CITY OF WARRENVILLE
DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. **O2017-25**

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF WARRENVILLE AND AIRHART DEVELOPMENT LLC

WHEREAS, the City is a duly constituted and existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a "home rule unit" under Section 6(a) of Article VII of the 1970 Constitution; and

WHEREAS, the City has the authority to promote the health, safety and welfare of the City and its inhabitants, to encourage private development in order to enhance the local tax base, create employment, and ameliorate blight, and to enter into contractual agreements with third persons to achieve these purposes; and

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois (65 ILCS 5/11-74.4-1, et. seq.), as from time to time amended (the **"Act"**), the Mayor and City Council of the City (the "**Corporate Authorities**") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as defined in Section 11.74.4-3(b) of the Act; and

WHEREAS, in accordance with the Act, the Corporate Authorities adopted the following ordinances on June 3, 2013: (1) Ordinance No. 2780, approving the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Plan and Project, dated January 7, 2013 (the "**Redevelopment Plan**"); (2) Ordinance No. 2781, designating the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Project Area (the "**Redevelopment Project**

Area"); and (3) Ordinance No. 2782 adopting tax increment allocation financing for the Redevelopment Project Area; and

WHEREAS, the City owns property in the Redevelopment Project Area (at the southeast corner of Rockwell Street and Stafford Place), consisting of approximately 4.25 acres (the "**Property**"); and

WHEREAS, the City adopted the Old Town/Civic Center Subarea Plan, dated March 2007, (the "**Subarea Plan**") as a component of the City's overall comprehensive plan, to guide future development of the "Civic Center" area of the City (as identified in the Subarea Plan) in which the Property is located; and

WHEREAS, the City believes the implementation of the Subarea Plan and the redevelopment of the Property in accordance with the objectives of the Subarea Plan would eliminate blight, catalyze other desirable development and redevelopment in the Redevelopment Project Area, and serve the needs of the City and the community by increasing housing and employment opportunities for area residents and generating increased tax revenues for the various taxing districts authorized to levy taxes within the Redevelopment Project Area; and

WHEREAS, the City conducted an extensive search process to identify developers with the necessary experience, expertise and financial capability to make all necessary infrastructure improvements to independently acquire and redevelop the Property with a residential use in accordance with the Subarea Plan; and

WHEREAS, the City has expended in excess of Three Million Dollars to acquire the Property, demolish and remove an obsolete and blighted industrial building, and complete the environmental remediation of significant subsurface soil contamination on the Property (collectively, the "**Extraordinary Redevelopment Expenses**") in order to prepare it for

redevelopment in furtherance of the objectives of the Subarea Plan and the Redevelopment Plan; and

WHEREAS, the Corporate Authorities find that the Extraordinary Redevelopment Expenses made it economically unfeasible for a private developer to pay a price for the Property sufficient to discharge the Extraordinary Redevelopment Expenses and acquire and redevelop the Property with a residential use in accordance with the Subarea Plan; and

WHEREAS, Airhart Development, LLC, an Illinois limited liability company (the "**Developer**"), met with the City and proposed implementing the Developer's 27 single-family home concept in accordance with certain design parameters and is prepared to execute and perform the agreement by and between the Developer and the City, in the form of Exhibit A attached hereto and made a part hereof (the "**Redevelopment Agreement**"); and

WHEREAS, on February 8, 2017, the City issued a Request for Proposals for development of the Property, and such Request for Proposals was advertised in the *Daily Herald* on February 8, 2017 and on February 15, 2017, with the Publisher's Certificate for each advertisement attached hereto as Exhibit B; and

WHEREAS, the Request for Proposals afforded respondents a reasonable opportunity to submit proposals as an alternative to the Project Plans and proposal submitted by the Developer but the City received no proposals to develop the Property prior to the published due date for responses; and

WHEREAS, the Corporate Authorities have determined that that the acceptance of the Developer's proposal and the implementation of the Project by the Developer and fulfillment generally of the Redevelopment Plan and Redevelopment Agreement are in the best interests of

the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: **Incorporation of Recitals**. The foregoing recitals to this Ordinance are incorporated in this Ordinance as if set out in full by this reference, and the statements and findings contained therein are found to be true and correct, and are hereby adopted as part of this Ordinance.

SECTION TWO: **Authority**. This Ordinance is adopted pursuant to the provisions of Section 6 of Article VII of the 1970 Constitution of the State of Illinois, as supplemented by Division 74.4 of Article 11 of the Illinois Municipal Code, and all laws amendatory thereof and supplemental thereto.

SECTION THREE: **Approval of Redevelopment Agreement**. The Redevelopment Agreement is hereby approved, subject to any final corrections as the City Administrator shall approve. The Corporate Authorities find that the Redevelopment Agreement is in furtherance of the objectives of the Redevelopment Plan and the City has made a public disclosure of the terms of the Redevelopment Agreement. The Mayor is hereby authorized and directed to execute and deliver the Redevelopment Agreement on behalf of the City, and the City Clerk is authorized and directed to affix the seal thereto and to attest the Redevelopment Agreement.

SECTION FOUR: **Publication**. The City Clerk is hereby authorized to publish this Ordinance in pamphlet form.

SECTION FIVE: **Severability**. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any other provisions of this Ordinance.

SECTION SIX: **Repealer**. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION SEVEN: **Effective Date**. This Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED THIS 1st day of May, 2017, pursuant to a roll call vote as follows:

AYES: Ald. Barry, Goodman, Weidner, Davolos, Aschauer, and Wilson

NAYS: Ald. Hoffmann and Bevier

ABSENT: None

APPROVED THIS 1st day of May, 2017.

David Brummel, Mayor

ATTEST:

Emily Larson, City Clerk

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE CITY COUNCIL OF THE CITY OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, THIS 8 DAY OF MAY, 2017

CITY CLERK

EXHIBIT A

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("**Agreement**"), dated this 2nd day of May, 2017 (the "**Effective Date**"), is made by and between the **CITY OF WARRENVILLE,** DuPage County, Illinois, an Illinois municipal corporation and home rule unit of local government (the "**City**"), and **AIRHART DEVELOPMENT, LLC**, an Illinois limited liability company (the "**Developer**").

RECITALS

WHEREAS, the City is a duly constituted and existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a "home rule unit" under Section 6(a) of Article VII of the 1970 Constitution; and

WHEREAS, the City has the authority to promote the health, safety and welfare of the City and its inhabitants, to encourage private development in order to enhance the local tax base, create employment, and ameliorate blight, and to enter into contractual agreements with third persons to achieve these purposes; and

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois (65 ILCS 5/11-74.4-1, et. seq.), as from time to time amended (the **"Act"**), the Mayor and City Council of the City (the "**Corporate Authorities**") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as defined in Section 11-74.4-3(b) of the Act; and

WHEREAS, in accordance with the Act, the Corporate Authorities adopted the following ordinances on June 3, 2013: (1) Ordinance No. 2780, approving the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Plan and Project, dated January 7, 2013 (the "**Redevelopment Plan**"); (2) Ordinance No. 2781, designating the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Project Area (the "**Redevelopment Project**

Area"); and (3) Ordinance No. 2782 adopting tax increment allocation financing for the Redevelopment Project Area; and

WHEREAS, the City owns property in the Redevelopment Project Area (at the southeast corner of Rockwell Street and Stafford Place), consisting of approximately 4.25 acres, and legally described in Exhibit A hereto (the "**Property**"); and

WHEREAS, the City adopted the Old Town/Civic Center Subarea Plan, dated March 2007, (the "**Subarea Plan**") as a component of the City's overall comprehensive plan, to guide future development of the "Civic Center" area of the City (as identified in the Subarea Plan) in which the Property is located; and

WHEREAS, the City believes the implementation of the Subarea Plan and the redevelopment of the Property in accordance with the objectives of the Subarea Plan would eliminate blight, catalyze other desirable development and redevelopment in the Redevelopment Project Area, and serve the needs of the City and the community by increasing housing and employment opportunities for area residents and generating increased tax revenues for the various taxing districts authorized to levy taxes within the Redevelopment Project Area; and

WHEREAS, the City has expended in excess of Three Million Dollars ($3,000,000) to acquire the Property, demolish and remove an obsolete and blighted industrial building located on the Property, and complete the environmental remediation of significant subsurface soil contamination on the Property (collectively, the "**Extraordinary Redevelopment Expenses**") in order to prepare it for redevelopment in furtherance of the objectives of the Subarea Plan and the Redevelopment Plan; and

WHEREAS, the Corporate Authorities find that the Extraordinary Redevelopment Expenses made it economically unfeasible for a private developer to pay a price for the Property sufficient to discharge the Extraordinary Redevelopment Expenses and acquire and redevelop the Property with a residential use in accordance with the Subarea Plan; and

WHEREAS, the City now desires to transfer title to the Property to the Developer for the consideration shown herein, to implement a redevelopment project in furtherance of the objectives of the Subarea Plan and the Redevelopment Plan; and

WHEREAS, the Developer desires to make all necessary infrastructure improvements (collectively the "**Infrastructure Improvements**") as are required to subdivide the Property into single family lots (each a "**Lot**" and collectively the "**Lots**") and to develop thereon approximately twenty-seven (27) single-family, small-lot detached single-family homes (the **"Dwellings")**, along with related site improvements, all as described in more detail in this Agreement (collectively, the **"Project"**); and

WHEREAS, the Developer has provided to the City the Developer's concept plan attached as Exhibit B-1 and the City has established the design parameters summarized in Exhibit B-2 hereto to describe the general scope and intent of the Project (collectively, the "**Project Plans"),** including the construction styles for "Manor Homes", "Cottage Row Homes" and "Ray Street Homes" as depicted therein) ; and

WHEREAS, the Corporate Authorities find that the implementation of the Project substantially in accordance with the Project Plans would be in furtherance of the objectives of the Subarea Plan and the Redevelopment Plan; and

WHEREAS, on February 8, 2017, the City issued a Request for Proposals for development of the Property, and such Request for Proposals was advertised in the *Daily Herald* on February 8 and 15, 2017; and

WHEREAS, the Request for Proposals afforded respondents a reasonable opportunity to submit proposals as an alternative to the Project Plans and proposal submitted by the Developer, but the City received no proposals to develop the Property prior to the published due date for responses; and

WHEREAS, the Extraordinary Redevelopment Expenses are eligible for reimbursement under the Act; and

WHEREAS, but for the ability to obtain said reimbursement, the Corporate Authorities find that the City would have not funded and completed the Extraordinary Redevelopment Expenses; and

WHEREAS, the Corporate Authorities adopted Ordinance No. O2017-25, approving and authorizing the execution of this Agreement with the Developer, as the best means of furthering the objectives of the Subarea Plan and the Redevelopment Plan while at the same time increasing the assessed valuation of the Property and the City's opportunity to recover the Extraordinary Redevelopment Expenses; and

WHEREAS, in order to induce the Developer to redevelop the Property generally as described in the Project Plans, the Corporate Authorities have determined that, subject to the terms and conditions herein provided, it is in the best interest of the City to convey fee simple title to the Property to the Developer; and

WHEREAS, but for the City incurring the Extraordinary Redevelopment Expenses and agreeing to convey title to the Property on the terms provided in this Agreement, the Corporate Authorities find that the Developer could not successfully undertake the Project; and

WHEREAS, this Agreement has been submitted to the Developer for consideration and review, and the Developer has approved this Agreement; and

WHEREAS, the Corporate Authorities, after due and careful consideration, have determined that the completion of the Project by the Developer and its performance of the agreements and covenants set forth in this Agreement, will be in furtherance of the Redevelopment Plan and Subarea Plan, increase employment opportunities, expand housing options in the City, increase the assessed valuation of the real estate situated within the City, increase the tax revenues realized by the City and the various taxing districts authorized to levy taxes within the Redevelopment Project Area, foster increased economic activity within the City, and otherwise be in the best interests of the City and the health, safety, morals and welfare of its residents and taxpayers.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and promises as contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I

INCORPORATION OF RECITALS

The foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II

MUTUAL ASSISTANCE

The City and the Developer (hereinafter each a "**Party**" and collectively the "**Parties**") agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and in the City's case, the adoption of such ordinances or resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III

DUE DILIGENCE – ZONING APPROVALS

Section 301. City Deliveries – No Further Remediation.

(a) The Developer acknowledges that it has reviewed all necessary and applicable information and reports concerning the City's efforts to identify and then remediate all areas of environmental contamination on portions of the Property with the assistance of the United States Environmental Protection Agency and the Illinois Environmental Protection Agency (IEPA). The reports made available to the Developer (collectively, the "**City Deliveries**") include the following:

(i) City of Warrenville completed IEPA Site Remediation Program Application and Service Agreement Forms DRM1 and DRM2;

(ii) July 2010 Comprehensive Site Investigation/Remediation Objectives Report/Remedial Action Plan;

(iii) February 16, 2012, City of Warrenville Response to January 10, 2010 IEPA review letter of the City's CSI/ROR/RAP, Results of the Supplemental Site Investigation and Amendment to the Remedial Action Plan;

(iv) August 27, 2012, IEPA Site Remediation Program Approval Letter of City's CSI/ROR/RAP;

(v) July, 2014 Remedial Action Completion Report (RACR); and

(vi) December 14, 2015 IEPA letter of no further remediation for residential redevelopment (NFR) on the Property.

(b) The City has submitted and received IEPA – Site Remediation Program approval of the Comprehensive Site Investigation Report/Remediation Objectives Report/Remediation Action Plan (CSIR/ROR/RAP) for subsurface soil contamination on the Property. The City completed the implementation of the approved Remediation Action Plan and received approval of its Remediation Action Completion Report (RACR) from IEPA. On December 14, 2015, IEPA issued its comprehensive letter of no further remediation for residential redevelopment (NFR) on the Property.

(c) The NFR requires engineering controls to exclude exposure pathways in certain cases (such as requiring the installation of a system for each Dwelling to prevent vapor intrusion from a basement). The Developer, at its sole cost, covenants and agrees to abide by all IEPA conditions made part of the NFR as stated therein.

(d) The Developer is hereby deemed to have actual notice of all of the information disclosed or made available or referenced in the City Deliveries, including, without limitation, all information, reports, investigations, violations, site assessments, soil borings, laboratory results and remediation plans.

Section 302. Due Diligence.

(a) The Developer shall pay the City the sum of Twenty Thousand Dollars ($20,000) (the "**First Installment**") upon execution of this Agreement. The Developer shall have the right for a period ending on the sixtieth (60^{th}) day after the Effective Date (the "**Due Diligence Period**") to review the City Deliveries, the NFR and the Title Commitment described below, and to have such studies and investigations of the Property performed as it deems necessary or appropriate, including, surveys, geotechnical and other site investigations (collectively, the "**Due Diligence**"). All Due Diligence shall be performed at the Developer's expense. The Developer is solely responsible for determining the suitability of the Property for the Project.

(b) Before conducting any invasive or destructive tests, studies or examinations, on the Property, the Developer shall first notify and obtain the prior written consent of the City, which shall not be unreasonably withheld or delayed. The Developer, at its sole expense, shall restore the Property to the same condition it was in prior to any such tests, studies, or investigations. Prior to undertaking any such investigations, the Developer will obtain and furnish to the City the insurance coverage required by this Agreement.

(c) Except as expressly provided in Article IV below, the Developer, at its sole cost, shall be responsible for the costs and expenses it incurs to correct on-site soils and to comply with IEPA regulations, including both (i) on-site remediation costs and (ii) increased hauling and disposal costs for soils with some residual level of contamination and/or related vapors that, while falling within IEPA remediation objectives, nevertheless may require disposal off-site at a higher cost than would be charged for soils not affected by residual contamination (collectively, "**Remediation Costs**"). If Remediation Costs exceed Fifty Thousand Dollars ($50,000) in total, then subject to the terms and conditions of Section 408 of this Agreement, the City will reimburse the Developer for 100% of documented and verifiable Remediation Costs above the sum of Fifty Thousand Dollars ($50,000) (the "**Reimbursable Remediation Costs**"). In no case shall the City's Reimbursable Remediation Cost obligation exceed Fifty Thousand Dollars ($50,000). The Developer in no event shall have any claim against the City or offset against the Purchase Price (as defined below) for any matter or thing discovered in the course of its Due Diligence other than

a claim for Reimbursable Remediation Costs to the extent payable in accordance with the terms and conditions of this Agreement.

