

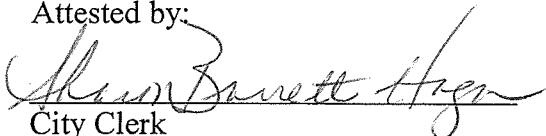
RESOLUTION R-23-11

**RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT – PEDESTRIAN ALLEY**

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 June 6, 2011, between the City of Wheaton and the Harold W. Gaede Trust, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 6th day of June, 2011.

Attested by:


City Clerk


Mayor

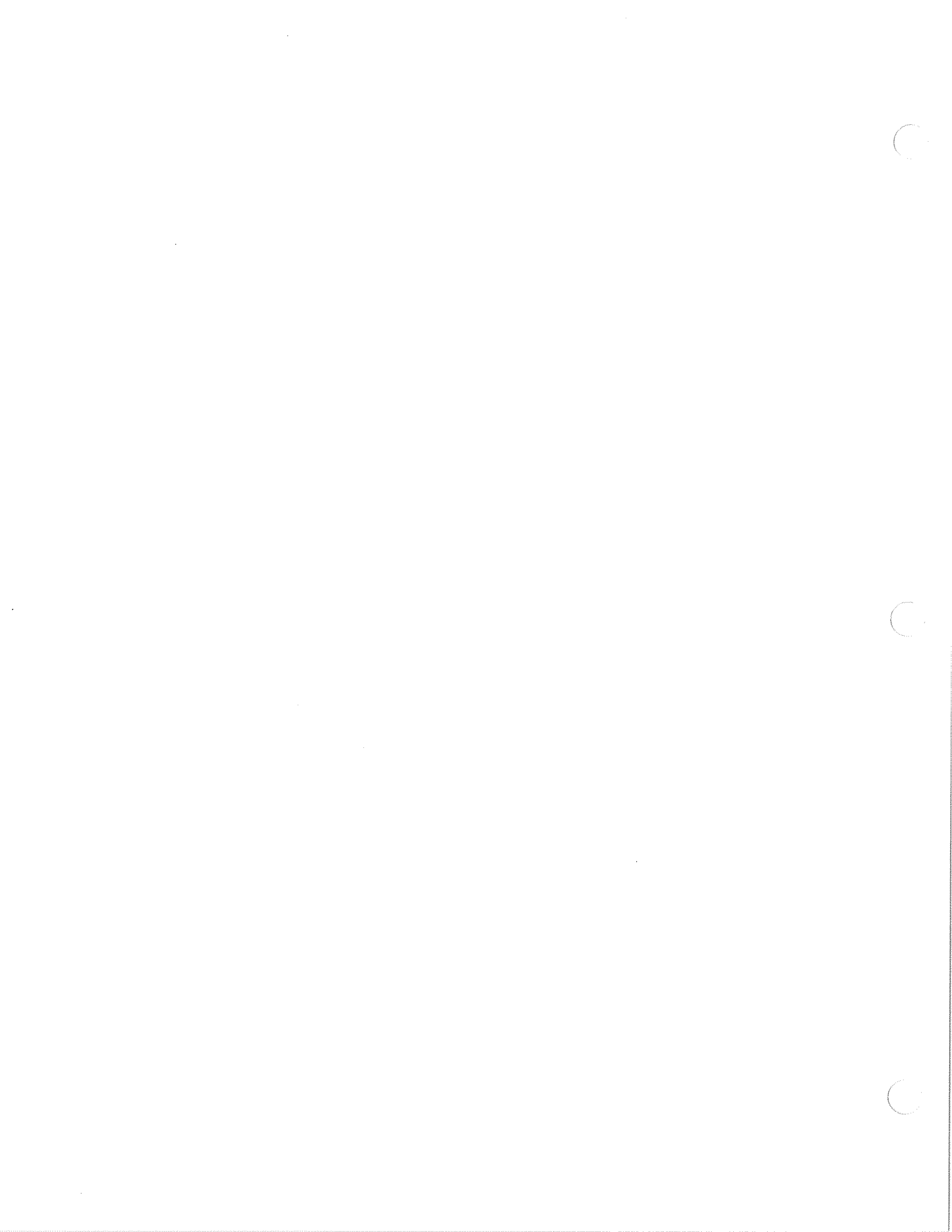
ROLL CALL VOTE

Ayes: Councilman Sues
Councilwoman Ives
Councilman Mouhelis
Councilman Rutledge
Mayor Gresk
Councilwoman Pacino Sanguinetti
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously



**CONSTRUCTION, USE AND
INDEMNIFICATION AGREEMENT
PEDESTRIAN ALLEY**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 6th day of June, 2011, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois, and the Harold W. Gaede Trust.

