


**RESOLUTION R-69-12**

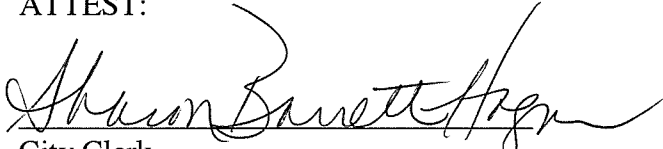
**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(171 E. Thompson Drive)**

**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 August 20, 2012, between the City of Wheaton and Therese Morris of 171 E. Thompson Drive, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 4<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

	<u>Roll Call Vote</u>
Ayes:	Councilman Sues
	Councilwoman Ives
	Councilman Mouhelis
	Councilman Rutledge
	Mayor Gresk
	Councilwoman Pacino Sanguinetti
	Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY ( 171 E. Thompson Drive )  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 20<sup>th</sup> day of August, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Ms. Therese Morris ("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, Therese Morris (hereinafter "Owner"), the owner of the premises located at 171 E. Thompson Drive, 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.) Therese Morris are the owners of property located at 171 E. Thompson Drive, 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 of Thompson Drive adjacent to 171 E. Thompson Drive.

\_\_\_\_\_ 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 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.

Theresa Morris

Owner

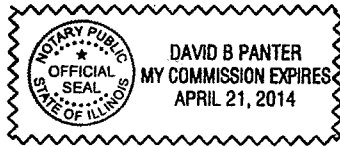
[Signature]  
Owner

Subscribed and sworn to before me this 20th day of August, 2012.

[Signature]

Notary Public

(Notary Seal)



[Signature]  
Mayor, City of Wheaton

Attested by:

[Signature]  
City Clerk

EXHIBIT A

Legal Description:

Lot 143 In Farnham Unit No 4, Being A Subdivision Of Part Of Lot 1 Of Oswald Sittler Farms In Section 28, Township 39<sup>th</sup> North, Range 10, East Of The Third Principal Meridian, According To The Plat Of Said Farnham Unit No. 4, Recorded October 22, 1968 As Document R68-49060, In DuPage County, Illinois.

171 E. Thompson Drive  
address

Wheaton, IL 60187

P.I.N. 05-28-102-007

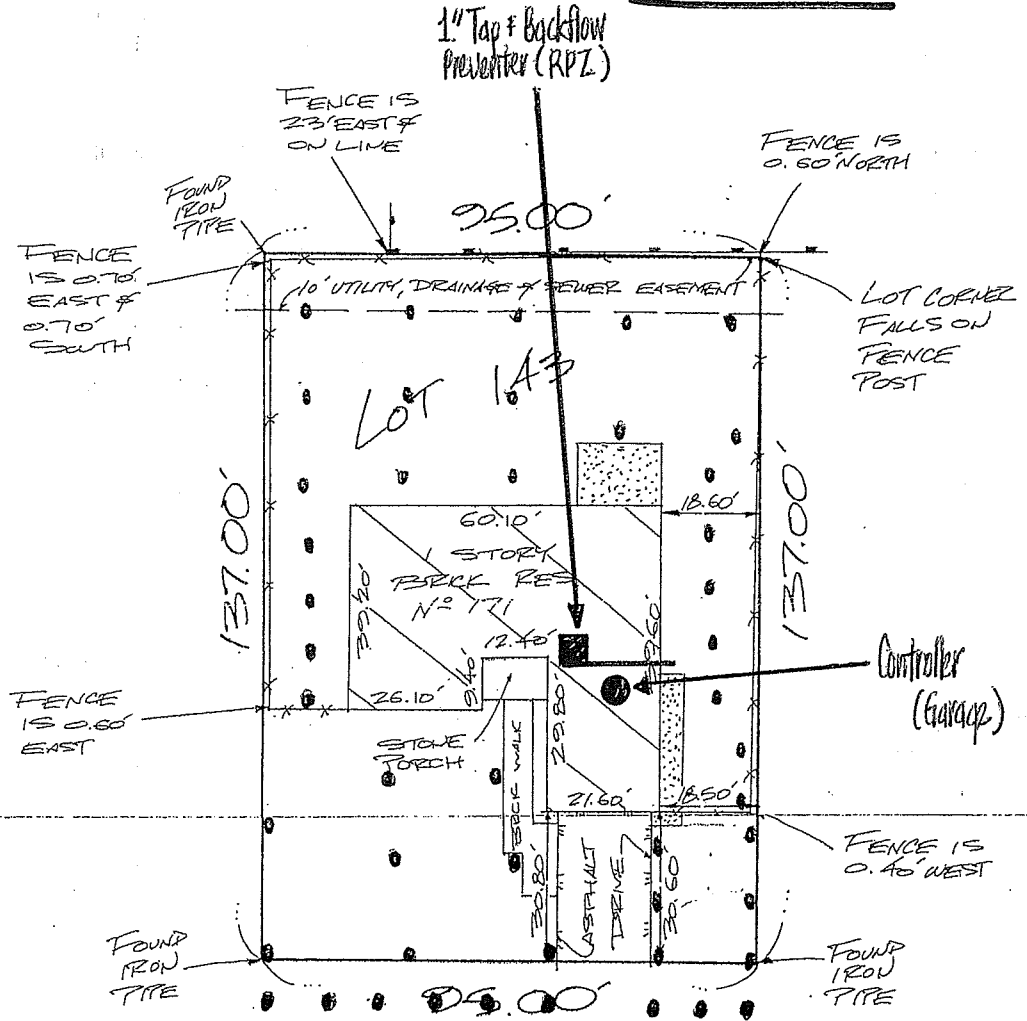
# Residential Surveying Service P.C.

108 Lee Lane Bolingbrook IL 60440  
 PH (630) 759-0205 FAX (630) 759-9291

## PLAT OF SURVEY

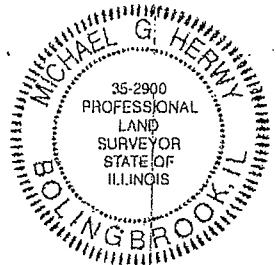
LOT 143 IN FARNHAM UNIT NO. 4, BEING A SUBDIVISION OF PART OF LOT 1 OF OSWALD SITTLER FARMS IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID FARNHAM UNIT NO. 4, RECORDED OCTOBER 22, 1968 AS DOCUMENT R68-49060, IN DUPAGE COUNTY, ILLINOIS.

**EXHIBIT "B"**



THOMPSON DR.

877 S.F. May. man  
 when used with  
 - 3111111111



State of Illinois }  
 County of Will } SS

I, Michael G. Herwy, an Illinois Professional Land Surveyor, do hereby certify that I have surveyed the parcel of land hereon described and that the Plat hereon drawn is a correct representation of said survey.

Dated, this 12<sup>TH</sup> day of MAY, A.D., 2000, at Bolingbrook, Illinois.

Michael G. Herwy  
 Illinois Professional Land Surveyor No. 35-2900

CLIENT CLARK/MORRIS

JOB No. 32595-00

For Building Lines, Easements and Other Restrictions not shown hereon refer to your Deed, Title Policy, Ordinance, etc.