(d) If the Developer is dissatisfied with its Due Diligence for any reason, the Developer shall have the right to terminate this Agreement, by giving notice of such termination to the City, within five (5) days after the end of the Due Diligence Period. Following such termination (and the Developer's compliance with the provisions of Section 607), the Initial Installment shall be refunded to the Developer and thereafter the Parties shall not have any further liabilities under this Agreement except for the indemnity obligations that expressly survive termination of this Agreement.

(e) If the Developer does not elect to terminate this Agreement at the end of the Due Diligence Period, the Developer shall pay the City the additional sum of Twenty Thousand Dollars ($20,000) (the "**Second Installment**") within ten (10) days after the end of the Due Diligence Period (the First Installment and Second Installment, collectively, the "**Deposit**"). Unless sooner forfeited as provided in this Agreement, the Deposit will be credited against the payment of the Purchase Price, as provided in Article IV below. The City in its discretion may apply the Deposit prior to Closing (defined below) to defray the administrative or other costs and professional fees incurred or to be incurred by the City in connection with this Agreement. After the City's receipt of the Second Installment, the Deposit shall be deemed non-refundable in all events, except upon the occurrence of an Event of Default (defined below) on the part of the City.

Section 303. Title and Survey Review – Permitted Exceptions.

(a) When used herein, the term "**Closing**" shall mean the conveyance of the Property to the Developer or its nominee, in accordance with the terms and provisions of this Agreement. The Closing shall be consummated through a deed and money escrow (the "**Escrow Agreement**"), the terms of which shall be mutually acceptable to the Parties, entered into with the Title Company (defined below) acting as escrow agent.

(b) Within forty-five (45) days after the Effective Date, the Developer, at its expense, shall deliver to the City a survey of the Property meeting the 2011 Minimum Standard Detail

Requirements for ALTA/ACSM Land Title Surveys, prepared by a land surveyor duly licensed in the State of Illinois, dated after the Effective Date (the "**Survey**").

(c) Within twenty (20) days after the Effective Date, the City shall obtain, and furnish to the Developer, an ALTA Owners title commitment ("**Title Commitment**") from Chicago Title Insurance Company ("**Title Company**"), in the amount of the Purchase Price, wherein the Title Company commits to issue its title insurance policy ("**Title Policy**"), showing marketable and insurable title to the Property to be in the City. Copies of all Documents of record evidencing the exceptions to title raised therein shall be provided to Developer along with the Title Commitment. Developer shall have a period of twenty (20) days following receipt of the Title Commitment, documents of record, and Survey in which to review the condition of title and make objections to the City for any title exceptions or survey matters which may be unacceptable to Developer. Within fifteen (15) days following receipt of any such title objection notice from the Developer, the City shall respond to the Developer in writing and either commit to remove such unacceptable title exceptions and cure such survey matters at or prior to Closing or advise Developer that it elects not to so cure or remove such unacceptable title exceptions or survey matters. The absence of any such written notice from the City shall be deemed to be a refusal by the City to cure any unacceptable title exceptions and survey matters raised in Developer's notice. Developer shall then have a period of ten (10) days in which to terminate this Agreement by written notice to the City and, if Developer elects not to terminate this Agreement within such ten (10) day period, the Developer shall be deemed to have accepted any such uncured title exceptions or survey matters. The title exceptions shown in the Title Commitment that are accepted by the Developer (or deemed accepted in accordance with the foregoing provisions) are herein referred to as the "**Preliminary Exceptions**". The Title Commitment shall be evidence of good title as to all matters to be insured by the Title Policy, subject only to matters therein stated as exceptions. The Title Commitment shall contain a specimen endorsement stating that the Title Policy will provide full extended coverage insurance which shall result in the deletion of the following general exceptions: (i) liens for labor or materials, whether or not of record; (ii) parties in possession; (iii) unrecorded easements; (iv) taxes or special assessments not shown by the public records; and (v) survey exceptions.

(d) At the Closing, the Title Policy will be issued in the amount of the Purchase Price and will insure title in the name of the Developer (or its permitted assignee) subject to the Preliminary Exceptions, as well as exceptions for (i) the acts of Purchaser and those parties acting through or for Purchaser and (ii) this Agreement, to be recorded by the City against the Property. The Preliminary Exceptions and the title exceptions noted in this Section 303(d) subject to which the Property shall be conveyed at the Closing are herein collectively referred to as the "**Permitted Exceptions**".

Section 304. Development Entitlements.

(a) Not later than sixty (60) days after the expiration of the Due Diligence Period, consistent with the Project Plans and in furtherance of the Project, the Developer shall file a complete and coordinated application package with the City (the **"PUD Application"**) for approval of all components of the Project including, but not limited to, preliminary and final planned unit development in the R-5 High Density, Single-Family Residential District and preliminary and final plats of subdivision (i.e., by seeking combined preliminary and final PUD and subdivision approvals), including payment of standard City application, review and inspection fees related to zoning, engineering and storm water management. The Developer will prepare and refine detailed development plans, including but not limited to, architectural and engineering design plans, for the Project for its PUD Application. Unless otherwise approved by the City, the Developer's PUD Application will be based generally on the Project Plans.

(b) The Developer will use all commercially reasonable efforts to obtain City approval within 120 days after submission of its PUD Application, such approval to be evidenced by the adoption of necessary ordinances and resolutions by the City Council ("**Final Approval**"). The City agrees it will take all steps necessary to conduct public hearings and meetings to consider the PUD Application and will not unreasonably withhold, delay or condition its approvals, but the Developer is responsible for satisfying all standard requirements and legal standards applicable to the PUD Application, and the Developer acknowledges that municipal approval of a planned unit development customarily involves the imposition of conditions intended to assure the realization of the goals of the development and the minimization of adverse impacts on nearby properties. During such time, the Developer will pay all development review fees as customarily charged

under City ordinances. The City will reasonably grant requests for extending the period during which the Developer may seek approval for development entitlements provided (i) the Developer's application is being prosecuted diligently and in good faith, (ii) the application is likely to be able to satisfy the legal standards for approval of a PUD in the City, and (iii) the reasons for delay do not arise from the Developer's decision to seek a material waiver of the Project Plans. The City, however, shall not be required to grant extensions totaling more than 120 days.

(c) If the Developer is unable to obtain Final Approval on terms and conditions consistent with the terms and provisions of this Agreement, within the time allowed herein to obtain such approval (as the same may have been extended by the City), then, at any time thereafter (and provided such approval is not later obtained), either Party may terminate this Agreement by giving notice to the other. Following such termination (and the Developer's compliance with the provisions of Section 607), the Parties shall not have any further liabilities under this Agreement except for the indemnity obligations that expressly survive termination of this Agreement. The Developer will not be entitled to receive a refund of the Deposit unless the City is found to have acted in bad faith in reviewing and/or withholding approval of the PUD Application.

(d) While pursuing approval of its PUD Application, the Developer will use all commercially reasonable efforts to obtain all governmental and agency approvals (other than from the City) required for the Developer to implement the Project, including the right to commence construction immediately after the Closing, subject to such conditions and terms as may be acceptable to the Developer ("**Development Approvals**"). The Developer will diligently seek to obtain the Development Approvals within forty-five (45) days after obtaining Final Approval. The Parties agree that the approved final subdivision plat (the "**Subdivision Plat**") will not be recorded until after title to the Property has been transferred to the Developer in accordance with this Agreement and all applicable City final development review and inspection fees (the "**Final Entitlement Fees**") have been paid.

ARTICLE IV
TRANSFER CONDITIONS
PURCHASE PRICE, FEES, TAXES AND REIMBURSEMENTS

Section 401. Transfer Conditions. Subject to the terms and conditions herein, the City agrees to convey fee simple title to the Property to the Developer, in consideration of the Developer's agreement to perform each of its obligations pursuant to this Agreement, but only if and provided that the Developer has satisfied the following conditions ("**Transfer Conditions**") within sixty (60) days after Final Approval:

(a) Delivered to the City the Mylar original and such additional copies of the approved, final Subdivision Plat, with all necessary signatures thereon except for the execution thereof by the City, as necessary for recording in the DuPage County Recorder's Office.

(b) Obtained City approval of the final engineering plans for all private infrastructure and public improvements in the nature of subdivision improvements (the "**Required Development Improvements**"), the performance of which will be secured by a letter of credit (the "**Letter of Credit**") pursuant to the City's subdivision ordinance. City approval of plans for the Required Development Improvements means that, except for the payment of all Final Entitlement Fees, the City is prepared to issue excavation, grading, and stormwater permits to the Developer for the Required Development Improvements and no other Development Approvals are required before commencement of construction can occur.

(c) Demonstrated to the City that all Development Approvals have been obtained.

(d) Provided reasonable evidence to the City of equity and/or financing commitment to complete all Required Development Improvements,

(e) Prepared and submitted a declaration of restrictive covenants acceptable to the City, to govern the homeowner's association to be formed to administer the common areas and private shared improvements benefitting the Property (the "**Declaration**") in accordance with Section 504 of this Agreement.

In no event will the Transfer Conditions be deemed satisfied, however, if at the relevant time there shall exist any uncured default on the part of the Developer under this Agreement.

Section 402. Failure to Satisfy Transfer Conditions. If the Developer does not satisfy the Transfer Conditions within ninety (90) days after the date of Final Approval (provided so long as the Developer is diligently and in good faith attempting to satisfy the Transfer Conditions, the Developer shall have one hundred twenty (120) days in which to satisfy the Transfer Conditions) and provided such failure does not arise from the refusal or failure of the City to respond to the Developer's submissions in accordance with its standard practices, then the City shall have the right to terminate this Agreement after first giving the Developer ten (10) days' notice of its intent to terminate, marked prominently to indicate it is a "ten-day notice". The Developer may cure its breach and satisfy the Transfer Conditions during such ten-day final cure period.

Section 403. Closing.

(a) Within fifteen (15) days after all of the Transfer Conditions are satisfied, the Parties will execute the Escrow Agreement, establish a closing escrow with the Title Company and proceed with the Closing. This Agreement shall not be merged into the Escrow Agreement, but the Escrow Agreement shall be deemed auxiliary to this Agreement and, as between the Parties hereto, the provisions of this Agreement shall govern and control. If there is any conflict between the Escrow Agreement and this Agreement, this Agreement shall control. The Parties shall divide the cost of all escrow closing charges attributed to the transaction, except any lender's escrow; all costs of any lender's escrow shall be paid by the Developer. The City will pay the base premium for the Title Policy, and the Developer will pay for any endorsements (other than extended coverage) to the Title Policy.

(b) At Closing, the City shall deliver or cause to be delivered to the Escrow Agent each of the following items:

(i) A duly executed and notarized special warranty deed (the "**Deed**") conveying fee simple title in the Property to the Developer (or nominee), subject only to the Permitted Exceptions;

(ii) The executed ordinance or ordinances that document the City's approval of the Subdivision Plat and final planned unit development documents (the **"Final Approval Ordinances")**;

(iii) The Subdivision Plat, with the City's signature thereon; and

(iv) Such evidence or documents as may be reasonably required by the Developer or the Title Company evidencing the status and capacity of the City and the authority of the person or persons who are executing the various documents on behalf of the City in connection with the conveyance of the Property, or otherwise as may customarily be provided in connection with a commercial real estate closing, including an Owner's ALTA affidavit and GAP Undertaking in such form as the Title Company may reasonably require.

(c) At Closing, the Developer shall deliver to the Escrow Agent the following items:

(i) The sum of Three Hundred Thirty-Five Thousand and no/100 Dollars ($335,000.00) (the "Purchase Price") less the amount of the Deposit.

(ii) The Letter of Credit, which shall be in the form of Exhibit C hereto, in an amount equal to 110% of the cost to complete all Required Development Improvements pursuant to City approved engineer's cost estimate; and

(iii) Payment of all unpaid Final Entitlement Fees (which payment may be made to the City in advance of the Closing outside of the Closing Escrow); and

(iv) Such evidence or documents as may reasonably be required by the City or the Title Company evidencing the status and capacity of the Developer and the authority of the person or persons who are executing the various documents on behalf of the Developer, or otherwise as may customarily be provided in connection with a commercial real estate closing, in connection with the conveyance of the Property.

(d) The conveyance will not require payment of transfer taxes; however, as a joint delivery at the Closing, the Parties will (i) complete and file the appropriate transfer tax declarations showing the exempt nature of the sale and the consideration for the Property in the amount of the Purchase Price and (ii) execute an escrow disbursement statement prepared by the Title Company.

(e) The Escrow Agreement will direct the Title Company to record in the following order of priority in the DuPage County Recorder's Office: (i) the Deed; (ii) the Final Approval Ordinances; and (iii) the Subdivision Plat. Recording charges shall be at the Developer's expense. Pursuant to the Escrow Agreement, the Title Company will issue the Title Policy to the Developer and disburse to the City an amount equal to the Purchase Price, less the Deposit and the City's share of closing costs, and plus the Final Entitlement Fees, to the extent deposited.

(f) Immediately following the Closing, the City shall take steps to remove the Property from its list of tax-exempt City-owned properties, and from and after the Closing the Developer will be responsible for payment of all real estate taxes which thereafter become due and payable in respect of the Property.

Section 404. As-Is Purchase. By accepting the Deed, the Developer acknowledges and agrees as follows:

(a) The Developer agrees to accept title to the Property AS-IS, WHERE-IS with all faults and acknowledges that prior to accepting title to the Property, the Developer had an opportunity to fully consider the purchase of the Property and to conduct a review of the condition and acceptability to the Developer of the Property to the fullest extent the Developer wishes to perform such due diligence. The Developer acknowledges that the Developer had the sole burden to perform any and all review and investigation as the Developer deemed necessary and proper, in the Developer's sole discretion. The Developer accepts all risks of the Property's condition, including without limitation, every circumstance or fact known or unknown, including any fact disclosed in the City Deliveries, and all faults that are undiscovered or unknown at the time of Closing.

(b) The Developer, for itself and its successors in interest, waives and releases the City from any present or future claim(s) arising from or relating to the presence or alleged presence of Hazardous Materials (as defined in Section 908 below) at, on, adjacent to, or under the Property, including without limitation, any claims under or on account of: (i) any federal law described above in the definition of Hazardous Materials, as the same may have been or may be amended from time to time, and similar state or local laws, and any regulations promulgated thereunder; (ii) any other federal state or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with, or otherwise in any manner relates to, environmental matters of any kind; or (iii) the common law. Except for those direct representations expressly set forth in this Agreement by the City, the Developer has not relied upon and specifically disclaims the right to rely upon any representation or warranty, whether express or implied, of the City in this Agreement for the Developer's execution of this Agreement or acceptance of title to the Property.

(c) The terms and provisions of this Section 404 of this Agreement shall survive the Closing.

Section 405. Letter of Credit. The City will grant **r**eductions in the Letter of Credit to the Developer only in accordance with the City's subdivision ordinance, upon completion of portions of the Required Development Improvements. The Developer agrees that, notwithstanding the certification by the City engineer of the completion of applicable portions of the Required Development Improvements, the Letter of Credit shall not be reduced below the amount of maintenance security then required after the City's acceptance of any public improvements for the Project (the maintenance security period shall be 2 years after the City's acceptance).

