

1

ORDINANCE NO. F-1246

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

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 have heretofore approved a redevelopment plan and 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, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, the City has previously entered into a Development Agreement (the "Agreement") dated June 20, 2005 with Norwood-Wheaton LLC (the "Developer") regarding a portion of said Project Area; and;

WHEREAS, the City and the Developer desire to amend the Agreement;

WHEREAS, the First Amendment to 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 First Amendment to Development Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

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or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

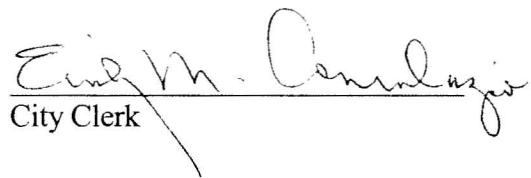
Section 3. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 16th day of January, 2007.



Mayor Carr

ATTEST:



Cindy M. Comolino
City Clerk

Roll Call Vote:

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

Nays: None

Absent: None

Motion Carried Unanimously

Passed: January 16, 2007
Published: January 17, 2007

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "FIRST AMENDMENT") is made and entered into as of the 16TH day of January, 2007, by and between the CITY OF WHEATON, a municipal corporation and home rule unit, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY") and NORWOOD-WHEATON LLC (the "DEVELOPER"); the CITY and the DEVELOPER being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Wheaton Main Street Redevelopment Area Project and Plan", dated November, 1999, as amended (hereinafter referred to as the "REDEVELOPMENT PLAN"), the CITY designated a certain area within its municipal limits for redevelopment and revitalization.

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").

C. 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. Further, 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.

D. The PARTIES previously entered into a Development Agreement dated June 20, 2005 (the "ORIGINAL AGREEMENT") regarding the construction of a three (3) building condominium/retail development, as more fully described in the ORIGINAL AGREEMENT.

E. The PARTIES desire to amend the ORIGINAL AGREEMENT and the City Council of the CITY has determined that such amendment would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, the PARTIES hereto agree as follows:

SECTION ONE

INCORPORATION OF RECITALS

The PARTIES hereby confirm the truth and validity of their respective representations and recitations set forth in the foregoing recitals and do further acknowledge that they are material to this FIRST AMENDMENT. Such recitals are hereby incorporated into and made a part of this FIRST AMENDMENT as though they were fully set forth in this Section One.

SECTION TWO

INTEGRATION OF DEVELOPMENT AGREEMENT

The provisions of this FIRST AMENDMENT shall be deemed by the PARTIES to be fully integrated into the ORIGINAL AGREEMENT. The ORIGINAL AGREEMENT shall remain in full force and effect except to the extent that it is expressly modified by the terms of this FIRST AMENDMENT. Should any provision of the ORIGINAL AGREEMENT conflict with any provision of this FIRST AMENDMENT, the provisions of this FIRST AMENDMENT

shall control.

SECTION THREE

DEFINITIONS

Terms capitalized in this FIRST AMENDMENT and not otherwise defined herein shall have the meanings ascribed to those terms in the ORIGINAL AGREEMENT. Terms defined and capitalized herein shall have the meanings ascribed to those terms in this FIRST AMENDMENT and, to the extent such terms are also defined terms in the ORIGINAL AGREEMENT, the definitions of those terms as herein provided shall be deemed to control the interpretation of those terms in the ORIGINAL AGREEMENT.

SECTION FOUR

AMENDMENTS TO ORIGINAL AGREEMENT

Section 10.02 of the ORIGINAL AGREEMENT is hereby deleted and the following language inserted:

"10.02. **METHOD OF REIMBURSEMENT:** DEVELOPER proposes to construct the PROJECT in two phases, building C in Phase I ("PHASE I") and buildings A and B in Phase II ("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 the DEVELOPER commences construction of PHASE I, 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 \$2,000,000 ("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 the DEVELOPER commences construction of PHASE II, the CITY shall

issue a second Note in the amount of \$4,000,000 ("PHASE II NOTE"), 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 \$2,000,000 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 PHASE I NOTE in a bifurcated manner. That portion of the PHASE I NOTE that is attributable to the costs of demolition on the entire SITE (approximately \$235,000) shall begin to accrue interest from the date that the DEVELOPER has paid all such costs (as evidenced by appropriate and adequate documentation submitted to the CITY). Interest on the remaining portion of the PHASE I NOTE shall begin to accrue on the date of issuance of said NOTE. Interest on the PHASE II NOTE shall begin to accrue on the date of issuance thereof.

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

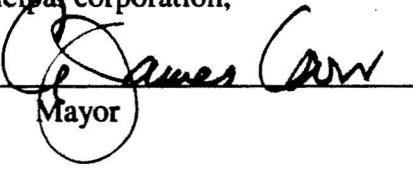
terms set out in the NOTES."

Exhibit "G" attached to the ORIGINAL AGREEMENT is hereby substituted with a revised Exhibit "G", which is attached hereto.

[SIGNATURE PAGE FOLLOWS]

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

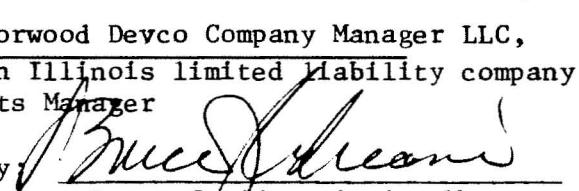
CITY OF WHEATON, an Illinois municipal corporation,

By: 
James Caw
Mayor

ATTEST:


Emily M. Condega
City Clerk

NORWOOD-WHEATON LLC, an Illinois limited liability company,

By: 
Norwood Devco Company Manager LLC,
an Illinois limited liability company,
its Manager
By: 
Bruce J. Dreani, its Manager

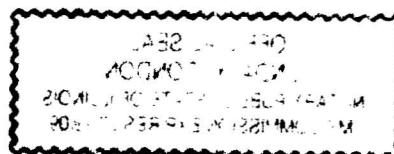
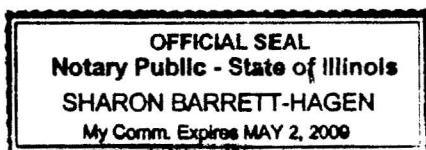
ATTEST: N/A

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 16th day of January, 2007.

Sharon Barrett-Hagen
Notary Public



STATE OF ILLINOIS)
DO HEREBY CERTIFY that)
COUNTY OF DUPAGE COOK)

) SS.
I, the undersigned, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that Bruce J. Adreani, Manager* of Norwood-Wheaton LLC ~~and~~
~~XXXXXXXXXXXXXXXXXXXXXX~~ of said ~~XXXXXXXXXXXX~~, personally known to me to be the
same person, whose name ~~is~~ ~~was~~ subscribed to the foregoing instrument as such Manager ~~and~~
~~XXXXXXXXXXXXXX~~, ~~respectively~~ appeared before me this date in person and acknowledged that ~~they~~ ^{his} he
signed and delivered the said instrument as ~~their~~ ^{his} free and voluntary act and as the free and
voluntary act of said company, for the uses and purposes therein set forth, ~~and the said~~
~~then and there acknowledged that she, as custodian of the seal of said company,~~
~~did affix the seal of said company to said instrument, as~~ ~~own free and voluntary act and as~~
~~the free and voluntary act of said company, for the uses and purposes therein set forth.~~

GIVEN under my hand and Notarial Seal this 25th day of January, 2007.

Linda YI-CONDON
Notary Public

* of Norwood Deyco Company Manager LLC,
an Illinois limited liability company,
as Manager

