

**RESOLUTION 15-141**

**A RESOLUTION TO APPROVE STATE INFRASTRUCTURE  
AGREEMENT WITH NORTHPOINT DEVELOPMENT**

**WHEREAS**, Developer is developing industrial buildings on property located on State Route 247/Beechcroft Road (the “Road”) within the City (the “Development”); and

**WHEREAS**, the Tennessee Department of Transportation (“TDOT”) has agreed pursuant to the State Industrial Access Act, Tenn. Code Ann. §§ 54-5-401, *et seq.*, to widen the Road from approximately 460 feet east of the intersection with Cleburne Road, continuing approximately 3,000 feet East to the eastern side of the Magna Seating building (701 Beechcroft Road) so as to: (i) provide two 12-foot lanes of travel and one 12-foot continuous center turn lane, (ii) add curb and gutter on both sides of the Road, (iii) improve the vertical alignment along the Road, (iv) add a dedicated east bound right turn lane from the Road onto Town Center Parkway, and (v) improve the eastbound right turn radius at the intersection of Town Center Parkway and U.S. 31 (collectively, the “Project”); and

**WHEREAS**, TDOT and the City have agreed to enter into an agreement (the “SIA Agreement”) that will provide that the City shall pay fifty percent (50%) of the cost of the right-of-way acquisition for the Project and fifty percent (50%) of the cost of the utilities relocation for the Project; and

**WHEREAS**, the City’s portion of the estimated cost of the right-of-way acquisition is \$55,036.20, and the City’s portion of the estimated cost of the utilities relocation is 102,482.40, for a total cost of \$157,518.60; and

**WHEREAS**, Developer has agreed to pay to the City the City’s share of the cost of the right-of-way acquisition and utilities relocation for the Project and for the one hundred percent (100%) of the costs of the construction of the curb and gutter located on the north side of the Road; and

**WHEREAS**, Developer has previously paid to TDOT, on behalf of the City, the sum of \$60,000 to allow TDOT to complete the design and commence right of way acquisition for the Project; and

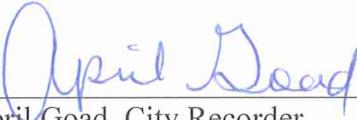
**WHEREAS**, Developer and the City wish to enter into this Agreement to address payment of the City’s share of the cost of the right-of-way acquisition and utilities relocation for the Project and the cost of the construction of the curb and gutter located on the north side of the Road.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Spring Hill, Board of Mayor and Aldermen approve the attached Infrastructure Agreement with Northpoint Development.

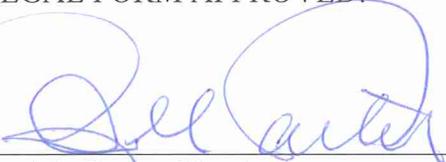
Adopted this 21<sup>st</sup> day of, December 2015.

  
\_\_\_\_\_  
Rick Graham, Mayor

ATTEST:

  
\_\_\_\_\_  
April Goad, City Recorder

LEGAL FORM APPROVED:

  
\_\_\_\_\_  
Patrick Carter, City Attorney

ROAD IMPROVEMENT AGREEMENT

THIS ROAD IMPROVEMENT AGREEMENT (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and among Spring Hill 56, LLC, a Missouri limited liability company (the "Developer") and The City of Spring Hill, Tennessee (the "City").

WITNESSETH:

WHEREAS, Developer is developing industrial buildings on property located on State Route 247/Beechcroft Road (the "Road") within the City (the "Development"); and

WHEREAS, the Tennessee Department of Transportation ("TDOT") has agreed pursuant to the State Industrial Access Act, Tenn. Code Ann. §§ 54-5-401, *et seq.*, to widen the Road from approximately 460 feet east of the intersection with Cleburne Road, continuing approximately 3,000 feet East to the eastern side of the Magna Seating building (701 Beechcroft Road) so as to: (i) provide two 12-foot lanes of travel and one 12-foot continuous center turn lane, (ii) add curb and gutter on both sides of the Road, (iii) improve the vertical alignment along the Road, (iv) add a dedicated east bound right turn lane from the Road onto Town Center Parkway, and (v) improve the eastbound right turn radius at the intersection of Town Center Parkway and U.S. 31 (collectively, the "Project"); and

WHEREAS, TDOT and the City have agreed to enter into an agreement (the "SIA Agreement") that will provide that the City shall pay fifty percent (50%) of the cost of the right-of-way acquisition for the Project and fifty percent (50%) of the cost of the utilities relocation for the Project; and

WHEREAS, the City's portion of the estimated cost of the right-of-way acquisition is \$55,036.20, and the City's portion of the estimated cost of the utilities relocation is 102,482.40, for a total cost of \$157,518.60; and

WHEREAS, Developer has agreed to pay to the City the City's share of the cost of the right-of-way acquisition and utilities relocation for the Project and for the one hundred percent (100%) of the costs of the construction of the curb and gutter located on the north side of the Road; and

WHEREAS, Developer has previously paid to TDOT, on behalf of the City, the sum of \$60,000 to allow TDOT to complete the design and commence right of way acquisition for the Project; and

WHEREAS, Developer and the City wish to enter into this Agreement to address payment of the City's share of the cost of the right-of-way acquisition and utilities relocation for the Project and the cost of the construction of the curb and gutter located on the north side of the Road.

