

RESOLUTION R-12-13

A RESOLUTION APPROVING A
GRANT OF TEMPORARY CONSTRUCTION EASEMENT
AND A GRANT OF PERMANENT EASEMENT
FOR THE NORTH MAIN STREET FLOOD CONTROL PROJECT
(Car Service Center)

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous of constructing a public flood control project along and within Winfield Creek at North Main Street, between Cole Avenue and Park Circle ("Project"); and

WHEREAS, Oxford Bank and Trust under Trust Agreement dated July 24, 1997 and known as Trust No. 582 ("Trust") is the owner of a parcel of property at 1801 N. Main Street improved with a car service center ("Owners Parcel"); and

WHEREAS, the City desires to secure from the Trust a temporary construction easement to utilize a portion of the Owners Parcel for the purpose of designing, engineering, restoring and constructing, and reconstructing a portion of the owners parking lot in conjunction with the Project; and

WHEREAS, the Trust agrees to accept from the City a permanent construction, maintenance and parking easement for the perpetual reasonable maintenance and repair of the Trust's parking lot; and

WHEREAS, the Trust has presented a temporary construction easement grant and a permanent construction and maintenance easement grant to the City for approval.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Grant of Temporary Access and Construction Easement from Trust to the City and Grant of Permanent Construction, Maintenance and Parking Easement from the City to Trust for Parking Restoration Work signed by the Trust is hereby approved.

IT IS FURTHER RESOLVED that the Mayor is authorized to sign the approval form and the City Clerk is authorized and directed to attest to the signature of the Mayor and attach a certified copy of this resolution of acceptance to the Easement Grant.

ADOPTED this 19th day of February, 2013.



Michael J. Gross
Mayor

ATTEST:



Shann Bennett Hagan
City Clerk

Roll Call Vote

Ayes:	Councilwoman Pacino Sanguinetti Councilman Scalzo Councilman Mouhelis Councilman Rutledge
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481

Councilman Saline
Mayor Gresk
Nays: None
Absent: Councilman Suess

Motion Carried Unanimously



GRANT OF TEMPORARY ACCESS AND CONSTRUCTION EASEMENT FROM OXFORD BANK & TRUST, AS TRUSTEE, UNDER TRUST AGREEMENT DATED JULY 24, 1997 AND KNOWN AS TRUST NO. 582 TO THE CITY OF WHEATON AND GRANT OF PERMANENT CONSTRUCTION, MAINTENANCE AND PARKING EASEMENT FROM THE CITY OF WHEATON TO OXFORD BANK & TRUST, AS TRUSTEE, UNDER TRUST AGREEMENT DATED JULY 24, 1997 AND KNOWN AS TRUST NO. 582, CHRISTOS BIZIOS AND HELEN BIZIOS FOR PARKING RESTORATION WORK

THIS GRANT OF EASEMENT ("Grant"), made this 19th day of February, 2013, by the City of Wheaton, DuPage County, Illinois, a municipal corporation, having principal offices at 303 W. Wesley Street, Wheaton, Illinois 60187 ("CITY") to Oxford Bank & Trust, as Trustee, under Trust Agreement dated July 24, 1997 and known as Trust No. 582 (hereinafter "Owner"):

RECITALS:

A. Owner is the owner in fee title to the real estate legally described and depicted on Exhibit "A" ("Owners Parcel"); and

B. City desires to secure a temporary access and construction easement to utilize a portion of the Owners Parcel, as depicted on Group Exhibit "B" ("Easement Premises"), for the purpose of designing, engineering, excavating, constructing, and restoring a flood control project and appurtenant improvements ("Temporary Easement") along and within Winfield Creek at, in, on and about its crossing with North Main Street ("Project") and in compliance with those plans and specifications identified and incorporated herein by reference in Exhibit "C" ("Plans and Specifications"); and

C. Owner agrees to grant the Temporary Easement; and

D. Owner desires to convey a portion of the Owners Parcel containing Winfield Creek and a strip of land contiguous to Winfield Creek (hereinafter "Water Course Parcel") in order to absolve themselves of further responsibility for the same; and

E. The CITY agrees to grant to Owner an eight (8) foot permanent construction, maintenance and parking easement from the Water Course Parcel for the perpetual reasonable maintenance and repair of the parking area ("Permanent Easement"); and

E. The location and dimensions of the Temporary Easement and Permanent Easement are described and depicted on Group Exhibit "B"; and

Now therefore in consideration of the benefits to be derived from the Project for the Owners Parcel and other valuable considerations as recited herein, the sufficiency and receipt of which are hereby acknowledged, the CITY and Owner hereby agree as follows:

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT

1. The foregoing recitals are incorporated herein as representing the intent of the Parties and as substantive terms and covenants of this Agreement.

