

RESOLUTION R-2019-81

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE VILLAGE OF CAROL STREAM AND THE CITY OF WHEATON FOR DE-
ANNEXATION, ANNEXATION AND REVENUE SHARING FOR PARCELS TO BE REDEVELOPED AT
THE NORTHEAST CORNER OF GENEVA ROAD AND MAIN STREET**

WHEREAS, the City of Wheaton ("City") and the Village of Carol Stream ("Village"), DuPage County, Illinois are Illinois Home Rule municipalities pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Village and City are authorized by the 1970 Illinois Constitution to contract with each other; and

WHEREAS, the Village and City have determined it is in the best interests of the residents of the Village and the City that redevelopment of the northeast corner of Geneva Road and Main Street occur to increase the economic vitality of said intersection; and

WHEREAS, a redevelopment proposal has been received that would require redevelopment of parcels in the City and Village; and

WHEREAS, redeveloping the parcels under one municipal jurisdiction is efficient and desirable; and

WHEREAS, to effectuate the redevelopment under one municipality, the City agrees to the de-annexation of one parcel and the Village agreeing to annex said parcel; and

WHEREAS, in consideration of the City de-annexing the parcel, the City and Village have agreed to share certain sales tax revenue generated from the redeveloped parcels; and

WHEREAS, an intergovernmental agreement has been developed setting forth the conditions of the de-annexation, annexation and revenue share.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to an Intergovernmental Agreement Between the Village of Carol Stream and the City of Wheaton setting forth conditions of de-annexation, annexation and revenue sharing for parcels to be redeveloped at the north east corner of Geneva Road and Main Street.

DATED this 19th day of August 2019.

ATTEST:

Shawn Bennett Hagan
City Clerk

Mayor

Philip Suess

Roll Call Vote:

Ayes: Councilman Barbier
Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess
Councilman Zaruba

Nays: Councilman Rutledge
Absent: None
Motion Carried

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
VILLAGE OF CAROL STREAM AND THE CITY OF WHEATON**

THIS AGREEMENT is made and entered into this 3rd day of SEPTEMBER, 2019, by and between the Village of Carol Stream, an Illinois home rule municipality, (hereinafter "Carol Stream") and the City of Wheaton, an Illinois home rule municipality (hereinafter "Wheaton"). Carol Stream and Wheaton are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois, provides that in furtherance of the exercise of their powers, units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not otherwise prohibited; and

WHEREAS, the Illinois Intergovernmental Cooperation Act provides that a public agency may jointly exercise or combine any power, privilege, function or authority with other public agencies, 5 ILCS 220/1 *et seq.*; and

WHEREAS, Carol Stream and Wheaton are both units of local government as defined in Article VII, Section 1 of the Constitution of the State of Illinois and are both public agencies as defined in the Intergovernmental Cooperation Act, 5 ILCS 220/2; and

WHEREAS, Carol Stream and Wheaton are both home rule units of government under subsection (a) of Section 6 of Article VII of the Constitution of the State of Illinois and may exercise any power and perform any function pertaining to their government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, pursuant to Article VII, Section 10 of the Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, their home rule authority and other applicable law, Carol Stream and Wheaton are authorized to enter into binding legal agreements involving the disconnection and annexation of properties; and

WHEREAS, the real property located at 2201 N. Main Street, Wheaton, Illinois and legally described in Exhibit A, attached hereto and made a part hereof, and hereinafter referred to as "Parcel A", is located within the corporate limits of the City of Wheaton, Illinois; and

WHEREAS, the real property located at 431 Geneva Road, Carol Stream, Illinois and legally described in Exhibit B, attached hereto and made a part hereof, and hereinafter referred to as "Parcel B", is located within the corporate limits of the Village of Carol Stream, Illinois; and

WHEREAS, the owner and the developer of Parcel A and Parcel B desire to develop both Parcel A and Parcel B within Carol Stream as a gas station, convenience store and car wash as generally depicted upon the site plan attached hereto as Exhibit C; and

WHEREAS, the owner of Parcel A desires to file a petition with the City Clerk of Wheaton requesting that Parcel A be disconnected from Wheaton as provided in Section 7-1-24 of the Illinois Municipal Code, 65 ILCS 5/7-1-24; and

WHEREAS, the owner of Parcel A desires to file a petition with the Village Clerk of Carol Stream requesting that upon disconnection Parcel A from Wheaton, Parcel A be annexed to Carol Stream; and

WHEREAS, in consideration of the disconnection of Parcel A from Wheaton and the annexation of said Parcel A to Carol Stream, Carol Stream has agreed to share certain sales tax revenue generated from the development of the gas station, convenience store and car wash on Parcels A and B with Wheaton as set forth in this Agreement (Parcels A and B are sometimes collectively referred to herein as the "Development Property"); and

WHEREAS, the Board of Trustees of Carol Stream and the City Council of Wheaton, have each determined that it is in the best interests of their respective municipalities to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals as set forth above are incorporated herein by reference and made a part of this Agreement.

