

## MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** James P. Kozik, AICP, Director of Planning and Economic Development

**DATE:** January 5, 2026

**SUBJECT:** **An Ordinance Repealing Portions of Ordinance No. E-3987 Regarding a Planned Unit Development For 50 E. Loop Road and a Resolution Entering Into a Watermain Easement Agreement**

### Request

City Council approval of an Ordinance repealing portions of a Planned Unit Development Ordinance and Subdivision Improvement Agreement and approval of a Resolution entering into a Watermain Easement Agreement.

### Background

On May 2, 1994, the City Council approved Ordinance No. E-3987, which rezoned the property at 50 East Loop Road (Subject Property) and granted a Special Use Permit for a Planned Unit Development to allow the development of the property as an Outback Steakhouse restaurant. In furtherance of the development of the restaurant, on June 27, 1994, the City and Outback also entered into a Planned Development Subdivision Improvement Agreement. Ordinance No. E-3987 also contained a provision that the special use permit, conditions, restrictions and requirements constituted a declaration of restrictive covenants and shall bind all successors, assigns and grantees.

### Proposal

A new owner/developer is planning to redevelop the Subject Property into a nursery school. According to the Wheaton Zoning Ordinance, issuance of a Special Use Permit and Planned Unit Development approval are no longer necessary for this redevelopment. Furthermore, several conditions of the existing Special Use Permit and Planned Development Subdivision Improvement Agreement are not relevant to the new development on the Subject Property. Consequently, the new owner/developer wishes to remove these conditions from the property title. In addition, when performing research on this matter, Staff discovered a City-owned watermain located along the south property line of the Subject Property was not located entirely within a utility easement.

The City Attorney has drafted an Ordinance that repeals the no longer relevant provisions of Ordinance No. E-3987 and the Planned Development Subdivision Improvement Agreement and a Resolution, entering into a Watermain Easement Agreement which would place the existing watermain fully within a utility easement.

### Recommendation

Staff recommends approval of the attached Ordinance and Resolution.

Attachments

c: Kevin Nieland



WHEATON MAYOR PHILIP J. SUESS

CITY MANAGER MICHAEL DZUGAN

**RESOLUTION NO. R-2026-xx**

**A RESOLUTION AUTHORIZING EXECUTION OF A WATERMAIN EASEMENT AGREEMENT  
BETWEEN THE CITY OF WHEATON AND NNN REIT, LP  
50 E. LOOP ROAD**

**WHEREAS**, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, NNN Reit, LP ("Grantor") owns the property located at 50 E. Loop Road, Wheaton ("Subject Property"); and

**WHEREAS**, there is a City-owned watermain that runs through the Subject Property for which there is no easement; and

**WHEREAS**, the City desires to obtain an easement from Grantor and Grantor desires to grant an easement to the City in order for the City to maintain the watermain, among other reasons; and

**WHEREAS**, the City and the Grantor wish to enter into a Watermain Easement Agreement for the benefit of both parties.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to, the Watermain Easement Agreement between the City of Wheaton and NNN Reit, LP; and that a copy of that certain Watermain Easement Agreement is attached hereto and incorporated herein as Exhibit "1".

**ADOPTED** this 5<sup>th</sup> day of January, 2026.

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Mayor

ATTEST:

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City Clerk

ROLL CALL VOTE:

Ayes:  
Nays:  
Absent:

Prepared by:

Legal Department  
InSite Real Estate, L.L.C.  
1400 16<sup>th</sup> Street, Suite 300  
Oak Brook, IL 60523

Upon recording return to:

City of Wheaton  
303 W Wesley St  
Wheaton, IL 60187

## **WATERMAIN EASEMENT AGREEMENT**

THIS WATERMAIN EASEMENT AGREEMENT (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between **NNN REIT, LP**, a Delaware limited partnership, formerly known as National Retail Properties, LP, a Delaware limited partnership ("Grantor"), whose address is 450 S. Orange Avenue, Suite 900, Orlando, Florida 32801-3339 and the **CITY OF WHEATON** ("Grantee"), whose address is 303 W Wesley St, Wheaton, IL 60187. Grantor and Grantee are sometimes individually referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, Grantor is the owner in fee simple of certain real property located in Wheaton, Illinois, legally described on Exhibit A, attached hereto and incorporated herein (the "Grantor Parcel"); and

WHEREAS, Grantee desires an easement from Grantor as depicted and legally described on Exhibit B, attached hereto and incorporated herein (the "Easement Area"); and

WHEREAS, Grantor desires to grant said easement to Grantee.

