

DEVELOPMENT AGREEMENT BETWEEN
THE VILLAGE OF WILMETTE AND
BANK ONE ILLINOIS, N.A.

WHEREAS, Bank One Illinois, N.A., ^{an Illinois} an Illinois banking corporation (hereinafter referred to as "the Bank") is the owner of certain real property located within the Village of Wilmette, Cook County, Illinois, commonly known as 1200 Central Avenue, and legally described as:

Lots 19, 20, 21, 22, 23, 24, 25, and 26, inclusive, in Westerfield's Resubdivision of part of Block 27 of the Village of Wilmette, in Township 42 North, Range 13, East of the Third Principal Meridian, as recorded May 17, 1878, in Cook County, Illinois;

and identified by the Assessor of Cook County, Illinois by the following Permanent Index Numbers:

- 05-34-103-0001
- 05-34-103-0002
- 05-34-103-0003
- 05-34-103-0004
- 05-34-103-0005
- 05-34-103-0008

(hereinafter referred to as "the Bank Property"), which is currently improved with a three-story building and other improvements appurtenant thereto; and,

WHEREAS, the Village of Wilmette, Cook County, Illinois (hereinafter referred to as "the Village") is an Illinois home rule municipal corporation which holds possession through statutory dedication of a certain tract of public right-of-way, legally described as follows:

Beginning at a point eighteen (18) feet, six (6) inches West of the Northeast corner of Lot 19 of Westerfield's Resubdivision of part of Block 27 of Village of Wilmette, recorded May 17, 1878 (Document No. 180959) in the Northwest one-quarter (1/4) of Section 34, Township 42 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois; Thence one-hundred and twenty (120) feet Westward along the North boundary of Lots 19, 20 and 21 of said Westerfield's Resubdivision; Thence North sixteen (16) feet; Thence Eastward one hundred and twenty (120) feet along a line parallel to and sixteen (16) feet North of the North boundary of said Lots 19, 20 and 21; Thence South sixteen (16) feet to the Point of the Beginning; the entire

TK dl

*37.50
25.00
57.50*

or

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described parcel lying in the Southerly portion of the dedicated right-of-way of Washington Avenue, immediately West of 12th Street, all within the limits of the Village of Wilmette, Illinois, and comprising approximately one thousand, nine hundred and twenty (1920) square feet, more or less;

(hereinafter referred to as "the Village right-of-way"), which is currently improved with surface motor vehicle parking and landscaping; and,

WHEREAS, the Village right-of-way and the Bank Property are contiguous and abut; and,

WHEREAS, the Village right-of-way was previously subject to a leasehold granted the Bank on or about June 1, 1977, and expiring June 1, 1997; and,

WHEREAS, the Village, based on its consideration of the decision of the Illinois Supreme Court in the case entitled, *American Telephone & Telegraph Co. v. Village of Arlington Heights*, 156 Ill.2d 399, 620 N.E.2d 1040, 189 Ill.Dec. 723 (1993), has determined that extension of the Bank's leasehold on the Village right-of-way or execution of a new lease for the Village right-of-way is not in the public interest; and,

WHEREAS, pursuant to the provisions of the Wilmette Zoning Ordinance and Zoning Map, both the Bank Property and the Village right-of-way are situated in the Village Center (VC) Commercial Zoning District; and,

WHEREAS, the Village has determined that the Village right-of-way is no longer needed to be held by dedication to the Village as a public right-of-way, and that the public interest will be served by its permanent vacation and closing in the manner provided at law, subject to certain restrictions on its future use as agreed between the Village and the Bank without which the Village would not consent to vacation of the Village right-of-way, and subject to the Bank paying to the Village an agreed amount of compensation for the fair market value of the Village right-of-way; and,

WHEREAS, the Bank desires that the Village vacate the Village right-of-way so that the Bank may enjoy the benefits of the addition of the Village right-of-way to the Bank Property, and in pursuance and consideration thereof, voluntarily intends to agree to the terms and conditions of said vacation as provided herein; and,

WHEREAS, it is the desire of both the Bank and the Village to enter into an Development Agreement to accomplish the purposes aforesaid; and,

NOW, THEREFORE, THE BANK AND THE VILLAGE HEREBY ENTER INTO THE FOLLOWING DEVELOPMENT AGREEMENT:

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Section 1: Incorporation of Recitals.

The foregoing recitals, and each of them, are hereby incorporated by reference and made a part of this Agreement as if set forth verbatim herein.

Section 2: Vacation of Village Right-of-Way; Procedure for Same.

The Village shall arrange to have such public hearings as are required by law to consider a request by the Bank for the vacation of the Village right-of-way. After such public hearings, the Village shall arrange to have introduced in the manner provided at law and under the Village Board's rules of procedure an Ordinance granting the vacation in the manner and form required under the Village Code and Section 11-91-1 of the Illinois Municipal Code, as amended by Public Act 90-179. Said Ordinance shall then be considered for adoption at the next regular meeting of the Village Board, in the ordinary course of the Village Board's business. Said Ordinance must receive the favorable votes of no less than three-fourths (¾) of the corporate authorities then holding office in order to be considered adopted.

