

RESOLUTION R-02-16

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1877 South Wiesbrook Road)**

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 January 6, 2016, between the City of Wheaton and the Chicago Title Land Trust Company for 1877 South Wiesbrook Road, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 19th day of January, 2016.

Mayor

ATTEST:

Shawn Bennett-Hagan
City Clerk

<u>Roll Call Vote</u>	
Ayes:	Councilman Suess
	Councilwoman Fitch
	Councilman Prendiville
	Mayor Gresk
	Councilman Scalzo
Nays:	None
Absent:	Councilman Rutledge
	Councilman Saline

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Wiesbrook Road)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 6th day of January, 2016, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Chicago Title Land Trust Company, as Trustee under Trust Agreement dated 12-17-2013 and known as Trust Number 8002363554 ("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, Chicago Title Land Trust Company, as Trustee under Trust Agreement dated 12-17-2013 and known as Trust Number 8002363554 (hereinafter "Owner"), the owner of the premises located at 1877 S. Wiesbrook, Rd., 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.) Chicago Land Trust Company is the owners of property located at 1877 S. Wiesbrook, 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 located on the westerly boundary of the subject property

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.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

CHICAGO TITLE LAND TRUST COMPANY, as Trustee aforesaid.

By Maurice Augi
Owner

Attestation not required
Pursuant to corporate by-laws
Owner

Subscribed and sworn to before me this 6th day of January, 2016.

Subscribed and sworn to before me this 14 day of
 Notary Public

Attested by:

Attested by:
Shawn Bennett Hogan
City Clerk

Mayor, City of Wheaton

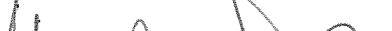

Michael J. Kelly
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY COMMENCING AT THE NORTH DIVISION CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 30 AND RUNNING THENCE SOUTH 85 DEGREES 55 MINUTES WEST ALONG THE QUARTER SECTION LINE, 2661.0 FEET TO THE CENTER LINE OF THE PUBLIC HIGHWAY KNOWN AS WIESBROOK ROAD; THENCE SOUTH 35 DEGREES 22 MINUTES 30 SECONDS WEST ALONG SAID CENTER LINE, 196.28 FEET TO THE SOUTHWEST CORNER OF THE SCHOOL LOT FOR A PLACE OF BEGINNING; THENCE NORTH 85 DEGREES 55 MINUTES EAST ALONG THE SOUTH LINE OF SAID SCHOOL LOT, 626.71 FEET TO THE WESTERLY LINE OF THE KAMMES (FORMERLY CASSEL) PROPERTY; THENCE SOUTH 3 DEGREES 49 MINUTES WEST ALONG SAID WEST LINE 131.24 FEET; THENCE SOUTH 85 DEGREES 55 MINUTES WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER, 715.67 FEET TO THE CENTERLINE OF SAID WIESBROOK ROAD; THENCE NORTH 35 DEGREES 22 MINUTES 30 SECONDS EAST ALONG SAID CENTER LINE, 168.37 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

1877 S. Wiesbrook Road, Wheaton, IL 60187
address

P.I.N. 05-30-301-002

