

ORDINANCE NO. F-0191

**AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY,
ILLINOIS; AUTHORIZING THE MAYOR AND CITY CLERK TO
ENTER INTO A CERTAIN DEVELOPMENT AGREEMENT REGARDING
THE DOWNTOWN WHEATON REDEVELOPMENT PROJECT PLAN**

WHEREAS, the Mayor and City Council (the "CORPORATE AUTHORITIES") of the City of Wheaton, DuPage County, Illinois (the "CITY"), have heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the CITY that the CITY undertake a redevelopment project and have heretofore approved a Redevelopment Plan (the "PLAN") and designated a redevelopment project area (the "PROJECT AREA") for that portion of the CITY known as the Downtown Wheaton Redevelopment Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended (the "ACT"); and,

WHEREAS, it is desirable and for the best interests of the residents of the CITY for the CITY to enter into a Development Agreement regarding a portion of said PROJECT AREA, in furtherance of the PLAN; and,

WHEREAS, in response to the CITY'S request, WHEATON WESLEY, L.L.C. (the "DEVELOPER") has submitted a proposal for redevelopment of a portion of said PROJECT AREA, said proposal being the subject of a Redevelopment Agreement (the "AGREEMENT") between the CITY and the DEVELOPER; and,

WHEREAS, the AGREEMENT, as well as all other proposals made in response to the CITY'S request, is on file with the City Clerk of the CITY and available for public inspection; and,

WHEREAS, the ACT authorizes municipalities to convey, dispose and mortgage real property or rights or interests therein, all in the manner and at such price the municipality determines is reasonably necessary to achieve the objectives of a redevelopment plan and project.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1: That the Mayor and City Clerk be and the same are hereby authorized to execute the AGREEMENT between the CITY and the DEVELOPER, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

Section 2: That the Mayor and City Clerk of the CITY be and the same are hereby authorized to execute and attest all other documents necessary to effectuate the purpose of the AGREEMENT, including, but not limited to, a deed conveying portions of real estate as set forth in the AGREEMENT.

Section 3: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

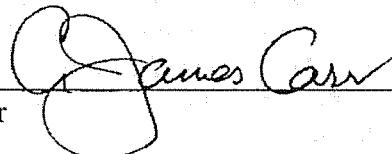
Section 4: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED and APPROVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, this Seventeenth Day of November, 1997.

ATTEST:

Emily M. Connelly
City Clerk

Mayor



Roll Call Vote:

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

Ayes:

None

Absent:

None

Motion Carried Unanimously

Passed: November 17, 1997

Published: November 18, 1997

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the 17th day of November, 1997 by and between the CITY OF WHEATON, an Illinois home rule municipal corporation located in DuPage County, Illinois (the "City"), and WHEATON WESLEY, L.L.C., an Illinois limited liability company ("Developer"). (The City and Developer are sometimes individually referred to as a "Party" and collectively referred to as the "Parties").

R E C I T A L S:

A. The City has the authority to adopt tax increment allocation financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended (the "Act").

B. The City has authorized the preparation of the "Downtown Wheaton Redevelopment Project Report" dated May 17, 1993 (the "Redevelopment Plan") concerning the area commonly known as the Downtown Wheaton Redevelopment Project Area and legally described in the Redevelopment Plan (the "Redevelopment Project Area").

C. In accordance with the Act, the City held and conducted a public hearing with respect to the Redevelopment Plan, the Redevelopment Project Area and the Redevelopment Project described in the Redevelopment Plan at a meeting of the Mayor and the City Council of the City (the "Corporate Authorities") held on April 19, 1993.

D. The Corporate Authorities of the City, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances: (1) Ordinance No. E-3903, approving the Redevelopment Plan, on October 18, 1993; (2) Ordinance No. E-3904, designating the Redevelopment Project Area, on October 18, 1993; (3) Ordinance No. E-3905, adopting tax increment financing for the Redevelopment Project Area, on October 18, 1993; and (4) Ordinance No. F-0191, approving and authorizing the execution of this Agreement, on November 17, 1997.

E. The City, after complying with all requirements imposed by law including, but not limited to, the requirements of Section 5/11-74.4-4(c) of the Act, has adopted Resolution No. R-50-97, on October 20, 1997, designating Developer as the exclusive developer of a portion of the Redevelopment Project Area bounded generally by Wheaton Avenue, Wesley Street, Front Street and the alley parallel to Hale Street and legally described on Exhibit A attached hereto and made a part hereof (the "Property").

F. Provided all conditions set forth in Section 6.3 have been satisfied or waived by Developer within the time limits set forth in Section 6.3, Developer will develop and improve

the Property as a mixed-use project consisting of residential, retail and ancillary uses (the "Project"), in conformance with the site plan, elevations and landscape plans approved pursuant to Ordinance No. F-0179, which are attached hereto and incorporated herein as Exhibit B (collectively, the "Concept Plan"). The Project will consist of approximately 8,500 square feet of retail and commercial space in two (2) buildings (the "Retail Buildings"), a residential condominium building with up to 40 units (the "Condominium Building"), and a four story parking garage (the "Parking Garage") to be constructed by Developer, on behalf of and as agent for, the City pursuant to a Construction Management Agreement (as defined in Section 5.2) containing parking spaces for approximately 400 vehicles, a portion of which Parking Garage will be conveyed to Developer in accordance with this Agreement to be part of the Condominium Building (the "Parking Garage Condominium Portion"). The Project will be developed in up to four (4) phases: (i) the Parking Garage; (ii) the Condominium Building; (iii) one Retail Building; and (iv) the other Retail Building. That portion of the Project to be constructed by Developer, on behalf of and as agent for, the City pursuant to the Construction Management Agreement (as defined in Section 5.2), which shall include the infrastructure and site improvements described in Section 5.2 (the "City TIF Improvements") and the Parking Garage, shall be referred to in this Agreement as the "Public Project" and the balance of the Project shall be referred to as the "Private Project."

G. To facilitate the development of the Property, and subject to and in accordance with the terms of this Agreement, the City has agreed (i) to engage Developer pursuant to the Construction Management Agreement to manage the design and construction of the Parking Garage and the City TIF Improvements, on behalf of and as agent for the City, (ii) to pay for a portion of the cost of the Parking Garage and to pay for the City TIF Improvements, (iii) to convey to Developer those portions of the Property on which is to be constructed the Retail Buildings (the "Retail Property") and the Condominium Building (including the Parking Garage Condominium Portion) (the "Condominium Property"; the Retail Property and the Condominium Property are sometimes referred to in this Agreement as the "Private Property") as set forth in this Agreement, and (iv) to perform the other obligations of the City set forth in this Agreement.

H. The Project shall be developed in accordance with plans and specifications to be submitted to and approved by the City and any other appropriate regulatory agency having jurisdiction over the Project in accordance with this Agreement (the "Plans"). Whenever the term "Plans", "plans", or "plans and specifications" is used in this Agreement, such term shall mean the complete package of working drawings, construction plans and specifications and other documents, all of which documents are separate from and in addition to the Concept Plan, that the City requires for the issuance of a building permit.

I. This Agreement has been submitted to the Corporate Authorities for consideration and review, and the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make this Agreement binding upon the City according to its terms.

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J. The Corporate Authorities, after due and careful consideration, have concluded that the development of that portion of the Redevelopment Project Area constituting the Property as provided for in this Agreement and in the Redevelopment Plan will further the growth of the City, facilitate the redevelopment of the entire Redevelopment Project Area, improve the environment of the City, increase the assessed valuation of real estate situated within the City, foster increased economic activity within the City, and otherwise be in the best interests of the City by furthering the health, safety, morals and welfare of its residents and taxpayers.

K. The City is desirous of having the Property developed for such uses in order to serve the needs of the City community and in order to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Redevelopment Project Area; and the City, in order to stimulate and induce the development of the Property, has agreed to finance the actual costs of the City TIF Improvements through tax increment and other funds available to the City, all in accordance with the terms and provisions of the Act and this Agreement.

L. The approval of this Agreement by the Corporate Authorities constitutes the exercise of the statutory and home rule authority vested in the City by the Constitution and laws of the State of Illinois.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE 1

RECITALS PART OF AGREEMENT

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

ARTICLE 2

MUTUAL ASSISTANCE

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the City's case, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent. Further, the City agrees that it will not revoke or amend the Redevelopment Plan or the ordinances adopted by the City relating to the Redevelopment Plan, the Project and this Agreement if such revocation or amendment would prevent the development

of the Project in accordance with this Agreement without the prior written consent of Developer, which consent may be withheld in Developer's sole discretion. The Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether federal, state, county or local) any financial or other aid and assistance (including any necessary permits, entitlements and approvals) required or useful for the construction or improvement of property and facilities in and on the Property or for the provision of services to the Property, including, without limitation, grants and assistance for public transportation, roads and highways, water and sanitary sewage facilities and storm water drainage facilities. The City agrees that it will issue all permits and approvals necessary for Developer's development of the Private Project provided that Developer submits all petitions and applications for such permits and approvals in conformance with the requirements of, and meeting all standards set forth in, the applicable City ordinances, policies and regulations, as well as the provisions of this Agreement. Developer and the City each agree to execute all documents and other instruments reasonably required by Developer's lender in connection with the financing of the acquisition of any of the Private Property and the development and construction of the Private Project. The Parties anticipate that the Property will be subdivided pursuant to a vertical plat of subdivision to create several air rights lots and that this plat of subdivision may be prepared and recorded prior to the completion of the Project. Therefore, the Parties agree to effect such conveyances and reconveyances and to cause such corrections and changes to be made to the plat of subdivision as are necessary and appropriate to vest in each of the Parties title to that portion of the Property mutually intended to be owned by such Party.

