



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Economic Development Division*

### **m e m o r a n d u m**

**TO:** Laurel Lunt Prussing, Mayor

**FROM:** Elizabeth H. Tyler, FAICP, Director, Community Development Services

**DATE:** April 23, 2015

**SUBJECT: AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT  
FIRST AMENDED AND RESTATED WITH FRASCA ASSOCIATES (906  
and 1402 East Airport Road)**

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### **Introduction**

The Urbana City Council is being asked to approve a first amended and restated agreement with Frasca Associates in order to make technical updates to the current agreement as well as to realign the agreement's project goals with the current expectations and needs of the employer. **(Attachment A - Draft Ordinance with attached First Amended and Restated Redevelopment Agreement)**

On December 17, 2012 the Urbana City Council approved a redevelopment agreement with Frasca Associates (Ordinance No. 2012-12-111). **(Attachment B - Original Redevelopment Agreement)** In order to facilitate business expansion and employment growth, the agreement incentivized the renovation and expansion of the Frasca International, Inc. flight simulator business at 906 East Airport Road and Frasca Field Airport at 1402 East Airport Road and provides for the reconstruction of East Airport Road using a combination of State Economic Development Program grant TIF 4 funds. These properties are generally located near the northwest corner of Cunningham Avenue and Airport Road and are within Tax Increment District #4. **(Attachment C – Location Map)**

### **Background**

Frasca International, Inc. designs and manufactures a complete line of simulators for all aircraft types for customers around the world. Over the years, both Frasca International and Frasca Field Airport have had a significant positive impact on the community. Founded in 1958, the flight simulator business currently employs 178 people. As part of the proposed project, Frasca International intends to hire 40 new employees. It is anticipated that these new jobs will be a mix of managerial, professional, technical, and administrative positions.

The original agreement obligated the City to accelerate proposed road work on East Airport Road which has been long planned and is consistent with the TIF District #4 redevelopment plan. In February of 2013 the Illinois Department of Transportation (IDOT) awarded the City of Urbana an Economic Development Program (EDP) grant for improvements to Airport Road from Willow Road to Cunningham Avenue (US Route 45) including improvements to the Cunningham Avenue / Airport Road intersection. This grant was awarded in association with Frasca's commitment to undertake reasonable efforts to create 40 or more jobs within a five year period.

The East Airport Road project is currently in the design phase with construction expected to begin in the spring of 2016. This project is included in the City's current Capital Improvement Plan. At present the project is anticipated to be primarily funded by up to \$1,809,925 in expenditures from TIF 4 as well as up to \$1,305,902 from the state EDP grant.

## **Discussion**

The proposed changes to the agreement allow for the improvements to the physical properties to occur through September 30<sup>th</sup>, 2017. This provides a total five year period as opposed to only two years in the original agreement. This new completion date is also coterminous with the deadline for job creation in the EDP agreement. The expanded timeframe has been requested by Frasca in order to assist them in fully meeting the obligations of the agreement.

The descriptions of the projects by phase have also been clarified in the draft agreement. Frasca has now fully completed Phases I and II of the agreement as described in this draft including many items that were flagged as optional in the original agreement. In total Frasca has completed a 4,000 square foot expansion, reconfiguration of two buildings, conversion of multiple rooms into office spaces, and the expansion and remodeling of multiple wash rooms and the lunch room to accommodate an increased number of employees.

The Phase III project description has been amended in the proposed to recognize that Frasca's space needs have evolved. Originally, the third phase called for the construction of a new building; however the extensive remodeling which has already occurred has reduced the need for new construction. The new language reflects a reduction in total square footage and provides Frasca the option of pursuing either a further remodeling or a new construction project to meet their space needs for further business expansion.

No other substantive changes to the terms of the agreement are proposed. The proposed amended agreement also employs a technical correction for evidencing the completion of projects when a certificate of occupancy is not required. In addition, there are a handful of other technical adjustments to the agreement dates and language.

## **Fiscal Impact**

No changes in the proposed first amended and restated agreement are anticipated to alter the fiscal impact of the original agreement.

The agreement will still provide up to a maximum of \$425,000 in property tax rebates over a ten year period. If the project conditions are met, the City would be expected to break even on its investment in 12-13 years. Aside from the direct fiscal impact, the creation of quality jobs is expected to positively impact the local economy and the City as a whole.

The agreement will assist the City with moving forward with the reconstruction of Airport Road west of Cunningham Avenue. This project has been long planned and is reflected in the City's capital improvement goals. The opportunity to utilize over \$1.3 million in state EDP grant funding has significantly reduced the City's total expense for this needed road reconstruction project.

## **Options**

1. Approve the proposed ordinance authorizing the execution of the first amended and restated redevelopment agreement as presented.
2. Approve the proposed ordinance authorizing the execution of the first amended and restated redevelopment agreement ordinance with changes. It should be noted that any changes will need to be agreed upon by the developer.
3. Deny the proposed ordinance authorizing the execution of the first amended and restated redevelopment agreement.

## **Recommendation**

Staff recommends that the City Council approve the proposed ordinance authorizing the execution of the first amended and restated redevelopment agreement with Frasca Associates.

