

**AN ORDINANCE GRANTING FINAL APPROVAL OF
A PLANNED DEVELOPMENT
(511-515 LINCOLN AVENUE AND 714-740 ELM STREET)
(One Winnetka)**

WHEREAS, SB One Winnetka, LLC, a Delaware limited liability company (“**SB One**”) is the record owner of the property commonly known as 511-515 Lincoln Avenue and 714-732 Elm Street, Winnetka, Illinois (collectively, “**SB One Property**”); and

WHEREAS, SB Winnetka, LLC, a Delaware limited liability company (“**SB Winnetka**”) (SB One and SB Winnetka are, collectively, the “**Developer**”) is the record title owner of the property commonly known as 740 Elm Street, Winnetka, Illinois (“**740 Elm Street Property**”); and

WHEREAS, SB Winnetka is the contract purchaser of the property commonly known as 736 Elm Street, Winnetka, Illinois, which is legally described in *Exhibit A* (“**736 Elm Street Property**”) (the 740 Elm Street Property and the 736 Elm Street Property are collectively, “**SB Winnetka Property**”); and

WHEREAS, the SB One Property and the SB Winnetka Property (collectively, “**Developer’s Pre-Development Property**”) comprise approximately 1.40 acres and are legally described in *Exhibit B* attached hereto; and

WHEREAS, the Developer’s Pre-Development Property is generally located on the southeast corner of Elm Street and Lincoln Avenue in Winnetka and in the C-2 General Retail Commercial and C-2 Overlay Districts under the Winnetka Zoning Ordinance, Title 17 of the Winnetka Village Code (“**Zoning Ordinance**”); and

WHEREAS, the Village is the record title owner of the property commonly known as 710 Elm Street and legally described in *Exhibit C* attached hereto (“**Pre-Development Parking Lot Parcel**”), which Pre-Development Parking Lot Parcel is currently improved with a Village-owned, public parking lot with ingress and egress on Elm Street; and

WHEREAS, redevelopment of the Developer’s Pre-Development Property requires approval of a planned development in accordance with Chapter 17.58 of the Zoning Ordinance; and

WHEREAS, on February 20, 2015, Developer and its predecessors jointly applied to the Village for preliminary approval of a planned development for the Developer’s Pre-Development Property, Pre-Development Parking Lot Parcel, and a portion of the Lincoln Avenue right-of-way immediately to the west of the Developer’s Pre-Development Property to redevelop such properties to generally include (i) the demolition of the existing buildings on the Developer’s Pre-Development Property; (ii) the construction and development of three new mixed-use buildings for retail and residential uses; (iii) related on-site and off-site parking improvements, including improvements to the Pre-Development Parking Lot Parcel and the construction and improvement of new public surface and underground parking in and along the Lincoln Avenue right of way; and (iv) related on-site and off-site streetscape and landscape improvements, (“**Preliminary Development Proposal**”), which Preliminary Development Proposal required the

approval of a preliminary planned development, and exceptions from and modifications to the height, upper story, and rear yard setback requirements for planned developments; and

WHEREAS, on January 17, 2017, the Village Council adopted Ordinance No. M-1-2017, approving the preliminary development plan (“*Preliminary Development Plan*”) and granting preliminary approval for the Developer’s requested exceptions to and modifications of the otherwise applicable planned development requirements for the Preliminary Development Proposal (“*Preliminary PD Ordinance*”); and

WHEREAS, as a condition of the Preliminary PD Ordinance, the Village entered into a Development Agreement dated February 1, 2017 (“*Initial Agreement*”) to further enable the Village to control the development and construction of the Preliminary Development Proposal; and

WHEREAS, pursuant to Section 17.58.090 of the Zoning Code, an applicant for a planned development is required to apply for approval of a final development plan, which final development plan must be in substantial conformance with the Preliminary Development Plan; and

WHEREAS, on March, 2018, the Developer submitted an application for approval of final development plan (“*Final Development Plan*”) of the final development proposal (“*Final Development Proposal*”), which Final Development Plan included changes (collectively, “*Plan Changes*”) (the Preliminary Development Proposal, as modified by the Plan Changes, is the “*Proposed Development*”) to the location and structures for commuter, employee, and customer parking, and the shifting of the Preliminary Development Proposal building to the east, thus eliminating the need for acquisition of a portion of the Lincoln Avenue right-of-way, but requiring acquisition of a portion of the Pre-Development Parking Lot Parcel located to the east of the Developer’s Pre-Development Property (“*Post-Development Transfer Parcel*”), which Post-Development Transfer Parcel is legally described in *Exhibit D* (the Developer’s Pre-Development Property and the Post-Development Transfer Parcel are, collectively, the “*PD Property*”); and