Section 406. Impact and Recapture Fees. School, park and library impact fees shall be those as stated on Exhibit D attached which shall be fixed for the term of this Agreement. The Manor Homes on lots 4-14 and Cottage Row Homes on Lots 15 through 27 in the Project Plans will pay fees assessed as payable for attached homes, and the Ray Street Homes will pay fees assessed as payable for detached homes. The impact fees imposed will be paid at the time of individual building permit approval. There shall be no other impact fees imposed other than as stated on Exhibit D with the exception of any applicable DuPage County Transportation Impact Fees. However, during the term of this Agreement, if any such school, park and/or library fees generally

applicable to all properties in the City or to any particular type of work are reduced, the fees applicable to the Property and to the type of work being done on the Property shall be reduced correspondingly. There shall be no recapture fees due or to be paid by Developer in relation to the Project.

Section 407. Municipal Fees. The Developer shall pay the City's standard building permit fees, water and sanitary sewer service connection fees, engineering and legal consulting fees, and other applicable fees and costs, payable in accordance with the fees and costs required under City ordinances existing as of the Effective Date. However, during the term of this Agreement, if any such fees generally applicable to all properties in the City or to any particular type of work are reduced, the fees applicable to the Property and to the type of work being done on the Property shall be reduced correspondingly.

Section 408. Reimbursable Remediation Costs. The City shall pay the amount of Reimbursable Remediation Costs submitted by Developer with detailed and auditable records supporting the claim and confirmed by the City by first reducing the amount of any City permit fees then remaining to be paid. Any amount of Reimbursable Remediation Costs that cannot be recovered in this manner shall be deemed a post-closing credit to the Developer against the Purchase Price, and shall be payable by the City only out of, and to the extent received from, real estate tax increment revenues deposited in the City's tax allocation fund for the Old Town/Civic Center TIF District #3 as a result of the incremental tax revenues generated by the tax parcels comprising the Property as certified by the DuPage County Clerk. The City shall apply 100% of the incremental revenues so received and not remitted to satisfy statutorily required payments to the School and/or Library District to make such reimbursement to the Developer of any unpaid Reimbursable Remediation Costs.

Section 409. Real Estate Taxes.

(a) The Developer agrees that it shall pay, when due, any and all real estate taxes, and back-up special service area taxes with respect to the Project and the Property, together with all improvements thereon. Failure to timely pay said taxes and/or special assessments shall constitute

a breach of this Agreement, subject to the notice and cure provisions set forth in Article VI of this Agreement.

(b) The Developer acknowledges that the Project is within the Redevelopment Project Area and that the City intends to seek reimbursement for certain eligible redevelopment project costs (as defined in the Act). Therefore, the Developer agrees that if any claim or appeal contesting the validity or amount of any real estate property tax assessment for the Property is filed by Developer, the Developer shall endeavor to provide notice of such claim or appeal, together with copies of all documents filed in connection with such claim or appeal, to the City within seven (7) days of the date of filing; provided, however, that that such notice obligation shall not be binding on any future homeowner of any Dwelling constructed on the any Lot comprising the Property. The City shall have the right to contest any such claim or appeal.

ARTICLE V
CONSTRUCTION AND LEGAL REQUIREMENTS

Section 501. Redevelopment Project.

(a) Subject to the provisions of Section 501(c) below, the Developer agrees that the final building and construction plans for all building and site improvements for the Project shall comply with the rules, regulations, and ordinances of the City (including but not limited to the City of Warrenville City Code, Zoning Ordinance, Subdivision Control Ordinance, building, electric, plumbing and fire codes adopted by the City of Warrenville City Code, and other regulations that are applicable to the Project) and all other applicable federal, state, county, or administrative laws, ordinances, rules, regulations, codes and orders (collectively, the **"Legal Requirements"**) relating in any manner to the Project, including, without limitation, all environmental laws, the Americans With Disabilities Act, and the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*). The final construction plans approved by the City, together with all plans approved pursuant to the Final Approval, shall constitute the "**Final Project Documents**". The Developer shall construct the Project or cause the Project to be constructed in accordance with the Final Project Documents, the terms and conditions of this Agreement and all Legal Requirements. The City may

administratively approve minor modifications to the Final Project Documents, as provided for under the City's Municipal Code and Zoning Ordinance.

To clarify certain provisions of this Section 501(a), the Developer acknowledges that the Illinois Department of Labor currently takes the position as a matter of its enforcement policy that the TIF financing of the Project under this Agreement does not subject the Project to the Prevailing Wage Act unless the Project also receives funding from another public source. The City makes no representation as to any such application of the Prevailing Wage Act to the Project, and any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent subsequently found to be applicable by any legal authority having jurisdiction, shall not be deemed an "Event of Default" under this Agreement. Notwithstanding the foregoing sentence, the Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

(b) The Parties agree and acknowledge that development of the Project in accordance with the Project Documents will be in furtherance of the Redevelopment Plan and the Act. The Developer acknowledges and covenants that it is not requesting and will not request that any incremental tax revenues from the Redevelopment Project Area be paid to the Developer, except as provided in Section 408 of this Agreement.

(c) The Zoning, Building, Fire and Life Safety Codes currently in effect in the City (the "**Current Codes**") will be the codes under which this Project will be built unless otherwise agreed to under this Agreement. The Developer acknowledges the City is in the process of adopting the 2015 International Residential Code and the 2015 International Fire Code (collectively the "**2015 Codes**"). The Developer agrees it will comply with the provisions of the 2015 Codes, and any local amendments the City adopts in conjunction with its adoption of the 2015 codes so long as said amendments are not inconsistent with the local amendments contained in the Current Codes. Further, the City and Developer agree that individual fire suppression systems will not be required in individual single family homes in this development that do not exceed four stories or 40 feet in height (measured to the mid-point of the roof), and comply with the Exterior Wall requirements of Section R302.1 of the 2006 International Residential Building Code. All

ordinances, regulations, and codes of the City, including, without limitation those pertaining to subdivision controls, zoning, building requirements, official plan, and related restrictions, as they presently exist; except as amended, varied, or modified by the terms of this Agreement, shall apply to the Property and its development for a period of time of seven (7) years from Closing (hereinafter the "**Code Lock-in Period**"). Any agreements, or additional regulations which are subsequently enacted by the City shall not be applied to the development of the subject Property except upon the written consent of the Developer during the Code Lock-in Period. After the Code Lock-in Period, the Property and its development will be subject to all ordinances, regulations, and codes of the City in existence on, or adopted after, the expiration of the Code Lock-in Period.

Section 502. Construction Commencement and Completion.

(a) The Developer shall be responsible for funding (or borrowing) and paying all costs necessary to construct and complete the Project. The Developer covenants and agrees to commence construction of the Required Development Improvements within 180 days after the date of Closing, weather permitting, and thereafter will diligently complete all subdivision improvements, with the exception of the final lift of street asphalt, sidewalks and parkway trees that are related to the completion of corresponding residential units, within one (1) year after the issuance of the first building permit. The Developer covenants and agrees to complete and obtain occupancy permits for at least twenty-four (24) Dwellings prior to the fifth (5^{th}) anniversary date of the issuance of the first building permit (the "**Completion Date**"). The foregoing time limitations are subject to Force Majeure in accordance with Section 608 of this Agreement but shall include the amount of time delay caused by slowing sales as a result of adverse market conditions that may generally exist in the DuPage County market and which are beyond the control of the Developer and which delay the sale of Dwellings and completion in accordance with prudent and generally accepted business practices in the local residential home industry. The Developer shall document the market absorption data and generalized adverse market conditions, and the City shall not unreasonably refuse to grant extensions in the Completion Date to reflect such conditions.

(b) If the Developer has not completed and received certificates of occupancy for a minimum of 24 Dwellings on or before the Completion Date, as may be extended pursuant to Section 502(a) above), for each Dwelling less than the number of 24 Dwellings completed (the

"**Unoccupied Dwellings**"), the Developer will pay to the City an annual delay payment equal to Two Thousand Five Hundred Dollars ($2,500) times the number of Unoccupied Dwellings. Such delay payments shall be calculated and paid, in advance, for the 12-month period, commencing on the Completion Date and on each anniversary thereof, so long as Unoccupied Dwellings exist. For example, if 21 Dwellings are completed on the Completion Date, the Developer will pay to the City the sum of Two Thousand Five Hundred Dollars ($2,500) x 3 = Seven Thousand Five Hundred Dollars ($7,500), as an advance payment covering the year that ends on the first anniversary of the Completion Date.

(c) Subject to the terms, conditions and provisions provided below, the Developer has the following general responsibilities (which are not all inclusive) for the planning, design, development, construction and installation of the Project (with the technical assistance of such qualified outside consultants as the Developer, in its discretion, may retain):

(i) Securing all authorizations, permits and licenses, including those of a temporary nature, as may be necessary for the construction and intended use of the Project.

(ii) Providing, either alone or in conjunction with the Developer's advisers and consultants, the appropriate coordination of all planning and construction of the Project, including the directing and scheduling of construction, all field inspections, tests, surveys and other activities related to the Project.

(iii) Providing qualified field personnel for inspecting and reviewing the Project progress and construction of the Project, including final inspection and certification by Developer that, to the best of its knowledge, all work, as constructed, conforms with the approved Final Project Documents.

(iv) Providing documentation to the satisfaction of the City of all contractor licenses.

Section 503. Compliance with Ethics and Contracting Laws.

(a) Without limiting the generality of the Legal Requirements described in Section 501, the Developer further certifies that the Developer:

(i) Is not barred from contracting with any unit of state or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 33E-4;

(ii) Shall comply with the Illinois Drug Free Work Place Act;

(iii) Shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights;

(iv) Shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 *et seq*.);

(v) Any construction contracts entered into by the Developer relating to the construction of the Project shall require all contractors and subcontractors to comply with the Illinois Fair Employment Practices Act;

(vi) The Developer is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the City; and

(vii) The Developer shall comply with all applicable federal, state and county laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. The Developer agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and further agrees to make all required withholdings and deposits therefore. The Developer agrees to maintain full compliance with changing government

requirements that govern or apply to the construction of the Project. The Developer understands and agrees that the most recent of such federal, state and county laws and regulations will govern the administration of this Agreement at any particular time and may be established after the date of the Agreement has been executed and may apply to this Agreement and the Project. Any lawsuit or complaint of violation of laws that is received by the Developer relative to this Agreement or the Project shall be immediately forwarded to the City Administrator.

Section 504. Homeowner Declaration and Special Service Area

(a) Before conveyance of any lot to a third party, Developer shall finalize the Declaration with such changes as may be approved by the City and cause the Declaration to be recorded in the DuPage County Recorder's Office. The Declaration will run with and burden all Lots in the Property (but excluding the three Lots to be improved with detached, single family homes on Ray Street, referred to as the "Ray Street Homes"). The City shall be a third-party beneficiary of the Declaration and be granted the right (without the obligation) to bring a suit to enjoin performance by the homeowner's association of its duties and obligations.

(b) Within 120 days after the Closing, the City may adopt an ordinance proposing formation of a special service area under the Special Service Area Tax Law consisting of the Lots forming the Property (but excluding the Ray Street Homes), to act as back-up revenue source for maintaining, repairing and replacing the private access drives (but only the sections that dead-end) and the storm water management system serving the Project (the "**SSA**"). The ordinances proposing and establishing the SSA will state that the City will adopt a levy to pay the costs of such maintenance, repairs and replacements only if the homeowner's association requests such funding or fails to perform the duties described in the Declaration. A tax levy so adopted shall provide for ad valorem taxes to be extended upon the equalized assessed value of all taxable lots in the SSA, unless the Developer requests and the establishing ordinance is able to provide for

levies to be extended based on a special tax roll. The Developer will support the City's actions in forming the SSA. Although the Ray Street Homes will not be part of the SSA, the Developer will provide for a permanent easement to be prepared and recorded, granting the Ray Street Homes an easement to discharge storm water into the storm water management system located on the balance of the Project (the "Storm Water Easement"). The Storm Water Easement shall be subject to the reasonable approval of the City and shall be recorded prior to the first conveyance by the Developer of any lot in the Project.

Section 505. Release and Indemnification.

(a) The Developer covenants and agrees to indemnify, defend and hold harmless the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages and claims, including but not limited to those that are based on tort law, wrongful death and/or a personal injury claim, suit or action and/or any relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future, and all costs and expenses, including but not limited to reasonable attorney's fees, court costs and expenses, suffered or incurred by the City which are caused as a result of (i) claims of third parties arising from the failure of the Developer to comply with any of the terms, covenants or conditions of this Agreement, or (ii) the failure of the Developer to pay any contractors, subcontractors or materialmen in connection with the Project, or (iii) material misrepresentations or omissions of the Developer relating to the Project or this Agreement which are the result of information supplied or omitted by the Developer or by its agents, employees, contractors, or persons under acting the control or at the request of the Developer, or (iv) the failure of the Developer to cure any material misrepresentations or omissions of the Developer in this Agreement, or (v) any claim or cause of action for injury or damage brought by any third party arising out of the construction or operation of the Project by the Developer (individually, "**Loss**" and collectively, "**Losses**"). The provisions of this Section shall not apply to a Loss that arises out of intentional misconduct on the part of the indemnified party seeking indemnification, or loss or portion thereof, that arises, in whole or in part, out of negligence on the part of such indemnified party, but only to the extent such

indemnified party's misconduct or negligence contributed to the Loss, or that the Loss is attributable to such indemnified party's misconduct or negligence.

(b) The Developer releases from and covenants and agrees that the City and its elected or appointed officers and officials, trustees, agents, volunteers, representatives and/or employees shall not be liable for any Losses.

(c) The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

Section 506. Insurance.

(a) Prior to Closing, the Developer obtain and continuously maintain insurance on the Property and the Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in Subsection (i) below prior to the commencement of construction of any portion of the Project as it is to be built:

(i) Builder's risk insurance, in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy, provided that the Builder's risk insurance will be obtained for portions of the Project only as they are to be constructed.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Developer's/Contractor's Policy naming the City and its officers, agents and employees as additional

insureds, with limits against bodily injury and property damage of not less than Five Million Dollars and no/100 Dollars ($5,000,000.00) for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis. The City shall be named as an "additional insured" with respect to such policy and protected in accordance with an additional insured endorsement in form and content satisfactory to the City, such that the City and the Developer are protected against any liability incidental to the use of or resulting from any claim from injury or damage occurring in or about the Project or the improvements or the construction and improvement thereof. Such liability policy shall be primary and non-contributory.

(iii) Workers compensation insurance, with statutory coverage.

(b) Continuity of Insurance. All insurance required in this Section 506. shall be obtained and continuously maintained through responsible insurance companies selected by Developer that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section 506, cancellation relative to each policy shall be as provided by the policy; however, the City must be named as a cancellation notice recipient. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section 506. In lieu of separate policies, the Developer, or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required.

Section 507. Assignment.

(a) Except as provided herein, the rights and obligations of the Developer under this Agreement shall not be assigned to any person or entity (including any assignment solely for collateral purposes as provided in Article VIII), and any other assignment in violation of the foregoing shall be null and void. By joining in the execution of this Agreement, AIRHART CONSTRUCTION CORP., an Illinois corporation, which is the sole member of the Developer,

does hereby agree to guarantee the payment and performance of each and every of the Developer's obligations under this Agreement and shall be liable to the City for the performance of the obligations and duties set forth in this Agreement on the part of the Developer.

(b) The City, in its sole and absolute discretion, may withhold its consent to any assignment of the Developer's rights and obligations under this Agreement to any party, until such time as all Requirement Development Improvements have been completed, the public improvements included therein have been accepted by the City, and the Letter of Credit has been reduced to the amount of maintenance security then required after the City's acceptance of any public improvements for the Project.

