



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning and Economic Development Division*

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

**TO:** Bruce K. Walden, Chief Administrative Officer

**FROM:** April D. Getchius, AICP, Director

**DATE:** August 31, 2000

**SUBJECT:** Development Agreement for Kinch/Florida Residential Development Site

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### **Introduction**

Staff has prepared a Draft Development Agreement between the City of Urbana and the development partnership of Tatman/Horve, L.L.C. for land transfer and residential development of the Kinch/Florida property in southeast Urbana. The City has owned this 18.51-acre property for several years as a result of previous development agreements with Mr. Scott Weller. Development of this site will allow for the extensions of Kinch Street southward and Florida Avenue eastward and for the addition of approximately 50 new single-family residential lots in Urbana. The Florida Avenue/Kinch Street connection will provide significant safety and convenience benefits to roadway circulation patterns in this portion of Urbana. The proposed roadway extensions and use for low-density residential are fully consistent with the Comprehensive Plan designations for the site.

### **Background**

On May 15, 2000, Community Development Services staff reissued a request for proposals (RFP) to developers and builders for the residential development of the Kinch/Florida site. A notice of the RFP was published in the News Gazette and sent to a mailing list of over 80 developers, builders, architects, and engineers in the central Illinois region. Copies of this RFP have previously been provided to Council.

The City received two responses to the RFP: one from a team consisting of Riley Homes (Dennis Ohnstad) and Lexington Construction Co. (Roger Dooley) and one from a team consisting of local developer Paul Tatman and Decatur-based developer Steve Horve. A staff committee composed of Bruce Walden, April Getchius, Bill Gray, Reed Berger, Rob Kowalski and Libby Tyler reviewed the proposals and made

systematic comparisons of the two submittals. While both proposals met the minimum review criteria set forth in the RFP and would provide a similar number of residential lots, the staff consensus was to enter into negotiations with Tatman/Horve, L.L.C. as an initial step in preparing a Draft Development Agreement for City Council review. The staff committee felt that the Tatman/Horve proposal would provide for a higher quality residential development that will act as a beneficial transition between the Stone Creek development to the south and the existing Lincolnwood development to the north and west. The developers have also expressed interest in additional development to the east depending upon the success of the current project. The committee felt that the Tatman/Horve proposal would yield the best benefit to the City in terms of tax base increases, quality of development, variety of home styles, and future growth in this area

## **Issues and Discussion**

A copy of the proposal submitted by Tatman/Horve, L.L.C. is enclosed separately in Councilmember packets. The proposal indicates that the developer would build 48 single-family units and one duplex, for a total of 50 units. Projected sales costs for the single-family units would range from \$125,000 to \$200,000, with an estimated annual property tax benefit to the City of approximately \$35,000. The developer based their proposed layout on a sample provided by the City's Engineering Division in the RFP. The proposed layout is consistent with the City's preference for no homes to gain direct access from Florida, as it is to function as an arterial.

Tatman/Horve, L.L.C. proposes that the City transfer the land to the developer at no cost and pay for the full cost of construction of Florida Avenue and infrastructure along Florida Avenue. The Developer would pay for the construction of all other public improvements, including Kinch Street, interior local streets, stormwater drainage improvements and stormwater detention. Consistent with the RFP, Project Impact funds could be applied to the stormwater drainage improvements. The City Engineer has indicated some technical concerns with the developer's cost estimate for construction of Florida Avenue as presented in the proposal. While the proposal estimates that construction of Florida Avenue will cost approximately \$222,000, the City Engineer estimates the cost at closer to \$325,000 assuming it is built by the developer with reimbursement by the City.

Tatman/Horve, L.L.C. proposes an aggressive construction schedule with infrastructure to be completed by Fall 2001. An initial six spec homes are to be completed by Summer 2001. A variety of floor plans and house styles are included as examples in the proposal. The developers indicate that professional engineering design and subdivision platting will be undertaken immediately upon award of an agreement. Tatman/Horve have indicated an interest in pursuing further development to the east of the site depending upon the success of this development.

Both members of the Tatman/Horve partnership have extensive relevant development and construction experience. Paul Tatman is a well-known local developer specializing in commercial and industrial park development. Steve Horve has extensive residential subdivision experience in the Decatur-Forsyth area.