2. **Disconnection of Parcel A.** Upon receipt of a written petition to disconnect Parcel A, signed by the owners of record of said Parcel A, (hereinafter the "Disconnection Petition") and accompanied by a Plat of Disconnection, Wheaton shall take all steps necessary and proper to disconnect Parcel A from the corporate limits of Wheaton in accordance with Section 7-1-24 of the Illinois Municipal Code, 65 ILCS 5/7-1-24. The City Council of Wheaton shall adopt an Ordinance disconnecting Parcel A not less than thirty (30) days nor more than sixty (60) days from the date the Disconnection Petition is filed with Wheaton. Within ten (10) days of the adoption of the Ordinance disconnecting Parcel A, Wheaton shall record the Ordinance and Plat of Disconnection with the Recorder of Deeds of Du Page County and shall provide notice of the disconnection to the County Clerk and the election authority of DuPage County. Wheaton shall also provide a certified copy of the recorded Ordinance and Plat of Disconnection to Carol Stream within said ten (10) day period.

3. **Annexation of Parcel A.** Upon the disconnection of Parcel A from Wheaton and upon receipt of a written petition to annex Parcel A, signed by the owners of record of said Parcel A and accompanied by a Plat of Annexation, Carol Stream shall take all steps necessary and proper to annex Parcel A into the Village of Carol Stream in accordance with Section 7-1-24 of the Illinois Municipal Code, 65 ILCS 5/7-1-24. Wheaton agrees that it waives any right to directly or indirectly challenge or otherwise contest the validity of the annexation of Parcel A by Carol Stream. Wheaton further agrees not to make any requests, formal or informal, to any third party for that third party to challenge the validity of the Carol Stream annexation of Parcel A.

4. **Jurisdiction over Parcel A.** Upon the disconnection of Parcel A from Wheaton and the annexation of said Parcel A to Carol Stream, Carol Stream shall have full and complete jurisdiction over Parcel A.

5. **Jurisdiction over Main Street/Schmale – Geneva Road Intersection.** The Parties acknowledge that notwithstanding the disconnection of Parcel A from Wheaton, Wheaton shall continue to have public safety jurisdiction over the intersection Main Street/Schmale – Geneva Road.

6. **Continuation of Services.** Notwithstanding the disconnection of Parcel A from the City of Wheaton, Wheaton agrees to continue to provide the following services to as set forth herein:

- A. Water service under the same terms and conditions as provided prior to disconnection until such time as Parcel A connects to the Carol Stream water system, but for no longer than 365 days.
- B. Fire and paramedic service until such time as Parcel A is annexed to the Carol Stream Fire Protection District. Carol Stream shall require that the annexation agreement between the owner and Carol Stream provide that the owner shall simultaneously petition the Carol Stream Fire Protection District for the annexation of Parcel A.

7. **Development.** Pursuant to the petition of the owner of Parcel A, Carol Stream shall conduct all necessary hearings in order to provide for the development of a gas station, convenience store and Car Wash upon the Development Property. Carol Stream agrees to employ reasonable and good faith efforts to cooperate with the Owner and to process and consider in an expedited manner all applications for development approval of a gas station, convenience store and car wash, in accordance with the applicable ordinances of Carol Stream and the laws of the State of Illinois.

8. **Revenue Sharing.** Subject to the terms and conditions of this Agreement, Carol Stream undertakes to share certain Sales Tax Revenue (as defined herein) received by Carol Stream from sales determined by the Illinois Department of Revenue ("IDOR") to have been generated from business transactions upon the Development Property and which may be properly distributed to Carol Stream. The term "Sales Tax Revenue" shall mean the net local portion of taxes imposed by the State of Illinois for distribution to Carol Stream pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. and the Service Occupation Tax Act, 35 ILCS 115/1 et seq., and the net portion of tax imposed, from time to time, by Carol Stream pursuant to the Home Rule Municipal Retailers' Occupation Tax Act, 65 ILCS 5/8-11-1 and the Home Rule Municipal Service Occupation Tax Act, 65 ILCS 5/8-11-5, which are collected by the State of Illinois from sales upon the Development Property and distributed by the IDOR to Carol Stream.

8.1 **Quarterly Payments.** Beginning upon the date that Carol Stream first receives from the IDOR Sales Tax Revenue generated from the Development

Property, Carol Stream shall share said Sales Tax Revenue with Wheaton in an amount equal to 45.58 per cent (45.58%) of such Sales Tax Revenue received from the IDOR. (45.58 per cent (45.58%) represents Parcel A's percentage of the Redevelopment Parcel.)

