

RESOLUTION R-35-14

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SIGN THAT
CERTAIN CONSENT DECREE IN GERALD GORSKI, et al., DUPAGE COUNTY
CASE NUMBER 2012 CH 4918**

WHEREAS, there is litigation pending against the City of Wheaton and others entitled, GERALD GORSKI, DIANE GIDEON, NORMAN and SHARON BROCKMEIER, DR. PATRICK and GAIL ZELLER and RANDY and KATHY NICKELL versus FOCUS DEVELOPMENT, INC., FOCUS COURTHOUSE, LLC, AIRHART CONSTRUCTION CORP., AIRHART DEVELOPMENT, LLC, COURTHOUSE LAND DEVELOPMENT, LLC, and BOARD OF DIRECTORS FOR THE COMMUNITY ASSOCIATION FOR THE COURTHOUSE SQUARE COMMUNITY ASSOCIATION and the CITY OF WHEATON, ILLINOIS, DUPAGE COUNTY CASE NUMBER 2012 CH 4918; and

WHEREAS, the parties to that litigation have reached an agreement by consent decree which fully reserves the legislative authority of the Corporate Authorities of the City of Wheaton; and

WHEREAS, the Mayor and City Council hereby deem it appropriate to agree to the consent decree, attached hereto and incorporated herein as if fully set forth as Exhibit 1.

NOW THEREFORE, be it RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that:

SECTION 1: The City Attorney is hereby authorized to sign the consent decree in DuPage County Case Number 2012 CH 4918 which is attached hereto and incorporated herein as Exhibit 1.

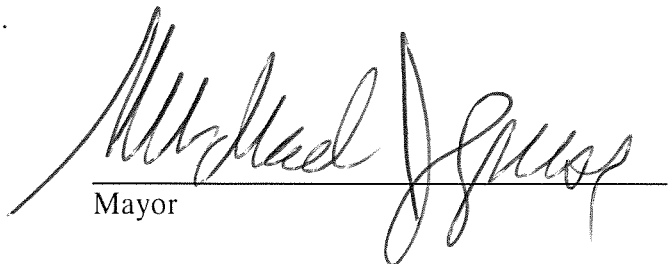
SECTION 2: Corporate counsel for the City of Wheaton and City Manager are hereby directed and authorized to undertake those acts necessary to effectuate the City's obligations under the agreement.

SECTION 3: This Resolution shall become effective immediately upon its adoption and approval.

ADOPTED this 2nd day of June, 2014.

ATTEST:


City Clerk


Mayor

Ayes:

Roll Call Vote:

Councilwoman Pacino Sanguinetti
Councilman Scalzo
Councilman Suess

Councilman Rutledge
Mayor Gresk

Nays: None
Absent: Councilman Prendiville
Councilman Saline

Motion Carried Unanimously

ABOVE SPACE FOR RECORDER'S USE ONLY

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

GERALD GORSKI, DIANE GIDEON, NORMAN)
and SHARON BROCKMEIER, DR. PATRICK and)
GAIL ZELLER and RANDY and KATHY NICKELL,)
Plaintiffs,)
and)

JOANN CARINS, GREGORY W. LESTON, JOE)
COLSANT, MARY K. McHUGH, MONTGOMERY)
and KATHRYN POOLEY, MURIEL I. ELMER, Ph.D.,)
DENNIS and CHARMAINE THORFELDT, MARTIN)
and AVERY ARLEN, MITCHELL and JULIE)
LUEDTKE, JUDITH A. ANDERSEN, BARBARA)
SPITKOVSKY, PETER and JUDY SCHWARZ,)
BARBARA SCHWEIZER, LEE JACKELS, JOSEPH P.)
HAYES, JR. and MARGARET HAYES, RON and)
JANET BIRCHALL, BILL and JUDY HOEWISCHER,)
ALAN and CHRISTY STUDANT, NICHOLAS)
FICHERA and TOM and RENEE CREGAN,)

Intervenors/Plaintiffs,)

v.)

NO. 2012 CH 4918

FOCUS COURTHOUSE, LLC, AIRHART)
DEVELOPMENT, LLC, COURTHOUSE LAND)
DEVELOPMENT, LLC, the BOARD OF)
DIRECTORS FOR THE COMMUNITY)
ASSOCIATION FOR THE COURTHOUSE SQUARE)
COMMUNITY ASSOCIATION, and the CITY OF)
WHEATON, ILLINOIS,)
Defendants.)

CONSENT DECREE AND ORDER

THIS CAUSE COMING BEFORE THE COURT for a status report on settlement, the parties having reached settlement terms, and the Court having jurisdiction over the subject matter and the parties hereto and having otherwise been fully advised in the premises, the COURT HEREBY FINDS:

1. The development commonly known as Courthouse Square is a mixed use development ("Courthouse Square") located on an approximately six (6) acre tract of land in Wheaton, Illinois ("Courthouse Square Land"); the Courthouse Square Land is legally described on the Courthouse Square Plat of Subdivision, recorded on May 16, 2006 as document number R2006-092638, portions of which have been consolidated or re-subdivided from time to time in plats recorded as documents numbers R2007-072736, R2007-091951, R2013-028572, R2013-144406 and most recently as R2014-034888, a true and correct copy of which is attached hereto and incorporated herein as **Exhibit A** ("Courthouse Square Plat") .

2. In 2004, Defendants, Focus Courthouse, LLC, Airhart Development, LLC, and Courthouse Land Development, LLC (hereinafter collectively "Defendant Developers"), obtained approval from Defendant City of Wheaton, Illinois ("City") for the development of a planned unit development in Courthouse Square (the "Courthouse Square PUD ").

3. The Courthouse Square PUD permitted the construction of 190 condominiums and 50 townhomes; a total of 240 dwelling units.

4. On February 27, 2012, Defendant Courthouse Land Development, LLC filed a zoning application ("Zoning Application") with the City seeking to amend the Courthouse Square PUD in order to build out a portion of Courthouse Square with a "Senior Housing Development."¹

¹ As this term is currently defined by Article II of the City's Zoning Ordinance which includes the following components: (1) Independent Living; (2) Assisted Living; and (3) Skilled Care.

5. On October 1, 2012, the City Council for the City passed Ordinance F-1666 ("Ordinance F-1666") approving the Zoning Application and granting the necessary zoning relief to authorize and enable the construction of the Senior Housing Development.

6. On October 1, 2012, the City also passed Ordinance F-1667 which approved the Third Amendment to a certain Development Agreement dated March 21, 2005, as the same has, from time to time, been amended and modified between the City and Defendant Developers relating to the Courthouse Square PUD.

7. On October 1, 2012, eight named plaintiffs ("Plaintiffs") filed a Complaint which they subsequently amended. Plaintiffs' First Amended Complaint contains twelve (12) counts including counts seeking declaratory and injunctive relief asking the court to declare Ordinance F-1666 unconstitutional and void and enjoining the Defendant Developers and the City from developing and constructing the Senior Housing Development within the Courthouse Square PUD.

8. Subsequently, all Defendants filed motions to dismiss the First Amended Complaint, which the Court granted in part and denied in part.

9. Plaintiffs then filed a Second Amended Complaint on behalf of themselves and numerous intervening parties ("Intervenors") continuing to seek the declaratory and injunctive relief set forth in Paragraph 7 of this Order (the "Litigation"). Since that time, the Court has continued this matter generally as the parties explored a potential settlement.

10. The parties have reached a settlement in this matter, and the Court approves the agreement reached between the parties as incorporated herein.

11. To the extent Plaintiffs, Intervenors and the Developer Defendants intend that certain terms and conditions of this Consent Decree touch and concern the land and shall run with the land comprising the Courthouse Square PUD, Defendant Developers agree to execute

on or before the Finalization Date (as defined in Paragraph R below) the Restrictive Covenant Agreement (also as defined in Paragraph R below) and acknowledge that it shall be recorded against the land described in Exhibit A.

12. Subject to the terms set forth herein generally, and specifically contingent upon the City's approval of the Amending Ordinance as set forth in Paragraph O below, the parties agree that neither Defendant Developers, nor their successors or assigns, will construct a Senior Housing Development within the Courthouse Square PUD and Ordinance F-1666 will be repealed by the City if it adopts the amending Ordinance as set forth in Paragraph O. In lieu of the Senior Housing Development permitted by Ordinance F-1666, and subject to the approval of the City as hereinafter provided, the Defendant Developers will be authorized to construct two residential buildings ("Residential Buildings")²; one located on Lot 9, the other on Lot 10, with an above- and below-ground garage and amenity structure between the two located on a portion of Outlot G as depicted on Exhibit A hereto (hereinafter, "Lot 9", "Lot 10" and "Buildable Outlot G", respectively). The Residential Buildings shall be used solely for residential purposes and said uses specifically exclude any usage which may consist of or constitute a Senior Housing Development.

THEREFORE, IT IS HEREBY ORDERED AND DECLARED:

- A. Once the terms of this Consent Decree have been satisfied and the City passes the Amending Ordinance, the covenants limiting the density of the Courthouse Square as provided in Paragraph F and prohibiting the Senior Housing Development as provided in Paragraph O shall survive.
- B. Under the City's Zoning Ordinance ("Zoning Ordinance"), the changes to the Courthouse Square PUD contemplated herein require an amendment to the

² As defined by the City's Zoning Ordinance.

Courthouse Square PUD pursuant to the procedures provided in Section 5.11.F of the Zoning Ordinance.

