

RESOLUTION NO. R-15-12

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE CITY CLERK TO ATTEST TO THAT CERTAIN REAL ESTATE CONTRACT AND RIDER FOR THE SALE OF 109 N. MAIN STREET, WHEATON, ILLINOIS (TIF 2)**

**WHEREAS**, 109 N. Main Street is a property located within the Wheaton Main Street Redevelopment Project Area and Plan (hereinafter TIF 2); and

**WHEREAS**, 109 N. Main Street (hereinafter the Property) was acquired by the City through eminent domain proceedings and the use of TIF 2 funds; and

**WHEREAS**, an offer to purchase the Property has been extended to the City; and

**WHEREAS**, the pending offer is the only offer that the City has received since taking title to the Property through the eminent domain case in October 2006; and

**WHEREAS**, the Corporate Authorities of the City of Wheaton have determined that it is in the best interest of the City to sell the Property for the pending offer, place it back on the tax rolls and promote the goals and objectives of TIF 2 ; and

**NOW THEREFORE**, be it RESOLVED by the Corporate Authorities of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to that certain Real Estate Contract, Conditions and Stipulations, and Rider (hereinafter Contract) attached hereto and incorporated herein as if fully set forth as Exhibit 1. Staff and the City Attorney are further instructed to undertake any and all necessary acts to effectuate the Contract in accordance with its terms.

ADOPTED this 21<sup>st</sup> day of February, 2012.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Sean Bennett Hagan  
City Clerk

Roll Call Vote:

Ayes: Councilwoman Ives  
Councilman Rutledge  
May Pro Tem Mouhelis  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo

Nays: None

Absent: Mayor Gresk  
Councilman Suess

Motion Carried Unanimously

## REAL ESTATE SALES CONTRACT

1. **Roy Millonzi and Karen Millonzi**, or their Nominee (Purchasers) agrees to purchase at a price of **Two Hundred Thousand and 00/100 (\$200,000.00)** (the "Purchase Price") on the terms set forth herein, the following real estate described in Exhibit A attached hereto and made a part hereof commonly known as 109 N. Main Street, Wheaton, DuPage County, Illinois, after delivery of a current survey, together with all improvements thereon and personal property, if any, attached or pertinent to the real estate (the "Property").
2. **The City of Wheaton**, an Illinois Home Rule Municipal Corporation (Seller), agrees to sell the Property described above, at the above Purchase Price and terms set forth herein, and to convey or cause to be conveyed to Purchaser or nominee title thereto by a recordable general warranty deed, with release of homestead rights, if any, and a proper bill of sale, subject only to: (a) covenants, conditions and restrictions of record; (b) private, public and utility easements and roads and highways, if any; (c) general taxes not yet due and payable, and only such exceptions as may be acceptable to Purchaser after review by Purchaser of the Title Commitment, Title Documents and Survey (as those documents are defined herein).
3. Purchaser will deposit within five (5) days after the date of execution, in escrow with Seller's Attorney the amount of **\$5,000.00** in a cashier's check as earnest money (the "Earnest Money") to be applied on the purchase price, and agrees to pay or satisfy the balance of the purchase price, plus or minus prorations, at the time of closing.
4. Seller, at its sole cost and expense, shall furnish to Purchaser by no later than thirty (30) days after the date of execution a plat of survey dated after the hereof (the "survey") of the property. The Survey shall be prepared by a registered Illinois land surveyor and shall be certified to have been prepared in accordance with the 2011 Minimum Standard Detail Requirements as adopted by ALTA/ACSM effective February 23, 2011 or such comparable standards as may then be in effect and shall include such items from Table A as Purchaser may specify. The certification on the survey shall run to the benefit of Seller, Purchaser, Purchaser's Lenders, if any, CTI, and such other parties as Purchaser shall designate to Seller in writing. Survey shall include area calculations.
5. Closing shall occur on or before **March 12, 2012**, unless extended by mutual agreement of the parties or on any date, if any, to which such time is extended by reason of Paragraph 2 of the Conditions and Stipulations hereafter becoming operative (whichever date is later), unless subsequently mutually agreed otherwise, at the office of Chicago Title Insurance Company 1725 S. Naperville Road, Wheaton, IL, provided title is shown to be good or is accepted by Purchaser.
6. This Contract is contingent upon the receipt by Purchaser on or before March 5, 2012 a firm written commitment for financing evidenced by a note secured by a mortgage or trust deed in the amount of \$150,000.00, or such lesser sum as Purchaser may accept, with interest at a rate not to exceed 6% per annum, amortized over 25 years, with no "points" or service fees. If after making a good faith effort in writing to obtain financing in accordance with such terms, purchaser is unable to obtain such financing and so notifies Seller in writing within the time period described in this paragraph, this Contract shall be terminated at the election of the purchaser, and the purchaser shall thereupon be entitled to the return of all earnest money deposited.

