

RESOLUTION R-92-08

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE AND THE CITY OF WHEATON FOR THE TRAFFIC SIGNAL AT CH 43 / COUNTY FARM ROAD & WILLIAMS STREET

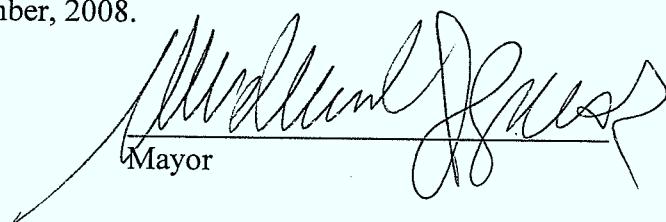
WHEREAS, the County of DuPage, in order to facilitate the free flow of traffic and to ensure the safety of the public, has installed a traffic signal at the intersection of County Farm Road (CH 43) and Williams Street in Wheaton, Illinois; and

WHEREAS, the County and the City desire to share in the cost of the installation of the traffic signal and to define future maintenance and energy costs for the traffic signal because of the immediate benefit to the residents of the City and County; and

WHEREAS, it is necessary for the County and City to enter into an agreement to establish the respective responsibilities of the traffic signal installation.

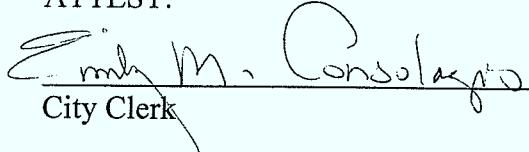
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute an intergovernmental agreement between the County of DuPage and the City of Wheaton for the traffic signal at County Farm Road and Williams Street.

ADOPTED, this 15th day of December, 2008.



Mayor

ATTEST:



Emily M. Consalago
City Clerk

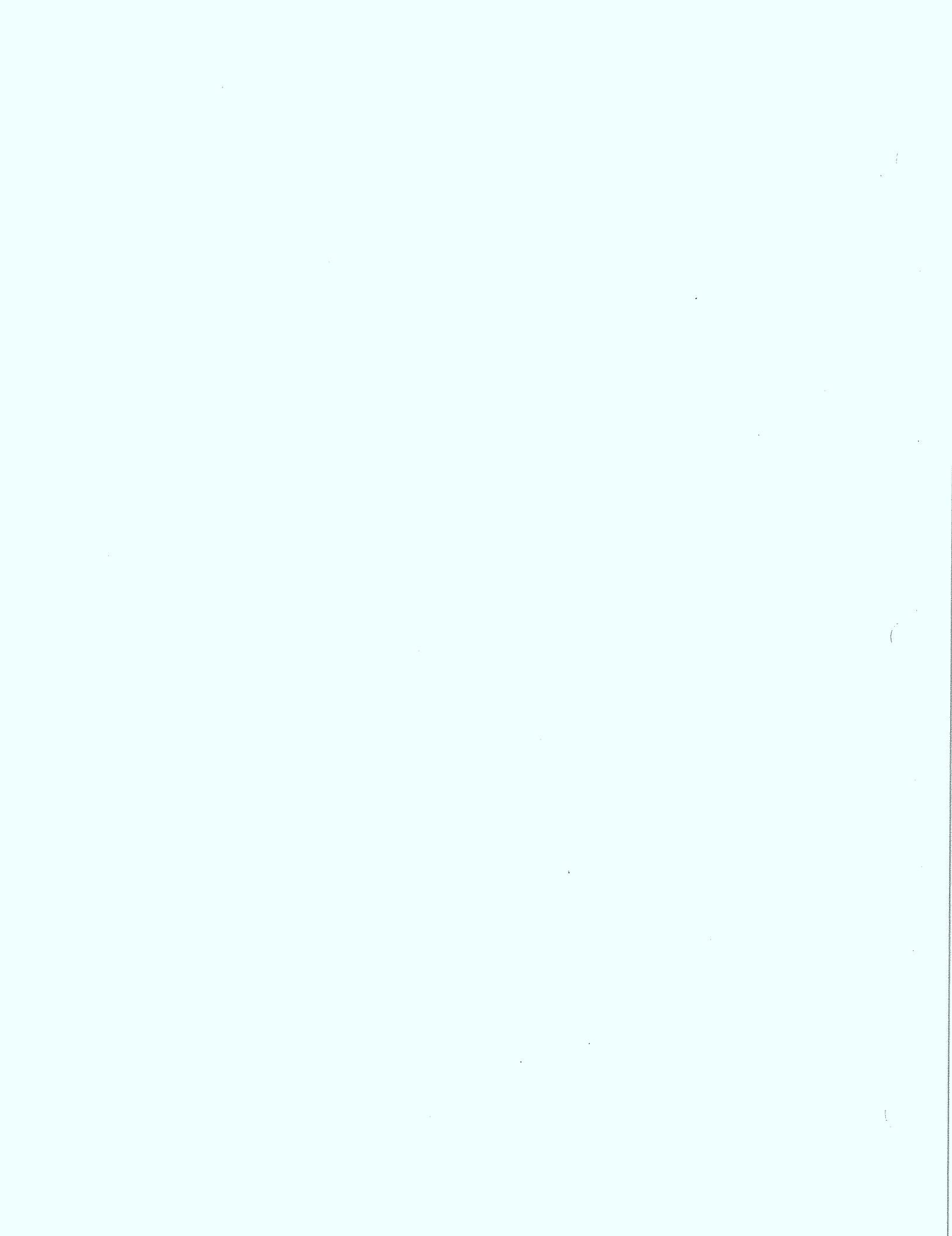
ROLL CALL VOTE

Ayes:	Councilman Johnson Mayor Gresk Councilman Mouhelis Councilman Prendiville Councilman Suess
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Nays:	None
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Absent:	Councilwoman Corry Councilman Levine
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Motion Carried Unanimously



INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE AND THE CITY OF WHEATON
FOR THE TRAFFIC SIGNAL
@ CH 43/COUNTY FARM ROAD & WILLIAMS STREET
SECTION 05-00179-01-TL

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 15th day of December, 2008, between the County of DuPage (hereinafter referred to as "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the City of Wheaton (hereinafter referred to as the "MUNICIPALITY"), a municipal corporation with offices at 303 West Wesley Street, Wheaton, IL 60187.

RECITALS

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and to ensure the safety of the public has installed a traffic signal at the intersection of CH 43/County Farm Road and Williams Street (hereinafter referred to as "TRAFFIC SIGNAL"); and

WHEREAS, the COUNTY and the MUNICIPALITY desire to share in the cost for the installation of the TRAFFIC SIGNAL and to define the future maintenance and energy costs for the TRAFFIC SIGNAL because of the immediate benefit of the TRAFFIC SIGNAL to the people of the City of Wheaton and to the residents of the County of DuPage; and

WHEREAS, an AGREEMENT has been prepared and attached hereto which outlines the responsibilities of the parties for the TRAFFIC SIGNAL; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.), and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is in their mutual best interests to enter into this AGREEMENT.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION.

- 1.1. All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are the inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 INSTALLATION COSTS

2.1. The COUNTY has previously installed the TRAFFIC SIGNAL at a cost of \$226,400.00.

3.0 COST SHARE BY THE MUNICIPALITY

3.1. The MUNICIPALITY agrees to pay up to pay fifty (50%) percent or \$113,200.00 of the installation cost (hereinafter "City's Share") of the TRAFFIC SIGNAL solely from the funds collected by the MUNICIPALITY from the amended City zoning ordinances: E-3730, F-0575, and F-0887, (hereinafter "Ordinances") which are attached hereto and incorporated herein as if fully set forth as Group Exhibit A. The City's Share shall not be subject to payment from any other City source. The City shall undertake reasonable efforts to enforce the Ordinances in conformance with their terms.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY agrees to pay for the future maintenance of the TRAFFIC SIGNAL.
- 4.2. The COUNTY retains the right to control and regulate the sequence and all other aspects of phasing and timing of the TRAFFIC SIGNAL.

4.3. The COUNTY will be responsible for the maintenance of all pavement markings on County Farm Road.

5.0 RESPONSIBILITIES OF THE MUNICIPALITY

- 5.1. The MUNICIPALITY agrees to pay for all future energy costs for the TRAFFIC SIGNAL to be billed directly from the energy provider.
- 5.2. The MUNICIPALITY shall be responsible for maintenance of all pavement markings on Williams Street including cross-walk and stop line markings.

6.0 EMERGENCY PRE-EMPTION EQUIPMENT RESPONSIBILITY

- 6.1. The COUNTY agrees to pay for all future emergency pre-emption equipment maintenance.

7.0 FUTURE MODERNIZATION/RECONSTRUCTION

- 7.1. If, in the future, the COUNTY adopts a roadway or traffic signal improvement which requires modernization or reconstruction of the TRAFFIC SIGNAL, the parties hereby agree to pay a cost share of the improvement to the traffic signals based on the number of approaches to the intersection maintained by the respective parties hereto.

8.0 INDEMNIFICATION

- 8.1. The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the MUNICIPALITY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

8.1.1. The COUNTY and the MUNICIPALITY acknowledge that the COUNTY has made no representations, assurances or guarantees regarding the COUNTY'S or any successors or assign's authority and legal capacity to indemnify the MUNICIPALITY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the MUNICIPALITY, or any person or entity claiming a right through MUNICIPALITY, or in the event of change in the laws of the State of Illinois governing COUNTY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

8.2. The MUNICIPALITY shall, to the extent permitted by law, indemnify, hold harmless and defend the COUNTY, its officials, officers, employees and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the MUNICIPALITY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The MUNICIPALITY does not hereby waive any defenses or immunity available to it with respect to third parties.

8.2.1. The COUNTY and the MUNICIPALITY acknowledge that the MUNICIPALITY has made no representations, assurances or guarantees regarding the MUNICIPALITY'S or any successor's or assign's authority and legal capacity to indemnify the COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the MUNICIPALITY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through COUNTY, or in the event of change in the laws of the State of Illinois governing MUNICIPALITY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and

enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

8.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, under this paragraph or paragraph 8.1, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY'S participation in its defense shall not remove MUNICIPALITY'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

8.4. Nothing contained herein shall be construed as prohibiting the MUNICIPALITY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The MUNICIPALITY'S participation in its defense shall not remove COUNTY'S duty to indemnify, defend, and hold the MUNICIPALITY harmless, as set forth above.