- C. Defendant Developers shall apply to the City for an amendment to the Courthouse Square PUD to eliminate the Senior Housing Development and to permit the construction of the Residential Buildings (hereinafter referred to as the "Project Application" or the "Project").
- D. As part of the Project Application, Defendant Developers shall seek approval by the City of plans which conform to the architectural design, exterior materials composition and bulk standards as herein provided.
- E. Defendant Developers intend to construct a Residential Building within Lot 9 fronting Naperville Road ("Building 1").
- F. Building 1 shall not exceed six stories and shall be in substantial conformity with the proposed exterior elevation for Building 1 attached hereto and incorporated herein as **Exhibit B** (the "Exterior Elevation"). Building 1 shall incorporate exterior materials and finishes substantially similar to the Exterior Elevation. Building 1 shall not exceed 67 feet in height when measured at the main roof, but excluding architectural gables or other elements, ("Maximum Height")³ and contain up to (60) "Dwelling Units:"⁴ divided approximately as follows: 9% studios; 37% one-bedroom, 9% one-bedroom plus den; 18% two-bedroom; 9% two-bedroom plus den, and 18% three-bedroom. The interiors of Building 1 shall contain finishes equal to or greater than those listed on the Sample Finish Schedule attached hereto as **Exhibit C** ("Sample Finish Schedule"). The

³ As that term is defined in the City's Zoning Ordinance.

⁴ As that term is defined in the City's Zoning Ordinance.

description of the standards set forth in this Paragraph and Exhibits B and C are collectively referred to herein as the "Construction Standards".

- G. Building 2 shall not exceed six stories and shall be in substantial conformity with the Exterior Elevation and Sample Finish Schedule, Exhibits B and C, *supra*, and shall not exceed the height of Building 1 and shall consist of not more than 93 Dwelling Units. In between Building 1 and Building 2 a structure may be constructed on Buildable Outlot G ("Connecting Structure") as shown on Exhibit B. As depicted on Exhibit B, the Connecting Structure shall generally include enclosed above- and below-ground parking and an enclosed amenity connection on the second floor between Building 1 and Building 2 and the entrance to the first floor of parking.

- H. In the Project Application, Defendant Developers shall provide for:

- (i) a number of parking spaces sufficient to accommodate each phase of the Project which shall minimally meet the standards contained in the original Courthouse Square PUD. Lot 9 is presently improved with a partially completed underground parking facility that shares common access and utilities with an existing underground parking facility located within and beneath the Courthouse Midrise Condominium located mainly on Lot 2 as identified on the Courthouse Square Plat. As part of the Project Application, the Defendant Developers will submit an agreement with the Courthouse Midrise Condominium Association substantially in the form attached as **Exhibit D** ("Special Amendment No. 2 to the Declaration of Condominium Ownership

for the Courthouse Square Midrise Condominium” or “Special Amendment No. 2”) making provisions for the fair and proportionate division of operation and maintenance expenses, including the cost of energy, attendant to the operation and maintenance of the common parking facilities and the shared fire pump, if utilized; and

- (ii) each Residential Building shall make provisions for the enclosure of all garbage and trash storage within such Residential Building so that there shall not be any garbage or trash storage outside of the Residential Buildings and such shall be so depicted on all applicable drawings; and
- (iii) a storm water management and detention plan which shall comply with the original Courthouse Square PUD. Should the Project cause flooding or other water related issues in the below-grade parking facilities, Plaintiffs wholly reserve their rights to take further legal action; and
- (iv) landscaping plans for Lots 9 and 10 and Outlots E, F and G minimally equivalent to the existing landscaping in Courthouse Square; and
- (v) except as otherwise provided in Paragraph H(i) above, the utilities servicing Buildings 1 and 2 and the Connecting Structure shall be separate and distinct from all utilities servicing the existing buildings in Courthouse Square.

I. At the initial public meeting before the City Council regarding approval of the Project Application (the “Initial Public Meeting”), Plaintiffs and their attorney shall be entitled to state their position regarding the Project Application (“Plaintiffs’ Project Position Statement”) expressly subject to the following conditions:

- (i) The total length of the presentation of Plaintiffs’ Project Position Statement by Plaintiffs and their attorney shall not exceed thirty (30) minutes; (ii) Plaintiffs’ attorney shall expressly represent to the City Council at the outset of Plaintiffs’ Project Position Statement that: a) his law firm has been involved in ongoing negotiations with Defendant Developers on behalf of Plaintiffs and Intervenors regarding the terms of this Consent Decree; b) his law firm has signed the Consent Decree on behalf of all Plaintiffs and Intervenors; c) Plaintiffs and Intervenors do not object to the general concept of the Residential Buildings being constructed as apartment complexes; and d) Plaintiffs and Intervenors do not wish the issue of the City’s approval of the Project Application to be referred to the City’s Planning and Zoning Board (the “Board”) for the Board’s recommendation.
- (iii) Any additional comments by any Intervenors at the Initial Public Meeting regarding the Project Application shall not exceed five (5) minutes for any individual Intervenor.

J. Except as expressly set forth in Paragraph I above, none of the Plaintiffs, Intervenors or their attorneys shall seek the opportunity to speak before or make

any presentation to the City Council or to the Board in opposition to the Project Application.

- K. Plaintiff Gerald Gorski ("Gorski") expressly warrants and represents that he will not: a) participate in the presentation of Plaintiffs' Project Position Statement; and b) organize people to testify before the City Council or the Board.
- L. Plaintiffs and Intervenors waive any right to conduct cross-examination or questioning of any witnesses or presenters at any meeting or hearing in connection with Defendant Developers' submission of the Project Application to the City for approval.
- M. Plaintiffs and Intervenors shall not: a) request that the City refer the issue of the City's approval of the Project Application to the Board for the Board's recommendation; nor b) object to the City's approval of the Project without referring the Project application to the Board for the Board's recommendation.
- N. All parties agree that Defendant Developers may within their sole discretion withdraw the Project Application at any time prior to obtaining approval of the Project by the City. In that event, this Consent Decree and Order shall be vacated upon Motion therefor filed and duly noticed by any party hereto. Upon the vacation of the Consent Decree, the Litigation shall be reinstated and the parties restored to positions they enjoyed immediately prior to the entry of the Consent Decree with the rights attendant thereto.
- O. Provided that (i) the City adopts an ordinance amending the Courthouse Square PUD granting approval of the Project and entitling the Defendant Developers to construct the Project as herein set forth subject only to those terms and conditions acceptable to Defendant Developers in their sole discretion ("Amending

Ordinance"), and (ii) as a part thereof the City repeals and renders ineffective and of no further force or effect Ordinance F-1666, Ordinance F-1667 and the Third Amendment to Development Agreement, the zoning rights and obligations attendant to the Courthouse Square PUD shall consist of those rights and obligations which existed prior to the passage of Ordinance F-1666 and any rights and obligations created by this Consent Decree and the Amending Ordinance. Upon passage of the Amending Ordinance, Defendant Developers and their successors and/or assigns, shall be prohibited from developing Courthouse Square, or any portion thereof, with a Senior Housing Development.

P. Within thirty (30) days of the City's passage of the Amending Ordinance, Defendant Developers, their successors and/or assigns and/or the Board of Directors for The Courthouse Square Community Association shall prepare a "Special Amendment"⁵ substantially in the form attached as **Exhibit E** ("Special Amendment No. 4") to the Community Declaration for Courthouse Square recorded May 16, 2006 as Document No. R2006-092638, as amended and supplemented from time to time, ("Declaration") and bylaws ("Bylaws") and submit a copy to counsel of Plaintiffs and Intervenor ("Plaintiffs' Counsel"). The Special Amendment No. 4 shall:

- (i) record the Bylaws of the Community Association; and
- (ii) provide for any necessary cost sharing as provided in Paragraph Y below.

Q. Defendant Developers shall submit the draft Special Amendment No. 4 to Plaintiffs' Counsel who shall review and approve or disapprove the proposed Special Amendment within seven (7) days and shall not withhold approval

⁵ As that term is described and defined in section 10.01 of the Declaration.

unreasonably. In the event a dispute arises concerning Special Amendment No. 4, the City shall not issue any permit in connection with the Project nor shall any construction activities in furtherance of the Project take place until the dispute is resolved.

- R. Upon the parties' agreement as to Special Amendment No. 2 and Special Amendment No. 4, Defendant Developers shall Record⁶ both of said documents with the DuPage County Recorder's Office on or before the one hundred twentieth (120th) day following the effective date of the Amending Ordinance (the "Finalization Date"). In addition thereto, Plaintiffs and the Defendant Developers shall cause to be duly executed and recorded, at Defendant Developers' expense, the Restrictive Covenant Agreement attached as **Exhibit F** (the "Restrictive Covenant Agreement") as may be amended by agreement of the parties in writing prior to recording, thereby establishing certain covenants running with the land.
- S. The cost of preparing and recording Special Amendment No. 2 and Special Amendment No. 4 shall be borne by Defendant Developers.
- T. Not later than the first to occur of the Finalization Date or December 31, 2014 ("Turnover Date")⁷, Defendant Developers shall, as the "Declarant," give written notice to the Courthouse Square Community Association pursuant to section 9.05(ii) of the Community Declaration for the Courthouse Square ("Declaration") that the Declarant thereby terminates its rights under said section 9.05 of the Declaration. Within thirty (30) days after such written notice, Defendant Developers shall provide notice and hold the initial election of the Board of

⁶ As that term is defined in section 1.46 of the Declaration.

⁷ The term "Turnover Date" shall have the same meaning in this Consent Decree and in the Community Declaration for the Courthouse Square Community Association and its By-Laws.

Directors for the Courthouse Square Community Association ("Initial Meeting of the Owners") pursuant to the terms and conditions of the Courthouse Square Community Association's Declaration and By-Laws not inconsistent with this Consent Decree.

