

ORDINANCE NO. F-1647

AN ORDINANCE OF THE CITY OF WHEATON, DUPAGE 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 – MORNINGSIDE WHEATON, LLC

WHEREAS, the Mayor and City Council of the City of Wheaton, DuPage County, Illinois (the “City”), have 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”), designating a redevelopment project area (the “Area”) for that portion of the City known as the Wheaton Main Street Redevelopment Project Area, and adopt tax increment 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 interests of the residents of the City of Wheaton to enter into a Redevelopment Agreement with Morningside Wheaton, LLC (the “Developer”) regarding a portion of said project area, in furtherance of the plan; and

WHEREAS, the Redevelopment Agreement and the Development Proposal associated therewith have been on file with the City Clerk of the City of Wheaton and are available for public inspection.

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

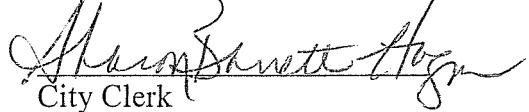
Section 1: That the Mayor and City Clerk be and the same are hereby authorized to execute the Redevelopment Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit “A,” and all other documents required to effectuate the purpose of the Redevelopment Agreement.

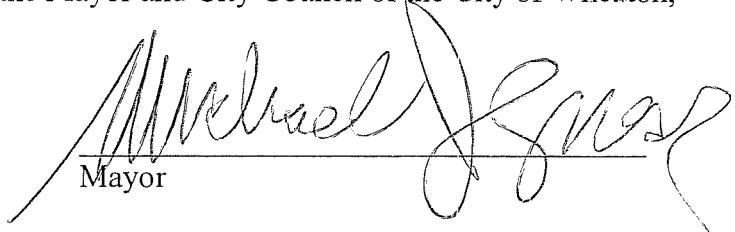
Section 2: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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

PASSED and APPROVED by the Mayor and City Council of the City of Wheaton,  
Illinois, this 2<sup>nd</sup> day of July, 2012.

ATTEST:

  
Shannanette Hogan  
City Clerk

  
Michael Gresk  
Mayor

Ayes:

Roll Call Vote:  
Councilman Suess  
Councilman Mouhelis  
Mayor Gresk  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo

Nays:

Councilman Rutledge

Absent:

Councilwoman Ives

Motion Carried

Passed: July 2, 2012  
Published: July 3, 2012

## REDEVELOPMENT AGREEMENT

This REDEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 3<sup>rd</sup> day of July, 2012, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY") and MORNINGSIDE WHEATON, LLC, an Illinois limited liability company (hereinafter referred to as "DEVELOPER").

### RECITALS

A. Pursuant to the terms of a Redevelopment Project 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 Corporate Authorities of the CITY designated a certain conservation area within its municipal limits for redevelopment and revitalization. The part of the City of Wheaton Main Street Redevelopment Project Area which is the subject matter of this AGREEMENT is depicted on **Exhibit "A"** and legally described on **Exhibit "B"**, (hereinafter referred to as the "SITE") which Exhibits are attached hereto and made a part hereof.

B. DEVELOPER, in accordance with the REDEVELOPMENT PLAN, will construct a premier residential rental community and install certain MINIMUM IMPROVEMENTS as hereinafter defined, all as more fully described on **Exhibit "C"** attached hereto and made a part hereof (collectively, the "PROJECT").

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.

D. The CITY is authorized under the provisions of the ACT to finance eligible redevelopment project costs, as that term is defined in the ACT, in accordance with the conditions and requirements set forth in the ACT (the "REDEVELOPMENT COSTS").

E. 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, said ordinance having been amended from time to time; (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").

F. The Corporate Authorities of the CITY have determined that the construction of the PROJECT would be, consistent with and in furtherance of the REDEVELOPMENT PLAN.

G. The Corporate Authorities have further determined that the payment or reimbursement of certain REDEVELOPMENT COSTS and other financial incentives, 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 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 1, and this AGREEMENT shall be construed in accordance therewith.

**SECTION TWO**

**DEFINITIONS**

Terms not otherwise defined herein shall have the following meaning:

"ACT" – means the Illinois Tax Increment Allocation Financing Act.

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

"BUILDING IMPROVEMENTS" – mean those improvements described in **Exhibit "D"**.

"CHARGES" – means 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 14 hereof.

"CITY" - means the City of Wheaton, DuPage County, Illinois.

“CITY FINAL APPROVAL” – means the later to occur of (1) the CITY’s issuance of a final certificate of occupancy for the BUILDING IMPROVEMENTS and (2) the CITY’s passage and publication of an ordinance accepting the PUBLIC IMPROVEMENTS.

“CONTROL DOCUMENTS” – means the Planned Unit Development Ordinance and land use approval documents referenced in that ordinance.

“CURE PERIOD” - means the period of thirty (30) days after notice of an EVENT OF DEFAULT within which the defaulting party may remedy the default except as such period may be extended pursuant to the terms hereof.

“DEVELOPER” - means Morningside Wheaton, LLC, an Illinois limited liability company and its successors and assigns.

“EVENT OF DEFAULT” - means the occurrence of any of the events listed in Section 12.05.

“FIRST STABILIZED YEAR” – means the first twelve consecutive months in which the PROJECT maintains an average occupancy level of ninety-five (95%) percent, as evidenced by DEVELOPER’s delivery of written notice to the CITY that the PROJECT meets such standard.

“FORCE MAJEURE” – means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, tornadoes, floods, washouts, restraining of government and people, civil disturbances, explosions, nuclear accidents, condemnation by the State of Illinois or any political subdivision thereof, wars, failure of utilities or any other matter beyond the reasonable control of a PARTY except as hereinafter provided. FORCE MAJEURE shall not include: (1) economic hardship or impracticability of performance; (2) commercial or

economic frustration of purpose; or (3) a failure of performance by a contractor (except as caused by events which constitute FORCE MAJEURE as to the contractor).

“LENDER” – means one or more legal entities, including but not limited to, a financial institution, real estate investment trust, insurance company, or pension fund that provides financing to DEVELOPER in connection with the PROJECT.

“LENDER FINANCING” – means any funds borrowed by DEVELOPER from any LENDER and which are available to pay for PROJECT costs, or any refinancing thereof.

“LOOK BACK” – means the potential for the CITY to recover TIF financial assistance paid or payable to the DEVELOPER if the profitability to the DEVELOPER exceeds defined parameters as provided in Section 11.

“MINIMUM IMPROVEMENTS” – means the collective categories of improvements, “BUILDING IMPROVEMENTS”, “PRIVATE IMPROVEMENTS” AND “PUBLIC IMPROVEMENTS” as described in Exhibit “D”.

“MINIMUM REAL PROPERTY TAXES” – means the amount of Seven Hundred Ninety Thousand (\$790,000) Dollars.

“MINOR MODIFICATIONS” – means modification or waiver of any requirement, specification, or other term set forth in this AGREEMENT, consented to by the PARTIES, which in the sole and absolute judgment of the City manager, or his designee, does not materially affect the goals, purposes, terms, conditions and/or nature of the AGREEMENT.

“PARTY” or “PARTIES” - means the CITY and/or the DEVELOPER, as the context may require.”

“PAYOUT REQUEST” also referred to as a “PR”- means a WRITTEN REQUEST, as described in Section 10.04 of this AGREEMENT, submitted to the CITY by the DEVELOPER

requesting reimbursement for REIMBURSABLE COSTS.

"PLANS AND SPECIFICATIONS" - means the approved Planned Development Plan approved by the Planned Unit Development ordinance, in conjunction with building plans, engineering plans, and construction documents containing working drawings and specifications, in such form customarily required by the CITY.

"PRIVATE IMPROVEMENTS"- means those non-public improvements described in "Exhibit "D".

"PUBLIC IMPROVEMENTS"- means the non-private improvements described in "Exhibit "D, subsection C".

"REIMBURSABLE COSTS" - means REDEVELOPMENT COSTS associated with PUBLIC IMPROVEMENTS, excluding UTILITY WORK, for which the CITY will reimburse the DEVELOPER pursuant to the terms of this AGREEMENT.

"RETURN ON COSTS" – means the amount equal to the DEVELOPER's annual Net Operating Income, inclusive of standard reserves (\$250.00 per unit per year), divided by the total development costs of the PROJECT.

"SCHEDULE" - means the schedule of construction and completion attached hereto as **Exhibit "E"**.

"SITE" – shall have the meaning ascribed to it in Exhibit "A".

"TAX INCREMENT" - means real estate tax revenues generated from time to time by the SITE and the PROJECT which are attributable to the increase in the equalized assessed valuation of the SITE and PROJECT over and above the initial equalized assessed value of the SITE at the time of the passage of the ORDINANCES, and as may be certified by the DuPage County Clerk, less and excepting (a) an administrative fee of five (5%) percent of such increase in equalized assessed

value in any given year; and (b) payments of twenty-five (25%) percent, in the aggregate, to the school districts, if applicable.

"TAX INCREMENT—AREA WIDE" - means real estate tax revenues generated from time to time by the AREA which are attributable to the increase in the equalized assessed valuation of the AREA over and above the initial equalized assessed value of the AREA as the time of the passage of the ORDINANCES, and as may be certified by the DuPage County Clerk.

"UTILITY WORK" – means costs associated with burial and removal of overhead utility lines and poles located along Wesley, Front and Cross Streets.

"UTILITY COST REIMBURSEMENT" – means payments from the CITY to REIMBURSE the DEVELOPER for the actual costs of UTILITY WORK.

### **SECTION THREE**

#### **DEVELOPER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

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

3.01. **APPLICABLE LAW**: Subject to DEVELOPER's securing of necessary financing and all necessary government approvals, 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.*, the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, and the portions of the Illinois Prevailing Wage Act applicable to the PROJECT, 820 ILCS 130/0.01 *et seq.* (collectively, the "APPLICABLE LAWS").

3.02 **PROJECT COMPLIANCE**: 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 CONTROL DOCUMENTS, the ORDINANCES, as amended from time to time, other applicable law, the PLANS AND SPECIFICATIONS and each and every exhibit attached to and incorporated therein, together with any required permits.

3.03. MISCELLANEOUS DEVELOPER COVENANTS: The DEVELOPER hereby covenants, represents and warrants as follows: (i) The DEVELOPER is now solvent and able to pay its debts as they mature; (ii) to the best knowledge of the DEVELOPER, upon due inquiry, there are no actions at law, in equity or similar proceedings which are pending or threatened against the DEVELOPER, which are reasonable 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, as and when required, 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; (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; and (ix) 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.

3.04. 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. DEVELOPER shall have the right to challenge and/or contest non-governmental liens and DEVELOPER's failure to pay the challenged and/or contested CHARGES shall not be deemed in default under this AGREEMENT provided DEVELOPER diligently pursue such challenge or contest.

3.05. PROGRESS REPORTS: Commencing from the date of execution of this AGREEMENT by the CITY until the issuance of the CITY FINAL APPROVAL, the DEVELOPER shall make progress reports to the CITY regarding the PROJECT. Said reports shall be in the form attached hereto and incorporated herein as **Exhibit "F"**. Reports shall be made quarterly.

3.06. 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 that prior to entering the SITE, such persons notify DEVELOPER's on-site representative and follow all safety guidelines as mandated by OSHA and common practice.

## SECTION FOUR

### CITY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. CITY COVENANTS: The CITY hereby covenants and represents as follows: (i) The CITY has authority pursuant to the ACT 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

### PAYMENT OF INSPECTION AND PERMIT FEES TO THE CITY UPON CERTAIN

#### EVENTS

5.01. PERMIT AND INSPECTION FEE PAYMENTS: Should the DEVELOPER fail to complete the PROJECT pursuant to the terms of the SCHEDULE, DEVELOPER shall pay to the CITY all inspection and permit fees waived by Section 9.01 of this AGREEMENT. Any amounts due to be repaid to the CITY under this Section shall constitute a lien on the SITE, which lien hereby is made expressly subject and subordinate to any LENDER FINANCING. The CITY agrees to execute, a SUBORDINATION AGREEMENT in the form attached hereto as **Exhibit**

“G” (“SUBORDINATION AGREEMENT”).

5.02. NOTICE: Prior to any amount becoming due under this Section 5, the CITY shall give written notice to the DEVELOPER and LENDER of its repayment obligation. Unless otherwise agreed by the CITY pursuant to an amendment of this AGREEMENT, the repayment obligation shall be due within thirty (30) days of the date of the written notice.

## SECTION SIX

### COSTS OF THE PROJECT

6.01. BUDGET: Attached hereto and incorporated herein as **Exhibit "H"** is the DEVELOPER's best estimate of the overall costs of the PROJECT (the "BUDGET"), including the UTILITY COST REIMBURSEMENT and REIMBURSABLE COSTS which are indicated by asterisk.

6.02. DEVELOPER'S COST: Subject to repayment of the UTILITY COST REIMBURSEMENT AND REIMBURSABLE COSTS by the CITY, as provided herein, the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT.

6.03. DEVELOPER'S BUDGET MANAGEMENT: Should the actual cost or expense of construction of the PUBLIC IMPROVEMENTS be greater than the amount set forth in the BUDGET for the PUBLIC IMPROVEMENTS, the DEVELOPER shall be required to pay such excess costs. Notwithstanding the foregoing, if actual costs for a particular line item shown on the BUDGET as UTILITY WORK or REIMBURSABLE COST, exceeds the budgeted amount, the CITY shall reimburse DEVELOPER for such excess cost but only so long as the total amount of the combined UTILITY WORK REIMBURSEMENT AND REIMBURSABLE COSTS does not exceed the total amount to be reimbursed by the CITY as set forth in Exhibit “H”. If the total actual costs of the PUBLIC IMPROVEMENTS (as determined upon completion of construction of the

PUBLIC IMPROVEMENTS for which DEVELOPER is seeking reimbursement) eligible for the reimbursement are less than the total shown for such items on the BUDGET, the CITY will reduce payments to reflect the amount of PUBLIC IMPROVEMENT cost saving. The maximum amount of reimbursement payable by the CITY to the DEVELOPER for PUBLIC IMPROVEMENTS shall be One Million, Three Hundred Sixty -Eight Thousand, One Hundred Ten Dollars (\$1,368,110). Nothing in this Section shall be interpreted to absolve the DEVELOPER from completing the MINIMUM IMPROVEMENTS.

## **SECTION SEVEN**

### **PROJECT AUDIT**

7.01. **RECORDS AUDIT**: The CITY shall have the right to examine all records relating to all costs paid by the DEVELOPER as well as records associated with those items described in the "LOOK BACK" sections of this AGREEMENT 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 of this AGREEMENT. If the DEVELOPER asserts that a record is proprietary and therefore that record is exempt from disclosure under the Illinois Freedom of Information Act, that record shall be submitted at the DEVELOPER's sole cost to an independent Certified Public Accountant (hereinafter "CPA") chosen by the CITY for audit and the CPA's conclusions regarding that document shall be provided to the CITY for its PROJECT audit purposes. This provision shall apply to all reimbursables as well as the LOOK BACK provisions of this AGREEMENT.

## **SECTION EIGHT**

### **CONSTRUCTION OF THE PROJECT**

8.01. **PUD APPROVAL; SUBMISSION AND APPROVAL OF PLANS AND**

SPECIFICATIONS: Construction of the PROJECT is contingent upon the approval by the Corporate Authorities of the CITY of a planned unit development, inclusive of a plat of consolidation. 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 planned unit development, and related documents.

8.02. DELIVERY OF BUILDING AND ENGINEERING PLANS: No later than one hundred twenty (120) days from the date of Planned Development approval by CITY Council, DEVELOPER shall cause to be delivered to the CITY for review and approval the building and final engineering plans for the PROJECT. The DEVELOPER shall also file at appropriate times 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.

8.03. PLAN REVIEW COOPERATION: 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 consider any such submittals and advise the DEVELOPER in writing within twenty-one (21) business days of a full and complete submission of any deficiency in any submitted PLANS AND SPECIFICATIONS or building permit applications, specifying the sections of the Planned Unit Development ordinance CONTROL DOCUMENTS or other applicable laws and ordinances, relied upon by the CITY in determining that any document may not be approved or recommended as submitted. Any errors or omissions of the CITY in the review of and comments provided in response to the submittals shall not constitute a waiver of the application of the CITY's ordinances and regulations related to the

PROJECT.

8.04. CORRECTED DOCUMENTS: 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, or such other reasonable time, 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 and applicable laws and ordinances, except that all submittals after the initial submittal shall be reviewed by the CITY within such shorter period as may be reasonable practical.

8.05. IMPROVEMENT AGREEMENT: Prior to the issuance of a building permit for the PROJECT, the DEVELOPER shall submit an executed copy of the Subdivision Improvement Agreement Acceptance and Guarantee, in substantially the form attached hereto as **Exhibit "I"**, and submit the security or completion bond required therein.

8.06. CONSTRUCTION: The DEVELOPER shall cause the PROJECT, including the MINIMUM IMPROVEMENTS, to be constructed in substantial conformance with the CONTROL DOCUMENTS and applicable laws and ordinances. 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; provided, however, MINOR REVISIONS to the building, engineering, and construction documents shall not be deemed to require an amendment to this AGREEMENT.

8.07. OCCUPANCY CERTIFICATE: The CITY shall not be required to issue a final certificate of occupancy for the BUILDING IMPROVEMENTS until the CITY's Building Department has concluded that the, MINIMUM IMPROVEMENTS are in conformance with

applicable Codes of the CITY and the PLANS AND SPECIFICATIONS. Such certificate of occupancy shall be issued in accordance with the CITY's customary procedures and shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the CITY may issue temporary occupancy certificates pursuant to its customary procedures.

8.08. TIME FOR COMPLETION: The PROJECT shall be constructed in accordance with the SCHEDULE set forth in Exhibit "E". The SCHEDULE shall be subject to reasonable change by the DEVELOPER, as approved by the CITY manager, any such schedule change shall initially be addressed as a MINOR MODIFICATION.

## SECTION NINE

### FEES AND COSTS

9.01. APPLICATION OF CITY CODES: DEVELOPER at its sole cost shall comply with all applicable CITY building codes and construction requirements utilized or approved by the CITY at time of building permit issuance. Normal and customary site and building plan review requirements will be followed. CITY fees for permits and inspections for PUBLIC IMPROVEMENTS are hereby waived.

9.02. PLAT OF CONSOLIDATION: A Plat of Consolidation acceptable to the CITY will be approved as part of the Planned Unit Development ordinance. The DEVELOPER will pay for the preparation of restrictive easements, and any other documentation necessary for the construction of the MINIMUM IMPROVEMENTS.

9.03. IMPACT FEES: The DEVELOPER shall pay all impact fees. Wheaton Park District impact fees shall be in the amount of One Hundred Fifty Thousand (\$150,000.00) Dollars.

## SECTION TEN

### TAX INCREMENT UTILIZATION

10.01. TAX INCREMENT (TIF) FINANCING: The SITE and the PROJECT are within the AREA, which consists of the SITE, the PROJECT and additional property. The additional property is not in the control of the DEVELOPER and is not subject to this AGREEMENT.

10.02. PRO FORMA: The CITY has accepted the DEVELOPER's pro forma statement, attached hereto and incorporated herein as **Exhibit "J"**, as a material basis for the REIMBURSABLE COSTS to be available to the DEVELOPER. Upon issuance of the CITY FINAL APPROVAL CITY will reimburse DEVELOPER for REIMBURSABLE COSTS:

- A. The CITY shall pay DEVELOPER within thirty (30) days of the approval of this AGREEMENT by CITY, one hundred (100%) percent of the UTILITY WORK payments already paid by DEVELOPER for the UTILITY WORK as well as any subsequent payments for UTILITY WORK by the DEVELOPER within thirty (30) days of them being paid.
- B. The DEVELOPER shall provide an irrevocable letter of credit ("LOC") in the full amount of all UTILITY WORK payments paid by the CITY to the DEVELOPER under Section 10.02(A). Said LOC shall be in the form attached hereto and incorporated herein as **Exhibit "K"** to this AGREEMENT, and shall remain in effect and enforceable until the PROJECT is complete, or the CITY has issued all the residential unit temporary certificates of occupancy for the apartment complex. The initial LOC will have a single two year (2) year term – with an option for the DEVELOPER to submit to the CITY an LOC for a successive one (1) year terms (Successor LOC) with the same conditions as the initial LOC. The Successor LOC

must be tendered to the CITY no less than seven days after the notice of non renewal referenced below in “(3)” of this subparagraph. The initial LOC may only be drawn by the CITY in the following circumstances: (1) if the building permit is not obtained within twelve (12) months after the CITY’s approval of the CONTROL DOCUMENTS; or (2) if the DEVELOPER has not received a minimum of all of the temporary or full residential unit certificates of occupancy within twenty four (24) months after the issuance of the building permit or (3) if the CITY receives written notice from the LENDER that the LOC is expiring within thirty (30) days and will not be renewed contrary to the terms of this Agreement. The LOC may be withdrawn by DEVELOPER when the PROJECT is complete or when all the residential unit certificates of occupancy (temporary or full) have been issued. The two (2%) percent per year cost of the DEVELOPER to finance the purchase of the LOC provided to the CITY shall be recoverable as a REIMBURSEABLE COST following completion of the PROJECT and the issuance of a certificate of occupancy.C. Upon issuance of the CITY FINAL APPROVAL the DEVELOPER may initiate PAYOUT REQUESTS to the City for REIMBURSEABLE COSTS.

10.03. ANNUAL TAX INCREMENT: DEVELOPER will annually provide evidence of payment of real estate tax bills to the CITY to allow the CITY to track and credit TAX INCREMENT produced by the PROJECT.

10.04. METHOD OF REIMBURSEMENT: In addition to any other documents required by this AGREEMENT the DEVELOPER shall provide the CITY with proper General Contractor Sworn Statements and lien waivers for all REIMBURSABLE COSTS. The form of these statements and waivers shall be the same as or substantially consistent with like forms used by

Chicago Title Company in its ordinary course of business. The DEVELOPER may submit PAYOUT REQUESTS for REIMBURSEABLE COSTS after the issuance of CITY FINAL APPROVAL. The PR shall include the most recent real estate tax bill for the SITE.

10.05. PROCESSING A PR: All PRs shall include a letter requesting payment, and a copy of the most recently available real estate tax bill for the SITE, and shall be addressed to the CITY Finance Director. The CITY shall have thirty (30) days after receipt of a PR from the DEVELOPER to approve or disapprove of such request. If the request is approved by the CITY Finance Director, payment shall be placed on the agenda of the CITY's next regularly scheduled CITY Council meeting for Council approval. Within ten (10) days of City Council authorization for payment of a PR, the CITY shall deliver payment of the amount requested in the PR. If disapproved, the CITY's Finance Director shall provide the DEVELOPER with a written explanation as to why the request was denied. To the extent that a request is denied for reasons other than the reimbursement is sought for a cost that is not a REIMBURSABLE COST, upon such denial, the DEVELOPER may take such action as necessary to correct the deficiencies identified and resubmit the PR pursuant to the same process. Notwithstanding the foregoing, if the DEVELOPER submits a PR which requests reimbursement for multiple cost items and only a portion of those cost items are disapproved by the CITY, the remaining costs shall be reimbursed in accordance with this Section and not withheld

10.06. WITHHOLDING PAYMENT EVENT OF DEFAULT: The CITY shall not unreasonably withhold, delay or condition its approval of a PR. Notwithstanding the foregoing, the CITY may withhold its approval of a given request for reimbursement if: (a) an EVENT OF DEFAULT of this AGREEMENT exists; and (b) the CITY has sent notice of that EVENT OF DEFAULT to the DEVELOPER in compliance with Section 12.05. Should the DEVELOPER

cure the EVENT OF DEFAULT within the applicable CURE PERIOD, the CITY shall approve and pay the submitted PR in conformance with its ordinary business practices unless there remain other unresolved issues of payment as described above.

## **SECTION ELEVEN**

### **LOOK BACK SHARING**

11.01. **INTENTION OF THE PARTIES:** The DEVELOPER has submitted comprehensive cost estimates to the CITY, which have been reviewed and analyzed by the CITY financial consultant for accuracy and reasonableness. The PARTIES have agreed that if the DEVELOPER's RETURN ON COSTS, starting with the FIRST STABILIZED YEAR, exceeds eight and one-half (8.5%) percent in any twelve (12) month period during the term of this AGREEMENT, the CITY will share fifty (50%) percent in LOOK BACK PAYMENT(S) as stated in Sections 11.03, 11.04, 11.05 and 11.07.

11.02. **LOOK BACK DOCUMENTATION:** The CITY may perform a "LOOK BACK" calculation upon the FIRST STABILIZED YEAR and any twelve (12) month period thereafter. The DEVELOPER shall provide an annual Operating Statement, if requested by the CITY, and any other documents the CITY deems necessary to perform the LOOK BACK analysis, such as lending/financing documents, rent rolls, other documents verifying revenue generation, and supporting documents related to expenditures. If the DEVELOPER asserts that a record is proprietary, that proprietary record shall be submitted to an independent Certified Public Accountant (hereinafter "CPA") reasonably approved by the CITY and the CPA will, at DEVELOPER's cost, provide to the CITY conclusions regarding that document for the CITY's LOOK BACK analysis. The documentation shall contain line items in amounts and descriptions specific to each cost rather than as a percentage of a larger line item.

11.03. LOOK BACK ANALYSIS: If, as a result of any LOOK BACK calculation, the DEVELOPER's Return on Costs for the FIRST STABILIZED YEAR or any twelve (12) month period thereafter exceeds eight and one-half (8.5%) percent (the agreed upon return), all amounts of Return on Costs in excess of eight and one-half (8.5%) percent shall be divided between the CITY and DEVELOPER on a 50/50 basis. Only one (1) LOOK BACK shall be permitted in each twelve (12) month period subsequent to the first LOOK BACK ANALYSIS.

11.04. "LOOK BACK" PAYMENT: The amount of any recovery by the CITY under the "LOOK BACK" provisions for any twelve (12) month period shall be fifty (50%) percent of any amount earned by the DEVELOPER in such twelve (12) month period in excess of the eight and one-half (8.5%) percent RETURN ON COSTS in conformance with the procedures described in Sections 11.03 and 11.04.

11.05. ACCELERATING RECOVERY OF PUBLIC FUNDING: Any LOOK BACK payments paid to the CITY by DEVELOPER shall be added to all TAX INCREMENT recovered by the CITY until all public funds paid to DEVELOPER have been recovered by the CITY.

11.06. LOOK BACK UPON TRANSFER OR SALE OF REDEVELOPMENT PROPERTY: The CITY will perform additional LOOK BACK calculation(s) if the property is sold or transferred to a third party prior to the expiration of this AGREEMENT. The CITY shall perform a LOOK BACK calculation to determine the PROJECT's unleveraged Internal Rate of Return (IRR). If as a result of this LOOK BACK calculation, the DEVELOPER's unleveraged IRR exceeds eighteen (18%) percent (as measured from the date of SITE acquisition to the date of the transfer), the CITY shall receive one-half of any percentage of the unleveraged IRR exceeding eighteen (18%) percent.

11.07. TERMINATION OF LOOK BACK: The LOOK BACK rights of the CITY shall terminate when the TAX INCREMENT recovery combined with any LOOK BACK PAYMENTS results in the CITY recovering all public funds paid to DEVELOPER or upon the CITY'S receipt of the last regular tax payment for the last year of the legal term limitation for the TIF, whichever occurs first.

## SECTION TWELVE

### PERFORMANCE

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

12.02. DELAY: Performance by either PARTY hereunder shall not be deemed to be in default as a result of unavoidable delays due to FORCE MAJEURE, 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 the PARTY seeking the benefit of the provisions of

this Section 12.02 shall, within ten (10) days after the beginning of any such unavoidable delay, have first notified the other PARTY thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced 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.

12.03. NO WAIVER BY DELAY: Excluding applicable statutes of limitation, or 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.

12.04. 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 termination of this AGREEMENT, secure the specific performance of the covenants and agreements herein contained, recover damages for the failure of performance, and/or any of the foregoing remedies so long as allowed in law or equity.

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 damages (except consequential damages), costs and expenses, including reasonable attorney fees. 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, at the same time or different times, any rights or remedies for the same default or for any other default by the other PARTY, as provided herein. Nothing in this AGREEMENT will be deemed waived or release the CITY'S common law or statutory privileges or immunities.

12.05. DEFAULT: Subject to the provisions set forth in Section 12.02 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 a breach or default under this AGREEMENT: (i) without a prior agreement with the CITY to modify the SCHEDULE, the DEVELOPER fails to proceed with the construction of the improvements as required by this AGREEMENT; (ii) without a prior agreement with the CITY to modify the SCHEDULE, the DEVELOPER abandons or substantially suspends construction hereunder or does not have a sufficient work force on the job so as to continuously and expeditiously complete the work; (iii) DEVELOPER transfers, or suffers any involuntary transfer of the PROJECT or the SITE or any part thereof, in violation of this AGREEMENT; (iv) the filing, execution or occurrence of a voluntary or involuntary petition filed seeking any debtor relief, or (v) the making of an assignment for the benefit of creditors by DEVELOPER, not permitted under an applicable SUBORDINATION AGREEMENT, 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.

12.06. NOTICE OF DEFAULT: The PARTY claiming an EVENT OF DEFAULT hereunder shall 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. Failure or delay in giving such notice shall not constitute a waiver of any default.

12.07. CURE PERIOD: The PARTY alleged to be in default shall, within thirty (30) days of receipt of the notice of default, cure, correct or remedy such alleged EVENT OF DEFAULT. 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 said 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. Any failure or delay by either PARTY in asserting any of its rights or remedies as to any default or alleged default shall not operate as a waiver of any such default or of any rights or remedies it may have as a result of such default, nor shall it deprive either such PARTY of its rights to institute and maintain any actions or proceedings which it may have hereunder.

12.08. LENDER RIGHTS: Whenever the CITY shall deliver a 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 LENDER providing LENDER FINANCING, a copy of such notice or demand, provided CITY has been advised in writing of the name and address of any such LENDER. After receipt of the default notice, any LENDER shall have the right, but not the obligation, to cure such default on the same terms and conditions as set forth herein for the cure

of defaults. However, with respect to any cure which requires the LENDER to possess and control the SITE and/or PROJECT, if LENDER undertakes such cure, by written notice to the CITY within 30 days after expiration of the DEVELOPER's cure period, the cure period shall continue for such additional time as may reasonably be required to obtain possession and control of the SITE and/or PROJECT and thereafter cure the default, but in no event shall the period from the default notice to completion of such cure exceed three hundred sixty-five (365) days, unless such cure cannot be effectuated within such period. In such an event, the LENDER'S cure period shall be extended for a reasonable period to time necessary to cure such default and LENDER shall thereafter diligently pursue such cure. Such LENDER may abandon exercise of its cure rights without liability to the CITY or any other party so long as it does not hold title to the SITE. The CITY shall accept cure by LENDER in fulfillment of DEVELOPER's obligations, for the account of DEVELOPER and with the same force and effect as if performed by DEVELOPER. Any LENDER exercising any act which could be characterized as a type of cure, of any DEVELOPER DEFAULT, shall not acquire any rights to enforce DEVELOPER's rights under this AGREEMENT unless it has executed the ASSUMPTION AGREEMENT with the CITY attached as **Exhibit "L"** ("ASSUMPTION AGREEMENT"). Each LENDER 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.

12.09. MORTGAGE LIENS: Notwithstanding any provision herein to the contrary, the DEVELOPER shall be permitted to grant and convey to one or more LENDER(s) mortgage liens and other liens and encumbrances upon the SITE owned by the DEVELOPER as security for LENDER FINANCING, without the prior consent of the CITY. The DEVELOPER shall be

permitted to collaterally assign and grant a security interest in its rights and interests hereunder to such LENDER(s) pursuant to a security agreement substantially in such LENDER's standard form, or such other form as the parties agree ("ASSIGNMENT"). In the event that any LENDER, its nominee or successor, shall succeed to the DEVELOPER's interest in all or any portion of the SITE pursuant to the exercise of remedies under any such LENDER FINANCING or ASSIGNMENT, whether by foreclosure, deed in lieu of foreclosure and/or exercise of any rights under such documents, the CITY hereby agrees to recognize such party as the successor in interest to the rights of DEVELOPER for all purposes under this AGREEMENT but only so long as such LENDER enters into the ASSUMPTION AGREEMENT attached as Exhibit L or an alternative assumption agreement as is reasonably acceptable to the CITY; provided, however, that such LENDER nominee or successor shall have no liability for any EVENT OF DEFAULT or any other act or omission of DEVELOPER occurring prior to such party's succession to the rights of DEVELOPER under this AGREEMENT. Execution of an ASSUMPTION AGREEMENT as referenced in this Section shall not relieve the DEVELOPER from liability for any default of the DEVELOPER which occurred prior to the execution of the assumption agreement. LENDER shall have a right to cure, subject to the other terms of this AGREEMENT. LENDER shall have no liability for any EVENT OF DEFAULT by the DEVELOPER but shall be strictly subject to the terms of this AGREEMENT if it becomes a successor to the DEVELOPER and enters into the ASSUMPTION AGREEMENT or an alternative assumption agreement with the CITY.

## **SECTION THIRTEEN**

### **INDEMNIFICATION**

13.01. **INDEMNIFICATION**: 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 fees and court costs) for the failure of DEVELOPER or any contractor to pay contractors, subcontractors or material men in connection with the PROJECT.

