

**RESOLUTION R-2018-54**

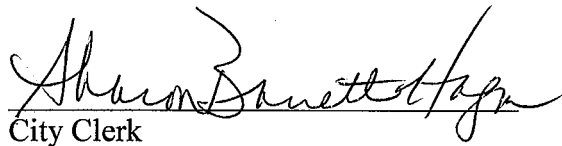
**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1638 Prospect Street)**

**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 23, 2018, between the City of Wheaton and the Christopher Anthony Bauer and Susan Lynn Bauer Trust for 1638 Prospect Street, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 18<sup>th</sup> day of June 2018.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Ayes:

Roll Call Vote  
Councilman Rutledge  
Councilman Scalzo  
Councilman Suess  
Councilman Barbier  
Councilwoman Fitch  
Mayor Gresk

Nays:

None

Absent:

Councilman Prendiville

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY ( PROSPECT ST )  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 23 day of MAY, 20 18, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and \_\_\_\_\_ ("Owner").

THE CHRISTOPHER ANTHONY BAUER AND SUSAN LYNN BAUER TRUST  
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, THE CHRISTOPHER ANTHONY BAUER AND SUSAN LYNN BAUER TRUST (hereinafter "Owner"), the owner of the premises located at 1638 PROSPECT 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.) THE CHRISTOPHER ANTHONY BAUER AND SUSAN LYNN BAUER TRUST are the owners of property located at 1638 PROSPECT 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 \_\_\_\_\_

\_\_\_\_\_ 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.

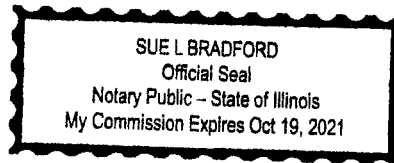
Christopher Bauer - TRUSTEE  
Owner

Susan Lynn Bauer - Trustee  
Owner

Subscribed and sworn to before me this 23<sup>rd</sup> day of MAY, 20 18.

Sue L Bradford Notary Public

(Notary Seal)



Michael J. Gray  
Mayor, City of Wheaton

Attested by:

Sharon Barnett Hogan  
City Clerk

EXHIBIT A

Legal Description:

LOT 713 IN BRIARCLIFFE (UNIT NUMBER FOUR) A SUBDIVISION OF  
PARTS OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD  
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED  
JANUARY 26, 1972 AS DOCUMENT RT2-4142, IN DU PAGE COUNTY,  
ILLINOIS.