- U. At the meeting for the Initial Meeting of the Owners or immediately afterwards, but no later than thirty (30) days thereafter, Defendant Developers shall turnover control and ownership the Courthouse Square Community Association ("Community Association"), along with all its books, records, property and other items required by Section 1-50(d) of the Common Interest Community Association Act (765 ILCS 160/1-1 et. seq.), to the newly elected Board.
- V. In the event that Building 1 and/or 2 is/are converted to condominiums, then Lot 9 (Building 1) and/or Lot 10 (Building 2) of Courthouse Square PUD (along with necessary portions of Buildable Outlot G (the Connecting Structure)), as the case may be, shall be submitted to the provisions of the Illinois Condominium Property Act (the "Act").
- W. In the event construction of Building 1, Building 2 and the Connecting Structure have been completed, then within sixty (60) days of the issuance of a certificate of occupancy by the City, Outlot E shall be conveyed to the Community Association subject to the terms of the Declaration and all covenants, conditions, restrictions and easements of record. In the event Building 1 is converted to condominiums, Lot 9 and the remaining portions of Outlot G (generally those portions of Outlot G lying east of the east line of Lot 9 extended southerly to the northeast corner of Lot 10) ("East Outlot G") shall be made subject to the terms of the Declaration and East Outlot G conveyed to the Community Association. In the event Building

2 is converted to condominiums, Lot 10 and Outlot F shall be made subject to the terms of the Declaration and Outlot F conveyed to the Community Association.

- X. Subject to the approval of the City, Defendant Developers may and have the option to record a plat of resubdivision to replat Lot 9 and 10 and Outlots E, F, and G in order to comply with requests by the City, the City's land planning or platting ordinances, the Illinois Plat Act (765 ILCS 205/0.01 et seq.), the tax parcel division requirements of DuPage County or to otherwise effectuate the Project and the purposes of this Consent Decree and Order.
- Y. Upon initial occupancy of Building 1 and/or Building 2, persons renting or occupying Dwelling Units in Building 1 and/or Building 2 ("Renters") shall be permitted to utilize the community areas and amenities owned by the Community Association on the same basis as owners of condominiums or townhomes located within Courthouse Square and subject to the same rules and regulations as are applicable to the owners of condominiums or townhomes within Courthouse Square adopted from time to time by the Community Association. The rights created in the first sentence of this Paragraph Y are subject to, and conditioned upon, the prompt receipt of the Required Payment, as defined below. During any period of time when Building 1 and/or Building 2 – or any Dwelling Unit located therein – is rented, the respective owners of said building or buildings shall pay, or cause to be paid, a pro rata share of the costs necessary to operate, repair, maintain and provide for reasonable reserves for the Courthouse Square Community Association common facilities consisting of the pool, fitness center, and community room (and the detention pond if Outlot E has been conveyed to the Community Association), all as more fully identified and set forth on **Exhibit**

G attached hereto and incorporated herein (the "Required Payment"). The Required Payment shall be determined by first dividing the total number of Dwelling Units contained in Building 1 and/or Building 2 (as of the date on which any occupancy permit was first issued by the City for either of Building 1 and/or Building 2) by the total number of Dwelling Units in Courthouse Square ("Total Dwelling Units"). Total Dwelling Units shall be the sum of all Condominium Units and Townhome Residences⁸ plus the number of dwelling units constructed in either Building 1 or Building 2. The total number of dwelling units attributable to either Building 1 or 2 shall be included in the number of Total Dwelling Units at the time a partial, temporary or final certificate of occupancy is issued by the City for any portion of Building 1 and/or 2. This calculation will result in a percentage reflecting the "Renters' Percentage". The total annual Community Assessment⁹ for the Community Association shall then be multiplied by the Renters' Percentage. The Renters' Percentage thus derived shall then be prorated based upon a percentage derived by the fraction that the number of days remaining in the calendar year bears to 365 days. This calculation shall produce the amount of the Required Payment which shall be payable in equal monthly installments (or prorated fraction thereof) on or before the first day of each month. Should the Defendant Developers, or their respective successor or assigns, fail to make all or any part of the Required Payment for any month or part thereof, the Community Association shall have the right, upon 30 days' prior written notice, to suspend the rights to the use of the Community Association's property of any and all of the renters within any Residential Building for which a Required

⁸ As that term is defined in the Declaration.

Payment has not been made. Such suspension shall remain in effect until all past due Required Payments have been paid in full. In addition to the payment of all Required Payments which are in arrears, should a failure to promptly pay the Required Payment occur more than once, the Community Association may further condition the restoration of the renters' rights of usage to Community Association property upon the further deposit of an additional two months of Required Payments. In the event the Community Assessment is recalculated in a given year due to a change in the Total Dwelling Units, the Renters' Pro Rata Share shall also be recalculated.

- Z. In the event a lawsuit is filed within the statutorily permitted time challenging the Amending Ordinance following its adoption, or in the event the City fails to duly adopt the Amending Ordinance on or before December 30, 2014, this Consent Decree and Order shall be vacated upon Motion therefor filed and duly noticed by any party by January 16, 2015 (or by the Finalization Date in the event that the Finalization Date occurs after January 16, 2015).
- AA. This matter is set for status on _____, 2014 at 9:00 a.m. at which time counsel for the parties shall report on the Project Application.
- BB. Plaintiffs, Defendant Developers and the City acknowledge that the Court retains jurisdiction to enforce the terms and conditions of this Consent Decree and in any action or suit to enforce the terms of this Consent Decree, or to declare a Party's rights hereunder ("Enforcement Litigation"), the prevailing party in the Enforcement Litigation shall be entitled to recover its costs, expenses and attorneys' fees, including para-professional and expert witness fees incurred due the Enforcement Litigation. The Parties expressly agree that, should suit be filed

to enforce any obligation created by this Agreement, the parties irrevocably submit to the jurisdiction of and venue in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

Entered

Date

One of the
Attorneys for Plaintiffs & Interveners,

James Knippen, one of the Attorneys for
Defendant, City of Wheaton, Illinois

Tim McLean, One of the
Attorneys for Defendants
Focus Courthouse, LLC,
Airhart Development, LLC,
Courthouse Land Development, LLC,
and Board of Directors of the
Courthouse Square Community
Association

One of the Attorneys
for the Defendant
Board of Directors of the
Courthouse Square Community
Association

Phillip A. Luetkehans, Esq.
LAW OFFICES OF
SCHIROTT, LUETKEHANS & GARNER, LLC
105 East Irving Park Road
Itasca, IL 60143 / 630-773-8500
Attorney No. 8500

Consent Decree List of Exhibits

A - Courthouse Square Plat

B - Exterior Elevation for Building 1

C - Sample Finish Schedule

D - Special Amendment No. 2

E - Special Amendment No. 4

F - Restrictive Covenant Agreement

G - Required Payment / Cost Sharing

**COURTHOUSE SQUARE
RESUBDIVISION
PHASE 4A**

ERTING A RECONDIVISION OF PART OF THE SOUTHWEST QUARTER AND PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 35 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PLAT
R2014-034888
APR. 28. 2014
11:25 AM

