

ORDINANCE NO. F-1061

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,  
AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CERTAIN  
DEVELOPMENT AGREEMENT REGARDING THE CITY OF WHEATON MAIN  
STREET REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council of the City of Wheaton, DuPage County, Illinois (the "City") has heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the City that the City undertake a redevelopment project and has heretofore approved a redevelopment plan (the "Plan"), designated a redevelopment project area (the "Project Area") for that portion of the City known as the City of Wheaton Main Street Redevelopment Project Area, and adopted tax increment allocation financing for the Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, it is desirable and in the best interest of the residents of the City for the City to enter into a Development Agreement with Norwood-Wheaton LLC (the "Developer") regarding a portion of said Project Area, in furtherance of the Plan; and

WHEREAS, the Development Agreement is on file with the City Clerk of the City and available for public inspection.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the Development Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein and all other documents required to effectuate the purpose of the Development Agreement.

Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 3. That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 20th day of June, 2005.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Emily M. Donnagio  
City Clerk

Roll Call Vote:

Ayes: Councilman Johnson  
Mayor Carr  
Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry

Nays: Councilman Levine  
Councilman Suess

Absent: None

Passed: June 20, 2005

Published: June 21, 2005

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 20<sup>th</sup> day of June, 2005, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois and NORWOOD-WHEATON LLC, an Illinois limited liability company.

### RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Wheaton Main Street Redevelopment Area Project and Plan", dated November, 1999 (as amended from time to time, hereinafter referred to as the "REDEVELOPMENT PLAN"), the CITY designated a certain area within its municipal limits for redevelopment and revitalization. Part of the City of Wheaton Main Street Redevelopment Project Area which is the subject matter of this AGREEMENT (hereinafter referred to as the "SITE") in said REDEVELOPMENT PLAN is outlined on Exhibit "A" and legally described on Exhibit "B", which Exhibits are attached hereto and made a part hereof.

B. The REDEVELOPMENT PLAN recited that the City of Wheaton Main Street Redevelopment Project Area is characterized by conditions which warrant the designation of the entire area as a "conservation area" within the definitions set forth in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (hereinafter referred to as the "ACT"). The REDEVELOPMENT PLAN further recited that CITY was desirous of having the SITE redeveloped and revitalized as a mixed use development to serve the needs of the community and to produce increased tax revenues for the community.

C. DEVELOPER, in accordance with the REDEVELOPMENT PLAN, will construct a three (3) building condominium/retail development consisting of approximately 199 condominiums and approximately 8,000 square feet of retail space and install certain REQUIRED PUBLIC

IMPROVEMENTS, all as more fully described on Exhibit "C" attached hereto and made a part hereof (the "PROJECT").

D. The CITY has the authority to promote the health, safety and welfare of its inhabitants, to prevent the onset of blight while instituting conservation measures, and to encourage private development in order to enhance the local tax base, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

E. The CITY is authorized under the provisions of the ACT to finance eligible redevelopment project costs in accordance with the conditions and requirements set forth in the ACT.

F. To stimulate the redevelopment of the AREA, and pursuant to the ACT, the corporate authorities of the CITY passed the following Ordinances: (1) Ordinance No. F-0418, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, APPROVING A TAX INCREMENT REDEVELOPMENT PLAN AND REDEVELOPMENT PROJECT FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA; (2) Ordinance No. F-0419, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, DESIGNATING THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA A REDEVELOPMENT PROJECT AREA PURSUANT TO THE TAX INCREMENT ALLOCATION REDEVELOPMENT ACT; (3) Ordinance No. F-0420, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, ADOPTING TAX INCREMENT ALLOCATION FINANCING FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA (the Ordinances together with the exhibits appended thereto are sometimes hereinafter collectively referred to as the "ORDINANCES").

G. The City Council of the CITY has determined that the construction of the PROJECT would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

H. The City Council has further determined that the payment or reimbursement of a portion of the REDEVELOPMENT COSTS, as hereinafter more fully defined, would promote the development of the PROJECT consistent with the purposes of the ACT, the REDEVELOPMENT PLAN, the ORDINANCES, and this AGREEMENT.

In consideration of the foregoing recitals and the covenants and conditions hereinafter set forth, and for other good and valuable consideration, the adequacy and sufficiency of which the PARTIES hereby stipulate, the PARTIES hereby agree as follows:

## SECTION ONE

### INCORPORATION OF RECITALS

The recitals set forth in the foregoing recitals are material to this AGREEMENT and are hereby incorporated into and made a part of this AGREEMENT as though they were fully set forth in this Section One, and this AGREEMENT shall be construed in accordance therewith.

## SECTION TWO

### DEFINITIONS

“AREA” - means the City of Wheaton Main Street Redevelopment Project Area, as designated in Ordinance No. F-0419 of the CITY.

“BUDGET” - means the DEVELOPER’S estimate of the costs of the PROJECT, as more fully described in Section 6.01 hereof.

“CERTIFICATE OF COMPLETION” – means a certificate issued by the CITY in a recordable form upon completion of construction in compliance with the terms and conditions of

this AGREEMENT that certifies the DEVELOPER has fulfilled its obligation to complete the PROJECT in compliance with the terms and conditions of this AGREEMENT.

“CHARGES” - all generally applicable Federal, State and local governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, fees, liens, claims or encumbrances or non-governmental claims or liens upon and/or relating to the SITE, the PROJECT, DEVELOPER’S business, DEVELOPER’S income and/or gross receipts and insurance premiums due on any policy or policies of insurance required pursuant to Section Thirteen hereof.

“CITY” - means the City of Wheaton, a municipal corporation organized and incorporated under the laws of the State of Illinois.

“CONTROL DOCUMENTS” - means those documents described in Section 3.01 hereof.

“CURE PERIOD” – means the period of thirty (30) days after an EVENT OF DEFAULT within which the defaulting party may remedy the default as further described in Section 11.07.

“DEVELOPER” - means NORWOOD-WHEATON LLC, its successors and assigns, and any trustee under any title-holding trust which shall, during the term of this AGREEMENT, hold legal title to any portion or all of the SITE, but not including any subsequent owners of individual residential or retail units.

“FUND” - means the City of Wheaton Main Street Redevelopment Project Area Special Tax Allocation Fund.

“NET TIF PROCEEDS” - means tax funds deposited into the FUND attributable to the P.I.N.s of the SITE, minus those funds which must be withheld pursuant to the requirements of the ACT to cover required school contributions and which are not remitted to the school districts pursuant to the requirements of the ACT. In addition, if no valid claim for school contributions is

made by September 30<sup>th</sup> of any year, funds withheld during the preceding year for that purpose shall also be considered NET TIF PROCEEDS.

“PARTY” or “PARTIES” - means the CITY and/or the DEVELOPER.

“PROJECT” - means the redevelopment project described in Exhibit “C” hereto, including the REQUIRED PUBLIC IMPROVEMENTS.

“REDEVELOPMENT COSTS” - means eligible “redevelopment project costs” as defined in the ACT, and as identified in the BUDGET.

“REQUIRED PUBLIC IMPROVEMENTS” - means the improvements described as such in Exhibit “C”.

“SCHEDULE” - means the schedule of construction and completion attached hereto as Exhibit "G", subject to the modifications by the DEVELOPER, as approved by the CITY in the reasonable exercise of its discretion.

“TAX INCREMENT” - means real estate revenues generated from time to time within the AREA (except for revenues attributable to specific real property that the CITY segregates pursuant to a previously executed redevelopment agreement), if any, which are attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the AREA over and above the initial equalized assessed value of each property in the AREA, as certified by the DuPage County Clerk.

“TIF OBLIGATIONS” - means any tax increment allocation financing issued by the CITY, excluding NOTES, as described in Section 10.02.

### SECTION THREE

#### DEVELOPER’S COVENANTS, REPRESENTATIONS AND WARRANTIES

The DEVELOPER covenants, represents and warrants to the CITY as follows:

3.01. CONTROL DOCUMENTS: DEVELOPER shall construct the PROJECT in conformance with, and, in connection therewith, shall be governed by, adhere to and obey, any and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the PROJECT as the same may, from time to time, be in force and effect, including, but not limited to the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* the Environmental Barriers Act, 410 ILCS 25/1 *et seq.*, and the Fair Housing Act, 42 U.S.C. 3601, *et seq.* and all amendments thereto (collectively, the "APPLICABLE LAWS"). Without limiting the generality of the foregoing, the DEVELOPER shall specifically cause construction of the PROJECT to comply with all of the terms and conditions of this AGREEMENT, the ORDINANCES, the APPLICABLE LAWS, the PLANS AND SPECIFICATIONS and each and every exhibit attached to and incorporated therein, together with any required permit (all of said documents being hereinafter collectively referred to as the "CONTROL DOCUMENTS").

3.02. DILIGENCE: DEVELOPER shall, after obtaining all required approvals, construct the PROJECT in conformance with the SCHEDULE.

