

ORDINANCE NO. F-1736

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

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

WHEREAS, the City has previously entered into a Development Agreement (the "Agreement") dated July 3, 2012 with Morningside Wheaton, LLC (the "Developer") regarding said Project Area; and

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

WHEREAS, the first amendment to the Agreement is on file with the City Clerk of the City and it is available for public inspection.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor is hereby authorized to execute and the City Clerk is hereby authorized to attest to the first Amendment to the Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

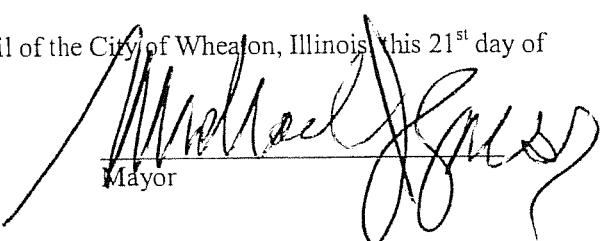
Section 2: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

Section 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 21<sup>st</sup> day of October, 2013.

ATTEST:

  
City Clerk

  
Michael J. Garry  
Mayor

Roll Call Vote

Ayes: Councilman Suess  
Councilman Prendiville  
Councilman Rutledge  
Councilman Saline  
Mayor Gresk  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

Passed: October 21, 2013

Published: October 22, 2013

**EXHIBIT A**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "FIRST AMENDMENT") is made and entered into as of the 21<sup>st</sup> day of October 2013, by and between the CITY OF WHEATON, an Illinois municipal corporation and home rule unit, 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 (the "DEVELOPER"); the City and Developer being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

**RECITALS:**

- A. The PARTIES previously entered into a Development Agreement dated July 3, 2012 (the "AGREEMENT").
- B. The Parties desire to amend the Agreement to provide for certain changes to the REIMBURSEABLE COSTS for the PUBLIC IMPROVEMENTS associated with the PROJECT.
- C. The City Council of the CITY has determined that this FIRST AMENDMENT will be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN, as amended.

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

**SECTION ONE**

**INCORPORATION OF RECITALS**

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

## SECTION TWO

### INTEGRATION OF DEVELOPMENT AGREEMENT

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

## SECTION THREE

### DEFINITIONS

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

## SECTION FOUR

### AMENDMENTS TO AGREEMENT

4.01. BUDGET: The BUDGET as set forth in Exhibit "H" of the AGREEMENT is hereby amended by deleting said Exhibit "H" in its entirety and replacing the same with Exhibit "H Budget - 10/11/13" which is attached hereto and incorporated herein.

4.02. PUBLIC IMPROVEMENTS: The maximum amount of reimbursement payable by the CITY to the DEVELOPER for PUBLIC IMPROVEMENTS shall be One Million, Three Hundred Ninety Three Thousand, Nine Hundred Fifty Seven Dollars (\$1,393,957).

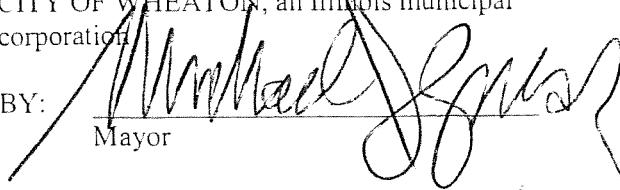
IN WITNESS WHEREOF, the Parties hereto have caused this FIRST AMENDMENT to be executed  
on or as of the day and year first above written.

CITY OF WHEATON, an Illinois municipal  
corporation

BY:

Mayor

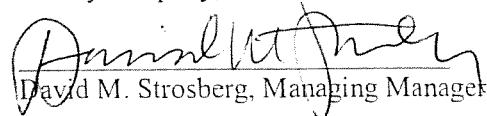
ATTEST:

  
Karen Bennett, Jr.  
City Clerk

MORNINGSIDE WHEATON, LLC,  
an Illinois limited liability company

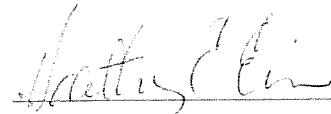
BY: MORNINGSIDE WHEATON  
DEVELOPMENT, LLC, an Illinois  
limited liability company, Member

By:

  
David M. Strosberg, Managing Manager

ATTEST:

By:

  
Heather E. Ervin

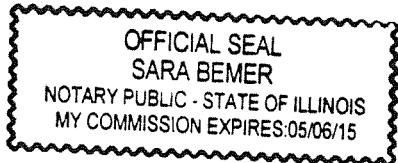


STATE OF ILLINOIS )  
                         ) SS  
COUNTY OF DUPAGE   )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Carty, Mayor, and Shawn Bennett-Hagen, City Clerk, of the CITY OF WHEATON, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments 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 corporation, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of October 2013.

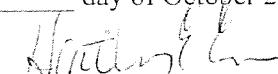
Sara Bemer  
Notary Public

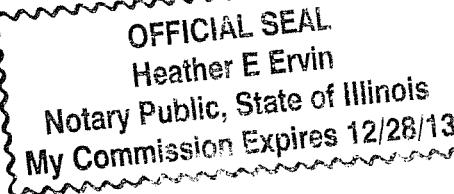


STATE OF ILLINOIS )  
                         ) SS  
COUNTY OF DUPAGE   )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that David M. Strosberg, personally known to me to be the Managing Manager of MORNINGSIDE WHEATON, LLC, an Illinois limited liability company, 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 as such Manager, he signed and delivered the said instrument pursuant to authority given by the Members of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of October 2012.

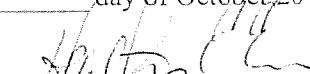
  
Notary Public

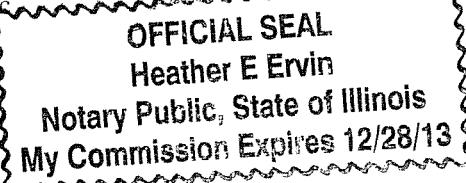


STATE OF ILLINOIS )  
                         ) SS  
COUNTY OF DUPAGE   )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David M. Strosberg, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of October 2012.

  
Notary Public



**EXHIBIT H**

**Budget - 10/11/13**



**Exhibit H**  
**Budget - 10/11/13**

**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 ( <i>estimated</i> )	\$ 2,220,040
Mezzanine loan interest reserve	\$ 1,200,000

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

**Public Improvements (\* Reimbursable 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)	
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

Original Total of Public Improvements (\* Reimbursable Costs) \$ 1,368,110  
Additional work on Front Street (10/11/13 Request) \$ 25,847  
Total of Public Improvements (\* Reimbursable Costs) \$ 1,393,957

**TOTAL Minimum Improvements Budget \$ 64,536,990**