(c) After completion of the Required Development Improvements as described above, with the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, all of the rights and obligations of the Developer under this Agreement may be assigned to a new developer (an "**Assignee**"), provided that the Developer presents reasonable documentation to the City evidencing its satisfaction of the following criteria. Upon any request by the Developer for consent to such an assignment, (i) the Developer shall provide such information as may reasonably be requested to indicate that the construction and management of the Project will continue in a manner that achieves the goals and objectives of the Redevelopment Plan, (ii) that the Assignee has sufficient managerial and financial capacity to complete the Project; and (iii) the Assignee shall have executed and delivered to the City an instrument stating that such Assignee has read this Agreement and agrees to be bound by its terms and assumes all of the obligations of the Developer from and after the date of the transfer. Upon consummation of a transfer complying with the provisions of this Section 507(c), the Developer shall be relieved from any liability under this Agreement arising from and after the date of such transfer, except that the Developer shall remain liable for its indemnifications and covenants under Section 505.

(d) The foregoing prohibition on assignment shall not preclude the granting of easements, licenses or rights of way to utility companies for purposes of implementing the Project.

(e) Each reference to the Developer in this Agreement shall be deemed to include the successors and permitted assigns of the Developer under this Agreement, including the person or

persons acquiring all or a portion of the interest of such members and any shareholders, members or partners of any successor or permitted assign of the Developer.

ARTICLE VI
REMEDIES FOR BREACH OF AGREEMENT

Section 601. Events of Default. The following shall be Events of Default with respect to this Agreement:

(a) If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand or request made by the Developer, in writing and delivered to the City pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the City.

(b) Default by the Developer in the performance or breach of any material covenant contained in this Agreement that continues after written notice thereof from the City; provided, however, that such default shall constitute an Event of Default only if the Developer does not remedy the default within fifteen (15) days after such notice from the City, with respect to any monetary obligation or testing failure, or within ninety (90) days after notice from the City, with respect to any default in the performance or breach of any other material covenant contained in this Agreement.

(c) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, (or similar official) of the Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

(d) The commencement by the Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by the Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.

(e) Default by the Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement concerning the existence or structure of the Developer; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the City.

(f) The Developer stops work for more than ninety (90) consecutive days after commencement of the construction of the Required Development Improvements for any reason other than (i) Force Majeure, (ii) litigation brought against the Developer or the City challenging approval or construction of the Project, and which litigation delays completion of the Required Development Improvements, (iii) winter weather conditions that limit construction activities, or (iv) if the Developer is ahead of its planned construction schedule.

(g) The Developer materially fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not, within thirty (30) days after written notice from the City, remedy the default.

Section 602. City Events of Default. The following shall be Events of Default with respect to this Agreement:

(a) If any material representation made by the City in this Agreement, or in any certificate, notice, demand or request made by the City, in writing and delivered to the Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default within thirty (30) days after written notice from the Developer.

(b) Failure of the City to promptly issue a building permit to Developer following payment of the applicable permit and impact fees; provided, however, that such default shall constitute an Event of Default only if (i) the Developer shall have submitted a full and complete permit application meeting the requirements of City ordinances and (ii) if the City does not remedy the default within thirty (30) days after written notice from the Developer.

(c) Default by the City for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default within thirty (30) days after written notice from the Developer.

Section 603. Pre-Trial Resolution of Disputes. The Developer and the City agree to address disagreements and disputes arising out of or related to this Agreement or the breach thereof through the procedures set forth in this Section 603 before resorting to legal proceedings. If the Developer and the City are unable to resolve the relevant issue in a manner that meets the interests of both Parties, the Parties agree to submit such disagreement or dispute identified in the notice specifying the Event of Default to a neutral independent mediator for non-binding mediation. The American Arbitration Association rules for mediation of commercial disputes shall govern such mediation. Either Party may initiate the request for mediation. The mediation proceeding shall be conducted in Chicago, Illinois and shall commence within ten days after the initiating Party initiates a request. The mediation shall not extend beyond two days unless the Parties otherwise agree in writing. Any agreement reached in mediation shall be reduced to writing and may be enforced in any court having jurisdiction thereof. Nothing in this Section 603 shall prevent the City from taking immediate action to enforce any building, health, safety or similar code violations.

Section 604. Remedies for Default. In the case of an Event of Default hereunder:

(a) Specific Performance. The non-defaulting Party may enforce or compel the performance of this Agreement in law or in equity, by suit, action, mandamus, or any other proceeding, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement; provided, however, that (i) at the request of either Party, the Parties shall first attempt to resolve any dispute pursuant to the provisions of Section 603, except when immediate action by the City is allowed as set forth therein, and (ii) the City shall have no right to compel specific performance of this Agreement against the Developer for any Event of Default by Developer occurring prior to Closing or relating to any failure by Developer to close on the acquisition of the Property, except that the City may compel the Developer to execute and deliver, upon request of the City, a Termination Agreement in the form required by Section 607 below, and the City may compel the Developer to honor its indemnifications and covenants under Section 505.

(b) Termination Before Closing. The Parties retain the right to terminate this Agreement before the Closing as provided in Articles III and IV above. In the case of any continuing Event of Default by a Party before the Closing, and its failure to cure such default after due notice and within the time period provided for in this Agreement, the non-defaulting Party shall have the right, thirty (30) days after notice to the defaulting Party indicating its intent to terminate, to terminate this Agreement.

(c) Termination After Closing. In the case of any continuing Event of Default by the Developer occurring after the Closing that has prevented or will prevent the completion of the Project and the accomplishment of the goals of the Redevelopment Plan, the City shall have the right, thirty (30) days after notice to the Developer indicating its intent to terminate, to terminate this Agreement by action of the Corporate Authorities, and in such case the City shall possess all rights to use eminent domain to acquire the Property, as if this Agreement had never been executed. The Developer shall not have the right to terminate this Agreement after the Developer has accepted the conveyance of title to the Property from the City.

(d) Reinstatement to Prior Position. In case either Party shall have proceeded to enforce its rights under this Agreement through legal proceedings, and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

(e) Self-help; Withholding Permits. In the case of an Event of Default by Developer in the completion of the Required Development Improvements, and its failure to cure such default after due notice and within the time frames provided for in this Agreement, in addition to any other remedies at law or in equity, the City shall have the right (but not the obligation) to take any action as in its discretion or judgment will be necessary to cure such Event of Default and is hereby granted license to enter upon the Property for the purpose of effectuating the cure (in which event the Developer is required to reimburse the City for all costs and expenses reasonably incurred by it in connection with the action to cure the breach, unless such costs have been otherwise drawn by the City under the Letter of Credit). In addition to every other remedy permitted by law or this Agreement for enforcement of the terms of this Agreement, the City shall be entitled to withhold issuance of building permits and certificates of occupancy for any and all buildings and structures on the Property at any time when the Developer has failed or refused to fulfill any of its material obligations under this Agreement, but the withholding of such permits and certificates of occupancy shall not be exercised in the case of buildings and structures in the Project that can proceed to completion without compromising the City's ability to obtain correction of the Developer's defaulted obligations under this Agreement.

(f) Lien for Unpaid Amounts. Any payment required of the Developer under the terms of this Agreement shall be a lien upon the Property which may be foreclosed in the same manner and with the same effect as in the foreclosure of a mortgage upon real estate, subject however to the prior rights and claims of any holder of a deed of trust, mortgage or similar encumbrances on the Property securing loans, advances or extension of credit to finance or from time to time refinance all or part of the Project.

(g) No Personal Liability for City Persons. Notwithstanding the provisions of Section 604(a) above or elsewhere in this Agreement to the contrary, the Developer agrees that it will not seek and does not have the right to seek to recover a judgment for monetary damages (i) against any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys of the City, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement or (ii) against the City on account of any negotiation, execution or breach any of the terms and conditions of this Agreement, except for damages actually incurred by the Developer as a direct result of the breach by the City.

(h) No Personal Liability for Developer Persons. Notwithstanding the provisions of Section 604(a) above or elsewhere in this Agreement to the contrary, the City agrees that it will not seek and does not have the right to seek to recover a judgment for monetary damages (i) against any officers, employees, agents, representatives, engineers, or attorneys of the Developer, on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement or (ii) against the Developer on account of any negotiation, execution or breach any of the terms and conditions of this Agreement, for exemplary, consequential or punitive damages resulting from a breach by the Developer.

Section 605. No Waiver by Delay or Otherwise. Any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, or the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

Section 606. Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise

of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

Section 607. Result of Termination. If the Developer or the City terminates this Agreement, in any circumstance when such termination is permitted hereunder, the Developer shall deliver copies of any and all third-party reports, tests, assessments, evaluations or studies which Developer prepared or obtained during the course of its Due Diligence; and, if this Agreement is terminated after the Developer submitted its PUD Application, the Developer shall provide to the City, at no cost and without representation or warranty of any kind, electronic and CAD files for the Survey, PUD plans, Subdivision Plat and, if prepared, the final engineering plans and specifications for the Required Development Improvements, and shall grant the City any and all rights the Developer may have in such plans, with the right to use them solely for improvements on the Property. The Developer agrees to use commercially reasonable efforts to retain such rights in such plans as will enable the City to use them solely for purposes of constructing or repairing the Project, subject to the indemnity with respect to future use set forth below. In no event shall Developer be obligated to provide the City with copies of or rights in any internally prepared or proprietary materials relating to the Property. The City agrees in connection with any such use that the City shall indemnify, defend and hold harmless the Developer and its consultants, engineers, surveyors from any liability resulting from such future use. Upon termination of this Agreement (when such termination is permitted hereunder), each Party, upon request of the other, shall forthwith execute and deliver an agreement confirming the termination of this Agreement in the form of Exhibit E hereto (the **"Termination Agreement"**), and upon the recording of such Termination Agreement, the Parties shall not have any further liabilities under this Agreement except for the indemnity obligations that expressly survive termination of this Agreement.

Section 608. Force Majeure. Time is of the essence of this Agreement; however, neither the City nor the Developer shall be deemed in material breach or default of their respective obligations under this Agreement, and the time for performance of obligations hereunder shall be extended in the event of any delay is caused in whole or in part to war, acts of God, strikes, labor disputes, weather conditions (beyond those of greater severity and duration than normal for the time of year), inability to procure materials, delay in issuance of necessary permits or authorizations by any

governmental body, including but not limited to the City, through no fault of the Developer or similar causes beyond the reasonable control of such Party (**"Force Majeure"**). If one of the foregoing events shall occur or either Party shall claim that such an event shall have occurred, the Party to whom such claim is made shall investigate same and consult with the Party making such claim regarding the same and the Party to whom such claim is made shall grant an extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure, provided that the failure of performance was reasonably caused by such Force Majeure and could not have been avoided by the exercise of due care by the Party making such claim. Force Majeure does not include economic hardship, commercial or economic frustration of purpose or failure by a contractor to perform (except by events constituting Force Majeure as to the contractor). The City shall not be obligated to grant extensions for Force Majeure caused by weather conditions unless such weather conditions are unusually severe or abnormal considering the time of year.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 701. Developer's Representations and Warranties. The Developer represents and warrants that:

(a) It is a duly organized and validly existing limited liability company under the laws of the State of Illinois authorized to do business in Illinois. The Developer has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by authorized members of the Developer and is legally binding upon and enforceable against the Developer in accordance with its terms.

(b) The Developer is not a party to any contract or agreement or subject to any charter, operating agreement, article of organization or other limited liability company restriction which materially and adversely affects its business, property or assets, or financial condition. Neither the execution and delivery of this Agreement nor compliance with the terms of this Agreement will conflict with, or result in any breach of the terms, conditions or restrictions of, or constitute a

default under, or result in any violation of, or result in the creation of any liens upon the properties or assets of the Developer pursuant to, the operating agreement or articles of incorporation of the Developer, any award of any arbitrator or any agreement (including any agreement with members), instrument, order, judgment, decree, statute, law, rule or regulation to which the Developer is subject.

(c) There is no action, suit, investigation or proceeding pending, or to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, or before any court, arbitrator, or administrative or governmental body, nor has the Developer received notice in respect of, nor does it have any knowledge of, any default with respect to any judgment, order, writ, injunction, or decree of any court, governmental authority or arbitration board or tribunal, which in either case might reasonably be expected to result in any material adverse change in the business, condition (financial or otherwise) or operations of the Developer or the ability of the Developer to perform its obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action.

(e) The Developer has filed all federal, state and other income tax returns which, to the knowledge of the officers of the Developer, are required to be filed, and each has paid all taxes as shown on such returns and on all assessments received by it to the extent that such taxes have become due, except such taxes as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles. The Developer knows of no proposed additional tax or assessment against it by any governmental authority that would be reasonably likely to have a material adverse effect on the business, condition (financial or otherwise) or operations of the Developer.

(f) The Developer has, or is able to obtain, funds in an amount not less than that required to complete construction of the Project.

Section 702. City Representations and Warranties. The City represents and warrants that:

(a) The City is a municipal corporation under the laws of the State of Illinois with power and authority under its home rule powers and the Act to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

(b) To the best of its knowledge and belief, the execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of, or constitute a default under, any agreement, contract, lease, mortgage, indenture, deed of trust or other instrument to which the City is a party, nor violate any federal, state or local ordinance or statute.

(c) There is no action, suit or proceeding pending, or to the knowledge of the City threatened, against or affecting the City, at law or in equity, or before any governmental authority which, if adversely determined, would impair the City's ability to perform its obligations under this Agreement.

(d) All actions of the Mayor and City Council of the City required to be taken to authorize execution of this Agreement have been validly and duly taken in accordance with law and the officers of the City signing this Agreement have been duly authorized to execute this Agreement on behalf of the City.

(e) The Project as set forth in this Agreement will not result in the displacement of residents from inhabited units under Section 11-74.4-3(n)(5) of the Act.

(f) The City represents and warrants that it does not have any actual knowledge of the presence of (i) any hazardous environmental substance on the Property other than as indicated in the environmental reports provided by the City to Developer or (ii) any underground storage tanks on the Property not already removed by the City. Further, the City represents that the underground storage tank it has removed from the Property was removed in conformance with applicable State of Illinois laws and requirements. The term actual knowledge, when referring to the City, shall refer only to the current actual (as opposed to implied, imputed or constructive) knowledge of John Coakley, City Administrator, and Ronald Mentzer, Community Development Director, who are responsible for negotiating the development of the Property and are the persons who coordinated

the City's efforts to obtain the NFR for the site and are most likely to be aware of all material matters related thereto. Actual knowledge shall not include the knowledge, actual or implied, of any official, officer, employee, independent contractor, or agent of the City or impose any duty upon the individuals named above to investigate the matter to which actual knowledge or absence thereof pertains. Notwithstanding anything to the contrary set forth in this Agreement, the foregoing individuals shall not have any personal liability with respect to any matters set forth in this Agreement or any of representations and/or warranties herein being or becoming untrue, inaccurate or incomplete. The foregoing representations shall not survive the closing and delivery of deed to the Property.

Section 703. Disclosure. In accordance with Illinois law, 50 ILCS 105/3.1, simultaneously with the execution of this Agreement by the Parties, the Developer or an authorized managing member thereof shall submit a sworn affidavit to the City disclosing the identity of every owner and beneficiary who shall obtain any interest, real or personal, in the Project, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation after having obtained such an interest in the Project or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the Developer or its managing agent that there is no readily known individual who shall obtain a greater than 7½% percent interest, real or personal, in the Developer or the Project. The sworn affidavit shall be substantially similar to the one described in Exhibit F hereto. Said affidavit shall be updated, as necessary.

ARTICLE VIII
ASSIGNMENT OF AGREEMENT – PROVISIONS FOR LENDERS

Section 801. Right to Collaterally Assign. At any time after the date of this Agreement, the Developer may assign its interest in and to this Agreement for collateral purposes only to any lender for the purpose of inducing such lender to provide funds to the Developer in connection with the performance of its duties under this Agreement and may grant or enter into mortgages, deeds of trust, or other form of financing conveyances relating to the Property for the purpose of securing loans or funds to be used for financing the construction of the Project, provided that such lender agrees in writing with the City that the collateral assignment is subject to the terms and conditions of this Article VIII. The Developer acknowledges that any such form of financing

conveyance shall not relieve it from any of its obligations or responsibilities hereunder unless the City, specifically, and in writing, releases the Developer from any such obligation or responsibility. The Developer shall identify to the City the name and address of any Lender to whom it has collaterally assigned this Agreement (each such party, a "**Lender**" hereunder).

