

Ordinance No. 17,992

**AN ORDINANCE AMENDING THE AGREEMENT BETWEEN
THE CITY OF PEORIA, MORTON COMMUNITY BANK AND WESTLAKE LIMITED
PARTNERSHIP RELATED TO THE WESTLAKE AVENUE/ROCKWOOD ROAD
SPECIAL SERVICE AREA**

WHEREAS, on July 21, 2010, the City of Peoria entered into an agreement with Westlake Limited Partnership, an Illinois limited partnership, to establish a Special Service Area; and

WHEREAS, the Westlake Shopping Center, which comprises all property included within the Westlake Special Service Area, is now owned and operated by Westlake Shopping Center, LLC, a Delaware limited liability company (“WSC”), which is successor in interest to Westlake Limited Partnership with regard to the Agreement; and

WHEREAS, the City of Peoria and WSC entered into a First Amended Agreement on or about July 1, 2014; and

WHEREAS, the City of Peoria and WSC entered into a Second Amended Agreement on or about November 2, 2021; and

WHEREAS, the City of Peoria and WSC desire to amend the Agreement as provided in the Third Amended Agreement, attached hereto as Exhibit A and incorporated herein; and

WHEREAS, it is in the best interests of the residents of the City of Peoria that such amendments to the Agreement be made;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Peoria, Illinois as follows:

Section 1. The Third Amended Agreement Between the City of Peoria, Morton Community Bank, and Westlake Shopping Center, LLC Related to the West Lake Avenue/Rockwood Road Special Service Area, attached hereto as Exhibit A, is hereby approved and adopted by the City Council of the City of Peoria. The City Manager is hereby directed to take any and all action necessary to execute said Third Amended Agreement.

Section 2. This Ordinance shall be in full force and effect immediately upon its passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this 9TH day of August, 2022.

ORDINANCE NO. 17,991

Approved:

Rita Ali
Mayor Rita Ali

Attest:

Stephanie Jarr
City Clerk

Examined and Approved:

Christine L. Kapuska
Corporation Counsel

**THIRD AMENDMENT AGREEMENT
BETWEEN THE CITY OF PEORIA, MORTON COMMUNITY BANK,
AND WESTLAKE SHOPPING CENTER, LLC,
RELATED TO THE
WEST LAKE AVENUE/ROCKWOOD ROAD SPECIAL SERVICE AREA**

THIS THIRD AMENDMENT (this "Third Amendment") is made and entered into on, and is effective as of the __ day of _____, 2022, by and between the City of Peoria ("City"), an Illinois home rule municipal corporation; Westlake Shopping Center, LLC ("Westlake"), a Delaware limited liability company (sometimes heretofore mistakenly identified as and referred to as an Illinois Limited Liability Company), successor in interest to Westlake Limited Partnership, an Illinois limited partnership; and Morton Community Bank ("MCB"), an Illinois banking corporation;

WITNESSETH:

WHEREAS, the City and Westlake Limited Partnership, predecessor in interest to Westlake hereunder, entered into an Agreement, dated as of the 21st day of July, 2010, amended by a First Amendment Agreement (the "First Amendment") dated as of the 31st day of July, 2014, and by a Second Amendment Agreement (the "Second Amendment") dated as of the 2nd day of November, 2021 (the foregoing Agreement, First Amendment, and Second Amendment being collectively referred to as the "Westlake SSA Agreement"), as the result of the establishment of a Special Service Area known as the West Lake Avenue/Rockwood Road Special Service Area (the "SSA") for the purpose of implementing certain payment and operational procedures (for the SSA) among the City, Westlake and MCB:

WHEREAS, the parties have heretofore been proceeding consistent with the provisions and obligations as set forth in the Westlake SSA Agreement;

WHEREAS, as a result of Westlake's desire to make additional improvements to the Westlake Shopping Center and provide for the maintenance thereof and/or provide for the maintenance of current improvements within the SSA (collectively the "Additional SSA Special Services"), the parties acknowledge that the provisions of such Westlake SSA Agreement need to be amended as set forth in this Third Amendment;

WHEREAS, based upon the above, the City has adopted Ordinance No. _____ pursuant to which the overall indebtedness of the SSA is to be and may be increased by an additional principal indebtedness amount of Five Hundred Thousand Dollars (\$500,000.00);

WHEREAS, MCB is willing to lend funds in the amount of the aforementioned Five Hundred Thousand Dollars (\$500,000.00) (in addition to the SSA loan funds heretofore advanced to Westlake for previous SSA Improvements) for purposes of, in part, funding the said Additional SSA Special Services, all of which is pursuant to a new promissory note (the "New Promissory Note") dated _____, 2022, in the amount of Five Hundred Thousand Dollars (\$500,000.00);

WHEREAS, the annual amounts due to MCB under the previous promissory note dated July 23, 2010 (the "Previous Promissory Note"), together with the annual amounts due to MCB under an additional promissory note dated July 16, 2014 (the "First Additional Promissory Note") and under an additional promissory note dated January 14, 2022 (the "Second Additional Promissory Note") together now with the annual amounts additionally due to MCB under the New

Promissory Note, shall (at a minimum) hereafter constitute and comprise the new annual tax levy of the SSA (with such collective amounts due to MCB under the Previous Promissory Note, the First Additional Promissory Note, the Second Additional Promissory Note, and the New Promissory Note being sometimes hereinafter collectively referred to as the "Collective Debt Service");