Prepared by:

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Brandon S Boys, AICP  
Economic Development Manager

ATTACHMENTS: A – Draft Ordinance with attached First Amended and Restated  
Redevelopment Agreement (changes shown)  
B – Original Redevelopment Agreement  
C – Location Map

# Attachment A

ORDINANCE NO. 2015-04-038

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT FIRST AMENDED  
AND RESTATED WITH FRASCA ASSOCIATES  
(906 AND 1402 EAST AIRPORT ROAD)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
URBANA, ILLINOIS, as follows:

Section 1. That a Redevelopment Agreement Between the City of Urbana and Frasca Associates in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2015.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

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**REDEVELOPMENT AGREEMENT**  
**FIRST AMENDED & RESTATED**

**by and between the**

**CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS**

**and**

**FRASCA ASSOCIATES**

Dated as of ~~December~~May 1, ~~2012~~2015

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**Document Prepared By:**

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Champaign, IL 61820**

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**EXHIBIT LIST**

EXHIBIT A      Description of Property



**REDEVELOPMENT AGREEMENT**  
**FIRST AMENDED AND RESTATED**

**THIS REDEVELOPMENT AGREEMENT FIRST AMENDED AND RESTATED** (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of ~~December~~ May 1, ~~2012~~ 2015, but actually executed by each of the parties on the dates set forth beneath each of their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the “**City**”), and **Frasca Associates**, an Illinois general partnership (the “**Developer**”). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and date this Agreement and to deliver it to the other (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the “**TIF Act**”), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the “**Corporate Authorities**”) did adopt a series of ordinances (Ordinance Nos. 2001-12-164, 2001-12-165 and 2001-12-166 on December 17, 2001) including as supplemented and amended (collectively, the “**TIF Ordinances**”); and

**WHEREAS**, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Cunningham Avenue Corridor Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved the related redevelopment plan, as supplemented and amended (the “**Redevelopment Plan**”), including the redevelopment projects described in the Redevelopment Plan (collectively, the “**Redevelopment Projects**”); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to develop the Property (as defined below) and to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below); and

**WHEREAS**, the Property (as defined below) is within the Redevelopment Project Area; and

**WHEREAS**, the Developer is unwilling to develop the Property (as defined below) and to undertake the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

**WHEREAS**, the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth in this Agreement; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions.** For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

**“Annual Reimbursement Amounts”** means, collectively, amounts to be reimbursed or paid to or as directed by the Developer from the Fund by the City under and pursuant to Section 4.1 of this Agreement.

**“City Codes”** means all applicable laws, codes, rules, regulations and ordinances of the City, including, without limitation, all applicable subdivision, zoning, environmental, building code or any other land use regulation or permit.

**“City Comptroller”** means the City Comptroller of the City, or his or her designee.

**“Completion Date”** means December 31, 2012 as to Phase I; December 31, 2013 as to Phase II; and ~~December 31, 2014~~September 30, 2017 as to Phase III the dates on or before which each phase of the Project reaches substantial completion such that it is ready for occupancy, utilization and continuous operation as evidenced by the issuance of ~~a certificate of occupancy by the City~~either a certificate of occupancy by the City or a letter from a City building official certifying that the work associated with the project has been approved in accordance with all applicable codes and final inspection(s) for all associated permits have been completed.

**“Commencement Date”** means no later than October 31, 2012 as to Phase I, ~~June 1, 2013;~~ as to Phase II, and ~~January~~May 1, ~~2014~~2017 as to Phase III, the dates on or before which the construction of each phase of the Project is to commence.

**“Corporate Authorities”** means the City Council of the City.

**“Eligible Redevelopment Project Costs”** means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including, but not limited to: (a) costs of studies, surveys, development of plans and specifications including but not limited to professional service costs for architectural, engineering, legal, financial, planning or other services; (b) site preparation, including clearing and grading of land; (c) costs of the construction of public works or improvements; (d) costs of rehabilitation, reconstruction, repair or remodeling of existing buildings; and (e) up to 30% per year of interest costs incurred by the Developer related to the construction of the Project subject to the total cost limitations of such interest payments as set forth in subparagraph (D) of such Section, 5/11-74.4-3(q)(11).

**“Fund”** means, collectively, the “Special Tax Allocation Fund” for the Redevelopment Project Area established under Section 5/11-74.8 of the TIF Act and the TIF Ordinances.

**“Incremental Property Taxes”** means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Property

by taxing districts that is attributable to the increase in the equalized assessed value of the Property over the equalized assessed value of the Property for tax year 2011 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the City Comptroller for deposit by the City Comptroller into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

**“Independent”** or **“independent”**, when used with respect to any specified person, means such person who is in fact independent and is not connected with the City or the Developer as an officer, employee, partner, or person performing a similar function, and whenever it is provided in this Agreement that the opinion or report of any independent person shall be furnished, such person shall be appointed by the Developer and approved by the City, and such opinion or report shall state that the signer had read this definition and that the signer is independent within the meaning hereof.

**“Phase I”, “Phase II” and “Phase III”** means the applicable first, second and third phase of the Project.

**“Prevailing Wage Act”** means the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work on any “public works” (as therein defined) no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is located and to perform certain notice and recordkeeping duties.

**“Project”** means, in connection with the Property, the construction of an addition to a building the rehabilitation, reconstruction, repair or remodeling of an existing building and the construction of a building containing not less than 12,000 square feet, in phases as further described below:

Phase I

4,000 square foot addition to building 2 to facilitate larger welding area and the addition of a five axis CNC milling machine.

Expand parking lot near building 2 addition.

Reconfigure existing building 2 for use as expanded composite shop.

Add washrooms to building 2.

Add sewer extension and water to building 2.

Move composite shop from building 1 to building 2.

Phase II

Remodel old vault room into office space and furnish.

Remodel old drawing reproduction room into office space and furnish.

Remodel old composite shop in building 1 ~~for~~into general purpose space that can be used to integrate products, house additional office space to support 20 additional engineers and technical staff, or demonstrate completed simulators.

\*Expand and remodel lunch room and washrooms to facilitate increased number of employees.

Phase III

~~Add new building, 12,000 to 24~~ Create an additional 8,000 square feet to facilitate expanded of either new or remodeled space for office, machine shop, inventory and/or project staging use to facilitate job growth.

\*Demolition of old runway surface at airport

Demolition of old “Willow Road” section west of building 2.

\*Additional expansion of parking lots.

\*Resurfacing of parking, lots.

\*Resurfacing of airport ramps and taxiways.

\*Signage improvements.

\*Retention pond maintenance and possible expansion.

\*Incorporation of these elements of the Project will be based on further analysis by Frasca and shall be performed in its discretion.

**“Property”** means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

**“Related Agreements”** means all option, development, redevelopment, construction, financing, franchise, loan, ground lease and lease agreements, whether now or hereafter existing, executed by the Developer in connection with the Project.

