

## RESOLUTION R-61-12

**A RESOLUTION APPROVING A  
TEMPORARY ACCESS AND CONSTRUCTION EASEMENT GRANT  
AND PERMANENT EASEMENT GRANT  
FOR THE NORTH MAIN STREET FLOOD CONTROL PROJECT  
(Hardware Retail Store)**

**WHEREAS**, the City of Wheaton, DuPage County, Illinois is desirous of constructing a public flood control project along and within Winfield Creek at North Main Street, between Cole Avenue and Park Circle (“Project”); and

**WHEREAS**, Westway, Inc. is the owner of a parcel of property at 1705 N. Main Street improved with a hardware retail store ("Owners Parcel"); and

**WHEREAS**, the City desires to secure from the Owner a temporary access easement and construction easement to utilize a portion of the Owners Parcel for the purpose of designing, engineering, excavating, constructing, and restoring the Project; and

**WHEREAS**, the City also desires to secure from the Owner a permanent easement for the redesign, reconstruction, maintenance, and operation of the Project upon completion of the Project; and

**WHEREAS**, the Owner has presented a temporary access and construction easement grant and a permanent easement grant to the City for approval.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Temporary Access and Construction Easement Grant and Permanent Easement Grant signed by the Owner and dated April 16, 2012, is hereby approved.

**IT IS FURTHER RESOLVED** that the Mayor is authorized to sign the approval form and the City Clerk is authorized and directed to attest to the signature of the Mayor and attach a certified copy of this resolution of acceptance to the Easement Grant.

ADOPTED this 20<sup>th</sup> day of August, 2012.

  
Michael J. Dwyer  
Mayor

ATTEST:

ATTEST:   
Sean Bennett-Hayes  
City Clerk

### Roll Call Vote

Ayes: Councilman Rutledge  
Mayor Gresk

Councilwoman Pacino Sanguinetti  
Councilman Scalzo  
Councilman Suess  
Councilwoman Ives  
Councilman Mouhelis

Nays: None  
Absent: None

Motion Carried Unanimously

**TEMPORARY ACCESS AND CONSTRUCTION EASEMENT GRANT  
AND PERMANENT EASEMENT GRANT**

THIS GRANT OF EASEMENT ("Grant") made this 16<sup>th</sup> day of April, 2012, by Westway, Inc., ("Owner" or "Grantor") to the City of Wheaton, DuPage County, Illinois, an Illinois municipal corporation having its principal offices at 303 W. Wesley Street, Wheaton, Illinois 60187 ("City" or "Grantee").

**RECITALS**

A. Owner is the owner in fee title to the real estate legally described and depicted on Exhibit "A" ("Owners Parcel"); and

B. City desires to secure a temporary access and construction easement to utilize a portion of the Owners Parcel, as depicted on Group Exhibit "B" ("Easement Premises"), for the purpose of designing, engineering, excavating, constructing, and restoring a flood control project and appurtenant improvements ("Temporary Easement") along and within Winfield Creek at, in, on and about its crossing with North Main Street ("Project") and in compliance with those plans and specifications identified and incorporated herein by reference in Exhibit "C" ("Plans and Specifications"); and

C. City also desires to secure a permanent easement for the redesign, reconstruction, maintenance and operation of the flood control improvements along and within Winfield Creek ("Permanent Easement") upon completion of the Project; and

D. The location and dimensions of the Temporary Easement and Permanent Easement are depicted on Group Exhibit "B"; and

E. The Project will mitigate but not eliminate flooding of the Owners Parcel by waters in the Winfield Creek drainage and will therefore benefit the Owners Parcel; and

F. City agrees to accept the Permanent Easement, for the perpetual reasonable maintenance and reasonable repair of the Permanent Easement area within Winfield Creek and within that surface portion of the Permanent easement area not within Winfield Creek notwithstanding that the later surface improvements are associated with the private use of the Owners Parcel.

Now therefore in consideration of the benefits to be derived from the Project for the Owners Parcel and other valuable considerations as recited herein, the sufficiency and receipt of which are hereby acknowledged, the undersigned Grantor and the City agree as follows:

**TEMPORARY EASEMENT**

1. The foregoing recitals are incorporated herein as representing the intent of the Parties and as substantive terms and covenants of this Agreement.

2. Grantor hereby grants a Temporary Easement as depicted on Group Exhibit B to the City to perform and complete the Project subject to the following terms and conditions. The City hereby accepts the Temporary Easement.

3. The Project shall be performed by the City and/or its agents, contractors, employees, successors and assigns, at the City's sole expense, in full compliance with the Plans and Specifications and shall be carried out in a prompt, professional, first class and workmanlike manner.

4. Upon the commencement of any portion of the Project which disturbs damages or removes any of the improvements currently located on the Easement Premises ("Site Work") ("Work Commencement Date"), the City shall cause the Site Work to be completed within approximately ninety (90) days following the Work Commencement Date ("Completion Date"). The Completion Date may be extended due to events beyond the control of the City such as but not limited to, extraordinary weather conditions, labor strikes, restrictions on the delivery of critical materials, epidemics or cataclysmic events or unknown site conditions. The City shall notify the Owners in writing no less than thirty (30) days prior to commencement of the Site Work to enable the Owners to undertake any efforts to notify its customers of the anticipated Site Work. The Owners and City staff shall inspect the Easement Premises no less than seven (7) days prior to the City or its contractors occupying the Temporary Easement to memorialize the pre-Project condition of the Easement Premises. During the period of the Temporary Easement, the Easement Premises will be posted by the City with "Keep Out" construction signs and the Owners shall only go onto the Easement Premises with the City Engineer or his designee. The City Engineer or his designee shall make themselves available to the Owners as may be reasonable during City business hours.

