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ORDINANCE NO. F-0017

AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN PROPERTY
FOR MUNICIPAL PURPOSES BY THE CITY OF WHEATON, ILLINOIS

WHEREAS, the City of Wheaton, Illinois (the "City"), on March 1, 1993 passed and approved Ordinance No. E-3888 entitled, "An Ordinance Proposing the Designation of a Redevelopment Project Area and Calling a Public Hearing in Connection Therewith;" and

WHEREAS, the City on October 18, 1993 passed and approved Ordinance No. E-3903 entitled, "An Ordinance of the City of Wheaton, DuPage County, Illinois, approving a Tax Increment Redevelopment Plan and Redevelopment Project for the Downtown Wheaton Redevelopment Project Area;" and

WHEREAS, the City on October 18, 1993 passed and approved Ordinance No. E-3904 entitled, "An Ordinance of the City of Wheaton, DuPage County, Illinois, Designating the Downtown Wheaton Redevelopment Project Area a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act;" and

WHEREAS, the City on October 18, 1993 passed and approved Ordinance No. E-3905 entitled, "An Ordinance of the City of Wheaton, DuPage County, Illinois, Adopting Tax Increment Allocation Financing for the Downtown Wheaton Redevelopment Project Area;" and

WHEREAS, the City on March 21, 1994 passed and approved Ordinance No. E-3974 entitled, "An Ordinance Authorizing the Negotiation for the Acquisition of Certain Properties Collectively Known as 'Redevelopment Project Sites, Phase I and Phase II' for Municipal Purposes by the City of Wheaton, Illinois;" and

WHEREAS, the City has adopted Resolutions R-06-94 and R-07-94 authorizing the City Manager to negotiate redevelopment agreements with prospective developers of certain sites within the Downtown Wheaton Redevelopment Project (the "Project"); and

WHEREAS, the City acting through the City Manager and the City Staff has proceeded to take steps to carry out the directives of the various ordinances and resolutions related to the proposed redevelopment of the areas described in the various ordinances pertaining to the Project area; and

WHEREAS, the City has the authority pursuant to the statutes of the State of Illinois, specifically pursuant to 65 ILCS 5/11-74.4-4(c) (1992), to acquire real estate, by purchase, donation, lease or eminent domain, located within the Project area in order to achieve the objectives of the redevelopment plan and project; and

WHEREAS, the City has found that it is necessary to acquire the parcel of real estate described on Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, the City has negotiated an agreement to purchase said real estate with the owner thereof, said agreement reached under the threat of the exercise of the City's eminent domain authority.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, as follows:

Section 1: That the Mayor and the City Clerk of the City are hereby authorized to execute and attest the "Purchase and Sale Agreement" attached hereto as Exhibit "B" and the "Parking Agreement" attached hereto as Exhibit "C" and incorporated herein, and all other documents necessary to effect the conveyance of said real estate to the City.

Section 2: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed and Approved by the Mayor and City Council of the City of Wheaton, Illinois, this 18th day of March, 1996.

ATTEST:

Emily M. Connelley
City Clerk

James Carr
Mayor

Ayes:

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

Nays:

None

Absent:

Councilwoman Culler

Motion Carried Unanimously

Passed: March 18, 1996

Published: March 19, 1996

EXHIBIT "A"

PARCEL 1: THE SOUTH 148.0 FEET OF THE WEST 57.0 FEET OF THE SOUTHEAST 1/4 OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: THE SOUTHEAST 1/4 (EXCEPT THE SOUTH 148.0 FEET THEREOF AND EXCEPT THE NORTH 23.63 FEET THEREOF) OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: THE EAST 22 (EXCEPT THE NORTH 23.63 FEET THEREOF) OF THE SOUTHWEST 1/4 OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-16-301-040

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is entered into this 18th day of March, 1996, by and between NBD BANK, Successor Trustee under Trust Agreement dated October 27, 1988 and known as Trust Number 5191-WH, of 211 South Wheaton Avenue, Wheaton, Illinois 60187 (the "Seller"), RJN Front Street Partnership, an Illinois general partnership, Seller's Beneficiary, (the "Beneficiary") and the CITY OF WHEATON, an Illinois Municipal Corporation, having an office at 303 West Wesley Street, P. O. Box 727, Wheaton, Illinois 60187 (the "Buyer").

RECITALS:

A. Seller is the owner of the land (the "Land") and all the improvements located thereon located at 215 West Front Street, Wheaton, Illinois 60187 (the Land and Improvements are collectively referred to herein as the "Property"). The Property is legally described on Exhibit "A," attached hereto.

B. Seller desires to sell the Property to Buyer, and Buyer desires to buy the Property from Seller, on the terms and subject to the conditions of this Agreement.

THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I

PURCHASE AND SALE

1.01 Agreement to Buy and Sell. Subject to the terms and conditions of this Agreement, Seller will sell to Buyer, and Buyer will purchase from Seller, good and marketable title to the

Property subject only to the Permitted Exceptions which are set forth on Exhibit "B," attached hereto.

1.02 Purchase Price. The purchase price ("Purchase Price") for the Property will be One Hundred Fifty Thousand Dollars (\$150,000.00).

1.03 Payment Terms. At Closing, Buyer shall pay to Seller, the Purchase Price, plus or minus prorations provided for under this Agreement, and less other credits to which Buyer is entitled under the terms of this Agreement, in United States funds, by cashier's check or wire transfer of immediately available funds.

ARTICLE II

CONDITIONS TO CLOSING

2.01 Approval by Buyer's City Council. This Agreement, and all of Buyer's obligations hereunder, are subject to the condition that within ten (10) business days from execution of this contract by the Seller, Buyer's City Council approves this Agreement and authorizes Buyer to complete the transaction described herein. If Buyer's City Council does not approve this Agreement and authorize Buyer to complete the transaction described herein, Buyer will so notify Seller in writing whereupon this Agreement will terminate without further action of the parties.

ARTICLE III

PRE-CLOSING MATTERS

3.01 Title Commitment. Within fifteen (15) days from the date of this Agreement, Seller will deliver to Buyer, a commitment for an owner's title insurance policy ("Title Commitment") issued by Chicago Title Insurance Company (the "Title Company") in the amount of the Purchase Price, covering title to the Property on or after the date of this Agreement, showing title in the intended grantor,

subject only to the general exceptions contained in the policy, the Permitted Exceptions and title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at Closing and which Seller will so remove or cause to be removed at Closing by using funds Buyer will pay upon delivery of the deed.

3.02 Survey. Seller will have no obligation to provide a survey of the Property to Buyer.

3.03 Correction of Title Defects. The Title Commitment will be conclusive evidence of title as therein shown. If the Title Commitment is subject to any exception other than an exception described in Section 3.01 of this Agreement (an "Unpermitted Exception"), Seller will have until the Closing to have the Unpermitted Exceptions removed from the Title Commitment, or to have the Title Company commit to insure against loss or damage that may be occasioned by the Unpermitted Exceptions, and Seller will use its best efforts to have the Unpermitted Exceptions removed or insured over. If Seller fails to have Unpermitted Exceptions removed or insured over within the time provided above, Buyer will have the right (i) to terminate this Agreement, or (ii) to close this transaction and accept title subject to the Unpermitted Exceptions that have not been removed, corrected, or insured over, without reduction in the Purchase Price.

ARTICLE IV

APPORTIONMENT OF COSTS

4.01 Real Estate Taxes. Seller warrants that the 1994 general real estate taxes are paid. The 1995 and subsequent general real estate taxes shall not be prorated and no proration credit shall be granted. However, Seller and/or Seller's Beneficiary hereby agrees to pay the 1995 real estate taxes when they become due and payable in 1996 and shall provide Buyer with proof of said payments

within fifteen (15) days of payments. Further, Seller and/or Seller's Beneficiary agrees that upon issuance of the 1996 tax bill, Seller's Beneficiary shall remit within thirty (30) days of receipt of a copy of the tax bill from Buyer, its pro-rata share of the 1996 taxes. The lessee of the premises, RJN Group, Inc., shall further guarantee the payment of such taxes.

4.02 Other Proratable Items. Water and sewer charges, if any, will be apportioned as of the Closing Date. Meters for water, electric, telephone and all other utilities and for fuel, will be read as of the Closing Date, and Seller will pay all final bills. Charges and payments under service contracts will be prorated as of the Closing Date.

4.03 Title, Recording Costs. Buyer will pay any fee the Title Company charges for issuing the Title Commitment, including any date down fee, and also including premiums for the Owner's Title Insurance Policy. Seller will pay any separate title exam charges and the recording fees for any mortgage or other encumbrance releases. Buyer will pay the premiums for extended coverage (if the Buyer elects to procure extended coverage) and any endorsements to the Owner's Title Insurance Policy that Buyer requests. Buyer will also pay all loan policy premiums, if any, and recording fees for the deed conveying the Property, Buyer's mortgage documents, if any, and the Disclosure Document referred in to Section 5.02(i) hereof.

ARTICLE V

CLOSING

5.01 Closing Date and Location, Escrow. Subject to satisfaction of the conditions set forth in this Agreement, Seller and Buyer will close this transaction within fourteen (14) business days of delivery of a signed contract from the Buyer to Seller's attorney or a date earlier mutually agreed upon by the parties,

(the "Closing Date"), at the offices of Chicago Title Insurance Company, Wheaton, Illinois, at a time mutually acceptable to Seller and Buyer. In this Agreement, the term "Closing", refers to Seller's conveyance of title to the Property to Buyer. Closing will take place through a New York style deed and money escrow with the Title Company serving as escrow agent (the "Escrow Agent"). Prior to the Closing Date, Seller and Buyer will execute the standard form of New York style deed and money escrow instructions then in use by the Escrow Agent, modified as necessary to conform to the terms of this Agreement. Seller and Buyer will each pay one-half (1/2) the escrow fee and Buyer shall pay any premium assessed for a New York style closing. Buyer will pay the cost of any separate money lender's escrow. Seller and Buyer may extend the Closing Date by agreement.

5.02 Seller's Closing Documents. At Closing, Seller will deposit with the Escrow Agent for delivery to Buyer, the following documents:

(a) A recordable Trustee's Deed in form reasonably acceptable to Buyer's counsel and the Title Company, conveying good and marketable title to Buyer in fee simple, free and clear of all liens and encumbrances, except the Permitted Exceptions.

(b) An ALTA Owner's Title Insurance Commitment ("Title Commitment") issued by the Title Company in the form customarily used by the Title Company for property similar to the Property, in the amount of the Purchase Price, insuring that Buyer or Buyer's assignee has marketable, good, insurable and indefeasible fee simple title to the Property, subject only to the general exceptions of the Policy, the Permitted Exceptions, and any other exceptions Buyer has elected to accept.

(c) Payoff letters issued by the holders of all mortgages or trust deeds of record, if any, setting forth the

amount(s) required to release the Property from such mortgages or trust deeds, or release deed(s) sufficient to release such mortgages or trust deeds of record as to the Property.

(d) A duly executed Affidavit of Title, covering the Closing Date, subject only to the Permitted Exceptions and Unpermitted Exceptions which either the Title Company commits to extend insurance for, or which Buyer has elected to accept title subject to, as provided in Section 3.03.

(e) ALTA Statements, executed in duplicate, by both Seller and Buyer.

(f) Executed real estate transfer tax declarations.

(g) Executed Closing Statement.

(h) Executed FIRPTA Statement certifying that Seller is not a "foreign person," "foreign corporation," "foreign partnership," or "foreign estate," as those terms are defined in Section 1445 of the Internal Revenue Code and the income tax regulations promulgated thereunder.

(i) An Environmental Disclosure Document fully completed and signed by Seller, in recordable form, and in form sufficient to satisfy the Responsible Property Transfer Act of 1988 (765 ILCS Sections 90/1 - 90/7) ("RPTA"). Seller and Buyer waive the requirement of RPTA that the Disclosure Document be delivered to Buyer within thirty (30) days after execution of this Agreement. Seller and Buyer each acknowledges that they are aware of the purpose and intent of the Disclosure Document.

(j) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

(k) RJN Group Inc.'s guarantee to pay the 1995 and 1996 real estate taxes per the prorations.

5.03 Buyer's Closing Documents. At Closing, in addition to payment of the Purchase Price as provided in Section 1.03 hereof, Buyer will deposit with the Escrow Agent for delivery to Seller, the following documents:

- (a) ALTA Statements in duplicate.
- (b) Executed counterpart of Seller's Closing Statement.
- (c) A copy of the ordinance, resolution or other formal action of Buyer's City Council, approving this Agreement and authorizing Buyer to complete the transaction described herein, certified by an authorized officer of Buyer as being a true and complete copy of the original and as being in effect and unamended.
- (d) Such other documents as reasonably may be required to consummate the transaction contemplated by this Agreement.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

6.01 Seller's Representations and Warranties. To induce Buyer to enter into this Agreement, Seller makes the following representations and warranties (all of which representations and warranties will be deemed to have been made again at the time of the Closing, and all will survive the Closing), and Seller's obligations under Section 6.03 to indemnify and hold Buyer harmless from any and all loss, expense or liability Buyer may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations and warranties, will be applicable.

(a) Seller has the right and authority to perform hereunder without obtaining any consents from governmental authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Seller is subject.

(b) Seller will at all times on and after the date of this Agreement, act with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform its obligations under this Agreement.

6.02 Buyer's Representations and Warranties. To induce Seller to enter into this Agreement, Buyer makes the following representations and warranties (all of which representations and warranties will be deemed to have been made again at the time of Closing, and all will survive the Closing), and Buyer's obligations under Section 6.03 to indemnify and hold Seller harmless from any and all loss, expense or liability Seller may suffer or incur, including reasonable attorneys' fees and court costs, as a result of any inaccuracy in any of such representations and warranties, will be applicable.

(a) Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois, with full power and authority to enter into and carry out the terms and provisions of this Agreement. The execution and performance of this Agreement and the terms and provisions hereof by Buyer are not inconsistent with, and do not result in the breach of any terms of Buyer's charter or any agreement or instrument to which Buyer is a party or by which Buyer may be bound.

(b) Buyer has the right and authority to perform hereunder without obtaining any consents from governmental

authorities or others except as expressly provided herein. The transactions herein contemplated will not constitute a violation of any applicable law, rule, regulation, ordinance, judgment, order or decree of any governmental entity or court to which Buyer is subject.

(c) Buyer will at all times on and after the date of this Agreement act with diligence and in good faith to satisfy any contingencies remaining unsatisfied from time to time, and to perform its obligations under this Agreement.

(d) Buyer has passed all appropriate ordinances in accordance with law, to carry out and to be bound by the provisions of this Agreement.

(e) The property currently located at 200 West Front Street, Wheaton, Illinois, conforms to the current zoning requirements with regard to parking. Further, the City represents and warrants that the building as it now exists at 200 West Front Street will not, under current zoning ordinances, become a non-conforming use due to the fact that the building does not have its own parking.

6.03 Survival of Representations and Warranties; Indemnification. The representations and warranties of the parties will be deemed to be continuing representations and warranties up to and including the Closing Date, with the same force and effect as though such representations and warranties had been made as of Closing. The representations and warranties of the parties will further survive the Closing, will not merge with any deed of conveyance, and will be continuing commitments and obligations of the parties hereto following the Closing Date, subject to any applicable statutes of limitations. Seller and Buyer agree to reimburse and indemnify each other (and Seller's officers, directors, members, employees, agents, successors and assigns, and

Buyer's employees, agents, successors and assigns will also by reimbursed and indemnified) from and against all liability, damages and losses whatsoever, including reasonable attorneys' fees and court costs, resulting from any misrepresentation, breach of warranty, or breach of covenant made by the indemnifying party in this Agreement or in any document, certificate or exhibit given or delivered to the other pursuant to this Agreement.

ARTICLE VII
PARKING SPACES

7.01 Parking Agreement. Seller, Seller's Beneficiary and Buyer shall enter into the Parking Agreement attached hereto and made a part hereof as Exhibit "C." The Parking Agreement shall be signed by the parties and exchange contemporaneously at closing.

ARTICLE VIII
POSSESSION

8.01 Delivery at Closing. Seller will deliver possession of the Property to Buyer at Closing. Any personal property not removed by Seller at the time of delivery of possession will be deemed abandoned, whereupon title thereto will pass to Buyer as if by Bill of Sale, and Buyer will have the right to dispose of such personal property in any manner Buyer chooses, at Buyer's expense. Seller will terminate any existing tenancies affecting the Property prior to or as of the Closing Date.

ARTICLE IX
BROKERS

9.01 No Brokers. Seller and Buyer represent and warrant to each other that they have dealt with no brokers or real estate agents in connection with the transaction described in this Agreement.

9.02 Indemnity. Seller and Buyer will indemnify each other against all loss, cost, damage and expense the other may incur as the result of a claim for commission, fee or other compensation made by any broker or real estate agent by reason of the transaction described in this Agreement, where such claim is based on dealings or alleged dealings by such broker or agent with the indemnifying party.

9.03 Survival. The representations and warranties of Seller and Buyer, and their agreements contained in this Article IX, will survive the Closing or other termination of this Agreement.

ARTICLE X MISCELLANEOUS

10.01 Notices. Any notice required or permitted to be given under this Agreement will be in writing and will be deemed to have been given when sent by telefacsimile (provided such telefacsimile is followed by the mailing of a "hard copy" of such notice in the United States mail, first class postage, within one (1) business day after the telefacsimile is sent) to the telefacsimile number provided below for the intended recipient of such notice, or when delivered personally or on the date deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addresses as follows:

If to Seller:	NBD Bank, Successor Trustee under Trust Agreement dated October 27, 1988 and known as Trust Number 5191-WH 211 South Wheaton Avenue Wheaton, Illinois 60187
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With a copy to:	Alan H. Garfield Garfield & Merel, Ltd. 15th Floor 211 West Wacker Drive Chicago, Illinois 60606 Telefacsimile No.: 312-332-1741
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If to Buyer: City of Wheaton
303 West Wesley Street
P. O. Box 727
Wheaton, Illinois 60187
Attention: Donald B. Rose
City Manager
Telefacsimile No.: 708-260-2017

With a copy to: Stephen D. Helm
Steve Helm & Associates
804 North Washington Street
Naperville, Illinois 60563
Telefacsimile No.: 708-369-8661

or to such other address as a party may from time to time specify in writing to the other parties in accordance with the terms hereof.

10.02 Amendment. This Agreement cannot be amended or terminated except by written instrument signed by all the parties hereto.

10.03 Waiver. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, will constitute a waiver thereof. Any party hereto, by notice to the other parties, may, but will be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of the other parties hereto. No waiver will affect or alter any other covenant, agreement, term or condition of this Agreement, all of which shall continue in full force and effect.

10.04 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

10.05 Governing Law. This Agreement has been entered into in the State of Illinois and will be interpreted under and governed by

the laws of the State of Illinois.

10.06 Assignment. Buyer may not assign this Agreement, or any of Buyer's rights hereunder, nor may Buyer delegate its duties, without first obtaining Seller's written consent, which Seller may withhold in its absolute discretion. This paragraph shall not apply to the Parking Agreement attached hereto and made a part hereof as Exhibit "C."

10.07 Binding Effect. Without limiting the provisions of Section 10.06, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

10.08 Prior Agreements. This Agreement (including the exhibits attached hereto) is the entire agreement between Seller and Buyer and supersedes in its entirety all prior agreements and understandings relating to the Property. The exhibits attached hereto are a material part of this Agreement.

10.09 Time of the Essence. Time is of the essence of the performance of each of the obligations of Seller and Buyer.

10.10 Waiver of Inverse Condemnation Claim. Seller releases Buyer from any claim Seller may have that Buyer's acquisition of the Property pursuant to this Agreement is an inverse condemnation of any property that Seller owns that is adjacent to the Property. Seller hereby waives any damage to the remainder claim Seller may have and further waives any relocation claim Seller may have as a result of this settlement.

10.11 Eminent Domain Authority. The Seller and Buyer acknowledges that Seller's sale of the Property to Buyer pursuant to this Agreement is made under threat of Buyer's eminent domain authority. Seller and Buyer have entered into this Agreement as a good faith settlement to avoid the filing of an eminent domain

action with respect to the Property.

10.12 Beneficiary Disclosure. Seller has complied with 50 ILCS 105/3.1, requiring the disclosure of the identity of every owner and beneficiary having any interest, real or personal, in the Subject Property, and every shareholder entitled to receive more than seven and one-half (7 1/2%) percent of the total distributable income of any corporation having any interest, real or personal, in such property. Said disclosure is attached hereto and made a part hereof as Exhibit "D."

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

SELLER:

NBD BANK, Successor Trustee under
Trust Agreement dated October 27,
1988 and known as Trust Number
5191-WH

EXONERATION PROVISION REGARDING
ANY LIABILITY OF NBD BANK ATTACHED
HERETO IS HEREBY EXPRESSLY MADE A
PART HEREOF.

BY:

ATTEST:

Dennis M. Sackman
TRUST OFFICER
John C. Sloan
Deputy Cashier
3-12-96
Date

SELLER'S BENEFICIARY:

RJN Front Street Partnership,
an Illinois General Partnership

BY:

Richard W. Vozz
Its General Partner

BY:

Olaf Hollenbeck
Its General Partner
March 6, 1996
Date

BUYER:

CITY OF WHEATON, an Illinois
Municipal Corporation

BY: _____

James Carr

ITS: _____

Mayor

Date

March 18, 1996

PARCEL 1: THE SOUTH 148.0 FEET OF THE WEST 87.0 FEET OF THE SOUTHEAST 1/4 OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1893 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: THE SOUTHEAST 1/4 (EXCEPT THE SOUTH 148.0 FEET THEREOF AND EXCEPT THE NORTH 23.63 FEET THEREOF) OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1893 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 3: THE EAST 22 (EXCEPT THE NORTH 23.63 FEET THEREOF) OF THE SOUTHWEST 1/4 OF LOT 2 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1893 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 08-16-301-040

EXHIBIT A

- (a) General real estate taxes for the year 1995 and subsequent years.
- (b) The land lies within the Wheaton Sanitary District which has accepted federal grants for sewage treatment works pursuant to Public Law 92-500. Federal law requires a user charge system separate from general ad valorem property taxes.
- (c) The land lies within the boundaries of a special service area as disclosed by ordinances recorded as Documents R92-253677 and R92-253678, and is subject to additional taxes under the terms of said ordinances and subsequent related ordinances.
- (d) Grant of Easement made by Wheaton National Bank, as Trustee under Trust Agreement dated November 30, 1971 and known as Trust Number 1751 to the City of Wheaton, an Illinois Municipal Corporation, recorded May 21, 1974 as Document R74-24383 an easement for alley purposes only, over, across and upon the following described property, to wit:

The South 8 feet of the North 31.63 feet of the South East Quarter of Lot 2 in Block 8 in the original Town of Wheaton, Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

- (e) Grant of Easement made by Hawthorne Bank of Wheaton, as Trustee under Trust Agreement dated May 31, 1972, known as Trust Number 1-158 to the City of Wheaton, an Illinois Municipality Corporation, recorded May 7, 1974 as Document R74-21523, an easement for alley purposes only, over, across and upon the following described property, to wit:

The South 8 feet of the North 31.63 feet of the East 22 feet of the Southwest Quarter of Lot 2, Block 8 in the original Town of Wheaton in Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

- (f) Ordinances approving, redesigning and adopting a tax increment allocation financing for the Downtown Redevelopment Project Area, recorded as Documents R93-103578, R93-103579 and R93-103580.
- (g) Acts of Buyer.

Exhibit C

RNJ:kz 2-7-96-cw-parking agreement

PARKING AGREEMENT

THIS PARKING AGREEMENT (the "AGREEMENT") is made as of this _____ day of _____, 1996, by and among the CITY OF WHEATON, DuPage County, Illinois (the "CITY") and NBD BANK, Successor Trustee under Trust Agreement (the "TRUST AGREEMENT") dated October 27, 1988 and known as Trust No. 5191-WH (the "TRUSTEE") and RJN FRONT STREET PARTNERSHIP, an Illinois general partnership (the "BENEFICIARY"; the TRUSTEE and the BENEFICIARY collectively referred to as "RJN") (the CITY and RJN collectively referred to as the "PARTIES").

