

ORDINANCE NO. F-1242

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 - CLD PROPERTIES, LLC

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 CLD Properties, LLC (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".

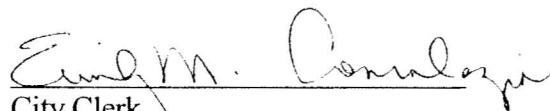
Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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 4th day of December, 2006.

Mayor 

ATTEST:

  
City Clerk

Roll Call Vote:

Ayes: Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Mouhelis

Nays: Councilman Levine  
Councilman Suess

Absent: None

Motion Carried

Passed: December 4, 2006  
Published: December 5, 2006

## **DEVELOPMENT AGREEMENT**

This DEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 4<sup>th</sup> day of December, 2006, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois and CLD PROPERTIES, LLC, an Illinois limited liability company.

### **RECITALS**

A. Pursuant to the terms of a Redevelopment Plan entitled "Wheaton Main Street Redevelopment Area Project and Plan", dated November, 1999 (as amended from time to time, hereinafter referred to as the "REDEVELOPMENT PLAN"), the CITY designated a certain area within its municipal limits for redevelopment and revitalization. That 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") is outlined on Exhibit "A" and legally described on Exhibit "B", which Exhibits are 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"). The REDEVELOPMENT PLAN further recited that CITY was desirous of having the SITE redeveloped and revitalized as a mixed use development to serve the needs of the community and to produce increased tax revenues for the community.

C. DEVELOPER, in accordance with the REDEVELOPMENT PLAN, will construct an office/retail building, as more fully described on Exhibit "C" 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 construction of 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 reimbursement of certain REDEVELOPMENT COSTS, as hereinafter provided, would promote the development of the PROJECT consistent with the purposes of the ACT, the REDEVELOPMENT PLAN and the ORDINANCES.

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

### **SECTION ONE**

#### **INCORPORATION OF RECITALS**

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**

Terms not otherwise defined herein shall have the following meaning:

"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 the SITE, the PROJECT, DEVELOPER'S business, DEVELOPER'S income and/or gross receipts and insurance premiums due on any policy or policies of insurance required pursuant to Section Thirteen hereof.

"CITY" - means the City of Wheaton, DuPage County, Illinois.

"CURE PERIOD" - means the period of thirty (30) days after notice of an EVENT OF DEFAULT within which the defaulting party may remedy the default as further described in Section 11.07.

"DEVELOPER" - means CLD Properties, LLC, an Illinois limited liability company and its successors and assigns.

"EVENT OF DEFAULT" - means the occurrence of any of the events listed in Section 11.05.

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

"PARTY" or "PARTIES" - means the CITY and/or the DEVELOPER.

"PLANS AND SPECIFICATIONS" - means the building plans, engineering plans and construction documents containing working drawings and specifications in such form customarily required by the CITY.

"REDEVELOPMENT COSTS" - means eligible "redevelopment project costs" as defined in the ACT.

"REIMBURSABLE COSTS" - means REDEVELOPMENT COSTS up to a maximum of \$2,431,487 for which the CITY will reimburse the DEVELOPER from TAX INCREMENT attributable to the SITE pursuant to the terms of this AGREEMENT.

"REIMBURSEMENT STATEMENT" - means a statement submitted to the CITY by the DEVELOPER requesting reimbursement for REIMBURSABLE COSTS expended by the DEVELOPER.

"SCHEDULE" - means the schedule of construction and completion attached hereto as

Exhibit "D".

"TAX INCREMENT" - means real estate revenues generated from time to time within the AREA (except for revenues attributable to specific real property that the CITY segregates pursuant to previously executed redevelopment agreements), 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 over and above the initial equalized assessed value of each property in the AREA, as certified by the DuPage County Clerk.

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

### **SECTION THREE**

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

The 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, including, but not limited to the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, the Environmental Barriers Act, 410 ILCS 25/1 *et seq.* and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* (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, Ordinance No. F-1183, as amended from time to time, the PLANS AND SPECIFICATIONS and each and every exhibit attached to and incorporated therein, together with any required permits (all of said documents

and the APPLICABLE LAWS being hereinafter collectively referred to as the "CONTROL DOCUMENTS").

3.02. MISCELLANEOUS DEVELOPER COVENANTS: (i) The DEVELOPER is now solvent and able to pay its debts as they mature; (ii) to the best knowledge of the DEVELOPER, upon due inquiry, there are no actions at law, in equity or similar proceedings which are pending or threatened against the DEVELOPER, which are reasonably likely to be adversely determined and result in any material and adverse change to the DEVELOPER'S financial condition, or materially affect the DEVELOPER'S assets as of the date of this AGREEMENT; (iii) the DEVELOPER has or will obtain all required government permits, certificates and consents (including, without limitation, appropriate environmental clearances and approvals) necessary to permit DEVELOPER to construct, occupy and operate the PROJECT; (iv) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of moneys to which the DEVELOPER is a party or by which it is bound which has not been cured or which is reasonably likely to result in a material and adverse change to the DEVELOPER; and (v) there has been no material and/or adverse change in the assets, liabilities or financial condition of the DEVELOPER other than as a result of the ordinary and customary conduct of its business; (vi) the execution and delivery of this AGREEMENT by the DEVELOPER, and the performance of this AGREEMENT by DEVELOPER, have been duly authorized by the DEVELOPER, and this AGREEMENT is binding on the DEVELOPER and enforceable against the DEVELOPER in accordance with its terms; (vii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; and (viii) neither the execution of this AGREEMENT nor the consummation of the transactions contemplated

hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which DEVELOPER is a party or by which DEVELOPER is bound, or (b) violate any restriction, court order or agreement to which the DEVELOPER is subject.

