

ORDINANCE NO. F-1867

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WHEATON AND MORNINGSIDE WHEATON, LLC (SIMPLIFIED LOOK BACK REIMBURSEMENT)

WHEREAS, on July 3, 2012, the City of Wheaton (“City”) and Morningside Wheaton, LLC (“Morningside or Developer”) entered into that certain Development/Subdivision Improvement Agreement recorded July 31, 2012 as document R2012-99467 (the “Agreement”), as authorized by Ordinance No. F-1647 recorded July 31, 2012 as document R2012-99466, as affected by the Subordination Agreement recorded August 28, 2012 as document R2012-117938, and a First Amendment to that Development Agreement entered into on or about October 21, 2013 for the property commonly known as Wheaton 121; and

WHEREAS, the parties wish to amend Section 11 of the Agreement to promote efficiency in the repayment to the City of public funds paid to the Developer by providing an alternative “Look Back” option not requiring financial records or analysis.

NOW THEREFORE BE IT ORDAINED, by the Mayor and City Council of the City of Wheaton, a municipal corporation, pursuant to its home rule authority, as follows:

SECTION 1: The Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to the Second Amendment to Development Agreement Between the City of Wheaton and Main Street Redevelopment Project Area – Morningside Wheaton, LLC which is attached hereto and incorporated herein as if fully set forth as Exhibit 1.

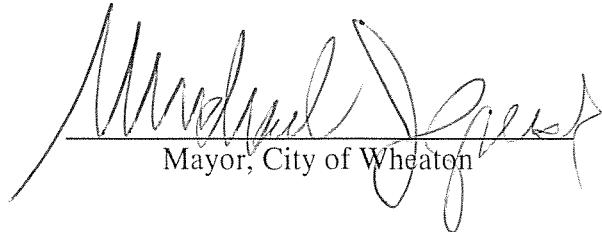
SECTION 2: In all other respects except as it affects Section 11 the Redevelopment Agreement is hereby reaffirmed.

SECTION 3: The City Manager is hereby authorized to sign the City’s Release and Side Letter Agreement referred to in the Second Amendment to the Development Agreement (Exhibit 1), which shall be prepared by the City Attorney and contain those terms as set forth in Exhibit 1, as well as any other terms necessary to effectuate its intent and application as determined by the City attorney.

SECTION 4: If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

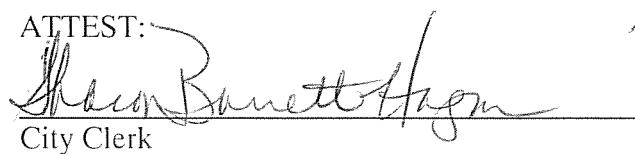
SECTION 5: Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency including preemptive Federal and State regulations.

SECTION 6: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.



Michael Gresk
Mayor, City of Wheaton

ATTEST:



Sharon Bennett Flory
City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilwoman Fitch
Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline

Nays: None
Absent: Councilman Scalzo

Motion Carried Unanimously

Passed: May 18, 2015

Published: May 19, 2015

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY
OF WHEATON AND MAIN STREET REDEVELOPMENT PROJECT AREA –
MORNINGSIDE WHEATON, LLC**

This Second Amendment to the Development Agreement (hereinafter referred to as “Second Amendment”) is made this 19th day of May, 2015 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 “City”), and Morningside Wheaton, LLC, an Illinois limited liability company (hereinafter referred to as “Developer”): the City and Developer sometimes being referred to individually as “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, the Parties previously entered into a Development Agreement dated July 3, 2012 and a First Amendment to the Development Agreement dated October 21, 2013 (“Agreement”);

WHEREAS, the Parties desire to adopt a Second Amendment to the Agreement to provide for certain changes in the Look Back provisions associated with the project;

WHEREAS, the Mayor and City Council of the City have determined that the Second Amendment will be in all respects consistent with and in furtherance of the Agreement.

