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ORDINANCE NO. 1037

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

WHEREAS, the City Council of the City of Wheaton, DuPage County, Illinois (the "City") has 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 has heretofore approved a redevelopment plan (the "Plan"), designated a redevelopment project area (the "Project Area") for that portion of the City known as the City of Wheaton Main Street Redevelopment Project Area, and adopted tax increment allocation financing for the Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, it is desirable and in the best interest of the residents of the City for the City to enter into a Development Agreement with James D. Atten and LaSalle Bank, as trustee under Trust No. 352 (collectively, the "Developer") regarding a portion of said Project Area, in furtherance of the Plan; and

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

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 Development Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein and all other documents required to effectuate the purpose of the Development Agreement.

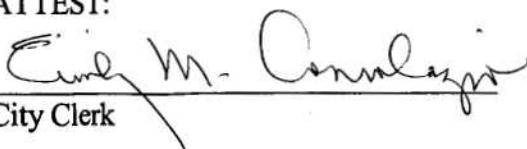
Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 18th day of April, 2005.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes: Roll Call Vote:  
Councilman Johnson  
Councilman Mork  
Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr

Nays: None

Absent: Councilwoman Johnson

Motion Carried Unanimously

Passed: April 18, 2005  
Published: April 19, 2005

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 18th day of April, 2005, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY") and JAMES D. ATTEN and LASALLE BANK, AS TRUSTEE UNDER TRUST NO. 352 (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 "Wheaton Main Street Redevelopment Area Project and Plan", dated November, 1999, as amended (hereinafter referred to as the "REDEVELOPMENT PLAN"), the CITY designated a certain area within its municipal limits for redevelopment and revitalization. Part of the City of Wheaton Main Street Redevelopment Project Area, which is the subject matter of this AGREEMENT (hereinafter referred to as the "SITE") in said REDEVELOPMENT PLAN is legally described on Exhibit "A" attached hereto and made a part hereof.

B. The REDEVELOPMENT PLAN recited that the City of Wheaton Main Street Redevelopment Project 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").

C. DEVELOPER, in accordance with the REDEVELOPMENT PLAN, will renovate the existing building located on the SITE, as more fully described on Exhibit "B" attached hereto

and made a part hereof (the "PROJECT").

D. 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.

E. 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.

F. To stimulate the redevelopment of the AREA, and pursuant to the ACT, the corporate authorities of the CITY passed the following Ordinances: (1) Ordinance No. F-0418, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, APPROVING A TAX INCREMENT REDEVELOPMENT PLAN AND REDEVELOPMENT PROJECT FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA; (2) Ordinance No. F-0419, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, DESIGNATING THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA A REDEVELOPMENT PROJECT AREA PURSUANT TO THE TAX INCREMENT ALLOCATION REDEVELOPMENT ACT; (3) Ordinance No. F-0420, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, ADOPTING TAX INCREMENT ALLOCATION FINANCING FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA. (The Ordinances together with the exhibits appended thereto are sometimes hereinafter collectively referred to as the "ORDINANCES").

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

H. The City Council has further determined that the payment or reimbursement of the REDEVELOPMENT COSTS, as hereinafter more fully defined, would promote the development of the PROJECT consistent with the purposes of the ACT, the REDEVELOPMENT PLAN, the ORDINANCES, and this AGREEMENT.

In consideration of the foregoing recitals and the covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which the PARTIES hereby stipulate, the PARTIES hereby agree as follows:

### **SECTION ONE**

#### **INCORPORATION OF RECITALS**

The recitals 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 Section One, and this AGREEMENT shall be construed in accordance therewith.

### **SECTION TWO**

#### **DEFINITIONS**

"AREA" - means the City of Wheaton Main Street Redevelopment Project Area, as designated in Ordinance No. F-0419 of the CITY.

"CHARGES" - means all generally applicable Federal, State and local governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, fees, liens, claims or encumbrances or non-governmental claims or liens upon and/or relating to SITE and the PROJECT, and insurance premiums due on any policy or policies of insurance required pursuant to Section Nine hereof.

"CITY MANAGER" - means the City Manager of the CITY, or his designee.

"FUND" - means the City of Wheaton Main Street Redevelopment Project Area Special Tax

Allocation Fund.

"PUBLIC IMPROVEMENTS" - means sidewalks, curbs, street lights and similar improvements constructed or installed in connection with the PROJECT, if any.

