

Mayor
C. James Carr

City Council
Alan Bolds
Liz Corry
Dave Johnson
Howard Levine
Tom Mouhelia
Phil Suess

City Manager
Donald B. Rose

CITY OF WHEATON, ILLINOIS

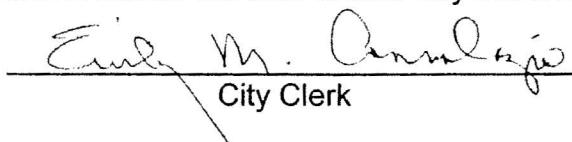
ORDINANCE F- 1257

AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE 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 (WHEATON PROPERTY PARTNERS)

I HEREBY CERTIFY that I am the City Clerk of the City of Wheaton, DuPage County, Illinois, and that, as such City Clerk, I have the custody of the papers, entries, records and ordinances of said City.

I FURTHER CERTIFY that the attached is a true and correct copy of City of Wheaton Ordinance F- 1257 which was adopted by the Wheaton City Council on Tuesday February 20, 2007.

I have hereunto set my hand and affixed the seal of said City this 21st, day of February, 2007.



Emily M. Consolazio
City Clerk

PREPARED BY/RETURN TO)

Emily Consolazio, City Clerk
City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187

ORDINANCE NO. F-1257

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 Wheaton Property Partners, LLC (the "Developer") regarding a portion of said Project Area, in furtherance of the Plan; and

WHEREAS, the Development Agreement and all proposals made in response to the City's request regarding said portion of the Project Area have been 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 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. In addition, Ordinance No. F-1152 is hereby expressly repealed in its entirety.

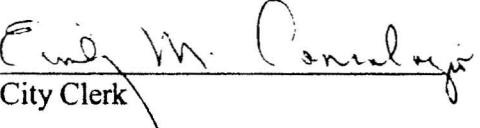
Section 3. That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 20th day of February, 2007.



Mayor

ATTEST:



Cindy W. Conroy
City Clerk

Roll Call Vote:

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

Nays: Councilman Bolds
Councilman Suess

Absent: None

Motion Carried

Passed: February 20, 2007

Published: February 21, 2007

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 20th day of February, 2007, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois and WHEATON PROPERTY PARTNERS, 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 and install certain REQUIRED PUBLIC IMPROVEMENTS (including the PARKING GARAGE), all as more fully described on Exhibit "C" attached hereto and made a part

hereof (collectively, 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, said ordinance having been amended from time to time; (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 and other financial incentives, 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) 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

Fourteen hereof.

"CHICAGO TITLE PARCEL" - means the real property legally described on Exhibit "D", attached hereto and incorporated herein.

"CHICAGO TITLE CONVEYANCE PARCEL" - means that portion of the CHICAGO TITLE PARCEL underlying the office/retail building and the walkway on the south side of said building, as shown on the final PLANS AND SPECIFICATIONS, that is conveyed to the DEVELOPER pursuant to Section 6.04 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 12.07.

"DEVELOPER" - means Wheaton Property Partners, LLC, an Illinois limited liability company and its successors and assigns.

"DISBURSEMENT STATEMENT" - means a statement submitted by the DEVELOPER requesting payment of REIMBURSABLE COSTS.

"JEWEL PARCEL" - means the real property legally described on Exhibit "E", attached hereto and incorporated herein.

"EVENT OF DEFAULT" - means the occurrence of any of the events listed in Section 12.05.

"FORCE MAJEURE" - means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, tornados, floods, washouts, restraining of

government and people, civil disturbances, explosions, nuclear accidents, condemnation by the State of Illinois or any political subdivision thereof, wars, failure of utilities or any other matter beyond the reasonable control of a PARTY except as hereinafter provided. FORCE MAJEURE shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose or (3) a failure of performance by a contractor (except as caused by events which constitute FORCE MAJEURE as to the contractor).

"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.

"PARKING GARAGE" - means the four-level parking structure to be constructed on the PARKING GARAGE PARCEL, as more fully described in Exhibit "C".

"PARKING GARAGE PARCEL" - means Lot 2 of the Plat of Subdivision prepared pursuant to Section 6.03.

"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 and approved by the CITY in the REDEVELOPMENT PLAN.

"REIMBURSABLE COSTS" - means REDEVELOPMENT COSTS in the amount of (i) up to \$5,800,000 for costs of the PARKING GARAGE and (ii) an additional \$36,500 for architectural, legal and engineering fees, which the CITY will pay to the DEVELOPER from proceeds of the TIF OBLIGATIONS pursuant to the terms of this AGREEMENT. In the event the eligible costs for the PARKING GARAGE are less than \$5,800,000, REIMBURSABLE COSTS

shall include any other REDEVELOPMENT COST, so long as the maximum amount reimbursed to the DEVELOPER does not exceed \$5,836,500.

"REQUIRED PUBLIC IMPROVEMENTS" - means the improvements described in the IMPROVEMENT AGREEMENT, including, but not limited to, the PARKING GARAGE.

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

"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-1153, 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 DEVELOPER, and this AGREEMENT is binding on DEVELOPER and enforceable against 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; (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 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 that portion of the SITE owned by DEVELOPER 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 "G". 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.

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 October 1, 2009, 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

LAND ACQUISITION/CONVEYANCES

6.01. **ACQUISITION OF JEWEL PARCEL:** The CITY currently holds title to the JEWEL PARCEL. The cost of the acquisition of the JEWEL PARCEL was paid by the CITY and the CITY shall retain title to said parcel.

6.02. **VACATION OF ALLEY:** The CITY shall vacate a portion of the existing alley located on the SITE in substantial conformance with the Plat of Vacation attached hereto and incorporated herein as Exhibit "H". Said Plat shall be approved by the corporate authorities of the CITY upon the last to occur of: (i) approval of the PLANS AND SPECIFICATIONS for the PROJECT and issuance of a building permit therefor and (ii) evidence that the DEVELOPER has obtained a loan in an amount sufficient to finance the costs of the PROJECT (minus the costs to be paid by the CITY hereunder).

6.03. **PLAT OF SUBDIVISION/CONVEYANCE TO THE CITY:** Immediately following the approval of the Plat of Vacation pursuant to Section 6.02, the corporate authorities of the CITY shall approve a Plat of Subdivision for the SITE in substantial conformance with the Plat attached hereto and incorporated herein as Exhibit "I". The DEVELOPER shall convey to the CITY any and all interest it has in Lot 2 on the Plat of Subdivision. Such conveyance shall be by quit claim deed

on an "as is" basis, but subject only to such liens and encumbrances as are acceptable to the CITY, and shall occur at the same time as the conveyance of the CHICAGO TITLE CONVEYANCE PARCEL to the DEVELOPER pursuant to Sections 6.04 and 6.05.

6.04. CONVEYANCE OF THE CHICAGO TITLE CONVEYANCE PARCEL: The CITY currently holds title to the CHICAGO TITLE PARCEL. So long as the DEVELOPER is not in default of any provision of this AGREEMENT, the CITY agrees to convey the CHICAGO TITLE CONVEYANCE PARCEL to the DEVELOPER for nominal consideration upon the last to occur of: (i) approval of the PLANS AND SPECIFICATIONS for the PROJECT and issuance of a building permit therefor and (ii) evidence that the DEVELOPER has obtained a loan in an amount sufficient to finance the costs of the PROJECT (minus the costs to be paid by the CITY hereunder).

The DEVELOPER acknowledges and agrees that such property shall be conveyed and accepted in an "as is" condition and that the CITY makes no representations, warranties or agreements of any kind whatsoever as to its condition, quality, or suitability for development. It shall be the sole responsibility of the DEVELOPER, at DEVELOPER'S sole expense, to investigate and determine the soil and all other conditions to accommodate the PROJECT to be constructed by the DEVELOPER hereunder. Prior to the conveyance of such property, DEVELOPER shall have access to said property in order to determine the soil and other conditions. If the soil or any other conditions are not, in all respects, entirely suitable for the PROJECT, then it shall be the sole responsibility and obligation of DEVELOPER, at DEVELOPER'S sole expense, to do such things as may be necessary to modify and improve said conditions, as to make the same entirely suitable in order to make the same entirely suitable for the PROJECT. If, however, the DEVELOPER determines that the cost of doing so renders the PROJECT economically unfeasible, the PROJECT shall not proceed and this AGREEMENT shall terminate. DEVELOPER shall indemnify and hold

CITY harmless from any and all costs, attorneys' fees, loss or damages resulting from DEVELOPER'S entry upon such property and actions thereon except as may otherwise be provided herein.

Once the CITY has conveyed the CHICAGO TITLE CONVEYANCE PARCEL pursuant to this Section, the DEVELOPER shall be responsible for any necessary demolition on said parcel.

6.05. CONVEYANCE; TITLE; ESCROW; POSSESSION; RECONVEYANCE:

A. The CITY shall, on a date that is mutually satisfactory to the PARTIES, convey to the DEVELOPER merchantable, insurable, fee simple title to the CHICAGO TITLE CONVEYANCE PARCEL by quit claim deed in a form which is mutually satisfactory to CITY and the DEVELOPER, and with no exceptions other than "permitted exceptions" as set forth in Exhibit "J" (hereinafter referred to as "PERMITTED EXCEPTIONS"). The CITY shall deliver or cause to be delivered to DEVELOPER, or to DEVELOPER'S attorneys, a title commitment for an ALTA Form B Owners Title Insurance Policy issued by Chicago Title Insurance Company (hereinafter referred to as the "TITLE COMPANY") in an amount determined by the PARTIES, covering title to the intended parcel on or after the date hereof, showing title in CITY subject only to PERMITTED EXCEPTIONS. The premium for the title policy to be delivered at closing shall be paid by the DEVELOPER.

B. The conveyance of the CHICAGO TITLE CONVEYANCE PARCEL shall be closed through a New York style deed and money escrow with the TITLE COMPANY serving as escrow agent. Not less than two (2) days before the closing date, the CITY and DEVELOPER will execute the standard form of New York style deed and money escrow instructions then in use by the TITLE COMPANY, modified as necessary to conform to the terms of this Agreement. The attorneys for CITY and DEVELOPER are authorized to execute the escrow agreement and

amendments thereto and all directions or communications thereto, as well as any other documents necessary to effectuate the conveyance of the CHICAGO TITLE CONVEYANCE PARCEL. All fees and costs of the escrow shall be paid the DEVELOPER.

Upon conveyance of the CHICAGO TITLE CONVEYANCE PARCEL, DEVELOPER shall have the right to possession thereof at the time of CLOSING or conveyance.

C. At closing, the CITY and/or the DEVELOPER, as is customary, shall deliver or cause to be delivered the following, in form and substance reasonably acceptable to the PARTIES:

- (i) A Quit Claim Deed, executed by the CITY, in recordable form, conveying the CHICAGO TITLE CONVEYANCE PARCEL to DEVELOPER;
- (ii) An Affidavit of Title and an ALTA Statement;
- (iii) A title policy (or "marked-up" title commitment) issued by the TITLE COMPANY dated as of the date of closing in the amount determined by the PARTIES, with such endorsements and otherwise in accordance with the requirements herein (it being understood that both PARTIES will provide any certificate or undertakings required in order to induce the TITLE COMPANY to insure for any "gap" period resulting from any delay in recording of documents or later-dating the title insurance file);
- (iv) Completed City, State and County Transfer Declarations; and
- (v) Such other documents and instruments as may reasonably be required by the TITLE COMPANY and which may be necessary to consummate this transaction and to otherwise effect the agreements of the PARTIES hereto.

After CLOSING or conveyance, CITY and DEVELOPER shall execute and deliver to the other such further documents and instruments as either CITY or DEVELOPER shall reasonably request to effect this AGREEMENT.

D. In the event that after the conveyance of the CHICAGO TITLE CONVEYANCE PARCEL to the DEVELOPER and the vacation of the alley, the DEVELOPER fails to commence construction of the PROJECT (as evidenced by demolition activities) by September 1, 2007, then in

addition to all other remedies available to the CITY at law or equity, the CITY, upon written notice, shall have the right, and DEVELOPER hereby agrees to cause title to said parcels to be reconveyed and delivered to the CITY subject only to those matters to which the DEVELOPER took title subject to. If TIF OBLIGATIONS have been issued on a tax-exempt basis, such reconveyance is subject to an opinion from Chapman and Cutler that the reconveyance will not adversely affect the tax-exempt status of such TIF OBLIGATIONS.

SECTION SEVEN

COSTS OF THE PROJECT

7.01. **BUDGET**: Attached hereto and incorporated herein as Exhibit "K" is the DEVELOPER'S best estimate of the costs of the PROJECT (the "BUDGET").

