

8-R-00

**A RESOLUTION**

**Authorizing the City Manager to Execute Third  
Amendment to the Redevelopment Agreement with  
AHC Evanston, LLC, an Illinois LLC, for the Downtown Development**

WHEREAS, the City of Evanston has determined that the southern portion of the Research Park should be redeveloped with commercial activities; and

WHEREAS, the Northwestern University Evanston Research Park Board issued Requests For Proposals for the redevelopment of the southern portion of the Research Park; and

WHEREAS, said Requests For Proposals set forth a desired development project to include a multi-screen cinema, a hotel, retail, commercial and a senior center; and

WHEREAS, AHC Evanston, LLC, an Illinois LLC, was designated as the developer pursuant to 96-R-97 and 16-R-98; and

WHEREAS, pursuant to Resolution 68-R-98 the City entered into a Redevelopment Agreement with AHC Evanston, LLC, an Illinois LLC, for the Research Park; and

WHEREAS, pursuant to 75-R-98 a First Amendment was made to the Redevelopment Agreement; and

WHEREAS, pursuant to 30-R-99 a Second Amendment was made to the Redevelopment Agreement; and

WHEREAS, it is necessary and in the best interest of the City that certain Third Amendment be made to the Redevelopment Agreement,

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

**SECTION 1:** That the 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, certain Third Amendment to the Redevelopment Agreement with AHC Evanston, LLC, an Illinois LLC, for the Downtown Development, attached hereto as Exhibit A.

**SECTION 2:** That the City Manager is hereby authorized and directed to negotiate any additional conditions of the Redevelopment Agreement as may be determined to be in the best interests of the City.

**SECTION 3:** That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner required by law.

Adopted: January 24, 2000

Lorraine A. Norton  
Mayor

ATTEST:  
Mary J. Morris  
City Clerk

**THIRD AMENDMENT  
TO  
REDEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT is made and entered into as of the \_\_\_\_\_ day of January, 2000, by and between the CITY OF EVANSTON, ILLINOIS, a home rule unit of local government located in Cook County, Illinois (the "City") and AHC EVANSTON, LLC ("Developer").

**RECITALS**

A. The City and Developer have entered into that certain Redevelopment Agreement dated October 23, 1998, as amended by that certain First Amendment to Redevelopment Agreement, dated November 23, 1998 and that certain Second Amendment to Redevelopment, dated June 7, 1999 (collectively, as amended hereby, the "Agreement"). All initially capitalized terms used and not otherwise defined herein shall have the meanings respectively ascribed to them in the Agreement.

B. Developer has entered into a certain Sales Contract dated May 27, 1999 (as amended from time to time, the "Sales Contract") with WINN Limited Partnership ("WINN") to sell the Hotel Parcel to a designee of WINN controlled by Regent Hotel Development II, LLC ("Regent") and/or Winston Hotels, Inc. ("Winston"; said designee referred to, together with any other purchaser reasonably acceptable to the City, as "Hotel Purchaser"). (The Hotel Purchaser is anticipated to be named Evanston Hotel Associates, LLC.) The parties wish to modify the Agreement so as to facilitate the purchase of the Hotel Parcel by Hotel Purchaser and for certain other related purposes.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth hereinbelow, it is agreed by and between the parties as follows:

1. In Paragraph 3(a) of the Agreement, clause (i) is hereby modified to state "(i) a hotel containing approximately 179 bays and between 167 and 179 rooms with a minimum of 4,000 square feet of banquet meetings/conference facilities on the Hotel Parcel ("Hotel")".

2. The parties have agreed that the Hotel Purchaser will assume at closing those certain obligations of the Developer relating to the Hotel Parcel described in Paragraph 31 of the Sales Contract, relevant portions of which are attached hereto as Exhibit A and made a part hereof. The City agrees that the assignment and assumption of such obligations at closing of the sale of the Hotel Parcel to Hotel Purchaser shall be effective to transfer said obligations to the Hotel Purchaser, whereupon Developer shall be relieved of such obligations with respect to the Hotel Parcel; provided however that Developer shall not be relieved of any other obligations contained in Agreement.