NOW THEREFORE, for Ten and No/100 Dollars (\$10.00) paid to the City by Developer and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Defined Terms. In addition to the terms defined in the foregoing recitals, which are incorporated herein by reference, and the other Sections of this Agreement, the following terms when used herein shall have the meanings ascribed to them below:

(i) "Additional City Costs" means any City Costs (as defined below) that exceed the Estimated City Costs (as defined below).

(ii) "City Costs" means all costs and expenses that the City will be required to pay to TDOT pursuant to the SIA Agreement as the City's share for the cost of the right-of-way acquisition and utilities relocation for the Project.

(iii) "Curb and Gutter Costs" means all costs and expenses that the City will be required to pay to complete the construction and installation of the Curb and Gutter Project.

(iv) "Curb and Gutter Project" means the construction of the curb and gutter located on the north side of the Road.

(v) "Deposit" means the \$60,000.00 previously paid by Developer to TDOT on behalf of the City.

(vi) "Estimated City Costs" means the estimated total City Costs for Project in the amount of \$157,518.60.

(vii) "Estimated Curb and Gutter Costs" means the estimated total Curb and Gutter Costs for Project in the amount of \$100,000.00.

2. SIA Agreement. The City agrees that, upon execution of this Agreement and the approval of the form of the SIA Agreement by TDOT and the City, the City shall execute the SIA Agreement.

3. Payment of City Costs. The Developer agrees that within ten (10) business days of the receipt of a written request from the City, to pay to the City (or to TDOT directly if requested by the City) the sum of \$97,518.60, which is the net amount of the Estimated City Costs minus the Deposit.

4. Payment of Additional City Costs. The Developer agrees that within ten (10) business days of the receipt of a written request from the City, to pay to the City (or to TDOT directly if requested by the City) the amount of any Additional City Costs.

5. Payment of Curb and Gutter Costs. The Developer agrees that within ten (10) business days of the receipt of a written request from the City, to pay to the City (or to TDOT directly if requested by the City) the amount of the Estimated Curb and Gutter Costs.

6. Payment of Additional Curb and Gutter Costs. The Developer agrees that within ten (10) business days of the receipt of a written request from the City, to pay to the City (or to TDOT directly if requested by the City) the amount of any Additional Curb and Gutter Costs.

7. Refund.

(a) The City agrees that in the event the total amount of the City Costs paid by the Developer to the City (or to TDOT directly if requested by the City) is determined to be less than the amount of the Estimated City Costs, or less than the Estimated City Costs plus the Additional City Costs, then the City shall request a refund of such amount from TDOT and upon receipt of such refund from TDOT, pay the amount of the refund to Developer within ten (10) business days of the receipt of the refund.

(b) The City agrees that in the event the total amount of the Curb and Gutter Costs paid by the Developer to the City (or to TDOT directly if requested by the City) is determined to be less than the amount of the Estimated Curb and Gutter Costs, or less than the Estimated Curb and Gutter Costs

plus the Additional Curb and Gutter Costs, then the City shall request a refund of such amount from TDOT and upon receipt of such refund from TDOT, pay the amount of the refund to Developer within ten (10) business days of the receipt of the refund.

8. Notices. All notices, consents and other communications (collectively, “Notices”) that may be or are required to be given under this Agreement or are related hereto shall be properly made only if in writing and sent by hand delivery, U.S. Certified Mail (Return Receipt Requested), or nationally recognized overnight delivery service to the address of Developer or the City, as applicable, set forth below, as the same is modified in accordance herewith.

If to the City:                   The City of Spring Hill, Tennessee

Attention:

with a copy to:

If to Developer:               Spring Hill 56, LLC  
c/o NorthPoint Development  
5015 NW Canal Street  
Riverside, Missouri 64150  
Attention: Brent Miles, V.P. Economic Development

with copy to:                   Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
Attention: J. Thomas Trent

Developer or the City may modify its address for Notices under this Section by sending written notice of such modification to the other in accordance with the terms hereof.

9. Modification. This Agreement may only be amended, modified or terminated by a written instrument signed by the City and Developer.

10. Interpretation. No inference shall be drawn from the addition, deletion or modification of any language contained in this Agreement or any prior draft hereof. Each of the parties hereto has agreed to the use of the particular language of this Agreement, and any question regarding the meaning of any provision of this Agreement shall not be resolved by any rule providing for construction against the party who caused the uncertainty to exist or against the draftsman.

11. Severability. If any provision of this Agreement shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement.

13. Successors and Assigns. The terms of this Agreement shall be binding on and inure to the benefit of Developer and the City and their respective successors-in-interest, and any references to Developer or the City shall be deemed to mean and include their respective successors-in-interest as though they had been original parties to this Agreement.

14. No Waiver. No waiver by Developer or the City of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to any party upon a breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach, and the waiver by a party of any breach of this Agreement shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

15. Attorneys' Fees. In the event any arbitration proceeding or legal proceedings related to this Agreement is commenced, the prevailing party in the proceeding shall be entitled to recover the reasonable attorneys' fees, litigation expenses and court costs it incurred in connection with such proceeding.

16. Governing Law. This Agreement shall be governed by the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

DEVELOPER:

Spring Hill 56, LLC, a Missouri limited liability company

By: NorthPoint Development, LLC, a Missouri limited liability company, its Manager

By: \_\_\_\_\_  
Nathaniel Hagedorn, Manager

City:

The City of Spring Hill, Tennessee

By: \_\_\_\_\_  
Name: Rick Graham  
Title: Mayor