3.03. MISCELLANEOUS DEVELOPER COVENANTS: (i) The DEVELOPER is now solvent and able to pay its debts as they mature; (ii) DEVELOPER, upon due inquiry, is unaware of any actions at law, in equity or similar proceedings which are pending or threatened against the DEVELOPER, which are reasonably likely to be adversely determined and result in any material and adverse change to the DEVELOPER'S financial condition, or materially affect the DEVELOPER'S assets as of the date of this AGREEMENT; (iii) the DEVELOPER has or will obtain all required government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) necessary to permit DEVELOPER to construct, occupy and operate the PROJECT; (iv) no default has been declared with respect to

any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of moneys to which the DEVELOPER is a party or by which it is bound which has not been cured or which is reasonably likely to result in a material and adverse change to the DEVELOPER; and (v) there has been no material and/or adverse change in the assets, liabilities or financial condition of the DEVELOPER other than as a result of the ordinary and customary conduct of its business; (vi) the execution and delivery of this AGREEMENT by the DEVELOPER, and the performance of this AGREEMENT by DEVELOPER, have been duly authorized by DEVELOPER, and this AGREEMENT is binding on DEVELOPER and enforceable against DEVELOPER in accordance with its terms; (vii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; (viii) neither the execution of this AGREEMENT nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which DEVELOPER is a party or by which DEVELOPER is bound; or (b) violate any restriction, court order or agreement to which DEVELOPER is subject.

3.04. CHARGES: DEVELOPER shall pay promptly when due all CHARGES arising or incurred from and after the date hereof with respect to the SITE or the PROJECT.

3.05. ORGANIZATION AND AUTHORITY: The DEVELOPER is a duly organized and existing Limited Liability Company organized and existing in good standing under the laws of the State of Illinois, and has the authority to enter into, execute, deliver and perform this AGREEMENT.

3.06. PROGRESS REPORTS: Until construction of the PROJECT is complete, the DEVELOPER shall make monthly progress reports to the CITY regarding the PROJECT. Said reports shall be in the form attached hereto and incorporated herein as Exhibit "D".

3.07. RIGHT OF INSPECTION: The DEVELOPER hereby agrees to permit the CITY'S authorized agents and employees to, during the normal business hours, inspect the PROJECT as it is being constructed, provided however that such authorized agents and employees must conform to all of the DEVELOPER'S on site safety rules and policies. If the CITY desires to inspect an occupied unit once a certificate of occupancy has been issued for said unit, it may only do so upon the agreement of the unit owner or occupant, or as otherwise permitted by law.

3.08. RETAIL TENANTS: The DEVELOPER agrees that none of the REDEVELOPMENT COSTS shall "provide direct financial support to a retail entity that is initiating operations" in the AREA "while terminating operations at another Illinois location within ten (10) miles" of the AREA but outside the boundaries of the CITY, within the meanings and as set forth in the ACT.

## SECTION FOUR

### CITY'S COVENANTS

(i) The CITY has authority pursuant to State statute as hereinbefore recited, to execute and deliver and perform the terms and obligations of this AGREEMENT; (ii) the execution and delivery of this AGREEMENT by the CITY, and the performance of this AGREEMENT by the CITY, have been duly authorized by the corporate authorities of the CITY, and this AGREEMENT is binding on the CITY and enforceable against the CITY in accordance with its terms; (iii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; (iv) neither the

execution of this AGREEMENT nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which the CITY is a party or by which the CITY is bound; or (b) violate any restriction, court order or agreement to which the CITY is subject.

## SECTION FIVE

### REMEDIES UPON FAILURE TO COMPLETE

If the DEVELOPER fails to timely complete the PROJECT in compliance with the terms of this AGREEMENT, then the CITY will have, but will not be limited to, the right to terminate this AGREEMENT and cease all reimbursement of REDEVELOPMENT COSTS not yet reimbursed under this AGREEMENT.

## SECTION SIX

### BUDGET

6.01. BUDGET: Attached hereto and incorporated herein as Exhibit "E" is the DEVELOPER'S BUDGET setting forth the DEVELOPER'S best estimate of the costs of the PROJECT and indicating REDEVELOPMENT COSTS. The CITY agrees to reimburse the DEVELOPER for REDEVELOPMENT COSTS pursuant to the terms of this AGREEMENT.

6.02. DEVELOPER'S COST: Subject to payment of certain costs by the CITY, as hereinafter provided, the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT. Should the actual cost or expense of construction of any item eligible for payment by the CITY be greater than the amount set forth in the BUDGET, the DEVELOPER shall be required to pay such excess costs and shall not be entitled to reimbursement therefor from the CITY.

The CITY reserves the right to examine all records relating to all costs paid by the DEVELOPER and to obtain from such consultants or experts as the CITY determines to be

appropriate, such other information as is necessary for the CITY to evaluate compliance by the DEVELOPER with the terms hereof so as to ascertain that the DEVELOPER is expending REDEVELOPMENT COSTS equal to or in excess of the amount of the reimbursement amounts set forth herein in Section Ten.

## **SECTION SEVEN**

### **CONSTRUCTION OF THE PROJECT**

7.01. **SUBMISSION OF PLANS AND SPECIFICATIONS; CONSTRUCTION OF PROJECT:** DEVELOPER shall submit complete building plans, engineering plans and construction documents containing working drawings and specifications to the CITY for review and approval in such form as the CITY customarily requires (the "PLANS AND SPECIFICATIONS") prepared in accordance with the CONTROL DOCUMENTS.

The CITY agrees to meet with the DEVELOPER and its authorized agents as frequently as may reasonably be necessary to coordinate the preparation of, submission to and review and approval by the CITY of the PLANS AND SPECIFICATIONS, including building permit applications. The CITY shall promptly consider any such submittals and advise the DEVELOPER in writing within twenty-one (21) business days of such initial submittal of any deficiency in any submitted PLANS AND SPECIFICATIONS or building permit applications, specifying the sections of the CONTROL DOCUMENTS relied upon by the CITY in determining that any document may not be approved or recommended as submitted. Should the CITY reject any submitted PLANS AND SPECIFICATIONS or building permit application for failure to comply with the CONTROL DOCUMENTS, the DEVELOPER shall, within twenty-one (21) business days after receiving written notice thereof, cause new or corrected documents to be prepared and submitted to the CITY. This process, within the time frames herein stipulated, shall be repeated as

often as may be necessary until the documents are in compliance with the CONTROL DOCUMENTS, except that all submittals after the initial submittal shall be reviewed by the CITY within fourteen (14) days.

The DEVELOPER shall also file all required applications and supporting documentation as may be necessary to secure any permit required to be issued by any other unit of government whose approval is a necessary precondition to DEVELOPER'S right to construct the PROJECT.

The DEVELOPER shall cause the PROJECT to be constructed in accordance with the site plan attached hereto and incorporated herein as Exhibit "F" (the "SITE PLAN") hereof, the PLANS AND SPECIFICATIONS and the CONTROL DOCUMENTS, together with such building permits as may be approved by the CITY. Subsequent to the approval of any PLANS AND SPECIFICATIONS, any amendments thereto shall be permitted only in accordance with the Planned Unit Development provisions contained in the CITY'S Zoning Ordinance.

**7.02. DEVELOPER'S COVENANT TO CONSTRUCT ALL REQUIRED PUBLIC IMPROVEMENTS:** The DEVELOPER shall cause the REQUIRED PUBLIC IMPROVEMENTS to be constructed as specified in the SCHEDULE, and as required for each phase of the PROJECT. Prior to the issuance of a building permit for the PROJECT, the DEVELOPER shall submit an executed copy of the CITY'S standard Planned Development/Subdivision Improvement Agreement (the "IMPROVEMENT AGREEMENT") and submit the security required therein. The IMPROVEMENT AGREEMENT shall provide for the phasing of the REQUIRED PUBLIC IMPROVEMENTS and submission of security.

Upon completion of any REQUIRED PUBLIC IMPROVEMENT and, further, upon the submission to the CITY of a certificate from the engineering firm employed by DEVELOPER stating that the said REQUIRED PUBLIC IMPROVEMENT has been completed in conformance

with the PLANS AND SPECIFICATIONS, the CITY shall, within thirty (30) days after the CITY receives the aforesaid certification from the DEVELOPER'S engineer, either (i) finally accept said REQUIRED PUBLIC IMPROVEMENT, or (ii) designate in writing to DEVELOPER all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said REQUIRED PUBLIC IMPROVEMENT, specifically citing sections of the PLANS AND SPECIFICATIONS relied upon by the CITY. Should the CITY reject any REQUIRED PUBLIC IMPROVEMENT, or any portion or segment thereof, for a recommendation of final acceptance, the DEVELOPER shall cause to be made to such REQUIRED PUBLIC IMPROVEMENT such corrections or modifications. The DEVELOPER shall cause the REQUIRED PUBLIC IMPROVEMENTS to be submitted and resubmitted as herein provided until the CITY shall finally accept same. No REQUIRED PUBLIC IMPROVEMENT shall be deemed to be finally accepted until the CITY shall finally accept same.

7.03. TIME FOR COMPLETION: DEVELOPER shall complete construction of the PROJECT in substantial conformance with the SCHEDULE. Upon request by the DEVELOPER, the CITY shall issue a CERTIFICATE OF COMPLETION in a recordable form indicating that the DEVELOPER has completed its obligations under this AGREEMENT.

7.04. CERTIFICATES OF OCCUPANCY: The CITY agrees to issue Certificates of Occupancy (including temporary certificates of occupancy) for residential and retail units within the PROJECT pursuant to the provisions of the Wheaton City Code.

## **SECTION EIGHT**

### **FEES**

DEVELOPER shall pay, in connection with the development of the PROJECT and the construction of the REQUIRED PUBLIC IMPROVEMENTS, such demolition, building or

excavation permit fees, engineering, connection or tap-on fees, charges and inspection fees, any cash in lieu of property donation requirements for school and park purposes or any other permit or license, (hereinafter the "FEES") that are assessed on a uniform basis throughout the CITY and are of general applicability to other property within the CITY of this AGREEMENT.

## SECTION NINE

[Reserved]

## SECTION TEN

### TAX INCREMENT UTILIZATION

#### 10.01. PAYMENT OF CERTAIN COSTS:

A. PAYMENT OF CERTAIN COSTS INCURRED BY DEVELOPER: Subject to the terms and conditions of this AGREEMENT (including, without limitation, the provisions concerning the utilization of TAX INCREMENT) and the ACT, the CITY shall reimburse the DEVELOPER for REDEVELOPMENT COSTS up to the amounts set forth in the BUDGET.

B. REIMBURSEMENT OF CERTAIN COSTS INCURRED BY CITY: The CITY shall be reimbursed, from moneys deposited in the FUND or from the proceeds of the TIF OBLIGATIONS, for: (i) all reasonable or necessary costs incurred in connection with the acquisition of any real property or easements therein necessary for the construction of the REQUIRED PUBLIC IMPROVEMENTS; (ii) all reasonable or necessary costs incurred by the CITY (including costs of studies, surveys, the development of plans and specifications, and professional service costs for engineering, legal, financial planning and other similar services) in establishing the AREA and in preparing, implementing and administering the REDEVELOPMENT PLAN and this AGREEMENT; (iii) all reasonable or necessary costs incurred by the CITY in complying with all state and county requirements concerning initial and annual filings and

submissions for, and qualifications of, the SITE; (v) all reasonable or necessary costs incurred by the CITY in maintaining and auditing the FUND as part of the CITY'S annual audit; (vi) all reasonable or necessary costs reimbursable under any other agreement regarding other projects in the AREA; and (vii) all other costs which constitute REDEVELOPMENT COSTS. Notwithstanding the foregoing, for so long as the NOTES (as defined below) are outstanding, no such reimbursement shall be made from NET TIF PROCEEDS.

10.02. METHOD OF REIMBURSEMENT: DEVELOPER proposes to construct the PROJECT in two phases, buildings A and B in Phase I and building C in Phase II, as shown on the SITE PLAN. The DEVELOPER will construct such REQUIRED PUBLIC IMPROVEMENTS as are required for each phase.

At the time that DEVELOPER begins demolition of the existing buildings on the SITE, and provided that the DEVELOPER is not in default under this AGREEMENT, the CITY shall issue a Note, in the form as set forth on Exhibit "H", in the amount of \$4,000,000 ("PHASE I NOTE") to evidence the CITY'S obligation to reimburse the DEVELOPER for REDEVELOPMENT COSTS related to Phase I. The PHASE I NOTE shall accrue interest at a rate equal to nine percent (9 %) per annum. At the time DEVELOPER submits an application for a building permit for Phase II of the project, the CITY shall issue a second Note ("PHASE II NOTE") in the amount of \$2,000,000 to evidence the CITY'S obligation to reimburse the DEVELOPER for REDEVELOPMENT COSTS related to Phase II. The PHASE II NOTE shall accrue interest at a rate equal to nine percent (9%) per annum. The CITY shall issue the PHASE II NOTE so long as DEVELOPER has shown by appropriate and adequate documentation that REDEVELOPMENT COSTS equal to or in excess of \$4,000,000 have been expended by DEVELOPER in Phase I and the DEVELOPER is not

in default under this AGREEMENT. The PHASE I NOTE and the PHASE II NOTE are collectively referred to as "NOTES."

The NOTES shall be paid solely from the NET TIF PROCEEDS until such time as the CITY issues TIF OBLIGATIONS, as described below. Interest shall accrue on the NOTES from their date of issuance. Payment of principal and interest on the NOTES shall be made pursuant to the terms contained therein, to the extent there are NET TIF PROCEEDS available for such payment. Provided that the DEVELOPER is not in default hereunder, the CITY'S obligation to repay the NOTES shall continue until the NOTES, including accrued interest, are paid in full, or until the expiration of the term of this AGREEMENT, whichever is earlier. If the AGREEMENT is terminated pursuant to the terms hereof, the CITY'S obligation to repay the NOTES shall also terminate. The DEVELOPER shall have the right to assign the NOTES, subject to the specific terms set out in the NOTES.

10.03. ISSUANCE OF TAX INCREMENT ALLOCATION FINANCING OBLIGATIONS: The CITY agrees to use its best efforts to issue TIF OBLIGATIONS so as to repay remaining principal and interest on the NOTES. It is recognized that the ability of the CITY to issue the amount of TIF OBLIGATIONS, which may take the form of bonds to be issued and sold, and the net available proceeds from such sale are dependent upon a number of economic and financial factors beyond the CITY'S control. The CITY, therefore, does not represent or warrant to the DEVELOPER that it will be able to sell any TIF OBLIGATIONS or the particular amount of the TIF OBLIGATIONS which may be sold or the amount of money which will be available from the proceeds of the sale of such TIF OBLIGATIONS to provide the funds contemplated hereunder. However, the CITY shall use its best efforts to sell TIF OBLIGATIONS in a principal amount

which will pay all remaining principal and interest due on the NOTES at the time the TIF OBLIGATIONS are issued and sold.

The DEVELOPER agrees to cooperate in the sale of the TIF OBLIGATIONS and to furnish necessary financial data on the PROJECT and other information, including projections as may be required by the CITY.

The CITY and the DEVELOPER agree that the TIF OBLIGATIONS shall have first and senior priority over any other obligation on all present and future real estate tax increment revenue generated by the construction of the PROJECT.

The CITY shall issue the TIF OBLIGATIONS in accordance with the terms herein and any relevant Bond Ordinance. The TIF OBLIGATIONS shall be issued at such time as, in the opinion of the CITY, the annual NET TIF PROCEEDS are anticipated to provide at least 1.25 times debt service on the TIF OBLIGATIONS. The DEVELOPER shall submit a feasibility report at the earliest of completion of construction of Phase II, or the closing of the purchase contracts on fifty percent (50%) of the residential units of Phase II. The CITY shall have the right to have the feasibility report reviewed by such financial consultants it deems necessary. If the feasibility report is acceptable to the CITY and shows that NET TIF PROCEEDS are anticipated to be sufficient to provide at least 1.25 times debt service on the TIF OBLIGATIONS (including costs of issuance) the CITY shall use its best efforts to issue such TIF OBLIGATIONS. The CITY shall have the right, in its sole discretion, to issue the TIF OBLIGATIONS at any time prior to the completion of Phase II if it deems it advisable to do so, in order to pay all or a portion of the principal and interest on the NOTES. If such TIF OBLIGATIONS are issued to pay only a portion of the principal and interest on the NOTES, the CITY shall remain obligated to issue additional TIF OBLIGATIONS to pay the remainder of principal and interest on the NOTES pursuant to the terms hereof.

## SECTION ELEVEN

### PERFORMANCE

11.01. TIME OF THE ESSENCE: Time is of the essence of this AGREEMENT.

11.02. UNAVOIDABLE DELAY: Performance by either PARTY hereunder shall not be deemed to be in default as a result of unavoidable delays or defaults due to war, insurrection, strikes, lockouts, riots, floods, earth-quakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, acts of the other PARTY, the act or the failure to act of any public or governmental agency or entity (except that the acts or failure to act of the CITY shall not excuse performance by the CITY) or any other like event or condition beyond the reasonable control of the PARTY affected thereby which in fact interferes with the ability of such PARTY to discharge their respective obligations hereunder; nor shall either the CITY or the DEVELOPER be considered in breach of, or default in its obligations under this AGREEMENT in the event of any delay resulting from the conduct of any judicial, administrative or legislative proceeding or caused by litigation or proceedings challenging the authority or right of the CITY to act under the ORDINANCES, or perform under this AGREEMENT. The CITY shall diligently contest any such proceedings and any appeals therefrom. The CITY may settle a contested proceeding at any point, so long as the settlement results in the CITY'S ability to perform pursuant to this AGREEMENT and so long as any such settlement does not impose additional obligations on DEVELOPER or reduce the DEVELOPER'S rights or increase its obligations under this AGREEMENT. Provided, however, that within ten (10) days after the beginning of any such unavoidable delay, the PARTY seeking the benefit of the provisions of this Section 11.02 have first notified the other PARTY thereof in writing, and of the cause or causes thereof, and have requested an extension for the period of the forced delay. Such notice may be given to a mortgagee in

possession or seeking to obtain possession or any mortgagee, successor or assign becoming an assignee by foreclosure or deed in lieu of foreclosures.