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

3.04. ORGANIZATION AND AUTHORITY: The DEVELOPER is a duly organized and existing limited liability company organized and existing in good standing under the laws of the State of Illinois, and has the authority to enter into, execute, deliver and perform this AGREEMENT.

3.05. PROGRESS REPORTS: Until construction of the PROJECT is complete, the DEVELOPER shall make progress reports to the CITY regarding the PROJECT. Said reports shall be in the form attached hereto and incorporated herein as Exhibit "E". For the first twelve (12) months of construction, the reports shall be made on a monthly basis. Thereafter, such reports shall be made on a quarterly basis.

3.06. 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.

3.07. RETAIL USERS: 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.

## **SECTION FOUR**

### **CITY'S COVENANTS**

(i) The CITY has authority pursuant to the ACT 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) 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 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**

### **REPAYMENT OF AMOUNTS TO THE CITY**

Should the DEVELOPER fail to substantially complete the PROJECT by December 31, 2008, the DEVELOPER shall repay to the CITY all amounts paid to the DEVELOPER by the CITY. For purposes of this Section "substantially complete" shall mean that a temporary occupancy certificate has been issued by the CITY pursuant to its customary procedures. Any amounts due to be repaid to the CITY under this Section shall constitute a lien on the SITE, which lien hereby is made expressly subject and subordinate to the lien of any third party financing affecting the SITE from time to time; provided, however, that such third party financing relates only to the PROJECT or the SITE. The CITY agrees to execute, from time to time, a subordination

agreement in a form reasonably requested by such third party lender.

Prior to any amount becoming due under this Section, the CITY shall give written notice to the DEVELOPER of its repayment obligation. Unless otherwise agreed by the CITY pursuant to an amendment of this AGREEMENT, the repayment obligation shall be due within thirty (30) days of the date of the written notice unless the PROJECT is substantially completed within said time period.

## **SECTION SIX**

### **COSTS OF THE PROJECT**

6.01. **BUDGET**: Attached hereto and incorporated herein as Exhibit "F" is the DEVELOPER'S pro forma, containing its best estimate of the costs of the PROJECT (the "BUDGET").

6.02. **DEVELOPER'S COST**: The CITY agrees to reimburse the DEVELOPER for up to \$2,431,487 of REIMBURSABLE COSTS in connection with the construction of the PROJECT pursuant to the provisions of Section Nine. Other than said reimbursement, the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT.

The CITY reserves the right to examine all records relating to all costs paid by the DEVELOPER and to obtain from such consultants or experts as the CITY determines to be appropriate, such other information as is necessary for the CITY to evaluate compliance by the DEVELOPER with the terms hereof.

## **SECTION SEVEN**

### **CONSTRUCTION OF THE PROJECT**

7.01. **ZONING APPROVAL; SUBMISSION AND APPROVAL OF PLANS AND SPECIFICATIONS**: The CITY has passed Ordinance No. F-1183, providing the necessary zoning

approvals for the PROJECT.

No later than March 1, 2007, DEVELOPER shall cause to be delivered to the CITY for review and approval the PLANS AND SPECIFICATIONS for the PROJECT. The DEVELOPER shall also file all required applications and supporting documentation as may be necessary to secure any permit required to be issued by any other unit of government whose approval is a necessary precondition to DEVELOPER'S right to construct the PROJECT.

The CITY agrees to meet with the DEVELOPER and its authorized agents as frequently as may reasonably be necessary to coordinate the preparation of, submission to and review and approval by the CITY of the PLANS AND SPECIFICATIONS, including building permit applications. The CITY shall promptly consider any such submittals and advise the DEVELOPER in writing within twenty-one (21) days of a full and complete submission of any deficiency in any submitted PLANS AND SPECIFICATIONS or building permit applications, specifying the sections of the CONTROL DOCUMENTS relied upon by the CITY in determining that any document may not be approved or recommended as submitted. Should the CITY reject any submitted PLANS AND SPECIFICATIONS or building permit application for failure to comply with the CONTROL DOCUMENTS, the DEVELOPER shall, within twenty-one (21) days after receiving written notice thereof, cause new or corrected documents to be prepared and submitted to the CITY. This process, within the time frames herein stipulated, shall be repeated as often as may be necessary until the documents are in compliance with the CONTROL DOCUMENTS, except that all submittals after the initial submittal shall be reviewed by the CITY within such shorter period as may be reasonably practical.

7.02. IMPROVEMENT AGREEMENT: Prior to the issuance of a building permit for the PROJECT, the DEVELOPER shall submit an executed copy of the CITY'S standard Planned



Development/Subdivision Improvement Agreement, in substantially the form attached hereto as Exhibit "G", and submit the security required therein.

7.03. CONSTRUCTION: The DEVELOPER shall cause the PROJECT, including the REQUIRED PUBLIC IMPROVEMENTS, to be constructed in conformance with the elevation drawings attached hereto and incorporated herein as Exhibit "H" and the CONTROL DOCUMENTS. Subsequent to the approval of any PLANS AND SPECIFICATIONS, any amendments thereto shall be permitted only in accordance with the Planned Unit Development provisions contained in the CITY'S Zoning Ordinance.