7. The earnest money shall be held by Seller's attorney for the mutual benefit of the parties in its Client Fund Account or Trust Account, without the requirement of investing said funds in an interest-bearing account.

8. The Seller has allowed the Purchaser, including their architect and contractor, to inspect the real estate and its improvements and has provided the Purchasers with a report of its Building and Code Enforcement Department which is attached hereto and incorporated herein as fully set forth as Exhibit 1. The Purchasers acknowledge and covenant that they are purchasing the real estate, its appurtenances and any personality located on or within the real estate in "as is" condition. If there is any other provision of this Real Estate Agreement, Conditions and Stipulations, and Rider to the contrary this "as is" condition shall control.

9. The City at its cost shall upgrade the existing water service line for the Property to a 2 inch water service line up to the buffalo box. All other connections from the buffalo box to the improvement on the real estate shall be made by the Purchasers at the Purchasers' expense.

10. Purchasers may apply for a façade grant for the improvement on the real estate which the City will process in conformance with its Downtown façade grant program. If the application for the façade grant complies with all requirements of the Downtown Façade Grant Program the grant shall be provided by administrative staff in conformance with that program.

11. A duplicate original of this Contract, duly executed by the Seller, shall be delivered to the Purchaser within 5 business days from the date hereof, otherwise, at the Purchaser's option, this Contract shall become null and void and the earnest money shall be refunded to the Purchaser.

This Contract is subject to the Conditions and Stipulations and Rider set forth on the following pages hereof, which Conditions and Stipulations and Rider are made a part of this Contract.

Dated: 2-21-12

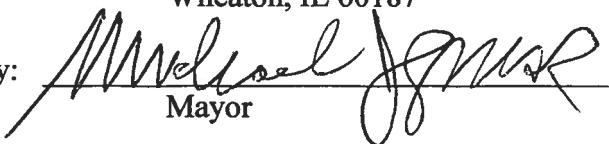
Purchasers: Roy Millonzi and Karen Millonzi  
Address: c/o Joseph R. Fortunato, Jr.  
Momkus Mc Cluskey LLC  
1001 Warrenville Road, #500, Lisle, IL 60532

  
Roy Millonzi  
  
Karen Millonzi

Seller: The City of Wheaton

Address: 303 W. Wheaton Avenue  
Wheaton, IL 60187

By:



A handwritten signature in black ink, appearing to read "Michael J. Morris".

Mayor

## CONDITIONS AND STIPULATIONS

1. Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, by no later than fourteen (14) days after the date of execution, a title commitment (the "Title Commitment") for an owner's title insurance policy (the "Title Policy") issued by CTI in the amount of the Purchase Price, covering title to the Property on or after the date hereof, showing title in the intended grantor subject only to title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which the Seller shall so remove at that time by using the funds to be paid upon the delivery of the deed. Simultaneously with the delivery of the Title Commitment, Seller will furnish Purchaser with legible copies of documents (the "Title Documents") affecting title to the Property or referred to in the Title Commitment or Survey where requested by the Purchasers. The Title Commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Seller shall also furnish Purchaser an affidavit of title in customary form covering the date of Closing and showing title in Seller subject only to the Permitted Exceptions in foregoing items (b) and (c) (Paragraph 2 Real Estate Contract).and unpermitted exceptions or defects in the title disclosed by the Survey, if any, as to which CTI commits to extend insurance in the manner specified in Paragraph 2 below. At Closing, Seller shall deliver or cause to be delivered the Title Policy from CTI (Including all requested endorsements) to Purchaser. Seller and Purchasers shall bear their respective title costs. Purchasers may secure such other title endorsements as they deem necessary at their cost.
2. Purchasers shall, no later than fifteen (15) days following delivery by Seller of the Title Commitment, the Survey and the Title Documents, deliver to Seller written notice of exceptions to title or survey defects or both other than Items (a) and (c), (Paragraph 2 Real Estate Contract) in the preceding paragraph (1) which are not acceptable to Purchaser (herein referred to as "Unpermitted Exceptions"). If Purchaser fails to timely deliver such notice, then the Permitted Exceptions shall be deemed to be all matters appearing on the Title Commitment. Seller shall have thirty (30) days from the date of delivery of written notice from Purchaser setting forth said Unpermitted Exceptions to have such Unpermitted Exceptions removed from the Title Commitment or Survey, as the case may be, or to have CTI commit to insure against loss or damage that may be occasioned by such exceptions or survey defects, and, in such event, the time of Closing shall be thirty-five (35) days after delivery of the Title Commitment or the time expressly specified in Paragraph 5 on Page 1 hereof, whichever is later. Any indemnity or other assurance delivered by Seller to obtain removal or insurance over an unpermitted exception must be satisfactory to Purchaser. If Seller fails to have the exceptions removed or to correct any survey defects, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions or survey defects within the specified time, Purchaser may terminate this Contract. If Purchaser does not so elect, this Contract shall become null and void without further action of the parties and the Earnest Money, together with all interest accrued thereon, shall be returned to Purchasers. In no circumstance shall the closing occur as a result of the conduct of the Purchaser later than May 1<sup>st</sup>, 2012 without agreement between the Seller and Purchaser. In this circumstance the Real Estate Contract shall become null and void and shall be without effect or further liability of the City to the Purchaser.

3. If applicable General taxes and other similar items shall be adjusted ratably as of the time of Closing. The General taxes shall be prorated on the basis of 105% of the most recent ascertainable taxes. All prorations shall be final unless otherwise provided herein. Seller shall verify that there will exist on the date of closing no leases or tenancies; at the election of Purchaser, assignable insurance policies, if any, shall then be assigned to Purchaser. If applicable, Seller shall pay the amount of any stamp tax imposed by state and county law on the transfer of the title, and shall furnish a completed Real Estate Transfer Declaration signed by the Seller or the Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois and shall furnish any declaration signed by the Seller or the Seller's agent. The parties acknowledge and agree that this transaction is exempt from the imposition of local municipal transfer tax, and the parties shall cooperate in the documentation on or before closing of such understanding, including the execution of any required transfer tax exemption forms.
4. This sale shall be closed through an agency escrow with Chicago Title Insurance (CTI).
5. Time is of the essence of this Contract. All notices herein required shall be in writing and shall be served on the parties in the manner set forth in Paragraph R-10 of the Rider.
- 6.. Seller represents that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller will furnish a Section 1445 Certification to Purchaser at Closing.

**RIDER ATTACHED TO AND MADE A PART OF THAT CERTAIN  
REAL ESTATE SALES CONTRACT BY AND BETWEEN  
ROY MILLONZI and KAREN MILLONZI, AS PURCHASER, AND  
THE CITY OF WHEATON, AS SELLER**

**R-1. Conflict.** The captioned Real Estate Sales Contract is hereby modified, amended and supplemented as herein below set forth. As so amended, said Real Estate Sales Contract is herein called "this Agreement". Except as to the "as is" provision in paragraph 8 of the Real Estate Contract insofar as the terms and provisions of this Rider purport to modify or amend or are in conflict with the terms and provisions of said Real Estate Sales Contract, the terms and provisions of this Rider shall govern and control. In all other respects, the terms and provisions of said Real Estate Sales Contract shall remain in full force and effect and unmodified.,

**R-2 Access.** Purchaser, its authorized agents, employees, consultants and representatives shall have the right of reasonable access to and entry upon the Property upon reasonable notice to the Seller's Director of Code Enforcement and Building [Joseph Kreidl] with full right to, at the sole cost and expense of Purchaser: (a) inspect the Property; and (b) conduct all surveys, inspections and tests on the Property as Purchaser shall deem necessary or desirable (collectively, the "Studies"). Purchaser hereby agrees to indemnify and hold the Seller harmless from and against: (i) any and all claims, actions, damages or expenses arising from the Studies conducted on the Property prior to the Closing; and (ii) any mechanic's liens filed against the Property resulting from the Studies conducted prior to the Closing.

**R-3. Representations, Warranties & Covenants.** To induce Purchaser to enter into this Agreement, and as a condition precedent to Purchaser's obligation to close the contemplated transaction, Seller hereby represents, warrants and covenants to Purchaser that as of the date hereof and as of the date of the Closing, that:

(i) There are no judicial or administrative actions, claims, causes of action, litigation or other legal proceedings, including, without limitation, condemnation or change in zoning classification actions (except as expressly provided for under Paragraph R-3 hereof), pending, or to the best of Seller's knowledge, threatened against Seller or the Property.