ARTICLE 3

DEVELOPER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

Developer covenants, represents and warrants to the City as follows:

3.1 Control Documents.

Developer shall construct the Project in conformance with and shall be governed by, adhere to and obey any and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Project as the same may, from time to time, be in force and effect, including, but not limited to, the applicable provisions of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* and the Environmental Barriers Act, 410 ILCS 25/1 *et seq.* Without limiting the generality of the foregoing, Developer shall specifically comply with all of the terms and conditions of this Agreement, applicable provisions of the Wheaton City Code, all documents and plans approved by the City regarding the Project and each and every exhibit attached to and incorporated therein, together with any required permit (all of such documents described in this Section 3.1 being hereinafter collectively referred to as the "Control Documents"). Developer hereby warrants and guarantees that the construction of the Private Project shall conform to the Control Documents and meet the requirements of any inspection permitted by this Agreement or the Control Documents and shall cause the contractor

for the Public Project to conform the construction of the Public Project with the Control Documents and meet the requirements of any inspection permitted by this Agreement or the Control Documents.

3.2 Diligence.

Developer shall proceed diligently to construct, or cause the construction of, the Project as required pursuant to this Agreement.

3.3 Miscellaneous Developer Covenants.

(i) Developer is now solvent and able to pay its debts as they mature; (ii) there are no actions at law, in equity or similar proceedings which are pending or threatened against Developer, which might result in any material and adverse change to Developer's financial condition, or materially affect Developer's assets as of the date of this Agreement; (iii) Developer has or will obtain all required government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) necessary to permit Developer to construct, occupy and operate the Project; (iv) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which Developer is a party or by which it is bound; and (v) there has been no material and/or adverse change in the assets, liabilities or financial condition of Developer since September 1, 1997, other than as a result of the ordinary and customary conduct of its business; (vi) the execution and delivery of this Agreement by Developer, and the performance of this Agreement by Developer, have been duly authorized by Developer, and this Agreement is binding on Developer and enforceable against Developer in accordance with its terms; subject to the effect of bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting creditors' rights; (vii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; and (viii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which Developer is a party or by which Developer is bound; or (b) violate any restriction, court order or agreement to which Developer is subject.

3.4 Levies and Attachments.

Developer shall not, without the prior written consent of the City Manager or his designated representative, which consent may be withheld in the City Manager's sole discretion, enter into any transaction not in the ordinary course of its business which would prevent Developer from being able to pay its debts as such then may exist.

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3.5 Organization and Authority.

Developer is a duly organized and existing limited liability corporation organized and existing under the laws of the State of Illinois, and has the right, power and authority to enter into, execute, deliver and perform this Agreement.

3.6 Right of Inspection.

Developer hereby agrees to permit the City's authorized agents and employees to, during the normal business hours, inspect the Project as it is being constructed.

ARTICLE 4

ACQUISITION OF THE PROPERTY

4.1 Conveyance of the Property.

The City shall disclose to Developer all environmental and other documentation and information in its possession concerning the Property. The City shall grant Developer and its agents and employees access to the Property to inspect the legal, environmental and physical condition of the Property and to conduct such tests, soil borings and studies as Developer may desire. Developer agrees to indemnify the City and hold the City and its employees harmless from and against any and all damages incurred by the City and arising out of Developer's entry onto the Property pursuant to this Section 4.1. Provided Developer approves the legal and physical condition of the Property, in its sole discretion, and the conditions set forth in Section 6.3 have been satisfied or waived by Developer within the time periods set forth in Section 6.3, then the City agrees to convey to Developer the Private Property free and clear of any exceptions to title not approved by Developer in its sole discretion in accordance with this Article 4.

4.2 Developer's Costs.

(a) Developer will pay the cost of the following items:

(1) The purchase price to purchase the Condominium Property as set forth in this Article 4. Developer's share of the costs of designing and constructing the Parking Garage is the total consideration to be paid for the Condominium Property.

(2) The purchase price to purchase the Retail Property as set forth in this Article 4.

(3) All of the construction costs incurred in developing the Private Project as set forth elsewhere in this Agreement.

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(b) All other costs not otherwise apportioned elsewhere in this Agreement shall be paid by the City including, but not limited to, costs incurred by the City in purchasing or otherwise acquiring the underlying land that comprises the Property, its attorneys' fees and fees of its surveyor and title companies.

4.3 Purchase Price.

(a) The purchase price for the entire Condominium Property (including the Parking Garage Condominium Portion) (the "Condominium Property Purchase Price") shall equal the greater of (i) \$800,000.00 and (ii) an amount equal to the product of the total cost to design and construct the Parking Garage multiplied by a fraction, the numerator of which is the number of parking spaces in the Parking Garage Condominium Portion, and the denominator of which is the total number of parking spaces in the completed Parking Garage. The Condominium Property Purchase Price shall be determined (in accordance with the formula set forth in the previous sentence) by the Condominium Property Closing and shall be deposited by Developer into the Parking Garage Construction Escrow at the Condominium Property Closing. If there are approved change orders during the construction of the Parking Garage that increase the total cost of designing and constructing the Parking Garage so that Developer's proportionate share of such costs (applying the formula set forth in clause (ii) of the first sentence of this Section 4.3(a)) would be greater than \$800,000.00, then (i) Developer shall promptly deposit into the Parking Garage Construction Escrow an amount equal to the product of such increased costs multiplied by a fraction, the numerator of which is the number of parking spaces in the Parking Garage Condominium Portion, and the denominator of which is the total number of parking spaces in the completed Parking Garage, and (ii) the City shall promptly deposit into the Parking Garage Construction Escrow an amount equal to the balance of such excess. Developer agrees that the City may refuse to issue a certificate of occupancy for a condominium unit in the Condominium Building until Developer has deposited such amount into the Parking Garage Construction Escrow.

(b) The purchase price for the entire Retail Property (the "Retail Property Purchase Price") shall equal \$15.00 multiplied by the Net Square Footage (as hereinafter defined) of the Retail Property. "Net Square Footage" shall mean the gross square footage of the Retail Property less any portion thereof lying within (i) a public or dedicated right of way, or (ii) any public, quasi-public or private easement areas which contain restrictions on the right to develop any structures or parking. The Retail Property Purchase Price shall be paid as follows. At the Retail Property Closing, Developer shall pay to the City, in cash, fifty percent (50%) of the Retail Property Purchase Price and deliver to the City a promissory note (the "Note") of Developer in the original principal amount of fifty percent (50%) of the Retail Property Purchase Price, which Note shall not bear interest and no principal payments shall be due under the Note until its maturity. The Note shall be due and payable upon the earlier of (i) twenty-four (24) months after the Retail Property Closing and (ii) the final completion of the Retail Buildings and issuance of a certificate of occupancy for the Retail Buildings (if Developer is entitled to such certificate of occupancy). The Note shall be secured by a lien on the Retail Property or such

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other security as is reasonably acceptable to the City, in either case fully subordinated to Developer's construction and permanent financing by documents reasonably acceptable to both the City and Developer's lender providing such financing. The City agrees to make available, at Developer's request, up to twelve (12) parking spaces within the Parking Garage for use by the employees of the users of the Retail Property. If Developer requests such parking spaces, then Developer, at its option, shall either (i) prepay to the City an amount equal to \$3,109.⁰⁰ per parking space for the right to use such parking spaces for a period of twenty (20) years; or (ii) pay for such parking spaces on a monthly basis at the regular monthly rates charged for spaces in the Parking Garage by the City; provided, however, that the City agrees to make such spaces available for twenty (20) years provided that such payments are made.

4.4 Conveyance of the Condominium Property.

(a) Not later than ninety (90) days after final planned unit development approval of the Project, Developer shall cause to be prepared and delivered to the City for its review and approval (i) preliminary plans and specifications for the design of the Parking Garage (as described in Section 5.1), which plans and specifications shall detail all components of the proposed Parking Garage (the "Preliminary Parking Garage Plans"), (ii) a proposed vertical plat of subdivision to create separate air rights parcels for the public portion of the Parking Garage, the Parking Garage Condominium Portion, the Retail Property and the Condominium Property and such other parcels as are deemed necessary by the City and Developer, in a form sufficient to enable the conveyance of the Private Property to Developer in accordance with this Agreement (the "Proposed Plat"), and (iii) preliminary plans and specifications of the design of the Condominium Building, which plans and specifications shall detail all components of the proposed Condominium Building (the "Preliminary Condominium Plans"). The City within thirty (30) days will review the Preliminary Parking Garage Plans, the Preliminary Condominium Plans and Proposed Plat and deliver to Developer its comments and recommendations. The City and Developer shall consult with each other in order to incorporate the City's comments and recommendations into the final plans for the Parking Garage and the Condominium Building and the final plat of subdivision for the Property. Not later than fifteen days after the City delivers its comments and recommendations to Developer, Developer will cause to be delivered to the City for its approval final plans and specifications for the Parking Garage (the "Final Parking Garage Plans"), final plans and specifications for the Condominium Building (the "Final Condominium Plans") and a proposed final plat of subdivision for the Property (the "Final Plat") which incorporate such comments and recommendations. The Final Parking Garage Plans and the Final Condominium Plans shall be in conformance with the Concept Plan. The City shall not be obligated to amend the Concept Plan as it relates to the Parking Garage and the Condominium Building. Provided the City approves the Final Parking Garage Plans, the Final Condominium Plans and Final Plat, which approval shall not be unreasonably withheld or delayed, Developer will cause the Final Plat to be executed and recorded with the Recorder's Office of DuPage County in accordance with all applicable laws, ordinances, codes, rules and regulations.

