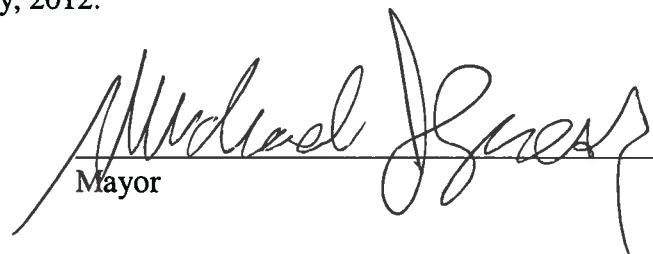


RESOLUTION R-51-12

RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND ABANDONMENT AGREEMENT (Morningside Wheaton, LLC)

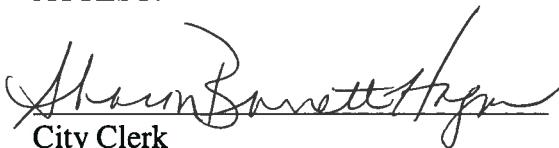
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Abandonment Agreement dated July 11, 2012, between the City of Wheaton and Morningside Wheaton, LLC for the property located at the northeast corner of Front and Cross streets; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 16th day of July, 2012.



Michael Gresk
Mayor

ATTEST:



Sean Barrett
City Clerk

Roll Call Vote

Ayes:	Councilman Scalzo Councilman Suess Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti
Nays:	None
Absent:	None

Motion Carried Unanimously

CONSTRUCTION, USE, and ABANDONMENT AGREEMENT
(Construction Material Storage on Scott Street between Front Street and Wesley Street
and the Placement and Abandonment of Foundation Sheet Piling Within Certain Public
Rights of Way.)

THIS CONSTRUCTION, USE, and ABANDONMENT AGREEMENT, (AGREEMENT) is made and entered into this 11th day of July, 2012, between the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Morningside Wheaton, LLC ("Owner").

WITNESSETH

WHEREAS, the City is in possession of improved public streets, being Scott, Front and Cross Streets, (hereinafter Public Streets) within the City limits of the City of Wheaton, Illinois, and which generally border a new development known as the Wheaton 121 Luxury Apartments (hereinafter Development); and

WHEREAS, Morningside Wheaton, LLC (hereinafter "Owner"), is the owner of a Development premises bordering the Public Streets; and

WHEREAS, the Owner proposes to close portions of Scott Street to public access and use the portions of Scott Street as a construction material storage and staging area during the construction of a multi-level residential apartment building on the Development; and

WHEREAS, the Owner to facilitate construction of the foundation and subsurface improvements of the Development proposes the placement and burying of sheet pilings within portions of the rights of way adjacent to the Public Streets, and to abandon those sheet pilings in place after proper backfilling and completion of the foundation and subsurface work for the Development; and

WHEREAS, the Owner acknowledges that the proposed closure and use of the Public Streets, with the exception of abandoning the sheet pilings, is a temporary condition caused by the limited space available on the Development site for construction material staging and foundation construction during construction of the Development; and

WHEREAS, the Owner acknowledges and warrants that this Agreement and the privileges granted herein are not an easement or lease and do not vest it with any property rights or claims to any portion of said right of way or Public Streets; and

WHEREAS, the City and Owner have entered into a Redevelopment Agreement dated July 3, 2012 and Subdivision Improvement Agreement, Acceptance and Guarantee for the Development (included as Exhibit I of the Redevelopment Agreement).

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and Owner as follows:

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

2.) Morningside Wheaton, LLC is the owner of property located at northeast corner of Front Street and Cross Street, Wheaton, Illinois, legally described as follows:

PARCEL 1:

THAT PART OF LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 6, 1986 AS DOCUMENT NUMBER R86-122510, AND ALL OF LOT 5 OF BLOCK 5 OF THE ORIGINAL TOWN OF WHEATON RECORDED AS DOCUMENT NUMBER 7256 AND ALL OF LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NUMBER 662395, ALL DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 88 DEGREES 41 MINUTES 29 SECONDS WEST ALONG AN ASSUMED BEARING, BEING THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 80.93 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 18 MINUTES 31 SECONDS EAST 256.30 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 74 DEGREES 52 MINUTES 09 SECONDS WEST ALONG SAID SOUTH LINE 328.96 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 00 DEGREES 35 MINUTES 06 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION AND THE WEST LINE OF SAID LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT AND ALSO THE WEST LINE OF SAID LOT 5 IN BLOCK 5 OF THE PLAT OF THE ORIGINAL TOWN OF WHEATON, 334.92 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE NORTH 88 DEGREES 41 MINUTES 29 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 5 AND THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 315.21 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 6, 1986 AS DOCUMENT NUMBER R86-122510, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 88 DEGREES 41 MINUTES 29 SECONDS WEST ALONG AN ASSUMED BEARING, BEING THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 80.93 FEET; THENCE SOUTH 01 DEGREE 18 MINUTES 31 SECONDS EAST 256.30 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 74 DEGREES 52 MINUTES 09 SECONDS EAST ALONG SAID SOUTH LINE 80.73 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 00 DEGREES 41 MINUTES 40 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION 237.03 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

