

## RESOLUTION R-04-11

### A RESOLUTION OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE INDEMNIFICATION AND USE AGREEMENT – DUMPSTER ENCLOSURE – 220 S. CROSS STREET

WHEREAS, the CITY is in possession of a public parking garage located at 220 S. Cross Street, Wheaton, Illinois, and legally described herein; and

WHEREAS, OWNER is the legal title holder of the premises located at 120 Liberty Drive, Wheaton, Illinois, which property is legally described herein and is contiguous to the aforementioned public parking garage; and

WHEREAS, OWNER desires to use a portion of the property upon which the public parking garage is constructed for the purpose of constructing an enclosure and placing and maintaining roll-out dumpsters for a tenant in their building at 120 Liberty Drive; and

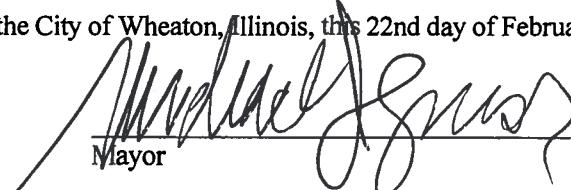
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the Indemnification and Use Agreement, in substantially the form attached hereto and incorporated herein as Exhibit "A".

Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 3. That this Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

ADOPTED by the City Council of the City of Wheaton, Illinois, this 22nd day of February 2011.



Mayor

ATTEST:



Karen Barrett-Hagan  
City Clerk

#### Roll Call Vote:

Ayes: Councilman Levine  
Councilman Mouhelis  
Mayor Gresk  
Councilman Prendiville  
Councilman Scalzo  
Councilwoman Corry

Nays: None

Absent: Councilman Suess

Motion Carried Unanimously

EXHIBIT "A"

INDEMINIFICATION AND USE AGREEMENT BETWEEN  
THE CITY OF WHEATON AND \_\_\_\_\_

THIS RIGHT-OF- WAY USE AGREEMENT (hereinafter "USE AGREEMENT") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, between the CITY OF WHEATON ("CITY"), an Illinois Municipal Corporation, located at 303 W. Wesley, Wheaton, Illinois, and \_\_\_\_\_ ("OWNER").

WITNESSETH

WHEREAS, the CITY is in possession of a public parking garage located at 220 S. Cross Street, Wheaton, Illinois, and legally described herein; and

WHEREAS, OWNER is the legal title holder of the premises located at 120 Liberty Drive, Wheaton, Illinois, which property is legally described herein and is contiguous to the aforementioned public parking garage; and

WHEREAS, OWNER desires to use a portion of the property upon which the public parking garage is constructed for the purpose of constructing an enclosure and placing and maintaining roll-out dumpsters for a tenant in their building at 120 Liberty Drive; and

WHEREAS, OWNER understands, acknowledges and agrees that its use of the property does not vest any property right in the property, nor does its use deprive, limit or in any way compromise the use of the public parking garage by the public including those property owners owning real property adjacent to the public parking garage; and

WHEREAS, OWNER understands, acknowledges and agrees that this Use Agreement does not create an easement or other interest in real property for the benefit of 120 Liberty Drive or the Owner.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, it is hereby agreed as follows:

- 1) The foregoing recitals are incorporated herein as representing the intent of the City and Owner and as substantive representations and covenants of this Agreement.
- 2) The City of Wheaton is the owner of the public parking garage located at 220 S. Cross Street, Wheaton, Illinois, legally described as follows:

LOT 2 IN WHEATON PROPERTY PARTNERS RESUBDIVISION BEING A SUBDIVISION IN EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 16 TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE CITY OF WHEATON IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-16-316-015 COMMONLY KNOWN AS:  
220 S. CROSS STREET, WHEATON, ILLINOIS 60187.

3) \_\_\_\_\_ is the Owner of the property located at 120 Liberty Drive, Wheaton, Illinois, legally described as follows:

LOT 1 IN WHEATON PROPERTY PARTNERS RESUBDIVISION BEING A SUBDIVISION IN EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 16 TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE CITY OF WHEATON IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-16-316-014 COMMONLY KNOWN AS: 120 LIBERTY DRIVE, WHEATON, ILLINOIS 60187.

4) 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 property upon which the public parking garage is constructed for the purpose of constructing an enclosure and placing and maintaining roll-out dumpsters for a tenant in their building at 120 Liberty Drive on property more specifically identified in the plans which are attached hereto and are incorporated herein by reference as Group Exhibit "A", along the west side of the public parking garage. The OWNER shall, as a material condition of this Agreement, maintain the roll out dumpsters and surrounding container enclosure as follows:

- A. The portion of property at, around and within the site shall be maintained in a clean and sanitary condition. No food, waste, debris, rubbish or other disposed items (hereinafter "Refuse") shall be permitted outside of the roll-out dumpsters; and
- B. The dumpsters shall contain tight-fitting and secure lids so as to minimize the escape of refuse and odors; and
- C. The enclosure around the roll-out dumpsters shall be maintained in good condition so as to screen the dumpster area from the remaining property and inhibit the spread of rubbish. All surfaces of the enclosures shall be maintained in a structurally sound, neat and sealed fashion so as to be sound and aesthetically acceptable.