11.03. NO WAIVER BY DELAY: Any delay by a PARTY in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights hereunder against the other PARTY shall not operate as a waiver of any such PARTY'S rights or to deprive it of or limit such rights in any way. No waiver in fact made by the CITY with respect to any specific default by DEVELOPER shall be considered or treated as a waiver of the rights of the CITY with respect to any other defaults by DEVELOPER or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the DEVELOPER with respect to any specific default by the CITY shall be considered or treated as a waiver of the rights of the DEVELOPER with respect to any other defaults by the CITY or with respect to the particular default except to the extent specifically waived in writing.

11.04. FORUM AND REMEDIES: Upon the breach of this AGREEMENT, any of the PARTIES hereto may, exclusively in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, by action or proceeding at law or in equity, secure the specific performance of the covenants and agreements herein contained or recover damages for the failure of performance or any of the above.

In the event either PARTY shall institute legal action because of breach of any agreement or obligation contained in this AGREEMENT, on the part of either PARTY to be kept or performed, the prevailing PARTY shall be entitled to recover all actual damages (except consequential damages), costs and expenses, including reasonable attorney's fees incurred therefore. The rights and remedies of the PARTIES are cumulative, and the exercise by either PARTY of one or more of such rights or remedies shall not preclude the exercise of it, at the same time or different times, of

any rights or remedies for the same default or for any other default by the other PARTY, as provided herein.

11.05 DEFAULT: Subject to the Unavoidable Delays provisions set forth in Section 11.02. hereof and to provisions for notice as provided herein, failure or delay by either PARTY to perform any term or provision of this AGREEMENT shall constitute an EVENT OF DEFAULT under this AGREEMENT. Furthermore, each of the following acts or omissions of DEVELOPER shall also constitute an EVENT OF DEFAULT under this AGREEMENT:

- (i) DEVELOPER transfers (except to subsequent individual residential or retail unit owners), or suffers any involuntary transfer of the SITE or any part thereof, in violation of this AGREEMENT; and
- (ii) the filing, execution or occurrence of a voluntary or involuntary petition filed seeking any debtor relief, or the making of an assignment for the benefit of creditors by DEVELOPER, or DEVELOPER'S execution of any instrument for the purpose of effecting a composition of creditors or the adjudication of DEVELOPER as bankrupt or insolvent.

11.06. NOTICE OF DEFAULT: A PARTY claiming an EVENT OF DEFAULT under this AGREEMENT shall promptly give written notice of the alleged DEFAULT to the PARTY alleged to be in DEFAULT, specifying the DEFAULT(S) complained of by the injured PARTY.

11.07. CURE PERIOD: The PARTY alleged to be in DEFAULT shall cure, correct or remedy such alleged EVENT OF DEFAULT within thirty (30) days ("CURE PERIOD"). The injured PARTY may not institute proceedings against the PARTY in default until the end of the CURE PERIOD. If such DEFAULT is cured within such CURE PERIOD, the DEFAULT shall be deemed cured. If the DEFAULT is one which cannot be reasonably cured within the CURE

PERIOD, and if the defaulting PARTY shall commence curing the same within such CURE PERIOD, the CURE PERIOD shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting PARTY diligently proceeds therewith; if such DEFAULT is cured within such extended period, the DEFAULT shall be deemed cured.

11.08. NOTIFICATION TO MORTGAGEES: Whenever the CITY shall deliver any notice of DEFAULT to DEVELOPER with respect to any alleged EVENT OF DEFAULT by DEVELOPER hereunder, the CITY shall at the same time deliver to each holder of record of any mortgage, or grantee under any other conveyance for financing, a copy of such notice or demand, provided CITY has been advised in writing of the name and address of any such holder. Each such holder or other entity shall have the right to cure or remedy or commence to cure or remedy any such DEFAULT after the expiration of the CURE PERIOD subject to the same conditions as are applicable to the DEVELOPER pursuant to Section 11.07 hereof.

In the event the DEVELOPER'S DEFAULT is not one curable by a mortgagee or holder of other interests under a conveyance by the DEVELOPER for purposes of financing acquisition of the site and construction of the PROJECT (i.e., insolvency or bankruptcy of the DEVELOPER), such holder may request and the CITY may agree to enter into an assumption agreement with such holder upon such terms as the parties may then agree. Any such assumption agreement shall minimally incorporate this AGREEMENT and all Exhibits attached hereto, together with such other reasonable terms as the parties may agree to secure the CITY in the prompt completion of the PROJECT and the REQUIRED PUBLIC IMPROVEMENTS.

11.09. CITY RIGHT TO CURE DEFAULTS: In the event the DEVELOPER, or any entity acquiring title to the SITE, or any portion of it in lieu of the DEVELOPER defaults in the construction or completion of construction of the improvements contemplated by the

AGREEMENT, and such default is also a default under any mortgage, deed of trust, other security instrument or lease-back or obligation to the grantee under any other conveyance for financing the acquisition or financing of the construction, and the holder, lessor or grantee, as the case may be, elects not to exercise its option to cure such default, the CITY may, after expiration of the notice and CURE PERIOD set forth in Section 11.07, cure such default, or cause the same to be cured, prior to completion of any foreclosure, termination of lease or other remedial proceeding as a result of such default. In such event, the CITY, or its nominee, shall be entitled to reimbursement from the DEVELOPER, or such other entity, of all reasonable costs and expenses incurred by the CITY in curing the default (including reasonable attorney's fees).

## SECTION TWELVE

### INDEMNIFICATION

The DEVELOPER and the CITY hereby agree to indemnify, defend and hold harmless the other PARTY and its officers, agents and employees from and against any losses, costs, damages (except consequential damages), liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) suffered or incurred by such PARTY arising from or in connection with the failure of the indemnifying PARTY to perform its obligations under this AGREEMENT. In addition, the DEVELOPER hereby agrees to indemnify, defend and hold harmless the CITY and its officers, agents and employees from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) for the failure of DEVELOPER or any contractor to pay contractors, subcontractors or materialmen in connection with the PROJECT.

## **SECTION THIRTEEN**

### **INSURANCE AND DESTRUCTION OF PROJECT**

Prior to the DEVELOPER'S commencement of construction of the PROJECT, the DEVELOPER shall provide the CITY with all policies of insurance which the CITY may reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the CITY, including without limitation, comprehensive public liability, workmen's compensation and builder's risk insurance coverage naming the CITY as an additional insured on said policies.

The DEVELOPER shall furnish or cause to be furnished to the CITY duplicate originals, if requested, or appropriate certificates of insurance evidencing that there shall be in effect on a per project limit basis, comprehensive public liability insurance (covering bodily injury and property damage) in the amount of at least Two Million and no/100ths Dollars (\$2,000,000.00) as combined single limits, per occurrence and shall include the CITY, its officers, agents and employees as additional insureds in all such policies. The CITY shall make no claim under any builder's risk or property damage insurance without an opinion from Chapman & Cutler or other nationally recognized bond counsel that such claim will not adversely affect the tax exempt status of any TIF OBLIGATIONS.

All such policies shall also provide for at least ten (10) days prior notice to the CITY of the cancellation or termination of such policies. The CITY shall have the right but not the obligation to pay any delinquent insurance premiums hereunder and DEVELOPER shall reimburse CITY for any such payments. Any liability of the CITY, its officers, agents and employees, for the construction of the REQUIRED PUBLIC IMPROVEMENTS shall be fully insured under these policies for the limits set forth above. Such insurance shall be maintained in force by DEVELOPER until

construction of the REQUIRED PUBLIC IMPROVEMENTS is completed and accepted by the CITY at which time the insurance requirements shall pass to the CITY.

Prior and subsequent to the completion of the PROJECT, DEVELOPER (or the subsequent Condominium Association subsequent to completion of the PROJECT) shall cause same to be insured in an amount equal to the full replacement value thereof, such that should any portion thereof be damaged or destroyed by fire or other insurable casualty, sufficient funds shall be available to permit the reconstruction thereof; provided, however, that once the CITY has accepted the REQUIRED PUBLIC IMPROVEMENTS, it shall be the CITY'S responsibility to insure the REQUIRED PUBLIC IMPROVEMENTS. Should the PROJECT be damaged or destroyed either prior to or subsequent to completion, the DEVELOPER (or the subsequent Condominium Association in the event destruction occurs after completion) shall either rebuild the PROJECT or repay to the CITY all moneys paid by the CITY under the provisions of this AGREEMENT. In the event that the amount of insurance proceeds is in excess of all amounts due to any lender holding a mortgage on the SITE, such excess shall be applied toward any amounts due to the CITY, if any, under the preceding sentence.