13.02. PREVAILING WAGE ACT: Because the PUBLIC IMPROVEMENTS component of the PROJECT will receive financial assistance from the CITY, the DEVELOPER is required to and shall comply with the applicable provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) and shall indemnify and hold harmless the CITY from any and all claims, damages, fines, fees, and penalties arising out of non-compliance with the Act by the DEVELOPER and its agents. The PARTIES agree and acknowledge that no public funding is being provided for the BUILDING IMPROVEMENTS or the PRIVATE IMPROVEMENTS

## SECTION FOURTEEN

### INSURANCE AND DESTRUCTION OF PROJECT

14.01. INSURANCE: Prior to the DEVELOPER commencing construction of the PROJECT, the DEVELOPER agrees to provide the CITY with the policies of insurance issued by the companies and in the amounts described on **Exhibit "M"** attached hereto and incorporated herein. Said insurance policies shall name the CITY as an additional insured with regard to all areas, improvements, activities and work related to the PUBLIC IMPROVEMENTS until the issuance of the CERTIFICATE OF OCCUPANCY. All such policies shall also provide for at least thirty (30) days' 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. The insurance covering the PUBLIC IMPROVEMENTS prior to the CITY'S acceptance shall satisfy the following requirements:

- A. The DEVELOPER and the DEVELOPER's Contractor or Contractors shall obtain and maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) including bodily injury and property damage, and in an amount of not less than one million dollars (\$1,000,000) annual aggregate per each personal injury and products completed operations; and general commercial automobile liability insurance protecting the DEVELOPER and the DEVELOPER's Contractor or Contractors, in an amount not less than one million (\$1,000,000) annual aggregate for personal injury liability and products completed operations.
- B. The insurance shall include coverage for explosion, collapse, or underground failure. Additionally, DEVELOPER and DEVELOPER's Contractor or Contractors shall obtain and maintain at all times an excess liability (umbrella) policy in an amount of not less than two million dollars (\$2,000,000).
- C. All insurance policies shall name the CITY as an additional insured as respects all coverage.
- D. Coverage shall be on a per occurrence basis and in accordance with the limits and provisions specified herein. Claims made policies are unacceptable.
- E. All such insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until the CITY has received at least thirty (30) days written notice of such cancellation or change.
- F. If at any such coverage is canceled or materially altered, all work on the PUBLIC IMPROVEMENTS shall cease until such time as the insurance coverage are restored to the satisfaction of the CITY.

G. Prior to commencement of any work on the PUBLIC IMPROVEMENTS DEVELOPER shall file with the CITY the required original certificates of insurance with endorsements, which shall clearly state all of the following:

- i) The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- ii) That the CITY shall receive thirty (30) days written notice prior to cancellation or alterations reducing the policy limits; and
- iii) That the DEVELOPER's insurance is primary as respects any other valid or collectible insurance that the CITY may possess, including any self-insured retentions that the CITY may have; and
- iv) Any other insurance the CITY does possess shall be considered excess insurance only and shall not be required to contribute with the DEVELOPER's insurance.
- v) DEVELOPER and/or its Contractor or Contractors shall obtain and maintain at all times during the term of the temporary license statutory workman's compensation and employer's liability insurance in those amounts not less than that required under Illinois law and shall furnish the CITY with a certificate showing proof of such coverage.
- vi) All insurance carriers providing coverage under this Agreement shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide.

Insurance policies and certificates issued by non-admitted insurance companies are unacceptable.

- vii) Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the CITY. To the greatest extent permitted under Illinois law, DEVELOPER hereby agrees and DEVELOPER's Contractor or Contractors shall agree to indemnify, defend, protect and hold harmless the CITY, its corporate authorities, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and clean-up actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to attorneys fees, expert witness fees and costs of defense (hereinafter "Losses") proximately resulting from the DEVELOPER's or the DEVELOPER's Contractor and/or Contractor's acts or omissions related to work on the PUBLIC IMPROVEMENTS and in, about, around or under the right-of-way. DEVELOPER shall be responsible to secure on behalf of the CITY a signed Indemnification Agreement from its Contractor or Contractors providing Wheaton with an identical promise to hold the CITY harmless and to indemnify the CITY prior to commencing work of the PUBLIC IMPROVEMENTS.

14.02. REPLACEMENT INSURANCE: Prior to the completion of the PUBLIC IMPROVEMENTS, DEVELOPER 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 PUBLIC IMPROVEMENTS, it shall be the CITY's responsibility to insure the PUBLIC IMPROVEMENTS. Should the PROJECT be damaged or destroyed prior to completion, the DEVELOPER shall either rebuild or demolish the PROJECT.

## **SECTION FIFTEEN**

### **SECURITY**

15.01. **SECURITY**: In conformance with the CITY's Subdivision Regulations (Chapter 62-54), prior to issuance of building permits and recording of the final plat of subdivision, the DEVELOPER shall deposit with the CITY, security in an amount estimated by the CITY's director of engineering or his designated representative as reasonably necessary to: (a) complete all PUBLIC IMPROVEMENTS, exclusive of burial of the overhead lines; (b) complete required engineering and surveying work including final staking and monumentation; (c) guarantee complete PUBLIC IMPROVEMENTS for a period of one (1) year from the date of acceptance. Acceptable forms of security are outlined in the CITY's Subdivision Improvement Agreement attached hereto as Exhibit "I".

## **SECTION SIXTEEN**

### **TRANSFERS**

16.01. **TRANSFERS**: Prior to completion of the PROJECT and the completion and acceptance of the PUBLIC IMPROVEMENTS, the DEVELOPER shall not make, create or suffer to be made any sale, transfer, assignment or conveyance, except to a LENDER providing LENDER FINANCING, 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. Sale or transfer of the SITE to a related party shall not require CITY approval but DEVELOPER shall provide notice thereof to the CITY. A sale will be considered to a related party if it satisfies one or more of the exemptions set forth in the CITY's Real Estate Transfer Tax Ordinance (Wheaton City Code, Ch. 66, Sec. 66-190(a)(1-12).

16.02. TRANSFeree SOLvency: 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 and strictly 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 titled owner of the SITE from any obligations as to SITE under this AGREEMENT.

## SECTION SEVENTEEN

### REAL PROPERTY TAXES

17.01. PROJECTED REAL PROPERTY TAXES: The CITY financial consultant has estimated that upon ninety-five (95%) percent occupancy the PROJECT should generate gross real property tax of Seven Hundred Ninety Thousand (\$790,000) Dollars per annum.

17.02. REAL PROPERTY TAXES IN EXCESS OF CITY ESTIMATE: During the term of this AGREEMENT, DEVELOPER shall be permitted to challenge or appeal real property taxes at any time they exceed the CITY estimate of Seven Hundred Ninety Thousand (\$790,000) Dollars per annum. But DEVELOPER agrees that no such challenge or appeal will seek relief which will generate less than the Seven Hundred Ninety Thousand (\$790,000) Dollars CITY estimate, except under Sections 17.03 and 17.04.

17.03. LESS THAN 80% OCCUPANCY. Until the PROJECT achieves eighty (80%) percent occupancy, DEVELOPER retains full unrestricted authority to challenge or appeal real property taxes.

17.04. 80% OR MORE OCCUPANCY, BUT LESS THAN 95% OCCUPANCY: At any time during the term of this AGREEMENT that occupancy is eighty (80%) percent or more, but is less than ninety-five (95%) percent, the DEVELOPER shall have a restricted right to challenge or appeal real property taxes for any year to an amount that is not less than the Targeted Property Taxes. The DEVELOPER has the restricted right to protest the amount of taxes based upon the following formula:

$$\text{Occupancy \%} \times \text{Minimum Real Property Taxes} = \text{Targeted Property Taxes}$$

The DEVELOPER agrees that no such tax challenge or appeal will seek relief below the Targeted Property Taxes for any year utilizing this formula. DEVELOPER shall use the average occupancy for the twelve (12) months immediately prior to the applicable tax assessment notice for purposes of Section 17.03 and Section 17.04.

**Example:**

Occupancy %: 85%  
Minimum Real Property Taxes: defined as \$790,000

85% x \$790,000 = Targeted Property Taxes of \$671,500

If the DEVELOPER's occupancy is 85%, the DEVELOPER could seek property tax relief under this Section of the AGREEMENT, but not below the amount of \$671,500.

**17.05. UNRESTRICTED RIGHTS UPON CITY RECOVERY OF PUBLIC FUNDS:**

Once the TAX INCREMENT (and any LOOK BACK recovery) yields sufficient revenue for the CITY to recover the public funds paid to the DEVELOPER, or upon the expiration of this AGREEMENT, DEVELOPER will have unrestricted right to challenge or appeal real property taxes.

**SECTION EIGHTEEN**

**MISCELLANEOUS PROVISIONS**

**18.01. 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.

**18.02. 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.

18.03. 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

18.04. COVENANTS RUNNING WITH THE LAND: It is intended and agreed that the covenants set forth in Section 3.01 (redevelopment), Section 6.03 (payment of cost overruns), Section 8 (terms of PROJECT construction), Section 11 (look back), Section 16.01 (transfers), Section 17.01 (tax appeals) and Section 18.16 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. All other obligations shall be deemed to be personal to DEVELOPER. Upon issuance of the CITY FINAL APPROVAL, the covenants in Sections 3.01, 6.03, and 8 shall be deemed released without further action by either PARTY. All other covenants running with the land shall be deemed released upon expiration of the term of this AGREEMENT without further action by either PARTY. This Section shall not be interpreted to release any ordinances of general application or the ordinance approving the Planned Unit Development. Notwithstanding the foregoing or any provision of this AGREEMENT to the contrary, the covenants in Sections 3.01, 6.03 and 8 shall not be binding on LENDERS benefited by the SUBORDINATION AGREEMENT, or any foreclosure successor who takes title prior to completion of the PROJECT, and neither foreclosing LENDER, nor foreclosure successor, shall have any liability for any failure by DEVELOPER to comply with such covenants or any other EVENT OF DEFAULT or act or omission of DEVELOPER occurring prior to the transfer of title to the SITE to such foreclosure successor. Notwithstanding anything to the contrary in this AGREEMENT in any and all circumstances every ordinance of general

application of the CITY shall remain applicable to and enforceable against any owner of the SITE.

18.05. 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.

18.06. 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.

18.07. 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.

18.08. 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 or by e-mail or fax:

If to the CITY:

CITY OF WHEATON  
303 West Wesley Street  
Wheaton, Illinois 60187  
Attention: City Clerk  
Facsimile: 630-260-2017  
Email: sbarrett-hagen@Wheaton.il.us

with a copy to:

WALSH, KNIPPEN, KNIGHT & POLLOCK, CHTD.  
2150 Manchester Road, Suite 200  
Wheaton, Illinois 60187  
Attention: James H. Knippen II  
Facsimile: 630-462-1984  
Email: Jim@wkkplaw.com

If to DEVELOPER:

MORNINGSIDE WHEATON, LLC  
223 West Erie Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60654

Attention: David M. Strosberg  
Facsimile: 312-280-5353  
Email: DStrosberg@MorningsideUSA.com

with a copy to:

DAY & ROBERT, P.C.  
300 East 5<sup>th</sup> Avenue, Suite 365  
Naperville, Illinois 60563  
Attention: Scott M. Day  
Facsimile: 630-637-9814  
Email: [smd@dayrobert.com](mailto:smd@dayrobert.com)

BANK OF AMERICA  
135 South LaSalle Street, 6<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: David P. Deeke  
Facsimile: 312-904-7764  
Email: [david.p.deeke@bam1.com](mailto:david.p.deeke@bam1.com)

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

18.09. 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.

18.10. 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 except in the limited instances where this AGREEMENT allows MINOR MODIFICATIONS. Execution of any amendment by the CITY shall first have been authorized by the Ordinance or Resolution duly adopted by the Corporate Authorities of the CITY.

18.11. 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.

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

18.13. 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.

18.14. 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 until the earlier of: (1) the CITY's receipt of full reimbursement for its payment of REIMBURSABLE and UTILITY COST REIMBURSEMENT to the DEVELOPER through either TAX INCREMENT and/or LOOK BACK payments; or (2) the payment of the second installment of the real estate taxes for the tax year marking the expiration of the Wheaton Main Street Redevelopment Tax Increment Financing District. Upon the expiration of the term of this 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 and

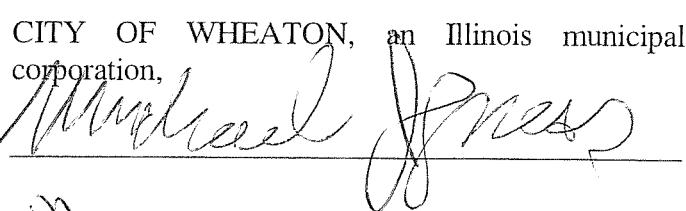
releasing DEVELOPER from all applicable covenants hereunder.

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

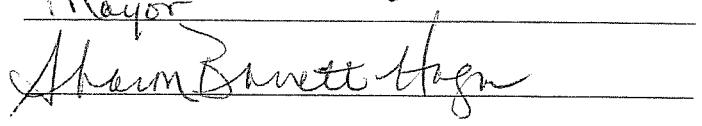
18.16. NO DISCRIMINATION: The DEVELOPER, in connection with the construction of the PROJECT, shall utilize fair employment practices, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The DEVELOPER shall take affirmative 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 required by State and Federal Law.

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

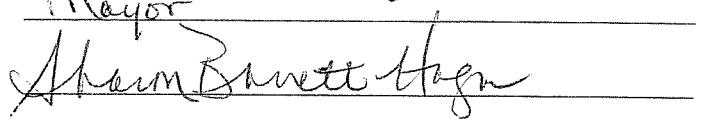
CITY OF WHEATON, an Illinois municipal corporation,

BY: 

ITS: Michael J. Ness

ATTEST: 

ITS: Alan Bennett

ATTEST: 

ITS: City Clerk

MORNINGSIDE WHEATON, LLC, an Illinois  
limited liability company,

by: Morningside Wheaton Development, LLC

BY:

Dennis W. July

ITS:

Managing Member

ATTEST:

B. L. Dick

ITS:

Member

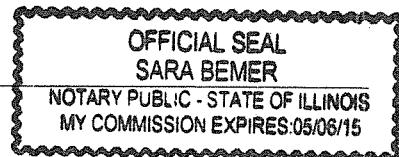
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DU PAGE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that Michael Bresk, Mayor of the City of Wheaton, and  
Sharon Barnett-Hagen, 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 3 day of

July, 2012.

Sara Bemer  
Notary Public

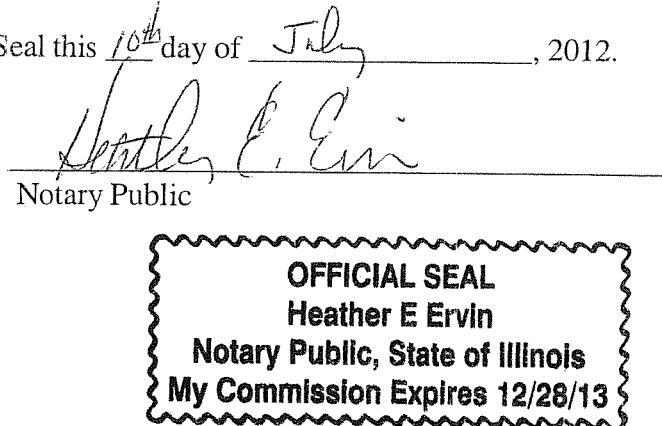
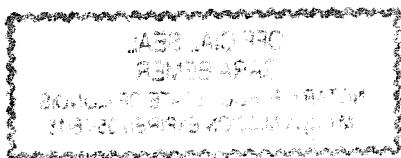


STATE OF ILLINOIS )  
COUNTY OF Cook ) SS.  
 )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that David M. Strashley, Managing Member of MORNINGSIDE WHEATON,  
LLC, and Brian Pawlik, Member of said company, personally known to me to  
be the same persons whose names are subscribed to the foregoing instrument as such Managing Member  
and Member, 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 company, for the uses and purposes therein set forth; and the said  
\_\_\_\_\_ then and there acknowledged that he, as custodian of the seal of said company,  
did affix the corporate seal of said corporation to said instrument, as he 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 10<sup>th</sup> day of July, 2012.