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(b) The City and Developer will mutually determine the date of the Condominium Property Closing, which date shall not be later than fourteen (14) days after a building permit for the Parking Garage has been issued by the City; provided that all conditions set forth in Sections 6.3(c) through 6.3(g) of this Agreement have been satisfied or waived by Developer in its sole discretion. At the Condominium Property Closing, the City shall record the Final Plat and the City and Developer will jointly establish a construction escrow for the construction of the Parking Garage (the "Parking Garage Construction Escrow"). Developer will deposit into the Parking Garage Construction Escrow the Condominium Property Purchase Price in accordance with Section 4.3(a). From time to time, as payments become due in connection with design and construction of the Parking Garage, the City will deposit into the Parking Garage Construction Escrow the amounts necessary to pay its proportionate share of such costs. The City covenants to pay all costs of designing and constructing the Parking Garage, less Developer's share of such costs determined in accordance with Section 4.3(a). The City and Developer each shall pay its proportionate share of architectural and engineering costs related to the Parking Garage incurred prior to the establishment of the Parking Garage Construction Escrow as such costs become due. In consideration for the payment of the Condominium Property Purchase Price at the Condominium Property Closing, the City shall convey the Condominium Property to Developer in accordance with the Closing procedures set forth in Section 4.9.

4.5 Conveyance of the Retail Property.

By notice to the City, Developer shall select the date of the Retail Property Closing, which date shall not be later than the scheduled date of commencement of construction on the Retail Property as set forth in Section 5.2; provided that both (i) the Condominium Property Closing has occurred and (ii) all other preconditions to Closing set forth in this Agreement have been satisfied or waived by Developer in its sole discretion (including, but not limited to, the conditions set forth in Section 6.3). At the Retail Property Closing, Developer shall pay to the City the Retail Property Purchase Price in accordance with Section 4.3(b) and the City shall convey the Retail Property to Developer in accordance with the Closing procedures set forth in Section 4.9.

4.6 Environmental.

(a) The City hereby agrees that all portions of the Private Property shall be conveyed by the City to Developer free and clear of any adverse environmental conditions, defects and problems. If, as a result of any testing or studies conducted by either Party, it shall be determined that any portion of the Property is not in compliance with any applicable environmental law, code, ordinance or regulation, and if the cost to correct and/or remediate such condition will not exceed \$500,000.00, the City and Developer shall agree upon a plan to correct and/or remediate such condition in compliance with all applicable laws, codes, ordinances and regulations and each Party shall pay a portion of such costs equal to the ratio of the square footage of such Party's portion of the Property to the total square footage of the

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Property; provided, however, if the cost to correct and/or remediate such condition will exceed \$500,000.00, then either Party may terminate this Agreement without liability to the other Party by notice delivered within thirty (30) days after determining such cost. It shall be the sole responsibility of the City to complete such work with respect to the real estate to be conveyed. Any correction and/or remediation of environmental conditions associated with the construction of the Parking Garage shall be part of the cost of constructing the Parking Garage and shall be paid for in accordance with Section 4.3(a).

(b) In all events, the City agrees to furnish Developer with true and accurate copies of every report and all data received in connection with any of the tests and studies conducted by or for the City and to comply with the provisions of the Illinois Responsibility Property Transfer Act of 1988, as amended ("RPTA").

4.7 Delivery of Survey and Title Commitment.

Within fifteen (15) days after the execution of this Agreement, the City, at the City's expense, shall deliver to Developer:

(1) A survey of the Property prepared in accordance with ALTA/ACSM standards for an Urban Survey including such Table A items as Developer reasonably requests (the "Survey"), in a form acceptable to Developer; and

(2) A currently dated title commitment (the "Title Commitment") covering the Property issued by Chicago Title Insurance Company (the "Title Company"), showing title in the City and showing Developer or its nominee as the proposed insured. Each title insurance policy to be issued in accordance with the Title Commitment shall be a current form of ALTA Owner's Title Insurance Policy (the "Owner's Policy") issued by the Title Company including such endorsements as Developer reasonably requests and providing extended coverage over all Schedule B exceptions showing good and marketable title to that portion of the Property conveyed to Developer subject only to those exceptions approved by Developer.

4.8 Clearance of Title or Survey Defects.

(a) If, by notice to the City delivered within fifteen (15) days after delivery of the Title Commitment and the Survey, Developer objects to any exceptions contained in the Title Commitment or any matters shown on the Survey (collectively, "Defects in Title"), the City shall have thirty (30) days from the date of Developer's notice in which to remove or obtain the commitment of the Title Company to waive or insure over such Defects in Title in a manner reasonably acceptable to Developer and Developer's lender and to furnish such required Title Commitment or Survey and eventual Owner's Policy showing such Defects in Title so cured.

(b) If such Defects in Title are not so cured within such thirty (30) day period, or if the City is unable to cure such Defects in title for any reason (and if no additional time is granted or mutually agreed upon), Developer may terminate this Agreement without liability to either Party, or, at its election, may take title as such title then is (with the right to deduct from the purchase price for the affected portion of the Property, the value of liens or encumbrances of a definite or ascertainable amount), upon giving to the City notice of such election. If Developer does not provide such notice of election within thirty (30) days after written notice to Developer of the City's inability to cure any such Defects in Title, this Agreement, without further action by either Party, shall terminate without liability to either Party.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the City's obligation to cure any Defects in Title to the Property and Developer's rights of approval or acceptance of title to any portion of the Property are expressly subject to the following:

(1) The City shall use its reasonable best efforts to cure Defects in Title and to obtain full extended coverage title insurance for all portions of the Property conveyed to Developer. If such Defects in Title cannot be cured within the time period and manner described in Section 4.8(b) (or within the time period described in Section 4.8(d)) and this Agreement is thereby terminated by either Party, such failure to clear title shall not be deemed a default of the City. If the condition of title to the Property has been accepted under the provisions of Section 4.8(b) and any additional Defects in Title subsequently appear on or prior to a Closing date and have not arisen from or been caused by acts done or suffered by or judgments against Developer or any person claiming by, through or under Developer, the City shall use its reasonable best efforts to clear such additional Defects in Title as described above.

(2) Developer will be required to accept title to the Private Property subject to encroachments and other questions of survey, rights-of-way and ingress and access easements, roads and the like, provided Developer is assured by the Title Company that all such Defects in Title shall be waived by the Title Company by reason of the development of the Project as described in this Agreement and/or because of the merger of the title to the various parcels in the Private Property in Developer or Developer's nominee.

(d) Notwithstanding anything to the contrary contained in this Agreement, the City agrees that, promptly after the execution and delivery of this Agreement, it will commence procedures and inquiries reasonably necessary to determine whether all Defects in Title can be promptly removed, waived or insured over by the Title Company in a manner reasonably acceptable to Developer and Developer's lender, or otherwise made acceptable to both Parties pursuant to arrangements mutually satisfactory to the Parties, which satisfaction shall not be unreasonably withheld by either Party. The Parties and their respective counsel and representatives agree to cooperate with each other to do this; provided, however, the City shall

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not be required to expend any amount not otherwise contemplated in this Agreement. Furthermore, notwithstanding the time limits and periods expressed in the foregoing sections of this Article 4, if it appears any Defects in Title cannot be cured to the mutual satisfaction of the Parties within sixty (60) days after the date of this Agreement, then, notwithstanding the provisions of Section 4.8(b), either Party by written notice to the other given within fifteen (15) days after written notice to Developer of the City's inability to cure any such Defects in Title may terminate this Agreement without further rights or liability of either Party.

4.9 Closing Escrow and Other Closing Procedures.

Each closing (a "Closing"), including both the Condominium Property Closing and the Retail Property Closing, shall be made through a deed and money escrow (a "Closing Escrow"). Delivery of the Quit Claim Deed and any other documents or monies to be delivered and exchanged as part of such Closing shall be made through the Closing Escrow at the office of the Title Company in accordance with the usual provisions of such form of escrow agreement then in use by the Title Company, modified to conform to the provisions of this Agreement. The cost of the Closing Escrow shall be borne equally by the City and Developer. The Closing Escrow shall provide for the deposit of the following:

- (a) A Quit Claim Deed for the portion of the Property being conveyed to Developer executed by the City in recordable form.
- (b) Completed Real Estate Transfer Tax Declarations or Exemption Statements executed by the Parties or their representatives in form required by the Real Estate Transfer Tax Acts of the State of Illinois, the City of Wheaton, and the County of DuPage, Illinois.
- (c) The Owner's Policy free of all ownership rights of prior title holders.
- (d) ALTA Statements and such other documents as reasonably may be required for the issuance of the Owner's Policy.
- (e) The customary opinion of the City's Counsel covering the City's corporate power and authority, compliance with all applicable laws, codes and ordinances, the validity of this Agreement, the authority of the City to adopt this Agreement under all applicable laws, codes and ordinances, and the Quit Claim Deed having been duly authorized, executed and delivered and effective to vest title to the portion of the Property covered by the Quit Claim Deed in Developer or its nominee.
- (f) A Disclosure Document in accordance with RPTA.
- (g) Upon the demand of either Party, the other Party will execute and deliver, or cause to be executed and delivered, as part of the Closing Escrow such other documents as may

be reasonably necessary to consummate the sale of the portion of the Property being conveyed to Developer at such Closing and the provisions of this Agreement.

Upon written notice to the City given not later than ten (10) days before the date of a Closing, Developer may elect to take title to the portion of the Private Property to be conveyed to Developer at such Closing in an Illinois land trust, corporation, limited liability company or other designated controlled entity as permitted under this Agreement.

For each Closing the City shall pay for all title searches through the date of the first current Title Commitment and as necessary to show title in the City, and a second "later date" Title Commitment to be obtained within a reasonable time prior to the date of such Closing, which second Title Commitment must comply with the conditions of Section 4.8. Thereafter, Developer shall pay for the cost of any subsequent title searches including any later date search covering the recording of each Quit Claim Deed and any title searches otherwise involving or requested by Developer. However, the City shall pay the premium for the issuance of each Owner's Policy.

The Parties agree this Agreement or a memorandum of this Agreement shall be recorded at the joint cost of the Parties. Any costs incurred by the City under this Section 4.9 may be reimbursed to the City out of the tax increment generated by the Redevelopment Project Area or other funds available to the City.

