



**CITY OF URBANA, ILLINOIS
DEPARTMENT OF PUBLIC WORKS**

ADMINISTRATION

MEMORANDUM

TO: Bruce K. Walden, Chief Administrative Officer
FROM: William R. Gray, P. E., Public Works Director
DATE: July 7, 2005
RE: **Maple Street License Agreement and Street Vacation**

INTRODUCTION

City staff met with the Five Points Northeast, LLC developer on Thursday, June 30, 2005, to discuss plans for developing a shopping area at Five Points East (northeast corner of University Avenue and Cunningham Avenue) in Urbana. The proposed site includes retail space parallel to Park Street and Maple Street (see attached sketch plan). In order to accommodate the proposed building footprint and parking needs, the developer would like to reclaim land that was recently dedicated to the City for expansion of the Park Street and Maple Street rights-of-way. These ten-foot strips (see attached street vacation plat) are the locations for consideration. In addition, the developer would like to add employee parking behind the proposed site, which would be located partially within the remaining Maple Street right-of-way. City staff is supportive of accommodating this request, as Maple Street forms more of a driveway access way to this retail site. The proposed 90-degree parking would abut the east side of the proposed retail building.

Since the ten-foot right-of-way strips were recently dedicated by the developer as part of a plat, the developer is merely requesting these ten-foot strips be vacated. It is not recommended to appraise these strips in order for the developer to pay to have them back. Typically, when the City is considering vacation of streets to adjacent non-residential property, the benefiting parties pay the fair market value for the land. The reduced right-of-way width will not interfere with future street improvements, as they would pertain to sidewalks or parkways.

Attached please find a license agreement that would permit the use of the Maple Street right-of-way for parking.

FISCAL IMPACTS

The developer would be responsible for all costs associated with building the parking area. The City may in the future reconstruct Maple Street as part of a Capital Improvement Project.

RECOMMENDATION

It is recommended that “*An Ordinance Approving and Authorizing the Execution of An Agreement For Use Of Right-Of-Way*” and “*An Ordinance Vacating a Portion of Park Street and Maple Street*” be approved.

WRG:klf

Attached:

- **Ordinance (Right-of-Way)**
- **License Agreement**
- **Sketch Plan (Exhibit A)**
- **Ordinance (Vacation)**
- **Street Vacation Plat**

ORDINANCE NO. 2005-07-111

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR USE OF RIGHT-OF-WAY

(Maple Street from University Avenue to Park Street)

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

Section 1. That An Agreement for Use of Right-of-Way (Maple Street from University Avenue to Park Street) between the City of Urbana, Illinois and Five Points Northeast, LLC., 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 _____, 2005.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2005.

Laurel Lunt Prussing, Mayor

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Maple Street from University Avenue to Park Street)

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Five Points Northeast, LLC. (hereinafter "Developers").

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Developers do mutually covenant and agree as follows:

A. Maple Street is a fifty-foot dedicated right-of-way between the north right-of-way of University Avenue and the south right-of-way of Park Street.

B. The Developers are herein granted by the City a limited right to construct a parking area to be built in part upon such right-of-way. This limited right is wholly dependent upon the Developers, their successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Developers expressly acknowledge and agree that such limited right is immediately revocable at the option of the City in the event that the Developers, their successors or assigns, fail to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that, regardless of the existence or not of any breach, the use by the Developers of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation and maintenance of a parking area, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), the Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement. The parking area shall conform to the provisions regarding Parking and Access set forth in Article VIII of the Urbana Zoning Ordinance. Accordingly, a variance from Section VIII-3 E of the Zoning Ordinance shall be obtained from the Zoning Board of Appeals and City Council by the Developers to allow exiting vehicles for a non-residential use to back into a public street.

D. When so instructed by the Director, the Developers will cause the parking area or any portion thereof to be removed, as nearly as possible in conformance with the Director's request, within thirty (30) days after receipt of written notice from the Director. The Developers are solely and entirely responsible for any and all costs directly or indirectly related to such removal, including but not limited to removal of the depressed curb and gutter and pavement, and replace with barrier curb and gutter and pavement and parkway restoration on Maple Street along the same alignment and to the proper elevation as existed prior to the construction of the parking area.

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(City of Urbana and Five Points Northeast, LLC.)**

E. In the event of an emergency, defined as imminent peril to person or property, or when the Developers have inadequately complied with an order of the Director pursuant to Paragraph (D) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (D) impracticable under the circumstances present, the Developers consent and agree that the City or its duly authorized agent may remove the parking area, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Developers. Should the Developers fail in any way to make timely payment to the City for such costs and expenses, the Developers agree to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

F. The Developers agree to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the construction of the parking area, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Developers shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

G. The Developers acknowledge that they shall be fully responsible and bear all costs associated with any and all pavement maintenance, pavement markings, snow removal, parking area sweeping and cleaning, and any other pavement maintenance or repair within the parking area.

H. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

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**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
(City of Urbana and Five Points Northeast, LLC.)**

CITY OF URBANA, ILLINOIS

**By: _____
Laurel Lunt Prussing, Mayor**

ATTEST:

Phyllis D. Clark, City Clerk

*** * ***

FIVE POINTS NORTHEAST, LLC.

**By: _____
President**

ATTEST:

Secretary

*** * ***

Prepared by and please return recorded copy to:

*Jack Waaler, Special Counsel
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801*



Exhibit "A"
 License Agreement
 Maple Street Parking

City of Urbana
 Public Works Department
 Engineering Division
 Date: 7/5/2005 Drawn by: BWF

