

**RESOLUTION R-53-12**

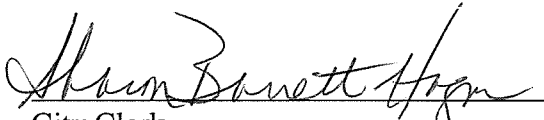
**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1917 Martingale Road)**

**BE IT AND IT IS HEREBY RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated July 9, 2012, between the City of Wheaton and Robert Livingston of 1917 Martingale Road, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 6<sup>th</sup> day of August, 2012.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Roll Call Vote

Ayes:	Councilman Scalzo Councilman Sues Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti
Nays:	None
Absent:	None

Motion Carried Unanimously



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY ( 1917 Martingale Road )  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 9th day of July, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Rob Livingston ("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, Rob Livingston (hereinafter "Owner"), the owner of the premises located at 1917 Martingale Road, 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.) Rob Livingston are the owners of property located at 1917 Martingale Road 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 a portion of the right-of-way more specifically identified as that portion of the right-of-way parkway and easements

\_\_\_\_\_ for construction of and use of a lawn irrigation system as depicted on Exhibit B attached hereto and made a part hereof. The installation and use of the lawn irrigation system shall conform to all applicable ordinances of the City. Those 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 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.

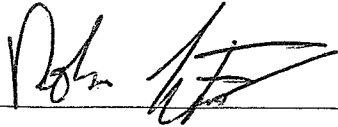
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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

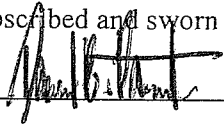
12.) This Agreement shall be binding on the Owners, their sucesors, heirs and assigns.

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.

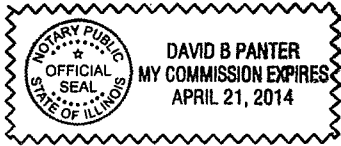
  
\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

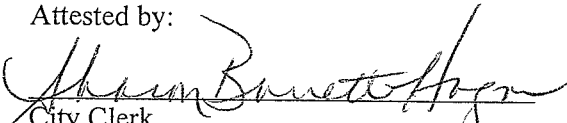
Subscribed and sworn to before me this 9th day of July, 2012.

  
\_\_\_\_\_  
Notary Public

(Notary Seal)



Attested by:

  
\_\_\_\_\_  
City Clerk

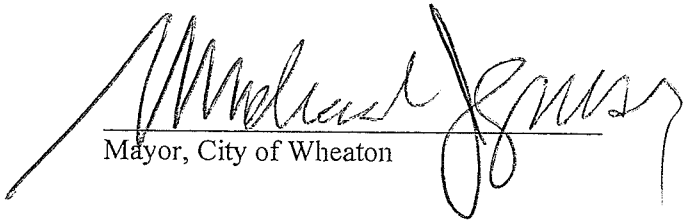
  
\_\_\_\_\_  
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

Lot 33 in Hawthorne Estates, Being A Subdivision Of That Part Of The West 1/2 Of The Northeast Quarter Of Section 9, Township 39 North, Range 10, East Of The Third Principal Meridian, Lying North Of And Adjoining The North Line Of Quiggle Construction Co's, Hawthorne Ranchland Addition To Wheaton, Recorded June 21, 1954 As Document 720773, Said Plot Of Hawthorne Estates Having Been Recorded September 12, 1995 As Document 772809, In DuPage County, Illinois.

1917 Martingale Road      Wheaton, IL 60187  
address

P.I.N. 05-09-205-002

LEGEND

A = ASSUMED	NW = NORTHWEST
S. = BUILDING SETBACK LINE	P.O.B. = POINT OF BEGINNING
C. = CALCULATE	P.O.C. = POINT OF COMMENCEMENT
C.E. = CITY EASEMENT	P.U.E. = PUBLIC UTILITY EASEMENT
CH = CHORD	P.U. & D. E. = PUBLIC UTILITY & DRAINAGE EASEMENT
CL = CENTERLINE	R = RECORD
D = DEED	RAD = RADIUS
D.E. = DRAINAGE EASEMENT	R.O.W. = RIGHT OF WAY
E = EAST	S = SOUTH
F.I.P. = FOUND IRON PIPE	S.I.P. = SET IRON PIPE
F.I.R. = FOUND IRON ROD	S.I.R. = SET IRON ROD
FT. = FEET/FOOT	SE = SOUTHEAST
L = ARC LENGTH	SW = SOUTHWEST
ASURED	W.E. = VILLAGE EASEMENT
TH	W = WEST
RTHEAST	
x	= FENCE
x	= EASEMENT LINE
	= SETBACK LINE

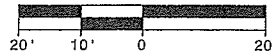
AREA OF SURVEY:  
 \*CONTAINING 12,713 SQ. FT. 0.29 ACRES MORE OR LESS\*

# MORRIS ENGINEERING, INC.

5100 S. LINCOLN LISLE, ILLINOIS 60532  
 MAIN PHONE: (630)271-0770 SURVEY DEPT. PHONE (630)271-0599  
 EMAIL: SURVEY@ECIVIL.COM WEBSITE: ECIVIL.COM