"REDEVELOPMENT COSTS" - means those items identified as such in the BUDGET.

"TIF OBLIGATIONS" - means any tax increment allocation financing issued by the CITY.

### **SECTION THREE**

#### **DEVELOPER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

DEVELOPER covenants, represents and warrants to the CITY as follows:

3.01. CONTROL DOCUMENTS: DEVELOPER shall construct the PROJECT in conformance with, and, in connection therewith, 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(collectively, the "APPLICABLE LAWS"). Without limiting the generality of the foregoing, the DEVELOPER shall specifically cause construction of the PROJECT to comply with all of the terms and conditions of this AGREEMENT, the ORDINANCES, the Wheaton City Code and the PLANS AND SPECIFICATIONS and each and every exhibit attached to and incorporated therein, together with any required permit (all of said documents, along with the APPLICABLE LAWS, being hereinafter collectively referred to as the "CONTROL DOCUMENTS").

3.02. DILIGENCE: DEVELOPER shall, after obtaining all required approvals, proceed with due diligence to construct the PROJECT.

3.03. MISCELLANEOUS DEVELOPER COVENANTS: (i) the DEVELOPER shall apply for all required government permits, certificates, consents necessary to permit

DEVELOPER to construct, occupy and operate the PROJECT; (ii) the execution and delivery of this AGREEMENT by the 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; (iii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; (iv) 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.

3.04. CHARGES: DEVELOPER shall pay promptly when due all CHARGES arising or incurred from and after the date hereof with respect to the SITE or the PROJECT.

3.05. RIGHT OF INSPECTION: The 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.

3.06. RETAIL TENANTS: The DEVELOPER agrees that none of the REDEVELOPMENT COSTS shall provide direct financial support to a retail entity that is initiating operations in the AREA while terminating operations at another Illinois location within ten (10) miles of the AREA but outside the boundaries of the CITY, as set forth in the ACT.

3.07. REDEVELOPMENT COSTS: The items marked with an asterisk on the BUDGET are eligible "redevelopment project costs" as defined in the ACT.



#### **SECTION FOUR**

##### **CITY'S REPRESENTATIONS, COVENANTS AND WARRANTIES**

The CITY represents, covenants and warrants to the DEVELOPER as follows: (i) the CITY has authority pursuant to State statute as hereinbefore recited, to execute and deliver and perform the terms and obligations of this AGREEMENT; (ii) the execution and delivery of this AGREEMENT by the CITY, and the performance of this AGREEMENT by the CITY, have been duly authorized by the corporate authorities of the CITY, and this AGREEMENT is binding on the CITY and enforceable against the CITY in accordance with its terms; (iii) 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 the CITY is a party or by which the CITY is bound, or (b) violate any restriction, court order or agreement to which the CITY is subject.

#### **SECTION FIVE**

##### **CONVEYANCE OF PROPERTY**

The CITY agrees to convey the real estate described on Exhibit "C", attached hereto and incorporated herein, to the DEVELOPER pursuant to the terms and conditions of a Purchase and Sale Agreement dated \_\_\_\_\_, 2005 between the PARTIES.

#### **SECTION SIX**

##### **APPROVAL AND CONSTRUCTION OF THE PROJECT**

6.01. **SUBMISSION OF PLANS AND SPECIFICATIONS:** Prior to commencing construction of the PROJECT, the DEVELOPER shall cause to be delivered to the CITY for review and approval completed building plans and construction documents containing working drawings and specifications for the PROJECT in such form as the CITY customarily requires ("PLANS AND



SPECIFICATIONS"). The PLANS AND SPECIFICATIONS to be prepared by DEVELOPER shall conform to the CONTROL DOCUMENTS as amended from time to time. Any amendment to any of the PLANS AND SPECIFICATIONS must be submitted by DEVELOPER to the CITY MANAGER for approval, which approval shall not be unreasonably withheld or delayed.

6.02. CONSTRUCTION OF THE PROJECT: The DEVELOPER shall cause the PROJECT to be constructed in accordance with the PLANS AND SPECIFICATIONS, together with such building permits as may be approved by the CITY. Prior to commencing construction of the PROJECT, the DEVELOPER shall submit evidence of financing (including, if applicable, DEVELOPER'S equity) for the total amount of the costs of the PROJECT (as set forth in the BUDGET).

