

ORDINANCE NO. F-0369

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO CERTAIN
EASEMENT AGREEMENTS REGARDING THE DOWNTOWN WHEATON
REDEVELOPMENT PROJECT AREA

WHEREAS, the Mayor and City Council of the City of Wheaton, DuPage County, Illinois (the "CITY"), have heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the CITY that the CITY undertake a redevelopment project and have heretofore approved a redevelopment plan and designated a redevelopment project area (the "PROJECT AREA") for that portion of the CITY known as the Downtown Wheaton Redevelopment Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, the CITY has previously entered into a Redevelopment Agreement (the "AGREEMENT") dated November 17, 1997, as amended, with WHEATON WESLEY, L.L.C. (the "DEVELOPER") regarding a portion of said PROJECT AREA; and,

WHEREAS, pursuant to the AGREEMENT, a residential condominium building known as Wheaton Place is currently under construction; and

WHEREAS, pursuant to the AGREEMENT, a parking garage has also been constructed on the site, a portion of which is owned by the CITY for public parking and a portion of which is owned by the DEVELOPER as part of the condominium project; and

WHEREAS, it is necessary for the CITY and the DEVELOPER to enter into certain easement agreements permitting ingress and egress over the property owned by each, and addressing related matters.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the Grant of Easement between the CITY and the DEVELOPER, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

Section 2. That the Mayor and City Clerk be and the same are hereby authorized to execute the Easement and Operating Agreement between the CITY and the DEVELOPER, in substantially the form attached hereto as Exhibit "B", and, by this reference, incorporated herein.

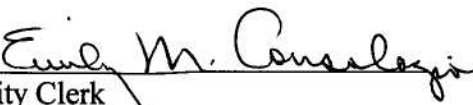
Section 3. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 4. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by and the Mayor and City Council of the City of Wheaton, Illinois, this 19th day of July, 1999.


Mayor

ATTEST:


City Clerk

Roll Call Vote:

Ayes: Councilwoman Davenport
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilman Mork

Nays: None

Absent: Councilman Eckhoff
Councilman Johnson

Motion Carried Unanimously

Passed: July 19, 1999
Published: July 20, 1999



Mayor
C. James Carr

City Council
Linda E. Davenport
Grant Eckhoff
Michael J. Gresk
Linda W. Johnson
W. David Johnson
Robert Mork

City Manager
Donald B. Rose



J.P. "RICK" CARNEY

DUPAGE COUNTY RECORDER

SEP. 30, 1999

3:48 PM

OTHER

05-16-301-047

016 PAGES

R1999-208441

CITY OF WHEATON, ILLINOIS

ORDINANCE NO. F-0369

AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY,
ILLINOIS, AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO CERTAIN EASEMENT AGREEMENTS REGARDING THE
DOWNTOWN WHEATON
REDEVELOPMENT PROJECT AREA

I HEREBY CERTIFY that I am the City Clerk of the City of Wheaton, DuPage County, Illinois, and that, as such City Clerk, I have the custody of the papers, entries, records and ordinances of said City.

I FURTHER CERTIFY that the attached is a true and correct copy of City of Wheaton Ordinance No. F-0369 which was adopted by the Wheaton City Council on July 19, 1999.

I have hereunto set my hand and affixed the seal of said City this 20th day of July, 1999.

Emily M. Consolazio
City Clerk

(PREPARED BY/RETURN TO)

Emily Consolazio, City Clerk
City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187

City of Wheaton

303 W. Wesley Street Box 727

Wheaton, IL 60189-0727

630-260-2000

630-260-2017 FAX

630-260-8090 TDD

R-1999-208441
9-30-99

ORDINANCE NO. F-0369

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO CERTAIN
EASEMENT AGREEMENTS REGARDING THE DOWNTOWN WHEATON
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WHEREAS, it is necessary for the CITY and the DEVELOPER to enter into certain easement agreements permitting ingress and egress over the property owned by each, and addressing related matters.

