

ORDINANCE NO#1283

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

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

WHEREAS, the City has previously entered into a Development Agreement (the "Agreement") dated February 20, 2007 with Wheaton Property Partners, LLC (the "Developer") regarding a portion of said Project Area; and;

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

WHEREAS, the First Amendment to Development Agreement is on file with the City Clerk of the City and available for public inspection.

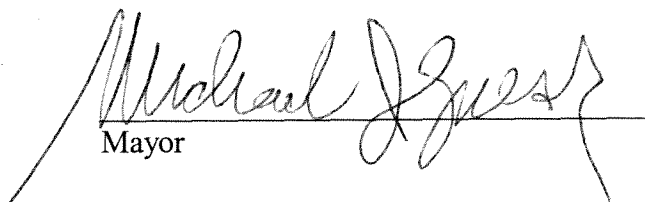
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the First Amendment to Development Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

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or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 21st day of May, 2007.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Roll Call Vote:

Ayes: Councilwoman Corry  
Councilman Johnson  
Councilman Levine  
Mayor Gresk  
Councilman Mouhelis

Nays: Councilman Prendiville  
Councilman Sues

Absent: None

Motion Carried

Passed: May 21, 2007  
Published: May 22, 2007

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "FIRST AMENDMENT") is made and entered into as of the 21st day of May, 2007, by and among the CITY OF WHEATON, a municipal corporation and home rule unit, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY"), WHEATON PROPERTY PARTNERS, LLC (the "DEVELOPER") and GLENSTAR ASSET MANAGEMENT, LLC ("GLENSTAR").

### RECITALS

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

B. The REDEVELOPMENT PLAN recited that the City of Wheaton Main Street Redevelopment Project Area is characterized by conditions which warrant the designation of the entire area as a "conservation area" within the definitions set forth in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (hereinafter referred to as the "ACT").

C. The CITY has the authority to promote the health, safety and welfare of its inhabitants, to prevent the onset of blight while instituting conservation measures, and to encourage private development in order to enhance the local tax base, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes. Further, the CITY is authorized under the provisions of the ACT to finance eligible redevelopment project costs in accordance with the conditions and requirements set forth in the ACT.

D. The CITY and the DEVELOPER previously entered into a Development Agreement dated February 20, 2007 (the "ORIGINAL AGREEMENT"; the ORIGINAL AGREEMENT and this FIRST AMENDMENT collectively referred to as the "AGREEMENT") regarding the construction of an office building and parking garage, as more fully described in the ORIGINAL AGREEMENT.

E. The DEVELOPER has entered in to that certain Design/Build Construction Contract dated as of November 26, 2006 ("CONSTRUCTION CONTRACT") with Opus North Corporation, providing for the construction of the PROJECT.

F. GLENSTAR is, and throughout the negotiation and execution of the CONSTRUCTION CONTRACT was, retained by the DEVELOPER to act as the DEVELOPER'S duly authorized agent and project coordinator for the PROJECT. In said capacity, GLENSTAR has worked with Opus North Corporation with respect to the design and implementation of the PROJECT,

G. The CONSTRUCTION CONTRACT has been, or will be simultaneously with the execution of this FIRST AMENDMENT, amended to add GLENSTAR as a party thereto, for the purpose of GLENSTAR acting in the capacity of Owner (as defined in the CONSTRUCTION CONTRACT) with respect to the construction of the PARKING GARAGE and being bound and benefited by all of the rights, remedies, duties and obligations of Owner with respect to the portion of the PROJECT pertaining to the PARKING GARAGE.

H. The CITY, the DEVELOPER and GLENSTAR desire to amend the ORIGINAL AGREEMENT to add GLENSTAR as a party thereto for the purposes described herein, and the City Council of the CITY has determined that such amendment would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

NOW, THEREFORE, in consideration of the foregoing recitals and in further consideration of the mutual covenants, conditions and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the CITY, the DEVELOPER and GLENSTAR agree as follows:

**SECTION ONE**

**INCORPORATION OF RECITALS**

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

**SECTION THREE**

**DEFINITIONS**

Terms capitalized in this FIRST AMENDMENT and not otherwise defined herein shall have the meanings ascribed to those terms in the ORIGINAL AGREEMENT. Terms defined and

capitalized herein shall have the meanings ascribed to those terms in this FIRST AMENDMENT and, to the extent such terms are also defined terms in the ORIGINAL AGREEMENT, the definitions of those terms as herein provided shall be deemed to control the interpretation of those terms in the ORIGINAL AGREEMENT.

