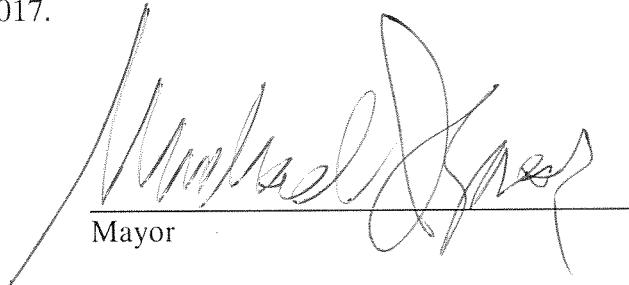


RESOLUTION R-102-17

RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION LICENSE AGREEMENT - Alley (304 Gary Avenue)

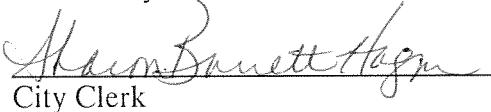
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification License Agreement dated October 2, 2017, between the City of Wheaton and Michael J. Tax and Amy K. Tax, 304 Gary Ave., Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 2nd day of October 2017.



Mayor

Attested by:



Amy K. Tax
City Clerk

Ayes: Councilman Suess
Councilman Barbier
Councilman Prendiville
Mayor Gresk
Councilman Scalzo

Nays: None
Absent: Councilwoman Fitch
Councilman Rutledge

Motion Carried Unanimously

**CONSTRUCTION, USE AND
INDEMNIFICATION LICENSE AGREEMENT
Alley (304 Gary Avenue)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION LICENSE AGREEMENT, made and entered into this 2nd day of October, 2017, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Michael J. Tax and Amy K. Tax ("Licensees").

WITNESSETH

WHEREAS, the City is in title and control of a public alley within the City limits of the City of Wheaton, Illinois, and legally described herein as the 20 foot wide public alley located on the block bounded by Union Avenue, Gary Avenue, Ellis Avenue and Seminary Avenue; and

WHEREAS, Michael J. Tax and Amy K. Tax (hereinafter "Licensees"), are the owners of the premises located at 304 Gary Avenue, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the public alley; and

WHEREAS, the Licensees use the public alley to access their garage; and

WHEREAS, the garage and fence have been in its existing location for over 67 years; and

WHEREAS, public property, including alleys, cannot be taken by adverse possession; and

WHEREAS, the Licensees are seeking to replace the floor of their garage and keep their existing fence; and

WHEREAS, the Licensees and City discovered during the processing of the Building Permit to replace the floor of the existing garage, that portions of the garage and floor area and existing fence encroach upon the public alley at a distance ranging from .74 feet to 1.57 feet; and

WHEREAS, the Licensees are seeking to keep the garage and fence in its existing location; and

WHEREAS, the Licensees acknowledge that this Agreement is not an easement and does not vest them in any manner with any property rights in or claims to any portion of said public alley; and

WHEREAS, the Licensees' successors and heirs will benefit from the replacement of the garage floor and keeping the garage and existing fence in its existing location.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Michael J. and Amy K. Tax as follows:

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

2.) Michael J. Tax and Amy K. Tax are the owners of property located at 304 Gary Avenue, Wheaton, Illinois, legally described as follows:

LOT 3 (EXCEPT THE WEST 10 FEET THEREOF) IN BLOCK 6 IN COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, AND THE SOUTHEAST QUARTER OF SECTION 17 AND NORTH 10 CHAINS IN WIDTH OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 1890 AS DOCUMENT 43592, IN DUPAGE COUNTY, ILLINOIS. (hereinafter "Property")

PIN: 05-17-229-013

3.) The Licensees, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby granted a license, subject to the issuance of a building permit and in strict conformance with the terms of this License Agreement, to replace the floor of the garage and to keep and maintain those portions of the existing garage and existing fence located in the alley (hereinafter "Improvements") in their existing location as depicted on the plat of survey and topography, prepared by Lambert & Associated, Wheaton, dated 8/3/17 and revised 9/5/17, attached hereto and incorporated herein as if fully set forth as Exhibit A.

4.) The Licensees shall not otherwise utilize the alley in a manner which interferes, impedes, hinders or otherwise obstructs the lawful use of the public alley by the City, or public.

5.) The City may terminate this Agreement together with all benefits and privileges granted hereunder, by notifying the Licensees in writing at least ninety (90) days prior to termination. In the case of a public emergency as determined by the City Manager this Agreement may be terminated on 24 hour notice. Service of the notice of termination in the case an emergency may be by hand or posted notice on the garage.

6.) Upon termination of this Agreement, the City may destroy, demolish, remove any Improvements placed in the public alley by the Licensees, its predecessor in title or any occupant of the Property, without any liability whatsoever to the Licensees. The City will have no obligation to protect or maintain the portions of the garage, garage floor or fence on the Licensee's property from damage or destruction caused by the City's destruction, demolition, or removal of those portions of the Improvements placed in the public alley and the Licensees hereby waive any and all claims, actions, causes of action, or damages against the City that may arise in the context of the City's exercise of its authority under this section.

7.) To the greatest extent permitted under Illinois law Licensees 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 attorneys' and experts' fees) which arise, or may be alleged to have arisen, out or in connection with the negligent acts or omissions or willful and wanton misconduct of the Licensees, or Licensees' agents, as a result of the design, construction, maintenance, or use of the garage and fence in the public alley on and contiguous to the garage.

8.) This Agreement is not an easement. It is only a license. If there is any attempt by the Licensees to maintain that the license granted herein is anything other than a license the Licensees shall reimburse the City for all attorneys' fees and costs associated with its defense of the claim.

EXHIBIT A

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall supercede 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 approved by the Corporate Authorities of the City, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

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

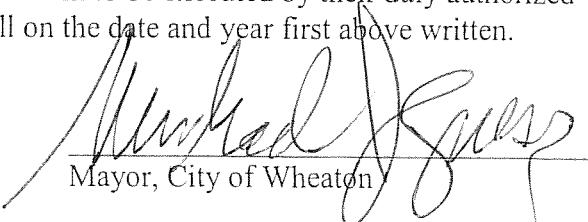
12.) Any failure of the City to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

13.) If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entire agreement shall be deemed void and the Licensee shall remove all portions of the Improvements on the public alley within thirty (30) days of such determination.

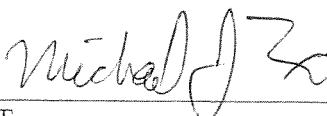
IN WITNESS WHEREOF, the Corporate authorities and the Licensees have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

Attested by:

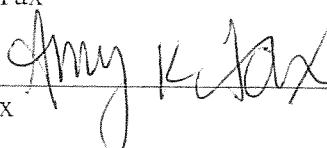
John Bennett Hagn
City Clerk



Michael J. Tax



Michael J. Tax



Amy K. Tax

Attested by:

Michael J. Tax

Michael J. Tax

