

RESOLUTION R-2019-37

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(116 East Elm 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 March 26, 2019, between the City of Wheaton and Jeffrey and Sarah Zettek for 116 East Elm Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 3<sup>rd</sup> day of June 2019.

  
\_\_\_\_\_  
Philip Suess  
Mayor

ATTEST:

  
\_\_\_\_\_  
Aaron Bennett Hagn  
City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Barbier Councilwoman Bray-Parker Councilwoman Fitch Mayor Suess Councilman Rutledge Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

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MAR 26 2019

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**  
**RIGHT-OF-WAY (116 E Elm St)**

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 26 day of March, 2019, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Jeffrey and Sarah Zettke ("Owner").

**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, Jeffrey & Sarah Zettke (hereinafter "Owner"), the owner of the premises located at 116 E Elm St., 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.) Jeffrey & Sarah Zettke are the owners of property located at 116 E Elm St., 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 at 116 E Elm St.

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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.

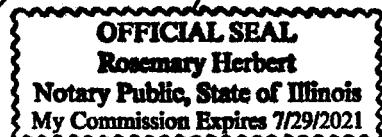
Jeffrey Zetts  
Owner

Sarah D. Zetts  
Owner

Subscribed and sworn to before me this 26 day of March, 2019.

Rosemary Herbert Notary Public

(Notary Seal)



Philip Sauer  
Mayor, City of Wheaton

Attested by:

Adam Bennett  
City Clerk

**EXHIBIT A**

**Legal Description:**

## Fairway Unit 1

116 E Elm St.      Wheaton, IL 60189  
address

P.I.N. 05-21-114-003

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simultaneously, without visible  
change in the properties of the  
material.

**EXHIBIT A**

Legal Description:

LOT 89 IN FAIRWAY UNIT NUMBER ONE, BEING A RESUBDIVISION OF LOT "A" AND PART OF LOT "B" OF COUNTRY CLUB ADDITION TO WHEATON, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID FAIRWAY UNIT NUMBER ONE, RECORDED MAY 3, 1946 AS DOCUMENT 497155, AND CERTIFICATE OF CORRECTION RECORDED NOVEMBER 26, 1952 AS DOCUMENT 668817, IN DUPAGE COUNTY, ILLINOIS.

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116 E. Elm St. Wheaton, IL 60187  
address

P.I.N. 05-21-114-003

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