#### SECTION FOURTEEN

##### DEVELOPER'S BOOKS AND RECORDS

DEVELOPER agrees that until such time as the CERTIFICATE OF COMPLETION is issued the CITY shall have the right and authority to review and audit, from time to time at the DEVELOPER'S offices, the DEVELOPER'S books and records relating to the PROJECT (including, but not limited to, DEVELOPER'S loan statements, general contractor's sworn statements, general contracts, subcontracts purchase orders, waivers of lien, paid receipts and invoices) reasonably required in order to confirm that the proceeds of monies disbursed from the

FUND or from any TIF OBLIGATIONS are or have been expended for the purposes permitted hereunder.

## **SECTION FIFTEEN**

### **TRANSFERS**

Prior to the issuance of a CERTIFICATE OF COMPLETION for the PROJECT and the acceptance of the REQUIRED PUBLIC IMPROVEMENTS, and other than (1) the transfer of the property or the beneficial interests in the property to an entity owned or controlled by substantially the same persons as DEVELOPER, (2) sales and mortgaging of the sale of individual residential units, or (3) the sale or the mortgaging of the retail space, the DEVELOPER shall not make, create or suffer to be made any sale, transfer, assignment or conveyance, except regarding financing of the PROJECT, with respect to this AGREEMENT or the SITE or the PROJECT, or any part thereof, including without limitation, any transfer or assignment of the beneficial interest in title holding trust or any part thereof, or contract or agree to do any of the same, without the prior written approval of the CITY, which approval shall not be unreasonably withheld or delayed.

Any proposed transferee within the forgoing period shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the CITY, to fulfill the obligations undertaken in this AGREEMENT by the DEVELOPER. Any such proposed transferee, by instrument in writing reasonably satisfactory to the CITY and in recordable form, for itself and its successors and assigns, and for the benefit of the CITY, shall expressly assume all of the obligations of the DEVELOPER under this AGREEMENT, shall agree to be subject to all the conditions and restrictions to which the DEVELOPER is subject and upon acceptance in writing by the CITY of such transferee the DEVELOPER shall be released from any obligation or responsibility under this AGREEMENT. In the absence of the specific written agreement by the

CITY no such transfer, assignment or approval by the CITY shall be deemed to relieve the DEVELOPER or any other party from any obligations as to SITE under this AGREEMENT.

### **SECTION SIXTEEN**

[Reserved]

### **SECTION SEVENTEEN**

### **MISCELLANEOUS PROVISIONS**

17.01. **MUTUAL ASSISTANCE**: The CITY and the DEVELOPER agree to execute all documents, including permit applications, and to take all appropriate or necessary measures as required by this AGREEMENT, by the ACT, by the ORDINANCES, the statutes of the State of Illinois or of any other governmental agencies as may be applicable thereto in order to properly effectuate the implementation, purpose, intent and spirit of this AGREEMENT and the completion of the PROJECT in accordance with the CONTROL DOCUMENTS.

17.02. **REAL ESTATE BROKERAGE**: The CITY and DEVELOPER each represent and warrant one to the other that neither has dealt with any real estate broker in connection with the transaction contemplated herein, and that no broker's commission or fee is due as a consequence of this AGREEMENT. Each PARTY hereto agrees to indemnify, defend and hold harmless each other PARTY from and against any and all claims for real estate broker commissions or fees in connection with any aspect of the transactions contemplated hereunder arising as a consequence of the acts or omissions of the PARTY from whom such indemnification is sought.

17.03. **TAX EXEMPT STATUS**: To the extent the TIF OBLIGATIONS are issued on a tax exempt basis, the PARTIES agree to cooperate to retain such tax exempt status.

17.04. **DISCLAIMER**: Nothing contained in this AGREEMENT nor any act of the CITY shall be deemed or construed by any of the PARTIES, or by third persons, to create any relationship

of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the CITY or the DEVELOPER.

17.05. COVENANTS RUNNING WITH THE LAND: It is intended and agreed that all covenants provided in this AGREEMENT on the part of the DEVELOPER to be performed or observed shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by the CITY, and any successor in interest to the SITE, or any part thereof; provided, however, it is not the intent of the PARTIES that the covenants provided herein shall be binding on the individual owners of any residential or retail unit ultimately constructed on the SITE.

17.06. PARAGRAPH HEADINGS: The paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this AGREEMENT and shall not be used to interpret or construe the terms and provisions of this AGREEMENT.

17.07. COUNTERPARTS: This AGREEMENT may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same AGREEMENT.

17.08. RECORDATION OF AGREEMENT: The PARTIES agree to execute and deliver the original of this AGREEMENT in proper form for recording in the office of the Recorder of Deeds, DuPage County, Illinois.

17.09. NOTICES: Notices herein required shall be in writing and shall be served upon the PARTIES, either personally or mailed by certified or registered mail, return receipt requested:

If to the CITY:

City Clerk  
CITY OF WHEATON  
303 West Wesley Street  
Wheaton, Illinois 60187

with a copy to:

GORSKI & GOOD  
211 South Wheaton Avenue, Suite 305  
Wheaton, Illinois 60187  
Attn: Ms. Robin Jones

If to DEVELOPER:

NORWOOD-WHEATON LLC  
7458 North Harlem Avenue  
Chicago, Illinois 60631-4404

with a copy to:

Stephen S. Messutta, General Counsel  
NORWOOD-WHEATON LLC  
7458 North Harlem Avenue  
Chicago, Illinois 60631-4404

and

Schain, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street  
Chicago, IL 60601-1102  
Attn: Bernard I. Citron

If to any Mortgagee:

To the person and address designated  
to the CITY in writing by the Mortgagee.

If to Bond Counsel:

CHAPMAN & CUTLER  
111 West Monroe Street  
Chicago, Illinois 60603

A PARTY'S address may be changed from time to time by such PARTY giving notice as provided above to the other PARTIES noted above.

17.10. INTEGRATION: This AGREEMENT together with all Exhibits and attachments thereto, constitute the entire understanding and agreement of the PARTIES. This AGREEMENT integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the PARTIES with respect to all or any part of the subject matter hereof. All waivers of the provisions of this AGREEMENT must be in writing and signed by the appropriate authorities of the CITY or the DEVELOPER, and all amendments hereto must be in writing and signed by the appropriate authorities of the CITY and the DEVELOPER.

17.11. AMENDMENT: This AGREEMENT, and any Exhibit attached hereto, may be amended only by written instrument properly executed by the PARTIES or their successors in interest. Execution of any such amendment by the CITY shall first have been authorized by the Ordinance or Resolution duly adopted by the corporate authorities of the CITY.

17.12. CERTIFICATE OF CONTINUED EFFECTIVENESS: Within ten (10) business days after the written request by DEVELOPER, the CITY shall execute and deliver to any existing or proposed mortgagee, or lessor or grantee a certificate stating that this AGREEMENT is in full force and effect, that neither the CITY nor DEVELOPER are in default under this AGREEMENT and containing such other information as may be reasonably requested by such mortgagee, lessor or grantor.

17.13. SUCCESSORS AND ASSIGNEES: The terms and conditions of this AGREEMENT are to apply to and bind and inure to the benefit of the CITY, the DEVELOPER and their successors and assignees.

17.14. SEVERABILITY: If any provision of this AGREEMENT, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is held invalid, the remainder of the AGREEMENT shall be construed as if such invalid part were never included herein and the AGREEMENT shall be and remain valid and enforceable to the fullest extent permitted by law.

17.15. TERM: This AGREEMENT shall be in full force and effect from and after the execution hereof by the last PARTY to execute the same and shall remain in full force and effect, unless earlier terminated pursuant to any of the terms or provisions of this AGREEMENT, until the earlier of December 31, 2023 or until all of the TIF OBLIGATIONS shall have been redeemed and fully satisfied. Upon the expiration of the term of the AGREEMENT, the CITY will provide the

DEVELOPER, at the DEVELOPER'S written request, with a written notice in recordable form stating that the term of the AGREEMENT has expired.

17.16. GOVERNING LAW: The laws of the State of Illinois shall govern the interpretation and enforcement of this AGREEMENT.

17.17. NO DISCRIMINATION: The DEVELOPER, in connection with the construction of the PROJECT, shall utilize fair employment practices, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The DEVELOPER shall take affirmative action to require that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising, solicitations and advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices which may be provided by the CITY setting forth the provisions of this nondiscrimination clause.

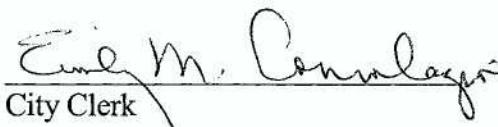
**(SIGNATURES APPEAR ON THE FOLLOWING PAGE)**

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed on or as of the day and year first above written.

CITY OF WHEATON, an Illinois municipal corporation,

By:   
Mayor

ATTEST:

  
Emily M. Convalaggio  
City Clerk

NORWOOD-WHEATON LLC., an Illinois limited liability company

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

ATTEST:

\_\_\_\_\_

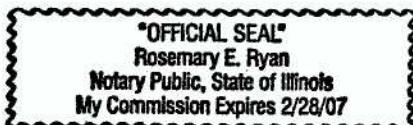
F-1061  
Ex A.

STATE OF ILLINOIS )  
                         ) SS.  
COUNTY OF DU PAGE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. James Carr, Mayor of the City of Wheaton, and Emily M. Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of JUNE, 2005.

*Rosemary E. Ryan*  
Notary Public



I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of Norwood Construction Inc, an  
Illinois Corporation as manager of NORWOOD-WHEATON LLC, an Illinois Limited Liability  
Company, \_\_\_\_\_, \_\_\_\_\_ of said corporation, personally known to me to be  
the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_  
and \_\_\_\_\_, respectively appeared before me this day in person and acknowledged that  
they signed and delivered the said instrument as their own free and voluntary act and as the free and  
voluntary act of said corporation, for the uses and purposes therein set forth; and the said  
\_\_\_\_\_ then and there acknowledged that \_\_\_\_\_ he, as custodian of the seal of said  
corporation, did affix the corporate seal of said corporation to said instrument, as h\_\_\_\_\_ own free and  
voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein  
set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_,  
2005.

---

Notary Public

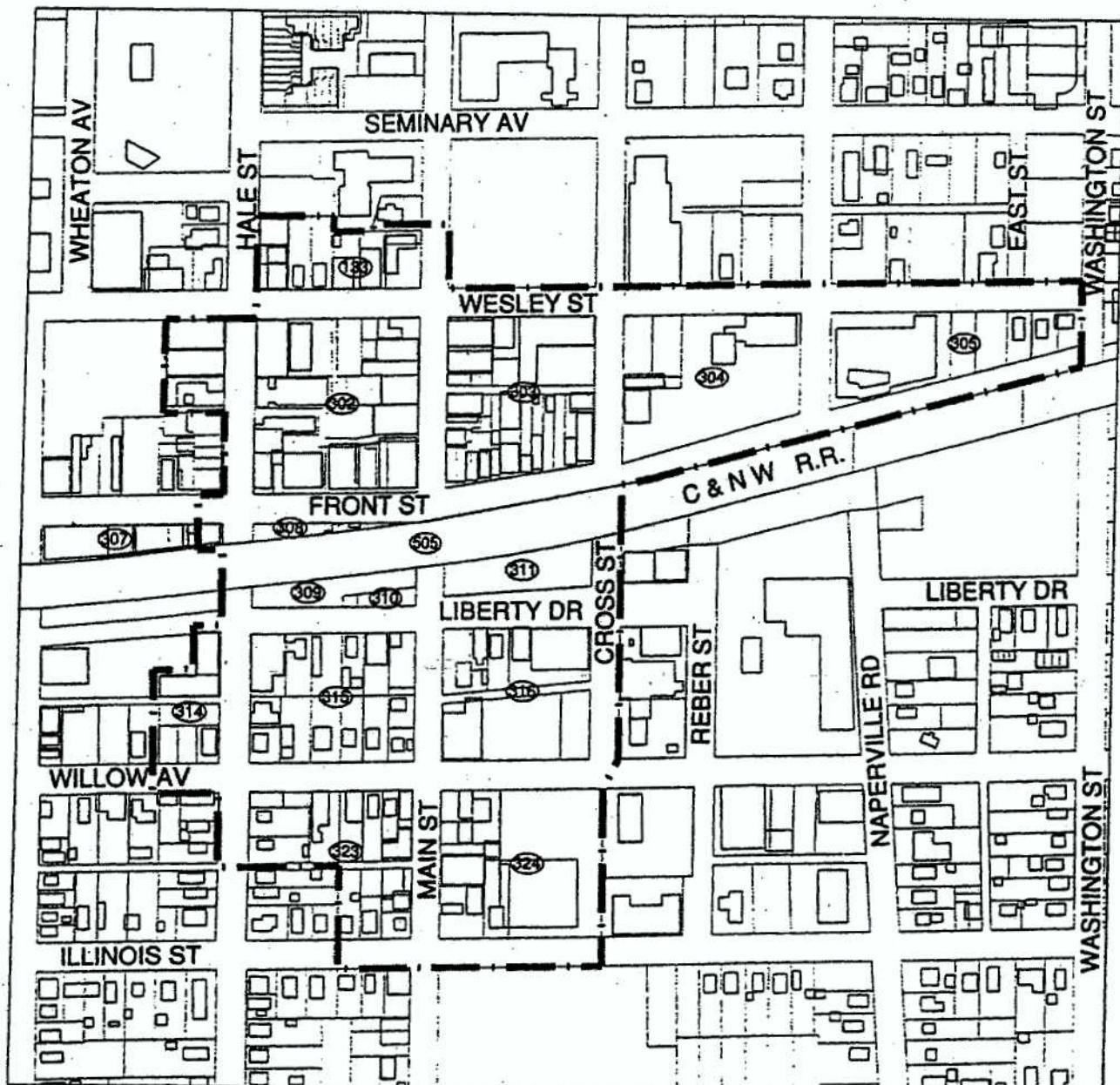
F 1061  
E b A

**EXHIBIT A**

**OUTLINE OF SITE**

**EXHIBIT A**

**OUTLINE OF SITE**



**LEGEND**

- Existing Building
- TIF 2 Redevelopment Area Boundary



F-1061  
Ex A.

**EXHIBIT B**

**LEGAL DESCRIPTION OF SITE**

**EXHIBIT B**

**LEGAL DESCRIPTION OF SITE**

**PARCEL 1:**

LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION OF ALL OF BLOCK 5 OF THE ORIGINAL TOWN OF WHEATON RECORDED AS DOCUMENT NO. 7256 (EXCEPT LOT 5 IN SAID ORIGINAL PLAT; AND EXCEPT LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NO. 662395, AN ASSESSMENT PLAT OF PARTS OF LOTS 4 AND 5 AND ALL OF LOTS 6 AND 7 IN BLOCK 5 OF SAID ORIGINAL PLAT) IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID GARY WHEATON BANK'S PLAT OF CONSOLIDATION RECORDED OCTOBER 6, 1986 AS DOCUMENT NO. R86-122510; EXCEPTING THEREFROM LOTS 3, 4, AND 5 IN CROSS AND FRONT ASSESSMENT PLAT OF PARTS OF LOTS 4 AND 5, ALL OF LOTS 6 AND 7 IN BLOCK 5 OF THE ORIGINAL PLAT OF THE TOWN OF WHEATON, BEING PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID CROSS AND FRONT ASSESSMENT PLAT THEREOF RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NO. 662395, IN DUPAGE COUNTY, ILLINOIS.

**PARCEL 1A:**

LOTS 3, 4 AND 5 IN CROSS AND FRONT ASSESSMENT PLAT OF PARTS OF LOTS 4 AND 5, ALL OF LOTS 6 AND 7 IN BLOCK 5 OF THE ORIGINAL PLAT OF THE TOWN OF WHEATON, BEING PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID CROSS AND FRONT ASSESSMENT PLAT THEREOF RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NO. 662395, IN DUPAGE COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT OF PARTS OF LOTS 4 AND 5, ALL OF LOTS 6 AND 7 IN BLOCK 5 OF THE ORIGINAL PLAT OF THE TOWN OF WHEATON, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO AFORESAID CROSS AND FRONT ASSESSMENT PLAT RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NO. 662395, IN DUPAGE COUNTY, ILLINOIS.

**PARCEL 3:**

LOT 5 IN BLOCK 5 OF THE PLAT OF THE ORIGINAL TOWN OF WHEATON, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 7256, IN DUPAGE COUNTY, ILLINOIS.

PINS: 05-16-304-008, 05-16-304-024, 05-16-304-026, AND 05-16-304-027

**EXHIBIT C**

**DESCRIPTION OF PROJECT**

Construction of three (3) condominium buildings and related parking spaces, along with approximately 8,000 square feet of retail space, all as approved in Ordinance No. F-0932.