**“Requisition”** means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article VI of this Agreement.

**Section 1.2. Construction.** This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the City.** In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **Organization and Standing.** The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) **Governmental Consents and Approvals.** No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

**Section 2.2. Representations and Warranties of the Developer.** In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

(a) **Organization.** The Developer is a general partnership duly organized, validly existing and in good standing under the laws of the State of Illinois.

(b) **Power and Authority.** The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's partners. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be

bound.

(e) **Consents and Approvals.** No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

(g) **Maintenance of Existence.** Subject to Section 9.9 of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois corporation.

(h) **Creation of Jobs.** ~~The Subject to Section 5.4 of this Agreement, the~~ Project will enable the creation of a total of forty (40) or more jobs during ~~the a five (5) year~~ period beginning October 1, 2012 and ~~continuing until the completion of the five year period immediately following the Phase III Completion Date ending September 30, 2017.~~

**Section 2.3. Related Agreements.** Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

**Section 2.4. Disclaimer of Warranties.** The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

### **ARTICLE III CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE DEVELOPER AND THE CITY**

**Section 3.1. Conditions Precedent.** The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon the Developer having completed the construction of Phase I of the Project on or before the applicable Completion Date in accordance with all applicable City Codes.

**Section 3.2. Satisfaction of Conditions; Notice of Termination.** The Developer shall use

due diligence to timely satisfy the condition set forth in Section 3.1 above, but if such condition is not so satisfied, then either party may terminate this Agreement by giving written notice thereof to the other. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

**ARTICLE IV**  
**CITY’S COVENANTS AND AGREEMENTS**

**Section 4.1. City’s TIF Funded Financial Obligations.** The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund such annual amounts (the “**Annual Reimbursement Amounts**”) related to Project upon the Property as follows:

(a) **Annual Reimbursement Amounts.** Such Annual Reimbursement Amounts in connection with the Project in any one calendar year shall be equal to sixty percent (60%) of the Incremental Property Taxes actually received by the City in each such calendar year subject to the terms and limitations of this Section immediately below;

(b) **Calculation of Annual Amount.** For the purpose of calculating the total amount of Incremental Property Taxes for such calendar year which are directly attributable to the Project upon the Property, the total equalized assessed value (the “**EAV**”) of the Property for such calendar year shall be reduced by the EAV of the Property for tax year 2011 in the agreed amount of \$1,674,860.00 (the result being the “**Incremental EAV**”), and such Incremental EAV shall be multiplied by the total tax rate of all applicable taxing districts levying taxes upon the Property for any such applicable calendar year;

(c) **Period of Annual Reimbursements.** The obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under this Section 4.1 shall be for a maximum period of ten (10) calendar years, commencing with the calendar year following the calendar year in which a certificate of occupancy is issued for Phase I of the Project, and shall terminate upon reimbursement by the City in accordance with Article VI of this Agreement not later than December 31 of the tenth (10<sup>th</sup>) calendar year in which any such Annual Reimbursement Amounts in connection with the Project become due and payable pursuant to this Section 4.1 and Article VI hereof; and

(d) **Dollar Limitation of Annual Reimbursement Amounts.** The total amount of all such payments of Annual Reimbursement Amounts pursuant to Section 4.1(a) above shall not exceed the lesser of: (i) the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Project upon the Property; or (ii) based upon the applicable amount of the Incremental EAV, the total amount set forth below:

<u>Incremental EAV</u>	<u>Total Amount</u>
------------------------	---------------------



\$500,000	\$275,000
\$630,000	\$350,000
\$790,000	\$425,000

**Section 4.2. City’s Public Improvement Obligations.** In connection with the Project, the City and the Developer mutually covenant and agree that the public improvement described below are necessary or desirable to be undertaken:

(a) **Airport Road Project.** The City agrees to apply to the Illinois Department of Transportation for a grant of economic development funds (the “Grant”) to enable the City to reconstruct 2,375 feet of Airport Road pavement adjacent to the Property from the west edge of the Cunningham Avenue pavement to approximately the west radius tangent point of the access drive along the western edge of the Property (the “Airport Road Project”). Such Airport Road Project shall include a three-lane cross section of roadway with a concrete or full depth asphalt pavement with curb and gutter, including storm sewers. In order to be eligible for the Grant, the Developer agrees to cooperate with the City in applying for the Grant, including, but not limited to, supplying any such commitments or certifications as may be required by the terms of the Grant to evidence the creation of jobs in connection with the Project. Provided the City is awarded the Grant, the City agrees to undertake (or cause to be undertaken), the Airport Road Project with such Grant and other City funds as soon as practical in accordance with the terms and conditions of such Grant.

In the event the City is not awarded the Grant, the City agrees to undertake (or cause to be undertaken) at its sole cost and expense of the Airport Road Project as part of the City’s annual Capital Improvement Plan no later than December 31, ~~2016~~2017.

(b) **Required right-of-way or easements.** If and to the extent that a part of any real estate owned by the Developer is required for any additional public right-of-way or public easements in connection with the Airport Road Project, the Developer shall dedicate or grant any such public right-of-way or public easements to the City without cost, and the City’s obligations in connection with the Airport Road Project as provided in this Section 4.2(a) above is expressly contingent upon any such dedication or grant being timely made. In any event, the City shall endeavor to obtain and use all necessary public right-of-way for the Airport Road Project from the real property owned by the Developer to the south of Airport Road. In no event shall the City’s acquisition of any public right-of-way damage existing improvements on the Property or impede its current use.