## Notary Public

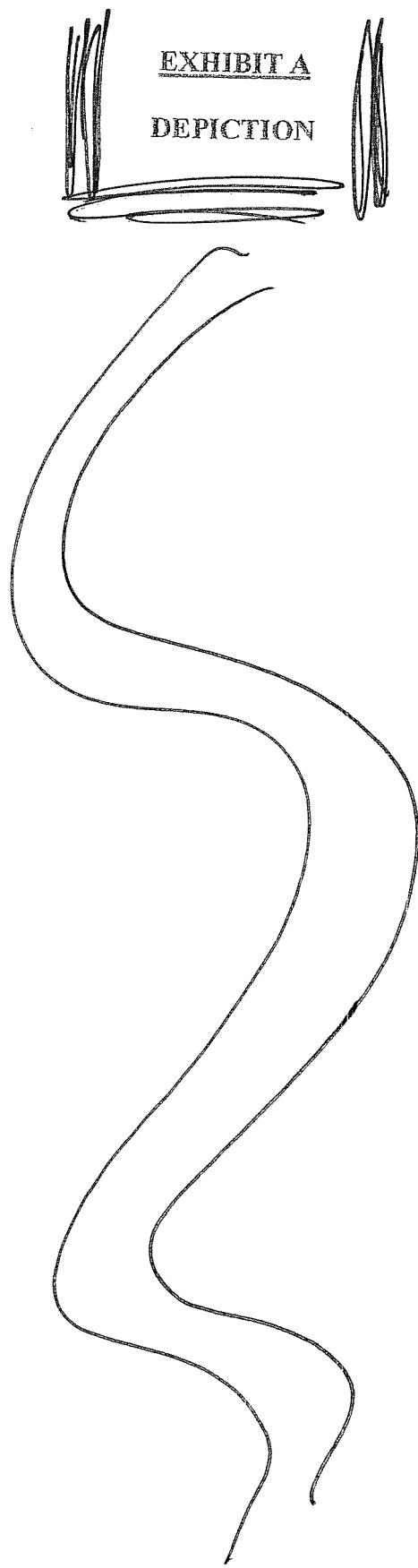


## LIST OF EXHIBITS

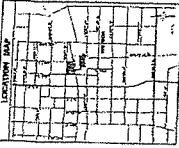
|           |  |
|-----------|--|
| Exhibit A | Depiction  |
| Exhibit B | Legal Description  |
| Exhibit C | Description of Project   |
| Exhibit D | Minimum Improvements, includes Building Improvements, Private Improvements and Public Improvements |
| Exhibit E | Schedule   |
| Exhibit F | Progress Report  |
| Exhibit G | Subordination Agreement  |
| Exhibit H | Budget   |
| Exhibit I | Subdivision Improvement Agreement, Acceptance and Guarantee  |
| Exhibit J | Pro Forma Review   |
| Exhibit K | Letter of Credit   |
| Exhibit L | Assumption Agreement   |
| Exhibit M | Insurance  |

EXHIBIT A

DEPICTION



**A.L.T.A. / A.C.S.M. LAND TITLE SURVEY**



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PRODUCED FOR  
SCOTT & SCOTT, LLC  
100 E. BAKER ST. STE 2300  
OCTOBER 14, 2004

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 6, 1986 AS DOCUMENT NUMBER R86-122510, AND ALL OF LOT 5 OF BLOCK 5 OF THE ORIGINAL TOWN OF WHEATON RECORDED AS DOCUMENT NUMBER 7256 AND ALL OF LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT RECORDED SEPTEMBER 17, 1952 AS DOCUMENT NUMBER 662395, ALL DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 88 DEGREES 41 MINUTES 29 SECONDS WEST ALONG AN ASSUMED BEARING, BEING THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 80.93 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 18 MINUTES 31 SECONDS EAST 256.30 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 74 DEGREES 52 MINUTES 09 SECONDS WEST ALONG SAID SOUTH LINE 328.96 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 00 DEGREES 35 MINUTES 06 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION AND THE WEST LINE OF SAID LOT 1 OF CROSS AND FRONT ASSESSMENT PLAT AND ALSO THE WEST LINE OF SAID LOT 5 IN BLOCK 5 OF THE PLAT OF THE ORIGINAL TOWN OF WHEATON, 334.92 FEET TO THE NORTHWEST CORNER OF SAID LOT 5; THENCE NORTH 88 DEGREES 41 MINUTES 29 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 5 AND THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 315.21 FEET TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 6, 1986 AS DOCUMENT NUMBER R86-122510, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE SOUTH 88 DEGREES 41 MINUTES 29 SECONDS WEST ALONG AN ASSUMED BEARING, BEING THE NORTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION, 80.93 FEET; THENCE SOUTH 01 DEGREE 18 MINUTES 31 SECONDS EAST 256.30 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 74 DEGREES 52 MINUTES 09 SECONDS EAST ALONG SAID SOUTH LINE 80.73 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1

IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION; THENCE NORTH 00 DEGREES 41 MINUTES 40 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 1 IN GARY WHEATON BANK'S PLAT OF CONSOLIDATION 237.03 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

05-16-304-008

05-16-304-024

05-16-304-026

05-16-304-027

Site is Vacant @ Cross Street & Front, Scott & Wesley Wheaton, IL 60187

Address will be 121 N. Cross Street, Wheaton, IL

EXHIBIT C

**DESCRIPTION OF PROJECT**

Wheaton 121 will be a 6-story community including approximately 306 residences and as further described in Exhibit D.

## EXHIBIT D

### MINIMUM IMPROVEMENTS

Minimum Improvements include the following:

A. Building Improvements may include:

- 6-story multi-family building, with 1 additional level of partial underground parking, 1 level of parking and residential units, and 5 levels of residential units
- Approximately 306 residential units
- Common area improvements, including meeting space, fitness center, outdoor pool and patio
- Leasing office
- Indoor parking with minimum of 405 parking spaces

B. Private Improvements may include:

- Improvements that are on private property and owned by the DEVELOPER, including:
  - Site clearance and removal of demolition debris
  - Grading and import/export of soil, if required
  - Environmental remediation and soils correction, if required
  - Driveways from street into indoor parking
  - Stormwater management, as required
  - Landscaping, fencing, retaining walls, and decorative elements

C. Public Improvements

- Improvements that are on public property and, upon acceptance by the CITY, will be accepted and maintained by the CITY, including: public sidewalks in the rights-of-way, around the perimeter of the SITE
- Street trees and rights-of-way landscaping
- Curbs and gutters
- Road improvements and (re)striping
- Street lighting and furnishings
- Public use plazas which shall be partially upon land owned and maintained by DEVELOPER, but subject to public easements in a form approved by the CITY's Corporate Authorities
- Burial of overhead utilities to eliminate visual blight of street and right-of-way corridors

EXHIBITE

SCHEDULE

DEVELOPER shall cause said MINIMUM IMPROVEMENTS herein described to be completed pursuant to the following schedule: DEVELOPER shall commence construction within twelve (12) months of receipt of a building permit, entitlements and Redevelopment Agreement. The DEVELOPER shall complete construction within thirty (30) months of commencement.

MINIMUM IMPROVEMENTS shall be deemed completed when the CITY has issued the CITY FINAL APPROVAL. The DEVELOPER shall make a written request for acceptance of PUBLIC IMPROVEMENTS to the CITY. Within thirty (30) days of receipt of said request from DEVELOPER, the CITY shall either: (a) provide a response of a written statement indicating measures remaining pursuant to a Punch List; or (b) provide a written statement that the CITY will take action to accept the PUBLIC IMPROVEMENTS by ordinance, and shall pass an ordinance to accept the PUBLIC IMPROVEMENTS within ninety (90) days of this notification.

EXHIBIT F

**PROGRESS REPORT**

**PROGRESS REPORT**

Date: \_\_\_\_\_

To: Person(s) designated by the City of Wheaton

From:

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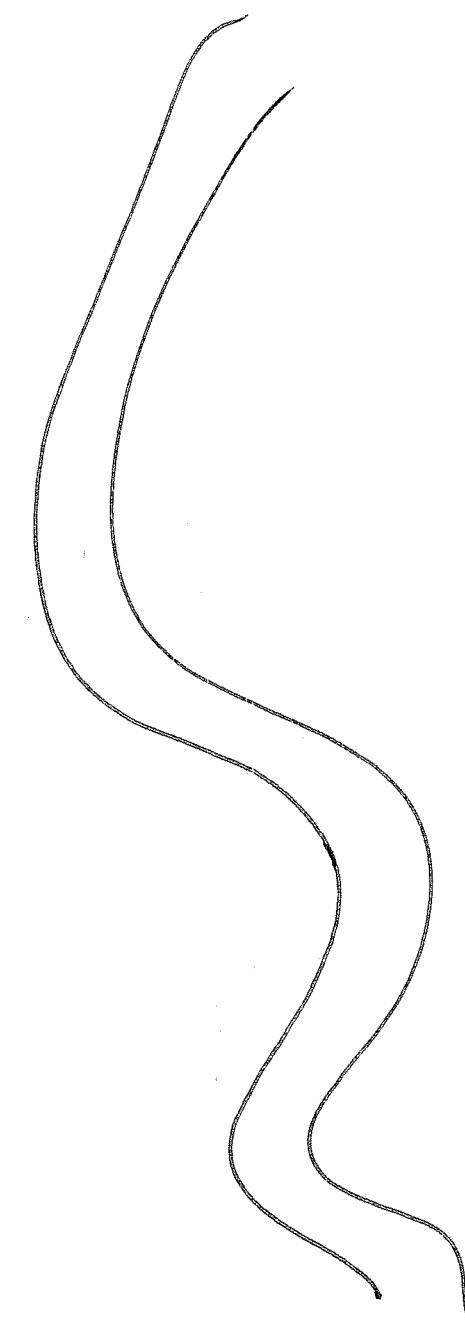
**A. Construction**

A description of the status of construction in place and schedule broken down by:

**B. Budget**

General description of budget status of the PUBLIC IMPROVEMENTS.

EXHIBIT G  
SUBORDINATION AGREEMENT



This document prepared by and after  
recording return to:

Linda S. Schurman, Esq.  
GoodSmith Gregg & Unruh, LLP  
150 S. Wacker Drive, Suite 3150  
Chicago, Illinois 60606

*This space reserved for Recorder's use only.*

### **SUBORDINATION AGREEMENT**

This Subordination Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Wheaton, Illinois, a municipal corporation (the "City"), and Bank of America, N.A. (the "Mortgagee"); and acknowledged and agreed to by Morningside Wheaton, LLC, an Illinois limited liability company (the "Developer").

### **WITNESSETH:**

**WHEREAS**, the Developer owns certain property located within the City of Wheaton Main Street Redevelopment Project Area and legally described on Exhibit A hereto (the "Property"), and plans to construct thereon a multi-family building with approximately 306 residential units and approximately 415 parking spaces and related site improvements (the "Improvements");

**WHEREAS**, the Developer and the City have entered into that certain Redevelopment Agreement dated as of \_\_\_\_\_, 2012 and recorded in the office of the DuPage County Recorder on \_\_\_\_\_, 2012 as Document No. \_\_\_\_\_ (the "RDA"), pursuant to which the Developer has agreed to construct the Improvements and certain related site improvements described in the RDA as the "Public Improvements" in accordance with the terms of the RDA and the City has agreed to provide certain financing for said "Public Improvements" and certain other improvements described in the RDA as the "Utility Work;"

**WHEREAS**, in order to obtain a portion of the financing for the Improvements, the Developer has entered into that certain Construction Loan Agreement dated as of \_\_\_\_\_, 2012 with Mortgagee (the "Loan Agreement"), pursuant to which Mortgagee has agreed to make a loan to the Developer in the principal amount of \$42,500,000 (as such loan may be increased from time to time, the "Loan");

**WHEREAS**, the Loan is secured by certain liens and encumbrances on the Property and the Improvements, the rights and interest of the Developer under RDA and other property of the Developer pursuant to the following: (i) a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by the Developer to Mortgagee dated as of \_\_\_\_\_, 2012 and recorded in the office of the DuPage County Recorder on \_\_\_\_\_, 2012 as Document No. \_\_\_\_\_ (as amended from time to time, the “**Mortgage**”), and (ii) a Collateral Assignment of TIF Documents dated as of \_\_\_\_\_, 2012 made by the Developer to Mortgagee (as amended from time to time, the “**Collateral Assignment**”); and

**WHEREAS**, Mortgagee requires, as a condition to its obligations under the Loan Agreement, that the City subordinate its rights and claims under the RDA to the rights and claims of Mortgagee and that the City provide certain other agreements for the benefit of Mortgagee as set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City and Mortgagee hereby agree as follows:

1. **Definitions.** All capitalized terms used but not defined herein shall have the meanings ascribed to them in the RDA.

2. **Subordination.** All of the City's rights and claims against the Developer arising under or in connection with the RDA (the “**City Claims**”) are hereby made subject and subordinate to the Mortgage and all of the indebtedness now or hereafter secured by the Mortgage (the “**Mortgage Debt**”). Without limitation of the foregoing, all liens on the Property or the Improvements or any other property of the Developer held by the City from time to time and arising under or in connection with the RDA (the “**City Liens**”) are hereby made subject and subordinate to the lien of the Mortgage, and all City Liens shall be deemed released upon the recordation of any deed in lieu of foreclosure of the Mortgage. So long as any of the Mortgage Debt remains outstanding, (a) the City shall not assert, foreclose, enforce, realize upon or bring a legal action with respect to the City Claims or the City Liens, or exercise any right to cure Developer defaults under the RDA, and (b) the Mortgage Debt shall be paid and satisfied in full before any payment is made on account of the City Claims. In the event any payment is made to the City with respect to the City Claims which is not permitted hereunder, such payment shall be held by the City in trust for the benefit of Mortgagee and shall be paid over to Mortgagee promptly upon demand by Mortgagee, for application to the payment of the Mortgage Debt remaining unpaid.

3. **Bankruptcy.**

(a) Upon any distribution of the assets or properties of the Developer or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving the Developer (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise, herein referred to as a “**Proceeding**”): (a) Mortgagee shall first be entitled to receive payment in full of the Mortgage Debt (including post-petition interest and all costs and expenses) before the City is entitled to receive any payment on account of the City

Claims; (b) any payment or distribution of the assets or properties of the Developer of any kind or character, whether in cash, property, or securities, to which the City would be entitled except for the provisions of this Agreement, shall be paid by the debtor in possession, liquidating trustee or agent or other person making such payment or distribution directly to Mortgagee; and (c) in the event that, notwithstanding the foregoing, any payment or distribution of the assets or properties of the Developer of any kind or character, whether in cash, property, or securities, shall be received by the City on account of the City Claims before all of the Mortgage Debt is paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Mortgagee, for application to the payment of the Mortgage Debt until all such Mortgage Debt shall have been paid in full.

(b) So long as any of the Mortgage Debt remains outstanding, the City shall not commence, consent to, acquiesce in, or join or participate in any insolvency or bankruptcy case or proceeding or any receivership, liquidation, reorganization, readjustment, composition or other similar case or proceeding relating to the Developer or its assets, any liquidation, dissolution, reorganization or winding up of the Developer, whether voluntary or involuntary, or any assignment for the benefit of creditors or any other marshalling of assets of the Developer (each an "**Insolvency Proceeding**");. The City further agrees that, so long as any of the Mortgage Debt remains outstanding, the City shall not make any election, give any consent, waive any right, commence any action or file any motion, claim (other than the filing of a proof of claim for the City Claims), obligation, notice or application or take any other action in any Insolvency Proceeding without the prior consent of Mortgagee if such action could reasonably be expected to adversely affect the treatment of or recovery on any claim by Mortgagee or the ability of Mortgagee to exercise any of its rights and remedies; provided, however, that the City shall retain the right, without the consent of Mortgagee, to participate in any Insolvency Proceeding for the purpose of seeking relief from any stay of action to enforce public health, safety and welfare ordinances of general application to the Property.

4. Collateral Assignment of RDA. In the event any Foreclosure Successor elects, in its sole discretion, to succeed to the rights and benefits of the Developer under the RDA, the City shall recognize such Foreclosure Successor as the successor in interest to the rights and benefits of the Developer under the RDA without liability to such Foreclosure Successor for any Event of Default or any other act or omission of the Developer occurring prior to the date of such succession, so long as such Foreclosure Successor enters into an assumption agreement in the form attached hereto as Exhibit B (an "**Assumption Agreement**"). Upon the execution by any Foreclosure Successor of an Assumption Agreement, the City shall also execute such Assumption Agreement. For purposes of this Agreement, the term "**Foreclosure Successor**" shall mean any person or entity that takes title to the Property and the Improvements as a result of the foreclosure of the Mortgage or a deed in lieu thereof or any subsequent successor owner of the Property and the Improvements.

5. Covenants Running With the Land. Notwithstanding anything to the contrary set forth in the RDA, none of the covenants in Sections 3.01, 6.03, 8 and 11.06 of the RDA shall be binding on any Foreclosure Successor, and no Foreclosure Successor shall have any liability for any failure by the Developer to comply with such covenants or any other Event of Default or act

or omission of the Developer occurring prior to the transfer of title to the Property and the Improvements to such Foreclosure Successor.

6. Personal Obligations of the Developer. The obligations of the Developer under the RDA that are not specifically identified in Section 18.04 of the RDA as covenants that run with the land shall not be binding on any future owner of the Property and the Improvements unless such owner elects to succeed to the rights and benefits of the Developer under the RDA pursuant to Section 3 of this Agreement and then only as provided the Assumption Agreement executed pursuant to such Section 3.

7. Development/Subdivision Improvement Agreement. The obligations of Developer under the Development/Subdivision Improvement Agreement executed by the Developer in connection with the RDA shall not be binding on any Foreclosure Successor, and no Foreclosure Successor shall have any liability for any failure by the Developer to comply with such covenants.

8. Public Improvements Bond. Notwithstanding anything to the contrary, nothing in this Agreement shall be interpreted or applied to preclude in any manner the City's right to execute on the bond or security posted by the Developer under the Development/Subdivision Improvement Agreement executed by the Developer in connection with the RDA.

9. Transfers. The City hereby consents to any transfer of the Property and the Improvements and/or the RDA to any Foreclosure Successor, and agrees that the provisions of Section 11.06 of the RDA shall not apply to the transfer the Property to any Foreclosure Successor.

10. Mortgagee as Lender. Mortgagee shall have all of the rights of a "Lender" under the RDA, including, without limitation, the right to receive notices of default by the Developer under the RDA. All such notices shall be delivered to Mortgagee at the address set forth below:

Bank of America, N.A.  
135 South LaSalle Street, 6<sup>th</sup> Floor  
Mail Code: IL4-135-06-41  
Chicago, IL 60603  
Attn: David P. Deeke  
Fax Number: 312.904.7764  
Email: [david.p.deeke@baml.com](mailto:david.p.deeke@baml.com)

11. Amendments. So long as any of the Mortgage Debt remains outstanding, the City shall not enter into any amendment or modification of the RDA without the prior written consent of the Mortgagee.

12. Certificate of Continued Effectiveness. Within ten (10) business days after the written request of Mortgagee, the City shall execute and deliver to Mortgagee a certificate stating that the RDA is in full force and effect, that neither the City nor the Developer are in default

under the RDA and containing such other information as may be reasonably requested by Mortgagee.

13. Dealings With the Developer. In making disbursements of the Loan, Mortgagee has no duty to, nor has Mortgagee represented that is will, see to the application of any Loan proceeds by the person or persons to whom Mortgagee disburses such Loan proceeds. Mortgagee may extend, renew, modify or amend the terms of the Mortgage Debt, or extend, renew, modify or amend the terms of any security therefor and release, transfer, assign, sell or exchange such security and otherwise deal freely with the Developer to the same extent as could any person, all without notice to or consent of the City and without affecting the agreements of the City set forth herein.

14. Ordinances of General Application. Notwithstanding anything to the contrary set forth herein, the City shall retain the right to apply and enforce public health, safety and welfare ordinances of general application to the Property, but it being further agreed that such Foreclosure Successor shall not be responsible for any fines, penalties or other amounts owed by the Developer for non-compliance with such ordinances during the period prior to such Foreclosure Successor's acquisition of title to the Property. So long as any of the Mortgage Debt remains outstanding, the Planned Unit Development authority for the Project (the "PUD Approval") shall not expire; provided, however, that, if the Project is not completed within thirty six (36) months after the issuance of the building permit for the Project, the City may serve written notice on Mortgagee or any Foreclosure Successor that it will proceed to a public hearing to revoke the PUD Approval if Mortgagee or any Foreclosure Successor fails, within twenty four (24) months after the transfer of title to the Project from the Developer to Mortgagee or a Foreclosure Successor, to diligently recommence construction of the Project, demolish any partially constructed improvements on the Property or submit an application for the approval of an alternative project on the Property (hereinafter "Remediation Actions"). If at the end of such twenty four (24) month period, no Remediation Actions have been taken by Mortgagee or any Foreclosure Successor, then the City, by its Corporate authorities, may conduct a public hearing to revoke the PUD Approval in its legislative discretion.

15. Further Assurances. So long as any of the Mortgage Debt remains outstanding, the City and Mortgagee will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

16. No Modification of Mortgage Debt. This Agreement is not intended to modify and shall not be construed to modify any term or provision of the Mortgage or any other documents evidencing, securing, guaranteeing or otherwise relating to the Mortgage Debt.

17. Waivers; Amendments. No waiver shall be deemed to be made by the City or Mortgagee of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or Mortgagee in any other respect at any other time. No amendment of this Agreement shall be effective unless in writing and executed by the parties to this Agreement.

18. Governing Law; Binding Effect; Conflict. This Agreement shall be governed by the laws of the State of Illinois, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Mortgagee. In the event of any conflict between this Agreement and the provisions of the RDA, this Agreement shall govern.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

**[The remainder of this page is intentionally left blank.]**

IN WITNESS WHEREOF, this Subordination Agreement has been executed and delivered as of the date first written above.

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF WHEATON**, an Illinois municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, 2012:

**MORNINGSIDE WHEATON, LLC**, an  
Illinois limited liability company  
by: *Morningside Wheaton Development, LLC*

By: *David M. Strosberg*  
Name: David M. Strosberg  
Title: Managing Member

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of the City of Wheaton, and \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of the City of Wheaton, and each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ and \_\_\_\_\_, they signed and delivered the said instrument pursuant to the authority given to them by said City, as their free and voluntary acts, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**Notary Public**

My Commission Expires \_\_\_\_\_  
(SEAL)

STATE OF ILLINOIS        )  
                              ) SS  
COUNTY OF COOK        )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of Bank of America, N.A. (the "Mortgagee"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by the Mortgagee, as his/her free and voluntary act and as the free and voluntary act of the Mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

---

Notary Public

My Commission Expires \_\_\_\_\_  
(SEAL)

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, Heather E. Ervin, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT David M Strosberg, personally known to me to be the Managing Member of Morningside Wheaton, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by the Developer, as his/her free and voluntary act and as the free and voluntary act of the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10<sup>th</sup> day of July, 2012.

Heather E. Ervin  
Notary Public

My Commission Expires 12/28/13  
(SEAL)

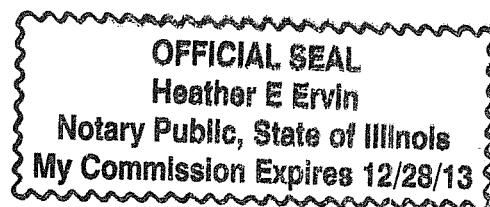
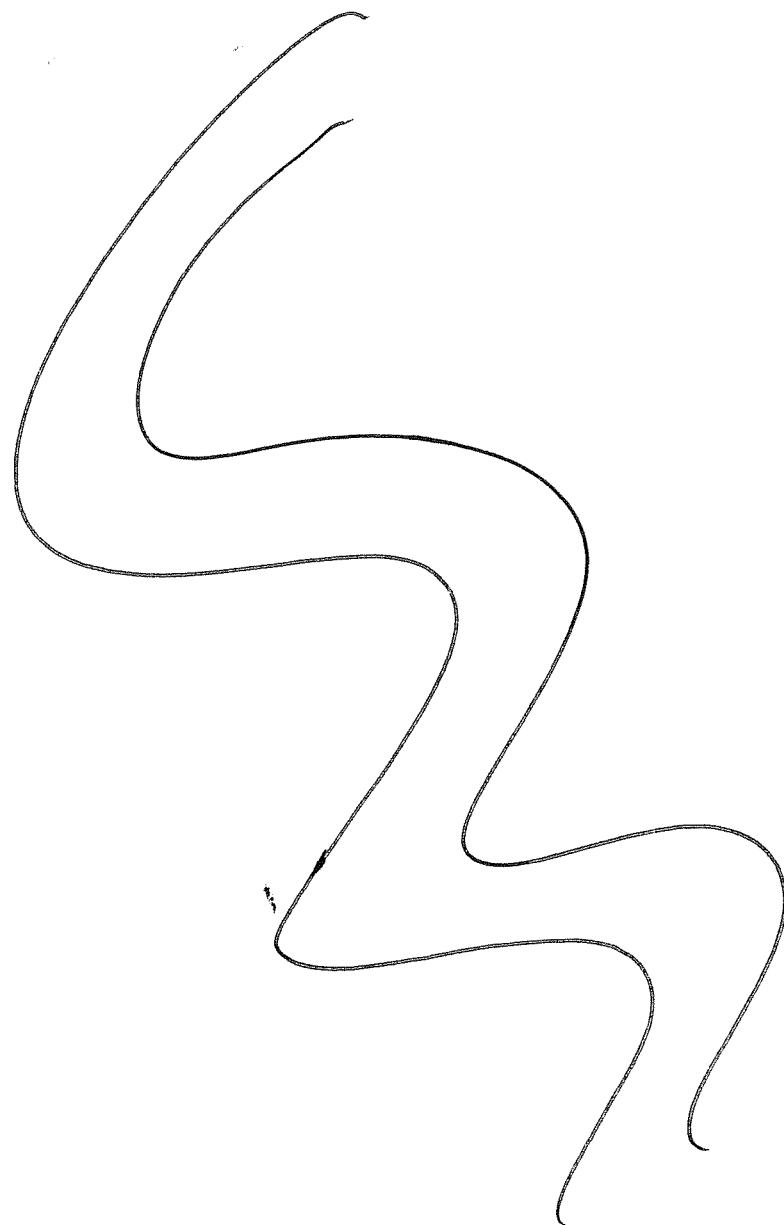
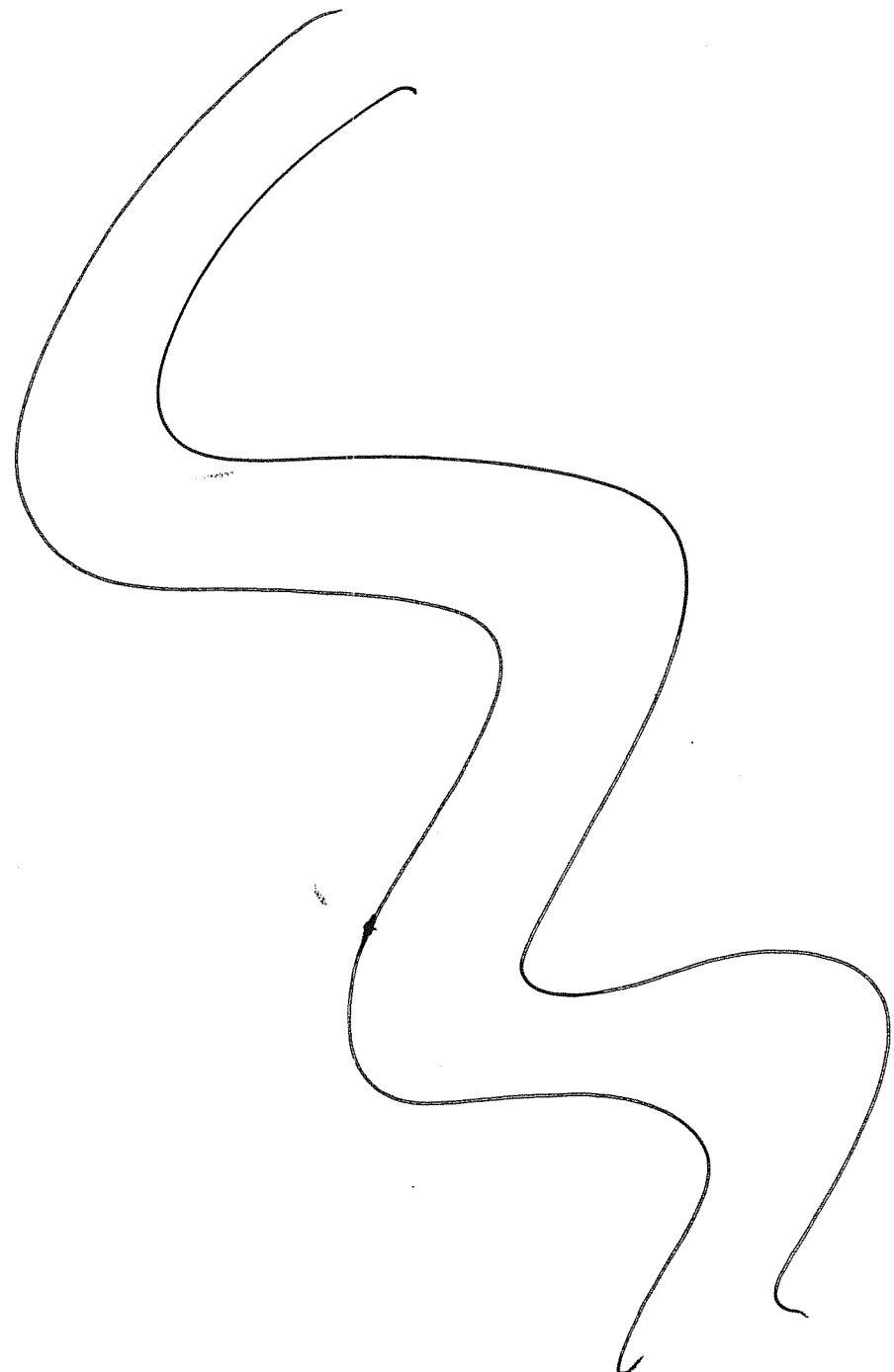
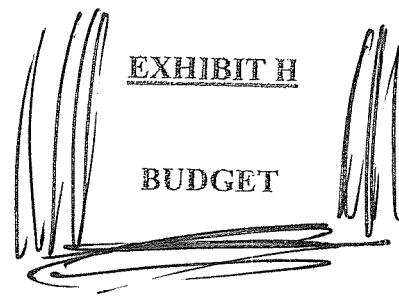


EXHIBIT A

Legal Description of Property







## Exhibit H Budget

### Building and Private Site Improvements

|   |               |
|---|---------------|
| Land  | \$ 3,350,000  |
| Hard construction costs                     | \$ 49,258,252 |
| Soft costs                                  | \$ 2,021,709  |
| Financing fees                              | \$ 916,313    |
| Development fee                             | \$ 2,676,719  |
| Construction loan interest reserve          | \$ 1,500,000  |
| Mezzanine loan accrued interest (estimated) | \$ 2,220,040  |
| Mezzanine loan interest reserve             | \$ 1,200,000  |

Total of Building and Private Site Improvements \$ 63,143,033

### Public Improvements (\*Reimburseable Costs)

#### Soft costs

|  |           |
|--|-----------|
| Architect and Landscape - design of public | \$ 33,600 |
| Civil Engineer - design of public          | \$ 19,200 |
| Accounting for TIF                         | \$ 15,000 |
| Letter of credit fees                      | \$ 30,000 |
| Legal for TIF                              | \$ 50,000 |