WHEREAS, it is contemplated that the extension of the maximum rate of the SSA tax levy as heretofore established (subject to abatement or reduction as from time to time has been made and shall further be made by the City pursuant to the terms of the First Amendment and the Second Amendment and for the provisions for the levy and collection of sales taxes under the terms thereof) shall be for the purpose of paying to MCB remaining obligations due in payment of the Collective Debt Service;

WHEREAS, Westlake and the City acknowledge that the arrangements contemplated hereby for the payment of the Collective Debt Service have been an inducement for MCB to make the additional money advances for which the New Promissory Note arises and has been executed;

WHEREAS, it is the desire of the parties to establish appropriate regulations and understandings relating to the SSA and for the repayment to MCB of the amount of the Collective Debt Service as will now be increased by the addition of the obligations of the New Promissory Note; and

WHEREAS, the City has the authority to set forth the terms and conditions under which tax revenues from the SSA shall be paid and applied as set forth in the Westlake SSA Agreement as modified by the First Amendment, the Second Amendment, and this Third Amendment;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Uses of Special Service Revenue. The parties agree that the use of additional SSA revenue as will be produced by the additional advances from MCB for the Additional SSA Special Services as contemplated hereby shall be and may be permitted for those uses and purposes heretofore permitted and provided in the Westlake SSA Agreement, the First Amendment, the Second Amendment, and this Third Amendment, and by those City Ordinances heretofore adopted by the City with respect to the SSA.

2. Revised Payment to MCB for SSA Improvements. The Collective Debt Service of the SSA to MCB arising from the Previous Promissory Note, the First Additional Promissory Note, the Second Additional Promissory Note, and the New Promissory Note shall be repaid consistent with the terms of the said foregoing Notes. Consistent with the foregoing, the City agrees to continue with the levying of an SSA tax as part of the imposition of general real estate taxes for properties within the SSA as heretofore set forth and provided in the Westlake SSA Agreement, the First Amendment, and the Second Amendment, including the procedures for abatement/reduction of any such levy as heretofore set forth in the Westlake SSA Agreement, the First Amendment, and the Second Amendment for revenues arising from the Westlake Supplemental Sales Tax.

3. Levy Limitations. With respect to the collection of any real estate or sales tax levies for the SSA, it is hereby recognized and acknowledged by the parties that nothing contained

herein shall be construed to increase the rate of the sales tax levy within the SSA, such levy currently being and to remain at 75/100 of a percent (.75%) of retail sales and services imposed under Articles II and III of Chapter 27 of the Code of Ordinances of the City of Peoria. In addition, it is further acknowledged and recognized that the period of time through which the SSA shall exist shall not be increased beyond the time for which the SSA was originally established and, consistent therewith, the parties agree that no period of repayment of the Collective Debt Service shall exceed that period for which the SSA is currently provided to remain and exist.

The annual analysis and determination of the tax levy imposed for each year from time to time shall continue as heretofore provided and done under the Westlake SSA Agreement and the First Amendment (as evidenced by the previous conduct of the parties in connection therewith) including as a part thereof the estimation and determination and abatement of any real estate tax levies as a result of the imposition of the Westlake Supplemental Sales Tax. Similarly, the collection of any and all real estate or sales taxes by the City for the SSA shall continue and be paid by the City to MCB for application and payment upon the Collective Debt Service with any deficiency upon obligations of the Collective Debt Service (to the extent of any deficiency in the amount of taxes collected to apply thereupon) to be and remain the obligation of Westlake to pay.

4. Other Provisions.

A. Compliance with Other Laws. Westlake, in constructing additional improvements shall comply with all applicable City, County, State and Federal codes and requirements, including the City's building, zoning and development codes. In addition, Westlake will pay all costs and fees imposed by the City's code.

B. Use of Terms. Capitalized terms as may be set forth in this Third Amendment shall, unless otherwise specifically provided, have the same meanings and construction for purposes of this Third Amendment as otherwise are set forth and provided in the previous Westlake SSA Agreement, the First Amendment, and the Second Amendment.

C. MCB as Party. The parties acknowledge and recognize that MCB's participation and involvement with the previous Westlake SSA Agreement was as a third party beneficiary (with MCB's rights attendant to such Westlake SSA Agreement and enforceable on its behalf as such a third party beneficiary). In the context of this Third Amendment, MCB is a party. As such, it is the intention of the parties that rights provided hereunder for the benefit of MCB shall be enforceable by MCB as a direct and participating party hereto and as if MCB were originally a party to the previous Westlake SSA Agreement.

D. Continuing Force and Effect of Previous Agreement. Except as otherwise set forth and modified by this Third Amendment, or except where the terms of this Third Amendment are inconsistent with the previous Westlake SSA Agreement and the previous First Amendment and Second Amendment (in which case the terms and provisions of this Third Amendment shall prevail), all of the terms and provisions of the previous Westlake SSA Agreement, as modified by this Third Amendment shall continue in full force and effect and are expressly, ratified, republished and incorporated herein by this reference.

E. Execution in Counterparts. This Third Amendment may be executed in and by counterpart originals, in which case each shall serve as an original hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(SIGNATURE PAGES FOLLOW)

CITY OF PEORIA, an Illinois municipal
corporation

By: _____
Its: _____

Attest: _____
City Clerk

Approved as to Form:

By: _____
Legal Department

WESTLAKE SHOPPING CENTER, LLC,
a Delaware limited liability company

By: WSC Investors, LLC,
a Delaware limited liability company,
its sole Member

By: Westlake Limited Partnership,
an Illinois limited partnership,
its sole Member

By: Commercial Management
Company,

an Illinois corporation, its General
Partner

By: _____
Leslie B. Cohen, President

MORTON COMMUNITY BANK, an Illinois corporation

By: _____
Its: _____