**Section 4.3. Extension of Enterprise Zone.** Within sixty (60) days after the satisfaction of the condition precedent as specified in Section 3.1 of this Agreement, the City covenants and agrees to adopt an ordinance and make application in accordance with the applicable provisions of the Illinois Enterprise Zone Act (20 ILCS 655/1 et seq.)(the “Enterprise Zone Act”) in order to initiate an extension of the Enterprise Zone of the City, as certified by the Illinois Department of Commerce and Economic Opportunity (“DCEO”), to include the Property. The Developer acknowledges and agrees that the inclusion of the Property to the Enterprise Zone of the City is subject to the approval of DCEO in accordance with the Enterprise Zone Act, and that the City makes no representation or warranty with respect to any such approval by DCEO. If and when approved by DCEO, the Developer would be eligible to receive, among others, certain incentives by way of an exemption



from the Retailers' Occupation Tax and the Home Rule Municipal Retailers Occupation Tax on the sale by an Illinois retailer of building materials to be incorporated into the Project but would not be entitled to any abatement of any ad valorem taxes levied upon the Property by the City which are attributable to the increase in the equalized assessed value of the Property due to the construction of the Project in that any such abatement is not applicable to any improvement within the Redevelopment Project Area.

**Section 4.4. Defense of Redevelopment Project Area.** In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payments of any Annual Reimbursement Amounts to be paid or reimbursed by the City is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Annual Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

## **ARTICLE V** **DEVELOPER'S COVENANTS**

**Section 5.1. Commitment to Undertake and Complete Project.** The Developer covenants and agrees to commence each phase of the Project on or before the applicable Commencement Date and to have the Project ready for occupancy, utilization and continuous commercial operation on or before the applicable Completion Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of the final development plans, any required permits and any certificate of occupancy, and any failure on the part of the City to grant or issue any such required permit or certificates of occupancy shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

**Section 5.2. Compliance with Agreement and Laws During Development.** The Developer shall at all times acquire, construct and install the Project, including any related required improvements, in conformance with this Agreement and all applicable federal or state laws, rules, regulations and permits, including without limitation all applicable City Codes, and, to the extent the Developer is deemed a "public body" or the Project or any part thereof is deemed a "public works" within the meaning of the Prevailing Wage Act, all requirements of the Prevailing Wage Act. Whenever possible, the Developer shall cause the Project to be designed, constructed and installed utilizing innovative and effective techniques in energy conservation. Any agreement of the Developer related to the design, construction or installation of the Project with any contractor, subcontractor or supplier shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 5.3. City's Right to Audit Developer's Books and Records.** The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to

time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Project and the total amount of related Eligible Redevelopment Project Costs, in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Project or to any financing of the construction of the Project and were in fact paid and incurred by the Developer.

**Section 5.4. Creation of Jobs.** The Developer (or its affiliate, Frasca International, Inc., on its behalf) agrees to use "reasonable efforts" to create forty (40) or more jobs in connection with the Project. "Reasonable efforts" shall mean and include the use of due diligence to create or cause the creation of such jobs under the economic conditions prevailing during such period.

**Section 5.5. Continuing Compliance with Laws.** The Developer agrees that in the continued use, occupation, operation and maintenance of the Project, the Developer will comply with all applicable federal and state laws, rules, regulations, permits and all applicable City Codes and other ordinances.

**Section 5.6. Tax and Related Payment Obligations.** The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Property upon which the Project is undertaken and shall be in full force and effect until December 31, 2035, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 5.6 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of taxes, assessments, charges or other impositions levied or imposed upon the Property or any part thereof.

## **ARTICLE VI**

### **PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS**

**Section 6.1. Payment Procedures.** The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Annual Reimbursement Amounts shall be paid solely,

and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Annual Reimbursement Amounts shall be disbursed by the City Comptroller for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the City Comptroller as its representative to coordinate the authorization of disbursement of any Annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Annual Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer with respect to Eligible Redevelopment Project Costs incurred and paid but not previously submitted. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable: (i) receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ affidavits or lien waivers; (ii) documentation from any financial institution which verifies the annual amount of interest costs incurred by the Developer for constructing the Project; or (iii) an affidavit by an Independent accountant which verifies that any such Eligible Project Redevelopment Costs have been paid and incurred by the Developer, together with required contractors’ affidavits and lien waivers.

**Section 6.2. Approval and Resubmission of Requisitions.** The City Comptroller shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; or (ii) any subsequent amendment of the TIF Act or any subsequent decision of a court of competent jurisdiction makes any such payment to be not authorized. If a Requisition is disapproved by such City Comptroller, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

**Section 6.3. Carryover.** Upon the approval of any applicable Requisition as set forth in Section 6.2 above, any excess amount of Eligible Redevelopment Project Costs approved therein, which are over and above the amount of any Annual Reimbursement Amounts then payable as specified in Section 4.1 of this Agreement, shall carry over into any remaining future years that any such Annual Reimbursement Amounts become due and payable under this Agreement.

**Section 6.4. Time of Payment.** Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay each of the applicable Annual Reimbursement Amounts which are approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after the receipt by the City of the last installment of the Incremental Property Taxes then payable for any such applicable calendar year.

## **ARTICLE VII** **DEFAULTS AND REMEDIES**

**Section 7.1. Events of Default.** The occurrence of any one or more of the events specified

in this Section 7.1 shall constitute a “**Default**” under this Agreement.

**By the Developer:**

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement or any of the Related Agreements that is false or misleading in any material respect;

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement or any of the Related Agreements;

**By the City:**

(1) The failure by the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of this Agreement; and

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

**Section 7.2. Rights to Cure.** The party claiming a Default under Section 7.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as provided above shall constitute a “**Breach**” under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

**Section 7.3. Remedies.** Upon the occurrence of any Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the Non-Defaulting Party may, upon the occurrence of any Breach under this Agreement by the Defaulting Party, institute such proceedings as to damages or otherwise as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to proceedings to compel any legal action for specific performance or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of any Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines

or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Annual Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

Notwithstanding anything herein to the contrary, the sole remedy of the City for monetary damages upon the occurrence of any Breach by the Developer under any of the terms and provisions of this Agreement shall be to institute legal action against the Developer for reimbursement of amounts paid to Developer as Annual Reimbursement Amounts hereunder. Under no circumstances shall the Developer be liable to the City for any indirect, special, consequential or punitive damages, including without limitation, amounts paid by City in connection with the Airport Road Project.

