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ORDINANCE NO.F-0586

AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A SUBORDINATION
AGREEMENT AND AN AMENDMENT TO SECOND MORTGAGE AGREEMENT
RELATING TO 315 WEST FRONT STREET, WHEATON, ILLINOIS

WHEREAS, the Mayor and City Council of the City of Wheaton, DuPage County, Illinois (the "Corporate Authorities") have heretofore in Ordinance No. F-0465 authorized the Mayor and City Clerk to enter into a certain Agreement to Sell, Redevelop and Lease 315 West Front Street, Wheaton, Illinois (the "Agreement") with the Wheaton Firehouse, L.L.C. (the "Purchaser/Developer") the property commonly referred to as the Wheaton Fire Station (the "Fire Station"); and

WHEREAS, the aforementioned Agreement provided that the parties would enter into a Second Mortgage Agreement and a Subordination Agreement; and

WHEREAS, the parties entered into a Second Mortgage Agreement dated June 8, 2000;

WHEREAS, the City entered into a Subordination Agreement with the Purchaser/Developer's primary lender, Bloomingdale Bank and Trust, on November 20, 2000; and

WHEREAS, the Second Mortgage Agreement provides in Section 3 that the amount of the Purchaser/Developer's primary financing shall not exceed \$800,000.00; and

WHEREAS, Section 29 of the Second Mortgage also creates an obligation upon the City to subordinate the lien of the City's Second Mortgage to the Purchaser/Developer's mortgage financing up to a maximum amount of \$800,000.00; and

WHEREAS, the Purchaser/Developer wishes to refinance its primary mortgage and to borrow an amount not to exceed \$1,000,000.00; and

WHEREAS, the Purchaser/Developer has provided the City with a copy of an appraisal prepared by Mark J. Layne & Associates, Ltd. with a valuation date of June 29, 2000 which places the value of the Fire Station at \$1,530,000.00; and

WHEREAS, in order to allow the Purchaser/Developer to refinance and borrow an amount not to exceed \$1,000,000.00, an Amendment to Second Mortgage Agreement will need to be executed and a new Subordination Agreement will need to be executed; and

WHEREAS, it is desirable and in the best interests of the residents of the City for the City to enter into the Amendment to Second Mortgage Agreement and Subordination Agreement, with copies of both proposed documents attached hereto and made a part hereof as Exhibits A and B, respectively.

NOW THEREFORE, BE IT ORDAINED by the 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 Amendment to Second Mortgage Agreement and Subordination Agreement, in substantially the form attached hereto as Exhibits A and B and by this reference, incorporated herein.

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 him.

PASSED AND APPROVED by the Mayor and City Council of the City of Wheaton, Illinois, this 16th day of April, 2001.

ATTEST:


Emily M. Consalvo
City Clerk


James Carr
Mayor

Roll Call Vote:
Ayes:
Councilman Gresk
Councilman Johnson
Councilwoman Johnson
Councilman Mork
Mayor Pro Tem Eckhoff

Nays: None

Absent:
Mayor Carr
Councilwoman Davenport

Motion Carried Unanimously

Passed: April 16, 2001

Published: April 17, 2001

**AMENDMENT TO
SECOND MORTGAGE AGREEMENT**

This Amendment to Second Mortgage Agreement (hereinafter referred to as the "Amendment") and relating to the real property and improvements described in Exhibit A which is attached hereto and hereby incorporated herein is made and entered into as of the 16th day of April, 2001, 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 "City"), 303 West Wesley Street, Wheaton, Illinois and Wheaton Firehouse, L.L.C., a Delaware Limited Liability company (hereinafter referred to as the "Owner").

RECITALS

- A. Owner entered into a Second Mortgage Agreement (hereinafter referred to as the "Mortgage") with City dated June 8, 2000 and recorded August 9, 2000 in the Office of the Recorder of Deeds of DuPage County, Illinois as document number R2000-123526.
- B. The Preamble of the Mortgage incorrectly identifies Owner as an Illinois Limited Liability Company rather than a Delaware Limited Liability Company.
- C. The City and the Owner desire to amend Section 3 of the Mortgage to expressly permit primary financing in a principal amount not to exceed \$1,000,000.00.
- D. The City and Owner desire to amend Section 29 of the Mortgage creating an obligation upon the City to subordinate the lien of its Mortgage to Owner's mortgagee financing up to a maximum amount of One Million (\$1,000,000.00) Dollars.

Owner and the City hereby further covenant and agree to amend the Mortgage as follows:

1. Owner is a Delaware Limited Liability Company.
2. Section 3 of the Mortgage shall expressly permit primary financing in a principal amount not to exceed \$1,000,000.00.
3. Section 29 of the Mortgage shall obligate the City to subordinate the Mortgage and this Amendment to the liens and security interests created by Owner's Mortgagee's financing, up to a maximum amount of One Million (\$1,000,000.00) Dollars.
4. In all other respects the terms of the Mortgage are hereby incorporated herein and made a part hereof as if fully set forth herein.
5. To the extent there arises a conflict between the Mortgage and this Amendment, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, this Amendment to Second Mortgage Agreement is effective as of the day and year first above written.

OWNER

WHEATON FIREHOUSE, L.L.C.

By: _____
Its: _____
Printed Name and Title

CITY

CITY OF WHEATON, a municipal corporation
and home rule unit

By: _____
Its: 
C. JAMES CARR, MAYOR
Printed Name and Title

STATE OF ILLINOIS)
COUNTY OF _____) SS

I, _____, a Notary Public in and for said County and State, certify that William Kamm of Wheaton Firehouse, L.L.C., a Delaware Limited Liability company, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said (company), for the uses and purposes therein set forth; and the said William Kamm did also then and there acknowledge that he, as custodian of the seal of said company affixed the said seal of said company to said instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes set forth in the instrument.