The proposal contains background information and illustrations of the development experience of the partnership members.

Attached to this proposal is a Draft Development Agreement between the City of Urbana and Tatman/Horve, L.L.C. for Council review and consideration. This Agreement is similar in format to those used previously for other developments in the City. Article III presents the City's obligations and Article IV presents the Developer's obligations. These obligations are as set forth in the RFP and in the developer's proposal.

## **Fiscal Impacts**

The projected direct gross outlay of the City for the proposed development is approximately \$325,000 for construction of Florida Avenue. Construction of Kinch Street which is to be borne by the developer is estimated by the City Engineering Division to cost approximately \$175,000. Without this development, construction of Kinch Street would be a City expense. Therefore, the net outlay (cost of Florida Avenue construction minus that for Kinch) for the City would equal \$150,000. The costs for Florida Avenue construction can be phased if the City decides to construct shoulders rather than curb and gutter on an interim basis. In addition, the City would commit \$33,750 in Project Impact funds towards the stormwater drainage improvements at the site. The cost for the land when it was acquired by the City several years ago was \$25,000.

Benefits to the City due to this development are estimated at \$35,000 per year in property tax revenues. The City would also receive sales tax benefit from the sale of construction materials purchased locally, utility tax revenues, and other revenue sources which are based upon population data. In addition, the City would no longer have the maintenance obligation for this property. Public safety concerns associated with incomplete circulation and inadequate stormwater drainage in this area would be eliminated with this development.

Planning and Economic Development Division staff have conducted a cost/benefit analysis for the development and project net positive annual revenues on the order of \$19,000 per year after buildout (2003), cumulating to approximately \$150,000 by 2010.

## **Options**

The City Council has the following options for action.

- a. adopt the attached Ordinance approving the Development Agreement and authorizing the Mayor and City Clerk to execute and attest to said agreement.

- b. adopt the attached Ordinance approving the Development Agreement with specific revisions and amendments to be identified and authorizing the Mayor and City Clerk to execute and attest to said agreement.
- c. not adopt the attached Ordinance.

## Recommendation

Based on the Recitals set forth in the attached Development Agreement and the findings summarized above, **staff recommends adoption of the attached Ordinance** approving the Development Agreement By and Between the City of Urbana, Champaign County, Illinois and Tatman/Horve, L.L.C. for the Kinch/Florida Residential Development (“Fairway Estates”).

Prepared by:

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Elizabeth H. Tyler, AICP/ASLA  
Assistant City Planner

Attachments:

1. An Ordinance Approving a Development Agreement By and Between the City of Urbana, Champaign County, Illinois and Tatman/Horve, L.L.C. for the Kinch/Florida Residential Development (“Fairway Estates”)
2. Draft Development Agreement By and Between the City of Urbana, Champaign County, Illinois and Tatman/Horve, L.L.C., dated August 30, 2000.

Enclosure: (separate for Council member packets)

Proposal to Develop Kinch/Florida Residential Development “Fairway Estates” By: Developers Paul Tatman and Steve Horve, July 14, 2000

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA AND TATMAN/HORVE, L.L.C. FOR THE KINCH/FLORIDA RESIDENTIAL DEVELOPMENT ("FAIRWAY ESTATES")**

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

Section 1. That an Agreement by and between the City of Urbana and Tatman/Horve, L.L.C., in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and 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 \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

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

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Tod Satterthwaite, Mayor

**KINCH/FLORIDA RESIDENTIAL DEVELOPMENT  
("FAIRWAY ESTATES")**

**DEVELOPMENT AGREEMENT**

**by and between**

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

**and**

**TATMAN/HORVE, L.L.C.**

**Dated September 5, 2000**

**Document Prepared by:**

**City of Urbana  
400 South Vine Street  
Urbana, Illinois 61801**

**THIS DEVELOPMENT AGREEMENT** (including attachments and exhibits, and referred to hereinafter as the "**Agreement**") shall be effective as of the date executed by the Mayor of the City of Urbana, and is by and between the City of Urbana, an Illinois home-rule municipality, in Champaign County, Illinois (the "City"), and Tatman/Horve, L.L.C. (hereinafter referred to as the "Developer").

