

100-O-04

AN ORDINANCE

**Authorizing Interim City Manager
to Execute the Fourth Amendment to the
Redevelopment Agreement with Sherman Plaza Venture, LLC**

WHEREAS, pursuant to the terms of a First Amended Redevelopment Plan entitled "Washington National Tax Increment Redevelopment Plan and Redevelopment Project" which was adopted of November 22, 1999, as ordinance 129-O-99 (hereinafter referred to as the "Redevelopment Plan"), the City designated a certain area within its municipal limits for redevelopment and revitalization with the development of a new public parking garage, a pedestrian oriented multi-use, multi-building retail and residential use.

WHEREAS, on November 22, 1999, Ordinance No. 130-O-99 designating the Amended Washington National Redevelopment Project Area was adopted. The Subject Property is within said Area.

WHEREAS, on November 22, 1999, Ordinance No. 131-O-99 confirming tax increment financing ("TIF") pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74 4-2 et seq.) (hereinafter referred to as the "Act") was adopted.

WHEREAS, the corporate authorities of the City, after due and careful consideration, have concluded that the development of the Subject Property as provided in Exhibit A and in the Redevelopment Plan will further the growth of the City, facilitate the redevelopment of the Redevelopment Area, improve the environment of

the City, increase the assessed valuation of the real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, enable the City to control the development of the Subject Property and otherwise be in the best interests of the City.

WHEREAS, the development pursuant to said Redevelopment Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of the City, and the health, safety and welfare of its residents and taxpayers.

WHEREAS, the Economic Development Committee held meetings to review and discuss said proposal; take testimony from the community; review information from City consultants; and the Redevelopment Agreement; and

WHEREAS, the Economic Development Committee recommended and City Council approved the Redevelopment Agreement on July 10, 2001; and

WHEREAS, the City Council approved the First Amendment to the Redevelopment Agreement on October 22, 2001 by Ordinance 105-O-01; and

WHEREAS, the City Council approved the Second Amendment to the Redevelopment Agreement on October 28, 2002 by Ordinance 99-O-02; and

WHEREAS, the City Council approved the Third Amendment to the Redevelopment Agreement on June 14, 2004 by Ordinance 61-O-04; and

WHEREAS, the Economic Development Committee and City Council has recommended further modifications to the Redevelopment Project,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the Interim City Manager is hereby authorized and directed to sign and the City Clerk, hereby authorized and directed to attest on behalf of the City of Evanston, the Fourth Amendment to the Redevelopment Agreement with the Sherman Plaza Venture, LLC, for the Downtown Development, attached hereto as Exhibit A.

SECTION 2: That the Interim City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the Fourth Amendment to the Redevelopment Agreement for Sherman Plaza as may be determined are in the best interest of the City.

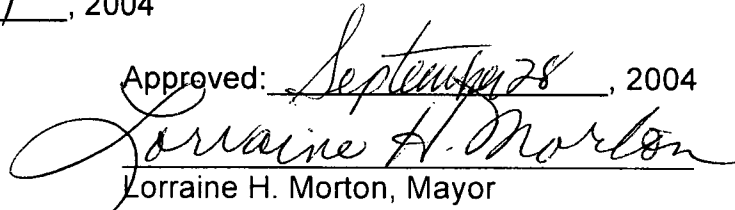
SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

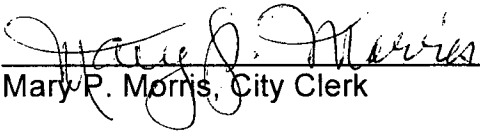
Introduced: Sept 27, 2004

Adopted: Sept 27, 2004

Approved: September 28, 2004

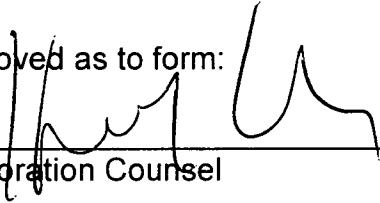

Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Approved as to form:



Corporation Counsel



Interdepartmental Memorandum

To: Mayor Morton & Aldermen
From: Judith Aiello, Interim City Manager
Herbert Hill, City Attorney
Martin Stern, U.S. Equities
Subject: Fourth Amendment to Sherman Plaza Redevelopment Agreement
Date: September 22, 2004

Attached for information is the Fourth Amendment to Redevelopment Agreement for Sherman Plaza. The Fourth Amendment makes certain modifications to the provisions of the Redevelopment Agreement in order to allow for the development to move forward at this time. Staff and Mr. Stern will be present on Monday evening but the following is a brief summary of some of the modifications, which are being recommended:

1. The requirement to pave the Interim Lot is deferred until 30 days after asphalt is available in 2005 but no later than April 30, 2005. However, this obligation is released if the Swap Closing has occurred in January.
2. If the Swap Closing has not occurred the City can terminate the Redevelopment Agreement or the City may purchase the Davis Parcel (portion of site on Davis Street, which would allow City to move forward and build a garage) or the City could purchase the whole site and terminate the relationship with the developer. The Developer could also purchase the Sherman Site (the Trade).
3. If there is no development, the City can lease the Developer's Property for \$1.00 and use it for parking until the property is sold or a building permit is issued. All the property will have paved at the Developer's expense.
4. If the City chooses to purchase the Developer's Land the price is the total cost of the land and carrying expenses until June 14, 2004 divided by the sq ft of the developer land multiplied by the sq ft of the option property.
5. If the project does not go forward, the Developer is allowed to market the site but they must market the parcel with the understanding that the City has no obligation to approve any project for all or part of the site. If the Develop does market the site
6. In order to move this project forward as soon as possible, this amendment requires that only caisson permits be submitted for all buildings but that the City has received a substantially complete set of construction drawings for the Garage.
7. This amendment allows for the participation in the project of Lincoln National Life Insurance Company.

8. The Developer will pay for trolleys and/or marketing during the holiday season or the City may offset our obligation to the Developer for work done to date.
9. If the project does not go forward, the City can terminate the Public Improvements Construction Agreement, which would mean that the Developer would no longer be the Construction Manager for the Garage and would not receive a fee from the City to develop the Garage. At that point the City could decide to build the Garage on our own or seek another developer to serve as Construction Manager.
10. We have modified the square footage to match the current plans.

Staff will also address issues raised by the City Council on Monday evening.

FOURTH AMENDMENT TO REDEVELOPMENT AGREEMENT

This Fourth Amendment to Redevelopment Agreement (this "Amendment") is made and entered into as of this ___ day of September, 2004, by and between the City of Evanston, Illinois, a home rule unit of local government located in Cook County, Illinois (the "City"), and Sherman Plaza Venture, L.L.C., an Illinois limited liability company (the "Developer").

RECITALS

A. The City and Developer have entered into that certain Redevelopment Agreement dated July 9, 2001 as amended by that certain First Amendment to Redevelopment Agreement dated as of October 22, 2001, that certain Second Amendment to Redevelopment Agreement dated as of October 28, 2002 and that certain Third Amendment to Redevelopment Agreement dated as of June 14, 2004 (the "Redevelopment Agreement") pursuant to the First Amended Redevelopment Plan entitled "Washington National Tax Increment Redevelopment Plan and Redevelopment Project" which was adopted on November 22, 1999.

B. By Ordinance 145-0-99 on October 10, 2000, the City granted a special use to Developer for a Planned Development for the Subject Property. The City extended the special use permit for the Planned Development in accordance with Ordinance 88-0-02 on September 23, 2002 and further modified and extended the special use permit for the Planned Development in accordance with Ordinance 66-O-04 on June 14, 2004 (the Planned Development as so approved, modified and extended shall be referred to as the "Planned Development"). In accordance with section 6-11-1-10 (A)(4) of the Evanston Zoning Ordinance, the Planned Development will no longer be valid on June 14, 2005, unless a building permit is issued and construction begins prior to June 14, 2005.

C. The City and Developer desire to amend the terms and provisions of the Redevelopment Agreement to make certain modifications and amendments and to extend the term of the Planned Development thereto in accordance with the terms and provisions of this Amendment.

AGREEMENTS

NOW THEREFORE, in consideration of the premises set forth above, and the mutual agreements hereinafter set forth below, it is hereby agreed by and between the parties hereto as follows:

1. All non-grammatical capitalized terms as used herein shall have the meaning ascribed to them in the Redevelopment Agreement unless otherwise specifically defined herein.

The representations set forth in the foregoing recitals are material to this Amendment and are hereby incorporated into and made a part of this Amendment as though they were fully set forth in this Section 1.

2. The City hereby agrees to defer Developer's obligation, in accordance with Paragraph 3 of the Redevelopment Agreement (see Section 4 of Third Amendment to Redevelopment Agreement), to install, not later than October 15, 2004, a temporary asphalt surface on the Interim Lot. Developer's obligation is deferred until thirty days after asphalt is available for purchase and delivery in 2005, but in any event not later than April 30, 2005. Developer's obligation with respect to the Interim Lot shall be released if the Swap Closing shall occur on or before January 15, 2005. In consideration of the City's Agreement to defer Developer's obligation to install the temporary asphalt lot, Developer agrees to reimburse the City for all costs and expenses incurred by the City in the operation of a trolley system in downtown Evanston during the 2004/5 and 2005/6 holiday seasons (generally from Thanksgiving through New Years' Day). Developer agrees that in the event Developer shall fail

to satisfy Developer's obligation with respect to the Interim Lot or reimburse the City for the trolley system expenses, the City may offset the cost and expense incurred by the City with respect to such matters against amounts owed by the City to Developer under the Public Improvements Construction Agreement.