6.03. PUBLIC IMPROVEMENTS: Upon completion of any PUBLIC IMPROVEMENT and, further, upon the submission to the CITY of a certificate from the engineering firm employed by DEVELOPER stating that the said PUBLIC IMPROVEMENT has been completed in conformance with the PLANS AND SPECIFICATIONS, the CITY shall, within thirty (30) days after the CITY receives the aforesaid certification from the DEVELOPER'S engineer, either (i) finally accept said PUBLIC IMPROVEMENT, or (ii) reject said PUBLIC IMPROVEMENT and designate in writing to DEVELOPER all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said PUBLIC IMPROVEMENT, specifically citing sections of the PLANS AND SPECIFICATIONS relied upon by the CITY (such writing hereinafter referred to as the "REJECTION NOTICE"). Should the CITY reject any PUBLIC IMPROVEMENT, or any portion or segment thereof, for a recommendation of final acceptance, the DEVELOPER shall cause to be made to such PUBLIC IMPROVEMENT such corrections or modifications specified by the CITY in the REJECTION NOTICE, but only to the extent such

corrections or modifications are in conformance with the PLANS AND SPECIFICATIONS. The DEVELOPER shall cause the PUBLIC IMPROVEMENTS to be submitted and resubmitted as herein provided until the CITY shall finally accept same. No PUBLIC IMPROVEMENT shall be deemed to be finally accepted until the CITY shall finally accept same. DEVELOPER shall require the general contractor for the PUBLIC IMPROVEMENTS to be bonded, such bond to be in form, substance and amount reasonably satisfactory to the CITY and shall include both the CITY and the DEVELOPER as the obligee thereunder. The underlying contract between the DEVELOPER and the general contractor shall provide for the labor and material warranty covering the PUBLIC IMPROVEMENTS to run for a period of two (2) years. The Bond required by this Section shall be issued by a surety having an AA rating or better using American Institute of Architects' form No. A311 or its equivalent. The general contractor may or may not, in its discretion, require bonds to be posted by any subcontractor with whom it contracts.

6.04. DEVELOPER'S COST: Subject to reimbursement from the CITY for various costs, as hereinafter provided, the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT. In addition, subject to reimbursement from the CITY as hereinafter provided, the DEVELOPER shall pay, in connection with the development of the PROJECT, such building permit fees, engineering, charges and inspection fees or any other permit or license that are assessed on a uniform basis throughout the CITY and are of general applicability to other property within the CITY.

6.05. TIME FOR COMPLETION: The DEVELOPER shall use due diligence to complete construction (except for tenant build out) of the PROJECT no later than March 1, 2007. The CITY shall not be required to issue any final certificate of occupancy until the PUBLIC IMPROVEMENTS have been completed and accepted by the CITY in accordance with Section

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6.03 of this AGREEMENT.

## SECTION SEVEN

### FINANCING THE PROJECT

7.01. SUBMISSION OF BUDGET: The DEVELOPER'S best estimate of the total costs of the PROJECT is attached hereto and incorporated herein as Exhibit "D" (the "BUDGET"). The items identified with an asterisk on the BUDGET are REDEVELOPMENT COSTS that are intended to be reimbursed by the CITY.

7.02. REIMBURSEMENT OF CERTAIN COSTS: Subject to the terms and conditions of this AGREEMENT (including, without limitation, the provisions concerning the utilization of TAX INCREMENT) and the ACT, the CITY shall reimburse DEVELOPER for certain costs, solely from TAX INCREMENT, as follows:

(A) REDEVELOPMENT COSTS, up to the amount set forth in the BUDGET. Should the DEVELOPER'S actual costs be greater than said amount, the DEVELOPER shall be required to pay such excess costs. Notwithstanding the foregoing, if actual REDEVELOPMENT COSTS for a particular line item shown on the BUDGET exceed the budgeted amount, the CITY shall reimburse DEVELOPER for such excess cost so long as the total amount reimbursed does not exceed the maximum amount set forth below.

(B) for interest costs incurred by the DEVELOPER related to the construction of the PROJECT, subject to the following limitations:

- i. the amount reimbursed shall be equal to two percent (2%) of the principal amount outstanding on the PROJECT loans for the period for which reimbursement is requested;
- ii. such interest costs are payable solely and directly to the DEVELOPER from the FUND;
- iii. such payments in any one year period may not exceed 30% of the annual interest costs incurred by the DEVELOPER with regard to the PROJECT during that year;
- iv. if there are not sufficient funds available in the FUND to make said payment, the amounts so due shall accrue and be payable when sufficient funds are available in the FUND; and
- v. the total of such interest payments paid pursuant to this AGREEMENT shall not exceed 30% of the total (i) cost paid or incurred by the DEVELOPER for the PROJECT, plus (ii) redevelopment project costs, excluding any property assembly costs and any relocation costs, incurred by the CITY pursuant to the ACT.

