

**Consent Agenda
New Business #1**

Memorandum

Paul G. Redman, P.E.
Director of Engineering



To: The Honorable Mayor and City Council

Date: June 21, 2018

Subject: Construction, Use, and Indemnification Agreement Approval

Section 22-8 of the Wheaton City Code requires the owner of property to execute a Construction, Use, and Indemnification Agreement with the City as a permit requirement for the installation of a lawn irrigation system within the City right-of-way or parkway. A resolution authorizing the execution of such an agreement for 1492 Lloyd Court is attached to this memorandum for your consideration. City staff recommends adoption of the resolution as submitted.

RESOLUTION R-2018-

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1492 Lloyd Court)**

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 June 16, 2018, between the City of Wheaton and Tyson and Abigail May of 1492 Lloyd Court, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 16th day of July, 2018.

Mayor

ATTEST:

City Clerk

Roll Call Vote

Ayes:
Nays:
Absent:

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (LLOYD CT)
 Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 16th day of June, 2018, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and TYSON & ABIGAIL MAY ("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, TYSON & ABIGAIL MAY (hereinafter "Owner"), the owner of the premises located at 1492 LLOYD CT, 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.) TYSON & ABIGAIL MAY are the owners of property located at 1492 LLOYD 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 adjacent to 1492 Lloyd 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.

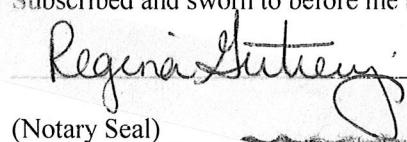


Owner

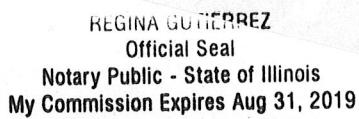
Owner



Subscribed and sworn to before me this 16 day of June, 20 18.


(Notary Seal)

Notary Public



Mayor, City of Wheaton

Attested by:

City Clerk

Jackie

1981-08-12

EXHIBIT A

Legal Description:

LOT 2 IN O'HOLLEARN ESTATES SUBDIVISION, BEING A SUBDIVISION OF LOT 6 OF HADLEY ESTATES, A SUBDIVISION OF PART OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID O'HOLLEARN ESTATES SUBDIVISION RECORDED OCTOBER 19, 1988 AS DOCUMENT NUMBER R88-118877, IN DU PAGE COUNTY, ILLINOIS.

AREA OF SITE=13,515 SQ.FT.