**Section 7.4. Costs, Expenses and Fees.** Upon the occurrence of a Default or any Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

## **ARTICLE VIII** **RELEASE, DEFENSE AND INDEMNIFICATION OF CITY**

**Section 8.1. Declaration of Invalidity.** Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit claims by Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any.

**Section 8.2. Damage, Injury or Death Resulting from Project.** The Developer releases from and covenants and agrees that the City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.3. Damage or Injury to Developer and Others.** The City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.4. No Personal Liability.** All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Annual Reimbursement Amounts which may become due and payable under the terms of this Agreement.

**Section 8.5. City Not Liable for Developer Obligations.** Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts.

**Section 8.6. Actions or Obligations of Developer.** The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the construction or installation of the Project, and **(iii)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the management, development, redevelopment, construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

**Section 8.7. Environmental Covenants.** To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(ii)** (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any

now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this paragraph, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Section 8.8. Notification of Claims.** Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

**Section 9.1 Entire Agreement and Amendments.** This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

**Section 9.2. Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

**Section 9.3. Counterparts.** Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

**Section 9.4. Special and Limited Obligation.** This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not otherwise.

**Section 9.5. Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

**Section 9.6. Waiver.** Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 9.7. Cooperation and Further Assurances.** The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 9.8. Notices and Communications.** All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:  
Frasca International, Inc.  
906 East Airport Road  
Urbana, IL 61802  
Attn: John Frasca



Tel: (217) 344-9200 / Fax: (217) 344-9207

With a copy to :

Webber & Thies, P.C.

Attn: David C. Thies

202 Lincoln Square

PO Box 189

Urbana, IL 61801

Tel: (217) 367-1126 / Fax: (217) 367-3752

|

- (ii) In the case of the City, to:  
City of Urbana, Illinois  
400 South Vine Street  
Urbana, IL 61801  
Attn: Community Development Director  
Tel: (217) 384-2439 / Fax: (217) 384-0200

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

**Section 9.9. Assignment.** The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement to any party other than to an entity having common ownership with the Developer without the prior written consent of the City. Except as authorized in this Section above, any assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable party thereto.

**Section 9.10. Successors in Interest.** Subject to Section 9.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

**Section 9.11. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

**Section 9.12. Illinois Law; Venue.** This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

**Section 9.13. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate on December 31 of the tenth (10<sup>th</sup>) calendar year following the calendar year in which a certificate of occupancy is issued for the Project; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.6 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

**Section 9.14. Recordation of Agreement.** Either party may record this Agreement or a Memorandum of this Agreement in the office of the Champaign County Recorder at any time following its execution and delivery by both parties.

**Section 9.15. Construction of Agreement.** This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF URBANA, CHAMPAIGN COUNTY,  
ILLINOIS**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**FRASCA ASSOCIATES**

By: \_\_\_\_\_  
Its Managing Partner

Date: \_\_\_\_\_

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

## **EXHIBIT A**

### **Description of Property**

A part of Lot 1 of Frasca Industrial Air Park, as shown on a plat recorded April 4, 1989, as Document Number 1989R05836 in the Office of the Recorder of Deeds, Champaign County, Illinois, being more particularly described as follows:

All that part of said Lot 1 of Frasca Industrial Air Park that lies within Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois.

# Attachment B

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## REDEVELOPMENT AGREEMENT

by and between the

**CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS**

and

**FRASCA ASSOCIATES**

Dated as of December 1, 2012

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**Document Prepared By:**

**Kenneth N. Beth  
Evans, Froehlich, Beth & Chamley  
44 Main Street, Third Floor  
Champaign, IL 61820**

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## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is dated for reference purposes only as of December 1, 2012, but actually executed by each of the parties on the dates set forth beneath each of their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the **“City”**), and **Frasca Associates**, an Illinois general partnership (the **“Developer”**). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and date this Agreement and to deliver it to the other (the **“Effective Date”**).

### RECITALS

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 *et seq.*), as supplemented and amended (the **“TIF Act”**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the **“Corporate Authorities”**) did adopt a series of ordinances (Ordinance Nos. 2001-12-164, 2001-12-165 and 2001-12-166 on December 17, 2001) including as supplemented and amended (collectively, the **“TIF Ordinances”**); and

**WHEREAS**, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Cunningham Avenue Corridor Redevelopment Project Area (the **“Redevelopment Project Area”**) and approved the related redevelopment plan, as supplemented and amended (the **“Redevelopment Plan”**), including the redevelopment projects described in the Redevelopment Plan (collectively, the **“Redevelopment Projects”**); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to develop the Property (as defined below) and to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below); and

**WHEREAS**, the Property (as defined below) is within the Redevelopment Project Area; and

**WHEREAS**, the Developer is unwilling to develop the Property (as defined below) and to undertake the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

**WHEREAS**, the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth in this Agreement; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:



## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions.** For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

**“Annual Reimbursement Amounts”** means, collectively, amounts to be reimbursed or paid to or as directed by the Developer from the Fund by the City under and pursuant to Section 4.1 of this Agreement.

**“City Codes”** means all applicable laws, codes, rules, regulations and ordinances of the City, including, without limitation, all applicable subdivision, zoning, environmental, building code or any other land use regulation or permit.

**“City Comptroller”** means the City Comptroller of the City, or his or her designee.

**“Completion Date”** means December 31, 2012 as to Phase I; December 31, 2013 as to Phase II; and December 31, 2014 as to Phase III the dates on or before which each phase of the Project reaches substantial completion such that it is ready for occupancy, utilization and continuous operation as evidenced by the issuance of a certificate of occupancy by the City.

**“Commencement Date”** means no later than October 31, 2012 as to Phase I, June 1, 2013, as to Phase II and January 1, 2014 as to Phase III, the dates on or before which the construction of each phase of the Project is to commence.