Reimbursement of costs under this subsection (B) shall be limited to interest on the amounts

set forth in the BUDGET as costs of construction of the PROJECT. The DEVELOPER shall provide all documentation required by the CITY to verify the DEVELOPER'S compliance with this requirement.

Notwithstanding anything herein stated to the contrary, the total amount of reimbursement to the DEVELOPER under this AGREEMENT shall not exceed \$340,880.

In the event there are insufficient funds on deposit in the FUND to pay the amounts which are due and payable to the DEVELOPER hereunder, such amounts shall remain a continuing claim against the FUND until fully paid.

7.03. METHOD OF REIMBURSEMENT: Requests for reimbursement shall be made no more frequently than monthly. To establish a right of reimbursement, DEVELOPER shall submit to a person or department within the CITY (as the same is designated by the CITY MANAGER) a written statement setting forth the amount of reimbursement requested and the specific costs for which reimbursement is sought. The request shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as the CITY reasonably shall require evidencing the right of DEVELOPER to reimbursement under this AGREEMENT. The CITY reserves the right to examine all records relating to all costs paid and/or incurred by DEVELOPER and to obtain from such consultants or experts as the CITY reasonably determines to be appropriate such other information as is reasonably necessary for the CITY to evaluate compliance by the DEVELOPER with the terms hereof.

The appropriate CITY employee or department shall have fifteen (15) days after receipt of any request for reimbursement from the DEVELOPER to recommend approval or disapproval of such request to the corporate authorities of the CITY and, if disapproved, to provide DEVELOPER in writing and in detail, with an explanation as to why such CITY employee or department is not prepared to recommend such reimbursement. Payment to the DEVELOPER shall be made within

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ten (10) days of approval thereof by the corporate authorities, if sufficient TAX INCREMENT is on deposit in the FUND.

Assuming that requests for reimbursement are made monthly, disbursements by the CITY to the DEVELOPER also shall be made monthly. The CITY shall not unreasonably withhold its approval of a given request for reimbursement. 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; provided, however, that the CITY shall give notice of such default pursuant to Section 8.03 hereof.

7.04. UTILIZATION OF TAX INCREMENT: The CITY shall deposit all real estate tax increment revenues generated from time to time within the AREA, if any, which are attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the AREA (except for revenues attributable to specific real property that the CITY otherwise agrees to segregate) over and above the initial equalized assessed value of each property in the AREA, as certified by the DuPage County Clerk (the "TAX INCREMENT"), as it is received, into the FUND, and shall disburse the same as follows:

A. First, the CITY shall pay, or allocate amounts sufficient to satisfy, debt service requirements (and any increase in required reserves) due in the current year and coming due in the following year on all outstanding TIF OBLIGATIONS, if any, and any other amount required to be paid by any ordinance authorizing any outstanding TIF OBLIGATIONS;

B. Next, the CITY shall pay, or allocate amounts sufficient to reimburse the CITY for all reasonable and necessary costs incurred by the CITY, to the extent such costs are not reimbursed from the proceeds of any TIF OBLIGATIONS;

C. Next, the CITY shall pay, or allocate amounts sufficient to pay, redevelopment

project costs for projects within the AREA, including payments pursuant to Section 7.02 hereof, or any other costs permitted under the ACT and any ordinance or ordinances authorizing the issuance of TIF OBLIGATIONS, including but not limited to redeeming, purchasing or refunding any such TIF OBLIGATIONS; and

C. Next, the CITY shall pay, or allocate amounts sufficient to reimburse the CITY for all reasonable and necessary costs incurred by the CITY, to the extent such costs are not reimbursed from the proceeds of any TIF OBLIGATIONS;

D. The balance, if any, shall be paid to the DuPage County Collector for distribution to the CITY and the affected taxing districts for deposit in their appropriate accounts, in accordance with the surplus distribution provisions of the ACT.

