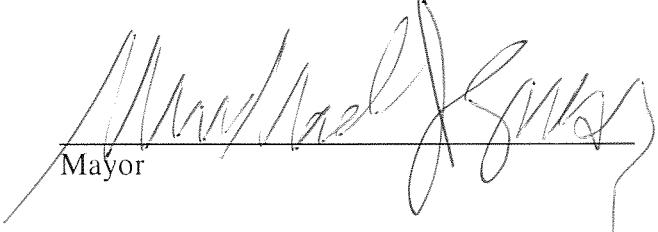


## RESOLUTION R-57-16

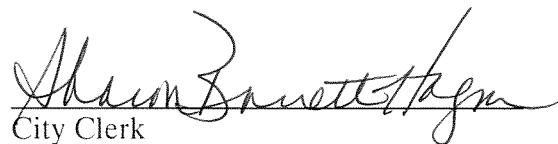
### A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT (919 North Cross Street)

**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 23, 2016, between the City of Wheaton and Richard P. and Randy F. Johnson of 919 North Cross Street, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 7<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

#### Roll Call Vote

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

Motion Carried Unanimously



**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**

**RIGHT-OF-WAY (Forest Avenue)** 919 CROSS ST.  
Street Name WHEATON, IL 60187

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 26 day of September, 2016, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Richard P. Johnson, Trustee of the Richard P. Johnson Trust dated October 26, 2015 and Randy F. Johnson, Trustee of the Randy F. Johnson Trust dated October 26, 2015; husband and wife ("Owners").

**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, Richard P. Johnson, Trustee of the Richard P. Johnson Trust dated October 26, 2015 and Randy F. Johnson, Trustee of the Randy F. Johnson Trust dated October 26, 2015; husband and wife (hereinafter "Owners"), the owners of the premises located at 919 North Cross Street, 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 snowmelt 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.) Richard P. Johnson, Trustee of the Richard P. Johnson Trust dated October 26, 2015 and Randy F. Johnson, Trustee of the Randy F. Johnson Trust dated October 26, 2015; husband and wife are the owners of property located at 919 North Cross Street, 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 facing Forest Avenue at the rear of the property described in Exhibit A for construction of and use of a snowmelt system as depicted on Exhibit B attached hereto and made a part hereof. The installation and use of the snowmelt 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 snowmelt system, the Owners shall be responsible to repair and restore the driveway, sidewalk and/or snowmelt system at their sole cost and expense. The Owners hereby acknowledge and agree that City its, employees and agents shall have no liability to the Owners for any damage, removal or other casualty to the snowmelt 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 snowmelt 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.

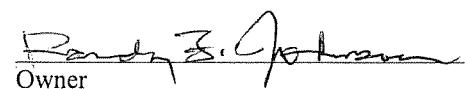
11.) The Owners obligations under this Agreement shall be joint and several.

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.

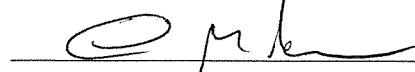


\_\_\_\_\_  
Owner

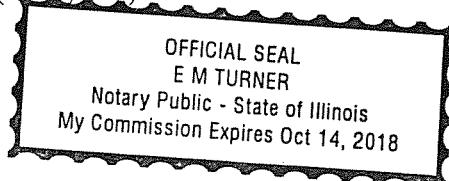


\_\_\_\_\_  
Owner

Subscribed and sworn to before me this 23rd day of Sept, 2016.

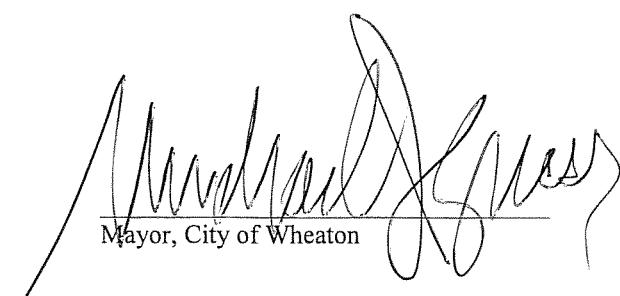
 Notary Public

(Notary Seal)



Attested by:

  
City Clerk



\_\_\_\_\_  
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

LOT 14 IN BLOCK 17 IN ARTHUR T. MCINTOSH AND COMPANY'S RESUBDIVISION OF  
BLOCKS 16 AND 17, IN N. E. GARY'S SECOND ADDITION TO WHEATON, BEING A  
SUBDIVISION IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10, EAST  
OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION  
RECORDED NOVEMBER 20, 1923 AS DOCUMENT 171776, IN DUPAGE COUNTY, ILLINOIS.

919 North Cross Street, Wheaton, IL 60187  
address

P.I.N. 05-09-324-001