**“Corporate Authorities”** means the City Council of the City.

**“Eligible Redevelopment Project Costs”** means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including, but not limited to: (a) costs of studies, surveys, development of plans and specifications including but not limited to professional service costs for architectural, engineering, legal, financial, planning or other services; (b) site preparation, including clearing and grading of land; (c) costs of the construction of public works or improvements; (d) costs of rehabilitation, reconstruction, repair or remodeling of existing buildings; and (e) up to 30% per year of interest costs incurred by the Developer related to the construction of the Project subject to the total cost limitations of such interest payments as set forth in subparagraph (D) of such Section, 5/11-74.4-3(q)(11).

**“Fund”** means, collectively, the “Special Tax Allocation Fund” for the Redevelopment Project Area established under Section 5/11-74.8 of the TIF Act and the TIF Ordinances.

**“Incremental Property Taxes”** means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Property by taxing districts that is attributable to the increase in the equalized assessed value of the Property over the equalized assessed value of the Property for tax year 2011 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall

be paid to the City Comptroller for deposit by the City Comptroller into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

**“Independent”** or **“independent”**, when used with respect to any specified person, means such person who is in fact independent and is not connected with the City or the Developer as an officer, employee, partner, or person performing a similar function, and whenever it is provided in this Agreement that the opinion or report of any independent person shall be furnished, such person shall be appointed by the Developer and approved by the City, and such opinion or report shall state that the signer had read this definition and that the signer is independent within the meaning hereof.

**“Phase I”, “Phase II” and “Phase III”** means the applicable first, second and third phase of the Project.

**“Prevailing Wage Act”** means the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work on any “public works” (as therein defined) no less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is located and to perform certain notice and recordkeeping duties.

**“Project”** means, in connection with the Property, the construction of an addition to a building the rehabilitation, reconstruction, repair or remodeling of an existing building and the construction of a building containing not less than 12,000 square feet, in phases as further described below:

Phase I

4,000 square foot addition to building 2 to facilitate larger welding area and the addition of a five axis CNC milling machine.

Expand parking lot near building 2 addition.

Reconfigure existing building 2 for use as expanded composite shop.

Add washrooms to building 2.

Add sewer extension and water to building 2.

Move composite shop from building 1 to building 2.

Phase II

Remodel old composite shop in building 1 for additional office space to support 20 additional engineers and technical staff.

\*Expand and remodel lunch room and washrooms to facilitate increased number of employees.

Phase III

Add new building, 12,000 to 24,000 square feet to facilitate expanded machine shop, inventory and project staging.

\*Demolition of old runway surface at airport

\*Additional expansion of parking

\*Resurfacing of parking, airport ramps and taxiways

\*Signage

\*Retention pond maintenance and possible expansion.

\*Incorporation of these elements of the Project will be based on further analysis by Frasca and shall be performed in its discretion.

**“Property”** means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

**“Related Agreements”** means all option, development, redevelopment, construction, financing, franchise, loan, ground lease and lease agreements, whether now or hereafter existing, executed by the Developer in connection with the Project.

**“Requisition”** means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article VI of this Agreement.

**Section 1.2. Construction.** This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the City.** In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **Organization and Standing.** The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City’s Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such

enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

**(d) No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

**(e) Governmental Consents and Approvals.** No consent or approval by any governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

**Section 2.2. Representations and Warranties of the Developer.** In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

**(a) Organization.** The Developer is a general partnership duly organized, validly existing and in good standing under the laws of the State of Illinois.

**(b) Power and Authority.** The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

**(c) Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's partners. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

**(d) No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

**(e) Consents and Approvals.** No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

**(f) No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

(g) **Maintenance of Existence.** Subject to Section 9.9 of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois corporation.

(h) **Creation of Jobs.** The Project will enable the creation of a total of forty (40) or more jobs during the period beginning October 1, 2012 and continuing until the completion of the five year period immediately following the Phase III Completion Date.

**Section 2.3. Related Agreements.** Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

**Section 2.4. Disclaimer of Warranties.** The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

### **ARTICLE III**

#### **CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE DEVELOPER AND THE CITY**

**Section 3.1. Conditions Precedent.** The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon the Developer having completed the construction of Phase I of the Project on or before the applicable Completion Date in accordance with all applicable City Codes.

**Section 3.2. Satisfaction of Conditions; Notice of Termination.** The Developer shall use due diligence to timely satisfy the condition set forth in Section 3.1 above, but if such condition is not so satisfied, then either party may terminate this Agreement by giving written notice thereof to the other. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

### **ARTICLE IV**

#### **CITY'S COVENANTS AND AGREEMENTS**

**Section 4.1. City's TIF Funded Financial Obligations.** The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs

in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund such annual amounts (the “**Annual Reimbursement Amounts**”) related to Project upon the Property as follows:

(a) **Annual Reimbursement Amounts.** Such Annual Reimbursement Amounts in connection with the Project in any one calendar year shall be equal to sixty percent (60%) of the Incremental Property Taxes actually received by the City in each such calendar year subject to the terms and limitations of this Section immediately below;

(b) **Calculation of Annual Amount.** For the purpose of calculating the total amount of Incremental Property Taxes for such calendar year which are directly attributable to the Project upon the Property, the total equalized assessed value (the “**EAV**”) of the Property for such calendar year shall be reduced by the EAV of the Property for tax year 2011 in the agreed amount of \$1,674,860.00 (the result being the “**Incremental EAV**”), and such Incremental EAV shall be multiplied by the total tax rate of all applicable taxing districts levying taxes upon the Property for any such applicable calendar year;

(c) **Period of Annual Reimbursements.** The obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under this Section 4.1 shall be for a maximum period of ten (10) calendar years, commencing with the calendar year following the calendar year in which a certificate of occupancy is issued for Phase I of the Project, and shall terminate upon reimbursement by the City in accordance with Article VI of this Agreement not later than December 31 of the tenth (10<sup>th</sup>) calendar year in which any such Annual Reimbursement Amounts in connection with the Project become due and payable pursuant to this Section 4.1 and Article VI hereof; and

