

ORDINANCE NO. F-1880

**AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS,
AUTHORIZING THE MAYOR TO SIGN AND CITY CLERK TO ATTEST TO A
CERTAIN SIXTH AMENDMENT TO A DEVELOPMENT AGREEMENT
REGARDING THE CITY OF WHEATON COURTHOUSE REDEVELOPMENT
PROJECT AREA**

WHEREAS, the City Council of the City of Wheaton, DuPage County, Illinois (the "City"), has heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of the residents of the City that the City undertake a redevelopment project and have heretofore approved a redevelopment plan and designated a redevelopment project area (the "Project Area") for that portion of the City known as the City of Wheaton Courthouse Redevelopment Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and

WHEREAS, the City has previously entered into a Development Agreement (the "Agreement") dated March 21, 2005 with Courthouse Land Development, LLC (the "Developer") regarding said Project Area, amended by: a First Amendment to the Development Agreement entered into on or about January 16, 2007, and a Second Amendment to the Development Agreement entered into on or about June 15, 2010, a Third Amendment to the Development Agreement entered into on or about October 1, 2012, a Fourth Amendment to the Development Agreement entered into on or about January 21, 2014, and a Fifth Amendment to the Development Agreement entered into on or about August 25, 2014; and

WHEREAS, the City and the Developer desire to further amend the Agreement; and

WHEREAS, the proposed Sixth Amendment to the Development Agreement has been and is on file with the City Clerk of the City and it is available for public inspection.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor is hereby authorized to sign and City Clerk is hereby directed to attest to the Sixth Amendment to the Development Agreement between the City and the Developer, attached hereto as Exhibit "A," and, by this reference, incorporated herein as if fully set forth.

Section 2: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 3: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 3rd day of August, 2015.


Mayor

ATTEST:


City Clerk

Roll Call Vote

Ayes: Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo
Councilman Sues
Councilwoman Fitch

Nays: None

Absent: None

Motion Carried Unanimously

Passed: August 3, 2015
Published: August 4, 2015

EXHIBIT A

SIXTH AMENDMENT TO DEVELOPMENT AGREEMENT

This SIXTH AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter referred to as the "SIXTH AMENDMENT") is made and entered into as of the 3rd day of August 2015, by and between the CITY OF WHEATON, an Illinois municipal corporation and home rule unit, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY") and COURTHOUSE LAND DEVELOPMENT, LLC, an Illinois limited liability company (the "DEVELOPER"); the City and Developer being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES."

RECITALS:

A. The PARTIES previously entered into a Development Agreement dated March 21, 2005 (the "AGREEMENT").

B. The AGREEMENT was amended by a First Amendment to Development Agreement dated January 16, 2007 (the "FIRST AMENDMENT"), a Second Amendment to Development Agreement dated June 15, 2010 (the "SECOND AMENDMENT"); a Third Amendment to Development Agreement dated October 1, 2012 ("THIRD AMENDMENT"; a Fourth Amendment to Development Agreement dated January 21, 2014 ("FOURTH AMENDMENT"); and a Fifth Amendment to Development Agreement dated August 25, 2014 ("FIFTH AMENDMENT"); the Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment collectively referred to herein as the "ORIGINAL AGREEMENT".

C. The Parties have agreed to amend the Original Agreement to provide for certain changes to the description of the Project.

D. The City Council of the CITY has determined that this SIXTH AMENDMENT will be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, the Parties hereto agree as follows:

SECTION ONE

INCORPORATION OF RECITALS

The PARTIES hereby confirm the accuracy and validity of their respective representations and recitations set forth in the foregoing recitals and do further acknowledge that they are material to this SIXTH AMENDMENT. Such recitals are hereby incorporated into and made a part of this SIXTH AMENDMENT as though they were fully set forth in this Section One.