NOW THEREFORE IN CONSIDERATION of the foregoing premises and consideration of the mutual covenants, conditions and agreements contained herein the Parties agree as follows:

SECTION 1: 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 the Second Amendment. Such recitals are incorporated into and made part of this Second Amendment as though they were fully set forth in this Section 1.

SECTION 2: 11.08. Simplified Look Back Reimbursement. The Developer may notify the City, in the instance of a sale of the redevelopment property (“Property Sale”), that the sale will result in the City recovering or completing the recovery of, as required by this AGREEMENT, all public funds paid to the Developer. In this event and simultaneously with the closing of the sale of the redevelopment property (the “Closing”), the Developer shall provide the City with full reimbursement of the REIMBURSABLE and UTILITY COSTS in the amount of \$1,393,957 (“RPF”).

Upon receipt of the RPF at Closing and simultaneously therewith, the City will provide to Developer a written release in recordable form stating that the Agreement has been terminated, including, without limitation; that the Developer is released from all obligations of Developer under the Agreement (“City’s Release”). The release shall include a reciprocal release of the Developer’s claims under the Agreement except its rights under the Side Letter referred to below. The City’s Release shall be recorded by the Developer on the same day as the Closing.

Additionally, upon the City's receipt of the RPF, the City and Developer shall simultaneously enter into a side letter agreement which shall not in any manner change, compromise or effect the Parties Release and the termination of the Agreement. The side letter agreement shall provide that within thirty (30) days of the City's receipt in 2015 of each installment of the 2014 real estate taxes and in 2016 of each installment of the 2015 real estate taxes, the City shall reimburse Developer for that portion of the real estate taxes paid by the Developer relating to the Tax Increment Financing ("Reconciled Taxes") that the City is required to reconcile under the terms of the Agreement; provided, however, that the Reconciled Taxes shall not exceed the RPF.

Should the Closing not occur prior to July 15, 2015, then this Amendment shall be void, and all rights of the Agreement shall remain in full force and effect.

SECTION 3: Integration of Development Agreement. The provisions of this Second Amendment shall be deemed by the Parties to be fully integrated into the Agreement.

SECTION 4: If any provision of this Second Amendment conflicts with the Agreement the provisions of the Second Amendment shall control.

SECTION 5: This Agreement constitutes the entire agreement and understanding by, between and among the Parties hereto on the subject hereof and supersedes all prior agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter of this Agreement. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein. No Party hereto has in any way relied, nor shall in any way rely, upon any oral or written agreements, representations, warranties, statements, promises or understandings made by any other party, any agent or attorney of any other party or any other person unless such agreement, representation, warranty, statement, promise or understanding is specifically set forth in this Agreement. No Party hereto nor any of his or its attorneys shall be bound by or charged with any statement, promises, or understandings not specifically set forth in this Agreement.

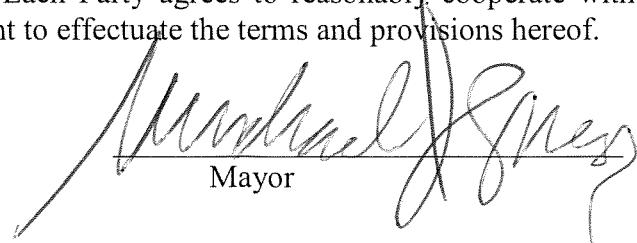
SECTION 6: This Agreement may not be modified or amended except by written signed by all the Parties. The failure of a Party to enforce any right under any provision of this Agreement, in one or more instances, shall not act as a waiver of that Party's right to enforce any provision of this Agreement.

SECTION 7: Post-Payment Cooperation. Each Party agrees to reasonably cooperate with the other Parties after the date of this Agreement to effectuate the terms and provisions hereof.

ATTEST:



City Clerk



Mayor

Heather E. Ervin
Morningside Wheaton, LLC

SUBSCRIBED and SWORN to
before me this 20th day of May, 2015
Heather E. Ervin
Notary Public

