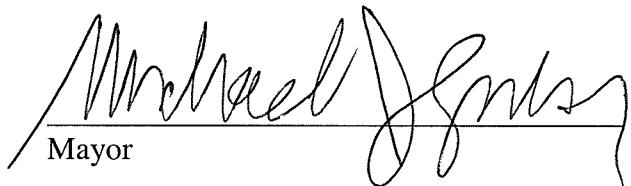


RESOLUTION R-85-12

A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT (116 Lewis Lane)

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 22, 2012, between the City of Wheaton and Scott and Rehna Becker of 116 Lewis Lane, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 5th day of November, 2012.



Michael J. Gries
Mayor

ATTEST:



Aaron Bennett
City Clerk

Roll Call Vote

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

Motion Carried Unanimously

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CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT

RIGHT-OF-WAY (116 LEWIS)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 22 day of October, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Scott & Rhona Becker ("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, Scott & Rhona Becker (hereinafter "Owner"), the owner of the premises located at 116 LEWIS, 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.) Scott & Rhona Becker are the owners of property located at 116 LEWIS, 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.

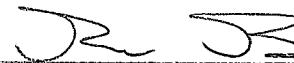
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within 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.

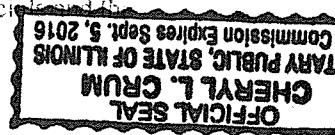
11.) The Owners obligations under this Agreement shall be joint and several.

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, the Corporate seal attached here all on the date and year first above written.



Owner



Owner

Subscribed and sworn to before me this 23rd day of Oct, 2012.

Cheryl L. Crum Notary Public
(Notary Seal)

Michael J. Power
Mayor, City of Wheaton

Attested by

Sharon Bennett Hagan
City Clerk

EXHIBIT A

PLAT OF SURVEY

LOT 22 IN FARMHAM UNIT NO. 6, A SUBDIVISION OF PART OF LOT 1 OF THE PLAT OF THE OSWALD SITTLER FARM IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 20, 1975 AS DOCUMENT R75-02761, IN DU PAGE COUNTY, ILLINOIS.

116 Lewis

address

Wheaton, IL 60187

P.I.N. 05-28-108-003

LEGEND
 e Monumentation Found
 o Monumentation Set
 (50') Record Dimension
 -x- Fence Line

PLAT OF SURVEY

LOT 22 IN FARMHAM UNIT NO. 6, A SUBDIVISION OF PART OF LOT 1 OF THE PLAT OF THE OSWALD SITTLER FARM IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 20, 1975 AS DOCUMENT R75-02761, IN DU PAGE COUNTY, ILLINOIS.

