RESOLUTION R-63-12

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE OF REAL ESTATE FOR THE NORTH MAIN STREET FLOOD CONTROL PROJECT (Medical Office Building)

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous of constructing a public flood control project along and within Winfield Creek at North Main Street, between Cole Avenue and Park Circle ("Project"); and

WHEREAS, Central DuPage Health is the owner of a parcel of property at 1800 N. Main Street improved with a medical office building ("Owners Parcel"); and

WHEREAS, the Central DuPage Health desires to convey a portion of the Owners Parcel containing Winfield Creek and a strip of land continuous to Winfield Creek in order to absolve itself of further responsibility for same; and

WHEREAS, the City is willing to accept title to the conveyed parcel to facilitate and manage surface drainage in the area.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a certain contract to purchase real estate with Central DuPage Health; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 20th day of August, 2012.

Mayor

ATTEST:

City Clerk

Roll Call Vote

Ayes:	Councilman Scalzo
	Councilman Suess
	Councilwoman Ives
	Councilman Mouhelis
	Councilman Rutledge
	Mayor Gresk
	Councilwoman Pacino Sanguinetti
Nays:	None
Absent:	None

Motion Carried Unanimously

CONTRACT FOR THE PURCHASE OF REAL ESTATE

RECITALS

WHEREAS, CENTRAL DUPAGE HEALTH, (hereinafter "CENTRAL DUPAGE") is the owner of a certain parcel of land legally described as:

> THAT PART OF LOT 3 IN BLOCK 5 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9 TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NUMBER 179449 AND CERTIFICATION OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NUMBER 180974 AND THAT PART OF LOT 3 IN THE CHALBERG PERRY SUBDIVISION BEING A SUBDIVISION IN SAID NORTHWEST QUARTER OF SECTION 9, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1979 AS DOCUMENT NUMBER R1979-093196 IN DUPAGE COUNTY, ILLINOIS, AND BEARING PIN NUMBERS: 05-09-106-004 AND 05-09-106-021 (hereinafter the "Owners Parcel"); and

WHEREAS, Winfield Creek borders the southern edge of the Owners Parcel; and

WHEREAS, the City of Wheaton, (hereinafter "CITY") intends to construct a flood control project and appurtenant improvements along and within Winfield Creek which will benefit the Owners Parcel by mitigating, but not eliminating, flooding (hereinafter "**Drainage Improvements**"); and

WHEREAS, CENTRAL DUPAGE desires to convey a portion of the Owners Parcel containing Winfield Creek and a strip of land contiguous to Winfield Creek (hereinafter "Water Course Parcel") in order to absolve itself of further responsibility for the same; and

WHEREAS, the CITY is willing to accept title to the Water Course Parcel to facilitate and manage and enhance surface drainage in the area.

WHEREAS, the CITY shall convey to CENTRAL DUPAGE a five (5) foot permanent construction and maintenance easement from the Water Course Parcel.

NOW THEREFORE, based upon the foregoing recitals and in consideration of the benefits to be derived from the Drainage Improvements for the Owners Parcel, and all other good and valuable considerations recited herein, the sufficiency and receipt of which are hereby acknowledged, CENTRAL DUPAGE and the CITY agree as follows:

1. The foregoing recitals are incorporated herein as representing the intent of the parties and substantive covenants.

2. CENTRAL DUPAGE, as owner of the Owners Parcel, hereby agrees to deed to the CITY for the price of one ($1.00) dollar and for the further considerations described herein, on the terms and conditions set forth herein the Water Course Parcel legally described in Exhibit 1 attached hereto and incorporated herein as if fully set forth, by recordable warranty deed subject only to the following:

A. General real estate taxes for the years 2011 and subsequent years;

B. Special assessments not due and payable as of the date of closing;

C. Building, building line and use or occupancy restrictions, conditions and covenants of record that do not restrict the CITY's ability to use the Owners Parcel for the CITY's statutory purposes; zoning laws and ordinances; easements for public utilities; and drainage ditches, feeders, laterals, and drain tile, pipe or other conduit.

3. The CITY shall obtain a title commitment and pay for all title charges, recording charges and surveys associated with the deeding of the Water Course Parcel. CENTRAL DUPAGE shall reasonably cooperate with the CITY to furnish as soon as reasonably possible any prior title policy, survey and related documents in CENTRAL DUPAGE's possession to facilitate the closing.

