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ORDINANCE NO. F-0064

**AN ORDINANCE AUTHORIZING SETTLEMENT OF LITIGATION ENTITLED
CITY OF WHEATON V. GARY-WHEATON BANK TRUST NO. 6047
DATED MAY 8, 1981, DU PAGE COUNTY CASE NO. 95 ED 59, AND
**ACQUISITION OF PROPERTY FOR ADDITIONAL PARKING FOR THE
WHEATON PUBLIC LIBRARY - 219 EAST WESLEY STREET/HASKIN****

WHEREAS, on August 7, 1995, the City of Wheaton ("City") passed and approved Ordinance No. E-4116, "AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY WITHIN THE CITY OF WHEATON, ILLINOIS, FOR PURPOSES OF ADDITIONAL PARKING FOR THE WHEATON PUBLIC LIBRARY - 219 EAST WESLEY STREET", empowering the Mayor and City Council, acting through the City Manager and authorized agents and attorneys, to take the necessary steps to acquire title to the property legally described in Ordinance No. E-4116) by eminent domain; and

WHEREAS, a complaint for condemnation was filed in the Eighteenth Judicial Circuit, DuPage County, Illinois, under case No. 95 ED 59 on November 20, 1995; the litigation is currently pending in the Eighteenth Judicial Circuit;

WHEREAS, the City Manager and the attorneys for the parties in the litigation have engaged in extensive negotiations for the settlement of the case; and the City Council has determined that it is fair and reasonable to resolve all differences of the parties and compromise and settle this case by payment of the sum of \$296,500.00 representing just compensation for the taking of the property legally described in the attached Exhibit A ("subject property"); the terms of the settlement are encompassed within the Agreed Final Judgment Order (including the attached Stipulation and Settlement Agreement) (hereafter "Order") attached to this ordinance as Exhibit B; and

WHEREAS, the City has determined that it is necessary to acquire the subject property

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

Section 1: The Mayor and City Council, acting through their authorized agent and attorney, WALSH, KNIPPEN, KNIGHT & DIAMOND, CHARTERED ("Attorneys for the City"), are empowered to take the necessary steps to acquire title to the subject property.

Section 2: The Attorneys for the City are hereby authorized and directed to execute, or have executed by the City, the Order and to present the Order to the Court, and further to proceed in accordance with the Order to take all necessary steps needed to acquire title to the subject property.

Section 3: Upon written direction from the Attorneys for the City, the Treasurer/Finance Officer of the City is authorized to issue a check, draft, or wire transfer in the amount of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$296,500.00) to the Treasurer of DuPage County in satisfaction of the Order to be entered in case No. 95 ED 59, for payment to the owners of the subject property described in Exhibit A.

Section 4: The Staff of the City shall take the necessary steps to properly remove the subject property from the general real estate tax rolls.

PASSED and APPROVED by the Mayor and City Council of the City of Wheaton, Illinois, this 7th day of October, 1996.

ATTEST:

Emily M. Czerwinski
City Clerk

James Carr
Mayor

Ayes:

Roll Call Vote:

Councilwoman Davenport
Councilman Eckhoff
Councilman Gerig
Mayor Carr
Councilman Gresk
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: October 7, 1996

Published: October 8, 1996

LEGAL DESCRIPTION

LOT 10 IN BLOCK 2 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, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-16-135-010

COMMONLY KNOWN AS: 219 EAST WESLEY STREET, WHEATON, ILLINOIS 60187

F-0264

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CITY OF WHEATON, an
Illinois Home Rule Municipal
Corporation,

v.

No. 95 ED 59

GARY-WHEATON BANK, a Corporation of Illinois, as Trustee Under Trust Agreement dated May 8, 1981 and known as Trust No. 6047, LYLE AND/OR DIAN HASKIN, as beneficiaries of Trust No. 6047, JANE H. RATHJE, and Unknown Owners,

Defendants.)

Whereas, the CITY OF WHEATON, an Illinois Home Rule Municipal Corporation (hereinafter "CITY"), represented by Walsh, Knippen, Knight & Diamond, Chartered, its attorneys, and GARY-WHEATON BANK, a Corporation of Illinois, as Trustee Under Trust Agreement Dated May 8, 1981 and Known as Trust No. 6047, (hereinafter "TRUST") as the owner of a parcel of improved property whose common address is 219 East Wesley Avenue, Wheaton, Illinois 60187 ("Subject Property"), LYLE and/or DIAN HASKIN as beneficiaries of Trust No. 6047, and JANE H. RATHJE, as a person with an interest in the property (all hereinafter referred to as "DEFENDANTS"), have agreed upon an amount of money constituting total and final just compensation for the taking of fee simple title in and

to the Subject Property as is set forth in Exhibit A which is attached hereto and incorporated herein as if fully set forth; and

Whereas, the CITY and the DEFENDANTS stipulate and agree to the following terms of settlement:

1. The CITY and DEFENDANTS shall jointly apply to the Circuit Court of DuPage County for entry of an Agreed Final Judgment Order on Settlement consistent with this Stipulation and Settlement Agreement and hereby stipulate that the sum of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$296,500.00) represents the total and final just compensation for fee simple title in and to the Subject Property. The parties further stipulate that there is no damage to the remainder.