CONCLUSIONS

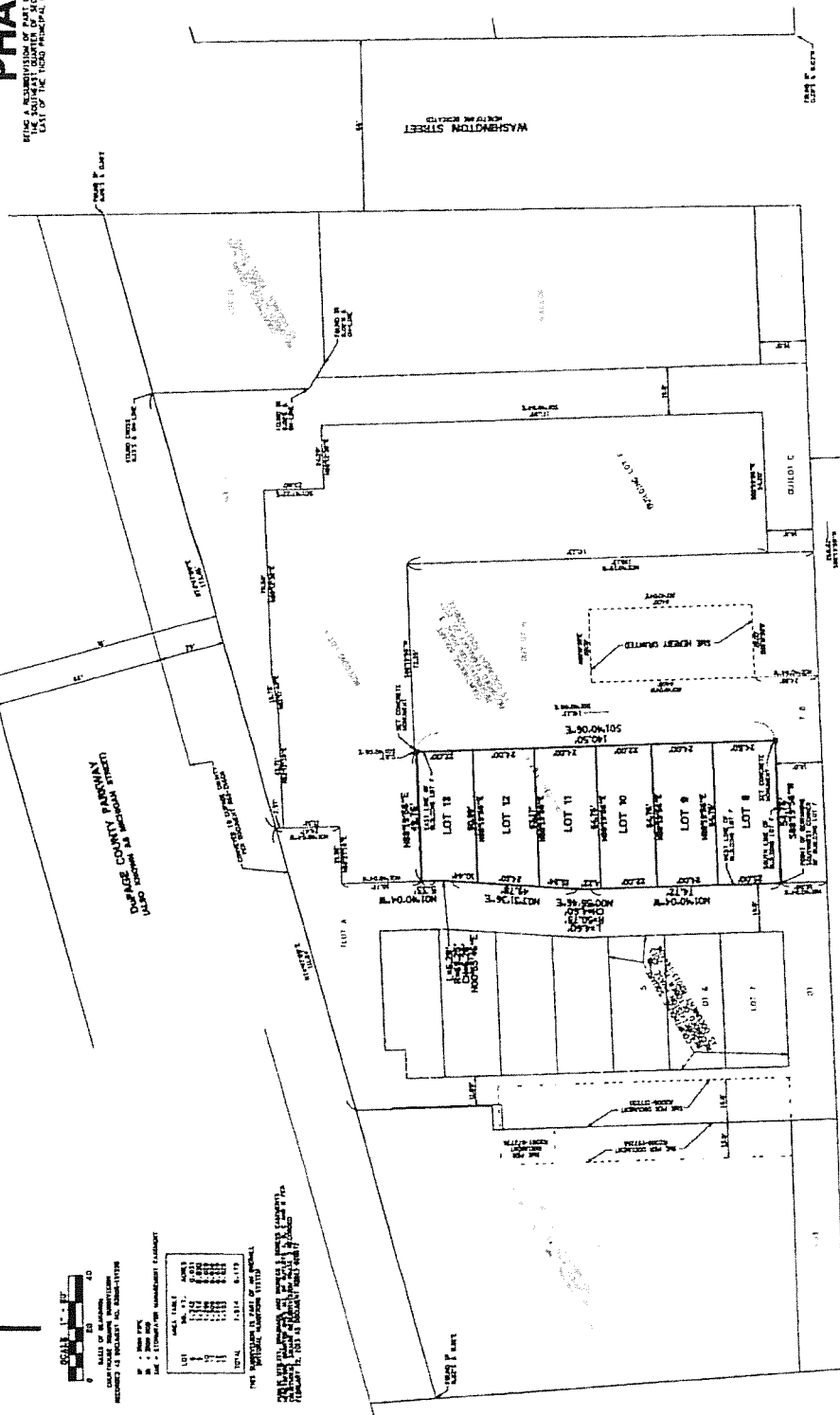


RESEARCHER IN INDIAN TV CHANNEL
NATIONALIST BANGALORE JOURNALIST
RESEARCHER IN BANGALORE

LOI	NO. OF	ADDED
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2	17.4	0.030
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4	17.4	0.030
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9	17.4	0.030
10	17.4	0.030
TOTAL	173.4	0.173

THIS SUBMISSION IS PART OF AN OUTREACH

1. 1955-1956, 1957-1958, 1959-1960, 1961-1962, 1963-1964, 1965-1966, 1967-1968, 1969-1970, 1971-1972, 1973-1974, 1975-1976, 1977-1978, 1979-1980, 1981-1982, 1983-1984, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994, 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 2691-2692, 2693-2694, 2695-2696, 2697-2698,



LIBERTY DRIVE
ALSO KNOWN AS SOUTH RAILROAD STREET

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

[illegible]

HERCULES INC.

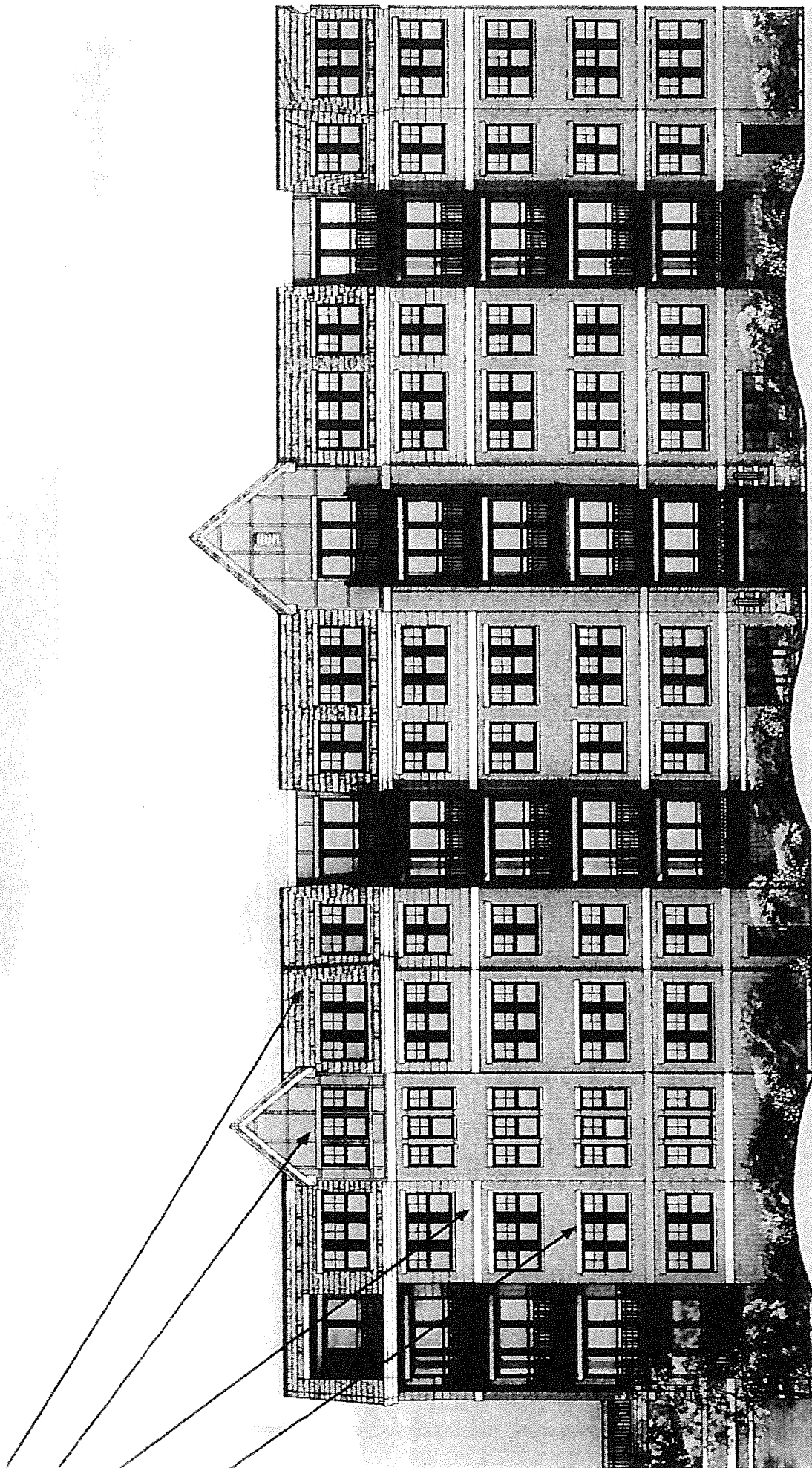


EXHIBIT
B

Courthouse Square Apartments
Sample Finish Schedule

Finish Package	Natural	Espresso
Location - Floor	Floors TBD	Floors TBD
Cabinets		
Cabinets (Style)	Saco, Marcus, Full Overlay, Maple	Saco, Marcus, Full Overlay, Maple
Cabinets (Stain)	Light Maple	Chocolate
Cabinets (Handle)	Brushed Nickel or Chrome	Brushed Nickel or Chrome
Kitchen		
Granite Counter Tops	Black Impala - 3cm	Verde Ecologia - 3cm
Kitchen Backsplash	3x6 American Olean Ceramic, #0091 Biscuit	3x6 American Olean Ceramic, #0091 Biscuit
Backsplash grout	Laticrete - #18 Sauterne	Laticrete - #18 Sauterne
Kitchen Backsplash Pattern	Stacked	Stacked
Appliances	Frigidaire - Stainless Steel	Frigidaire - Stainless Steel
Garbage Disposal	Insinkerator Badger 1/3 HP	Insinkerator Badger 1/3 HP
Kitchen Faucet W/ Pullout	Brushed Nickel or Chrome	Brushed Nickel or Chrome
Kitchen Sink	Undermount - Stainless Steel	Undermount - Stainless Steel
Bathroom		
Bath Surround Tile (Walls)	Stonepeak 12"x12" - Travertine White	Stonepeak 12"x12" - Travertine White
Bath Tile Grout (Walls)	Laticrete - #23 Antique White	Laticrete - #23 Antique White
Bathroom Vanity Tops	Granite - Kashmir White - 2cm	Granite - Kashmir White - 2cm
Bathroom Sink	Undermount - White	Undermount - White
Faucets, Tub/ Shower Controls	Chrome	Chrome
Toilet High Efficiency Elongated Bowl	White	White
Bath Accessories	Chrome	Chrome
Flooring		
Plank Flooring (Kitchen, Dining, Living)	Armstrong LVT, Natural Personality D1003 - White Maple	Shaw Market Square - #780 Boca
Vinyl Tile (Bath, Laundry)	Nafco LVT 16"x16" Firenze - Antique White	Nafco LVT 16"x16" Firenze - Antique White
Carpet (Bedrooms)	Shaw Nylon, Concord PSS17 - #100 Sahara Buff	Shaw Nylon, Concord PSS17 - #105 Sand Pebble
Vinyl Base	Johnsonite 2 1/2" CBY-01-2.5HT, Snow White	Johnsonite 2 1/2" CBY-01-2.5HT, Snow White
Vinyl Quarter Round Shoe	Johnsonite, QTR-01-A, Snow White	Johnsonite, QTR-01-A, Snow White
Paint		
Paint Ceilings (Flat)	White - ICI, Fencepost #81YY 87/031	White - ICI, Fencepost #81YY 87/031
Paint Trim (Semi-gloss)	White - ICI, Fencepost #81YY 87/031	White - ICI, Fencepost #81YY 87/031
Paint Walls (Flat)	White - ICI, Fencepost #81YY 87/031	White - ICI, Fencepost #81YY 87/031
Paint Accent Wall, Living Room (Flat)	ICI, Manuscript, #40YY 60/103	ICI, Toasty Grey, #30YY 51/098
Paint Accent Wall, Bedroom (Flat)	ICI, Paddlewheel Grey, #50BG 64/028	Benjamin Moore, 2148-40, Light Kahki
Apartment Other		
Door Hardware	Brushed Chrome	Brushed Chrome
Doors - Hollow-Core Wood Flush	Paint - White	Paint - White
Washer/Dryer	White	White
1" Horizontal Mini blinds	White	White
Common Areas		
Paint Corridor Walls, Ceiling (Flat)	Benjamin Moore, OC-117 Simply White	Benjamin Moore, OC-117 Simply White
Paint Corridor Base, Doors, Frames (Semi-Gloss)	Benjamin Moore, OC-117 Simply White	Benjamin Moore, OC-117 Simply White
Paint Corridor Drops, Walls (Eggshell)	Benjamin Moore, HC 159 Philipsburg Blue	Benjamin Moore, HC 159 Philipsburg Blue
Paint Corridor Drops, Ceiling (Flat)	BM, HC-145, Van Courtland Blue	BM, HC-145, Van Courtland Blue
Paint Corridor Drops, Doors, Frames, Trim (Semi-gloss)	Benjamin Moore, HC-159 Philipsburg Blue	Benjamin Moore, HC-159 Philipsburg Blue
Leasing Office Accent Wall (Flat)	Benjamin Moore, 2126-30, Anchor Grey	Benjamin Moore, 2126-30, Anchor Grey
Paint, Balconies, Windows, metal	Benjamin Moore 2126-20 Raccoon Grey	Benjamin Moore 2126-20 Raccoon Grey
Flooring (Lobby) - Porcelain Tile	12x24, Basaltina Grey, Natural Finish	12x24, Basaltina Grey, Natural Finish
Flooring (Lobby) - Porcelain Tile Base	3x18, Basaltina Grey, Natural Finish	3x18, Basaltina Grey, Natural Finish
Flooring (Lobby) - Tile Grout	Mer-Krete, #D-38 Grey	Mer-Krete, #D-38 Grey
Flooring (Fitness Room)	Rubber, ECO stone - #806 Bedrock	Rubber, ECO stone - #806 Bedrock
Flooring (Corridors, Leasing, Amenities)	Bigelow, Urban Path, #BQ202 - #7585 Rushing River	Bigelow, Urban Path, #BQ202 - #7585 Rushing River
Flooring (Corridor Drops)	Bigelow, City Step, #BQ215 - #7585 Rushing River	Bigelow, City Step, #BQ215 - #7585 Rushing River
Door Hardware	Brushed Chrome	Brushed Chrome

