



**DEPARTMENT OF COMMUNITY DEVELOPMENT
SERVICES**

Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden

FROM: Elizabeth H. Tyler, AICP, Director

DATE: February 10, 2005

SUBJECT: Development Incentive Agreement with Tatman Family, LLC (Jewel Property)

Description

The purpose of this memorandum is to seek approval by Council for the Mayor to enter into a development incentive agreement with Tatman Family, LLC (i.e., the Developer) that will enact a plan to redevelop the former Jewel site (the Site) and surrounding parcels in the Philo Road Business District, an illustration of which is attached. The development incentive agreement (copy attached) specifies obligations, incentives and a timetable for commencing with the private development of the site, including division of the current site into outparcels as well as marketing of the proposed outparcels and the existing building for new commercial/retail or office uses. A site plan showing a proposed layout of outparcels and land uses on the site is attached to the Agreement.

Background

Over the past several months, the City has been coordinating with residents, business owners, and other stakeholders to implement a new revitalization strategy for the Philo Road Business District (the District). This new plan, entitled the *Philo Road Business District Revitalization Action Plan*, dated January 20, 2005, was adopted on February 7, 2005 by the City Council. The plan was developed partially in response to the recent closing of three retail businesses that occupied large parcels of land in the District, namely the Kmart, Jerry's IGA, and former Jewel stores. The vacancy of these buildings and parcels have created a perception of decline in the District that needs to be addressed in a sensible and timely manner.

The plans for the redevelopment of the site coincide well with the planning objectives and other developments within the District, many of which are outlined in the Philo Road Action Plan. These objectives were based on input from nearby residents, business owners, and other stakeholders from meetings, interviews and surveys.

There are several overall objectives outlined in the Philo Road Plan. One of the key initiatives is “to improve the image of the Philo Road Business District.” This initiative recognizes the importance of the appearance and vitality of the District as reflective of the neighborhood and of the City as a whole. Other objectives mentioned are to “encourage building reuse,” and to promote “the creation of outlots to promote a denser/more vibrant area”. The fulfillment of the terms in the Agreement will help to improve the image of the District, and will accomplish the other objectives through reuse of the former Jewel building and creation of new outlots along Philo Road.

Issues and Discussion

The Development Incentive Agreement would enable the Developer to plat or replat the Site in accordance with a site plan to be approved by the City, but substantially similar to that attached to the Agreement, by **June 30, 2005**. The Agreement also obligates the Developer to use due diligence to market the outparcels and any leasable space within the existing building.

The City obligations under the Agreement are to reserve or appropriate sufficient funds to tenants or the Developer to construct a new building on either of the created outparcels fronting Philo Road, or to the Developer or tenants in order to improve any tenant space up to a maximum of three (3) tenant spaces within the existing building. The funds would pay an interest subsidy amount to the Developer or tenants equivalent to the present value of a loan in an amount equal to \$60,000 payable at an interest rate of 5.5% over a term of 5 years, in conjunction with a grant in the amount of \$6,000 for each loan subsidy provided. All loans and grants would be subject to the criteria in the RIP guidelines. An additional \$1,000 grant would be provided to new tenants to cover opening expenses.

The second obligation of the City would be to reserve or appropriate funds in an amount of at least \$20,000 to undertake landscaping improvements within the Philo Road right-of-way between Florida Avenue and Colorado Avenue as described in the RIP guidelines.

Fiscal Impact

The expenditure by the City for the RIP loan subsidies and grants (including opening grants) would range from approximately \$60,000 to \$100,000. These funds would be disbursed as projects occur, or upon the issuance of a Certificate of Occupancy for the opening grants. A minimum of \$20,000 would need to be appropriated to undertake the landscaping improvements.

As outlots are developed and the existing building is improved and occupied, it is expected that increased property taxes will be generated, as well as additional sales taxes from retail uses. Any additional occupancy of the existing building or construction of additional retail/office space will also indirectly benefit the City through higher patronage of nearby existing businesses, which will in turn generate additional sales tax revenue for the City.

Options

The City Council has the following options with respect to this Development Agreement:

1. The City Council may authorize the Mayor to enter into the proposed agreement with Tatman Family, LLC.
2. The City Council may authorize the Mayor to enter into the proposed agreement subject to specific modifications.
3. The City Council may deny authorization to enter into the proposed agreement.