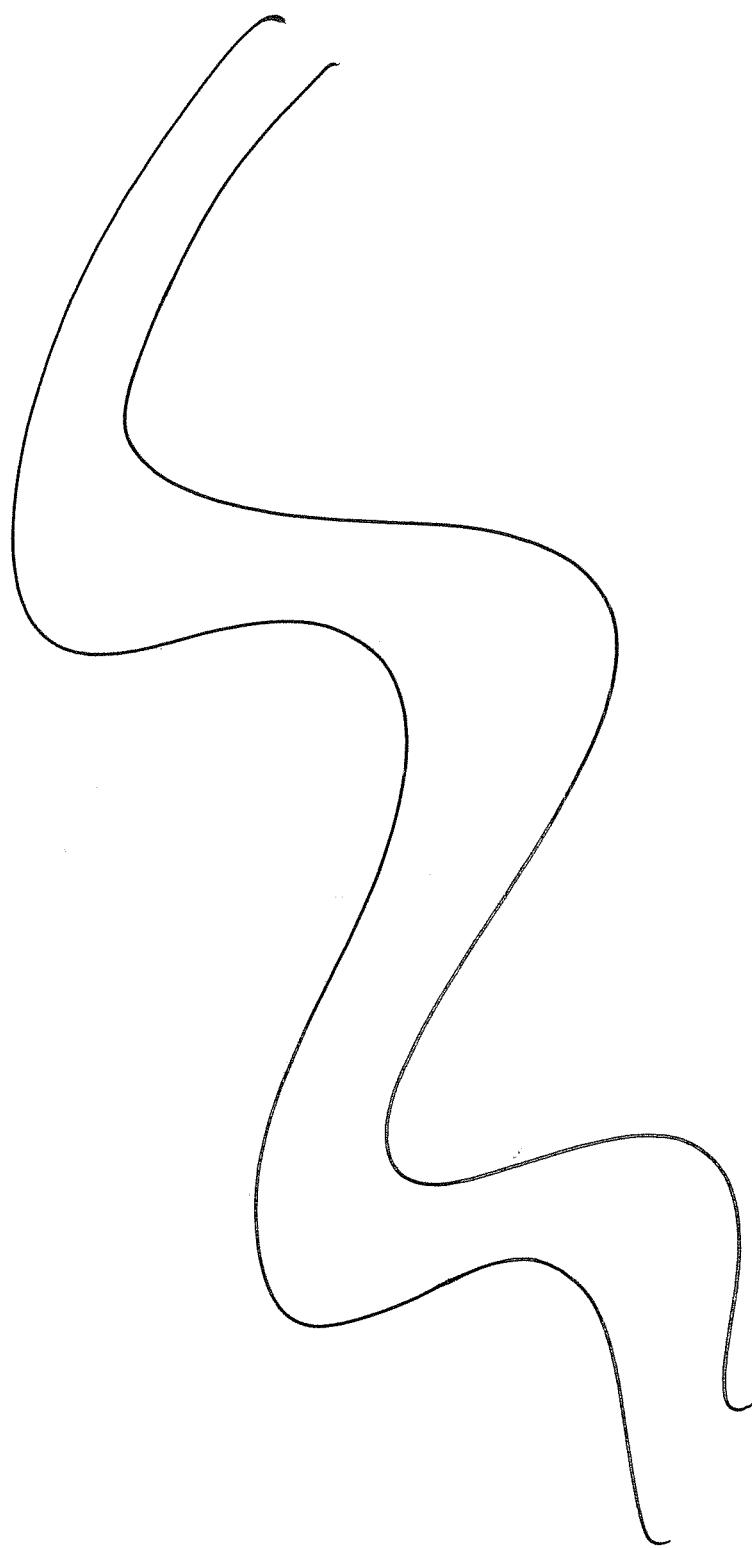
#### Hard costs

|   |            |
|---|------------|
| Removal of existing utility/curb/gutter/pavement  | \$ 25,000  |
| Asphalt patching/paving in public streets   | \$ 122,084 |
| Striping and signage - public streets   | \$ 10,000  |
| Trash cans  | \$ 5,200   |
| Bike Racks: commercial wave in-ground - TO BE FURNISHED AND INSTALLED BY CITY   | \$ -       |
| Lighted bollards to line plazas   | \$ 11,250  |
| Lightpoles - single head  | \$ 105,000 |
| Benches   | \$ 11,000  |
| Plain concrete sidewalk   | \$ 53,125  |
| Curb and gutter   | \$ 28,500  |
| Parkways - earthwork  | \$ 53,900  |
| Sod   | \$ 4,356   |
| NE Plaza planting beds  | \$ 6,090   |
| NE Plaza concrete (4" thick, exposed aggregate w/ sawcuts)  | \$ 9,625   |
| NE Plaza retaining wall and fencing   | \$ 7,800   |
| SW Plaza & drive concrete (4" thick and 8" thick, exposed aggregate w/sawcuts)<br>Does not include entry sidewalk area NE of circle drive | \$ 29,313  |
| SW Plaza planter  | \$ 15,000  |
| SW Plaza - landscaping in planter   | \$ 2,000   |
| Large trees in boulevard (approx 3" diam)   | \$ 9,990   |
| Fountains or public art   | \$ 60,000  |
| Bond for ROW work - not required for burial of overhead utilities   | \$ 35,000  |
| Contingency   | \$ 60,423  |
| General conditions  | \$ 51,607  |
| Insurance   | \$ 442     |
| Utility Work  | \$ 503,605 |

Total of Public Improvements (\*Reimburseable Costs) \$ 1,368,110

**TOTAL Minimum Improvements Budget \$ 64,511,143**

EXHIBIT I



DEVELOPMENT /SUBDIVISION IMPROVEMENT

AGREEMENT

*3rd day of July 2012*

THIS AGREEMENT made and entered into this A by and between the City of Wheaton, an Illinois Municipal Corporation, and having its office at City Hall, 303 West Wesley Street, Wheaton, Illinois hereinafter called "City" and Morningside Wheaton LLC, an Corporation, ( Partnership, Limited Liability Company) hereinafter called the "Developer," WITNESSTH:

WHEREAS, the Developer has fee simple title in itself to the real estate described as follows:

(Insert underlying legal here)

Property Index Number 05-16-304-008, 05-16-304-024, 05-16-304-026, and 05-16-304-0027

(hereinafter "Property")

WHEREAS, the Developer has submitted a plan for a development/subdivision subdivided the Property by Plat of subdivision, or resubdivision, or zoning approval, as the case may be, approved by the Corporate Authorities of the City by Resolution ( insert #) on ( insert date); and

WHEREAS, the City has approved said development /subdivision plat strictly subject to the completion of the public and required improvements in accordance with its ordinances, resolutions, good engineering practices , and this Agreement, and as a condition to the issuance of occupancy permits for any buildings to be constructed on the property.

NOW THEREFORE, City and Developer agree as follows:

**REQUIRED IMPROVEMENTS**

1. The Developer at its sole cost and expense shall furnish all necessary materials, labor, and equipment to construct and complete public improvements, stormwater management improvements and other improvements, (hereinafter " Required Improvements") in conformance with, the requirements of the Subdivision Control Ordinance, this Agreement, good engineering practices, and any other requirements as may be set forth in ordinances or

resolutions approving the development/subdivision . These Required Improvements except as otherwise set forth on the Redevelopment Agreement shall include: survey monuments, sanitary sewers and all appurtenances, storm drainage systems and all appurtenances, watermains and all appurtenances, street lighting and all appurtenances, street signs, street pavements to include curb and gutter, sidewalks, parkway trees, parkway landscaping, final lot staking, erosion control, landscaping improvements, including inspection, testing and final engineering record drawings. All these Required Improvements shall be in accordance with the standards, specifications, and requirements of the City of Wheaton. Such Required Improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto which exhibit has been prepared by SPACECO, Inc of Rosemont, IL who are registered professional engineers. Any Improvement required by ordinance, resolution or this Agreement, but omitted from Exhibit A, shall be constructed and completed as required. All utility lines and services to be replaced under the street shall be installed prior to paving.

**CONTRACTS/ESTIMATES AND SECURITY FOR PUBLIC/REQUIRED  
IMPROVEMENTS**

2. Attached hereto and incorporated herein as if fully set forth as Exhibit B, is an executed contract between the Developer and a contractor, or a complete cost estimate prepared by a professional engineer, for the construction and completion of the Required Improvements. Prior to the execution of this Agreement, the Developer shall deposit a bond in conformance with Section 62-54 of the Wheaton City Code in an amount equal to One hundred and twenty five percent (125%) of the engineer's cost estimate for the Required Improvements.

**CONSTRUCTION OBSERVATIONS**

3. All work on Required Improvements shall be subject to spot construction observations and the approval of the Director of Engineering or his designee, and his written approval thereof shall be a condition precedent to payout or reduction of the funds deposited in escrow or the letter of credit. Written approval by the Director of Engineering or his designee shall not in any way diminish, qualify, or release the Developer's obligation to construct,

complete and guarantee the Required Improvements as required by ordinance, resolution, good engineering practice and this Agreement . The Developer shall be responsible for inspecting and insuring that its work is in compliance with all of the foregoing requirements.

#### **OBSERVATION FEES**

4. Except as provided for in the Redevelopment Agreement , the Developer shall pay 2% of the total cost of the Improvement to the City as a construction observation fee, as required by Ordinance. Payment shall be made within ten (10) days of the execution of this Agreement.

#### **INSURANCE**

5. Prior to commencement of any work provided for herein, the Developer and/or its contractors shall furnish the City with certificates of insurance and insurance policies as required by the City. All insurance shall be as required in the Development Agreement between the CITY and DEVELOPER.

In addition, by its execution of this Agreement, the Developer hereby agrees to the greatest extent allowable under Illinois law to defend, indemnify and hold harmless the City, its elected and appointed officials employees, agents and assigns and each of them, against any and all claims, actions, losses, damages, attorney's fees or expenses which they may sustain or become liable for on account of injury or death of persons, or damage to or destruction of property resulting from acts or omissions in the performance of work related to the Required Improvements , by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees in furtherance of construction of the Required Improvements , or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this Agreement.

#### **ACCEPTANCE AND GUARANTEE**

6. The Developer guarantees that the design, workmanship and material furnished in the Required Improvements will be designed ,furnished and performed in accordance with well known established practice and standards recognized by professional engineers and in the

construction trades.. All such Required Improvements shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City. Except for those projects which contain special management areas such as wetlands and/or floodplains that may contain longer guarantee periods as stipulated by the permitting authority.

Prior to requesting final acceptance, the Developer shall inspect and repair all deficiencies in the Required Improvements. The City will then inspect and provide a list of deficiencies ("Punchlist").

The Developer shall cause all deficiencies to be repaired within 60 days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the cash escrow or letter of credit, described in Paragraph 2, to insure compliance with this Agreement. Failure to complete the deficiencies within 60 days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

The City shall retain ten ( 10%) of the total amount of the security, for the Required Improvements for one year after final acceptance of the Improvement, as a guarantee that the workmanship and materials furnished therefore are first class and as above provided, and that the Required Improvements are and will remain in good and sound condition for and during the one year period from and after its completion and acceptance except for projects which contain special management areas such as wetlands and/or floodplains that may contain longer guarantee periods as stipulated by the permitting authority.

The Developer shall make or cause to be made at its own expense, any and all repairs that may become necessary by virtue of this guarantee, and shall leave the Required Improvements in good and sound condition, satisfactory to the City Engineer, at the expiration of the guarantee. In said event and at the expiration of such period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the Required Improvements, shall be paid over, or released as the case may be , in conformance with Section 2 of this Agreement.

Further, if during said guarantee period, the improvement shall in the opinion of the City Engineer, require any repairs or renewals the Developer shall upon notification by the Director of Engineering of necessity for such repair or renewals, make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs, renewals, within a reasonable time after notification as herein before provided, or to start work within one week after such notification, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer shall pay such amount of excess to the City.

#### **TIME LIMIT**

7. The Developer shall cause said Required Improvements to be completed within 24 months from the date hereof. If work is not completed within the time prescribed herein, then the City shall have the right to complete said work and draw on funds in escrow as provided in Exhibit "C". The Developer shall cause his consulting engineers to correct drawings to show work as actually constructed and said engineers shall turn over original tracings thereof to the City as and for the City's property.

#### **ORDINANCES**

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer upon notice from the City and prior to acceptance of the subdivision shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to this property as of the effective date of said law or ordinance.

#### **LIEN WAIVERS**

9. The Developer shall furnish the City with a contractor's affidavit showing all subcontractors and material suppliers and further furnish lien waivers that all persons who have done work, or have furnished material under this agreement, and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are not longer entitled to such lien.

## **OCCUPANCY PERMITS**

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all Required Improvements required by this Agreement have been completed, except for final road surface course, public sidewalks, and parkway trees. Parkway trees shall be installed within six months from the issuance of an occupancy permit. It is also agreed that parkway trees that do not meet City standards will be replaced and maintained by the Developer no later than 60 days after notification by the City.

## **MAINTENANCE**

11. The Developer shall be responsible for the maintenance of the required improvements, excluding resurfaced public streets unless damaged in subsequent construction by the Developer, until such time as they are accepted by the City. If the Developer requests and the City elects, at the time of the execution of this agreement, to have the City perform this maintenance it hereby agrees to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said cost to the City. Any payments not made pursuant to this requirement may be taken by the City, in its sole discretion, from the security posted in accordance with Section 2 of this Agreement. If a deduction taken by the City from the security results in a shortfall of the required amount of the security the Developer shall replenish the security in the amount of the deficiency within seven calendar days of the City's request. Any failure of the Developer to replenish the security within seven days of the City's request shall constitute a material breach of this Agreement authorizing the City to assert control over the cash escrow or call the letter of credit.

## **RESOLUTION**

12. It is hereby agreed that the following development shall comply with the strict adherence of Subdivision or Planned Unit Development Ordinance requirements and as approved by Ordinances F-1647 and F-1648 a copy of which is attached hereto and made a part hereof.

## **BINDING EFFECT**

13. This Agreement shall be binding upon all parties, their successors and assigns and grantees.

#### INTEGRATION

14. This Agreement cancels and supersedes any agreements heretofore entered into between the parties which are in conflict with the provision hereof. All aspects of the parties negotiations related to this Agreement are fully integrated herein and there are no other understandings or agreements, oral or written, related to the provisions of this Agreement or any ordinances or resolutions adopted in conjunction herewith.

#### AMENDMENTS

15. Any amendments to this Agreement shall be in writing and approved by the City Council. City Ordinance provisions in effect at the time of the request for an amendment shall apply. (Unless specified otherwise.)

#### NO THIRD PARTY BENEFICIARIES

16. There are no third party beneficiaries of this Agreement.

#### CITY'S LITIGATION EXPENSES

17. Should the Developer bring any claim or litigation against the City or any of its employees in their professional or personal capacity in consequence of this Agreement, or should the City bring any action to enforce all or any portion of this Agreement, and should the Developer lose all or a portion of said litigation, the Developer shall reimburse the City or its employees their reasonable attorneys fees, expert witness fees and costs: in the full amount if it loses the whole of the litigation or; in a case where it loses a portion of the litigation those reasonable attorneys fees, expert witness fees and costs attributable to that portion of the litigation.

#### EXCLUSIVE JURISDICTION

18. Exclusive jurisdiction for any litigation related to this Agreement shall be in the 18<sup>th</sup> Judicial Court, DuPage County, Illinois.

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Owner has executed this agreement, all as of the date first above written.

CITY OF WHEATON, an Illinois  
Municipal Corporation

BY \_\_\_\_\_  
Mayor

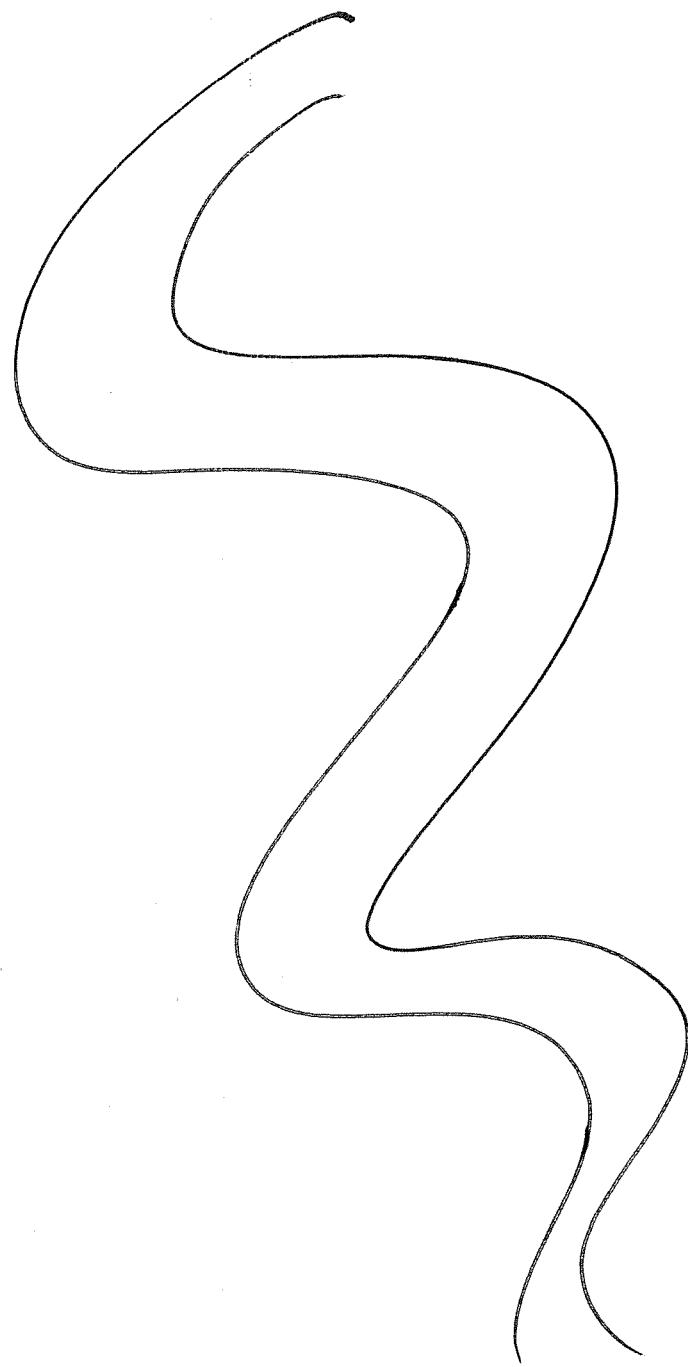
ATTEST:

City Clerk

Developer: by: Morningside Wheaton, LLC  
Morningside Wheaton Development, LLC

Donald W. Jurek  
BY  
Managing Member

EXHIBIT J



PRO FORMA REVIEW



**City of Wheaton**  
**Morningside / Residences of Wheaton**  
**306 Apartment Units**

| SOURCES                            | After Refinance | Before Refinance |              |              |
|------------------------------------|-----------------|------------------|--------------|--------------|
|                                    |                 | % OF TOTAL       | % OF FINANCE | TOTALS       |
| DEVELOPER FINANCING - 1st Mortgage | 57,182,386      | 65.91%           | 65.91%       | \$42,500,000 |
| MEZZANINE DEBT                     | 0               | 14.05%           | 14.05%       | \$9,061,102  |
| DEVELOPER EQUITY                   | 6,177,967       | 16.59%           | 16.59%       | \$10,700,000 |
| MEZZANINE ACCRUED INTEREST         | 0               | 3.45%            | 3.45%        | \$2,222,040  |
| AMOUNT FINANCED                    | 63,360,353      | 100.00%          |              | \$64,483,142 |
| AMOUNT FINANCED                    | 62,263,102      |                  |              |              |
| MEZZANINE ACCRUED INTEREST         | 2,220,040       |                  |              |              |
| PV TAX INCREMENT REVENUE           | 1,338,110       |                  |              |              |
| COST NET OF TIF                    | 63,145,032      |                  |              |              |
| TOTAL SOURCES                      |                 | 100.00%          |              | \$64,483,142 |

| USES                      | QTY | Unit | \$ Per Unit | % OF TOTAL | TOTALS       |
|---------------------------|-----|------|-------------|------------|--------------|
| ACQUISITION COSTS         |     |      |             |            | \$3,350,000  |
| HARD / CONSTRUCTION COSTS |     |      |             |            | \$50,478,562 |
| SOFT COSTS                |     |      |             |            | \$10,652,581 |
| TOTAL USES                |     |      |             |            | \$64,481,143 |



**City of Wheaton**  
**Morningside / Residences of Wheaton**  
**306 Apartment Units**

**PROJECT REVENUE ASSUMPTIONS**

| <u>TYPE</u>                | <u>ANNUAL REVENUE</u> |
|----------------------------|-----------------------|
| Apartment Rental Subtotal  | \$6,165,840           |
| Storage Units Subtotal     | \$15,300              |
| <b>Total Rental Income</b> | <b>6,181,140</b>      |
| <br>Parking Space Subtotal | <br>\$456,000         |
| <b>Total Other Income</b>  | <b>\$456,000</b>      |
| <b>GRAND TOTAL</b>         | <b>\$6,637,140</b>    |

**PROJECT SALE ASSUMPTIONS**

|                        |           |
|------------------------|-----------|
| First Year N. O. I.    | 4,383,983 |
| C.A.P Rate             | 5.75%     |
| Sales Expense          | 0.50%     |
| Permanent Loan Percent | 75.00%    |

**PROJECT DEBT ASSUMPTIONS**

**Private Debt:**

|                     |              |
|---------------------|--------------|
| Amount of Bond-Loan | 57,182,386   |
| Term Of Bond-Loan   | 30           |
| Rate of Bond-Loan   | 5.75%        |
| Monthly Payment     | 333,700.88   |
| Annual Payment      | 4,004,410.59 |

**INFLATION ASSUMPTIONS**

| YEAR             | 2013  | 2014  | 2015  | 2016  | 2017  |
|------------------|-------|-------|-------|-------|-------|
| Rental Revenue   | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Other Income     | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Expenses         | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Bad Debt         | 1.00% | 1.00% | 1.00% | 1.00% | 1.00% |
| Vacancy          | 5.00% | 5.00% | 5.00% | 5.00% | 5.00% |
| MONTHS OPERATING | 12    |       |       |       |       |
| YEAR             | 2018  | 2019  | 2020  | 2021  | 2022  |
| Rental Revenue   | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Other Income     | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Expenses         | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Bad Debt         | 1.00% | 1.00% | 1.00% | 1.00% | 1.00% |
| VACANCY          | 5.00% | 5.00% | 5.00% | 5.00% | 5.00% |
| YEAR             | 2023  | 2024  | 2025  | 2026  | 2027  |
| Rental Revenue   | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Other Income     | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Expenses         | 2.50% | 2.50% | 2.50% | 2.50% | 2.50% |
| Bad Debt         | 1.00% | 1.00% | 1.00% | 1.00% | 1.00% |
| VACANCY          | 5.00% | 5.00% | 5.00% | 5.00% | 5.00% |



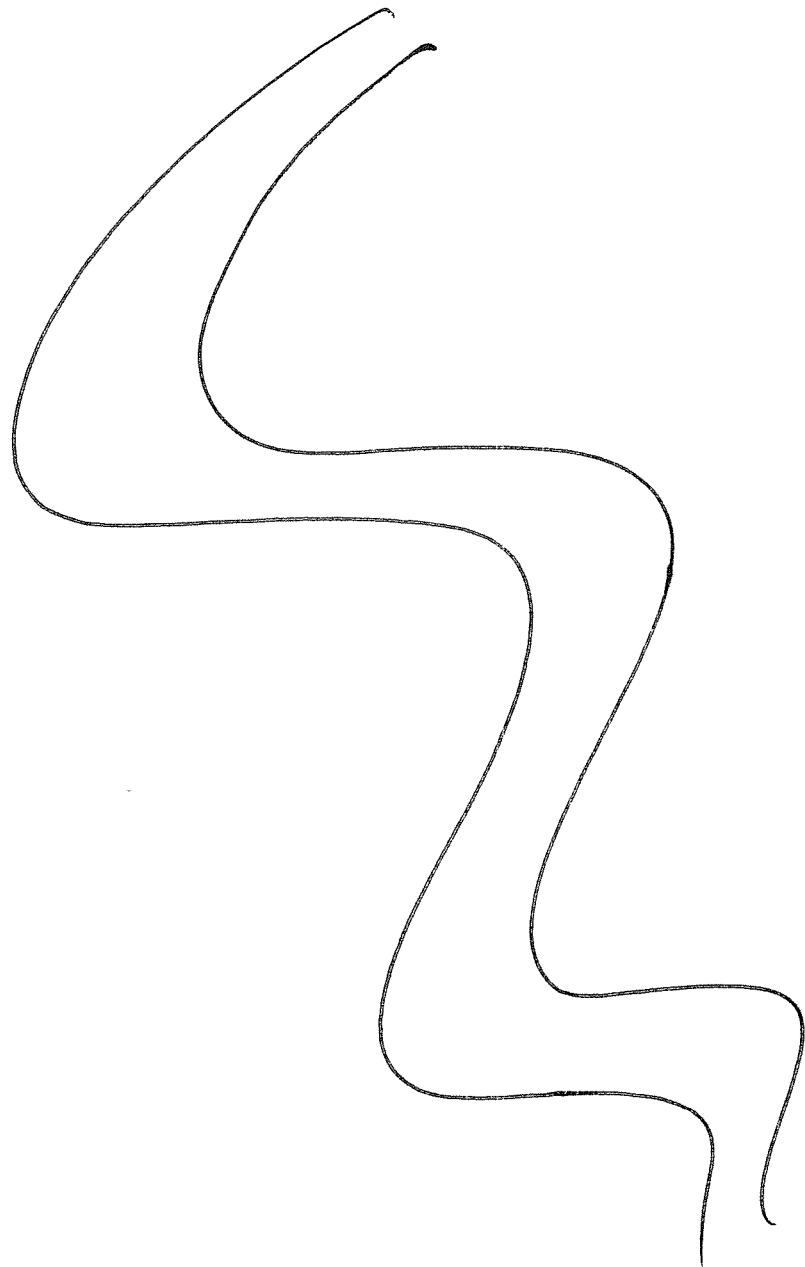
**City of Wheaton**  
**Morningside / Residences of Wheaton**  
**306 Apartment Units**

| <b>CASH FLOW - INCOME</b> |             |             |             |             |             |
|---------------------------|-------------|-------------|-------------|-------------|-------------|
| <b>Rental Revenue</b>     | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> | <b>2017</b> |
| Total Operating Income    | \$0         | \$0         | \$0         | \$6,865,760 | \$7,037,404 |
| <b>Rental Revenue</b>     | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> |
| Total Operating Income    | \$7,213,340 | \$7,393,673 | \$7,578,515 | \$7,767,978 | \$7,962,177 |
| <b>Rental Revenue</b>     | <b>2023</b> | <b>2024</b> | <b>2025</b> | <b>2026</b> | <b>2027</b> |
| Total Operating Income    | \$8,161,232 | \$8,365,262 | \$8,574,394 | \$8,788,754 | \$9,008,473 |

| <b>CASH FLOW - EXPENSES AND DEBT</b> |             |             |             |             |             |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|
| <b>OPERATING EXP(-)</b>              | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> | <b>2017</b> |
| TOTAL EXPENSES                       | \$0         | \$0         | \$0         | \$2,415,872 | \$2,476,268 |
| NET OPERATING INCOME                 | \$0         | \$0         | \$0         | \$4,449,889 | \$4,561,136 |
| Capital Reserves                     | \$0         | \$0         | \$0         | \$65,906    | \$67,554    |
| CASH FLOW FROM OPERATIONS            | \$0         | \$0         | \$0         | \$4,383,983 | \$4,493,582 |
| TIF PAYMENTS                         | \$0         | \$0         | \$0         | \$0         | \$0         |
| PROCEEDS FROM PERMANET FINANCING     | \$0         | \$0         | \$0         | \$2,943,135 | \$0         |
| CASH FLOW AVAIL. FOR DEBT SERVICE    | \$0         | \$0         | \$0         | \$7,327,118 | \$4,493,582 |
| DEBT SERVICE                         | \$0         | \$0         | \$0         | \$4,004,411 | \$4,004,411 |
| CASH FLOW AFTER FINANCING            | \$0         | \$0         | \$0         | \$3,322,707 | \$489,172   |
| RETURN ON COSTS                      | 0.00%       | 0.00%       | 0.00%       | 6.94%       | 7.12%       |
| RETURN ON INVESTMENT.-ANNUAL         | 0.00%       | 0.00%       | 0.00%       | 53.78%      | 15.12%      |
| <b>OPERATING EXP(-)</b>              | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> |
| TOTAL EXPENSES                       | \$2,538,175 | \$2,601,629 | \$2,666,670 | \$2,733,337 | \$2,801,670 |
| NET OPERATING INCOME                 | \$4,675,165 | \$4,792,044 | \$4,911,845 | \$5,034,641 | \$5,160,507 |
| Capital Reserves                     | \$69,242    | \$70,974    | \$72,748    | \$74,567    | \$76,431    |
| CASH FLOW FROM OPERATIONS            | \$4,605,922 | \$4,721,070 | \$4,839,097 | \$4,960,074 | \$5,084,076 |
| TIF PAYMENTS                         | \$0         | \$0         | \$0         | \$0         | \$0         |
| PROCEEDS FROM PERMANET FINANCING     | \$0         | \$0         | \$0         | \$0         | \$0         |
| CASH FLOW AVAIL. FOR DEBT SERVICE    | \$4,605,922 | \$4,721,070 | \$4,839,097 | \$4,960,074 | \$5,084,076 |
| DEBT SERVICE                         | \$4,004,411 | \$4,004,411 | \$4,004,411 | \$4,004,411 | \$4,004,411 |
| CASH FLOW AFTER FINANCING            | \$601,511   | \$716,660   | \$834,686   | \$955,664   | \$1,079,666 |
| RETURN ON COSTS                      | 7.29%       | 7.48%       | 7.66%       | 7.86%       | 8.05%       |
| RETURN ON INVESTMENT.-ANNUAL         | 9.74%       | 11.60%      | 13.51%      | 15.47%      | 17.48%      |
| <b>OPERATING EXP(-)</b>              | <b>2023</b> | <b>2024</b> | <b>2025</b> | <b>2026</b> | <b>2027</b> |
| TOTAL EXPENSES                       | \$2,871,712 | \$2,943,505 | \$3,017,092 | \$3,092,520 | \$3,169,833 |
| NET OPERATING INCOME                 | \$5,289,520 | \$5,421,758 | \$5,557,301 | \$5,696,234 | \$5,838,640 |
| Capital Reserves                     | \$78,342    | \$80,300    | \$82,308    | \$84,365    | \$86,474    |
| CASH FLOW FROM OPERATIONS            | \$5,211,178 | \$5,341,457 | \$5,474,994 | \$5,611,869 | \$5,752,165 |
| TIF PAYMENTS                         | \$0         | \$0         | \$0         | \$0         | \$0         |
| PROCEEDS FROM PERMANET FINANCING     | \$0         | \$0         | \$0         | \$0         | \$0         |
| CASH FLOW AVAIL. FOR DEBT SERVICE    | \$5,211,178 | \$5,341,457 | \$5,474,994 | \$5,611,869 | \$5,752,165 |
| DEBT SERVICE                         | \$4,004,411 | \$4,004,411 | \$4,004,411 | \$4,004,411 | \$4,004,411 |
| CASH FLOW AFTER FINANCING            | \$1,206,767 | \$1,337,047 | \$1,470,583 | \$1,607,458 | \$1,747,755 |
| RETURN ON COSTS                      | 8.25%       | 8.46%       | 8.67%       | 8.89%       | 9.11%       |
| RETURN ON INVESTMENT-ANNUAL          | 19.53%      | 21.64%      | 23.80%      | 26.02%      | 28.29%      |

EXHIBIT K

**LETTER OF CREDIT**



EXB-425344

*[Signature]*

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: AUGUST *1*, 2012

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: *3125344*

ISSUING BANK  
BANK OF AMERICA, N.A.  
1000 W. TEMPLE STREET  
7TH FLOOR, CA9-705-07-05  
LOS ANGELES, CA 90012-1514

BENEFICIARY  
CITY OF WHEATON ("CITY")  
303 W. WESLEY STREET  
WHEATON, IL 60187

APPLICANT  
MORNINGSIDE WHEATON, LLC  
("DEVELOPER")  
223 W. ERIE STREET, 3RD FLOOR  
CHICAGO, IL 60654

AMOUNT  
USD 500,000.00  
FIVE HUNDRED THOUSAND AND 00/100'S US DOLLARS

EXPIRATION  
AUGUST 1, 2014 AT OUR COUNTERS

*6/11/12*  
2ND REVISED  
**DRAFT COPY**  
FOR DISCUSSION AND REVIEW PURPOSES ONLY  
PLEASE SIGNIFY YOUR ACCEPTANCE AND  
APPROVAL TO ISSUE THIS FORM

*X* \_\_\_\_\_ Date: \_\_\_\_\_  
APPLICANT'S AUTHORIZED SIGNATURE (S) (DATE)

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER *3125344* WHICH IS AVAILABLE WITH BANK OF AMERICA, N.A., LOS ANGELES, CALIFORNIA BY PAYMENT AGAINST PRESENTATION OF THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENTS AND YOUR DRAFTS AT SIGHT DRAWN ON BANK OF AMERICA, N.A., LOS ANGELES, CALIFORNIA ACCOMPANIED BY THE DOCUMENT DETAILED BELOW:

A WRITTEN STATEMENT SIGNED BY A DULY AUTHORIZED OFFICER OF THE CITY OF WEATON STATING ONE OF THE FOLLOWING:

QUOTE

THE UNDERSIGNED BEING A DULY AUTHORIZED OFFICER OF THE CITY OF WHEATON ("CITY") DEMANDS PAYMENT OF US\$500,000.00 (FIVE HUNDRED THOUSAND AND 00/100'S U.S. DOLLARS) UNDER BANK OF AMERICA, N.A., IRREVOCABLE STANDBY LETTER OF CREDIT NO. *3125344* DATED AUGUST *\*\*1*, 2012 AND HEREBY REPRESENTS AND WARRANTS THAT MORNINGSIDE WHEATON, LLC ("DEVELOPER") HAS FAILED TO PERFORM AS PER CONTRACT NUMBER