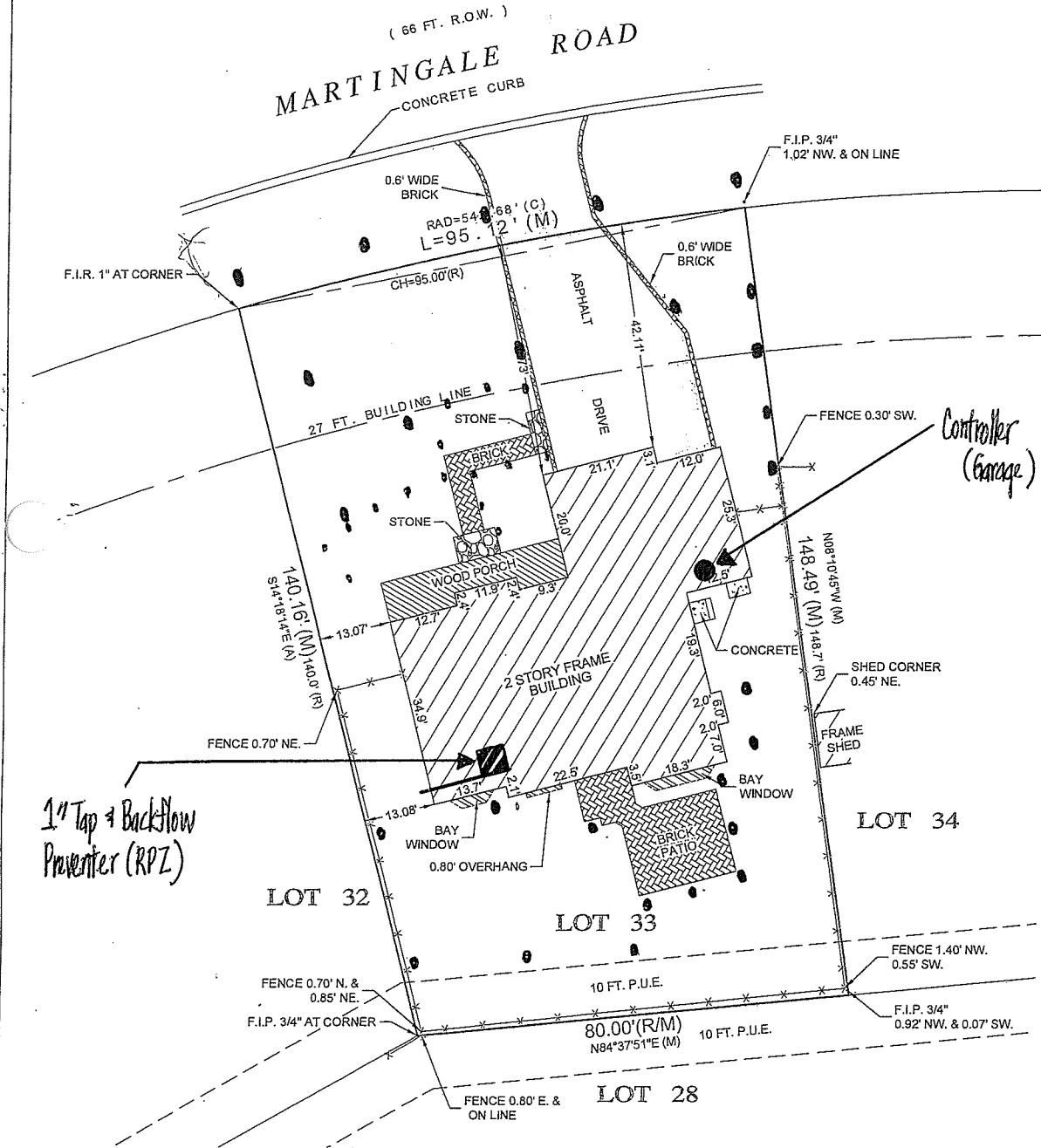
## PLAT OF SURVEY

### EXHIBIT "B"



BASIS OF BEARING:  
 WESTERLY LINE OF LOT 33 AS FOUND  
 MONUMENTED AND OCCUPIED PER RECORD  
 SUBDIVISION PLAT.  
 S 14°18'14" E (A)

LOT 33 IN HAWTHORNE ESTATES, BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF AND ADJOINING THE NORTH LINE OF DURABLE CONSTRUCTION CO'S, HAWTHORNE RANCHLAND ADDITION TO WHEATON, RECORDED JUNE 21, 1954 AS DOCUMENT 720773, SAID PLAT OF HAWTHORNE ESTATES HAVING BEEN RECORDED SEPTEMBER 12, 1995 AS DOCUMENT 772809, IN DUPAGE COUNTY, ILLINOIS.



STATE OF ILLINOIS  
 COUNTY OF DUPAGE

I, ROBERT J. SLADER, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT "THIS PROFESSIONAL SURVEY CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY," AND THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION OF SAID SURVEY.

DATED, THIS 10TH DAY OF JANUARY, A.D., 2012, AT LISLE, ILLINOIS.  
 ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-2181  
 LICENSE EXPIRATION DATE NOVEMBER 30, 2012  
 ILLINOIS BUSINESS REGISTRATION NO. 184-001245



NOTE:  
 1. ALL TIES SHOWN ON THIS SURVEY ARE MEASURED TO THE BUILDING'S SIDING (BRICK, FRAME, STUCCO, METAL, ETC.) AND NOT TO THE FOUNDATION, UNLESS NOTED OTHERWISE.  
 2. ROOF LINES AND OVERHANGS ARE TYPICALLY NOT SHOWN HEREON.

ADDRESS COMMONLY KNOWN AS 1917 MARTINGALE ROAD  
 WHEATON, ILLINOIS  
 CLIENT FAUSETT MILES, P.C.  
 JOB NO. 12-01-0012  
 FIELDWORK DATE/CREW CHIEF 01-09-12 (CS/DS)  
 DRAWN BY: JB REVISED:

