

ORDINANCE NO. 0219

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,  
AUTHORIZING THE AMENDMENT OF A CERTAIN MORTGAGE AND NOTES  
RELATING THERETO IN CONNECTION WITH REAL ESTATE LOCATED IN THE  
DOWNTOWN WHEATON REDEVELOPMENT PROJECT AREA (TIF SITE 1)

WHEREAS, the corporate authorities of the City of Wheaton (the "Corporate Authorities") have previously designated a certain area within its municipal limits for redevelopment and revitalization pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (the "Act"); and

WHEREAS, as authorized by the Act, the City has previously assisted Wheaton Development, L.L.C. (the "Developer") in acquiring certain property described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, in connection with said assistance, the City and the Borrower have entered into a Mortgage Agreement dated June 25, 1996, as amended by a First Amendment to Mortgage Agreement dated March 6, 1997 and a Second Amendment to Mortgage Agreement dated September 26, 1997 (collectively, the "Mortgage"); and

WHEREAS, said Mortgage secures a Note dated June 25, 1996, in the amount of \$150,000 (the "Note"), an Additional Note dated March 6, 1997, in the amount of \$200,000 (the "Additional Note") and a Second Additional Note dated September 26, 1997, in the amount of \$200,000, all executed by the Borrower; and

WHEREAS, pursuant to the terms of the Note and the Additional Note, all sums remaining due to the City as of December 25, 1997 are to be accelerated and paid to the City; and

WHEREAS, the parties desire to extend the date of such acceleration; and

WHEREAS, it is therefore necessary to amend the Mortgage, the Note and the Additional Note.

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

Section 1. That the Mayor and City Clerk of the City be and the same are hereby authorized to execute and attest a Third Amendment to Mortgage Agreement in substantially the form attached hereto as Exhibit "B".

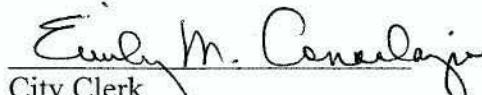
Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 3. 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 this 2nd day of March, 1998.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Emily M. Cenelaj  
City Clerk

AYES: Councilwoman Davenport; Councilman Gresk; Mayor Pro Tem Eckhoff;  
Councilman Johnson; Councilwoman Johnson; Councilman Mork.

NAYES: None.

ABSENT: Mayor Carr.

Motion Carried Unanimously

Published: March 3, 1998.

## EXHIBIT "A"

THE NORTH 60 FEET OF LOT 8; LOT 9 (EXCEPT THE WEST 9 FEET LYING SOUTH OF THE NORTH 60 FEET OF SAID LOT 9) AND THE SOUTH 1/2 OF THE VACATED 33 FOOT WIDE ALLEY LYING NORTH OF AND ADJOINING SAID LOTS 8 AND 9, IN BLOCK 1 OF GARY'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11973, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-17-404-012

COMMON ADDRESS: 405 Front Street, Wheaton, Illinois 60187

LOTS 4, 5, 6, 7 AND 8 (EXCEPT THE NORTH 60 FEET OF SAID LOT 8) AND THE WEST 9 FEET OF LOT 9 (EXCEPT THE NORTH 60 FEET) AND SOUTH 1/2 OF VACATED 33 FOOT WIDE ALLEY LYING NORTH AND ADJOINING LOTS 4, 5, 6 AND 7, ALL IN BLOCK 1 IN GARY'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11973, IN DU PAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-17-404-011

COMMON ADDRESS: 405 Front Street, Wheaton, Illinois 60187

THAT PART OF LOT 2 IN COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH EAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 2, SAID POINT BEING AT THE INTERSECTION OF THE WEST LINE OF GARY STREET, WITH THE NORTH LINE OF NORTH RAILROAD STREET; THENCE NORTH ALONG THE WEST LINE OF GARY STREET 236 FEET; THENCE WEST AT RIGHT ANGLES TO SAID GARY STREET, 117.6 FEET; THENCE SOUTH PARALLEL TO SAID GARY STREET, 224.2 FEET TO THE NORTH LINE OF SAID NORTH RAILROAD; THENCE SOUTH 87 DEGREES 3 MINUTES ALONG SAID NORTH RAILROAD STREET, 54 FEET; THENCE EAST ALONG THE NORTH LINE OF SAID NORTH RAILROAD STREET, 65.7 FEET TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 05-17-431-001400 05-17-431-030

COMMON ADDRESS: 100 N. Gary Avenue, Wheaton, Illinois 60187

RNJ:SS CW-MORT2.AGR 2/17/98

EXHIBIT "B"

