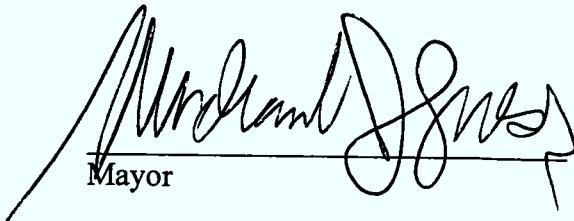


## RESOLUTION R-59-08

### RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT – (Elmwood Avenue)

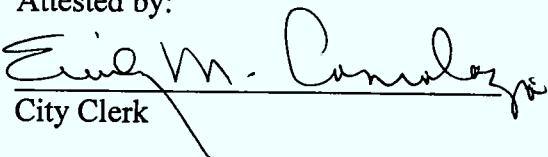
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated September 2, 2008, between the City of Wheaton and Shahzad L. Paul, 2077 W. Roosevelt Road, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 2<sup>nd</sup> day of September, 2008.



Mayor

Attested by:



Emily M. Connelly  
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  
(Elmwood Avenue)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 2<sup>nd</sup> day of September, 2008, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Shahzad L. Paul ("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, Shahzad L. Paul (hereinafter "Owner"), is the owner of the premises located at 2077 W. Roosevelt Road, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of unimproved public right-of-way; and

WHEREAS, the Owner uses the unimproved public right-of-way to access their garage; and

WHEREAS, the Owner is desirous of paving a portion of said unimproved public right-of-way located adjacent to 2077 W. Roosevelt Road, Wheaton, Illinois; 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 Shahzad L. Paul as follows:

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

2.) Shahzad L. Paul is the owner of property located at 2077 W. Roosevelt Road, Wheaton, Illinois, legally described as follows:

LOT 15 IN BLOCK 4 IN WHEATON PARK MANOR, BEING A SUBDIVISION IN SECTION 18,  
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING



TO THE PLAT THEREOF RECORDED JUNE 24, 1924 AS DOCUMENT NUMBER 179446, LYING NORTH OF A LINE WHICH INTERSECTS THE WEST LINE OF SAID LOT 15 AT A POINT 10.27 FEET NORTH OF THE SOUTHWEST CORNER THEREOF, AS MEASURED ALONG SAID WEST LINE AND INTERSECTS THE EAST LINE OF SAID LOT 15 AT A POINT 5.13 FEET NORTH OF THE SOUTHEAST CORNER THEREOF, AS MEASURED ALONG SAID EAST LINE, IN DUPAGE COUNTY, ILLINOIS.

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 and use a portion of the unimproved right-of-way of Elmwood Avenue more specifically identified as the 115.00' portion of the Elmwood Avenue lying immediately west of the Property described in Paragraph 2 of this Agreement and north of the right-of-way of Roosevelt Road (IL Rt. 38), 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. 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, 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, and/or 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 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,

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R-59-08

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:

Erin M. Annable  
City Clerk

Mayor, City of Wheaton

Shahzad J. Pau

Attested by:

EXHIBIT A**PLAT OF SURVEY**

ELMWOOD DRIVE RIGHT-OF-WAY LYING NORTH OF ROOSEVELT ROAD AND SOUTH OF THE NORTH LINE OF LOT 15, BLOCK 4 EXTENDED WEST TO THE NORTH LINE OF LOT 11, BLOCK 5 IN MERRITON PARK MAJOR SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 23, 1924, AS DOCUMENT #179446, IN DU PAGE COUNTY, ILLINOIS.