Required Public Improvements:

Burial of overhead electrical lines around the Site perimeter

Pedestrian access in and around courtyard

Removal of existing parking stalls from south side of Front Street

Construction of angled parking stalls on north side of Front Street

Perimeter street curb and gutter replacement and pavement resurfacing

Streetscape improvements

**EXHIBIT D**

**PROGRESS REPORT**

Project: Wescott Crossing

Reporting Period: Month of \_\_\_\_\_, 200\_

DESCRIPTION	OF	AMOUNT	AMOUNT		
			EXPENDED	THIS	CUMULATIVE
<u>EXPENDITURE</u>	<u>BUDGETED</u>	<u>REPORTING</u>	<u>AMOUNT</u>	<u>PERIOD</u>	<u>EXPENDED</u>

Date: \_\_\_\_\_, 200\_.

F 10601  
Ex A.

EXHIBIT E

BUDGET

TABLE 1  
Wescott Crossing  
City of Wheaton  
Budget

REVISED 12/7/04

Exhibit E

<u>USES</u>			
	Total Cost	TIF Eligible Costs	
<b>LAND</b>			
Acquisition	\$ 6,230,000		
Misc. Closing Costs	\$ 150,000		
<b>Sub Total Site Acquisition</b>	<b>\$ 6,380,000</b>		<b>\$ 4,205,387</b>
<b>HARD COSTS</b>			
Core and Shell-Hard Construction-Units and All On-Site Parking [2]	\$ 36,255,750		
General Conditions	\$ 1,797,000		
<b>Sub Total Hard Costs</b>	<b>\$ 38,052,750</b>		
<b>Site Work [2]</b>			
<b>Site Improvements</b>			
Demolition [3]	\$ 400,000	\$ 400,000	
Environmental Remediation [4]	\$ 50,000	\$ 50,000	
Storm Water Detention	\$ 50,000	\$ 50,000	
<b>Site Enhancements</b>			
Landscaping & Irrigation	\$ 200,000		
Site Furnishings, Fences and Gates, Site Masonry, Site Lighting	\$ 155,000		
<b>Public Improvements (Req'd by City)</b>			
Pkg. Stalls/Ped. Access in Ctyd./Curb & Gutter/Bury utilities [5]	\$ 1,069,613	\$ 1,069,613	
Public Streetscape Improvements [6]	\$ 225,000	\$ 225,000	
<b>Sub Total Site Work</b>	<b>\$ 2,149,613</b>		
<b>Sub Total Hard Costs + Site Work</b>	<b>\$ 40,202,363</b>		
Contingency (% of Hard + Site)	\$ 2,010,118		
Construction Mgmt. Fee	\$ 1,608,095		
Supervision	\$ 1,206,071		
<b>Total Hard Costs and Site</b>	<b>\$ 45,026,646</b>		
<b>SOFT COSTS</b>			
Permits, Impact Fees, etc.	\$ 403,000		
Architectural & Engineering	3.5% of THC & Site	\$ 1,407,083	
Civil Engineering/Surveying		\$ 200,000	
Title and Recording		\$ 25,000	
General & Administrative [7]		\$ 2,985,000	
Professional Fees (Consultants)		\$ 150,000	
Sales, Advertising & Inside Sales Commissions		\$ 2,786,000	
Broker Fees @ 1/3 of Sales @ 2.5%	33.33%	2.5%	\$ 531,394
Closing Costs			\$ 248,750
<b>Subtotal Soft Costs</b>			<b>\$ 8,736,227</b>
Contingency	5% of Soft Costs		\$ 436,811
<b>Total Soft Costs</b>			<b>\$ 9,173,038</b>
<b>Sub Total Development Costs (Land+Hard+Soft)</b>			<b>\$ 60,579,684</b>
<b>INTEREST</b>			
Bank Loan Interest @	8.00% of Sales	\$ 5,101,893	
<b>Total Interest</b>			<b>\$ 5,101,893</b>
<b>Total Land+ Hard+ Soft+ Interest</b>	<b>\$ 65,681,577</b>		
<b>Total TIF Eligible Costs</b>			<b>\$ 6,000,000</b>

[2] Estimate per Levine Assoc. of Illinois

[3] Estimate per Brandenburg Industrial Service Company

[4] Estimate per Environmental Group Services, Ltd.

[5] Estimate per SPACECO, Inc.

[6] Estimate per OKW Architects and data provided by the City of Wheaton.

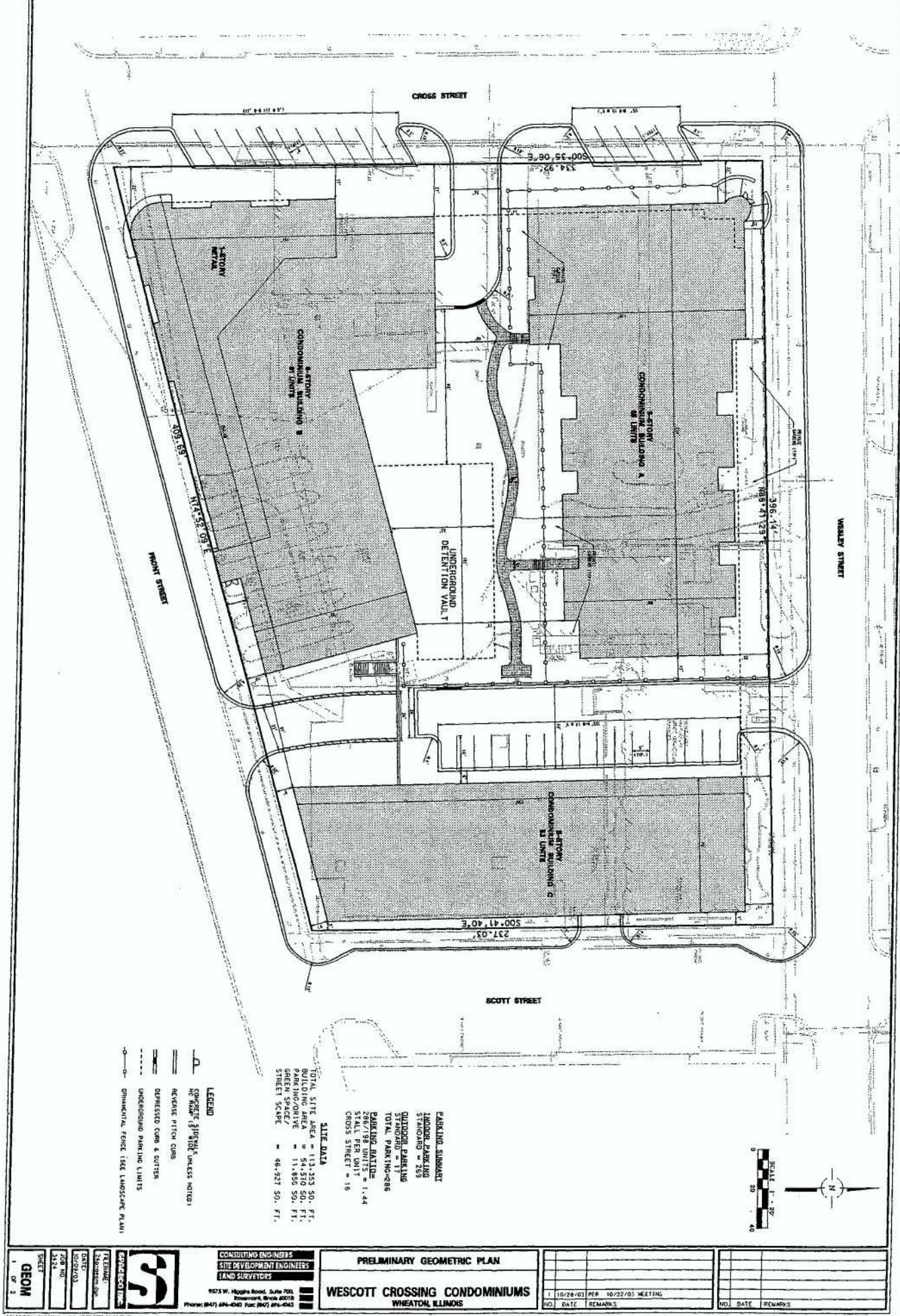
[7] General & Administrative costs includes insurance, real estate taxes, start-up, construction site operation, FF&E, supplies, etc.

F. 10601  
Ex A

**EXHIBIT F**

**SITE PLAN**

EXhibit "F"



F-1061  
Ex A.