Recommendation

Staff recommends that the Committee of the Whole forward the attached ordinances and agreements to the City Council's regular meeting scheduled on February 21, 2005 with a motion for approval.

Prepared by:

Ryan Brault, Redevelopment Specialist

Exhibits: Redevelopment Area Map
Ordinance
Draft Development Incentive Agreement
(with legal description, RIP Program Guidelines, and proposed Site Plan attached)

cc: Paul Tatman

ORDINANCE NO. 2005-02-019

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH
TATMAN FAMILY, LLC

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

Section 1. That a Development Agreement authorizing allocation of funds for financial incentives associated with the redevelopment of a commercial building and site located at 1806-1810 South Philo Road, between the City of Urbana and Tatman Family, LLC, an Illinois Limited Liability Company, in substantially 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:

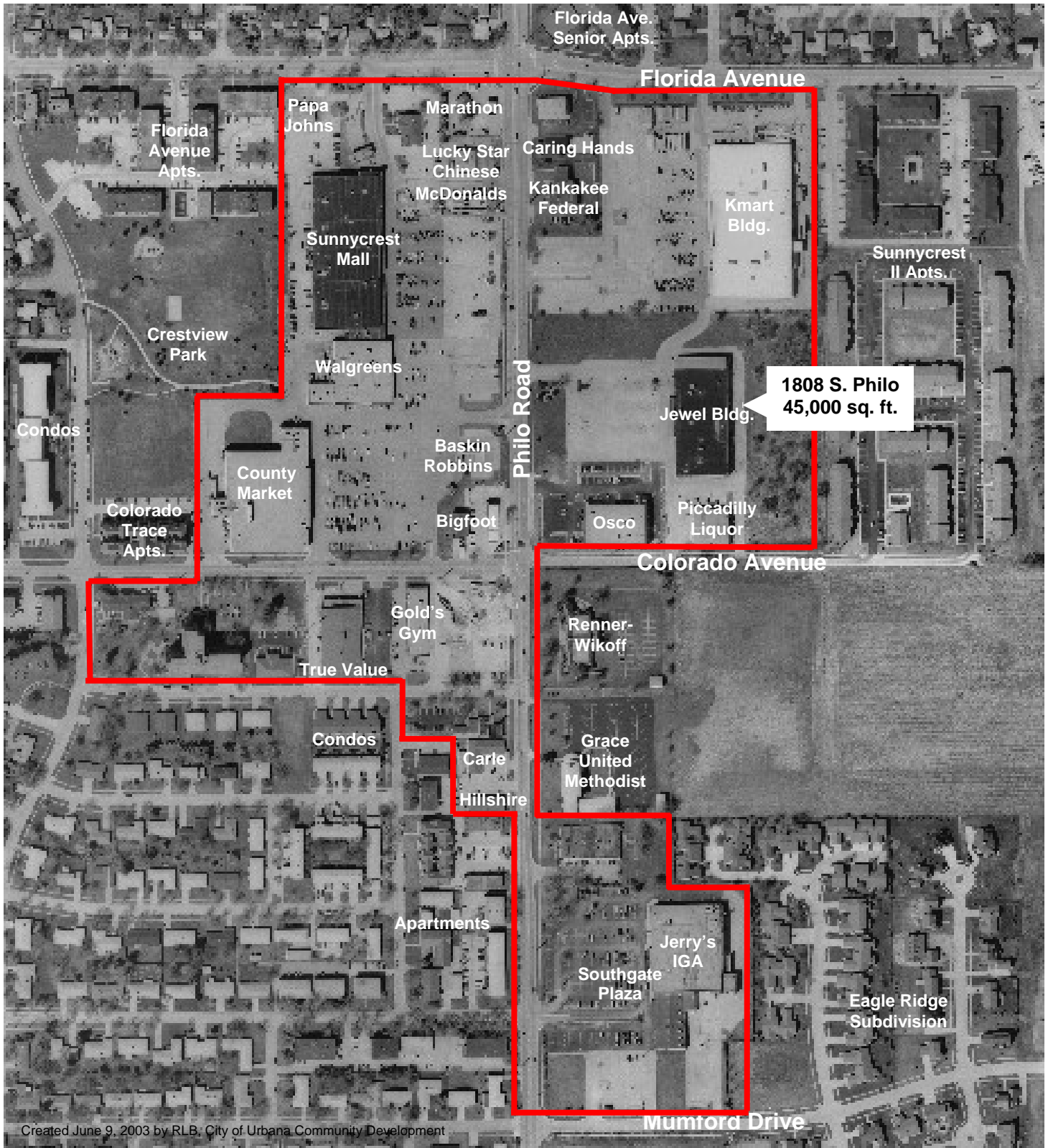
ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
_____.