**THIRD AMENDMENT TO MORTGAGE AGREEMENT**

This THIRD AMENDMENT TO MORTGAGE AGREEMENT (hereinafter referred to as the ("THIRD AMENDMENT") is made and entered into as of the 2nd day of March, 1998, by and between the CITY OF WHEATON, a municipal corporation and home rule unit, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "LENDER"), 303 W. Wesley Street, Wheaton, Illinois 60187 and Wheaton Development, L.L.C., an Illinois limited liability company (hereinafter referred to as the "BORROWER") c/o R. Franczak & Associates, Inc., 701 Lee Street, Suite 680, Des Plaines, Illinois 60016; the LENDER and the BORROWER being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

**RECITALS**

A. Pursuant to the terms of a Redevelopment Plan entitled "Downtown Wheaton Redevelopment Project Report", dated May 17, 1993 (hereinafter referred to as the "REDEVELOPMENT PLAN"), the LENDER designated a certain area within its municipal limits for redevelopment and revitalization.

B. The REDEVELOPMENT PLAN recited that the Downtown Wheaton Redevelopment Project Area (the "AREA") is characterized by conditions which warrant the

designation of the entire area as a "conservation area" within the definitions set forth in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (hereinafter referred to as the "ACT"). The REDEVELOPMENT PLAN further recited that LENDER was desirous of having the AREA redeveloped and revitalized as a development for commercial and/or residential uses to serve the needs of the community and to produce increased tax revenues for the community.

C. The LENDER has the authority to promote the health, safety and welfare of its inhabitants, to prevent the onset of blight while instituting conservation measures, and to encourage private development in order to enhance the local tax base, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

D. The LENDER previously assisted the BORROWER in acquiring certain property described in the Mortgage Agreement dated June 25, 1996 between the LENDER and the BORROWER (the "ORIGINAL MORTGAGE"), said document being recorded on July 10, 1996 as Document R96-114052 in the Recorder's Office of DuPage County, Illinois. Said ORIGINAL MORTGAGE secured a Note (the "ORIGINAL NOTE") in the amount of \$150,000 executed by the BORROWER.

The LENDER subsequently assisted the BORROWER in acquiring certain property described in the First Amendment to Mortgage Agreement dated March 6, 1997 between the LENDER and the BORROWER (the "FIRST AMENDMENT"), said document being recorded on March 7, 1997 as Document R97-032750 in the Recorder's Office of DuPage County, Illinois, said FIRST AMENDMENT securing, in addition to the ORIGINAL NOTE, a Note (the "ADDITIONAL NOTE") in the amount of \$200,000, executed by the BORROWER.

E. The LENDER subsequently assisted the BORROWER in acquiring certain property described in the Second Amendment to Mortgage Agreement dated September 26, 1997 between the LENDER and the BORROWER (the "SECOND AMENDMENT"), said document being recorded on October 14, 1997 as Document R97-155168 in the Recorder's Office of DuPage County, Illinois, said SECOND AMENDMENT securing, in addition to the ORIGINAL NOTE and the ADDITIONAL NOTE, a Note (the "SECOND ADDITIONAL NOTE") in the amount of \$200,000, executed by the BORROWER.

F. The real estate which is the subject of the MORTGAGE is legally described on Exhibit "A" attached hereto and made a part hereof.

G. Pursuant to the terms of the NOTE and ADDITIONAL NOTE, all amounts remaining unpaid by December 25, 1997 shall accelerate and be payable to the LENDER.

H. The PARTIES desire to extend the date of December 25, 1997 to March 26, 1999.

I. It is, therefore, necessary to amend the ORIGINAL MORTGAGE.

THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, the PARTIES hereto agree as follows:

## ARTICLE I

### INCORPORATION OF RECITALS

The PARTIES hereby confirm the truth and validity of their respective representations and recitations set forth in the foregoing recitals and do further acknowledge that they are material to this THIRD AMENDMENT. Such recitals are hereby incorporated into and made a part of this THIRD AMENDMENT as though they were fully set forth in this Article I.

## ARTICLE II

### INTEGRATION OF MORTGAGE AGREEMENT

The provisions of this THIRD AMENDMENT shall be deemed by the PARTIES to be fully integrated into the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT. The ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT shall remain in full force and effect except to the extent that it is expressly modified by the terms of this THIRD AMENDMENT. Should any provision of the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT, conflict with any provision of this THIRD AMENDMENT, the provisions of the THIRD AMENDMENT shall control.

