

## RESOLUTION R-14-10

### A RESOLUTION GRANTING A VARIATION FROM THE PROVISIONS OF SECTION 34-101(f)(1) OF THE WHEATON CITY CODE STORMWATER PROVISIONS- BURGER KING 2191 WEST ROOSEVELT ROAD-HEARTLAND FOOD CORPORATION

**WHEREAS**, the lessee of the property legally described in this resolution, Heartland Food Corporation (“Applicant”), has submitted to the City of Wheaton (“City”) a petition for a variance from the provisions of the City Stormwater Ordinance, Chapter 34 of the City Code; the property is commonly known as 2191 West Roosevelt Road (“subject property”); and

**WHEREAS**, the variation petition requests the City to accept a plan to correct a non-conforming stormwater management condition on the subject property; and the Director of Engineering has recommended approval of the variation request subject to certain conditions, restrictions and requirements.

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, as follows:

**Section 1:** A variation is hereby granted from the provisions of Section 34-101 (f) (1) of the City Code to allow the maximum storage depth of stormwater on the certain portions of the parking area on the following-described real estate to exceed one (1) foot in depth:

LOT 1 IN BURGER KING PLAT OF CONSOLIDATION, A SUBDIVISION OF PART OF SECTION 18, TOWNSHIP 39, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON MARCH 10, 1989 AS DOCUMENT R89-27313, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-18-311-036

This property is commonly known as 2191 West Roosevelt Road, Wheaton, Illinois.

**Section 2:** The variation provided for by this resolution is subject to the following conditions, restrictions and requirements:

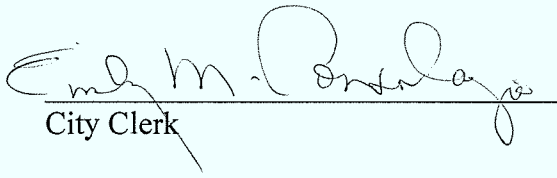
- A. That portion of the subject property on which stormwater storage may exceed one (1) foot in depth is more specifically described on a three (3) page site plan entitled “Burger King, Wheaton, Illinois Site Plan - Existing Conditions, J&HA Project No. E452” prepared by Jacob & Hefner Associates, Inc., dated January 21, 2010 and a stormwater conditions summary report prepared by Jacob & Hefner Associates, Inc., dated November 9, 2009; a copy of these documents is incorporated into this resolution by this reference as though fully set forth and is on file in the office of the City Department of Engineering;

- B. The Applicant shall construct the proposed corrective plan/improvements for the stormwater management of the subject property in conformance with the site plan recited in subparagraph A, above; and such improvements shall be complete and operational on or before July 31, 2010. The construction of the improvements shall be subject to the provisions and requirements of the City Code as varied by this resolution.
- C. The Applicant shall post signs of an appropriate number and location warning users of the site that the depth of stormwater flooding exceeds one foot. The content, location and number of the signs shall be subject to the reasonable approval of the Director of Engineering for the City.
- D. The Applicant and owner of the subject property shall indemnify and hold the City harmless from any and all liability it may incur as a result of the stormwater storage provided on the subject property; the indemnification and hold harmless agreement shall be subject to the reasonable approval of the City Attorney and shall be recorded along with a copy of this resolution in the Office of the Recorder of Deeds DuPage County, at the expense of the Applicant.
- E. This variance shall be in full force and effect, subject to the terms of this resolution until December 31, 2013; after which time, the stormwater storage on the subject property shall be brought into full compliance with the City Stormwater Ordinance or other governing stormwater management ordinance(s) regulating land development activities in the City in effect on December 31, 2013. Full compliance with the City Stormwater Ordinance shall be completed by the owner of the property on or before July 1, 2014.
- F. By accepting the benefits of this resolution the owner of the subject property hereby covenants and agrees that the conditions, restrictions and requirements contained in this resolution shall be considered real covenants and conditions and shall be considered as conditions precedent to the use and enjoyment of the subject property, and improvements thereon, and as real covenants running with, and binding upon, the subject property, in perpetuity, or further resolution or ordinance of the City.
- G. The covenants and conditions recited in this agreement shall be binding upon the Owner, its/his/her/their successors, assigns, lessees and grantees in perpetuity or sooner terminated by legislative act of the City.

**ADOPTED** this 5<sup>th</sup> day of April, 2010.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL VOTE

Ayes: Councilman Mouhelis  
Mayor Gresk  
Councilman Prendiville  
Councilman Scalzo  
Councilman Sues  
Councilwoman Corry  
Councilman Levine

Nays: None  
Absent: None

Motion Carried Unanimously

