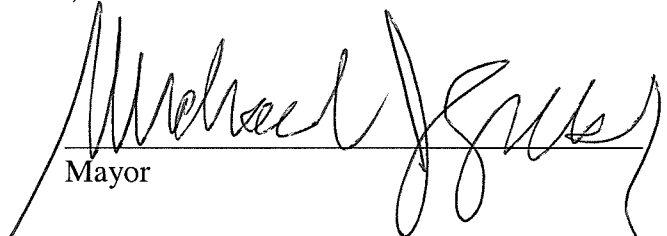


**RESOLUTION R-68-12**


**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(225 E. Forest Avenue)**

**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 August 17, 2012, between the City of Wheaton and the Anne E. Lautz Trust of 225 E. Forest Avenue, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 4<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

	<u>Roll Call Vote</u>
Ayes:	Councilman Sues Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

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**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY ( FOREST AVE )**  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 17 day of AUG, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and ANNE E LAUTZ TRUST ("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, ANNE E LAUTZ TRUST (hereinafter "Owner"), the owner of the premises located at 225 E FOREST AVE, 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.) ANNE E LAUTZ TRUST are the owners of property located at 225 E FOREST AVE 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 225 E FOREST AVE

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\_\_\_\_\_ 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.

Anna E. Lutz, TTEE  
Owner  
Anna E. Lutz Declaration  
of Trust UDT DTD 03/30/1992  
Owner

Subscribed and sworn to before me this 17th day of August, 2012.  
Diane M. Weesman Notary Public



Michael Jones  
Mayor, City of Wheaton

Attested by:  
Ashley Barnett Hogan  
City Clerk

**EXHIBIT A**

Legal Description:

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IN BLOCK 8 IN ARTHUR T. MCINTOSH AND COMPANY'S RESUBDIVISION OF BLOCKS 1 TO 11 AND INCLUSIVE, IN NOAH E. GARY'S SECOND ADDITION TO WHEATON IN THE SOUTH HALF OF SECTION 9, 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SECTION RECORDED APRIL 21, 1923 AS DOCUMENT 164742 IN DU PAGE COUNTY, ILLINOIS.

225 E. FOREST AVE Wheaton, IL 60187  
address

P.I.N. 05-09-319-012

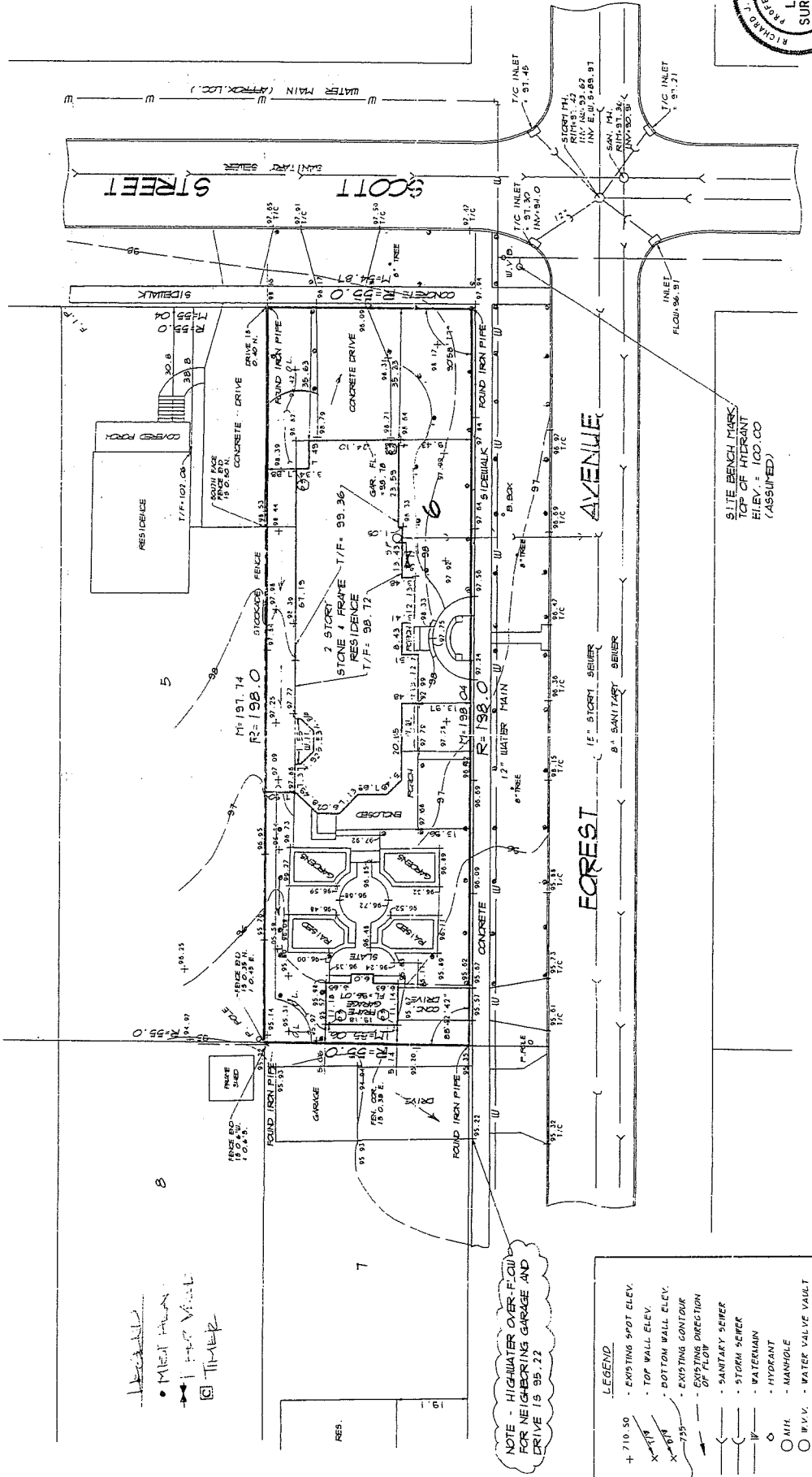
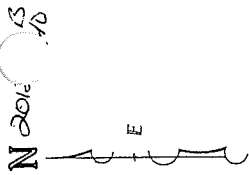
# FINAL GRADE SURVEY