## ARTICLE III

### DEFINITIONS

Terms capitalized in this THIRD AMENDMENT and not otherwise defined herein shall have the meanings ascribed to those terms in the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT. Terms defined and capitalized herein shall have the meanings ascribed to those terms in this THIRD AMENDMENT and, to the extent such terms are also defined terms in the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT, the definitions of those terms as herein provided shall be deemed to control the interpretation of those terms in the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT.

The following terms defined in the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and SECOND AMENDMENT shall be amended as follows:

28  
NOTE - shall mean the ORIGINAL NOTE, as amended, the ADDITIONAL NOTE, as amended and the SECOND ADDITIONAL NOTE.

MORTGAGE - shall mean the ORIGINAL MORTGAGE as amended by the FIRST AMENDMENT, the SECOND AMENDMENT and this THIRD AMENDMENT.

LOAN DOCUMENTS - shall have the meaning as set forth in the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT, the SECOND AMENDMENT, and this THIRD AMENDMENT.

LAND - shall include the land described in Exhibit "A" to the ORIGINAL MORTGAGE, as amended by the FIRST AMENDMENT and the SECOND AMENDMENT.

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

CITY OF WHEATON, an Illinois  
municipal corporation,

By: 

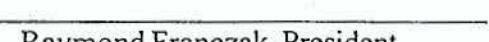
George J. Caw  
Mayor

ATTEST:

  
Emily M. Cawley  
City Clerk

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

By: R. FRANCZAK & ASSOCIATES, INC.,  
a manager,

By: 

Raymond Franczak, President

ATTEST:

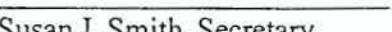
  
Robert Lewandowski, Secretary

By: NORWOOD BUILDERS, INC., a  
manager,

By: 

Bruce Adreani, President

ATTEST:

  
Susan J. Smith, Secretary

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

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. James Carr, Mayor of the City of Wheaton, and Emily M. Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2<sup>nd</sup> day of MARCH,  
1998.

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Notary Public

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

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond Franczak, President of R. Franczak & Associates, Inc., a manager of Wheaton Development L.L.C. and Robert Lewandowski, Secretary of said R. Franczak & Associates, Inc., personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Andreani, President of Norwood Builders, Inc. a manager of Wheaton Development, L.L.C. and Susan J. Smith, Secretary of said Norwood Builders, Inc., personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively appeared before me this day in person and acknowledged that they signed and delivered the same instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that she, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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Notary Public

RNJ:SS CW-MORTG 9-23-97

## AMENDED NOTE

\$150,000

Wheaton, Illinois  
\_\_\_\_\_, 1998

For value received, the undersigned, WHEATON DEVELOPMENT, L.L.C. ("BORROWER") promises to pay to the order of the CITY OF WHEATON, DuPage County, Illinois ("LENDER") the principal sum of One Hundred Fifty Thousand and 00/100ths Dollars (\$150,000) together with interest on the unpaid principal balance from the date of this Note at the rate of zero percent (0%) per annum until this Note is paid in full. As of the date of this Amended Note, LENDER acknowledges receipt of \$135,000 of the \$150,000 due to the LENDER.

This Note shall be payable as follows: \$5,000 per condominium unit shall be payable at the time an occupancy permit is issued for such unit; provided, however, that if any units have not been issued an occupancy permit by March 26, 1999, all amounts remaining unpaid at that time shall immediately be paid to the LENDER. All payments shall be made to LENDER at Wheaton City Hall, Wheaton, Illinois, or at such other places as the LENDER may designate by written notice to BORROWER.

This Note is secured by a Mortgage dated June 25, 1996, as amended by the First Amendment to Mortgage Agreement dated March 6, 1997, the Second Amendment to Mortgage Agreement dated September 26, 1997 and the Third Amendment to Mortgage Agreement dated \_\_\_\_\_, 1998 (collectively, the "Mortgage") on real estate and improvements thereon located in the State of Illinois from BORROWER to LENDER, which Mortgage and all provisions thereof is incorporated hereby by this reference as fully and with the same effect as if set forth herein in full.

All payments shall be applied first to interest, if any, then to principal and other sums due under this Amended Note or Mortgage. BORROWER may prepay this Amended Note in full or in part at any time without penalty.

