

RESOLUTION R-07-13

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDED
PLANNED DEVELOPMENT SUBDIVISION IMPROVEMENT AGREEMENT
FOR COURTHOUSE SQUARE**

WHEREAS, the City of Wheaton, an Illinois Municipal Corporation, and Courthouse Land Development, LLC, an Illinois Limited Liability Company, ("Developer") have previously entered into a Planned Development Subdivision Improvement Agreement dated November 14, 2005 and recorded as document R2005-284069 on December 23, 2005 in DuPage County, Illinois; and

WHEREAS, the Developer has presented an amended development plan concerning the townhome portion of the development project approved by the Corporate Authorities of the City by Ordinance No. F-1495 dated June 7, 2010; and

WHEREAS, in order for the Developer to proceed with construction of the townhome portion of the development project an amendment to the 2005 Planned Development Subdivision Improvement Agreement must be entered into by the City and Developer.

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Wheaton that the Mayor is authorized to execute an amended Planned Development Subdivision Improvement Agreement for Courthouse Square; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 22nd day of January, 2013.



Michael J. Gresk
Mayor

ATTEST:



Sean Bennett-Horn
City Clerk

Roll Call Vote

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

Motion Carried Unanimously

PLANNED UNIT DEVELOPMENT
SUBDIVISION IMPROVEMENT
AGREEMENT

THIS AGREEMENT made and entered into this 22nd day of January, 2013 by and between the City of Wheaton, an Illinois Municipal Corporation, and having its office at City Hall, 303 West Wesley Street, Wheaton, Illinois hereinafter called "City" and Courthouse Land Development, LLC, a(n) Illinois Limited Liability Company hereinafter called the "Developer,"

WITNESSTH:

WHEREAS, this Agreement amends the Courthouse Square Planned Development Subdivision Improvement Agreement dated November 14, 2005 and recorded as document R2005-284069 on December 23, 2005 in DuPage County, Illinois (hereinafter 2005 SIA).

WHEREAS, the Developer has fee simple title in itself to the real estate described as follows:

LOTS 4, 5, 6, 9, 10 AND OUTLOTS E, F, G, H, I, J AND K, IN COURTHOUSE SQUARE BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 8, 2005 AS DOCUMENT NO. R2005-197255, EXCEPT:

THAT PART OF SAID LOT 4 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 01 DEGREES 40 MINUTES 04 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 4, A DISTANCE OF 14.12 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 19 MINUTES 56 SECONDS EAST, 0.50 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04 SECONDS EAST, 42.51 FEET; THENCE SOUTH 88 DEGREES 19 MINUTES 56 SECONDS WEST, 9.55 FEET TO SAID WEST LINE OF LOT 4; THENCE NORTH 01 DEGREES 40 MINUTES 04 SECONDS WEST ALONG SAID WEST LINE, 3.63 FEET TO AN ANGLE POINT IN SAID WEST LINE; THENCE NORTH 88 DEGREES 19 MINUTES 56 SECONDS EAST ALONG SAID WEST LINE, 9.05 FEET TO AN ANGLE POINT IN SAID WEST LINE; THENCE NORTH 01 DEGREES 40 MINUTES 04 SECONDS WEST ALONG SAID WEST LINE, 38.88 FEET TO SAID POINT OF BEGINNING;

ALSO EXCEPT:

THAT PART OF SAID LOT 4, LYING AT OR BELOW AN ELEVATION OF 745.75 AS REFERENCED TO THE DUPAGE COUNTY DATUM (NGVD29) DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 01 DEGREES 40 MINUTES 04 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 4, A DISTANCE OF 14.12 FEET; THENCE NORTH 88 DEGREES 19 MINUTES 56 SECONDS EAST, 0.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 19 MINUTES 56 SECONDS EAST, 7.70 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04

SECONDS EAST, 29.33 FEET; THENCE NORTH 88 DEGREES 19 MINUTES 56
SECONDS EAST, 1.25 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04
SECONDS EAST, 10.12 FEET; THENCE SOUTH 88 DEGREES 19 MINUTES 56
SECONDS WEST, 1.25 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04
SECONDS EAST, 13.94 FEET; THENCE NORTH 88 DEGREES 19 MINUTES 56
SECONDS EAST, 3.39 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04
SECONDS EAST, 6.05 FEET; THENCE SOUTH 88 DEGREES 19 MINUTES 56
SECONDS WEST, 1.33 FEET; THENCE SOUTH 01 DEGREES 40 MINUTES 04
SECONDS EAST, 1.08 FEET; THENCE SOUTH 88 DEGREES 19 MINUTES 56
SECONDS WEST, 19.31 FEET TO SAID WEST LINE OF LOT 4; THENCE NORTH 01
DEGREES 40 MINUTES 04 SECONDS WEST ALONG SAID WEST LINE, 18.00
FEET; THENCE NORTH 88 DEGREES 19 MINUTES 56 SECONDS EAST, 9.55 FEET;
THENCE NORTH 01 DEGREES 40 MINUTES 04 SECONDS WEST, 42.51 FEET TO
SAID POINT OF BEGINNING;

ALSO EXCEPT:

THAT PART OF LOT 9 AND OUTLOT E IN COURTHOUSE SQUARE, BEING A
SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND PART OF THE
SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST
OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF
RECORDED SEPTEMBER 8, 2005 AS DOCUMENT NO. R2005-197255, IN DUPAGE
COUNTY, ILLINOIS LYING AT OR BELOW AN ELEVATION OF 739.50 AS
REFERENCED TO THE DUPAGE COUNTY DATUM (NGVD29) AND SITUATED IN
THE FOLLOWING DESCRIBED PARCEL: COMMENCING AT THE SOUTHEAST
CORNER OF OUTLOT D IN SAID COURTHOUSE SQUARE; THENCE SOUTH 86
DEGREES 01 MINUTES 16 SECONDS WEST ALONG THE SOUTHERLY LINE OF
SAID OUTLOT D, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 03 DEGREES 58 MINUTES 44 SECONDS EAST, RIGHT ANGLES
TO THE LAST DESCRIBED COURSE, 5.00 FEET; THENCE SOUTH 86 DEGREES 01
MINUTES 16 SECONDS WEST, RIGHT ANGLES TO THE LAST DESCRIBED
COURSE, 90.79 FEET; THENCE NORTH 03 DEGREES 58 MINUTES 44 SECONDS
WEST, RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 5.00 FEET TO SAID
SOUTHERLY LINE OF OUTLOT D; THENCE NORTH 86 DEGREES 01 MINUTES 16
SECONDS EAST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 90.79 FEET TO
SAID POINT OF BEGINNING, ALL IN DU PAGE COUNTY, ILLINOIS.

Property Index Number(s)
Lot 4 05-16-319-011 (part of)
 Lot 5 05-16-319-006
 Lot 6 05-16-425-002
 Lot 9 05-16-318-017
 Lot 10 05-16-318-007
 Outlot E 05-16-318-019
 Outlot F 05-16-318/-015
 Outlot G 05-16-318-014
 Outlot H 05-16-319-007
 Outlot I 05-16-319-008
 Outlot J 05-16-319-009
 Outlot K 05-16-425-003

(hereinafter "Property")

WHEREAS, the Developer has submitted a plan for a development/subdivision subdividing the Property by Plat of subdivision, or resubdivision, or zoning approval, as the case may be, approved by the Corporate Authorities of the City by Ordinance F-0950 on September 20, 2004, as amended; and by Ordinance F-1495 on June 7, 2010 concerning the Townhome portion of the project.

WHEREAS, this amendment requires the uncompleted public and required improvements to be completed in conformance with Exhibit A referred to below, and in accordance with the Development Agreement as amended by Ordinance F-1667 dated October 1, 2012.

WHEREAS, the City has approved said development /subdivision plat strictly subject to the completion of the public and required improvements in accordance with its ordinances, resolutions, good engineering practices, the prior 2005 SIA and this Amended Subdivision Improvement Agreement, and as a condition to the issuance of occupancy permits for any buildings to be constructed on the property.