4. CENTRAL DUPAGE hereby agrees to pay the first and second installment of 2011 real estate taxes for the Owners Parcel and 2012 real estate taxes on the Owners Parcel through the date that is deeded to the CITY.

5. Upon tender of the deed for the Water Course Parcel, the CITY shall convey a permanent parking lot construction and maintenance easement to CENTRAL DUPAGE along the north five (5) feet of the Water Course Parcel to allow CENTRAL DUPAGE to maintain and replace paved parking surfaces located on the Owners Parcel, as depicted in the legal description attached hereto and incorporated herein as Exhibit 2. A copy of the Grant of Permanent Construction and Maintenance Easement, which shall be recorded after the recording of the deed for the Water Course Parcel, is attached hereto and incorporated herein as Exhibit 3.

6. Closing shall occur within thirty (30) days from the date of signing of this Contract by the Mayor of the CITY, unless otherwise agreed to by the parties. The closing shall occur at the offices of the CITY's corporate counsel, Walsh, Knippen, Knight & Pollock, Chtd., 2150 Manchester Road, Suite 200, Wheaton, Illinois 60187, or at such other location agreed by the Parties. Possession shall be delivered to the CITY at closing. The easements shall become effective upon recording of the deed for the Water Course. All

documents shall be recorded by the CITY's Title Insurer at the CITY'S expense. CENTRAL DUPAGE agrees that it will take no action to change the physical condition of the real estate between the date of signing this Contract and the date of closing.

7. If the title commitment discloses unpermitted exceptions, CENTRAL DUPAGE shall have thirty (30) days from the date of the CITY's written request to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions, and, in such event, the time of closing shall be thirty five (35) days after the CITY's written request or the time specified in Paragraph Six (6) hereof, whichever is later. If CENTRAL DUPAGE fails to have the exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, the CITY may terminate this Contract or may elect, upon notice to CENTRAL DUPAGE within ten (10) days after the expiration of the thirty (30) day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. In either instance neither party shall have any further obligations nor damage claims against the other.

8. All notices related to this Agreement whether required or discretionary shall be in writing and shall be deemed given if either (i) personally delivered, (ii) sent by registered or certified United State mail, postage prepaid, return receipt requested, or (iii) sent by a nationally recognized overnight courier service or by e-mail transmission acknowledged by the authorized recipient. Notices shall be served on the parties as follows:

SELLER:

Central DuPage Health
Property Management Division
1800 N. Main Street
Wheaton, Illinois 60187

c: Central DuPage Health
General Counsel
25 N. Winfield Road
Winfield, Illinois 60190

PURCHASER:

City Manager, Donald Rose
City of Wheaton
303 W. Wesley Street
Wheaton, Illinois 60187

c: City of Wheaton corporate counsel
Walsh, Knippen, Knight & Pollock
2150 Manchester Road, Suite 200
Wheaton, Illinois 60187
jim@wkkplaw.com

9. This Contract contains the entire agreement between the parties hereto. All negotiations between the parties are merged in this Contract, and there are no understandings or agreements other than those incorporated in this Contract.

10. No addition to, or modification of this Contract shall be effective unless fully set forth in writing and signed by both CENTRAL DUPAGE and the CITY. The invalidity or unenforceability of any provision or provisions of this Contract shall not render any other provision or provisions invalid or unenforceable.

11. This Contract shall be construed in accordance with the laws of the State of Illinois. Exclusive jurisdiction for any action related to this Contract shall be the 18th Judicial Circuit Court, DuPage County, Illinois.

PURCHASER:

Mayor Michael J. Gresk
City of Wheaton

ATTEST:

Sharon Barrett-Hagen, City Clerk
City of Wheaton

SELLER:

By: James T. Spear
Title: Executive VP & CFO

ATTEST:

By: John J. Yep
Title: Director-Business Development

EXHIBIT 1

WATER COURSE PARCEL

LEGAL DESCRIPTION (FEE TITLE-CENTRAL DUPAGE HOSPITAL):

