

RESOLUTION R-2019-53

**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
CHICAGO TITLE TR 352 - 112-120 N MAIN STREET, WHEATON, IL
8 INCH DIAMETER INSULATED STAINLESS STEEL EXHAUST FLUE**

WHEREAS, the City is in possession of an improved public alley (hereinafter "Alley"); and

WHEREAS, Chicago Title TR 352 (hereinafter "Owner") hold title to the premises located at 112-120 N. Main Street, Wheaton, Illinois (hereinafter "Subject Property"), which is adjacent to a portion of the Alley; and

WHEREAS, the Owner desires to lease a portion of the subject property to a coffee shop and roaster on the Subject Property; and

WHEREAS, said tenant proposes to vent the roaster utilizing an 8 inch diameter insulated stainless steel exhaust flue which will encroach 12 inches, ten feet above grade onto said Alley located adjacent to the Subject Property.

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 an construction, use and indemnification agreement between the City of Wheaton and Chicago Title TR 352, as attached hereto 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 17th day of June 2019.

ATTEST:

Sharon Bennett Hagan

City Clerk

Philip J. Suess

Mayor

Roll Call Vote:

Ayes: Councilman Rutledge
Councilman Barbier
Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess

Nays: None

Absent: Councilman Scalzo

Motion Carried Unanimously.



EXHIBIT "A"

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
CHICAGO TITLE TR 352 - 112-120 N MAIN STREET, WHEATON, IL
8 INCH DIAMETER INSULATED STAINLESS STEEL EXHAUST FLUE

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT (hereinafter "Agreement"), made and entered into this 17th day of June, 2019, between the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois (hereinafter "City"), and Chicago Title TR 352, 112-120 N Main Street, Wheaton, IL 60187-5344 (hereinafter "Owner").

WITNESSETH

WHEREAS, the City is in possession of an improved public alley (hereinafter "Alley"); and

WHEREAS, Owner holds title to the premises located at 112-120 N. Main Street, Wheaton, Illinois (hereinafter "Subject Property"), which is legally described herein and is adjacent to a portion of the Alley; and

WHEREAS, the Owner desires to lease a portion of the subject property to a coffee shop and roaster on the Subject Property; and

WHEREAS, said tenant proposes to vent the roaster utilizing an 8 inch diameter insulated stainless steel exhaust flue which will encroach 12 inches, ten feet above grade onto said Alley located adjacent to the Subject Property; and

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

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

- 1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.
- 2.) Chicago Title Tr 352 is the owner of Subject Property, legally described as follows:

PARCEL 1: THOSE PARTS OF LOTS 8, 13 AND 14 IN BLOCK 7 OF THE PLAT OF THE TOWN OF WHEATON DESCRIBED BY COMMENDING 126.00 FEET NORTH OF THE SOUTHEAST CORNER OF BLOCK 7 AND RUNNING THENCE NORTH 73.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 8; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 8, 75.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 7, 73.00 FEET; THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 8, 75.00 FEET TO THE POINT OF BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: THOSE PARTS OF LOTS 8 AND 13 IN BLOCK 7 OF THE TOWN OF WHEATON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 75.00 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 8; RUNNING THENCE WEST 28 FEET; THENCE SOUTH 85.00 FEET; THENCE EAST 28 FEET; THENCE NORTH 28 FEET TO THE POINT OF BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE

THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART, IF ANY, FALLING IN LOT A OF OWNER'S ASSESSMENT PLAT RECORDED AS DOCUMENT 410255), IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF LOT 7 IN BLOCK 7 OF THE PLAT OF THE TOWN OF WHEATON DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 88.35 FEET TO THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN DOCUMENT R94-151548 FOR A POINT OF BEGINNING, THENCE CONTINUING WEST IN THE SAME DIRECTION 30.00 FEET; THENCE NORTH AT RIGHT ANGLES 21.00 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, 30.00 FEET; THENCE SOUTH 21.00 FEET TO THE POINT OF BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-16-302-071

3.) The Owner, 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 Alley for the purpose of constructing an 8 inch diameter insulated stainless steel exhaust flue for a coffee roaster for his buildings tenant on property more specifically identified in the plans which are attached hereto and are incorporated herein by reference as Exhibit "A".

4.) The City retains the right to enter said portion of Alley occupied by the Owner at any time for the purpose of maintaining the existing 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 Alley occupied by the Owner is needed for purposes of carrying out a public improvement or if the use of the portion of the Alley by the Owner threatens or harms the health, safety or general welfare of the public, or upon 90 days notice from the City to the Owner for any purpose the City deems appropriate in its absolute discretion, then the Owner shall remove the decorative stainless steel vent pipe upon the City's request. Owner will keep and maintain the 8 In Diameter Insulated Stainless Steel Exhaust Flue in a manner so as to not interfere with the public's use of the Alley.

5.) At such time as the coffee roaster is no longer used by Owners tenant, the Owner shall within 90 days, remove the 8 inch diameter insulated stainless steel exhaust flue from the Alley.

6.) Except as provided in paragraph 4 of this Agreement, the City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, with or without cause in the sole and absolute discretion of the Corporate Authorities of the City, by notifying the Owner in writing at least ninety (90) days prior to the date of termination.

7.) Upon termination of this Agreement, the City may remove and dispose of any or all of the aforesaid 8 inch diameter insulated stainless steel exhaust flue placed upon the Alley by Owner without liability.

8.) Owner 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 Owner'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 Owner 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.

9.) Owner 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 Owner against liability for any injury to any person (including death) or damage to any property, resulting because of Owner's use of the Alley as described herein.

10.) 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.

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

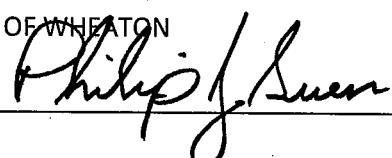
12.) This Agreement is not and shall not be construed as an easement. If any court of competent jurisdiction construes this Agreement as an easement it shall only be a temporary easement which shall terminate 14 days after the Owner asserts in any writing that it constitutes an easement. This Agreement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

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

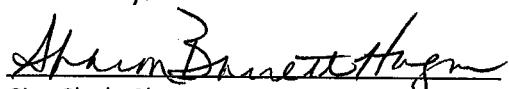
IN WITNESS WHEREOF, the Corporate Authorities of the City of Wheaton and the Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.

CITY OF WHEATON

By


Philip J. Sauer

Attested by:


Sharon Barrett-Hagen

City Clerk, Sharon Barrett-Hagen

OWNER

By

Attested by:



Exhibit "A"