(ii) Neither the execution nor delivery of this Agreement, consummation of the transaction contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflict with or will result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing, or results in the creation of a lien, claim, charge or encumbrance of the Property other than those matters approved by Purchaser pursuant to the terms hereof. This Agreement and all documents to be executed pursuant hereto by the parties hereto are and shall be binding upon the enforceable against Seller in accordance with their respective terms; and Seller has the requisite power and authority to enter into this Agreement and to consummate the subject transaction, and all formal requirements necessary or required by applicable Laws for Seller to enter into this Agreement and to perform hereunder have been complied with.

(iii) That upon closing, the sole undisputed physical possession of the real estate will be delivered to Purchaser free and clear of all leases, tenants and/or tenancies, and there are no parties in possession of the real estate, nor are there any parties with possessory rights in the real estate other than Seller. Except for Seller, no person, firm, or entity has any right to possession or occupancy of the Property, or any part thereof, or right of first refusal or first offer or any option to acquire title to the Property or any part thereof or interest therein.

(iv) To the best of the City's knowledge the Property is not located in any flood hazard, flood plain, wetland or other special environmentally protected area.

(v) No labor, material or other services have been or are being furnished by or at direction of Seller, its agents, employees, representatives, in or about the Property, or any part thereof, which have not been fully paid for.

(vi) From and after the date hereof, Seller shall operate and manage the Property in the same manner as it has been operating and managing the Property and agrees not to sell, transfer, convey or encumber or cause to be sold, transferred, conveyed or encumbered, other than as is consistent with Purchaser's Intended Use, or otherwise performing or permitting any act or deed which shall diminish, encumber or affect Purchaser's rights in and to the Property or prevent Seller from performing fully its obligations hereunder. There are no executory agreements pertaining to the Property and no obligations burdening the Property created by any so-called "recapture agreement" involving refund for sewer or water extension or other improvements to any sewer or water systems, oversizing, utility, lighting or like expenses or charge for work or services done upon or relating to the Property and there are no unexecuted paving agreements or undertaking or bond with any governmental agency respecting construction of any roadways or other improvements contemplated to serve the Property or street lighting which will burden the Property or any owner of the Property.

(vii) Seller hereby represents and warrants to Purchaser that the current zoning classification for the Property is C-2, and that said C-2 zoning classification includes, among other permitted uses, the operation of a commercial hair salon and spa as well as other commercial uses.

Seller shall deliver to Purchaser at Closing a statement signed by Seller certifying that all representations, warranties and covenants set forth in this Paragraph R-3 are true and correct as of the date of the Closing with the same effect as though made on the date of the Closing and shall survive the Closing.

**R-4. Brokerage.** Seller represents and warrants to Purchaser that it has dealt with no broker or finder with respect to the sale and purchase hereunder except for Broker, whose commission shall be paid by Purchaser. Seller hereby indemnifies and agrees to save, defend and hold Purchaser harmless from and against any loss, cost, damage, claim, liability or expense (including, but not limited to, reasonable attorneys' fees and litigation expenses) suffered by Purchase as a result of Seller's breach of the foregoing warranty. Purchaser represents and warrants to Seller that it has dealt with no

broker or finder with respect to the sale and purchase hereunder except Broker, and Purchaser hereby indemnifies and agrees to save, defend and hold Seller harmless from and against any loss, cost, damage, claim, liability or expense (including, but not limited to, reasonable attorneys' fees and litigation expenses) suffered or incurred by Seller as a result of Purchaser's breach of the foregoing warranty.

**R-5. Default.** If this Agreement is terminated without Purchaser's fault, Purchaser's sole and exclusive remedy shall be return of all Earnest Money. If this Agreement is terminated as a result of Purchaser's default hereunder, then, the Earnest Money, together with all accrued interest thereon, if any, shall be paid to the Seller as liquidated and agreed damages and in full satisfaction of all claims of Seller hereunder. The parties recognize the forfeiture of said monies to be liquidated damages recognizing that it would be difficult and impracticable, under the presently known and anticipated facts and circumstances, to ascertain and fix actual damages that Seller would incur as a result of a default by the Purchaser. Forfeiture of the Earnest Money, with all accrued interest thereon, is Seller's sole remedy. Neither party hereto shall be considered in default under this Agreement until such time as the defaulting party has failed to cure a default within ten (10) days following receipt of written notice from the non-defaulting party specifying the nature of and proposed cure for said default. The obligations described in this Paragraph R-5 shall survive the termination of this Agreement.