THAT PART OF LOT 3 IN BLOCK 5 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 AND THAT PART OF LOT 3 IN CHALBERG PERRY SUBDIVISION, BEING A SUBDIVISION IN SAID NORTHWEST QUARTER OF SECTION 9, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1979 AS DOCUMENT NO. R1979-093196 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3 IN BLOCK 5; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 3 IN BLOCK 5 AND THE SOUTH LINE OF SAID LOT 3 IN CHALBERG PERRY SUBDIVISION, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF SOUTH 88 DEGREES 25 MINUTES 45 SECONDS WEST, A DISTANCE OF 324.57 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3 IN CHALBERG PERRY SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 16 SECONDS WEST, 57.22 FEET ALONG THE WEST LINE OF SAID LOT 3; THENCE NORTH 89 DEGREES 16 MINUTES 06 SECONDS EAST, 324.53 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3 IN BLOCK 5; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 52.46 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

EXHIBIT 2

LEGAL DESCRIPTION (CONSTRUCTION AND MAINTENANCE EASEMENT-CENTRAL DUPAGE HOSPITAL):

THAT PART OF LOT 3 IN BLOCK 5 OF ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, BEING A SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT NO. 179449 AND CERTIFICATE OF CORRECTION RECORDED AUGUST 5, 1924 AS DOCUMENT NO. 180974 AND THAT PART OF LOT 3 IN CHALBERG PERRY SUBDIVISION, BEING A SUBDIVISION IN SAID NORTHWEST QUARTER OF SECTION 9, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 1979 AS DOCUMENT NO. R1979-093196 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3 IN BLOCK 5; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 3 IN BLOCK 5, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 00 DEGREES 34 MINUTES 15 SECONDS WEST, A DISTANCE OF 47.46 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 16 MINUTES 06 SECONDS WEST, 324.53 FEET TO A POINT ON THE WEST LINE OF SAID LOT 3 IN CHALBERG PERRY SUBDIVISION; THENCE NORTH 00 DEGREES 34 MINUTES 16 SECONDS WEST, 5.00 FEET ALONG SAID WEST LINE; THENCE NORTH 89 DEGREES 16 MINUTES 06 SECONDS EAST, 324.53 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3 IN BLOCK 5; THENCE SOUTH 00 DEGREES 34 MINUTES 15 SECONDS EAST, 5.00 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

EXHIBIT 3

GRANT OF TEMPORARY CONSTRUCTION EASEMENT FROM CENTRAL DUPAGE HEALTH TO THE CITY OF WHEATON AND GRANT OF PERMANENT CONSTRUCTION AND MAINTENANCE EASEMENT FROM THE CITY OF WHEATON TO CENTRAL DUPAGE HEALTH FOR PARKING RESTORATION WORK

THIS GRANT OF EASEMENT ("**Grant**"), made this _____ day of _____, 2012, by Central DuPage Health (hereinafter "CENTRAL DUPAGE") ("**Owner**") to the City of Wheaton, DuPage County, Illinois, a municipal cooperation, having principal offices at 303 W. Wesley Street, Wheaton, Illinois 60187 ("CITY") and by the CITY to CENTRAL DUPAGE:

RECITALS:

A. Owner is the owner in fee title to the real estate legally described and depicted on Exhibit "A" ("**Owners Parcel**"); and

B. CITY desires to secure a temporary construction easement to utilize a portion of the Owners Parcel, as depicted on Group Exhibit "B" ("**Easement Premises**"), for the purpose of designing, engineering, restoring and constructing, and reconstructing a portion of the Owners parking lot appurtenant improvements ("**Temporary Easement**") in compliance with those plans and specifications identified and incorporated herein by reference in Exhibit "C" ("**Plans and Specifications**")(hereinafter the "**Work**")

C. Owner agrees to grant the CITY the Temporary Easement to perform the Work; and

D. CENTRAL DUPAGE agrees to accept the permanent construction and maintenance easement from the CITY granting CENTRAL DUPAGE, perpetual reasonable maintenance and repair of the parking area ("**Permanent Easement**"); and

E. The location and dimensions of the Temporary Easement and Permanent Easement are described and depicted on Group Exhibit "B"; and

F. Nothing in this grant of easement shall be interpreted to grant the City an easement for purposes of work directly related to the North Main Street Flood Control Project.

Now therefore in consideration of the benefits to be derived from the Project for the Owners Parcel and other valuable considerations as recited herein, the sufficiency and receipt of which are hereby acknowledged, the CITY and CENTRAL DUPAGE hereby agree as follows:

GRANT OF TEMPORARY EASEMENT

1. The foregoing recitals are incorporated herein as representing the intent of the Parties and as substantive terms and conditions of this Agreement.