EXHIBIT

C

tabler

THIS INSTRUMENT PREPARED
BY AND SHOULD BE RETURNED
TO:

Victoria C. Bresnahan
MELTZER, PURTILL & STELLE LLC
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606-6704

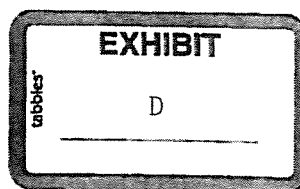
**SPECIAL AMENDMENT NO. 2 TO
DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE COURTHOUSE
SQUARE MIDRISE CONDOMINIUM**

This Special Amendment No. 2 is made by Focus Courthouse, LLC, an Illinois limited liability company, ("Declarant").

RECITALS

Declarant Recorded the Declaration of Condominium Ownership for the Courthouse Square Midrise Condominium with the DuPage County Recorder of Deeds on September 7, 2007, as Document No. R2007-166179 (the "Condominium Declaration"). The Declaration submitted certain real estate to the provisions of the Condominium Property Act of the State of Illinois (the "Act") and subjected such real estate to the Declaration.

In Article Nine of the Condominium Declaration, Declarant reserved the right and power to record a Special Amendment to the Condominium Declaration to, among other things, correct errors, omissions, ambiguities or inconsistencies in the Condominium Declaration or any Exhibit. In Article Eight of the Condominium Declaration, Declarant reserved the right and power to add portions of the Development Area from time to time to the Condominium Declaration and submit such portions to the provisions of the Act. In the Recitals of the Condominium Declaration, Declarant reserved the right to grant easements and grant cost sharing arrangements with respect to portions of the Development Area that will serve more than one condominium. In Paragraph 13 of Amendment No. 1 (defined below) Declarant further reserved the right to amend the Declaration to grant easements and provide cost sharing arrangements with respect to the Development Area which shall serve a separate use (other than separate midrise



<u>Document</u>	<u>Recording Date</u>	<u>Recording Number</u>
Special Amendment No. 1	September 27, 2007	R2007-178770
Supplement No. 1	September 27, 2007	R2007-178771
Supplement No. 2	October 24, 2007	R2007-193241
Amendment No. 1	April 21, 2009	R2009-058831

In furtherance of the foregoing and as contemplated by Paragraph 13 of Amendment No. 1 Declarant desires (i) to identify the Midrise 2 (Building C3) Parking Area and the Midrise 2 (Building C3) Parking Spaces and (ii) to recognize the grant of easements and rights granted and reserved in Amendment No. 1 and to provide for cost sharing with regard to a residential, non-condominium use on the Development Area. Portions of the Development Area are subject to that certain Consent Decree and Order entered on _____ in Case 2012 CH 4918 ("Consent Decree"). The Consent Decree provides for the Recording of this Special Amendment No. 2.

Accordingly, Declarant does hereby amend the Condominium Declaration and Amendment No. 1 to the Condominium Declaration as follows:

1. Terms. All terms used herein, if not otherwise defined herein, shall have the meanings set forth in the Condominium Declaration.

2. Amendment of Sections 1.51, 1.52 and 1.53. Sections 1.51, 1.52 and 1.53 of the Condominium Declaration shall be amended to amend and restate in their entirety the following definitions:

1.51 Midrise 2 (Building C3) Owner: An Owner, from time to time of a condominium unit in the Midrise 2 (Building C3) Condominium or the owner of Lot 9 in the Courthouse Square Subdivision ("Owner of Lot 9").

1.52 Midrise 2 (Building C3) Parking Area: That portion of the Garage designated on the Plat as spaces P-79 through P-88, both inclusive, P-89 through P-92, both inclusive and P-101 and the corresponding Storage Area designated on the Plat as spaces S-68 through S-72, both inclusive, S-73 through S-76, both inclusive and S-82. The Midrise 2 (Building C3) Parking Area shall be reserved for the use of Midrise 2 (Building C3) Owners.

1.53. Midrise 2 (Building C3) Parking Space: A portion of the Midrise 2 (Building C3) Parking Area which is identified on the Plat with a distinguishing number or other symbol. The Midrise 2 (Building C3) Parking Spaces shall be spaces P-79 through P-88, both inclusive, P-89 through P-92, both inclusive and P-101.

3. Amendment to Section 2.08. In order to clarify easements concerning the Midrise 2 (Building C3) Parking Area, Section 2.08 of the Condominium Declaration is hereby restated in its entirety to be and read as follows:

“(j) The Declarant declares and reserves to itself, as the Owner of Lot 9 , (i) a non-exclusive, perpetual easement for pedestrian and vehicular access, over and across the Garage and the driveway which furnishes access to the Garage, between the Parcel and the Midrise 2 (Building C3) Parking Area, and (ii) the right to park an operable motor vehicle in each Midrise 2 (Building C3) Parking Space.

4. Amendment to Section 2.08. In order to clarify easements for the benefit of the Owners of Lot 9, Section 2.08 of the Condominium Declaration is hereby restated in its entirety to be and read as follows:

“(k) The Declarant declares and reserves to itself as the Owner of Lot 9 and of Lot 10, a non-exclusive, perpetual easement for vehicular access, over and across the Garage and the driveway which furnishes access to the Garage (“Midrise Access Easement”). The Midrise Access Easement shall inure to the benefit of the Owner of Lot 9 and Lot 10 and run with title to all portions of Lot 9 and Lot 10.”

5. Amendment to Section 3.15. In order to subject the Midrise 2 (Building C3) Parking Area to rules adopted by the Board, Section 3.15 of the Condominium Declaration is hereby restated in its entirety to be and read as follows:

“(d) The use and enjoyment of the Midrise 2 (Building C3) Parking Area shall be subject to reasonable rules and regulations duly adopted from time to time by the Board, in consultation with the Owner of Lot 9; provided that prior to adoption of any such rules, there shall first be held a meeting of the Board or Owners (if required by the Act) and the Owner of Lot 9 to discuss the proposed rules.”

6. Amendment to Section 3.18. Notwithstanding the terms of Section 3.18 of the Declaration, as amended by Amendment No. 1., the Midrise 2 (Building C3) Parking Spaces shall be designated for use as the Owner of Lot 9 provides from time to time.

7. Amendment to Section 6.03. In order to require the Condominium Association to furnish a budget to the Owner of Lot 9, the first full paragraph of Section 6.03 is hereby amended and restated in its entirety to be and read as follows:

“6.03 ASSESSMENTS: Each year at least sixty (60) days before the end of the Condominium Association's fiscal year, and at least thirty (30) days before final adoption thereof, the Board shall furnish each Owner of a Dwelling Unit, the Courthouse Association, the Townhome Association, and the Owner of Lot 9 with a proposed budget for the ensuing fiscal year which shall show the following, with reasonable explanations and itemizations:”

In all other respects the terms of Section 6.03 are unchanged.

8. Amendment to Section 9.02. In order to provide for amending the provisions of the Condominium Declaration pertaining to the Midrise 2 (Building C3) Parking Area and the

Midrise 2 (Building C3) Parking Spaces, Section 9.02(iv) of the Condominium Declaration is hereby restated in its entirety as follows:

“(iv) the provisions relating to the Midrise 2 (Building C3) Parking Area and Midrise 2 (Building C3) Parking Spaces may only be amended with the written consent of the Owner of Lot 9. If the Midrise 2 (Building C3) Declaration is Recorded, then and thereafter, the written consent of the Midrise 2 (Building C3) Association shall be required.”

