

RESOLUTION R-2021-55

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1815 Golden Pond Lane)

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 11th, 2021, between the City of Wheaton and Patrick and Regina Gibbons for 1815 Golden Pond Lane, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 21st day of June 2021.



Philip J. Suess
Mayor

ATTEST:



Karen Bennett Hagen
City Clerk

Ayes: Roll Call Vote
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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**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (1815 GOLDEN POND LANE)
Street Name**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 11 day of MAY, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and PATRICK AND REGINA GIBBONS ("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, PATRICK AND REGINA GIBBONS (hereinafter "Owner"), the owner of the premises located at 1815 GOLDEN POND LANE, 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.) PATRICK AND REGINA GIBBONS are the owners of property located at 1815 GOLDEN POND LANE, 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.

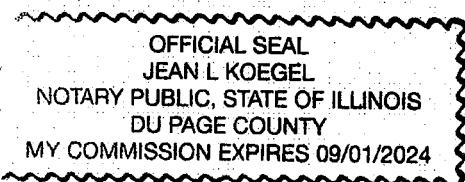
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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



Patrick Sitter

Owner

Regina Sitter

Owner

Subscribed and sworn to before me this 11th day of May, 2021.

Jean L. Koegel

Notary Public

(Notary Seal)

Philip J. Sitter

Mayor, City of Wheaton

Attested by:

Shawn Bawden-Hagan

City Clerk

EXHIBIT A

Legal Description:

LOT 26 IN JOE KEIM'S ORCHARD COVE, BEING 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.

1815 GOLDEN POND LANE Wheaton, IL 60189
Street Name

P.I.N. 05-29-120-003

PLAT OF SURVEY

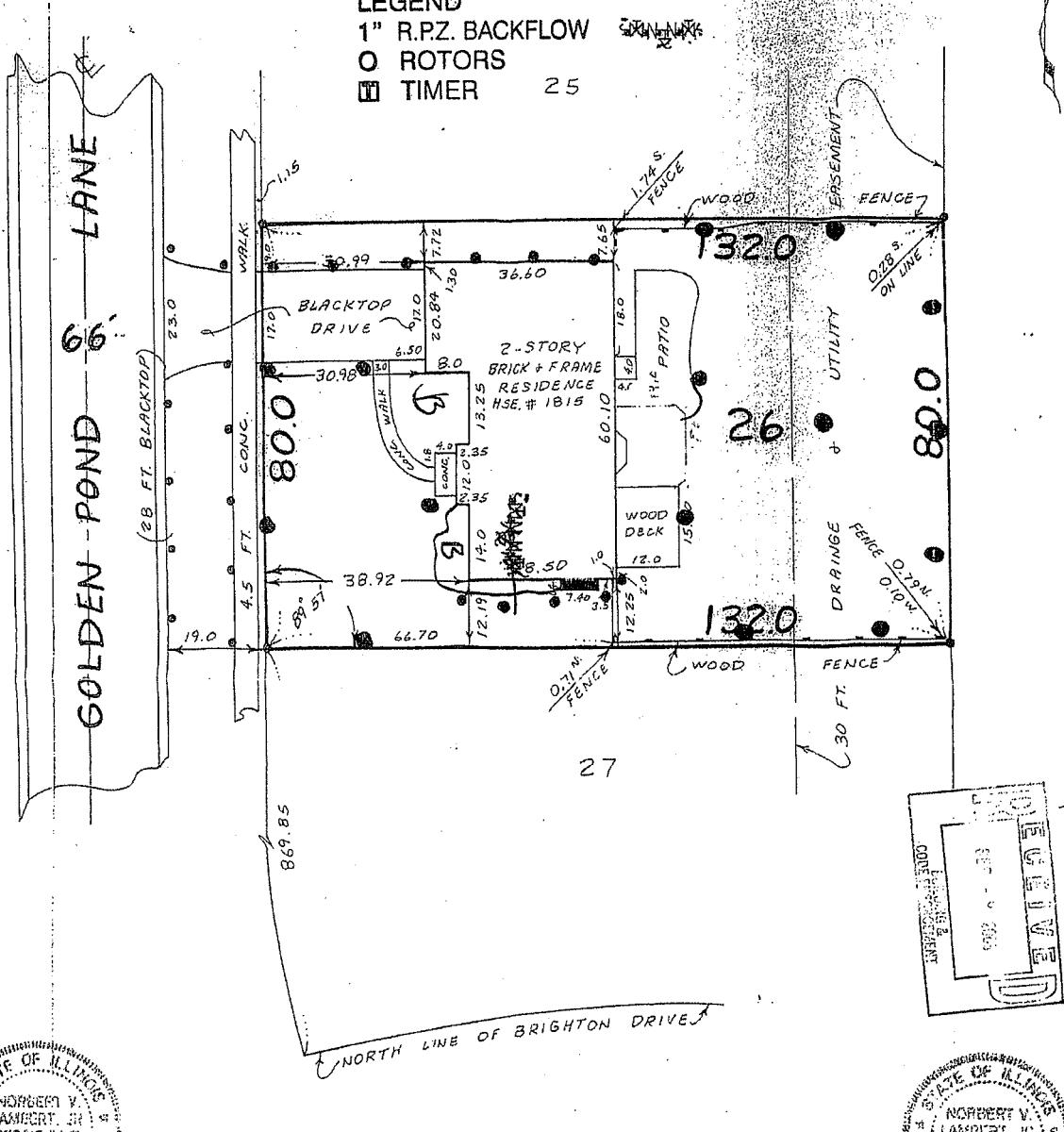
OF LOT 26 IN JOE KEIJER'S ORCHARD COVE, BEING A SUBDIVISION IN PART OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 26, 1980 AS DOCUMENT R80-58087, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B

LEGEND

- 1" R.P.Z. BACKFLOW
- O ROTORS
- TIMER

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ERED BY: HAAS & MCLENNAN - ATTY

ORDER NO. 96-A 50

FILE NO. 96-019



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

HIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR
E SURVEYED THE PROPERTY DESCRIBED ABOVE AND THAT
ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID
PROPERTY.
IVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS.
16 TH DAY OF JANUARY A.D. 1996.

Nobert V. Lambert, Jr.
ILLINOIS LAND SURVEYOR NO. 1863

R TO DEED OR SUBDIVISION POLICY FOR RESTRICTIONS NOT SHOWN ON SURVEY.
PARENT SURVEYOR TO MAKE AND REPORT ANY APPARENT
REFERENCE LINE EXISTING IN THIS SURVEY.

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

BUILDINGS LOCATED AS SHOWN ON THIS 16TH DAY
OF JANUARY A.D. 1996.

Nobert V. Lambert, Jr.
ILLINOIS LAND SURVEYOR NO. 1863

LAMBERT & ASSOCIATES

LAND SURVEYORS
320 SOUTH REBER ST. WHEATON, ILL. 60187
PHONE: (708) 653-6331 FAX: (708) 653-6396

■ = found iron stake
○ = set iron stake

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