If (a) BORROWER fails to make any payment due under this Amended Note or the Mortgage within five (5) days after it becomes due, or (b) upon any default, described in Section 15.2 of the Mortgage securing this Amended Note, either of which are not cured within the applicable cure period following the date of mailing of written notice of such default to BORROWER, or (c) upon any default set forth in Section 15.3, 15.4 and 15.5 of the Mortgage, LENDER may accelerate the entire principal balance of this Amended Note and declare the same immediately due and payable without notice or demand.

Upon such acceleration or upon maturity, interest on amounts due and unpaid hereunder shall accrue at the Default Rate, which

rate shall be nine percent (9%) per annum and shall be payable upon demand.

Presentment, protest, and notice of dishonor are hereby waived. This Amended Note shall be governed by the laws of the State of Illinois.

BORROWER shall pay all costs and expenses of collection or foreclosure, including (without limitation) reasonable attorneys' fees except to the extent limited or prohibited by law.

LENDER may grant renewals or extensions, accept partial payments, release security or anyone liable on this Amended Note or any guaranty without affecting the liability of BORROWER or any guarantor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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

By: R. FRANCZAK & ASSOCIATES, INC.,  
a manager,

By: \_\_\_\_\_  
Raymond Franczak, President

By: NORWOOD BUILDERS, INC., a  
manager,

By: \_\_\_\_\_  
Bruce Adreani, President

RNJ:SS CW-MORTG 9-23-97

## AMENDED ADDITIONAL NOTE

\$200,000

Wheaton, Illinois  
\_\_\_\_\_, 1998

For value received, the undersigned, WHEATON DEVELOPMENT, L.L.C. ("BORROWER") promises to pay to the order of the CITY OF WHEATON, DuPage County, Illinois ("LENDER") the principal sum of Two Hundred Thousand and 00/100ths Dollars (\$200,000) together with interest on the unpaid principal balance from the date of this Note at the rate of zero percent (0%) per annum until this Note is paid in full. As of the date of this Amended Additional Note, LENDER acknowledges receipt of \$95,000 of the \$200,000 due to the LENDER.

This Note shall be payable as follows: \$5,000 per condominium unit shall be payable at the time an occupancy permit is issued for such unit; provided, however, that if any units have not been issued an occupancy permit by March 26, 1999, all amounts remaining unpaid at that time shall immediately be paid to the LENDER. All payments shall be made to LENDER at Wheaton City Hall, Wheaton, Illinois, or at such other places as the LENDER may designate by written notice to BORROWER.

This Note is secured by a Mortgage dated June 25, 1996, as amended by the First Amendment to Mortgage Agreement dated March 6, 1997, the Second Amendment to Mortgage Agreement dated September 26, 1997 and the Third Amendment to Mortgage Agreement dated \_\_\_\_\_, 1998 (collectively, the "Mortgage") on real estate and improvements thereon located in the State of Illinois from BORROWER to LENDER, which Mortgage and all provisions thereof is incorporated hereby by this reference as fully and with the same effect as if set forth herein in full.

All payments shall be applied first to interest, if any, then to principal and other sums due under this Amended Additional Note or Mortgage. BORROWER may prepay this Amended Additional Note in full or in part at any time without penalty.

If (a) BORROWER fails to make any payment due under this Amended Additional Note or the Mortgage within five (5) days after it becomes due, or (b) upon any default, described in Section 15.2 of the Mortgage securing this Amended Additional Note, either of which are not cured within the applicable cure period following the date of mailing of written notice of such default to BORROWER, or (c) upon any default set forth in Section 15.3, 15.4 and 15.5 of the Mortgage, LENDER may accelerate the entire principal balance of this Amended Additional Note and declare the same immediately due and payable without notice or demand.

Upon such acceleration or upon maturity, interest on amounts due and unpaid hereunder shall accrue at the Default Rate, which rate shall be nine percent (9%) per annum and shall be payable upon

demand.

Presentment, protest, and notice of dishonor are hereby waived. This Amended Additional Note shall be governed by the laws of the State of Illinois.

BORROWER shall pay all costs and expenses of collection or foreclosure, including (without limitation) reasonable attorneys' fees except to the extent limited or prohibited by law.

LENDER may grant renewals or extensions, accept partial payments, release security or anyone liable on this Amended Additional Note or any guaranty without affecting the liability of BORROWER or any guarantor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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

By: R. FRANCAZAK & ASSOCIATES, INC.,  
a manager,

By: \_\_\_\_\_  
Raymond Franczak, President

By: NORWOOD BUILDERS, INC., a  
manager,

By: \_\_\_\_\_  
Bruce Adreani, President