NOW THEREFORE, City and Developer agree as follows:

REQUIRED IMPROVEMENTS

1. The Developer at its sole cost and expense shall furnish all necessary materials, labor, and equipment to construct and complete the public and required improvements, stormwater management improvements and other required improvements, (hereinafter "Required Improvements") in conformance with the requirements of the Subdivision Control Ordinance, Stormwater Management Ordinance, Zoning Ordinance, this Agreement, good engineering practices, and any other requirements as may be set forth in ordinances or resolutions approving the PUD/development/subdivision . These Required Improvements shall include but not be limited to: remaining survey monuments, sanitary sewers and all appurtenances, storm drainage systems and all appurtenances, watermains and all appurtenances, street lighting and all appurtenances, street signs, street (public or private) pavements to include curb and gutter, sidewalks, parkway trees, parkway landscaping, final lot staking, erosion control, landscaping improvements, detention area landscaping, including inspection, testing and final engineering record drawings. All these Required Improvements shall be in accordance with the standards,

specifications and requirements of the City of Wheaton. Such Required Improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto, which exhibit has been prepared by Jacob & Hefner Associates, P.C. and SpaceCo Inc. who are registered professional engineers. Any Improvement required by ordinance, resolution or this Agreement, but omitted from Exhibit A, shall be constructed and completed as required. All utility lines and services to be replaced under the street shall be installed prior to paving.

CONTRACTS/ESTIMATES AND SECURITY FOR PUBLIC/REQUIRED
IMPROVEMENTS

2. Attached hereto and incorporated herein as if fully set forth as Exhibit B and Exhibit B-1 is a complete cost estimate prepared by a professional engineer for the construction and completion of the remaining Required Improvements for the Mid-rise portion of the project (Exhibit B) and the Required Improvements for the Townhome portion of the project (Exhibit B-1). The developer currently has a letter of credit on file from PNC Bank, which shall be maintained, until replaced or substituted, in accordance with the terms of this Agreement.

Any letter of credit posted to guarantee the Required Improvements shall be subject to the approval of the City Attorney and Director of Engineering, with the City being the sole beneficiary of the letter of credit for purposes of constructing and completing the Required Improvements. Any amounts drawn by the City from the escrow or letter of credit, exceeding the cost of the Required Improvements, shall be returned: in the case of a cash escrow exclusively to the Developer in the case of a cash escrow held by the City; exclusively to the escrow agent in the case of a third party escrow; or in the case of the letter of credit exclusively to the issuer.

CONSTRUCTION OBSERVATIONS

3. All work on Required Improvements shall be subject to spot construction observations and the approval of the Director of Engineering or his designee, and his written approval thereof shall be a condition precedent to payout or reduction of the funds deposited in escrow or the letter of credit. Written approval by the Director of Engineering or his designee shall not in any way diminish, qualify, or release the Developer's obligation to construct,

complete and guarantee the Required Improvements as required by ordinance, resolution, good engineering practice and this Agreement. The Developer shall be responsible for inspecting and insuring that its work is in compliance with all of the foregoing requirements.

OBSERVATION FEES

4. The Developer shall pay 2% of the total cost of the Improvement to the City as a construction observation fee, as required by Ordinance. Payment shall be made within ten (10) days of the execution of this Agreement.

INSURANCE

5. Prior to commencement of any work provided for herein, the Developer and/or its contractors shall furnish the City with certificates of insurance providing for workmen's compensation and commercial liability insurance, including occupational disease coverage and comprehensive liability to cover said work as follows::

- (a) Workmen's compensation (statutory limits)
- (b) Comprehensive Commercial liability coverage, by one or more policies, with combined limits of \$1,000,000/\$3,000,000, including collapse and explosion coverage.
- (c) Vehicle liability coverage with limits of \$500,000/\$1,000,000.
- (d) Minimum liability coverage of One Hundred Thousand (\$100,000) Dollars for property damage.