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Section 2. That the Mayor and City Clerk be and the same are hereby authorized to execute the Easement and Operating Agreement between the CITY and the DEVELOPER, in substantially the form attached hereto as Exhibit "B", and, by this reference, incorporated herein.

Section 3. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

2-1999-205441

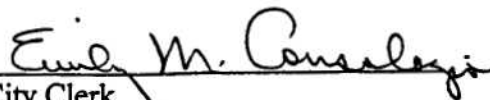
9-30-99

672
Section 4. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by and the Mayor and City Council of the City of Wheaton, Illinois, this 19th day of July, 1999.


Mayor

ATTEST:


City Clerk

Roll Call Vote:

Ayes: Councilwoman Davenport
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilman Mork

Nays: None

Absent: Councilman Eckhoff
Councilman Johnson

Motion Carried Unanimously

Passed: July 19, 1999
Published: July 20, 1999

05-16-301-048, 047 & 049
232 W. WESLEY
WHEATON, IL
60187

R-1999-208441
9-30-99

GRANT OF EASEMENT

THIS GRANT is made this 20th day of July, 1999, by and between the City of Wheaton, DuPage County, Illinois (the "City"), Wheaton Wesley, L.L.C., an Illinois limited liability company ("Wheaton Wesley") and Wheaton Front, L.L.C., an Illinois limited liability company ("Wheaton Front") (collectively, Wheaton Wesley and Wheaton Front are referred to as the "Developer").

WITNESSETH:

WHEREAS, Wheaton Wesley currently owns a certain parcel of real property described in Exhibit "A" attached hereto and made a part hereof ("Parcel A"); and

WHEREAS, Wheaton Front owns a certain parcel of real property described in Exhibit "B" attached hereto and made a part hereof ("Parcel B"); and

WHEREAS, the City currently owns a certain parcel of real property described in Exhibit "C" attached hereto and made a part hereof ("Parcel C")

WHEREAS, it is necessary and desirable that the Developer grant certain easements over Parcel A and Parcel B for the benefit of Parcel C.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

Section 1. Ingress and egress easement over Parcel A. In order to provide access for motor vehicles and pedestrian traffic to and from Parcel C, the Developer hereby grants, gives and conveys to the City and its successors and assigns, as an easement appurtenant to Parcel C, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across that portion of Parcel A as legally described on Exhibit "D" attached hereto and made a part hereof (the "Parcel A Easement Area").

Section 2. Ingress and egress easement over Parcel A. In order to provide access for pedestrian traffic to and from Parcel C, the Developer hereby grants, gives and conveys to the City and its successors and assigns, as an easement appurtenant to Parcel C, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across those portions of Parcel B legally described on Exhibit "E" attached hereto and made a part hereof (the "Parcel B Easement Area"). The easements granted by Sections 1 and 2 of this Agreement are illustrated on Exhibit "F" attached hereto and made a part hereof.

Section 3. Construction and maintenance. The Developer shall, at its own cost and expense, construct and pave the driveway in the Parcel A Easement Areas and the sidewalk in the Parcel B Easement Area pursuant to plans previously approved by the City. The Developer shall provide snow and ice removal from the Parcel A and Parcel B Easement Areas when necessary, and maintain and repair the same to keep the same in a clean, sightly, safe, unobstructed, good and usable condition. With regard to the foregoing, the Developer shall comply with any and all applicable federal, state and local zoning and other ordinances, statutes, guidelines, requirements and regulations.

All maintenance and repair of the Parcel A and Parcel B Easement Areas shall be made so as to interfere as little as practicable with the rights granted to the City pursuant to this Agreement and with the operations of the City, its employees, agents, tenants, invitees or licensees. The Developer shall conduct repaving of the driveway area so as to provide a smooth surface between Wheaton Avenue, Parcel A and Parcel C.

