

ORDINANCE F- 1139

**AN ORDINANCE APPROVING A LAND EXCHANGE AGREEMENT
BETWEEN THE CITY OF WHEATON AND WHEATON DRAMA, INC.**

WHEREAS, Wheaton Drama, Inc. (hereinafter “WDI”) and the City of Wheaton (hereinafter “City”) have negotiated a Land Exchange Agreement (hereinafter “Agreement”) for properties in and around the Wheaton Drama, Incorporated property at 111 N. Hale Street, Wheaton, Illinois; and

WHEREAS, the exchanged parcels are legally described in the Land Exchange Agreement incorporated herein. For further reference the City parcel shall be referred to as the City Parcel and the Wheaton Drama, Inc. parcel is referred to as the WDI Parcel.

WHEREAS, the City has the authority to exchange land in conformance with its home rule authority when such an exchange is for governmental purposes; and

WHEREAS, the property exchange will permit the City to proceed and complete a parking lot reconstruction and appurtenant improvements adjacent to 111 N. Hale Street, Wheaton, Illinois, in such manner and fashion as is consistent with the City’s governmental authority and which is in the best interest of the public health, safety and welfare; and

WHEREAS, the Land Exchange Agreement between WDI and the City will further permit for proper planning and the redevelopment of the exchanged parcels.

NOW THEREFORE, be it Ordained by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that:

SECTION 1: The Corporate Authorities of the City of Wheaton hereby authorize the exchange of the City parcel for the WDI parcel in conformance with all of the terms and conditions of the Land Exchange Agreement.

SECTION 2: The Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to that certain Land Exchange Agreement between the Wheaton Drama, Inc., and the City of Wheaton, Illinois, for the exchange of property attached hereto and incorporated herein as if fully set forth, (containing twelve (12) pages including exhibits is attached hereto and is fully set forth as Exhibit 1).

SECTION 3: The Mayor is further authorized to sign and the City Clerk to attest to any and all documents necessary to complete the City’s, undertakings and covenants under the terms of the Agreement.

SECTION 4: The Corporate Authorities of the City of Wheaton further hereby accept the “Easement Grant” incorporated into the Agreement as Exhibit C.

SECTION 5: The City Attorney is hereby authorized and directed to prepare any and all documents and perform any and all other acts necessary to effectuate the “Agreement”.

SECTION 6: All Ordinances and parts of Ordinances in conflict with or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such conflict or inconsistency.

SECTION 7: That if any part of part or portion of this Ordinance is declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance.

SECTION 8: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and City Council.

AYES: Councilman Bolds; Councilwoman Corry; Mayor Carr; Councilman Levine; and Councilman Mouhelis.

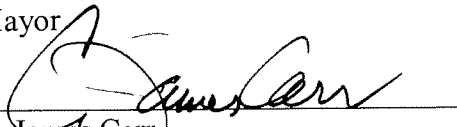
NAYS: None.

ABSENT: Councilman Johnson and Councilman Suess.

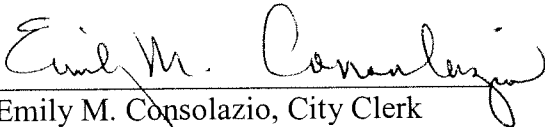
PASS AND APPROVED THIS 21st DAY OF February, 2006.

PUBLISHED THIS 22nd DAY OF February, 2006.

Mayor


C. James Carr,
City of Wheaton

ATTEST:


Emily M. Consolazio, City Clerk
City of Wheaton

**WHEATON DRAMA, INC. AND CITY OF WHEATON, ILLINOIS
AGREEMENT TO EXCHANGE PROPERTY**

This Agreement to Exchange Property and Vacation of Dedication (the "Agreement") is made and entered into as of the 17th day of February, 2006, and is by and between Wheaton Drama, Inc., an Illinois not-for-profit corporation ("WDI") and the City of Wheaton, a municipal corporation (the "City").

RECITALS:

A. WDI is the owner of a certain parcel of property (the "WDI Property") commonly known as 111 N. Hale St., Wheaton, Illinois, the legal description of which is on Exhibit "A" attached hereto and made a part hereof;

B. A graphic description of the WDI Property and its various distinctive features are depicted on the survey entitled "Sketch Plan Showing Proposed Parking Area East of Playhouse 111" and dated September 10, 2005 (the "WDI Site Survey") attached hereto and marked as Exhibit "B" for identification;

C. For purposes of this Agreement there are four distinct areas ("Site Areas") of the WDI Property: namely, (i) the theater building (the "WDI Building"); (ii) the front entrance way facing Hale Street; (iii) a parcel of vacant property (the "City Parcel") with approximate dimensions of 6' by 166.86' situated on the North side of the WDI Building between the West boundary of the WDI Property to the East, and identified as Parcel "A" on the WDI Site Survey; and, (iv) a parcel of unimproved property (the "WDI Parcel") comprising the Western fourteen (14) feet of the Eastern eighteen (18) by 61.36 Feet of the WDI Property depicted as Parcel "B" on the WDI Site Survey;

D. Although WDI holds title to the WDI Parcel, it is subject to the rights of the City under the terms of an easement and dedication ("Public Grant") previously conveyed to the City for a public right-of-way for ingress and egress by the general public over and upon the WDI Parcel and adjacent property;

E. WDI has requested that the City to vacate a portion of the Public Grants and re-convey its interests in the WDI Parcel to WDI in exchange for the conveyance of the City Parcel to the City;

F. As the result of the construction of an addition (the "WDI Addition") to the WDI Building, the North wall of the WDI Building is immediately adjacent to the South boundary of the City Parcel;

G. In conjunction with the construction of the WDI Addition, WDI installed outlets on the North Wall to permit the installation of light fixtures (the "City Light Fixtures") on the North Wall of the WDI Building to provide illumination of the City Parcel;

H. The City Light Fixtures have previously been connected to the WDI Building electrical service, but the City has agreed to reimburse WDI for such service costs to date and

to connect its electrical service to the City Light Fixtures at its cost and expense in substitution for the existing WDI service;

I. The City is in the process of the reconstruction (the "Parking Lot Reconstruction") of the general parking area (the "East Parking Area") which is immediately adjacent to and East of the WDI Property;

J. As part of the Parking Lot Reconstruction the City will construct or designate areas for enclosures ("Refuse Enclosures") for the storage of refuse containers on the WDI Property;

K In conjunction with the Parking Lot Reconstruction the City has agreed, at its expense, to remove the current curb to the rear of the WDI Building, install paving and new curbing in the manner depicted on the Sketch dated 11-3-05, attached hereto and incorporated herein as if fully set forth as exhibit D, for the "parking spaces" and for the "proposed dumpster pad" and a sidewalk east and adjacent to the WDI Building (the "City Improvements");

I. In consideration of the exchange of parcels as contemplated by this Agreement the City has agreed to provide City Improvements without cost to WDI;

M. WDI, in consideration of the exchange of the parcels as contemplated by this Agreement, has agreed to allow a recessed Refuse Enclosure (the "WDI Enclosure") on the Eastern portion of the WDI Building, if and when WDI constructs an expansion of the WDI Building onto the WDI Parcel; and,

N. WDI and the City have entered into this Agreement to memorialize the terms and conditions of their Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Incorporation of Recitals

1.1 The foregoing Recital Paragraphs A-N inclusive, shall be and are incorporated herein to express the intent of the parties and as substantive provisions of this Agreement.

2. Execution and Delivery of Conveyance Documents

2.1 At a time mutually agreeable to the parties, but not later than February 17, 2006, the parties shall conduct a closing ("Closing") at the offices of the city attorneys, Walsh, Knippen, Knight & Pollack, 601 W. Liberty Drive, Wheaton, IL 60187. The Closing shall be conducted without the benefit of an escrow to the exchange of documents as provided herein.

2.2 At the Closing WDI shall deliver the following documents:

2.2.1 A Special Warranty Deed conveying title to Parcel A to the City;

2.2.2 A Partial Release of Mortgage executed by Community Bank/Wheaton-Glen Ellyn, releasing its mortgage lien on the title to the City Parcel;

2.2.3 A fully completed P-TAX -203 Form, completed to reflect the terms of the conveyance of title to the City;

2.2.4 A certified resolution of the Board of Directors of WDI, authorizing the conveyance;

2.2.5 A Certificate of Incumbency of WDI;

2.2.6 A Certificate of Good Standing for WDI; and,

2.2.7 An exemption certificate from the City of Wheaton exempting the conveyance from the application of the City of Wheaton Transfer Tax;

2.2.8 A grant of easement to the City in the form attached hereto as Exhibit "C" conveying the City the right to maintain up to three (3) dumpsters on the WDI Parcel, limited to surface rights only and further limited as to source and content of refuse to be placed in those dumpsters; and,

2.2.9 Such other documents as shall be reasonably requested by the City to complete the Closing.

2.3 At the Closing, the City shall deliver the following:

2.3.1 A Special Warranty, or Quit Claim, Deed conveying title and all of the City's interests in the WDI Parcel to WDI;

2.3.2 A certified copy of an ordinance or ordinances enacted by the City Council authorizing the conveyance of title to the WDI Parcel to WDI and the vacation of the Public Grant and whatever additional documentation may be required to memorialize said vacation on the public record;

2.3.3 A fully completed P-TAX -203 Form, completed to reflect the terms of the conveyance of title of the WDI Parcel;

2.3.4 An exemption certificate from the City of Wheaton exempting the conveyance from the application of the City of Wheaton Transfer Tax;

2.3.5 Such other documents as shall be reasonably required by legal counsel for WDI to implement the terms and conditions of this Agreement; and,

2.4 City shall bear the expense of recording of all documents to be recorded to implement the terms of this Agreement.

3. Title Insurance

3.1 WDI shall not be required to provide a commitment for title insurance for the City Parcel, however if the City elects to secure title insurance, WDI shall provide such documentation as may be reasonably required to comply with the conditions of the title insurer for the issuance of a title insurance policy issued for the benefit of the City.

3.2 WDI represents and warrants to the City that it holds title to the WDI Parcel free and clear of all liens except for: real estate taxes for the year 2005 and subsequent years; the lien of a mortgage to Community Bank-Wheaton Glen Ellyn; and rights of the public in and to certain portions of thereof.

3.3 It is understood and agreed that the following exception shall be deemed as "Permitted Exceptions" to the Commitment for Title Insurance:

3.3.1 General real estate taxes for the year 2005 and subsequent years; WDI shall however remain liable for the payment of any taxes on the City Parcel to the date of the Closing.

3.3.2 Special assessments levied and confirmed after the date of this Agreement;

3.3.3 Building, building line and use and occupancy restrictions, conditions and covenants of record;

3.3.4 Zoning laws and ordinances; and,

3.3.5 Easements for public utilities and, drainage, feeders, pipes, laterals, drain tiles and other conduits.

3.4 In the event that the Commitment for Title Insurance procured by the City discloses any exceptions other than permitted exceptions, the City shall notify WDI of that fact and WDI shall thereafter have a period of time of not less than sixty (60) days within which to either secure the waiver of any non-permitted exceptions or to procure the endorsement thereof by the title insurer.

3.5 It is understood and agreed that if either party elects to procure a Commitment for Title Insurance in conjunction with this transaction, the procuring party shall bear the cost of the title insurance except with respect to any specific endorsements which may be required by the title insurer to conform title to the terms of this Agreement.

4. WDI to Participate in Plat of Resubdivision

4.1 The City may re-subdivide the property encompassed within the East Parking Area as well as the City Parcel through the development of a Plat of Consolidation and Re-Subdivision (the "Re-Subdivision Plat") at some time in the future. If requested by the City, WDI agrees to permit the incorporation of its property in to the Re-Subdivision Plat provided that all expenses related to the development of the instrument are borne by the City. The City shall cause the plat of resubdivision to depict the easements vacated as a result of this Agreement.

5. Construction of Improvements to the WDI Parcel

5.1 The City agrees at, it's expense, to install certain improvements (the "City Improvements") to the WDI Parcel substantially in accordance with the manner as depicted on Exhibit D.

5.2 The City agrees to permit WDI to utilize the WDI Parcel for parking in the manner as depicted on Exhibit D. Subject to the prior approval of the City, WDI shall be permitted to affix

a sign to the side of its building identifying the parking spaces on the WDI Parcel as private for the exclusive use of WDI.

6. License to Maintain Light Fixtures/Reimbursement for Electrical Service

6.1 WDI hereby grants to the City a license (the "Fixture License") to maintain the City Light Fixtures on the North Wall of the WDI Building for an indefinite period of time.

6.2 The City shall be solely responsible for the maintenance and operation (including electrical usage charges) of the City Light Fixtures. Additionally, upon provision by WDI of substantiation of past electrical service charges for the operation of the City Light Fixtures, the City will reimburse WDI for those charges. Upon reasonable notice to the City, WDI agrees to permit the City access to the interior of its premises should it be required for the maintenance of the City Light Fixtures.

6.3 The Fixture License shall be terminable at any time by the City, in which case the City will cap the electrical outlets and install brick work substantially identical to existing brick work. It may be terminated by WDI, or any successor in interest, if the WDI building is demolished.

7. Notices

7.1 All notices and communications to be given hereunder shall be in writing and may be delivered by: (i) personal receipted delivery; (ii) recognized overnight private mail service; (iii) or by United States Postal Service certified mail, return receipt requested. A notice shall be deemed to have been served when actually received if served by personal delivery or overnight private mail service, or on the third business day following posting if served by certified mail.

7.2 All notices to be given hereunder shall be addressed to the parties as follows:

If to the City:	The City of Wheaton 303 West Wesley St. Wheaton, Illinois 60187 Attention: City Manager
With copy to:	James H. Knippen, II, Esq. Walsh, Knippen & Knight Chartered 601 West Liberty Drive Wheaton, Illinois 60187
If to WDI:	Wheaton Drama, Inc. 111 North Hale Street Wheaton, Illinois 60187 Attention: President
With copy to:	John P. Martin, Esq. Huck Bouma P.C. 1755 South Naperville Road, #200 Wheaton, Illinois 60187

7.3 Any party may change an address to which notice is to be given through service of a notice in conformity with the provisions of this Section Seven.

8. Miscellaneous Provisions

8.1 Time is of the Essence. Time is of the essence of this Agreement.

8.2 Applicable Law. This Agreement shall be construed in accordance with and under the provisions of the laws of the State of Illinois.

8.3 Execution in Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but the sum and substance of which shall be one agreement.

8.4 Binding Upon Heirs and Assigns. This Agreement shall be binding upon and inured to the benefit of each of the party's respective heirs, successors, executors and permitted assigns.

8.5 Illinois Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

8.6 Severability. In the event that any part of this Agreement is declared to be invalid, the offending portion of the Agreement shall be stricken and the Agreement shall remain in full force and effect as if the offending portion had not been included in the Agreement.

8.7 Headings. The headings in this Agreement are for convenience and reference only and shall not be used in conjunction with its interpretation.

8.8 Recordation. This Agreement may be recorded by the City at its expense at any time before or after the Closing.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple counterparts, on the day and date first above written.

WHEATON DRAMA, INC.

By: _____
President

CITY OF WHEATON, a municipal corporation

By: [Signature]
Mayor

Attest: [Signature]
City Clerk

**EXHIBIT A
TO
WHEATON DRAMA INC./CITY OF WHEATON
AGREEMENT TO EXCHANGE PROPERTY**

The following is a legal description of the entire parcel of property owned by Wheaton Drama, Inc.:

Parcel 1:

LOT 9 (EXCEPT THE EAST 33 FEET THEREOF and EXCEPT THE NORTH 5 FEET THEREOF and EXCEPT THAT PART THEREOF DESCRIBED AS BEGINNING AT A POINT IN THE WEST LINE OF LOT 9, 13.2 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE EASTERLY 73.15 FEET TO A POINT 12 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT, 12 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING) IN BLOCK 7 IN THE PLAT OF THE TOWN OF THE CITY, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS.

Parcel 2:

THAT PART OF LOT 9 DESCRIBED BY BEGINNING AT A POINT IN THE WEST LINE OF SAID LOT 9, 13.2 FEET NORTH OF THE SOUTHWEST CORNER and RUNNING THENCE EASTERLY 73.15 FEET TO A PONT 12.0 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33.0 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT 9, 12.0 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART THEREOF LYING WEST OF THE EAST LINE, EXTENDED NORTH, OF LOT 10), ALL IN BLOCK 7 IN THE PLAT OF THE TOWN OF THE CITY, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINAICPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DUPAGE COUNTY, ILLINOIS.