2. Owner hereby grants a Temporary Easement to the City as depicted in Group Exhibit "B" to perform and complete the Project subject to the following terms and conditions. The City accepts the Temporary Easement. The Temporary Easement shall include a grant to perform and complete paving of the Owners private parking area depicted on Exhibit B. The City shall pay its contractor for any and all

cost and expenses associated with this paving. The paving on the Owner's private parking area shall be completed in conformance with the City's plans and specifications.

3. The Project shall be performed by the City and/or its agents, contractors, employees, successors and assigns, at the City's sole expense, in full compliance with the Plans and Specifications and shall be carried out in a prompt, professional, first class and workmanlike manner.

4. Upon the commencement of any portion of the Project which disturbs, damages or removes any of the improvements currently located on the Easement Premises ("Site Work") ("Work Commencement Date"), the City shall cause the Site Work to be completed within approximately ninety (90) days following the Work Commencement Date ("Completion Date"). The Completion Date may be extended due to events beyond the control of the City such as but not limited to, extraordinary weather conditions, labor strikes, restrictions on the delivery of critical materials, epidemics or cataclysmic events or unknown site conditions. The City shall notify the beneficiaries of the Owner in writing no less than thirty (30) days prior to the Work Commencement Date to enable them to undertake any efforts to notify its tenants of the anticipated Site Work. The beneficiaries of the Owner and City staff shall inspect the Owner's premises no less than seven (7) days prior to the City or its contractors occupying the Temporary Easement to memorialize the pre-Project condition of the Easement Premises. During the period of the Temporary Easement the Easement Premises will be posted by the City with "Keep Out" construction signs and the beneficiaries of the Owner shall only go onto the Easement Premises with the City Engineer or his designee. The City Engineer or his designee shall make themselves available to the beneficiaries of the Owner as may be reasonable during City business hours.

5. All existing improvements located within the Easement Premises which are disturbed, damaged or removed shall be repaired, replaced or restored by the City, at its sole expense, in compliance with the Plans and Specifications prior to the Completion Deadline.

6. The City, its contractors, successors and assigns, shall indemnify, defend and hold harmless Owner from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or property occasioned directly or indirectly as a result of any act or omission by the City, or any person or entity acting by, through, or under the City on the Easement Premises. The City shall require all of its contractors performing work within the Easement Premises at all time during the term of this Temporary Easement to carry broad form general insurance with combined single limit coverage of not less than \$2,000,000.00, naming Owner as an additional insured thereunder.

7. The Temporary Easement shall automatically, and without further action by any party, expire and be of no further force and effect upon completion of the Project.

GRANT OF PERMANENT EASEMENT

The terms and conditions of the Permanent Easement shall be as follows:

1. The CITY hereby grants to Owner a Permanent Easement over that portion of the Water Course Parcel as depicted on Group Exhibit B for the right and authority to establish operate and maintain, construct, design, survey, reconstruct, or repair, a paved parking surface and appurtenant improvements. The CITY shall have no obligation after the Project is completed to maintain or repair, or reconstruct the parking surface or appurtenant improvements.

2. Owner which in this context shall also include the beneficiaries of Trust 582, their contractors, successors and assigns, shall indemnify, defend and hold harmless the CITY from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or City property

occasioned directly or indirectly as a result of any act or omission by Owner, or any person or entity acting by, through, or under BIZIOS, for their activities on or within the Permanent Easement. Owner shall require all of its contractors performing work within the Easement Premises at all time during the term of this Permanent Easement to carry broad form general insurance with combined single limit coverage of not less than \$2,000,000.00, naming the CITY as an additional insured thereunder.