WHEREAS, the CITY currently operates public parking facilities known as Municipal Parking Lots No. 3, 4 and 5 (collectively, the "LOTS"), respectively, within its corporate limits, the location of such LOTS legally described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the CITY is, or will be, the holder of legal title to a certain parcel of land within its corporate limits and legally described on Exhibit "B" attached hereto and made a part hereof, upon which a public parking garage (the "GARAGE") is to be

constructed; and

WHEREAS, TRUSTEE is the title-holder of the property commonly known as 200 Front Street and legally described on Exhibit "C" attached hereto and made a part hereof (the "BENEFITTED PARCEL") and BENEFICIARY is the beneficiary of said TRUST AGREEMENT; and

WHEREAS, RJN desires to utilize certain parking spaces located in the LOTS and the GARAGE upon the terms and conditions of this AGREEMENT for the benefit of RJN and its successors in title, legal or equitable, to the BENEFITTED PARCEL; and

WHEREAS, the Illinois Constitution, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; and

WHEREAS, as a home rule unit under Article VII, Section 6 of the Illinois Constitution, 1970, the CITY may exercise any power and perform any function pertaining to its government and affairs.

NOW, THEREFORE, for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

Section 1. Parking Spaces.

The CITY hereby grants to RJN, and its successors in interest in the title to the BENEFITTED PARCEL, the privilege of occupying and using certain parking spaces as follows:

- (a) Forty-one (41) parking spaces in Municipal Parking Lot No. 4, such spaces comprising the entire parking area in Lot No. 4, for a maximum term of forty (40) years, commencing on _____. The CITY shall issue no other permits for parking in Lot No. 4 except pursuant to this AGREEMENT.

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- (b) Sixteen (16) parking spaces in the GARAGE, if and when constructed, the location of such spaces to be designated by the CITY in its discretion, for a maximum term of five (5) years, commencing on _____.
- (c) Sixteen (16) parking spaces in either Municipal Parking Lot No. 3 or Municipal Parking Lot No. 5, such spaces to be designated for RJN'S use, for a maximum term of fifteen (15) years, commencing as of the date of expiration of the term for the GARAGE set forth in (b) above.
- (d) Sixteen (16) parking spaces in either the City Hall Parking Lot or the lot commonly referred to as the Rhodes lot, such lot being located on the property legally described on Exhibit "D" attached hereto and made a part hereof, during the period of construction of the GARAGE, the location of such spaces to be designated by the CITY in its discretion. For purposes of this Agreement, any lot referred to in this subsection (d) shall be included in the definition of the term "LOTS".

The determination of which LOTS are utilized pursuant to subsections (c) and (d) above shall be made by the CITY; provided, however, the PARTIES acknowledge that RJN's preference is for Lot No. 5 and the Rhodes Parking Lot, respectively, and the CITY shall make reasonable efforts to accommodate such preference. To the extent reasonably possible, the spaces to be provided under subsection (c) shall all be located within one lot and the spaces to be provided under subsection (d) shall also be located within one lot.

RJN shall comply with all rules and regulations of the CITY applicable to the GARAGE and LOTS, except as specifically modified by this AGREEMENT.

The PARTIES hereby acknowledge that the CITY does not hold title to the land upon which Lot Nos. 3, 4 and 5 are located. Said land is owned by the County of DuPage (the "COUNTY") and the CITY

is, with the knowledge and consent of the COUNTY, operating public parking facilities thereon.

If, by reason of any action by the COUNTY, any of Lot Nos. 3, 4 or 5 are no longer used as municipal parking facilities, the CITY shall provide RJN a number of parking spaces equal to the number of parking spaces lost under and pursuant to the following conditions:

- (a) The CITY shall provide replacement spaces to the extent that there are spaces in existence and available at that time, but the CITY shall have no obligation to terminate any existing parking permits and shall have sole discretion in determining whether spaces are available;
- (b) The CITY shall have no obligation to construct new parking facilities, but if, in its sole discretion, the CITY does construct new parking facilities, RJN shall be given a preference over other parkers in utilizing such facilities;
- (c) The replacement spaces, if any, shall be designated by the CITY and situated in one or more locations ("ALTERNATE LOCATIONS") within the geographical area depicted in Exhibit "E" attached hereto and made a part hereof;
- (d) No replacement spaces shall be located in the GARAGE, the City Hall Parking Lot or Municipal Lot No. 2;
- (e) If, after the action of the COUNTY, any portions of Lot Nos. 3, 4 and 5 are still used as municipal parking facilities, the CITY shall provide replacement spaces in those facilities, to the extent there are sufficient spaces available but the CITY shall have no obligation to terminate any existing parking permits and shall have sole discretion in determining whether spaces are available;
- (f) The fee for the replacement parking spaces shall be one-half (1/2) the then-applicable fee as set forth in Section 2; provided that if any replacement spaces are located in Lot Nos. 3, 4 or 5, the fee for those spaces shall be the then-applicable fee as set forth at Section 2; and,
- (g) Failure to provide replacement parking spaces shall not be considered an event of default under this AGREEMENT

so long as the loss of spaces in Lot Nos. 3, 4 and 5 is due to the actions of the COUNTY.

Section 2. Fee Payable.

In consideration of the above rights granted to RJN, RJN shall pay a fee equal to ten dollars (\$10.00) per parking space per month for a period of one year. The fee shall increase annually thereafter based upon the increase in the Consumer Price Index for the Chicago area for the previous calendar year. The fee shall be payable on the first day of each month in advance. The first payment is due on _____, 1996, and shall be prorated from the first day of said month.

Section 3. Reduction in Spaces.

