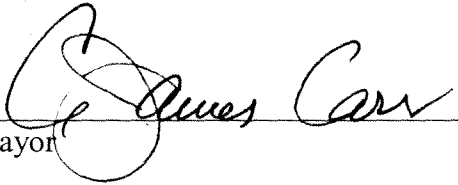


**RESOLUTION R-06-04**

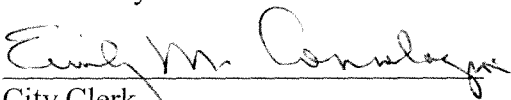
**RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE AND  
INDEMNIFICATION AGREEMENT - Right-of-Way (518 W. Roosevelt Road)**

BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated February 2, 2004, between the City of Wheaton and Kingsland Development Corp./Kingsland Properties, LLC, 518 W. Roosevelt Road, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 2nd day of February, 2004.

  
\_\_\_\_\_  
Mayor

Attested by:

  
\_\_\_\_\_  
City Clerk

Ayes: Roll Call Vote  
Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilwoman Johnson  
Councilman Mork

Nays: None

Absent: None

Motion Carried Unanimously

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (518W. Roosevelt Road)**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 2nd day of February, 2004, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Kingsland Development Corp./Kingsland Properties, LLC.

WITNESSETH

WHEREAS, the City is in possession of an unimproved right-of-way within the City limits of the City of Wheaton, Illinois, located south of Roosevelt Road and west of Warrenville Road; and

WHEREAS, Kingsland Development Corp./Kingsland Properties, LLC. (hereinafter "Owner"), is the owner of the property located at 518 W. Roosevelt Road, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the unimproved right-of-way; and

WHEREAS, the Owner would like to use, landscape, and fence a portion of the unimproved right-of-way; 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 right-of-way; and

WHEREAS, the Owner's successors and heirs will benefit from the use of the right-of-way as described herein.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Kingsland Development Corp./Kingsland Properties, LLC. as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Kingsland Development Corp./Kingsland Properties, LLC. is the owner of property located at 518 W. Roosevelt Road, Wheaton, Illinois, legally described as follows:

LOTS 3, 4 AND 5 IN SECKER'S ADDITION TO WHEATON, BEING A SUBDIVISION OF LOTS 1 AND 2 OF THE COUNTY CLERK'S ASSESSMENT SUBDIVISION OF THAT PART OF THE EAST HALF OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE WARRENVILLE ROAD AND NORTH OF THE CENTER OF UNION DRAINAGE DITCH #1, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 3, 1913 AS DOCUMENT 113627, IN DUPAGE COUNTY, ILLINOIS.

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R-26-24

EXCEPTING THEREFROM THE FOLLOWING:

THAT PARTS OF LOTS 3, 4, AND 5 IN SECKER'S ADDITION TO WHEATON, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 3, 1913 AS DOCUMENT 113627, IN DUPAGE COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF AFORESAID LOT 5 IN SECKER'S ADDITION TO WHEATON AS MONUMENTED AND OCCUPIED; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 29 MINUTES 30 SECONDS WEST 183.35 FEET ALONG THE WEST LINE OF SAID LOT 5 TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SAME BEARING OF NORTH 00 DEGREES 29 MINUTES 30 SECONDS WEST 7.50 FEET ALONG SAID WEST LINE OF LOT 5 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 88 DEGREES 39 MINUTES 34 SECONDS EAST 103.80 FEET ALONG THE NORTH LINE OF AFORESAID LOTS 5 AND 4 TO THE NORTHEAST CORNER OF LOT 4; THENCE SOUTH 00 DEGREES 42 MINUTES EAST 7.91 FEET (RECORDED AS 8.00 FEET) ALONG THE EAST LINE OF SAID LOT 4 TO THE SOUTH LINE OF THE NORTH 8.00 FEET OF LOT 3; THENCE NORTH 88 DEGREES 39 MINUTES 34 SECONDS EAST 52.00 FEET ALONG THE SOUTH LINE OF THE NORTH 8 FEET OF LOT 3; TO A POINT ON THE EAST LINE OF AFORESAID LOT 3 AS MONUMENTED AND OCCUPIED, THENCE SOUTH 00 DEGREES 40 MINUTES 23 SECONDS EAST 7.09 FEET ALONG SAID EAST LINE; THENCE SOUTH 88 DEGREES 39 MINUTES 34 SECONDS WEST 52.00 FEET TO A POINT ON THE WEST LINE OF LOT 4, SAID POINT BEING MONUMENTED BY AN ILLINOIS DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS SURVEY MARKER; THENCE NORTH 87 DEGREES 12 MINUTES 16 SECONDS WEST 104.02 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-20-205-043

Commonly known as: 518 W. Roosevelt Road, Wheaton, Illinois

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to use a portion of the unimproved right-of-way more specifically identified as the 16 feet by 155.70 feet portion of the right-of-way lying immediately south of the Property described in Paragraph 2 of this Agreement, in the following manner: erect a fence over the right-of-way and use as a landscaped area.

4.) The Owner shall construct the fence in conformance with all applicable City ordinances. Upon completion Owner shall maintain the fence in good condition and repair and in conformance with all applicable City ordinances. If the Owner fails to maintain the fence as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the fence. If the City makes such repairs the Owner shall reimburse the City its actual costs. If the Owner fails to reimburse the City its actual costs within 30 days of invoice the City shall have the right to lien the Property described in paragraph 2 of this Agreement and to foreclose such lien in conformance with State law.

5.) The City retains the right to enter said right-of-way for the purpose of maintaining the existing City utility systems (watermain, storm and sanitary sewers) if any. If the City performs maintenance work on any of the aforesaid utility systems the Owner shall restore the fence and landscaping at their sole cost and expense.

Re 06-04

6.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, as provided for in the "Construction, Use and Indemnification Agreement Right-of-Way (518 W. Roosevelt Road)".

7.) Upon termination of this Agreement, the City may destroy, demolish, remove any improvements placed upon the right-of-way by the Owner without liability.

8.) To the greatest extent permitted under Illinois law Owner 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 experts fees) which arise or may be caused by the negligence of the Owner, or Owner's agents, as a result of the design, construction, maintenance, use or abandonment of the fence described herein.

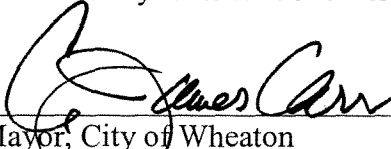
9.) This Agreement is not an easement.

10.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall proceed 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.

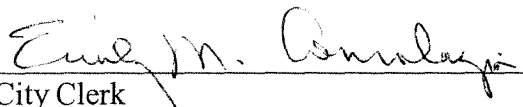
11.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

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

IN WITNESS WHEREOF, the Corporate authorities and the Owner 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.

  
\_\_\_\_\_  
Mayor, City of Wheaton

Attested by:

  
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Kingsland Development Corp./  
Kingsland Properties, LLC

Attested by:

\_\_\_\_\_