NOW, THEREFORE, in consideration of the sum of ONE and 00/100 DOLLAR (\$1.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee, the easement as follows, subject to all reservations, leases, licenses, easements, restrictions, covenants, encumbrances and other matters of record:

1. Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a non-exclusive, perpetual easement (the "Easement") to construct, reconstruct, repair, inspect, maintain and operate a public watermain together with any and all necessary appliances and other structures and appurtenances as may be deemed necessary by said City of Wheaton, upon, along, under and through the Easement Area (the "Improvements"), together with the right of access across the Grantor Parcel for necessary men and equipment to do any of the above work. The right is also granted to cut down, trim or remove any trees, shrubs or other plants on the Easement Area that interfere with the operation of such public watermain.

2. Duration. The Easement granted herein is appurtenant to and shall run with title to the Grantor Parcel and is perpetual.

3. Private Use. Nothing contained in this Agreement shall ever be deemed to create a gift or dedication of all or any portion of the Grantor Parcel to the general public or for any public use or public purpose whatsoever. No permanent buildings shall be placed in the Easement Area, but the Easement Area may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with

the aforesaid uses or rights. In addition, elevations or grades shall not be changed within the Easement Area without the written approval of Grantee.

4. **Maintenance, Costs and Repair.** The costs and expenses incurred in connection with the installation, maintenance, repair, replacement and removal of any Improvements in the Easement Area ("Grantee's Maintenance") shall be borne by Grantee. Grantee, when performing or causing to be performed any such Grantee's Maintenance, shall be responsible at its expense, to backfill all areas with approved materials but shall not be liable to restore any pavement, curb and gutter, sidewalks or landscaping disturbed during such Grantee's Maintenance, and Grantor shall be responsible for the full and complete restoration of the Easement Area. Grantee covenants and warrants that it will perform all Grantee's Maintenance (i) in a professional, good and workmanlike manner in conformance with customary engineering and construction practices, (ii) in compliance with all applicable regulations and any agreements of record affecting Grantor's Property and (iii) in such a manner so as not to interfere with Grantor's Improvements within the Easement Area or any other portion of Grantor's Property.

5. **Grantor Approval of Plans and Specifications.** Grantee shall not construct or install any initial Improvements, or replace any existing Improvements, without first (i) providing written notice of the same to Grantor, which written notice shall include Grantee's plans and specifications for any such Improvements, and (ii) requesting and obtaining Grantor's written approval of the same, which written approval shall not be unreasonably conditioned, delayed or withheld.

6. **Indemnification.** To the extent permitted by applicable law, Grantee shall indemnify, hold harmless and defend Grantor, its mortgagee, general partner, limited partner, members, managers, employees, agents, contractors, invitees, officers, directors, lessees, affiliates and subsidiaries from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorneys' and other professional fees, in connection with any property damage or personal injury, arising from or out of the exercise of the rights granted under this Agreement, including without limitation, the installation, operation, maintenance, repair, replacement or removal by Grantee its employees, agents, contractors and subcontractors, of the Improvements, except to the extent that any such claims, actions, damages, liabilities, expenses or damage arise out of the negligence or willful misconduct caused by Grantor, its employees, agents, contractors, invitees, officers, directors, affiliates or subsidiaries. The terms and conditions of this Section shall survive the expiration or earlier termination of this Agreement.

7. **Default.** If Grantee fails to satisfy or perform any of its obligations hereunder, Grantor shall have the right to so notify Grantee and, if such failure is not cured within thirty (30) days after receipt by Grantee of the notice, Grantor may take such action as is necessary under the circumstances, in which case Grantee shall reimburse Grantor for all costs incurred in connection therewith. In the event such demand for payment is not paid, Grantor may pursue any and all available remedies at law or in equity.

8. **Notices.** Any notice given under this Agreement must be in writing and will be deemed to have been delivered: (a) upon receipt or refusal of delivery, when delivered personally; (b) the day deposited with the U.S. Postal Service, when sent by certified or registered mail, postage prepaid, return receipt requested; or (c) the day deposited with a nationally recognized overnight courier service such as Federal Express, when sent next business day delivery to a U.S. address.

