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**THE CITY OF ROCHELLE**  
**Ogle County, Illinois**

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**RESOLUTION**  
**NO. \_\_\_\_\_**

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**A RESOLUTION AUTHORIZING RELEASE OF CLAIMS AND  
INDEMNIFICATION AGREEMENTS WITH MIDWEST PHYSICAL THERAPY,  
INC., AND MIDWESTERN CLOTHING COMPANY, LLC, IN EXCHANGE FOR  
BUILDING IMPROVEMENTS**

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**JOHN BEARROWS, Mayor**  
**ROSE HUERAMO, City Clerk**

**TOM McDERMOTT**  
**BIL HAYES**  
**KATE SHAW-DICKEY**  
**DAN McDERMOTT**  
**ROSAELIA ARTEAGA**  
**BEN VALDIVIESO**  
**City Council**

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Published in pamphlet form by authority of the Mayor and City Council of the City of Rochelle  
Peterson, Johnson, and Murray LLC, City Attorneys  
1301 W. 22nd Street – Ste. 500 Oak Brook, Illinois 60523

**CITY OF ROCHELLE**  
**Ogle County, Illinois**

**RESOLUTION NO. \_\_\_\_\_**  
**Date Passed: June 24, 2024**

**A RESOLUTION AUTHORIZING RELEASE OF CLAIMS AND INDEMNIFICATION  
AGREEMENTS WITH MIDWEST PHYSICAL THERAPY, INC., AND MIDWESTERN  
CLOTHING COMPANY LLC IN EXCHANGE FOR BUILDING IMPROVEMENTS**

**WHEREAS**, Section 7 of Article VII of the 1970 Constitution of the State of Illinois provides that a municipality that is not a home rule unit shall only have the powers granted to them by law and as such the City of Rochelle, Ogle County, Illinois being a non-home rule unit pursuant to the provisions of said Section 7 of Article VII, and may exercise only the powers expressly granted by law; and

**WHEREAS**, the Illinois General Assembly granted non-home rule municipalities broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities.” 65 ILCS 5/1-2-1; and

**WHEREAS**, while “non-home rule municipalities have the authority to enact ordinances, such ordinances may in no event conflict with state law or prohibit what a state statute expressly permits . . . A local ordinance may impose more rigorous or definite regulations in addition to those enacted by the state legislature so long as they do not conflict with the statute.” (*Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (1997)); and

**WHEREAS**, the City recently demolished the property at 517 W 4th Avenue due to structural issues; and

**WHEREAS**, as a result of the demolition the east side of the building at 519 W 4th Avenue, and the west side of the building at 513 W 4th Avenue have become exposed and it has created an unfinished, less aesthetically pleasing appearance (Photos of the buildings are attached herein as Exhibit A); and

**WHEREAS**, the City is willing to power wash and paint the east side of 519 W 4th Avenue; and power wash and paint (or potentially side the wall with metal sheathing if necessary) on the west side of 513 W 4th Avenue to improve the appearance of both buildings; and

**WHEREAS**, the authorized agents of the two respective buildings would like the City to make the proposed improvements; and

**WHEREAS**, in exchange for making the improvements to the two buildings the City is asking the parties agree to waive any claims and indemnify the City for any potential liability associated with the work done on the two buildings (a copy of said Agreements are attached herein as Exhibits B and C); and

**WHEREAS**, it has been determined by the Corporate Authorities of the City of Rochelle that it is in the best interest of the City and its residents to approve the Agreements attached herein as Exhibits B and C.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and City Council of the City of Rochelle, Ogle County, Illinois, as follows:

SECTION ONE: The foregoing recitals shall be, and are hereby, incorporated into and made a part of this Resolution as if fully set forth in this Section One.

SECTION TWO: That the Mayor and City Council of the City of Rochelle hereby approve the Release of Claims and Indemnification Agreements Attached herein as Exhibits B and C and the City Manager is hereby authorized to execute said Agreements.

SECTION THREE: If any provision of this Resolution or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Resolution is severable.

SECTION FOUR: Where the conditions imposed by any provisions of this Resolution are more restrictive than comparable provisions imposed by Resolution in any other local law, ordinance, resolution, rule or regulation, the regulations of this Resolution will govern.

SECTION FIVE: The City Clerk shall publish this Resolution in pamphlet form.

