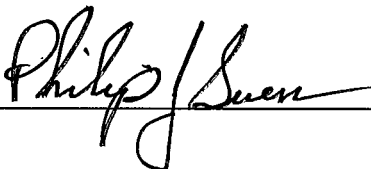


RESOLUTION R-2020-76

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1932 Jahns Drive)

**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 August 30<sup>th</sup>, 2020, between the City of Wheaton and Richard and Mary Bixter for 1932 Jahns Drive, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 21<sup>st</sup> day of September 2020.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Roll Call Vote

Ayes: Councilman Barbier  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Suess  
Councilwoman Robbins  
Councilman Rutledge  
Councilman Zaruba

Nays: None

Absent: None

Motion Carried Unanimously



202002589

Lawn Irrigation System

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY ( Sahns Drive )**  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 30 day of August, 2020, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Richard and Mary Bixter ("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, Richard and Mary Bixter (hereinafter "Owner"), the owner of the premises located at 1932 Sahns 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.) Richard and Mary Bixter are the owners of property located at 1932 Sahns 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 only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The 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 the 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.

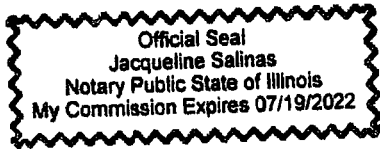
Mary M Birtles  
Owner

RL Balle  
Owner

Subscribed and sworn to before me this 30 day of August, 2020

Jacqueline Salinas Notary Public

(Notary Seal)



Philip J. Suen  
Mayor, City of Wheaton

Attested by:

Adam Bennett  
City Clerk

EXHIBIT A

Legal Description:

Lot 53 In Danada Farms East Unit 2, Being a Subdivision  
Of Part of The East Half of Section 28 Township 39  
North Range 10 East of The Third Principal  
Meridian, According to the Plat Thereof Recorded  
November 16, 1987 AS Document R87-163490  
In DuPage County Illinois

Sahns Drive

Street Name

Wheaton, IL 60189

P.I.N. 05-28-401-038

**EXHIBIT B**

**PLAT OF SURVEY**  
of

LOT 53 IN DANADA FARMS EAST UNIT 2, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 16, 1987 AS DOCUMENT R87-163490, IN DUPAGE COUNTY, ILLINOIS.

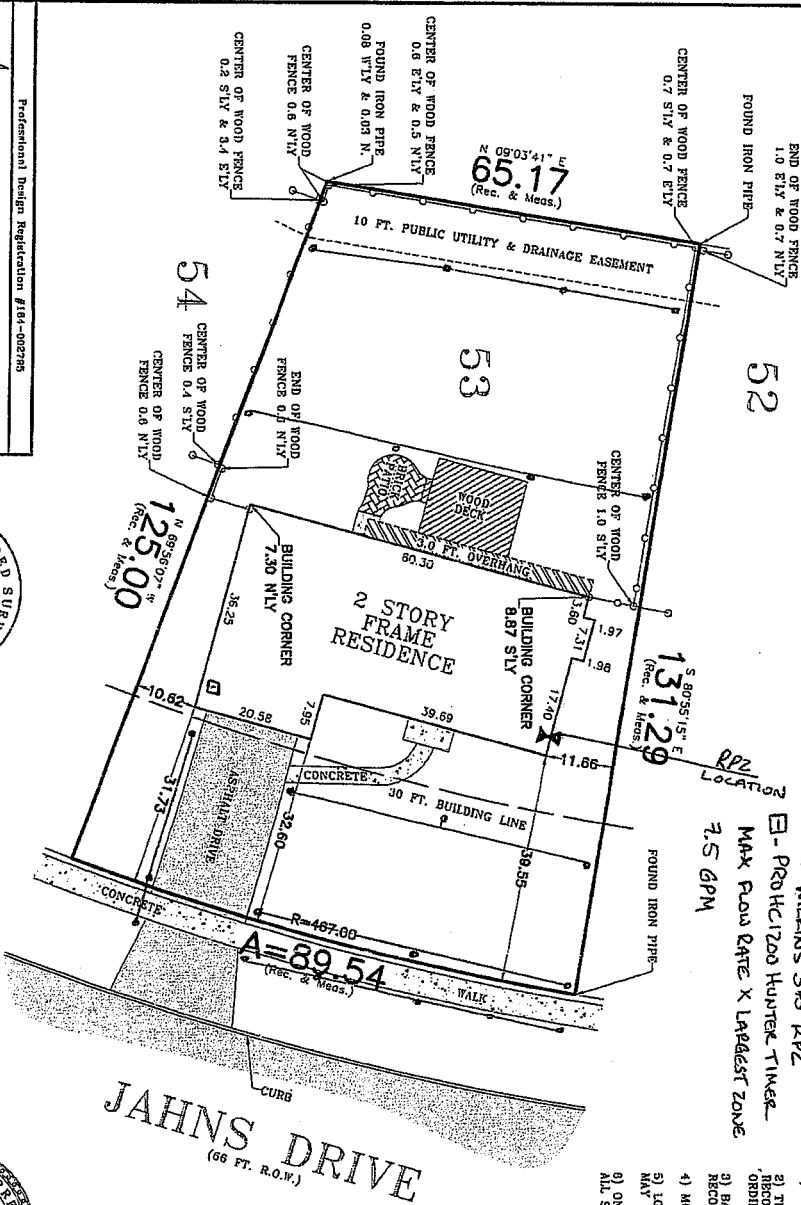
ADDRESS: 1932 JAHNS DRIVE, WHEATON, ILLINOIS  
P.L.N. 05-28-401-038

