

RESOLUTION 2009-38

4-29-09

**RESOLUTION BY ECONOMIC DEVELOPMENT AND REDEVELOPMENT
COMMITTEE AUTHORIZING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT
WITH COBBLE COURT ASSOCIATES LIMITED PARTNERSHIP**

WHEREAS, the Cobble Court Associates Limited Partnership and the Village have entered into a development agreement in regard to the Cobble Court project located adjacent to STH 11;

WHEREAS, the parties desire to amend the development agreement to provide for certain payments to the Village and removing certain timing requirements for Cobble Court Associates Limited Partnership.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of the Amendment to Development Agreement (which is attached hereto as Exhibit A and incorporated herein) with Cobble Court Associates Limited Partnership which provides certain payments to the Village and removes certain timing requirements for Cobble Court Associates Limited Partnership is authorized and approved subject to final review by the Village Administrator; and the Village Attorney ;and
2. The Village President and the Village Clerk are authorized to sign any agreements, amendments or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 5th day of May 2009.

Village of Sturtevant

By _____
Steven Jansen, President

Attest _____
Mary Hanstad, Village Clerk

**APRIL, 2009 AMENDMENT TO
DEVELOPMENT AGREEMENT**

This is an amendment ("Amendment") made on May 5, 2009, to the Development Agreement ("Agreement") entered into on or about August 15, 2006, between COBBLE COURT ASSOCIATES LIMITED PARTNERSHIP, and its successors and assigns ("Developer"), and the VILLAGE OF STURTEVANT, a municipal corporation located in Racine County, Wisconsin ("Village"), for the development of certain property located within the Village to be known as Cobble Court (the "Development").

WHEREAS, the Agreement required Developer to complete, as a part of Phase I of the Development, three commercial buildings, comprised of two 9,600 square foot buildings and a third, smaller outlot building, with a total minimum improvement value of \$2.1 million (Exhibit D) (the "Commercial Development"); and,

WHEREAS, the Agreement also contained certain deadlines and guarantees concerning the total minimum improvement value of the Commercial Development, beginning as of January 1, 2008, deadlines which Developer will be unable to attain and from which it seeks relief; and,

WHEREAS, the Village is willing to afford Developer relief, in accordance with the terms of this Amendment;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

- 1) That Section III, Paragraph C (including all subparagraphs) of the Agreement, shall be deleted in their entirety and replaced with the following:

"C. Commercial Development Payment. The parties agree that in lieu of Developer constructing any portion of the Commercial Development within a set timeframe or a guarantee from Developer of a total minimum improvement value for any portion of the Commercial Development, Developer agrees to make an annual payment ("Payment") to the Village beginning on January 31, 2009 to offset the tax revenue that the Village has not realized from the Developer's promised but unconstructed Commercial Development.

1. The 2008 Payment, due by January 31, 2009 or within 15 days of the effective date of this Agreement, whichever occurs later, shall be \$6,848.50, equating to the property tax that would have been due to the Village on improvements with a value of \$1 million, as calculated by multiplying \$1 million by the Village's 2008 mill rate (\$7.3199 per \$1,000 of assessed value) and by its average assessment ratio (.9356). The 2009 Payment, which shall be due by January 31, 2010, and the Payment for each year thereafter, which shall be due by each subsequent January 31st, shall be in an amount equal to the total property tax that would have been due to the Village on improvements having a total value of \$2.1 million, as calculated by multiplying \$2.1 million by the Village's mill rate and average assessment ratio for the tax year in question, less any Village property taxes paid by Developer on any improvements, or

parts thereof, which were actually constructed as part of the Commercial Development on January 1 of said tax year. Notice of the Village's mill rate and average assessment ratio for a given tax year shall be provided to Developer after they have been determined pursuant to applicable statutory procedures.

2. Any default in payment by Developer shall constitute a breach of the Agreement and the Village shall have all remedies afforded to it by this Agreement or at law and in equity. In addition, the Village shall be authorized to draw on the Letter of Credit posted by Developer under subparagraph 4 in an amount equal to the unpaid Payment, without any further notice to Developer. The Village shall not be required to pay interest on any amounts drawn on the Letter of Credit, and shall have no obligation to reimburse Developer for any Payment regardless of any future tax revenues that are generated by any Commercial Development.
 3. Payment of this Payment by the Developer shall terminate upon either of the following occurrences: (1) the realization of a cumulative value of \$2,100,000.00, as calculated by dividing the assessed value of all improvements on the Commercial Development by the Village's average assessment ratio for the given tax year or (2) the sale of the Development or the Commercial Development to a 3rd party, provided that such 3rd party has entered into an agreement with the Village containing the same material terms as this Agreement and provided that the 3rd party has supplied the Village with a replacement Letter of Credit in an amount of no less than \$20,000. Otherwise, in the event of a sale of the entire Development or the Commercial Development by Developer to a 3rd party, the Village shall be entitled to immediately draw the entire remaining balance of the Letter of Credit as an additional Payment.
 4. Developer shall post with the Village an irrevocable letter of credit in the amount of \$20,000.00, which shall remain in full force and effect and shall be renewed as necessary at all times prior to the termination of the Payment ("Letter of Credit"). If the Village is forced to draw on the Letter of Credit due to Developer's nonpayment of any Payment, Developer shall, within 60 days of the Village's draw, return the balance of the Letter of Credit that was posted with the Village to \$20,000 or, alternatively, provide the Village with a substitute Letter of Credit, meeting the requirements of this Paragraph, in the amount of \$20,000, in which case the Village will release the balance of the original Letter of Credit. If Developer fails to maintain a Letter of Credit with the Village as provided herein, the Village shall be entitled to draw the remaining balance of any Letter of Credit that has been posted as an additional Payment. The Village may also draw the balance of any Letter of Credit if, thirty days prior to its expiration, Developer has not posted a replacement Letter of Credit with an expiration date at least one year later than that set to expire.
 5. Upon termination of this Payment, the Village shall release any remaining Letter of Credit being held to insure Payment by the Developer."
- 2) That, in all other respects not addressed by this Amendment, the Agreement, as amended, remains in full force and effect.

**COBBLE COURT ASSOCIATES
LIMITED PARTNERSHIP**

By: **COBBLE COURT (GP), INC.**
Its: General Partner

By: _____
Robert A. Patch, President

STATE OF WISCONSIN)
)SS.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2009, the above named Robert A. Patch, the President of Cobble Court (GP), Inc., the general partner of Cobble Court Associates, LP, to me known to be the person who executed the foregoing instrument, and acknowledged the same as the act and deed of said entities.

Notary Public, Milwaukee County, WI
My Commission: _____

VILLAGE OF STURTEVANT

By: Steve Jansen
Steve Jansen, President

Attest: Mary Hanstad
Mary Hanstad, Village Clerk

STATE OF WISCONSIN)
)SS.
COUNTY OF RACINE)

Personally came before me this 5th day of May, 2009, the above named Steve Jansen and Mary Hanstad, to me known to be the President and Clerk of the Village of Sturtevant, and acknowledged the same as the act and deed of said Village.

Mark Jansen
Notary Public, Racine County, WI
My Commission: permanet