The foregoing coverage shall be the required minimums. Except for the Workmen's Compensation coverage, all certificates of insurance shall name the City as an additional insured with respect to the provisions of said policy related to the Required Improvements. All policies of insurance shall be occurrence policies. Claims made policies are unacceptable. All policies shall be primary and no policy shall require contribution from the City's insurance. All carriers providing insurance shall be authorized to do business in the State of Illinois and shall be subject to the reasonable approval of the City Attorney. Certificates of insurance for the foregoing coverage shall be filed with the City Engineer prior to the issuance of any permits.

In addition, by its execution of this Agreement, the Developer hereby agrees to the greatest extent allowable under Illinois law to defend, indemnify and hold harmless the City, its

elected and appointed officials employees, agents and assigns and each of them, against any and all claims, actions, losses, damages, attorney's fees or expenses which they may sustain or become liable for on account of injury or death of persons, or damage to or destruction of property resulting from acts or omissions in the performance of work related to the Required Improvements, by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees in furtherance of construction of the Required Improvements, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this Agreement.

ACCEPTANCE AND GUARANTEE

6. The Developer guarantees that the design, workmanship and material furnished in the Required Improvements will be designed, furnished and performed in accordance with well known established practice and standards recognized by professional engineers and in the construction trades. All such Required Improvements shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City, except for those projects which contain special management areas such as wetlands and/or floodplains that may contain longer guarantee periods as stipulated by the permitting authority.

Prior to requesting final acceptance, the Developer shall inspect and repair all deficiencies in the Required Improvements. The City will then inspect and provide a list of deficiencies ("Punchlist").

The Developer shall cause all deficiencies to be repaired within sixty (60) days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the cash escrow or letter of credit, described in Paragraph 2, to insure compliance with this Agreement. Failure to complete the deficiencies within sixty (60) days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

The City shall retain ten percent (10%) of the total amount of the security for the Required Improvements for one year after final acceptance of the Improvement as a guarantee that the workmanship and materials furnished therefore are first class and as above provided, and that the Required Improvements are and will remain in good and sound condition for and during the one year period from and after its completion and acceptance except for projects which contain special management areas such as wetlands and/or floodplains that may contain longer guarantee periods as stipulated by the permitting authority.

The Developer shall make or cause to be made at its own expense, any and all repairs that may become necessary by virtue of this guarantee, and shall leave the Required Improvements in good and sound condition, satisfactory to the City Engineer, at the expiration of the guarantee. In said event and at the expiration of such period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the Required Improvements, shall be paid over, or released as the case may be, in conformance with Section 2 of this Agreement.

Further, if during said guarantee period, the improvement shall in the opinion of the City Engineer require any repairs or renewals, the Developer shall, upon notification by the Director of Engineering of necessity for such repair or renewals, make such repairs or renewals at its own cost and expense. Should the Developer fail to make such repairs or renewals within a reasonable time after notification as herein before provided, or to start work within one week after such notification, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer shall pay such amount of excess to the City.

TIME LIMIT

7. The Developer shall cause said Required Improvements for the project to be completed in accordance with the Development Agreement phasing outlined in the Development Agreement amendment approved as Ordinance F-1667, dated October 1, 2012.

ORDINANCES

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer, upon notice from the City and prior to acceptance of the subdivision, shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to this property as of the effective date of said law or ordinance.

LIEN WAIVERS

9. The Developer shall furnish the City with a contractor's affidavit showing all subcontractors and material suppliers and further furnish lien waivers that all persons who have done work, or have furnished material under this agreement and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are no longer entitled to such lien.

OCCUPANCY PERMITS

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all Required Improvements required by this Agreement have been completed in accordance with the phasing schedule outlined in the Development Agreement

MAINTENANCE

11. The Developer shall be responsible for the maintenance of the required improvements until such time as they are accepted by the City. This maintenance shall include routine maintenance such as snow removal, pruning and watering of parkway trees, landscaping and street sweeping, as well as emergency maintenance such as sewer blockages. If the Developer requests and the City elects, at the time of the execution of this agreement, to have the City perform this maintenance, it hereby agrees to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said cost to the City. Any payments not made pursuant to this requirement may be taken by the City, in its sole discretion, from the security posted in accordance with Section 2 of this Agreement. If a deduction taken by the City from the security results in a shortfall of the required amount of the security, the Developer shall replenish the security in the amount of the deficiency within seven (7) calendar days of the City's request. Any failure of the Developer to replenish the security

within seven (7) days of the City's request shall constitute a material breach of this Agreement authorizing the City to assert control over the cash escrow or call the letter of credit.

