

22



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

| File Number   | Title      | Status   |
|---|------------|--|
| R-2004-0324   | Resolution | In Committee                                     |
| Resolution approving Access Agreement by and between the City of West Allis and Whitnall-Summit Company, LLC. |            |  |
| Introduced: 11/16/2004  |            | Controlling Body: Safety & Development Committee |

### COMMITTEE RECOMMENDATION

*ADOPT*

| ACTION DATE:    | MOVER                               | SECONDER                            |            | AYE                                 | NO       | PRESENT | EXCUSED |
|-----------------|-------------------------------------|-------------------------------------|------------|-------------------------------------|----------|---------|---------|
| <i>11/14/04</i> |                                     |                                     | Barczak    | <input checked="" type="checkbox"/> |          |         |         |
|                 |                                     |                                     | Czaplewski |                                     |          |         |         |
|                 |                                     |                                     | Dobrowski  |                                     |          |         |         |
|                 |                                     |                                     | Kopplin    |                                     |          |         |         |
|                 |                                     |                                     | Lajsic     | <input checked="" type="checkbox"/> |          |         |         |
|                 | <input checked="" type="checkbox"/> |                                     | Narlock    |                                     |          |         |         |
|                 |                                     |                                     | Reinke     | <input checked="" type="checkbox"/> |          |         |         |
|                 |                                     |                                     | Sengstock  |                                     |          |         |         |
|                 |                                     | <input checked="" type="checkbox"/> | Vitale     | <input checked="" type="checkbox"/> |          |         |         |
|                 |                                     |                                     | Weigel     | <input checked="" type="checkbox"/> |          |         |         |
|                 |                                     |                                     | TOTAL      | <i>5</i>                            | <i>0</i> |         |         |

### SIGNATURE OF COMMITTEE MEMBER

*[Signature]*  
 \_\_\_\_\_  
 Chair Vice-Chair Member

### COMMON COUNCIL ACTION

**ADOPT**

| ACTION DATE:       | MOVER                               | SECONDER                            |            | AYE                                 | NO       | PRESENT | EXCUSED |
|--------------------|-------------------------------------|-------------------------------------|------------|-------------------------------------|----------|---------|---------|
| <i>NOV 16 2004</i> |                                     |                                     | Barczak    | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Czaplewski | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Dobrowski  | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Kopplin    | <input checked="" type="checkbox"/> |          |         |         |
|                    | <input checked="" type="checkbox"/> |                                     | Lajsic     | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Narlock    | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     | <input checked="" type="checkbox"/> | Reinke     | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Sengstock  | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Vitale     | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | Weigel     | <input checked="" type="checkbox"/> |          |         |         |
|                    |                                     |                                     | TOTAL      | <i>10</i>                           | <i>-</i> |         |         |



DEV

# STANDING COMMITTEES OF THE CITY OF WEST ALLIS COMMON COUNCIL 2004

## ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski  
Vice-Chair: Martin J. Weigel  
Gary T. Barczak  
Thomas G. Lajsic  
Rosalie L. Reinke

## PUBLIC WORKS

Chair: Richard F. Narlock  
Vice-Chair: Linda A. Dobrowski  
Kurt E. Kopplin  
Vincent Vitale  
James W. Sengstock

## SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic  
Vice-Chair: Vincent Vitale  
Gary T. Barczak  
Martin J. Weigel  
Rosalie L. Reinke

## LICENSE & HEALTH

Chair: Kurt E. Kopplin  
Vice-Chair: James W. Sengstock  
Linda A. Dobrowski  
Richard F. Narlock  
Michael J. Czaplewski

## ADVISORY

Chair: Rosalie L. Reinke  
Vice-Chair: Gary T. Barczak  
Linda A. Dobrowski  
Vincent Vitale  
Martin J. Weigel



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2004-0324**

**Final Action:**

**NOV 16 2004**

Resolution approving the Access Agreement by and between the City of West Allis and Whitnall-Summit Company, LLC.