**SECTION FOUR**

**JOINDER OF GLENSTAR**

GLENSTAR is hereby added as a party to the AGREEMENT for the purposes set forth herein.

**SECTION FIVE**

**GLENSTAR'S COVENANTS, WARRANTIES**

A. GLENSTAR shall ensure that the PARKING GARAGE is constructed in conformance with, and, in connection therewith, GLENSTAR shall be governed by, adhere to and obey, all APPLICABLE LAWS and CONTROL DOCUMENTS.

B. (i) GLENSTAR is now solvent and able to pay its debts as they mature; (ii) to the best knowledge of GLENSTAR, upon due inquiry, there are no actions at law, in equity or similar proceedings which are pending or threatened against GLENSTAR, which are reasonably likely to be adversely determined and result in any material and adverse change to GLENSTAR'S financial condition, or materially affect GLENSTAR'S assets as of the date of this FIRST AMENDMENT; (iii) 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 GLENSTAR 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 GLENSTAR; (iv) the execution and delivery of this AGREEMENT by GLENSTAR, and the performance of this AGREEMENT by

GLENSTAR, have been duly authorized, and this AGREEMENT is binding on GLENSTAR and enforceable against GLENSTAR in accordance with its terms; (v) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; (vi) 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 GLENSTAR is a party or by which GLENSTAR is bound, or (b) violate any restriction, court order or agreement to which GLENSTAR is subject; and (vii) GLENSTAR shall maintain its existence as a limited liability company until such time as its responsibilities hereunder and under the CONSTRUCTION CONTRACT have been completed.

C. Section 8.03 of the ORIGINAL AGREEMENT is hereby amended as follows:

(i) The last sentence of the first paragraph is deleted. In addition, Exhibit "M" is deleted from the AGREEMENT.

(ii) The third paragraph is deleted and in lieu thereof, the following language is added: Upon completion of the PARKING GARAGE and acceptance by the CITY pursuant to the procedures set forth in the Planned Development/Subdivision Improvement Agreement, the DEVELOPER shall convey the PARKING GARAGE to the CITY. Such conveyance shall be made without any express or implied warranties by the DEVELOPER; provided, however, that the DEVELOPER hereby assigns all warranties regarding the PARKING GARAGE to the CITY. The CITY agrees that it shall look solely to said warranties and to GLENSTAR with respect to any and all claims concerning the PARKING GARAGE due to (i) defects in design, (ii) defects in material or workmanship, or (iii) failure to comply with APPLICABLE LAWS and the CONTROL DOCUMENTS, and the DEVELOPER shall have no liability or responsibility with

respect thereto; provided, however that the exculpation of the DEVELOPER under this paragraph shall not apply should the DEVELOPER have or obtain knowledge of any such defects or failures during the construction of the PARKING GARAGE unless the DEVELOPER provides written notice of such defect or failure to the CITY within seventy two (72) hours following DEVELOPER becoming aware of the same. GLENSTAR and the DEVELOPER agree that, with regard to the PARKING GARAGE, they will not accept any defective or nonconforming Work (as defined in the CONSTRUCTION CONTRACT), pursuant to Section 7 of the CONSTRUCTION CONTRACT or otherwise, without the written approval of the CITY.

Upon acceptance and conveyance of the PARKING GARAGE as described in the preceding paragraph, GLENSTAR'S obligations under this Section 8.03 shall cease and GLENSTAR shall have no further liability hereunder.

**SECTION SIX**

**SUCCESSORS AND ASSIGNEES**

The terms and conditions of the AGREEMENT are to apply to and bind and inure to the benefit of the CITY, the DEVELOPER, GLENSTAR and their successors and assignees. Notwithstanding the foregoing, GLENSTAR shall not assign its interest under the AGREEMENT without the consent of the CITY.

[SIGNATURE PAGE FOLLOWS]



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: [Signature]  
Mayor

ATTEST:

[Signature]  
City Clerk

WHEATON PROPERTY PARTNERS, LLC, an Illinois limited liability company,

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

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

GLENSTAR ASSET MANAGEMENT, LLC, an Illinois limited liability company,

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

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

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 J. Gresk, Mayor of the City of Wheaton, and Emily M. Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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

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 \_\_\_\_\_, \_\_\_\_\_ of Wheaton Property Partners, LLC and \_\_\_\_\_, \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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

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 \_\_\_\_\_, \_\_\_\_\_ of Glenstar Asset Management, LLC and \_\_\_\_\_, \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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