9.0 ENTIRE AGREEMENT

1839

9.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the TRAFFIC SIGNAL, and supersedes all previous communications or understandings whether oral or written.

10.0 NOTICES

10.1. Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, to the party's address. The address of each party is as specified below; either party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

For MUNICIPALITY:
Donald B. Rose
City Manager
City of Wheaton
303 West Wesley Street
Wheaton, IL 60187

For COUNTY:
Charles Tokarski, P.E.
County Engineer
DuPage County
Div. of Transportation
421 N. County Farm Rd.
Wheaton, IL 60187

11.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

11.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

12.0 NON-ASSIGNMENT

12.1. This AGREEMENT shall not be assigned by either party.

13.0 GOVERNING LAW

13.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

13.2. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

14.0 SEVERABILITY

14.1. In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

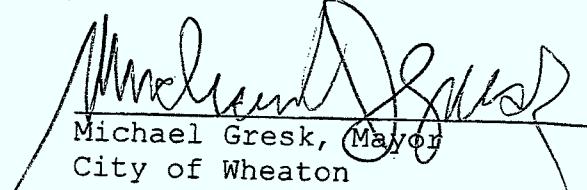
15.0 FORCE MAJEURE

15.1. Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not

limited to Acts of God, war, civil unrest, strikes, walkouts, fires and natural disasters.

IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

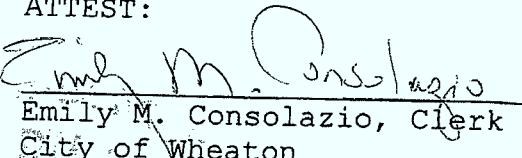
Robert J. Schillerstrom
Chairman, DuPage County Board


Michael Gresk, Mayor
City of Wheaton

ATTEST:

Gary A. King
County Clerk

ATTEST:


Emily M. Consolazio, Clerk
City of Wheaton

GROUP EXHIBIT A

ORDINANCE NO. E-3730

AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE MAP AND GRANTING A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT ON A CERTAIN PIECE OF PROPERTY COMMONLY KNOWN AS LOT 30 IN KEIM'S RESUBDIVISION OF WHEATON PARK MANOR (NORTHEAST CORNER OF ROOSEVELT AND COUNTY FARM ROADS) - TARGET STORES

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, and issue a special use permit for a planned unit development for the construction and use of an approximately 270,000 square foot shopping center on the property legally described herein within the city limits of Wheaton, Illinois, and commonly known as Lot 30 in Keim's Resubdivision of Wheaton Park Manor, located at the northeast corner of Roosevelt and County Farm Roads; and

WHEREAS, the property referred to in this ordinance is subject to the terms and conditions of a certain ordinance entitled "Ordinance No. E-3451, An Ordinance Granting A Special Use Permit For A Planned Unit Development On A Piece Of Property Commonly Known As Wheaton Park Manor And Certain Other Property" recorded in the office of the DuPage County Record of Deeds as Document No. 89-47465 ("prior ordinance"); and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Board of Zoning Appeals on August 27, 1991, to consider the zoning requests; and the Wheaton Board of Zoning Appeals has recommended approval of the zoning amendment and issuance of the special use permit.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, is amended by including the following-described C-3 zoned property in the C-3 Planned Unit Development General Business District zoning classification:

LOT 30 IN KEIM'S RESUBDIVISION OF WHEATON PARK MANOR, BEING A SUBDIVISION OF PART OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 1989 AS DOCUMENT NO. R89-094349, IN DUPAGE COUNTY, ILLINOIS

This property is commonly known as Lot 30 in Keim's Resubdivision of Wheaton Park Manor (northeast corner of Roosevelt and County Farm Roads) ("subject property"). The owner or owners of fee simple title to all or any portion of the subject property, and such owner or owners, heirs, successors, assigns, and grantees are collectively referred to herein as "Owner".

Section 2: PUD PLANS: Pursuant to the Findings of Fact determined by the Wheaton Board of Zoning Appeals, a special use permit for a planned unit development is granted to allow the construction and use of an approximately 270,000 square foot shopping center on the subject property, in full compliance with the following planned unit development documentation:

- A. The Preliminary Site Plan entitled "Preliminary Plan/Target Stores/Wheaton prepared by Cemcon Ltd., Winfield, Illinois, dated July 3, 1991 and bearing revision dates of July 12 and July 18, 1991 ("Site Plan").
- B. The Preliminary Grading and Drainage Plan entitled "Preliminary Grading and Drainage Plan, Target Stores, Wheaton Site, Sheets Nos. 1 and 2 prepared by Cemcon Ltd., Winfield, Illinois, dated July 3, 1991 and bearing revision dates of July 12 and July 18, 1991 ("Grading Plan").
- C. The Preliminary Landscape Plan entitled "Conceptual Landscape Plan - For Review Only" prepared by the Lannert Group, St. Charles, Illinois, dated July 2, 1991 ("Landscape Plan").
- D. The Building Elevation Plan entitled "Shop Elevations, Target G1-92 Wheaton, Illinois prepared by RSP Architects, Ltd., in association with Setter Leach and Lindstrom, Inc., Minneapolis, Minnesota dated July 29, 1991 ("Building Elevation Plan").
- E. The Sight Line Study entitled "Sight Line Studies, A1" dated August 15, 1991 ("Site Line Study").
- F. The Building Elevation Plan entitled "Partial Plan/Elevations, A1"; "Floor and Sidewalk Plans, A2"; and "Shop Elevations A3", dated July 16, 1991 (collectively as "Miscellaneous Plans").

