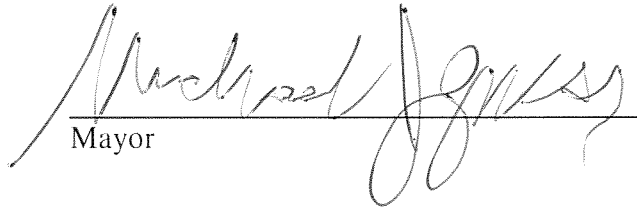


RESOLUTION R-46-16

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(121 West Union 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 August 25, 2016, between the City of Wheaton and Scott and Jennifer Brown of 121 West Union Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 3<sup>rd</sup> day of October, 2016.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

	<u>Roll Call Vote</u>
Ayes:	Councilman Sues
	Councilwoman Fitch
	Councilman Prendiville
	Councilman Rutledge
	Mayor Gresk
	Councilman Saline
	Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously



**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY (121 W UNION AVE )**  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 25<sup>th</sup> day of AUG, 2016, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Scott & Jennifer Brown ("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, Scott & Jennifer Brown (hereinafter "Owner"), the owner of the premises located at 121 W UNION, 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.) Scott & Jennifer Brown are the owners of property located at 121 W Union, 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 121 W Union Ave

\_\_\_\_\_ 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.

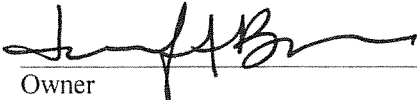
10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

11.) The Owners obligations under this Agreement shall be joint and several.

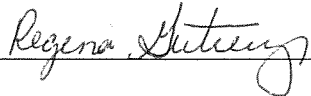
12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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.

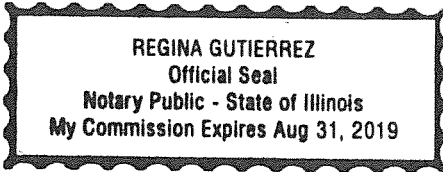
  
\_\_\_\_\_  
Owner

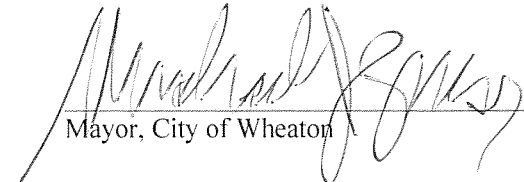
  
\_\_\_\_\_  
Owner

Subscribed and sworn to before me this 25 day of August, 2016.

  
\_\_\_\_\_  
Notary Public

(Notary Seal)



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

Attested by:

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

EXHIBIT A

Legal Description:

THE EAST NINETY SEVEN AND FIVE TENTHS (97.5) FEET OF THE WEST ONE HUNDRED SIXTY FIVE (165) FEET OF BLOCK ONE (1) (EXCEPT THE NORTH ONE HUNDRED NINETY SIX (19) FEET THEREOF) IN MALLORY'S ADDITION TO WHEATON, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

ALSO THE WEST FIFTY EIGHT AND FIVE TENTHS (58.5) FEET OF LOT FOUR (4) AND THAT PART OF LOT FIVE (5) LYING EAST OF A LINE DRAWN PARALLEL TO AND SIXTY SEVEN AND FIVE TENTHS (67.5) FEET (MEASURED ON THE SOUTH LINE) OF THE WEST LINE OF THE EAST HALF OF LOT SIX (6) IN BLOCK ONE (1), OF VALLETTE AND BEARDS' ADDITION TO WHEATON, IN SECTION 16 TOWNSHIP NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

121 W. Union Ave. Wheaton, IL 60187  
address

P.I.N. 05-16-121-025



