

**RESOLUTION R-46-12****RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(913 James Court)**

**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 1, 2012, between the City of Wheaton and Bradley and Cindy Baise of 913 James Court, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 2<sup>nd</sup> day of July, 2012.

  
\_\_\_\_\_  
Michael J. Gresk  
Mayor

ATTEST:

  
\_\_\_\_\_  
Anna Bennett Hogan

City Clerk

**Roll Call Vote**

Ayes:	Councilman Suess Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	Councilwoman Ives

**Motion Carried Unanimously**

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CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (James Court)  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 31 day of May, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Baise, Brad ("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, Baise, Brad (hereinafter "Owner"), the owner of the premises located at 913 James Court, 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.) Baise are the owners of property located at 913 James Ct, 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 James Court adjacent to  
913 James Court \_\_\_\_\_ 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.

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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.

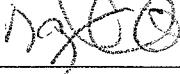
12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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 1<sup>st</sup> day of June, 2012.



\_\_\_\_\_  
Notary Public

(Notary Seal)



\_\_\_\_\_  
Michael J. Gruen

Attested by:

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

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EXHIBIT A

Legal Description:

Lot 2 in Block 2 in Wheaton's third resubdivision  
a resubdivision of blocks or tracts 2, 8, and 12  
in Washington Wheaton Subdivision Unit 4, a part  
of Sections 20 and 21, Township 39 north,  
range 10, East of the third principal meridian,  
according to the plat of Wheaton's third  
Subdivision, recorded December 14, 1951. As  
document 641433 in DuPage County, Illinois.

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Wheaton, IL 60187

address

P.I.N. 05-21-106-002

EXHIBIT "B"

91.5 JAMES COURI

P.I.N. # 05-21-106-062

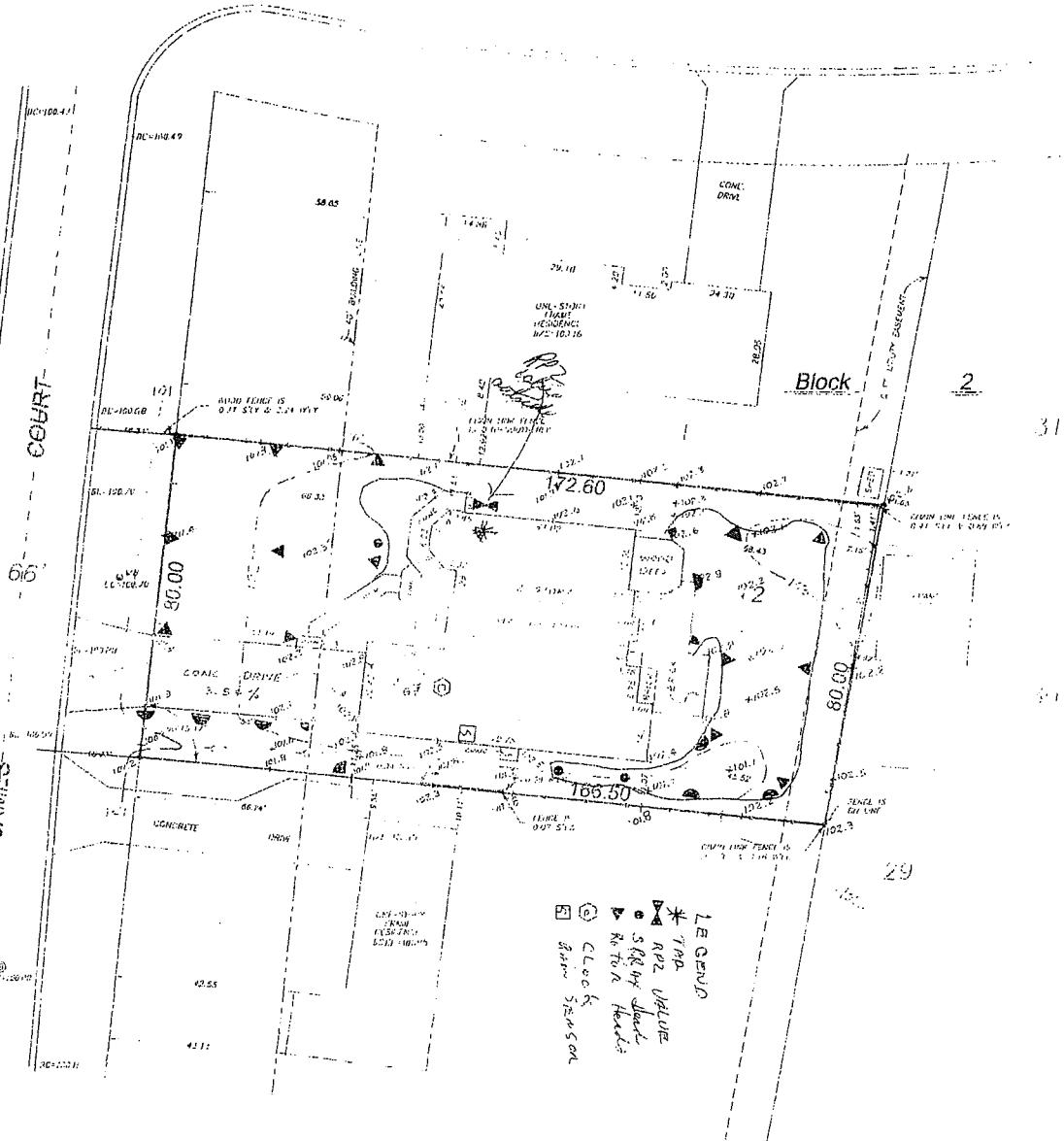
LOT 3 IN BLOCK 2 IN WHEATON'S THIRD RESUBDIVISION, A RESERVE SITE OF TRACTS 10, 11, 12 AND 13 IN WASHINGTON WHEATON SUBDIVISION UNIT 4, A PART OF SECTIONS 20 AND 21, TOWNSHIP 14 NORTH, RANGE 16 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF WHEATON'S THIRD RESUBDIVISION, RECORDED IN CUYAHOGA COUNTY, OHIO, ON DOCUMENT 5470, ON DECEMBER EIGHTH, 1903.