7.02. **DEVELOPER'S COST**: The CITY agrees to pay to the DEVELOPER: (i) up to \$5,800,000 for the cost of constructing the PARKING GARAGE, and (ii) an additional \$36,500 for architectural, legal and engineering fees, pursuant to the provisions of Section Ten. Other than said payment (and any costs related to the CITY'S acquisition of the CHICAGO TITLE PARCEL), the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT. In the event the eligible costs for the PARKING GARAGE are less than \$5,800,000, the CITY shall pay for other REIMBURSABLE COSTS, so long as the maximum amount paid to the DEVELOPER does not exceed \$5,836,500.

Should the actual cost or expense of construction of the PARKING GARAGE be greater than \$5,800,000 but less than \$6,000,000, the DEVELOPER shall be required to pay such excess cost. Should the actual cost or expense of construction of the PARKING GARAGE be greater than \$6,000,000, but less than \$6,400,000, the CITY and the DEVELOPER shall each pay fifty percent (50%) of such excess; provided, however, that prior to incurring any cost or expense in

excess of \$6,000,000, the DEVELOPER shall obtain the approval of the City Manager. The CITY'S portion of the excess costs shall be paid within thirty (30) days of receipt of an invoice and supporting documentation from the DEVELOPER, and shall be paid from the CITY'S parking fund, not from proceeds of any TIF OBLIGATIONS or TIF INCREMENT. Should the actual cost or expense of construction of the PARKING GARAGE be greater than \$6,400,000, the DEVELOPER shall be required to pay such excess costs.

If REIMBURSABLE COSTS are less than \$5,836,500, the excess proceeds from TIF OBLIGATIONS shall be utilized by the CITY as it determines in its sole discretion, as limited by the ACT.

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 EIGHT

CONSTRUCTION OF THE PROJECT

8.01. PUD APPROVAL; SUBMISSION AND APPROVAL OF PLANS AND SPECIFICATIONS: Construction of the PROJECT is contingent upon the approval by the corporate authorities of a minor amendment to a Planned Unit Development. 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 minor amendment.

No later than April 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.

The design and materials of the PARKING GARAGE shall be subject to review by the CITY'S parking consultant, Walker Parking Consultants/Engineers, Inc. in order to ensure that they are consistent with first-class public parking garages in the Chicago metropolitan area. In addition to complying with the CONTROL DOCUMENTS, the portion of the PLANS AND SPECIFICATIONS relating to the PARKING GARAGE shall conform to regionally accepted

standards for similar structures located in the Chicago metropolitan area as approved by said consultant.

8.02. 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 "L", and submit the security required therein.

8.03. PARKING GARAGE: The DEVELOPER shall cause the construction of the PARKING GARAGE on the PARKING GARAGE PARCEL. Prior to the construction of the PARKING GARAGE, the CITY shall permit the DEVELOPER to utilize the PARKING GARAGE PARCEL for construction staging activities for the remainder of the PROJECT. The CITY shall grant the necessary license to the DEVELOPER in order to permit access to the PARKING GARAGE PARCEL for the aforesaid purposes. The DEVELOPER shall require its contractor to indemnify and hold CITY harmless from any and all costs, attorneys' fees, loss or damages resulting from the DEVELOPER'S entry upon the PARKING GARAGE PARCEL pursuant to this paragraph. An agreement substantially in the form attached hereto as Exhibit "M" shall be delivered to the CITY prior to the contractor commencing any activities on the PARKING GARAGE PARCEL.

The DEVELOPER shall require such warranties from contractors and subcontractors regarding the PARKING GARAGE as are typical for similar structures in the Chicago metropolitan area and approved by Walker Parking Consultants/Engineers.

Upon completion of the PARKING GARAGE and acceptance by the CITY pursuant to the Planned Development/Subdivision Improvement Agreement, the DEVELOPER shall convey the PARKING GARAGE to the CITY. Such conveyance shall be made without any express or

implied warranties by the DEVELOPER; provided, however, that the DEVELOPER shall provide copies of all written warranties regarding the PARKING GARAGE to the CITY. The agreement previously attached hereto as Exhibit "M" shall also acknowledge that said warranties are for the benefit of the CITY. The CITY agrees that it shall look solely to said warranties and the contractor pursuant to its rights as a third party beneficiary as provided in said Exhibit "M" with respect to any and all claims concerning the PARKING GARAGE due to (i) defects in design, (ii) defects in material or workmanship, or (iii) failure to comply with applicable laws (including those relating to environmental conditions) and/or the PLANS AND SPECIFICATIONS, and the DEVELOPER shall have no liability or responsibility with respect thereto; provided, however that the exculpation of the DEVELOPER under this paragraph shall not apply should the DEVELOPER have or obtain knowledge of any such defects or failures during the construction of the PARKING GARAGE unless the DEVELOPER provides written notice of such defect or failure to the CITY within seventy two (72) hours following DEVELOPER becoming aware of the same.

The PARKING GARAGE shall be made available to employees of the leasehold tenants in the PROJECT on the same basis, and pursuant to the same fees, as the general public. The PARKING GARAGE shall be operated and maintained by the CITY in the same manner as other public parking structures in the CITY.

8.04. 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 "N" 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.

8.05. 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 NINE

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 TEN

TAX INCREMENT UTILIZATION

10.01. ISSUANCE OF TAX INCREMENT ALLOCATION FINANCING

OBLIGATIONS: It is recognized that the ability of the CITY to issue the amount of TIF OBLIGATIONS which may be sold and the net available proceeds from such sale are dependent upon a number of economic and financial factors beyond the CITY'S control. The CITY, therefore, does not represent or warrant to the DEVELOPER that it will be able to sell any TIF

OBLIGATIONS or the particular amount of the TIF OBLIGATIONS which may be sold or the amount of money which will be available from the proceeds of the sale of such TIF OBLIGATIONS to provide the funds contemplated hereunder. However, the CITY shall use its best efforts to sell TIF OBLIGATIONS in such principal amount as is necessary to provide \$5,800,000 for REIMBURSABLE COSTS, as set forth below.

The DEVELOPER agrees to cooperate in the sale of the TIF OBLIGATIONS and to furnish necessary financial data on the PROJECT and other information concerning the PROJECT, including projections as may be required by the CITY.

If the CITY is unable to sell the TIF OBLIGATIONS by June 1, 2007, at a net interest rate not to exceed 6.2%, if taxable, or 4.8%, if tax-exempt, and in such principal amount as is sufficient to provide net proceeds of \$5,800,000 for REIMBURSABLE COSTS, this AGREEMENT shall become null and void and of no further force and effect and the CITY shall have no further liability to DEVELOPER hereunder. Prior to this provision becoming effective, the CITY shall give thirty (30) days written notice to the DEVELOPER, indicating that the CITY has been unable to sell the TIF OBLIGATIONS.

If this AGREEMENT becomes null and void, and the CHICAGO TITLE CONVEYANCE PARCEL has already been conveyed to the DEVELOPER and/or the Plat of Vacation has been approved, the DEVELOPER shall cause title to said parcels to be reconveyed and delivered to the CITY subject only to those matters to which the DEVELOPER took title subject to.

The CITY and the DEVELOPER agree that the TIF OBLIGATIONS shall have first and senior priority over any other obligation on all present and future real estate tax increment revenue generated by the construction of the PROJECT.

10.02. PAYMENT OF CERTAIN COSTS:

A. **PAYMENT OF CERTAIN COSTS INCURRED BY DEVELOPER:** 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, solely from the proceeds of the TIF OBLIGATIONS, pay or reimburse the DEVELOPER for the REIMBURSABLE COSTS as provided in Section 7.02.

B. **REIMBURSEMENT OF CERTAIN COSTS INCURRED BY CITY:** The CITY shall be reimbursed, from moneys deposited in the FUND (subject to Section 10.03) or from the proceeds of the TIF OBLIGATIONS, for: (i) all reasonable or necessary costs incurred by the CITY (including costs of studies, surveys, the development of plans and specifications, and professional service costs for engineering, legal, financial planning and other similar services) in establishing the AREA and in preparing, implementing and administering the REDEVELOPMENT PLAN and this AGREEMENT; (ii) all reasonable or necessary costs incurred by the CITY in complying with all state and county requirements concerning initial and annual filings and submissions for, and qualifications of, the SITE; (iii) all reasonable or necessary costs incurred by the CITY in maintaining and auditing the FUND as part of the CITY'S annual audit; (iv) all reasonable or necessary costs reimbursable under any other agreement regarding other projects in the AREA; and (v) all other costs which constitute REDEVELOPMENT COSTS, including the cost of acquisition of the JEWEL PARCEL and the CHICAGO TITLE PARCEL.

10.03. UTILIZATION OF TAX INCREMENT: Subject to the provisions of any ordinance passed by the CITY and authorizing the issuance of TIF OBLIGATIONS, 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 as authorized in Section 10.02.B. hereof, 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.

10.04. METHOD OF PAYMENT: Subject to the provisions of any ordinance passed by the CITY and authorizing the issuance of TIF OBLIGATIONS, proceeds of the TIF OBLIGATIONS in the amount of \$5,836,500 shall be deposited into an escrow with the TITLE COMPANY. The escrow shall be subject to mutually acceptable escrow instructions, but shall, at a minimum, be consistent with the provisions of this Section and further provide that: (i) the amounts on deposit in the escrow shall be invested as directed by the CITY, with all interest accruing to the CITY, and (ii) the escrow agent shall not disburse any funds without obtaining the approval of the CITY'S Finance Director. The DEVELOPER shall be responsible for all escrow fees.

To establish a right of payment, DEVELOPER shall submit to the escrow agent a written DISBURSEMENT STATEMENT setting forth the amount of payment requested and the specific costs for which payment is sought. The DISBURSEMENT STATEMENT shall be accompanied

by such bills, contracts, invoices, lien waivers or other evidence as the escrow agent shall reasonably require evidencing the right of DEVELOPER to payment under this AGREEMENT. The escrow agent shall provide copies of the DISBURSEMENT STATEMENT, along with supporting documentation, to the CITY'S Finance Director.

The CITY reserves the right to examine all records relating to REIMBURSABLE COSTS 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.

If a request for payment is disapproved, the Finance Director shall provide the DEVELOPER with an explanation as to why the request was denied. To the extent that a request is denied for reasons other than the payment is sought for a cost that is not a REIMBURSABLE COST, upon such denial, the DEVELOPER may take such action as necessary to correct the deficiencies identified and resubmit the DISBURSEMENT STATEMENT pursuant to the same process. Notwithstanding the foregoing, if the DEVELOPER submits a DISBURSEMENT STATEMENT which requests payment for multiple cost items and only a portion of those cost items are disapproved by the CITY, the remaining costs shall be reimbursed in accordance with this Section and not withheld.

The CITY shall not unreasonably withhold its approval of a given DISBURSEMENT STATEMENT. Notwithstanding the foregoing, the CITY may withhold its approval of a given request for payment if: (a) the DEVELOPER is in default of this AGREEMENT and (b) the CITY has sent notice to the DEVELOPER in compliance with Section 12.05. Should the DEVELOPER cure such default within the applicable CURE PERIOD, the CITY shall promptly approve the pending request.

SECTION ELEVEN

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 "K". Within sixty (60) days of issuance of the later of (i) a final certificate of occupancy for that part of the office building portion of the PROJECT to be leased by First Trust Portfolio or (ii) a final certificate of occupancy for the PARKING GARAGE, the DEVELOPER shall submit a certification of actual costs and remaining reserves in each of the categories shown on the BUDGET 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 said certified costs and remaining reserves show a "return on equity" to the DEVELOPER in excess of what is shown on the BUDGET, 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. The PARTIES agree that to the extent the REIMBURSABLE COSTS are less than \$5,800,000, the savings in that category will not factor into the calculation under this Section, since the CITY will retain the excess TIF OBLIGATION proceeds as a result of such savings.

SECTION TWELVE

PERFORMANCE

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

12.02. **DELAY:** Performance by either PARTY hereunder shall not be deemed to be in

default as a result of unavoidable delays due to FORCE MAJEURE, acts of the other PARTY, or 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) 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 12.02 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.

12.03. 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.

12.04. FORUM 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.

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.

12.05 DEFAULT: Subject to the "unavoidable delays" provisions set forth in Section 12.02 hereof and to provisions for notice 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.

12.06 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.

12.07. 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.

12.08. **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 that portion of the SITE owned by the DEVELOPER 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 substantially in the form attached hereto and incorporated herein as Exhibit "O", or such other form as the parties agree ("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 substantially in the form attached to the ASSIGNMENT. 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 make any disbursement of any proceeds under any TIF OBLIGATIONS or to pay any TAX INCREMENT to such MORTGAGEE or any successor to such MORTGAGEE, unless agreed to by the CITY in writing.

12.09. 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 THIRTEEN

INDEMNIFICATION

Subject to Section 17.18 of this AGREEMENT, the DEVELOPER and the CITY hereby agree to indemnify, defend and hold harmless the other PARTY and its officers, 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 FOURTEEN

INSURANCE AND DESTRUCTION OF PROJECT

Prior to the DEVELOPER commencing construction of the PROJECT, the DEVELOPER agrees to provide the CITY with the policies of insurance issued by the companies and in the amounts described on Exhibit "P" attached hereto and incorporated herein. Subject to Section 17.18 of this AGREEMENT, said insurance policies shall name the CITY as an additional insured.

To the extent that TIF OBLIGATIONS are issued on a tax-exempt basis, the CITY shall make no claim under any builder's risk or property damage insurance without an opinion from Chapman and Cutler LLP or other nationally recognized bond counsel that such claim will not adversely affect the tax-exempt status of the 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.

Prior 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 prior to completion, the DEVELOPER shall rebuild the PROJECT as originally contemplated in this AGREEMENT.

SECTION FIFTEEN

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 SIXTEEN

TRANSFERS

Prior to completion of the PROJECT and the completion and acceptance of the REQUIRED PUBLIC IMPROVEMENTS, the DEVELOPER shall not make, create or suffer to be

made any sale, transfer, assignment or conveyance, except regarding financing of the PROJECT, 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 SEVENTEEN

MISCELLANEOUS PROVISIONS

17.01. 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.

17.02. 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.

17.03. TAX EXEMPT STATUS: To the extent the TIF OBLIGATIONS are issued on a tax-exempt basis, the PARTIES agree to cooperate to retain such tax-exempt status.

17.04. 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

17.05. 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.

17.06. 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.

17.07. 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.

17.08. 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.

17.09. 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:	Wheaton Property Partners, LLC c/o Russ Graham 510 North Ellis Avenue Wheaton, Illinois 60187
with a copy to:	Rathje & Woodward 300 East Roosevelt Road Wheaton, Illinois 60187 Attn: Mr. Henry S. Stillwell
If to any Mortgagee:	To the person and address designated to the CITY in writing by the Mortgagee.
If to Bond Counsel:	Chapman and Cutler LLP 111 W. Monroe Chicago, Illinois 60603

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.

17.10. 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.

17.11. 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.

17.12. 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.

17.13. 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.

17.14. 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.

17.15. 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 TIF OBLIGATIONS shall have been redeemed and fully satisfied, whichever is earlier. Upon the expiration of the term of this AGREEMENT the CITY will provide the DEVELOPER, at the DEVELOPER'S written request, with a written notice in recordable form stating that the term of the AGREEMENT has expired.

Notwithstanding any term or provision in this AGREEMENT to the contrary, the legal effectiveness of this AGREEMENT shall be subject to the adoption by the CITY of an ordinance vacating the alley recited in paragraph 6.02 of this AGREEMENT. In the event the CITY does not adopt the alley vacation ordinance, this AGREEMENT shall be terminated and shall be of no force and effect and the PARTIES to this AGREEMENT shall each be responsible for their own costs and expenses only.

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

17.17. 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.

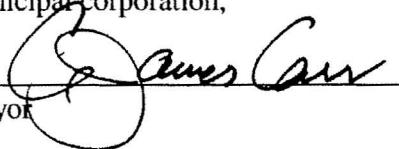
17.18. NO SPECIAL ENTITLEMENTS: The CITY and the DEVELOPER hereby expressly covenant, warrant and agree that no special legal entitlements to the PARKING GARAGE or any portion of the PARKING GARAGE shall at any time inure to the DEVELOPER, any successor to or assignee of the DEVELOPER or any other nongovernmental person, it being the express intent of the parties hereto that the PARKING GARAGE is and shall at all times be publicly owned, operated and maintained as part of the public capital infrastructure systems of the CITY. To that end the CITY hereby expressly represents, and the DEVELOPER hereby expressly acknowledges, that the CITY makes no commitment, express or implied, to the DEVELOPER that (i) the PARKING GARAGE, or any portion of the PARKING GARAGE, will be maintained by the CITY for parking purposes for any period of time, (ii) the CITY will not permit the PARKING GARAGE, or any portion of the PARKING GARAGE, to be used on an unreserved, first come-first served basis, or (iii) the CITY will not increase or decrease the fees and charges for the use of the PARKING GARAGE, or any portion of the PARKING GARAGE, at any time or for any period of time. The CITY and the DEVELOPER hereby acknowledge that Chapman and Cutler LLP, Chicago, Illinois, as bond counsel to the CITY, will rely upon this Section 17.18 in rendering its approving legal opinion on the TIF OBLIGATIONS, in the event the TIF OBLIGATIONS are issued bearing interest which is excludable from the gross income of the

owners thereof for purposes of federal income taxation.

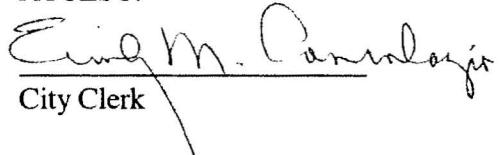
(SIGNATURE PAGE FOLLOWS)

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

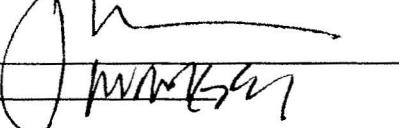
CITY OF WHEATON, an Illinois municipal corporation,

By: 
Mayor

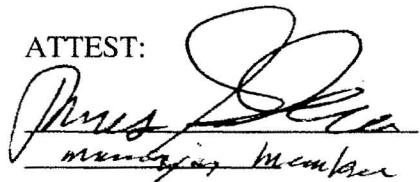
ATTEST:


Emily M. Panaligan
City Clerk

WHEATON PROPERTY PARTNERS,
LLC, an Illinois limited liability company,

By: 
Its

ATTEST:


James D. Bly
Managing Member

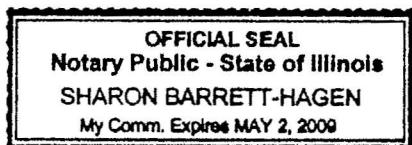
STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

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 22nd day of February,

2007.

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 Jian Bauer, Manager of WHEATON PROPERTY
PARTNERS, LLC, and Russ Graham, Manager of said company, personally
known to me to be the same persons whose names are subscribed to the foregoing instrument as
such Manager and Manager, 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 Manager 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 he 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 26 day of February,
2007.

2007.

Karen D. Rice
Notary Public

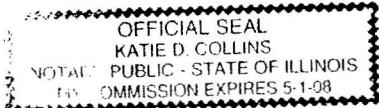


EXHIBIT A

OUTLINE OF SITE

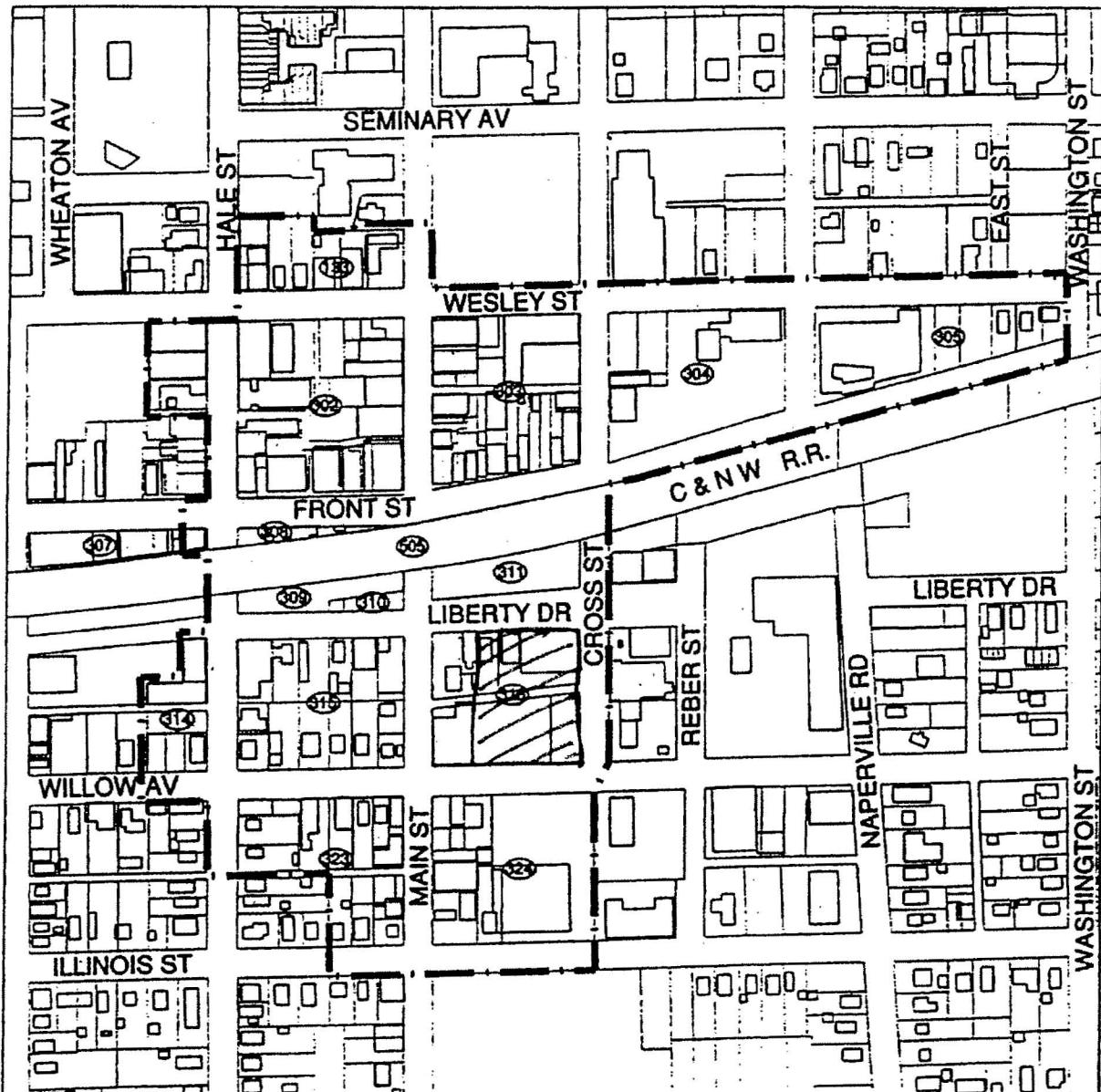
Project Area

Exhibit 1

Main Street Redevelopment Project

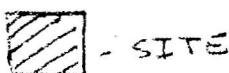
Downtown Wheaton

0 175' 350'



LEGEND

- Existing Building
- TIF 2 Redevelopment Area Boundary
- (133) Block Number



**TESKA
ASSOCIATES
INC.**
627 Green Street
Evanston, Illinois 60201
847.666.2015

August 12, 1999

EXHIBIT B

LEGAL DESCRIPTION OF SITE

CHICAGO TITLE PARCEL:

PARCEL 1: LOTS 1 AND 2 (EXCEPT SO MUCH OF EACH OF SAID LOTS AS WAS TAKEN OFF OF THE NORTH END THEREOF FOR THE WIDENING OF SOUTH RAILROAD STREET, NOW KNOW AS LIBERTY DRIVE, AS CONDEMNED BY COUNTY COURT CASE #4 ON JANUARY 11, 1897) AND LOT 3 (EXCEPT THE WEST 14.5 FEET MEASURED ON THE NORTH LINE), IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11976, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 10 IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A PART OF THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11976, IN DU PAGE COUNTY, ILLINOIS.

JEWEL PARCEL:

LOTS 6, 7, 8 AND 9 IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO WHEATON IN THE EAST HALF OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THAT PART THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 6 IN BLOCK 4 AND RUNNING THENCE EAST ALONG THE NORTH LINE OF WILLOW AVENUE 88.0 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF MAIN STREET 139.03 FEET TO AN IRON PIPE IN THE NORTH LINE OF LOT 7 IN SAID BLOCK 4; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOTS 6 AND 7 AND THE SOUTH LINE OF ALLEY 88.3 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE SOUTH ALONG THE EAST LINE OF MAIN STREET 132.65 FEET TO THE PLACE OF BEGINNING, IN THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS.

PARCEL OWNED BY DEVELOPER:

THE WEST 14.5 FEET OF LOT 3, AS MEASURED ALONG THE NORTH LINE THEREOF (EXCEPT THAT PART THEREOF FALLING IN LIBERTY DRIVE AS SAME IS NOW LOCATED) AND LOT 4 (EXCEPT THE WEST 33 FEET OFF THE ENTIRE WEST SIDE THEREOF), ALSO, THAT PART OF THE VACATED PORTION OF SOUTH RAILROAD STREET LYING NORTH OF AND ADJOINING SAID LOT 4 IN BLOCK 4 IN WARREN L.

WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11976, IN DU PAGE COUNTY, ILLINOIS.

EXHIBIT C

DESCRIPTION OF PROJECT

The project consists of the construction of a privately owned office/retail building and a publicly owned parking garage. The portion of the subject property to be privately owned and improved with an office/retail building comprises approximately 40,738 square feet or 0.94 acres of land on the southwest corner of Liberty Drive and Cross Street. The office/retail building will consist of a five stories with a total rentable area of 118,843 square feet. The ground floor will comprise approximately 15,000 square feet of retail space; the second through fifth floors will comprise approximately 103,743 square feet of office space. As part of the project, the developer shall also cause to be constructed a four-level, approximately 425-stall municipal parking structure on an adjacent lot owned by the City of Wheaton. In addition, the subject office building will include 70 privately owned basement level parking spaces. The proposed office building is 66.7 percent pre-leased to First Trust Portfolio.

EXHIBIT D

LEGAL DESCRIPTION OF CHICAGO TITLE PARCEL

PARCEL 1: LOTS 1 AND 2 (EXCEPT SO MUCH OF EACH OF SAID LOTS AS WAS TAKEN OFF OF THE NORTH END THEREOF FOR THE WIDENING OF SOUTH RAILROAD STREET, NOW KNOW AS LIBERTY DRIVE, AS CONDEMNED BY COUNTY COURT CASE #4 ON JANUARY 11, 1897) AND LOT 3 (EXCEPT THE WEST 14.5 FEET MEASURED ON THE NORTH LINE), IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A SUBDIVISION IN THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11976, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 10 IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO THE TOWN OF WHEATON, BEING A PART OF THE EAST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1857 AS DOCUMENT 11976, IN DU PAGE COUNTY, ILLINOIS.

EXHIBIT E

LEGAL DESCRIPTION OF JEWEL PARCEL

LOTS 6, 7, 8 AND 9 IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO WHEATON IN THE EAST HALF OF THE SOUTHWEST ¼ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THAT PART THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 6 IN BLOCK 4 AND RUNNING THENCE EAST ALONG THE NORTH LINE OF WILLOW AVENUE 88.0 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF MAIN STREET 139.03 FEET TO AN IRON PIPE IN THE NORTH LINE OF LOT 7 IN SAID BLOCK 4; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOTS 6 AND 7 AND THE SOUTH LINE OF ALLEY 88.3 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE SOUTH ALONG THE EAST LINE OF MAIN STREET 132.65 FEET TO THE PLACE OF BEGINNING, IN THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS.

EXHIBIT F

SCHEDULE

Preliminary Construction Schedule

11

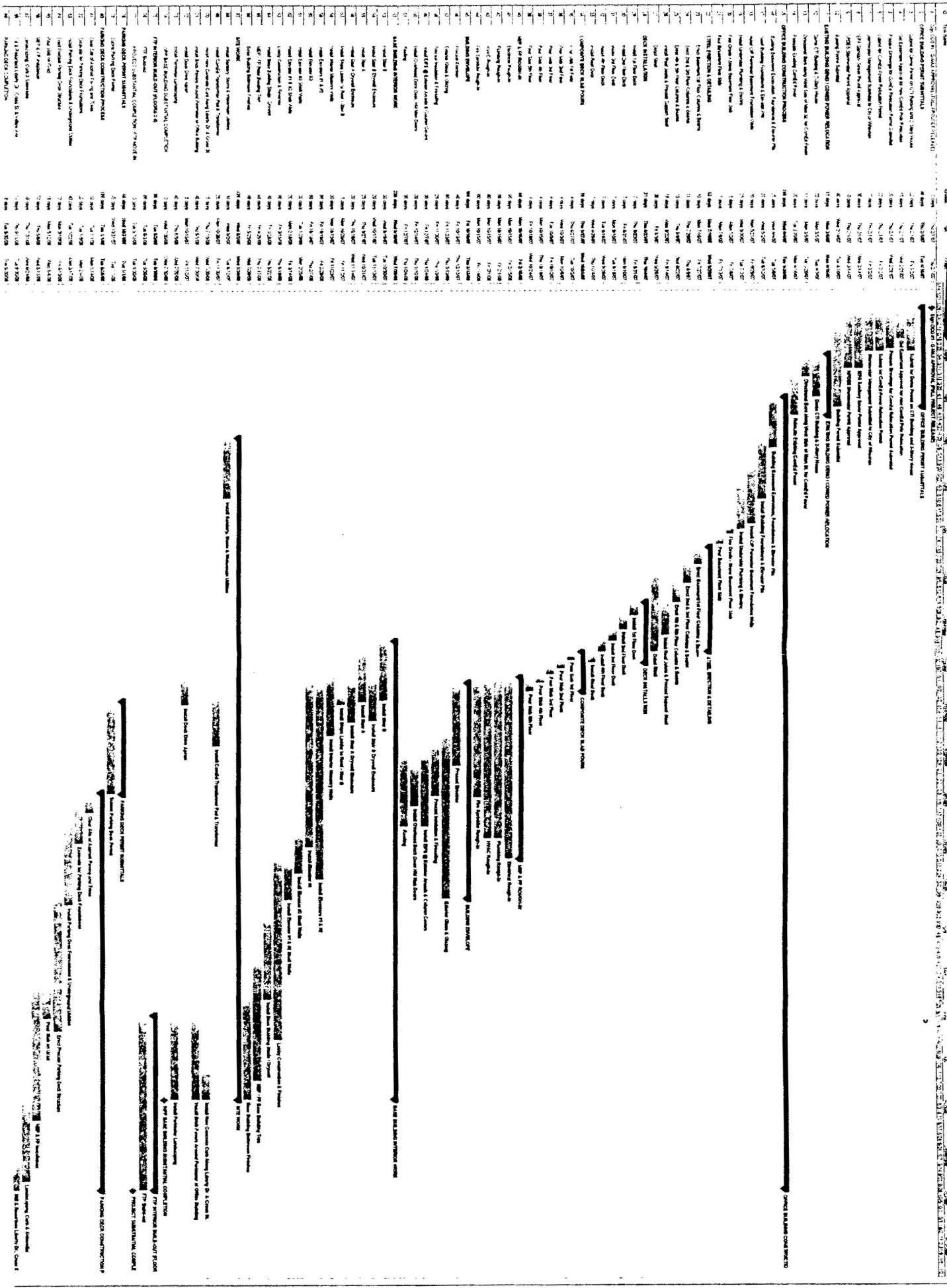


EXHIBIT G

PROGRESS REPORT

Progress Report – Wheaton Property Partners

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.

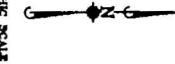
EXHIBIT H

PLAT OF VACATION

EXHIBIT I

PLAT OF SUBDIVISION

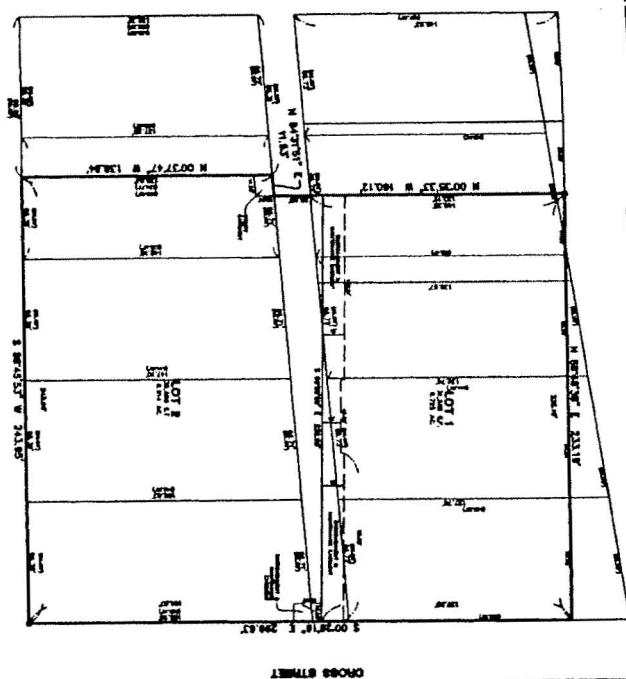
EXHIBIT I



FINAL PLAT OF SUBDIVISION

WHEATON PROPERTY PARTNERS SUBDIVISION

NOTE: A dimension on the plan shall be measured in feet, unless otherwise specified. A dimension in inches shall be multiplied by 1/12 to obtain the equivalent dimension in feet.



WHEATON PROPERTY PARTNERS, LTD.
1000 N. MICHIGAN AVENUE, SUITE 1000
CHICAGO, ILLINOIS 60611
(312) 929-1000
FAX: (312) 929-1001
E-MAIL: WHEATON@WHEATONPARTNERS.COM
WEBSITE: WWW.WHEATONPARTNERS.COM



WHEATON PROPERTY PARTNERS
CITY OF WHEATON, ILLINOIS
FINAL PLAT OF SUBDIVISION

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CONSULTING LTD.

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FINAL PLAT OF SUBDIVISION

WHEATON PROPERTY PARTNERS SUBDIVISION



WHEATON PROPERTY PARTNERS
CITY OF WHEATON, ILLINOIS
FINAL PLAT OF SUBDIVISION

Manhard
CONSULTING LTD.

2 - 2

EXHIBIT J

PERMITTED EXCEPTIONS

General exceptions and Special Exceptions letters E, F, G, M, N, O on Owner's Policy dated 5/10/02 attached hereto.

OWNER'S POLICY (1992)

SCHEDULE B

1410 002203552 UL

NOTWITHSTANDING THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS OF THIS POLICY, ALL ENDORSEMENTS, IF ANY, ATTACHED HERETO ARE VALID DESPITE THE LACK OF SIGNATURE BY EITHER THE PRESIDENT, A VICE PRESIDENT, THE SECRETARY, AN ASSISTANT SECRETARY, OR VALIDATING OFFICER OR AUTHORIZED SIGNATORY OF THE COMPANY.

EXCEPTIONS FROM COVERAGE

THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE SUSTAINED BY THE INSURED (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEY'S FEES OR EXPENSES) BY REASON OF THE FOLLOWING EXCEPTIONS:

GENERAL EXCEPTIONS:

- (1) RIGHTS OR CLAIMS OF PARTIES IN POSSESSION NOT SHOWN BY PUBLIC RECORDS.
- (2) ENCROACHMENTS, OVERLAPS, BOUNDARY LINE DISPUTES, OR OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY AND INSPECTION OF THE PREMISES.
- (3) EASEMENTS, OR CLAIMS OF EASEMENTS, NOT SHOWN BY THE PUBLIC RECORDS.
- (4) ANY LIEN, OR RIGHT TO A LIEN, FOR SERVICES, LABOR OR MATERIAL HERETOFORE OR HEREAFTER FURNISHED, IMPOSED BY LAW AND NOT SHOWN BY THE PUBLIC RECORDS.
- (5) TAXES OR SPECIAL ASSESSMENTS WHICH ARE NOT SHOWN AS EXISTING LIENS BY THE PUBLIC RECORDS.

SPECIAL EXCEPTIONS: THE MORTGAGE, IF ANY, REFERRED TO IN ITEM 4 OF SCHEDULE A.

B 6. TAXES FOR THE YEARS 2001 AND 2002.

TAXES FOR THE YEAR 2001 ARE PAYABLE IN TWO INSTALLMENTS:

THE FIRST INSTALLMENT, AMOUNTING TO \$8605.13, IS NOT DELINQUENT BEFORE JUNE 3, 2002.

THE SECOND INSTALLMENT, AMOUNTING TO \$8605.13, IS NOT DELINQUENT BEFORE SEPTEMBER 3, 2002.

TAXES FOR THE YEAR 2002 ARE NOT YET DUE AND PAYABLE.

PERMANENT INDEX NUMBER: 05-16-316-004 - AFFECTS LOTS 1 AND 2 AND THE EAST 52.5 FEET OF LOT 3 (EXCEPT STREET) IN BLOCK 4 IN WARREN L. WHEATON'S ADDITION TO WHEATON

C 7. TAXES FOR THE YEARS 2001 AND 2002.

TAXES FOR THE YEAR 2001 ARE PAYABLE IN TWO INSTALLMENTS:

THE FIRST INSTALLMENT, AMOUNTING TO \$1383.03, IS NOT DELINQUENT BEFORE JUNE 3, 2002.

THE SECOND INSTALLMENT, AMOUNTING TO \$1383.03, IS NOT DELINQUENT BEFORE SEPTEMBER 3, 2002.

TAXES FOR THE YEAR 2002 ARE NOT YET DUE AND PAYABLE.

PERMANENT INDEX NUMBER: 05-16-316-009 - AFFECTS THE NORTH 94.1 FEET

CHICAGO TITLE INSURANCE COMPANY
OWNER'S POLICY (1992)
SCHEDULE B

1410 002203552 UL

**EXCEPTIONS FROM COVERAGE
(CONTINUED)**

(MEASURED ON THE EAST) OF LOT 10 IN BLOCK 4 IN WARREN L. WHEATONS ADDITION

D 8. TAXES FOR THE YEARS 2001 AND 2002.

TAXES FOR THE YEAR 2001 ARE PAYABLE IN TWO INSTALLMENTS:
THE FIRST INSTALLMENT, AMOUNTING TO \$923.18, IS NOT DELINQUENT BEFORE JUNE
3, 2002.
THE SECOND INSTALLMENT, AMOUNTING TO \$923.18, IS NOT DELINQUENT BEFORE
SEPTEMBER 3, 2002.

TAXES FOR THE YEAR 2002 ARE NOT YET DUE AND PAYABLE.

PERMANENT INDEX NUMBER: 05-16-316-010 - AFFECTS THE SOUTH 61 FEET OF LOT 10
IN BLOCK 4 IN WARREN L. WHEATONS ADDITION

E 9. THE LAND LIES WITHIN THE BOUNDARIES OF A SPECIAL SERVICE AREA AS DISCLOSED
BY ORDINANCE RECORDED AS DOCUMENT R97-179663, AND IS SUBJECT TO ADDITIONAL
TAXES UNDER THE TERMS OF SAID ORDINANCE AND SUBSEQUENT RELATED ORDINANCES.

F 10. THE LAND LIES WITHIN THE WHEATON SANITARY DISTRICT WHICH HAS ACCEPTED
FEDERAL GRANTS FOR SEWAGE TREATMENT WORKS PURSUANT TO PUBLIC LAW 92-500.
FEDERAL LAW REQUIRES A USER CHARGE SYSTEM SEPARATE FROM GENERAL AD VALOREM
PROPERTY TAXES.

G 11. RIGHTS OF THE PUBLIC AND THE CITY OF WHEATON IN AND TO SO MUCH OF LOT 3
(EXCEPT THE WEST 14.5 FEET MEASURED ON THE NORTH LINE), AS CONDEMNED FOR THE
WIDENING OF S. RAILROAD STREET, ON A PETITION OF THE CITY OF WHEATON FILED
DECEMBER 30, 1896 AND JUDGEMENT RENDERED JANUARY 11, 1897 IN THE COUNTY
COURT OF DUPAGE COUNTY, ILLINOIS, AS CASE 4.

AFFECTS LOT 3 (EXCEPT THE WEST 14.5 FEET MEASURED ON THE NORTH LINE).

M 12. TERMS, PROVISIONS AND CONDITIONS CONTAINED IN ORDINANCE NO. F-0418 AN
ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS, APPROVING A TAX
INCREMENT REDEVELOPMENT PLAN AND REDEVELOPMENT PROJECT FOR THE CITY OF
WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA, RECORDED DECEMBER 22, 1999
AS DOCUMENT R1999-261861.

N 13. TERMS, PROVISIONS AND CONDITIONS CONTAINED IN ORDINANCE NO. F-0419 AN
ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS, DESIGNATING THE
CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA A REDEVELOPMENT
PROJECT AREA PURSUANT TO THE TAX INCREMENT ALLOCATION REDEVELOPMENT ACT
RECORDED DECEMBER 22, 1999 AS DOCUMENT R1999-261862.

O 14. TERMS, PROVISIONS AND CONDITIONS CONTAINED IN ORDINANCE NO. F-0420 AN
ORDINANCE OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS, ADOPTING TAX
INCREMENT ALLOCATION FINANCING FOR THE CITY OF WHEATON MAIN STREET
REDEVELOPMENT PROJECT AREA RECORDED DECEMBER 22, 1999 AS DOCUMENT

CHICAGO TITLE INSURANCE COMPANY
OWNER'S POLICY (1992)
SCHEDULE B

1410 002203552 UL

**EXCEPTIONS FROM COVERAGE
(CONTINUED)**

R1999-261863.

EXHIBIT K

BUDGET

Ex. R

DEVELOPMENT BUDGET
 Wheaton Office Building
 Pro Forma - Project Cost Budget

Feb. 20th 2007

Project Size in RSF:	118,743	Project Size in RSF:	118,743	TOTAL COST	\$ 30,915,252
GSF Floor Area Ratio	2%	Common Area Factor:		Less Equity	\$ 5,125,000
Projected Base Rent:		Proj. Const. Loan Amt.:	\$ 25,790,252	Total Const. Loan	25,790,252
Proj. Avg. Lease Term:	10.0	Proj. Const. Loan Rate:	floats	Less Income	
Total Development Cost:	\$ 30,915,252	SF per floor	varies	Total Cost after income	30,915,252
Total Dev. Cost/GSF	\$ 260.35	Total Dev. Cost/RSF	\$ 260.35	Con loan after income	25,790,252
Cost After Income	\$ 30,915,252				
Cost After Income PSF	\$ 260.35				
ITEM	QUANTITY	UNIT COST	COST	PERCENT of BUDGET	COMMENTS
LAND COST					
Land:			\$ 750,000	2.43%	
HARD COSTS					
Sitework	118,743	\$ 7.50	\$ 890,573	2.88%	Preliminary Estimate
Architectural:	118,743	\$ 4.75	\$ 564,029	1.82%	Preliminary Estimate
MEP & Structural Eng.	118,743	\$ 1.10	\$ 130,617	0.42%	Preliminary Estimate
Civil Engineering:	118,743	\$ 0.40	\$ 47,497	0.15%	Preliminary Estimate
Permits:	118,743	\$ -	\$ 67,952	0.57	Preliminary Estimate
impact fees	118,743	\$ 1.30	\$ 154,366	0.50%	Preliminary Estimate
General Conditions	118,743	\$ 5.75	\$ 682,772	2.21%	Preliminary Estimate
Base Building Cost	118,743	\$ 70.78	\$ 8,404,630	27.19%	Preliminary Estimate
Contractor's fee	118,743	\$ 7.00	\$ 831,201	2.69%	Preliminary Estimate
parking under building	68	\$ 6,250	\$ 425,000	1.37%	Preliminary Estimate
utility relocation			\$ 150,000	0.49%	Preliminary Estimate
building demo			\$ 125,000	0.40%	Preliminary Estimate
parking ramp			\$ 50,000	0.16%	Preliminary Estimate
Insurance			\$ 150,000	0.49%	Preliminary Estimate
Landscaping & Irrigation:	118,743	\$ 1.18	\$ 140,117	0.45%	Preliminary Estimate
road improvement			\$ 150,000		Preliminary Estimate
Lobby contingency			\$ 200,000	0.65%	Preliminary Estimate
Opus contingency	118,743	\$ 2.26	\$ 268,359	0.87%	Preliminary Estimate
Subtotal Hard Costs			\$ 13,432,113	113.12	43.45%
storm water in lieu fee			\$ 150,000	1.28	Preliminary Estimate
First Port. Tenant work	79,202	\$ 70	\$ 5,544,140	17.93%	Preliminary Estimate
Spec. Tenant work	24,541	\$ 50	\$ 1,227,050	10.33	Preliminary Estimate
internal stairway			\$ 100,000		Preliminary Estimate
Interior finish allow. Retail	15,000	\$ 30	\$ 450,000	3.79	Preliminary Estimate
office security allowance			\$ 15,000		Preliminary Estimate
Parking Deck	425	\$ 13,647	\$ 5,799,975	18.76%	Preliminary Estimate
Sub-Total Hard Costs:			\$ 26,718,278	\$ 225,01	86.42%
SOFT COSTS					
Marketing	118,743	\$ 0.10	\$ 11,874	0.04%	Preliminary Estimate
Space Planning Marketing:	118,743	\$ 0.50	\$ 59,372	0.19%	Preliminary Estimate
Property Tax Carry	118,743	\$ 1.00	\$ 118,743	0.38%	Preliminary Estimate
Legal/Insurance:	118,743	\$ 2.00	\$ 237,486	0.77%	Preliminary Estimate
Leasing Commissions:	39,583	\$ 10.00	\$ 395,830	3.33	1.28%
Financing Points:	\$ 118,743	\$ 1.25	\$ 148,429	1.25	0.48%
Project Carry Cost			\$ 900,000	7.58	2.91%
misc. due. Diligence			\$ 50,000		Preliminary Estimate
environmental reports			\$ 50,000		Preliminary Estimate
Title Insurance & Closing Cos	\$ 118,743	\$ 0.50	\$ 59,372	\$ 0.50	0.19%
Sub-Total Soft Costs:			\$ 2,030,905	\$ 17.10	6.57%
TOTAL HARD & SOFT COSTS:			\$ 29,499,183	\$ 248,43	95.42%
Contingency	\$ 26,718,278	4.00%	\$ 1,068,731	\$ 9.00	3.46%
Construction Mgmt.	\$ 27,787,009	1.25%	\$ 347,338	\$ 2.93	1.12%
TOTAL DEVELOPMENT BUDGET			\$ 30,915,252	\$ 260,35	100.00%
RENT LEVEL ANALYSIS					
Office Net Rent	\$ 14.75	79,202	\$ 1,168,230		
office Net Rent Spec.	\$ 16.50	24,541	\$ 404,927		
Retail Net Rent	\$ 21.00	15,000	\$ 315,000		
Total Potential Net Income			\$ 1,888,156	equity	\$ 5,905,097
Less Vacancy & Credit Losses	5%		\$ (94,408)	interest rate	7%
Projected Net Income:				debt service	\$ 413,356.78
Refinance					
construction loan	\$ 25,790,252	83.42%		Projected Cap. Rate	Projected Value
End Loan	\$ 19,210,155	62.14%		7.47%	\$ 24,012,693
existing equity	\$ 5,125,000	16.58%		cost	\$ 30,915,252
remaining equity	\$ 11,705,097	37.86%		Delta	\$ (6,902,558)
TIF CITY CONTRIBUTION	\$ 5,800,000	18.76%			
Equity after TIF	\$ 5,905,097	19.10%			
Value 7.25%	80% loan to V		debt service	Net Income	pot. Cash flow
24,012,693	19,210,155		\$ 1,544,877	\$ 1,793,748	\$ 248,871
					Return to Equity 4.2%

EXHIBIT L
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 _____; and

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 Plan Commission 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. Notwithstanding the foregoing, to the extent that the Development Agreement between the City and the Developer dated March ___, 2005 imposes higher or stricter minimum requirements for insurance, the Developer shall comply with such requirements.

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

pursuant to the following schedule: _____. 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. In the event of a conflict between any such ordinances, it is the intent of the parties that Ordinance No. _____, as amended from time to time, shall prevail.

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 relating to the phase of the development said building is located in 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, which acceptance shall not be unreasonably delayed or denied. 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.

ORDINANCE

12. It is hereby agreed that the subject development shall comply with the City's Subdivision and/or Planned Unit Development Ordinance requirements, except as the same may be modified by Ordinance No. _____, as amended from time to time.

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 M

AGREEMENT

AGREEMENT

This Agreement (the "Agreement") is made and entered into as of the _____ day of _____, 2007, by and between Wheaton Property Partners, LLC ("WPP") an Illinois limited liability company and Opus North Corporation, an Illinois corporation ("Opus").

RECITALS

A. WPP and Opus have previously entered into that certain Design/Build Construction Contract (the "Contract") dated November 26, 2006 with regard to certain property in the City of Wheaton, Illinois (the "City").

B. A portion of the project to be constructed pursuant to the Contract is a parking garage to be located on property owned by the City. Upon completion of the parking garage, WPP will convey all interest in the garage to the City pursuant to the provisions of a Development Agreement dated _____, 2007 between the City and WPP.

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 WPP and Opus hereby stipulate, the parties hereby agree as follows:

1. 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 1, and this Agreement shall be construed in accordance therewith.