4.10 Prorations and Payment of Real Estate Taxes.

With respect to each portion of the Property to be conveyed to Developer, all special assessments, whether due before or after any Closing, and that portion of the current general real estate taxes, if any, and drainage district assessments, if any, due on or before the Closing date for the conveyance of such portion of the Property, shall be the responsibility of the City and the City shall either arrange to pay such taxes and assessments as and when due or otherwise cause the waiver thereof. That portion of the general real estate taxes and drainage district assessments or installations thereof for such portion of the Property for the year of Closing allocable to the period after the Closing date for the conveyance of such portion of the Property shall be the responsibility of, and shall be paid in full by, Developer.

4.11 Conditions Precedent to the City's Obligations to Close.

With respect to the Closing of each portion of the Property to be conveyed to Developer, in addition to any other conditions or restrictions contained in this Agreement, the submission by Developer of all pertinent documents as referred to in this Article 4 and the submission to the DuPage County Assessor's Office and the DuPage County Clerk's Office of a letter jointly signed by the City and Developer acknowledging that such portion of the Property is now privately owned and subject to taxation shall be conditions precedent to the City's obligation to close the conveyance of such portion of the Property as contemplated by this Agreement.

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ARTICLE 5

CONSTRUCTION OF THE PARKING GARAGE AND THE CITY TIF IMPROVEMENTS

5.1 Parking Garage.

(a) Developer shall cause plans and specifications for the Parking Garage to be prepared in accordance with Section 4.4(a). The Parking Garage Condominium Portion is that portion of the Parking Garage adjacent to the Condominium Property, as generally shown on Exhibit B, but in a precise location mutually determined by the City and Developer, and containing a number of parking spaces equal to the total number of units to be constructed by Developer as part of the Condominium Property multiplied by 1.5. The Parking Garage Condominium Portion shall be part of the Condominium and shall be conveyed to Developer with the conveyance of the Condominium Property. The Parking Garage shall be designed so that direct access from the Condominium Building to each floor of the Parking Garage Condominium Portion will be provided. The City shall pay the entire cost to design and construct the Parking Garage, subject to Developer's contribution of a portion of such cost as part of the Condominium Property Purchase Price in accordance with Section 4.3(a). Developer shall select the general contractor to construct the Parking Garage in its reasonable discretion, after consultation with the City. Developer shall cause the construction of the Parking Garage to be commenced with ninety (90) days after the issuance of all building and other permits necessary for the construction of the Parking Garage.

(b) The Parties acknowledge that there will not be a permanent wall separating the Parking Garage Condominium Portion from the balance of the Parking Garage, although there may be gates or other structures to effect such separation, as agreed to by the Parties. Developer (or the Condominium Association for the Condominium Building) may subsequently modify and/or improve such separation structures. After completion of the Parking Garage, the City shall cause the Parking Garage to be maintained, insured, managed and operated in a manner consistent with first-class public parking garages in the greater Chicago area. A proportionate share of the costs of such services provided by the City (based on the ratio of the number of parking spaces in the two portions of the Parking Garage) shall be paid for by the Condominium pursuant to the REA (as defined in Section 5.3).

5.2 City TIF Improvements.

In order to further the redevelopment of the Property, and at no cost to Developer, Developer, on behalf of and as agent for, the City, shall design and construct the following (collectively, "City TIF Improvements") in accordance with plans and specifications prepared at the direction of Developer and approved by the City and Developer: (i) improvements (including lighting and

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brick pavers) to the alley parallel to Hale Street and the alley perpendicular to Hale Street; (ii) public way improvements along Wheaton Avenue, Wesley Street and Front Street; and (iii) the reconfiguration of the intersection of Wheaton Avenue and Wesley Street to "square off" the southeast and southwest corners of such intersection and construction of a public plaza relocating the existing fountain with landscaping at the southeast corner of such intersection, all as shown on the Concept Plan. The City shall pay the entire cost of constructing the City TIF Improvements. The City and Developer shall enter into a construction management agreement (the "Construction Management Agreement") in the form attached hereto as **Exhibit C**, pursuant to which the City will engage Developer as a construction manager to manage the construction, on behalf of and as agent for, the City, of the Parking Garage and the City TIF Improvements. The Construction Management Agreement will provide that Developer will be paid a fee of one percent (1%) of the costs of constructing the Parking Garage and the City TIF Improvements for its services pursuant to the Construction Management Agreement.

5.3 REA.

Developer and the City will enter into a reciprocal easement and operating agreement ("REA") mutually acceptable to the Parties governing the interrelationship among the various portions of the Property and including, but not limited to, provisions for exclusive and non-exclusive easements; the provision of services from one portion of the Property to another; the allocation, collection and payment of shared expenses and provided services; maintenance, insurance, use and alterations requirements and restrictions; and decision and dispute-resolution procedures.

5.4 Indemnification.

Developer hereby agrees to indemnify, defend and hold the City and its officers, agents and employees harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, reasonable attorneys' fees and court costs), but specifically excluding any consequential damages, suffered or incurred by the City arising from or in connection with (i) the failure of Developer to perform its obligations under this Agreement or (ii) the failure of Developer or any contractor to pay contractors, subcontractors or materialmen in connection with the Project; provided that, with respect to the Public Project, the City has supplied the funds to pay the costs of the Public Project, subject to Developer's contribution of a portion of the costs of the Parking Garage pursuant to Section 4.3(a).

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ARTICLE 6

CONSTRUCTION OF THE PRIVATE PROJECT

6.1 Plan Approval.

From time to time, Developer shall submit to the City the Plans for that portion of the Private Project then being undertaken by Developer. The City agrees that the City Manager, or his or her designee, will meet with Developer to coordinate the preparation of its submission of any Plans to the City for its review and approval. The City agrees that the City Manager, or his or her designee, will communicate and consult informally with Developer as frequently as is necessary to insure that the submittal of the Plans can receive a prompt and speedy consideration. The City shall have thirty (30) days to review and approve the Plans, or to provide a written statement identifying any portion of the Plans which is not approved and citing with specificity the provisions of the Control Documents with which the Plans (or portions thereof) fail to comply and the City agrees to approve the Plans upon Developer's compliance with those requirements so specified within ten (10) working days of resubmittal of the revised Plans. The City has approved the Concept Plan for the Project. The City agrees that it will not disapprove any Plans submitted by the Developer that are in conformance with the Concept Plan, provided such Plans also meet the requirements of the Control Documents. The City hereby designates the City Manager, or his or her designee, as the City's representative to review and approve or disapprove all Plans.

6.2 Construction of the Private Project.

Developer agrees to use commercially reasonable efforts to construct or to cause the construction of the Private Project and shall do so in accordance with the approved Plans. Developer may develop the Private Project in up to three (3) phases, consisting of (i) the Condominium Building, (ii) one Retail Building, and (iii) the other Retail Building, as determined by Developer. Notwithstanding the foregoing, Developer shall determine in its sole discretion the number of units to be constructed as part of the Condominium Building (provided such number of units may not exceed 40). Subject to satisfaction of all preconditions set forth in this Agreement, Developer agrees to commence construction on the Condominium Property (other than the Parking Garage Condominium Portion) within one hundred twenty (120) days after the later of (i) the issuance of all building and other permits necessary for the construction of the Condominium Building and (ii) commencement of construction of the Parking Garage; and to commence construction on the Retail Property no later than October 20, 1999.

6.3 Pre-Conditions to Obligations.

Developer shall have no obligation to commence development of the Private Project nor, having elected to commence development of the Private Project, to complete such development, unless

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each of the following conditions shall have been satisfied within the time specified below or waived in writing in the sole discretion of Developer:

(a) Acquisition of the Condominium Property. Developer shall have acquired fee simple title to the Condominium Property, free and clear of all exceptions to title not approved by Developer in its sole discretion, prior to the date by which construction of the Condominium Building is to commence.

(b) Acquisition of the Retail Property. Developer shall have acquired fee simple title to the Retail Property, free and clear of all exceptions to title not approved by Developer in its sole discretion, on the date established for the Retail Property Closing pursuant to Section 4.5.

(c) Review of the Property. Developer shall have satisfied itself, at its sole discretion, as to the condition of title, survey and soils of the Property, by the date which is thirty (30) days after the date of this Agreement.

(d) No Litigation. At the time of commencement of construction of any portion of the Project there shall not be any litigation pending or threatened against the City or Developer seeking to invalidate, enjoin the operation of, or otherwise attack any of the foregoing or this Agreement.

(e) Access. Final access permits for vehicular ingress and egress to and from public streets and highways from and to the Property shall have been issued by the governmental body having jurisdiction thereof for the locations shown on the final site plan, without qualification or restriction, not later than February 1, 1998.

(f) Permits. All building permits and other approvals required for construction of the portion of the Private Project then being undertaken by Developer shall have been issued.

(g) No City Default. The City shall not be in default in the payment or performance of any of its obligations under this Agreement.

6.4 Signs.

After the execution and delivery of this Agreement, Developer shall have the right from time to time to erect a sign or signs on vacant or unoccupied portions of the Property at such location or locations as shall be reasonably acceptable to the City; provided, however, such signs and Developer's right to erect them shall in each and every instance be subject to the provisions of all applicable laws, codes and ordinances including, but not limited to, the Wheaton Sign Ordinance, as amended from time to time, and such signs shall be subject to the prior review by and the reasonable approval of the City.

ARTICLE 7

INSURANCE

Prior to Developer commencing construction of the Private Project or the Public Project Developer agrees to provide the City with all policies of insurance which the City may reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the City, including without limitation, comprehensive liability, worker's compensation and builder's risk insurance coverage naming the City as an additional insured on such policies.