RJN at any time and for any reason during the term of this AGREEMENT, upon a minimum of thirty (30) days' prior written notice to the CITY ("EFFECTIVE DATE"), shall have the unrestricted right to:

- (a) Reduce the amount of parking spaces under this AGREEMENT for the duration of the term applicable to said spaces ("RELEASED SPACES"). In such case the fee payments shall be reduced as of the EFFECTIVE DATE and shall be paid and due only upon those spaces not released from that point forward. Upon such reduction, RJN shall no longer have any right to such RELEASED SPACES except as may be mutually agreed in writing between RJN and the CITY; or
- (b) Reduce the amount of parking spaces under this AGREEMENT for a specific time period ("REDUCTION PERIOD"), which shall not be less than ninety (90) days in duration ("TEMPORARILY RELEASED SPACES"). In such case the fee payments during the REDUCTION PERIOD shall be reduced as of the EFFECTIVE DATE, in an amount equal to the fee due on the spaces released. At the end of the REDUCTION PERIOD, fee payments shall automatically be reinstated for the remaining time period. RJN shall not be required to pay any fees on the TEMPORARILY RELEASED SPACES released during the REDUCTION PERIOD.

- (c) If RJN has paid fees in advance, such shall be credited against the next fee payment due for all the remaining spaces.
- (d) The CITY may utilize the RELEASED SPACES and TEMPORARILY RELEASED SPACES as it deems appropriate, as long as such does not interfere with RJN's utilization of the remaining spaces under this AGREEMENT.
- (e) RJN shall have the right in its notices to the CITY to designate the location of the spaces to be released, with the condition that they must be grouped together, in order that the CITY may permit use of same and avoid confusion between RJN parking spaces and CITY spaces. If RELEASED SPACES become available in a lot which was previously used exclusively by RJN, the CITY will designate the spaces so as not to be confused with RJN usage.
- (f) RJN shall have the ability to exercise the rights to permanently or temporarily reduce parking spaces per subsections (a) and (b) above as often and as many times as it deems necessary during the term of this AGREEMENT with the condition that RELEASED SPACES may not be re-utilized without mutual written agreement.

Section 4. Parking Stickers.

The CITY shall issue a parking sticker for each parking space used. Such parking stickers must be displayed by every vehicle utilizing the parking spaces.

Section 5. Maintenance.

The CITY shall maintain the LOTS, ALTERNATE LOCATIONS and GARAGE in good repair, remove snow in a reasonable and customary manner, provide reasonable and necessary lighting for the LOTS and GARAGE and enforce applicable traffic laws and regulations.

Section 6. Interruption of Use.

The CITY may temporarily interrupt RJN's use of the LOTS, ALTERNATE LOCATIONS and GARAGE for repair and maintenance purposes; provided however, that the CITY shall use reasonable efforts to

perform such repairs and maintenance so as to reasonably minimize such interruptions. In the event that any PERMITTED USER is unable to utilize any of the LOTS, ALTERNATE LOCATIONS and GARAGE because of such repair and maintenance, such PERMITTED USER may utilize street parking that is otherwise restricted so long as the parking sticker is properly displayed.

Section 7. Permitted User.

The parking spaces shall be solely for the use of RJN or any other person, firm, corporation or other legal entity holding legal or equitable title to the BENEFITTED PARCEL, their employees and agents, including tenants and employees of tenants ("PERMITTED USERS") so long as said PERMITTED USERS are actually located or work in the building located on the BENEFITTED PARCEL.

Section 8. Assignability.

This AGREEMENT shall not be assignable except as provided in Section 21 hereof and, provided, however, that upon the sale or other transfer of the BENEFITTED PARCEL, the benefits and obligations of this AGREEMENT shall run to the successor title holders of the BENEFITTED PARCEL, and RJN or other prior owner of the BENEFITTED PARCEL (as the case may be) shall be released from future obligations hereunder.

RJN, or any subsequent owner, shall provide written notice to the CITY of any sale or transfer of the BENEFITTED PARCEL within twenty one (21) days of said sale or transfer.

Section 9. Necessary Actions.

The CITY represents and warrants that it has authority to

execute, deliver and perform the terms and obligations of this AGREEMENT and that it has taken all actions required by law, including, but not limited to, passage of all necessary ordinances, to enter into this AGREEMENT.

Section 10. Default.

If RJN defaults in the payment of fees due under this AGREEMENT, and such default is not cured within thirty (30) days of written notice thereof by the CITY, the CITY may declare this AGREEMENT terminated, and upon such termination this AGREEMENT shall be null and void and of no further force or effect and RJN will surrender all rights to the LOTS, GARAGE and ALTERNATE LOCATIONS.

Exclusive venue for any action brought regarding this AGREEMENT shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. Any PARTY claiming a default under this AGREEMENT shall give written notice of the alleged default to the PARTY alleged to be in default, specifying the default(s) complained of by the injured PARTY. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, the injured PARTY may not institute proceedings against the PARTY in default until five (5) days after giving such notice. If such default is cured within such five (5) day period, the default shall be deemed cured. If the default is one which cannot be reasonably cured within five (5) days, and if the defaulting PARTY shall commence curing the same

within such five (5) day period, the said five (5) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting PARTY diligently proceeds therewith; if such default is cured within such extended period, the default shall be deemed cured.

Section 11. Amendment.

This AGREEMENT shall be amended only with the consent of all PARTIES and such amendment shall be in writing, signed by all the PARTIES hereto, including any mortgagee pursuant to Section 21 hereof.

Section 12. No Warranty; Integration.

The CITY hereby makes and has made no representations, statements, warranties or agreements to RJN in or in connection with this AGREEMENT or the LOTS, GARAGE or ALTERNATE LOCATIONS except as otherwise provided herein and in the Purchase and Sale Agreement referenced below. This AGREEMENT embodies the entire understanding of the PARTIES hereto, and there are no further or other agreements or understandings, written or oral, in effect between the PARTIES relating to the subject matter hereof except for the Purchase and Sale Agreement between the CITY and RJN attached hereto as Exhibit "F" and made a part hereof. The exhibits attached hereto are a material part of this AGREEMENT.

Section 13. Incorporation of Preambles.

The PARTIES confirm and admit the truth and validity of the representations and recitations set forth in the preambles of this AGREEMENT. The PARTIES further acknowledge that the same are

material to this AGREEMENT and are hereby incorporated into this AGREEMENT as though they were fully set forth in this Section 13.

Section 14. Notices.