Section 802. Lender Option to Cure Default. Whenever the City shall deliver any notice or demand to the Developer with respect to any alleged breach or default by Developer hereunder, the City shall at the same time deliver to Lender a copy of such notice or demand, provided the City has been notified by notice in conformance with Section 903 of this Agreement, to the City Administrator advising him of the name and address of such Lender. Each Lender shall (insofar as the rights of the City are concerned) have the rights of the Developer, at such Lender's option within sixty (60) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the indebtedness secured by the lien of its mortgage or security interest; provided, however, in the event of a default by the Developer hereunder which is not curable by such Lender (e.g., insolvency or bankruptcy of Developer), such Lender shall be deemed to have cured such noncurable defaults by its execution of the assumption agreement described below.

Section 803. Limitation on Lender Liability. No Lender shall be obligated by the provisions of this Agreement to construct or complete the Project contemplated by this Agreement or to guarantee such construction or completion, notwithstanding the collateral assignment of this Agreement by the Developer or the execution of any financing conveyance in favor of such Lender. Conversely, nothing contained in this Agreement shall be deemed to permit or authorize any Lender to devote the Property to any uses other than those uses and improvements contemplated by this Agreement, any such unauthorized use or improvements being expressly prohibited. Nothing contained in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue the construction or completion of any portion of the Project (beyond the extent reasonably necessary to conserve or protect the portion already competed) without first having expressly assumed the obligations of Developer with respect thereto under this Agreement in favor of the City by written agreement satisfactory to the City. In such event, the Lender must agree to complete in the manner provided in this Agreement, the improvements to which the lien

or title of the Lender relates, and submit evidence satisfactory to the City that such Lender has the qualifications and financial responsibility necessary to assume and perform such obligations of the Developer, as the case may be. If such an assumption agreement is approved by the City, then Developer will be relieved of its obligations under this Agreement. Any such Lender properly completing the improvements on the Property in conformance with applicable law shall be entitled, upon written request made to the City, to a certificate of occupancy from the City with respect to such improvements. Nothing contained in this Agreement shall be deemed to grant to any Lender or any party claiming by, through or under the Developer any rights or powers beyond those granted herein to the Developer.

ARTICLE IX
GENERAL PROVISIONS

Section 901. Entire Agreement; Successors and Assigns; Amendments. This Agreement, and the Exhibits attached to it contain the entire agreement between the Parties in connection with these transactions, and there are no oral or parole agreements, representations or inducements existing between the Parties relating to these transactions which are not expressly set forth in this Agreement and covered by this Agreement. This Agreement may not be modified except by a written agreement signed by all of the parties or their successors in interest, and in the case of the City, shall require the adoption of an ordinance or resolution by the Mayor and City Council of the City approving such amendment. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their respective heirs, legal representatives, administrators, successors, successors in interest and assigns.

Section 902. Governing Law; Interpretation; Partial Invalidity. This Agreement shall be governed by the laws of the State of Illinois. The captions, section numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portions of the applicable provision. If in interpreting this Agreement or considering matters affect the Property, a conflict arises or exists between City ordinances and this Agreement, this

Agreement shall control to the extent permitted by law. The City ordinances shall be controlling, except to the extent that this Agreement provides a specific exception to the applicability of the City ordinances.

Section 903. Notices. All notices, demands, requests, consents, approvals or other instruments required or permitted to be given under this Agreement shall be in writing and shall be executed by the Party or an officer, agent or attorney of the Party, and shall be deemed to have been effective as of the date of actual delivery, if by messenger delivery, on the date of transmission if transmitted via facsimile during normal business hours (9:00 a.m. to 5:00 p.m.), or as of the third (3rd) day from and including the date of posting, if deposited in the United States mail, postage prepaid, registered or certified mail, addressed as follows (or to such other address as may be designated from time to time by either Party by written notice to the other):

If to the Developer: Airhart Development, LLC
Mark Glassman
500 E. Roosevelt Rd.
West Chicago, IL 60185
(630) 293-3000
Fax: (630) 293-0746

With a copy to: Guerard, Kalina & Butkus
Attn: Richard Guerard
310 S. County Farm Road, Suite H
Wheaton, Illinois 60187
Direct (630) 698-4700
Fax: (630) 690-9652

If to the City: City of Warrenville
3 S. 258 Manning Avenue
Warrenville, Illinois 60555
Attn: City Administrator
Direct (630) 393-9427
Fax: (630) 393-6948

With a copy to: Bruce K. Huvard, Esq.
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062
Tel: (847) 480-7800

Fax: (847) 480-7882

Section 904. Conflict of Interest: City's Representative Not Individually Liable. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such member, official or employee participate in any decision relating to this Agreement which affects such person's interests or the interests of any corporation, partnership, or association in which such person is directly or indirectly interested. No member or employee of the City has acquired any interest direct, or indirect, in the Property. No member, official, or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement, except as such shall be found to be caused by a violation of Section 4(n) of the Act.

Section 905. Municipal Limitation. All commitments or obligations of the City undertaken pursuant to this Agreement shall be limited to the extent that such obligations are within its powers as a municipal corporation.

Section 906. Costs. Any cost and expense incurred by either Party with regard to the preparation of this Agreement shall be borne exclusively by such Party with no right to reimbursement from the other except as provided in this Agreement.

Section 907. Recording. The Parties agree that this Agreement will be recorded by the City, at its cost, with the DuPage County Recorder's Office after execution thereof by the Parties. The Developer agrees that monetary damages are not adequate to extinguish the obligations of the Developer herein and that all covenants and agreements set forth in this Agreement are intended to be and shall constitute equitable servitudes running with the land and shall inure to the benefit of and be binding upon the City and the Developer and each subsequent holder of any interest in any portion of the land herein conveyed and their grantees, mortgagees, heirs, successors, personal representatives and assigns.**Section 908. Hazardous Materials.** For purposes of this Agreement, the term, "Hazardous Materials", shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or

constituent regulated under the comprehensive environmental response, compensation and liability act, 42 U.S.C. §9601, et seq.; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; asbestos and asbestos-containing materials, PCBS and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. §1910.1200, et seq.; and industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq.

Section 909. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a joint venture between the Parties. It is understood and agreed that this Agreement does not provide for the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise, nor does it constitute either Party as an agent of the other for any purpose whatsoever.

Section 910. Counterparts. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

Section 911. Authority to Execute. Each signatory on behalf of a Party to this Agreement warrants and represents that he or she is a duly authorized representative of that Party, with full power and authority to agree to this Agreement, and all terms herein, on behalf of that Party.

Section 912. Venue. Each Party (i) consents to submit itself to the personal jurisdiction of any federal or state court located in DuPage County, Illinois (and elsewhere with respect to appellate courts with jurisdiction over such matter) in the event any dispute arises out of this Agreement or any of the transactions contemplated hereby, and consents to service of process by notice, (ii)

agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iii) agrees that it will not bring any action relating to this Agreement in any court other than a federal or state court sitting in DuPage County, Illinois.

Section 913. Jury Waiver. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT.

Section 914. Effective Date - Term of Agreement. This Agreement shall be deemed dated and become effective on the date the Corporate Authorities approve this Agreement. Unless this Agreement is sooner terminated in accordance with its terms, this Agreement will remain in full force and effect for a term that expires upon the earlier of: (a) the termination of the Old Town/Civic Center Tax Increment Financing District (TIF #3) and (b) the issuance of the certificate of occupancy for the final Dwelling in the Project to be completed (i.e., when all 27 Dwellings have been completed). Notwithstanding the expiration, termination or breach of this Agreement by either Party, the covenants and agreements contained in Sections 301(c), Article IV, Sections 505, 506, 507 and Article VI of this Agreement shall survive such expiration, termination or breach by either Party.

Section 915. Off-premise Signs. If the Developer obtains permission from affected property owners for signs identifying the Project, and if requested by the City to install such signs on a temporary basis as a means of furthering the goals of the Project and Redevelopment Plan, the Parties will cooperate to agree upon the location and appearance of the signs, and the Developer, at its cost, will pay for all costs of erecting such signs. The right to maintain such signs shall exist only during such time as the City reasonably determines that the activities under this Agreement necessary to implement the goals of the Redevelopment Plan are being furthered.

Section 916. Exhibits. The following exhibits are attached hereto and made a part hereof or incorporated herein by reference and made a part hereof:

EXHIBIT A ..... Legal Description of the Property
EXHIBIT B-1 .....Project Plans
EXHIBIT B-2 ..... Project Plans

EXHIBIT C ..... Letter of Credit
EXHIBIT D ..... Impact Fees
EXHIBIT E ..... Termination Agreement
EXHIBIT F ..... Disclosure Affidavit

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IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the Effective Date first above written.

CITY OF WARRENVILLE

By: _____
Name: David Brummel
Title: Mayor

Date: 5-2-2017

AIRHART DEVELOPMENT, LLC,
an Illinois limited liability company

By: AIRHART CONSTRUCTION CORP.,
an Illinois corporation, its sole member

By: _____
Name: Court Airhart
Title: President

Date: 5/2/2017

ATTEST:

By: _____
Name: Emily Larson
Title: City Clerk

Date: May 2 2017

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

On May 2, 2017, David Brummel, as Mayor, and Emily Larson, as City Clerk, of the City of Warrenville, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the City of Warrenville, for the uses and purposes therein set forth.

Given under my hand and official seal this 2nd day of May, 2017.

Notary Public

ALMA MORGAN
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
September 27, 2017

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

On May 2nd, 2017, Court Airhart, personally known to me to be the President of Airhart Construction Corp., an Illinois corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 2nd day of May, 2017.

Notary Public

OFFICIAL SEAL
MARK D GLASSMAN
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 06/27/2020

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

Tract 1: THE SOUTH HALF OF LOTS 12 AND 13, MEASURED ON THE LINE BETWEEN SAID LOTS IN MOUNT'S SUBDIVISION OF PART OF LOT 2 IN BLOCK 1 OF RAY'S SUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 8 IN MANNING'S WARRENVILLE SUBDIVISION, IN SECTION 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT OF MOUNT'S SUBDIVISION RECORDED MAY 7, 1946 AS DOCUMENT NO. 497414 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 16, 1946 AS DOCUMENT NUMBER 512727, IN DU PAGE COUNTY, ILLINOIS.

Tract 2: LOT 2 IN MUSSELMAN'S PLAT OF RESUBDIVISION, BEING A RESUBDIVISION OF VACATED RAILROAD AVENUE, VACATED ROCKWELL STREET, AND VACATED MOUNT STREET ALONG WITH PORTIONS OF WARRENVILLE PARK SUBDIVISION WARRENVILLE WINDOW COMPANY'S ASSESSMENT PLAT, RAY'S SUBDIVISION AND MOUNT'S SUBDIVISION OF PORTIONS OF SECTIONS 34 AND 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID MUSSELMAN'S PLAT OF RESUBDIVISION RECORDED MARCH 10, 1986 AS DOCUMENT R86-21786, IN DU PAGE COUNTY, ILLINOIS.

Tract 3: THE NORTH HALF (AS MEASURED ALONG THE WEST LINE) OF LOTS 12 AND 13, IN MOUNT'S SUBDIVISION OF PART OF LOT 2 IN BLOCK 1 OF RAY'S SUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 8 OF MANNING'S WARRENVILLE SUBDIVISION IN SECTION 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCED BEING HAD TO THE PLAT OF MOUNT'S SUBDIVISION RECORDED MAY 7, 1946 AS DOCUMENT NUMBER 497414 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 16, 1946 AS DOCUMENT 512727, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE EAST 42 FEET OF LOT 22 IN BLOCK 13 IN WARRENVILLE PARK SUBDIVISION OF PART OF SECTION 34 AND SECTION 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 12, 1926 AS DOCUMENT 217509, LYING NORTHERLY OF THE NORTH LINE OF LOT 4 IN BLOCK 1 IN RAY'S SUBDIVISION RECORDED DECEMBER 30, 1926 AS DOCUMENT 227243, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 3:

LOT 3 IN MUSSELMAN'S PLAT OF RESUBDIVISION, BEING A RESUBDIVISION OF VACATED RAILROAD AVENUE, VACATED ROCKWELL STREET, AND VACATED MOUNT STREET ALONG WITH PORTIONS OF WARRENVILLE PARK SUBDIVISION WARRENVILLE WINDOW COMPANY'S ASSESSMENT PLAT, RAY'S SUBDIVISION AND MOUNT'S SUBDIVISION OF PORTIONS OF SECTIONS 34 AND 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID MUSSELMAN'S PLAT OF RESUBDIVISION RECORDED MARCH 10, 1986 AS DOCUMENT R86-21786, IN DUPAGE COUNTY, ILLINOIS. EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF MANNING AVENUE AND THE NORTHERLY RIGHT OF WAY LINE OF MOUNT STREET; THENCE NORTHWESTERLY ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID MOUNT STREET, SAID LINE ALSO BEING ALONG LOT 3 OF MUSSELMAN'S PLAT OF RESUBDIVISION, A DISTANCE OF 178.94 FEET; THENCE CONTINUING NORTHWESTERLY ALONG AN EXTENSION OF SAID LAST DESCRIBED COURSE, A DISTANCE OF 55.00 FEET; THENCE NORTHWESTERLY AT A DEFLECTION ANGLE TO THE RIGHT OF THE LAST DESCRIBED COURSE, 46 DEGREES 52 MINUTES 54 SECONDS, A DISTANCE OF 26.92 FEET; THENCE NORTHWESTERLY AT A DEFLECTION ANGLE TO THE RIGHT OF THE LAST DESCRIBED COURSE, 05 DEGREES 43 MINUTES 36 SECONDS, A DISTANCE OF 92.32 FEET TO A POINT, SAID POINT BEING AN ANGLE POINT OF THE NORTHERLY LINE OF SAID LOT 3; THENCE NORTHEASTERLY ALONG SAID LOT 3 LOT LINE, A DISTANCE OF 90.00 FEET; THENCE SOUTHEASTERLY ALONG SAID LOT 3 LOT LINE, A DISTANCE OF 9.66 FEET; THENCE NORTHEASTERLY ALONG SAID LOT 3 LOT LINE, A DISTANCE OF 97.61 FEET; THENCE SOUTHEASTERLY ALONG SAID LOT 3 LOT LINE, A DISTANCE OF 211.90 FEET TO A POINT, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY LINE OF MANNING AVENUE AFORESAID; THENCE SOUTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE OF MANNING AVENUE, CURVING TO THE LEFT AND HAVING A RADIUS OF 756.00 FEET, AN ARC DISTANCE OF 70.08 FEET TO THE POINT OF BEGINNING,

AND ALSO EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF MANNING AVENUE AND THE NORTHERLY RIGHT OF WAY LINE OF MOUNT STREET; THENCE NORTHWESTERLY ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID MOUNT STREET, SAID LINE ALSO BEING ALONG LOT 3 OF MUSSELMAN'S PLAT OF RESUBDIVISION, A DISTANCE OF 178.94 FEET; THENCE CONTINUING NORTHWESTERLY ALONG AN EXTENSION OF SAID LAST DESCRIBED COURSE, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WESTERLY ON THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 9.55 FEET; THENCE NORTHWESTERLY AT A DEFLECTION ANGLE TO THE RIGHT OF THE LAST DESCRIBED COURSE, 52 DEGREES

34 MINUTES 49 SECONDS, A DISTANCE OF 117.06 FEET TO THE NORTHERLY LINE OF SAID LOT 3; THENCE SOUTHEASTERLY ON SAID NORTHERLY LINE, 6.31 FEET TO A NORTHERLY CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF THE PREVIOUSLY DESCRIBED EXCEPTION NO., A DISTANCE OF 92.32 FEET TO AN ANGLE PONT IN SAID WESTERLY LINE; THENCE SOUTHEASTERLY AT A DEFLECTION ANGLE TO THE LEFT OF THE LAST DESCRIBED COURSE, 05 DEGREES 47 MINUTES 36 SECONDS, A DISTANCE OF 26.97 FEET TO THE POINT OF BEGINNING, ALL IN DU PAGE COUNTY, ILLINOIS.