**NOW, THEREFORE**, for and in consideration of the mutual obligations 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:

### **RECITALS**

**WHEREAS**, as a result of previous development agreements with a former owner, the City does own 18.51 acres of land in three tracts at 1504 South Kinch Street, Urbana, Illinois located generally at the eastern terminus of Florida Avenue and southern terminus of Kinch Street described more particularly in Exhibit A and referred to hereafter as the "Site"; and

**WHEREAS**, the Site is currently undeveloped and is characterized by poor stormwater drainage conditions and overgrown vegetation posing a maintenance burden upon the City; and

**WHEREAS**, the City desires to have the Site developed with residential uses consistent with the goals and objectives of the Urbana Comprehensive Plan and involving the construction of collector and arterial streets necessary to improve public safety, access, and convenience for the general public at this location; and

**WHEREAS**, the City issued a Request for Proposals to developers on May 15, 2000 requesting written proposals for development of the Site consistent with a number of requirements and criteria as set forth in the proposal, including the following:

1. Development of a residential neighborhood that is compatible with existing and planned developments surrounding the site;
2. Eastward extension of Florida Avenue as a minor arterial street to connect with the future Smith Road east of the Site, including the construction of related infrastructure improvements (e.g., sidewalks, street lights, curb, and gutter), in accordance with the alignment and specifications provided by the City's Engineering Division and with the standards of the Urbana Subdivision and Land Development Code. Driveway access should not front onto Florida Avenue, as it is a limited access minor arterial;
3. Extension and connection of Kinch Street to Florida Avenue, including the construction of related infrastructure improvements (e.g., sidewalks, curb, and gutter) in accordance with the alignment and specifications provided by the City's Engineering Division and with the standards of the Urbana Subdivision and Land Development Code;
4. Consideration of connections to stub streets to the north (Hillside Drive and Greenridge Drive) as well as to future Smith Road to the east. The integrity, function, and safety of areawide circulation should be considered in the proposed layout;
5. Construction of public utilities necessary to provide adequate service to the site, consistent with the requirements of service providers and with the standards of the Urbana Subdivision and Land Development Code;
6. Provision of necessary stormwater conveyance and detention facilities, consistent with the requirements of the Urbana Subdivision and Land Development Code. Proposed layout should consider site topography and drainage features and connection to surrounding stormwater drainage facilities;
7. Conformance to the Urbana Zoning Ordinance requirements for the R-2 and R-3 Districts;
8. Conformance to the requirements of the Urbana Subdivision and Land Development Code, including preparation of Preliminary and Final Plat documents;
9. Optional consideration of additional off-site construction of Florida Avenue eastward to connect

to Smith Road extended and possibly beyond. Such construction would be in conjunction with the adjoining property owner; and

10. Optional consideration of off-site construction of Smith Road to the east of the Site in conjunction with the adjoining property owner.

**WHEREAS**, the Developer submitted a response to the Request for Proposals on July 14, 2000 with a proposal to develop 48 single-family and one two-family residential lots and associated infrastructure at the Site in a general layout as presented in Exhibit B and referred to hereinafter as the “Development”; and

**WHEREAS**, as set forth in their proposal, the Developer proposes to construct all infrastructure necessary for the Development, including construction of Kinch Street and other local roads and necessary storm sewers and stormwater detention, and with the exception of the construction of Florida Avenue which shall be the responsibility of the City; and

**WHEREAS**, a proposal review committee set forth by the Request for Proposals reviewed the submitted proposals and found that the Developer’s proposal best met the requirements and criteria of the Request; and

**WHEREAS**, the City Council of the City on September 5, 2000 adopted Ordinance No. 2000-09-104, entitled “An Ordinance Approving a Development Agreement By and Between the City of Urbana, Champaign County, Illinois and Tatman/Horve, L.L.C. for the Kinch/Florida Residential Development (“Fairway Estates”)”.

## DEVELOPMENT AGREEMENT

### ARTICLE I

#### DEFINITIONS

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

"**City**" means the City of Urbana, Champaign County, Illinois.

"**Corporate Authorities**" means the City Council of the City of Urbana, Illinois.

"**Developer**" means Tatman/Horve, L.L.C.