3. Upon the earlier of (a) the date the temporary asphalt surface shall be installed on the Interim Lot and (b) April 30, 2005, and provided that the Swap Closing shall not have occurred, the City may lease from Developer (the "Interim Lease") the Developer-owned real property that is located on the Interim Lot (the "Leased Land") for a total annual rent of \$1.00 on such other reasonable terms and conditions as the parties shall mutually agree (including but not limited to the obligation of the City to add Developer as an additional insured on the City's liability insurance policy) for use by the City for interim surface public parking. In the event during the term of the Interim Lease title to the Davis Parcel, will be conveyed by Developer to the City or title to the Sherman Parcel will be conveyed by the City to Developer, the description of the Leased Land shall be modified to reflect the real property then owned by Developer on the Interim Lot. Unless sooner terminated by the City, the Interim Lease will expire on the earlier to occur of (x) the Swap Closing or (y) the date of issuance of a permit by the City for construction of new improvements on substantially all of the Leased Land.

4. After January 15, 2005, unless the Swap Closing has occurred, (a) the City may exercise the City Option (in accordance with Section 42(c)(ii) of the Redevelopment Agreement) without terminating the Redevelopment Agreement and (b) the City Option shall continue in full force and effect notwithstanding Developer's election to terminate the Redevelopment Agreement, provided that the City Option shall expire, if not sooner exercised, thirty (30) days after Developer's delivery to the City of a copy of a fully executed bona fide contract for the sale

of all of the Development Property, however, the City Option shall be reinstated if the proposed sale shall not close within two hundred and seventy (270) days after the date of the Sales Contract.

5. If, at any time during which the City option shall be in effect, the City shall elect to exercise the City Option to purchase only the Davis Parcel, then:

a. Whether or not the Redevelopment Agreement has been terminated, Developer shall have the option, exercisable for thirty (30) days after notice from the City exercising the City Option to acquire fee title to the Davis Parcel to acquire fee title to the Sherman Parcel from the City by trading the Sherman Parcel for the Davis Parcel (the "Trade"). If Developer shall exercise its right to effect the Trade, the closing of the conveyance of the Sherman Parcel and the Davis Parcel shall occur simultaneously and within sixty (60) days of the Developer's notice.

b. Notwithstanding anything in Section 42(c)(ii) to the contrary, the City shall have the option to purchase the remaining real property owned by the Developer at the Subject Property which real property shall include the Sherman Parcel if Developer shall cause the Trade to occur (such real property being referred to as the "Option Property"). The price to be paid by the City for the Option Property shall equal the total acquisition cost and carrying expense of the property owned by Developer at the Subject Property as of the date of this Amendment. The "cost" of such property shall equal the purchase price or acquisition cost for such property including any tenant relocation expenses incurred by Developer. The "carrying expense" shall equal all real estate taxes paid by Developer for such property and all interest paid by Developer on any loans related to Developer's acquisition of such property (whether or not such loans are secured

by a mortgage or other security interest on such property); provided, however, that the carrying expense shall be calculated through June 14, 2004. The City shall exercise such option by written notice to Developer and the City may only exercise such option as to all of the Option Property. The City Option to purchase the Option Property shall expire, if not sooner exercised, thirty (30) days after Developer's delivery to the City of a copy of a fully executed bona fide contract for the sale of all of the Option Property. The City's option with respect to the Option Property shall be reinstated if the proposed sale shall not close within two hundred and seventy (270) days after the date of the sales contract.

6. Notwithstanding anything in Section 42(c)(ii) to the contrary and subject to the rights of the City under Section 5(b) of this Amendment, Developer's election to terminate the Redevelopment Agreement shall not trigger the City Option. After January 15, 2005, if the Swap Closing shall not have occurred and the City shall not have exercised the City Option, and Developer has not satisfied the Swap Conditions, Developer shall have the right to market Developer's property for sale. Developer and the City acknowledge that the preferred configuration of the Subject Property is as planned in accordance with the Redevelopment Agreement for a mixed-use retail, residential and parking development as demonstrated by the Planned Development with the City owning the Davis Parcel and Developer owning the Sherman Parcel. Therefore, Developer shall have the right to market its property under the assumption that the Developer's property will include the Sherman Parcel. If the Developer shall proceed in that manner, Developer shall have the right to cause the City to complete the Trade provided the following conditions are met (the "Trade Conditions"):

a. Developer shall notify the City in writing that Developer has commenced negotiations with a third-party purchaser ("Purchaser") who intends to develop a new

project on the Subject Property, under the assumption that the Trade shall occur and the Sherman Parcel will be included in Purchaser's project. Developer agrees to meet with the City and the Purchaser with respect to the proposed new project as soon as practicable.