ALSO EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT B IN ALBRIGHT PARK RE-SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 2 AND 3 IN RAY'S SUBDIVISION RECORDED DECEMBER 30, 1925 AS DOCUMENT NUMBER 22743 AND PART OF LOT 2 IN BLOCK 8 IN MANNING'S WARRENVILLE SUBDIVISION RECORDED NOVEMBER 10, 1906 AS DOCUMENT NUMBER 89268 AND BEING A PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 29, 1986 AS DOCUMENT NUMBER R1986-052732; THENCE SOUTH 80 DEGREES 03 MINUTES 05 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT B, 24.64 FEET; THENCE NORTH 62 DEGREES 27 MINUTES 40 SECONDS EAST 64.60 FEET; THENCE SOUTH 27 DEGREES 59 MINUTES 59 SECONDS EAST, 49.31 FEET TO THE NORTH LINE OF LOT 3 IN MUSSLEMAN'S PLAT OF RE-SUBDIVISION RECORDED MARCH 10, 1986 AS DOCUMENT NUMBER R1986-052732 FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 27 DEGREES 59 MINUTES 59 SECONDS EAST, 49.28 FEET; THENCE NORTH 62 DEGREES 25 MINUTES 47 SECONDS EAST 64.52 FEET TO A CORNER OF SAID LOT 3; THENCE NORTH 80 DEGREES 03 MINUTES 05 SECONDS WEST 80.88 FEET TO THE POINT OF BEINNING, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 4:

BEING A PART OF LOT B IN ALBRIGHT PARK RE-SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 2 AN 3 IN RAY'S SUBDIVISION RECORDED DECEMBER 30, 1925 AS DOCUMENT NO. 227243 AND PART OF LOT 2 IN BLOCK 8 IN MANNING'S WARRENVILLE SUBDIVISION RECORDED NOVEMBER 10, 1906 AS DOCUMENT NO. 89268 AND BEING A PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 29, 1986 AS DOCUMENT NO. R1986-052732, DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST WESTERLY CORNER OF SAID LOT B; THENCE SOUTH 80 DEGREES 03 MINUTES 05 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT B, 24.64 FEET FOR THE POINT OF BEGINNING; THENCE NORTH 62 DEGREES 27 MINUTES 40 SECONDS EAST 64.60 FEET; THENCE SOUTH 27 DEGREES 59 MINUTES 59 SECONDS EAST, 49.31 FEET TO THE NORTH LINE OF LOT 3 IN MUSSELMAN'S PLAT OF RESUBDIVISION RECORDED MARCH 10, 1986 AS

DOCUMENT NUMBER R1986-052732; THENCE NORTH 80 DEGREES 03 MINUTES 05 SECONDS WEST 80.98 FEET ALONG SAID NORTH LINE TO SAID POINT OF BEGINNING, ALL IN THE CITY OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS.

PARCEL 5:

THAT PORTION OF MOUNT STREET DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 12 IN MOUNT'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED MAY 7, 1946 AS DOCUMENT NO. 497414, SAID POINT ALSO BEING ON THE SOUTH LINE OF SAID MOUNT STREET AND ON AN EAST LINE OF LOT 3 IN MUSSLEMAN'S PLAT OF RESUBDIVISION, ACCORDING TO THE PLAT OF SAID MUSSELMAN'S PLAT OF RESUBDIVISION RECORDED MARCH 10, 1986 AS DOCUMENT NUMBER R86-21786, ALL BEING SUBDIVISIONS OF PART OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS; THENCE NORTH 09 DEGREES 43 MINUTES 52 SECONDS EAST ALONG SAID EAST LINE, 65.77 FEET TO THE NORTH LINE OF SAID MOUNT STREET; THENCE SOUTH 80 DEGREES 07 MINUTES 11 SECOND EAST ALONG SAID NORTH LINE 21.39 FEET; THENCE SOUTH 25 DEGREES 28 MINUTES 27 SECONDS EAST 80.46 FEET TO SAID SOUTH LINE OF MOUNT STREET; THENCE NORTH 80 DEGREES 14 MINUTES 32 SECONDS WEST ALONG SAID SOUTH LINE 67.78 FEET TO THE PLACE OF BEGINNING.

P.I.N.s: 04-35-107-042
04-35-107-044
04-35-107-049
04-35-107-021
04-35-107-022.

EXHIBIT B-1

Concept Plan

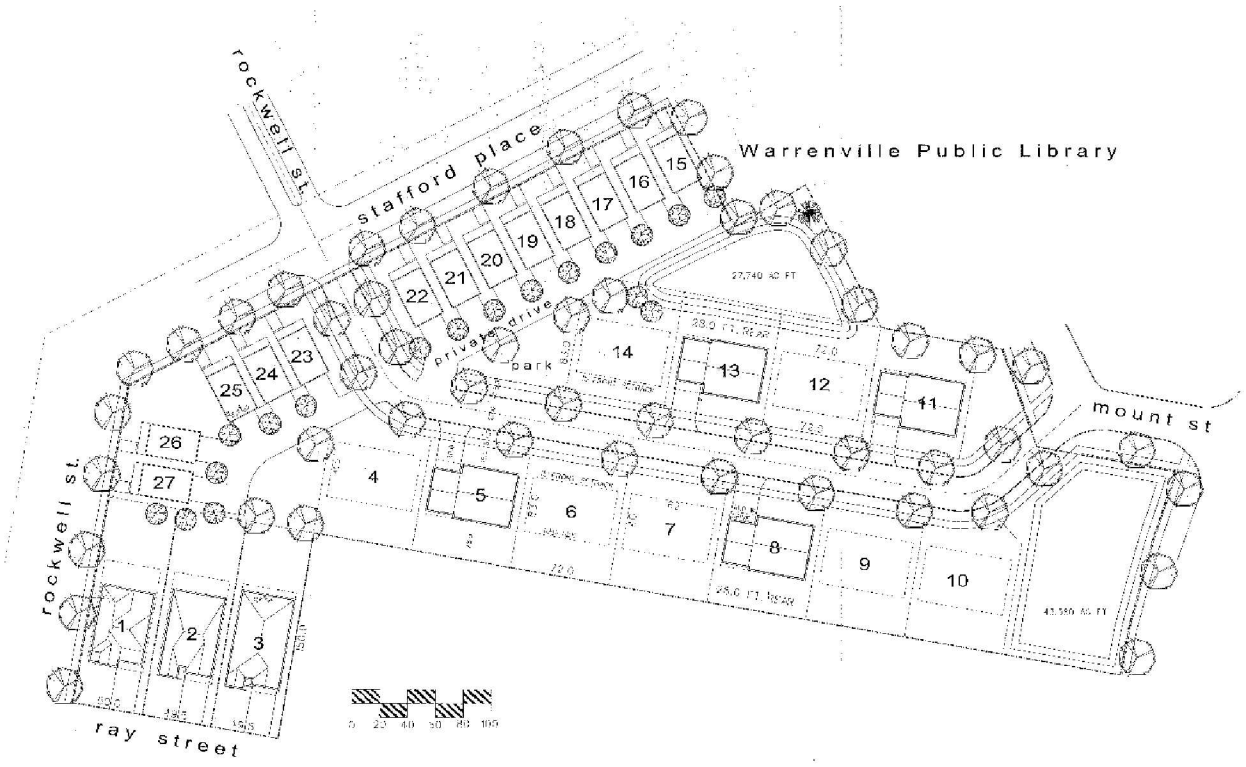

EXHIBIT B-2

Detailed Design Parameters for the Residential Redevelopment of CCRS #1

1. **Building Layout:** Residential units should face public streets as much as reasonably possible. Building layout should be configured so as to minimize the number of new private driveways onto Stafford Place and Rockwell Street. Individual buildings should be designed and located in a manner to minimize the visual impact garages and driveways have on the streetscapes within and adjacent to the site. This can be accomplished by setting back the front face of front loaded garages from the front building façade and incorporating "rear loaded" garages where vehicle access provided from the rear of the building.

2. **Building Type:** The City prefers a project that includes diverse building types that appeal to a wide range of potential Developers including empty nesters that desire first floor master bedrooms and young professionals that do not require or prefer a yard.

3. **Building Materials:** Building facades shall be constructed of high quality building materials and preferably should include masonry and stone. Exterior chimney chases shall be constructed with masonry materials, however gas direct vent fireplaces will be allowed with "dog house" bump outs that have siding and roofing material. Cinder/concrete block, vinyl siding, and aluminum siding are not acceptable building materials. Acceptable roofing materials include architectural grade shingles and architectural metal panels.

4. **Building Energy Efficiency:** The City desires the developer of the site to construct ENERGY STAR compliant, or a recognized energy efficient equal certification, homes in the project.

5. **Building Height:** The City anticipates any attached residential units will be no more than 2.5 stories in height when viewed from the front and three stories when viewed from the rear. This contemplates up to three finished levels in each unit, with either the lowest floor partially below grade or the upper floor located under the building roof with gables and or dormers. However, this does not preclude the cottage row homes from having an upper level loft under the roof or dormers and a roof terrace. Building heights should not exceed the level required to provide a visually interesting pitched roof profile. Maximum building height, as measured from the lowest point of the lowest ground level of the units, should not exceed 40 feet. Taller units should be located along the north end of the site. Ranch homes and homes with an exterior appearance of a two-story home are encouraged along the south edge of the site adjacent to the existing Ray Street residential neighborhood.

6. **Building Articulation and Details:** A high level of articulation and visual interest is strongly preferred in facades, roof-lines, usable front porches, dormers, and other building features. This includes attractive front doors, garage doors and desirable trim elements in the building siding package. Special attention should be given to insuring the homes have a variety of exterior elevations and color packages so as to minimize aesthetic monotony within the project.

7. **Buffering:** High quality transitional yard buffering should be provided along the southern edge of the site adjacent to the existing single-family homes along the north side of Ray Street. This should be accomplished through the combined use of trees, landscape plantings, and high quality fencing when parking and paving improvements are located in close proximity to this shared property line. Where possible, landscape detention areas should be incorporated into the transitional yard buffer to reduce the length of continuous transitional yard fencing.

8. **Stormwater Management:** The City expects the site will be designed and developed to comply with the retention and best management provisions of the then most current City of Warrenville Stormwater Management and Floodplain Ordinance. A strong preference exists for these requirements to be met through the use of pervious pavement material, bioswales, and native planted detention areas.

9. **Site Circulation and Access:** The City expects that any street connection through the site that will invite general public use as a convenient cut-thru will be designed to meet City public street requirements and located within a dedicated public right-of-way at least 50 feet wide. If Mount Street is extended through the site, the City expects the west end of Mount Street to intersect with either the north/south section of Rockwell Street or Stafford Place directly opposite (south) of the new Rockwell Street/Stafford Place/Illinois Prairie Path, Route 56 intersection in a manner that allows for the safe alignment of vehicles on Mount Street at the new intersection. Public pedestrian access between Stafford Place and Manning Avenue shall be provided.

10. **Parking:** Public street parking shall be provided along at least one side of any new public street constructed on the property. All residential buildings shall include two garage spaces and two off-street parking spaces either on the private driveway for each home and/or elsewhere on the site.

EXHIBIT C

Form of Letter of Credit

IRREVOCABLE LETTER OF CREDIT

Beneficiary:
City of Warrenville
c/o Community Development Director
Community Development Department
3 S 258 Manning Avenue
Warrenville, Illinois 60555

Irrevocable Standby Letter of Credit No.: ____
Date of Letter of Credit: _____, 2017
Expiry Date: December ___, 201__
Amount: $_____

Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor at the request of and for account of Airhart Construction Corp. (the "Owner/Developer"), up to the aggregate amount of $_____ available by your draft(s) drawn at sight on us.

We are advised by the applicant that this Irrevocable Standby Letter of Credit is provided to you at the request of the Owner/Developer in connection with the performance of the Owner/Developer's obligations arising under that certain Redevelopment Agreement dated _____, 2017 between the City of Warrenville and the Owner/Developer (the "Redevelopment Agreement") for construction of the project therein described (the "Project") and in particular certain improvements defined therein as the "Required Development Improvements".

All drafts drawn hereunder shall bear upon their face the words:

"DRAWN UNDER _____ BANK IRREVOCABLE LETTER OF CREDIT NO. _____ DATED _____, 2017."

All such drafts must be signed by the City Administrator, City Attorney, Community Development Director, or City Engineer of the City of Warrenville on city letterhead and must contain a statement certifying that an Event of Default by the Developer has occurred under the Redevelopment Agreement based on one or more of the following acts or omissions:

1. That a portion of the work required under the plans, specifications and agreements of the City of Warrenville by which the Project and work thereunder are governed has either (a) not been completed as and when required under the Redevelopment Agreement, or (b) not been properly maintained by the Owner/Developer; or

2. That the required work is either not yet completed by the Owner/Developer or approved/accepted by the City of Warrenville and the Owner/Developer has failed to renew or replace this Irrevocable Letter of Credit at least 60 days prior to its expiration; or

3. That an amount is due and owing the City of Warrenville for unpaid review, inspection, development or permit fees related to said Project; or

4. That the "Outstanding Obligation" as such term is defined in the Redevelopment Agreement is due and owing the City of Warrenville in accordance with the terms of the Redevelopment Agreement.

Any such drafts presented to the Bank and signed by the City Administrator, City Attorney, Community Development Director, or City Engineer of the City of Warrenville on city letterhead shall conclusively be presumed to have been signed by an authorized officer of the City of Warrenville, and the Bank shall have no obligation or duty to inquire (and shall make no inquiry) as to the authority of such signer. Drafts should be presented to the Bank [at a local correspondent bank in Chicago, Illinois]. The original of this Letter of Credit must be submitted with the final draw hereunder.

This Irrevocable Letter of Credit shall expire on _____, 2017, and IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. This Irrevocable Letter of Credit and the obligations contained herein shall not expire except as specified hereinabove.

We are advised that The Irrevocable Letter of Credit shall be utilized to secure the proper installation and maintenance (ordinary wear and tear excluded) of all improvements and/or dedicated public right-of-way as required under the Subdivision and other germane Ordinances of the City of Warrenville and to secure all obligations of the Owner/Developer arising under the Redevelopment Agreement, including, without limitation, the payment of the Outstanding Obligation. This Irrevocable Letter of Credit is the independent obligation of Bank of America, N.A. and shall be separate of the obligation of the Owner/Developer to install and maintain all improvements and/or dedicated public right-of-ways as required by the City of Warrenville for a period of two years from the date on which all such improvements are formally approved and/or accepted by the Warrenville City Council.

The Bank understands that, by separate agreement, the face amount of this Irrevocable Letter of Credit may be reduced periodically as phases of the Project have been completed by Owner/Developer and approved and/or accepted by the City of Warrenville. The Bank agrees that any such reduction in the amount of this Irrevocable Letter of Credit shall be made by the Bank only upon the receipt of a signed letter from the City of Warrenville indicating "Bank of America, N.A. Letter of Credit Number XXXXXXX may reduced by (amount) to a new total of (Amount)."

The undersigned further agrees that this Irrevocable Letter of Credit shall remain in full force and effect and shall not be affected by any and all amendments or modifications, which may be made from time to time to the plans, specifications and agreements for the Project, with or without notice from said City of such amendments or modifications.