Section 4. Performance of Developer's obligation. In the event of an emergency requiring maintenance or repair of the Parcel A or Parcel B Easement Areas, if the Developer does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that the Developer will, or will be able to, undertake such maintenance or repair, the City may, at its option, perform such maintenance or repair and pay any and all costs and charges associated therewith.

If the Developer's failure to maintain or repair the Parcel A and Parcel B Easement Areas does not result in an emergency, the City may notify the Developer in writing of such failure. In the event the Developer fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, in the event the Developer fails to commence the cure of such default within such ten (10) day period and diligently pursue such cure to completion, the City may, at its option, perform the obligation which the Developer has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

In any event described in this Section 4, the City shall be entitled to recover from the Developer the charges, fees, costs and expenses incurred by the City (including, if the Developer is in default, reasonable attorneys' fees) in connection therewith, together with interest thereon at the Default Rate of Interest (as hereinafter defined) from the date of payment. Such charges, fees, costs, expenses and interest shall be paid by the Developer within ten (10) days after receipt of a statement thereof from the City. For the purposes hereof, the term "Default Rate of Interest" shall be the rate of interest from time to time announced by Wheaton Bank as its prime rate.

The City, if performing any maintenance or repair on the Parcel A or Parcel B Easement Areas, shall restore the area affected by such maintenance or repair to the condition existing prior thereto or prior to any damage or disrepair necessitating such maintenance or repair.

Section 5. Covenants running with the land. All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Section 6. Interpretation. The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the Parties hereto.

Section 7. Termination. The City may terminate any easement granted hereunder by recording a release thereof with the Office of the Recorder of Deeds of DuPage County, Illinois, with directions for delivery of the same to the grantor of such easement at its address given pursuant hereto, whereupon all rights, duties and liabilities hereby created shall terminate as to such easement.

Section 8. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. The City at:

City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187

with a copy to:

Gorski & Good
211 South Wheaton Avenue
Suite 305
Wheaton, Illinois 60187

B. The Developer at:

Joseph J. Freed and Associates
1400 South Wolf Road
Building 100
Wheeling, Illinois 60090

With a copy to:

Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601-1293
Attention: Jefftrey S. Arnold

C. To such other person or place which either party hereto, by its prior written notice, shall designate for notice to it from the other parties hereto.

Section 3. Construction and maintenance. The Developer shall, at its own cost and expense, construct and pave the driveway in the Parcel A Easement Areas and the sidewalk in the Parcel B Easement Area pursuant to plans previously approved by the City. The Developer shall provide snow and ice removal from the Parcel A and Parcel B Easement Areas when necessary, and maintain and repair the same to keep the same in a clean, sightly, safe, unobstructed, good and usable condition. With regard to the foregoing, the Developer shall comply with any and all applicable federal, state and local zoning and other ordinances, statutes, guidelines, requirements and regulations.

All maintenance and repair of the Parcel A and Parcel B Easement Areas shall be made so as to interfere as little as practicable with the rights granted to the City pursuant to this Agreement and with the operations of the City, its employees, agents, tenants, invitees or licensees. The Developer shall conduct repaving of the driveway area so as to provide a smooth surface between Wheaton Avenue, Parcel A and Parcel C.

Section 4. Performance of Developer's obligation. In the event of an emergency requiring maintenance or repair of the Parcel A or Parcel B Easement Areas, if the Developer does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that the Developer will, or will be able to, undertake such maintenance or repair, the City may, at its option, perform such maintenance or repair and pay any and all costs and charges associated therewith.

If the Developer's failure to maintain or repair the Parcel A and Parcel B Easement Areas does not result in an emergency, the City may notify the Developer in writing of such failure. In the event the Developer fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, in the event the Developer fails to commence the cure of such default within such ten (10) day period and diligently pursue such cure to completion, the City may, at its option, perform the obligation which the Developer has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

In any event described in this Section 4, the City shall be entitled to recover from the Developer the charges, fees, costs and expenses incurred by the City (including, if the Developer is in default, reasonable attorneys' fees) in connection therewith, together with interest thereon at the Default Rate of Interest (as hereinafter defined) from the date of payment. Such charges, fees, costs, expenses and interest shall be paid by the Developer within ten (10) days after receipt of a statement thereof from the City. For the purposes hereof, the term "Default Rate of Interest" shall be the rate of interest from time to time announced by Wheaton Bank as its prime rate.

