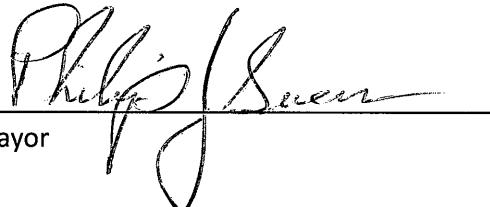


RESOLUTION R-2021-26

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(312 N. West Street)**

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 March 30th, 2021, between the City of Wheaton and Robin & Jennifer Pastore for 312 N. West Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 19th day of April 2021.



Philip J. Suess
Mayor

ATTEST:



Sharm Bennett-Fay
City Clerk

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

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

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CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (N. West Street)
Street Name

3/23/2021

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 30th day of March, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Robin + Jennifer Pastore ("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, Robin + Jennifer Pastore (hereinafter "Owner"), the owner of the premises located at 312 N. West Street, 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.) Robin + Jennifer Pastore are the owners of property located at 312 N. West Street, 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.

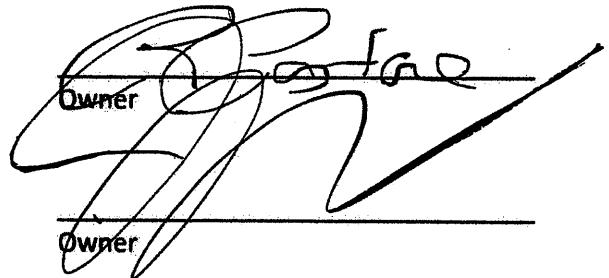
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within 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.

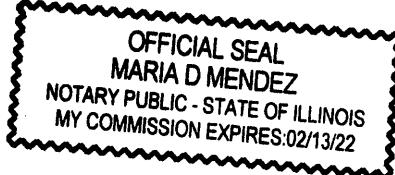


Two handwritten signatures are shown, one above the other. The top signature is longer and appears to read "John Doe". The bottom signature is shorter and appears to read "Jane Doe". Both signatures are written in cursive ink.

Subscribed and sworn to before me this 30th day of March, 2021.

Maria D. Mendez Notary Public

(Notary Seal)



A handwritten signature that appears to read "Philip J. Sauer". The signature is written in cursive ink.

Philip J. Sauer
Mayor, City of Wheaton

Attested by:

Sharon Bennett Hayes
City Clerk

EXHIBIT A

Legal Description:

PART OF THE EAST 1/2 OF BLOCK 3 IN COUNTY CLERKS ASSESSMENT DIVISION OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OTHER PROPERTY RECORDED AS DOCUMENT 43592, DESCRIBED AS FOLLOWS: COMMENDING AT THE NORTHWEST CORNER OF THE INTERSECTION OF MAPLE AND WEST STREETS; THENCE NORTH ALONG THE WEST SIDE OF WESTSTREET 94.5 FEET FOR A POINT OF BEGINNING (WHICH POINT IS 33FEET WEST AND 541 FEET NORTH OF THE QUARTER SECTION CORNER) IN THE EAST LINE OF SECTION 17: THENCE NORTH ALONG THE WEST LINE OF WEST STREET, 98.5 FEET, MORE OR LESS, TO ANNA M. MINK'S SOUTHEAST CORNER, THENCE WEST PARALLEL WITH MAPLE STREET, 188 FEET TO THE ALLEY: THENCE SOUTH ALONG THE EST SIDE OF THE ALLEY 98.5 FEET, THENCE EST 188 FEET TO THE POINT OF BEGINNING, AND EST 1/2 OF VACATED ALLEY ADJOINING OF WEST, IN DUPAGE COUNTY, ILLINOIS.