3. Any notice required or desired to be given under these Grants shall be in writing and shall be deemed to have been given when delivered personally, on the date of confirmed facsimile transmission, or on the date deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owners: Oxford Bank & Trust
1111 West 22nd Street
Suite 800
Oak Brook, Illinois 60523

cc: Mr. Christos and Mrs. Helen Bizios
21 W 041 Par Lane
Itasca, Illinois 60143

If to City: City of Wheaton
303 W. Wesley Street
P.O. Box 727
Wheaton, Illinois 60187-0727
Attn: Director of Engineering
Fax no. (630) 260-2195

Or to other such address as either party may from time to time specify in writing to the other in accordance with the terms hereof.

4. Except as otherwise provided herein, this Grant may be amended or modified by, and only by, a written instrument duly authorized and executed by the parties hereto.

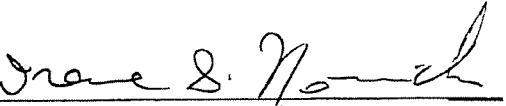
5. This Grant shall be governed by the laws of the State of Illinois.

6. This Agreement may only be modified in writing executed by both the OWNER and CITY.

IN WITNESS WHEREOF, the City of Wheaton has executed this indenture.

OWNERS:

By:


Tracey S. Nauh
Oxford Bank & Trust, as Trustee under Trust
Agreement dated July 24, 1997 and known as
Trust No.582.

Attest:


Kelly K. Dalton

This instrument is executed by OXFORD BANK & TRUST not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by OXFORD BANK & TRUST are undertaken by it solely as Trustee, as aforesaid and not individually, and no personal liability shall be asserted or be enforceable against OXFORD BANK & TRUST by reason of any of the covenants, statements, representations or warranties contained in this instrument.

MUTUAL ACCEPTANCE OF EASEMENTS

The above and foregoing Grant of Temporary Access and Construction Easement and Permanent Construction, Maintenance and Parking Easement and the terms and conditions set forth therein are hereby accepted by the undersigned. Following execution by the parties this instrument shall be recorded by the City of Wheaton Clerk at the City of Wheaton's expense.

City of Wheaton, an Illinois municipal corporation

By: Michael J. Gross

Mayor

Attest: John Bennett Hagen
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION (BIZIOS - CAR SERVICE CENTER):

LOT 4 AND THE NORTH 18 FEET OF LOT 5 IN BLOCK 4 IN ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS.

1801 N. Main Street, Wheaton, IL 60187

P.I.N.: 05-09-108-039 and 05-09-108-040

LEGAL DESCRIPTION (FEE TITLE-CAR SERVICE):

THAT PART OF THE NORTH 18.00 FEET OF LOT 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 5; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 189.05 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 26 SECONDS EAST, 18.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 82.00 FEET OF SAID LOT 5; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 189.34 FEET ALONG SAID NORTH LINE TO A POINT ON THE WEST LINE OF SAID LOT 5; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 18.00 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION (CONSTRUCTION, MAINTENANCE AND PARKING EASEMENT-CAR SERVICE):

THAT PART OF THE NORTH 8.00 FEET OF LOT 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 5; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 189.05 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 26 SECONDS EAST, 8.00 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 189.18 FEET TO A POINT ON THE WEST LINE OF SAID LOT 5; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 8.00 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION (TEMPORARY EASEMENT "A"-CAR SERVICE):