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303 West Wesley Street
Wheaton, Illinois 60187

with a copy to:

Gorski & Good
211 South Wheaton Avenue
Suite 305
Wheaton, Illinois 60187

B. The Developer at:

Joseph J. Freed and Associates
1400 South Wolf Road
Building 100
Wheeling, Illinois 60090

With a copy to:

Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601-1293
Attention: Jeffrey S. Arnold

C. To such other person or place which either party hereto, by its prior written notice, shall designate for notice to it from the other parties hereto.

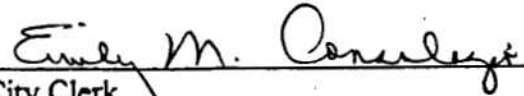
IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

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**CITY OF WHEATON, an
Illinois municipal corporation**

By: 

ATTEST:


City Clerk

**WHEATON WESLEY, L.L.C., an
Illinois company**

By: 

Name: JOHN M. CHINDEN

Title: MANAGER

**WHEATON FRONT, L.L.C., an
Illinois limited liability company**

By: 

Name: JOHN M. CHINDEN

Title: MANAGER

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James Carr, Mayor of the City of Wheaton, and Emily Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth, and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of SEPTEMBER, 1999.

Janet Q. Christman
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John McLinden of Wheaton Wesley, L.L.C., personally known to me to be the same persons whose names is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of Wheaton Wesley, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31ST day of August, 1999.

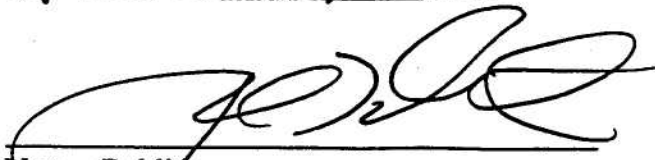


Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John McLinden of Wheaton Front, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of Wheaton Front, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31ST day of August, 1999.



Notary Public



EXHIBIT "A"

LOT 1 IN WHEATON PLACE SUBDIVISION, BEING A PART OF THE SOUTHWEST
QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS
DOCUMENT R98-68533, IN DU PAGE COUNTY, ILLINOIS.

R-1999-208441

9-30-99

EXHIBIT "B"

LOTS 3 AND 4 IN WHEATON PLACE 2ND RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

R-1999-208441

9-30-99

EXHIBIT "C"

LOTS 2-LC, 2-GC, 2-2C, 2-3C & 2-4C IN WHEATON PLACE 2ND RESUBDIVISION,
BEING A SUBDIVISION IN PART OF THE SOUTHWEST QUARTER OF SECTION 16,
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN
DUPAGE COUNTY, ILLINOIS.

R-1999-208441
9-30-99

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R-1999-208441

9-30-99

EXHIBIT "C"

LOTS 2-LC, 2-GC, 2-2C, 2-3C & 2-4C IN WHEATON PLACE 2ND RESUBDIVISION,
BEING A SUBDIVISION IN PART OF THE SOUTHWEST QUARTER OF SECTION 16,
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN
DUPAGE COUNTY, ILLINOIS.