(d) **Dollar Limitation of Annual Reimbursement Amounts.** The total amount of all such payments of Annual Reimbursement Amounts pursuant to Section 4.1(a) above shall not exceed the lesser of: (i) the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Project upon the Property; or (ii) based upon the applicable amount of the Incremental EAV, the total amount set forth below:

<u>Incremental EAV</u>	<u>Total Amount</u>
\$500,000	\$275,000
\$630,000	\$350,000
\$790,000	\$425,000

**Section 4.2. City’s Public Improvement Obligations.** In connection with the Project, the City and the Developer mutually covenant and agree that the public improvement described below are necessary or desirable to be undertaken:

(a) **Airport Road Project.** The City agrees to apply to the Illinois Department of Transportation for a grant of economic development funds (the “**Grant**”) to enable the City to

reconstruct 2,375 feet of Airport Road pavement adjacent to the Property from the west edge of the Cunningham Avenue pavement to approximately the west radius tangent point of the access drive along the western edge of the Property (the “**Airport Road Project**”). Such Airport Road Project shall include a three-lane cross section of roadway with a concrete or full depth asphalt pavement with curb and gutter, including storm sewers. In order to be eligible for the Grant, the Developer agrees to cooperate with the City in applying for the Grant, including, but not limited to, supplying any such commitments or certifications as may be required by the terms of the Grant to evidence the creation of jobs in connection with the Project. Provided the City is awarded the Grant, the City agrees to undertake (or cause to be undertaken), the Airport Road Project with such Grant and other City funds as soon as practical in accordance with the terms and conditions of such Grant.

In the event the City is not awarded the Grant, the City agrees to undertake (or cause to be undertaken) at its sole cost and expense of the Airport Road Project as part of the City’s annual Capital Improvement Plan no later than December 31, 2016.

(b) **Required right-of-way or easements.** If and to the extent that a part of any real estate owned by the Developer is required for any additional public right-of-way or public easements in connection with the Airport Road Project, the Developer shall dedicate or grant any such public right-of-way or public easements to the City without cost, and the City’s obligations in connection with the Airport Road Project as provided in this Section 4.2(a) above is expressly contingent upon any such dedication or grant being timely made. In any event, the City shall endeavor to obtain and use all necessary public right-of-way for the Airport Road Project from the real property owned by the Developer to the south of Airport Road. In no event shall the City’s acquisition of any public right-of-way damage existing improvements on the Property or impede its current use.

**Section 4.3. Extension of Enterprise Zone.** Within sixty (60) days after the satisfaction of the condition precedent as specified in Section 3.1 of this Agreement, the City covenants and agrees to adopt an ordinance and make application in accordance with the applicable provisions of the Illinois Enterprise Zone Act (20 ILCS 655/1 et seq.)(the “**Enterprise Zone Act**”) in order to initiate an extension of the Enterprise Zone of the City, as certified by the Illinois Department of Commerce and Economic Opportunity (“**DCEO**”), to include the Property. The Developer acknowledges and agrees that the inclusion of the Property to the Enterprise Zone of the City is subject to the approval of DCEO in accordance with the Enterprise Zone Act, and that the City makes no representation or warranty with respect to any such approval by DCEO. If and when approved by DCEO, the Developer would be eligible to receive, among others, certain incentives by way of an exemption from the Retailers’ Occupation Tax and the Home Rule Municipal Retailers Occupation Tax on the sale by an Illinois retailer of building materials to be incorporated into the Project but would not be entitled to any abatement of any ad valorem taxes levied upon the Property by the City which are attributable to the increase in the equalized assessed value of the Property due to the construction of the Project in that any such abatement is not applicable to any improvement within the Redevelopment Project Area.

**Section 4.4. Defense of Redevelopment Project Area.** In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payments of any Annual Reimbursement Amounts to be paid or reimbursed by the City is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court

or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Annual Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

## **ARTICLE V**

### **DEVELOPER'S COVENANTS**

**Section 5.1. Commitment to Undertake and Complete Project.** The Developer covenants and agrees to commence each phase of the Project on or before the applicable Commencement Date and to have the Project ready for occupancy, utilization and continuous commercial operation on or before the applicable Completion Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of the final development plans, any required permits and any certificate of occupancy, and any failure on the part of the City to grant or issue any such required permit or certificates of occupancy shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

**Section 5.2. Compliance with Agreement and Laws During Development.** The Developer shall at all times acquire, construct and install the Project, including any related required improvements, in conformance with this Agreement and all applicable federal or state laws, rules, regulations and permits, including without limitation all applicable City Codes, and, to the extent the Developer is deemed a "public body" or the Project or any part thereof is deemed a "public works" within the meaning of the Prevailing Wage Act, all requirements of the Prevailing Wage Act. Whenever possible, the Developer shall cause the Project to be designed, constructed and installed utilizing innovative and effective techniques in energy conservation. Any agreement of the Developer related to the design, construction or installation of the Project with any contractor, subcontractor or supplier shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 5.3. City's Right to Audit Developer's Books and Records.** The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Project and the total amount of related Eligible Redevelopment Project Costs, in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Project or to any financing of the construction of the Project and were in fact paid and incurred by the Developer.

**Section 5.4. Creation of Jobs.** The Developer (or its affiliate, Frasca International, Inc., on its behalf) agrees to use "reasonable efforts" to create forty (40) or more jobs in connection with the Project. "Reasonable efforts" shall mean and include the use of due diligence to create or cause the creation of such jobs under the economic conditions prevailing during such period.



**Section 5.5. Continuing Compliance with Laws.** The Developer agrees that in the continued use, occupation, operation and maintenance of the Project, the Developer will comply with all applicable federal and state laws, rules, regulations, permits and all applicable City Codes and other ordinances.

**Section 5.6. Tax and Related Payment Obligations.** The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Property upon which the Project is undertaken and shall be in full force and effect until December 31, 2035, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 5.6 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of taxes, assessments, charges or other impositions levied or imposed upon the Property or any part thereof.