Developer shall furnish or cause to be furnished to the City duplicate originals, if requested, or appropriate certificates of insurance evidencing that there shall be in effect on a per project limit basis, comprehensive bodily injury and property damage liability insurance in the amount of at least Two Million and no/100ths Dollars (\$2,000,000.00) combined single limit, per occurrence and shall include the City, its officers, agents and employees as additional insureds in all such policies.

All such policies shall also provide for at least thirty (30) days notice to the City of the cancellation or termination of such policies. The City shall have right but not the obligation to pay any delinquent insurance premiums hereunder and Developer shall reimburse the City for any such payments. Any liability of the City, its officers, agents and employees, for bodily injury or property damage in connection with the construction of the Public Project shall be fully insured under these policies for the limits set forth above. Such insurance shall be maintained in force by Developer until construction of the Public Project is completed.

Prior to the completion of the Private Project or any phase thereof and prior to the completion and acceptance by the City of the Public Project, Developer shall cause same to be insured in an amount equal to the full replacement value thereof, such that should any portion thereof be damaged or destroyed by fire or other insurable casualty, sufficient funds shall be available to permit the reconstruction thereof. Developer agrees, in the event of a loss thereunder, to apply such insurance proceeds to the restoration or reconstruction of the Private Project or the Public Project as the case may be. Developer agrees that it shall not obtain mortgage or construction loans or other financing relationships containing terms inconsistent with the provisions relating to the application of insurance proceeds as herein provided. Should the insurance proceeds alone prove insufficient to pay the full cost of the restoration or reconstruction of the Private Project, the balance of such expense shall be borne by Developer. Should the insurance proceeds alone prove insufficient to pay the full cost of the restoration or reconstruction of the Public Project, each Party shall pay that portion of the balance of such expense that is determined by multiplying such balance by a fraction, the numerator of which is the number of parking spaces in such Party's portion of the Parking Garage and the denominator of which is the total number of parking spaces in the Parking Garage. Developer shall commence, or cause to be

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commenced, the restoration or reconstruction within one hundred eighty (180) days of the casualty event.

ARTICLE 8

COMPLETION

8.1 Private Project.

At the time Developer is entitled to issuance of a certificate of occupancy pursuant to applicable City ordinances with respect to any phase or portion of the Private Project, the City also shall furnish Developer with certificates of completion (each, a "Certificate of Completion"). Issuance of a Certificate of Completion shall mean that Developer has substantially completed the applicable phase or portion of the Private Project in accordance with the Plans and in conformity with the Redevelopment Plan and this Agreement. Except as otherwise provided for in this Agreement, the City's issuance of a Certificate of Completion shall release the party to whom it is issued from any further obligation or liability under this Agreement with respect to the construction and completion of the applicable phase or portion of the Private Project.

8.2 Form of Certificate.

Each Certificate of Completion shall be in a recordable form, and shall be a conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the obligations of the party to whom it is issued and such party's successors and assigns with respect to the construction and completion of the Private Project (or the phase or portion of the Private Project to which it is applicable). Upon written request by Developer for a Certificate of Completion, the City shall have thirty (30) days after receipt of such request to provide Developer with a Certificate of Completion or a written statement indicating in detail how Developer has failed to complete the construction of the Private Project in conformity with the Redevelopment Plan and this Agreement, or has otherwise failed to perform its obligations under this Agreement, and what additional measures or acts will be necessary, in the reasonable opinion of the City (which shall be determined based solely on the requirements of applicable City ordinances and rules and regulations, as may be modified by the Redevelopment Plan and this Agreement), for Developer to take or perform in order to obtain the Certificate of Completion.

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ARTICLE 9

UTILITIES AND FEES

The City hereby agrees that Developer shall have the right to connect any and all on-site water lines, sanitary and storm sewer lines constructed on the Property to City utility lines existing at or near the perimeter of the Property. The City represents and warrants to Developer that (except for any existing or future special service areas) no tax, fee, charge, exaction or imposition of any kind shall be imposed upon or with respect to the Redevelopment Project Area, the Property or Developer, or upon, or by reason of, the planning, development, construction, use, ownership and/or operation of any portion of the Property or any public improvements or services associated therewith after the effective date of this Agreement that are not (i) made generally applicable on a uniform basis to all owners, users and developers of property within the City and (ii) reasonably related to increased costs incurred by the City in providing services for which each such fee is assessed. Developer shall pay all fees imposed on Developer; provided, however, that Developer does not waive any statutory rights to object to future special service areas proposed by the City that include the Private Property.

ARTICLE 10

OCCURRENCES CONSTITUTING PERMITTED DELAYS

A Party shall not be deemed to be in default under this Agreement where delays or defaults are due to the fault of the other Party, war, unusual weather conditions, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, threatened or pending litigation against such Party, epidemics, quarantine restrictions, freight embargoes or lack of transportation, or other reasons beyond the reasonable control of such Party ("Permitted Delays"). An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the Party claiming such extension is sent to the other Party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the Party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

ARTICLE 11

MORTGAGE HOLDERS

11.1 Notice to Mortgage Holders.

Whenever the City shall deliver any notice or demand to Developer with respect to any alleged breach or default by Developer, the City shall at the same time deliver to each holder of record

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(a "Holder") of any mortgage, deed of trust or other security interest and the lessor under any sale-leaseback or grantee under any other conveyance for financing (a "Security Interest") a copy of such notice or demand, provided the City has been advised of the name and address of any such Holder. Each such Holder shall (insofar as the rights of the City are concerned) have the right at its sole option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default; provided, however, in the event of a default by Developer under this Agreement which is not curable by such Holder (e.g., insolvency or bankruptcy or the need to take possession of the portion of the Property in which such Holder has a Security Interest), such Holder shall be deemed to have cured such non-curable defaults by its execution of the assumption agreement contemplated in the later portions of this Section 11.1. No Holder shall be obligated by the provisions of this Agreement to construct or complete any improvements or to guarantee such construction or completion, notwithstanding the assignment of this Agreement to such Holder by Developer. Nothing contained in this Agreement shall be deemed to permit or authorize any Holder to undertake or continue the construction or completion of any improvements (beyond the extent necessary to conserve or protect the improvement or construction already made) without first having expressly assumed the obligations of Developer (with respect to the portion of the Property in which the Holder has a Security Interest) to the City as set forth in this Agreement by written agreement reasonably satisfactory to the City. Such Holder and its successors in interest shall be deemed only to have assumed the obligations of Developer for as long as such Holder has an interest in and possession of a portion of the Property, and the sole remedy for breach of this assumption agreement will be limited to the equity interest of such Holder or successor in its respective portion of the Property. No such assumption agreement will relieve Developer of any of its obligations under this Agreement. Any such Holder or other entity properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from time to time from the City with respect to such improvements. Nothing in this Section 11.1 shall be deemed to grant to any such Holder referred to in this Section 11.1 any rights or powers beyond those granted under such Holder's underlying agreement with Developer.

11.2 Cure by the City.

In the event of a default or breach by Developer under this Agreement not cured within the curative period provided in this Agreement, which default is also a default under any Security Instrument, then prior to the issuance of the final Certificate of Completion for the Private Project and provided the Holder of such Security Interest has not exercised its option to complete the portion of the Private Project subject to its Security Interest, subject to acquiring possession of such portion of the Property, the City may cure the default under the Security Instrument or cause such default to be cured prior to completion of any foreclosure as a result of such default. In such event, the City shall be entitled to reimbursement from Developer of all reasonable costs and expenses incurred by the City in curing the default of such party, including reasonable attorneys' fees. Nothing in this Section 11.2 shall require any Holder to delay or abate any foreclosure proceeding or the exercise of any other remedy under its Security Instrument and

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upon completion of foreclosure or other appropriate proceeding with the City not having cured the Developer's default prior thereto, such Holder shall be entitled to its interest in the portion of the Property subject to its Security Interest, unencumbered by this Agreement and free of any obligation under this Agreement.

ARTICLE 12

AUTHORITY

12.1 Actions.

The City represents and warrants to Developer that, upon application of Developer it has taken or will take all such actions as may be required and necessary to process all amendments, variations and special use and planned unit development approvals relating to its zoning ordinances and its other ordinances, codes and regulations as may be necessary or proper in order to insure the development of the Property in accordance with the Redevelopment Plan and this Agreement and to enable the City to execute this Agreement and to carry out fully and perform the terms, covenants, agreements, duties and obligations on its part to be kept and performed as provided by the terms and provisions of this Agreement.

12.2 Powers.

(a) The City hereby represents and warrants to Developer that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

(b) Developer hereby represents and warrants to the City that Developer has full lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Developer actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of Developer, is enforceable in accordance with its terms and provisions and does not require the consent of any other party.

12.3 Authorized Parties.

Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements, any request, demand, approval, notice or consent, or agreement of the City or Developer is required to agree to or to take some action at the request of the other

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party to this Agreement, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided in this Agreement, by the City Manager or his or her designee, and for Developer by any authorized officer (in any event, the officer(s) executing this Agreement are so authorized) of one of its members and either Party shall be authorized to act on any such request, demand, approval, notice or consent or agreement.

ARTICLE 13

GENERAL PROVISIONS

13.1 Time of Essence.

Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters of this Agreement and acknowledge that the successful performance of this Agreement requires their continued cooperation.

13.2 Default.

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if it fails to materially perform, observe or comply with any of its covenants, agreements or obligations under this Agreement or breaches or violates any of its representations contained in this Agreement after the expiration of any applicable cure period. If Developer fails to commence construction of any phase of the Project by the dates specified in this Agreement (and does not so commence construction of such phase within thirty (30) days after written notice from the City), then the City (in addition to any other remedy it may have) may terminate this Agreement immediately upon notice to Developer.