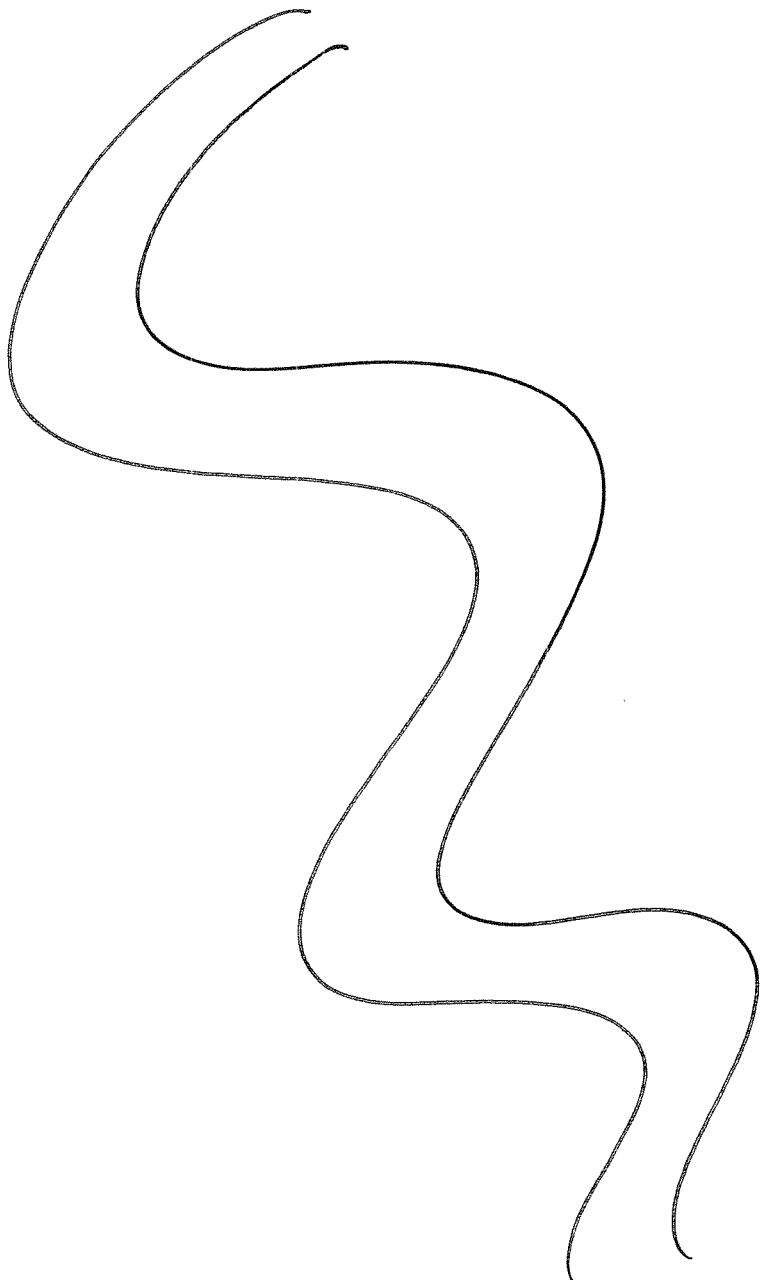
FURTHER DESCRIPTION, IF THE REDEVELOPMENT AGREEMENT BETWEEN CITY OF WHEATON AND THE DEVELOPER DATED \_\_\_\_\_ NECESSARY IN THAT:

1. NO BUILDING PERMIT HAS BEEN OBTAINED BY THE DEVELOPER WITHIN TWELVE (12) MONTHS AFTER THE CITY'S APPROVAL OF THE "CONTROL DOCUMENTS"; OR

DRAFT

**EXHIBIT I**

**ASSUMPTION AGREEMENT**



Ex-105344  
(Rev. 2)

BANK OF AMERICA - CONFIDENTIAL

PAGE: 2

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: ~~3125344~~

2. THE DEVELOPER HAS NOT RECEIVED A MINIMUM OF ALL OF THE TEMPORARY RESIDENTIAL UNIT CERTIFICATES OF OCCUPANCY (EITHER TEMPORARY OR FULL) ISSUED WITHIN THE TWENTY FOUR (24) MONTHS OF THE ISSUANCE OF THE BUILDING PERMIT FOR THE APARTMENT COMPLEX; OR

3. BANK OF AMERICA HAS GIVEN THE CITY THIRTY DAY WRITTEN NOTICE THAT THIS STANDBY LETTER OF CREDIT WILL EXPIRE AND NOT BE RENEWED CONTRARY TO THE TERMS OF THE REDEVELOPMENT AGREEMENT.  
UNQUOTE

THIS LETTER OF CREDIT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FROM AUGUST 1, 2014 TO AUGUST 1, 2015, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO AUGUST 1, 2014, WE NOTIFY YOU BY OVERNIGHT COURIER SERVICE AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AT BANK OF AMERICA, N.A., 1000 WEST TEMPLE STREET, 7TH FLOOR, LOS ANGELES, CA 90012, MAIL CODE: CA9-705-07-05, ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT, AS SPECIFIED HEREIN.

THIS LETTER OF CREDIT IS SUBJECT TO INTERNATIONAL STANDBY PRACTICES ("ISP98"), ICC PUBLICATION NO. 590.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-541-6096 OPT 1.

-----  
AUTHORIZED SIGNATURE  
THIS DOCUMENT CONSISTS OF 2 PAGE(S).

DRAFT

**Form of Assumption  
Agreement**

This document prepared by and after  
recording return to:

---

---

---

*This space reserved for Recorder's use only.*

**ASSUMPTION AGREEMENT**

This Assumption Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Wheaton, Illinois, a municipal  
corporation (the "City"), and \_\_\_\_\_, a  
\_\_\_\_\_  
(the "Successor Developer").

**WITNESSETH:**

**WHEREAS**, Morningside Wheaton, LLC, an Illinois limited liability company (the "Original Developer") and the City have entered into that certain Redevelopment Agreement dated as of \_\_\_\_\_, 2012 and recorded in the office of the DuPage County Recorder on \_\_\_\_\_, 2012 as Document No. \_\_\_\_\_ (the "RDA"), pursuant to which the Original Developer agreed to construct certain improvements and related site improvements on certain property located within the City of Wheaton Main Street Redevelopment Project Area and legally described on Exhibit A hereto (the "Property"), and the City agreed to provide certain financing for said improvements;

**WHEREAS**, the Successor Developer has succeeded to the Original Developer as the owner of the Property and desires to succeed to all right, title and interest of the Original Developer under the RDA; and

**WHEREAS**, the City is willing to recognize the Successor Developer as the successor in interest to the rights and benefits of the Original Developer under the RDA so long as the Successor Developer assumes all obligations of the Original Developer under the RDA arising after the date hereof as hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City and the Successor Developer hereby agree as follows:

1. Definitions. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the RDA.

2. [Reinstatement. The RDA is hereby reinstated for the benefit of the Successor Developer.] [NOTE: To be included if the City has previously terminated the RDA as a result of a default by the Original Developer.]

3. Assumption. The Successor Developer hereby assumes all obligations of the Original Developer arising under the RDA after the date hereof. The Successor Developer shall have no liability for any Event of Default or any other act or omission of the Original Developer prior to the date hereof.

4. Recognition. The City hereby recognizes the Successor Developer as the successor in interest to the rights and benefits of the Original Developer under the RDA, entitled to all of the rights and benefits of the "Developer" thereunder. The City further agrees that the Successor Developer shall not be required to cure defaults by the Original Developer that are not curable by the Successor Developer (e.g., insolvency or bankruptcy of the Original Developer) in order to exercise the rights and benefits of the "Developer" under the RDA.

5. Original Developer. Nothing set forth herein shall affect any claims the City may have against the Original Developer.

6. Notices. All notices to the Successor Developer under the RDA shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

7. Successors and Assigns. The terms and conditions of this Agreement shall apply to and bind and inure to the benefit of the City, the Successor Developer and their successors and assigns.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

{The remainder of this page is intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the date and year first above written.

**SUCCESSOR DEVELOPER:**

a[ ] \_\_\_\_\_,

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

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

Title: \_\_\_\_\_

**CITY:**

CITY OF WHEATON, an Illinois municipal corporation

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

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

Title: \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

I, the undersigned, a notary public in and for the County and State aforesaid, DO  
HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the  
of the City of Wheaton, and \_\_\_\_\_, personally known to me to be  
the \_\_\_\_\_ of the City of Wheaton, and each personally known to me to be the  
same persons whose names are subscribed to the foregoing instrument, appeared before me this  
day in person and acknowledged that as such \_\_\_\_\_ and \_\_\_\_\_, they  
signed and delivered the said instrument pursuant to the authority given to them by said City, as  
their free and voluntary acts, and as the free and voluntary act and deed of said City, for the uses  
and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

My Commission Expires \_\_\_\_\_  
(SEAL)

STATE OF ILLINOIS        )  
                              ) SS.  
COUNTY OF \_\_\_\_\_        )

I, \_\_\_\_\_, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_, a[n] \_\_\_\_\_ (the "Successor Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by the Successor Developer, as his/her free and voluntary act and as the free and voluntary act of the Successor Developer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

My Commission Expires \_\_\_\_\_  
(SEAL)

EXHIBIT A

Legal Description of the Property

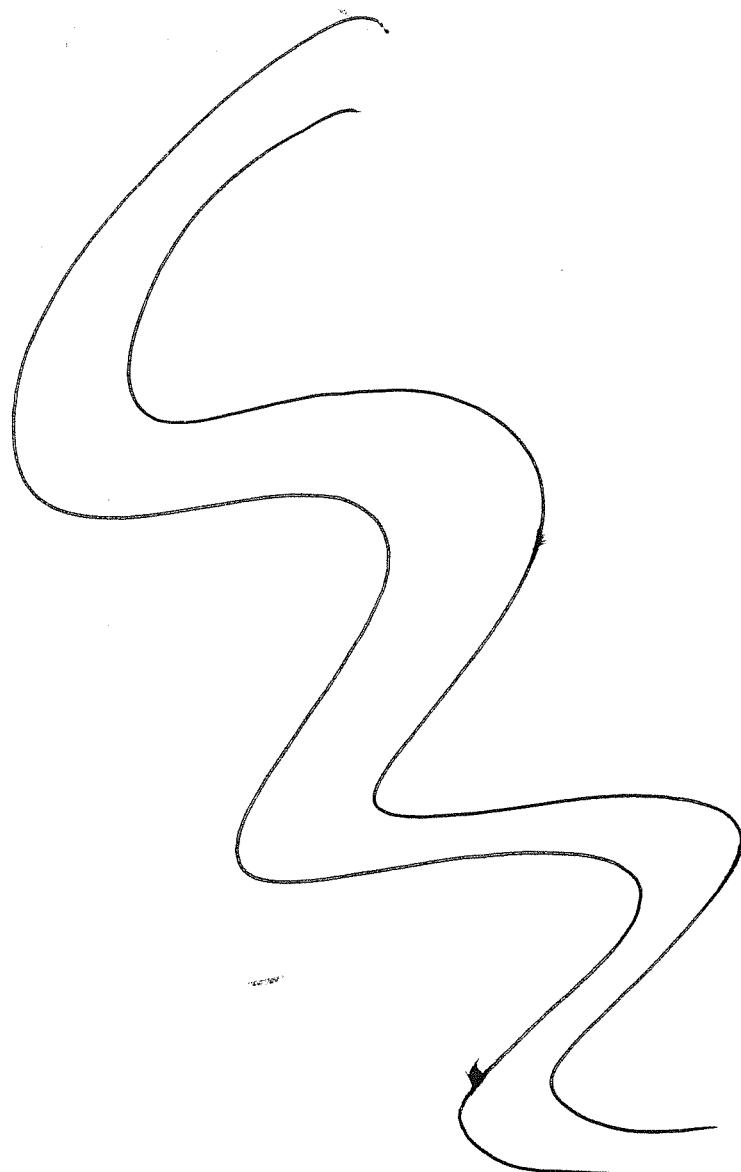
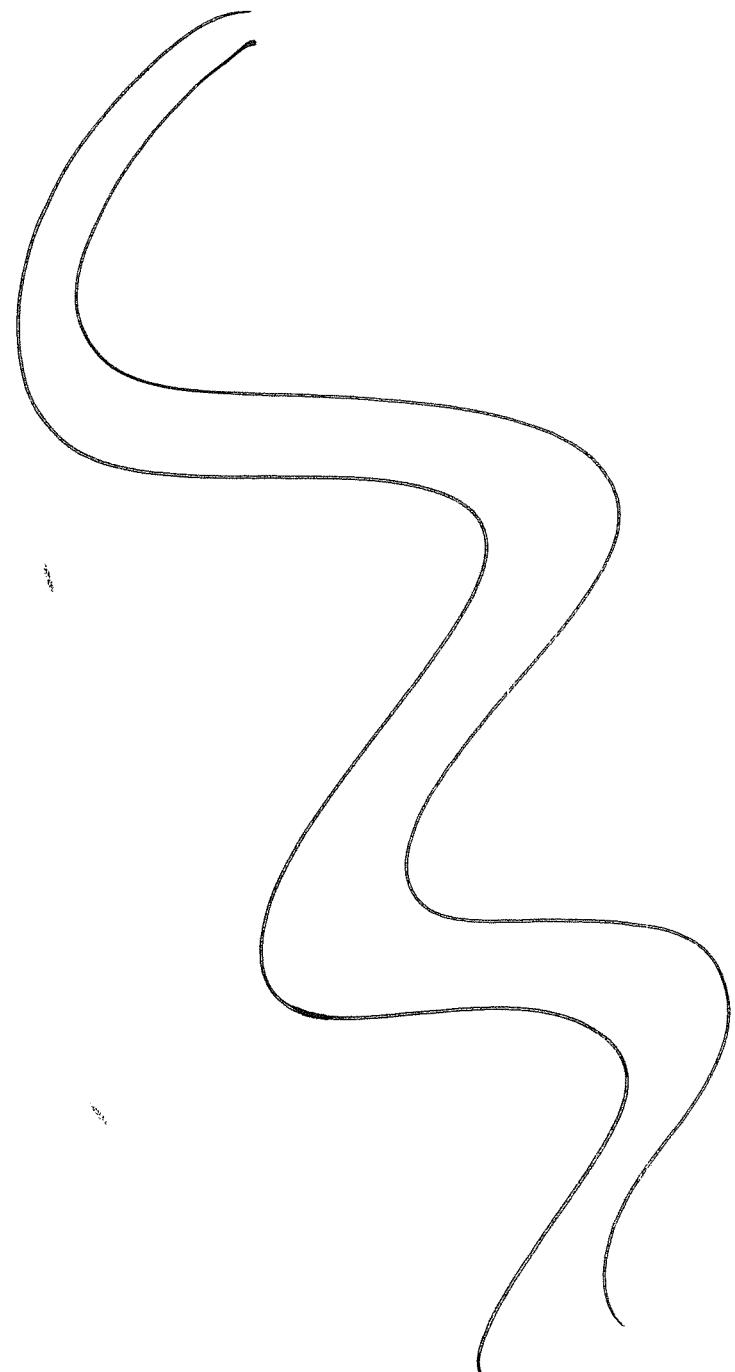


EXHIBIT M  
INSURANCE





# CERTIFICATE OF LIABILITY INSURANCE

OP ID: VD

DATE [MM/DD/YYYY]

04/19/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|   |  |  |                |
|---|--|--|----------------|
| PRODUCER<br>Esser Hayes Insurance Group<br>1811 High Grove, Suite 139<br>Naperville, IL 60540-9100<br>Tamara A. Knight, CIC | 630-355-2077   | CONTACT NAME:<br>PHONE (A/C, No., Ext):<br>E-MAIL:<br>ADDRESS:<br>PRODUCER CUSTOMER ID #: MORN-1 | FAX (A/C, No): |
| INSURED<br>Morningside Wheaton, LLC<br>Morningside Constructors, LLC<br>223 W Erie 3rd Floor<br>Chicago, IL 60654           | INSURER(S) AFFORDING COVERAGE<br>INSURER A: Cincinnati Insurance Company<br>INSURER B:<br>INSURER C:<br>INSURER D:<br>INSURER E:<br>INSURER F: |  |                |
|   | NAIC # 10677   |  |                |

## COVERS

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL SUBR<br>INSR | WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|---|-------------------|-----|---------------|-------------------------|-------------------------|---|
| A        | GENERAL LIABILITY<br><br>X COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  |                   | X   | EPP0083567    | 04/29/11                | 04/29/14                | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (EA occurrence) \$ 500,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY <input type="checkbox"/> PRO-<br>JECT <input type="checkbox"/> LOC   |                   |     |               |                         |                         | \$  |
| A        | AUTOMOBILE LIABILITY<br><br>ANY AUTO<br>ALL OWNED AUTOS<br>SCHEDULED AUTOS<br>X HIRED AUTOS<br>X NON-OWNED AUTOS  |                   |     | EBA0083567    | 04/29/11                | 04/29/13                | COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$<br>\$   |
| A        | UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br>EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE   |                   |     | EPP0083567    | 04/29/11                | 04/29/13                | EACH OCCURRENCE \$ 2,000,000<br>AGGREGATE \$ 2,000,000  |
| A        | DEDUCTIBLE<br>X RETENTION \$  |                   |     |               |                         |                         | \$<br>\$  |
| A        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>Y/N<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/><br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A               |     | WC2101991     | 04/29/11                | 04/29/12                | X WC STATUTORY LIMITS \$<br>E.L. EACH ACCIDENT \$ 500,000<br>E.L. DISEASE - EA EMPLOYEE \$ 500,000<br>E.L. DISEASE - POLICY LIMIT \$ 500,000  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
ADDITIONAL INSURED FOR GENERAL LIABILITY: CITY OF WHEATON.

## CERTIFICATE HOLDER

## CANCELLATION

CWHEATO

CITY OF WHEATON  
303 W. WESLEY STREET  
WHEATON, IL 60187

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