5. All existing improvements located within the Easement Premises which are disturbed, damaged or removed shall be repaired, replaced or restored by the City, at its sole expense, in compliance with the Plans and Specifications prior to the Completion Deadline.

6. The City, its contractors, successors and assigns, shall indemnify, defend and hold harmless Grantor from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or property occasioned directly or indirectly as a result of any act or omission by the City, or any person or entity acting by, through, or under the City on the Easement Premises. The City shall require all of its contractors performing work within the Easement Premises at all time during the term of this Temporary Easement to carry broad form general insurance with combined single limit coverage of not less than \$2,000,000.00, naming Grantor, and Grantor's lease holder of Owners Parcel, as additional insured thereunder.

7. The Temporary Easement shall automatically, and without further action by any party, expire and be of no further force and effect upon completion of the Project.

### **PERMANENT EASEMENT**

1. The Owner hereby grants to the City a Permanent Easement over a portion of the Easement Premises as depicted on Group Exhibit "B" for the perpetual privilege, right and authority, but not the obligation, to operate and maintain by construction, design, survey, reconstruction, repair, observation or maintenance of the flood control improvements.

2. The City shall pay the Owners Ten Dollars (\$10.00) as full and final consideration for the Permanent Easement.

3. The Owners agree that there is no damage to the remainder resulting from the Permanent Easement and the payments for the Temporary Easement include all "damage to the remainder" resulting from the Temporary Easement.

### **GENERAL TERMS**

1. Any notice required or desired to be given under this Grant shall be in writing and shall be deemed to have been given when delivered personally, on the date of confirmed facsimile transmission, or on the date deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owners: Westway, Incorporated  
15 West College Drive  
Arlington Heights, IL 60004  
Fax no. (847) 255-1648

If to City: City of Wheaton  
303 W. Wesley Street  
PO Box 727  
Wheaton, IL 60187-0727  
Attn: Director of Engineering  
Fax no. (630) 260-2195

Or to other such address as either party may from time to time specify in writing to the other in accordance with the terms hereof.

2. Except as otherwise provided herein, this Grant may be amended or modified by, and only by, a written instrument duly authorized and executed by the parties hereto.

3. This Grant shall be governed by the laws of the State of Illinois.

4. This Agreement may only be modified in writing executed by both the Owners and City.

IN WITNESS WHEREOF, Grantor has executed this indenture this 16<sup>th</sup> day of April, 2012.

OWNERS: Westway, Inc.

Roy Fellars

Mary L. Fellars

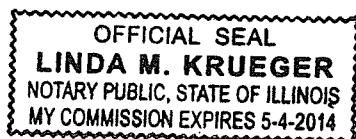
By: Roy A. Fellars  
Title: President

Attest: Mary L. Fellars  
Title: Secretary

Subscribed and sworn to before me this 16<sup>th</sup> day of April, 2012.

Linda M. Krueger Notary Public

(Notary Seal)



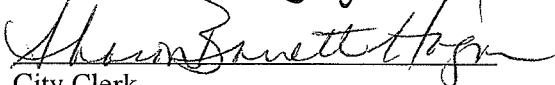
## CITY ACCEPTANCE

The above and foregoing Grant of Temporary Access and Construction Easement and the terms and conditions set forth therein are hereby approved and accepted by the City of Wheaton. Following execution by the City this instrument may be recorded against the Owners Parcel at the City's expense.

City of Wheaton, an Illinois municipal corporation

By: 

Mayor

Attest: 

City Clerk

**EXHIBIT "A"**

**LEGAL DESCRIPTION (BUIKEMA'S ACE HARDWARE):**

LOT 5 (EXCEPT THE NORTH 18 FEET AND EXCEPT THE SOUTH 82 FEET OF THE WEST 150 FEET) AND LOT 6 (EXCEPT THE SOUTH 32 FEET AND EXCEPT THE NORTH 68 FEET OF THE WEST 150 FEET) IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS.

1705 N. Main Street, Wheaton, IL 60187

P.I.N.: 05-09-108-007

Group Exhibit "B"

LEGAL DESCRIPTION (TEMPORARY AND PERMANENT EASEMENT-BUIKEMA'S ACE HARDWARE):

THAT PART OF LOT 5 IN BLOCK 4 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 5; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, A DISTANCE OF 18.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 82 FEET OF SAID LOT 5; THENCE NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, 150.02 FEET TO A POINT ON THE EAST LINE OF THE WEST 150.00 FEET OF SAID LOT 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 30 MINUTES 34 SECONDS EAST, 30.00 FEET ALONG SAID NORTH LINE; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 17.00 FEET; THENCE SOUTH 88 DEGREES 30 MINUTES 34 SECONDS WEST, 30.00 FEET TO A POINT ON SAID EAST LINE OF THE WEST 150.00 FEET OF LOT 5; THENCE NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, 17.00 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

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