



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Economic Development Division*

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

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

**FROM:** Elizabeth H. Tyler, AICP, Director

**DATE:** February 9, 2006

**SUBJECT:** Agreement with the Urbana Park District and Five Points Realty, LLC  
(Northeast Corner of Broadway and University Avenue)

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**Description**

The purpose of this memorandum is to seek approval for the Mayor to execute an agreement with the Urbana Park District and Five Points Realty, LLC in order to facilitate a land swap between the Park District and the developer of the northwest corner of five points. This land swap would involve conveyance of the tract shown as Parcel A from the Park District to Five Points, LLC and conveyance of the tract shown as Parcel B from Five Points, LLC to the Urbana Park District. The City of Urbana will act as the facilitator of the land transfer due to limitations on the Park District's abilities to convey land directly to a developer. The result will be a more logical layout for the shopping center planned for the Five Points property and improvements to the Park District's land. The Park District uses this property for over-flow and event parking.

Other provisions of the agreement include removal of the existing hard surface on Parcel B and preparation for turfing, provision of any necessary drainage improvements for both Parcel A and Parcel B, erection of a 6-foot board on board fence along the new south property of the Park District land, and removal of overhead utility lines extending across both Parcel A and Parcel B, all at the developer's expense. In addition, the developer would convey to the Park District (through the City) a payment in the amount of \$20,666 and the City would convey to the Park District a payment in the amount of \$6,666 in the form of Tax Increment Finance District eligible expenses.

It should be noted that the Master Plan included in the Agreement as "Exhibit A" is included for the purposes of illustrating the land swap only and is not in any way an accurate depiction of the developer's site development plan. The developer continues to refine the site plan for the project. A current version of this proposed site plan is attached to this memorandum for informational purposes only.

## **Background**

The land transfer to be executed as a part of the proposed agreement was anticipated by and consistent with a Redevelopment Agreement by and between the City of Urbana and Five Points Realty, LLC, authorization for which was passed by the City Council on February 7, 2005 (Ordinance No. 2005-01-014). An amendment to this Agreement was authorized by the City Council on April 4, 2005 (Ordinance No. 2005-03-049). A copy of this Redevelopment Agreement and Amendment are attached to the subject Agreement as “Exhibit C”. This Redevelopment Agreement addresses the Developer’s intent to develop no less than 50,000 square feet of improvements at the site, including an urban shopping center complex and other commercial facilities on outlots or parcels at the site. The Developer has been completing engineering studies, developing site plans, and marketing the retail spaces at the site in anticipation of the relocation of University Auto Park from the site to their new facility at Cunningham Avenue and Interstate 74. Redevelopment of this site is anticipated in and is consistent with the Urbana Downtown Strategic Plan, adopted in 2002, and with the Tax Increment Finance District Redevelopment Plan, as amended in 2005.

## **Fiscal Impact**

The Agreement would have minor direct fiscal impact on the City of Urbana. Under the terms of the Agreement, the City would be obligated to provide an amount not to exceed \$6,666 to the Urbana Park District for TIF-eligible expenses within any of the TIF Districts. Once the Park District has identified the specific project or expenditures for this amount, an appropriate budget amendment will be prepared.

The fiscal impacts and benefits of the Five Points Realty project were identified at the time of the consideration of the Redevelopment Agreement. In brief, the City would provide TIF assistance for 10 years in an amount not to exceed 80% of incremental tax revenues generated by the retail or hotel/motel space in the project and no more than 50% of incremental tax revenues generated by the office and service space. In addition, to help beautify the proposed project area and establish it as a key entrance to the downtown, the City will contribute to necessary access, streetscaping, utility, environmental, or other infrastructure or beautification projects in an amount up to \$150,000. In return for these incentives the City would receive benefits in the form of additional sales tax revenue generated by the project, increased EAV, and increased tax increment for TIF 2. Additionally, this project would help spur further interest in the Five Points and downtown area for commercial development; would draw increased visitors to the downtown area creating a spillover effect benefiting all nearby businesses; and would help fulfill a key element of the Downtown Strategic Plan.

