

RESOLUTION R-20-15

**A RESOLUTION OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONSTRUCTION, USE
AND INDEMNIFICATION AGREEMENT – DUMPSTER SCREEN – GUST – 204 W. WESLEY
STREET**

WHEREAS, the City is in possession of an improved public alley (hereinafter "Alley"); and

WHEREAS, Howard and JoAnn Gust as Joint Tenants (hereinafter "Owner") hold title to the premises located at 204 W. Wesley Street, Wheaton, Illinois (hereinafter "Subject Property"), which is adjacent to a portion of the Alley; and

WHEREAS, the Owner desires to enlarge an area for roll-out dumpsters and a dumpster screen (hereinafter "Refuse Area") on the Subject Property; and

WHEREAS, a portion of said Refuse Area to be constructed by the Owner will encroach 1 foot 8 inches onto said Alley located adjacent to the Subject Property; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an construction, use and indemnification agreement between the City of Wheaton and Howard and JoAnn Gust as Joint Tenants, as attached hereto and made a part thereof.

Section 1. This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

ADOPTED by the City Council of the City of Wheaton, Illinois, this 4th day of May, 2015.

Mayor

ATTEST:

City Clerk

Roll Call Vote:

Ayes: Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo
Councilman Sues
Councilwoman Fitch

Nays: None

Absent: None

Motion Carried Unanimously

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
GUST**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT (hereinafter "Agreement"), made and entered into this 4th day of May, 2015, between the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois (hereinafter "City"), and Howard and JoAnn Gust as Joint Tenants (hereinafter "Owner").

WITNESSETH

WHEREAS, the City is in possession of an improved public alley (hereinafter "Alley"); and

WHEREAS, Owner holds title to the premises located at 204 W. Wesley Street, Wheaton, Illinois (hereinafter "Subject Property"), which is legally described herein and is adjacent to a portion of the Alley; and

WHEREAS, the Owner desires to enlarge an area for roll-out dumpsters and a dumpster screen (hereinafter "Refuse Area") on the Subject Property; and

WHEREAS, a portion of said Refuse Area constructed by the Owner will encroach 1 foot 8 inches onto 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

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.) Howard and JoAnn Gust as Joint Tenants are the owners of Subject Property, legally described as follows:

Lot 1 in Block 8 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 June 20, 1853 as Document 7256, in DuPage County, Illinois.

PIN: 05-16-301-027

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to, and shall, use a portion of the Alley for the purpose of constructing a dumpster screen and placing and maintaining roll-out dumpsters for his buildings tenants on property more specifically identified in the plans which are attached hereto and are incorporated herein by reference as Exhibit "A".

Owner shall, as a material condition of this Agreement, maintain the roll-out dumpsters and Refuse Area as follows:

- A. The portion of property at, around and within the Refuse Area shall be maintained in a clean and sanitary condition. No food, waste, debris, rubbish or other disposed items shall be permitted outside of the roll-out dumpsters; and
- B. The dumpsters shall contain tight-fitting and secure lids so as to minimize the escape of refuse and odors; and
- C. The dumpster screen shall be maintained in good condition so as to screen the Refuse Area from the Alley and inhibit the spread of rubbish. All surfaces of the dumpster screen shall be maintained in a structurally sound and neat fashion so as to be sound and aesthetically acceptable.

Any violations of the conditions set forth in this section shall permit the City to terminate this Agreement upon 14 days written notice to the Owner.

4.) The City retains the right to enter said portion of Alley occupied by the Owner at any time for the purpose of maintaining the existing concrete pavement, the existing City utility systems (water mains, storm and sanitary sewers) if any, and for any other lawful purpose. If the City determines that the portion of the Alley occupied by the Owner is needed for purposes of carrying out a public improvement or if the use of the portion of the Alley by the Owner threatens or harms the health, safety or general welfare of the public, or upon 90 days notice from the City to the Owner for any purpose the City deems appropriate in its absolute discretion, then the Owner shall move the roll-out dumpsters and/or the dumpster screen upon the City's request. Owner will keep and maintain the roll-out dumpsters and dumpster screen in a manner so as to not interfere with the public's use of the Alley.

5.) Except as provided in paragraph 4 of this Agreement, the City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, with or without cause in the sole and absolute discretion of the Corporate Authorities of the City, by notifying the Owner in writing at least ninety (90) days prior to the date of termination.

6.) Upon termination of this Agreement, the City may remove and dispose of any or all of the aforesaid roll-out dumpsters, dumpster screen and related improvements placed upon the Alley by Owner without liability.

7.) Owner agrees to indemnify, defend, protect, and hold harmless the City, its corporate authorities, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to reasonable attorney's fees, expert witness fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Owner's acts or omissions within the scope of this Use Agreement. Nothing set forth in this Agreement shall be deemed a waiver by the City of any defenses or immunities relating to Owner or its property, or to any other person or entity or their property, that are or would be otherwise available to the City or its corporate authorities, officers and employees under the provisions of the Illinois Local Government and Governmental Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers and employees under the common law of the State of Illinois or the United States of America.

8.) Owner shall file with the City Manager of the City, a policy or certificate of insurance maintaining a minimum of TWO MILLION DOLLARS AND 00/100 (\$2,000,000.00) of general liability insurance coverage, issued by a solvent insurance company authorized to do business in the State of Illinois, insuring Owner against liability for any injury to any person (including death) or damage to any property, resulting because of Owner's use of the Alley as described herein.

9.) The provisions set forth in this Agreement and exhibits thereto, represent the entire Agreement between the parties and shall supersede 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 hereto only. No, heir, successor, lessee or assign of the Owner shall have any rights or privileges under this Agreement without the express written consent of the City.

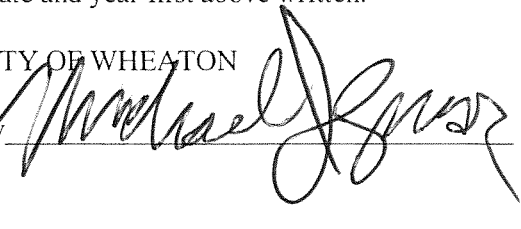
11.) This Agreement is not and shall not be construed as an easement. If any court of competent jurisdiction construes this Agreement as an easement it shall only be a temporary easement which shall terminate 14 days after the Owner asserts in any writing that it constitutes an easement. This Agreement shall also not be construed to create a leasehold.

12.) This Agreement shall be recorded by the City Clerk, in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of Owner.

IN WITNESS WHEREOF, the Corporate Authorities of the City of Wheaton and the Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.

CITY OF WHEATON

By

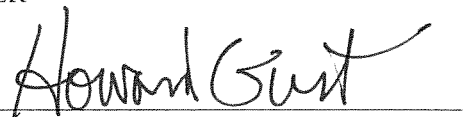


Attested by:


City Clerk, Sharon Barrett-Hagen

OWNER

By



Attested by:

OWNER

By

Attested by:
