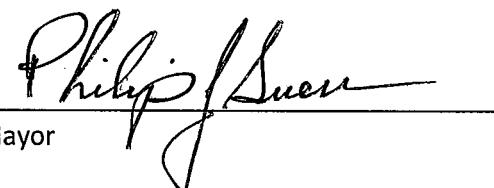


RESOLUTION R-2020-104

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1241 Hidden Court)

**BE IT AND IT IS HEREBY RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to the Construction, Use, and Indemnification Agreement dated May 8<sup>th</sup>, 2019, between the City of Wheaton and Thomas and Denise Kazar for 1241 Hidden Court, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 16<sup>th</sup> day of November 2020.

  
\_\_\_\_\_  
Philip J. Suess  
Mayor

ATTEST:

  
\_\_\_\_\_  
Karen Bennett  
City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Barbier Councilwoman Bray-Parker Councilwoman Fitch Mayor Suess Councilwoman Robbins Councilman Rutledge Councilman Zaruba

Nays:	None
Absent:	None
<u>Motion Carried Unanimously</u>	

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**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY ( Hidden Court )**  
**Street Name**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 8th day of May, 2019, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Thomas and Denise Kazar ("Owner").

**WITNESSETH**

WHEREAS, the City is in possession of a right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, Thomas and Denise Kazar (hereinafter "Owner"), the owner of the premises located at 1241 Hidden Court, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owners would like to use a portion of the City's right-of-way for the purpose of constructing and maintaining a lawn irrigation system; and

WHEREAS, the Owners acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said right-of-way.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Owner as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Thomas and Denise Kazar are the owners of property located at 1241 Hidden Court, Wheaton, Illinois, legally described on Exhibit A attached hereto and made a part hereof.

3.) The Owners, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby authorized to use only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The ordinances are material terms and conditions of this Agreement.

4.) The City retains the right to enter said right-of-way for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (watermain, storm and sanitary sewers) and other infrastructure. If the City performs any work within said right-of-way which causes damage to the lawn irrigation system, the Owners shall be responsible to repair the lawn irrigation system at their sole cost and expense. The Owner hereby acknowledges and agrees that the City, its employees, and agents shall have no liability to the owner for any damage, removal or other casualty to the lawn irrigation system caused by the City, its employees or agent regardless of the cause.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owners in writing at least fourteen (14) days prior to termination.

6.) Upon termination of this Agreement, the City may destroy, demolish, or remove any improvements placed upon the right-of-way by the Owners without liability.

7.) To the greatest extent permitted under Illinois law, Owners shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and expert's fees) which arise or may be caused by the negligence of the Owners, or Owners' agents, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation system described herein.

8.) This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement it shall be a temporary easement which shall expire 14 days after such construction.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

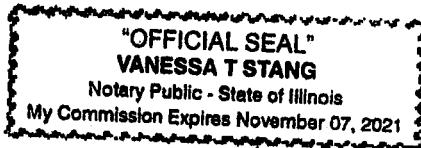
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

Thomas Kagan  
Owner  
Tom Kagan  
Owner

Subscribed and sworn to before me this 10 day of May, 2019.

Vanessa T Stang Notary Public

(Notary Seal)



Philip J. Stang  
Mayor, City of Wheaton

Attested by:

Shawn Bennett Stang  
City Clerk

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100. *W. E. B. DuBois*

**EXHIBIT A**

Legal Description:

Lot 19 in Joe Keim's Orchard Cove, A Subdivision  
In Part of Section 29, Township 39 North, Range 10  
East of the third Principal Meridian, According  
To The Plat Thereof Recorded September 26, 1980  
As Document R80-58087, In DuPage County, Illinois

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1241 HIDDEN CT.      Wheaton, IL 60189  
address