"**Development**" means the proposal by the Developer to build 49 residential lots and associated infrastructure as set forth in the Developer's proposal dated July 14, 2000 and as illustrated in the general layout shown in Exhibit B.

"**Parties**" means, collectively, the City and the Developer.

"**Proposal**" means the Proposal to Develop Kinch/Florida Residential Development, "Fairway Estates" submitted by Developers Paul Tatman and Steve Horve to the City on July 14, 2000.

"**Public Improvements**" means Florida Avenue, Kinch Street, local streets, sanitary sewers, storm sewers, stormwater detention and other infrastructure constructed within the Development.

"**Request for Proposals**" means the Request for Proposals for the Kinch/Florida Residential Development prepared and issued by the City of Urbana Department of Community Development Services on May 15, 2000.

"**Site**" means the 18.51-acre property in the vicinity of the northwest corner of Kinch Street and Florida Avenue as described in Exhibit A.

"**Site Plan**" means the general layout for platting of the proposed Development as illustrated in Exhibit B.

“**Subdivision and Land Development Code**” means Chapter 21 of the Code of Ordinances, City of Urbana, Illinois entitled “the Urbana Subdivision and Land Development Code”, as adopted on November 21, 1988 and subsequently amended.

**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.
- (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:

**Section 2.1.1 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.

**Section 2.1.2 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. And to the

extent, if at all, anything to be done under this Agreement by the City which is not in conformance with applicable Illinois State Statutes, the provisions of this Agreement shall control, it being the intention of the City to invoke its constitutional Home Rule powers and Article VII, Section 10 (Intergovernmental Cooperation) of the Illinois Constitution to support the provisions of this agreement.

**Section 2.1.3 Validity.** 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; however, 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.

**Section 2.1.4 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.

**Section 2.1.5 Governmental Consents and Approvals.** No consent or approval by any governmental authority other than the City is required in connection with the execution and delivery by the City of this Agreement.

**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:

**Section 2.2.1 Organization.** The Developer is a Limited Liability Corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and is duly qualified to transact business in Illinois.

**Section 2.2.2 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.

**Section 2.2.3 Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Developer. 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 law, 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.

**Section 2.2.4 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.

**Section 2.2.5 Consents.** No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by the Developer of this Agreement or the performance thereof by the Developer.

**Section 2.2.6 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 (a) to which the Developer is a party and (b) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

**Section 2.3 Disclaimer of Warranties.** The City, the Owner and the Developer acknowledge that none has made any warranties to the other, except as set forth in this Agreement. Nothing has come to the attention of the Owner or Developer to question the assumptions or conclusions or other terms and the Developer assumes all risks in connection with the practical realization of any such private development.

### **ARTICLE III**

#### **CITY'S OBLIGATIONS**

**Section 3.1 Transfer of Property.** The conveyance of the site (Exhibit "A") shall be made at the time the construction bond for the public improvements (except Florida Avenue) which are required by the Urbana Subdivision and Land Development Code is approved by the City. The construction bond shall be in the amount, and in the form required by the Urbana Subdivision and Land Development Code. If the Developer's obligations as set forth in Article IV are not fulfilled by the Developer or pursuant to the construction bond posted, the City may, after thirty (30) day's notice to the Developer, record the Quit Claim Deed provided by the Developer to the City contemporaneous with the conveyance of the site to Developer.

Within a reasonable time after the approval of this Agreement by the Urbana City Council, the City shall deliver to Developer a Commitment for Title Insurance issued by a title insurance company doing business in Champaign County, committing the title company to issue a policy in the usual form insuring title to the site in the City for the amount of \$25,000.00. The City shall pay the cost of providing title insurance as described herein. Permissible exceptions to title shall include only the lien of general taxes, and zoning laws and easements apparent or of record. If the title evidence discloses exceptions other than those permitted, Developer shall get written notice of such exceptions to Seller within a reasonable time. Seller shall have a

reasonable time to have such title exceptions removed. If the City is unable to cure such exception, then the Developer shall have the option to terminate this Agreement.

**Section 3.2 Site Plan Approval.** The City hereby approves the Site Plan attached as Exhibit B subject to the terms and conditions outlined herein. This Site Plan shall form the basis for subdivision platting of the property under the provisions of the Urbana Subdivision and Land Development Code.