**EXHIBIT B
TO
WHEATON DRAMA INC./CITY OF WHEATON
AGREEMENT TO EXCHANGE PROPERTY**

Copy of the WDI Site Survey is attached.

SKETCH PLAN SHOWING PROPOSED PARKING AREA EAST OF PLAYHOUSE 111

F-1139

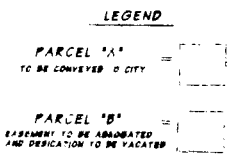
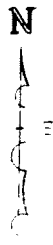
PARCEL "A" (TO BE CONVEYED TO THE CITY OF WHEATON)

THE NORTH 6.0 FEET OF THE FOLLOWING DESCRIBED PROPERTY:
 LOT 9 (EXCEPT THE EAST 33 FEET THEREOF AND EXCEPT THE NORTH 5 FEET THEREOF AND EXCEPT THAT PART THEREOF DESCRIBED AS BEGINNING AT A POINT IN THE WEST LINE OF LOT 9, 13.2 FEET NORTH OF THE SOUTH WEST CORNER THEREOF; THENCE EASTERLY 73.15 FEET TO A POINT 12 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT, 12 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING) IN BLOCK 7 OF THE PLAT OF THE TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.

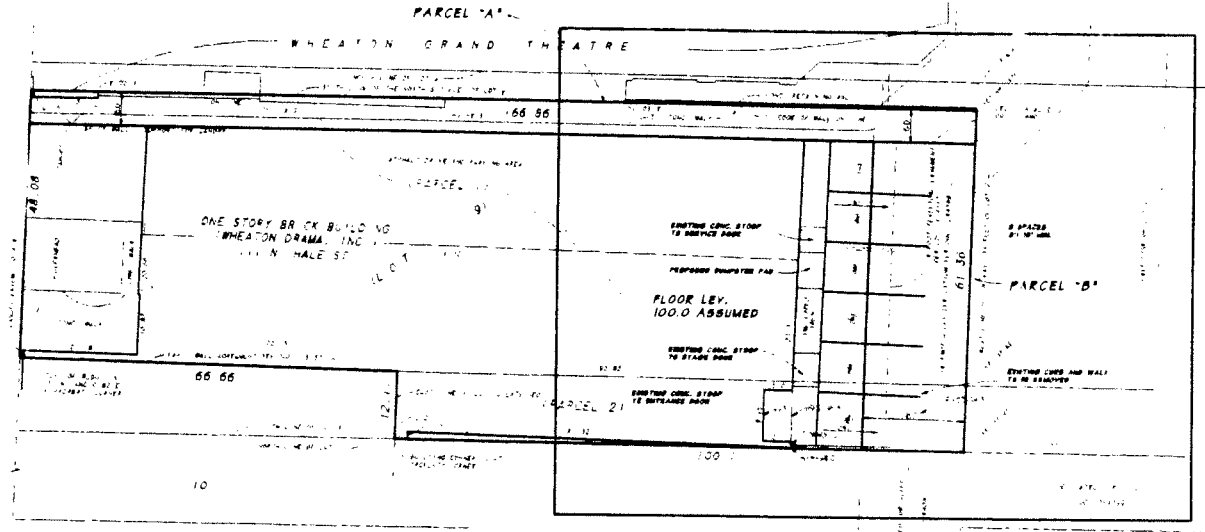
PARCEL "B" (EASEMENTS TO BE ABROGATED AND DEDICATIONS TO BE VACATED BY THE CITY OF WHEATON)

THE EAST 18.0 FEET, EXCEPT THE NORTH 6.0 FEET, OF THE FOLLOWING DESCRIBED PROPERTY:
 LOT 9 (EXCEPT THE EAST 33 FEET THEREOF AND EXCEPT THE NORTH 5 FEET THEREOF AND EXCEPT THAT PART THEREOF DESCRIBED AS BEGINNING AT A POINT IN THE WEST LINE OF LOT 9, 13.2 FEET NORTH OF THE SOUTH WEST CORNER THEREOF; THENCE EASTERLY 73.15 FEET TO A POINT 12 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT, 12 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING) IN BLOCK 7 OF THE PLAT OF THE TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.