2. It is hereby agreed that the City is intended to be a direct third party beneficiary of the Contract as it relates to the construction of the parking garage, with full rights to enforce the provisions thereof, including, but not limited to, provisions relating to insurance, indemnification and warranties. The Contract shall be deemed to be amended so as to incorporate the provisions of

this Agreement therein. Except to the extent modified herein, the Contract shall remain in full force and effect. No modification of the rights granted herein or any provision of the Contract relating to insurance, indemnification or warranties shall be made without the written consent of the City.

3. The terms and conditions of this Agreement shall apply to and bind and inure to the benefit of the City, WPP, Opus and their successors and assignees.

4. The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

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

WHEATON PROPERTY PARTNERS,
LLC, an Illinois limited liability company,

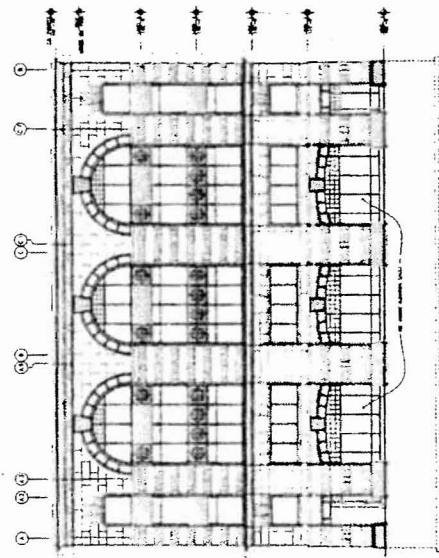
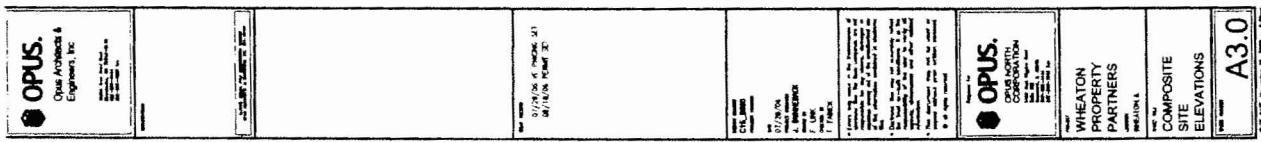
By: _____
Its _____

OPUS NORTH CORPORATION, an
Illinois corporation,

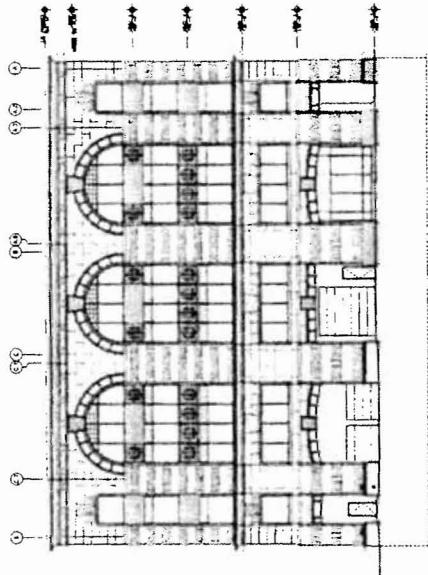
By: _____
Its: _____

EXHIBIT N

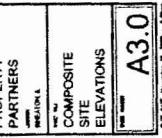
ELEVATIONS

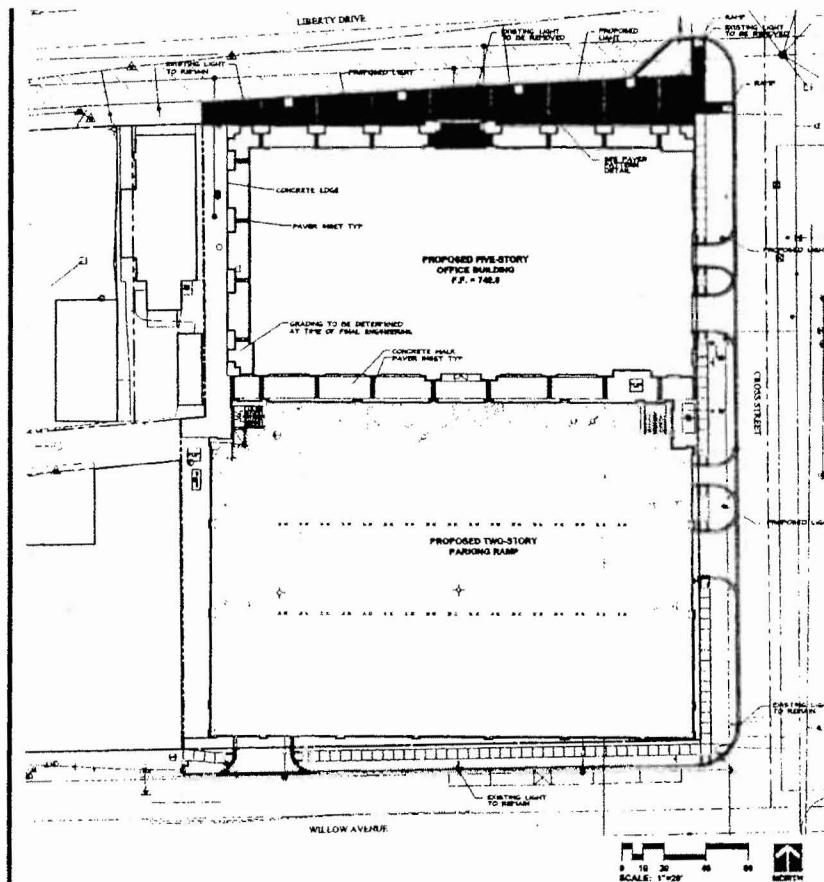


1 WEST SIDE ELEVATION

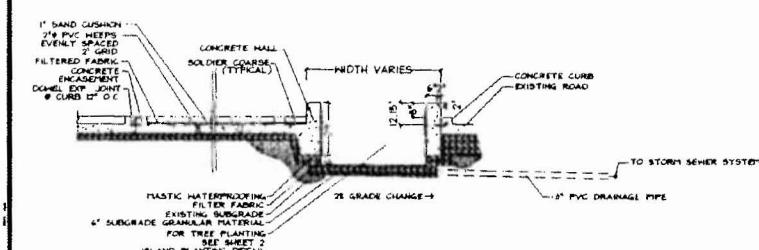


2 EASY SITE REVIEWING



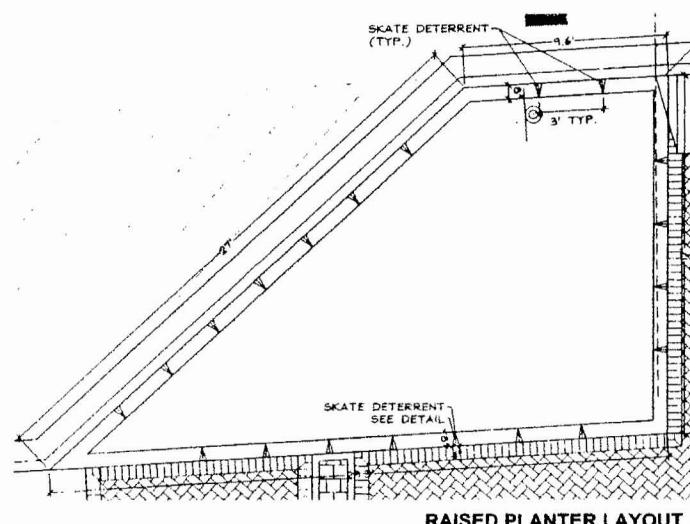


PLANTER WALL AND PAVER DETAIL

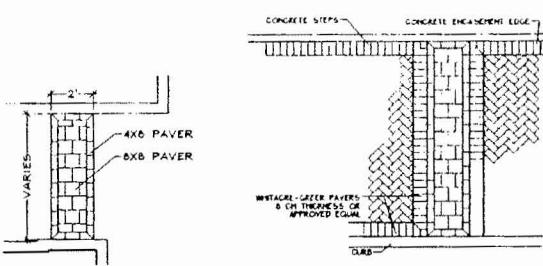


ISLAND PLANTING DETAIL

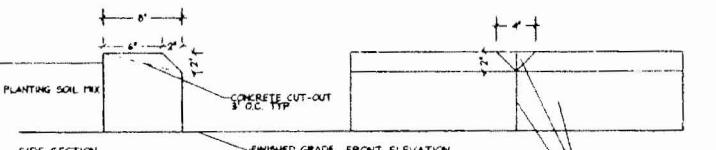
PLANTER WALL AND PAVER DETAIL



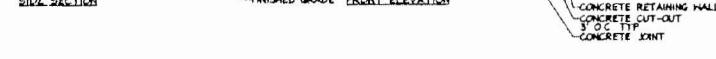
RAISED PLANTER LAYOUT



**PAVER BAND
DETAIL**
NOT TO SCALE



PAVER PATTERN DETAIL



SKATE DETERRENT DETAIL

GIR
MARY B. WEBER
& ASSOCIATES, INC.
LAND PLANNERS
DESIGN ARCHITECTS
CONSULTANT ENGINEERS
PLANNING, DESIGN,
CONSTRUCTION,
MANAGEMENT

WHEATON PROPERTY PARTNERS

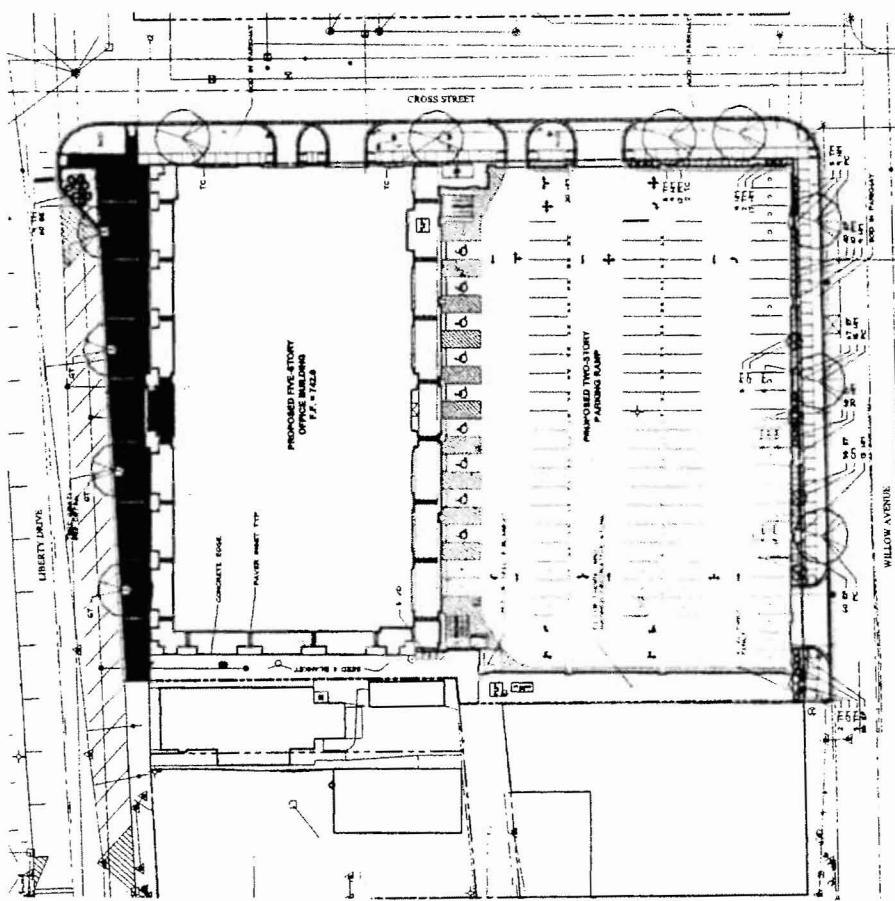
DES PLAINES, ILLINOIS

HARDSCAPE PLAN

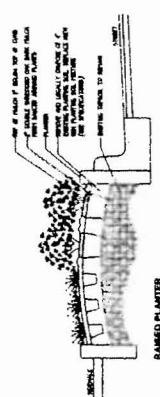
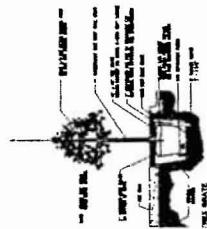
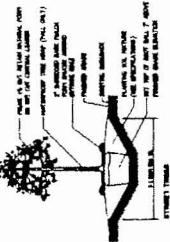