**, an Illinois limited liability company,

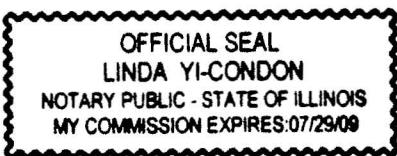


EXHIBIT GREVISED SCHEDULE

Wescott Crossing Condominiums
Construction Time Line
As of October 10, 2006

A. Year 2007 - Phase II Building "C" 48 units			
	Description	Start Date	Completion Date
1.	Shoring of Building "C" begins.	February 28, 2007	
2.	Excavation of Building "C" begins.	March 7, 2007	
3.	Shoring & excavation process completed on Building "C".		April 14, 2007
4.	Foundation placement begins on Building "C".	April 17, 2007	
5.	Foundation completed.		June 29, 2007
6.	Building "C" tower construction starts, 5 story building.	July 3, 2007	
7.	Ground floor (1 st story) Shell completed		August 3, 2007
8.	2 nd story of shell started	August 6, 2007	
9.	2 nd story of shell & deck completed		August 24, 2007
10	3 rd story of shell started	August 27, 2007	
.			
11	3 rd story of shell and deck completed		September 17, 2007
.			
12	Infrastructure support for Building "C" started	September 17, 2007	
.			
13	4 th story of shell started	September 18, 2007	
.			
14	4 th story of shell & deck completed		October 14, 2007
.			
15	Top floor (5 th story) shell started	October 17, 2007	
.			
16	5 th story shell complete and ready for roof placement	November 11, 2007	
.			
17	Roof set Building "C"	November 14, 2007	
.			
18	Roof completed		November 23, 2007
.			
19	Building interior build-out continues		February 1, 2008
.			
20	Building sales office and models open in building	February 5, 2008	
.			
21	First Closings take place in Building "C"	March 2, 2008	
.			

B. Phase I Building "A" 60 units and Building "B" 79 units

	Description	Start Date	Completion Date
1.	Property take down	February 28, 2006	
2.	Demolition process begins on Phase I, drive thru facility building and Cross St. facility.	May 1, 2006	
3.	Demolition completed on buildings in Phase II parcel.		June 2, 2006
4.	Demolition begins on remainder of buildings and infrastructure Phase I	June 2, 2006	
5.	Demolition and site preparation for Phase I ends		July 1, 2006
6.	Shoring begins for building foundation in Phase I	March 1, 2008	
7.	Excavation begins for Phase I	April 1, 2008	
8.	Shoring and excavation completed		May 1, 2008
9.	Foundation started on buildings "A" and "B"	May 2, 2008	
10.	Building foundations only completed		August 1, 2008
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	August 2, 2008	
13.	Public Improvements-Bury the Overhead electrical lines around the site perimeter	January 1, 2009	
14.	1 st story of Building "A" completed		September 6, 2008
15.	Public Improvements-Pedestrian Access in and around Courtyard	February 10, 2009	
16.	1 st story of Building "B" completed		October 1, 2008
17.	2 nd story of Building "A" completed		November 1, 2008
18.	2 nd story of Building "B" completed		December 1, 2008
19.	3 rd story of Building "A" completed		January 2, 2009
20.	3 rd story of Building "B" completed		January 16, 2009
21.	4 th story of Building "A" completed		February 7, 2009
22.	Public Improvements-Remove existing stalls from south side of Front St.	June 30, 2009	
23.	Public Improvements-Construct new angled stalls on north side of Front Street	June 30, 2009	
24.	Public Improvements-Perimeter Street Curb & Gutter replacement and pavement resurfacing	June 30, 2009	
25.	4 th story of Building "B" completed		February 28, 2009
26.	5 th story of building "A" completed and ready for roof placement		April 15, 2009
27.	Public Improvements-Pedestrian Access in and around Courtyard		August 15, 2009
28.	5 th story of Building "B" completed		April 10, 2009
29.	Building "A" roof set	April 16, 2009	
30.	Building "A" roof complete		April 27, 2009
31.	Building "B" 6 story complete		May 7, 2009
32.	Building "B" roof set	May 12, 2009	
33.	Building "B" roof complete		June 1, 2009
34.	Public Improvements-Remove existing stalls from south side of Front St.		September 30, 2009
35.	Public Improvements-Construct new angled stalls on north side of Front Street		September 30, 2009
36.	Public Improvements-Perimeter Street Curb & Gutter replacement		September 30, 2009

	and pavement resurfacing		
37.	Public Improvements-Bury the Overhead electrical lines around the site perimeter		September 30, 2009
38.	Center garage starts	June 30, 2009	
39.	Building "B" interior build-out continues to		October 10, 2009
40.	Building "A" interior build-out starts	April 30, 2009	
41.	Building "A" sales office and models open	October 1, 2009	
42.	Center garage completed		October 15, 2009
43.	Building "A" first closings	October 15, 2009	
44.	Building "B" interior build-out complete		October 20, 2009
45.	Sales office and models open "B"	December 1, 2009	
46.	Building "A" retail ready for build-out to start	August 1, 2009	
47.	Building "B" first closings	January 1, 2010	