9. Deletion of Exhibit G. Exhibit G attached to Amendment No. 1 is hereby deleted in its entirety.

10. Cost Sharing. Pursuant to Paragraph 13 of Amendment No. 1 the Declarant reserves the right to amend the Declaration to arrange for the cost sharing associated with the Owner of Lot 9's use of the Midrise 2 (Building C3) Parking Area and Midrise 2 (Building C3) Parking Spaces. Owner of Lot 9 shall pay to the Condominium Association an amount equal to the Garage Assessment payable by the Owner of the Dwelling Unit in such monthly portions which shall be equal to 1/12th of the Garage Assessment, divided by the total number of Garage Spaces located in the Garage multiplied by fifteen (15) (“Garage Payment”).

11. Fire Pump. In the event Midrise 2 (Building C3) Parking Area benefits from the use of a shared fire pump, then the Owner of Lot 9 shall pay to the Condominium Association an amount equal to prorated share of the costs to maintain the fire pump (“Fire Pump Costs”) in such monthly portions which shall equal 1/12 of the Fire Pump Costs, divided by 203, multiplied by 153 (“Fire Pump Fee”).

12. Failure to Pay Garage Payment. If the Owner of Lot 9 fails to pay the Garage Payment or Fire Pump Fee to the Condominium Association within thirty (30) days after payment is requested hereunder, the Condominium Association may record a lien against Lot 9 in an amount equal to the Garage Payment or Fire Pump Fee (together with interest thereon at the rate of four percent (4%) above the “prime rate” of interest as published from time to time in the Wall Street Journal from the due date to the date when paid), costs and reasonable attorney's fees, as applicable, which amounts shall be added to the amount of the lien, which lien (i) shall be effective upon Recording, (ii) shall be subordinate to any first mortgage lien thereon, and (iii) may be foreclosed in the same manner as a mortgage lien.

13. Covenants to Run with Land. The covenants, conditions, restrictions, and easements contained in the Condominium Declaration, as amended by this Special Amendment No. 2., shall run with and bind the Premises.

14. Continuation. As expressly hereby amended, the Condominium Declaration shall continue in full force and effect in accordance with its terms.

SIGNATURE PAGE TO FOLLOW

Dated: _____, 201__

DECLARANT:

FOCUS COURTHOUSE, LLC, An Illinois limited liability company

By: Focus Management, LLC, an Illinois limited liability company, its sole member

By: _____
Timothy J. Anderson, its Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Timothy J. Anderson, Manager of Focus Management, LLC, which is the sole member of Focus Courthouse, LLC, an Illinois limited liability company (the "Company") personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ day of _____, 201__.

Notary Public

RBC REAL ESTATE FINANCE INC.,
a Delaware corporation,
as Assignee of RBC Bank (USA), formerly known
as RBC Centura Bank, a North Carolina banking
corporation

ATTEST:

By: _____
Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County and State, do hereby certify that _____ and _____, the _____ and _____ respectively, of RBC Real Estate Finance, Inc., a Delaware corporation (the "Bank"), and, as such _____ and _____, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 201__.

Notary Public

EXHIBIT A TO
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
THE COURTHOUSE SQUARE MIDRISE CONDOMINIUM

The Development Area

THAT PART OF LOT 1 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 749.00 AS REFERENCED TO THE DUPAGE COUNTY DATUM (NGVD29) DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 03 DEGREES 58 MINUTES 44 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 6.90 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 86 DEGREES 01 MINUTES 16 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 2.42 FEET; THENCE NORTH 03 DEGREES 58 MINUTES 44 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 72.75 FEET; THENCE NORTH 86 DEGREES 01 MINUTES 16 SECONDS EAST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 13.42 FEET TO THE WESTERLY LINE OF LOT 2 IN SAID COURTHOUSE SQUARE; THENCE SOUTH 03 DEGREES 58 MINUTES 44 SECONDS EAST ALONG SAID WESTERLY LINE, A DISTANCE OF 72.75 FEET; THENCE SOUTH 86 DEGREES 01 MINUTES 16 SECONDS WEST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 11.00 FEET TO SAID POINT OF BEGINNING.

AND

LOTS 2, 9 AND 10 AND OUTLOTS A THROUGH L, BOTH INCLUSIVE, 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, PURSUANT TO THE PLAT THEREOF RECORDED SEPTEMBER 8, 2005, AS DOCUMENT NO. R2005-197255, IN DUPAGE COUNTY, ILLINOIS.

PINs: 05-16-342-001 through 050; 05-16-318-017; 05-16-318-007; 05-16-318-021; 05-16-318-009 and 010; 05-16-318-022; 05-16-319-007; 05-16-318-012; 05-16-318-019; 05-16-318-015 and 014; 05-16-319-008 and 009; 05-16-425-003

ADDRESSES: 255 East Liberty and other vacant lots near DuPage County Parkway and Reber Street, Wheaton, Illinois

THIS INSTRUMENT PREPARED
BY AND SHOULD BE RETURNED
TO:

Victoria C. Bresnahan
MELTZER, PURTILL & STELLE LLC
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606-6704

ABOVE SPACE FOR RECORDER'S USE ONLY

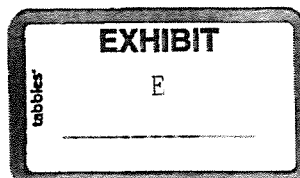
SPECIAL AMENDMENT NO. 4 TO THE COMMUNITY DECLARATION FOR THE COURTHOUSE SQUARE

This Special Amendment No. 4 is made by Courthouse Land Development, LLC, an Illinois limited liability company ("Declarant").

RECITALS

Declarant Recorded the Community Declaration for the Courthouse Square in the Office of the Recorder of Deeds for DuPage County, Illinois, on May 16, 2006, as Document No. R2006-092638 (the "Community Declaration"). In Article Ten of the Community Declaration, Declarant reserved the right and power to record a Special Amendment to the Community Declaration to, among other things, correct errors, omissions, ambiguities or inconsistencies in the Community Declaration or any Exhibit. In Article Twelve of the Community Declaration, Declarant reserved the right and power to annex, add and subject additional portions of the Development Area to the provisions of the Community Declaration as additional Premises by recording a supplement to the Community Declaration. Declarant exercised the rights and powers of Article Ten and Article Twelve by recording the following documents:

<u>Supplement Number</u>	<u>Date of Recording</u>	<u>Document Number</u>
Special Amendment No. 1	September 7, 2007	R2007-166176
Supplement No. 1	September 7, 2007	R2007-166180
Supplement No. 2	September 27, 2007	R2007-178772
Supplement No. 3	October 24, 2007	R2007-193244
Supplement No. 4	November 16, 2007	R2007-205705
Supplement No. 5	February 19, 2008	R2008-025475
Supplement No. 6	September 12, 2008	R2008-139210
Special Amendment No. 2	April 21, 2009	R2009-058830
Supplement No. 7	February 28, 2011	R2011-028745
Supplement No. 8	May 22, 2012	R2012-065847
Supplement No. 9	October 22, 2012	R2012-148177
Supplement No. 10	December 21, 2012	R2012-182103



Portions of the Development Area are subject to that certain Consent Decree and Order entered on _____ in Case 2012 CH 4918 ("Consent Decree"). The Consent Decree forms the basis upon which certain portions of the Development Area will be zoned and approved by the City of Wheaton and therefore provides for the Recording of this Special Amendment No. 4 and the specific provisions herein.

Accordingly, the Declarant desires to exercise the right and power reserved in Article Ten to correct errors, omissions, inconsistencies or ambiguities to conform to the terms of the Consent Decree.

NOW, THEREFORE, for the reasons set forth above Declarant does hereby amend the Community Declaration as follows:

I. **SPECIAL AMENDMENT:**

1. **By-laws of the Community Association.** The By-laws of the Community Association are attached hereto as Exhibit D and made a part hereof.

2. **Access to the Community Area and Cost Sharing with the Rental Area.** Pursuant to the Consent Decree and applicable zoning predicated thereon, certain portions of the Development Area known as Lot 9, Lot 10, Outlot G and Outlot F (collectively the "Rental Area") will be operated as a residential rental development. The Rental Area may in the future be submitted to the terms of the Community Declaration subject to the terms of Article XII. During the time that the Rental Area has not been made subject to the terms of the Community Declaration, the following shall apply:

- (a) Upon initial occupancy of the building on Lot 9 ("Building 1") and/or the building on Lot 10 ("Building 2"), persons renting or occupying apartments in Building 1 and/or Building 2 ("Renters") shall be permitted to utilize the Community Areas and amenities owned by the Community Association on the same basis as Owners of Condominium Units located on the Premises and subject to the same rules and regulations as are applicable to the Owners of Condominium Units adopted from time to time by the Community Association. The rights created herein are subject to, and conditioned upon, the prompt receipt of the "Required Payment", as defined below.
- (b) During any period of time when Building 1 and/or Building 2 – or any apartment located therein – is rented, the respective owners of said building or buildings shall pay, or cause to be paid, a pro rata share of the costs necessary to operate, repair, maintain and provide for reasonable reserves for the Community Association common facilities ("Required Payment"). The "Common Facilities" shall consist of the pool, fitness center, and community room (and the detention pond if Outlot E has been

conveyed to the Community Association). The Required Payment shall be determined by first dividing the total number of apartments contained in Building 1 and/or Building 2 (as of the date on which any occupancy permit was first issued by the Municipality for either of Building 1 and/or Building 2) by the total number of dwelling units in the Courthouse Square development ("Total Dwelling Units"). Total Dwelling Units shall be the sum of all Condominium Units plus the number of apartments constructed in either Building 1 or Building 2. The total number of apartments attributable to either Building 1 or 2 shall be included in the number of Total Dwelling Units at the time a partial, temporary or final certificate of occupancy is issued by the City for any portion of Building 1 and/or 2. This calculation will result in a percentage reflecting the "Renters' Percentage". The total annual Community Assessment for the Community Association shall then be multiplied by the Renters' Percentage. The Renters' Percentage thus derived shall then be prorated based upon a percentage derived by the fraction that the number of days remaining in the calendar year bears to 365 days. This calculation shall produce the amount of the Required Payment which shall be payable in equal monthly installments (or prorated fraction thereof) on or before the first day of each month.