WHEREAS, the Plan Changes also require the Developer to transfer to the Village the portion of the Developer’s Pre-Development Property legally described in *Exhibit E* (“*Lot 3*”); and

WHEREAS, the Plan Changes do not constitute a substantial change in the Preliminary Development Proposal under Section 17-58.090.A.1 of the Zoning Ordinance; and

WHEREAS, pursuant to proper notice and in accordance with the Village Zoning Ordinance, the Winnetka Design Review Board considered the Final Development Plan at its meetings on June 27, 2018, and July 19, 2018; and

WHEREAS, on July 19, 2018, the Design Review Board made specific findings and conclusions, specifically that, as a whole, the Final Development Plan was consistent with the Village of Winnetka Design Guidelines and recommended that it be approved, subject to conditions, by the Village Council; and

WHEREAS, pursuant to proper notice and in accordance with the Zoning Ordinance, the Winnetka Zoning Board of Appeals (“**ZBA**”) held a public hearing on the Final Development Plan, which public hearing commenced on June 27, 2018, and continued on July 9, 2018; and

WHEREAS, on July 9, 2018, the ZBA adopted a resolution with specific findings and conclusions, recommending that the Village Council approve the Final Development Plan, subject to certain conditions; and

WHEREAS, pursuant to proper notice and in accordance with the Village Zoning Ordinance, the Winnetka Plan Commission held a public hearing on the Final Development Plan, which public hearing commenced on June 27, 2018, and continued on July 25, 2018; and

WHEREAS, on July 25, 2018, the Plan Commission adopted a resolution with specific findings and conclusions, recommending that the Village Council approve the Final Development Plan, subject to certain conditions; and

WHEREAS, pursuant to Section 17.50.100 of the Planned Development Regulations, the findings and recommendations of the Plan Commission, the Design Review Board, and the ZBA were submitted to the Village Council, along with the complete records of all three bodies, all supporting materials, and all correspondence and written comment received at any time related to the Application and the proposed development; and

WHEREAS, under the Final Development Plan, the exceptions from and modifications to the height provisions of Subsection 17.58.040.C of the Planned Development Regulations are to allow (i) a height of 61.5 feet for the parapet on the corner turret and center portion of the Lincoln Avenue building, (ii) a height of 59 feet for the remaining portions of the Lincoln Avenue building; (iii) a height of 48 feet, 10 inches for the center building on Elm Street; and (iv) a height of 58 feet for the east building on Elm Street (collectively, the “**Height Modification**”); and

WHEREAS, under the Final Development Plan, the exceptions from and modifications to the upper story setback provisions of Subsections 17.58.040.B and 17.46.025 of the Zoning Ordinance are to reduce the required upper story setback (i) from 10 feet to zero feet on the north and west elevations at fourth floor and above on the Lincoln Avenue building, and (ii) from 10 feet to zero feet on the north and west elevations at fourth floor and above on the east building on Elm Street (collectively, the “**Upper Story Setback Modification**”); and

WHEREAS, under the Final Development Plan, the exceptions from and modifications to the rear setback provisions of Subsections 17.58.040.B and 17.46.030 of the Zoning Ordinance are to reduce the required rear setback from 10 feet to zero feet along the east property line of the PD Property (“**Rear Setback Modification**”); and

WHEREAS, under the Final Development Plan, the exceptions from and modifications to the parking stall drive aisle dimension regulations of Subsections 17.58.040.D and 17.46.110(H) of the Zoning Ordinance are to reduce the required parking drive aisle width from 24 feet to 22 feet for the drive aisles in levels B-1 and B-2 in the parking garage to be developed on the PD Property (“**Drive-Aisle Modification**”) (the Height Modification, Upper Story Setback Modification, Rear Setback Modification, and Drive Aisle Modification are, collectively, the “**Modifications**”); and

WHEREAS, as a condition to adoption of this Ordinance, the Developer will enter into an amended and restated development agreement with the Village in substantially the form attached to Resolution _____ ("*Amended Development Agreement*"), which Amended Development Agreement along with this Ordinance will govern the use and redevelopment of the PD Property; and

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970, pursuant to which it has the authority, except as limited by said Section 6 of the Constitution of the State of Illinois of 1970, pursuant to which it has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village; and

WHEREAS, the Village Council introduced this Ordinance at its regular meeting on September 18, 2018; and

WHEREAS, the Village Council has determined that approval of the Final Development Plan pursuant to this Ordinance is in the best interest of the Village and its residents;

NOW, THEREFORE, the Council of the Village of Winnetka does ordain as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Ordinance as the findings of the Village Council.

SECTION 2: ADDITIONAL FINDINGS. The Village Council further finds as follows:

- A.** Subject to the terms and conditions of this Ordinance, the Final Development Plan is consistent with the Village of Winnetka Comprehensive Plan, *Winnetka 2020*.
- B.** Subject to the terms and conditions of this Ordinance, and pursuant to Sections 17.58.090 and 17.58.100 of the Zoning Ordinance, the Final Development Plan is in substantial conformance with the Preliminary Development Plan.
- C.** Subject to the terms and conditions of this Ordinance, the Final Development Plan complies with all applicable Village ordinances.
- D.** Subject to the terms and conditions of this Ordinance, the Final Development Plan is in conformity with the Village of Winnetka Design Guidelines.
- E.** Subject to the terms and conditions of this Ordinance, the Final Development Plan meets the standards for approval of special use permits, as established in Chapter 17.56 of the Zoning Ordinance.
- F.** Subject to the terms and conditions of this Ordinance, the Modifications meet the standards for modifications pursuant to Section 17.58.040(C) of the Planned Development Regulations.

G. Subject to the terms and conditions of this Ordinance, the Final Development Plan meets the general purpose and intent of the Planned Development Ordinance, as set out in Section 17.58.020 of the Planned Development Ordinance.

SECTION 3: APPROVAL OF A SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT AND A CERTIFICATE OF APPROPRIATENESS.

A. **Special Use Permit.** Subject to the terms, conditions, restrictions, modifications, and exceptions set forth in Sections 6 through 13 of this Ordinance, the Village Council shall, and does hereby, grant a special use permit for a planned development for the Proposed Development for the PD Property in accordance with, and pursuant Chapter 17.58 of the Zoning Ordinance and the home rule powers of the Village.

B. **Certificate of Appropriateness.** Subject to, and contingent upon, the terms, conditions, restrictions, and provisions set forth in Section 5 of this Ordinance, the Certificate of Appropriateness is granted for PD Property, pursuant to Section 15.40.010 of the Village Code and the home rule powers of the Village.

SECTION 4: APPROVAL OF A FINAL DEVELOPMENT PLAN. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 6 through 13 of this Ordinance, the Final Development Plan for the planned development for the PD Property, shall be, and it is hereby, approved, and shall hereafter consist of the following documents (collectively, the "*Final Development Plan*"):

- A. The *Planned Development Plat*, consisting of two sheets, prepared by Gremley & Biedermann, with a latest revision date of September 24, 2018, a copy a copy of which is attached to, and by this reference made a part of, this Ordinance as *Exhibit F*;
- B. The *Architectural Plan*, consisting of 37 sheets, with the latest revision date of September 7, 2018, a copy of which is attached to, and by this reference made a part of, this Ordinance as group *Exhibit G*;
- C. The *Final Engineering Plan*, consisting of 23 sheets, prepared by Eriksson Engineering Associates, Ltd., dated August 20, 2018, a copy of which is attached to, and by this reference made a part of, this Ordinance as *Exhibit H*; and
- D. The *Landscape and Lighting Plan*, consisting of the plan entitled "Landscape and Lighting Plan, consisting of four sheets, prepared by Daniel Weinbach & Partners Ltd., with latest revision date of September 7, 2018, and the plan entitled, "Existing Tree Survey", consisting of one sheet (sheet L-1.0), prepared by Daniel Weinbach & Partners Ltd., copies of which are attached to, and by this reference made a part of, this Ordinance as group *Exhibit I*.