## EXHIBIT G

### SCHEDULE

#### Wescott Crossing Condominiums Construction Time Line

<b>A. Phase I Building "A" 65 units and Building "B" 81 units</b>			
	<u>Description</u>	<u>Start Date</u>	<u>Completion Date</u>
1.	Property take down	July 1 <sup>st</sup> , 2005	
2.	Demolition process begins on Phase I, 4-story bank building and drive thru facility building.	July 2 <sup>nd</sup> , 2005	
3.	Demolition completed on buildings in Phase II parcel.		July 29 <sup>th</sup> , 2005
4.	Demolition begins on remainder of buildings and infrastructure Phase I	September 1 <sup>st</sup> , 2005	
5.	Demolition and site preparation for Phase I ends		November 1 <sup>st</sup> , 2005
6.	Shoring begins for building foundation in Phase I	November 2 <sup>nd</sup> , 2005	
7.	Excavation begins for Phase I	December 2 <sup>nd</sup> , 2005	
8.	Shoring and excavation completed		February 1 <sup>st</sup> , 2006
9.	Foundation started on buildings "A" and "B"	February 2 <sup>nd</sup> , 2006	
10.	Building foundations only completed		August 31 <sup>st</sup> , 2006
11.	Center garage foundation to be started after completion of building "A" and "B" towers		
12.	Building "A" (5 story) and Building "B" (6 story) towers started	September 1 <sup>st</sup> , 2006	
13.	Public Improvements-Bury the Overhead electrical lines around the site perimeter	September 1 <sup>st</sup> , 2006	
14.	1 <sup>st</sup> story of Building "A" completed		September 24, 2006
15.	Public Improvements-Pedestrian Access in and around Courtyard	October 10 <sup>th</sup> , 2006	
16.	1 <sup>st</sup> story of Building "B" completed		October 17, 2006
17.	2 <sup>nd</sup> story of Building "A" completed		November 8 <sup>th</sup> , 2006
18.	2 <sup>nd</sup> story of Building "B" completed		December 2 <sup>nd</sup> , 2006
19.	3 <sup>rd</sup> story of Building "A" completed		December 25 <sup>th</sup> , 2006
20.	3 <sup>rd</sup> story of Building "B" completed		January 23 <sup>rd</sup> , 2007
21.	4 <sup>th</sup> story of Building "A" completed		February 11 <sup>th</sup> , 2007
22.	Public Improvements-Remove existing stalls from south side of Front St.	March 1 <sup>st</sup> , 2007	

23.	Public Improvements-Construct new angled stalls on north side of Front Street	March 1 <sup>st</sup> , 2007	
24.	Public Improvements-Perimeter Street Curb & Gutter replacement and pavement resurfacing	March 1 <sup>st</sup> , 2007	
25.	4 <sup>th</sup> story of Building "B" completed		March 6 <sup>th</sup> , 2007
26.	5 <sup>th</sup> story of building "A" completed and ready for roof placement		March 28 <sup>th</sup> , 2007
27.	Public Improvements-Pedestrian Access in and around Courtyard		April 15 <sup>th</sup> , 2007
28.	5 <sup>th</sup> story of Building "B" completed		April 19 <sup>th</sup> , 2007
29.	Building "A" roof set	April 8 <sup>th</sup> , 2007	
30.	Building "A" roof complete		April 23 <sup>rd</sup> , 2007
31.	Building "B" 6 story complete		May 11 <sup>th</sup> , 2007
32.	Building "B" roof set	May 15 <sup>th</sup> , 2007	
33.	Building "B" roof complete		May 24 <sup>th</sup> , 2007
34.	Public Improvements-Remove existing stalls from south side of Front St.		June 1 <sup>st</sup> , 2007
35.	Public Improvements-Construct new angled stalls on north side of Front Street		June 1 <sup>st</sup> , 2007
36.	Public Improvements-Perimeter Street Curb & Gutter replacement and pavement resurfacing		June 1 <sup>st</sup> , 2007
37.	Public Improvements-Bury the Overhead electrical lines around the site perimeter		June 1 <sup>st</sup> 2007
38.	Center garage starts	June 12 <sup>th</sup> , 2007	
39.	Building "B" interior build-out continues to		July 9 <sup>th</sup> , 2007
40.	Building "A" interior build-out starts	July 13 <sup>th</sup> , 2007	
41.	Building "B" sales office and models open	July 14 <sup>th</sup> , 2007	
42.	Center garage completed		October 10 <sup>th</sup> , 2007
43.	Building "B" first closings	October 11 <sup>th</sup> , 2007	
44.	Building "A" interior build-out complete		February 12 <sup>th</sup> , 2008
45.	Sales office and models open	February 27 <sup>th</sup> , 2008	
46.	Building "A" retail ready for build-out to start	February 27 <sup>th</sup> , 2008	
47.	Building "A" first closings	March 14 <sup>th</sup> , 2008	

F. 1061  
Ex A

**B. Year 2007 - Phase II Building "C" 52 units**

	<u>Description</u>	<u>Start Date</u>	<u>Completion Date</u>
1.	Shoring of Building "C" begins.	July 30 <sup>th</sup> , 2007	
2.	Excavation of Building "C" begins.	August 6 <sup>th</sup> , 2007	
3.	Shoring & excavation process completed on Building "C".		September 13 <sup>th</sup> , 2007
4.	Foundation placement begins on Building "C".	September 16 <sup>th</sup> , 2007	
5.	Foundation completed.		November 29 <sup>th</sup> , 2007
6.	Building "C" tower construction starts, 5 story building.	December 3 <sup>rd</sup> , 2007	
7.	Ground floor (1 <sup>st</sup> story) Shell completed		January 3 <sup>rd</sup> , 2008
8.	2 <sup>nd</sup> story of shell started	January 6 <sup>th</sup> , 2008	
9.	2 <sup>nd</sup> story of shell & deck completed		January 24 <sup>th</sup> , 2008
10.	3 <sup>rd</sup> story of shell started	January 27 <sup>th</sup> , 2008	
11.	3 <sup>rd</sup> story of shell and deck completed		February 17 <sup>th</sup> , 2008
12.	Infrastructure support for Building "C" started	February 17 <sup>th</sup> , 2008	
13.	4 <sup>th</sup> story of shell started	February 18 <sup>th</sup> , 2008	
14.	4 <sup>th</sup> story of shell & deck completed		March 14 <sup>th</sup> , 2008
15.	Top floor (5 <sup>th</sup> story) shell started	March 17 <sup>th</sup> , 2008	
16.	5 <sup>th</sup> story shell complete and ready for roof placement	April 11 <sup>th</sup> , 2008	
17.	Roof set Building "C"	April 14 <sup>th</sup> , 2008	
18.	Roof completed		April 23 <sup>rd</sup> , 2008
19.	Building interior build-out continues		July 1 <sup>st</sup> , 2008
20.	Building sales office and models open in building	July 5 <sup>th</sup> , 2008	
21.	First Closings take place in Building "C"	July 30 <sup>th</sup> , 2008	

**EXHIBIT H**

**FORM OF NOTE**

\$ \_\_\_\_\_

Wheaton, Illinois  
\_\_\_\_\_, 200\_

FOR VALUE RECEIVED, the undersigned, the City of Wheaton, an Illinois municipal corporation, with its principal address at 303 W. Wesley Street, Wheaton, Illinois 60187 ("Maker"), hereby promises to pay to the order of \_\_\_\_\_ ("Payee"), the principal sum of \_\_\_\_\_ (\$\_\_\_\_\_) DOLLARS, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of 9% per annum. Accrued, unpaid amounts of interest on this Note shall be added to the outstanding principal balance of this Note, on an annual basis, and such additional amounts of principal shall thereafter bear interest in the same manner and at the same rate as the unpaid principal balance of this Note.

Maker waives presentment and demand for payment, notice of non-payment and of design, protest of dishonor and notice of protest. No delay or omission of Payee to exercise any right shall impair any such right or be construed to be a waiver of any right or default.

This Note is issued under and pursuant to the terms and provisions of a certain Development Agreement entered into as of the \_\_\_ day of June, 2005, by and between the Maker and Payee, all of the provisions of which are hereby incorporated herein as though set forth verbatim. Reference is hereby made to such Development Agreement for definition of all terms not otherwise defined herein.

This Note shall not constitute a general obligation of the Maker, nor shall it be secured by the full faith and credit of the Maker. This Note shall be payable solely from the sources set forth in the Development Agreement. Provided that the Payee is not in default under the Development Agreement, the Maker's obligation to repay this Note shall continue until the Note, including accrued interest, is paid in full, or until the expiration of the term of the Development Agreement, whichever is earlier. If the Development Agreement is terminated pursuant to the terms thereof, the Maker's obligation to repay this Note shall also terminate.

This Note is subject to mandatory redemption without premium, pursuant to the provisions of Section 10.02 of the Development Agreement at a redemption price of 100% of the principal amount redeemed plus interest accrued to the redemption date on the first day of February of each year to the extent there are Net TIF Proceeds available for such redemption.

This Note is also subject to mandatory redemption without premium pursuant to the provisions of Section 10.03 of the Development Agreement.

This Note is also subject to optional redemption without premium, in whole or in part, at any time.

F-1561  
Ex A

2083

This Note shall inure to the benefit of the Payee and its successors and assigns and shall be binding upon the undersigned and its successors and assigns.

IN WITNESS WHEREOF, the Maker has executed this Note as of the day and year first above written.

CITY OF WHEATON, an Illinois  
municipal corporation,

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

ATTEST:

\_\_\_\_\_  
City Clerk