

This Instrument Prepared by:

CITY OF EVANSTON

Law Department

909 Davis Street

Evanston, IL 60201

After Recording Return to:

CITY OF EVANSTON

Law Department

909 Davis Street

Evanston, IL 60201

(For Recorder's Use Only)

**INDEMNIFICATION AND HOLD HARMLESS AGREEMENT
PUBLIC WAY USE PERMIT/APPROPRIATION OF A PORTION OF PARKWAY**

THIS AGREEMENT, entered into this _____ day of _____, 20____, between the City of Evanston, an Illinois municipal corporation (the "City") and the homeowner of the property described in Exhibit A ("Homeowner") (collectively, "the Parties").

RECITALS

WHEREAS, the City is in possession of a right-of-way and/or parkway within the City limits, as described herein (the "Parkway"); and

WHEREAS, Homeowner, _____ is the owner of the property described in Exhibit A, commonly known as _____, Evanston, Illinois, and contiguous to a portion of the Parkway; and

WHEREAS, Homeowner would like to appropriate a portion of the Parkway for his/her/their personal use and enjoyment, for purposes of installing a Walk perpendicular to their property and across the Parkway (the "Carriage Walk"); and

WHEREAS, Homeowner has applied for a public use permit in order to construct the Carriage Walk; and

WHEREAS, in exchange for the permit to construct the Carriage Walk, Homeowner has agreed that the Carriage Walk shall be constructed and maintained in accordance with, and subject to, all conditions, stipulations, and requirements of the ordinances of the City of Evanston; and

WHEREAS, in exchange for the permit to construct the Carriage Walk, Homeowner has agreed to provide all upkeep and repair to the Carriage Walk.

NOW, THEREFORE, in consideration of the promises of each of the parties to the other and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are a material part of this Agreement and are incorporated herein by reference.
2. Ownership. _____ is/are the legal owner(s) of the property located at _____, described in the attached Exhibit A, which is incorporated herein.
3. Parkway Appropriation. Homeowner(s) is/are authorized to construct a Carriage Walk on that part of the public way that is commonly referred to as the Parkway, provided that Homeowner constructs and maintains said Carriage Walk in accordance with all City ordinances.
4. Upkeep and Repair. Homeowner(s) hereby agrees to provide all maintenance, upkeep, and repair to the Carriage Walk.
5. City Right to Enter. The City retains the right to enter the Parkway for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (such as water main, storm and sanitary sewers) and other infrastructure.
6. Homeowner Duty to Repair. If the City performs any work in the Parkway that causes damage to the Carriage Walk, Homeowner(s) shall be solely responsible for repairing the Carriage Walk at their sole cost and expense. Homeowner(s) hereby acknowledge(s) and agree(s) that the City, its employees and agents shall have no liability to Homeowner(s) for any damage, removal, or other casualty to the Carriage Walk, regardless of the cause and regardless of whether the actions of the City, its employees and agents contributed to said damage, removal, or other casualty. If the installation or maintenance of the Carriage Walk damages City property – including City trees – Homeowner will be reimburse the City for the cost of repair or replacement of said City property.
7. Termination. The City may, without any liability to the Homeowner(s), terminate and cancel this Agreement together with all rights and privileged granted hereunder, by notifying the Homeowner(s), in writing, at least fourteen (14) days prior to termination, if the City determines that it must destroy, demolish, and/or remove any improvements placed upon the Parkway – including the Carriage Walk -- when the Parkway is needed for public use.
8. Indemnification. Homeowner(s) recognize(s) that, upon constructing the Carriage Walk, he/she/they have appropriated that portion of the public way for their own use. Homeowner(s) acknowledge(s) and agree(s) to defend, indemnify, and hold harmless the City and its officers, elected and appointed officials, agents, and employees, from any and all liability, losses, or damages as a result of claims, demands, suits,

actions, or proceedings of any kind or nature, including but not limited to costs and fees, including attorney's fees, judgments or settlements, arising from or arising out of any negligent or willful act or omission on the part of the Homeowner(s) or the Homeowner's sub-contractors, employees, or agents, and/or as a result of the design, construction, maintenance, use, or abandonment of the Carriage Walk described herein. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. To the extent permissible by law, Homeowner(s) waive(s) any limits to the amount of its obligation to indemnify pursuant to this provision. This section shall survive the completion, expiration, or termination of this Agreement.

9. Not an Easement. This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement, it shall be a temporary easement that expires fourteen (14) days after construction.

10. Entire Agreement, Modifications. The provisions set forth in this Agreement 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.

11. Binding Effect. This Agreement shall be binding on the Parties, their successors, heirs and assigns.

12. Severability. If any provision of this Agreement is invalid for any reason, such invalidation shall not affect any provision of this Agreement which can be given effect without the invalid provision; and, to this end, the provisions of this Agreement are to be severable.

13. Governing Law. The Parties agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be Cook County, Illinois.

14. Recording. This Agreement shall be recorded in the office of the Recorder of Deeds, Cook County, Illinois, at the sole expense of the Homeowner(s) and a copy of the recordation shall be provided to the City.

15. Joint and Several. The Homeowner(s) obligations under this Agreement shall be joint and several.

16. Successors. This Agreement shall be binding upon the Homeowner(s), their successors, heirs, and assigns.

IN WITNESS WHEREOF, the Parties agree to the terms above and have each executed this Agreement on the date first written above.

CITY:

HOMEOWNER(S):

Luke Stowe
City Manager

Name: _____

Name: _____

EXHIBIT A: LEGAL DESCRIPTION OF REAL PROPERTY

[include legal description from property records]

Property Index Number: _____

Real Estate Address: _____