Tod Satterthwaite, Mayor

SOUTHEAST URBANA BUSINESS DISTRICT



Created June 9, 2003 by RLB, City of Urbana Community Development

EXHIBIT B

 District Boundary

SOUTHEAST URBANA BUSINESS
NEIGHBORHOOD BOUNDARY MAP



DEVELOPMENT INCENTIVE AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**TATMAN FAMILY L.L.C.,
AN ILLINOIS LIMITED LIABILITY COMPANY**

Dated as of February 21, 2005

Document Prepared By:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
P.O. Box 737
Champaign, IL 61820**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1. Definitions	1
Section 1.2. Construction	2
ARTICLE II REPRESENTATIONS AND WARRANTIES	2
Section 2.1. Representations and Warranties of the City	2
(a) Organization and Standing	2
(b) Power and Authority	2
(c) Authorization and Enforceability	2
(d) No Violation	3
(e) Governmental Consents and Approvals	3
Section 2.2. Representations and Warranties of the Developer	3
(a) Organization	3
(b) Power and Authority	3
(c) Authorization and Enforceability	3
(d) No Violation	3
(e) Consents	3
(f) No Proceedings or Judgments	3
Section 2.3. Disclaimer of Warranties	3
ARTICLE III CITY'S COVENANTS AND AGREEMENTS	4
Section 3.1. City's Financial Obligations.....	4
Section 3.2. City's Obligation to Undertake Landscaping Improvements.....	4
ARTICLE IV DEVELOPER'S COVENANTS AND AGREEMENTS	5
Section 4.1. Agreement to Construct the Private Development Project	5
Section 4.2. Developer Marketing Obligation	5
Section 4.3. Compliance with Agreement and Laws During Development	5
Section 4.4. Indemnity	5
Section 4.5. Continuing Compliance With Laws	5
Section 4.6. Real Estate Tax Obligations	5

ARTICLE V	DEFAULTS AND REMEDIES	6
Section 5.1.	Defaults - Rights to Cure.....	6
Section 5.2.	Remedies	6
Section 5.3.	Costs, Expenses and Fees.....	7
ARTICLE VI	MISCELLANEOUS PROVISIONS	7
Section 6.1.	Entire Contract and Amendments	7
Section 6.2.	Third Parties	7
Section 6.3.	Counterparts	7
Section 6.4.	Special and Limited Obligation.....	7
Section 6.5.	Time and Force Majeure	7
Section 6.6.	Waiver	8
Section 6.7.	Cooperation and Further Assurances	8
Section 6.8.	Notices and Communications.....	8
Section 6.9.	Successors in Interest	8
Section 6.10.	No Joint Venture, Agency, or Partnership Created.....	9
Section 6.11.	Illinois Law; Venue.....	9
Section 6.12.	No Personal Liability of Officials of City	9
Section 6.13.	Repealer.....	9
Section 6.14.	Term	9

LIST OF EXHIBITS

EXHIBIT A	Legal Description of Development Project Site
EXHIBIT B	Philo Road Business District Redevelopment Incentive Program Guidelines
EXHIBIT C	Site Plan

DEVELOPMENT INCENTIVE AGREEMENT

THIS DEVELOPMENT INCENTIVE AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is made and entered into as of February 21, 2005, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the “**City**”), and the **Tatman Family L.L.C.**, an Illinois limited liability company (the “**Developer**”).

RECITALS

WHEREAS, the Developer proposes to plat or replat, rehabilitate, repair, remodel and otherwise construct and install (or cause to be done) the Private Development Project (including related and appurtenant facilities as more fully defined below) on the Development Project Site (as defined below); and

WHEREAS, the Development Project Site (as defined below), is within the area for which certain incentives may be provided in accordance with the Program Guidelines (as defined below); and

WHEREAS, the Developer is unwilling to undertake the Private Development Project without certain incentives from the City, which the City is willing to provide, and the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended; 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:

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

“**Development Project Site**” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit A hereto, upon or within which the Private Development Project is to be located.

