

Resolution No. R-64 -05

A RESOLUTION AUTHORIZING EXECUTION OF A
LAND ACQUISITION AND EASEMENT AGREEMENT
(PARKING LOT #2)

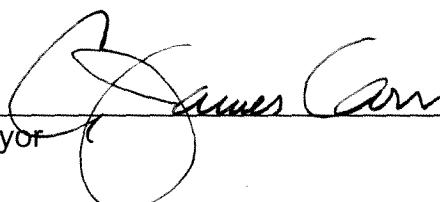
WHEREAS, the City of Wheaton desires to reconstruct Municipal Parking Lot #2; and

WHEREAS, it is necessary for the City to acquire certain property at the south end of Municipal Parking Lot #2 owned by LaSalle Bank, N.A. as successor to American National Bank and Trust Company of Chicago, as Trustee under that certain Land Trust dated 10/01/83 and known as Trust #548436; and

WHEREAS, an agreement for the acquisition of property has been negotiated by the City Attorney and City Manager.

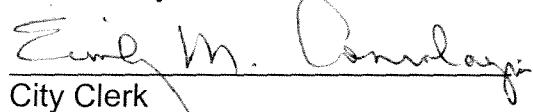
NOW, THEREFORE, BE IT RESOLVED by the Wheaton City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign the Land Acquisition and Easement Agreement attached to this Resolution as Exhibit A.

Adopted this 18th day of July, 2005.



Mayor

Attested by:



City Clerk

Ayes:

Roll Call Vote:
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine
Councilman Mouhelis
Councilman Suess

Nays:

None

Absent:

None

Motion Carried Unanimously

LAND ACQUISITION AND EASEMENT AGREEMENT

WHEREAS, LaSalle Bank, N.A., as successor to American National Bank & Trust Company of Chicago, as trustee under that certain Land Trust Agreement dated 10/01/83 and known as Trust No. 548436 (hereinafter "the "Trust") owns certain property a copy of the legal description being attached hereto and incorporated herein as if fully set forth as exhibit A (hereinafter "the Property"); and

WHEREAS, the Property is encumbered by a prescriptive easement providing egress and ingress to and through parking areas owned by the Trust and the City of Wheaton (hereinafter "City"); and

WHEREAS, the City of Wheaton desires to acquire a portion of the Property (hereinafter the acquisition parcel) for purposes of performing parking and alley improvements upon and in the area of the property; and

WHEREAS upon purchase of the acquisition parcel a portion the Property shall remain owned by the Trust (hereinafter "retained parcel"); and

WHEREAS, the Trust desires to transfer title of the Property to the City in conformance with the terms and conditions of this Agreement.

NOW THEREFORE, based on fifty thousand dollars (\$50,000.00) consideration paid in hand, by the City of Wheaton, to the Trust; and other good and valuable consideration as recited herein, the Trust and the City of Wheaton agree as follows:

1. The foregoing recitals are incorporated herein as evidencing the intent of the parties.

2. The Trust shall convey the acquisition parcel, to the City of Wheaton, by recordable Trustee's Deed, on or before June 15, 2005. The Deed shall only be subject to the following permitted exceptions:

- a. General real estate taxes not due and payable at the time of the closing; Real Estate taxes shall be prorated at the time of closing except that the City agrees to pay one eighth of the estimated 2005 real estate taxes allocated to the acquisition parcel from January 1, 2005 to the date of closing. The proration shall be based on the 2004 real estate tax bill.
- b. Special assessments confirmed after this contract;
- c. Building, building line and use or occupancy restrictions, conditions and covenants of record;
- d. Zoning Laws and Ordinances;

- e. Easement for public utilities or any other public purpose;
- f. Drainage Feeders, pipes, laterals, drain tiles or other conduits.
- g. A single existing mortgage between (insert) which the Seller represents shall be paid off in October 2005. Seller shall provide the City with a copy of the release deed within 30 days of the payoff. Seller further represents and warrants that any refinancing of this mortgage prior to pay off shall not include the acquisition parcel.

3. The City of Wheaton shall secure, at its own expense, two surveys accurately depicting and describing: a) the acquisition parcel and b) the retained parcel. Originals of both surveys shall be tendered to the Trust not less than 21 days prior to closing. The City may also secure a policy of title insurance for the Property in an amount it deems necessary and appropriate. If the City elects to secure this title policy, it shall provide a copy to the Trust prior to Closing.