All notices and other communications given pursuant to this AGREEMENT shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or on the third (3rd) day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to LESSOR: CITY OF WHEATON
303 W. Wesley Street
P.O. Box 727
Wheaton, Illinois 60187
Attn: City Manager

If to TRUSTEE: NBD BANK, Successor Trustee under Trust Agreement dated October 27, 1988, and known as Trust No. 5191-WH
211 S. Wheaton Avenue
Wheaton, Illinois 60187

or to any successor in title to the BENEFITTED PARCEL pursuant to Section 8 at the address designated to the CITY in writing.

If to BENEFICIARY: RJN FRONT STREET PARTNERSHIP
c/o Richard Nogaj and Alan Hollenbeck
200 Front Street
Wheaton, Illinois 60187

with a copy to any mortgage holder of the BENEFITTED PARCEL at the address designated to the CITY in writing by said mortgage holder pursuant to Section 21.

Section 15. Counterparts.

This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

Section 16. Waiver.

No failure by any PARTY to insist upon the strict performance of any covenant, duty, agreement or condition of this AGREEMENT, or to exercise any right or remedy upon a breach thereof, will constitute a waiver thereof. Any PARTY hereto, by notice to the other PARTIES, may, but will be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of the other PARTIES hereto. No waiver will affect or alter any other covenant, agreement, term or condition of this AGREEMENT, all of which shall continue in full force and effect.

Section 17. Captions.

The captions of this AGREEMENT are for convenience and reference only and in no way define, limit or describe the scope or intent of this AGREEMENT.

Section 18. Governing Law.

This AGREEMENT has been entered into in the State of Illinois and will be interpreted under and governed by the laws of the State of Illinois.

Section 19. No Estate.

The TRUSTEE and the BENEFICIARY acknowledge that they do not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the LOTS, GARAGE or ALTERNATE LOCATIONS by virtue of this AGREEMENT or the BENEFICIARY'S use of the LOTS, GARAGE or ALTERNATE LOCATIONS pursuant hereto except as granted herein. Pursuant to Section 8 hereof, the benefits and obligations

under this AGREEMENT shall be deemed to run with the BENEFITTED PARCEL.

RJN shall be a licensee of the CITY and said license shall be subject to the terms of this AGREEMENT.

Section 20. Recording.

This AGREEMENT shall be recorded with the DuPage County Recorder of Deeds.

Section 21. Rights as to Mortgagees.

RJN, or any successors in title to the BENEFITTED PARCEL, may assign its rights hereunder to a mortgage holder of the BENEFITTED PARCEL as additional collateral and such mortgagee may succeed to and enforce RJN's rights hereunder.

The mortgagee shall give written notice to the CITY of such mortgage. Any amendment or modification to this AGREEMENT shall be approved in writing by said mortgagee; provided, however, that parking spaces may be released pursuant to Section 3 hereof without mortgagee's consent as long as there are at least available twenty-

five (25) spaces that are not RELEASED SPACES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF WHEATON, DuPage County,
Illinois

By: _____
Mayor

ATTEST:

City Clerk

[S E A L]

NBD BANK, Successor Trustee under
Trust Agreement dated October 27,
1988 and known as Trust No. 5191-WH

By: Donna M. Nalund

Its: TRUST OFFICER

ATTEST:

Paul Haon
Its: Deputy Cashier

[S E A L]

EXONERATION PROVISION RESTRICTING
ANY LIABILITY OF NBD BANK ATTACHED
HERETO IS HEREBY EXPRESSLY MADE A
PART HEREOF.

RJN FRONT STREET PARTNERSHIP, an
Illinois General Partnership

By: Richard W. Noy

Its: General Partner

ATTEST:

Alan Hollander
Its: General Partner

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. James Carr, Mayor of the City of Wheaton, and Emily M. 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 day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the 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 _____
day of _____, 1996.

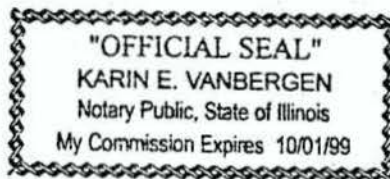
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Richard J. Nogaj,
_____ of RJN Front Street Partnership and Alan J. Hollenbeck,
_____ of said partnership, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Parting Agreement and Purchase and Sale Agreement, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6 day of March, 1996.

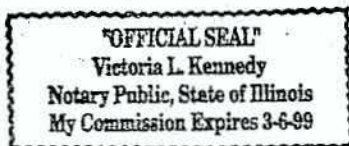
Karin E. VanBergen
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donna M. Saelinger, Trust Officer, of NBD BANK, and Jane C. Hoon, Deputy Cashier thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Deputy Cashier, respectively appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, as TRUSTEE, for the uses and purposes therein set forth; and said Deputy Cashier did also then and there acknowledge that he/she, as custodian of the corporate seal of said Bank, did affix said corporate seal of said Bank to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said Bank, as said TRUSTEE, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12th day of
March, 1996.



Victoria L. Kennedy
Notary Public

EXHIBIT "A"

Lot No. 3

Parcel 1:

Block 3 and that portion of vacated Liberty Drive (as vacated by document 309952, recorded March 19, 1931) in Warren L. Wheaton's Addition to Wheaton in the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, according to the plat thereof recorded December 3, 1857 as Document #11976, in Du Page County, Illinois.

Parcel 2:

That portion of Liberty Drive lying North of a line drawn from a point 25.7 feet south of the Southeast corner of Parcel 1 to a point 18.75 south of the southwest corner of parcel 1 and lying West of the West line of Cross Street extended South, in the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in Du Page County, Illinois.

Lot No. 4

Lots 1, 2, 3 and 4 in block #2 of J. C. Wheaton's addition to the Town of Wheaton, being a subdivision in the West Half of the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, According to the plat thereof recorded July 7, 1855, as Document #9567, in DuPage County, Illinois.

Lot No. 5

That part of the Du Page County Parkway (being the former right-of-way of the Chicago, Aurora and Elgin Railroad) lying East of the Eastern right-of-way of Wheaton Avenue and West of the Western right-of-way of Hale Street, in the Southwest Quarter of Section 16, township 39 North, Range 10 East of the Third Principal Meridian, according to the plat of Said Du Page County Parkway Recorded as Document # R91-28150 in Du Page County, Illinois.