Any violations of the conditions set forth in this section shall permit the CITY to terminate this Agreement upon 14 days written notice to the OWNER.

5) The CITY retains the right to enter said property at any time for the purpose of maintaining the existing concrete 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 property is needed for purposes of carrying out a public improvement or if the use of the property by the OWNER threatens or harms the health, safety or general welfare of the public, then the OWNER shall be required to move or remove the roll-out dumpsters and/or the container enclosure upon the CITY'S request. OWNER will keep and maintain the roll-out dumpsters and container enclosure in a manner so as to not interfere with the public's use of the alley right-of-way.

6) Except as provided in paragraph 3 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 roll-out dumpsters, container enclosure and related improvements placed upon the property 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 Use 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 right-of-way 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 \_\_\_\_\_

Attested by:

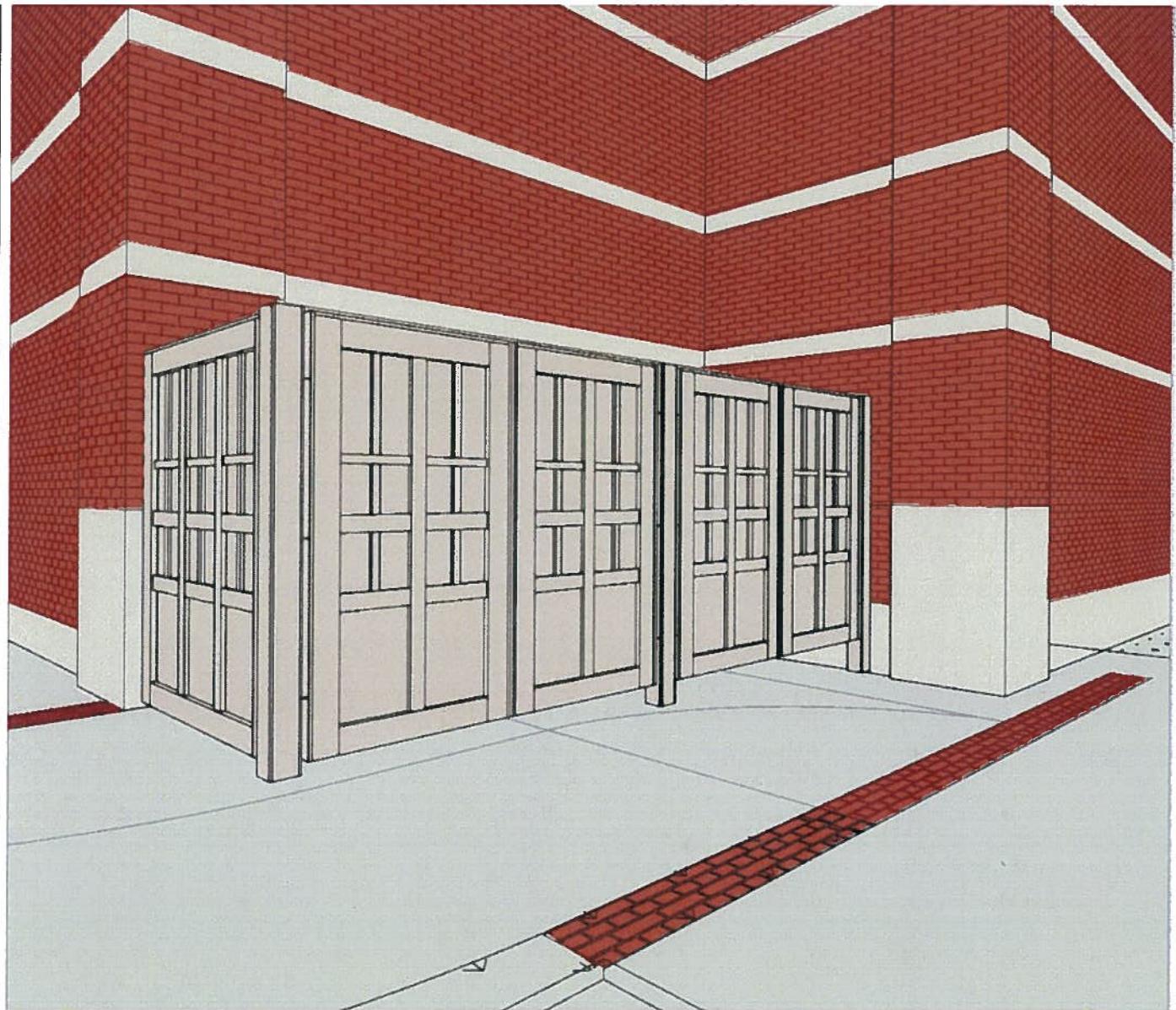
\_\_\_\_\_  
City Clerk, Emily Consolazio

By \_\_\_\_\_

Attested by:

\_\_\_\_\_

Exhibit "A"



**Trash Enclosure  
120 E. Liberty Drive  
Wheaton, Illinois**

20 January 2011  
Stratford Company  
David Thoma, Architect  
847 224 7901