The Bank shall be solely responsible for the costs incurred in providing such public notice and personal notice of public hearings as may be required by law or ordinance of the Village as may be required for consideration of the proposed vacation of the Village right-of-way, for the cost of any survey required for the Village right-of-way, and for the cost of preparation and recordation of the Plat of Vacation and this Agreement.

Section 3: Limitations and Conditions of Vacation, and Ordinance Granting Same.

The vacation of the Village right-of-way contemplated in this Agreement and any ordinance adopted by the Village Board of Trustees in furtherance thereof is subject to the following limitations, which are voluntarily agreed to by the Bank in consideration of said vacation, and without which the Village would not agree to vacate the Village right-of-way:

- (a) The ownership and use of the Village right-of-way is subject and shall continue in perpetuity to be subject to existing public utility easements and the future exercise of these easement rights by the Village and public utilities as they shall appear from existing easement agreements.
- (b) The ownership and use of the Village right-of-way, on and after its vacation, shall be limited and restricted, now and in perpetuity, to the use, enjoyment and maintenance of the improvements to the Village right-of-way existing on the date of execution of this Agreement. No redevelopment of the Village right-of-way, nor any change, other than repair, maintenance or needed replacement with

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substantially similar type of the existing improvements to the Village right-of-way of any sort, including but not limited to any construction of new improvements or structures of any sort, or any change in the finished grade of the Village right-of-way, shall be permitted without the express written consent of the Village. Said consent shall be granted or denied only in the sole, exclusive and unlimited discretion of the corporate authorities of the Village, and shall be expressed only a by Resolution adopted by the affirmative votes of a majority of all the corporate authorities then holding office, or by the adoption of an ordinance providing for the approval of a Planned Unit Development on the Bank Property, in the manner provided in the Village Zoning Ordinance.

- (c) The Bank shall pay to the Village, as compensation for the fair market value of the Village right-of-way to be vacated, **FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00)**, and the vacation of the Village right-of-way shall not become effective until said compensation is received by the Village.
- (d) Both the Ordinance approving the vacation of the Village right-of-way and the Plat of Vacation approved pursuant thereto shall recite each of the foregoing conditions and limitations.

Section 4: No Representations as to Future Approvals.

Nothing herein shall be deemed to relieve the Bank of any other obligation, duty, or limitation on the subdivision, use and development of the Village right-of-way subsequent to its vacation, which may be provided for in the Village Code and the Zoning Ordinance, or to relieve the Bank of any obligation to seek any other required approval from any other public body of the Village as may be otherwise required by law. Nothing herein shall be deemed to compel or require any members of the Village Board of Trustees or any member of any board or commission of the Village, to vote in any particular manner on any item of public business which may come before any of them.

Section 5: Effect of Failure to Take Legislative Action.

The Bank acknowledges and agrees that the actions of the Village Board of Trustees contemplated in this Agreement are discretionary and legislative, and cannot be compelled by contract. Each of the parties understands and agrees that, in the event that the Village Board should fail to pass or adopt the ordinance contemplated in Section 2 of this Agreement, then the effect thereof shall be that the Agreement is rendered void and of no further effect. The failure to pass or adopt said ordinance shall not give rise to any claim against the Village of Wilmette, its officers, agents, employees or public officials arising from the failure to take said legislative action

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Section 6: Miscellaneous.

- (a) Upon approval and passage of the ordinance granting the vacation of the Village right-of-way and the approval of the Plat of Vacation for same, the Bank shall be obligated, at its expense, to cause the recordation of the Plat of Vacation, and the recordation of this Agreement under the Permanent Index numbers of each parcel comprising the Bank Property as described in the recitals to this Agreement, and each of them, with the Office of the Recorder of Deeds of Cook County, Illinois.
- (b) This Agreement, and any documents that may be executed under Section 6(d), contains the entire agreement between the parties, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, administrators, personal representatives, heirs, successors, and assigns of each.
- (c) This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws. Terms contained herein shall not be construed against a party merely because that party is or was the principal drafter.
- (d) Both the Village and the Bank agree to cooperate fully and to execute any and all supplementary documents and to take such additional administrative actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

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ENTERED INTO THIS 24th DAY OF September, 1997.

ILLINOIS
BANK ONE CHICAGO, N.A.

VILLAGE OF WILMETTE, ILLINOIS

BY: Larry Remodell
(Title) Senior Officer

BY: [Signature]
Village President

ATTEST: [Signature]
(Title) Deputy Notary Public

ATTEST: [Signature]
Village Clerk

Subscribed and sworn before me
19th day of Sept, 1997.

Subscribed and sworn before me this
25 day of Sept, 1997.

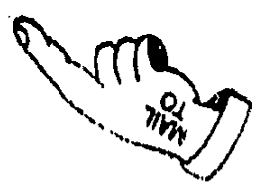
Cheryl McKnight
Notary Public

[Signature]
Notary Public

My Commission Expires May 21, 2000
1125 17th St.
Denver, CO 80202

OFFICIAL SEAL
BEVERLY A. DENBERG
Notary Public, State of Illinois
My Commission Expires 6-12-2000

Timothy J. Ferraro, Corporation Counsel
Village of Wilmette
1700 Wilmette Ave.
Wilmette, IL 60091



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