

## RESOLUTION R-72-12

### A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT (440 W. Seminary 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 October 7, 2011, between the City of Wheaton and the Lucian and Gloria Sezonov of 440 W. Seminary Avenue, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 4<sup>th</sup> day of September, 2012.



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

ATTEST:



\_\_\_\_\_  
Anna Bennett  
City Clerk

Ayes:	<u>Roll Call Vote:</u> Councilman Suess Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (440 W Seminary Ave  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 7 day of OCT, 2011, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and LUCIAN SEZONOV ("Owner").

LUCIAN SEZONOV  
Gloria Sezonov  
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

LUCIAN SEZONOV  
WHEREAS, Gloria Sezonov (hereinafter "Owner"), the owner of the premises located at 440 W Seminary 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.) LUCIAN SEZONOV  
Gloria Sezonov are the owners of property located at 440 W Seminary  
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 \_\_\_\_\_

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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.

Luzan Agor  
Owner

Saraj Mehta  
Owner

Subscribed and sworn to before me this 4th day of Oct, 20 11

Saraj Mehta Notary Public

(Notary Seal)



Attested by:

Shaun Bennett Flynn  
City Clerk

Michael J. Scanlon  
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

~~Site Plan~~

OF LOT 6 IN CITY HOMES OF NORTH WHEATON  
RESUBDIVISION UNIT 1, BEING A SUBDIVISION IN THE  
SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION  
17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE  
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT  
THEREOF RECORDED JANUARY 31, 2008, AS  
DOCUMENT R2008-016284 IN DUPage COUNTY,  
ILLINOIS.

440 SEMINARY Ave, Wheaton, IL 60187  
address

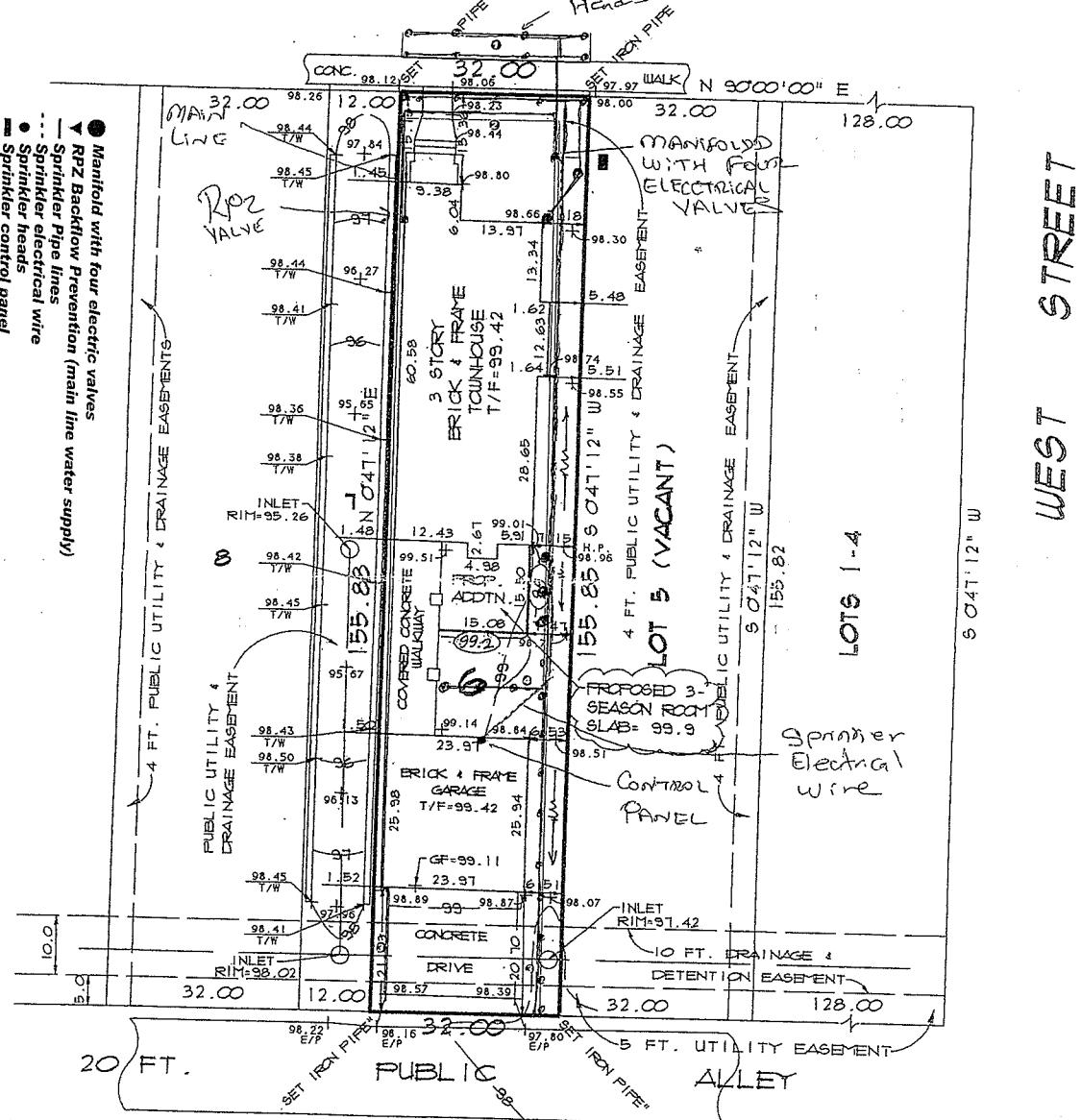
P.I.N. 05-17-232-014

# SITE PLAN

OF LOT 6 IN CITY HOMES OF NORTH WHEATON RESUBDIVISION UNIT 1, BEING A  
SUBDIVISION IN THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17,  
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN,  
ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 31, 2008, AS DOCUMENT  
R2008-016284 IN DUPAGE COUNTY, ILLINOIS.

THIS PROPERTY IS KNOWN AS 440 SEMINARY AVENUE, WHEATON, ILLINOIS.  
PREPARED FOR DAVIDSON HOMES.

SEMINARY SPRINKLER AVENUE



STATE OF ILLINOIS )  
COUNTY OF DUPAGE } S.S.

This is to certify that we, Steinbrecher Land Surveyors, Inc. Land Surveying and Professional Engineering Design Firm No. 184-003126, have prepared a Site Plan for the property shown hereon, which is, to the best of our knowledge and belief, in conformance with all applicable ordinances and requirements.

West Chicago, Illinois. OCT. 20, 2011

**Steinbrecher Land Surveyors, Inc.**  
Professional Engineering and Professional Land Surveying  
Design Firm Corporation No. 184-003126  
141 S. Nellor Blvd. West Chicago, IL 60185-2844  
(630) 293-8900 FAX 293-8902

Steinbrecher Land Surveyors, Inc., by

Professional Land Surveyor 3583  
My license expires November 30, 20 12

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