If TAX INCREMENT on deposit in the FUND is insufficient to make payments due to the DEVELOPER under Section 7.02 and all other amounts due, or reasonably expected to be due prior to the next deposit of TAX INCREMENT, to developers pursuant to other development agreements relating to projects within the AREA ("OTHER AGREEMENTS"), payments under subsection B. hereof shall be made on a proportionate basis. Determination of the amount due to the DEVELOPER shall be calculated based upon the proportion that the maximum amount due to the DEVELOPER under this AGREEMENT bears to the total maximum amount due under OTHER AGREEMENTS.

## **SECTION EIGHT**

### **PERFORMANCE**

8.01. **TIME OF THE ESSENCE**: Time is of the essence of this AGREEMENT.

8.02. **NO WAIVER BY DELAY**: Any delay by a PARTY in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights hereunder against the other PARTY



shall not operate as a waiver of any such PARTY'S rights or to deprive it of or limit such rights in any way. No waiver in fact made by the CITY with respect to any specific default by DEVELOPER shall be considered or treated as a waiver of the rights of the CITY with respect to any other defaults by DEVELOPER or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the DEVELOPER with respect to any specific default by the CITY shall be considered or treated as a waiver of the rights of the DEVELOPER with respect to any other defaults by the CITY or with respect to the particular default except to the extent specifically waived in writing.

8.03. BREACH AND REMEDIES: Upon the breach of this AGREEMENT, any of the PARTIES hereto may, exclusively in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, by action or proceeding at law or in equity, secure termination of this Agreement, secure the specific performance of the covenants and agreements herein contained or recover damages for the failure of performance or any of the above. Notwithstanding the foregoing, neither PARTY shall be liable for consequential damages.

In the event either PARTY shall institute legal action because of breach of any agreement or obligation contained in this AGREEMENT, on the part of either PARTY to be kept or performed, the prevailing PARTY shall be entitled to recover all damages (except consequential damages), costs and expenses, including reasonable attorneys' fees and expenses incurred therefore. The rights and remedies of the PARTIES are cumulative, and the exercise by either PARTY of one or more of such rights or remedies shall not preclude the exercise of it, at the same time or different times, of any rights or remedies for the same default or for any other default by the other PARTY, as provided herein.

Subject to provisions for notice and cure as provided herein, failure or delay by either



PARTY to perform any term or provisions of this AGREEMENT shall constitute a default under this AGREEMENT. The PARTY who so fails or delays must, upon receipt of written notice of the existence of such default, promptly commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The PARTY claiming such default shall give written notice of the alleged default to the PARTY alleged to be in default, specifying the default(s) complained of by the injured PARTY. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Any failure or delay by either PARTY in asserting any of its rights or remedies as to any default or alleged default shall not operate as a waiver of any such default or of any rights or remedies it may have as a result of such default, nor shall it deprive either such PARTY of its rights to institute and maintain any actions or proceedings which it may have hereunder.

#### **SECTION NINE**

#### **INDEMNIFICATION**

The DEVELOPER hereby agrees to indemnify, defend and hold harmless the CITY and its officers, agents and employees from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) for the failure of DEVELOPER or any contractor to pay contractors, subcontractors or materialmen in connection with the PROJECT.

#### **SECTION TEN**

#### **INSURANCE AND DESTRUCTION OF PROJECT**

Prior to the DEVELOPER commencing construction of the PROJECT, the DEVELOPER agrees to provide the CITY with evidence of 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, workmen's compensation and builder's risk insurance coverage.

The 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.

Prior and subsequent to the completion of the 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. Should the PROJECT be damaged or destroyed either prior to or subsequent to completion, the DEVELOPER shall either rebuild the PROJECT or repay to the CITY all moneys paid to the DEVELOPER from the CITY under the provisions of this AGREEMENT. In the event that the amount of insurance proceeds is in excess of all amounts due to any lender holding a mortgage on the SITE, such excess shall be applied toward any amounts due to the CITY, if any, under the preceding sentence.

## **SECTION ELEVEN**

### **DEVELOPER'S BOOKS AND RECORDS**

DEVELOPER agrees that the CITY shall have the right and authority to review and audit, from time to time, DEVELOPER'S books and records relating to the PROJECT (including DEVELOPER'S loan statements, general contractor's sworn statements, general contracts, subcontracts purchase orders, waivers of lien, paid receipts and invoices).

