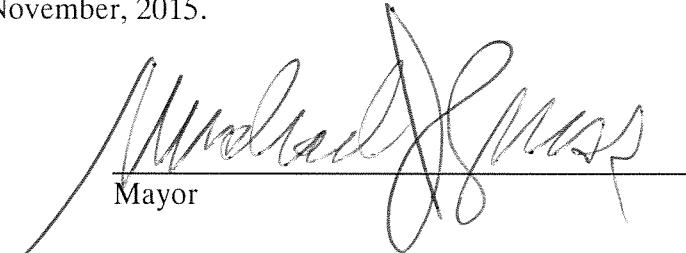


RESOLUTION R-66-15

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1867 South Wiesbrook Road)

**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 September 21, 2015, between the City of Wheaton and the Jennifer Rebecca Sterba Trust for 1867 South Wiesbrook Road, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 2<sup>nd</sup> day of November, 2015.



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
Aaron Bennett Hagen  
City Clerk

Roll Call Vote

Ayes:	Councilman Rutledge Mayor Gresk Councilman Saline Councilman Scalzo Councilwoman Fitch Councilman Prendiville
Nays:	None
Absent:	Councilman Suess

Motion Carried Unanimously



**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**

**RIGHT-OF-WAY (1867 S. Wiesbrook Rd)**

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 21 day of Sept, 2015, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Jennifer Rebecca ("Owner").

Sterha Trust

**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, Jennifer Rebecca Sterha Trust (hereinafter "Owner"), the owner of the premises located at 1867 S. Wiesbrook Rd, 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.) Jennifer Rebecca Sterha Trust are the owners of property located at 1867 S. Wiesbrook Rd 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 1867 S. Wiesbrook Rd

---

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.

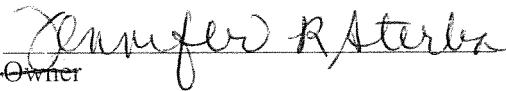
10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

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

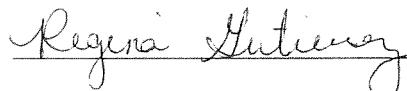
12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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.

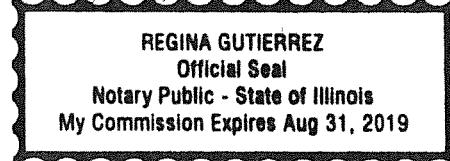
  
\_\_\_\_\_  
Owner

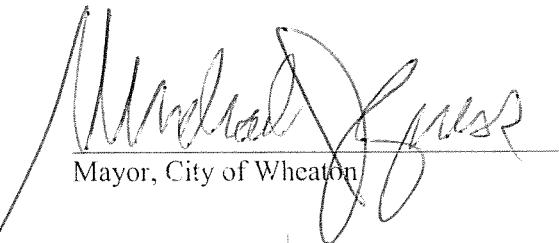
  
\_\_\_\_\_  
Owner  
as trustees  
for JENNIFER REBECCA STERBA TRUST

Subscribed and sworn to before me this 21<sup>st</sup> day of September, 2015.

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

(Notary Seal)



  
\_\_\_\_\_  
Michael J. Gries  
Mayor, City of Wheaton

Attested by:

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

EXHIBIT A

Legal Description:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 39  
NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY  
COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH AND SOUTH  
DIVISION LINE OF THE SOUTHEAST QUARTER SAID SECTION 30 WITH THE EAST AND  
WEST QUARTER SECTION LINE OF SAID SECTION AND RUNNING THENCE SOUTH 85  
DEGREES 55 MINUTES WEST ALONG THE QUARTER SECTION LINE 2138.0 FEET TO  
KAMMIES' (FORMERLY CASSEL'S) NORTHWEST CORNER AS SHOWN BY DEED RECORDED JULY  
13, 1934 AS DOCUMENT 347332 FOR A PLACE OF BEGINNING; THENCE SOUTH 3 DEGREES  
49 MINUTES WEST ALONG SAID KAMMIES' WESTERLY LINE 153.0 FEET; THENCE SOUTH  
85 DEGREES 55 MINUTES WEST PARALLEL WITH THE NORTH LINE OF THE SOUTHWEST  
1867 S. WIESBROOK Wheaton, IL 60187

address

P.I.N. 05-30-301-001

QUARTER OF SAID SECTION 626.71 FEET  
TO THE CENTER OF THE PUBLIC HIGHWAY  
KNOWN AS WIESBROOK ROAD; THENCE NORTH  
35 DEGREES 22 MINUTES 30 SECONDS  
EAST ALONG SAID CENTER LINE 196.28  
FEET TO THE NORTH LINE OF SAID  
SOUTHWEST QUARTER OF SECTION 30; THENCE  
NORTH 85 DEGREES 55 MINUTES EAST  
ALONG SAID LINE 523.0 FEET TO THE PLACE  
OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS



