

RESOLUTION R-2021-29

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1605 Wilmette 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 April 15th, 2021, between the City of Wheaton and Brian & Anne Polencheck for 1605 Wilmette Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 3rd day of May 2021.



Philip J. Suess
Mayor

ATTEST:



Shaw Bennett Hagan
City Clerk

Roll Call Vote

Ayes: Councilwoman Robbins
Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilwoman Fitch

Nays: None

Absent: None

Motion Carried Unanimously

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APP 19 2021

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT

RIGHT-OF-WAY (Wilmette St. & Madsen Ct.)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 15 day of April, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Brian + Anne Polencheck ("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, Brian + Anne Polencheck (hereinafter "Owner"), the owner of the premises located at 1605 Wilmette St., 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.) Brian + Anne Polencheck are the owners of property located at 1605 Wilmette St., 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.

Diane Polencheck
Owner

B. B.
Owner

Subscribed and sworn to before me this 15 day of April, 2021

Maria D. Mendez Notary Public

(Notary Seal)



Philip J. Sauer
Mayor, City of Wheaton

Attested by:

Alma Bennett Hagan
City Clerk

EXHIBIT A

Legal Description:

LOT 32 IN ASHTON COURT SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 20, 1957 AS DOCUMENT 836109 AND CERTIFICATE OF CORRECTION RECORDED APRIL 22, 1957 AS DOCUMENT 839725, IN DUPAGE COUNTY, ILLINOIS.

1605 WILMETTE ST. Wheaton, IL 60187
Street Name

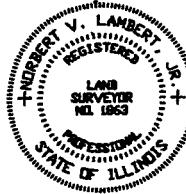
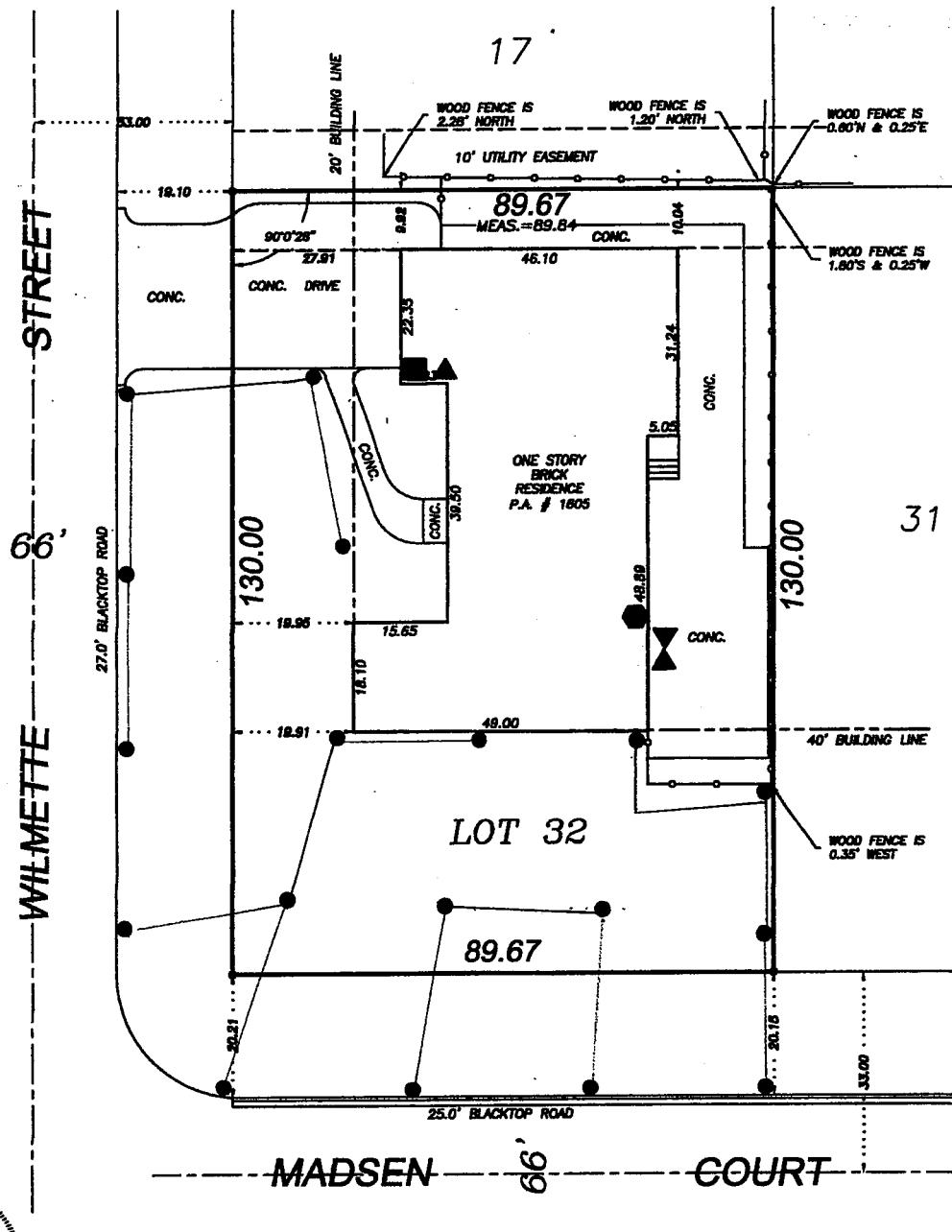
P.I.N. 05-10-110-009

PLAT OF SURVEY

LOT 32 IN ASHTON COURT SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED MARCH 20, 1957 AS DOCUMENT 836109 AND CERTIFICATE OF CORRECTION RECORDED APRIL 22, 1957 AS DOCUMENT 839725, IN DUPAGE COUNTY, ILLINOIS.

SCALE: 1"-20'

APR. 19 2021



STATE OF ILLINOIS) S.S.
COUNTY OF DU PAGE)

THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR,
HAVE SURVEYED THE PROPERTY DESCRIBED ABOVE AND THAT
THE ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID
SURVEY.

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT
ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS,

THIS 18TH DAY OF JUNE, A.D. 2008.

Nedra Z. Zanis

ILLINOIS LAND SURVEYOR NO. 1863

PER TO DEED OR GUARANTEE POLICY FOR RESTRICTIONS NOT SHOWN

E SURVEY.

L DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

COMPARE ALL POINTS BEFORE BUILDING AND REPORT ANY APPARENT

SUPERPARANCES TO THE SURVEYOR.

- ◆ 1" RPZ
- ◆ Existing 3/4" Meter
- Controller
- ▲ Rain Sensor
- Sprinkler Head

All Control boxes, piping +
Sprinkler heads installed
3 ft from City valve,
fire hydrant + B-Box
18 GPM per largest zone

ORDERED BY BROMMANN, SCOTT

ORDER NO. 08 F 008 FILE NO. 080425

LAMBERT & ASSOCIATES
LAND SURVEYORS

320 SOUTH REBER ST. WHEATON, ILL. 60187
PHONE: (630) 653-6331 FAX: (630) 653-6396

◆ = FOUND IRON STAKE
○ = SET IRON STAKE

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