

RESOLUTION R-48-16

A RESOLUTION OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT – WINTER VESTIBULE – GIA MIA – 106 N. HALE STREET

WHEREAS, the City is in possession of an improved public right-of-way which includes a street and a sidewalk (hereinafter "Sidewalk"); and

WHEREAS, Gia Mia, LLC (hereinafter "Tenant") hold a lease to the premises located at 106 N. Hale Street, Wheaton, Illinois (hereinafter "Subject Property"), which is adjacent to a portion of the Sidewalk; and

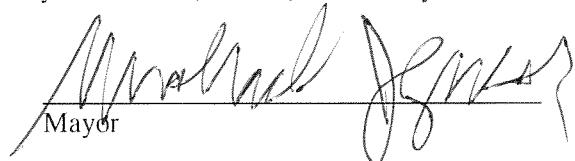
WHEREAS, the Tenant desires to erect a temporary winter vestibule at the front door of the building on the Subject Property which would encroach 4 feet onto the Sidewalk; and

WHEREAS, over 8 feet of open sidewalk would remain for the public to traverse upon.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to a construction, use and indemnification agreement between the City of Wheaton and Gia Mia LLC, as attached hereto as Exhibit "A" and made a part thereof.

Section 1. This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

ADOPTED by the City Council of the City of Wheaton, Illinois, this 3rd day of October, 2016.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilwoman Fitch
Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

EXHIBIT "A"

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
GIA MIA, LLC**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT (hereinafter "Agreement"), made and entered into this 3rd day of October, 2016, between the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois (hereinafter "City"), and Gia Mia, LLC (hereinafter "Tenant").

WITNESSETH

WHEREAS, the City is in possession of an improved public right-of-way which includes a street and a sidewalk (hereinafter "Sidewalk"); and

WHEREAS, Gia Mia, LLC (hereinafter "Tenant") hold a lease to the premises located at 106 N. Hale Street, Wheaton, Illinois (hereinafter "Subject Property"), which is adjacent to a portion of the Sidewalk; and

WHEREAS, the Tenant desires to erect a temporary winter vestibule at the front door of the building on the Subject Property which would encroach 4 feet onto the Sidewalk; and

WHEREAS, over 8 feet of open sidewalk would remain for the public to traverse upon; and

WHEREAS, the Tenant acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said Sidewalk; and

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Tenant as follows:

- 1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.
- 2.) Gia Mia, LLC are the tenants of the Subject Property, legally described in Exhibit "A"
- 3.) The Tenant, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to, and shall, use a portion of the Sidewalk for the erection of a temporary winter vestibule at the front door of the building on the Subject Property more specifically identified in the plans which are attached hereto and are incorporated herein by reference as Exhibit "B". The authorization granted herein shall expire on April 3, 2017.

Tenant shall, as a material condition of this Agreement, maintain the temporary winter vestibule as follows:

- A. The temporary winter vestibule shall be maintained in good condition and in a structurally sound and neat fashion so as to be sound and aesthetically acceptable.

Any violations of the condition set forth in this section shall permit the City to terminate this Agreement upon 14 days written notice to the Tenant.

4.) The City retains the right to enter said portion of Sidewalk occupied by the Tenant at any time for the purpose of maintaining the existing concrete pavement, the existing City utility systems (water mains, storm and sanitary sewers) if any, and for any other lawful purpose. If the City determines that the portion of the Sidewalk occupied by the Tenant is needed for purposes of carrying out a public improvement or if the use of the portion of the Sidewalk by the Tenant threatens or harms the health, safety or general welfare of the public, or upon 14 days notice from the City to the Tenant for any purpose the City deems appropriate in its absolute discretion, then the Tenant shall remove the temporary winter vestibule upon the City's request. Tenant will keep and maintain the temporary winter vestibule in a manner so as to not interfere with the public's use of the Sidewalk.

5.) Upon termination of this Agreement, the City may remove and dispose of the temporary winter vestibule placed upon the Sidewalk by Tenant without liability.