2. The CITY shall pay on or before November 1, 1996, to the DuPage County Treasurer the sum of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$296,500.00).

3. The DEFENDANTS may apply to the Court for withdrawal of the just compensation funds on or after November 1, 1996. Prior to the withdrawal of said funds, notice of the proposed withdrawal shall be given to the CITY.

4. The DEFENDANTS shall maintain liability/hazard insurance on the Subject Property until possession is given to the CITY. For purposes of this agreement, possession shall be considered to be given to the CITY upon entry of the Final Judgment order and Settlement Agreement in the Eighteenth Judicial Circuit Court.

5. Any personal property not removed by the DEFENDANTS or any tenant of the DEFENDANTS at the time of delivery of possession will be deemed to be abandoned;

whereupon title thereto will pass to the CITY as if by bill of sale, and CITY shall have the right to dispose of such personal property in any manner the CITY chooses.

6. The CITY and DEFENDANTS shall be responsible for their respective attorney's fees and costs incurred throughout this condemnation suit, and each shall waive any and all claims related to such litigation.

7. The DEFENDANTS waive their right to jury trial, and both parties waive their right to appeal.

8. The date of this Stipulation and Settlement Agreement shall be the date it is executed on behalf of the CITY.

9. The DEFENDANTS shall execute any and all conveyancing documents and related documents determined by the CITY to be reasonably necessary so as to result in the CITY obtaining fee simple title to the Subject Property free and clear of any encumbrances not otherwise permitted. Execution of said documents may occur at any time prior to or subsequent to the entry of the Agreed Final Judgment Order on Settlement in 95 ED 59.

10. The Court shall maintain jurisdiction over this matter until all matters which are subject of this Stipulation and Settlement Agreement have been finalized.

11. The DEFENDANTS shall comply with 50 ILCS 105/3.1 requiring the disclosure of the identity of every owner and beneficiary having an interest, real or personal, in the Subject Property or anyone entitled to receive more than SEVEN AND ONE-HALF PERCENT (7 ½%) of the total distributable income of any corporation having any interest, real or personal, in such property. Said disclosure shall be tendered to the

CITY'S attorney at the time the DEFENDANTS execute this Stipulation and Settlement Agreement.

12. CITY and DEFENDANTS each represent and warrant that each party has the power and authority and have completed all necessary actions to enter into this Stipulation and Settlement Agreement and, further, that each party has authorized execution of this Stipulation and Settlement Agreement by the signatures set forth below.

AGREED:

CITY OF WHEATON, an Illinois home rule
municipal corporation

By _____
C. James Carr, Mayor

ATTEST:

Emily Consolazio, City Clerk

State of Illinois, County of Du Page. I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that C. JAMES CARR, personally known to me to be the Mayor of the City of Wheaton, an Illinois municipal corporation, and EMILY CONSOLAZIO, personally known to me to be the City Clerk of said City of Wheaton, and personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the seal of said City of Wheaton to be affixed thereto, pursuant to the authority given by the City Council of City of Wheaton, as their free and voluntary act and deed of said City of Wheaton, for the uses and purposes therein set forth.

Given under my hand and official seal,
this _____ day of _____, 1996.

(Seal) _____

F-0064

6/5

AGREED:

GARY-WHEATON BANK, a Corporation, as
Trustee under Trust Agreement dated May 8, 1981
and known as Trust No. 6047

By _____

ATTEST:

State of Illinois, County of Du Page. I, the undersigned, a Notary Public, in and for the
County and State aforesaid, DO HEREBY CERTIFY, that

personally known to me to be the _____, and

personally known to me to be the _____ of said bank, and personally known
to be the same persons whose names are subscribed to the foregoing instrument,
appeared before me this day in person and severally acknowledged that as such
_____ and _____, they signed and delivered the said
instrument and caused the corporate seal of said bank to be affixed thereto, pursuant to
the authority given by the Board of Directors of said bank, as their free and voluntary act
and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 1996.

(Seal)

Notary Public

AGREED:

Lyle Haskin

SWORN TO and SUBSCRIBED by me
this ____ day of _____ 1996.

Notary Public

AGREED:

Dian Haskin

SWORN TO and SUBSCRIBED by me
this ____ day of _____ 1996.

Notary Public

AGREED:

Jane H. Rathje

SWORN TO and SUBSCRIBED by me
this ____ day of _____ 1996.

