

RESOLUTION R-2018-94

A RESOLUTION APPROVING A FIRST AMENDMENT TO RECAPTURE AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS AND R. LAUTZ CONSTRUCTION, INC.

WHEREAS, the City of Wheaton ("City") and R. Lautz Construction, Inc. ("Developer") entered into a Recapture Agreement dated June 7, 1999 ("Recapture 6-7-99") providing for recapture of public improvement costs from benefiting properties at the time such benefiting properties connect to the public improvements; and

WHEREAS, The Recapture 6-7-99 has a twenty (20) year term and is set to expire on June 7, 2019; and

WHEREAS, the benefiting properties have not yet connected to the public improvements; and

WHEREAS, the underlying purpose and policy supporting Recapture 6-7-99 remains appropriate and rational beyond June 7, 2019 if the benefiting properties have not connected by that date; and

WHEREAS, the City and Developer desire to extend the term of Recapture 6-7-99 for an additional ten (10) years; and

WHEREAS, the City and Developer, in recognition of the time period since the installation of the public improvements, agree that the original recapture expense as set forth in Exhibit A to Recapture 6-7-99 should no longer impose any annual interest charges from June 7, 1999 to date of payment.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to that First Amendment to Recapture Agreement Between the City of Wheaton, Illinois and R. Lautz Construction, Inc. attached hereto and incorporated herein as Exhibit 1.

ADOPTED this 15th day of October 2018.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilwoman Fitch

Councilman Prendiville

Mayor Gresk

Councilman Scalzo

Nays: Councilman Suess
Councilman Barbier
Absent: Councilman Rutledge

Motion Carried

**FIRST AMENDMENT TO RECAPTURE AGREEMENT BETWEEN THE CITY OF WHEATON,
ILLINOIS AND R. LAUTZ CONSTRUCTION, INC.**

This First Amendment to a Recapture Agreement dated June 7, 1999, a copy of which is attached hereto and incorporated herein as fully set forth as Exhibit A, (hereinafter "Recapture 6-7-99"), is entered into as of this 15th day of October 2018 by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 W. Wesley Street, Wheaton, IL 60187, and R. Lautz Construction, Inc. ("Developer"), 25 W 581 Plamondon Road, Wheaton, Illinois 60189.

WHEREAS, the City and Developer entered into the Recapture 6-7-99 providing for recapture of public improvement costs from benefiting properties at the time such benefiting properties connect to the public improvements consistent with Exhibit A; and

WHEREAS, the Recapture 6-7-99 has a twenty (20) year term and is set to expire on June 7, 2019; and

WHEREAS, the benefiting properties have not yet connected to the public improvements; and

WHEREAS, the underlying purpose and policy supporting Recapture 6-7-99 remains appropriate and rational beyond June 7, 2019 if the benefiting properties have not connected by that date; and

WHEREAS, the City and Developer desire to extend the term of the Recapture 6-7-99 for an additional ten (10) years; and

WHEREAS, the City and Developer in recognition of the time period since the installation of the public improvements agree that the original recapture expense as set forth in Exhibit A should no longer impose any annual interest charges from June 7, 1999 to date of payment; and

WHEREAS, the City Clerk has noticed, by first class mail and certified mail, the land owner(s) affected by this First Amendment of the date of the meeting when such First Amendment will be considered by the Corporate Authorities of the City.

NOW, THEREFORE, in consideration of the agreements contained in this instrument and such other sufficient considerations, the parties agree as follows:

1. Paragraph 4, of Recapture 6-7-99 is hereby amended by striking in its entirety and replacing it with a new Paragraph 4 which shall read: "AMENDED RECAPTURE EXPENSE: The Developer has heretofore delivered to the City Engineer, and the City Engineer has approved documentation verifying the Improvements Total Cost. According to the Schedule of Improvements and Benefit Amount to Others/Recapture Expense, Exhibit C of Recapture 6-7-99, the total costs of designing and installing the Improvements are two hundred

twenty-three thousand five hundred twenty-two dollars and twenty-one cents (\$223,522.21). The owner (or owners) of each Benefiting Property shall pay on the Due Date, as defined in Paragraph 5 of Recapture 6-7-99, eighty-five thousand one hundred fifty-eight dollars and eighty-one cents (\$85,158.81) (hereinafter referred to as the "Recapture Expense"), which represents that portion of the Improvements benefiting others, according to said Schedule of Improvements and Benefit Amount to Others/Recapture Expense ("Exhibit C"). All interest imposed by Recapture 6-7-99 is hereby waived and nullified in its entirety and shall not be an obligation of the Benefiting Property."

2. Paragraph 5 of Recapture 6-7-99, "COLLECTION OF RECAPTURE EXPENSE," is hereby amended by striking it in its entirety and replacing it with a new Paragraph 5, which shall read: "AMENDED COLLECTION OF RECAPTURE: At such time as the City grants permission via permit, plat approval or the like, for connection to the Improvements, to the person or entity owning the Benefiting Property, the City shall assess against and collect from the person or entity owning the Benefiting Property, or any portion thereof, the Amended Recapture Expense set forth in Paragraph 4 hereof. At such time as any such owner, or any person acting by, through or on behalf of such owner, seeks direct or indirect connection to any of the Improvements, whichever shall first occur (hereinafter referred to as the "Due Date"), the City shall collect from such owner or agent that amount of the Amended Recapture Expense applicable to such Benefiting Property. No connection permit shall be issued for any Benefiting Property, or any portion thereof, until such Benefiting Property has fully paid its proportionate share of the Amended Recapture Expense as herein provided."
3. Paragraph 9 of Recapture 6-7-99, "TERM," is hereby amended by striking it in its entirety and replacing it with a new Paragraph 9, which shall read: "TERM: This First Amendment to the Recapture Agreement shall be in full force and effect for a period of ten (10) years from the date of September 17, 2018, unless sooner terminated by the agreement of the parties hereto or by the completion of all duties to be performed hereunder. To the extent that the owner or owners of any Benefiting Property fails to apply to directly or indirectly connect such Benefiting Property to the Improvements within the said ten (10) year period, then this Recapture -6-7-99, and each and every duty or undertaking set forth herein, shall become null and void and of no further force and effect as to any such Benefiting Property. The expiration of this Recapture Agreement shall not terminate the right and obligation of recapture provided herein, if, prior to such expiration, the person or entity owning the Benefiting Property has applied for direct or indirect connection to the Improvements. The ten (10) year term may be extended by mutual agreement of the parties."

4. Paragraph 10 of Recapture 6-7-99 "LIEN" is hereby amended by striking it in its entirety and replacing it with a new Paragraph 10 which shall read: "LIEN: The recordation of this First Amendment and Recapture Agreement shall create and constitute a lien against the Benefiting Property, and each Benefiting Property contained therein, in the amount of eighty-five thousand one hundred fifty-eight dollars and eighty-one cents (\$85,158.81) the Recapture Expense provided herein."
5. In all other respects the terms and condition of Recapture 6-7-99 to the extent they are not inconsistent with this amendment are hereby readopted and extended for an additional 10-year term.

CITY:

City of Wheaton

By: 

Mayor

Date: 10/16/18

Attest: 

DEVELOPER:

R. Lautz Construction, Inc.
25 W 581 Plamondon Road
Wheaton, Illinois 60189

By: 

Date: 10/30/2018

Title: President

Attest: 