## **SECTION TWELVE**

### **MISCELLANEOUS PROVISIONS**

12.01. **MUTUAL ASSISTANCE**: The CITY and the DEVELOPER agree to execute all documents, including permit applications, and to take all appropriate or necessary measures as required by this AGREEMENT, by the ACT, by the ORDINANCES, the statutes of the State of Illinois or of any other governmental agencies as may be applicable thereto in order to properly effectuate the implementation, purpose, intent and spirit of this AGREEMENT and the completion of the PROJECT in accordance with the CONTROL DOCUMENTS.

12.02. **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, or of limited or general partnership, or of joint venture, or of any association or relationship involving the CITY or the DEVELOPER

12.03. **COVENANTS RUNNING WITH THE LAND**: It is intended and agreed, that all covenants provided in this AGREEMENT on the part of the DEVELOPER 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 the SITE, or any part thereof.

12.04. **PARAGRAPH HEADINGS**: The paragraph 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.

12.05. **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.

12.06. 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.

12.07. NOTICES: Notices herein required shall be in writing and shall be served upon the PARTIES, either personally or mailed by certified or registered mail, return receipt requested:

If to the CITY: City Clerk  
CITY OF WHEATON  
303 W. Wesley Street  
Wheaton, Illinois 60187

with a copy to: GORSKI & GOOD  
211 South Wheaton Avenue  
Suite 305  
Wheaton, Illinois 60187  
Attn: Ms. Robin Jones

If to DEVELOPER: LaSalle Bank, as Trustee under Trust No. 352  
P.O. Box 444  
Wheaton, Illinois 60189-0444

and James Atten  
P.O. Box 444  
Wheaton, Illinois 60189-0444

A PARTY'S address may be changed from time to time by such PARTY giving notice as provided above to the other PARTIES noted above.

12.08. INTEGRATION: This AGREEMENT together with all Exhibits and attachments thereto, constitute the entire understanding and agreement of the PARTIES. This AGREEMENT integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the PARTIES with respect to all or any part of the subject matter hereof. All waivers of the provisions of this AGREEMENT must be in writing and signed by the appropriate authorities of the CITY or the DEVELOPER.

12.09. AMENDMENT: This AGREEMENT, and any Exhibit attached hereto, may be amended only by written instrument properly executed by the PARTIES or their successors in interest. Execution of any such amendment by the CITY shall first have been authorized by the Ordinance or Resolution duly adopted by the corporate authorities of the CITY.

12.10. SUCCESSORS AND ASSIGNEES: The terms and conditions of this AGREEMENT are to apply to and bind and inure to the benefit of the CITY, the DEVELOPER and their successors and assignees.

12.11. SEVERABILITY: If any provision of this AGREEMENT, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is held invalid, the remainder of the AGREEMENT shall be construed as if such invalid part were never included herein and the AGREEMENT shall be and remain valid and enforceable to the fullest extent permitted by law.

12.12. TERM: This AGREEMENT shall be in full force and effect from and after the execution hereof by the last PARTY to execute the same and shall remain in full force and effect, unless otherwise terminated pursuant to the provisions hereof, until the earlier of December 6, 2022 or until such time as the DEVELOPER has been fully paid and reimbursed pursuant to the provisions of Sections 7.02.

12.13. GOVERNING LAW: The laws of the State of Illinois shall govern the interpretation and enforcement of this AGREEMENT.

12.14. NO DISCRIMINATION: The 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. The DEVELOPER shall take affirmative action to require that applicants 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 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: 

Mayor

ATTEST:

  
City Clerk

\_\_\_\_\_  
JAMES D. ATTEN

LASALLE BANK, AS TRUSTEE UNDER  
TRUST NO. 352

By: \_\_\_\_\_

Trust Officer

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_



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 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
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 James D. Atten, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

F-1031  
1799

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 \_\_\_\_\_, \_\_\_\_\_ of LaSalle Bank, as Trustee  
under Trust No. 352, and \_\_\_\_\_, \_\_\_\_\_ of said bank, 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 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 \_\_\_\_\_ then and there acknowledged that he, as custodian of the seal of said  
company, did affix the seal of said company to said instrument, as his 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 \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### LEGAL DESCRIPTION OF THE SITE

