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ORDINANCE NO. F-0161

AN ORDINANCE AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT
PERTAINING TO CERTAIN PROPERTY KNOWN AS THE
CENTRAL DUPAGE HOSPITAL/WISEPENNY PARCEL

WHEREAS, the City of Wheaton, Illinois (the "City") on June 19, 1995 passed and approved Ordinance No. E-4101 entitled, "An Ordinance Authorizing the Purchase of Certain Property for Municipal Purposes by the City of Wheaton, Illinois"; and

WHEREAS, on October 6, 1995, the closing for the property that is the subject of the above referenced ordinance occurred; and

WHEREAS, pursuant to paragraph 7.01(b) (2) of the Purchase and Sale Agreement entered into between the City and Central DuPage Hospital Association, the sum of \$25,000.00 was held back from the Seller's proceeds and placed in an escrow account at Chicago Title Insurance Company to secure the performance of the Seller's obligations under the Purchase and Sale Agreement, which included the removal of all underground storage tanks located on the property; and

WHEREAS, the removal of the underground storage tanks located on the property was completed in July of 1996 and an Underground Storage Tank Removal Summary Report dated September 3, 1996 was issued by Fugro Midwest, Inc.; and

WHEREAS, subsequent to the issuance of the above referenced report, a dispute has arisen between Central DuPage Hospital Association and the City with regard to the extent of Central DuPage Hospital Association's obligation to perform further remediation at the property; and

WHEREAS, the City and Central DuPage Hospital Association have agreed to resolve the dispute without litigation and to enter into a written Settlement Agreement; and

WHEREAS, the City has found that it is necessary and desirable to enter into the Settlement Agreement attached hereto and made a part hereof as Exhibit A.

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 to the "Settlement Agreement" attached hereto as Exhibit A and incorporated herein.

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 4th day of August, 1997.



Mayor

ATTEST:

Erin M. Connelly
City Clerk

Roll Call Vote:

Ayes: Councilwoman Davenport
Councilman Eckhoff
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: None

Motion Carried Unanimously

Passed: August 4, 1997
Published: August 5, 1997

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, is made this ____ day of June, 1997, by and between CENTRAL DU PAGE HOSPITAL ASSOCIATION, an Illinois not-for-profit corporation ("CDHA") and THE CITY OF WHEATON, an Illinois municipal corporation ("Wheaton").

RECITALS:

A. CDHA and Wheaton entered into a Purchase and Sale Agreement dated June 19, 1995 (the "Contract") pursuant to which CDHA sold to Wheaton the real property located at 225 West Front Street, Wheaton, Illinois 60187 (the "Property").

B. At closing on the sale of the Property to Wheaton (the "Closing"), the parties deposited \$25,000.00 (the "Escrowed Funds") of the net sale proceeds into an escrow account with Chicago Title and Trust Company, Wheaton, Illinois office (the "Escrowee"), escrow no. 95047443 (the "Escrow") to secure CDHA's performance of certain post-Closing obligations it undertook in the Contract with respect to the removal of underground storage tanks, soil analysis and possible remediation.

C. A dispute arose between CDHA and Wheaton subsequent to Closing, concerning the extent of CDHA's obligation to investigate the existence of hazardous substances at the Property and to remediate soil and ground water affected thereby. CDHA and Wheaton have resolved such dispute without litigation and desire to reduce to writing the terms of their settlement.

THEREFORE, in consideration of the mutual covenants and releases contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CDHA and Wheaton hereby agree as follows:

1. The foregoing Recitals are a material part of this Agreement.
2. Wheaton shall be entitled to Two Thousand Five Hundred Dollars (\$2,500.00) of the Escrowed Funds (the "Settlement Amount"), and CDHA shall be entitled to Twenty-two Thousand Five Hundred (\$22,500.00) of the Escrowed Funds, plus all interest earned on the Escrowed Funds. Upon execution and delivery of this Agreement, Wheaton and CDHA shall in writing direct the Escrowee to distribute the Escrowed Funds in accordance with this Section 2.
3. Wheaton acknowledges that payment of the Settlement Amount is made in full and final satisfaction of, and Wheaton hereby releases CDHA, its affiliates, successors and assigns from, any obligation CDHA has or may have under the Contract, to conduct further soil analysis or other soil or ground water investigations or analyses or to remediate or remove Hazardous Substances (as hereinafter defined), including, but not limited to, benzene, from the Property or adjacent properties, or to take other corrective action with

respect thereto. For purposes of this Agreement, the term "Hazardous Substances" shall have the same meaning ascribed to it in Section 7.06 of the Contract, which such definition is hereby incorporated into this Agreement by this reference.

4. This Agreement is entered into solely for the purpose of avoiding the burden and expense of litigation and does not constitute an admission of liability by CDHA or Wheaton.

5. CDHA and Wheaton both hereby state that they intend to be legally bound by this Agreement. Each party represents and warrants to the other that the individuals signing this Agreement on its behalf are authorized to do so.

6. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together constitute one in the same instrument.

7. This Agreement shall be governed by and construed in accordance with the internal laws and not the conflicts laws of the state of Illinois.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

9. CDHA and Wheaton have had the opportunity to consult, and have consulted with legal counsel of their own choosing, and enter into this Agreement on the basis of their own knowledge and assessment of the circumstances, as well as that of their legal counsel, without any reliance on any representation or assurance made by, or on behalf of, the other party.

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

CENTRAL DU PAGE HOSPITAL
ASSOCIATION, an Illinois not-for-profit corporation

By: _____

Its: _____

CITY OF WHEATON, an Illinois
municipal corporation

By: _____

Its: _____