WITNESSETH

WHEREAS, the City is in possession of an improved public alley (hereinafter "Alley") within the City limits of the City of Wheaton, Illinois (hereinafter "City"), and legally described herein; and

WHEREAS, the Harold W. Gaede Trust (hereinafter "Owner"), are the owner of the premises located at 112 N. Hale Street, Wheaton, Illinois (hereinafter "Subject Property"), which property is legally described herein and is contiguous to a portion of the Alley; and

WHEREAS, the Owner desires to construct a handicap ramp on the Subject Property; and

WHEREAS, the handrails of said handicap ramp constructed by the Owner will encroach approximately one foot over said Alley located adjacent to the Subject Property; 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 Alley; and

WHEREAS, the Owner's successors and heirs will benefit from the construction of the handicap ramp as described herein.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Owner as follows:

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

2.) The Harold W. Gaede Trust is the owner of property located at 112 N. Hale Street, Wheaton, Illinois, legally described as follows:

Lot 11 in Block 8 (except for the north 14.5 feet of said lot 11) in the Town of Wheaton, Being a subdivision in Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, according to the plat thereof Recorded as document # 7256 in DuPage County, Illinois. PIN: 05-16-301-031

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 a handicap ramp including handrails, subject to all other permitting requirements, which handrails are authorized to encroach approximately one foot into said Alley as depicted in the plans attached hereto as Exhibit A which is attached hereto and incorporated herein as if fully set forth.

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4.) Except as to the handrail encroachment, the Owner shall construct and use handicap ramp in a manner which does not interfere, impede, hinder or otherwise obstruct the lawful use of the right-of-way by the City. Upon completion, the Owner shall maintain the entire handicap ramp and appurtenances in good condition and repair and in conformance with all applicable City ordinances. If the Owner fails to maintain the handrails as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the handrails. 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 with 30 days of invoice the City shall have the right to lien the Subject Property and to foreclose the lien.

5.) If the City performs maintenance work on the Alley or on any of the utility systems in the Alley causing damage or removal of the handrails, the Owner shall restore the handrails at their sole cost and expense.

6.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owner in writing at least thirty (30) days prior to termination.

7.) Upon termination of this Agreement, the City may destroy, demolish, or remove any improvements placed upon the Alley by the Owner without liability.

8.) 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 of 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 handrail encroachment described herein.

9.) The Owner shall name the City as an additional insured on its liability insurance to indemnify and hold the City harmless in conformance with Paragraph 8 of this Agreement. The liability insurance policy shall be in with an insurance company licensed to do business in Illinois and shall be subject to the reasonable approval of the City Attorney.

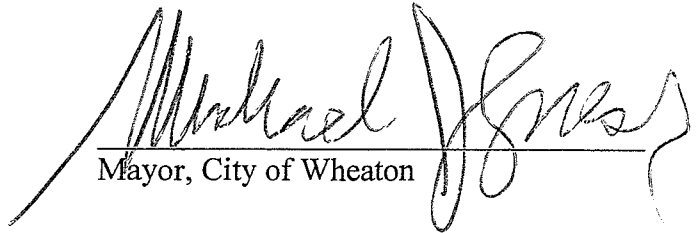
10.) This Agreement is not an easement . If this agreement is interpreted by a court as an easement it shall be temporary and terminate twenty four hours after entry of any court order interpreting it as an easement.

11.) 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.

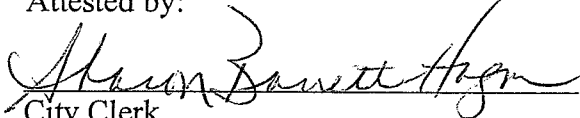
12.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

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

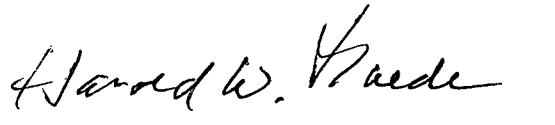
IN WITNESS WHEREOF, the Corporate authorities and the Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.