SECTION TWO

INTEGRATION OF DEVELOPMENT AGREEMENT

The provisions of this SIXTH AMENDMENT shall be deemed by the PARTIES to be fully integrated into the ORIGINAL AGREEMENT. The ORIGINAL AGREEMENT shall remain in full force and effect except to the extent that it is expressly modified by the terms of this SIXTH AMENDMENT. Should any provision of the ORIGINAL AGREEMENT conflict with any provision of this SIXTH AMENDMENT the provisions of this SIXTH AMENDMENT shall control.

SECTION THREE

AMENDMENTS TO ORIGINAL AGREEMENT

PROJECT Description: The description of the PROJECT set forth in Exhibit "C" of the ORIGINAL AGREEMENT, as amended pursuant to Section 4.02 of the FIFTH AMENDMENT, is further amended in accordance with the provisions of Exhibit "C-1" which is attached hereto and incorporated herein.

IN WITNESS WHEREOF, the Parties hereto have caused this SIXTH AMENDMENT to be executed on or as of the day and year first above written.

CITY OF WHEATON, an Illinois municipal corporation

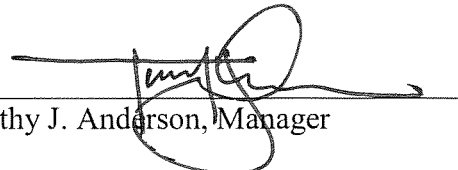
By: 
Mayor

ATTEST:


City Clerk


COURTHOUSE LAND DEVELOPMENT, LLC.
an Illinois limited liability company

By: Focus Courthouse, LLC, an Illinois
limited liability company, Member

By: 
Timothy J. Anderson, Manager

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

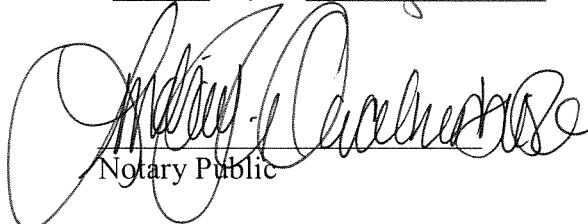
By: Airhart Construction Corp., an Illinois corporation, Manager

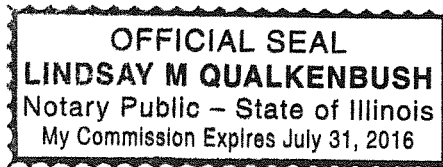
By: 
Court M. Airhart, President

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Michael J. Gresk, Mayor, and Sharon Barrett-Hagen, City Clerk, of the CITY OF WHEATON, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as such Mayor and City Clerk, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of August, 2015.


Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Timothy J. Anderson, personally known to me to be the Manager of FOCUS COURTHOUSE, LLC, an Illinois limited liability company, and personally known to me 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 the said instrument pursuant to authority given by the Members of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of August, 2015.



Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Court M. Airhart, personally known to me to be the President of Airhart Construction Corp., an Illinois corporation, and personally known to me 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 the said instrument pursuant to authority given by the Members of said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12th day of August, 2015.



Notary Public

EXHIBIT C-1

DESCRIPTION OF PROJECT

Airhart Construction, Focus Development and Antunovich Associates have teamed together to formulate a new development Courthouse Square, for National Lewis University's 6.387-acre campus in Wheaton, Illinois. This parcel, adjacent to Wheaton's Downtown Redevelopment District, will expand the Master Plan adopted by the City of Wheaton by providing a European-style residential development that integrates the two historic structures that exist on the campus. One condominium building containing 50 units along with not less than 42 Georgetown-style homes and 153 luxury rental apartments, in conformance with the Amended Planned Unit Development, will be constructed on the campus to a scale that is compatible and respectful of the two historic structures. The historic exterior of the DuPage County Courthouse Building was restored and the interior adapted to accommodate 6 condominium units. The former States Attorneys Building was renovated as a clubhouse for the development and houses two condominium office suites. The existing Jail/Annex Office Building east of the Old DuPage County Building was demolished and the east Façade of the courthouse building uncovered and restored.

