

ORDINANCE NO. F-0099

**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, Designation 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 on October 21, 1996 passed and approved Ordinance No. F-0070 entitled, "An Ordinance Authorizing the Negotiation for the Acquisition of Certain Properties Collectively known as 'Site II Alley' for Municipal Purposes by the City of Wheaton, Illinois"; 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 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 6th day of January, 1997.



Mayor

ATTEST:



City Clerk

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: January 6, 1997

Published: January 7, 1997

The Westerly 9 feet of Lot 4 in Pawlik's Assessment Plat of Lot 12 in Block 8 of the original Town of Wheaton, also the East 9 feet of Subdivision Lot 2, (except the North 50 feet thereof) in the Commissioner's Subdivision of Lot 2 in Block 8 in said original Town of Wheaton, in Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, according to said Pawlik's Assessment Plat recorded March 28, 1950 as Document 589210, in DuPage County, Illinois.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is entered into this 6th day of January, 1996, by and between ROBERT SCHAEFER and MARY JANE SCHAEFER, his wife, in joint tenancy, of H.C. 62, Box 665, Honesdale, Pennsylvania 18431 (collectively known as the "Seller"), 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, building and all other improvements located at 106 North Hale Street, Wheaton, Illinois 60187.

B. Seller desires to sell and Buyer desires to buy, on the terms and subject to the conditions of this Agreement, the westerly nine (9) feet of the property described in paragraph A above with said westerly nine (9) feet legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Subject Property").

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 IPURCHASE 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 Subject 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 Subject Property will be Three Thousand Six Hundred Eighty Dollars. (\$3,680.00).

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 prior to Closing, Buyer's City Council approves this Agreement and authorizes Buyer to complete the transaction described herein. If prior to Closing Buyer's City Council does not approve this Agreement and authorize Buyer to complete the transaction described herein, Buyer will so notify Seller whereupon this Agreement will terminate without further action of the parties.

ARTICLE III
PRE-CLOSING MATTERS

3.01 Title Commitment. Buyer shall obtain 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 Subject 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 Subject 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 shall be responsible for the 1995 general real estate taxes. The 1996 and subsequent general real estate taxes shall be prorated as of the date of closing based on the most recent net valuation factors, the latest known equalization factors and the latest known tax rate. Buyer shall be responsible for the preparation and recording of any assessment plats necessary to obtain a new permanent parcel number for the Subject Property and Buyer agrees to cooperate (if necessary) in obtaining said assessment plat.

4.02 Transfer Taxes. Seller will pay all transfer taxes

imposed by the State of Illinois and the county in which the Subject Property is located, if applicable. Any applicable city transfer tax will be paid by the party upon whom the applicable ordinance places responsibility therefor. If the applicable ordinance does not specify the party responsible for the payment of city transfer taxes, the Buyer will pay such tax.

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 will also pay all premiums for the Owner's Title Insurance Policy, excluding premiums for extended coverage (if Buyer elects to procure extended coverage) and excluding premiums for any endorsements to the Owner's Title Insurance Policy Buyer requests. 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 Subject 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.

Seller and Buyer shall close this transaction through the mail and will close this on or before January 30, 1997, unless extended by agreement between the parties. Buyer shall cause the necessary conveyancing documents to be prepared and forwarded to Seller. Upon receipt of executed conveyancing documents from Seller, Buyer shall remit payment of the purchase price to Seller, and Buyer will record the deed upon confirmation by Seller of receipt of the

Purchase Price.

5.02 Seller's Closing Documents. Seller will execute and deliver to Buyer the following documents:

- (a) A recordable warranty 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) 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 Subject Property from such mortgages or trust deeds, or release deed(s) sufficient to release such mortgages or trust deeds of record as to the Subject Property.
- (c) 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.
- (d) ALTA Statements, executed in duplicate, by both Seller and Buyer.
- (e) Executed real estate transfer tax declarations.
- (f) Executed Closing Statement.
- (g) 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.

(h) 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.

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

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 execute the following documents:

(a) ALTA Statements in duplicate.

(b) Executed counterpart of 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.

(c) Seller is not aware nor has any knowledge of any underground storage tanks located on the Subject Property.

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.

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
POSSESSION

7.01 Delivery at Closing. Seller will deliver possession of the Subject 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 Subject Property prior to or as of the Closing Date.

ARTICLE VIII
BROKERS

8.01 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.

8.02 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.

8.03 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 IX
MISCELLANEOUS

9.01 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:	Robert Schaefer and Mary Jane Schaefer H.C. 62, Box 665 Honesdale, Pennsylvania 18431
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.

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

9.03 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.

9.04 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.

9.05 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.

9.06 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.

9.07 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.

9.08 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 Subject Property. The exhibits attached hereto are a material part of this Agreement.

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

9.10 Waiver of Inverse Condemnation Claim. Seller releases Buyer from any claim Seller may have that Buyer's acquisition of the Subject Property pursuant to this Agreement is an inverse condemnation of any property that Seller owns that is adjacent to the Subject Property.

9.11 Eminent Domain Authority. The Seller and Buyer acknowledges that Seller's sale of the Subject 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 Subject Property.

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

SELLER:

Robert Schaefer
Robert Schaefer

Mary Jane Schaefer
Mary Jane Schaefer

Date

BUYER:

CITY OF WHEATON, an Illinois
Municipal Corporation

BY:

James Law

ITS:

Mayor
January 6, 1997

Date

The Westerly 9 feet of Lot 4 in Pawlik's Assessment Plat of Lot 12 in Block 8 of the original Town of Wheaton, also the East 9 feet of Subdivision Lot 2, (except the North 50 feet thereof) in the Commissioner's Subdivision of Lot 2 in Block 8 in said original Town of Wheaton, in Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, according to said Pawlik's Assessment Plat recorded March 28, 1950 as Document 589210, in DuPage County, Illinois.

Subject to:

- (a) General real estate taxes for the year 1996 and subsequent years.
- (b) The land lies within the boundaries of a special service area as disclosed by ordinance recorded as Document R92-253678, and is subject to additional taxes under the terms of said ordinance and subsequent related ordinances.
- (c) Ordinances approving, redesigning and adopting a tax increment allocation financing for the Downtown Wheaton Redevelopment Project Area, recorded as Documents R93-103578, R93-103579 and R93-103580.
- (d) 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.
- (e) Easements for the purposes of ingress and egress as shown on Pawlik's Assessment Plat, aforesaid, as follows:

Over the West 20 feet of Lot 4

- (f) Agreement between Charles G. Pawlik and Frances D. Pawlik, his wife and Harry A. Pawlik and Virginia S. Pawlik, his wife and Marvin M. S. Carney and Dorothy B. Carney, his wife and Alex D. Hopkins and Maxine B. Hopkins, his wife dated March 4, 1950 and recorded April 7, 1951 as Document 620322, relating to party wall rights of the owners of adjoining property.
- (g) Party wall rights of owners of adjoining land in and to a party walls.
- (h) Terms, provisions, conditions and easement rights contained in Agreement dated March 4, 1950 and recorded April 7, 1951 as Document 620325, made by and between Charles G. Pawlik and Frances D. Pawlik, his wife, and Harry A. Pawlik and Virginia S. Pawlik, his wife, and Ralph Attig and Chare M. Attig, his wife, relating to rights of owners and adjoining owners, ingress and egress and construction of buildings thereon.