

ORDINANCE NO. F-0312

AN ORDINANCE AUTHORIZING EXECUTION OF THE FIRST AMENDMENT
TO A CERTAIN ANNEXATION AGREEMENT DATED NOVEMBER 3, 1992, AMONG
THE CITY OF WHEATON, ILLINOIS ("CITY"), AND SUBURBAN
TRUST & SAVINGS BANK AS TRUSTEE UNDER TRUST NO. 3985,
EDWARD F. MORGAN, JR., AND SALLY E. L. MORGAN ("OWNER")

WHEREAS, the City and Owner have previously entered into an Annexation Agreement dated November 3, 1992 ("Original Annexation Agreement"); the Subject Matter of the Original Annexation Agreement is the property legally described on Exhibit A of Amendment Number One to Annexation Agreement; and

WHEREAS, the Owner is now requesting an amendment to the Original Annexation Agreement to vacate an emergency access easement, declare the private nature of certain internal sidewalks, and establish certain obligations relative to construction and maintenance of the property's northern boundary fence which faces Loretto Lane.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers as follows:

Section 1: The Mayor is authorized and directed to execute a certain first amendment to the Annexation Agreement entitled, "Amendment Number One to Annexation Agreement" between the City of Wheaton, an Illinois Municipal Corporation ("City"), Morgan's Orchard Lake Homeowners' Association, an Illinois not-for-profit corporation ("Association"), and Edward F. Morgan, Jr. ("Developer"), dated January 19, 1999; and the City Clerk is authorized and directed to attest to the signature of the Mayor. This amendment is on file in the office of the City Clerk and is incorporated into this Ordinance by this reference, as though fully set forth therein.

Section 2: A Copy of the first amendment to the Annexation Agreement entitled "Amendment Number One to Annexation Agreement", dated January 19, 1999 shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owner.

Section 3: The terms and conditions of the Original Annexation Agreement are ratified and remain in full force and effect.

Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Davenport
Councilman Gresk
Mayor Pro Tem Eckhoff
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: Mayor Carr

Motion Carried Unanimously

Passed: January 19, 1999
Published: January 20, 1999

AMENDMENT NUMBER ONE TO ANNEXATION AGREEMENT

This Amendment Number One to Annexation Agreement ("First Amendment") is made and entered into this ____ day of February, 1999 by and among the City of Wheaton, Illinois, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), Morgan's Orchard Lake Homeowners' Association, an Illinois not for profit corporation ("Association") and Edward F. Morgan, Jr., ("Developer").

WITNESSETH

WHEREAS, on November 3, 1992, the City, Developer and others entered into that certain Annexation Agreement ("Agreement") concerning the property described on Exhibit A attached hereto ("Property"), which Agreement was recorded with the DuPage County Recorder of Deeds on November 24, 1992 as Document No, R92-228607, and

WHEREAS, in July of 1997, a seven (7) foot boundary fence ("Boundary Fence") was damaged in part by a tornado, and pursuant to a permit issued by the City, the damaged portion of the Boundary Fence was reconstructed to its original height and condition;

WHEREAS, the City now asserts that the Boundary Fence is not in conformance with the Wheaton Fence Ordinance;

WHEREAS, it is the Association's position that the Boundary Fence, as it currently exists, was specifically authorized by the ordinance granting a special use for the Property and that the City is equitably estopped from claiming otherwise;

WHEREAS, in an attempt to avoid litigation and seek an amicable resolution of this matter, the parties hereto wish to amend the Annexation Agreement to, among other things:

- a) Vacate an emergency access easement, which due to a change in conditions, is of no benefit to the Property or City;
- b) Declare the private nature of certain internal sidewalks within the Property;
- c) Establish certain obligations on the part of the Association to construct and maintain a finished side on that portion of the Property's northern boundary fence which faces Loretto Lane: and
- d) Affirm the City's approval of that certain Declaration of Covenants, Conditions and Easement for Morgan's Orchard Lake Planned Unit Development ("Covenants"), that certain Amendment Number One to the Covenants recorded with the DuPage County Recorder of Deeds as document No. R98-038759 ("Amendment One to Covenants"), as

well as that certain proposed Amendment Number Two to the Covenants, a copy of which is attached hereto as Exhibit B ("Proposed Amendment") and

WHEREAS, pursuant to chapter 18, section 18-1, et seq. of the Wheaton City Code, the applicable provisions of the Illinois Complied Statutes, and Illinois Constitution, all legal requirements for this First Amendment have been met;

