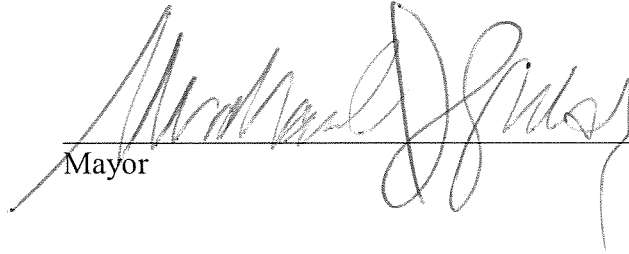


**RESOLUTION R-24-15**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(422 Pershing Avenue)**

**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 7, 2015, between the City of Wheaton and Jason and Beth Guwra for 422 Pershing Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 18<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Ayes:

Roll Call Vote

Councilman Sues  
Councilwoman Fitch  
Councilman Prendiville  
Councilman Rutledge  
Mayor Gresk  
Councilman Saline

Nays:

None

Absent:

Councilman Scalzo

Motion Carried Unanimously



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (422 Pershing)  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 7 day of May, 2015, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Givewer ("Owner").

WITNESSETH Jason + Beth

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, Givewer Jason + Beth (hereinafter "Owner"), the owner of the premises located at 422 Pershing Ave, 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.) Givewer Jason + Beth are the owners of property located at 422 Pershing Ave 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 422 Pershing Ave

\_\_\_\_\_ 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.

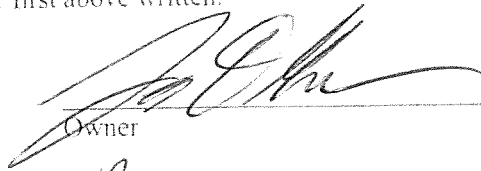
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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

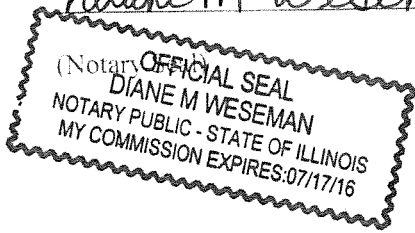
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

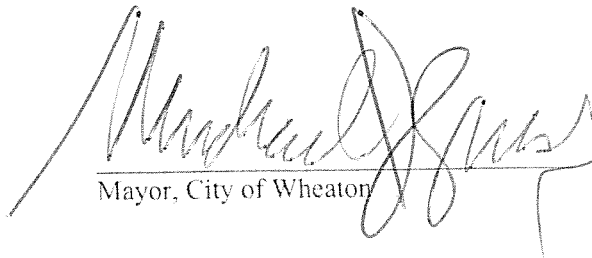
  
Owner

  
Owner

Subscribed and sworn to before me this 7 day of May, 2015.

 Notary Public



  
Mayor, City of Wheaton

Attested by:

  
City Clerk

EXHIBIT A

Legal Description:

of the west  $2\frac{1}{2}$  Feet of the North 300 feet  
of Lot 57 in Roosevelt Heights, A subdiv. of part  
of the north half of Section 21, Township 39 North  
Range 10 East of the Third principal meridian  
in Dodge County, Illinois

