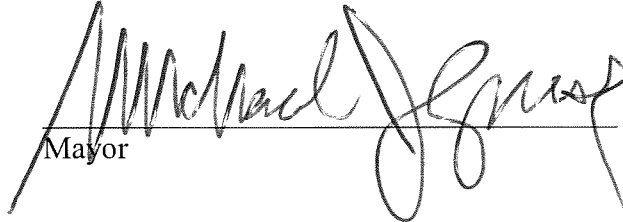


**RESOLUTION R-64-13**


**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(200 West Franklin Street)**

**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 21, 2013 between the City of Wheaton and the Kim E. Boyce Living Trust for 200 West Franklin Street, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 3<sup>rd</sup> day of September, 2013.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Roll Call Vote

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

Motion Carried Unanimously



**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY (200 W Franklin St)**  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 21 day of August, 2013, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), ar: Kim E Boyce Living Trust ("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 Kim E Boyce Living Trust (hereinafter "Owner"), the owner of the premises located at 200 W Franklin 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.) Kim E Boyce Living Trust are the owners of property located at 200 W Franklin 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 a portion of the right-of-way more specifically identified as that portion of the right-of-way Underground Irrigation Installation 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.

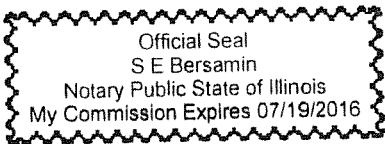
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

Kim E Bayce Ewing Trust / David + Kim Bayce  
Owner

Kim Bayce [Signature]  
Owner  
Trustees

Subscribed and sworn to before me this 21 day of Aug, 2013.

[Signature]  
Notary Public  
(Notary Seal)



[Signature]  
Mayor, City of Wheaton

Attested by:

[Signature]  
City Clerk

EXHIBIT A

Legal Description:

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**PLAT OF SURVEY**

OF THE EAST 60 FEET OF THE NORTH 174 FEET OF BLOCK 10 IN MALLORY'S ADDITION TO THE VILLAGE OF WHEATON,  
BEING A SUBDIVISION IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10,  
EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 2, 1875, AS DOCUMENT  
20408, IN DUPAGE COUNTY, ILLINOIS.

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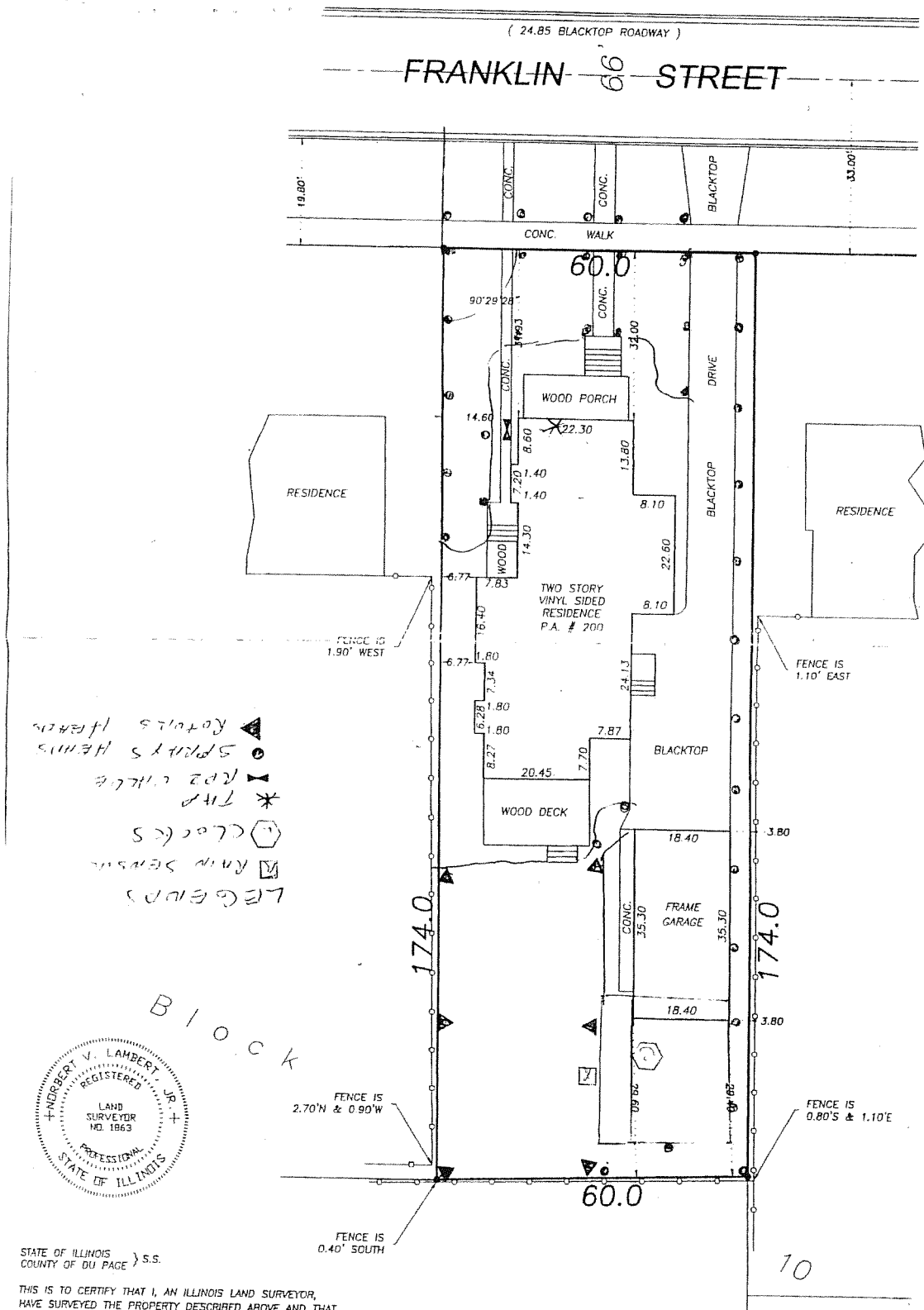
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200 W Franklin Wheaton, IL 60187  
address

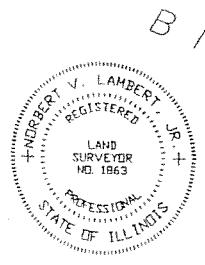
P.I.N. 05-16-121-007

# PLAT OF SURVEY

OF THE EAST 60 FEET OF THE NORTH 174 FEET OF BLOCK 10 IN MALLORY'S ADDITION TO THE VILLAGE OF WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 2, 1875, AS DOCUMENT 20408, IN DUPAGE COUNTY, ILLINOIS.



LEGENDS  
 [ ] RAIN SENSOR  
 [ ] CLOCKS  
 \* THE  
 [ ] RPD LITTLE  
 [ ] SPRAYS HEATHS  
 [ ] ROTUNDS HEATHS



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 4TH DAY OF MAY, A.D. 2007.

*Robert V. Lambert, Jr.*  
 ILLINOIS LAND SURVEYOR NO. 1863

RESURVEYED AND ADDITIONAL IMPROVEMENTS LOCATED:

REFER TO DEED OR GUARANTEE POLICY FOR RESTRICTIONS NOT SHOWN