AND ALSO THE EAST 18.0 FEET OF THE FOLLOWING DESCRIBED PROPERTY:
 THAT PART OF LOT 9 DESCRIBED BY BEGINNING AT A POINT IN THE WEST LINE OF SAID LOT 9, 13.2 FEET NORTH OF THE SOUTHWEST CORNER AND RUNNING THENCE EASTERLY 73.15 FEET TO A POINT 12.0 FEET NORTH OF THE SOUTH LINE OF SAID LOT 9; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 9, 93.82 FEET TO A POINT 33.0 FEET WEST OF THE EAST LINE OF SAID LOT 9; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOT 9, 12.0 FEET; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 166.97 FEET TO THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 13.2 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART THEREOF LYING WEST OF THE EAST LINE, EXTENDED NORTH, OF LOT 10), ALL IN BLOCK 7 IN THE PLAT OF THE TOWN OF WHEATON, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 20, 1853 AS DOCUMENT 7256, IN DU PAGE COUNTY, ILLINOIS.



HALE STREET



Steinbrecher Land Surveyors, Inc.
 1000 N. W. 10th St., Suite 100
 Ft. Lauderdale, Florida 33309
 Phone: (305) 463-1111
 Fax: (305) 463-1112

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:
John P. Martin
Huck Bouma PC
1755 South Naperville Road, Suite 200
Wheaton, Illinois 60187
(630) 221-1755 Fax (630) 221-1756

PROPERTY ADDRESS:

PERMANENT INDEX NUMBER(S):

EASEMENT GRANT

This EASEMENT GRANT is made between WHEATON DRAMA, INC, an Illinois not for profit corporation ("Grantor@"), and The CITY OF WHEATON, an Illinois municipal corporation ("Grantee@").

RECITALS

A. Grantor is the owner of a tract of land described as follows and hereafter referred to as "Parcel 1" (the "Wheaton Drama Parcel").

B. Grantee is the owner of a tract of land described as follows and hereafter referred to as "Parcel 2" (the "City Parking Lot").

C. Grantor wishes to grant and Grantee wishes to receive an easement over and upon Parcel 1 described as follows (the "Easement Premises@").

D. Parcel 1 is presently improved with a building used for theatrical performances and Parcel 2 is improved with a municipal parking lot and driveway.

NOW, THEREFORE, in consideration of ten and no/100 dollars (\$10.00), the above Recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, and covenants and restrictions are made:

1. GRANT OF EASEMENT. Grantor hereby grants to Grantee, its successors and assigns, an easement for placement and maintenance of trash dumpsters upon the Easement Premises.

2. USE OF EASEMENT PREMISES. The following restrictions apply to Grantee's use of the Easement Premises:

a. The installation or maintenance by Grantee of pipes, conduits, or wires, under, upon or over the easement premises is forbidden.

b. The total number of dumpsters on the Easement Premises shall not exceed three.

c. Grantor shall be initially entitled to exclusive use of one (1) of the dumpsters and, upon thirty (30) days written notice, the right to exclusive use of two (2) of the dumpsters.

d. No food, general restaurant waste or waste from the Wheaton Theater building shall be permitted in the dumpsters.

3. **RESERVED RIGHTS.** Grantor reserves the right to make the following uses of the Easement Premises:

a. The right to erect a building over, or a basement or vault under, the Easement Premises, provided, in the event of such erection, that construction and use of the improvement shall be conducted in a manner not unreasonably interfering with Grantee=s use of the Easement Premises.

b. The right to relocate the Easement Premises upon some other portion of Parcel 1.

4. **USE OF PARCELS 1 and 2.** As long as this easement grant remains in effect, Parcel 2 shall not be used for other than parking purposes.

5. **PARKING.** Both parties covenant that vehicles shall not be parked on the easement premises.

6. **PAVING OF EASEMENT.** Grantee covenants to promptly improve the easement premises with a concrete surface suitable for use by commercial garbage trucks and will at all times maintain same in good repair.

