

RESOLUTION R-73-13

A RESOLUTION AUTHORIZING THE EXECUTION OF
AN AGREEMENT TO ABROGATE COVENANTS,
CONDITIONS AND RESTRICTIONS
(1100 East Roosevelt Road)

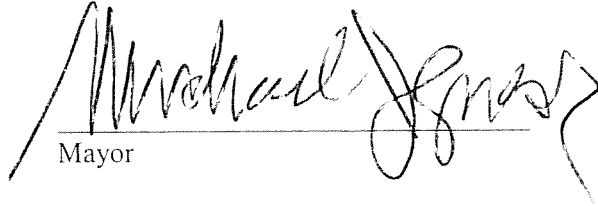
WHEREAS, the owner of the property located at 1100 East Roosevelt Road has requested the City of Wheaton to abrogate certain covenants, conditions, and restrictions on the property created by an agreement between a former owner of the property and the City recorded on August 26, 1964 as document number R64-31463; and

WHEREAS, the restrictions have been satisfied or no longer apply to the Property; and

WHEREAS, the City has determined that the abrogation of the Restrictions will promote the health, safety and welfare, and be in the best interest of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is authorized to execute an agreement to abrogate covenants, conditions and restrictions between the City of Wheaton and WGE Properties, LLC for the property located at 1100 East Roosevelt Road.

ADOPTED this 7th day of October, 2013.



Mayor



City Clerk

Roll Call Vote

Ayes:	Councilman Suess Councilman Prendiville Councilman Rutledge Councilman Saline Mayor Gresk Councilman Scalzo
Nays:	None
Absent:	Councilwoman Pacino Sanguinetti

Motion Carried Unanimously

**This Document Prepared By and
Return to:**

George M. Bradshaw
Huck Bouma P.C.
1755 S. Naperville Road, Ste. 200
Wheaton, IL 60189

**AGREEMENT TO ABROGATE
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Agreement is made and entered into by and between the City of Wheaton, Illinois, an Illinois municipal corporation (the "City"), and WGE Properties, LLC, an Illinois limited liability company (the "Owner") as of this 7th day of October, 2013:

WITNESSETH:

WHEREAS, Owner holds fee simple title to the real estate located within the municipal limits of the City commonly known as 1100 Roosevelt Road, Wheaton, Illinois (the "Property") and legally described as follows:

PARCEL 1: LOTS 1, 2, 3, 4, 5, 6, 7 AND 8 (EXCEPT THE NORTH 10 FEET OF SAID LOTS) AND LOTS 15, 16, 17, 18, 19, 20, 21 AND 22 IN BLOCK 2 IN WHEATON ESTATES, BEING A SUBDIVISION IN THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 7, 1924 AS DOCUMENT 177383, IN DUPAGE COUNTY, ILLINOIS; AND

PARCEL 2: LOTS 10 AND 11 (EXCEPT THE NORTH 12 FEET OF SAID LOTS) IN BLOCK 1 IN WHEATON ESTATES, BEING A SUBDIVISION IN THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 7, 1924 AS DOCUMENT 177383, IN DUPAGE COUNTY, ILLINOIS.

and;

WHEREAS, Parcel 1 above is subject to certain covenants, conditions and restrictions created in Articles of Agreement between the former owners of Parcel 1, as defined therein, and the City, recorded on August 26, 1964 as document number R64-31463 (the "Restrictions"); and

WHEREAS, the Restrictions all have been satisfied or no longer apply to the Property;
and

WHEREAS, Owner has requested that the City abrogate the Restrictions; and

WHEREAS, the City has determined that the abrogation of the Restrictions will promote the health, safety and welfare, and be in the best interest of the City and its residents.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree and covenant as follows:

1. **Release of Restrictions.** The City does hereby release and abrogate to the Owner any right, title and interest whatsoever that the City may have in the Restrictions as defined herein and acknowledges that the Restrictions are hereby deemed by the City to be null and void and shall be hereafter held for naught.

2. **General Provisions.**

- a. **Necessary Ordinances and Resolutions.** The City shall pass all ordinances and resolutions as are necessary to implement the terms and intent of this Agreement, provided that said actions or not contrary to law. Nothing in this agreement shall be interpreted to waive or compromise the City's lawful zoning authority or police powers.
- b. **Recording.** This Agreement shall be recorded at the Office of Recorder of Deeds for DuPage County, Illinois, at the Owner's expense.
- c. **Recitals.** The Recitals set forth at the beginning of this Agreement are incorporated herein by this reference and shall constitute substantive provisions of this Agreement.
- d. **Enforcement.** This Agreement shall be enforceable in the courts of DuPage County, Illinois and shall be governed by the laws of the State of Illinois.
- e. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors in interest and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF WHEATON,
an Illinois municipal corporation

By: _____

Its: Mayor

WGE PROPERTIES, LLC,
an Illinois limited liability company

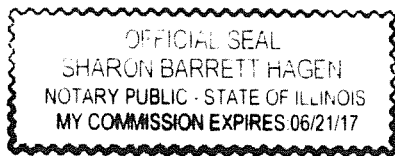
By: _____

Its: Manager

STATE OF ILLINOIS)
COUNTY OF DuPAGE) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael DiGresk as the Mayor of the City of Wheaton, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor, he signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 7th day of October, 2013.