Lot 1 in Wheaton City Hall Second Plat of Consolidation in part of the northwest quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, DuPage County, Illinois, recorded on May 19, 1994 as Document No. R94-114713 in the Office of the DuPage County Recorder.

THAT PART OF LOTS 2, 3, 4, 5, 6 AND 7 IN BLOCK 8 IN THE TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, DESCRIBED BY BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE EASTERLY, 266.79 FEET ALONG THE NORTH LINE OF SAID BLOCK TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTHERLY, 222.91 FEET ALONG THE EAST LINE OF LOT 2, FORMING AN ANGLE OF 89 DEGREES 03 MINUTES 22 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTERCLOCKWISE THEREFROM) TO THE SOUTH LINE OF THE NORTH 23.63 FEET OF THE SOUTH HALF OF SAID LOT; THENCE WESTERLY, 133.25 FEET ALONG SAID SOUTH LINE, FORMING AN ANGLE OF 90 DEGREES 53 MINUTES 31 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTERCLOCKWISE THEREFROM) TO THE COMMON LOT LINE BETWEEN SAID LOTS 2 AND 6; THENCE SOUTHERLY, 40.82 FEET ALONG SAID COMMON LINE, FORMING AN ANGLE OF 90 DEGREES 51 MINUTES 34 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED CLOCKWISE THEREFROM) TO THE SOUTH LINE OF THE NORTH 44 FEET OF THE SOUTH 46 FEET OF SAID LOT 6; THENCE WESTERLY, 66.61 FEET ALONG SAID SOUTH LINE, FORMING AN ANGLE OF 90 DEGREES 52 MINUTES 08 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM) TO THE EAST LINE OF THE WEST HALF OF SAID LOT 6; THENCE SOUTHERLY, 52.93 FEET ALONG SAID EAST LINE AND THE COMMON LINE BETWEEN LOTS 7 AND 8, FORMING AN ANGLE OF 90 DEGREES 50 MINUTES 55 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED CLOCKWISE THEREFROM) TO THE NORTH LINE OF THE SOUTH 82 FEET OF SAID LOT 7; THENCE WESTERLY, 66.59 FEET ALONG SAID NORTH LINE, FORMING AN ANGLE OF 90 DEGREES 52 MINUTES 33 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM) TO THE WEST LINE OF SAID BLOCK 8; THENCE NORTH, 316.88 FEET ALONG SAID WEST LINE, FORMING AN ANGLE OF 89 DEGREES 08 MINUTES 40 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM) TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

EXCEPTING THEREFROM,

THAT PART OF LOTS 3 AND 4 IN BLOCK 8 IN THE TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, DESCRIBED BY BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 8; THENCE EASTERLY, 74.91 FEET ALONG THE NORTH LINE OF SAID BLOCK; THENCE SOUTHWESTERLY, 14.59 FEET ALONG A LINE FORMING AN ANGLE OF 17 DEGREES 03 MINUTES 23 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM); THENCE SOUTHWESTERLY, 17.45 FEET ALONG A LINE FORMING AN ANGLE OF 201 DEGREES 10 MINUTES 49 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM); THENCE SOUTHWESTERLY, 23.99 FEET ALONG A LINE FORMING AN ANGLE OF 183 DEGREES 50 MINUTES 21 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM); THENCE SOUTHWESTERLY, 42.84 FEET ALONG A LINE FORMING AN ANGLE OF 192 DEGREES 30 MINUTES 18 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM); THENCE SOUTHWESTERLY, 9.16 FEET ALONG A LINE FORMING AN ANGLE OF 188 DEGREES 03 MINUTES 03 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM) TO THE WEST LINE OF SAID BLOCK 8; THENCE NORTHERLY, 75.60 FEET ALONG SAID WEST LINE, FORMING AN ANGLE OF 26 DEGREES 33 MINUTES 03 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED COUNTER-CLOCKWISE THEREFROM) TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

CONTAINING 66,295 SQUARE FEET, MORE OR LESS.

E+C

LEGAL DESCRIPTION

Parcel I:

Warehouse Lot 2 and the East 10.5 feet of Warehouse Lot 3 in Plat of County Clerk's Assessment Division of all unsubdivided lands in the South Half and the South Half of the North Half of Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded September 29, 1890 as Document No. 43590, in DuPage County, Illinois.

Permanent Index No. 05-16-307-005

EXHIBIT "D"

THE SOUTH 82 FEET OF LOT 7 IN BLOCK 8 IN TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS

RIDER ATTACHED TO AND MADE A PART OF
PARKING AGREEMENT

DATED _____ UNDER TRUST NO. 5191-WH

This instrument is executed by NBD Bank, Successor Trustee to NBD Trust Company of Illinois, not personally but as Trustee under Trust No. 5191-WH, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All of the terms, provisions, stipulations, covenants and conditions to be performed by NBD Bank, are undertaken by it solely as Trustee as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against NBD Bank, by reason of anything contained in said instrument, or in any previously executed document, whether or not executed by said NBD Bank, either individually or as Trustee as aforesaid, relating to the subject matter of the attached agreement, all such personal liability, if any, being expressly waived by every person now or hereafter claiming any right or security hereunder. No duty shall rest upon NBD Bank, personally or as said Trustee to sequester the rents, issues, and profits arising from the property in said trust estate, or the proceeds arising from the sale or other disposition thereof; but so far as said Trustee and its successors and said NBD Bank, personally are concerned, the legal holder or holders of this instrument and the owner or owners of any indebtedness accruing hereunder shall look solely to the mortgaged real estate for the payment thereof, by enforcement of the lien heretofore created in the manner provided therefor and as provided in said note or by action to enforce the personal liability of the guarantor, if any.

It is expressly understood and agreed by every person, firm or corporation claiming any interest in this document that NBD Bank, shall have no liability, contingent or otherwise arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from, or affecting the property or the soil, water, vegetation, buildings, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Trustee, which are based upon or in any way related to such hazardous materials including without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provisions of the exculpatory Rider and the provisions of the document to which it is attached, the provisions of this Rider shall govern.