All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

The Bank hereby undertakes and engages that all demands for payment made in conformity with this Irrevocable Letter of Credit will be duly honored upon presentation. If, within ten days from the date any written demand for payment (made in conformity with this Irrevocable Letter of Credit) is presented, the Bank fails to honor it, Bank hereby agrees to pay all attorney fees, court costs and other expenses incurred by the City of Warrenville in enforcing the terms of this Irrevocable Letter of Credit.

This Irrevocable Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1998 Revision) International Chamber of Commerce, Publication No. 590. In the event of a conflict between this Irrevocable Letter of Credit and such uniform rules, this Irrevocable Letter of Credit shall control.

_____*(Name of Bank)*_____

By:_____
Bank President

_____
Senior Vice-President/Senior Loan Officer

EXHIBIT D

Impact Fees Payable to School, Park and Library

Impact Fees/Donations				
as of 11/29/2016				
	School	Park	Library	total:
Detached SF 2 BR	$ 2,262	$ 4,119	$ 349	$ 6,730
Detached SF 3 BR	$ 2,244	$ 4,433	$ 375	$ 7,051
Detached SF 4 BR	$ 3,508	$ 5,339	$ 452	$ 9,299
Detached SF 5 BR	$ 3,127	$ 5,468	$ 463	$ 9,058
Attached SF 2 BR	$ 505	$ 2,546	$ 216	$ 3,267
Attached SF 3 BR	$ 566	$ 3,561	$ 302	$ 4,429
Attached SF 4 BR	$ 1,410	$ 4,151	$ 351	$ 5,912
Appartment eff.	$ -	$ 2,100	$ 178	$ 2,278
Appartment 1 BR	$ 167	$ 2,652	$ 225	$ 3,043
Appartment 2 BR	$ 393	$ 3,011	$ 255	$ 3,659
Appartment 3 BR	$ 807	$ 3,788	$ 321	$ 4,915
Condo eff.	$ -	$ 2,100	$ 178	$ 2,278
Condo 1 BR	$ 290	$ 4,463	$ 893	$ 5,646
Condo 2 BR	$ 684	$ 5,238	$ 1,048	$ 6,970
Condo 3 BR	$ 1,405	$ 6,460	$ 1,292	$ 9,156

EXHIBIT E

Form of Termination Agreement

This instrument was prepared by
and after recording return to:

Bruce K. Huvard
Cohen, Salk & Huvard. P.C.
630 Dundee Road, Suite 120
Northbrook, IL 60062

PINS: see Exhibit A

For Recorder's Office Use Only

TERMINATION AGREEMENT

This Termination Agreement (the "Agreement") is made as of the __ day of _____, 2015, between the **CITY OF WARRENVILLE,** DuPage County, Illinois, an Illinois municipal corporation and home rule unit of local government (the "**City**"), and **AIRHART CONSTRUCTION CORP.**, an Illinois corporation (the "**Developer**"). The City and the Developer are sometimes collectively referred to herein as the "Parties".

R E C I T A L S

WHEREAS, the Parties executed that certain Redevelopment Agreement dated _____, 2017 (the "Redevelopment Agreement") relating to the property legally described in Exhibit A attached and made a part hereof, and caused the same to be recorded in the DuPage County Recorder's Office as document number _____ ; and

WHEREAS, all terms which are capitalized but not defined in this Agreement shall the meanings assigned to such terms in the Redevelopment Agreement; and

WHEREAS, in certain instances when the termination of the Redevelopment Agreement is permitted by its terms, the Parties agreed to join in the execution of this Agreement to memorialize such termination; and

AGREEMENTS

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

1. **Recitals.** The foregoing recitals are incorporated into and by this reference made a part of this Agreement.

2. **Termination**. From and after the date this Agreement is recorded in the DuPage County Recorder's Office, all rights, duties, obligations and liabilities of the Parties under the Redevelopment Agreement shall terminate and be of no further force effect, except that the indemnity obligations of the Parties that expressly survive the termination of the Redevelopment Agreement shall continue in full force and effect.

3. **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the Effective Date first above written.

CITY OF WARRENVILLE

By: _____
Name: David Brummel
Title: Mayor

Date: _____

AIRHART DEVELOPMENT, LLC,
an Illinois limited liability company

By: AIRHART CONSTRUCTION CORP.,
an Illinois corporation, its sole member

By: _____
Name: Court Airhart
Title: President

Date: _____

ATTEST:

By: _____
Name: Emily Larson
Title: City Clerk

Date: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

On _____ ___, 2017, David Brummel, as Mayor, and Emily Larson, as City Clerk, of the City of Warrenville, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of the City of Warrenville, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 2017.

_____
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

On _____, 2017, Court Airhart, personally known to me to be the President of Airhart Construction Corp., an Illinois corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

Given under my hand and official seal this ____ day of _____, 2017.

_____
Notary Public

EXHIBIT A

Legal Description of Property

EXHIBIT F

DISCLOSURE AFFIDAVIT

State of Illinois)
)
County of _____)

THE DEVELOPER MUST SIGN THIS AFFIDAVIT

I, _____, reside at _____, County of _____, State of Illinois, being first duly sworn and having personal knowledge of the below facts, swear to the following:

That I am over the age of eighteen and am the President of Airhart Construction Corp., the Developer.

That the Redevelopment Site consists of the property legally described on the legal description exhibit hereto (the "**Property**").

That I understand that pursuant to 50 ILCS 105/3.1, prior to execution of the Redevelopment Agreement between the Developer and the City, state law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the City disclosing the identity of every owner and beneficiary who will obtain any interest, real or personal, in the Property, and every shareholder who will be entitled to receive more than 7.5% of the total distributable income of any corporation having any interest, real or personal, in the Property after this transaction is consummated**.**

As the corporate official for the Developer, I declare under oath that (choose one):

(a) The owners, beneficiaries or partners of the Developer are:

(b) The shareholders of the Developer with more than 7 1/2% interest are:

_____

This instrument is made to induce the City to enter into the Redevelopment Agreement and in accordance with 50 ILCS 105/3.1.

Affiant: _____

Subscribed and sworn to before me this ___
day of _____, 2017.

_____

EXHIBIT B

CITY OF WARRENVILLE
Request for Proposals
FOR THE PURCHASE AND RESIDENTIAL REDEVELOPMENT OF A CITY-OWNED TRACT OF LAND IN THE OLD TOWN/CIVIC CENTER TAX INCREMENT FINANCING DISTRICT (TIF #3) REDEVELOPMENT PROJECT AREA

NOTICE IS HEREBY GIVEN that the City of Warrenville, Illinois ("City") is accepting proposals for the purchase and redevelopment of a vacant tract of land owned by the City at the southeast corner of Rockwell Street and Stafford Place (the "Property"), containing approximately 4.25 acres, located within the "Civic Center" core of the City. The site is located south of the Warrenville Public Library and is bounded by Rockwell Street on the west, Stafford Place and Mount Street on the north, Ray Street on the south, and Manning Street on the east.. The site is included in the following permanent index numbers: 04-35-107-021, 022, 042, 044, and 051. The site also includes the unimproved west end of the existing Mount Street ROW. A legal description is available from the Community Development Department of the City at the address listed below.

BACKGROUND:

The Property is located in the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Project Area (the "Area"), as designated by Ordinance No. 2781 adopted June 2, 2013, by the Mayor and City Council of the City, pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (the "Act").

The City, by Ordinance No. 2780, approved the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Plan and Project, dated January 7, 2013, (the "Redevelopment Plan").

The City, by Ordinance No. 2371, adopted the Old Town/Civic Center Subarea Plan, dated March 2007 (the "Subarea Plan"), as a component of the City's overall comprehensive plan, to guide future development within the Civic Center area.

The City, by Resolution 2016-25, endorsed a series of detailed goals, objectives, and design parameters for the residential redevelopment of the Property (the "Updated City Goals and Objectives").

The City has made a significant investment to acquire the Property, demolish and remove obsolete and blighting commercial buildings, complete environmental remediation of significant subsurface soil contamination, and acquire a comprehensive no further remediation letter from the IEPA (collectively, the "Extraordinary Redevelopment Expenses") in order to prepare the Property for moderately dense residential redevelopment in manner that would be consistent with the Subarea Plan, Redevelopment Plan, and Updated City Goals and Objectives.

SUMMARY OF KEY CITY GOALS AND OBJECTIVES:

1. **Facilitate a high quality residential redevelopment project** that complies with the detailed design parameters it has established to ensure a well-designed, high-quality, and attractive project that would set a desirable standard for other future redevelopment projects in the Area and enhance the "small town character" of the City.
2. **Facilitate a moderately dense residential redevelopment project** that includes up to 28 small lot, detached, single family homes that would be attractive to a wide range of potential buyers.
3. **Focus on the long-term "return on investment" for the City.** The City's total return on investment includes both the initial sales price for the property and the TIF revenue the private redevelopment of the property will generate over the "life" of TIF #3.
4. **Control City risk** by (i) not investing additional City funds into the Property's redevelopment and (ii) working with a developer with a successful track record of completing high quality residential development projects in the Chicago metro area.

Additional detail on the history, City goals, objectives, and detailed design parameters for the Property is available for public inspection in the Community Development Department of the City at 3 S 258 Manning Avenue, Warrenville, IL 60555, Monday to Friday: 8:00 a.m. to 5:00 p.m. or on the City's website at:
http://www.warrenville.il.us/index.aspx?NID=495

PROPOSAL REQUIREMENTS: Pursuant to Section 11-74.4-4(c) of the Act, the City seeks proposals under which the developer will acquire the Property and the City will agree to convey fee simple title to the Property to the developer by special warranty deed with the specific intent of redeveloping the property in a manner that would achieve the City's stated goals and objectives. Proposals must include (1) a written description of the size, design, and anticipated sale price of the proposed residential lots and homes and representative photos, illustrations, and floor plans for the proposed homes, (2) a detailed description and concept site plan (drawn to scale) of the proposed site infrastructure and lot layout, (3) a construction timeline for site infrastructure improvements and the sale/construction of homes, (4) a written acknowledgment that no project costs are proposed for City/TIF reimbursement, (5) the amount the developer is willing to pay for the Property and the terms and any special conditions of such payment, and (6) information that proves the developer has the experience, resources, and financial capacity required to complete the proposed building and site infrastructure improvements.

Proposals are to be sealed and marked "Old Town/Civic Center Redevelopment Site #1"and delivered to Ronald Mentzer, Community Development Director, City of Warrenville, 3 S 258 Manning Avenue, Warrenville, IL 60555, no later than 10:00 a.m. on March 6, 2017.

Questions regarding this Request for Proposals must be submitted in writing to Ronald Mentzer, Community Development Director, City of Warrenville, at rmentzer@warrenville.il.us or 3 S 258 Manning Avenue, Warrenville, IL 60555, no later than 10:00 a.m. February 24, 2016.

The City Council reserves the right to accept or reject any or all proposals or any part thereof; waive any minor defects, irregularities or informalities; and to decide not to award any contract; or award a contract deemed to be in the best interests of the City of Warrenville.

Published in Daily Herald February 8, 2017 (4463803)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DAILY HERALD**. That said **DAILY HERALD** is a secular newspaper and has been circulated daily in the Village(s) of Addison, Bensenville, Bloomingdale, Carol Stream, Glendale Heights, Glen Ellyn, Itasca, Keeneyville, Lisle, Lombard, Medinah, Naperville, Oak Brook, Oakbrook Terrace, Roselle, Villa Park, Warrenville, West Chicago, Wheaton, Winfield, Wood Dale, Aurora, Elmhurst, Woodridge

County(ies) of DuPage and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published February 8, 2017 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Paula Baltz
Authorized Agent

Control # 4463803

CITY OF WARRENVILLE
Request for Proposals

FOR THE PURCHASE AND RESIDENTIAL REDEVELOPMENT OF A CITY-OWNED TRACT OF LAND IN THE OLD TOWN/CIVIC CENTER TAX INCREMENT FINANCING DISTRICT (TIF #3) REDEVELOPMENT PROJECT AREA

NOTICE IS HEREBY GIVEN that the City of Warrenville, Illinois ("City") is accepting proposals for the purchase and redevelopment of a vacant tract of land owned by the City at the southeast corner of Rockwell Street and Stafford Place (the "Property"), containing approximately 4.25 acres, located within the "Civic Center" core of the City. The site is located south of the Warrenville Public Library and is bounded by Rockwell Street on the west, Stafford Place and Mount Street on the north, Ray Street on the south, and Manning Street on the east.. The site is included in the following permanent index numbers: 04-35-107-021, 022, 042, 044, and 051. The site also includes the unimproved west end of the existing Mount Street ROW. A legal description is available from the Community Development Department of the City at the address listed below.

BACKGROUND:

The Property is located in the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Project Area (the "Area"), as designated by Ordinance No. 2781 adopted June 2, 2013, by the Mayor and City Council of the City, pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (the "Act").

The City, by Ordinance No. 2780, approved the Old Town/Civic Center Tax Increment Financing District (TIF #3) Redevelopment Plan and Project, dated January 7, 2013, (the "Redevelopment Plan").

The City, by Ordinance No. 2371, adopted the Old Town/Civic Center Subarea Plan, dated March 2007 (the "Subarea Plan"), as a component of the City's overall comprehensive plan, to guide future development within the Civic Center area.

The City, by Resolution 2016-25, endorsed a series of detailed goals, objectives, and design parameters for the residential redevelopment of the Property (the "Updated City Goals and Objectives").

The City has made a significant investment to acquire the Property, demolish and remove obsolete and blighting commercial buildings, complete environmental remediation of significant subsurface soil contamination, and acquire a comprehensive no further remediation letter from the IEPA (collectively, the "Extraordinary Redevelopment Expenses") in order to prepare the Property for moderately dense residential redevelopment in manner that would be consistent with the Subarea Plan, Redevelopment Plan, and Updated City Goals and Objectives.

SUMMARY OF KEY CITY GOALS AND OBJECTIVES:

1. **Facilitate a high quality residential redevelopment project** that complies with the detailed design parameters it has established to ensure a well-designed, high-quality, and attractive project that would set a desirable standard for other future redevelopment projects in the Area and enhance the "small town character" of the City.
2. **Facilitate a moderately dense residential redevelopment project** that includes up to 28 small lot, detached, single family homes that would be attractive to a wide range of potential buyers.
3. **Focus on the long-term "return on investment" for the City.** The City's total return on investment includes both the initial sales price for the property and the TIF revenue the private redevelopment of the property will generate over the "life" of TIF #3.
4. **Control City risk** by (i) not investing additional City funds into the Property's redevelopment and (ii) working with a developer with a successful track record of completing high quality residential development projects in the Chicago metro area.

Additional detail on the history, City goals, objectives, and detailed design parameters for the Property is available for public inspection in the Community Development Department of the City at 3 S 258 Manning Avenue, Warrenville, IL 60555, Monday to Friday: 8:00 a.m. to 5:00 p.m. or on the City's website at: http://www.warrenville.il.us/index.aspx?NID=495

PROPOSAL REQUIREMENTS: Pursuant to Section 11-74.4-4(c) of the Act, the City seeks proposals under which the developer will acquire the Property and the City will agree to convey fee simple title to the Property to the developer by special warranty deed with the specific intent of redeveloping the property in a manner that would achieve the City's stated goals and objectives. Proposals must include (1) a written description of the size, design, and anticipated sale price of the proposed residential lots and homes and representative photos, illustrations, and floor plans for the proposed homes, (2) a detailed description and concept site plan (drawn to scale) of the proposed site infrastructure and lot layout, (3) a construction timeline for site infrastructure improvements and the sale/construction of homes, (4) a written acknowledgment that no project costs are proposed for City/TIF reimbursement, (5) the amount the developer is willing to pay for the Property and the terms and any special conditions of such payment, and (6) information that proves the developer has the experience, resources, and financial capacity required to complete the proposed building and site infrastructure improvements.