## **ARTICLE VI**

### **PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS**

**Section 6.1. Payment Procedures.** The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Annual Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Annual Reimbursement Amounts shall be disbursed by the City Comptroller for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the City Comptroller as its representative to coordinate the authorization of disbursement of any Annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Annual Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer with respect to Eligible Redevelopment Project Costs incurred and paid but not previously submitted. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as

applicable: (i) receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors' affidavits or lien waivers; (ii) documentation from any financial institution which verifies the annual amount of interest costs incurred by the Developer for constructing the Project; or (iii) an affidavit by an Independent accountant which verifies that any such Eligible Project Redevelopment Costs have been paid and incurred by the Developer, together with required contractors' affidavits and lien waivers.

**Section 6.2. Approval and Resubmission of Requisitions.** The City Comptroller shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; or (ii) any subsequent amendment of the TIF Act or any subsequent decision of a court of competent jurisdiction makes any such payment to be not authorized. If a Requisition is disapproved by such City Comptroller, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

**Section 6.3. Carryover.** Upon the approval of any applicable Requisition as set forth in Section 6.2 above, any excess amount of Eligible Redevelopment Project Costs approved therein, which are over and above the amount of any Annual Reimbursement Amounts then payable as specified in Section 4.1 of this Agreement, shall carry over into any remaining future years that any such Annual Reimbursement Amounts become due and payable under this Agreement.

**Section 6.4. Time of Payment.** Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay each of the applicable Annual Reimbursement Amounts which are approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after the receipt by the City of the last installment of the Incremental Property Taxes then payable for any such applicable calendar year.

## **ARTICLE VII DEFAULTS AND REMEDIES**

**Section 7.1. Events of Default.** The occurrence of any one or more of the events specified in this Section 7.1 shall constitute a "**Default**" under this Agreement.

**By the Developer:**

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement or any of the Related Agreements that is false or misleading in any material respect;

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement or any of the Related Agreements;

**By the City:**

(1) The failure by the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of this Agreement; and

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

**Section 7.2. Rights to Cure.** The party claiming a Default under Section 7.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as provided above shall constitute a “**Breach**” under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

**Section 7.3. Remedies.** Upon the occurrence of any Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the Non-Defaulting Party may, upon the occurrence of any Breach under this Agreement by the Defaulting Party, institute such proceedings as to damages or otherwise as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to proceedings to compel any legal action for specific performance or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of any Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Annual Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

Notwithstanding anything herein to the contrary, the sole remedy of the City for monetary damages upon the occurrence of any Breach by the Developer under any of the terms and provisions of this Agreement shall be to institute legal action against the Developer for reimbursement of amounts paid to Developer as Annual Reimbursement Amounts hereunder. Under no circumstances shall the Developer be liable to the City for any indirect, special,

consequential or punitive damages, including without limitation, amounts paid by City in connection with the Airport Road Project.

**Section 7.4. Costs, Expenses and Fees.** Upon the occurrence of a Default or any Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

## **ARTICLE VIII** **RELEASE, DEFENSE AND INDEMNIFICATION OF CITY**

**Section 8.1. Declaration of Invalidity.** Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit claims by Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any.

**Section 8.2. Damage, Injury or Death Resulting from Project.** The Developer releases from and covenants and agrees that the City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.3. Damage or Injury to Developer and Others.** The City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.4. No Personal Liability.** All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents,

employees or independent contractors in their individual capacities. No member of the Corporate Authorities, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Annual Reimbursement Amounts which may become due and payable under the terms of this Agreement.

**Section 8.5. City Not Liable for Developer Obligations.** Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts.

**Section 8.6. Actions or Obligations of Developer.** The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the construction or installation of the Project, and **(iii)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the management, development, redevelopment, construction or installation of the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

**Section 8.7. Environmental Covenants.** To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(ii)** (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(iii)** any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or **(iv)** any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this paragraph, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or

related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Section 8.8. Notification of Claims.** Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

**Section 9.1 Entire Agreement and Amendments.** This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

**Section 9.2. Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

**Section 9.3. Counterparts.** Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

**Section 9.4. Special and Limited Obligation.** This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not otherwise.

**Section 9.5. Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lock-out or other labor disturbance (whether legal or illegal, with

respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

**Section 9.6. Waiver.** Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 9.7. Cooperation and Further Assurances.** The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 9.8. Notices and Communications.** All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:  
Frasca International, Inc.  
906 East Airport Road  
Urbana, IL 61802  
Attn: John Frasca  
Tel: (217) 344-9200 / Fax: (217) 344-9207

With a copy to :  
Webber & Thies, P.C.  
Attn: David C. Thies  
202 Lincoln Square  
PO Box 189  
Urbana, IL 61801  
Tel: (217) 367-1126 / Fax: (217) 367-3752

- (ii) In the case of the City, to:  
City of Urbana, Illinois  
400 South Vine Street  
Urbana, IL 61801  
Attn: Community Development Director  
Tel: (217) 384-2439 / Fax: (217) 384-0200

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

**Section 9.9. Assignment.** The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement to any party other than to an entity having common ownership with the Developer without the prior written consent of the City. Except as authorized in this Section above, any assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable party thereto.

**Section 9.10. Successors in Interest.** Subject to Section 9.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

**Section 9.11. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

**Section 9.12. Illinois Law; Venue.** This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

**Section 9.13. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate on December 31 of the tenth (10<sup>th</sup>) calendar year following the calendar year in which a certificate of occupancy is issued for the Project; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.6 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

**Section 9.14. Recordation of Agreement.** Either party may record this Agreement or a Memorandum of this Agreement in the office of the Champaign County Recorder at any time following its execution and delivery by both parties.




**Section 9.15. Construction of Agreement.** This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

**CITY OF URBANA, CHAMPAIGN COUNTY,  
ILLINOIS**

By:   
Mayor

ATTEST:

By:   
City Clerk

Date: 1/10/13

**FRASCA ASSOCIATES**

By:   
Its Managing Partner

Date: 12/20/12

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

# Attachment C - Location Map



This map application was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGISC), or other CCGISC member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this application is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this application and information contained herein. The use of this application constitutes acknowledgement of this disclaimer.