SECTION SIX: This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

[SIGNATURE PAGE TO FOLLOW]

PASSED THIS 24<sup>th</sup> day of June, 2024.

AYES:

NAYS:

ABSENT:

APPROVED THIS 24<sup>th</sup> day of June, 2024.

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MAYOR

ATTEST:

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CITY CLERK

STATE OF ILLINOIS        )  
                                      )  
COUNTY OF OGLE        )        SS.

CERTIFICATE

I, Rose Hueramo, City Clerk of the City of Rochelle, County of Ogle and State of Illinois,  
DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_,  
“A RESOLUTION AUTHORIZING RELEASE OF CLAIMS AND INDEMNIFICATION  
AGREEMENTS WITH MIDWEST PHYSICAL THERAPY, INC., AND MIDWESTERN  
CLOTHING COMPANY LLC IN EXCHANGE FOR BUILDING IMPROVEMENTS which was  
adopted by the Mayor and City Council of the City of Rochelle on June 24, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of  
the City of Rochelle this 24<sup>th</sup> day of June 2024.

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CITY CLERK

**EXHIBIT A**  
**(AERIAL DEPICTION)**



**(513 W 4<sup>th</sup> Avenue)**





**(519 W 4th Avenue)**





## **EXHIBIT B (AGREEMENT)**

### **RELEASE OF CLAIMS AND INDEMNIFICATION AGREEMENT**

THIS RELEASE OF CLAIMS AND INDEMNIFICATION AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2024, by and between Midwestern Clothing Company, LLC, with its principle place of business located at 519 W 4th Avenue, Rochelle, IL 61068 (the “**Beneficiary**” or “**Indemnitor**”), and the City of Rochelle, an Illinois municipal corporation with its place of business at 420 North 6<sup>th</sup> Street, Rochelle, Illinois 61068 (the “**City**” or “**City/Indemnatee**”).

**WHEREAS**, the City recently demolished the property at 517 W 4th Avenue due to structural issues; and

**WHEREAS**, as a result of the demolition the east side of the building at 519 W 4th Avenue has become exposed and has created an unfinished, less aesthetically pleasing appearance; and

**WHEREAS**, the owner of 519 W 4th Avenue is Midwestern Clothing Company, LLC; and

**WHEREAS**, the City is willing to power wash and paint the east side of Midwestern Clothing Company, LLC’s building to improve its appearance; and

**WHEREAS**, Jeffery S. Tilton on behalf of Midwestern Clothing Company, LLC, would like the City to power wash and paint the east side of its building at 519 W 4th Avenue; and

**NOW, THEREFORE**, in consideration of the foregoing and certain other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Release and Waiver. Beneficiary hereby fully and forever releases and discharges the City from, and expressly waives, any and all liability, claims, and demands of whatever kind or nature, either in law or in equity, that may arise from the City’s access to and construction (painting and power washing) on the Beneficiary’s property. Beneficiary agrees not to make or bring any such claim or demand against the City, and fully and forever releases and discharges the City from liability under such claims or demands. BENEFICIARY UNDERSTANDS THAT THIS RELEASE DISCHARGES THE CITY FROM ANY LIABILITY OR CLAIMS THAT BENEFICIARY MAY HAVE AGAINST THE CITY WITH RESPECT TO ANY BODILY INJURY, PERSONAL INJURY, ILLNESS, PROPERTY DAMAGE, OR PROPERTY LOSS THAT MAY RESULT FROM THE CITY’S ACCESS TO AND IMPROVEMENT OF BENEFICIARY’S PROPERTY.

2. Indemnification. The Beneficiary/Indemnitor shall indemnify City/Indemnatee and hold City/Indemnatee harmless if the City/Indemnatee is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, and in any appeal in such action, suit or proceeding, and in any inquiry or investigation that could lead to such an action, suit or proceeding, against

any and all liabilities, obligations (whether known or unknown, or due or to become due or otherwise), judgments, fines, fees, penalties, interest obligations, deficiencies, other actual losses and reasonable expenses (including, without limitation amounts paid in settlement, interest, court costs, costs of investigators, reasonable fees and expenses of attorneys, accountants, financial advisors and other experts) incurred or suffered by City/Indemnatee in connection with such action, suit or proceeding arising out of or pertaining to any actual or alleged action or omission which arises out of or relates to the painting or power washing of Beneficiary's building to the fullest extent permitted by applicable law. Each such liability, obligation, judgment, fine, fee, penalty, interest obligation, deficiency, other actual losses, and reasonable expenses being referred to herein as a "Loss," and collectively, as "Losses". Any Loss incurred by City/Indemnatee shall be paid by the Beneficiary on a regular monthly basis.

