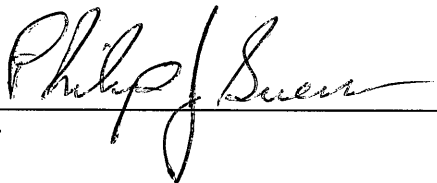


RESOLUTION R-2021-24

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(730 Dawes Avenue)**

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 April 5th, 2021, between the City of Wheaton and Martin & Laura Khoeler for 730 Dawes Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 19th day of April 2021.



Mayor

ATTEST:



City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilwoman Robbins Councilman Rutledge Councilman Zaruba Councilman Barbier Councilwoman Bray-Parker Councilwoman Fitch Mayor Sues
Nays:	None
Absent:	None
	<u>Motion Carried Unanimously</u>



APR - 6 2021

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (730 Dawes Ave)
Street Name**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5th day of April, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and MARTIN & LAURA KOEHLER ("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, MARTIN & LAURA KOEHLER (hereinafter "Owner"), the owner of the premises located at 730 Dawes 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.) MARTIN & LAURA KOEHLER are the owners of property located at 730 Dawes 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 only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The 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 the 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.

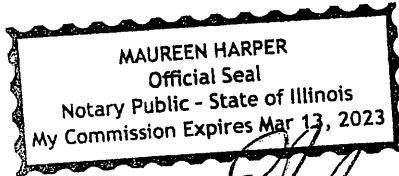
Jack A. Koehler
Owner

Laurie W. Koehler
Owner

Subscribed and sworn to before me this *6th* day of *April*, 20*21*

Maureen Harper Notary Public

(Notary Seal)



Philip J. Seem
Mayor, City of Wheaton

Attested by:

Shaun Bennett Harper
City Clerk

EXHIBIT A

Legal Description:

Lot 1 in Gardner's Grove Subdivision, Being
a Subdivision in part of the Northeast Quarter
of Section # 21, Township 39 North, Range 10,
East of the Third Principal Meridian. According
to the Plat Thereof recorded April 23rd 1992
as document R92-074740 in Dupage County Ill.