NOW THEREFORE, in consideration of the foregoing preamble and the mutual covenants and agreements contained herein, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein as if fully set forth herein.
2. Defined Terms and Conflicts. All capitalized terms set forth in the Agreement shall have the same meaning for the purpose of this Agreement. To the extent of any conflict between the terms of the Agreement and the terms of this First Amendment, the terms of this First Amendment shall control.
3. Development Boundary Fence. The 7-foot high perimeter Boundary Fence along the north, east and south boundary lines of the Property may be maintained in its current height and condition pursuant to the ordinance granting special use for a planned unit development for the Property. Upon the damage or destruction of the Boundary Fence, the Association shall be permitted to repair or reconstruct the Boundary Fence to the condition which presently exists except that the finished side shall face out or the fence shall have both sides finished. Such repair or reconstruction shall be with material types consistent with the existing fencing materials. The Association shall have the obligation to improve the fence by constructing a finished side facing Loretto Lane within 90 days from the date of recording of this First Amendment. Such obligation shall be discharged by the Association's placement of 6-foot high finished rectangular fence panels, the top of which shall be level with the lowest point of the scallops of Boundary Fence, the lowest point of the scallops being approximately 6 inches from the top of the Boundary Fence posts as depicted on Exhibit D. The Association shall have no obligation to double side that portion of the Boundary Fence above the lowest point of the existing scallops. The Association shall have the ongoing obligation for the repair, maintenance and replacement of the Boundary Fence, as and when necessary.
4. Internal Sidewalks. The City agrees to adopt such ordinances, immediately following the City's approval of this First Amendment, to the extent necessary to vacate any claim or right that the City or anyone claiming by, through or as a result of actions by the City, may have to use the internal sidewalks component of the easement depicted on Exhibit C attached hereto. From and after the date of this First Amendment, the Association shall have the responsibility, financial and otherwise, to maintain the sidewalk located within the sidewalk easement being hereby vacated. The Association shall maintain the pedestrian access gates along the northern and southern portions of the Boundary Fence, but shall be under no obligation to keep such gates open or unlocked. The City shall have the right to use the pedestrian access gates as and when necessary to gain ingress and egress to the Property for emergency purposes.

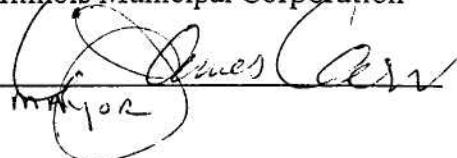
5. Emergency Access Easement. The City agrees to adopt such ordinances, immediately following the City's approval of this First Amendment to vacate any claim or right that the City, or anyone claiming by, through, or as a result of actions by the City, may have to use that certain emergency access easement depicted on Exhibit C attached hereto. Notwithstanding any requirement of the City to the contrary, the Association, or the owner of the property upon which the emergency access easement is located, shall have the right to remove the pavement and subbase installed on the emergency access easement and restore the same to its natural grade or improve such property as otherwise authorized by the Association. The Association shall have no further obligation to maintain the emergency access easement and shall have the right to remove the emergency access gate incorporated into the northern Boundary Fence and construct in its place, fencing consistent with the balance of the northern Boundary Fence.

6. Approval of Covenants. The City hereby approves the form and content of the previously recorded Covenants and Amendment One to Covenants, as well as the form and content of the Proposed Amendment attached hereto as Exhibit B.

7. Further Actions. Immediately following the approval of this First Amendment by the City, the City agrees to adopt such ordinances as may be required to conform any previously adopted ordinances, including but not limited to ordinance Number E-3843 recorded on November 24, 1992 as document number R92-228609, to the terms of this Amendment.

City of Wheaton, Illinois
An Illinois Municipal Corporation

by



Attest

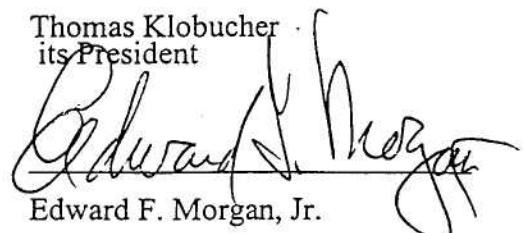
Emily M. Cenidegan
City Clerk

Morgan's Orchard Lake Homeowners Association,
An Illinois Not-for-Profit Corporation

by



Thomas Klobucher
its President


Edward F. Morgan, Jr.