(Site Plan, Grading Plan, Landscape Plan, Building Elevation Plans, Sight Line Studies and Miscellaneous Plans are collectively referred to herein as the PUD Plans).

Section 3: SITE PLAN:

- A. The development of the subject property shall be in substantial conformity with the Site Plan with respect to the size and location of access drives, parking facilities, free standing signs, and buildings. The Site Plan shall require the width of all handicap parking spaces to be 16 feet, illustrate the location of all loading areas for the building entitled Target Store. The loading areas and trash enclosures for the other buildings shall be illustrated on the architectural plans at the time of the building permit application. All trash enclosures shall be constructed of materials similar to the building or shall be located within the building.
- B. Located next to the solid line of the approximated footprint for each building on the Site Plan are dashed lines representing the building envelope for each of the buildings ("building envelope"). Each building may be constructed and located within the building envelope identified by such building and may, at Owner's election encompass the entirety of the building envelope.

Section 4: LANDSCAPE PLAN:

- A. The Landscape Plan sets forth the preliminary details approved by the City to be utilized in development of the subject property. The size and species of plant material identified on the landscape plan shall be subject to the reasonable availability of such materials at the time of planting. Final landscape plans shall be submitted by Owner for review and approval by the City Planner prior to the issuance of a site development permit.
- B. The final landscape plan shall be overlaid on a half tone engineering plan, illustrate and provide for the parking lot islands along the building to be planted with shade trees, provided, however, no trees shall be required in such islands in front of the signs of major tenants. The final landscape plan shall illustrate and provide for the detention facility and retaining walls, if such retaining walls are utilized by Owner, on the southwest corner of the subject property to be constructed with materials which will enhance the appearance of the retaining walls, and shall list and illustrate the exact quantities and types of materials and plants to be provided on the subject property.
- C. The Owner shall maintain all landscaping and plantings of the subject property so that the number, quality, and character of the landscaping shall not be less than which

is illustrated on the approved Landscape Plan. In the event any landscaping, plantings, or vegetation on the subject property dies in whole or in part at any time, the Owner shall during the next planting season thereafter replace the non viable landscaping vegetation and/or plantings with reasonably similar substitutes of the original planting size.

Section 5: BUILDING ELEVATION PLANS:

- A. The buildings constructed upon the subject property shall be designed in general conformity with the architectural style set forth in the Building Elevation Plans and Miscellaneous Plans. The Building Elevation Plans and Miscellaneous Plans shall constitute architectural concept plans only and shall be utilized as a guide by Owner in the preparation of final architectural building plans for each building and for the purpose of establishing compatibility among the various buildings constructed within the subject property.
- B. All rooftop mechanical equipment shall be screened from view pursuant to the Sight Line study.
- C. The rear side of the building shall be constructed and designed with architectural features substantially similar to the front side of the building.

Section 6: SIGNAGE: All signs for the subject property shall conform to the prior ordinance. No signs may be placed on the rear wall of any building on the subject property.

Section 7: FINAL ENGINEERING PLANS: Prior to the issuance of any site development permit for the subject property, Owner shall submit final engineering plans to the City which final engineering plans shall be subject to the approval of the City Engineer, which approval shall not be unreasonably withheld. The final engineering plans shall include but shall not be limited to the following:

- A. The final engineering plans shall conform with the requirements and provisions contained in the July 26, 1991 letter of the Wheaton City Engineer.
- B. The Owner and the City of Wheaton shall enter into a subdivision improvement agreement and Owner shall furnish security for the public improvements as required by the Wheaton City Code and terms and provisions of the subdivision improvement agreement shall be subject to the reasonable approval of the Wheaton City Engineer.