6.) Tenant agrees to indemnify, defend, protect, and hold harmless the City, its corporate authorities, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to reasonable attorney's fees, expert witness fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Tenant's acts or omissions within the scope of this Use Agreement. Nothing set forth in this Agreement shall be deemed a waiver by the City of any defenses or immunities relating to Tenant or its property, or to any other person or entity or their property, that are or would be otherwise available to the City or its corporate authorities, officers and employees under the provisions of the Illinois Local Government and Governmental Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers and employees under the common law of the State of Illinois or the United States of America.

7.) Tenant shall file with the City Manager of the City, a policy or certificate of insurance maintaining a minimum of TWO MILLION DOLLARS AND 00/100 (\$2,000,000.00) of general liability insurance coverage, issued by a solvent insurance company authorized to do business in the State of Illinois, insuring Tenant against liability for any injury to any person (including death) or damage to any property, resulting because of Tenant's use of the Sidewalk as described herein.

8.) The provisions set forth in this Agreement and exhibits thereto, represent the entire Agreement between the parties and shall supersede 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.

9.) This Agreement shall be binding upon the parties hereto only. No, heir, successor, lessee or assign of the Tenant shall have any rights or privileges under this Agreement without the express written consent of the City.

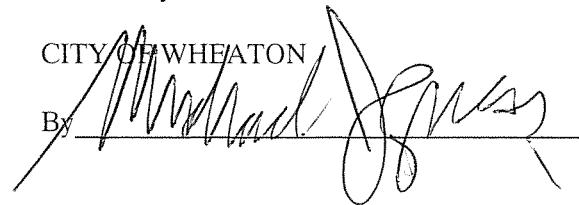
10.) This Agreement is not and shall not be construed as an easement. If any court of competent jurisdiction construes this Agreement as an easement it shall only be a temporary easement which shall terminate 14 days after the Tenant asserts in any writing that it constitutes an easement. This Agreement shall also not be construed to create a leasehold.

11.) This Agreement shall be recorded by the City Clerk, in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of Tenant.

IN WITNESS WHEREOF, the Corporate Authorities of the City of Wheaton and the Tenant have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.

CITY OF WHEATON

By



Attested by:



Sharon Barrett-Hagen

City Clerk, Sharon Barrett-Hagen

TENANT

By



Bonny Lyle

Attested by:



Bonny Lyle

Exhibit “A”



LEGAL DESCRIPTION OF THE SITE

Parcel 1

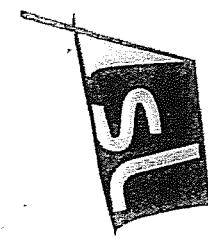
Lot 4 (except westerly 9 feet thereof) of Pawlik's assessment plat of lot 12 in Block 8 of the original Town of Wheaton. Also the East 9 feet of sub-lot 2 in Block 8 in said original Town of Wheaton, according to Pawlik's assessment plat recorded March 28, 1950 as document 589210 in DuPage County, Illinois.

Parcel 2

That part of Lot 13 described as follows: commencing at the Southeast corner of said lot 13 and running thence North along the East line of said lot 80.75 feet to the Northerly line of a one story brick store building owned by the Consumers Sanitary Coffee and Butter Stores, Inc. for a point of beginning, thence Westerly along the Northerly line of said building 66.55 feet to a point on the West line from the Southwest corner of said Lot 13, thence North along said West line of Lot 13, 26.4 feet to a point that is 25.40 feet South, measured on said West line from the Northwest corner of said Lot 13, (said point being also in line with the Southerly line of a two story building owned by Max J. and Mary Burckal), thence Easterly along the said Southerly line of said Burckal building, 66.65 feet to a point on the East line of said Lot 13 that is 26.18 feet South measured on said East line 25.75 feet to the place of beginning, in Block 8 in Town of Wheaton, being a subdivision in Section 16, Township 39 North, Range 10, East of the third principal meridian, according to the plat thereof recorded June 20, 1853 as document 7256, in DuPage County, Illinois.

PINs: 05-16-301-033, 05-16-301-042

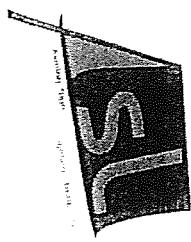
Exhibit “B”



1000 Wörter-Glossar aus der Geschichte

INTRODUCTION

Door to restaurant, wings out



PRINTED IN U.S.A.

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1. *W. E. H. Lees*, *Journal of the Royal Statistical Society, Series B*, 1952, 19, 171-192.

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