SECTION 5: APPROVAL OF EXEMPTIONS AND MODIFICATIONS. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Sections 6 through 13 of this Ordinance, the following exceptions and modifications from the provisions of the Planned Development Regulations are granted:

A. Building Height. An exception from and modification to the 45-foot building height limitation of Subsection 17.58.040(C) of the Planned Development Regulations, to allow for a maximum building height, as measured pursuant to the Zoning Ordinance, of: (i) a height of 61.5 feet for the parapet on the corner turret and center portion of the Lincoln Avenue building, (ii) a height of 59 feet for the remaining portions of the Lincoln Avenue building; (iii) a height of 48 feet, 10 inches for the center building on Elm Street; and (iv) a height of 58 feet for the east building on Elm Street, all as specifically depicted on the Architectural Plan.

B. Upper Story Setback. An exception from and modification to the setback limitations of Subsection 17.58.040(B) of the Planned Development Regulations and 17.46.25, to reduce the upper story setback (i) from 10 feet to zero feet on the north and west elevations at fourth floor and above on the Lincoln Avenue building, and (ii) from 10 feet to zero feet on the north and west elevations at fourth floor and above on the east building on Elm Street.

C. Rear Yard Setback. An exception from and modification to the rear yard setback limitations of Subsection 17.58.040(B) of the Planned Development Regulations and 17.46.030, to reduce the rear yard setback to zero along the east property line of the PD Property.

D. Drive Aisle Width. An exception from and modification to the parking stall drive aisle dimension regulations of Subsections 17.58.040.D and 17.46.110(H) of the Zoning Ordinance of the Zoning Ordinance to reduce the required parking drive aisle width from 24 feet to 22 feet for the drive aisles in levels B-1 and B-2 in the parking garage to be developed on the PD Property.

SECTION 6: CONDITIONS. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Winnetka Village Code or the Zoning Ordinance, or any other rights Developer, individually or collectively, may have, the approvals granted in Sections 3, 4, and 5 of this Ordinance shall be, and they are hereby, expressly subject to and contingent upon the redevelopment, use, and maintenance of the PD Property in compliance with each and all of the conditions set forth in this Section:

A. Amended Development Agreement. Within 30 days after the adoption of this Ordinance, the Developer shall enter into the Amended Development Agreement approved pursuant to Resolution _____.

B. Compliance with Regulations. The redevelopment, use, operation, and maintenance of the PD Property shall comply with all applicable Village codes and ordinances, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance or the Amended Development Agreement.

C. Single Phase Development. The construction of the Proposed Development shall take place in one continuous phase.

D. Parking. The Developer shall construct and provide (i) 115 underground private parking spaces on the PD Property for use by the residences and guests of the Proposed Development; (ii) 131 underground public parking spaces on Lot 3 for commuter, employee, and general public use (“*Public Underground Spaces*”); (iii) 33 public parking spaces (“*East Parking Lot Spaces*”) on the portion of the Pre-Development Parking Lot Parcel that does not include the Post-Development Transfer Parcel (“*Post-Development Parking Lot Parcel*”); (iv)

11 on-street public parking spaces in and along the east side of the Lincoln Avenue right-of-way and repair or reconstruct any other parking spaces on the Lincoln Avenue right-of-way damaged by any construction (“*Lincoln Avenue Public On-Street Spaces*”); and (v) 24 on-street public parking spaces in and along the south side of the Elm Street right-of-way (“*Elm Street Public On-Street Spaces*”). The Public Underground Spaces shall, upon completion and acceptance by the Village, be dedicated and conveyed to the Village.

E. Refuse and Recycling Collection. As provided in the Architectural Plan, Developer shall provide a sufficient quantity of separate containers for the collection and disposal of refuse and of recyclable materials on the PD Property, as determined by the Director of Public Works in his or her discretion. Developer will manage the collection and disposal of refuse and of recyclable materials on the PD Property to alleviate, to the greatest extent possible, noise and inconvenience to the residents of the PD Property and neighboring properties, as more specifically provided in the Loading and Refuse Plan. The Developer will not be responsible for the refuse and recycling collection by the Village or the Village’s contractor. Collection of refuse and recyclable materials of the PD Property shall not occur prior to 7:00 a.m. on any day.

F. Vehicular Ingress and Egress. Developer shall ensure that all ingress and egress from the PD Property and the Post-Transfer Parking Lot Parcel, as depicted on the Final Development Plan, have adequate turning radiuses for vehicular use, including delivery trucks and refuse collection trucks, and provide for adequate sightlines and access, as depicted in Loading and Refuse Plan.