“**Private Development Project**” means the platting or replatting of the Development Project Site, the construction and installation of a new commercial building on each of Outlot 1 and Outlot 2 (as designated on the Site Plan) and the rehabilitation, reconstruction, repair or remodeling of the Existing Building (as designated on the Site Plan) to facilitate new office tenancies upon the Development Project Site.

“Program Guidelines” means the “Philo Road Business District Redevelopment Incentive Program Guidelines” attached hereto as Exhibit B.

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

“Site Plan” means the preliminary layout of the Development Project Site as depicted on the attached Exhibit C and all references herein to **“Outlot 1”**, **“Outlot 2”** or the **“Existing Building”** shall be substantially in accordance with the designation thereof on the Site Plan.

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:

(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 sales tax revenues 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 limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, and is operated with management vested in its manager(s).

(b) Power and Authority. The Developer is the sole owner of the Development Project Site and 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 manager(s). 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. 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.

(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.

Section 2.3. 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 Private Development Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections associated with any of the provisions of this Agreement.

ARTICLE III
CITY'S COVENANTS AND AGREEMENTS

Section 3.1. City's Financial Obligations. The City shall have the obligations set forth in this Section 3.1 relative to providing the following financial incentives in connection with the Private Development Project:

(a) to reserve or appropriate sufficient funds for such purpose and to: (i) either pay an interest subsidy amount to the Developer equivalent to the present value of a loan in an amount equal to \$60,000 payable at an interest rate of 5.5% over a term of 5 years, or (ii) provide a loan as described in the Program Guidelines in an amount equal to \$60,000 for each of the following:

1. a newly constructed building upon Outlot 1
2. a newly constructed building upon Outlot 2
3. each tenant space within the Existing Building for up to a maximum of three (3) tenant spaces;

(b) to provide a grant as described in the Program Guidelines in an amount equal to \$6,000 in connection with each of the listed items described in subsection (a) of this Section 3.1 above;

(c) each such payment or loan and grant shall be made or paid by the City at the time a certificate of occupancy is issued for any newly constructed building upon Outlot 1 or Outlot 2 or for any leased premises within the Existing Building; and

(d) to make an additional grant award of up to \$1,000 each for opening expenses as evidenced by a Certificate of Occupancy for the first retail or service tenant in the respective buildings upon Outlot 1, Outlot 2 or any leased premises within the Existing Building when such tenant commences business operations.

Section 3.2. City's Obligation to Undertake Landscaping Improvements. The City covenants and agrees to reserve or appropriate funds in an amount not less than \$20,000 to undertake landscaping improvements within the Philo Road right-of-way within the Philo Road Business District as described in the Program Guidelines.

ARTICLE IV
DEVELOPER'S COVENANTS AND AGREEMENTS

Section 4.1. Agreement to Construct the Private Development Project. The Developer covenants and agrees to commence and complete the following phase of the Private Development Project in the manner and with the effect set forth in this Agreement, substantially in accordance with such schedule as follows:

<u>Activity</u>	<u>Completion Date</u>
Plat or replat Development Project Site in accordance with Site Plan	June 30, 2005

Section 4.2. Developer Marketing Obligation. The Developer covenants and agrees to use due diligence to market Outlot 1, Outlot 2 and any leasehold premises with the Existing Building. Upon the request of the City, the Developer shall submit to the City evidence of such due diligence by way of realtor listing agreements, advertisements, promotional materials and other marketing efforts.

Section 4.3. Compliance with Agreement and Laws During Development. The Developer shall at all times undertake the Private Development Project in conformance with this Agreement and all applicable federal, state and local laws, rules and regulations, including all subdivision, zoning, environmental or other ordinances of the City. Any agreement of the Developer related to the Private Development Project with any contractor, subcontractor or any other party or parties to any such agreements shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

Section 4.4. Indemnity. The Developer agrees to forever indemnify and defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract brought against the City arising from any alleged claims, acts or omissions of such Developer in connection with this Agreement, including the Private Development Project, whether or not suit is filed.