2/16/99

**EXHIBIT A - ("PROPERTY")
LEGAL DESCRIPTION**

LOTS 1 AND 2 IN MORGAN'S ORCHARD LAKE P.U.D. RESUBDIVISION OF LOTS 1 AND 9 IN MORGAN'S ORCHARD LAKE P.U.D., BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED MAY 24, 1996 AS DOCUMENT R96-87623 IN DUPAGE COUNTY, ILLINOIS.

LOTS 2 THROUGH 8 AND OUTLOTS A, B AND C IN MORGAN'S ORCHARD LAKE P.U.D. BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 22, 1993 AS DOCUMENT R93-035000, AND RE-RECORDED FEBRUARY 10, 1994 AS DOCUMENT NO. R94-037719, IN DUPAGE COUNTY, ILLINOIS.

LOT NO.	COMMON ADDRESS	PIN NO.
LOT 1	1861 KANDAHAR CT.	05-29-109-033
LOT 2	1841 KANDAHAR CT.	05-29-109-029
LOT 3	1821 ORCHARD RD.	05-29-109-028
LOT 4	1801 ORCHARD RD.	05-29-109-027
LOT 5	1831 KANDAHAR CT.	05-29-109-026
LOT 6	1819 KANDAHAR CT.	05-29-109-025
LOT 7	1847 KANDAHAR CT.	05-29-109-024
LOT 8	1857 KANDAHAR CT.	05-29-109-023
LOT 9	1869 KANDAHAR CT.	05-29-109-034
OUTLOT A	VACANT ON ORCHARD RD.	05-29-109-030
OUTLOT B	VACANT ON ORCHARD RD.	05-29-109-031
OUTLOT C	1869 KANDAHAR CT.	05-29-109-034

Prepared by and return to:
 Cary J. Kerger, Attorney at Law
 1901 S. Meyers Road, Suite 220
 Oakbrook Terrace, IL 60181

**AMENDMENT NUMBER TWO TO DECLARATION OF COVENANTS,
CONDITIONS AND EASEMENTS FOR MORGANS ORCHARD LAKE PLANNED
UNIT DEVELOPMENT**

This Amendment Number Two is entered into this ____ day of February, 1999 by and among Edward F. Morgan, Jr. and Sally E. L. Morgan ("Lot 1 Owner"), Michael Morgan and Leslie Morgan ("Lot 2 Owner"), Gene Lubera and Nadine Lubera ("Lot 3 Owner"), Timothy C. Morgan and Jane Senja Morgan (Lot 4 Owner"), David Allen and Nancy Allen ("Lot 5 Owner"), William Kindorf and Jane Kindorf ("Lot 6 Owner"), Thomas Klobucher and Carol Klobucher ("Lot 7 and 8 Owner") and Richard K. Thomas and Brenda Thomas ("Lot 9 Owner") (all such parties being hereinafter collectively referred to as ("Amending Owners"). For purposes of this Amendment Number Two, the defined terms established in Article I of the Declaration shall have the same meaning hereunder.

W I T N E S S E T H

WHEREAS, on March 1, 1994, the then record owners of the Property described on Exhibit A attached hereto ("Property") caused to be recorded against the Property that certain Declaration of Covenants, Conditions and Easements for Morgan's Orchard Lake Planned Unit Development ("Declaration") which Declaration was recorded with the DuPage County Recorder of Deeds on March 8, 1994 as Document No. R94-57043;

WHEREAS, on November 1, 1997 the Declaration was amended by that certain Amendment Number One ("First Amendment") which was recorded with the DuPage County Recorder of Deeds as Document No. R98-038759;

WHEREAS, since recording of the Declaration and First Amendment, portions of the Property have been conveyed and are now owned as follows:

Lot 1 (as resubdivided)	Edward F. Morgan and Sally E. L. Morgan
Lot 2	Michael and Leslie Morgan
Lot 3	Gene T. and Nadine Lubera
Lot 4	Timothy C. and Jane Senja Morgan
Lot 5	David and Nancy Allen
Lot 6	William and Jane Kindorf
Lot 7 and 8	Thomas and Carol Klobucher
Lot 9 (as resubdivided)	Richard K. and Brenda Thomas
Outlots A & B	Morgan's Orchard Lake Homeowners' Association
Outlot C	Orchard Cove Lake Homeowners' Association

WHEREAS, the Association would like to again amend the Declaration to vacate such rights that it or the Amending Owners may have in the Emergency Access Easement referred to in Article III of the Declaration; and