Given under my hand and notarial seal this _____ day of _____, 2001.

My commission expires: _____

Notary Public

STATE OF ILLINOIS)
COUNTY OF DuPage) SS

I, ROSEMARY E. RYAN, a Notary Public in and for said County and State, certify that C. JAMES PARK of the City of Wheaton, an Illinois Municipal Corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Mayor, appeared before me this day in person, and acknowledged that he signed and delivered the 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; and the said Mayor did also then and there acknowledge that he affixed the said 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 set forth in the instrument.

Given under my hand and notarial seal this 17 day of APRIL, 2001.

My commission expires: 2/28/03

Rosemary E. Ryan

Notary Public

"OFFICIAL SEAL"
ROSEMARY E. RYAN
Notary Public, State of Illinois
My Commission Expires 2/28/03

Exhibit A

ALL OF LOT 8, AND THAT PART OF LOT 9 BEING THE WEST 0.45 FEET
MEASURED ON THE NORTH, BY THE WEST 1.2 FEET MEASURED ON THE
SOUTH, AND THE SOUTH 6.5 FEET OF THE VACATED ALLEY ADJOINING LOTS 8
AND 9 ON THE NORTH, ALL IN BLOCK 1 IN J.C. WHEATON'S ADDITION TO THE
TOWN OF WHEATON, BEING A SUBDIVISION IN THE WEST $\frac{1}{2}$ OF THE
SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF
THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
RECORDED JULY 7, 1855 AS DOCUMENT 9567, IN DU PAGE COUNTY, ILLINOIS.

COMMONLY KNOWN AS 315 WEST FRONT STREET, WHEATON, ILLINOIS 60187

PERMANENT INDEX NUMBER 05-16-300-020

SUBORDINATION AGREEMENT

This Subordination Agreement, made this 16th day of April 2001, between West Suburban Bank ("First Mortgagee") and the City of Wheaton ("Second Mortgagee"):

RECITALS:

- A. Wheaton Firehouse, L.L.C. ("Owner") executed a mortgage to secure a note in the principal amount of One Million and No One-Hundredth's Dollars (\$1,000,000.00) (the "First Mortgage") with First Mortgagee dated _____ relating to the real property and improvements (the "Property") described in Exhibit A which is attached hereto and hereby incorporated herein.
- B. Owner executed a Second Mortgage Agreement (the "Second Mortgage") with Second Mortgagee dated June 8, 2000 and recorded August 9, 2000 in the Office of the Recorder of Deeds of DuPage County, Illinois as document number R2000-123526 relating to the Property. The Second Mortgage was amended by agreement of even date herewith (the "Amendment").
- C. As a condition of the First Mortgage, First Mortgagee requires that the interest of Second Mortgagee in and to the Property, and the Second Mortgage, and Amendment be subordinated to the lien of the First Mortgage. The terms of the Second Mortgage and Amendment require that Second Mortgagee subordinate its interest in the Property, and the Second Mortgage and Amendment, to the First Mortgagee.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises herein contained, the sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

1. The Second Mortgage and Amendment are and shall continue hereafter to be subject and subordinate to the lien of the First Mortgage.
2. The term "First Mortgagee" shall mean the holder of the First Mortgage (as the same may be assigned from time to time) and the term "First Mortgage" shall mean First Mortgage (as the same may be renewed, modified, replaced, extended or consolidated with mortgages placed on the Property, dated subsequent to the date of the Second Mortgage).
3. Any and all notices to be given pursuant hereto shall be sufficient if in writing and mailed by United States certified or registered mail, postage paid, addressed to First Mortgagee and Second Mortgagee as follows:

If to First Mortgagee, at: West Suburban Bank

If to Second Mortgagee, at: City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187
Mr. Donald B. Rose

All notices shall be deemed to have been received three (3) days following the postmark dates thereof.

4. This agreement and the covenants, conditions and promises herein contained shall inure to the benefit of and be binding upon First Mortgagee and Second Mortgagee, their respective successors, assigns, grantees and legal representatives.

IN WITNESS WHEREOF, First Mortgagee and Second Mortgagee have caused this agreement to be executed by their duly authorized officers and their respective corporate seals to be affixed hereto, as of the day and year first above written.

First Mortgagee: WEST SUBURBAN BANK

By: _____ Attest: _____
Title: _____ Title: _____

Second Mortgagee: CITY OF WHEATON

By:  Attest: Mayor
Title: Mayor Title: _____

STATE OF ILLINOIS)
COUNTY OF _____) SS

I, _____, a Notary Public in and for said County and State, certify that _____ of West Suburban Bank, an Illinois State Banking Corporation, and _____ of said corporation personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such and _____, 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 _____ did also then and there acknowledge that he/she, as custodian of the corporate seal of said corporation affixed the said corporate seal of said corporation to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes set forth in the instrument.

Given under my hand and notarial seal this _____ day of _____, 2001.

My commission expires: _____

Notary Public

STATE OF ILLINOIS)
COUNTY OF _____) SS

I, ROSEMARY E. RYAN, a Notary Public in and for said County and State, certify that C. JAMES CARR of the City of Wheaton, an Illinois Municipal Corporation, and Emily M. Consalazio of said corporation 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 corporation, for the uses and purposes therein set forth; and the said City Clerk did also then and there acknowledge that he/she, as custodian of the corporate seal of said corporation affixed the said corporate seal of said corporation to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes set forth in the instrument.

Given under my hand and notarial seal this 17 day of APRIL, 2001.

My commission expires: 2/28/03

Rosemary E. Ryan
Notary Public

“OFFICIAL SEAL”
ROSEMARY E. RYAN
Notary Public, State of Illinois
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