

RESOLUTION R-2019-64

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(109 North Hale 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 July 22, 2019, between the City of Wheaton and Innovator Capital Management, LLC for 109 North Hale Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 5<sup>th</sup> day of August 2019.

  
\_\_\_\_\_  
Philip J. Suess  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sean Bennett-Hagan  
City Clerk

Roll Call Vote

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

Nays: None  
Absent: Councilwoman Fitch

Motion Carried Unanimously

○

○

○

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY ( 109 N. HALE ST. )**

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 22 day of December, 20 19, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and INNOVATOR CAPITAL MANAGEMENT, LLC ("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, INNOVATOR CAPITAL MANAGEMENT, LLC (hereinafter "Owner"), the owner of the premises located at 109 N. HALE 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.) INNOVATOR CAPITAL MANAGEMENT, LLC are the owners of property located at 109 N. HALE 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 BETWEEN THE BUILDING AND HALE ST. CURB AND BETWEEN NORTH AND SOUTH BUILDING CORNERS (SIDEWALK)

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 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 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.

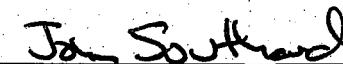
10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

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

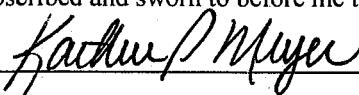
12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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.

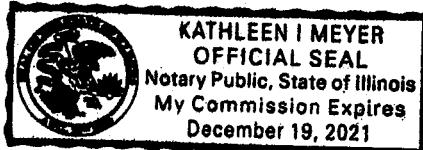
  
\_\_\_\_\_  
Owner Manager

  
\_\_\_\_\_  
Owner Manager Jim Southard  
Innovator Capital Management  
LLC

Subscribed and sworn to before me this 22 day of July, 20 19.

  
\_\_\_\_\_  
KATHLEEN I. MEYER Notary Public

(Notary Seal)



Attested by:

  
\_\_\_\_\_  
Sharon Smetta  
City Clerk

  
\_\_\_\_\_  
Philip J. Bussey  
Mayor, City of Wheaton

**EXHIBIT A**

Legal Description:

**PARCEL 1:**

THE NORTH 40.0 FEET OF LOT 10, AND A PART OF LOT 9 DESCRIBED BY BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 9, 13.2 FEET NORTH OF THE SOUTHWEST CORNER, RUNNING THENCE EASTERLY 73.15 FEET TO A POINT 12.0 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33.0 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT 9, 12.0 FEET, THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PORTION OF SAID PART OF LOT 9 LYING EAST OF THE EAST LINE, EXTENDED NORTH, OF LOT 10) ALL IN BLOCK 7 IN THE 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

**109 N. HALE ST.** Wheaton, IL 60187  
address

P.I.N. **0516302064**