WHEREAS, the City of West Allis (the "City") owns property located at 67\*\* West Washington Street in the City of West Allis, Wisconsin, identified as Tax Key No. 439-0001-028 (the "Property"); and,

WHEREAS, Whitnall-Summit Company, LLC ("Accessee") and its representatives and consultants require access to the Property for the purpose of constructing a parking structure; and,

WHEREAS, the City and Accessee (collectively the "Parties") wish to cooperate with each other to facilitate the construction; and,

WHEREAS, the Department of Development has reviewed and recommends approval of the Access Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of West Allis approves the Access Agreement.

BE IT FURTHER RESOLVED that the Director of Development be and is hereby authorized to execute and deliver the Agreement on behalf of the City of West Allis.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

cc: Department of Development

Dev-R-370-11-16-04\bjb

ADOPTED November 19, 2004

Paul M. Ziehler

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED November 19, 2004

Jeannette Bell

Jeannette Bell, Mayor

## **ACCESS AGREEMENT**

This Access Agreement ("Agreement") is made this 17<sup>th</sup> day of November, 2004, between the City of West Allis ("City") and Whitnall-Summit Company ("Whitnall Summit") for the purposes described herein.

### **I. RECITALS**

1. City owns property located at 67\*\* West Washington Street in the City of West Allis, Wisconsin, identified as Tax Parcel No. 439-0001-028 (the "Property").

2. A-C Reorganization Trust ("ACRT") is a party to an agreement entitled Purchase and Development Agreement for Utility Corridor Stormwater Project between ACRT and the City and dated July 12, 2002 (the "Utility Corridor Agreement"), which requires ACRT to make and pay for certain improvements and environmental repair to the Utility Corridor Property and, upon obtaining a Certificate of Completion under the Wisconsin Voluntary Party Liability Exemption Program, further obligates the City to take title to the Utility Corridor Property.

3. The City and Whitnall Summit are parties to a Development Agreement dated April 21<sup>st</sup>, 2004, whereby the City agrees to sell the Property to Whitnall Summit upon certain conditions. Those conditions have not yet been met but the parties are otherwise performing pursuant to the Development Agreement.

4. That Whitnall Summit is constructing an office building that requires the ACRT property, as well as the Property to be used for parking facilities.

5. Whitnall Summit and its representatives, consultants and contractors require access to the Property during the time that the Property is still owned by City for the purpose of constructing improvements relating to a two (2) story parking structure on the Property (the "Parking Improvements").

6. Whitnall Summit and City wish to acknowledge Whitnall Summit's agreement to comprehensively indemnify City during Whitnall Summit's entry onto the Property to construct the Parking Improvements for any property damage (outside of the Parking Improvements approved by City), for any personal injury, and for any liens of contractors or other representatives or agents of Whitnall Summit.

7. City and Whitnall Summit (collectively the "Parties") wish to cooperate with each other to facilitate Whitnall Summit's construction of the Improvements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:



## II. AGREEMENT

1. Right of Entry. Subject to the terms of this Agreement, City grants to Whitnall Summit and its representatives, consultants and contractors access to the Property for the purpose of constructing the Parking Improvements.

2. Performance of and Payment for Parking Improvements. Whitnall Summit shall promptly pay and satisfy any and all obligations to any representative, consultant or contractor hired or directed by Whitnall Summit to implement the Parking Improvements so as to prevent any such representative, consultant or contractor from seeking to secure payment by initiating actions to place or by placing a lien against the Property. No Parking Improvements shall be undertaken until Whitnall Summit shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all municipal departments and governmental entities having jurisdiction over the Property and shall have complied with all other legal requirements relating to the Parking Improvements. Any Parking Improvements shall be completed promptly, in a good and workmanlike manner. Whitnall Summit shall insure that the Property shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to or in connection with the Property. If any liens are filed, Whitnall Summit shall remove the same within ten (10) days or provide a bond to City for one hundred fifty percent (150%) of the amount of the lien claim. If Whitnall Summit is in default under this Agreement, Whitnall Summit shall promptly remove all of the Parking Improvements, and Whitnall Summit shall repair all damage to the Property caused by such removal.

3. Notice and Timing. Whitnall Summit will conduct the Parking Improvements between the hours of 6:00 a.m. and 6:00 p.m., unless other arrangements are made. Whitnall Summit will conduct the Parking Improvements in a manner that does not unreasonably interfere with City's use and enjoyment of the Property.

4. Property Clearance and Sharing of Information. Whitnall Summit will contact "Digger's Hotline" or another underground utility locator service at its own expense to locate any underground utilities on the Property.

