

**RESOLUTION R-63-07**

**RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT - Right-of-Way (408 West Jefferson 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 September 17, 2007, between the City of Wheaton and Richard and Shirley Whitecotton, 408 West Jefferson Avenue, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 17<sup>th</sup> day of September, 2007.

  
\_\_\_\_\_  
Mayor

Attested by:

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

Ayes:

Roll Call Vote

Councilwoman Corry

Councilman Johnson

Councilman Levine

Mayor Gresk

Councilman Mouhelis

Councilman Prendiville

Councilman Suess

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: September 17, 2007

Published: September 18, 2007

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (408 WEST JEFFERSON AVENUE)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 17<sup>th</sup> day of September, 2007, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Richard and Shirley Whitecotton ("Owner").

WITNESSETH

WHEREAS, the City is in possession of an improved right-of-way within the City limits of the City of Wheaton, Illinois, commonly known as a Public Alley between Jefferson Avenue and Lincoln Avenue; and

WHEREAS, Richard and Shirley Whitecotton (hereinafter "Owner"), are the owners of the premises located at 408 West Jefferson Avenue, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the improved right-of-way; and

WHEREAS, the Owner would like to use a portion of the improved right-of-way to access their basement located at 408 West Jefferson Avenue; and

WHEREAS, the Owner 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 Richard and Shirley Whitecotton as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Richard and Shirley Whitecotton are the owners of property located at 408 West Jefferson Avenue, Wheaton, Illinois, legally described as follows:

Of the North Eighty Two (82) Feet (Except the East One Hundred thirty Eight (138) Feet Thereof) of Lot Two (2) in Block Eleven (11) in NOAH E.GARY'S FIRST ADDITION TO WHEATON, in the North East Quarter of Section Seventeen (17) Township Thirty Nine (39) North, Range Ten (10) East of the Third Principal Meridian, in DuPage County, Illinois.

Commonly known as: 408 West Jefferson Avenue, Wheaton, Illinois

PIN: 05-17-214-006

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to construct and use a portion of the

26300

improved right-of-way lying immediately west of the Property described in Paragraph 2 of this Agreement, in the following manner: to construct and use a basement entrance and walkway in strict conformance with Exhibit A which is attached hereto and incorporated herein as if fully set forth.

4.) The Owner shall construct and use the basement entrance and walkway in conformance with all applicable City ordinances. Upon completion, Owner shall maintain the basement entrance and walkway in good condition and repair and in conformance with all applicable City ordinances. If the Owner fails to maintain the basement entrance and walkway as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the basement entrance and walkway. If the City makes such repairs, the Owner shall reimburse the City its actual costs. If the Owner fails to reimburse the City its actual costs within thirty (30) days of invoice, the City shall have the right to lien the Property described in paragraph 2 of this Agreement and to foreclose such lien in conformance with State law.

5.) The Corporate Authorities of the City in their absolute discretion may terminate and cancel this Agreement together with all rights and privileges granted hereunder upon thirty (30) days written notice to the Owner.

6.) Upon termination of this Agreement, the City may destroy, demolish, remove any improvements placed upon the right-of-way by the Owner without liability and at the Owner's cost and expense.

7.) To the greatest extent permitted under Illinois law, Owner 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 experts fees) which arise or may be caused by the negligence of the Owner, or Owner's agents, as a result of the design, construction, maintenance, use or abandonment of the basement entrance and walkway described herein. As a material condition of the City's willingness to provide this use agreement, the Owner hereby waives and releases any and all claims, actions, damages, injuries, costs and expenses against the City, its employees, officials, agents and assigns that arise out of any act or omission of the City, its employees, officials, agents and assigns in connection with this use agreement or the presence of the improvements in the Public Alley.

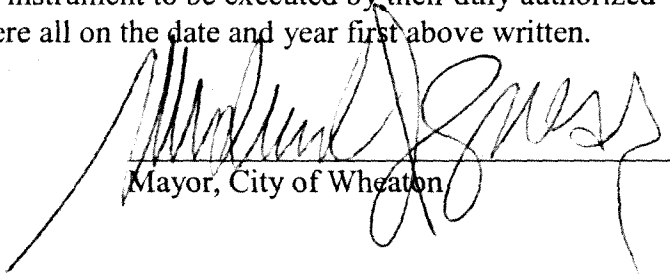
8.) This Agreement is not an easement. If a court ever interprets this document as an easement, it shall be temporary for a period of thirty (30) days only and upon its expiration the use shall become null and void except that the indemnification and hold harmless, and waiver set forth in Paragraph 7 shall survive.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall proceed 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.

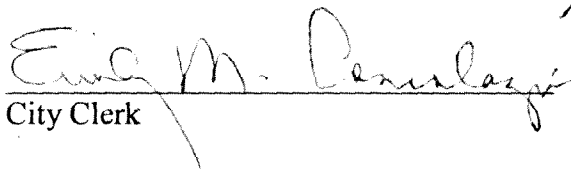
10.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

11.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owner.

IN WITNESS WHEREOF, the Corporate authorities and the Owner 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.

  
\_\_\_\_\_  
Mayor, City of Wheaton

Attested by:

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

\_\_\_\_\_  
Richard Whitecotton

\_\_\_\_\_  
Shirley Whitecotton

Attested by:

\_\_\_\_\_