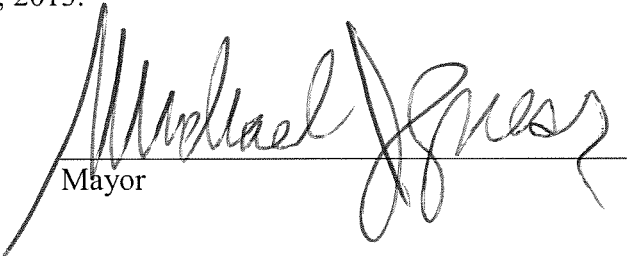


RESOLUTION R-49-13

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(207 N. Ellis Avenue)**

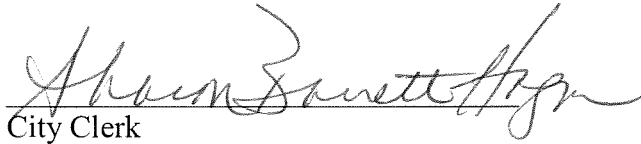
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated June 11, 2013 between the City of Wheaton and Michael P. and Sasha E. Parker of 207 N. Ellis Avenue, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 15th day of July, 2013.



Mayor

ATTEST:



City Clerk

Roll Call Vote

Ayes:	Councilman Scalzo Councilman Sues Councilman Prendiville Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti
Nays:	None
Absent:	Councilman Saline

Motion Carried Unanimously

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (207 N. Ellis Avenue)
Street Name**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 11th day of June, 2013, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Michael and Sasha Parker ("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, Michael and Sasha Parker hereinafter "Owner"), the owner of the premises located at 207 N Ellis Avenue, 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.) Michael and Sasha Parker are the owners of property located at 207 N. Ellis Avenue, 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 between the sidewalk and curb.

_____ 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.

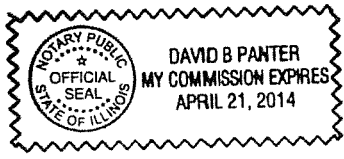
Michael Parker
Owner

Sasha Parker
Owner

Subscribed and sworn to before me this 11th day of June, 2013.

David B. Panter
Notary Public

(Notary Seal)



Michael Jones
Mayor, City of Wheaton

Attested by:
Alexis Barnett Hagen
City Clerk

EXHIBIT A

Legal Description:

Parcel 1: Commencing At The Southeast Corner Of The Northeast 1/4 Of Section 17 Township 39 North, Range 10 East Of The Third Principal Meridian, Thence North 75 Chains; Thence West 12.50 Chains For A Place Of Beginning; Thence North 2.35' Chains; Thence West 1 Chain; Thence South 2.35 Chains; Thence East 1 Chain To The Place Of Beginning, In DuPage County, Illinois

Parcel 2: Commencing At The Southeast Corner Of The Northeast 1/4 Of Section 17, Township 39 North, Range 10 East Of The Third Principal Meridian: Thence North 3 Rods; Thence West 12.50 Chains For A Place Of Beginning, Running Thence North 2.35' Chains; Thence East 1 Chain; Thence South 2.35 Chains; Thence West 1 Chain To The Place Of Beginning, Except The East 60 Feet Of The West 132 Feet Of Lot 3 In Block 5 Of The Plat Of County Clerks Assessor's 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, In DuPage County, Illinois.