The CITY shall not be required to issue a final certificate of occupancy for the PROJECT until the REQUIRED PUBLIC IMPROVEMENTS have been completed and the CITY'S Engineer has recommended acceptance of said REQUIRED PUBLIC IMPROVEMENTS in accordance with the Planned Unit Development/Subdivision Improvement Agreement. Notwithstanding the foregoing, the CITY shall issue temporary occupancy certificates pursuant to its customary procedures.

7.04. TIME FOR COMPLETION: The PROJECT shall be constructed in accordance with the SCHEDULE. The SCHEDULE shall be subject to reasonable change by the DEVELOPER, as approved by the CITY, such approval not to be unreasonably withheld.

## **SECTION EIGHT**

### **FEES**

DEVELOPER shall pay, in connection with the development of the PROJECT and the construction of the REQUIRED PUBLIC IMPROVEMENTS, such building or excavation permit fees, engineering, connection or tap-on fees, charges and inspection fees, or any other permit or license fees, that are assessed on a uniform basis throughout the CITY and are of general

applicability to other property within the CITY.

## **SECTION NINE**

### **TAX INCREMENT UTILIZATION; REIMBURSEMENT OF REDEVELOPMENT**

#### **COSTS**

9.01. **UTILIZATION OF TAX INCREMENT:** The CITY shall deposit all 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 required by the TIF OBLIGATIONS) due in the current year and coming due in the following year on all outstanding TIF OBLIGATIONS, if any;

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, at its option, pay or allocate amounts sufficient to pay, any REDEVELOPMENT COSTS for other projects within the AREA 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

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.

Notwithstanding the foregoing, during the term of this AGREEMENT or until such time as the DEVELOPER has been fully reimbursed as set forth below, whichever is earlier), all TAX INCREMENT that is attributable to the SITE shall be segregated in a separate account within the FUND ("DEVELOPER ACCOUNT") and shall be utilized to fulfill the terms of Section 9.02.

9.02. REIMBURSEMENT OF REDEVELOPMENT 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 hereby pledges TAX INCREMENT attributable to the SITE to reimburse DEVELOPER for REDEVELOPMENT COSTS up to a maximum amount of \$2,431,487.

9.03. METHOD OF REIMBURSEMENT: 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 REIMBURSEMENT STATEMENT 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 a REIMBURSEMENT STATEMENT 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 ten (10) days of approval thereof by the corporate authorities, if sufficient TAX INCREMENT is on deposit in the DEVELOPER ACCOUNT. Notwithstanding the foregoing, up to fifty percent (50%) of the TAX INCREMENT on deposit in the DEVELOPER ACCOUNT shall be used to reimburse the CITY for legal and financial advisor costs incurred in connection with this

AGREEMENT and the transactions contemplated herein.

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 11.06 hereof.

In the event there are insufficient funds on deposit in the DEVELOPER ACCOUNT to pay the amounts which are due and payable to the DEVELOPER hereunder, such amounts shall remain a continuing claim against the DEVELOPER ACCOUNT until fully paid, or until this AGREEMENT terminates pursuant to the terms of Section 16.14.

## **SECTION TEN**

### **FINAL CERTIFICATION OF PROJECT COSTS; RECAPTURE**

The DEVELOPER acknowledges that the level of financial assistance provided by the CITY herein is based upon the BUDGET, previously attached hereto as Exhibit "F". Within sixty (60) days of issuance of a final certificate of occupancy for the PROJECT, the DEVELOPER shall submit a certification of actual costs in each of the categories shown on the pro forma to the CITY. The DEVELOPER shall provide such documentation as the CITY deems necessary to confirm the actual costs. The CITY shall have the certified actual costs reviewed by its financial adviser and shall notify the DEVELOPER in writing when they are determined by it and its financial adviser to be acceptable.

Once the certified actual costs are deemed to be acceptable by the CITY, to the extent they show a "return on equity" to the DEVELOPER in excess of 13.5%, fifty percent (50%) of such excess shall be paid to the CITY, such payment to be made within thirty (30) days of

acceptance of the certified actual costs by the CITY.

## **SECTION ELEVEN**

### **PERFORMANCE**

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

11.02. **DELAY**: Performance by either PARTY hereunder shall not be deemed to be in default as a result of unavoidable delays or defaults due to war, insurrection, strikes, lockouts, riots, floods, earth-quakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, acts of the other PARTY, the act or the failure to act of any public or governmental agency or entity (except that the acts or failure to act of the CITY shall not excuse performance by the CITY) or any other like event or condition beyond the reasonable control of the PARTY affected thereby which in fact interferes with the ability of such PARTY to discharge their respective obligations hereunder; nor shall either the CITY or the DEVELOPER be considered on breach of, or default in its obligations under this AGREEMENT in the event of any delay resulting from the conduct of any judicial, administrative or legislative proceeding or caused by litigation or proceedings challenging the authority or right of the CITY to act under the ORDINANCES, or perform under this AGREEMENT. The CITY shall diligently contest any such proceedings and any appeals therefrom. The CITY may settle a contested proceeding at any point, so long as the settlement results in the CITY'S ability to perform pursuant to this AGREEMENT and so long as any such settlement does not impose additional obligations on DEVELOPER or reduce the DEVELOPER'S rights or increase its obligations under this AGREEMENT. Provided, however, that the PARTY seeking the benefit of the provisions of this Section 11.02 shall, within ten (10) days after the beginning of any such unavoidable delay, have first notified the other PARTY thereof in writing, and of the cause or causes thereof, and requested

an extension for the period of the enforced delay. Such notice may be given to a mortgagee in possession or seeking to obtain possession or any mortgagee, successor or assign becoming an assignee by foreclosure or deed in lieu of foreclosures.