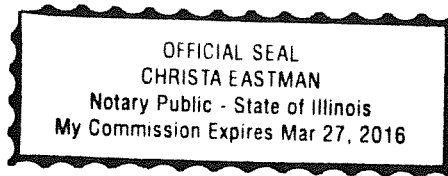


Sharon Barrett Hagen
Notary Public

STATE OF ILLINOIS)
COUNTY OF DuPAGE) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ as the Manager of WGE Properties, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he signed and delivered the said instrument, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 11 day of October, 2013.



Christa Eastman
Notary Public

AN ORDINANCE AMENDING THE WHEATON ZONING
ORDINANCE (PROPERTY LOCATED AT SOUTHEAST
CORNER OF ROOSEVELT ROAD AND PRESIDENT
STREET)

WHEREAS, the property hereinafter described is adjacent to, or in close proximity to Roosevelt Road, and

WHEREAS, the City is conscious of the increasing traffic hazards on Roosevelt Road, and is desirous of controlling and reducing the number of commercial driveways opening onto Roosevelt Road, in order to develop the commercial area in question without increasing said traffic hazards, and

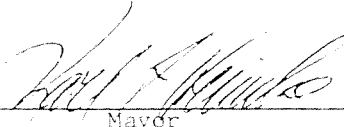
WHEREAS, in furtherance of the above objectives, the City has heretofore entered into an Agreement with the owners of said property, regarding ingress to and egress from said property and other facets of traffic control, which Agreement is a covenant running with the land in question and binding upon the owners, their heirs, executors, administrators and assigns and all subsequent purchasers or lessees of said property.

NOW, THEREFORE, be it ordained by the City Council of the City of Wheaton, Illinois:

Section 1. The zoning map incorporated by reference in and made a part of the Zoning Ordinance contained in Chapter 31 of the Code of the City of Wheaton, Illinois, 1955, is hereby amended by excluding from Apartment District and including in Community Business District the following parcels of land, to-wit:

Block 2 excepting Lots 12, 13 and 14 in Wheaton Estates, a subdivision in Section 22, Township 39 North, Range 10, East of the Third Principal Meridian, in the City of Wheaton, County of DuPage, State of Illinois.

Section 2. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.



Mayor

Passed and filed for record in my office this 8th day of September, 1964.


Acting City Clerk

ARTICLES OF AGREEMENT

Articles of Agreement, made this 18th day of May, 1964,
between Gary Wheaton Bank, not personally, but as Trustee under
Trust No. 445, ~~Gary Wheaton Bank, not personally, but as Trustee~~
~~under Trust No. 154,~~ Chicago Title and Trust Company, not per-
sonally, but as Trustee under Trust No. 4462, Wheaton National
Bank, not personally, but as Trustee under Trust No. 885, DOMINICK
DI VITO and MARIE DI VITO, his wife, as joint tenants, and HARRY
RIBBY, parties of the first part, hereinafter called "Owner",
and City of Wheaton, Illinois, a municipal corporation, part
of the second part, hereinafter called the "City".

WITNESSETH: Whereas the owner has pending an application
for rezoning the following described property from Apartment
District to Community Business:

Block 22, excepting Lots 12, 13, 14 in Wheaton 1st Street
a subdivision in Section 22, Township 39 North, Range 11
East of the Third Principal Meridian, in the City of
Wheaton, County of DuPage, State of Illinois, and

WHEREAS, said property is located within the City of Wheaton,
County of DuPage, State of Illinois; and is therefore subject to
the jurisdiction of an appropriate governmental agency of said
City; and

WHEREAS, the City is conscious of the increasing traffic
hazard on Roosevelt Road, and is desirous of controlling and
reducing the number of commercial drives by opening only Roosevelt
Road, in order to develop the commercial area in question without
increasing said traffic hazards; and

WHEREAS, the City is desirous of rezoning said property from
the present Apartment District to Community Business and shall

NS-1-31403

USE NO. _____
FILED FOR RECORD IN OFFICE OF
CLERK OF COUNTY OF DUPAGE, ILLINOIS

AUG 26 '64 - 7 50PM

Paul J. ...
RECORDS

adopt the necessary ordinance for said rezoning subject to and in express consideration of the terms and conditions contained hereinafter:

NOW, THEREFORE,

A) It is hereby covenanted and agreed by the party of the first part that any and all vehicular traffic existing from said property onto Roosevelt Road shall be permitted to turn in an easterly direction only.