A-9-10

3

Ordinance E-3730 /Page 5

- C. The traffic report shall be updated to include a review of the internal circulation, queue analysis at the access drives, traffic control sign locations, crosswalk and pedestrian routes, and a sight distance versus landscaping berm analysis for all drive accesses on the site.
- D. Owner shall construct sidewalk along Roosevelt Road and County Farm Road adjacent to the subject property, and at such other locations within the subject property as directed, in writing, by the Wheaton City Engineer. The requirement for constructing sidewalk along Fapp Circle adjacent to the subject property is hereby waived; the Owner shall donate seventy-five percent (75%) of the cost of said sidewalk construction as determined by the Wheaton City Engineer (\$21,262.50).
- E. The main ingress-egress drive adjacent to the front of the in-line buildings on the subject property shall be of a width thirty feet (30') from face-to-face of curb and shall include two (2) eleven foot (11') through-lanes and one (1) eight foot (8') loading-fire lane as identified on the Site Plan.
- F. All sanitary sewer service for the subject property shall conform with the requirements of the Wheaton Sanitary District.
- G. All improvements to County Farm Road and access to and from County Farm Road and the subject property shall conform with the requirements of the DuPage County Division of Transportation.
- H. All improvements to Roosevelt Road and access to and from Roosevelt Road and the subject property shall conform with the requirements of the Illinois Department of Transportation; the application filed by Owner with the Illinois Department of Transportation shall include and illustrate the proposed improvements including, but not limited to, the right-turn deceleration lane and fully actuated traffic signals with push-button pedestrian crossing signals at the main access drive.

Section 8: GENERAL PROVISIONS:

- A. The Owner may elect to develop the property in phases. Prior to the occupancy of any phase all infrastructure serving such phase and perimeter landscaping serving the entire project shall be complete. Each phase shall include parking, parking lot landscaping, and lighting necessary for the effective utilization of such building space constructed as part of such phase. Future building pads must be graded, seeded, and maintained.

B. Prior to the issuance of any occupancy permit, Owner shall direct to the City the following:

i. A plat of easement pertaining to public utilities constructed on the subject property and shared access with the property commonly known as McDonald's at the northeast corner of Roosevelt and County Farm Roads in accordance with and subject to a certain Agreement made and entered into between Joe Keim Land Corporation and McDonald's Corporation dated June 19, 1989; a copy of this Agreement is on file in the office of the City Clerk. The plat of easement shall provide that the City will maintain the water main and sanitary sewer main within the easement; however, the grant of easement shall specifically recite that the City shall have no responsibility or liability with respect to any restoration of pavement, turf, sidewalk, curb, and gutter within the easement, or adjacent thereto. The plat shall meet the reasonable approval of the Wheaton City Engineer.

The City of Wheaton shall maintain all water mains and sanitary sewers (excluding service lines to buildings) on the subject property; Owner hereby grants permission to the City to enter upon and remain on the subject property for the performance of said maintenance and repairs. In the event the City of Wheaton provides any maintenance or repairs to the water mains or sanitary sewers on the subject property, the City of Wheaton shall exercise reasonable care and caution to minimize the amount of disturbance, damage, or destruction, to improvements upon the easement and on the subject property. The Owner shall be responsible for the restoration of that portion of the subject property involved in the maintenance (i.e., paving, curb, gutter, landscaping, and the like but excluding therefrom damage to buildings or other improvements caused by the negligent or wrongful conduct of the City or its contractors). Owner shall be responsible for all maintenance and repairs to all other utilities on the subject property, including but not limited to, pavement, curb and gutter, storm sewer, storm water storage facilities, and lighting.

ii. Fire lanes shall be designated, as directed by the City of Wheaton, at the expense of the Owner; fire lane locations shall be as designated by the Wheaton Fire Chief. By accepting the benefits of this ordinance and special use permit, the development of the subject property, and using the subject property as provided for in this ordinance,

Owner hereby authorizes the City to enforce compliance with the fire lane designations.

C. Exterior artificial lighting on the subject property shall be of a character and design which directs the illumination generally downward; the quality, character, and location of the artificial lighting shall be subject to the reasonable approval of the Wheaton City Engineer.

D. Outdoor storage of materials for more than 72 consecutive hours shall not be permitted along the rear of the building.

E. In the event Owner fails to comply with the provisions of this Ordinance, the City shall direct written notice of non-compliance to the Owner, directing that the non-compliance with this Ordinance be remedied. In the event the non-compliance with any provision of the Ordinance is not remedied within thirty (30) days following the date said notice is received by Owner, the City shall be entitled to seek specific performance of this Ordinance in a court of competent jurisdiction or, in the case of non-compliance with respect to the construction or maintenance of utilities or storm water storage facilities which are the responsibility of Owner hereunder, the City shall have the option, but not the duty, to perform or have performed on its behalf, any such maintenance, repairs, or construction reasonably necessary to cause such utilities or storm water storage facilities to be brought into compliance with the provisions of this Ordinance. In the event the City shall be required to perform, or have performed on its behalf, any maintenance work, repairs or construction to any utilities or storm water storage facilities located upon the Subject Property, which Owner is obligated under this Ordinance to perform at Owner's expense, the cost incurred by the City as a result thereof, together with the additional sum of ten percent (10%) shall, upon recordation of a notice of lien against the Subject Property, together with notice thereof to Owner, within sixty (60) days of completion of such work, constitute a lien against the Subject Property which may be foreclosed by any action brought by, or on behalf of the City in the Circuit Court of DuPage County, Wheaton, Illinois. In the event the City forecloses any such lien pursuant to litigation duly brought pursuant to the provisions of this Ordinance, Owner covenants and agrees to pay the reasonable attorney's fees incurred by the City as a result of the filing and the prosecution of such litigation.