4. In addition to the fifty thousand dollar (\$50,000.00) consideration described above, the City, as additional consideration, agrees to perform the following work and services on the property legally described in the survey attached hereto and incorporated herein as if fully set forth as Exhibit A (hereinafter "Trust's Parking Property").

- a.. The City shall engineer, design, demolish, construct and improve the Trust's Parking Property with new parking facilities which shall include a new parking surface, new curbs, new striping and perimeter landscaping. (Hereinafter "Reconstruction Work"). All Reconstruction Work shall be done by the City or its Contractor in conformance with applicable Ordinances and in a good and workmanlike fashion consistent with industry standards. For purposes of said design, demolition and construction, the Trust hereby grants to the City and/or the City's Contractor and subcontractor, a temporary construction easement to go upon the Trust's Parking Property for any and all purposes reasonably associated with the Reconstruction Work.
- b. Upon completion of the Reconstruction Work the City shall, so long as the landscaping exists, maintain the landscaping in conformance with the standards used by the City of Wheaton to maintain other landscaping in its downtown business district.
- c. During the period of the Reconstruction Work of the Trustee's Parking Lot, the City shall temporarily provide the Trustee with eighteen (18) transponders which shall permit the Trust's beneficiaries and their designer's access to the Wheaton Avenue Parking Garage. Sixteen (16) of the eighteen (18) transponders will be returned, by the Trustees or its designee to the City upon completion of the Reconstruction Work. The

remaining two transponders shall be kept by the Trustees beneficiaries in conformance with sub paragraph d of this section.

- d. In consequence of the fact that the parking lot improvements will reduce the number of spaces in the Trust's parking lot by two spaces, the City shall further provide the beneficiary of the Trust with two (2) transponders which will provide access for any and all persons authorized by the Trustee to use the transponders to access two spaces in the private reserved area of Wheaton Avenue Parking Garage for so long as the Trust holds title to the retained parcel. These two transponders, however, shall be returned to the City of Wheaton if and when the Trust conveys title to the trust Parking Lot to another owner.
- e. The City shall make, maintain and post signs at the entrance to the Trust's parking lot which state that the Trust's parking area is private and that unauthorized vehicles shall be subject to towing. The sign or signs shall be subject to the reasonable approval of the Trust. The Trust shall be responsible to monitor and enforce parking regulation within the Trust's parking lot.

5. Financing Condition. This contract is not subject to any financing conditions.

6. The City and the Trust agree that there were no brokers involved in this transaction and that no broker is due or entitled to a commission.

7. The Trust shall furnish the City at closing with an affidavit of title, covering the date of closing, subject only to those permitted special exceptions set forth in paragraph 5 and un-permitted exceptions, if any, as to which any title insurer commits to extend insurance in the manner specified in paragraph 11.

8. Time is of the essence of this contract. Failure of either party to perform this contract within the time period specified herein shall give the opposing party the right to seek forfeiture or specific performance and shall give the non-breaching party the right to reasonable attorney's fees and costs for any litigation necessary to enforce this Agreement.

9. Trust hereby grants the City of Wheaton a permanent landscaping maintenance easement to go upon the Trust Parking Property for purposes of the landscape maintenance described herein, so long as the Private Parking exists within the Trust's Parking Property. This easement shall survive closing.

10. For all work performed by the City of Wheaton, and or its Contractor's, during the temporary construction easement, and for purposes of the permanent landscape easement, the City of Wheaton hereby agrees to defend, indemnify and hold harmless, the Trust, and its beneficiaries, from any and all claims, actions, causes of action, demands, injuries, deaths, damages, liabilities, fines, charges, penalties, or other losses proximately resulting from the acts or omissions of the City, its employees, elected officials, agents, contractors, or assigns on or

about the temporary construction and (or permanent landscape easement). The City shall require any contractor on the Trust's Parking Property to execute and identical indemnification.