Section 4.5. Continuing Compliance with Laws. The Developer agrees that upon completion and in the continued use, occupation, operation and maintenance of the Private Development Project thereafter, the Developer will comply with all applicable federal and state laws, rules, regulations and ordinances of the City.

Section 4.6. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Project Site. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Project Site 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 Development Project Site upon which the Private Development Project is located and shall be in full force and effect until December 31, 2025, 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 Development Project Site 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 4.7 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 real property taxes assessed and levied upon the Development Project Site or any part thereof.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.1. Defaults - Rights to Cure. Failure or delay by either party to timely perform any material 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, 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 party alleged to be in default specifying the default complained of. 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 cannot 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.

Section 5.2. Remedies. In the event of a breach of this Agreement by the Developer under any of the terms and provisions hereof, 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 and such other rights and remedies of the City as may be applicable in connection with any loan documents for any of the loans described in Section 3.1(a) hereof, the only other remedy available to either party in the event of a breach of this Agreement by the other party under any of the terms and provisions hereof shall be to institute legal action against the other party for specific performance or other appropriate equitable relief. Except for any loans or other payments which become due and payable in accordance with the provisions of Section 3.1 hereof, under no circumstances shall the City be subject to any monetary liability or

be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement.

Section 5.3. Costs, Expenses and Fees. If either party defaults in the performance of its obligations hereunder, and is determined in default of this Agreement by a court of competent jurisdiction, each of the parties agree that the defaulting party shall pay the non-defaulting party's costs, expenses and fees of enforcing the defaulting party's obligations under this Agreement, including but not limited to reasonable fees of accountants, attorneys, engineers and other professionals.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Entire Contract and Amendments. This Agreement (together with Exhibits A, B and C 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 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 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 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 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 hereunder only such amount of the sales tax revenues generated from the Philo Road Business District described in the Program Guidelines, if, as and when received, and not otherwise.

Section 6.5. 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 for any other reasons not within the Developer's or the City's control.

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 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 6.8. 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:
Tatman Family, L.L.C.
c/o Tatman Construction Services
3109 East Tatman Court
Urbana, IL 61801
Attn: Paul Tatman
Tel: (217) 365-9198 / Fax: (217) 365-9367

- (ii) In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Chief Administrative Officer
Tel: (217) 384-2455 / Fax: (217) 384-2363

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 6.9. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns; provided, however, that the Developer may not assign its rights under this Agreement prior to the completion of the Private Development Project without the express written consent of the City.

Section 6.10. 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 6.11. 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 6.12. 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 6.13. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof, including the Program Guidelines, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

Section 6.14. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until December 31 of the calendar year in which the last loan or payment obligation of the City becomes due and payable to the Developer under Section 3.1 of this Agreement or January 31, 2010, whichever is earlier; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section.

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**

(SEAL)

By: _____
Mayor

ATTEST:

City Clerk

Date: _____

TATMAN FAMILY L.L.C.

By: _____
Its Manager

Date: _____

[Exhibits A, B and C follow this page and are an integral part of this Agreement in the context of use.]

EXHIBIT A

Description of Development Project Site

EXHIBIT B

A part of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, being more particularly described as follows:

Tract 1:

Lot 1 of Becky's Subdivision as per plat recorded in Book "Y" at page 196, in Champaign County, Illinois.

Tract 2:

Lot 2 of Becky's Subdivision as per plat recorded in Book "Y" at page 196, in Champaign County Illinois, EXCEPT the following described tracts:

A tract of land in Section 21, Township 19 North, Range 9 East of the Third Principal Meridian in Champaign County, Illinois, conveyed to the State of Illinois by Dedication recorded as Document 71R 12394, more particularly described as follows:

Starting at the Southwest corner of the Northwest Quarter of the Northeast Quarter of said Section 21 marked by a brass plug imbedded in the pavement; thence North along the West line of the said Northeast Quarter a distance of 513 feet to a point; thence East a distance of 40 feet to the point of beginning, said point being on the Easterly right of way of Philo Road; thence South along said Easterly right of way a distance of 36.5 feet to a point; thence North 45 degrees East a distance of 19.8 feet to a point; thence North parallel to said Easterly right of way a distance of 45 feet to a point; thence North 45 degrees West a distance of 19.8 feet to a point on the said Easterly right of way; thence South along said Easterly right of way a distance of 36.5 feet to the point of beginning, in Champaign County, Illinois;