2. CENTRAL DUPAGE hereby grants and the CITY accepts Temporary Easement to perform and complete the Work.

3. The Work shall be performed by the CITY and/or its agents, contractors, employees, successors and assigns, at the CITY's sole expense, in full compliance with the Plans and Specifications and shall be carried out in a prompt, professional, first class and workmanlike manner.

4. All existing improvements located within the Temporary Easement granted by CENTRAL DUPAGE to the CITY which are disturbed, damaged or removed as a result of the Work shall be repaired, replaced or restored by the City, at its sole expense, consistent with their preexisting condition or if new in compliance with the Plans and Specifications.

5. Construction access to the Work including delivery of materials and labor shall be permitted by CENTRAL DUPAGE through the Owner's parking lot as depicted on Exhibit "D". The City shall notify the Owners in writing no less than thirty (30) days prior to commencement of the Work to enable the Owners to undertake any efforts to notify its customers of the anticipated Work. The Owners and City staff shall inspect the Owners premises no less than seven (7) days prior to the City or its contractors occupying the Temporary Easement to memorialize the pre-Project condition of the Owners Parcel.

6. The CITY, its contractors, successors and assigns, shall indemnify, defend and hold harmless Grantor from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or Owners Parcel occasioned directly or indirectly as a result of any act or omission by the CITY, or any person or entity acting by, through, or under the CITY for their activities on or within the Owners Parcel. The CITY shall require all of its contractors performing work within the Easement Premises at all time during the term of this Temporary Easement to carry broad form general insurance with combined single limit coverage of not less than $2,000,000.00, naming Grantor as an additional insured thereunder.

7. The Temporary Easement granted by CENTRAL DUPAGE to the CITY shall automatically, and without further action by any party, expire and be of no further force and effect upon completion of the Project.

GRANT OF PERMANENT EASEMENT

The terms and conditions of the Permanent Easement shall be as follows:

1. The CITY hereby grants to CENTRAL DUPAGE a Permanent Easement over that portion of the Water Course Parcel as depicted on Group Exhibit B to for the right and authority to establish operate and maintain, construct, design, survey, reconstruct, or repair, a paved parking surface and appurtenant improvements. The CITY shall have no obligation after the Project is completed to maintain or repair, or reconstruct the parking surface or appurtenant improvements.

2. CENTRAL DUPAGE, its contractors, successors and assigns, shall indemnify, defend and hold harmless Grantor from all liability, claims and expenses, including reasonable attorney's fees, for injury to person or City property occasioned directly or indirectly as a result of any act or omission by CENTRAL DUPAGE, or any person or entity acting by, through, or under CENTRAL DUPAGE, for their activities on or within the Permanent Easement. CENTRAL DUPAGE shall require all of its contractors performing work within the Easement Premises at all time during the term of this Permanent Easement to carry broad form general insurance with combined single limit coverage of not less than $2,000,000.00, naming Grantor as an additional insured thereunder.

3. Any notice required or desired to be given under these Grants shall be in writing and shall be deemed to have been given when delivered personally, on the date of confirmed facsimile transmission, or on the date deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Owners: Central DuPage Health
Property Management Division
1800 N. Main Street
Wheaton, Illinois 60187
Fax no. (630) 614-4899

If to City: City of Wheaton
303 W. Wesley Street
PO Box 727
Wheaton, IL 60187-0727
Attn: Director of Engineering
Fax no. (630) 260-2195

Or to other such address as either party may from time to time specify in writing to the other in accordance with the terms hereof.

4. Except as otherwise provided herein, this Grant may be amended or modified by, and only by, a written instrument duly authorized and executed by the parties hereto.

5. This Grant shall be governed by the laws of the State of Illinois.

6. This Agreement may only be modified in writing executed by both the Owners and CITY.

IN WITNESS WHEREOF, Owner has executed this indenture this ____ day of _____ , 2012.

OWNERS:

CENTRAL DUPAGE HEALTH

By: _____
Title: _____

Attest: _____
Title: _____

EXHIBIT 3

MUTUAL ACCEPTANCE OF EASEMENTS

The above and foregoing Grant of Temporary Construction Easement, and Permanent Easement and the terms and conditions set forth therein are hereby approved and accepted by the undersigned. Following execution by the parties this instrument shall be recorded by the City of Wheaton Clerk at the City of Wheaton's expense.

City of Wheaton, an Illinois municipal corporation

By: _____
Mayor

Attest: _____
City Clerk