(b) Upon a breach of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements contained in this Agreement, may be awarded damages for failure of performance, or may terminate this Agreement; provided, however, that notwithstanding the foregoing to the contrary, the City's sole remedies in the event Developer fails to complete construction of the Private Project after commencing construction of the Private Project and such failure is a default under this Agreement shall be (i) an action for specific performance, and (ii) an action for actual (but not consequential) damages in an amount equal to the out-of-pocket costs expended by the City in connection with this Agreement and the Private Project. Except for the foregoing and as otherwise set forth in this Agreement, no action taken by a Party pursuant to the provisions of this Section 13.2 or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth in this Agreement, or available to any Party at law or in equity.

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(c) Before any failure of either Party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. Except as set forth in Section 13.2(a), no breach of this Agreement may be found to have occurred if performance has commenced to cure such alleged breach to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice and the Party alleged to be in breach continues diligently to pursue such cure, subject, however, to Permitted Delays. Except as specifically set forth in this Agreement, each of the Parties shall have all remedies available at law or in equity to enforce this Agreement in case of a breach of this Agreement which continues after the expiration of any applicable cure periods.

13.3 Amendment.

This Agreement and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, evidenced by a written amendment, by the adoption of an ordinance or resolution of the City approving such amendment, as provided by law, and by the execution of such amendment by the Parties or their successors in interest.

13.4 No Other Agreement.

Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

13.5 Prohibitions Against Assignment and Transfers.

Until the Private Project is substantially completed, any transfer by Developer of all or any interest in either the Property and any improvements on the Property (except for any Permitted Transfers, as hereinafter defined) and this Agreement is only permitted upon the prior written approval of the City, which approval shall not be unreasonably withheld. In connection with any request for the City's consent to any applicable transfer (other than a Permitted Transfer), Developer shall submit to the City evidence of the following regarding such transfer:

(a) Any proposed transferee shall have the experience and financial responsibility necessary to fulfill the obligations undertaken by Developer in this Agreement;

(b) Any such proposed transferee shall have expressly assumed the obligations of Developer hereunder in writing;

(c) All instruments and legal documents involved and affecting any such transfer from Developer to any transferee shall be submitted to the City for review and approval.

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Upon compliance with the requirements contained in this Section 13.5, Developer shall be relieved from all further liability under this Agreement. Except upon compliance with the foregoing requirements or in the event of specific written agreement by the City, no transfer shall be deemed to relieve Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Private Project from any of their obligations with respect thereto as to the interest transferred. Developer shall in any event notify the City of any transfer of any interest in the Private Project (including Permitted Transfers) other than (i) transfers of interests in connection with the sale of individual condominium units and such units' interest in the common elements of the condominium, (ii) transfers of any property to any condominium association(s) and homeowners association(s) to be established, and (iii) the execution of easements, licenses, concessions or leases of any part of the Private Project or the Private Property to retail, commercial, restaurant or entertainment users.

For purposes of this Agreement, "Permitted Transfers" shall mean: (i) Developer's transfer of title to the Private Property (or any portion thereof) to a land trust of which Developer or any entity described in clause (vii) of this paragraph is the beneficiary; (ii) the sale of condominium units and such units' interest in the common elements of the condominium to individual purchasers; (iii) the transfer of any property to any condominium association(s) and homeowners association(s) to be established; (iv) the execution of easements, licenses, concessions or leases of any part of the Private Project or the Private Property to retail, commercial, restaurant or entertainment users; (v) the sale or ground lease of any part of the Private Project or the Private Property to retail, commercial, restaurant or entertainment users; (vi) collateral assignments and/or mortgages of Developer's rights and/or sales and leasebacks respecting the Private Project or the Private Property or any portion thereof to lenders financing the Private Project; and (vii) transfers to any partnership, joint venture or limited liability company of which Developer or its members or its affiliates or any of their respective officers, directors, shareholders, members, managers or partners is a partner, joint venturer or member.

13.6 Severability.

If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

13.7 Illinois Law.

This Agreement shall be construed in accordance with the laws of the State of Illinois.

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13.8 Notice.

Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance with this Section 13.8. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail.

To Developer:

Wheaton Wesley, L.L.C.
c/o Centrum Properties, Inc.
225 West Hubbard Street
4th Floor
Chicago, Illinois 60610
Attn.: John T. McLinden
Fax No. (312-832-2525)

and to:

Wheaton Wesley, L.L.C.
c/o Joseph J. Freed and Associates, Inc.
1400 South Wolf Road
Building 100
Wheeling, Illinois 60090
Attn: Thomas H. Fraerman and Gregory R. Glass
Fax No. (847-215-5282)

with a copy to:

Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601-1293
Attn: Paul Homer and Jeffrey S. Arnold
Fax No. (312-236-7516)

To the City:

The City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187
Attn: City Clerk
Fax No. (630-260-2017)

R97-187256

With a copy to:

Gorski & Good
211 South Wheaton Avenue
Wheaton, Illinois 60187
Attn: Robin N. Jones
Fax No. (630-665-8670)

13.9 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

13.10 References.

Except as otherwise provided, all references to Sections and Articles in this Agreement are to the Sections and Articles of this Agreement. All Section headings and references are for the convenience of the Parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

13.11 Consent or Approval.

Except as otherwise provided in this Agreement, whenever consent or approval of any Party to this Agreement is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

13.12 Real Estate Brokerage.

The City and Developer each represent and warrant one to the other that neither has dealt with any real estate broker in connection with the transaction contemplated in this Agreement, and that no broker's commission or fee is due as a consequence of this Agreement. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all claims for real estate broker commissions or fees in connection with any aspect of the transactions contemplated hereunder arising as a consequence of the acts or omissions of the Party from whom such indemnification is sought.

13.13 Definitions of "Developer" to Include "Trustee".

It is the intention of the Parties that the word "Developer" as defined and used in this Agreement shall be construed to include the "Trustee" under any title holding trust which shall, during the term of this Agreement, hold legal title to any portion or all of the Property.

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13.14 Disclaimer.

Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the Parties, or by third persons, to create any relationship of third party beneficiary, or of principal or agent (except with respect to the Construction Management Agreement), or of limited or general partnership, or of joint venture, or of any association or relationship involving the City.

13.15 Covenants Running With the Land.

It is intended and agreed, that all covenants provided in this Agreement on the part of Developer or any title holding trust over which Developer has a power of direction, to be performed or observed shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by the City, and any successor in interest to all or any portion of the Property except for any unit owner of a completed condominium unit or tenant of any retail space. Notwithstanding the foregoing, all such covenants shall cease upon the expiration of the Term of this Agreement.

13.16 Recordation of Agreement.

The Parties agree to execute and deliver the original of this Agreement in proper form for recording in the office of the Recorder of Deeds, DuPage County, Illinois.

13.17 Successors and Assignees.

The terms and conditions of this Agreement shall apply to and bind the successors and assignees of the City and the successors and assignees of Developer.

13.18 Term.

This Agreement shall be in full force and effect from and after its execution by the last Party to execute this Agreement and shall remain in full force and effect until November 1, 2017 or the final maturity of any bonds issued by the City to pay for the Public Project, whichever is later, unless earlier terminated pursuant to any of the terms or provisions of this Agreement.

13.19 No Discrimination.

Developer, in connection with the construction of the Project, shall utilize fair employment practices, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Developer shall, with respect to the construction of the Private Project, and shall require the contractor constructing the Public Project to, with respect to the construction of the Public Project, take affirmative action to require that applicants

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are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WHEATON, an Illinois
municipal corporation

ATTEST:

Emily M. Consalvo
City Clerk

By: James Caw
Mayor

WHEATON WESLEY, L.L.C.,
an Illinois limited liability company

By: Wesley
Its: MANAGER

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EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Concept Plan
Exhibit C	Form of Construction Management Agreement

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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EXHIBIT A

LOT 1 OF THE PLAT OF CONSOLIDATION OF PART OF THE ORIGINAL TOWN OF WHEATON (T.I.F. SITE 2), BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT HEREOF RECORDED ON SEPTEMBER 22, 1997 AS DOCUMENT R97-143126 IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-16-301-045