P.I.N. 05-29-111-009

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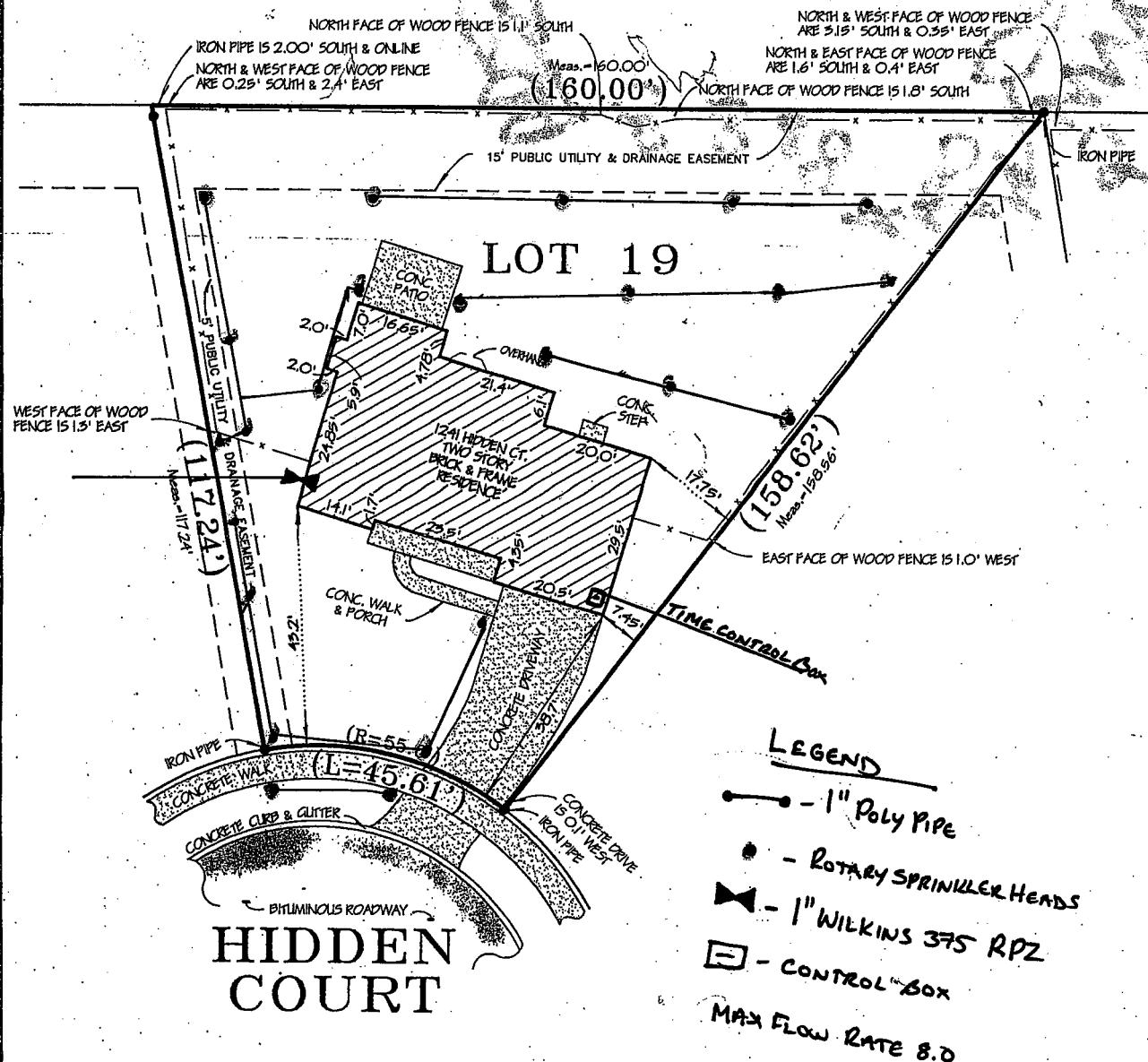
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# PLAT OF SURVEY

LEGEND  
 ● Monumentation Found  
 ○ Monumentation Set  
 (50') Record Dimension  
 -X- Fence Line

LOT 19 IN JOE KEIM'S ORCHARD COVE, A SUBDIVISION IN PART OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 26, 1980 AS DOCUMENT R80-58087, IN DU PAGE COUNTY, ILLINOIS.

CARRADUS



STATE OF ILLINOIS) SS  
COUNTY OF DU PAGE)



THIS IS TO CERTIFY THAT I, ALLEN D. CARRADUS, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF ILLINOIS, HAVE SURVEYED THE PROPERTY AS DESCRIBED HEREON AND THAT THE ANNEXED PLAT IS A CORRECT AND TRUE REPRESENTATION THEREOF.

SIGNED AND SEALED AT WINFIELD, ILLINOIS THIS 4th DAY OF June A.D. 2001  
BY Allen D. Carradus ILLINOIS PROFESSIONAL LAND SURVEYOR NO 35-2551

NOTES

1. All distances shown hereon are in feet and decimal parts thereof corrected to 68' f. Distances shown along curved lines are Arc Measurements unless otherwise noted.
2. Compare the Legal Description, Building Lines, and Easements as shown hereon with your Deed, Title Insurance Policy or Title Commitment.
3. Consult local authorities for additional setbacks and restrictions not shown hereon.
4. Compare all survey points and report any discrepancies immediately.
5. Consult utility companies and municipalities prior to the start of any construction.
6. Dimensions to and along buildings are exterior foundation measurements.
7. Do Not Assume distances from scaled measurements made hereon.

ALLEN D. CARRADUS AND ASSOCIATES  
Land Surveying, Land Planning, & Engineering Services  
108 W. Liberty Drive, Wheaton, Illinois 60187  
(630) 588-0416 (Fax) 653-7682

PREPARED FOR LAW OFFICE OF POWELL & BOYER  
DRAWN BY DATE SCALE FLDSK PAGE PROJECT NO.

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