1492 LLOYD CT Wheaton, IL 60187
address

P.I.N. 05-20-401-004

PLAT OF SURVEY

EXHIBIT B

LEGEND

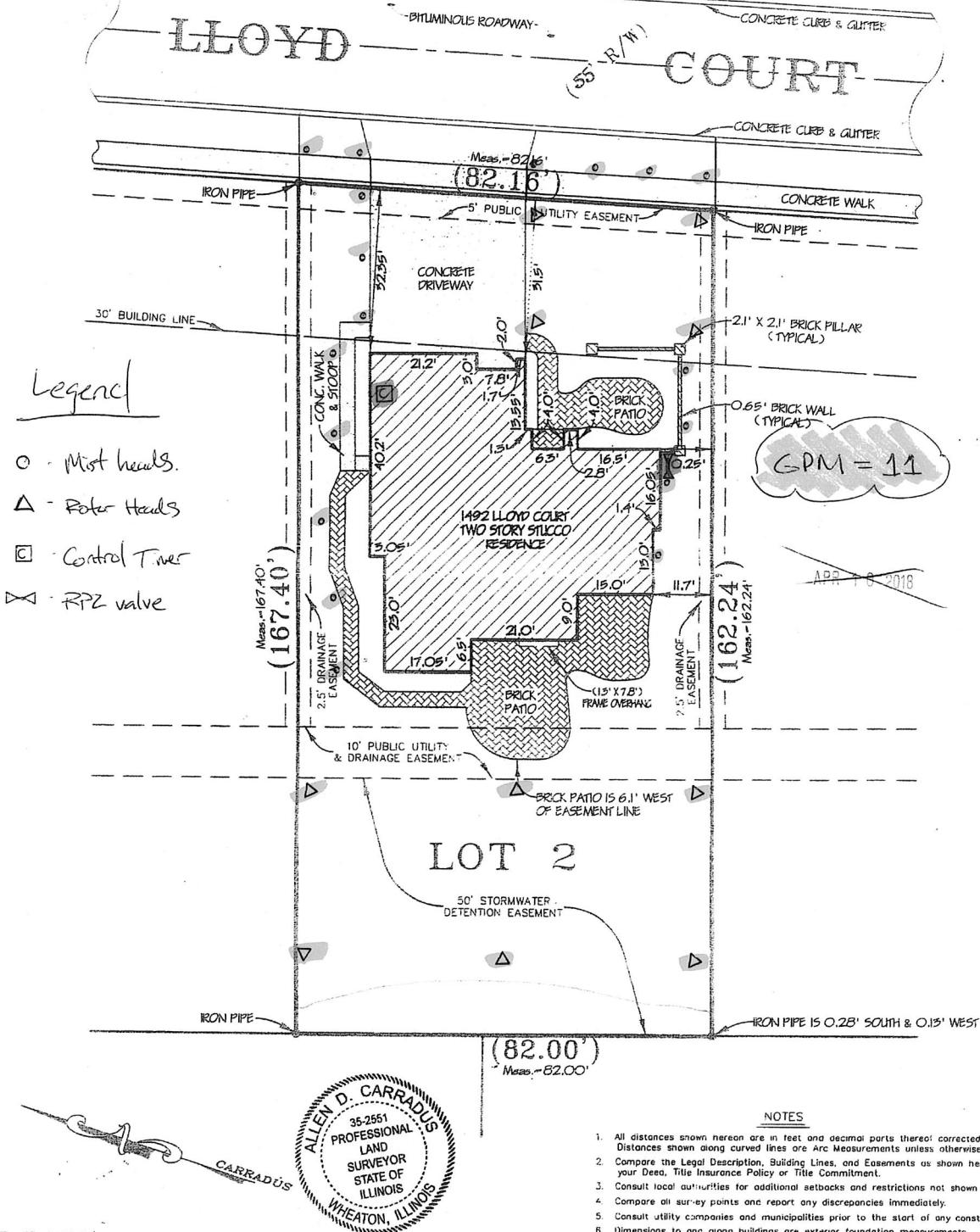
* Monumentation Found
 O Monumentation Set
 (SO) Record Dimension
 —*— Fence Line

LOT 2 IN O'HOLLEARN ESTATES SUBDIVISION, BEING A SUBDIVISION OF LOT 6 OF HADLEY ESTATES, A SUBDIVISION OF PART OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID O'HOLLEARN ESTATES SUBDIVISION RECORDED OCTOBER 19, 1988 AS DOCUMENT NUMBER R88-118877, IN DU PAGE COUNTY, ILLINOIS.

AREA OF SITE=13,515 SQ.FT.

MAY 16 2018

ANGLE ON THE SOUTHEAST CORNER
OF THE SITE IS 93°32'40"



STATE OF ILLINOIS }
COUNTY OF DU PAGE } SS

THIS IS TO CERTIFY THAT I, ALLEN D. CARRADUS, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF ILLINOIS, HAVE SURVEYED THE PROPERTY AS DESCRIBED HEREON AND THAT THE ANNEXED PLAT IS A CORRECT AND TRUE REPRESENTATION THEREOF, AND THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

SIGNED AND SEALED AT WHEATON, ILLINOIS THIS 20th DAY OF November A.D. 2012
BY Alma L. Casonius ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 35-255
MY LICENSE EXPIRES NOVEMBER 30, 2012.

NOTES

1. All distances shown herein are in feet and decimal parts thereof corrected to 68'. Distances shown along curved lines are Arc Measurements unless otherwise noted.
2. Compare the Legal Description, Building Lines, and Easements as shown herein with your Deed, Title Insurance Policy or Title Commitment.
3. Consult local authorities for additional setbacks and restrictions not shown herein.
4. Compare all survey points one report any discrepancies immediately.
5. Consult utility companies and municipalities prior to the start of any construction.
6. Dimensions to one along buildings are exterior foundation measurements.
7. Do Not Assume distances from scaled measurements made herein.

ALLEN D. CARRADUS

LAND SURVEYOR

(630) 588-0416 (Fax) 653-7682
MARK RODRIGUEZ ATTORNEY

MARK RODRIGUEZ, ATTORNEY				
DRAWN BY:	DATE OF FIELD WORK:	SCALE:	FLD.BK. - PAGE	PROJECT NO.
CMG	11/20/12	1' = 20'	310-61	24381