2. Non-Exclusivity. The rights of City/Indemnatee hereunder shall be in addition to any rights or immunities that City/Indemnatee may have under the applicable law.

3. Enforceability. The indemnification contained in this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, and assigns.

4. Binding Obligation. If this Agreement or any portion hereof shall be found to be invalid on any ground by any court of competent jurisdiction, then the Beneficiary shall nevertheless indemnify and hold harmless City/Indemnatee, as to costs, charges and expenses (including court costs and attorneys' fees), judgments, fines, penalties and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, and in any appeal in such action, suit or proceeding, and in any inquiry or investigation that could lead to such an action, suit or proceeding, to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated and to the fullest extent permitted by applicable law.

5. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, without regard to the principles of conflicts of laws. The parties agree that any litigation directly or indirectly relating to this Agreement must be brought before and determined by a court of competent jurisdiction within Ogle County, Illinois, and the parties hereby agree to waive any rights to object to, and hereby agree to submit to, the jurisdiction of such courts.

6. Right to Sue; Attorneys' Fees and Costs. If a claim by City/Indemnatee for payment of Losses hereunder is not paid in full by the Beneficiary within forty-five (45) days after a written claim has been delivered to the Beneficiary, City/Indemnatee may at any time thereafter bring suit against the Beneficiary to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, City/Indemnatee shall be entitled to be paid also the reasonable costs and expenses of prosecuting such suit. In any suit brought by City/Indemnatee to enforce any right hereunder (including, without limitation, the right to indemnification), the burden of proving that City/Indemnatee is not entitled to such right shall be borne by the Beneficiary.

7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of each party to this Agreement.

8. Amendment. This Agreement may be amended, modified, or supplemented only by a written instrument executed by each of the parties hereto.

9. Authority. The signatories to this Agreement represent and warrant that he or she is duly authorized and has legal capacity to execute and deliver this Agreement on behalf of their respective party. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

10. Counterpart Signature. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument, but only one of which need be produced.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**City/Indemnatee**

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Jeff Fiegenschuh  
Rochelle City Manager

**Beneficiary/Indemnitor**

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Jeffery S. Tilton  
Midwestern Clothing Company, LLC

## **EXHIBIT C (AGREEMENT)**

### **RELEASE OF CLAIMS AND INDEMNIFICATION AGREEMENT**

THIS RELEASE OF CLAIMS AND INDEMNIFICATION AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2024, by and between Midwest Physical Therapy, Inc., with its principle place of business located at 513 W 4th Avenue, Rochelle, IL 61068 (the “**Beneficiary**” or “**Indemnitor**”), and the City of Rochelle, an Illinois municipal corporation with its place of business at 420 North 6<sup>th</sup> Street, Rochelle, Illinois 61068 (the “**City**” or “**City/Indemnatee**”).

**WHEREAS**, the City recently demolished the property at 517 W 4th Avenue due to structural issues; and

**WHEREAS**, as a result of the demolition the west side of the building at 513 W 4th Avenue has become exposed and has created an unfinished, less aesthetically pleasing appearance; and

**WHEREAS**, the owner of 513 W 4th Avenue is Midwest Physical Therapy, Inc.; and

**WHEREAS**, the City is willing power wash and paint the west side of Midwest Physical Therapy, Inc.’s building to improve its appearance; and

**WHEREAS**, in the event the City finds power washing and painting of the west side of Midwest Physical Therapy, Inc.’s building is not sufficient or appropriate, the City is willing to cover the west side of the building with metal sheathing; and

**WHEREAS**, Khan Riazulla on behalf of Midwest Physical Therapy, Inc., would like the City to power wash and paint, or pay for the installation of metal sheathing on the west side of its building at 513 W 4th Avenue; and