OF LOT 8 IN BLOCK 8 IN ARTHUR T. MCINTOSH AND COMPANY'S RESUBDIVISION OF BLOCKS 1 TO 11 AND 13 TO 15 INCLUSIVE, IN NOAH E. GARY'S SECOND ADDITION TO WHEATON IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED APRIL 21, 1923 AS DOCUMENT 164742 IN DU PAGE COUNTY, ILLINOIS.

This property is known as 225 E. Forest Avenue, Wheaton, Illinois.

Prepared for Dave Lutz

P. I. N. 08-08-319-012



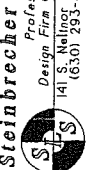
SITE BENCH MARKS  
TOP OF HYDRANT  
ELEV. = 100.00  
(ASSUMED)

STATE OF ILLINOIS } S.S.  
COUNTY OF DUPAGE }

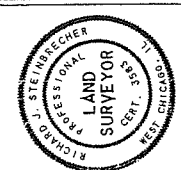
I do hereby certify that the lot grading has been completed substantially in accordance with the approved grading plans and that any deviation from those plans will not adversely affect the functioning of the drainage system.

West Chicago, Illinois, August 25, 2011

**Steinbrecher Land Surveyors, Inc.**  
Professional Land Surveying  
Design Firm Corporation No. 184-003126  
141 S. Neilson Blvd., West Chicago, IL 60185-2844  
(630) 293-8900 Fax 293-8902



*Richard J. Steinbrecher*  
Richard J. Steinbrecher  
Professional Land Surveyor, 3583  
License expires Nov. 30, 2012



NOTE - HIGH WATER OVER-FLOW FOR NEIGHBORING GARAGE AND DRIVE IS 95.22

- LEGEND**
- + 710.50 - EXISTING SPOT ELEV.
  - X-WALL - TOP WALL ELEV.
  - X-DIM - BOTTOM WALL ELEV.
  - 735 - EXISTING CONTOUR
  - - - - - EXISTING DIRECTION OF FLOW
  - - - - - SANITARY SEWER
  - - - - - STORM SEWER
  - - - - - WATER MAIN
  - MH - MANHOLE
  - W.V. - WATER VALVE VAULT
  - S.P. - SUMP PUMP
  - O.L. - DOWNSPOUT OUTLET
  - G.O. - CLEAN OUT

- LEGEND**
- F.I.P. - FOUND IRON PIPE
  - F.I.R. - FOUND IRON ROD
 H | - MEASURED DISTANCE | R.A. | - RADIUS | R.D. | - RADIUS OF WAY | R.O. | - RADIUS | M.H. | - MANHOLE | W.V. | - WATER VALVE VAULT | P.V. | - POLYVINYL CHLORIDE PIPE | REP. | - REINFORCED CONCRETE PIPE | EP | - EDGE OF PAVEMENT |