730 Dawes _____ Wheaton, IL 6018_
Street Name

P.I.N. 05-21-216-036

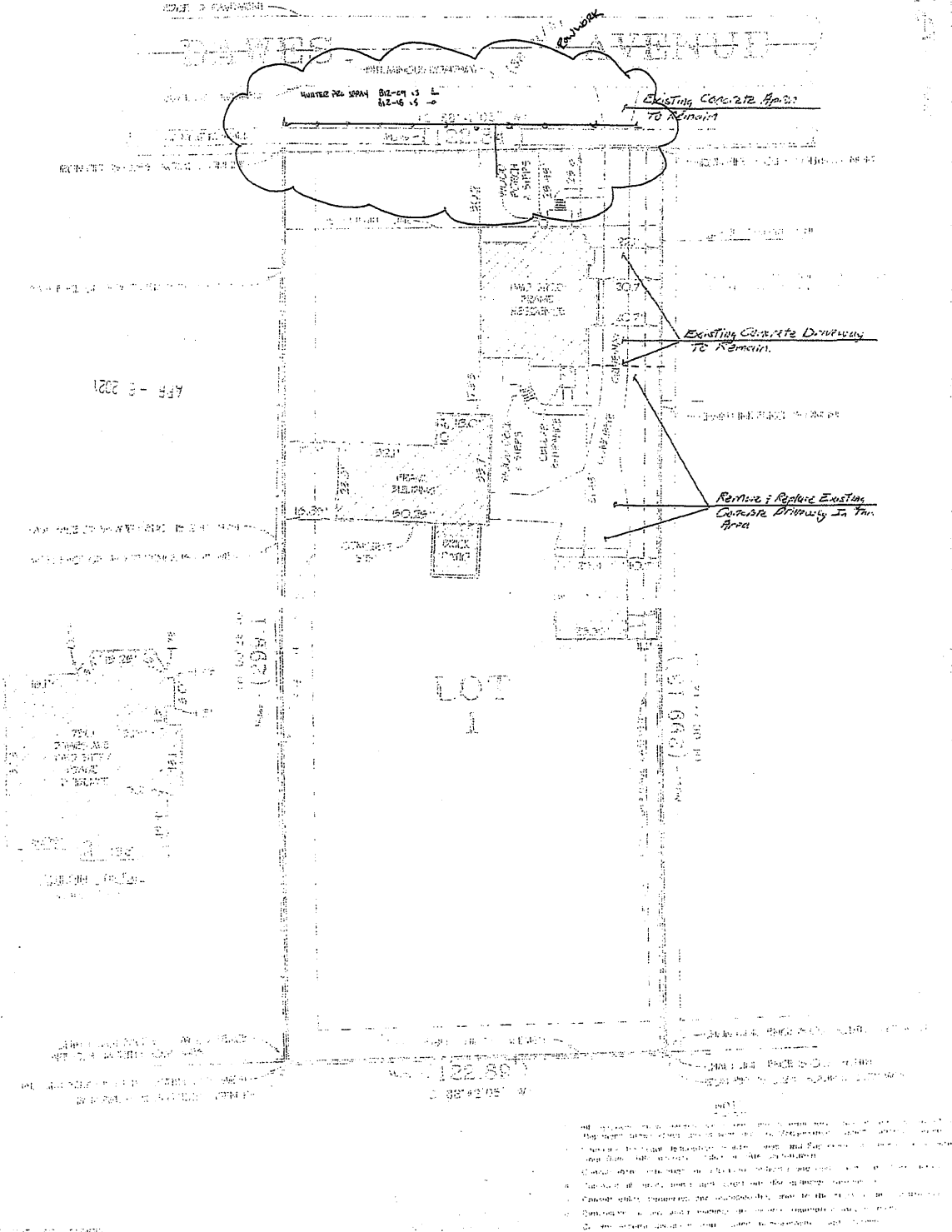
ASSESSOR
COUNTY CLERK
PLAT BOOK
DATE

PLAT OF SURVEY

EXHIBIT B

LOT 1 IN GARDNER'S GROVE SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1992 AS INSTRUMENT 287-0787 IN W. DUPAGE COUNTY, ILLINOIS.

AREA OF SITE = 36,749.50 SQ FT 0.84 ACRES



I, MARTY KOENLER, being a duly qualified and licensed Professional Land Surveyor, do hereby certify that I have personally supervised and performed the survey herein and that the same is correct and true representation thereof, and that this Professional Service conforms to the highest ethical standards for a boundary survey.

DATE OF SURVEY: 11/11/2021
BY: MARTY KOENLER, Professional Land Surveyor No. 000000000
WITNESSES: _____

CARRADIS LAND SURVEY, INC.
100 Bridge Street, Suite 100, Wheeling, Illinois 60090
(630) 588-0111 Fax: 630-588-0112