PARCEL 1: THOSE PARTS OF LOTS 8, 13 AND 14 IN BLOCK 7 OF THE PLAT OF THE TOWN OF WHEATON DESCRIBED BY COMMENCING 126.00 FEET NORTH OF THE SOUTHEAST CORNER OF BLOCK 7 AND RUNNING THENCE NORTH 73.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 8; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 8, 75.00 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK 7, 73.00 FEET; THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 8, 75.00 FEET TO THE POINT OF BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: THOSE PARTS OF LOTS 8 AND 13 IN BLOCK 7 OF THE TOWN OF WHEATON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 75.00 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 8; RUNNING THENCE WEST 28 FEET; THENCE SOUTH 85.00 FEET; THENCE EAST 28 FEET; THENCE NORTH 85.00 FEET TO THE POINT OF BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART, IF ANY, FALLING IN LOT A OF OWNER'S ASSESSMENT PLAT RECORDED AS DOCUMENT 410255), IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B

DESCRIPTION OF THE PROJECT - 116 N. MAIN STREET

Remove and replace East elevation of the building.

Remove and replaced 2<sup>nd</sup> floor windows and exterior rear door to deck.

Construct new exterior stairway at NW corner of building for fire egress from 2<sup>nd</sup> floor deck and remove fire escape on South side over alley.

Replace roof and skylights.

Remove seven outdated apartment units on 2nd floor and construct five two-bedroom units.

Install concrete entries to building and pad for fire stairway and dumpster storage area.

Install fire detection system in entire building.

EXHIBIT C

LEGAL DESCRIPTION OF CONVEYANCE PARCEL

THAT PART OF LOT 7 IN BLOCK 7 OF THE PLAT OF TOWN OF WHEATON DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE WEST ALONG THE SOUTH LINE  
OF SAID LOT 7; A DISTANCE OF 88.35 FEET TO THE SOUTHWEST CORNER OF THE PROPERTY  
DESCRIBED IN DOCUMENT R94-151548 FOR A POINT OF BEGINNING; THENCE CONTINUING WEST IN  
THE SAME DIRECTION 30.00 FEET; THENCE NORTH AT RIGHT ANGLES 21.00 FEET; THENCE EAST  
PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, 30.00 FEET; THENCE SOUTH 21.00 FEET TO THE  
POINT F BEGINNING, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN DU PAGE COUNTY, ILLINOIS.

EXHIBIT D  
Budget  
116 N. Main Street

Site Cost

|   |   |        |
|---|---|--------|
| Off Site/concrete (walks & ingress areas) | * | 17,500 |
| Land for Fire Egress                      |   | 25,000 |

Redevelopment Costs

|  |   |        |
|--|---|--------|
| Demolition                                     | * | 50,000 |
| Masonry  | * | 52,000 |
| Steel  | * | 9,700  |
| Stone  | * | 15,500 |
| Tuckpointing**                                 |   | 66,500 |
| Paint Removal on rear brick**                  |   | 22,500 |
| Lumber   | * | 9,000  |
| Roof - Structural/Flashing                     | * | 4,735  |
| Carpentry                                      | * | 8,700  |
| Escape stairs                                  | * | 14,500 |
| Store Fronts                                   | * | 30,245 |
| Remove and Rebuild Roof Sections               |   | 44,500 |
| Windows  | * | 27,550 |
| Roof - build up with exterior insulation board |   | 90,504 |
| Skylights                                      |   | 15,500 |
| Lighting                                       | * | 6,450  |
| Awnings & Signage**                            |   | 40,000 |
| Fire Detection                                 |   | 15,000 |

Contingency on Site Work Cost and Redevelopment Costs (15%)

81,200

Total, Site, Redevelopment and Contingency Costs

646,584

Soft Costs

|  |   |         |
|--|---|---------|
| Non-Legal Professional Services (Architect, Eng., Const. Man.) | * | 58,200  |
| General Contractor Fees  |   | 101,350 |
| Survey   | * | 700     |
| Environmental Testing  | * | 1,350   |
| Permits & Fees   | * | 2,500   |
| Insurance and Security   | * | 3,000   |
| Appraisal  | * | 2,250   |
| Loan Fee   |   | 500     |
| Lender Legal   |   | 2,500   |
| Title Insurance  | * | 2,000   |

Contingency on Soft Costs (5%)

8,718

Total Soft Costs and Contingency

183,068

Interior redevelopment costs (2nd floor)

|  |         |
|--|---------|
| Complete Demolition of 7 residential units and construction of 5 two-bedroom apartments: Basic | 390,225 |
| Apartments: Upgrades**   | 200,400 |

Total Redevelopment Costs

1,420,277

\*Total Redevelopment Costs intended to be reimbursed by the City

340,880

\*\*Contingent on additional financing over \$750,000