WHEREAS, pursuant to Article VIII of the Declaration, the Declaration is subject to amendment upon the written agreement of five-ninths of the Owners of Record of Lots 1 through 9, and the Amending Owners represent all of the Owners of Record of Lots 1 through 9;

NOW THEREFORE, in consideration of the foregoing preamble and the mutual covenants and agreements contained herein, the Amending Owners agree as follows:

1. The foregoing Recitals are incorporated herein as if once again fully set forth in the body of this Amendment Number Two.
2. Article III of the Declaration entitled Easements shall be amended by the deletion of the section entitled Emergency Access Easement. The Declarant, Association and the Amending Owner do hereby relinquish any right, title or interest they each may have in the Emergency Access Easement as more particularly described in Article III of the Declaration.
3. The Lot 6 Owner shall have the right to remove and dispose of the paved surface located on the Emergency Access Easement and the Association shall have no further obligation with respect thereto.
4. Except as otherwise amended herein, the Declaration and First Amendment shall remain in full force and effect without modification.

DECLARANTS CONSENT:

Edward F. Morgan, Jr. and Sally E. L. Morgan, individually, and as successors in interest to Suburban Trust & Savings Bank, t/u/t dated 1/5/87 and known as Trust No 3985

Edward F. Morgan, Jr.

Sally E. L. Morgan

Michael Morgan and Leslie Morgan, individually, and as successors in interest to First Chicago Trust Company of Illinois, t/u/t/ dated 12/23/93 and known as Trust No. 10-466.

Michael Morgan

AMENDING OWNERS:

Lot 1 Owners:

Edward F. Morgan, Jr.

Sally E. L. Morgan

Lot 2 Owners:

Michael Morgan

Leslie Morgan

Lot 3 Owners:

Leslie Morgan

Gene Lubera

Nadine Lubera

Lot 4 Owner:

Timothy C. Morgan

Jane Senja Morgan

Lot 5 Owners:

David Allen

Nancy Allen

Lot 6 Owners:

William Kindorf

Jane Kindorf

Lot 7 & 8 Owners:

Thomas Klobucher

Carol Klobucher

Lot 9 Owners:

Richard K. Thomas

Brenda Thomas

ASSOCIATION:

Morgan's Orchard Lake Homeowners Association,
An Illinois Not-for-Profit Corporation

by _____

Thomas Klobucher
its President

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Edward F. Morgan, Jr. and Sally E. L. Morgan**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199__.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Michael Morgan and Leslie Morgan**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199__.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Gene Lubera and Nadine Lubera**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Timothy C. Morgan and Jane Senja Morgan**, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **David Allen and Nancy Allen**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **William Kindorf and Jane Kindorf**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Thomas Klobucher and Carol Klobucher**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Richard K. Thomas and Brenda Thomas**, his wife, personally known to me appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that **Thomas Klobucher**, personally known to me to be the President of Morgan's Orchard Lake Homeowners' Association, appeared before me this day in person and acknowledged that they signed and delivered the aforesaid instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 199____.

Notary Public

Commission Expires: _____

**EXHIBIT A - ("PROPERTY")
LEGAL DESCRIPTION**

LOTS 1 AND 2 IN MORGAN'S ORCHARD LAKE P.U.D. RESUBDIVISION OF LOTS 1 AND 9 IN MORGAN'S ORCHARD LAKE P.U.D., BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED MAY 24, 1996 AS DOCUMENT R96-87623 IN DUPAGE COUNTY, ILLINOIS.

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Prepared by and return to:
Cary J. Kerger, Attorney at Law
1901 S. Meyers Road, Suite 220
Oakbrook Terrace, IL 60181