TAX P.I.N.: 05-16-304-008, 05-16-304-024, 05-16-304-026, 05-16-304-027
(LEGAL DESCRIPTION OF OWNERS PARCEL) (HEREINAFTER THE "PROPERTY")

3.) The Owner, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to:

- a.) close to public access and use improved right-of-way specifically identified as Scott Street lying immediately east of the Property described in Paragraph 2 of this Agreement, in the following manner: to close the street to public access by the use of fencing and a locked gate, store construction materials, place construction office trailers, and provide construction vehicle access in strict conformance with Exhibit A which is attached hereto and incorporated herein as if fully set forth; and
- b.) place, secure, backfill and abandon below grade and in place, within the public right of way adjacent to the Public Streets, pile sheeting necessary for the installation of the Development's foundation and subsurface improvements in strict conformance with Exhibit A.

4.) The Owner shall use and maintain the public street in conformance with all applicable City ordinances and in a manner which does not interfere, impede, hinder or otherwise obstruct the lawful use of the right-of-way by the City, including, but not limited to access by emergency response vehicles and personnel. Other than the subsurface abandonment of the sheet pilings, upon completion of the use, the Owner shall restore the public street to its original condition or better in conformance with all applicable City ordinances. If the Owner fails to restore the public street right-of-way as required by this paragraph City shall have the right but not the obligation to make any and all repairs to the public street right-of-way. 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 with 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.) All sections of the Development Agreement and Subdivision Improvement Agreement for the Development, between the City and the Developer related to: Indemnification and Hold Harmless, Insurance and a Completion Bond shall be applicable to this AGREEMENT and are incorporated herein as is fully set forth. The language in the Development Agreement and Subdivision Improvement Agreement related to Indemnification and Hold Harmless, Insurance and Completion Bond shall be interpreted to provide the City with maximum applicability and benefit as applied to this AGREEMENT. The Developer shall provide the City with proof of insurance and completion bond, and its insurance carrier's written acknowledgement that its insurance is applicable to this AGREEMENT, prior to occupying or using any of the areas for the purposes described herein.

6.) The City retains the right at any time to enter the Public Streets for the purpose of inspecting, maintaining, repairing or reconstructing existing City utility systems (water main, storm and sanitary sewers). The Developer shall cooperate with the City in this instance to minimize the Developer's interference with the City's utility work. In the case of a public emergency the Developer shall promptly relocate any stored materials interfering with the City's utility work. If the Developer fails or refuses to relocate stored materials in this instance the City may do so without liability to the Developer. So long as this AGREEMENT remains effective the Developer shall provide and maintain with the City an emergency contact person who will be available to the City by phone in the case of public emergency.

7.) The City may terminate and cancel this Agreement together with all privileges granted hereunder, by notifying the Owner in writing at least ninety (90) days prior to

termination. This Agreement shall terminate in any case no later than issuance of a temporary occupancy permit for the building on the Development.

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

9.) This Agreement is not an easement or lease.

10.) The provisions set forth in this AGREEMENT and its exhibits represent the entire Agreement between the parties and shall supersede any prior agreements, contracts, understandings, promises and representations, oral or written, related to the use of Public Streets by the Developer. This AGREEMENT however shall not supersede, modify or amend or be interpreted to supersede, modify or amend in any manner the Development Agreement or Subdivision Improvement Agreement between the City and Developer. 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.

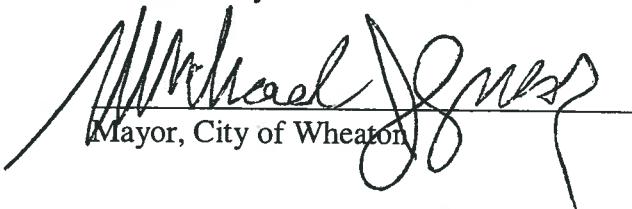
11.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

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.

Attested by:


Sean Barrett Flynn
City Clerk


Michael J. Jones
Mayor, City of Wheaton

OWNER:

Morningside Wheaton, LLC
By: Morningside Wheaton Development,
LLC

David M. Strosberg
Managing Member

Attested by:

Morningside Wheaton, LLC
By: Morningside Wheaton Development, LLC

Brian Pawlik
Member

FitzGerald
A. S. O. C. 1
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1-312-563-1919
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Phone: 847/821-5815
Fax: 847/821-5810
info@jhennic.com
www.jhennic.com

EXCAVATION NOTES

EARTH SLOPES SHOWN ARE
FOR GENERAL CONFORMANCE
ONLY AND ARE ESTABLISHED
AT 1.5H: 1.0V

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ADDENDUM 2
6/27/12