- (c) Should the owner of Building 9 and/or Building 10, or their respective successor or assigns, fail to make all or any part of the Required Payment for any month or part thereof, the Community Association shall have the right, upon 30 days' prior written notice, to suspend the rights to the use of the Common Facilities of any and all of the Renters within either Building 1 or Building 2 for which a Required Payment has not been made. Such suspension shall remain in effect until all past due Required Payments have been paid in full. In addition to the payment of all Required Payments which are in arrears, should a failure to promptly pay the Required Payment occur more than once, the Community Association may further condition the restoration of the Renters' rights of usage to Common Facilities upon the further deposit of an additional two months of Required Payments. In the event the Community Assessment is recalculated in a given year due to a change in the Total Dwelling Units, the Renters' Pro Rata Share shall also be recalculated.
- (d) Subject to the Community Associations timely receipt of the Required Payments, the owners of Lot 9 and Lot 10 and their Renters shall have the right to access and a perpetual, non-exclusive easement for their benefit and for the benefit of the Rental Area over the Community Area for ingress and egress to and from and the use of the Common Facilities as described herein.
- (e) Nothing herein shall require that the Rental Area or any portion thereof be submitted to the terms of the Community Declaration unless or until the

Rental Area or a portion thereof is converted to condominiums as provided in the Consent Decree, and the Rental Area is made subject to the provisions of the Community Declaration, in which event, the provisions of this Section 3 shall terminate and the provisions of the Community Declaration shall govern.

II. MISCELLANEOUS

1. **Terms.** All terms used herein, if not otherwise defined herein, shall have the meanings set forth in the Community Declaration.
2. **Covenants to Run with Land.** The covenants, conditions, restrictions and easements contained in the Community Declaration, as amended by this Supplemental Declaration and Special Amendment shall run with and bind the Premises.
3. **Continuation.** As expressly hereby amended, the Community Declaration shall continue in full force and effect in accordance with its terms.

SIGNATURE PAGE TO FOLLOW

Dated: _____, 20____

DECLARANT:

COURTHOUSE LAND DEVELOPMENT, LLC, an
Illinois limited liability company

By: Airhart Development, LLC, an Illinois
limited liability company, a Member

By: Airhart Construction Corp., an Illinois
corporation, its sole Member

By: _____
Mark D. Glassman, Its Sec./Treas.

AND

By: Focus Wheaton, LLC, an Illinois
limited liability company, a Member

By: _____
Timothy J. Anderson, its Manager

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that and Timothy J. Anderson, the Manager of Focus Management, LLC, the sole member of Focus Courthouse, LLC, a Member of Courthouse Land Development, LLC (the "Company"), personally known to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his individual free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ day of _____, 20____.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mark D. Glassman, the Secretary / Treasurer of Airhart Construction Corp., the sole Member of Airhart Development, LLC, a Member of the Courthouse Land Development, LLC, (the "Company") personally known to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his individual free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this _____ day of _____, 20____.

Notary Public

BMO Harris Bank, N.A., as holder of the mortgage dated May 15, 2013 and recorded in the office of the Recorder of Deeds of DuPage County, Illinois, on May 17, 2013 as Document No. R2013-071890, with respect to the Premises, hereby consents to the recording of this Declaration to which this Consent is attached and agrees that its mortgage shall be subject to the terms of this Declaration.

Dated: _____, 20__

BMO Harris Bank, N.A.

ATTEST:

By: _____
Its: _____

By: _____
Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County and State, do hereby certify that _____ and _____, the _____ and _____ respectively, of BMO Harris Bank, N.A., (the "Bank"), and, as such _____ and _____ appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

CONSENT OF MORTGAGEE

THE UNDERSIGNED, WEST SUBURBAN BANK, AS MORTGAGEE, UNDER THE PROVISIONS OF CERTAIN MORTGAGE DATED AND RECORDED IN THE RECORDER'S OFFICE OF DUPAGE COUNTY, ILLINOIS ON THE 26TH DAY OF JULY, A.D. 2013, AS DOCUMENT NUMBER R2013-108644, HEREBY CONSENTS TO THE RECORDING OF THIS DECLARATION TO WHICH THIS CONSENT IS ATTACHED AND AGREES THAT ITS MORTGAGE SHALL BE SUBJECT TO THE TERMS OF THIS DECLARATION.

DATED THIS ____ DAY OF _____, A.D. 20__.

BY: _____

PRINTED NAME AND TITLE

ATTEST: _____

PRINTED NAME AND TITLE

WEST SUBURBAN BANK
711 S. WESTMORE / MEYERS ROAD
LOMBARD, ILLINOIS 60148

MORTGAGEE'S NOTARY PUBLIC
STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, _____, A NOTARY PUBLIC IN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT _____ OF SAID BANK WHO IS PERSONALLY KNOWN TO ME TO BE THE SAME WHOSE NAME IS SUBSCRIBED TO THE FOREGOING CERTIFICATE, APPEARED BEFORE ME THIS DAY IN PERSON AND ACKNOWLEDGED THAT HE/SHE/THEY DID SIGN AND DELIVER THIS INSTRUMENT AS A FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES HEREIN SET FORTH.

GIVEN UNDER MY HAND AND NOTARIAL SEAL THIS ____ DAY OF _____, A.D. 20__.

NOTARY PUBLIC

**THIRD AMENDED AND RESTATED EXHIBIT A TO
COMMUNITY DECLARATION FOR
THE COURTHOUSE SQUARE**

The Development Area

Lots 9 and 10 and Outlots A through L, both inclusive, 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, pursuant to the plat thereof recorded September 8, 2005, as Document No. R2005-197255, in DuPage County, Illinois.

PINs: 05-16-318-017 and 007

Addresses: Vacant Lots along Liberty Drive, Naperville Street and Reber Street, Wheaton

and

All Lots, Outlots and Building Lots in Courthouse Square Resubdivision Phase 3, a resubdivision 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, pursuant to the plat thereof recorded February 22, 2013, as Document No. R2013-028572, in DuPage County, Illinois

New PINs

Outlot A		05-16-319-012
1	315 E. Liberty	05-16-319-013
2	317 E. Liberty	05-16-319-014
3	319 E. Liberty	05-16-319-015
4	321 E. Liberty	05-16-319-016
Building lot E	E. Liberty	05-16-319-017
Building lot F	E. Liberty	05-16-319-018
Outlot B	E. Liberty	05-16-319-019
Outlot C	E. Liberty	05-16-319-020
Building lot G	E. Liberty	05-16-425-004
Outlot D	E. Liberty	05-16-425-005

and

All Dwelling Units in the Courthouse Square Townhome Condominium, as delineated on a survey of the following described tract of land: Certain lots in Courthouse Square according to the plat thereof recorded September 8, 2005, as Document No. R2005-197255 and Lot 3 in Courthouse Square Comed Consolidation according to the plat thereof Recorded April 19, 2007 as Document No. R2007-072736 and re-Recorded May 16, 2007 as Document No. R2007-091951, which survey is attached as Exhibit C to the Declaration of Condominium Ownership for the Courthouse Square Townhome Condominium Recorded as document number R2007-205704, as supplemented and amended from time to time, together with its undivided percentage interest in the Common Elements, all in a part of the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

PINs: 05-16-343-001 through 011

Addresses: 191, 193, 195 and 199 Reber Street and 301, 303, 305, 307, 309, 311 and 313 East Liberty Street, Wheaton.

and

Office Units O-1 and O-2 and Community Unit C-1, in the Courthouse Square Office Building Condominium, as delineated on a survey of the following described tract of land: Lot 8 in Courthouse Square according to the plat thereof Recorded September 8, 2005, as Document No. R2005-197255 which survey is attached as Exhibit C to the Declaration of Condominium Ownership for Courthouse Square Office Building Condominium Recorded May 16, 2006 as Document R2006-092639, together with its undivided percentage interest in the Common Elements, all in a part of the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

PINs: 05-16-341-001, 002 and 003
Address: 207 South Reber, Wheaton

and

All Dwelling Units in the Courthouse Square Midrise Condominium, as delineated on a survey of the following described tract of land: Lot 2 in Courthouse Square according to the plat thereof Recorded September 8, 2005, as Document No. R2005-197255 which survey is attached as Exhibit C to the Declaration of Condominium Ownership for Courthouse Square Midrise Condominium Recorded September 7, 2007 as Document R2007-166179, as supplemented and amended from time to time, together with its undivided percentage interest in the Common Elements, all in a part of the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

PINs: 05-16-342-001 through 050
Address: 255 East Liberty, Wheaton.

and

All Dwelling Units in the Courthouse Condominium, as delineated on a survey of the following described tract of land: Lot 7 in Courthouse Square according to the plat thereof Recorded September 8, 2005, as Document No. R2005-197255 which survey is attached as Exhibit C to the Declaration of Condominium Ownership for Courthouse Square Condominium Recorded February 19, 2008 as Document R2008-025474, as supplemented and amended from time to time, together with its undivided percentage interest in the Common Elements, all in a part of the Southwest Quarter of Section 16, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

PINs: 05-16-344-001 and 002
PIN: 05-16-318-023
Address: Reber Street, Wheaton, IL

**EXHIBIT D TO THE
COMMUNITY DECLARATION
FOR THE COURTHOUSE SQUARE**

By-Laws

[see attached]

*This Document Prepared By
and After Recording Mail To:*
Colleen M. Healy, Esq.
Clingen Callow & McLean, LLC
2100 Manchester Road, Suite 1750
Wheaton, Illinois 60187

RESTRICTIVE COVENANT AGREEMENT

This **RESTRICTIVE COVENANT AGREEMENT** ("Agreement") is entered into this ____ day of April 2014 by and between Focus Courthouse, LLC, an Illinois limited liability company ("Grantor"), and The Courthouse Square Community Association, an Illinois not-for-profit corporation ("Grantee") (collectively, the "Parties").