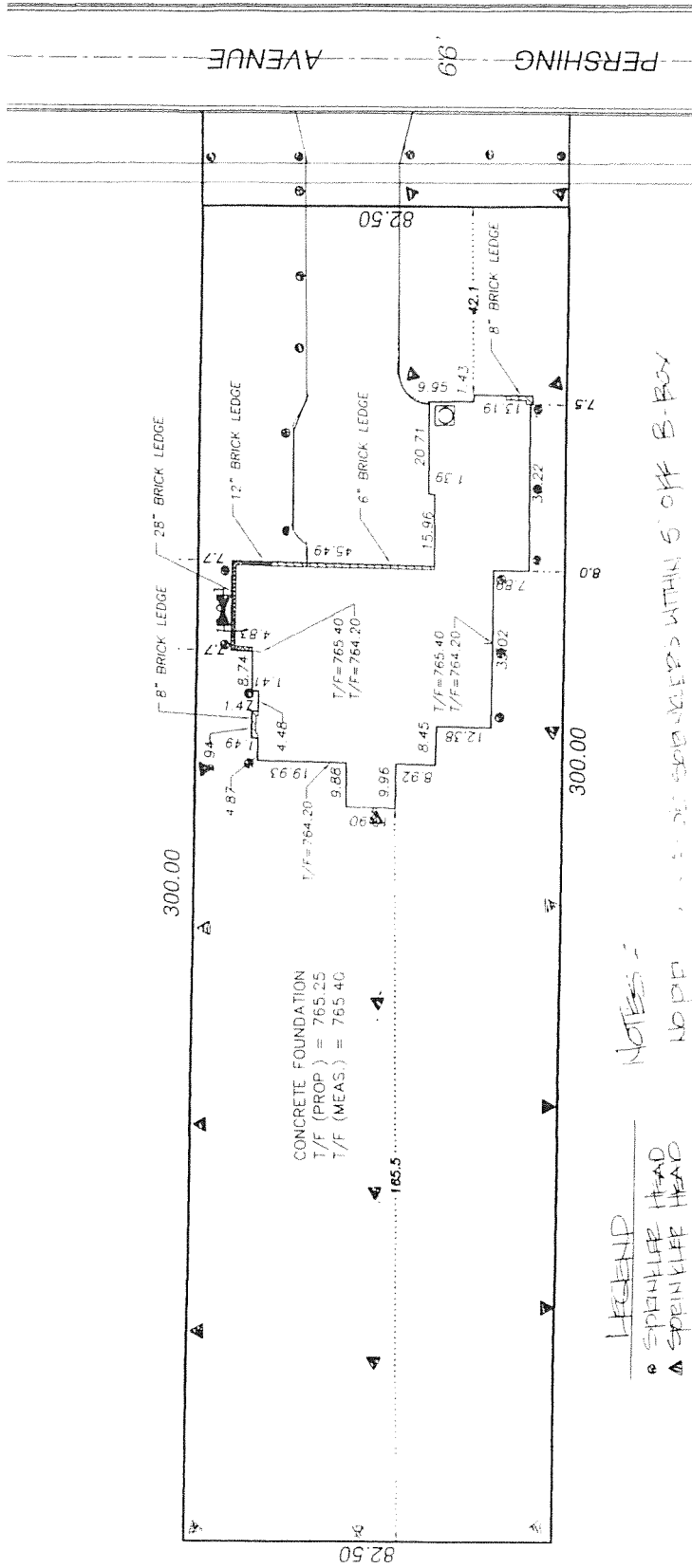
422 Pershing Ave Wheaton, IL 60187  
address

P.L.N. 05-21-202-017

# PLAT OF SURVEY

OF THE WEST 82 1/2 FEET OF THE NORTH 300 FEET OF LOT 57 IN ROOSEVELT HEIGHTS, A SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTH HALF OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

SCALE: 1" = 20'



CONCRETE FOUNDATION  
T/F (PROP.) = 765.25  
T/F (MEAS.) = 765.40

- LEGEND**
- SPINKLER HEAD
  - ▲ SPINKLER HEAD
  - ⊗ 1" PZ VALVE
  - TIMEE

**NOTES**

NO PZ SPINKLERS WITHIN 5' OFF B-BOX  
LARGEST EXIST. USAGE 12 GPM

## BENCHMARK INFORMATION

BENCHMARK: DUPAGE COUNTY BENCHMARK NUMBER MC10011 LOCATED AT INTERSECTION OF TAFT AVENUE AND PRESIDENT STREET. MONUMENT SURFACE IN THE EAST SIDE OF A 2.0 FT DIAMETER CONCRETE

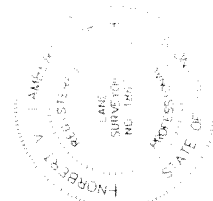
ELEVATION = 761.61

SITE BENCHMARK: SANITARY MANHOLE LOCATED IN CENTERLINE OF PERSHING AVENUE APPROXIMATELY 50' WEST OF SUBJECT PROPERTY

RIM ELEVATION = 761.07

**LAMBERT & ASSOCIATES**  
LAND SURVEYORS

905 W. WASHINGTON ST. WHEATON, IL 60187  
PHONE: (708) 401-1234 FAX: (708) 401-1234



STATE OF ILLINOIS  
COUNTY OF DUPAGE  
I, ROBERT J. LAMBERT, A LICENSED LAND SURVEYOR  
HAVE SURVEYED THE FOREGOING PROPERTY AND HAVE  
ANNEXED HERETO MY CERTIFICATE OF PROFESSIONAL  
OPINION.  
I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF  
ILLINOIS AND I AM A MEMBER OF THE ILLINOIS SURVEYING  
BOARD UNDER MEASUREMENT ACT 1984.  
I HAVE BEEN EMPLOYED BY LAMBERT & ASSOCIATES, INC.  
AS A LICENSED LAND SURVEYOR SINCE 1984.  
I HAVE BEEN EMPLOYED BY LAMBERT & ASSOCIATES, INC.  
AS A LICENSED LAND SURVEYOR SINCE 1984.  
I HAVE BEEN EMPLOYED BY LAMBERT & ASSOCIATES, INC.  
AS A LICENSED LAND SURVEYOR SINCE 1984.  
I HAVE BEEN EMPLOYED BY LAMBERT & ASSOCIATES, INC.  
AS A LICENSED LAND SURVEYOR SINCE 1984.