G. Installation of Signage. The installation, construction, location, and maintenance of all signage on the PD Property shall be governed by Chapter 15.60 of the Village Code.

H. Use Restriction. Except as otherwise approved by the Village Council by resolution duly adopted, the first-floor retail space located at the southwest corner of the Proposed Development and south of the interior east-west corridor shall not be used as a restaurant. All other retail portions of the PD Property may be used for restaurant use in accordance with the Zoning Code.

I. Ventilation. All exhaust emanating from commercial kitchens and similar facilities within the non-residential portions of the PD Property shall be vented through the roof of the development at elevations in excess of existing buildings adjacent to the PD Property.

J. Continued Cooperation. Developer will meet separately on a regular basis with the Hadley Institute and representatives from the 711 Oak Street property in order to eliminate, or reduce to the greatest extent possible, the impact on those properties and operations of the construction and use of the Proposed Development. Unless the Developer and the respective representatives of the Hadley Institute and 711 Oak Street agree otherwise, these meetings will occur once a month during the first 12 months after commencement of construction and once every two months thereafter until the final certificate of occupancy for the proposed development is issued. The Developer will provide the Village with reasonably documented written reports outlining the issues discussed at the meetings undertaken pursuant to this Subsection.

K. Video Surveillance System. Developer shall install a video surveillance system for the Public Underground Spaces and the East Parking Lot Spaces that is compatible and integrated with the Village’s existing video surveillance system.

L. East Parking Lot Safety Measures. Developer shall undertake the improvements and systems set forth in the Hadley Institute Plan that is a part of the Final Engineering Plan, including specifically, but without limitation, installation of safety measures to adequately alert pedestrians to vehicular traffic entering and exiting the Post-Development Parking Lot Parcel and the installation and location of covered walkways and other necessary facilities and equipment during construction to protect and facilitate the operations of the Hadley Institute, all after conferring with Village staff and the Hadley Institute to determine best practices for such safety measures.

M. Landscaping. Developer shall install and maintain all landscaping as depicted on the Landscape and Lighting Plan, including specifically, without limitation, the following:

1. Landscape and streetscape improvements, including specifically, without limitation, street lights, pedestrian lights, clay pavers, tree grates, irrigation, bike racks, trees, and other streetscape improvements, along (a) the north side of Elm Street, from Arbor Vitae to Lincoln Avenue; (b) the south side of Elm Street from the east property line of the Post-Development Parking Lot Parcel to Lincoln Avenue; and (c) the east and west sides of Lincoln Avenue, from Elm Street to the southern property line of Developer's Post-Development Property, all (i) in general accordance with the Village Streetscape Plan, which an excerpt of such plan is attached as *Exhibit J*, as determined by the Village (unless requirements of the Village Streetscape Plan are waived by the Village), which Village Streetscape may be modified by the Village at any time prior to the installation of the landscape and streetscape improvements, and (ii) pursuant to final construction plans approved by the Village Manager.
2. All trees, shrubs, plantings, and ornamentals shall be healthy, and of the size, height, and species described in the Landscape and Lighting Plan.

O. Site Utilities. As further provided and required pursuant to the Amended Development Agreement and in the Final Development Plan, the Developer shall provide, at its sole cost and expense, for the extension, installation and connection of all public and private utility facilities necessary to serve the Proposed Development, including specifically, without limitation: (a) water service connections and meters, fire hydrants and standpipes, electric service connections and individual service lines, electric meters and transformers, sanitary sewer lines and storm sewer lines; (b) all applicable service and connection fees; and (c) any upgrades to Village utility systems that the Village determines is directly attributable and reasonably necessary to provide adequate utility service to the Proposed Development. Where utility service is provided by the Village, the Village shall retain all authority and discretion, pursuant to applicable State law and the Winnetka Village Code, to determine the nature and extent of the utility facilities necessary to serve the Proposed Development and to determine the methods of construction.

P. Electrical Power Cables. Pursuant to the Final Development Plan, the Proposed Development will require the existing electrical power cables to be relocated. Developer, at its sole cost and responsibility, will relocate the existing electrical power cables as set forth in the

Final Development Plan. Developer will grant any necessary easements to the Village for operation and maintenance of any cables located under the Proposed Development.