RECITALS

WHEREAS, Grantor is the owner of that certain real property located in Wheaton, Illinois 60187 and known as Lots 9, 10 and Outlots F and G in Courthouse Square, legally described on as Exhibit A attached hereto ("Grantor's Property").

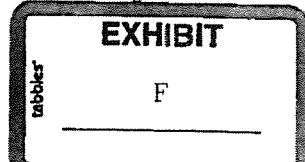
WHEREAS, Grantor caused to be recorded "The Community Declaration for the Courthouse Square" recorded as R2006-092638 as amended and supplemented from time to time (the "Declaration"), which was recorded against that certain tract of real property legally described in Exhibit B attached hereto ("Courthouse Square").

WHEREAS, the Declaration created The Courthouse Square Community Association (the "Community Association").

WHEREAS, Grantor desires to grant and Grantee desires to receive a restrictive covenant which prohibits the construction, development or use of Grantor's Property in any way which may consist of or constitute a "Senior Housing Development."¹

WHEREAS, after the construction of all units in either one or both residential buildings (the "Residential Buildings"), one located on Lot 9 ("Building 1") and the other on Lot 10 ("Building 2"), with an amenity connection and garage structure between the two located on a portion of Outlot G (hereinafter, "Lot 9", "Lot 10" and "Buildable Outlot G", respectively), and only in the event of the subsequent conversion of either or both Buildings 1 and/or 2 to condominiums, Grantor covenants that Lot 9 and/or Lot 10, as the case may be, will be subjected

As this term is currently defined in Article II of the City's Zoning Ordinance which includes the following components: (1) Independent Living; (2) Assisted Living; and (3) Skilled Care.



to the provisions of the Illinois Condominium Property Act (the "Act") and to the terms and conditions of the Declaration (to the extent permitted under the Declaration).

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge that the foregoing Recitals are true and correct and are incorporated herein as material terms of this Agreement.

2. **Grant of Restrictive Covenants.**

(a) **Prohibition of Senior Housing.** Grantor covenants to Grantee that Grantor shall not construct upon, develop or use Grantor's Property in any way which may consist of or constitute a Senior Housing Development.

(b) **Post-Conversion Covenants.**

(i) **Lot 9 and East Outlot G.** After the construction of all units in Building 1 on Lot 9, and only in the event of the subsequent conversion of Building 1 to condominiums, Grantor covenants that: i) Lot 9 and the remaining portions of Outlot G (generally those portions of Outlot G lying east of the east line of Lot 9 extended southerly to the northeast corner of Lot 10) ("East Outlot G") shall be subjected to the terms of the Act and of the Declaration (to the extent permitted under the Declaration); and ii) East Outlot G shall be conveyed to the Community Association.

(ii) **Lot 10 and Outlot F.** After the construction of all units in Building 2 on Lot 10, and only in the event of a subsequent conversion of Building 2 to condominiums, Grantor covenants that: i) Lot 10 and Outlot F shall be subjected to the terms of the Act and of the Declaration (to the extent permitted under the Declaration); and ii) Outlot F shall be conveyed to the Community Association.

3. **Binding Effect.** Grantor and Grantee agree to be bound by all of the terms and conditions herein contained and agree to keep and perform the covenants and agreements herein contained. The rights, duties, covenants, and obligations of the Parties under this Agreement shall, to the fullest extent legally possible, run with the land and accrue to and be binding upon the successors and assigns of the Parties.

4. **Invalidity.** If any of the covenants, conditions or terms of this instrument shall be found void or unenforceable for whatever reason by any court of law or equity, the Parties agree and intend that every other covenant, condition or term herein set forth shall remain valid and binding, provided that in such event, the Parties agree to the fullest extent possible to modify

such covenant, condition or term to the extent required in order to carry out the general intention of the Parties and to impart validity to such covenant, condition or term.

5. **Notices.** Any notice or other communication that is required or permitted hereunder shall be sufficient if it is in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor: Timothy Anderson
Focus Courthouse, LLC
191 Waukegan Road, Suite 202
Northfield, Illinois 60093

With a copy to: Timothy M. McLean, Esq.
Clingen Callow & McLean, LLC
2100 Manchester Road, Suite 1750
Wheaton, Illinois 60187

If to Grantee: Courthouse Square Community Association

With a copy to: Philip A. Luetkehans
Schrott, Luetkehans & Garner, P.C.
105 East Irving Park Road
Itasca, Illinois 60143

or to such other address as may be designated from time to time by the Parties. Such notice shall be deemed to have been given upon delivery if delivered personally, or two (2) days after it has been deposited in the mail as set forth above, if given by registered or certified mail.

6. **Waiver.** No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

7. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois. The Parties agree that the proper venue for any litigation arising from this Agreement shall be the Circuit Court of DuPage County, Illinois.

8. **Severability.** In the event that any provision in this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or application of this Agreement that can be given effect without the invalid or unenforceable provision or application.

9. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

10. **Entire Agreement.** This Agreement contains the entire understanding between and among the Parties hereto and supersedes any prior understanding and agreements between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

11. **Amendment.** No alteration, modification, or change in this Agreement shall be valid unless executed in writing and recorded in DuPage County, Illinois, by the Parties.

12. **Effective Date.** The provisions of this Agreement shall become effective upon the date this Agreement is filed of record in the office of the Recorder of Deeds for DuPage County, Illinois.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and seals this ____ day of _____, 2014.

[Signature Pages Follow]

GRANTOR:

FOCUS COURTHOUSE, LLC

By: Focus Management, LLC, an Illinois
limited liability company, its sole member

By: _____
Timothy J. Anderson, its Manager

GRANTEE:

COURTHOUSE SQUARE COMMUNITY ASSOCIATION

By: _____
Print Name: _____
Title: _____

STATE OF ILLINOIS)
) S.S.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Timothy J. Anderson, Manager of Focus Management, LLC, which is the sole member of Focus Courthouse, LLC (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2014.

Notary Public

STATE OF ILLINOIS)
) S.S.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be a _____ of **COURTHOUSE SQUARE COMMUNITY ASSOCIATION**, whose name is subscribed to the foregoing Agreement, appeared before me this day in person, and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of the company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2014.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

LOTS 9, 10 AND OUTLOTS F AND G, 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, RECORDED SEPTEMBER 8, 2005, AS DOCUMENT NUMBER R2005-197255, IN THE OFFICE OF THE DUPAGE COUNTY RECORDER, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05 16 318 017
 05 16 318 007

COURTHOUSE SQUARE COMMUNITY ASSOCIATION
2013 BUDGET WORKSHEET

	Current 2013 Budget	Proposed Apartment Categories
ADMINISTRATIVE		
Homeowner Communication	1,150	
Website	820	
Bank Fees/PO Box/Check Stock	0	
Annual report/taxes paid	10	
Miscellaneous Administrative	0	
Accountant Fees/Audit	1,000	
Legal Fees-General Counsel	500	
Tax preparation	225	
Management Contract	12,600	12,600
Insurance Premiums	4,758	4,758

	Total Units	
Midrise Condos	50	
Townhomes	11	
Courthouse Condos	6	
Office Condos	2	
	69	
Apartment	55	44%
	124	

UTILITIES		
Water - Irrigation System	0	
Electric	4,500	4,500
Cable TV	2,040	2,040
Telephone/Communications	625	625

COMMUNITY ROOM AND FITNESS CENTER		
Janitorial Contract	3,600	3,600
Lighting Interior	0	0
Interior Repair - Other	600	600
Exterior Repair - Other	100	100
Supplies (Consummable)	894	894
Carpets/Cleaning	600	600
HVAC	1,250	1,250
Alarm System Repair	100	100
Alarm Testing	100	100
Plumbing	500	500
Painting	1,000	1,000
Drywall Repair	500	500
Locks/Doors	500	500
Hardware/Cleaning Supplies	0	0
Cubhouse Cleaning	0	0
Fitness Ctr Equipment/Furniture	2,500	2,500

GROUNDS		
Holiday Decorations	200	
Landscape Contract	11,200	
Mulch	3,000	
Snow Contract & Salting	17,000	
Landscape Treatments	400	
Tree Care Treatment	2,800	
Tree Care Pruning	2,600	
Turf/shrub replacements	7,500	
Core Aeration	0	
Irrigation Repairs/Maintenance	1,000	
Irrigation Open/Close	1,000	
Front Entrance & Signs	1,000	
Lighting Repairs (Exterior)	100	
Street/Walk/Drive Repair/Maintenance	1,400	
Pest Control	200	

POOL		
Cleaning/Maintenance/Chemicals	4,500	4,500
Chemicals	0	0
Open/Close Pool	1,085	1,085
Contracted Services	0	0
Pool Repairs	1,000	1,000
Pool Administration	250	250

OFFICE ASSESSMENTS		
CHS Office Assessments	18,708	18,708

RESERVE		
Reserve Contribution	5,000	5,000

Note

TOTAL OPERATING EXPENSES	\$120,315	\$ 67,210
		X 44%
		\$ 29,572

Apartment "Share"

Note: The Apartment share of the Reserve Contribution can only be used
for capital improvements / expenditures for the Pool, Community Room
and Fitness Center