- F. The City shall issue to Owner all appropriate permits for the access drives identified on the site plan to permit access onto the adjacent public roads, and, as to any road requiring permits from a separate governmental authority, the City shall fully cooperate with Owner in Owner's efforts to obtain such permits from such other governmental authority.
- G. In the event Owner from time to time elects to subdivide any portion of the subject property for the purpose of separating ownership and/or complying with Owner's lender's requirements, each such subdivision shall be reviewed for approval or denial by the City Council only. Any such subdivision shall be approved by the City Council provided all necessary cross easements for access and parking are provided on the face of each such subdivision plat so as to ensure the continuing compliance of each building located upon the subject property with all of the standards and conditions of this ordinance.
- H. As-constructed drawings of all improvements on the subject property shall be furnished to the City prior to the issuance of the last occupancy permit for the final building constructed upon the subject property.
- I. All subsequent approvals required to be obtained by Owner from the City, Assistant City Manager, City Engineer, City Planner, or City Attorney shall be given in a timely manner by such reviewing person or persons provided the materials being reviewed as submitted by Owner are in substantial compliance with the PUD documents and/or other preliminary plans reviewed and approved as a part of this planned unit development as reasonably modified to accommodate final engineering design requirements for the subject property.
- J. This ordinance shall be recorded in the office of J. P. Carney, Recorder of Deeds, DuPage County, Illinois, and shall constitute a covenant running with and binding upon the subject property. The obligations of Owner set forth in this ordinance shall only be enforceable against Owner so long as Owner holds legal title to the subject property, and upon conveyance of legal title to the subject property the City shall look only to each successor Owner for enforcement of this Ordinance.
- K. Except as otherwise expressly provided herein, this Ordinance may be amended from time to time in accordance with the applicable provisions of the Wheaton Zoning Ordinance.

Ordinance E-3730 /Page 9

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Henry J. Henry

ATTEST: Mayor

Chely M. Conaology
City Clerk

Roll Call Vote:

Ayes:

Councilman Gerig
Councilman Eckhoff
Councilwoman Culler
Councilman Maxwell

Nays:

None

Absent:

Mayor Henry

Motion Carried Unanimously

Passed: October 14, 1991
Published: October 15, 1991

685

ORDINANCE NO. F-0575

AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE MAP AND AUTHORIZING ZONING VARIATIONS ON A CERTAIN PIECE OF PROPERTY COMMONLY LOCATED AT 445 AND 495 SOUTH KNOLL STREET - SOUTHWEST CORNER OF COUNTY FARM ROAD AND CHILDS STREET/WINDHAM HOMES, INC.

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, on the property legally described herein within the city limits of Wheaton, Illinois, and commonly known as 445 and 495 South Knoll Street and commonly located on the southwest corner of County Farm Road and Childs Street; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Board of Zoning Appeals on January 9, 2001, to consider the zoning amendment; and the Wheaton Board of Zoning Appeals has recommended approval of the zoning amendment and issuance of the special use permit.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The City of Wheaton adopts and ratifies the findings of fact made and determined by the Board of Zoning Appeals and further makes and determines the following additional findings of fact:

- A. The improvement of Knoll Street beyond the boundaries of the subject property will; provide for the orderly and harmonious development of the City; provide for the coordination of streets with future development; and secure a uniform system of utilities and services.
- B. The improvement of Knoll Street beyond the boundaries of the subject property will promote the public safety and welfare of the City and its residents.
- C. The construction of a sanitary sewer adjacent to the subject property will provide for a uniform system of utilities and services and will promote the public safety and welfare of the City and its residents.
- D. The improvement of Knoll Street beyond the boundary of the subject property and the construction of a sanitary sewer as provided for in this ordinance will benefit real estate adjacent to those street and sewer improvements; accordingly, a recapture agreement imposing reimbursement obligations on the other benefitted real estate is appropriate.

Section 2: The Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, is amended by deleting the following-described property from the R-1 Residential District zoning classification and including it in the O-R Office Research District zoning classification:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Block 3, first addition to Wheaton Park Manor, and Lots 1, 2, 3 and 4 in Wheaton Park Manor, and commonly known as 445 and 495 South Knoll Street, Wheaton, Illinois. P.I.N. Nos. 05-18-307, 001, 002, 003, 007, 008, 012, 013, 014, 015, 024

The full and complete legal description, together with real estate permanent index, numbers will be included in the ordinance signed by the Mayor and City Clerk ("subject property").

Section 3: The zoning provided for in this ordinance and the use and operation of the subject property as an office building shall be subject to the following conditions, restrictions and requirements:

- A. Prior to the issuance of a storm water management permit or building permit, owner/developer shall file with the City final engineering plans; the plans shall be subject to the reasonable approval of the director of engineering.
- B. Any rooftop mechanical units shall be screened from view.
- C. Signage for the office building to be constructed on the subject property shall be monument style and shall not exceed 24 square feet for each sign face; the height of the sign shall not exceed seven feet.
- D. A variation from the provisions of Section 15.2(3) of the zoning ordinance is granted, allowing for the south (side) yard setback to be 10.5 feet, in lieu of 40 feet.
- E. A variation from the provisions of the Wheaton Zoning Ordinance is granted allowing for a 10-foot parking lot setback on the east side of the subject property, in lieu of 15 feet.
- F. Owner/developer shall construct and provide sanitary sewer along that portion of the subject property adjacent to Childs Street and Knoll Street.
- G. Owner/developer shall construct full roadway improvement to Knoll Street between Childs Street and Williams Street, and to Childs Street between County Farm Road and Knoll Street; the roadway improvement shall be in conformance with the provisions of the Wheaton City Code.