11. During the period of construction of the Trust Parking Property, the City shall provide, through self-insured retention and or supplemental policies, a minimum of a commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence (combined single limit) including bodily injury and property damage, and in amount not less than one million dollars (\$1,000,000.00) annual aggregate per each personal injury and products completed operation; and general commercial automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) annual aggregate for personal injury liability and products completed operations. The insurance shall include coverage for collapsed or underground failure. Additionally, the City shall obtain and maintain, at all times of the temporary construction easement, an excess liability (umbrella) policy in an amount of two million dollars (\$2,000,000.00). All insurance policies shall name the Trust as an additional insured as respects all coverage. Coverage shall be on a per occurrence basis and in accordance with the limits and provision specified herein. If at any time, during the contemporary construction easement, such coverage is cancelled or materially altered, all work on the Trust Parking Property shall cease until such time as the insurance coverage is restored to the satisfaction of the Trust. The City shall further require any contractor performing work on the parking lot reconstruction to carry insurance in the foregoing amounts except that self insured retainage by a contractor shall not be permitted. Upon completion of the reconstruction work, the City shall maintain general liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence in an excess liability (umbrella) policy in an amount not less than two million dollars (\$2,000,000.00) to provide coverage for any acts or omissions by the City associated with the permanent landscape maintenance easement. The Trust shall be named co-insured on any of these policies which shall be maintained throughout the effective period of the permanent landscape maintenance easement.

12. Neither the Trust nor the City intends that there be any third-party beneficiaries to this Agreement. By agreeing to the insurance and indemnification provision set forth in this Agreement, the City does not waive any common law or statutory privileges and immunities associated with injuries which may occur within the Trust's Parking Property.

13. The City shall use all reasonable and diligent efforts to complete the parking lot reconstruction before October 30, 2005. The City shall however, shall not be responsible for any delays resulting from force majeure, strikes, war, terrorism or acts of God.

14. The landscape maintenance easement granted herein shall run with the land and inure to the benefit of the parties, their heirs, successors, and assigns.

15. This Agreement may be recorded by the City with the DuPage County Recorder of Deeds at the City's sole expense. All covenants, terms and conditions of this agreement shall survive closing.

16. This Agreement shall be interpreted in accordance with the laws of the State of Illinois.

17. Should any provision of this Agreement be declared invalid by a Court of competent jurisdiction, such invalidity shall not affect the remaining portions of the Agreement.

18. Failure of either party to strictly enforce any provision of this Agreement at any time shall not constitute a release or waiver of that provision or any other provision of the Agreement by the enforcing party, which shall retain all rights as set forth herein for the duration of the Agreement.

19. All notices, demands, request or other communications under this Agreement shall be in writing and shall be deemed to have been properly served if the delivered by hand to the party whose attention it is directed; if sent, postage pre- paid by registered or certified mail, return receipt requested, or if sent by private carrier, guaranteeing next day delivery, addressed as follows or to such other addresses as either party may designate in writing: if to the Trust, LaSalle National Bank, N.A., (insert address) Attention: Trustee; if to the City of Wheaton, City Clerk, 303 Wesley Street, Wheaton, Illinois, 60187, Attention City Manager.

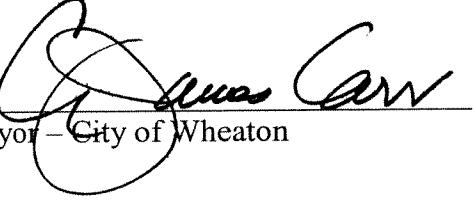
20. This Agreement shall not be assigned without the written consent of each party. Such consent shall not be unreasonably withheld.

In witness whereof, the parties hereunder have set their hands and seals the day and year first written above.

Trustee

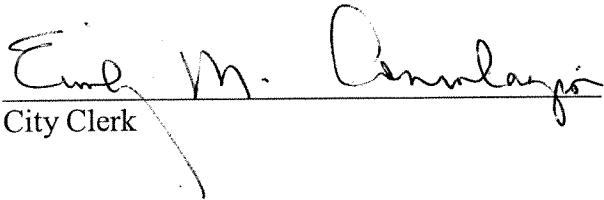
SUBSCRIBED AND SWORN to before
me this _____ day of _____, 2002

NOTARY PUBLIC



Dennis Carr
Mayor - City of Wheaton

Attested:



Emily M. Donnaly
City Clerk