5. Materials Management. Whitnall Summit shall manage and dispose of all soils and excavated materials generated during the course of the Parking Improvements in a manner in compliance with Wisconsin Department of Natural Resources regulations and directions. The costs associated with removal and disposal of soil and excavated materials shall be borne by Whitnall Summit.

6. Limitation of Scope of Agreement. The Parties agree that the scope and purpose of Whitnall Summit's entry on to the Property are limited to the Parking Improvements.

7. Indemnification. Whitnall Summit agrees to indemnify and hold City harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses relating to Whitnall Summit's entry onto the Property and construction of the Parking Improvements, including but not limited to property damage, personal injuries, accidents, death, other damages, contractors liens, claims, losses, demands, penalties, expenses or liabilities caused by the actions or omissions of Whitnall Summit and/or its agents, representatives or consultants on the Property, arising out of or relating to the entry on and use of the Property and Parking Improvements conducted by Whitnall Summit and/or its agents, representatives or consultants while on the Property pursuant to the terms of this Agreement. The provisions of this paragraph will survive this Agreement indefinitely.

8. Insurance. Before entering on the Property for any purposes, Whitnall Summit shall add City as an additional insured on its comprehensive liability insurance policy (which will be in an amount of no less than \$3,000,000.00 (Three Million Dollars)). Whitnall Summit will also maintain (and require its contractors to maintain) worker's compensation insurance in amounts required by law. Further, before placing any improvements on the Property, it shall obtain and maintain extended coverage fire and casualty insurance on its contents for full replacement cost. Whitnall Summit hereby waives all rights of recovery against City for any casualty loss. Whitnall Summit shall provide City with a certificate of such insurance prior to entry. Said certificate shall be in a form acceptable to the City Attorney and naming the City as an additional insured with at least thirty (30) days notice to City prior to cancellation.

9. Compliance with Laws. Whitnall Summit will comply with all applicable federal, state or local laws, ordinances, rules, orders or regulations in conducting the Parking Improvements, including, without limitation, Wisconsin Administrative Code Ch. NR 718.

10. Title to Property. City represents and warrants that it has title to the Property and the authority to grant the requested access to the Property and to allow the implementation of the Parking Improvements on the Property.

11. Costs, Expenses and Attorneys' Fees. Whitnall Summit shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by City in connection with the negotiation and administration of this Agreement and enforcing the covenants and agreements in this Agreement.

12. Default. In the event Whitnall Summit is in default under this Agreement, City shall be entitled to send a written notice to Whitnall Summit of such default, and if such default is not cured with thirty (30) days, then Whitnall Summit shall: (a) promptly cease the Parking Improvements and operations on the Property; (b) promptly remove at its expense all Parking Improvements completed to the then current date; and (c) be responsible for all other loss, cost and damage relating to this Agreement. City shall also have all its rights and remedies against Whitnall Summit relating to such default.

13. Term. This Agreement terminates on the date, which is one hundred and eighty (180) days after the date this Agreement is fully executed, unless the Parties agree otherwise in writing.

14. Notices. Notices relating to this Agreement shall be sent to the following:

|          |  |
|----------|--|
| To City: | Department of Development<br>City of West Allis<br>7525 West Greenfield Avenue<br>West Allis, WI 53214<br>Attn: John F. Stibal, Director<br>(414) 302-8460<br>(414) 302-8401 - fax |
|----------|--|


To Whitnall Summit: Anthony G. Henika  
Anthony G. Henika, S.C.  
9114 W. Puetz Road  
Franklin, WI 53132  
(414) 529-3230  
(414) 529-3204 - fax

15. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.


16. Execution. This Agreement may be executed in counterparts all of which, taken together, shall constitute one instrument. Faxed signatures on this Agreement will be considered binding on the parties.

17. Authority to Enter into Agreement. Each person signing this Agreement represents and warrants that he or she has the full power and authority to enter into and be bound by this Agreement.

FOR CITY OF WEST ALLIS

By:   
11-17-04

FOR WHITNALL-SUMMIT COMPANY

By:   
11/17/04

Approved as to form  
this 17 day of November, 2004.

  
City Attorney

H/Scott/CDA/Access Agreement-Whitnall - Summit