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RESOLUTION R-26-08

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

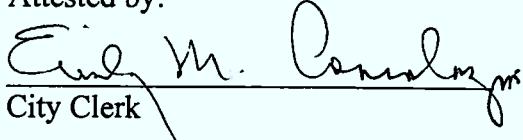
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated May 5, 2008, between the City of Wheaton and Wheaton College, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 5th day of May, 2008.



Michael Gresk
Mayor

Attested by:



Cindy M. Connolly
City Clerk

Roll Call Vote:

Ayes:	Councilman Mouhelis Councilman Prendiville Councilman Suess Councilwoman Corry Councilman Johnson Councilman Levine Mayor Gresk
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Nays:	None
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Absent:	None
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Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT RIGHT-OF-WAY (WASHINGTON STREET)

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5th day of May, 2008, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Wheaton College ("Owner").

WITNESSETH

WHEREAS, the City is in possession of a right-of-way within the City limits of the City of Wheaton, Illinois, located on Washington Street north of Lincoln Avenue; and

WHEREAS, Wheaton College (hereinafter "Owner"), is the owner of the premises located east of Washington Street, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owner would like to continue to use the existing asphalt parking improvement located on this right-of-way; 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; and

WHEREAS, the Owner's successors and heirs will benefit from the use of the 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 Wheaton College as follows:

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

2.) Wheaton College is the owner of property located east of Washington Street and north of Lincoln Avenue, Wheaton, Illinois, legally described as follows:

THE WESTERN PORTION OF THE WHEATON COLLEGE CAMPUS LYING IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS.

Commonly known as : Edman Chapel parking lot, Wheaton, Illinois

PIN: 05-16-207-005

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to use a portion of the right-of-way more specifically identified as the 8 feet by 67.5 feet portion of the right-of-way, see attached exhibit A, lying immediately west of the Property described in Paragraph 2 of this Agreement, in the following manner: continue to use the existing asphalt parking improvement.

5.) The City retains the right to enter said 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 and concrete curb at their sole cost and expense.

6.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, as provided for in the "Installment Agreement for the Vacation of Right-of-Way (Washington Street)".

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 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 fence described herein.

9.) This Agreement is not an easement.

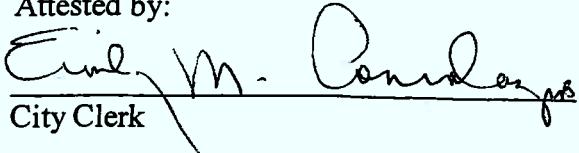
10.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall proceed all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within 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.

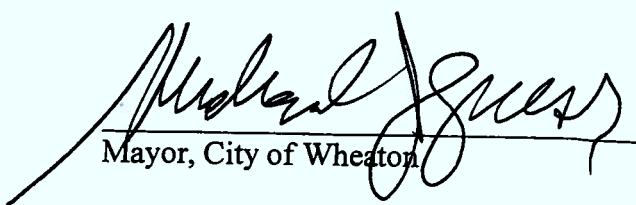
11.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

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.

Attested by:


Cindy M. Condon
City Clerk


Michael J. Gress
Mayor, City of Wheaton

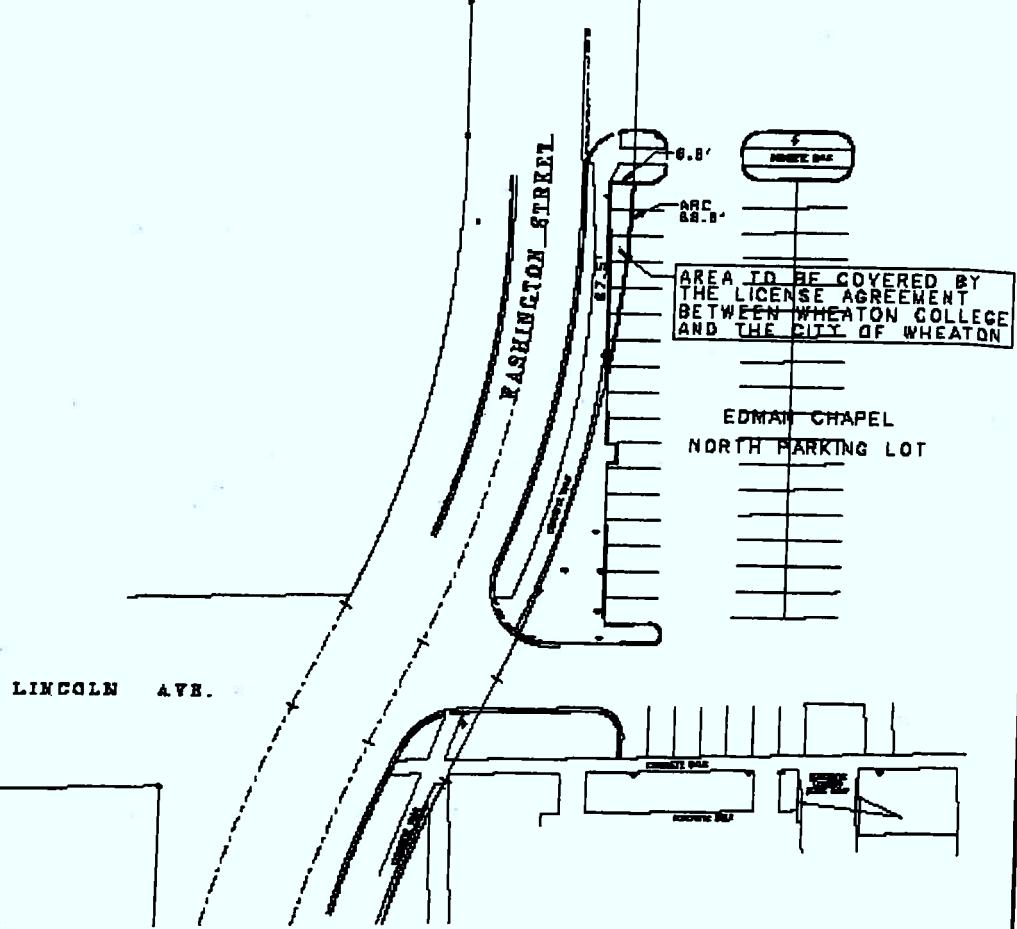
Carl E. Johnson, Sr. V.P.
Wheaton College

Attested by:

Steph W. Mead.
Business Manager
Wheaton College.

EXHIBIT A

EXHIBIT A



PREPARED FOR	CITY OF WHEATON 303 W. WESLEY STREET WHEATON, IL 60187
WEBSTER, MCGRATH & AHLBERG LTD.	
WMA LAND SURVEYING - CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE Over 100 Years of Service to Chicago	
207 South Moparvis Road Wheaton, Illinois 60187 630/666-7803 Fax: 630/662-1260 Email: wmaltd@wmaltd.com Design Firm License No. 186-003101	