b. Developer executes a bona fide contract for the sale of some or all of Developer's land at the Subject Property which contract shall assume that the Trade shall occur immediately prior to the closing of the conveyance contemplated by such contract and the Sherman Parcel shall be included with the property being sold by Developer.

c. Purchaser applies for all necessary zoning approvals to permit its proposed project.

d. The City Council approves, in its sole discretion, Purchaser's proposed project (this condition shall not be met if Purchaser or Developer obtain a court order overturning the City Council's decision to not approve Purchaser's proposed project). Developer and the City agree that it is within the Council's discretion to not approve the proposed project if it does not include all of Developer's land.

In the event the foregoing conditions are met, the City and Developer shall complete the Trade contemporaneous with the closing of the sale of Developer's other property to Purchaser. The City's obligation to complete the Trade shall be conditioned upon the closing of the sale to Purchaser. If requested by Developer, the City will complete the Trade by delivering a deed conveying the Sherman Parcel directly to Purchaser. The closing of the Trade shall occur through an escrow at the title company handling the closing of the sale of the other property to Purchaser in order to satisfy the

conditions set forth herein. Title and survey procedures as set forth in the Redevelopment Agreement with respect to the Swap shall be applicable to the Trade.

If Developer requests in writing that the City confirm to Developer and Purchaser that this Amendment is in full force and effect, the City shall respond to Developer's request in writing not later than thirty (30) days after Developer's written request.

7. After January 15, 2004, unless the Swap Closing has occurred, if the Redevelopment Agreement is terminated by either the City or Developer, the City shall have the right to terminate the Public Improvements Construction Agreement (the "PIC Agreement") and remove Developer as the City's development manager under the PIC Agreement. Upon termination of the PIC Agreement by the City, the City shall pay Developer for all costs and expenses that are payable to Developer under the PIC Agreement up to and including the date of termination of the PIC Agreement. However, in such event, the City shall have no obligation to pay Developer any of Developer's Development Fee notwithstanding that Developer may have earned such Development Fee.

8. The City agrees and acknowledges that Developer shall have the same rights to collaterally assign Developer's economic interest under the PIC Agreement for financing purposes as Developer has to collaterally assign Developer's interest under the Redevelopment Agreement pursuant to Paragraph 24 of the Redevelopment Agreement.

9. Developer has modified the plans for the Retail Project by removing the basement originally proposed for the building. As a result, the total square footage of the Retail Project has been reduced. In consideration of such reduction the following amendments are made to the Redevelopment Agreement:

a. The number "146,000" in Paragraph 4(a) of the Redevelopment Agreement is deleted and the number "142,000" is substituted in lieu thereof.

b. The number "75,000" in Paragraph 4(b)(i) of the Redevelopment Agreement is deleted and the number "71,000" is substituted in lieu thereof.

10. Paragraph 8(c)(ii) of the Redevelopment Agreement is hereby deleted in its entirety and the following is hereby substituted therefor:

"Developer has submitted to the City a complete submission for caisson permits for all of the buildings of the Development."

11. Paragraph 8(c)(vii) of the Redevelopment Agreement is hereby deleted in its entirety and the following is hereby substituted therefor:

"Developer has delivered to the City a substantially complete set of construction drawings for the New Garage."

12. In accordance with Paragraph 31 of the Redevelopment Agreement and notwithstanding anything in the Redevelopment Agreement to the contrary, the City approves the transfer and conveyance of fee title to condominium units to condominium buyers and the transfer and conveyance of the Retail Project to The Lincoln National Life Insurance Company, an Indiana corporation ("Lincoln"), pursuant to that certain term letter by and between Developer and Lincoln dated July 6, 2004.

13. Except as specifically amended herein, all of the terms, covenants, conditions and stipulations contained in the Redevelopment Agreement are ratified and confirmed in all respects and shall continue to apply with full force and effect.

14. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws of the State of Illinois.

15. This Amendment shall be binding upon and inure to the benefit of, the parties hereto and their respective successors and assigns as permitted under the Redevelopment Agreement.

16. This Amendment may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

17. Neither this Amendment, nor any term or provision hereof, may be changed, waived, discharged or terminated orally, but only by an instrument in writing, signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed and delivered as of the date first above written.

SIGNATURE PAGE FOLLOWS

DEVELOPER:

Sherman Plaza Venture, L.L.C., an
Illinois limited liability company

By: SPV, Inc., its manager

By: _____
Name: _____
Its: _____

CITY OF EVANSTON:

By: *Judith Helto*
City Manager

ATTEST

CITY CLERK

Mary J. Morris

CHI 4182638.3