1638 PROSPECT ST      Wheaton, IL 60187/9  
address

P.I.N. 05-22-306-024

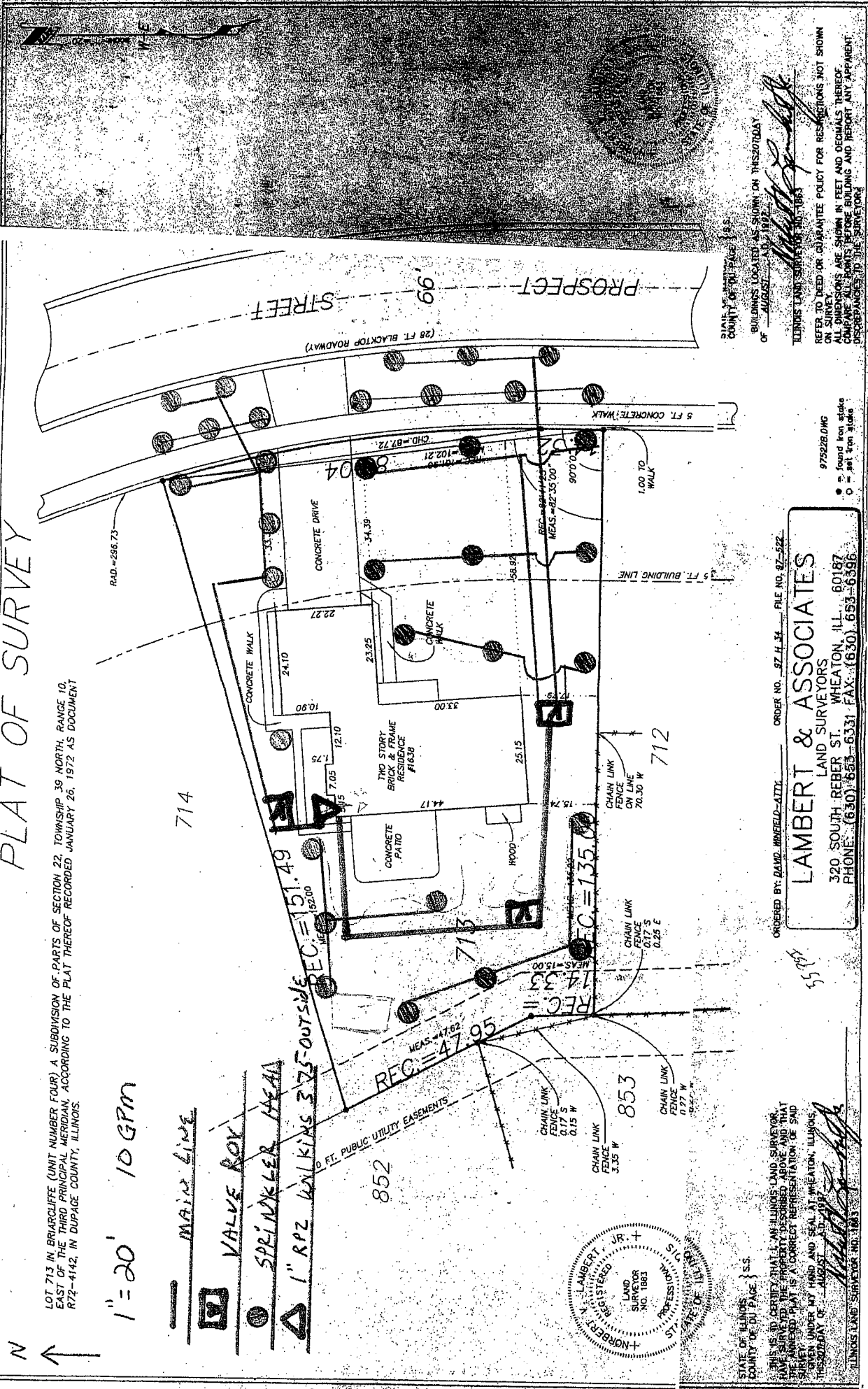
EXHIBIT B

# PLAT OF SURVEY

LOT 713 IN BRIARCLIFFE (UNIT NUMBER FOUR) A SUBDIVISION OF PARTS OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 26, 1972 AS DOCUMENT R72-4142, IN DUPAGE COUNTY, ILLINOIS.

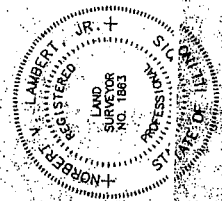
1" = 20' 10 GPM

- MAIN LINE
- VALVE BOX
- SPRINKLER HEAD
- △ 1" RPZ VALVES 375-OUTSIDE



STATE OF ILLINOIS  
COUNTY OF DU PAGE } S.S.  
BUILDINGS LOCATED AS SHOWN ON THIS SURVEY  
OF AUGUST 1972  
TENNIS LANE SURVEY NO. 1883  
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: DAVID WAREFIELD-ATTY. ORDER NO. 87 H 34 FILE NO. 87-522  
**LAMBERT & ASSOCIATES**  
LAND SURVEYORS  
320 SOUTH REBER ST. WHEATON, ILL. 60187  
PHONE: (630) 653-6331 FAX: (630) 653-6356



STATE OF ILLINOIS  
COUNTY OF DU PAGE } S.S.  
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.  
GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS  
THIS DAY OF AUGUST 1972  
TENNIS LANE SURVEY NO. 1883