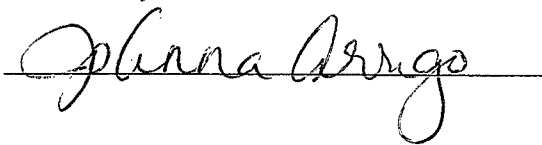
Mayor, City of Wheaton

Attested by:


City Clerk



Owner

Attested by:


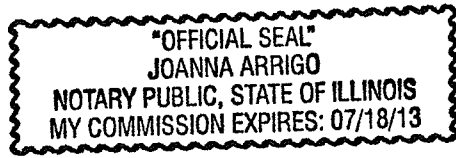
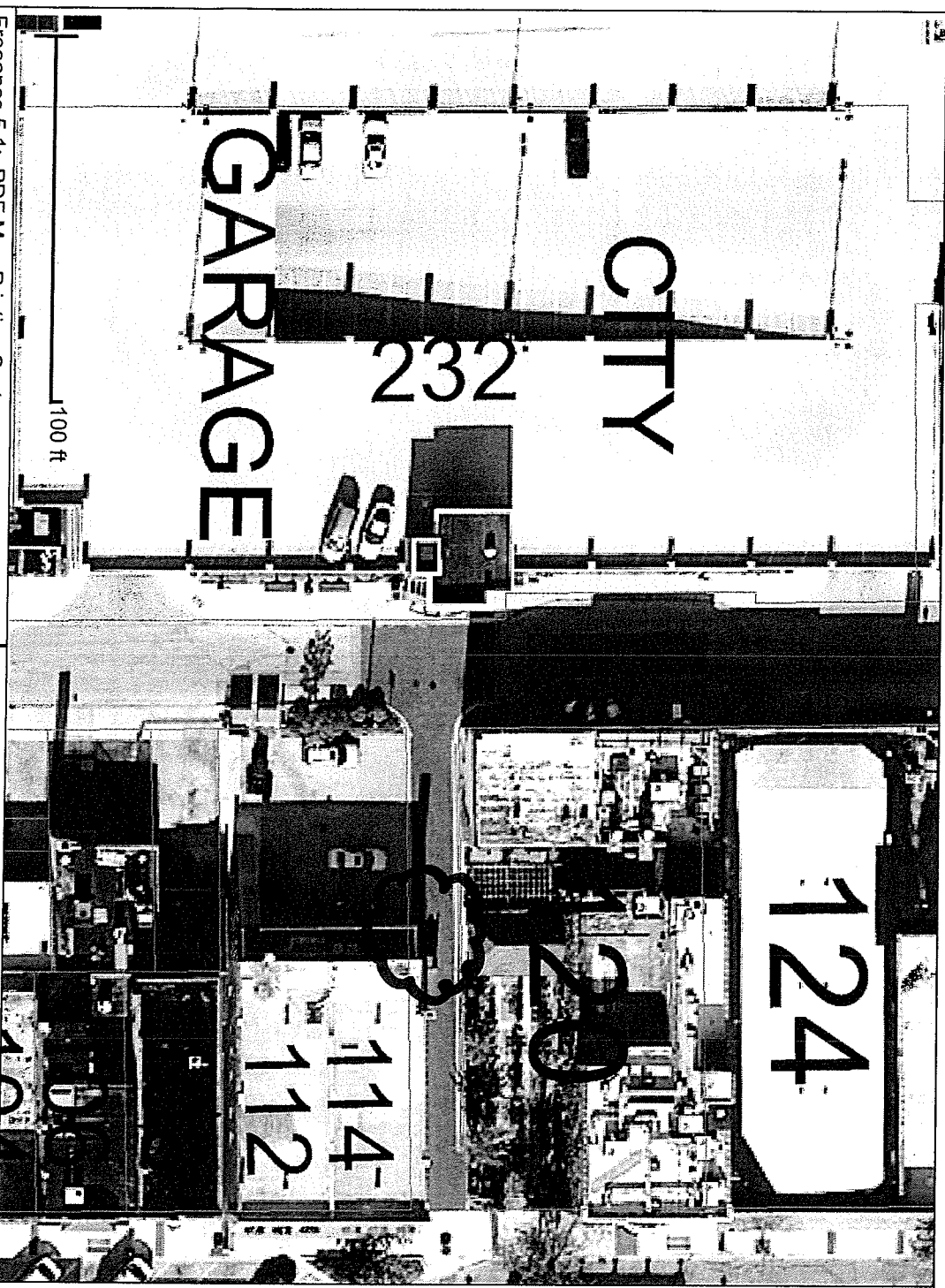


Exhibit 'A'



Frearance 5.1: PDF Map Printing System
City of Wheaton GIS

Prairie Paths

Railroad

City Limits

Major Roads

Street Names

Parcels

Schools

Parks & Open Space

Aerials - 2009

Red: Band_1

Green: Band_2

Blue: Band_3

Background

Outside Wheaton

Wheaton

Municipalities

CAROL STREAM

DOMNERS GROVE

GLEN ELLYN

LIBLE

LOMBARD

NAPERVILLE

WARRENVILLE

WINFIELD