## Options

The city council has the following options in regards to this redevelopment agreement:

- The City Council may authorize the Mayor to enter into the proposed Agreement with the Urbana Park District and Five Points Realty, LLC
- The City Council may authorize the Mayor to enter into the proposed Agreement with the Urbana Park District and Five Points Realty, LLC, subject to specific changes to be identified and agreed to by both the Urbana Park District and by the developer. (Note that the subject agreement has already been approved by the Urbana Park District Board).
- The City Council may deny authorization to enter into the proposed Agreement with the Urbana Park District and Five Points Realty, LLC.

## Recommendations

In the interests of implementing the previously approved Redevelopment Agreement, Downtown Strategic Plan, and TIF 2 Redevelopment Plan, staff recommends that the City Council authorize the Mayor to execute the proposed Agreement with the Urbana Park District and Five Points Realty, LLC, as presented herein.

Attachments:     A.     Site Location Map  
                      B.     Draft Site Plan  
                      C.     Ordinance  
                      D:     Proposed Agreement with Urbana Park District and Five Points Realty, LLC

Cc:             Joe Petry, Five Points Realty  
                  Vicki Mayes, Urbana Park District  
                  Betsy Wong, Attorney for Park District  
                  Pat Fitzgerald, Attorney for Five Points Realty

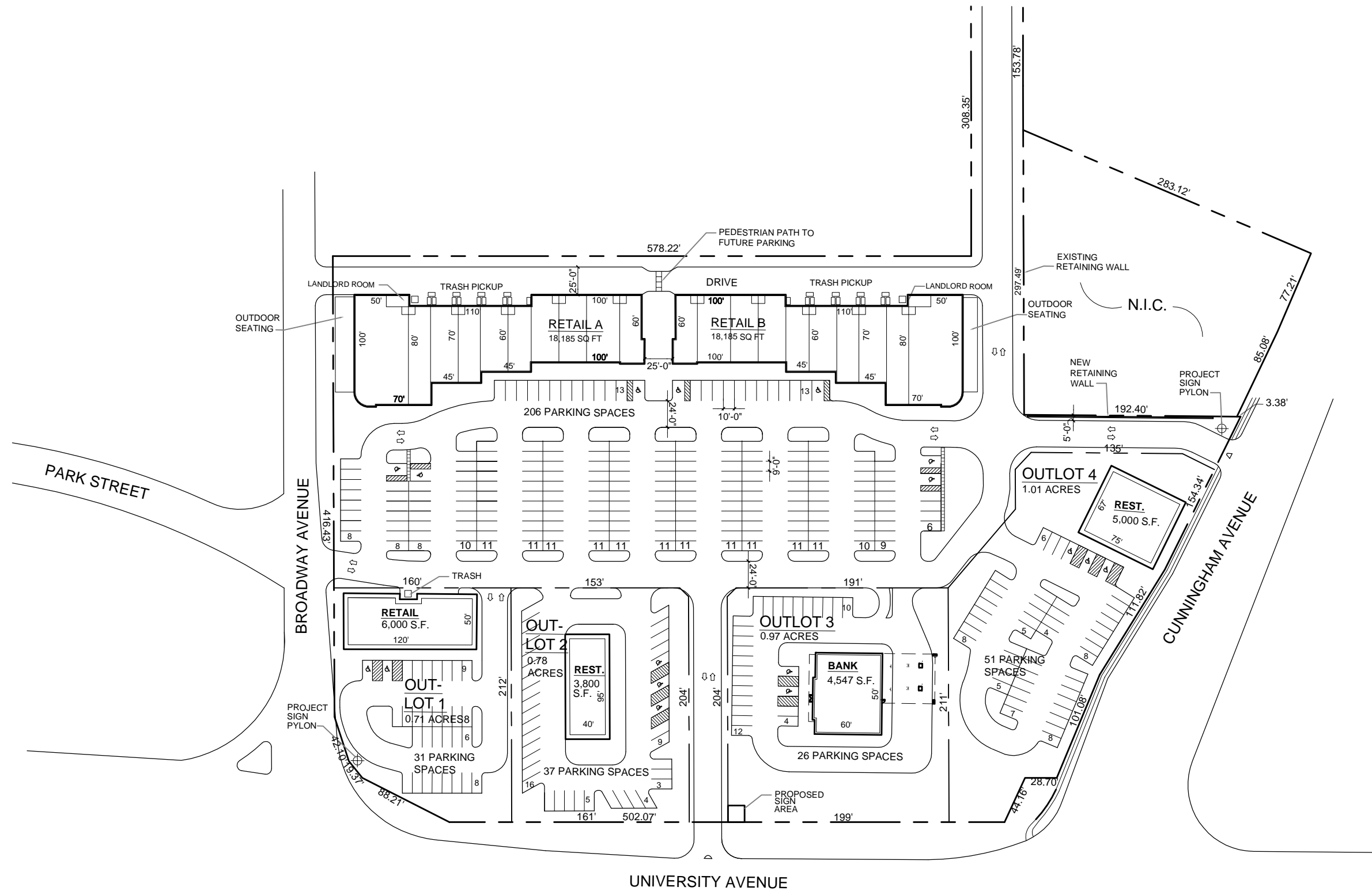


# Five Points Northwest Location Aerial Map



Subject Site

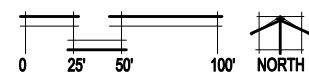




TABULATION	
<b>RETAIL A</b>	
A100	4735 S.F.
A200	1600 S.F.
A300	1750 S.F.
A400	1400 S.F.
A500	1500 S.F.
A600	1200 S.F.
A700	1500 S.F.
A800	1500 S.F.
A900	1800 S.F.
A1000	1200 S.F.
<b>TOTAL:</b>	<b>18,185 S.F.</b>
<b>RETAIL B</b>	
B100	1200 S.F.
B200	1800 S.F.
B300	1500 S.F.
B400	1500 S.F.
B500	1200 S.F.
B600	1500 S.F.
B700	1400 S.F.
B800	1750 S.F.
B900	1600 S.F.
B1000	4735 S.F.
<b>TOTAL:</b>	<b>18,185 S.F.</b>
<b>RETAIL A + RETAIL B</b>	<b>36,370 S.F.</b>
<b>SITE AREA</b>	<b>4.89 AC.</b>
<b>PARKING RATIO</b>	<b>5.66/1000 S.F.</b>