11.03. 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.

11.04. FORUM AND REMEDIES: Upon an EVENT OF DEFAULT under 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.

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 attorney's fees 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, at the same time or different times, any rights or remedies for the same default or for any other default by the other PARTY, as provided herein.

11.05 DEFAULT: Subject to the "unavoidable delays" provisions set forth in Section 11.02 hereof and to provisions for notice and cure as provided herein, failure or delay by either PARTY to perform any term or provision of this AGREEMENT shall constitute an EVENT OF DEFAULT under this AGREEMENT. Furthermore, each of the following acts or omissions of DEVELOPER shall also constitute a breach or default under this AGREEMENT: (i) without a prior agreement with the CITY to modify the SCHEDULE, the DEVELOPER fails to proceed with the construction of the PROJECT as required by this AGREEMENT; (ii) without a prior agreement with the CITY to modify the SCHEDULE, the DEVELOPER abandons or substantially suspends construction hereunder or does not have a sufficient work force on the job so as to continuously and expeditiously complete the work; (iii) DEVELOPER transfers, or suffers any involuntary transfer of the PROJECT or the SITE or any part thereof, in violation of this AGREEMENT; (iv) the filing, execution or occurrence of a voluntary or involuntary petition filed seeking any debtor relief, or the making of an assignment for the benefit of creditors by DEVELOPER, or DEVELOPER'S execution of any instrument for the purpose of effecting a composition of creditors or the adjudication of DEVELOPER as bankrupt or insolvent.

11.06 NOTICE OF DEFAULT: The PARTY claiming an EVENT OF DEFAULT hereunder 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.

11.07. CURE PERIOD: The PARTY alleged to be in default shall, within thirty (30) days of receipt of the notice of default, cure, correct or remedy such alleged EVENT OF DEFAULT.

The injured PARTY may not institute proceedings against the PARTY in default until the end of the CURE PERIOD. If such default is cured within such CURE PERIOD, the default shall be deemed cured. If the default is one which cannot be reasonably cured within the CURE PERIOD, and if the defaulting PARTY shall commence curing the same within such CURE PERIOD, the said CURE PERIOD shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting PARTY diligently proceeds therewith; if such default is cured within such extended period, the default shall be deemed cured.

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.

11.08. MORTGAGEES: Whenever the CITY shall deliver a notice of default to DEVELOPER with respect to any alleged EVENT OF DEFAULT by DEVELOPER hereunder, the CITY shall at the same time deliver to each MORTGAGEE (as defined below), a copy of such notice or demand, provided CITY has been advised in writing of the name and address of any such MORTGAGEE. Each such MORTGAGEE shall have the right to cure or remedy or commence to cure or remedy any such default after the expiration of the CURE PERIOD, subject to the same conditions as are applicable to the DEVELOPER.

In the event the DEVELOPER'S default is not one curable by a MORTGAGEE (i.e., insolvency or bankruptcy of the DEVELOPER), such MORTGAGEE may request and the CITY may agree to enter into an assumption agreement with such MORTGAGEE.

Notwithstanding any provision herein to the contrary, the DEVELOPER shall be permitted to grant and convey to third parties (each a "MORTGAGEE") mortgage liens and other liens and



encumbrances upon the SITE as security for financing extended to the DEVELOPER from time to time in connection with the PROJECT, or any portion thereof (each a "MORTGAGE"), without the prior consent of the CITY, and the DEVELOPER shall be permitted to collaterally assign and grant a security interest in its rights and interests hereunder to such MORTGAGEE pursuant to a security agreement in a form acceptable to the CITY ("ASSIGNMENT"). In the event that any MORTGAGEE shall succeed to the DEVELOPER'S interest in any portion of the SITE pursuant to the exercise of remedies under any such MORTGAGE or ASSIGNMENT, whether by foreclosure, deed in lieu of foreclosure and/or exercise of any rights under such documents, the CITY hereby agrees to attorn to and recognize such party as the successor in interest to the DEVELOPER for all purposes under this AGREEMENT so long as such party enters into an assumption agreement in a form acceptable to the CITY. Execution of the assumption agreement shall not relieve the DEVELOPER from liability for any default of the DEVELOPER which occurred prior to the execution of the assumption agreement. If such MORTGAGEE does not enter into an assumption agreement, such party shall be entitled to no rights and benefits under this AGREEMENT, and such party shall be bound only by those provisions of this AGREEMENT which are covenants expressly running with the land and the CITY shall not be obligated to pay any TAX INCREMENT to such MORTGAGEE or any successor to such MORTGAGEE, unless agreed to by the CITY in writing.