# PLAT OF SURVEY

LEGEND

PROP. GRADE	
PROP. CONSIDER	
CONST. GRADE	
CONST. CONTOUR	
FLW. GRADE	
PROP. DIV/INCE	
SYNTHETIC BOUND.	
PROP. FATHM. ELEV.	

FINAL GRADING SURVEY



THE PROPERTY OF THE SENATE, - INFORMED TO  
THE SENATE AND THE HOUSE, STANDARDS  
FOR A NEW MARKS SURVEY.

STATE OF ILLINOIS 155

THIS IS TO CERTIFY THAT I, W. CLYDE SMITH, LAND SURVEYOR,  
HAVE SURVEYED THE PROPERTY DESCRIBED ABOVE, AND THAT  
THE ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID  
SURVEY.

GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS,  
THIS 15TH DAY OF SEPTEMBER, A.D. 1954.

THIS 15TH DAY OF SEPTEMBER, A.D. 2006.

ILLINOIS LAND SURVEYOR NO. 1853

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 BUILDING AND REPORT ANY APPARENT  
DISCREPANCIES TO THE SURVEYOR.

ORDERED BY: BRECK RIDGE DEV. SOU. ID: 04-0150 FAX NO: 04-0149-C  
**LAMBERT & ASSOCIATES**  
LAND SURVEYORS  
320 SOUTH REBER ST. WHEATON, ILL. 60187  
PHONE: (630) 653-6333; FAX: (630) 653-6396

FINAL IMPROVEMENTS LISTED  
FINAL TOPOGRAPHIC PREPARATION

7-21-06: 115

RECORDED: 6/27/09 AM

■ = FOUND IRON STAKE  
□ = SET IRON STAKE

Scale 1" = 20'