EXHIBIT C

SEE ATTACHED PLAT OF ABROGATION OF EASEMENTS

PREPARED BY PATRICK ENGINEERING, INC. AND DATED 02/15/99

PLAT OF ABROGATION

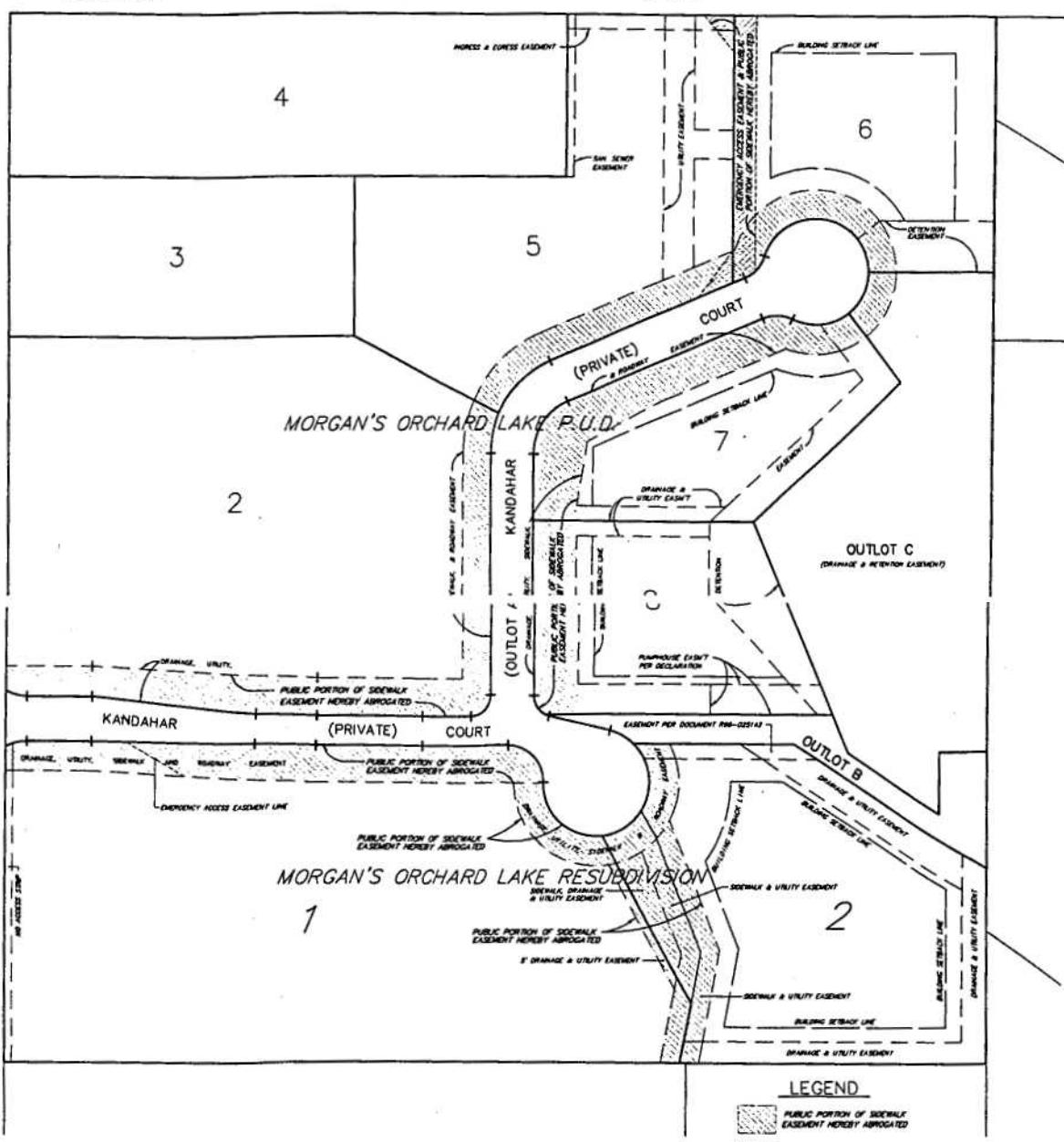
OF EASEMENTS WITHIN PART OF MORGAN'S ORCHARD LAKE P.U.D.
AND WITHIN PART OF MORGAN'S ORCHARD LAKE RESUBDIVISION

Oral F.0312 342



LORETTO

LANE



LEGEND

- PUBLIC PORTION OF SIDEWALK EASEMENT HEREBY ABROGATED
- EMERGENCY ACCESS EASEMENT HEREBY ABROGATED
- COMBINED PUBLIC PORTION OF SIDEWALK EASEMENT & EMERGENCY ACCESS EASEMENT HEREBY ABROGATED

SCALE: 1" = 50'	PROJECT: MORGAN'S ORCHARD LAKE P.U.D.
DATE: 02-15-99	SHEET TITLE: PLAT OF ABROGATION OF EASEMENTS
DES. BY:	
DR. BY: JM	
CHK. BY: EWK	
APP. BY: EWK	
PATRICK ENGINEERING, INC. LISLE, ILLINOIS	
SHEET 1 OF 1	DRAWING NO. STA
EXHIBIT A	