Q. Use and Maintenance of the Subject Property. To assure that the public health, safety, and general welfare are protected during construction of the Proposed Development and specifically pending and during the demolition and redevelopment of the existing structures on the PD Property, the following minimum, including the minimum standards set forth in Village Code Sections 15.32.150 and 15.48, standards for the use and maintenance of the PD Property shall apply:

1. Prior to demolition, the Developer shall not allow the PD Property or any of the buildings on the PD Property to fall into disrepair and shall promptly make all necessary repairs. The Developer shall also maintain the buildings and the PD Property in a safe and proper condition and in good repair.
2. As used in this subsection, “proper” shall mean:
 - a. that the Developer shall use commercially reasonable efforts, as determined by the Director of Community Development, under the supervision of the Village Manager, to ensure: (i) that exterior enclosures (exterior walls, windows, doors, etc.) are adequately maintained, watertight and in good operating condition; (ii) that roofing systems are adequately maintained and watertight; (iii) that all heating, ventilating, air conditioning, electric, plumbing and fire- and life-safety systems serving the existing buildings and commercial tenant spaces are maintained in good repair and remain functional at all times; (iv) that parking areas are kept clean and well lit; and (v) that structural systems are maintained in good repair, with any indication of structural deterioration promptly and safely repaired;
 - b. that the Developer shall use its best efforts, as determined by the Director of Community Development, under the supervision of the Village Manager, to ensure: (i) that any damage from vandals, including graffiti, are promptly removed; (ii) that any debris and accumulations of dirt are promptly removed; (iii) that salt or similar de-icers are applied to pedestrian walkways, vehicular driveways and parking areas to protect against the accumulation of snow and ice; and (iv) that accumulations of snow and ice on such areas be promptly and safely removed; and
 - c. that the Developer shall promptly replace any cracked or broken windows within seven days, unless otherwise approved by the Director of Community Development.
3. All materials used in maintaining and repairing the PD Property and the existing buildings shall be of equal or better quality than the existing materials.

R. **Taxes and Utilities.** The Developer shall pay all taxes and utility fees as and when due and shall provide proof that the PD Property is free of utility, tax or other liens as a condition for final planned development approval and as a condition for the issuance of any permits.

S. **Term of Building Permit.** The building permit issued for the construction of the Proposed Development shall be in effect for a term of 24 months from the date of issuance.

T. **Binding Effect; Non-Transferability.** The privileges, obligations, and provisions of each and every section and requirement of this Ordinance are for and shall insure solely to the benefit of the Developer, and are and shall be binding on the Developer, upon any and all of the Developer's heirs, successors, and assigns, and upon any and all of the respective successor legal and or beneficial owners of all or any portion of the Property, except as otherwise expressly provided in this Ordinance or in the Amended Development Agreement. Nothing in this Ordinance shall be deemed to allow the Developer to transfer any of the rights or interests granted herein to any other person or entity, except as provided in the Development Agreement, without the prior approval of the Village Council by a duly adopted amendment to this Ordinance.

U. **No Third Party Beneficiaries.** Nothing in this Ordinance shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

V. **Exterior Building Materials.** Prior to issuance of any demolition or building permits, the Developer must present final actual material and material selection specifications and actual finishes for all exterior building and retaining wall materials for review and approval by the Design Review Board.

SECTION 7: FAILURE TO COMPLY WITH CONDITIONS. Upon failure or refusal of the Developer, or any of its officers, employees, or agents, to comply with any or all of the conditions, restrictions, or provisions of this Ordinance or the Amended Development Agreement (collectively, "*Final Approval Documents*"), the permits and approvals granted in the Final Approval Documents shall, at the sole discretion of the Village Council, by ordinance duly adopted, be revoked and become null and void. In the event of revocation, the development and use of the PD Property shall be governed solely by the regulations of the C-2 General Retail Commercial and C-2 Overlay Districts, as the same may, from time to time, be amended. Further, in the event of a revocation of the permits or approvals granted pursuant to the Final Approval Documents, the Village Manager and Village Attorney are hereby authorized and directed to bring any zoning or other enforcement action that may be appropriate under the circumstances.

SECTION 8: PAYMENT OF VILLAGE FEES AND COSTS. Except as otherwise provided in the Amended Development Agreement, the Developer shall pay to the Village, as and when due, all application, review, inspection, and permit fees, all water and sewer general and special connection fees, tap-on fees, charges and contributions, and all other fees, expenses, charges and contributions required by applicable Village codes, ordinances, resolutions, rules or regulations, including, without limitation, the fees, charges and contributions provided in the fee schedules set by Village resolution or established by Village Code. All payments shall be at the rates that are in effect at the time the charge is incurred, and the Village reserves its right and discretion to establish or increase rates from time to time.