Notary Public

jim\wheaton\gary-whe.lit\pleading\stip&stl.agr

LEGAL DESCRIPTION

LOT 10 IN BLOCK 2 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, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-16-135-010

COMMONLY KNOWN AS: 219 EAST WESLEY STREET, WHEATON, ILLINOIS 60187

STATE OF ILLINOIS)
COUNTY OF DU PAGE) SS.

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS**

CITY OF WHEATON, an)
Illinois Home Rule Municipal)
Corporation,)
Plaintiff,)
v.) No. 95 ED 59
GARY WHEATON BANK, a)
Corporation of Illinois, as Trustee)
Under Trust Agreement dated)
May 8, 1981 and known as Trust)
No. 6047, et al.)
Defendants.)

AGREED FINAL JUDGMENT ORDER ON SETTLEMENT

This matter having come on to be heard on the complaint of the CITY OF WHEATON, an Illinois Home Rule Municipal Corporation, (hereinafter "Plaintiff"), to ascertain just compensation for property sought to be taken for public purposes, as set forth in such complaint, (hereinafter the "Subject Property"), and for entry of an Agreed Final Judgment Order on Settlement;

Plaintiff, appearing by Walsh, Knippen, Knight & Diamond, Chartered, as its attorneys, and GARY-WHEATON BANK, a Corporation of Illinois, as Trustee Under Trust Agreement Dated May 8, 1981 and Known as Trust No. 6047, appearing by Lyle Haskin, and persons otherwise interested in the subject property having been named as Unknown Owners; and

JANE RATHJE, having been named as a party in interest, and having filed a *pro se* appearance, and the Court being fully advised in the premises;

The Court hereby finds that:

1. The defendants to this proceeding have been served by process as provided by statute, or have appeared voluntarily, and have entered their appearance or have failed to enter their appearance in that time required by statute and that due and proper notice has been provided herein; and
2. Judgment by default is hereby entered against defendant UNKNOWN OWNERS; and
3. This Court has jurisdiction over the subject matter of this proceeding and all parties hereto; and
4. The legal description of the Subject Property as set forth in Exhibit A attached hereto and incorporated herein as if fully set forth; and
5. Plaintiff and defendants have now entered into a Stipulation and Settlement Agreement (a copy of which is attached hereto and made part hereof as Exhibit B) which fixes the total and final amount of just compensation for fee simple title to the Subject Property. The Court further finds that there is no damage to the remainder; and
6. That the defendants appearing have waived their right to jury trial, and all defendants waive their right to appeal; and
7. Plaintiff and defendants have made certain representations and agreements as contained within the Stipulation and Settlement Agreement and the terms thereof are incorporated herein by reference; and
8. Plaintiff and defendants have each stipulated that the total and final just compensation for fee simple title in and to the Subject Property is TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$296,500.00); and
9. Plaintiff and defendants have agreed and understand that they shall be responsible for their respective attorney's fees and costs incurred throughout this condemnation lawsuit, and each waive any and all claims related to such litigation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That the total compensation to be paid for the appearing plaintiff, as just compensation in this cause, is the total sum of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$296,500.00), that sum representing just compensation for the Subject Property described in the complaint filed herein and described in Exhibit A hereto and that the plaintiff shall pay on or before June 7, 1996, the sum of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED (\$296,500) as required pursuant to the terms and stipulations of the settlement agreement. Upon deposit of the sum of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED (\$296,500) with the Treasurer of DuPage County, the CITY OF WHEATON shall be vested with fee simple title to the Subject Property.
2. That the legal description of the Subject Property is as is set forth on Exhibit A attached hereto and incorporated herein as if fully set forth.
3. Plaintiff and defendants shall be responsible for their respective attorney's fees and costs incurred throughout this condemnation lawsuit, and each waive any and all claims related to such litigation.
4. The terms of the Stipulation and Settlement Agreement (a copy of which is attached hereto as Exhibit B) entered into by and between the plaintiff and the defendants are incorporated herein by reference, and this Court shall retain jurisdiction to enforce all the terms of said stipulation and settlement agreement.

AGREED:

AGREED:

James H. Knippen II
Attorney-in-Fact for the City of Wheaton

Trustee of Gary Wheaton Bank
Trust No. 6047

AGREED:

AGREED:

Lyle Haskin

Dian Haskin

AGREED:

Jane H. Rathje

ENTERED: _____

DATED: _____

Walsh, Knippen, Knight & Diamond, Chartered
DuPage Attorney No. 38611
Attorney for Plaintiff
601 West Liberty Drive
P. O. Box 999
Wheaton, IL 60189
708/462-1980
jim\wheaton\gary-whe.lit\pleading\agr-fina.ord

LEGAL DESCRIPTION

LOT 10 IN BLOCK 2 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, IN DUPAGE COUNTY, ILLINOIS.

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