WHEATON PROPERTY PARTNERS

GENERAL NOTES

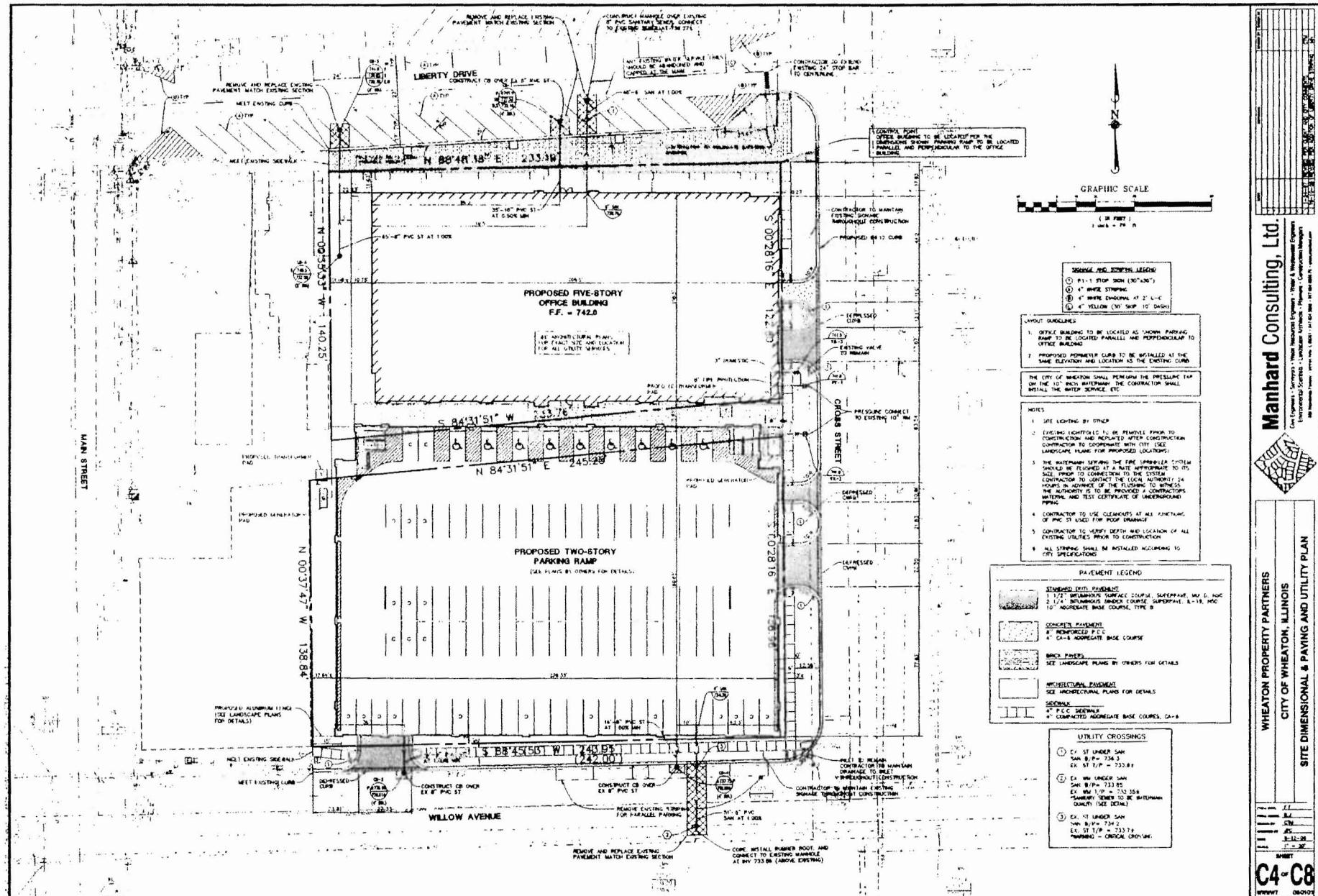


PLANTING DETAILS





This image is a high-contrast, black-and-white scan of a document or a textured surface. It features a dense, abstract pattern of vertical and horizontal lines, creating a grid-like appearance. The lines are thick and dark, set against a lighter background. There are no discernible text, figures, or tables. The overall effect is that of a heavily processed or low-quality image of a document page.



Manhard Consulting, Ltd.

Engineering Services • Human Resources Engineers • Hotel & Restaurant Engineers
Manufacturing Services • Landscape Architects • Planners • Construction Managers
At McDonald's Hotels • 1000000000 • 1000000000 • 1000000000 • 1000000000 • 1000000000

WHEATON PROPERTY PARTNERS

CITY OF WHEATON, ILLINOIS

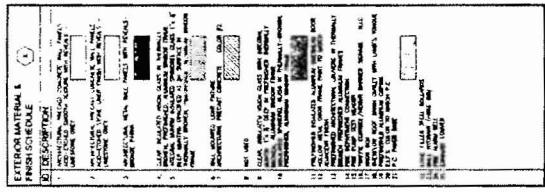
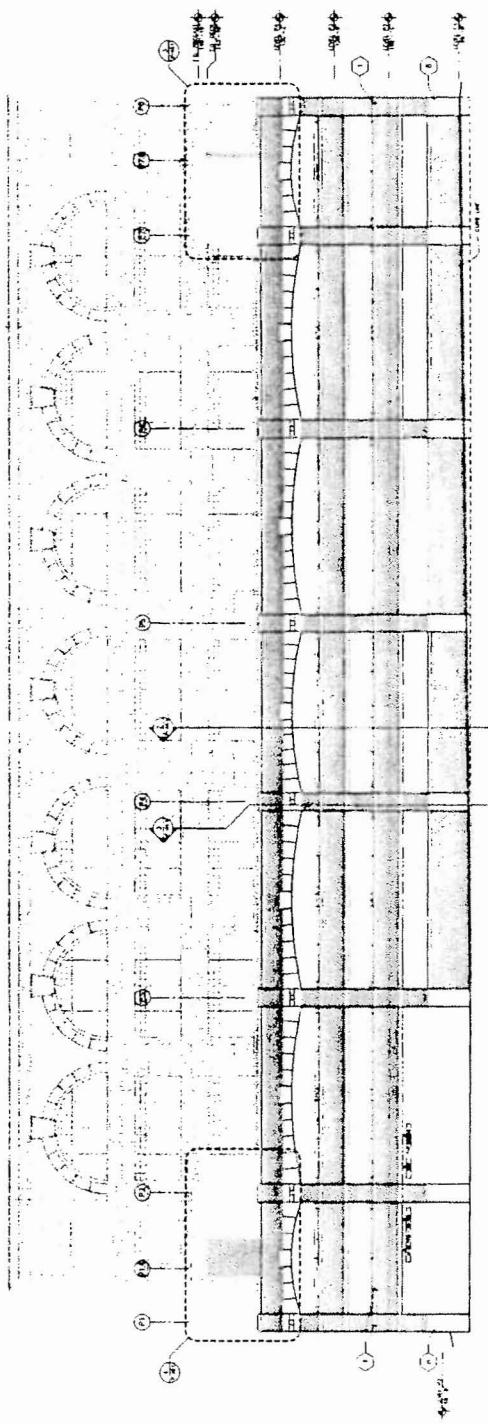
SITE DIMENSIONAL & PAVING AND UTILITY PLAN