116
 Lewis
 Ln.

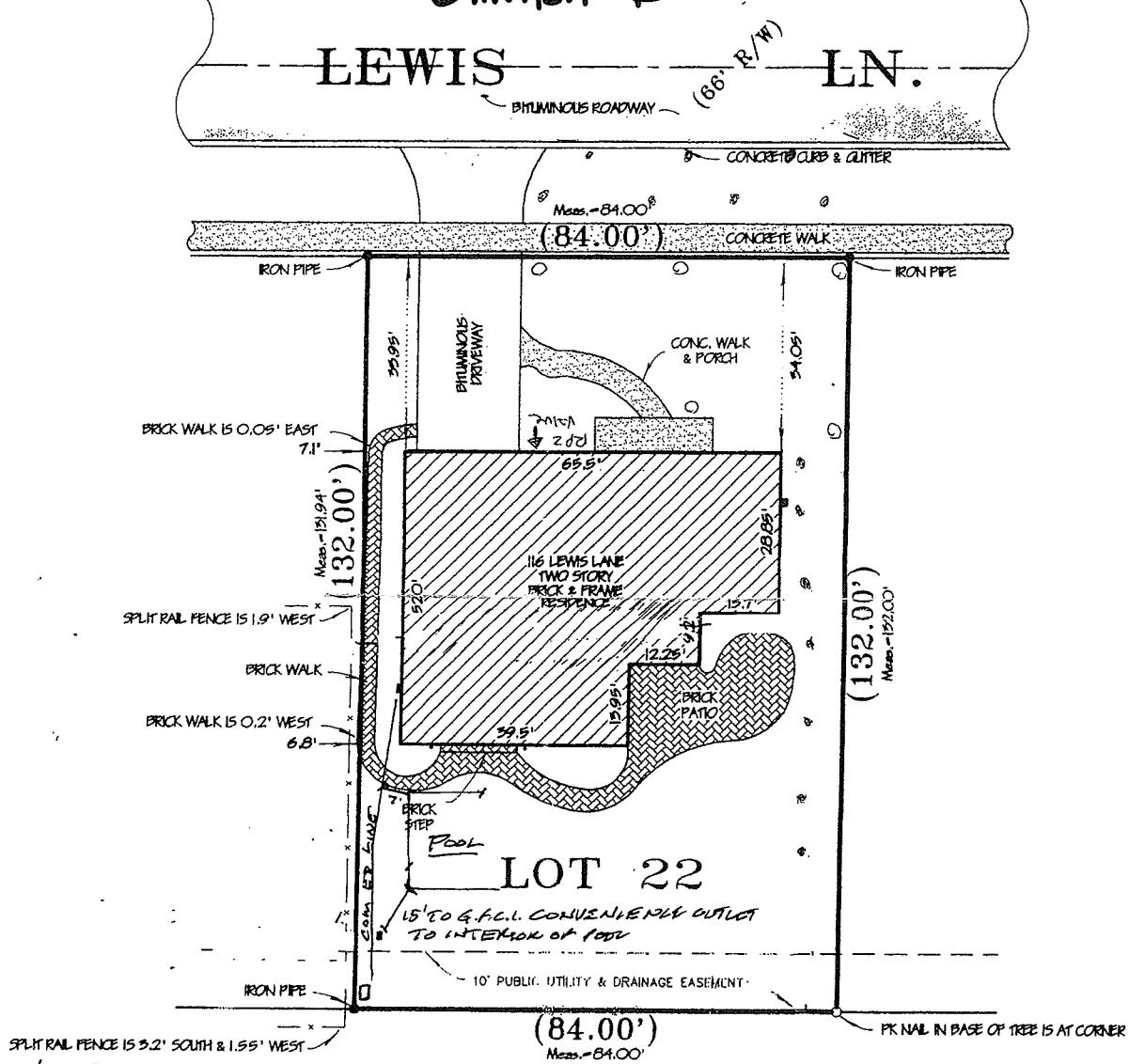
ANGLE ON THE NORTHWEST CORNER OF THE SITE IS 89°58'43"

2012 LPRI 2042

2012 LPUB 2042

CARRADUS

"EXHIBIT B"



STATE OF ILLINOIS) ss
 COUNTY OF DU PAGE)

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 15th DAY OF August A.D. 2003
 By Allen D. Carradus
 ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 35-2551
 MY LICENSE EXPIRES NOVEMBER 30, 2004



NOTES

1. All distances shown herein are in feet and decimal parts thereof corrected to 88' f. 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 and report any discrepancies immediately.
5. Consult utility companies and municipalities prior to the start of any construction.
6. Dimensions to and along buildings are exterior foundation measurements.
7. Do Not Assume distances from scaled measurements made herein.

ALLEN D. CARRADUS AND
 Land Surveying, Land Planning, & Engineering Services
 108 W. Liberty Drive, Wheaton, Illinois 60187
 (630) 588-0416 (Fax) 653-7682

PREPARED FOR: HAAS & MCLENNAN, ATTORNEYS
 DRAWN BY: JLW DATE: 08/15/03 SCALE: 1:20' NO. OF PAGE: 173-56 PROJECT NO: 11443

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