R-1999-208441
9-30-99

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EXHIBIT "D"

PARCEL A EASEMENT AREA:

THE NORTH 12.00 FEET OF THE SOUTH 24.50 FEET OF LOT 1 IN WHEATON PLACE,
BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 16,
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN IN
DUPAGE COUNTY, ILLINOIS

R-1999-208441
9-30-99

EXHIBIT "E"

PARCEL B EASEMENT AREA:

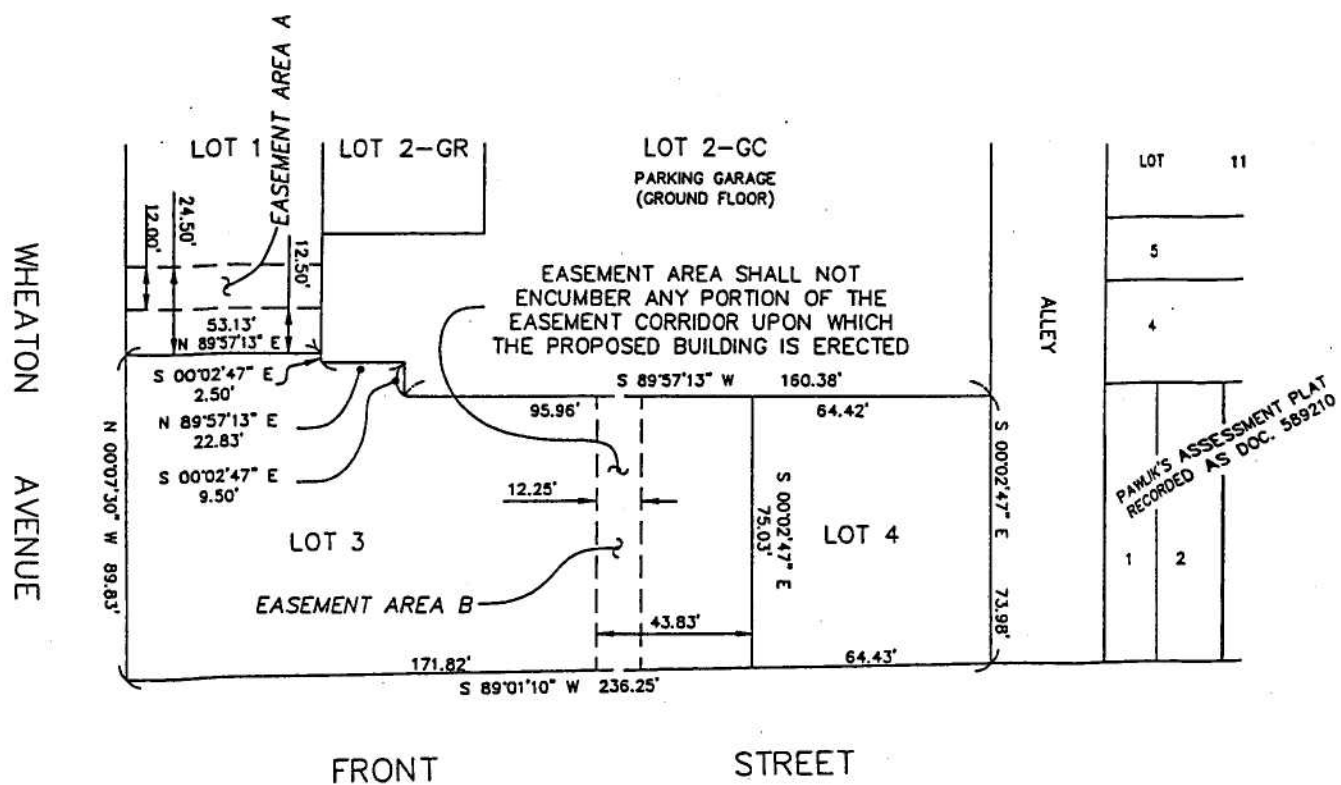
THE NORTH 5 FEET OF LOT 4 IN WHEATON PLACE 2ND RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS

AND ALSO:

A 5 FOOT STRIP OF LAND LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE NORTHEAST CORNER OF LOT 3 IN WHEATON PLACE 2ND RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTH 89 DEGREES 57 MINUTES 13 SECONDS WEST, 95.96 FEET ALONG THE NORTH LINE OF LOT 3 (THE REMAINING COURSES ARE ALONG THE NORTHERLY LINE OF SAID LOT 3); THENCE NORTH 00 DEGREES 02 MINUTES 47 SECONDS WEST, 9.50 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 13 SECONDS WEST, 22.83 FEET TO THE POINT OF TERMINUS, IN DUPAGE COUNTY, ILLINOIS.