**Section 3.3 Subdivision Plat Approval.** The Corporate Authorities agree to approve subdivision platting of the Development as generally shown in the Site Plan (Exhibit B) subject to the provisions of the Urbana Subdivision and Land Development Code, including consideration of a waiver to allow 28-foot wide local streets (as measured from back-of-curb to back-of-curb).

**Section 3.4 Florida Avenue.** The City agrees to pay for the engineering and construction of Florida Avenue as an urban arterial street along the south side of the Site as generally shown in Exhibit B. The City will reimburse the Developer for engineering fees up to 15% of the construction costs. Engineering fees shall include all surveying, design, testing services, plans and specifications, and construction inspection, engineering and staking for Florida Avenue. The Developer shall solicit at least three bids for Florida Avenue and the contract shall be awarded to the lowest, responsible bidder. The City Engineer shall approve the general contractor and the price prior to commencement of work. Such construction shall be completed within 24 months of the execution of this Agreement. The Developer's engineer and the City shall meet as necessary to develop an approved set of plans. Florida Avenue shall be constructed as an arterial consistent with the standards of the Urbana Land Development and Subdivision Code, except that temporary deferral of curb and gutter may be allowed at the City's discretion to permit phased construction of this improvement. Construction of Florida Avenue shall be at the City's expense, but shall be undertaken by the Developer as a part of the Development.

**Section 3.5 Drainage Improvement Grant Assistance.** The City agrees to apply \$33,750 in Project Impact grant funds toward drainage improvements necessary for this Development by means of a reimbursement payment to the Developer, subject to receipt of a request for this payment prior to April 2001 and upon the submission of proper receipts and documentation to the City of Urbana Comptroller. The drainage improvements eligible for this assistance include connection of an existing 48-inch diameter storm sewer to an existing 54-inch St. Joseph Drainage District storm sewer via a stormwater detention basin, as shown in Exhibit B. All storm sewer and inlet work associated with the Florida Avenue improvements shall be paid by the City per Section 3.4. The City further agrees to conduct environmental review and other processing requirements of this grant fund. If request for payment is not received by April 2001, such funds may not be available and the Developer will be responsible for payment of all costs of drainage improvements.

**Section 3.6 Acceptance of Public Improvements.** Upon completion of construction of the Development, the City agrees to accept all Public Improvements associated with the Development, including streets, sidewalks, and utilities, under the terms and provisions of the Urbana Subdivision and Land Development Code.

**Section 3.7 Engineering Assistance.** The City agrees to provide an electronic version of the layout shown in Exhibit B to the Developer for purposes of assisting the Developer's Engineer in preparing subdivision plats for the Development.

**Section 3.8 Marketing Assistance.** The City agrees to provide assistance in marketing the Development to potential homebuyers. Such assistance shall include City participation in sales events and inclusion of the Development in newsletters and other communication and development incentive tools utilized by the Community Development Department of the City. The City further agrees to budget a minimum of \$1,000 toward marketing efforts for the Development.

## ARTICLE IV

### **DEVELOPER'S OBLIGATIONS**

**Section 4.1 Agreement to Accept Property and Construct the Development.** The Developer agrees to accept title to the Site (at such time as construction bonds are posted for the Development under the provisions of the Urbana Subdivision and Land Development Code) and to construct the Development in the form of a high quality residential subdivision to include 49 single-family residences and one duplex and associated infrastructure, as generally illustrated in Exhibit B and in conformance to the Urbana Subdivision and Land Development Code.

**Section 4.2 Site Plan Compliance.** The Developer agrees to develop the Development in substantial conformance with the Site Plan attached in Exhibit B and referenced herein.

**Section 4.3 Subdivision Plat Preparation.** The Developer agrees to prepare Preliminary and Final Plats for the Development in substantial conformance with the layout shown in the Site Plan attached in Exhibit B and in compliance with the Urbana Subdivision and Land Development Code. The Developer agrees to complete Final Platting of all lots in the Development within 24 months from execution of this Agreement. An extension of 12 months or less from this timing requirement shall be authorized upon written agreement by the City.