<b>OUTLOTS</b>	
OUTLOT 1	0.71 AC.
OUTLOT 2	0.78 AC.
OUTLOT 3	0.97 AC.
OUTLOT 4	1.01 AC.
<b>TOTAL:</b>	<b>3.47 AC.</b>
<b>TOTAL SITE AREA</b>	<b>8.36 AC.</b>

SITE PLAN OPTION 8-B

SCALE: 1"=100'-0"



ORDINANCE NO. 2006-02-016

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH  
THE URBANA PARK DISTRICT AND FIVE POINTS REALTY, LLC**

(Northeast Corner Broadway Avenue and University Avenue)

WHEREAS, on February 7, 2005, in Ordinance No. 2005-01-014, the City approved a Redevelopment Agreement between the City of Urbana and Five Points Realty, LLC, which addressed the redevelopment of the northwest corner of the Five Points intersection; and

WHEREAS, the said Redevelopment Agreement anticipated a "land swap" between the Park District and the developer of the northwest corner of Five Points; and

WHEREAS, the attached agreement between the City of Urbana, the Urbana Park District, and Five Points Realty, LLC addresses the details of how such land swap is to be accomplished among other matters; and

WHEREAS, the Urbana Park District approved the attached agreement on January 11, 2006;

NOW, THEREFORE, 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, the Urbana Park District, and Five Points Realty, LLC, 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 \_\_\_\_\_,  
2006.

AYES:

NAYS:

ABSTAINS:

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

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

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

**AGREEMENT BETWEEN THE CITY OF URBANA, THE  
URBANA PARK DISTRICT AND FIVE POINTS REALTY, LLC**

**THIS AGREEMENT**, including Attachments and Exhibits and hereinafter referred to as the “Agreement” by and between the City of Urbana, Illinois, the Urbana Park District and Five Points Realty, LLC shall be effective as of the date that the last of the Chief Executive Officers of the respective parties sign this Agreement as evidenced by the date appearing below their signature provided, however, this Agreement shall not come into effect unless the Development Agreement between Five Points Realty, LLC and the City in form set forth in Attachment “A” to this Agreement is first entered into.

**RECITALS**

**WHEREAS**, in accordance with and pursuant to both the Intergovernmental Agreement Article of the Illinois Constitution of 1970 and the Illinois Compiled Statues, the governmental parties are authorized to enter into intergovernmental agreements;

**WHEREAS**, Five Points Realty, LLC has developed a Master Site Plan to re-develop the land at the Northeast corner of Broadway and University Avenue; and that development is in need of property currently owned by the Urbana Park District; and

**WHEREAS**, the City has determined that the attached Master Site Plan is in the best interest of citizens of the City of Urbana and has entered into a development agreement with Five Points Realty, LLC; and

**WHEREAS**, the District has approved a land exchange to allow the redevelopment of the area, subject to certain terms and conditions; and

**NOW, THEREFORE**, the parties hereby agree as follows:



**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 will have the meaning provided from place to place herein, including as follows:

“City” means the City Council of the City of Urbana, Illinois or its agents, employees and representatives.

“Corporate Authorities” means the City Council of the City of Urbana, Illinois.

“Development Area” means the real estate at the Northeast corner of the intersections of Broadway and University Avenue, as illustrated in Exhibit “A”, attached hereto; and

“District” means the Urbana Park District.

“Five Points” means Five Points Realty, LLC.

“Parties” mean, collectively, the City of Urbana, the Urbana Park District and Five Points Realty, LLC.

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

(a) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and will not affect the meaning, construction or effect hereof.

(b) all exhibits attached to this Agreement will be and are operative provisions of this Agreement and will 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.** The City hereby makes certain representations. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

**Section 2.2 Representations and Warranties of the Urbana Park District.** The District makes the following representations. The District has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings.

**Section 2.3 Disclaimer of Warranties.** The City and the District acknowledge that neither has made any warranties to the other, except as set forth in this Agreement.

**ARTICLE III**  
**COVENANTS AND AGREEMENTS**

**Section 3.1 Related Agreement.** The City agrees that the redevelopment shall be subject to the terms and conditions of a related Agreement between the City and Five Points (Attachment “A”). If for any reason the Development Agreement between the City and Five Points (Attachment “A”) becomes null and void then this Agreement shall automatically become null and void at the same time.

**Section 3.2 Conveyance of Property.** At the closing the District agrees to convey to the City of Urbana, that Park District property illustrated generally on Exhibit B as

Parcel A. The City will convey to Park District that property which Five Points conveys to the City as illustrated generally on Exhibit B as Parcel B. Both deeds will be sufficient in form to convey the real estate fee simple absolute title free and clear of any and all liens and other encumbrances except for the real estate taxes for the current and subsequent years, covenants, conditions, restrictions and easements of records and all applicable zoning laws and ordinances.

**Section 3.3 Park Property Issues.** Five Points agrees that:

A. At its sole expense, Five Points shall remove the hard surface on Parcel B and grade Parcel B. Said work shall be subject to the District engineer's approval, which shall not be unreasonably withheld, conditioned or delayed.

B. At its sole expense, Five Points shall provide plans for and construct adequate drainage on Parcel A and Parcel B. Said plans shall be subject to the District's engineer's approval which shall not be unreasonably withheld, conditioned or delayed.

C. At its sole expense, Five Points agrees to seed, cover and water on Parcel B so that an adequate grass cover is established.

D. At its sole expense, Five Points agrees to construct a six (6) foot board on board fencing on District property from the Southeast corner of Parcel B along the South boundary of the Park District's property to Broadway Avenue.

E. At its sole expense, Five Points agrees to remove or relocate overhead utility lines crossing over Parcel A and Parcel B.

F. Five Points agrees Five Points' performances as specified in this Section will be completed within sixty (60) days from Closing.

G. The District and Five Points acknowledge and agree if the District prescribes a specific use for Parcel B before the specified timeframe within this Agreement, the District and Five Points shall cooperate with each other regarding any and all modifications which may be necessary to Five Points' performance as specified in this Section.

**Section 3.4 Payments.** In recognition of the District's cooperation with the redevelopment of the area, the City of Urbana agrees to pay for tax increment financing eligible expenses incurred by the District in any TIF areas an amount, in addition to the tax increment financing funds that the Park District will receive for other projects, an amount not to exceed \$6,666.00.