AND ALSO EXCEPT a part of Lot 2 in Becky's Subdivision as per plat recorded in Book "Y" of Plats at page 196 in Champaign County, Illinois, conveyed by deed recorded as Document 98R 17490, more particularly described as follows:

Beginning at the Northwest corner of Lot 3 in said Becky's Subdivision; thence South 89 degrees 30 minutes 06 seconds East along the North line of said Lot 3 a distance of 195.00 feet to the Northeast corner of said Lot 3; thence North 00 degrees 00 minutes 00 seconds East along the Northerly extension of the East line of said Lot 3 a distance of 17.40 feet; thence North 89 degrees 30 minutes 06 seconds West parallel with the North line of said Lot 3 a distance of 195.00 feet to the West line of said Lot 2; thence South 00 degrees 00 minutes 00 seconds West along said West line a distance of 17.40 feet to the point of beginning, in Champaign County, Illinois;

AND ALSO EXCEPT a part of Lot 2 in Becky's Subdivision as per plat recorded in Book "Y" of Plats at page 196 in Champaign County, Illinois, conveyed by deed recorded as Document 98R 17491, more particularly described as follows:

Beginning at the Northwest corner of Lot 4 in said Becky's Subdivision; thence South 89 degrees 30 minutes 06 seconds East along the North line of said Lot 4 a distance of 143.00 feet to the Northeast corner of said Lot 4; thence North 00 degrees 00 minutes 00 seconds East along the Northerly extension of the East line of said Lot 4 a distance of 17.40 feet; thence North 89 degrees 30 minutes 06 seconds West parallel with the North line of said Lot 4 a distance of 143.00 feet to the Northerly extension of the West line of said Lot 4; thence South 00 degrees 00 minutes 00 seconds West along said Northerly extension a distance of 17.40 feet to the point of beginning, in Champaign County, Illinois.

Tract 3:

Lot 6 of Becky's Subdivision as per plat recorded in Book "Y" at page 196, in Champaign County, Illinois.

Commonly known as: 1806-1810 S. Philo Rd., Urbana, Illinois.

PIN: 93-21-21-201-001, 93-21-21-201-008, and 93-21-21-201-006

EXHIBIT B

Philo Road Business District Redevelopment Incentive Program Guidelines



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

Philo Road Business District Redevelopment Incentive Program Guidelines

(Supersedes all previous guidelines)

The Philo Road Business District Redevelopment Incentive Program is designed to provide a loan/grant incentive for businesses along Philo Road (as shown in the attached district map) that are constructing or rehabilitating their building, landscaping, and/or site. Grants in this area are only available for specific targeted retail uses that fill an unmet need in Urbana.

Following is a summary of the criteria and guidelines of the program:

- An eligible business located within the Philo Road Business District can apply for a loan to construct, rehabilitate, or otherwise improve its building, landscaping, site, or remodel enclosed commercial mall space.
- Interest subsidies of qualified bank loans are based on the availability of funds.
- The City of Urbana pays an interest subsidy amount to the participating lending institution equivalent to the present value of the loans accrued interest at a rate of 5.5%.
- The term of the loan is 5 years, with 60 payments.
- At least 50% of the loan and grant proceeds must be used on the exterior of the structure under rehabilitation, except in the case of enclosed mall space renovation.
- In addition to the loan amount, businesses may also be eligible for a grant of up to 10% of the amount, based upon the targeted use of the business. The grant amount will automatically be awarded to those projects that are eligible retail or entertainment uses.
- Retail uses must have 75% of their floor space devoted to sales/display to qualify.
- Loans cannot be used for working capital, property acquisition, or refinancing of an existing debt.
- Applicants must be the owner of record, mortgagor, contract purchaser, or long-term lessee and must receive approval of their application by the City of Urbana and the participating lending institution.
- The lender establishes all underwriting criterion.
- An applicant cannot receive more than 1 City subsidized loan/grant in a 5-year period.
- Approval is based on funding availability, compliance with the above guidelines, and overall compliance with the economic development policies of the City of Urbana. Eligibility determinations are made by City of Urbana economic development staff based upon these factors.