C4-C8

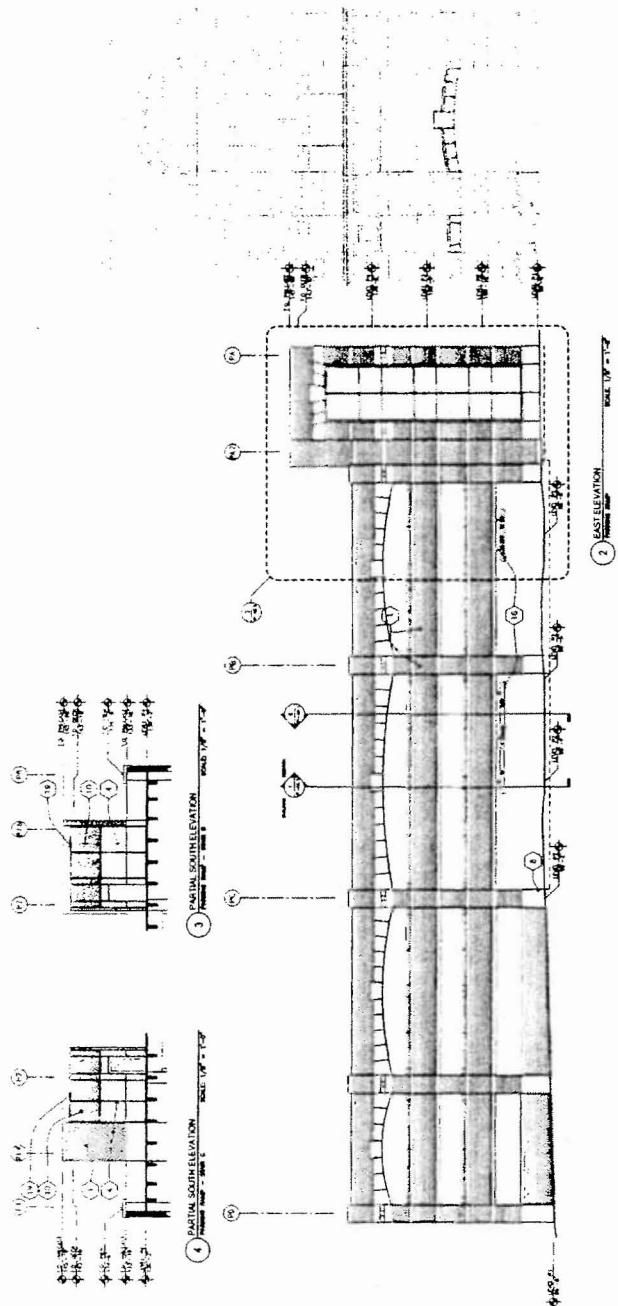


100

07-25-07
PROGRESS SET



1. SOUTHEAST ELEVATION

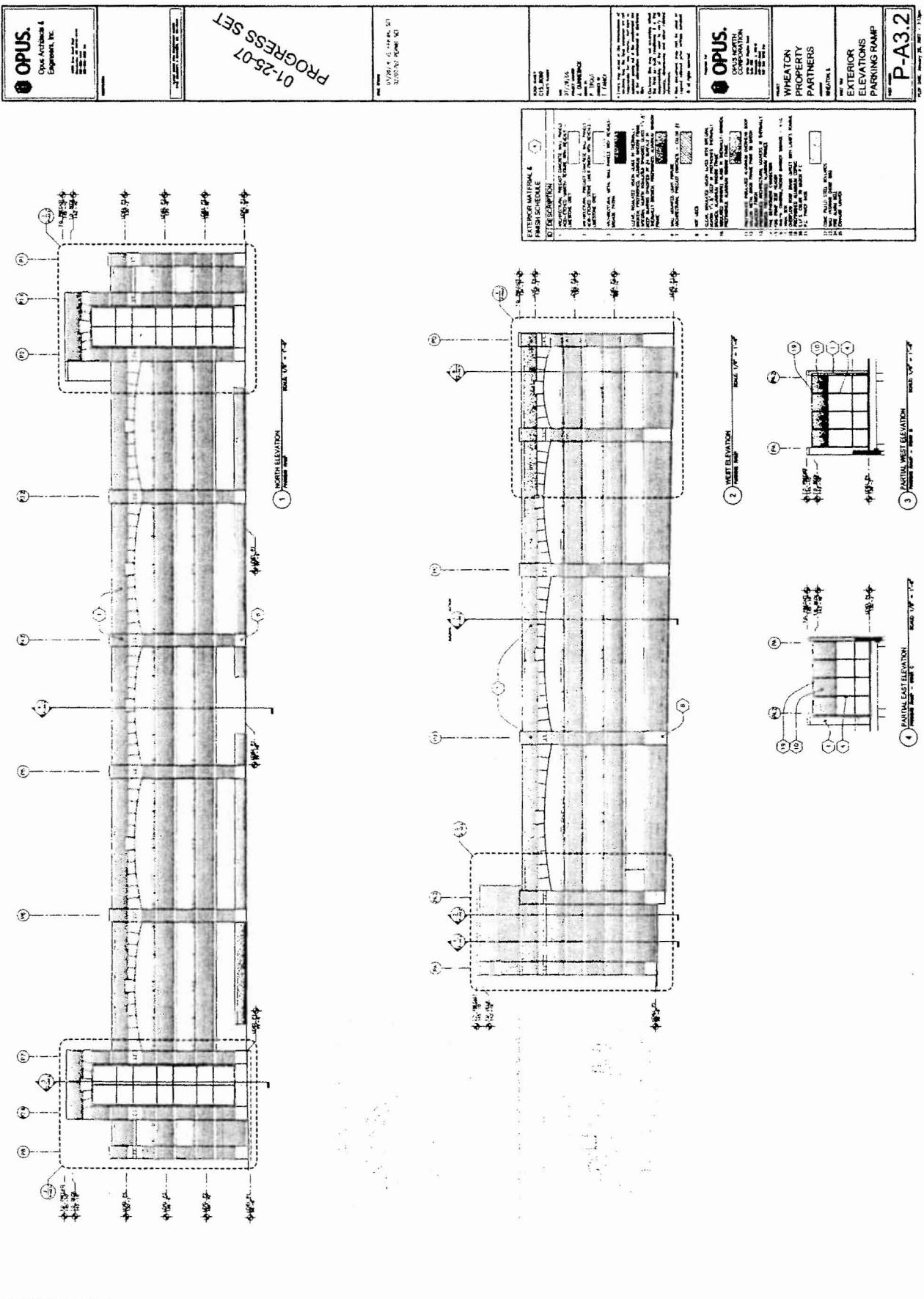


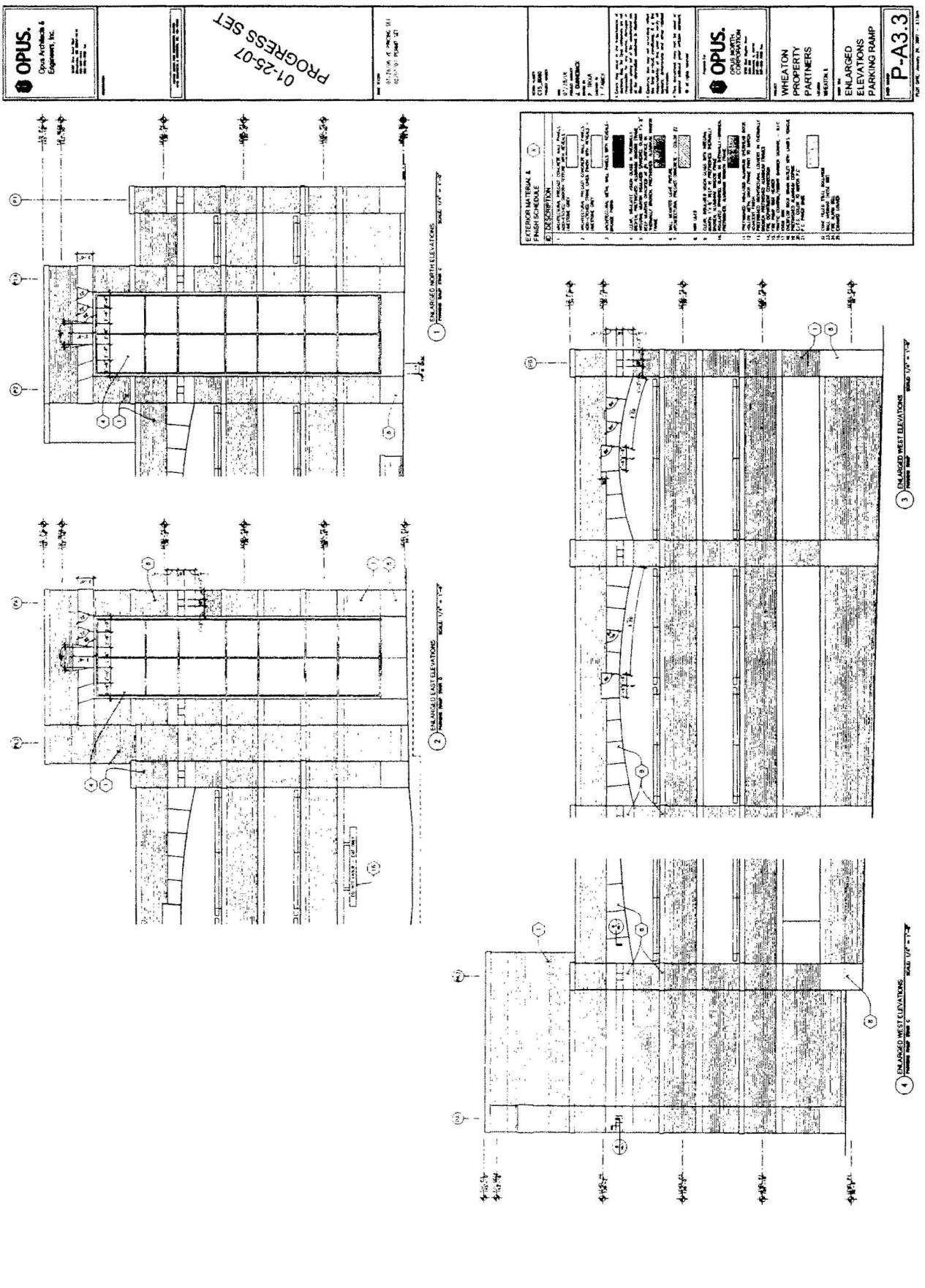
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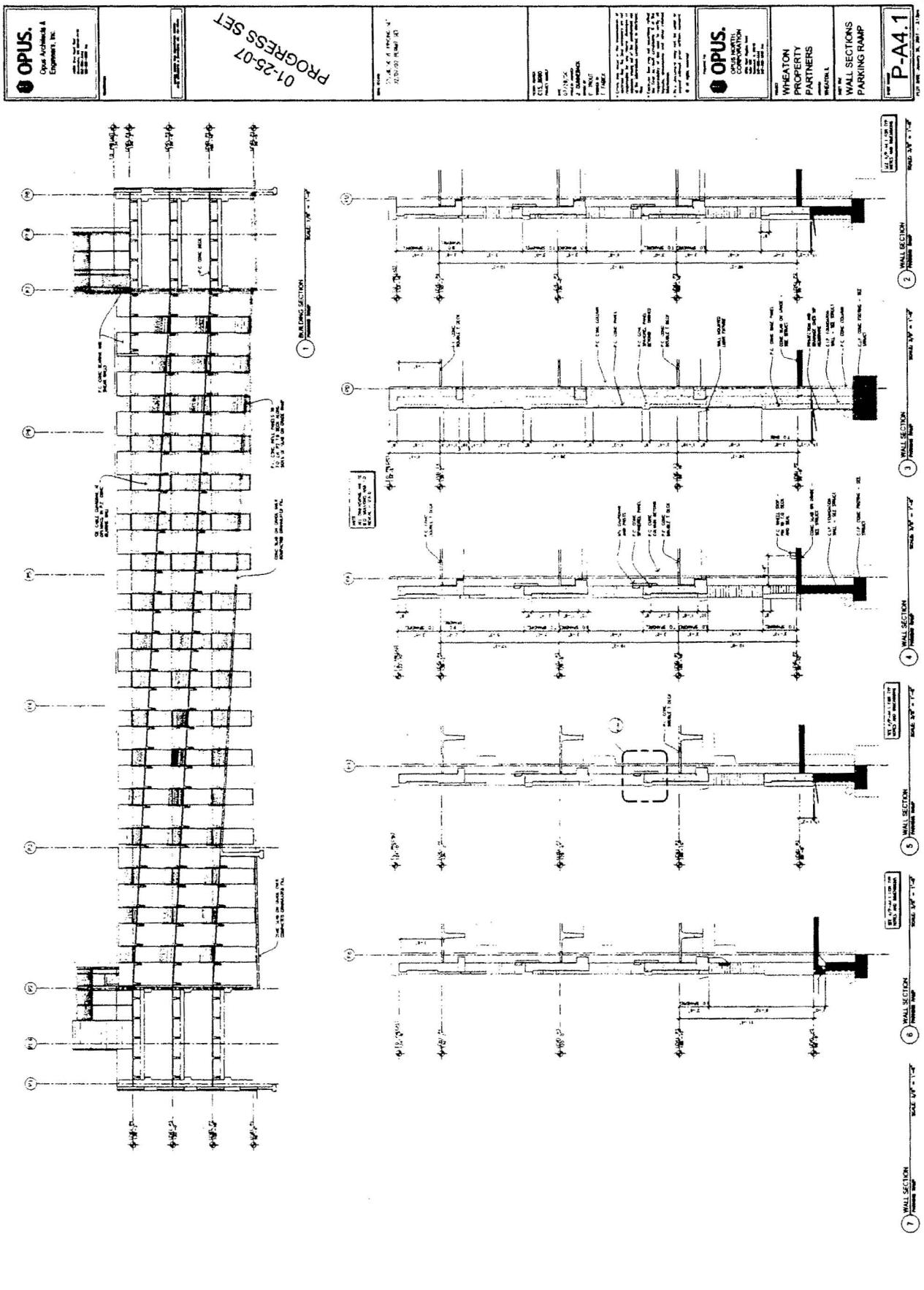
WHEATON
PROPERTY
PARTNERS
RENTAL

EXTERIOR
ELEVATIONS
PARKING RAMP

P-A3.1



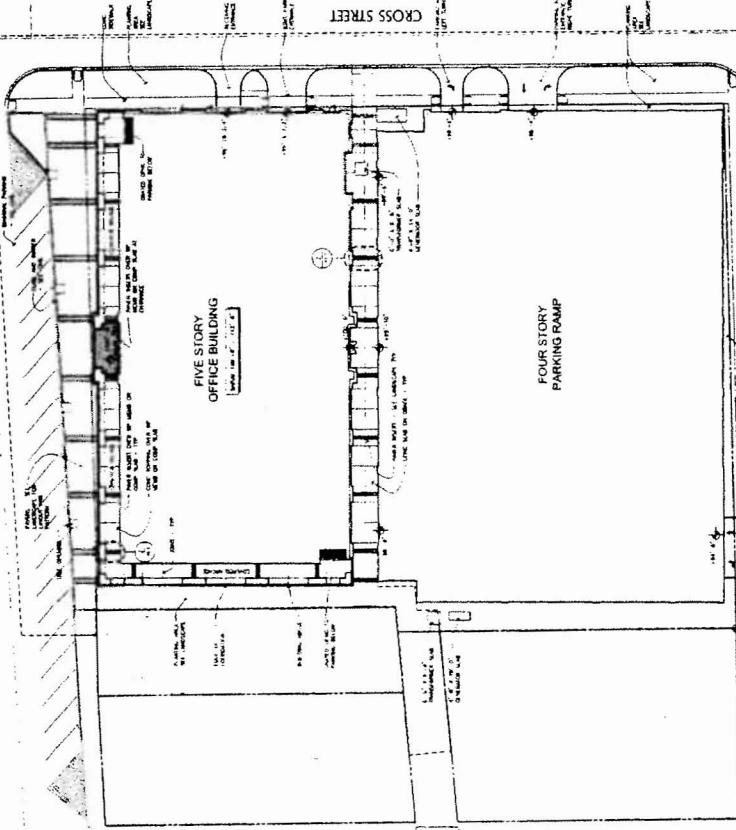






Opus
Architects &
Engineers, Inc.

www.opusinc.com

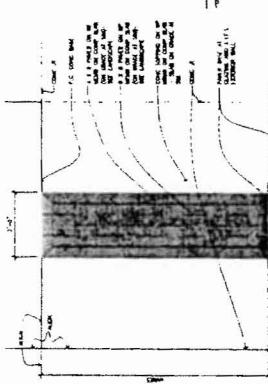


Opus
Architects &
Engineers, Inc.

www.opusinc.com

WHEATON
PROPERTY
PARTNERS
www.wheatonproperty.com

ARCHITECTURAL
SITE PLAN



MAIN STREET

EXHIBIT O

SECURITY AGREEMENT

RESERVED

EXHIBIT P

INSURANCE SCHEDULE

1. Builder's Risk and/or Property Coverage covering full insurable replacement cost for fire or other insurable perils normally provided for in projects of similar size subject to individual policy terms, conditions and exclusions.
2. Commercial General Liability insurance coverage with a minimum limit of \$3,000,000 for Bodily Injury and Property Damage combined single limit and in the Aggregate on an annual basis.
3. Business Automobile Liability with a minimum coverage of \$1,000,000 combined single limit for Bodily Injury and Property Damage.
4. Umbrella or Excess Liability Coverage with a minimum coverage limit of \$5,000,000 combined Single Limit on an annual aggregate basis.
5. Workers Compensation in the statutory amount required by the state.

Insurance policies will name the City of Wheaton as an additional insured. All such policies shall provide for at least 30 days notice to the City of Wheaton of the cancellation or termination of such policies.