**Section 4.4 Public Improvements.** The Developer agrees to construct all Public Improvements shown on the Site Plan in Exhibit B and necessary for the Development, including Florida Avenue, Kinch Street and other local streets, storm sewer improvements, stormwater detention, and other utilities, in conformance with the development standards contained in the Urbana Subdivision and Land Development Code. As set forth in Article III of this Agreement, the City shall reimburse the Developer for construction of Florida Avenue and shall provide Stormwater Drainage Improvement grant assistance.

**Section 4.5 Kinch Street.** The Developer agrees to construct Kinch Street as a collector street consistent with the standards of the Urbana Land Development and Subdivision Code, with a width of 31 feet, as measured from the backs-of-curb.

**Section 4.6 Local Streets.** The Developer agrees to construct the streets within the Development as local streets consistent with the standards of the Urbana Land Development and Subdivision Code, except that a waiver to allow a 28-foot wide street, as measured from the backs-of-curb, shall be considered by the Corporate Authorities.

**Section 4.7 Drainage Improvement Grant Assistance.** The Developer agrees to apply to the City for \$33,750 in Project Impact grant funds toward drainage improvements necessary for this Development prior to April 2001 and to submit proper receipts and documentation to the City of Urbana Comptroller. Eligible drainage improvements include connection of an existing 48-inch diameter storm sewer to an existing 54-inch diameter sewer via a stormwater detention basin, all as shown on Exhibit B. If proper request for payment is not received by April 2001, such funds may not be available and the Developer will be responsible for payment of all costs of drainage improvements.

**Section 4.8 Invoices and Change Orders.** The Developer shall make all payments to the construction contractor, engineer, and their respective subcontractors and subconsultants, material suppliers, etc. Developer shall invoice the City in accordance with the cost described in Section 3.4 and Section 3.5. Payments shall be made to the Developer within thirty (30) days after the City receives the invoices. The Developer shall provide reasonable documentation to the City regarding the actual cost of the work as costs are incurred and submit invoices based upon percentage of completion, less a five percent retainage pending final completion. Any change orders for work other than that approved per Section 3.4 shall first be approved by the City Engineer. Failure to do so may result in no compensation by the City for work performed. Lien waivers must be submitted prior to final payment.

**Section 4.9 Dedication of Improvements and Easements.** The Developer agrees to dedicate Public Improvements, including public streets and right-of-way, and to provide necessary easements for utilities as a part of the subdivision plat(s) for the Development. However, the proposed stormwater detention basin shall be the responsibility of the future Homeowner's Association for the Development and shall not be dedicated to the City.

**Section 4.10 Timing of Construction.** The Developer agrees to complete construction of Kinch Street within 12 months and construction of Florida Avenue within 24 months from execution of this Agreement. An extension of 12 months or less from any of these timing requirements shall be authorized upon written agreement by the City.

**Section 4.11 Speculative Homes.** The Developer agrees to construct a minimum of six speculative homes as models at the Site within 12 months from execution of this Agreement applying a variety of floor plans and elevations. Possible floor plans and elevations to be used shall include those presented in the Proposal as well as any additional floor plans and elevations that may be selected by the Developer. An extension of 12 months or less from this timing requirement shall be authorized upon written agreement by the City. The speculative homes and all other homes approved in the Development by the Architectural Control Committee required herein shall have a minimum square footage areas of 1100 for single-story single family homes and 1500 square feet for two-story single family homes. All homes shall include garages and driveways.

**Section 4.12 Subdivision Covenants.** The Developer agrees to adopt subdivision covenants for the Development generally consistent with those included in the Proposal, and attached hereto as Exhibit C, including limitations on building type, architectural control, and dwelling quality and size, except that such covenants shall require minimum square footage areas of 1100 for single-story single family homes and 1500 square feet for two-story single family homes. The Developer agrees to submit such subdivision covenants to staff of the City for review and approval as a part of the subdivision platting process.

**Section 4.13 Architectural Control Committee.** The Developer agrees to establish an Architectural Control Committee as a part of the subdivision covenants for the Development. Such Committee shall include the Developers and shall review and approve all buildings in the Development with respect to quality of workmanship and material, harmony of exterior design with proposed and existing structures, and as to location with respect to adjoining properties, topography, trees and shrubs, and finish grade elevations.

