

ORDINANCE NO. F-0813

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CERTAIN FIRST
AMENDMENT TO DEVELOPMENT AGREEMENT REGARDING THE DOWNTOWN
WHEATON REDEVELOPMENT PROJECT AREA

WHEREAS, the Mayor and City Council 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 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; and,

WHEREAS, the CITY has previously entered into a Development Agreement (the "AGREEMENT") dated May 20, 2002 with HOWARD H. GUST and WEST SUBURBAN BANK, as Trustee under Trust Number 12210 (collectively, the "DEVELOPER") regarding a portion of said PROJECT AREA; and;

WHEREAS, the CITY and the DEVELOPER desire to amend the AGREEMENT;

WHEREAS, the First Amendment to Development Agreement is on file with the City Clerk of the CITY and available for public inspection.

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 First Amendment to Development 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 all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

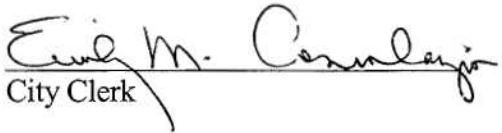
Section 3. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by and the Mayor and City Council of the City of Wheaton,
Illinois, this 5th day of May, 2003.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork
Councilman Mouhelis

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: May 5, 2003

Published: May 6, 2003

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "FIRST AMENDMENT") is made and entered into as of the 5th day of May, 2003, 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") and HOWARD H. GUST and WEST SUBURBAN BANK, as Trustee under Trust Number 12210 (hereinafter collectively referred to as the "DEVELOPER"); the CITY and the DEVELOPER 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 CITY 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 CITY 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 CITY 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. Further, the CITY is authorized under the provisions of the ACT to finance eligible redevelopment project costs in accordance with the conditions and requirements set forth in the ACT (the "REDEVELOPMENT COSTS").

D. The PARTIES previously entered into a Development Agreement dated May 20, 2002 (the "ORIGINAL AGREEMENT") regarding the renovation and reconstruction of the exterior and interior of the building located at 100 N. Hale Street (the "ORIGINAL PROJECT"). The DEVELOPER desires to do additional work at said location, as more fully described on Exhibit "A" attached hereto and made a part hereof (the "ADDITIONAL PROJECT"), and has requested the CITY'S assistance in financing said ADDITIONAL PROJECT.

E. The City Council of the CITY has determined that the construction of the ADDITIONAL PROJECT would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

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:

SECTION ONE

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 FIRST AMENDMENT. Such recitals are hereby incorporated into and made a part of this FIRST AMENDMENT as though they were fully set forth in this Section One.

SECTION TWO

INTEGRATION OF DEVELOPMENT AGREEMENT

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

SECTION THREE

DEFINITIONS

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

SECTION FOUR

AMENDMENTS TO ORIGINAL AGREEMENT

4.01. Except with respect to Section Five and Section Six of the ORIGINAL AGREEMENT, all covenants, representations, warranties and provisions contained in the ORIGINAL AGREEMENT regarding the PROJECT shall be deemed to apply to the ADDITIONAL PROJECT.

4.02. Section 5.02. of the ORIGINAL AGREEMENT, entitled SUBMISSION OF PLANS AND SPECIFICATIONS; COMMENCEMENT OF CONSTRUCTION, is hereby amended by adding the following provision:

The CITY shall be responsible for constructing that portion of the ADDITIONAL PROJECT that is described in subsection (ii) of Exhibit "A", as well as that portion of subsection (i) of Exhibit "A" that relates to the relocation of the water and sewer lines and related appurtenances. The DEVELOPER shall be responsible for constructing the remaining portion of the ADDITIONAL PROJECT.

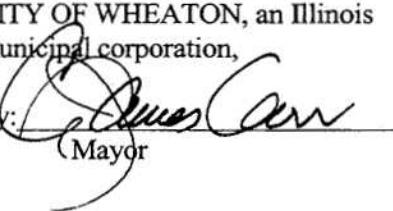
Section 4.03. Section 6.02. of the ORIGINAL AGREEMENT, entitled FINANCING OF PROJECT COSTS, is hereby amended by adding the following provision:

The costs of the ADDITIONAL PROJECT shall be divided between the CITY and the DEVELOPER as outlined on Exhibit "A". To the extent that there are any cost overruns in any portion of the ADDITIONAL PROJECT, the PARTY responsible for that portion of the ADDITIONAL PROJECT, as outlined in Exhibit "A", shall be responsible for payment of such overruns. The PARTY

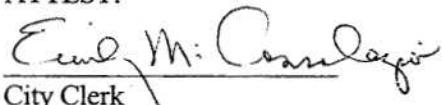
responsible for any portion of the ADDITIONAL PROJECT shall pay invoices related to said portion directly to the person or company providing the work. To the extent, as noted on Exhibit "A", that the CITY and the DEVELOPER are splitting the cost of a particular portion of the ADDITIONAL PROJECT, the DEVELOPER shall pay all invoices relating to that portion. Upon the DEVELOPER'S written request, accompanied by such bills, contracts, invoices, lien waivers or other evidence as the CITY shall require, the CITY shall, within thirty (30) days, reimburse the DEVELOPER for the CITY'S portion of the invoice. Notwithstanding the foregoing, the CITY may withhold its approval of a given request for reimbursement if, and for so long as, the DEVELOPER is in default of this AGREEMENT.

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,

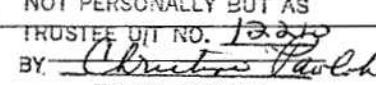
By: 
James Carr
Mayor

ATTEST:

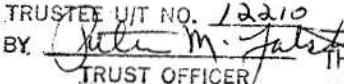

Erin M. Connelley
City Clerk


Howard H. Gust

WEST SUBURBAN BANK, as Trustee
under Trust Number 12210

WEST SUBURBAN BANK
NOT PERSONALLY BUT AS
By: 
NOT PERSONALLY BUT AS
TRUSTEE U/T NO. 12210
By: Christopher Paul
TRUST OFFICER

ATTEST: TRUSTEE U/T NO. 12210

BY: 
Christopher Paul
TRUST OFFICER

THIS INSTRUMENT is executed by West Suburban Bank ("WSB") not personally or individually, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee. All of the statements, warranties, and representations set forth herein are made solely on information and belief without any independent inquiry or investigation by WSB and should be construed accordingly. Notwithstanding any provision to the contrary set forth in this instrument, any recourse against WSB shall be limited to the assets comprising the trust estate and no personal liability shall be asserted or be enforceable against WSB by reason of the terms, promises, agreements, covenants, warranties, representations, indemnifications, or other matters herein set forth, all such personal liability of WSB being expressly waived.

Ordinance F-0813
Ex A.

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 9th day of May, 2003.

Janet Q. Christman
Notary Public



Ordinance F-0813
Ex A.

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

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Howard H. Gust, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this date in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of July, 2003.

Christine Pawlak
Notary Public



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

Ordinance F-0813
Ex A.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Christine Pawlik Trustee of WEST SUBURBAN BANK, as Trustee under Trust Number 12210 and Patricia Tolson, Trustee of said bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trustee and Trustee, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth; and the said Christine Pawlik then and there acknowledged that she, as custodian of the seal of said company, did affix the seal of said company to said instrument, as her own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of May, 2003.

Patricia A. Farley
Notary Public



EXHIBIT A

DESCRIPTION OF ADDITIONAL PROJECT AND COSTS

The ADDITIONAL PROJECT consists of: (i) the relocation of existing utilities, including gas, electric, water and sewer lines and related appurtenances, from the underground vault area located in front of 100 and 104 N. Hale Street and (ii) the installation of granular fill in said underground vault area, construction of a wall between the vault area and the adjacent buildings and removal and reconstruction of the affected sidewalks. Further details of the ADDITIONAL PROJECT are included with plans and specifications and cost proposals which are on file with the CITY, including:

ComEd, dated March 18, 2003 - \$10,221.12 (1)
SAAS Electric, dated March 4, 2003 - \$4,844.00 (1)
Armbrust Plumbing, Heating and Air Conditioning, Inc., dated April 3, 2003 - \$5,181.00 (2)
Armbrust Plumbing, Heating and Air Conditioning, Inc., dated April 3, 2003 - \$3,807.00 (1)
Nicor Gas, dated March 24, 2003 - \$1,751.94 (1)
Nicor Gas, dated March 24, 2003 - \$1,561.24 (3)
Elliot Construction, dated April 4, 2003 - \$39,800.00 (1)
Elliot Construction, dated March 12, 2003 - \$67,400.00 (4)
Elliot Construction, dated March 24, 2003 - \$15,360.00 (1)
Giblin Enterprises, dated April 1, 2003 - \$16,687 (5)
Armbrust Plumbing, Heating and Air Conditioning, Inc., dated April 16, 2003 - \$1,140 (1)

In addition, the CITY'S Water Department will cap the existing watermain, tap main for new water service line from main to b-box, remove existing hydrant and install new hydrant.

- (1) The CITY shall be responsible for these costs.
- (2) Of this amount, the CITY shall be responsible for \$2,590.50 and the DEVELOPER shall be responsible for \$2,590.50.
- (3) Of this amount, the CITY shall be responsible for \$780.62 and the DEVELOPER shall be responsible for \$780.62.
- (4) Of this amount, the CITY shall be responsible for \$57,000 and the DEVELOPER shall be responsible for \$10,400.
- (5) Of this amount, the CITY shall be responsible for \$8,344 and the DEVELOPER shall be responsible for \$8,344.