312 N. WEST ST. Wheaton, IL 60187
Street Name

P.I.N. 05-17-230-005

1216 E. Central Road
Arlington Heights, IL 60005
Phone: 847-392-7600
Fax: 847-392-7719



21-1 N. County Street
Waukegan, IL 60085
Phone: 847-336-2473
Fax: 847-336-2113

EXHIBIT B

9800 S. Roberts Road
Palos Hills, IL 60465
Phone: 708-430-4077
Fax: 708-598-0896

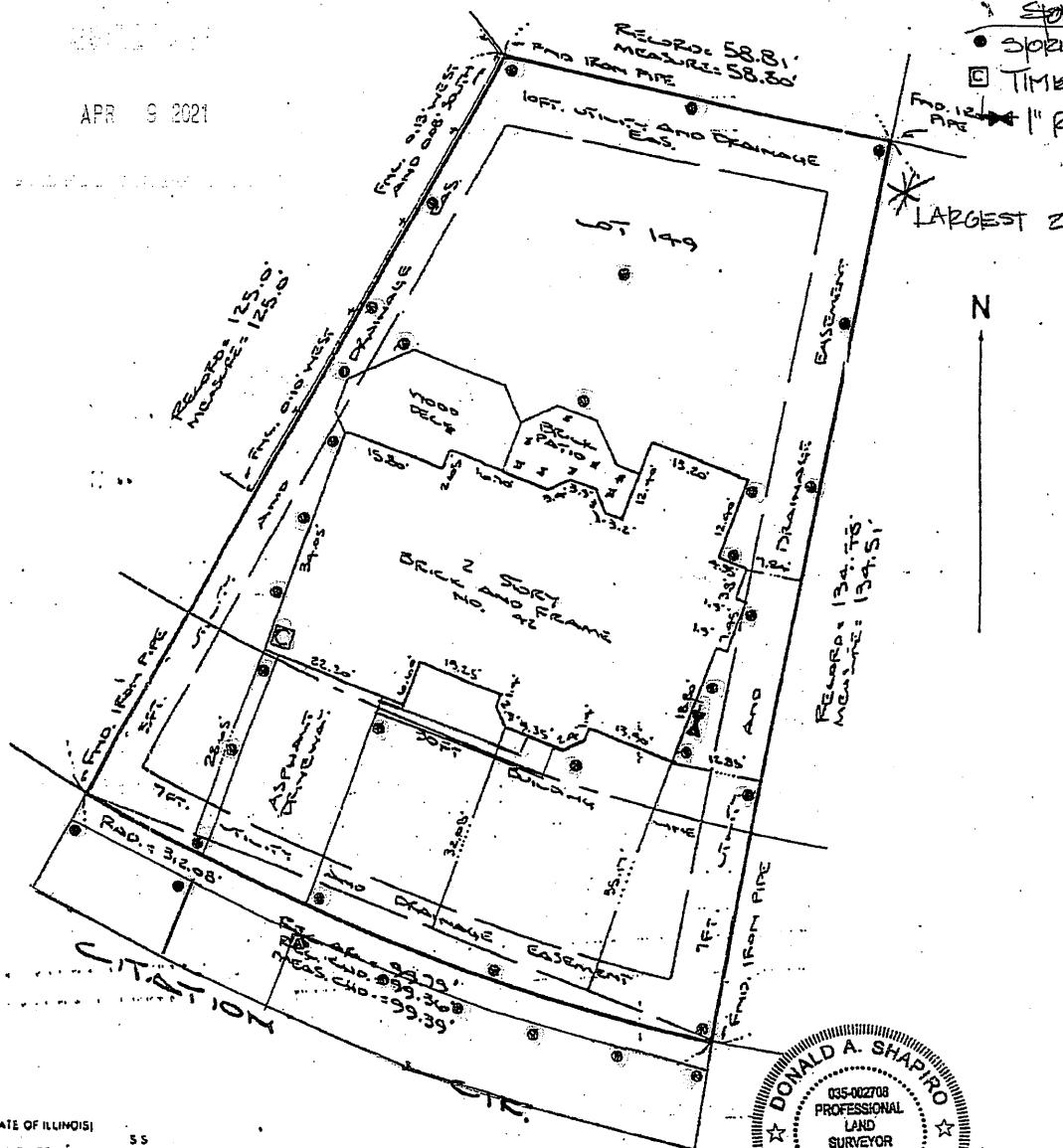
PLAT OF SURVEY

E-MAIL AND INTERNET ADDRESSES:
<http://www.masc.com> AND sales@masc.com

460 S. County Farm Road
Wheaton, IL 60187
Phone: 630-690-3733
Fax: 630-690-3735

LOT 149 IN DANADA FARMS UNIT 2, BEING A SUBDIVISION OF PART OF THE SOUTH EAST QUARTER OF SECTION 21 AND THE NORTH EAST QUARTER OF SECTION 28, TOWNSHIP 3rd NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED OCTOBER 12, 1987 AS DOCUMENT R87-148927, IN DUPAGE COUNTY, ILLINOIS.

APR 9 2021



STATE OF ILLINOIS
COUNTY OF LAC

On behalf of MID AMERICA SURVEY COMPANY I hereby certify that the above described property was surveyed under my supervision and that the same is in a correct and servable condition.

Survey Dated June 4 99

Scale 1" = 20'
All distances shown are in feet & decimal parts
Interest, true angles & distances are to be
determined by reading.

Job No. 251-259

Address 47 CATAWBA CIR.

City WHEATON

State ILLINOIS

Zip Code 60187

Notes: NOTES

By Donald A. Shapiro
Mid America Survey Company
Registered Illinois Land Surveyor

Compare your description and true markings
with this plat and enter report any discrepancies which you may find.

GRADING PLAN

EXHIBIT B



NORTH