



CITY COUNCIL AGENDA ITEM

To: Mayor Graham and City Council
From: Ted Shekell, Planning Director
Walter Denton, City Administrator
Date: March 2, 2009
Subject: **Resolution No.**_____: A Resolution Authorizing the Mayor to Sign a Successor Developer Deposit Agreement between Louisville Realty Corporation and the City of O'Fallon for Hearthstone

List of committees that have reviewed: The Community Development Committee reviewed and recommended approving the Successor Developer Deposit Agreement concerning the Hearthstone matter at its March 9, 2009, meeting with a vote of 5-0.

Background

Taylor-Morley, the developer and home builder of Hearthstone Subdivision, closed its doors and filed for bankruptcy in the summer of 2008. There were a few items in the Hearthstone Subdivision that needed to either be completed or problems that needed correcting, and the city had \$76,800 remaining in a letter of credit from Southwest Bank to guarantee the work was done. Unfortunately, the bank, as guarantor of Taylor-Morley's obligations, did not perform the work nor renew the LOC prior to its expiration, consequently, the bank forfeited the full amount of the LOC to the City after we "called" the security. However, rather than the City being obligated to make the repairs, we have reached agreement with the bank for them to make the corrections as noted in the attached list (some of which have now been done). Upon their completion of this work and the City's inspection of the work, the funds would be released back to the bank. The agreement will actually be with Louisville Realty Corporation, with Southwest Bank and M&I signing a release of interest in the funds.

The City's special legal counsel, Dan Vogel, prepared the agreement and the bank has stated they will have the agreement signed. The City's Engineering Department has been involved in coordinating the scope of work with the bank, and it will also be inspecting the work as its completed. Our understanding from the bank is that the work will be completed by April of this year.

Legal Considerations, if any: Dan Vogel, special legal counsel for the City, prepared the agreement and recommends it as proposed.

Budget Impact: The City will release the \$76,800 to Louisville Realty Corp. upon completion of the work by Southwest Bank and their entities.

Staff Recommendation: Staff recommends approval of the development agreement as proposed.