232 WEST WESLEY STREET, WHEATON, IL 60187

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EXHIBIT B

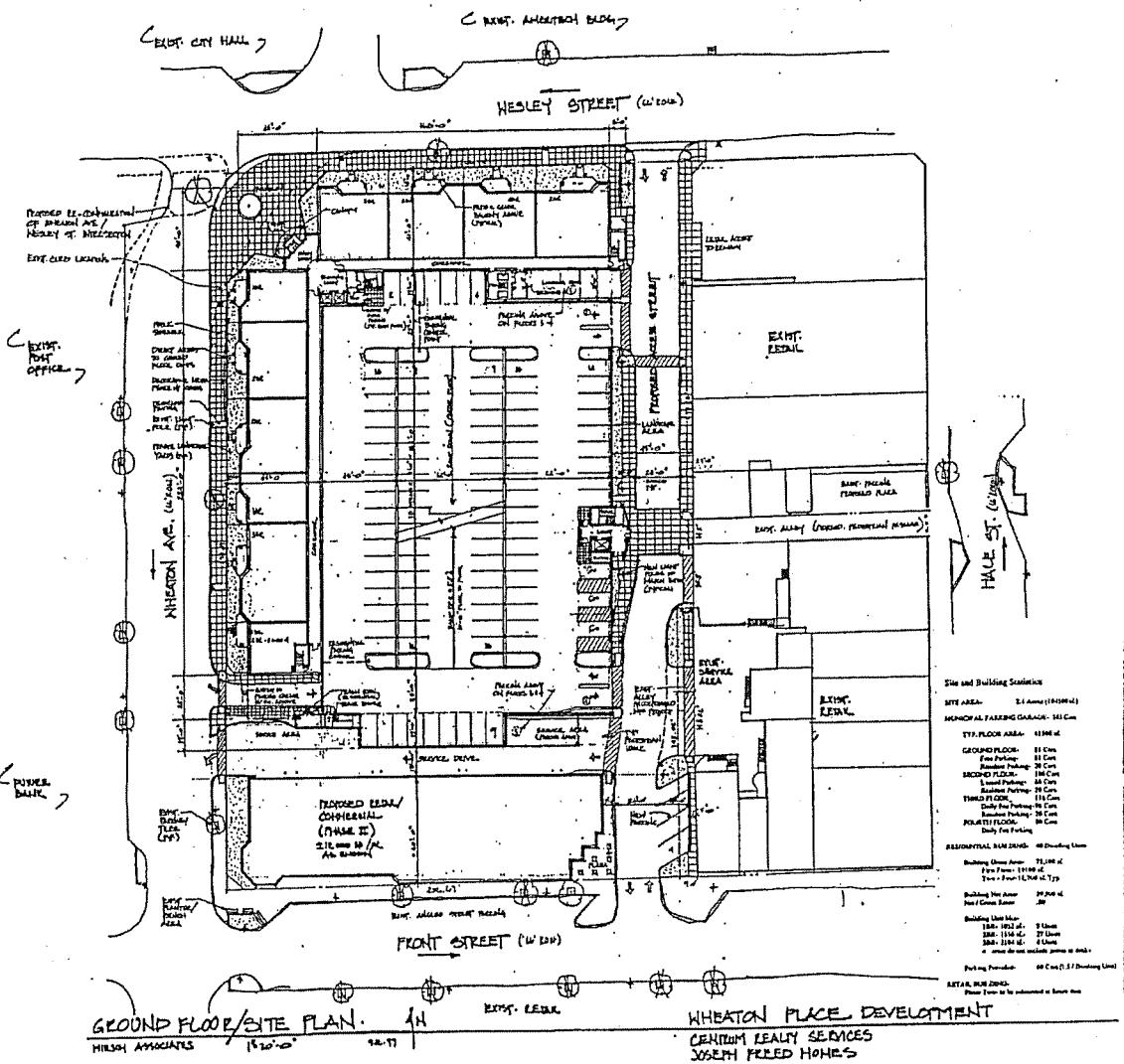
CONCEPT PLAN

(Attached)

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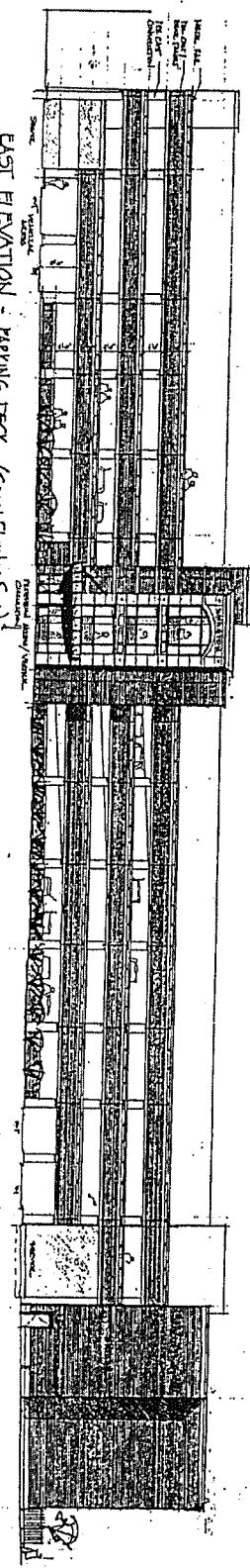
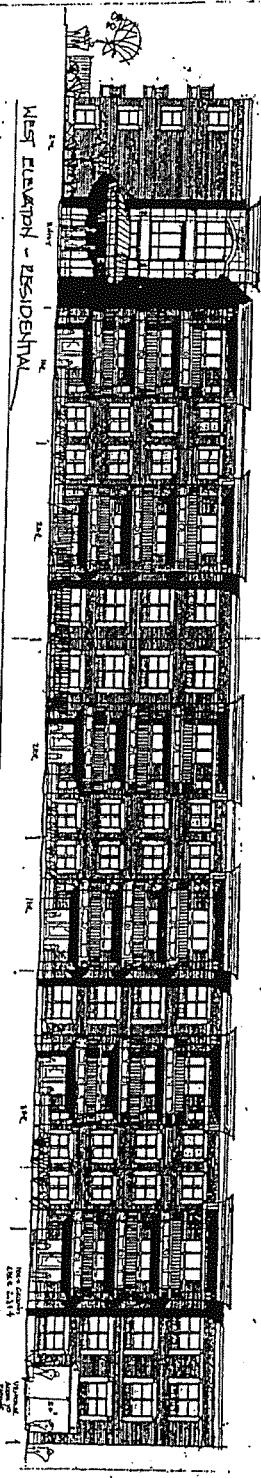
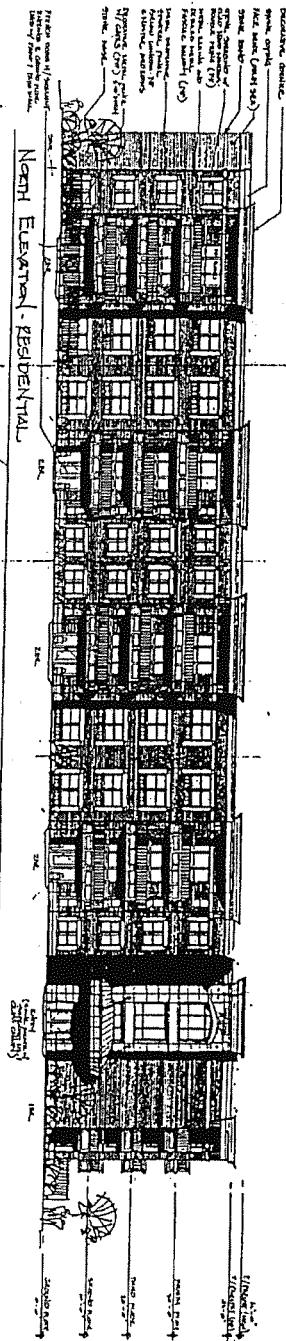
EXHIBIT B

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page

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HEATON PLACE • BUILDING ELEVATIONS • CENTRUM REALTY SERVICES • JOSEPH FREED HOMES • HIRSCH ASSOCIATES
Sept. 2, 1977
165-10-2

Page 2

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page 3



EXHIBIT C

FORM OF CONSTRUCTION MANAGEMENT AGREEMENT

(Attached)

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CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (this "Agreement") is made as of this 17th day of November, 1997, by and between the **CITY OF WHEATON**, an Illinois home rule municipal corporation located in the DuPage County, Illinois ("Owner"), and **WHEATON WESLEY, L.L.C.**, an Illinois limited liability company ("Construction Manager"). (Owner and Construction Manager are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".)

W I T N E S S E T H:

WHEREAS, Owner and Construction Manager have entered into that certain Redevelopment Agreement dated November 17, 1997 pursuant to which Owner agreed to engage Construction Manager as a construction manager and an agent of Owner to manage the construction, on behalf of Owner, of the Public Project (as defined in the Redevelopment Agreement; all capitalized terms not defined in this Agreement shall have the meanings ascribed to them in the Redevelopment Agreement). Owner desires to engage the services of Construction Manager to supervise the design and construction of the Public Project (hereinafter referred to as the "Work").

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid by each Party to the other, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Employment. Owner hereby employs the services of Construction Manager to furnish supervisory and managerial services in connection with the design and construction of the Public Project. Construction Manager hereby accepts such employment. Owner represents

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and warrants to Construction Manager that Owner has full constitutional right and authority to enter into this Agreement with Construction Manager without advertising for bids or taking any actions other than adopting a resolution of Owner approving and authorizing the execution of this Agreement.

2. **Definitions.** In addition to any other terms defined in this Agreement, the following terms shall have the meanings ascribed to them, unless the context clearly requires otherwise:

- (a) **Approved Plans:** the Plans for the Public Project submitted by, or caused to be submitted by, Construction Manager and approved by Owner.
- (b) **Project Budget:** the budget (including hard and soft costs) for construction of the Public Project jointly prepared and approved by Owner and by Construction Manager in writing and attached hereto and incorporated herein as Exhibit A. Changes may be made to the Project Budget upon the mutual agreement of the Parties. Any such changes that do not increase the total cost of the Project Budget may be agreed to in writing by the City Manager on behalf of the City and Construction Manager's designated representative on behalf of Construction Manager.

3. **Compensation.** A construction management fee (the "Fee") in the amount of one percent (1%) of the total contract sum of all construction contracts for the Public Project entered into on behalf of Owner pursuant to this Agreement shall be paid to Construction Manager for its services in connection with the construction of the Public Project pursuant to this Agreement. The Fee shall be paid in equal monthly installments during the course of construction of the Public Project. In addition, Owner shall reimburse Construction Manager for its direct out-of-

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pocket costs and third-party costs in connection with the Public Project and carrying out Construction Manager's obligations under this Agreement, actually incurred by Construction Manager in connection with its services pursuant to this Agreement, provided such costs are included in the approved Project Budget.

4. Services. The services of Construction Manager pursuant to this Agreement, for and in consideration of the Fee, shall be as follows:

(a) Construction Manager shall cause the plans and specifications for the Public Project to be prepared and shall submit, or cause to be submitted, the plans and specifications for the Public Project to Owner for its review and approval. Except for the foregoing, nothing herein contained shall be deemed or construed as an obligation or an undertaking on the part of Construction Manager itself to furnish architectural or engineering services, it being expressly understood and agreed that all architectural and engineering services are being performed by the architects and engineers engaged by Construction Manager.

(b) Provide preliminary evaluation of the Project Budget requirements, including preliminary estimates of the costs of construction. Advise on site use, selection of materials, building systems and equipment and methods of Public Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials and possible economies.

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(c) Prepare and recommend to Owner a construction schedule providing for the phasing of construction from commencement to completion, and periodically update the construction schedule.