**Section 4.14 Homeowner's Association.** The Developer agrees to establish a Homeowner's Association for the Development as a part of the subdivision covenants. Through these covenants, the Homeowner's Association shall be made responsible for the proper functioning and maintenance of the detention basin proposed on the Site.

**Section 4.15 Engineering Plans.** The Developer agrees to have construction plans for the Public Improvements of the Development prepared and sealed by a professional engineer licensed in the State of Illinois in compliance with the Urbana Subdivision and Land Development Code. Such plans shall be subject to review and approval by the City Engineer.

**Section 4.16 Performance Bond.** The Developer agrees to post a performance bond for the public improvements associated with the Development in conformance with the Urbana Subdivision and Land Development Code. Calculation of the performance bond amount may exclude the cost of construction of Florida Avenue, since this cost will be the responsibility of the City as set forth in Article III of this Agreement.

**Section 4.17 Marketing.** The Developer agrees to apply due diligence in marketing the Development to prospective homebuyers. The Developer agrees to request City assistance as appropriate and necessary in marketing efforts as set forth in Article IV of this Agreement.

## ARTICLE V

### DEFAULTS AND REMEDIES

**Section 5.1 Defaults - Rights to Cure.** Failure or delay by either Party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such default by the Party defaulted upon, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the other Party. Except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which can not reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of 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 alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**Section 6.1 Entire Contract and Amendments.** This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties.

**Section 6.2 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 the obligation or liability of any third persons to 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 6.3 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 6.4 Special and Limited Obligation.** This Agreement shall constitute 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.

**Section 6.5 Legally Valid and Binding.** This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

**Section 6.6 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 6.7 Cooperation and Further Assurances.** The City and the Developer each covenants and agrees 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 6.8 Notices.** All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Developer:

Paul Tatman  
Tatman/Horve, L.L.C.  
3103 Tatman Court, Suite 104  
Urbana, Illinois 61802  
Office Phone: (217) 365-9198  
Mobile Phone: (217) 202-0801  
Fax: (217) 365-9367

And

Steve Horve  
Tatman/Horve, L.L.C.  
330 Marion Avenue  
Forsyth, Illinois 62535  
Office Phone: (217) 875-1362  
Mobile Phone: (217) 454-5446  
Fax: (217) 875-1748

To the City:

Bruce K. Walden, Chief Administrative Officer  
City of Urbana, Illinois  
400 South Vine Street  
Urbana, Illinois 61801  
Phone: (217) 384-2454  
Fax: (217) 384-2426

With a copy to:

Legal Division  
400 South Vine Street  
Urbana, Illinois 61801  
Phone: (217) 384-2464  
Fax: (217) 384-2460

**Section 6.9 Successors in Interest.** This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns.

**Section 6.10 No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

**Section 6.11 Illinois Law.** This Agreement shall be construed and interpreted under the laws of the State of Illinois.

**Section 6.12 Costs and Expenses.** If either Party defaults in the performance of its obligations hereunder, the Parties agree that the defaulting Party shall pay the non-defaulting Party's costs of enforcing the defaulting Party's obligations under this Agreement, including but not limited to attorneys' fees and expenses.

**Section 6.13 No Personal Liability of Officials of City.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

**Section 6.14 Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

**Section 6.15 Term.** This Agreement shall remain in full force and effect until final acceptance of all public improvements associated with the Development and return of performance bond to the Developer,

including any maintenance bond. Provisions of this Agreement pertaining to Subdivision Covenants shall remain in force until such time as all homes within the Development are fully constructed.

**Section 6.16 Eligibility.** If the Developer does not gain title to the Site under the provisions of this Agreement as described herein, the Developer will no longer be considered the developer of said site and is no longer eligible for the benefits set forth herein.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

**CITY OF URBANA, ILLINOIS**

**TATMAN/HORVE, L.L.C.**

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

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

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

Its: \_\_\_\_\_

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

(SEAL)

ATTEST:

ATTEST:

\_\_\_\_\_

Notary Public

\_\_\_\_\_  
City Clerk

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

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**Exhibit A**

**Legal Description**

**Exhibit B**

**Proposed Site Plan**

**Exhibit C**

Example Subdivision