SECTION 9: NON-INTERFERENCE WITH BUSINESSES. All of the Developer’s construction activities for the Proposed Development shall be performed so as to minimize, to the greatest extent possible, or eliminate interruption of or interference with the businesses on adjacent properties, and any interference with pedestrian and vehicular traffic, including parking, and other businesses in the vicinity of the PD Property.

SECTION 10: EFFECT OF FINAL PLAN APPROVAL.

A. Duration of Final Approval. Except as provided in the Subsection B of this Section, the final approval of the Proposed Development shall expire 90 days from the effective date of Section 3, 4, and 5 of this Ordinance unless the Developer has, by that date, submitted a complete application for a building permit for the Proposed Development pursuant to the Village Code.

B. Extension of Final Approval. The Village Council by resolution duly adopted may grant two consecutive 90-day extensions to the time for filing a complete building permit application for the Proposed Development, provided the Village determines the Developer has met the following conditions:

- 1. the Developer has made good faith effort to meet the applicable filing deadline;
- 2. the inability of the Developer to meet the applicable filing deadline is due to circumstances beyond the Developer’s control, provided that the financial condition of the Developer shall not be considered a condition beyond Developer’s control; and
- 3. the Developer is in full compliance with all other applicable development requirements, including the terms of the Final Approval Documents.

C. Construction. The Developer shall commence construction, beyond mere fencing and preparation of the worksite, of the Proposed Development within 60 days after the issuance by the Village of a building permit for the Proposed Development. The construction of the Proposed Development shall be substantially complete no later than 24 months after the issuance by the Village of the building permit for the Proposed Development.

D. No Work Authorization. Nothing in this Ordinance shall be construed as authorizing the issuance of any permits for the demolition of any of the existing buildings on PD Property or for the construction of the Proposed Development.

SECTION 11: HOME RULE POWERS. This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 12: EFFECTIVE DATE OF APPROVALS. The approvals granted in Sections 3, 4 and 5 of this Ordinance shall be effective only upon the occurrence of all of the following events:

A. The recording with the Cook County Recorder of Deeds of the plat of subdivision entitled “One Winnetka Subdivision” that is approved pursuant to Resolution No. _____, prepared by Gremely & Biedermann, and consisting of three sheets, with latest revision date of _____, 2018 (“*Final Plat*”); and

B. The conveyance of Lot 3 to the Village in accordance with Section 8 of the Amended Development Agreement.

SECTION 13: EFFECTIVE DATE.

A. This Ordinance shall be effective only upon the occurrence of all of the following events:

1. Passage by the Village Council of the Village of Winnetka in the manner required by law;
2. Publication in pamphlet form in the manner required by law; and
3. The filing by the Developer, within 10 days after the passage of this Ordinance by the Village Council, for recording in the Office of the Cook County Recorder of Deeds, of an Unconditional Agreement and Consent, signed by all owners of property within the PD Property other than the Village, to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance. The Unconditional Agreement and Consent shall be in the form of *Exhibit K* attached to, and by this reference made a part of, this Ordinance.

B. At the option of the Village Council by resolution duly adopted, this Ordinance shall be of no force or effect and shall be rendered null and void in the event that:

1. The Developer does not file with the Village Clerk a fully executed copy of the Unconditional Agreement and Consent required pursuant to Paragraph 13.A.3 of this Ordinance within 10 days after the date of passage of this Ordinance by the Village Council; or
2. The Final Plat is not recorded with the Cook County Recorder of Deeds by December 31, 2018 (“*Recording Deadline*”); provided that the Recording Deadline may be extended by Developer for two 90-day periods by providing written notice to the Village in the event that Developer is unable to close on the 736 Elm Street Property.

[SIGNATURE PAGE FOLLOWS]

ORDINANCE NO. M-13-2018

PASSED this __ day of _____, 2018, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this __ day of _____, 2018.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the
President and Board of Trustees
of the Village of Winnetka,
Illinois, this __ day of _____,
2018.

Introduced: October 2, 2018

Passed and Approved: _____, 2018