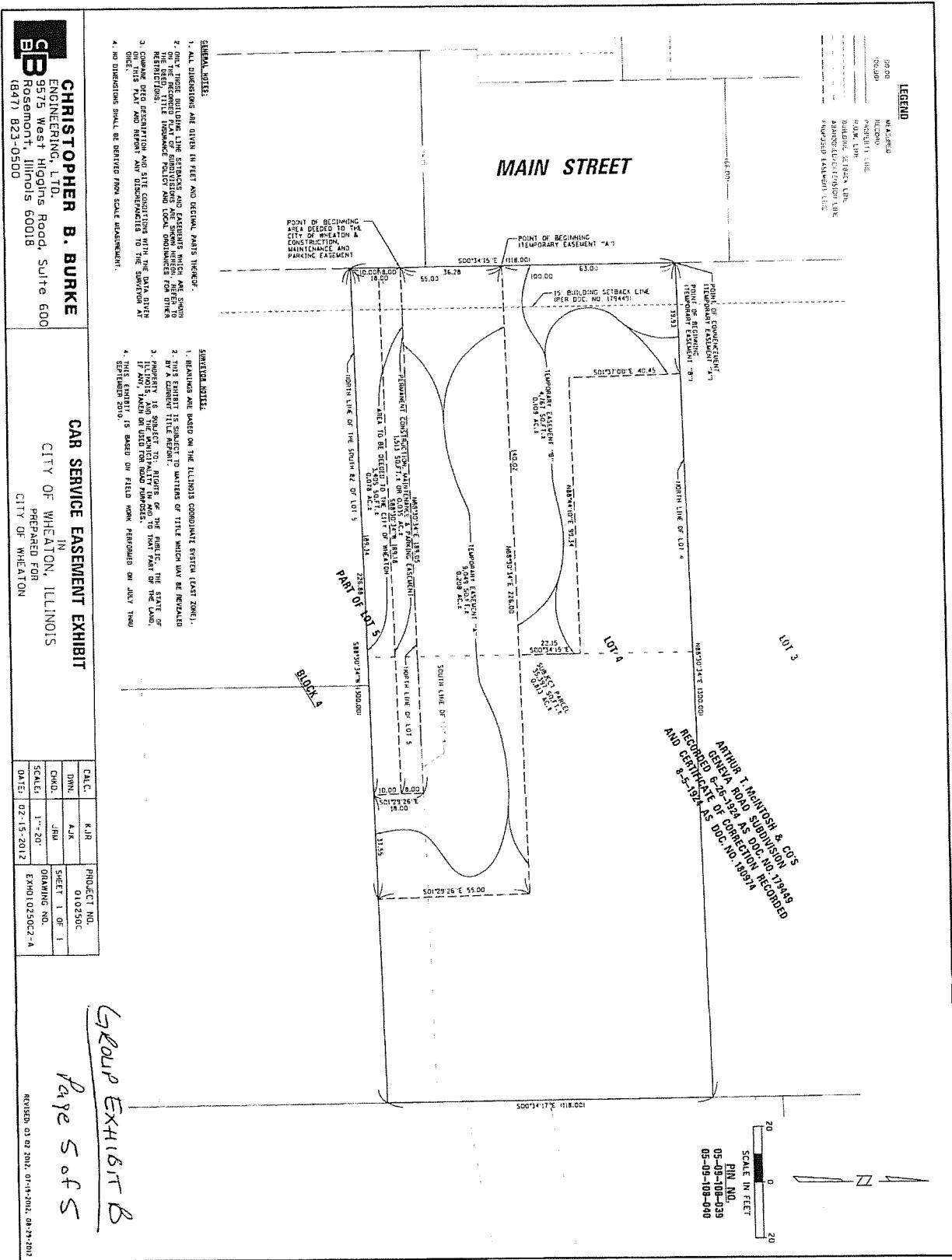
THAT PART OF LOT 4 AND 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 4, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, A DISTANCE OF 63.00 FEET TO A POINT OF BEGINNING; THENCE NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, 226.00 FEET; THENCE SOUTH 01 DEGREES 29 MINUTES 26 SECONDS EAST, 55.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 82.00 FEET OF SAID LOT 5; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 37.55 FEET ALONG SAID NORTH LINE; THENCE NORTH 01 DEGREES 29 MINUTES 26 SECONDS WEST, 18.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 4; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 189.05 FEET ALONG SAID SOUTH LINE TO A POINT ON THE WEST LINE OF LOT 4; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 36.28 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