For further information, contact:

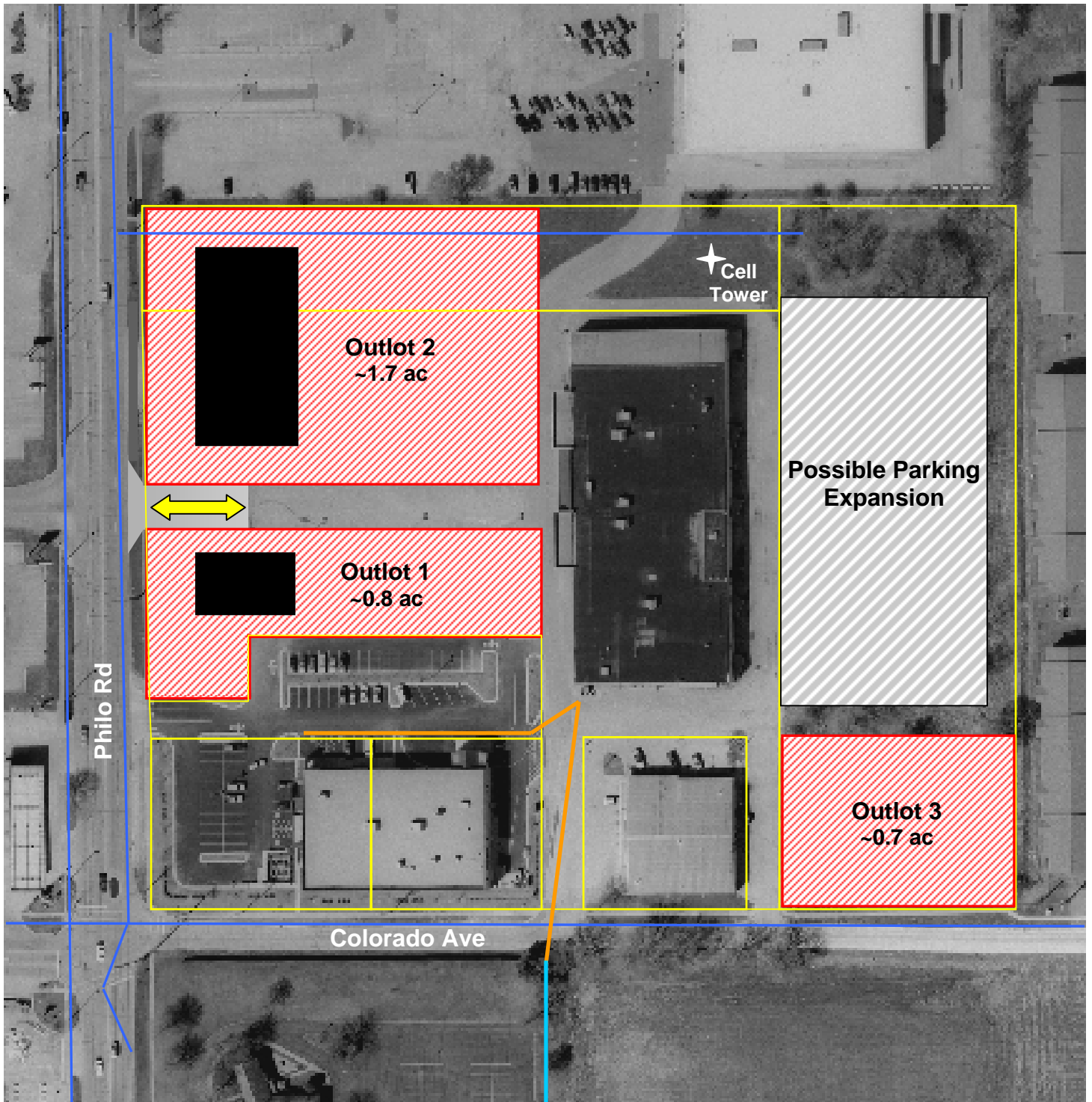
Kathy Larson
City of Urbana
Community Development Services Department

400 South Vine Street
Urbana, IL 61801
(217) 384-2319
kalarson@city.urbana.il.us

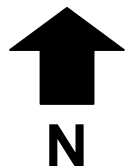
EXHIBIT C

Site Plan

Jewel Outlots Site Plan



New access drive lined up with existing County Market drive
Use existing access drive
Jewel lot and parking expands into rear lot



— Storm Sewer — City Sanitary Sewer — UCSD Sanitary Sewer