7. **WARRANTIES OF TITLE.** Grantor warrants that it has good and indefeasible fee simple title to the easement premises.

8. **RUNNING OF BENEFITS AND BURDENS.** All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the assigns, successors, tenants and personal representatives of the parties hereto.

9. **TERMINATION OF COVENANT LIABILITY.** Whenever a transfer of ownership of either parcel takes place, liability of the transferor for breach of covenant occurring thereafter automatically terminates.

10. **ATTORNEY=S FEES.** Either party may enforce this instrument through appropriate legal action and, should he prevail in such litigation, shall recover as part of his costs, a reasonable attorney=s fee.

11. CONSTRUCTION. The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on the grantee is carried out.

12. NOTICE. Grantor=s address is 111 North Hale, Wheaton, Illinois 60187; and grantee=s address is 303 West Wesley, Wheaton, Illinois 60187. Either party may lodge written notice of change of address with the other. All notices shall be sent by U.S. mail to the addresses provided for in this paragraph and shall be deemed given when placed in the mail. The affidavit of the person depositing the notice in the U.S. Post Office receptacle shall be evidence of such mailing.

13. RELEASE OF EASEMENT. The grantee herein may terminate this instrument by recording a release in recordable form with directions for delivery of same to grantor at his last address given pursuant hereto whereupon all rights, duties and liabilities hereby created shall terminate. For convenience such instrument may run to the owner or owners and parties interested@ in Parcel 1.

14. INDEMNITY. City hereby agrees to indemnify and hold WDI harmless from any loss occasioned by WDI as a result of the activities conducted upon the easement premises, either by the City or any third party, including any litigation costs.

IN WITNESS WHEREOF, the grantor and the grantee have hereunto set their hands and seals this ____ day of _____ A.D., 2005.

GRANTOR:
WHEATON DRAMA, INC, an Illinois not-for-profit corporation

By: _____
Title: _____

GRANTEE:
CITY OF WHEATON, an Illinois municipal corporation

By: _____
Title: _____

ATTEST:

Title: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ as _____ of Wheaton Drama, Inc., an Illinois not-for-profit corporation personally known to me to be the same person

whose name is subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and severally acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of Wheaton Drama, Inc., for the uses and purposes therein set forth.

Given under my hand and notarial seal, this ____ day of _____, 20__.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF _____) **SS.**

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ personally known to me to be the _____ of the City of Wheaton, an Illinois municipal corporation and _____ personally known to me to be the _____ of said corporation, 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 _____ and _____, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this ____ day of _____, 20__.

Notary Public

ARCCEL "A"

EATON GRAND THEATRE

NORTH LINE OF LOT 9
- SOUTH LINE OF THE NORTH 5.0 FEET OF LOT 9

166.86

ASPHALT DRIVE AND PARKING AREA

(PARCEL 1)

(BUILDING
A, INC.)
E ST.

116.02

12.11

EAST LINE OF LOT 10 EXTENDED
BUILDING CORNER IS AT
PROPERTY CORNER

(PARCEL 2)

67.53

100.1

FLOOR LEV. 45'
100.0 ASSUMED

EXISTING CONC. STUOP
TO SERVICE DOOR

EXISTING CONC. STUOP
TO STAGE DOOR

PROPOSED BRACKET PAD

0.03 5'

CONC. RETAINING WALL
5' EDGE OF WALL ON LINE

CONC. RETAINING WALL

EXISTING CONC. STUOP
TO SERVICE DOOR

SIDEWALK

2'±

14 FOOT PERPETUAL EASEMENT
PER DOC. 174117

14 FOOT ALLEY DEDICATION PER DOC. 284398

61.36

DEDICATED OR ALLEY

DOC. 284408

9.15
3.8
5.0
99.5
99.8/98.8

B/W-98.0
2.9

33.0

EXISTING CURB AND WALK
TO BE REMOVED

PARCEL "B"

9 SPACES
BY 10' WALK

DEC. FOR ALLEY
DOC. 28440

SET RR SPIK.

10" INCH PIPE

EAST LINE OF LOT 9

N.T.S.

11.03.05

EXHIBIT D

DEDICATED FOR ALLEY
DOC. 284399