Proposals are to be sealed and marked "Old Town/Civic Center Redevelopment Site #1"and delivered to Ronald Mentzer, Community Development Director, City of Warrenville, 3 S 258 Manning Avenue, Warrenville, IL 60555, no later than 10:00 a.m. on March 6, 2017.

Questions regarding this Request for Proposals must be submitted in writing to Ronald Mentzer, Community Development Director, City of Warrenville, at **rmentzer@warrenville.il.us** or 3 S 258 Manning Avenue, Warrenville, IL 60555, no later than 10:00 a.m. February 24, 2017.

The City Council reserves the right to accept or reject any or all proposals or any part thereof; waive any minor defects, irregularities or informalities; and to decide not to award any contract; or award a contract deemed to be in the best interests of the City of Warrenville.

Published in Daily Herald Feb. 15, 2017 (4464423)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the **DAILY HERALD**. That said **DAILY HERALD** is a secular newspaper and has been circulated daily in the Village(s) of Addison, Bensenville, Bloomingdale, Carol Stream, Glendale Heights, Glen Ellyn, Itasca, Keeneyville, Lisle, Lombard, Medinah, Naperville, Oak Brook, Oakbrook Terrace, Roselle, Villa Park, Warrenville, West Chicago, Wheaton, Winfield, Wood Dale, Aurora, Elmhurst, Woodridge

County(ies) of DuPage and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 715, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published February 15, 2017 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Paula Baltzer
Authorized Agent

Control # 4464423

CITY OF WARRENVILLE
MEMORANDUM

TO: Mayor, City Council, and City Administrator Coakley
FROM: Ronald Mentzer, Community Development Director RM
SUBJECT: CCRS #1 REDEVELOPMENT AGREEMENT WITH AIRHART DEVELOPMENT LLC
DATE: April 26, 2017

PURPOSE
This memo has been prepared to outline the Economic Development Representatives (EDR) unanimous recommendation to approve the April 24, 2017, redevelopment and land sales agreement (RDA) for City owned Civic Center Redevelopment Site #1(CCRS #1) with Airhart Development LLC (Airhart).

BACKGROUND
On December 19, 2016, the City Council designated Airhart as the "*Preferred Developer*" for CCRS #1. This designation authorized (i) staff and the City's redevelopment attorney to negotiate a RDA for CCRS #1 with Airhart and (ii) SB Friedman Development Advisors (SB Friedman) to evaluate Airhart's proposed purchase offer on behalf of the City.

The Illinois Tax Increment Allocation Redevelopment Act required the City to seek alternate proposals for CCRS #1 before approving a RDA with Airhart. The City published a detailed request for proposals (RFP) for CCRS #1 in the Daily Herald newspaper on February 8th and 15th. The RFP was also sent to directly to more than 20 residential developers active in the Chicagoland market. No alternate proposals were received.

CURRENT STATUS
A copy of the final recommended version of the RDA is attached as Exhibit A to the ordinance that has been prepared to memorialize its approval by the City Council. This ordinance is included with the agenda back up materials for the May 1, 2017, City Council Meeting. The RDA's business terms are substantially consistent with the detailed purchase offer Airhart submitted to the City in 2016. Key provisions of the April 24, 2017, RDA include:

Reimbursable Remediation Costs (Section 302.(c)): If Airhart incurs more than $50,000 in on-site environmental remediation costs or increased hauling/disposal costs for contaminated soil, the City agrees to reimburse Airhart for costs they incur above $50,000 with a maximum reimbursement obligation of $50,000. Per Section 408 of the agreement, any required City reimbursement would be in the form of permit fee credits first, and incremental TIF revenue the development would create second.

Development Entitlements (Section 304.(a)): Airhart's project must be consistent with the Project Plans attached to the RDA as Exhibits B-1 and B-2. The Project Plans are substantially consistent with the updated detailed design parameter expectations endorsed by

the City Council in City Resolution 2016-25 and the courtesy review information Airhart presented to the Plan Commission in late 2016.

Purchase Price (Section 403.(c)(i): The full purchase price of $335,000 would be paid at closing. As previously noted SB Friedman analyzed the merits of Airhart's proposed purchase price on behalf of the City. SB Friedman's analysis concluded *"The Developers land price offer, though materially lower than the residual land value projection prepared by SB Friedman, may be reasonable given the Developer's operations, site complexities, and the policy goals of the City. While it may be possible for the City to achieve a higher land sale price than the Developer's current offer, it is also possible that such an offer may not be available or may not be forthcoming in the near-term. For this reason, it may be in the City's best interest to move forward with the Developer's offer in order to advance development goals and generate property tax revenues in a timely manner".*

Impact and Recapture Fees (Section 406): The school, park, and library impact fees for the "Manor Homes" and "Cottage Row Homes" proposed on lots 4-27 would be based on City Code impact fee requirements for attached housing units. These 24 homes would be located on the smallest lots which will be maintained by the homeowners association. Staff analyzed the merits of this request by obtaining population and student generation data for other similar Airhart area developments and discussing it with senior staff representatives of School District 200, the Warrenville Library District, and the Warrenville Park District. None of these districts have objected to this provision of the RDA. From staff's perspective, the data gathered during this process clearly supports the technical merits of this provision of the RDA.

Municipal Fees (Section 407): The City's current development review and building permit fees would be apply during the life of the agreement unless they are reduced.

Residential Sprinklers (Section 501.(c)): Acknowledges the City's current building and fire code requirements do not require the proposed detached single-family residential structures in this development to be equipped with residential sprinkler systems.

Code Lock-in Period (Section 501.(c)): Documents that the Zoning, Building, Fire, and Life Safety codes the City has in place today will be the codes under which the project will be built.

Construction Commencement and Completion (Section 502.(a) and (b): Requires Airhart to (i) begin construction of the required development improvements within 180 days from taking title of the property and (ii) completing construction of these improvements within one year from the issuance of the first building permit in the project. If Airhart does not obtain occupancy permits for at least 24 homes within 5 years from the issuance of the first building permit, the developer is required to pay the City $2,500 per home, per year, for any uncompleted home below 24.

ECONOMIC DEVELOPMENT REPRSENTATIVE RECOMMENDATION

The EDR recommends City Council approval of the April 24, 2017, RDA based on the following conclusions and findings:

- It satisfies the four goals the City Council established for CCRS #1 in Resolution No. 2016-25 (attached for reference as Exhibit 1).
- Airhart's planned project effectively addresses the key concerns raised during the review and approval process for the Settler's Pointe Project previously proposed on the property.
- Airhart plans to complete site development and infrastructure construction activities and begin new home construction in the project this construction season.
- Airhart is locally based and has a long track record of successful residential developments in the area.
- The varied design and architecture of semi-custom, detached homes planned for this project is consistent with the small-town character the City desires to achieve on this property.
- The planned small lot, detached, single family home product would expand housing alternatives in Warrenville.
- The additional residential population generated by Airhart's redevelopment project will support increased activity and vitality in the Civic Center area and make the adjacent Route 56 and Batavia Road corridors more attractive to other desirable economic development.
- Upon full build-out, Airhart's planned project will have a market value of approximately $11.9 million dollars (27 homes x $420,000 per home) and generate approximately $300,000 in new TIF revenue annually for the City and approximately $3,900,000 in total City TIF revenue over the remaining life of TIF #3.

NEXT STEPS

Airhart will complete due diligence activities and submit a detailed planned unit development application for its proposed redevelopment project within 105 days from the City's approval and execution of the RDA. The Plan Commission will conduct a formal public hearing on Airhart's PUD application and plans. Airhart will close on the purchase of CCRS #1 following the City Council's approval of Airhart's final PUD plans.

EXHIBIT 1

CITY OF WARRENVILLE
DU PAGE COUNTY, ILLINOIS

RESOLUTION NO. 2016- 25
ENDORSING UPDATED CITY GOALS AND OBJECTIVES FOR RESIDENTIAL DEVELOPMENT ON CIVIC CENTER REDEVELOPMENT SITE #1

WHEREAS, over an eleven-year period the City acquired approximately 4.25 acres for redevelopment (hereinafter Civic Center Redevelopment Site #1 or CCRS #1) in the City's Civic Center area; and

WHEREAS, in 2007 the City Council unanimously approved the Old Town/Civic Center Subarea Plan and that plan illustrates CCRS #1 being redeveloped with a moderately dense residential project based on significant resident input and guidance from consulting development experts; and

WHEREAS, the City Council determined that the site should be redeveloped with houses, and not remain a contaminated industrial site, because additional residents are necessary to support the establishment of a vibrant downtown in the Civic Center area; and

WHEREAS, the 2013 Old town/Civic Center Tax Increment Financing District (TIF #3) Plan and 2015 Strategic and Economic Development Plans include residential redevelopment of CCRS #1; and

WHEREAS, based on these adopted plans for residential redevelopment of CCRS #1, the City Council invested significant public dollars of up to $3.5 million for the acquisition, demolition, contamination clean up, and site preparation for residential redevelopment; and

WHEREAS, the tax revenue generated from the private residential redevelopment and spending by the new residents will pay back the City's significant investment; and

WHEREAS, the City's substantial investment of public dollars makes the site financially unfeasible for anything but private redevelopment; and

WHEREAS, timely and quality private residential redevelopment of CCRS #1 continues to be a high priority project for the City; and

WHEREAS, a City Council endorsed, shared set of goals and objectives for CCRS #1 will improve City staff's ability to provide clear direction to the City consultants and prospective developer(s) that work with the City on the residential redevelopment of CCRS #1.

NOW, THEREFORE IT BE RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: The recitals set forth hereinabove shall be and are hereby adopted as

findings of fact as if said recitals were fully set forth within this Section One.

SECTION TWO: That this Resolution shall serve to revise, replace, and expand on the Resolution the City Council approved in 2013 (Resolution No. 2013-22) to endorse general design parameters for the CCRS #1 Property.

SECTION THREE: The City Council hereby endorses the five goals and objectives, which are included on Exhibit A, as the City's most important goals and objectives for the redevelopment of CCRS #1.

SECTION FOUR: The City Council hereby endorses the Detailed Design Parameters for CCRS #1, as delineated in Exhibit B.

That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED AND APPROVED THIS 19th day of September, 2016.
AYES: Ald. Wilson, Barry, Goodman, Davolos, Weidner, and Aschauer
NAYS: Ald. Hoffmann
ABSENT: Ald. Bevier

ATTEST:

City Clerk

Mayor

EXHIBIT A

The City's five most important goals and objectives for the residential redevelopment of CCRS #1 include:

1. **Facilitate high quality residential redevelopment:** The City desires a well-designed, quality constructed, compact, walkable, residential project that will have a strong sense of place and set a desirable standard for other future redevelopment projects in the TIF #3 area. The City considers project quality and character more important than increased short-term fiscal return. As such, the City expects the redevelopment of the property to be substantially consistent with the detailed design parameters attached as Exhibit B.

2. **Facilitate moderately dense residential redevelopment:** The 2007 Old Town/Civic Center Subarea Plan clearly documents the City's desire to increase activity and enhance the vitality of the Subarea by expanding the scope and diversity of housing alternatives by redeveloping CCRS #1 with both attached and small lot detached single family homes. While the approved Subarea Plan illustrates the redevelopment of CCRS #1 with 39 attached and three small lot detached homes, the City now prefers a lesser number of total homes than included on the original plan.

3. **Focus on the long-term "return on investment" for the City:** The City has invested approximately three and one-half million dollars into property acquisition, site demolition, and environmental remediation related activities on CCRS #1 thus far. The property is located within TIF #3. As such, the City Council is concerned with the total return on investment it will realize by the sale and redevelopment of this property, which includes revenue from the sale of the property, permit and inspection fees, and the TIF revenue the private redevelopment of the property will generate over the life of TIF #3.

4. **Minimize City risk and additional investment:** While the City is willing to be flexible in how it works with a private developer to accomplish the above three goals, it:
    a. Is not inclined to invest additional City funds into redevelopment costs.
    b. Must account for the potential partial completion of a redevelopment project.
    c. Prefers to work with a residential developer with a successful track record of completing high quality residential development projects in the Chicago area.

EXHIBIT B

Detailed Design Parameters for the Residential Redevelopment of CCRS #1

Building Layout and Design: Residential units should face public streets as much as reasonably possible. Building layout should be configured so as to minimize the number of new private driveways onto Stafford Place and Rockwell Street. Individual buildings should be designed and located in a manner that minimizes the visual impact garages and driveways have on the streetscapes within and adjacent to the site. This can be accomplished by setting back the front face of front-loaded garages from the front-building facade and/or incorporating rear-loaded garages where vehicle access provided from the rear of the building. The front wall of front-loaded garages shall be setback a minimum of 20 feet from the front property line. The City desires the homes constructed on CCRS #1 to appeal to a wide range of potential homebuyers and shall include first floor master bedroom options designed to accommodate single level living.

Building Materials: Building facades shall be constructed of high-quality building materials and preferably should include masonry and stone elements. Exterior chimney chases shall be constructed with masonry materials. Cinder/concrete block, vinyl siding, and aluminum siding are not acceptable building materials. Acceptable roofing materials include architectural grade shingles and architectural metal panels.

Building Energy Efficiency: The City desires the developer of the site to construct ENERGY STAR compliant (or a recognized equal energy-efficient certification) homes in the redevelopment project.

Building Height: The City anticipates any attached residential units will be no more than 2.5 stories in height when viewed from the front and three stories when viewed from the rear. This contemplates up to three finished levels in each unit, with either the lowest floor partially below grade or the upper floor located under the building roof with gables and or dormers. Building heights should not exceed the level required to provide a visually interesting pitched roof profile. Maximum building height, as measured from the lowest point of the lowest ground level of the units, should not exceed 40 feet. End units in multiple unit buildings are encouraged to follow a two-story "villa" format with a lower height than interior units. Taller units should be located along the north end of the site. Ranch homes and homes with an exterior appearance of a two-story home are encouraged along the south edge of the site adjacent to the existing Ray Street residential neighborhood.

Building Articulation and Details: A high level of articulation and visual interest is strongly preferred in facades, roof-lines, usable front porches, dormers, and other building features. This includes attractive front doors, garage doors with windows and variable design details, and desirable trim elements in the building siding package. Special attention should be given to

ensuring the homes have a variety of exterior elevations and color packages so as to prevent aesthetic monotony within the project.

Buffering: High-quality transitional-yard buffering should be provided along the southern edge of the site adjacent to the existing single-family homes along the north side of Ray Street. This should be accomplished through the combined use of trees, landscape plantings, and high-quality fencing when parking and paving improvements are located in close proximity to this shared property line. Where possible, landscape detention areas should be incorporated into the transitional-yard buffer to reduce the length of continuous transitional-yard fencing.

Stormwater Management: The City expects the site will be designed and developed to comply with the retention and best management provisions of the most current City of Warrenville Stormwater Management and Floodplain Ordinance then in existence. A strong preference exists for these requirements to be met through the use of pervious pavement material, bioswales, and native planted detention areas.

Site Circulation and Access: The City expects that any street connection through the site that will invite general public use as a convenient cut-thru will be designed to meet City public street requirements and located within a dedicated public right-of-way at least 50-feet in width. If Mount Street is extended through the site, the City expects the west end of Mount Street to intersect with Stafford Place directly opposite (south) of the Rockwell Street/Stafford Place/Illinois Prairie Path, Route 56 intersection in a manner that allows for the safe alignment of vehicles on Mount Street at the intersection. Public pedestrian access shall be provided through the site between Stafford Place/Rockwell Street and Manning Avenue.

Parking: Public street parking shall be provided along at least one side of all new public streets constructed on the property. All residential buildings shall include two garage spaces and two off-street parking spaces, either on the private driveway for each home or elsewhere on the site.

Street Lighting: New street(s) within the project and all existing street frontages adjacent to the site shall be illuminated with the City's standard ornamental streetlights.