8.2 Payment Schedule. Carol Stream shall pay the portion of the Sales Tax Revenue to be provided to Wheaton on a quarterly basis within thirty (30) days of the end of each fiscal quarter (April 30, July 31, October 31, January 31); provided, that Carol Stream has received the Sales Tax Revenue for such fiscal quarter from the IDOR. If the Sales Tax Revenue is not received because of a delay by the State of Illinois or the IDOR, then Quarterly Payments shall be due and payable by Carol Stream within thirty (30) days after the date Carol Stream actually receives the Sales Tax Revenue from the IDOR. To the extent authorized and approved by IDOR, Carol Stream agrees to provide supporting documentation of the amount remitted to the Wheaton. In the event that IDOR issues any corrections, reversals or tax credits for taxes determined by IDOR to have been not properly remitted to Carol Stream, adjustments will be made in the subsequent quarterly payment made to Wheaton, with supporting documentation of the adjustment provided to Wheaton.

8.3 Carol Stream's Obligations Limited to Sales Tax Revenue. Carol Stream's obligation to make payments to Wheaton hereunder constitute a limited obligation of Carol Stream payable solely from amounts available from Sales Tax Revenue that is remitted to Carol Stream from the IDOR as a result of business transactions occurring upon the Development Property from the gas station, convenience store and car wash. Carol Stream's obligation shall not include any other taxes imposed by Carol Stream or received by Carol Stream from the State of Illinois or otherwise and shall not constitute a general obligation or indebtedness of Carol Stream and shall not give rise to any pecuniary liability of Carol Stream or a charge against its general credit or taxing power.

8.4 No Recourse. No recourse under or upon any obligation, covenant or condition of this Section 8, or for any claim based thereon or otherwise related thereto, shall be had against Carol Stream, or its officers, officials, agents and/or employees, for any consequential damages or in any amount in excess of any specific sum agreed by Carol Stream to be paid to Wheaton hereunder, subject to the terms and conditions set forth herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by, Carol Stream, or its officers, officials, agents and/or employees, in excess of such amounts and any and all such rights or claims of Wheaton against Carol Stream, or its officers, officials, agents and/or employees for consequential damages are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by Carol Stream.

8.5 Change in Law. If any other governmental or legislative body enacts any law, statute, or rule or regulation which results or may result in any material change or

amendments to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., the Service Occupation Tax Act, 35 ILCS 115/1 et seq., the Home Rule Retailers' Occupation Tax, 65 ILCS 5/8-11-1, or Home Rule Municipal Service Occupation Tax, 65 ILCS 5/8-11-5, which changes or amendments prohibit Carol Stream from complying with this Agreement, or which law, statute, rule or regulation affect Carol Stream's ability to comply this Agreement, then the obligation to make payments of Sales Tax Revenue shall cease and terminate.

9. **Notices.** Notice or other writings which any Party is required to, or may wish to, serve upon the other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Carol Stream:

Village Manager
Village of Carol Stream
500 N. Gary Avenue
Carol Stream, IL. 60188

If to Wheaton:

City Manager
City of Wheaton
303 W. Wesley Street
Wheaton, IL. 60187

or to such other address or other individuals as either Party may from time to time designate in a written notice to the other Party. The effective date of notice for personal delivery shall be the date of delivery and for certified mail shall be three (3) days after mailing.

10. **Headings.** The headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

11. **Entire Agreement.** The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent counsel and that this Agreement is a compilation of said negotiations. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings or written or oral agreements between them regarding the subject matter of this Agreement.

12. **Cooperation and Further Assurances.** Carol Stream and Wheaton each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and take such further acts as may be reasonably required to carry out the terms and conditions of this Agreement.

13. **No Waiver of Rights.** The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights hereunder, shall not waive such rights and such Party shall have the right to enforce all such rights at any time.

14. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the Parties hereto shall be brought in the 18th Judicial Circuit, Du Page County, Illinois.

15. **Invalidity.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, or in the event that such court shall determine that either party does not have the power to perform any such provision, the entire Agreement shall be null and void.

16. **Authorization.** The Mayor and Clerk of the respective Parties hereby warrant that they have been lawfully authorized by the corporate authorities of their respective municipalities to execute this Agreement. The Parties shall, upon request, deliver to each other copies of all resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

17. **Effective Date.** This Agreement shall be deemed dated and become effective on the date the last of the Parties executes this Agreement as set forth below. This Agreement, however, shall become null and void and of no effect if either Party fails to approve the actions hereinabove set forth.