H. Prior to the issuance of any storm water management permit or building permit, owner/developer shall file an amended site plan with the City; the site plan shall illustrate the following:

- i. Future motor vehicle ingress and egress to and from the subject property and Knoll Street ("Knoll Street access").
- ii. The Knoll Street access shall be for the benefit of the subject property and the real estate south and east of, and adjacent to, the subject property and north of Williams Street ("adjacent property").
- iii. The final plat for the subject property shall illustrate the future Knoll Street access and a cross access easement allowing motor vehicle traffic into and out of the adjacent property across and along the subject property. The cost of constructing the Knoll Street access, together with interconnection between the subject property and the adjacent property, shall be the responsibility of the owner(s)/developer(s), if any, of the adjacent property. The future Knoll Street access requirement shall remain in effect for a period of 10 years following the date of this ordinance. In the event the adjacent property has not then developed, pursuant to the provisions of the codes and ordinances of the City, this Knoll Street access requirement shall automatically terminate. However, the cross access easement shall remain in perpetuity. The terms and provisions of the cross access easement shall be subject to the reasonable approval of the director of engineering.
- iv. In the event a traffic control signal is warranted and approved for construction at the intersection of County Farm Road and Williams Street, at any time in the future, the owner of the subject property shall be financially responsible for a portion of the cost of the design construction and maintenance, including utility costs, of the traffic control signal. The owner's share of the cost of the traffic control signal shall be based on the number of motor vehicles traveling through the intersection and going to or coming from the subject property, when compared to the total number of motor vehicles going to or coming from the subject property, the commercial property on the east side of County Farm Road between Fapp Circle and Roosevelt Road and the adjacent property as evidenced by a traffic study. All other motor vehicles, generally using County Farm Road, shall not be included in this cost determination. The traffic study shall be subject to the reasonable approval of the director of engineering.

- I. Owner/developer of the subject property may file a recapture agreement with the City, pursuant to the provisions of the City Code. The subjects of the recapture agreement may be those portions of the Knoll Street roadway improvements and the sanitary sewer which benefit real estate other than, or in addition to, the subject property.
- J. Prior to the issuance of any building permit, owner/developer shall furnish a landscape and tree preservation plan prepared in accordance with the requirements of the Zoning Ordinance. The landscape plan shall be subject to the reasonable approval of the Director of Planning.
- K. Prior to the issuance of any site development or building permit, owner shall enter into a Fire Lane Designation and Enforcement Agreement with the City of Wheaton, providing for the designation, maintenance, and enforcement of the fire lane, which is appended and incorporated herein as Exhibit A.
- L. This ordinance, and the conditions, restrictions, and requirements recited herein, shall be considered a declaration of restrictive covenants and shall be binding upon the subject property and its owner, its successors, assigns, and grantees; this ordinance shall be recorded in the office of J. P. Caney, Recorder of Deeds, Du Page County, Illinois.
- M. By application for, and receipt of, any site development or building permit and the commencement of construction of any improvements on the subject property, owner, for himself/itself, his/its successors, assigns, and grantees, thereby agrees to all terms and conditions of this ordinance and declares this ordinance to constitute a covenant running with, and binding, the subject property, in perpetuity.
- N. The construction and development of the improvements on the subject property shall be in full compliance with the preliminary site geometric and signage plan prepared by Farnsworth Group, entitled "A Preliminary Site Geometric Plan: County Farm Business Development, Wheaton, Illinois" revised date January 15, 2001, and further revised pursuant to the provisions of this ordinance; proposed elevation drawings prepared by Robert Juris and Associates, entitled "Windham Office Building" dated October 10, 2000.

Section 4: All ordinances, or parts of ordinances, in conflict with this ordinance are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

Emily M. Condega
City Clerk

John Carr
Mayor

Roll Call Vote:
Ayes:
Councilman Eckhoff
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilwoman Johnson
Councilman Mork
Councilwoman Davenport

Nays:
Absent:

Motion Carried Unanimously

Passed: March 19, 2001
Published: March 20, 2001

R. S. 10-27

10-27

ORDINANCE NO. F-0887

**AN ORDINANCE AMENDING THE WHEATON ZONING MAP
AND GRANTING A SPECIAL USE PERMIT
FOR A BANK, OFFICE AND RETAIL BUILDING-NORTHWEST CORNER OF COUNTY
FARM AND WILLIAMS STREET-FAWELL**

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, to rezone certain real estate from the R-1 Residential zoning district to the C-5 Planned Commercial zoning district and for the issuance of a special use permit to allow the construction and use of a new 12,800 square foot bank, office, retail building consisting of a Suburban Bank branch with 4 drive-thru banking lanes and a coffee store with a drive-thru lane on the first floor, and professional office space on the second floor, all on the property legally described herein within the city limits of Wheaton, Illinois, and commonly located at the Northwest Corner of County Farm Road and Williams Street; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on January 13 and 27, 2004, to consider the zoning amendment and issuance of the special use permit; and the Board has recommended the zoning amendment and issuance of the special use permit;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, is amended by deleting the following-described property from the R-1 Residential District zoning classification and including it in the C-5 Planned Commercial zoning classification:

**LOTS 9, 10, 11, AND 12 IN BLOCK 21 IN WHEATON PARK MANOR, A
SUBDIVISION OF PART OF LOTS 1 AND 2 IN OWNER'S PLAT OF PART OF SECTION
13, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN
AND FRACTIONAL SECTION 18, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID WHEATON
PARK MANOR RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179446, IN DUPAGE
COUNTY, ILLINOIS.**

**LOTS 10, 11, AND 12 IN BLOCK 3 IN FIRST ADDITION TO WHEATON PARK
MANOR, A SUBDIVISION IN SECTION 13, TOWNSHIP 39 NORTH, RANGE 9, EAST
OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
RECORDED MAY 15, 1925 AS DOCUMENT 192981, IN DUPAGE COUNTY,
ILLINOIS.**

**PIN NO. 05-18-307-009, 05-18-307-010, 05-18-307-011, 05-18-307-020-05-
18-307-021, 05-18-307-022, 05-18-307-025**

This property is commonly located at the Northwest Corner of County Farm Road and Williams Street, Wheaton, IL 60187 ("subject property").

Section 2: Pursuant to the Findings of Fact (except those pertaining to the originally requested setback variation) made and determined by the planning and Zoning Board, a special use permit is hereby issued to allow for the construction and use of a new 12,800 square foot bank, office, retail building consisting of a Suburban Bank branch with 4 drive-thru banking lanes and a coffee store with a drive-thru lane on the first floor, and professional office space on the second floor, all on the subject property in full compliance with the site plan prepared by VOA, 224 South Michigan Avenue, Suite 1400, Chicago, IL 60604, dated February 3, 2004, entitled Suburban Bank and Office Center; elevations one thru four, prepared by VOA, received February 6, 2004; and in further compliance with the following conditions, restrictions, and requirements:

1. Owner/developer shall furnish to the City a parking lot lighting plan in accordance with Article 22.5.9 of the City of Wheaton Zoning Ordinance, the plan shall be subject to the reasonable approval of the Director of Planning and Economic Development.
2. Owner/developer shall furnish to the City a final landscape plan in accordance with Article 6 of the City of Wheaton Zoning Ordinance; the plan shall be subject to the reasonable approval of the Director of Planning and Economic Development.
3. Owner/developer shall furnish to the City a sign plan in accordance with Article 23 of the City of Wheaton Zoning Ordinance; the plan shall be subject to the reasonable approval of the Director of Planning and Economic Development.
4. Owner/developer shall furnish to the City a stormwater management plan illustrating stormwater storage upon the surface of the parking facility; the plan shall be subject to the reasonable approval of the Director of Engineering.
5. Owner/developer shall construct public sidewalks along the County Farm Road, Williams Street and Knoll Street frontages of the subject property.
6. Owner/developer shall reconstruct the west portion of Williams Street to City standards.
7. In the event the owner/developer of the County Farm Executive Center fails to proceed with construction of its previously approved development or in the event the Owner/developer of the subject property receives construction permit approval prior to the owner/developer of the County Farm Executive Center, Owner/developer of the subject property shall reconstruct that portion of Knoll Street adjacent to the subject property; the reconstruction shall be in accordance with the standards of the City.
8. The owner/developer shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial compliance with Exhibit "A".
9. In the event a traffic control signal is approved for construction at the intersection of County Farm Road and Williams Street, at any time in the future, the owner/developer of the Subject Property shall be financially responsible for a portion of the cost of the design construction and maintenance, including utility costs, of the traffic control signal. The owner/developer's share of the cost of the traffic control signal shall be based on the number of motor vehicles traveling through the intersection and generated by their use when compared to the total number of motor vehicles going to or coming from the subject property, the commercial property on the east side of County Farm Road between Papp Circle and Roosevelt Road and the adjacent property as evidenced by a traffic study. All other motor vehicles, generally using

R-92-28

Ordinance F-2887
P 3

1089

County Farm Road, shall not be included in this cost determination. The traffic study shall be subject to the reasonable approval of the Director of Engineering.

10. This special use permit, and the conditions, restrictions, and requirements recited herein, shall be considered a declaration of restrictive covenants and shall be binding upon the subject property and its Owner, its successors, assigns, and grantees; this ordinance shall be recorded in the Office of J. P. Carney, Recorder of Deeds, Du Page County, Illinois, at the expense of the Owner.

Section 4: The Owner of the Subject Property shall maintain all landscaping and plantings on the Subject Property so that the number, quality, and character of the landscaping shall not be less than that which is illustrated on the approved landscape plan.

Section 5: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 6: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.


James Carr
Mayor

ATTEST

Ernest M. Corralage
City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: Councilman Johnson

Motion Carried Unanimously

Passed: February 17, 2004
Published: February 18, 2004