**R-6. Successors and Assigns.** This Agreement shall be binding in all respects on and shall inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns. Purchaser has the right to designate in writing a nominee to whom Seller agrees to convey title to the Property at the time of Closing. Said nominee may, but need not, be an Illinois land trust. Purchaser may assign this Agreement to a person or entity controlled by or affiliated with Purchaser. Any other assignment by the Purchasers shall be subject to the approval of the Corporate Authorities of the Seller in their sole discretion.

**R-7. Entire Agreement.** This Agreement represents the entire agreement between the parties hereto and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for either party in connection with the negotiation of the terms hereof. No future modification, termination or amendment of this Agreement may be made, except by written agreement executed by the parties hereto. No party's failure to insist upon the strict performance of any covenant, duty, or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such right or remedy, term or condition.

**R-8. Notices.** All elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by personal delivery, overnight courier with evidence of receipt, certified or registered mail, return receipt requested, postage prepaid or by facsimile transmission (provided that an original of said election notice or communication is sent simultaneously by any of the other designated methods) addressed:

A. In the case of Seller, address to:  
The City of Wheaton  
c/o City Manager  
303 W. Wesley Street  
Wheaton, IL 60187  
Telephone: 630-260-2000  
Facsimile:

With a copy to: Walsh, Knippen , Knight and Pollack  
2150 W Manchester Road  
Suite 200  
Wheaton, Il 60187  
Telephone 630-462-1980  
Fax 630-462-1984

B. In the case of Purchaser, address to:  
Roy Millonzi and Karen Millonzi  
c/o Joseph R. Fortunato, Jr.  
Momkus McCluskey LLC  
1001 Warrenville Road, #500  
Lisle, IL 60532  
Telephone: 630-434-0400 ext. 173  
Facsimile: 630-434-0444  
E-mail: jfortunato@momlaw.com

Or at such other addresses as the parties may designate to the other by written notice in the manner herein provided. Any such notices or election shall be effective upon delivery, if personally delivered or delivered by facsimile, one (1) day after delivery to the overnight courier or two (2) days after depositing same in the United States mail.

R-9. **Possession.** Seller agrees to deliver sole and exclusive possession of the Property to Purchaser on the date of Closing.

R-10. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The proper venue for any and all disputes shall be the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

R-11. **Attorneys' Fees.** If either party shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses and court costs, and in the absence of the adjudication of a prevailing party, all said fees and expenses shall be paid in accordance with any settlement agreement.

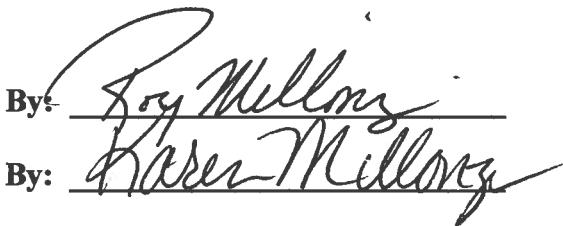
R-12. **Miscellaneous.** Captions of paragraphs herein are inserted for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular paragraphs to which they refer. All provisions of this Agreement which involve obligations, duties or rights which have not been determined or ascertained as of the date of the Closing and all representations, warranties and indemnifications made hereunder shall be deemed to survive the Closing. In addition to all other requirements contained in this Agreement, Seller shall deliver at Closing such other documents, instruments and certifications as may be reasonably required by Purchaser or CTI to fully effectuate and consummate the subject transaction. The terms and conditions of this Agreement shall not merge with, be extinguished or otherwise affected by any subsequent conveyance or instrument by or between Seller and Purchaser hereto unless such instrument shall specifically so state and be signed by Seller and Purchaser.

**IN WITNESS WHEREOF**, Seller and Purchaser have executed this Agreement this \_\_\_\_\_ day of November, 2011.

**PURCHASERS:**

By:

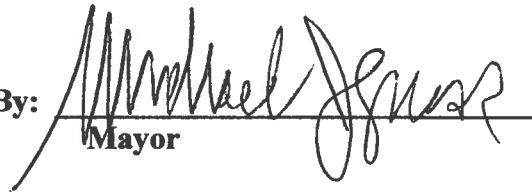
By:



**SELLER:**

By:

Mayor



**ATTESTATION:**

By:



City Clerk

**Exhibit A**

**Legal Description**