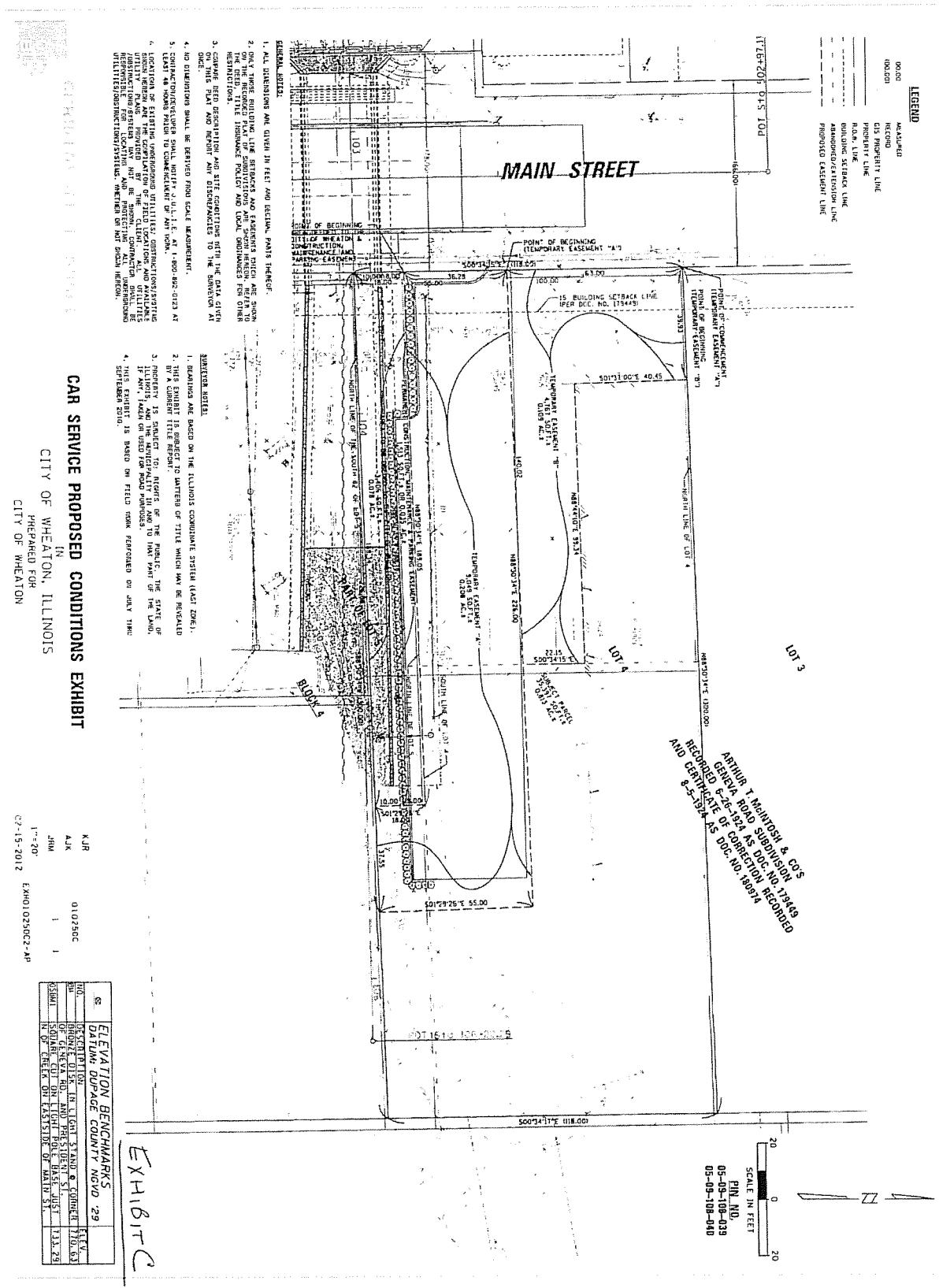
LEGAL DESCRIPTION (TEMPORARY EASEMENT "B"-CAR SERVICE):

THAT PART OF LOT 4 AND 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 4, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 39.93 FEET; THENCE SOUTH 01 DEGREES 37 MINUTES 00 SECONDS EAST, 40.45 FEET; THENCE NORTH 88 DEGREES 44 MINUTES 10 SECONDS EAST, 99.34 FEET; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 22.15 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 140.02 FEET TO A POINT ON THE WEST LINE OF SAID LOT 4; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 63.00 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.



Group Exhibit B
Page 5 of 5



CAR SERVICE PROPOSED CONDITIONS EXHIBIT

CITY OF WHEATON, ILLINOIS
DECEMBER 26, 1906

CITY OF WHEATON

2012-15-2012

EXHIBIT C