REGISTRATION LEGEND  
 - Rod Control Sprinkler Head  
 - 1" Polyethylene Pipe  
 - 1" WILKINS 375 R/PZ  
 - PROHICIZOO HUNTER TRIMMER  
 MAX FLOW RATE X LARGEST ZONE  
 7.5 GPM

**GENERAL NOTES:**

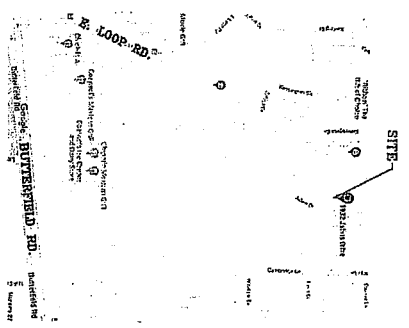
- 1) THE LEGAL DESCRIPTION HAS BEEN PROVIDED BY THE CLIENT OR THEIR AGENT.
- 2) THIS SURVEY SHOWS THE BUILDING LINES AND EASEMENTS AS INDICATED BY THE RECORDED PLAT. THIS PLAT DOES NOT SHOW ANY RESTRICTIONS ESTABLISHED BY LOCAL ORDINANCES UNLESS SUPPLIED BY THE CLIENT.
- 3) BASIS OF BEARING FOR THIS SURVEY IS DANADA FARMS EAST UNIT 2 SUBDIVISION RECORDED NOVEMBER 16, 1987 AS DOCUMENT R87-163490.
- 4) MONUMENTS WERE NOT SET PER THE CLIENT REQUEST.
- 5) LOCATION OF SOME FEATURES MAY BE ENLARGED FOR CLARITY. NO INTERPOLATIONS MAY BE MADE FROM THE INFORMATION SHOWN HEREBON.
- 6) ONLY COPIES WITH AN ORIGINAL SIGNATURE AND SEAL ARE OFFICIAL LEGAL DOCUMENTS. ALL SURVEYS AND COPYRIGHTED MATERIALS WITH ALL RIGHTS RESERVED.

SCALE: 1" = 20'



**JAHNS DRIVE**  
(66 FT. R.O.W.)

**LOCATION MAP**  
NOT TO SCALE



Professional Design Registration #161-002728

**Preferred**  
SURVEY, INC

7616 N. 70TH STREET, BRIDGEVIEW, IL, 60455  
Phone 708-458-7143 / Fax 708-458-7853  
www.preferredsurvey.com

Field Work Completed: 09/05/2019  
Land Area Surveyed: 9.9850 Sq. Ft.  
Drawing Revised: P/CS/CR



SURVEY ORDERED BY: MICHAEL KENT

STATE OF ILLINOIS )  
COUNTY OF COOK )

1. MICHAEL J. LOPEZ, AS AN EMPLOYEE OF PREFERRED SURVEY INC., DO HEREBY STATE THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE STANDARDS AND ETHICS OF THE PROFESSION AND THAT ALL SURVEY DIMENSIONS ARE SHOWN IN FEET AND DECIMAL PARTS THEREOF AND ARE CORRECTED TO A TEMPERATURE OF 68 DEGREES FAHRENHEIT.

GIVEN UNDER MY HAND AND SEAL THIS 11th DAY OF SEPTEMBER, A.D. 2019

\_\_\_\_\_  
MICHAEL J. LOPEZ  
Professional Land Surveyor  
No. 3523

\_\_\_\_\_  
TAY LUBENSKY  
Professional Engineer No. 11/20/20  
P.S.I. NO. 192324