207 N. Ellis Avenue

address

Wheaton, IL 60187

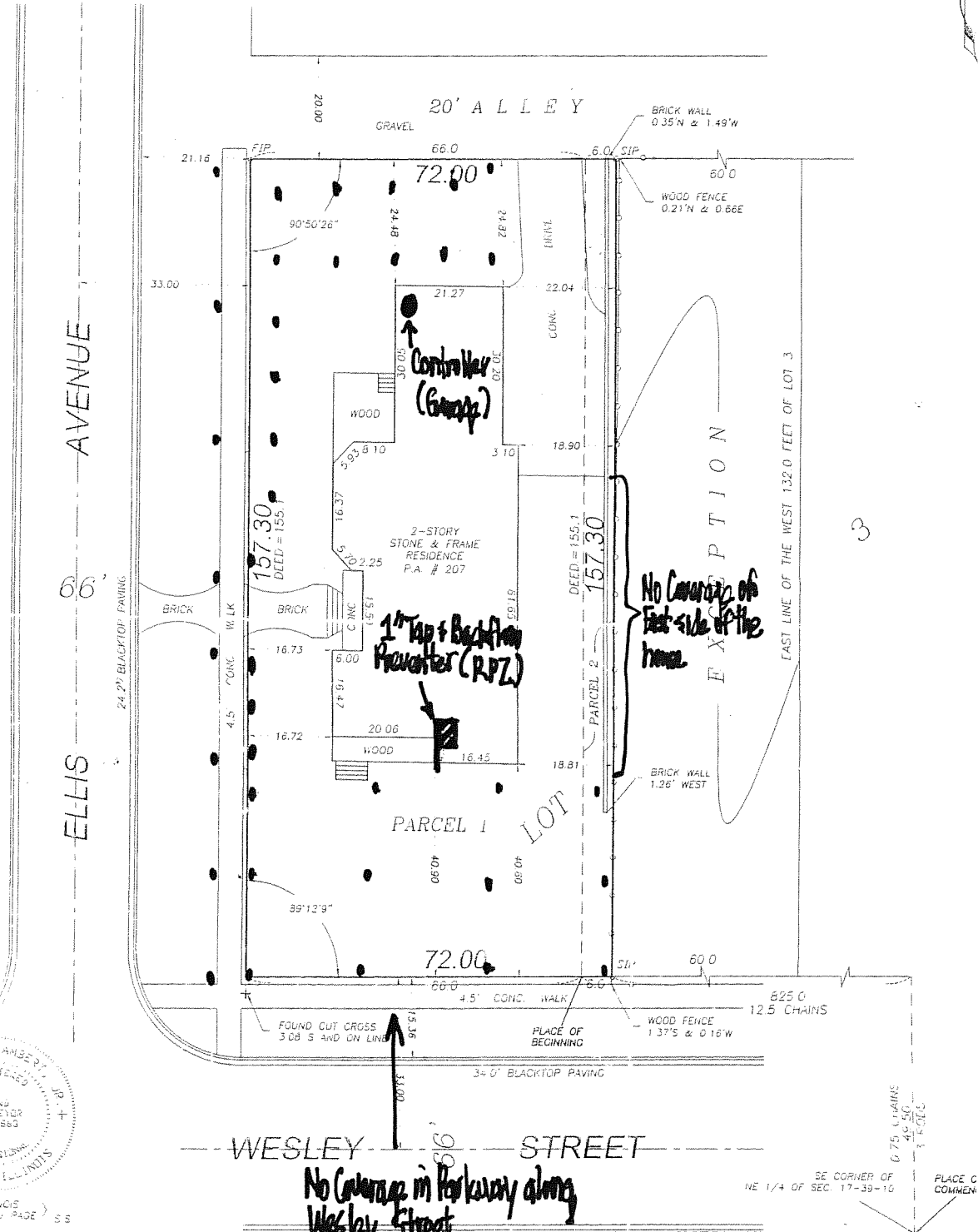
P.I.N. 05-17-231-007

PLAT OF SURVEY EXHIBIT B

PARCEL 1: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE NORTH 1.75 CHAINS; THENCE WEST 12.50 CHAINS FOR A PLACE OF BEGINNING; THENCE NORTH 2.35' CHAINS; THENCE WEST 1 CHAIN; THENCE SOUTH 2.35 CHAINS, THENCE EAST 1 CHAIN TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE NORTH 3 RODS; THENCE WEST 12.50 CHAINS FOR A PLACE OF BEGINNING; RUNNING THENCE NORTH 2.35' CHAINS, THENCE EAST 1 CHAIN; THENCE SOUTH 2.35 CHAINS, THENCE WEST 1 CHAIN TO THE PLACE OF BEGINNING, EXCEPT 60 FEET OF THE WEST 132 FEET OF LOT 3 IN BLOCK 5 OF THE PLAT OF COUNTY CLERK'S 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, IN DUPAGE COUNTY, ILLINOIS.

SCALE: 1" = 20'



STATE OF ILLINOIS
COUNTY OF DUPAGE S.S.

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 26th DAY OF FEBRUARY, A.D., 2013

ILLINOIS LAND SURVEYOR NO. 1863, LICENSE EXPIRES 11/07/14
ILLINOIS DESIGN FIRM NO. 184-006911

REFER TO DEED OR GUARANTEE POLICY FOR RESTRICTIONS NOT SHOWN ON SURVEY

ALL DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
COMPARE ALL POINTS BEFORE RECONSTRUCTION TO BE MADE BY THE SURVEYOR.

ORDERED BY: POWELL & BOYER ORDER NO. 13 B 028 FILE NO. 120055

LAMBERT & ASSOCIATES
LAND SURVEYORS
955 WEST LIBERTY DR., WHEATON, IL 60187

○ = FOUND IRON STAKE
○ = 5 FT IRON STAKE