11.09. CITY RIGHT TO CURE DEFAULTS: In the event the DEVELOPER defaults in the construction or completion of construction of the improvements contemplated by the provisions of this AGREEMENT, and such default is also a default under any mortgage, deed of trust, other security instrument or lease-back or obligation to the grantee under any other conveyance for financing, and the holder, lessor or grantee, as the case may be, elects not to exercise its option to cure such default, the CITY may, after expiration of the notice and CURE PERIOD, cure such

default, or cause the same to be cured, prior to completion of any foreclosure, termination of lease or other remedial proceeding as a result of such default. In such event, the CITY, or its nominee, shall be entitled to reimbursement from the DEVELOPER, or such other entity, of all reasonable costs and expenses incurred by the CITY in curing the default (including reasonable attorney's fees).

## **SECTION TWELVE**

### **INDEMNIFICATION**

The DEVELOPER and the CITY hereby agree to indemnify, defend and hold harmless the other PARTY and its officers, members, agents and employees from and against any losses, costs, damages (except consequential damages), liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) suffered or incurred by such PARTY arising from or in connection with the failure of the indemnifying PARTY to perform its obligations under this AGREEMENT. In addition, 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 THIRTEEN**

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

Prior to the DEVELOPER commencing construction of the PROJECT, the DEVELOPER agrees to provide the CITY with all policies of insurance which the CITY may reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the CITY, including without limitation, comprehensive liability, workmen's compensation and builder's risk

insurance coverage naming the CITY as an additional insured on said policies.

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 and shall include the CITY, its officers, agents and employees as additional insureds in all such policies. The CITY shall make no claim under any builder's risk or property damage insurance without an opinion from Chapman & Cutler or other nationally recognized bond counsel that such claim will not adversely affect the tax-exempt status of any TIF OBLIGATIONS.

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

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; provided, however, that once the CITY has accepted the REQUIRED PUBLIC IMPROVEMENTS, it shall be the CITY'S responsibility to insure the REQUIRED PUBLIC IMPROVEMENTS. 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 FOURTEEN**

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

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

#### **SECTION FIFTEEN**

##### **TRANSFERS**

Prior to completion of the PROJECT and other than (1) the transfer of the property or the beneficial interests in the property to an entity owned or controlled by substantially the same persons as DEVELOPER, (2) sales and mortgaging of the sale of individual condominium units, or (3) assignments relating to financing of the PROJECT as permitted by Section 11.08, the DEVELOPER shall not make, create or suffer to be made any sale, transfer, assignment or conveyance with respect to this AGREEMENT or the SITE or the PROJECT, or any part thereof, including without limitation, any transfer or assignment of the beneficial interest in title holding trust or any part thereof, or contract or agree to do any of the same, without the prior written approval of the CITY, which approval shall not be unreasonably withheld or delayed.

Any proposed transferee within the forgoing period shall have the qualifications and

financial responsibility necessary and adequate, as may be reasonably determined by the CITY, to fulfill the obligations undertaken in this AGREEMENT by the DEVELOPER. Any such proposed transferee, by instrument in writing reasonably satisfactory to the CITY and in recordable form, for itself and its successors and assigns, and for the benefit of the CITY, shall expressly assume all of the obligations of the DEVELOPER under this AGREEMENT, shall agree to be subject to all the conditions and restrictions to which the DEVELOPER is subject and upon acceptance in writing by the CITY of such transferee the DEVELOPER shall be released from any obligation or responsibility under this AGREEMENT. In the absence of the specific written agreement by the CITY no such transfer, assignment or approval by the CITY shall be deemed to relieve the DEVELOPER or any other party from any obligations as to SITE under this AGREEMENT.

## **SECTION SIXTEEN**

### **MISCELLANEOUS PROVISIONS**

16.01. **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.

16.02. **REAL ESTATE BROKERAGE**: The CITY and DEVELOPER each represent and warrant one to the other that neither has dealt with any real estate broker in connection with the transaction contemplated herein, and that no broker's commission or fee is due as a consequence of this AGREEMENT. Each PARTY hereto agrees to indemnify, defend and hold harmless each other PARTY from and against any and all claims for real estate broker commissions or fees in

connection with any aspect of the transactions contemplated hereunder arising as a consequence of the acts or omissions of the PARTY from whom such indemnification is sought.

16.03. 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

16.04. 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.

16.05. 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.

16.06. 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.

16.07. 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.

16.08. 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: CLD Properties, LLC  
c/o Lorraine Dusek  
405 W. Front Street  
Wheaton, Illinois 60187

with a copy to: Rathje & Woodward  
300 East Roosevelt Road  
Wheaton, Illinois 60187  
Attn: Mr. Scott Pointner

If to any Mortgagee: To the person and address designated  
to the CITY in writing by the Mortgagee.

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.

16.09. 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, and all amendments hereto must be in writing and signed by the appropriate authorities of the CITY and the DEVELOPER.

16.10. 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.

16.11. CERTIFICATE OF CONTINUED EFFECTIVENESS: Within ten (10) business days after the written request by DEVELOPER, the CITY shall execute and deliver to any existing or proposed mortgagee, or lessor or grantee a certificate stating that this AGREEMENT is in full force and effect, that neither the CITY nor DEVELOPER are in default under this AGREEMENT and containing such other information as may be reasonably requested by such mortgagee, lessor or grantor.

16.12. 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.

16.13. 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.

16.14. 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 earlier terminated pursuant to any of the terms or provisions of this AGREEMENT, until the earlier of December 31, 2023 or until all of the DEVELOPER has been fully reimbursed for REDEVELOPMENT COSTS as provided herein, whichever is earlier.