To Grantee: **City of Wheaton  
303 W Wesley St  
Wheaton, IL 60187**

To Grantor: NNN REIT, LP  
450 S. Orange Avenue, Suite 900  
Orlando, Florida 32801-3339  
Attn: Senior Vice President – Asset Management

Any Party shall have the right from time to time and at any time, upon at least ten (10) days' prior written notice thereof in accordance with provisions hereof, to change its respective address and to specify any

other address; provided, however, notwithstanding anything herein contained to the contrary, in order for the notice of address change to be effective it must actually be received.

9. Entire Agreement. Grantor and Grantee agree that this Agreement contains all of the agreements, promises and understandings between the Parties. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by all of the Parties herein.

10. Separability. If any provision of this Agreement is hereafter expressly declared by a court of proper jurisdiction to be invalid or unenforceable, such provision shall be cancelled and severed from this Agreement and the other provisions of this Agreement shall continue in full force and effect.

11. Amendment; Modification. This Agreement may be amended by the written consent and mutual agreement of the Parties herein. Any such modification or amendment shall be effective when duly recorded with the DuPage County, Illinois Recorder's Office.

12. Authority. Each signatory hereto hereby warrants to the other Party that the individual has the authority to execute this Agreement for and on behalf of the entity for which it purports to act.

13. Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original, but all of which, when taken together, shall constitute one Agreement.

14. Governing Law. This Agreement and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Illinois.

15. Recording. This Agreement shall be recorded by the City Clerk, in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the City.

***[END OF TEXT – EXECUTION PAGE TO FOLLOW]***

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**GRANTOR:**

Signed, sealed and delivered  
in the presence of:

**NNN REIT, LP,**  
a Delaware limited partnership

By: NNN GP Corp., a Delaware corporation,  
as general partner

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Vice President

Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence, this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by \_\_\_\_\_, as Executive Vice President of NNN GP Corp., a Delaware corporation, as general partner of NNN REIT, LP, a Delaware limited partnership, on behalf of the partnership. He/She is personally known to me.

\_\_\_\_\_  
Notary Public - State of Florida

Printed Name: \_\_\_\_\_  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

(NOTARY SEAL)

**GRANTEE:**

**CITY OF WHEATON**

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

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

**EXHIBIT A**

**Legal Description of Grantor Parcel**

Lot 1 in KEIM'S OUTBACK SUBDIVISION, being a resubdivision of Lot 2 in KEIM'S EAST LOOP ROAD SUBDIVISION, a resubdivision of Lot 2 in KEIM'S RESUBDIVISION of Lot 6 in DANADA FARMS EAST UNIT 1, in Section 28, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat of resubdivision record May 19, 1994 as Document No. R94-114712, in DuPage County, Illinois.

Address: 50 East Loop Road, Wheaton, Illinois

PIN: 05-28-402-012

**EXHIBIT B**

**Depiction of and Legal Description of Easement Area**

PART OF LOT 1 IN KEIM'S OUTBACK SUBDIVISION, BEING A RESUBDIVISION OF LOT 2 IN KEIM'S EAST LOOP ROAD SUBDIVISION, A RESUBDIVISION OF LOT 2 IN KEIM'S RESUBDIVISION OF LOT 6 IN DANADA FARMS EAST UNIT 1, IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED MAY 19, 1994 AS DOCUMENT NO. R94-114712, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 24 DEGREES 17 MINUTES 41 SECONDS EAST ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 10.19 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 24 DEGREES 17 MINUTES 41 SECONDS EAST ALONG SAID WESTERLY LINE, 10.00 FEET; THENCE SOUTH 66 DEGREES 32 MINUTES 03 SECONDS EAST, 118.25 FEET; THENCE SOUTH 61 DEGREES 25 MINUTES 13 SECONDS EAST, 51.85 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 1 THAT IS 18.11 FEET NORTHEASTERLY OF, MEASURED ALONG SAID EASTERLY LINE, THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 24 DEGREES 18 MINUTES 33 SECONDS WEST ALONG SAID EASTERLY LINE, 10.03 FEET; THENCE NORTH 61 DEGREES 25 MINUTES 13 SECONDS WEST, 52.15 FEET; THENCE NORTH 66 DEGREES 32 MINUTES 03 SECONDS WEST, 117.95 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

# EXHIBIT

