

## RESOLUTION R-44-06

**RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT – (Summit Street)**

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 5, 2006, between the City of Wheaton and Michael A. Ganey and James T. Lewkowitz, as owner of the property located at 1400 Avery Avenue, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 5<sup>th</sup> day of June, 2006.

  
James Carr

Attested by:

Attested by:  
Emily M. Cenvalasjo  
City Clerk

### Roll Call Vote

Ayes: Councilman Mouhelis  
Councilman Suess  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine

Nays: None  
Absent: None

### Motion Carried Unanimously

**CONSTRUCTION, USE AND  
INDEMNIFICATION AGREEMENT  
(Summit Street)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5<sup>th</sup> day of June, 2006, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Michael A. Ganey and James T. Lewkowitz ("Owner").

**WITNESSETH**

WHEREAS, the City is in possession of an unimproved public street within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, Michael A. Ganey and James T. Lewkowitz (hereinafter "Owner"), are the owner of the premises located at 1400 Avery Avenue, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of unimproved public right-of-way; and

WHEREAS, the Owner and the property owners at 1318 Avery Avenue and 216 N. Summit Street use the unimproved public right-of-way to access their respective garages; and

WHEREAS, the Owner is desirous of paving a portion of said unimproved public right-of-way located adjacent to 1400 Avery Avenue, Wheaton, Illinois; and

WHEREAS, the property owners at 1318 Avery Avenue and 216 N. Summit Street will not be financially contributing to the construction of the asphalt driveway; 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 public unimproved right-of-way; and

WHEREAS, the Owner's successors and heirs will benefit from the placement of asphalt over the unimproved public right-of-way as described herein.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Michael A. Ganey and James T. Lewkowitz as follows:

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

2.) Michael A. Ganey and James T. Lewkowitz are the owner of property located at 1400 Avery Avenue, Wheaton, Illinois, legally described as follows:

LOTS 9 AND 10 IN BLOCK 6 IN EAST WHEATON, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 2, 1889 IN BOOK 4 OF PLATS, PAGE 28, AS DOCUMENT 40813 IN DUPAGE COUNTY, ILLINOIS (hereinafter the "Property").

PIN: 05-15-126-001

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authority to construct and use a portion of the unimproved right-of-way of Summit Street more specifically identified as the 100.00 foot portion of the Summit Street 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 paved driveway 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 asphalt driveway in conformance with all applicable City ordinances and in a manner which does not interfere, impede, hinder or otherwise obstruct the lawful use of the right-of-way by the City, public or property owners residing at 1318 Avery Avenue and 216 N. Summit Street. Upon completion, Owner shall maintain the asphalt in good condition and repair and in conformance with all applicable City ordinances. If the Owner fails to maintain the asphalt as required by this paragraph, City shall have the right but not the obligation to make any and all repairs to the asphalt. 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 Property described in paragraph 2 of this Agreement and to foreclose such lien in conformance with State law.

5.) The City retains the right to enter said unimproved public right-of-way for the purpose of maintaining the existing City utility systems (watermain, storm and sanitary sewers) if any. If the City performs maintenance work on any of the aforesaid utility systems the Owner shall restore the asphalt 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 ninety (90) days prior to termination.

7.) Upon termination of this Agreement, the City may destroy, demolish, remove any improvements placed upon the right-of-way 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

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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 asphalt driveway described herein.

9.) This Agreement is not an easement.

10.) 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.

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

12.) 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.

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Mayor, City of Wheaton

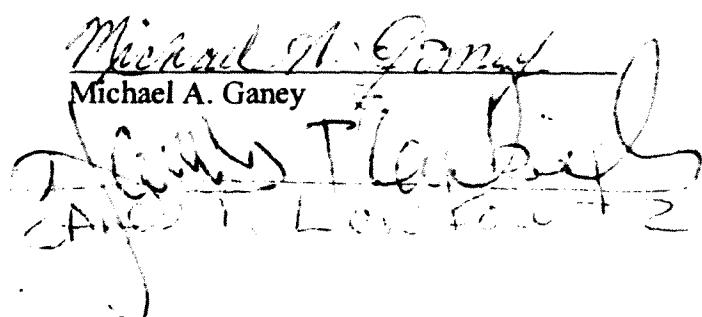
Attested by:

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City Clerk

Attested by:

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Michael A. Ganey