RESOLUTION

12. It is hereby agreed that the following development shall comply with the strict adherence of Subdivision or Planned Unit Development Ordinance requirements and as approved by Ordinance No. F-0950 and No. F-1495, and as amended from time to time, the contents of which are made part hereof as if fully set forth.

BINDING EFFECT

13. This Agreement shall be binding upon all parties, their successors and assigns and grantees.

INTEGRATION

14. This Agreement amends any agreements heretofore entered into between the parties which are in conflict with the provisions hereof to the extent of such inconsistency. All aspects of the parties' negotiations related to this Agreement are fully integrated herein and there are no other understandings or agreements, oral or written, related to the provisions of this Agreement or any ordinances or resolutions adopted in conjunction herewith.

AMENDMENTS

15. Any future amendments to this amended Agreement shall be in writing and approved by the City Council. City Ordinance provisions in effect at the time of the request for an amendment shall apply (unless specified otherwise).

NO THIRD PARTY BENEFICIARIES

16. There are no third party beneficiaries of this Agreement.

CITY'S LITIGATION EXPENSES

17. Should the Developer bring any claim or litigation against the City or any of its employees in their professional or personal capacity in consequence of this Agreement, or should the City bring any action to enforce all or any portion of this Agreement, and should the Developer lose all or a portion of said litigation, the Developer shall reimburse the City or its employees their reasonable attorney's fees, expert witness fees and costs: in the full amount if it loses the whole of the litigation or; in a case where it loses a portion of the litigation those

reasonable attorney's fees, expert witness fees and costs attributable to that portion of the litigation.

EXCLUSIVE JURISDICTION

18. Exclusive jurisdiction for any litigation related to this Agreement shall be in the 18th Judicial Court, DuPage County, Illinois.

AFFIRMATION OF PRIOR SIA AND AMENDENTS

19. Except as specifically amended herein, the 2005 SIA and any amendments thereto are hereby reaffirmed in all respects.

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Owner has executed this agreement, all as of the date first above written.

CITY OF WHEATON, an Illinois
Municipal Corporation

BY

Michael J. Stilson
Mayor


ATTEST:
City Clerk

DEVELOPER:
COURTHOUSE LAND DEVELOPMENT, LLC
An Illinois Limited Liability Company

BY: 
Timothy Anderson *Pres. Manager* 
Focus Development, Inc. *Courthouse LLC*
Member / Manager

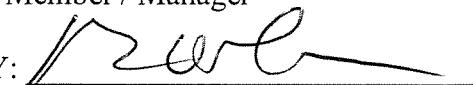
BY: 
Mark Glassman, Sec./Treas.
Airhart Development, LLC
Member / Manager

EXHIBIT A

FINAL ENGINEERING PLANS

Final engineering plans and specification prepared by Jacob & Hefner Associates, P.C., entitled **Site Improvement Plans for Courthouse Square**, job number **D315**, dated **April 13, 2005**, with last revision date of **November 11, 2005**, consisting of **25** sheets. As amended for the townhome property lots 4, 5 and 6 of Courthouse Square by the final engineering plans and specification prepared by SpaceCo, Inc., entitled **Courthouse Square Phase 3**, job number **6325**, dated **February 4, 2011**, with last revision date of **December 19, 2012**, consisting of **11** sheets.

EXHIBIT B

COST ESTIMATE

Final Engineer's Opinion of Probable Construction Cost prepared by SpaceCo, Inc. dated January 9, 2013 for the remaining improvements for the Mid-rise portion of the project.

EXHIBIT B-1

COST ESTIMATE

Final Engineer's Opinion of Probable Construction Cost prepared by SpaceCo, Inc. last revised dated January 9, 2013 for the Townhome portion of the project.