3. Notwithstanding the restrictions on transfers contained in Paragraph 31 of the Agreement, (i) the Hotel Purchaser may at any time transfer the Hotel Parcel to affiliates of the

Hotel Purchaser and/or affiliates of Winston and/or Regent and (ii) following the Completion of Construction and opening of the Hotel, there shall be no further restrictions on transfer of the Hotel Parcel. The City waives any right to claim that a real estate transfer tax will be due to the City upon the transfer of interest in Hotel Purchaser to Winston or an affiliate of Winston, which transfer is expected to occur at approximately the time of issuance of a certificate of occupancy for the Hotel.

4. A Phase I Environmental Report prepared for Purchaser disclosed the possible presence of petroleum containing materials on or near the Hotel Parcel. In response to the Phase I Environmental Report, Hotel Purchaser conducted a Phase II Environmental Study with respect to the possible presence of petroleum on the Hotel Parcel, the cost of which will be shared in equal proportions by Hotel Purchaser, Developer and the City. The Phase II Environmental Study did not disclose Affected Soil on or near the Hotel Parcel; however, Paragraph 33 of the Redevelopment Agreement sets forth the City’s continuing responsibilities with respect to Affected Soils which may be encountered upon the Developer Property, including, but not limited to the Hotel Parcel. The City remains committed to following these requirements with respect to the Developer Property, including, but not limited to the Hotel Parcel. Hotel Purchaser, the City and, prior to the sale of the Hotel Parcel, the Developer shall work together to satisfy any requirements of the Hotel Purchaser relative to environmental issues arising on the Hotel Parcel, the Garage Parcel, the access road to the Garage Parcel from University Place and other portions of the Subject Property which may effect the Hotel Parcel. Such requirements may, at Hotel Purchaser’s discretion, include application for a no further action letter from the Illinois Environmental Protection Agency.

5. The parking lease with respect to the Hotel Parcel shall be promptly amended pursuant to the amendment attached as Exhibit B hereto and made a part hereof.

6. To protect the Hotel Purchaser against the possibility of non-competitive real estate tax assessments, the City, for the current remaining life of the TIF District (2008), shall rebate to the Hotel Purchaser, its successors and assigns, a portion of the real estate taxes paid by the owner of the Hotel Parcel and collected by the City based on the following schedule and notes:

**PERCENTAGE OF EXCESS REAL ESTATE TAX REBATED**

**Real Estate Taxes Per Room**

**Percentage of Real Estate Taxes to Total Gross Income**

	\$2,850	\$2,950	\$3,050	\$3,150
6.25% or less	None	33%	66%	100%
6.25% to 6.50%	33%	66%	100%	100%

6.50% to 6.75%	66%	100%	100%	100%
6.75% to 7.00% or more	100%	100%	100%	100%

Notes:

The Base Tax year shall be 2001.

The monetary breakpoints for Real Estate Taxes per room contained in the table above shall increase by the Consumer Price Index each year, not to exceed a compounded 3.0% per year.

Actual taxes on the Hotel shall reflect the results of the resolution of any appeal made by owner of the Hotel to the County Assessor or Board of Appeals regarding the level of assessment.

Rebate percentages are cumulative across the divisions in each parameter. For example, if actual taxes assessed after appeal are \$3,100 per room (167 rooms) and gross income is \$8.0 million, the rebate would be as follows.

Percentage of Taxes to Gross Income	6.47%
Rebate of Taxes between \$2,850 and \$2,950 = 33%	\$33.00 per room
Rebate of taxes between \$2,950 and \$3,050 = 66%	\$66.00 per room
Rebate of Taxes between \$3,050 and \$3,150 = 100%	\$50.00 per room
Total Rebate	\$149.00 per room

The owner of the Hotel shall provide the City, with proof of payment of real estate taxes. Rebates shall be made by the City within thirty (30) days, of the City's receipt of the taxes from the Cook County Treasurer. If a rebate is made by the City to the owner of the Hotel, and the City is later required to refund to the State of Illinois any part of the City's share of the revenue generated from the real estate taxes from which that rebate was made, the owner of the Hotel, within thirty (30) days after receipt of a written demand from the City (accompanied by reasonable evidence that the City has made such refund to the State of Illinois), shall promptly refund to the City the percentage of such rebate which is equal to the percentage of said real estate tax revenue actually refunded by the City to the State of Illinois, but only to the extent that the owner of the Hotel has received funds from the State of Illinois with which to make the refund to the City.

