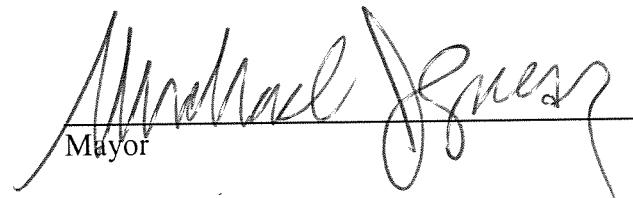


RESOLUTION R-94-13

A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT (121 North Cross Street)

BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign and the City Clerk is directed to attest to the Construction, Use and Indemnification Agreement dated September 5, 2013 between the City of Wheaton and Morningside Wheaton, LLC for 121 North Cross Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 2nd day of December, 2013.



Michael Gresk
Mayor

ATTEST:



Aaron Bennett Hagen
City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilman Prendiville
Councilman Rutledge
Councilman Saline
Mayor Gresk
Councilwoman Pacino Sanguinetti
Councilman Scalzo

Nays: None
Absent: None

Motion Carried Unanimously



OCT 18 2013

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT

RIGHT-OF-WAY (121 N. Cross)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5th day of Sept, 2013, among 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 a right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, Morningside Wheaton, LLC (hereinafter "Owner"), the owner of the premises located at 121 N. Cross St., Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owners would like to use a portion of the City's right-of-way for the purpose of constructing and maintaining a lawn irrigation system; and

WHEREAS, the Owners 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.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the 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 are the owners of property located at 121 N. Cross, St. Wheaton, Illinois, legally described on Exhibit A attached hereto and made a part hereof.

3.) The Owners, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby authorized to use a portion of the right-of-way more specifically identified as that portion of the right-of-way of Front Street, Scott Street, and Wesley Street adjacent to 121 N. Cross Street for construction of and use of a lawn irrigation system as depicted on Exhibit B attached hereto and made a part hereof. The installation and use of the lawn irrigation system shall conform to all applicable ordinances of the City. Those ordinances are material terms and conditions of this Agreement.

4.) The City retains the right to enter said right-of-way for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (watermain, storm and sanitary sewers) and other infrastructure. If the City performs any work within said right-of-way which causes damage to the lawn irrigation system, the Owners shall be responsible to repair the lawn irrigation system at their sole cost and expense. The Owner hereby acknowledges and agrees that City its, employees and agents shall have no liability to the Owner for any damage, removal or other casualty to the lawn irrigation system caused by the City, its employees or agent regardless of the cause.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owners in writing at least fourteen (14) days prior to termination.

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

7.) To the greatest extent permitted under Illinois law, Owners 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 expert's fees) which arise or may be caused by the negligence of the Owners, or Owners' agents, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation system described herein.

8.) This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement it shall be a temporary easement which shall expire 14 days after such construction.

9.) The provisions set forth in this Agreement and exhibit 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.

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

11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

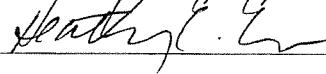
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.



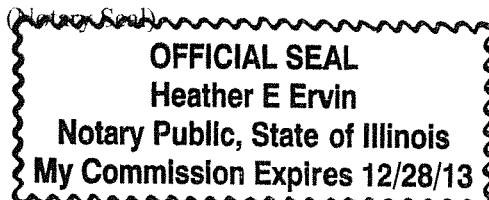
Owner

Owner

Subscribed and sworn to before me this 5th day of September, 2013.



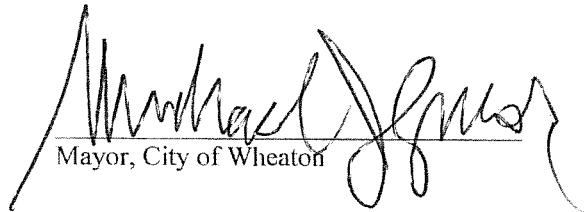
Notary Public



Attested by:



Shawn Bennett-Hagan
City Clerk



Michael J. Frisina
Mayor, City of Wheaton

Exhibit A

Legal Description:

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 DU PAGE 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")

Property Address: 121 N. Cross St, Wheaton, IL 60187