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



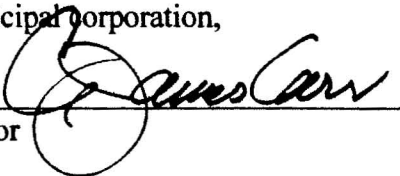
16.16. NO DISCRIMINATION: The DEVELOPER, in connection with the construction of the PROJECT, shall utilize fair employment practices, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The DEVELOPER shall take affirmative 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. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising, solicitations and advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices which may be provided by the CITY setting forth the provisions of this non-discrimination clause.

[SIGNATURE PAGE FOLLOWS]

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

CLD PROPERTIES, LLC, an Illinois limited  
liability company,

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

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  
\_\_\_\_\_, 2006.

\_\_\_\_\_  
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 \_\_\_\_\_, \_\_\_\_\_ of CLD Properties, LLC, and  
\_\_\_\_\_, \_\_\_\_\_ of said company, 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 company, 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 corporate seal of said corporation to said instrument, as h\_\_ own free and voluntary act  
and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_,  
2006.

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

**EXHIBIT A**  
**OUTLINE OF SITE**



**EXHIBIT B**

**LEGAL DESCRIPTION OF SITE**

THE WEST 66 FEET OF THE SOUTH 100 FEET OF BLOCK 6 OF VALLETE AND BEARD'S ADDITION TO WHEATON, A SUBDIVISION IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 10, 1854 AS DOCUMENT 8384, IN DUPAGE COUNTY, ILLINOIS.

THE EASTERLY 99 FEET OF THE WEST 165 FEET OF THE SOUTH 165 FEET OF BLOCK 6 OF VALLETTE AND BEARD'S ADDITION TO WHEATON, BEING A SUBDIVISION IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 10, 1854 AS DOCUMENT 8384, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-16-133-007, 05-06-133-008, 05-16-133-009

Commonly known as 117-131 W. Wesley Street, Wheaton, IL

## **EXHIBIT C**

### **DESCRIPTION OF PROJECT**

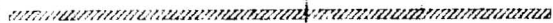













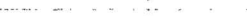
The Project will consist of a three-story 40,379 square foot commercial building, with retail uses on the first floor and office space on the upper floors.



**EXHIBIT D**

**SCHEDULE**



2007												2008												
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
<p>Existing Tenant Space Search and Relocation</p> <p>7/21  2/21</p> <p>Budget Document Development</p> <p>7/25  9/15</p> <p>Budget Review and Approval</p> <p>9/18  10/6</p> <p>Pre-Construction Sales and Leasing Activities</p> <p>10/9  12/14</p> <p>Secure Project Financing</p> <p>11/9  12/14</p> <p>Design-Build Construction Agreement Execution</p> <p>12/15  12/29</p> <p>Permit Document Development</p> <p>1/2  2/12</p> <p>Order Long-Lead Items</p> <p>1/23  1/29</p> <p>Permit Document Review</p> <p>2/13  3/26</p> <p>Receive Demolition Permit</p> <p>2/27  2/27</p> <p>Mobilization</p> <p>2/28  3/2</p> <p>Building Demolition</p> <p>3/5  3/16</p> <p>Receive Full Building Permit</p> <p>3/27  3/27</p> <p>Shell Building Construction</p> <p>3/28  12/3</p> <p>Assumed Tenant and Condo Finish Time Line</p> <p>10/29  7/3</p>																								

**EXHIBIT E**  
**PROGRESS REPORT**

Progress Report – CLD Properties, LLC

Date: \_\_\_\_\_, 200\_\_

To: Person(s) designated by the City of Wheaton

From:

---

A. Construction

A description of the status of construction in place and schedule broken down by:

B. Budget

General description of budget status of the project.

**EXHIBIT F**

**BUDGET**

**BASED ON EHLERS' CHANGES TO DEVELOPER'S NUMBERS**  
**CASH FLOW STATEMENT**  
**Dusek Project NO TIF**

<b>SOURCES</b>		
	<b>% OF TOTAL</b>	<b>TOTALS</b>
DEVELOPER FINANCING	68.72%	8,721,454
DEVELOPER EQUITY	21.43%	2,720,000
SALE OF SUITE TO AMLINGS	9.85%	1,250,000
TIF (New 7.5% (Average) Rate 2-4 (redevelopment) 100)	0.00%	0
<b>TOTAL SOURCES</b>	<b>100.00%</b>	<b>12,691,454</b>
<b>TOTAL USES</b>		<b>12,691,454</b>
Equity - GAP		0