MARTY KOENLER
Professional Land Surveyor No. 000000000



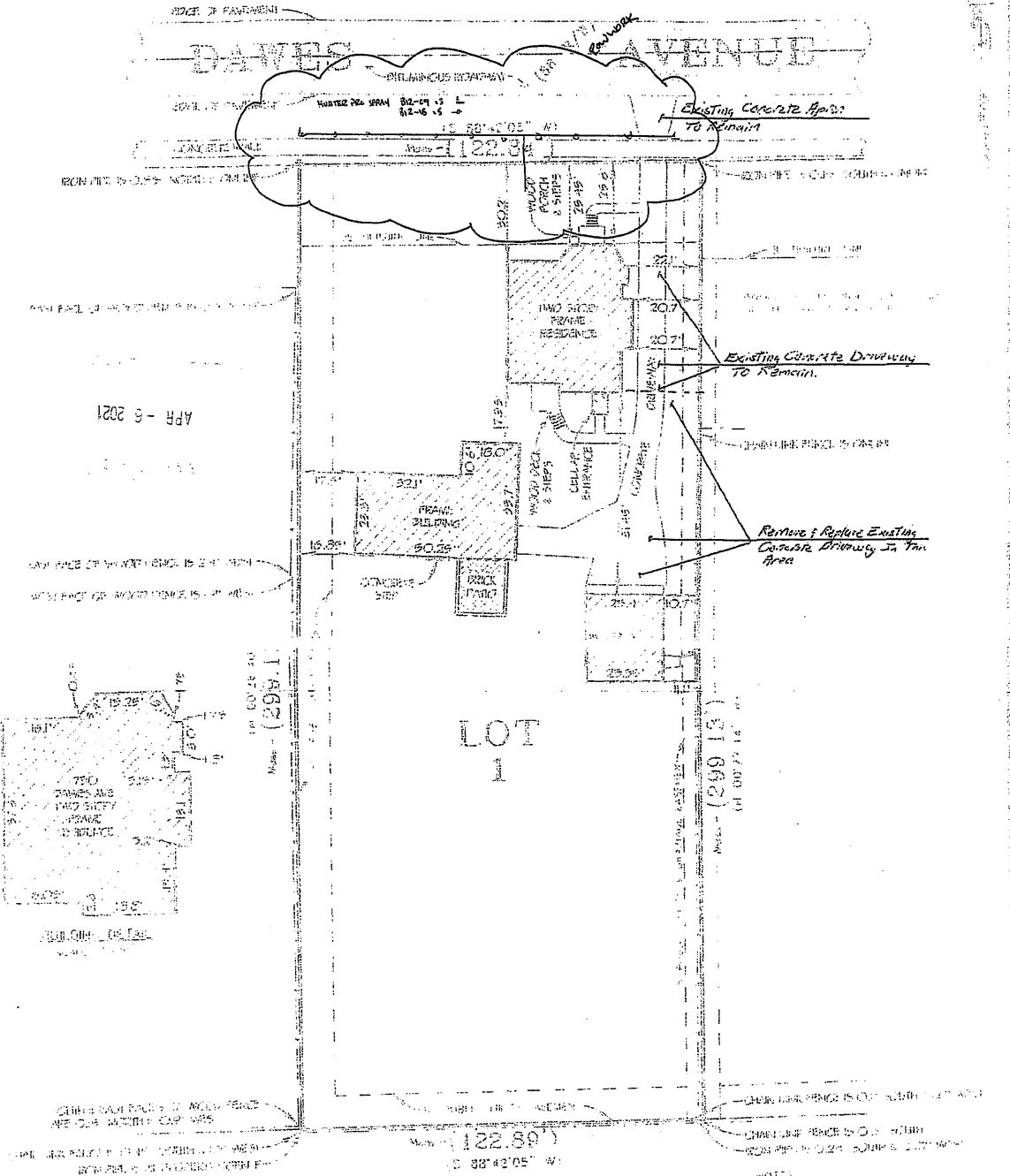
LEGEND
 Shaded Area = Existing Building
 Dashed Line = Proposed Boundary
 Solid Line = Survey Boundary
 Dotted Line = Easement

PLAT OF SURVEY

EXHIBIT B

LOT 1 IN GARDNER'S GROVE SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1992 AS DOCUMENT 292-07-17-10, IN DUPAGE COUNTY, ILLINOIS.

AREA OF SITE = 56,746 SQ FT 0.84 ACRES



DATE OF SURVEY: 05/11/2011
 BY: MARTY KOENLER, PROFESSIONAL LAND SURVEYOR
 THIS IS TO CERTIFY THAT I, MARTY KOENLER, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF ILLINOIS, HAVE SURVEYED THE PROPERTY AS DESCRIBED HEREON AND THAT THE FOREGOING PLAT IS A CORRECT AND TRUE REPRESENTATION HEREOF, AND THAT THE PROFESSIONAL SERVICE RENDERED TO THE PROPERTY OWNER MEETS THE STANDARDS FOR A BOUNDARY SURVEY.

CARRADUS LAND SURVEY, INC.
 100 Bridge Street Suite 100, Wheaton, Illinois 60187
 (630) 582-0416 Fax: 555-7392
MARTY KOENLER

DATE: 05/11/2011
 TIME: 10:00 AM
 PROJECT: GARDNER'S GROVE SUBDIVISION LOT 1