IN WITNESS WHEREOF, the Village of Carol Stream, pursuant to authority granted by the adoption of a Resolution by its Board of Trustees, has caused this Agreement to be executed by its Mayor and attested by its Clerk; and the City of Wheaton, pursuant to the authority granted by the adoption of a Resolution by its City Council, has caused this instrument to be signed by its Mayor and attested by its Clerk.

VILLAGE OF CAROL STREAM
an Illinois home rule municipal corporation

By: Frank Saverino
Frank Saverino, Sr., Mayor

ATTEST:

By: Laura Czarnecki
Laura Czarnecki, Village Clerk

CITY OF WHEATON:
an Illinois home rule municipal corporation

By: Philip Suess
Philip Suess, Mayor

ATTEST:

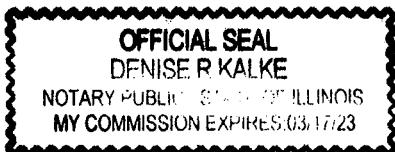
By: Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

ACKNOWLEDGMENTS

State of Illinois)
) SS
County of Du Page)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Frank Saverino, Sr. and Laura Czarnecki, personally known to me to be the Mayor and Village Clerk of the Village of Carol Stream, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 3rd day of September, 2019.



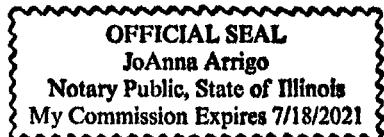

Mark A. Kille
Notary Public

ACKNOWLEDGMENTS

State of Illinois)
County of Du Page)
) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Philip Suess and Sharon Barrett-Hagen, personally known to me to be the Mayor and City Clerk of the City of Wheaton, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 20th day of August, 2019.



Jeanne Arago
Notary Public

EXHIBIT A

Legal Description of Parcel A

LOT ONE IN GENEVA-MAIN SUBDIVISION OF THE SOUTH 230 FEET OF THE WEST 165 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 21, 1959 AS DOCUMENT 909953, IN DUPAGE COUNTY, ILLINOIS.

COMMON ADDRESS: 2201 NORTH MAIN STREET, WHEATON, ILLINOIS 60187

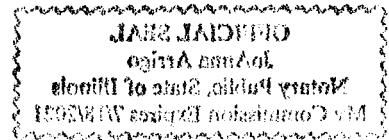
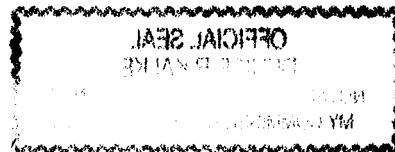


EXHIBIT B

Legal Description of Parcel B

THAT PART OF LOT 2 IN ANDERSON'S MAIN STREET SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 1969 AS DOCUMENT R69-42683, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1 IN SAID ANDERSON'S MAIN STREET SUBDIVISION; THENCE NORTH 00 DEGREES 09 MINUTES 23 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 21.45 FEET TO A POINT OF CURVATURE; THENCE NORtherly ALONG SAID WEST LINE, BEING A CURVE CONCAVE EASTERLY, TANGENT TO THE LAST DESCRIBED COURSE, HAVING A RADIUS OF 1972.41 FEET, A CHORD BEARING OF NORTH 00 DEGREES 07 MINUTES 39 SECONDS WEST, A CHORD LENGTH OF 1.99 FEET, AN ARC LENGTH OF 1.99 FEET; THENCE NORTH 89 DEGREES 31 MINUTES 11 SECOND EAST, 135.36 FEET TO THE EAST LINE OF SAID LOT 1, SAID EAST LINE ALSO BEING THE WESTERLY LINE OF LOT 2 IN SAID ANDERSON'S MAIN STREET SUBDIVISION, FOR THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 31 MINUTES 11 SECOND EAST ALONG THE EASTERLY EXTENSION OF THE LAST DESCRIBED COURSE, 89.91 FEET TO THE EAST LINE OF SAID LOT 2; THENCE SOUTH 00 DEGREES 15 MINUTES 13 SECONDS EAST ALONG SAID EAST LINE, 199.28 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 88 DEGREES 28 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 110.68 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 00 DEGREES 09 MINUTES 22 SECONDS WEST ALONG THE WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 179.99 FEET TO AN ANGLE POINT IN SAID WESTERLY LINE; THENCE NORTH 88 DEGREES 28 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY LINE, 19.89 FEET TO AN ANGLE POINT IN SAID WESTERLY LINE; THENCE NORTH 01 DEGREE 15 MINUTES 20 SECONDS EAST ALONG SAID WESTERLY LINE, 20.97 FEET TO THE POINT OF BEGINNING; IN DUPAGE COUNTY, ILLINOIS.

COMMON ADDRESS: 431 GENEVA ROAD, CAROL STREAM, ILLINOIS 60188

Exhibit C