7. For the current remaining life of the TIF District (2008), the City shall rebate to the Hotel Owner a portion of the Hotel Occupancy Tax paid by the Hotel or an alternative municipal revenue collected by the City. Such rebate shall equal the amount actually collected by the City from the Hotel at an Hotel Occupancy Tax Rate of 2% or, in the event the City elects to pay such rebate from an alternate source, the rebate paid to the owner of the Hotel shall equal the amount that the City would otherwise have collected from the Hotel at an Hotel Occupancy Tax Rate of 2%; provided, however, the use of such alternative source shall not diminish funds to which the Hotel may otherwise be entitled.

8. Simultaneously with the conveyance of the Hotel Parcel by the City, the City will grant, at no charge, a recordable access easement across the City property immediately west of the Hotel Parcel and a right-of-way encroachment at the front entrance of the Hotel, for purposes of a "Drop-off Lane", as necessary to accommodate patrons of the Hotel and the Hotel's service needs.

9. The City will use good faith efforts with Northwestern University to help obtain access to the University's land west of the Hotel Parcel for use as a staging area during construction through April 1, 2001, and to have Northwestern University construct screening around certain areas of its building to the east of the Hotel Parcel. If Northwestern University is unwilling to permit the use of its land for staging purposes, the City shall provide sufficient area(s) within the rights of way adjacent to the Hotel Parcel for use as a staging area through April 1, 2001.

10. Hotel Purchaser, its successors and assigns, may not sell the Hotel to any entity entitled to a real estate tax exemption unless that entity agrees to maintain the property on the tax rolls and not to seek an exemption.

AHC EVANSTON, LLC

By: AHC Management, Inc., an Illinois corporation manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF EVANSTON

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

STATE OF \_\_\_\_\_ )  
 )SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 1999, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of **CITY OF EVANSTON**, a municipal corporation; and that said instrument was executed on behalf of said \_\_\_\_\_ by authority of its \_\_\_\_\_; and that said \_\_\_\_\_ acknowledged before me said instrument to be the free act and deed of said \_\_\_\_\_.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 )SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 1999, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of **AHC MANAGEMENT, INC.**, the Manager of **AHC Evanston LLC**, a limited liability company; and that said instrument was executed on behalf of said \_\_\_\_\_ by authority of its \_\_\_\_\_; and that said \_\_\_\_\_ acknowledged before me said instrument to be the free act and deed of said \_\_\_\_\_.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public



## Exhibit A

“31. Agreements of Purchaser Relative to Redevelopment Agreement. At closing, Purchaser ... agree[s] to provide the City with certain documents with respect to the Hotel Parcel defined in the Redevelopment Agreement as follows:

(a) A completion guaranty guaranteeing that the Hotel to be constructed on the Hotel Parcel shall be completed within twenty-four (24) months after Closing of the construction loan for the hotel, which guaranty shall be in the amount of \$300,000.00 and shall be in the form attached to the Redevelopment Agreement;

(b) a construction budget and a construction schedule for the Hotel;

(c) an executed commitment or loan agreement for construction financing for the Hotel and, if applicable, a commitment for any equity needed in excess of such financing;

(d) an executed construction contract with a fixed or guaranteed maximum price for the Hotel;

(e) an executed operating lease for the management and operation of the Hotel with the Hotel lessee ... which shall have a term of at least ten (10) years commencing upon the completion of construction of the Hotel;

(f) a commitment for a franchise license for the Hotel from Hilton Hotels, Inc. and;

(g) an assumption agreement as required by Section 7 of the Redevelopment Agreement in form and substance reasonably satisfactory to Purchaser.

In addition, Purchaser shall be entitled to receipt at Closing of an estoppel certificate from the City, in form and substance reasonably acceptable to Purchaser and the City, certifying that (i) there are no defaults in existence under the Redevelopment Agreement on the part of the Seller affecting the rights of Purchaser relative to the Hotel Parcel, (ii) that a future default under the Redevelopment Agreement by Seller shall not affect the rights or obligations of Purchaser under the Redevelopment Agreement relative to Purchaser's ownership, development and operation of the Hotel and, (iii) that other than the completion guaranty relative to the Hotel Parcel, Purchaser shall not be responsible for any other guaranty, letter of credit or other security obligation set forth in the Redevelopment Agreement.”