R-1999-208441

9-30-99

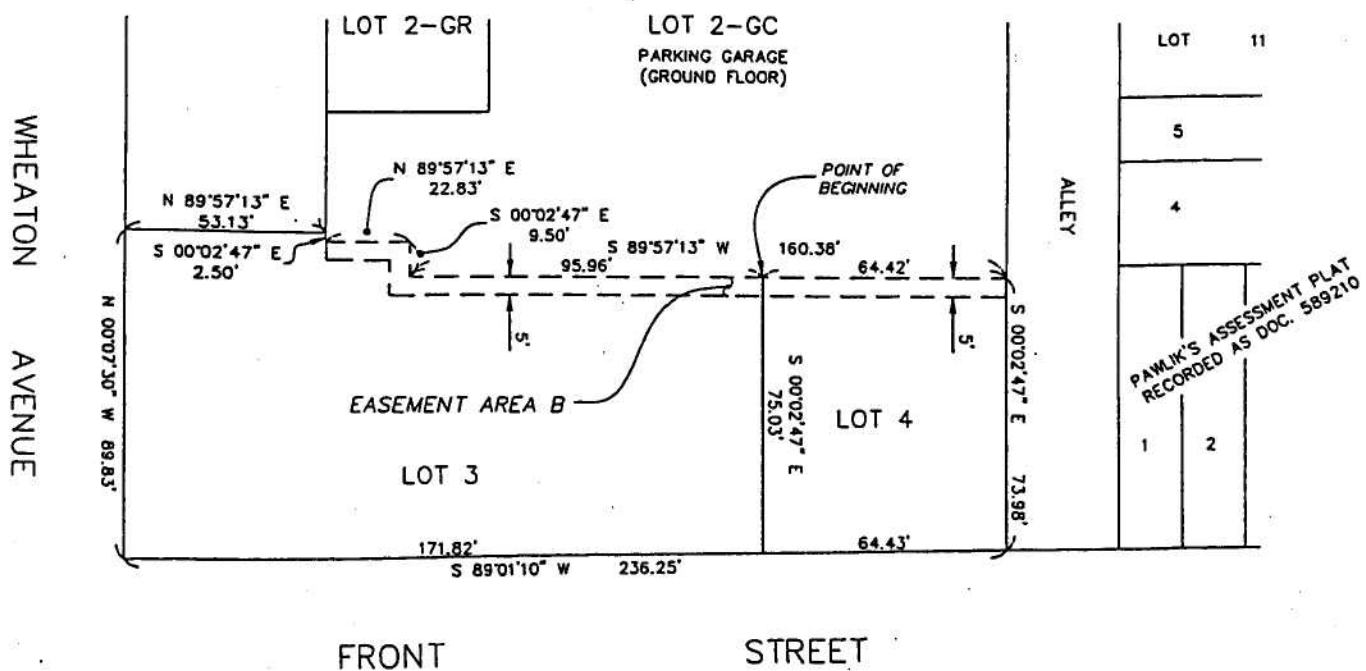
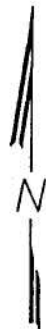
EXHIBIT F

DISK: 903203P
 FILE NAME: EXHIBIT 1-1
 VIEW: SHEET 1
 DATE: 4-29-99
 BY: KTE
 REVISED 6/30/99-NOG (ADD EASEMENT LOT 1)
 REVISED 7-16-99/jrp A/B DESIGNATIONS

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R-1999-208441
 9-30-99

EXHIBIT F



DISK: 903203P
FILE NAME: EXHIBIT 2-1
VIEW: SHEET 1
DATE: 4-29-99
BY: KTE

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R-1999-208441

9-30-99