**NOW, THEREFORE**, in consideration of the foregoing and certain other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Release and Waiver. Beneficiary hereby fully and forever releases and discharges the City from, and expressly waives, any and all liability, claims, and demands of whatever kind or nature, either in law or in equity, that may arise from the City’s access to and construction (painting, power washing or installation of metal sheathing) or on the Beneficiary’s property. Beneficiary agrees not to make or bring any such claim or demand against the City, and fully and forever releases and discharges the City from liability under such claims or demands. BENEFICIARY UNDERSTANDS THAT THIS RELEASE DISCHARGES THE CITY FROM ANY LIABILITY OR CLAIMS THAT BENEFICIARY MAY HAVE AGAINST THE CITY WITH RESPECT TO ANY BODILY INJURY, PERSONAL INJURY, ILLNESS, PROPERTY DAMAGE, OR PROPERTY LOSS THAT MAY RESULT FROM THE CITY’S ACCESS TO AND IMPROVEMENT OF BENEFICIARY’S PROPERTY.

2. Indemnification. The Beneficiary/Indemnitor shall indemnify City/Indemnatee and hold City/Indemnatee harmless if the City/Indemnatee is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, and in any appeal in such action, suit or proceeding, and in any inquiry or investigation that could lead to such an action, suit or proceeding, against any and all liabilities, obligations (whether known or unknown, or due or to become due or otherwise), judgments, fines, fees, penalties, interest obligations, deficiencies, other actual losses and reasonable expenses (including, without limitation amounts paid in settlement, interest, court costs, costs of investigators, reasonable fees and expenses of attorneys, accountants, financial advisors and other experts) incurred or suffered by City/Indemnatee in connection with such action, suit or proceeding arising out of or pertaining to any actual or alleged action or omission which arises out of or relates to power washing, painting or the installation of metal sheathing on Beneficiary's building to the fullest extent permitted by applicable law. Each such liability, obligation, judgment, fine, fee, penalty, interest obligation, deficiency, other actual losses, and reasonable expenses being referred to herein as a "Loss," and collectively, as "Losses". Any Loss incurred by City/Indemnatee shall be paid by the Beneficiary on a regular monthly basis.

2. Non-Exclusivity. The rights of City/Indemnatee hereunder shall be in addition to any rights or immunities that City/Indemnatee may have under the applicable law.

3. Enforceability. The indemnification contained in this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, and assigns.

4. Binding Obligation. If this Agreement or any portion hereof shall be found to be invalid on any ground by any court of competent jurisdiction, then the Beneficiary shall nevertheless indemnify and hold harmless City/Indemnatee, as to costs, charges and expenses (including court costs and attorneys' fees), judgments, fines, penalties and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, and in any appeal in such action, suit or proceeding, and in any inquiry or investigation that could lead to such an action, suit or proceeding, to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated and to the fullest extent permitted by applicable law.

5. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, without regard to the principles of conflicts of laws. The parties agree that any litigation directly or indirectly relating to this Agreement must be brought before and determined by a court of competent jurisdiction within Ogle County, Illinois, and the parties hereby agree to waive any rights to object to, and hereby agree to submit to, the jurisdiction of such courts.

6. Right to Sue; Attorneys' Fees and Costs. If a claim by City/Indemnatee for payment of Losses hereunder is not paid in full by the Beneficiary within forty-five (45) days after a written claim has been delivered to the Beneficiary, City/Indemnatee may at any time thereafter bring suit against the Beneficiary to recover the unpaid amount of the claim. If successful in whole or in part

in any such suit, City/Indemnatee shall be entitled to be paid also the reasonable costs and expenses of prosecuting such suit. In any suit brought by City/Indemnatee to enforce any right hereunder (including, without limitation, the right to indemnification), the burden of proving that City/Indemnatee is not entitled to such right shall be borne by the Beneficiary.

7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of each party to this Agreement.

8. Amendment. This Agreement may be amended, modified, or supplemented only by a written instrument executed by each of the parties hereto.

9. Authority. The signatories to this Agreement represent and warrant that he or she is duly authorized and has legal capacity to execute and deliver this Agreement on behalf of their respective party. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

10. Counterpart Signature. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument, but only one of which need be produced.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

**City/Indemnatee**

**Beneficiary/Indemnitor**

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Jeff Fiegenschuh  
Rochelle City Manager

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Khan Riazulla  
Owner of Midwest Physical Therapy