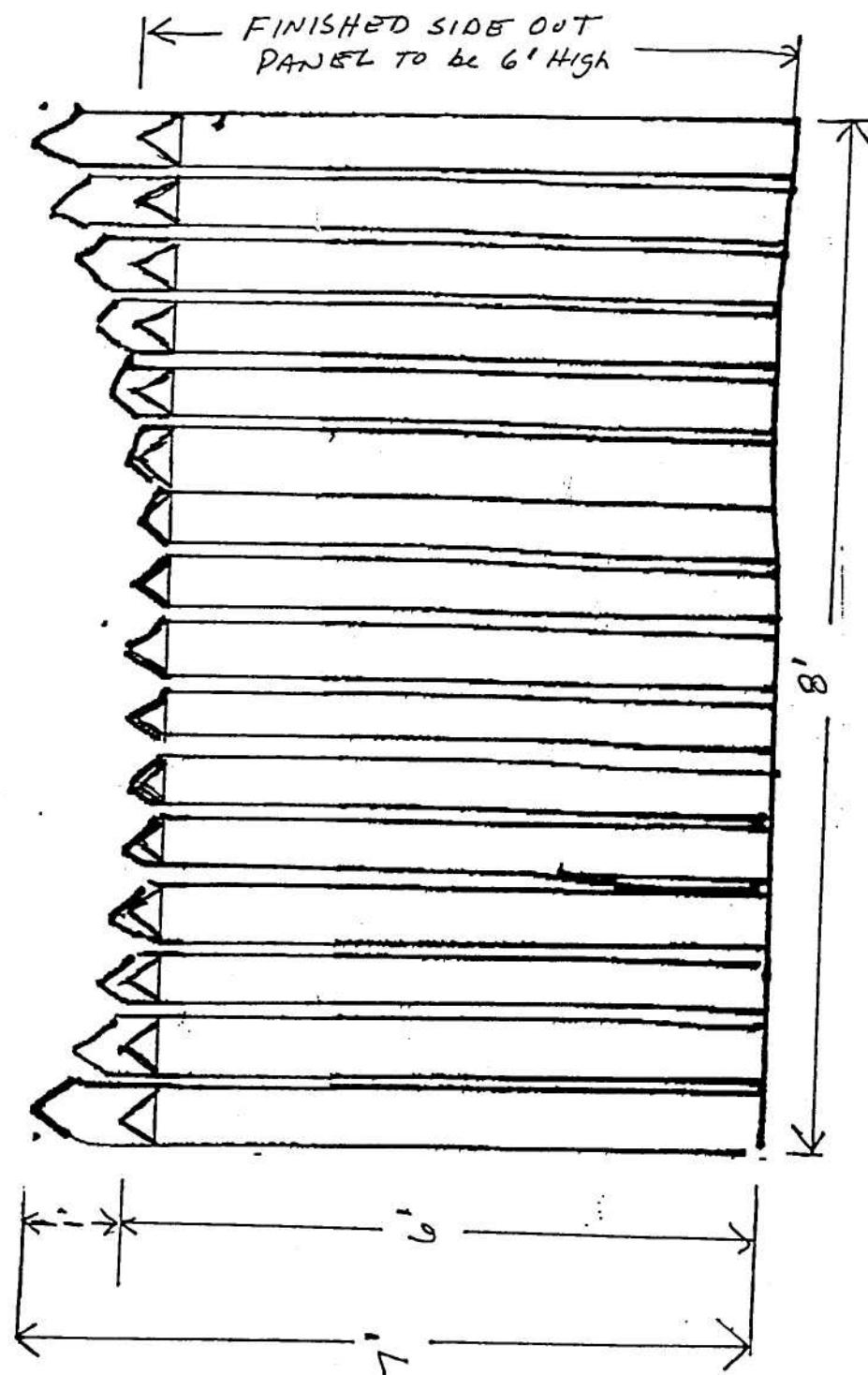
Exhibit C

ss

IS TO CERTIFY THAT I, ERNST W. KOHN, ILLINOIS PROFESSIONAL SURVEYOR No. 1886, HAVE SURVEYED AND PLATTED FOR PLAT PURPOSES THE EASEMENTS SHOWN IN THE ANNEXED WHICH IS A CORRECT AND TRUE REPRESENTATION OF SAID EASEMENT.

AT LISLE, ILLINOIS THIS 15th DAY OF February, 1999 A.D.

Ernst W. Kohn
PROFESSIONAL LAND SURVEYOR No. 1886



NOT TO SCALE