<b>USES</b>				
	<b>Per Sq. Ft.</b>	<b>% OF TOTAL</b>	<b>SUBTOTAL</b>	<b>TOTALS</b>
<b>ACQUISITION COSTS</b>				<b>3,188,508</b>
Attention Building		13.79%	1,750,000	
Attention Carry Cost		1.04%	132,000	
Appraisals		0.06%	7,500	
Demolition		0.00%		
Relocation		2.80%	330,000	
Equity Contribution - (Corner & Amings building)			970,000	
<b>TOTAL ACQUISITION COSTS</b>				<b>3,188,508</b>
<b>CONSTRUCTION COSTS</b>				
Construction Cost		52.01%	6,600,588	
Structural Reinforcement		0.00%		
<b>SOFT COSTS</b>				<b>714,021</b>
Misc. Costs				
Utilities		0.14%	18,000	
Insurance during Construction		0.08%	7,500	
Project Management Fees		1.18%	150,000	
Environmental Fees		0.24%	30,000	
Legal Fees		0.32%	40,000	
TIF Consulting fees		0.04%	5,000	
FF & E		1.04%	132,012	
Technology		0.70%	88,000	
Material Testing		0.12%	15,000	
Final Cleaning		0.08%	10,000	
Reproduction		0.08%	10,000	
Incidentals (Signage, supplies, etc.)		0.08%	10,000	
Owner's Legal Fee		0.12%	15,000	
Annual Insurance Cost		0.18%	22,500	
Lost Income		0.59%	75,000	
Reimbursables		0.12%	15,000	
Building Permits		0.47%	60,000	
<b>PREDEVELOPMENT COSTS</b>				<b>552,848</b>
Architect/Engineering		3.80%	482,158	
Site Survey		0.03%	3,540	
Borings		0.03%	3,880	
Parking Study		0.07%	8,600	
Public Utility Relocation & Excess Public Utility Fees		0.39%	50,000	
Phase I Environmental Study		0.04%	4,700	
<b>UTILITY FEES</b>				<b>70,000</b>
Sanitary		0.16%	20,000	
Water Service / Tap on		0.24%	30,000	
Road Improvements		0.16%	20,000	
<b>REAL ESTATE TAXES</b>		1.24%	158,758	<b>158,758</b>
<b>FINANCING</b>				<b>1,032,000</b>
Construction Period Interest		7.09%	900,000	
Commission - Attention Closing		0.47%	60,000	
Broker Fee		0.57%	72,000	
Tenant Concessions/Vacancy Capitalization		0.00%	0	
<b>CONTINGENCY</b>				<b>375,731</b>
Contingency (5% of Construction & Soft Costs - Misc)		2.50%	315,731	
Construction Contingency		0.00%	0	
Initial Contingency		0.00%	0	
Repair of Existing Church Parking Lot		0.08%	10,000	
Other Contingency		0.00%	0	
<b>TOTAL SOFT COSTS</b>				<b>2,901,358</b>
<b>TOTAL USES</b>		<b>92.36%</b>		<b>12,691,454</b>

**EXHIBIT G**

**IMPROVEMENT AGREEMENT**

PLANNED DEVELOPMENT  
SUBDIVISION IMPROVEMENT  
AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ by and between the City of Wheaton, an Illinois Corporation, and having its office at City Hall, 303 West Wesley Street, Wheaton, Illinois hereinafter called "City" and , an \_\_\_\_\_ Corporation, hereinafter called the "Developer,"  
WITNESSTH:

WHEREAS, the Developer is seized and possessed in fee simple title in himself or his nominee to the real estate described as follows:

\_\_\_\_\_  
Property Index Number

WHEREAS, the Developer desires to subdivide said property described above and has submitted to the City a plat of subdivision designated as:

\_\_\_\_\_ and which subdivision plat has been approved by the Mayor and City Council of the City; and

WHEREAS, the City is willing to approve said subdivision plat provided that this agreement is executed to insure the completion of certain public improvements in accordance with its duly enacted ordinances, as a condition to the issuance of occupancy permits for any buildings to be constructed on the property.

NOW THEREFORE, it is mutually agreed as follows:

## **IMPROVEMENTS**

1. The developer shall furnish at his own cost and expense all necessary materials, labor, and equipment to complete the required improvements required by the Subdivision Control Ordinance. These improvements are as follows: monuments, sanitary sewers and all appurtenances, storm drainage systems and all appurtenances, water mains and all appurtenances, street lighting and all appurtenances, street signs, street pavements to include curb and gutter, sidewalks, parkway trees, parkway landscaping, and detention area landscaping. All these improvements shall be in accordance with the standards, specifications, and requirements of the City of Wheaton. Such improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto which exhibit has been prepared by \_\_\_\_\_ who are registered professional engineers. All utility lines and services to be replaced under the street shall be installed prior to paving.

## **ESCROW AND CONSTRUCTION CONTRACT**

2. Attached hereto is Exhibit B, an executed contract between the Developer and a contractor, or a complete cost estimate prepared by a professional engineer, for the construction and improvements described in paragraph 1 hereof. Prior to the execution of this agreement, the Developer shall deposit in escrow (Exhibit "C") an amount equal to the sum of the total of the amounts required to pay said contractor, or 125% of the engineer's cost estimate including all final lot staking and survey monuments, by irrevocable letter of credit or cash, in escrow with to be disbursed with the joint written order of the City Engineer, of the City of Wheaton and \_\_\_\_\_, agent for the Developer for the sole purpose of paying for the improvements herein described. Until said escrow (Exhibit "C") is established with the City of Wheaton, this agreement shall not be in force and effect. The contract shall be executed by the escrow agent, who shall be approved by the City and who shall be deemed a party to this contract.



### **CONSTRUCTION OBSERVATIONS**

3. All work shall be subject to spot construction observations and the approval of the City Engineer, and his written approval thereof shall be a condition precedent to payout or reduction of the funds deposited in escrow. The Developer shall be responsible for inspecting and insuring that his work meets with the approved plans and specifications.

### **OBSERVATION FEES**

4. The Developer shall pay 2% of the total cost of the improvement to the City of Wheaton as a construction observation fee, as required by Ordinance. Payment is to be made within ten (10) days of the execution of this agreement.