B) That prior to beginning any construction on said property, a building site plan shall accompany the request for a building permit to be issued by the city, which site plan shall have located thereon all parking areas; driveways and buildings for the tract in question. The location of all parking areas and driveways shall be subject to City Council approval.

C) That the dedicated and unimproved portion of TAFT AVENUE, between President Street and Williston Street shall be improved at owner's cost and expense and owner agrees that prior to issuance of any building permit covering any portion of the property in question, it will deposit in escrow with the City of Wheaton,

1. such sum of money as determined by the estimate of the City Engineer to be necessary to cover the cost of improving Taft Avenue, or
2. such sum as is agreed upon pursuant to a contract for said improvement between owner and a paying contractor, it being understood that any contract for the improvement of Taft Avenue must comply with the applicable local ordinances and state statutes governing said improvement and must be submitted to the City Engineer for approval.

D) In the event that the City's Engineering Department is of the opinion that the building site plan as finally submitted necessitates the addition of another east bound traffic lane on

the south side of Roosevelt Road, fronting the property in question, and the right of way, as it presently exists, is insufficient in width for construction of the same, the Owner hereby agrees to dedicate the north six (6) feet of Lots 1 through 11 in Block 2, for construction of said additional traffic lane.

E) In the event that the City's Engineering Department is of the opinion that the final site plan, as submitted, necessitates the addition of another north bound traffic lane on President Street, south of Roosevelt Road, and the right of way as presently located and dedicated is insufficient for construction of the same, the Owner hereby agrees to dedicate, the west five (5) feet Lot 11 in Block 2 for construction of said additional traffic lane.

F) That in the event the property in question, or any portion thereof, is sold or leased by the Owner, such easements as are necessary to provide access to a street or road other than Roosevelt Road shall be incorporated into the deed of sale or lease, as the case may be, the purpose being to assure the City that each parcel or tract of land shall have access for ingress and egress to a street other than the heavily travelled Roosevelt Road.

G) That all existing building line restrictions and other ordinances of the City regulating construction of buildings within the corporate limits thereof shall be strictly complied with by the Owner unless specifically waived or altered by the proper corporate authorities.

IT IS MUTUALLY AGREED by and between the parties hereto, that the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties and upon all subsequent purchasers or lessees of the property in question.

IN WITNESS WHEREOF the parties hereunto set their hands and seals to this agreement the day and year first above written.

OWNERS:

GARY-WHEATON BANK, not personally, but as Trustee under Trust No. 445

BY: *Ralph Weiss*
President

~~GARY-WHEATON BANK, not personally, but as Trustee under Trust No. 445~~

BY: _____

CHICAGO TITLE AND TRUST COMPANY, not personally, but as Trustee under Trust No. 4462

BY: *Frank H. ...*
ASST. VICE PRESIDENT

WHEATON NATIONAL BANK, not personally, but as Trustee under Trust No. 445

BY: *...*

Dominick Di Vito
DOMINICK DI VITO

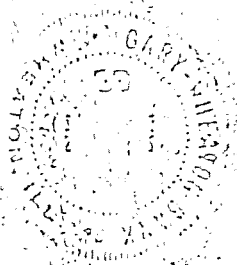
Marie Di Vito
MARIE DI VITO

Harry Kuhn
HARRY KUHN

CITY OF WHEATON, a Municipal Corporation

BY: *...*
Mayor

ATTEST: *...*
City Clerk, City of Wheaton



ATTEST: *...*
ASST. SECRETAR



See explanation rider attached

IN WITNESS WHEREOF the parties hereunto set their hands and seals to this agreement the day and year first above written.

OWNERS:

GARY-WHEATON BANK, not personally, but as Trustee under Trust No. 445

BY: Ralph Lewis Executive

~~GARY-WHEATON BANK, not personally, but as Trustee under Trust No. 445~~

BY:

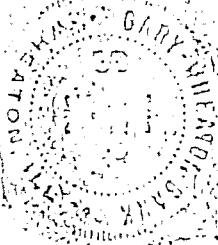
CHICAGO TITLE AND TRUST COMPANY, not personally, but as Trustee under Trust No. 4462

BY: Richard A. Mc...

WHEATON NATIONAL BANK, not personally, but as Trustee under Trust No. 445

BY: J. E. Wheaton Pres.

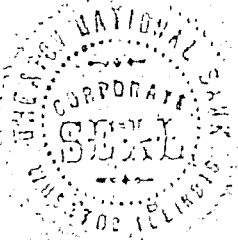
Annals White



ATTEST

[Signature]
ASST. SECRETARY

See expiration rider attached



It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Chicago Title and Trust Company or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

FORM 11

ATTEST: [Signature]
City Clerk, City of Wheaton