

ORDINANCE NO. F-1302

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 DOWNTOWN
WHEATON REDEVELOPMENT PROJECT AREA

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 have heretofore approved a redevelopment plan and designated a redevelopment project area (the "PROJECT AREA") for that portion of the CITY known as the Downtown Wheaton 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 March 21, 2005 with DEREK BROMSTEAD (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 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 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or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.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 and the Mayor and City Council of the City of Wheaton, Illinois, this 1st day of October, 2007.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Prendiville
Councilman Sues
Councilwoman Corry
Councilman Johnson
Councilman Levine
Mayor Gresk
Councilman Mouhelis

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: October 1, 2007

Published: October 2, 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 First day of October, 2007, by and between 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") and DEREK BROMSTEAD (hereinafter referred to as the "DEVELOPER"); the CITY and the DEVELOPER being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Downtown Wheaton Redevelopment Project Report", dated May 17, 1993 (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 Downtown Wheaton Redevelopment Project Area (the "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"). The REDEVELOPMENT PLAN further recited that CITY was desirous of having the AREA redeveloped and revitalized as a development for commercial and/or

residential uses to serve the needs of the community and to produce increased tax revenues for the community.

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 (the "REDEVELOPMENT COSTS").

D. The PARTIES previously entered into a Development Agreement dated March 21, 2005 (the "ORIGINAL AGREEMENT") regarding the renovation and reconstruction of the exterior and interior of the building located at 106 N. Hale Street (the "PROJECT"). The DEVELOPER has requested that the CITY provide additional financial assistance regarding certain REDEVELOPMENT COSTS. Attached hereto and made a part hereof as Exhibit "A" is a list of additional REDEVELOPMENT COSTS that have been, or will be, incurred by the DEVELOPER.

E. The City Council of the CITY has determined that such additional reimbursement would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

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 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. The term "AGREEMENT" shall mean the ORIGINAL AGREEMENT as amended by this FIRST AMENDMENT.

SECTION FOUR

AMENDMENTS TO ORIGINAL AGREEMENT

4.01. COMPLETION DATE: The DEVELOPER shall complete construction of the PROJECT no later than September 1, 2007.

4.02. REIMBURSEMENT OF CERTAIN ADDITIONAL COSTS: Pursuant to Section 6.02 of the ORIGINAL AGREEMENT, the maximum amount of reimbursement to the DEVELOPER was not exceed \$60,000. The DEVELOPER acknowledges receipt of said amount. The CITY hereby agrees that the maximum amount of reimbursement shall be increased by the amount of \$23,800, for a total reimbursement of \$83,800. The additional amount of reimbursement is for the REDEVELOPMENT COSTS set forth on Exhibit "A".

In addition to the restrictions contained in the ORIGINAL AGREEMENT, including, but not limited to, the provisions of Sections 6.03 and 6.04 of the ORIGINAL AGREEMENT regarding submittal of required documentation and utilization of TAX INCREMENT, such additional reimbursement shall be subject to the following conditions:

(a) Reimbursement shall be made solely from TAX INCREMENT attributable to the SITE, not from the AREA as a whole.

(b) No reimbursement shall be made until such time as the TAX INCREMENT attributable to the SITE, as measured beginning with taxes collected from the CITY'S 2005 tax levy, has totaled the amount of \$60,000. At that point, annual distributions from the TAX INCREMENT attributable to the SITE, to the extent available, shall be made to the DEVELOPER, up to the maximum amount of \$23,800.00.

(c) No reimbursement shall be made unless the DEVELOPER provides a copy of the tax bill for the SITE to the CITY each year, beginning with the 2006 tax bill, along with proof of payment of such taxes.

4.03. REPAYMENT OBLIGATION: Should the DEVELOPER fail to substantially complete the PROJECT by the date specified in Section 4.01, the DEVELOPER shall not be entitled to any further reimbursement of REDEVELOPMENT COSTS and shall repay to the CITY all amounts previously paid to the DEVELOPER by the CITY. For purposes of this Section

"substantially complete" shall mean that a temporary occupancy certificate has been issued by the CITY pursuant to its customary procedures. 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 the lien of any third party financing affecting the SITE from time to time; provided, however, that such third party financing relates only to the PROJECT or the SITE. The CITY agrees to execute, from time to time, a subordination agreement in a form reasonably requested by such third party lender.

4.04. TERMINATION: If at any time during the term of this AGREEMENT, the DEVELOPER ceases operation of a restaurant on the SITE, this AGREEMENT shall, without any further action by the CITY, terminate and no further reimbursement shall be due to the DEVELOPER.

4.05. TERM: Section 11.12 of the ORIGINAL AGREEMENT is hereby amended to read as follows: 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, unless otherwise terminated pursuant to the provisions hereof, until December 31, 2017.

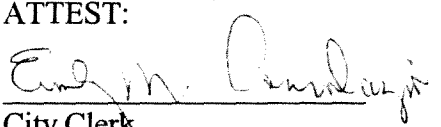
IN WITNESS WHEREOF, the PARTIES hereto have caused this FIRST AMENDMENT to be executed on or as of the day and year first above written.

CITY OF WHEATON, an Illinois
municipal corporation

By: 

Mayor

ATTEST:


City Clerk

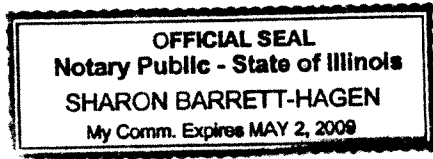

DEREK BROMSTEAD

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. Conso-lazio, 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 4th day of December, 2007.

Sharon Barrett Hagen
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 DEREK BROMSTEAD, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this date 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 24 day of December 2007.

Lena Walnwright
Notary Public

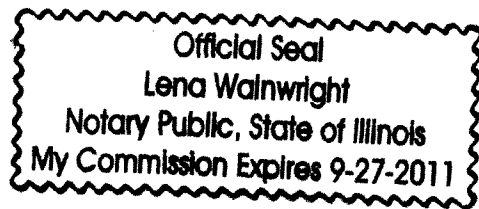


EXHIBIT A

ADDITIONAL REDEVELOPMENT COSTS

Architectural/ Structural	\$23,800
Engineering	\$12,000
Permits	\$24,000
Plumbing	\$44,000
Façade	\$23,200
Framing	\$75,000
Electrical	\$57,000
HVAC	\$93,000
Roof	\$18,000
Floors	\$18,000
Misc	\$ 8,000