(d) Represent Owner in all matters requiring Owner's determination in its dealing with contractors, suppliers and others in the performance of the Work and all negotiations and communications between Owner and all contractors, suppliers and others shall be made through Construction Manager.

(e) Record the progress of the Public Project, and advise Owner if it appears that the timetable for construction as set forth in the construction schedule may be materially exceeded, and make recommendations for corrective action.

(f) Provide regular monitoring of the actual costs of construction; identify variances between actual costs and the Project Budget which will likely result, in Construction Manager's judgment, in a cost overrun; advise Owner if it appears that the final costs of construction may exceed the Project Budget; and make recommendations for corrective action.

(g) Determine in general that the Work of each contractor is being performed in accordance with contract requirements; endeavor to achieve satisfactory performance from the contractors in accordance with contract requirements; endeavor to guard Owner against defects and deficiencies in the Work; on behalf of Owner, reject Work which does not conform to contract requirements; and recommend courses of action to Owner when requirements of a contract are not being fulfilled, and the nonperforming party will not take satisfactory corrective action.

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(h) Recommend necessary or desirable changes to Owner; review requests for changes; ensure that all structural, mechanical or electrical changes which are of such a material nature in Construction Manager's opinion as to require changes in the plans and specifications be changed by the architects or engineers of record, as the case may be, for the Public Project; if changes are agreed to by Owner and Construction Manager, execute change orders on behalf of, and as agent for, Owner.

(i) Maintain at its office, on a current basis: a record copy of all construction documents and contracts, including plans and specifications, change orders and other data and materials as would be required under sound construction management practices; and make all such records available to Owner and the appropriate architect or engineer; at the completion of the Public Project, promptly deliver the originals of all pertinent construction documents and contracts to Owner (provided, however, that Construction Manager shall always be entitled to keep a set of duplicate originals or copies of all of the foregoing), and maintain all such records for a period of one (1) year.

(j) Make provisions (including adequate notice to Owner to facilitate prompt payment) to secure for accrual to Owner all available trade discounts, rebates and refunds, and returns from the sale of surplus materials and equipment.

(k) Provide administrative, management and related services as required to coordinate the work of the various contractors and workmen; provide sufficient organization, personnel and management to carry out the terms of this Agreement. To the extent that any of the Public Project are to be located within Owner-owned rights-of-

way, Owner shall grant to Construction Manager and its designees access thereto to enable the construction of such Public Project.

(l) Perform such other services in connection with the Public Project as may be reasonably necessary to accomplish the foregoing, and as may be reasonably requested by Owner, and provide the facilities and services of its on-site personnel to the extent reasonably necessary and required to carry out Construction Manager's obligations under this Agreement.

5. Contracts.

(a) All contracts for the design, engineering, construction inspection and construction of all or any of the Public Project, and all amendments, supplements, addenda, changes and change orders to such contracts, shall be entered into by Construction Manager, not individually, but only on behalf of and as agent for Owner, after written approval of such contracts by Owner.

(b) As payments become due under such contracts, Construction Manager shall notify Owner of the amount of such payments then due and Owner shall disburse, or cause to be disbursed, to the contractor the amount necessary to make such payment. Amounts to pay for the Parking Garage shall be disbursed from the Parking Garage Construction Escrow.

(c) Construction Manager shall not be (i) liable for the payment of any debts contracted by Owner in connection with the Public Project, except to the extent of funds received by it for that purpose; (ii) responsible for construction means, methods, techniques and procedures employed by contractors in their performance; (iii) liable or

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responsible for the failure of any contractor to carry out Work in accordance with its contract requirements or the negligence of any contractor in connection therewith; or (iv) liable or responsible for any act, omission or negligence of any architect or engineer with respect to the Work. Construction Manager shall not be responsible for latent defects in the Work and Owner agrees to look solely to the contractors which performed the Work in connection with any claims of defect in the Work.

6. On-Site Supervisors. Construction Manager will supervise the actual construction Work.

7. Inspections. Construction Manager will inspect, or cause others to inspect, the Public Project as the Work progresses and will keep Owner advised as to such progress and will give such general supervision and management as may be required to assure the construction and completion of the Public Project in an efficient and workmanlike manner and in compliance with the Approved Plans and the building and other applicable laws and regulations of Owner.

8. Books and Records. Construction Manager will set up and maintain at its office, at its own cost, a complete set of books for the construction of the Public Project. Construction Manager shall at Owner's request make all such books as well as all other records pertaining to the Public Project available for Owner's inspection at the offices of Construction Manager.

9. Owner's Representative. Owner shall designate a representative authorized to act in Owner's behalf with respect to the Public Project. On behalf of Owner, such authorized representative shall examine documents submitted by Construction Manager and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of Construction Manager's services.

10. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

11. Default.

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice, subject, however, to the terms and provisions of Section 11(c). Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

(c) Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of Permitted Delays, the time for such performance shall be extended for the period of the delay. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from

the time of the commencement of the cause, provided that written notice by the Party claiming such extension is sent to the other Party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the Party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

12. **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual agreement of the Parties evidenced by a written amendment, by the adoption of an ordinance or resolution of Owner approving such written amendment, as provided by law, and by the execution of such written amendment by the Parties or their successors in interest.

13. **Entire Agreement.** This Agreement (including all Exhibits attached to this Agreement) sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained; provided, however, that the terms of this Agreement and those contained in the Redevelopment Agreement shall be construed *in pari materia* so as to give effect to the intent of the Parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral (except for the Redevelopment Agreement) and, together with the Redevelopment Agreement, shall be deemed a full integration of the entire agreement of the Parties.

14. **Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

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15. Illinois Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

16. Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing with such an overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance with this Section 16. All notices by telecopy facsimile shall be subsequently confirmed by U.S. certified or registered mail.

To Developer: Wheaton Wesley, L.L.C.
c/o Centrum Properties, Inc.
225 West Hubbard Street
4th Floor
Chicago, Illinois 60610
Attn.: John T. McLinden
Fax No. (312-832-2525)

and to: Wheaton Wesley, L.L.C.
c/o Joseph J. Freed and Associates, Inc.
1400 South Wolf Road
Building 100
Wheeling, Illinois 60090
Attn: Thomas H. Fraerman and Gregory R. Glass
Fax No. (847-215-5282)

1997-187256

with a copy to:

Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601-1293
Attn: Paul Homer and Jeffrey S. Arnold
Fax No. (312-236-7516)

To the City:

The City of Wheaton
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With a copy to:

Gorski & Good
211 South Wheaton Avenue
Wheaton, Illinois 60187
Attn: Robin N. Jones
Fax No. (630-665-8670)

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

18. No Recordation. The Parties agree that this Agreement may not and shall not be recorded without the prior written consent of Construction Manager.

19. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

20. Term of Agreement. The term of this Agreement shall commence on the date first above written and shall continue until the date (the "Termination Date") which the earlier of (i) the completion of the Public Project and the payment of all costs for the Public Project and the payment to Construction Manager of the Fee, and (ii) the expiration of the term of the Redevelopment Agreement.

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21. Interpretation. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

22. Exhibits. All exhibits attached hereto are declared to be a part of this Agreement and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WHEATON, an Illinois municipal corporation

ATTEST:

Emily M. Condega
City Clerk

By: James Caw
Mayor

WHEATON WESLEY, L.L.C.,
an Illinois limited liability company

By: Wesley Caw
Its: MANAGER

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EXHIBIT A

PROJECT BUDGET

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EXHIBIT "A"

Wheaton TIF Sheet II
Public Project

Wheaton
11-15-97

Hard Costs:

Off-Site Improvements (1)	\$544,955
Parking Garage (2)	4,332,723
Hard Cost Contingency (3)	341,437
Construction Management Fee (4)	52,191
Total Hard Costs	\$5,271,307

Soft Costs:

Architectural & Engineering (5)	\$192,000
Civil Engineering & Surveying (6)	22,500
Geotechnical	10,000
Construction Escrow Fees	10,000
Title Insurance	15,000
Insurance (7)	20,000
Permit Fees	50,000
Soft Cost Contingency	50,000
Total Soft Costs	\$369,500

Total Hard & Soft Costs **\$5,640,807**

Payments From Centrum-Freed:

Developer Payment--Residential Parcel (8)	(\$800,000)
Developer Payment--Commercial Parcel (9)	(255,000)
Total Payments From Centrum Freed	(\$1,055,000)
Adjusted Total Cost	\$4,585,807

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Footnotes:

- (1) Off-Site Improvements are also referred to as "City TIF Improvements" per Section 5.2 of the Redevelopment Agreement. See attached detailed budget titled "Construction Cost Estimate for Wheaton Place Development Street (ROW) Work" dated 10-6-97 and revised 11-12-97 and 11-14-97.
- (2) See attached budget for a 4 level 419 car garage prepared by Walker Parking Consultants.
- (3) Based on 7% of Off-Site Improvements and Parking Garage Hard Costs.
- (4) Based on 1% of Off-Site Improvements, Parking Garage Hard Costs and Hard Cost Contingency.
- (5) See Attached proposals from Walker Parking Consultants and Hirsch Associates for architectural and engineering services related to the Parking Garage.
- (6) See attached proposal from Cemcon, Ltd. The budgeted amount is based upon a 50% allocation of the total civil engineering and surveying costs (\$45,000 * 50%). The remaining 50% of said costs shall be allocated to the residential and commercial components of the project and shall be paid by Centrum--Freed.
- (7) Estimated amount of Builder's Risk and General Liability Insurance premiums during the construction period.
- (8) See Section 4.3 (a) of the Redevelopment Agreement.
- (9) See Section 4.3 (b) of the Redevelopment Agreement. The budgeted amount is based upon an estimated 17,000 square feet of land area. The actual land area to be allocated to the commercial component of the project shall be determined by the final Plat of Sub-division.

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