### **INSURANCE**

5. Prior to commencement of any work provided for herein, the Developer and/or his contractors shall furnish the City with certificates of insurance providing for workmen's compensation and employer's liability insurance, including occupational disease coverage and comprehensive liability insurance to cover said work in the following amounts:

- (a) Workmen's compensation (statutory limits)
- (b) Employer's liability (limits \$500,000/1,000,000 including liability for injury or death of City's employees).
- (c) A minimum of Two Hundred Fifty Thousand (\$250,000) Dollars for injury to one person.
- (d) A minimum of Five Hundred Thousand (\$500,000) Dollars for injury to more than one person.
- (e) A minimum of One Hundred Thousand (\$100,000) Dollars for property damage.

The above amounts being the minimum for each accident. Said certificate or certificates of insurance shall further provide that the City be named co-insured with respect to the provisions of said policy as to the improvements covered by this contract.

In addition, by its execution of this agreement, the Developer hereby agrees to indemnify and hold harmless the City, its agents and employees, and each of them, against all loss, damage,

attorney's fees or expense which they may sustain or become liable for on account of injury or death of persons, or on account of damage to or destruction of property resulting from the performance of this work agreement by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this agreement is carried on.

### **ACCEPTANCE AND GUARANTEE**

6. The Developer for the work herein specified guarantees that the workmanship and material furnished under the specifications and used in said work will be furnished and performed in accordance with well known established practice and standards recognized by engineers in the trade. All such work shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City.

Prior to requesting acceptance, the Developer shall inspect and repair all deficiencies in the subject work. The City will then inspect and provide a list of deficiencies ("Punchlist").

The Developer shall cause all deficiencies to be repaired within 60 days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the escrow, described in Paragraph 2, to insure compliance with this agreement. Failure to complete the deficiencies within 60 days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

There shall be retained by the City, from the amount due upon the contract, a deferred payment in the amount of ten (10) percent of the total final contract price of the improvements, which amount will be retained for one year after the completion of, and final acceptance of, the improvement, as a guarantee upon the part of the Developer that the workmanship and materials furnished therefore are first class and as above provided, and that the improvement is and will remain in good and sound condition for and during the one year period from and after its completion and acceptance.

The Developer shall make or cause to be made at its own expense, any and all repairs that may become necessary under and by virtue of this contract guarantee, and shall leave the improvement in good and sound condition, satisfactory to the City Engineer, at the expiration of the guarantee. In said event and at the expiration of such period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the improvement, shall be paid over to the Developer as full payment for any balance due under this contract for said improvement.

Further, if during said guarantee period, the improvement shall in the opinion of the City Engineer, require any repairs or renewals which in his judgment are necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, the Developer shall upon notification by the City Engineer of necessity for such repair or renewals, make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs, renewals, within a reasonable time after notification as herein before provided, or to start work within one week after such notification, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer or its surety shall pay such amount of excess to the City.

#### **TIME LIMIT**

7. The Developer shall cause said improvements herein described to be completed within one year from the date hereof. If work is not completed within the time prescribed herein, then the City shall have the right to complete said work and draw on funds in escrow as provided in Exhibit "C". The Developer shall cause his consulting engineers to correct drawings to show work as actually constructed and said engineers shall turn over original tracings thereof to the City as and for the City's property.

#### **ORDINANCES**

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer upon notice from the City and prior to

acceptance of the subdivision shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to this property as of the effective date of said law or ordinance.

### **LIEN WAIVERS**

9. The Developer shall furnish the City with a contractor's affidavit showing all subcontractors and material suppliers and further furnish lien waivers that all persons who have done work, or have furnished material under this agreement, and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are not longer entitled to such lien.

### **OCCUPANCY PERMITS**

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all improvements required by this agreement have been completed, except for final road surface course, public sidewalks, and parkway trees. Parkway trees shall be installed within six months from the issuance of an occupancy permit. It is also agreed that parkway trees that do not meet City standards will be replaced and maintained by the Developer no later than 60 days after notification by the City.

### **MAINTENANCE**

11. The Developer shall be responsible for the maintenance of the required improvements until such time as they are accepted by the City. This maintenance shall include routine maintenance such as snow removal, pruning and watering of parkway trees, landscaping and street sweeping as well as emergency maintenance such as sewer blockages. If the Developer requests and the City elects, at the time of the execution of this agreement, to have the City perform this maintenance he hereby agrees to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said cost to the City.

### **RESOLUTION**

12. It is hereby agreed that the following development shall comply with the strict adherence of Subdivision or Planned Unit Development Ordinance requirements and as approved by Resolution \_\_\_\_\_ a copy of which is attached hereto and made a part hereof.

### **BINDING EFFECT**

13. This agreement shall be binding upon all parties, their successors and assigns and grantees.

### **SUCCESSION**

14. This agreement cancels and supersedes any agreements heretofore entered into between the parties which are in conflict with the provision hereof.

### **AMENDMENTS**

15. All amendments to this agreement shall be in writing and approved by the City Council. City Ordinance provisions in effect at the time of the request for an amendment shall apply. (Unless specified otherwise.)

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Owner has executed this agreement, all as of the date first above written.

CITY OF WHEATON, an Illinois  
Municipal Corporation

BY \_\_\_\_\_  
Mayor

ATTEST:

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

DEVELOPER:

BY \_\_\_\_\_

**EXHIBIT H**

**ELEVATIONS**