**Section 3.5 Future Easements.** In the event an adjacent owner or utility company needs an easement on Parcel B, the Park District agrees to grant such easements as are necessary on reasonable terms.

## **ARTICLE IV**

### **CLOSING**

**Section 4.1.** At the closing, the District shall convey to the City title to Parcel A, together with all improvements and appurtenances thereon, in exchange for a deed to the District for Parcel B, and Twenty thousand, six hundred sixty-six dollars (\$20,666.00) from Five Points. The full and total consideration of the exchange transaction between the parties hereto is the exchange of the above parcels of real estate and other consideration upon the terms set forth in this Agreement.

**Section 4.2 Closing.** Closing of the Exchange Transaction shall be held on or before November 1, 2006.

**Section 4.3.** At the Closing, the District shall deliver possession of Parcel A to the City upon receipt of possession of Parcel B.

**Section 4.4 Taxes and Assessments.** All real estate taxes and assessments attributable to the Parcels shall be pro-rated as closing based upon the most recently ascertainable tax information available at the time of Closing. Transfer taxes, if any, shall be the obligation of the Grantor. All general and special assessments, if any, which are a lien upon the real estate as from the date of this Agreement, shall be the conveying party's expense. All such taxes and assessments which are an obligation of one party of this Agreement shall be paid to the other party hereto at Closing, and such payment shall release the conveying party from any further liability as to the other party in connections therewith.

**Section 4.5 Evidence of Title.** Within a reasonable period after the date hereof, Five Points shall procure title insurance commitment from Chicago Title Insurance Company for Parcel B at Five Point's expense committing the title company to issue policy in the usual form insuring title to the real estate to be exchanged hereby in the amount as agreed upon between Five Points and the District. Within a reasonable period after the date hereof, the District shall procure title insurance commitment from Chicago Title Insurance Company for Parcel A at the District's expense committing the title company to issue policy in the usual form insurance title to the real estate to be exchanged hereby in the amount as agreed upon between the District and Five Points. Permissible exceptions to titles shall include only the lien of general real estate taxes; zoning laws and building ordinances; and covenants and restrictions of record which are not violated by the existing improvements or the present use of the property and which do not restrict reasonable use of the property. If title commitments disclose an impermissible exception, the acquiring party shall give notice of such exception to the conveying party within a reasonable time. The conveying party shall have a reasonable time to have the exception removed. If the conveying party is unable to cure such exception, then the party acquiring the real estate shall have the option to terminate this Agreement. Within a reasonable period of time following the Closing, Chicago Title Insurance Company shall issue title insurance policies in conformity with the terms

hereof with Five Points shown as the owner in fee simple absolute of Parcel A and with the District shown as the owner in fee simple absolute of Parcel B.

**Section 4.6 Physical Condition of Properties.** Parcels A and B are being acquired in “as is” condition, subject to any subsequent casualty loss as referenced in Section 4.8 hereto and subject to performances to be completed by Five Points as referenced in Section 3.3.

**Section 4.7 Transaction Costs.** Five Points shall pay the cost of the title insurance policy ordered on Parcel B, recording fees for the deeds on Parcel A and easements, transfer taxes applicable to the deeds for Parcel B, survey fee, if any, for Parcel A and Five Points’ attorneys’ and other professional fees related to this exchange transaction. The District shall pay the cost of the title insurance policy ordered on Parcel A, recording fee for the deeds on Parcel B, transfer taxes applicable to the deeds for Parcel A, survey fee, if any for Parcel B and the Districts’ attorneys’ and other professional fees related to this exchange transaction.

**Section 4.8 Risk of Loss.** Risk of loss of, damage to and liability from the real estate and improvements thereon shall remain with the conveying party until Closing.

## **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 will 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 will 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 the defaulting party commences to cure said default, such thirty (30) day period will 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 will be deemed not to 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 will 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.** The sole remedy of either party in the event of a default by the other party under any of the terms and provisions of this Agreement will be to institute legal action against the other party for specific performance or other appropriate equitable relief.

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS**

**Section 6.1 Entire Contract Parcel and Amendments.** This Agreement (together with the Exhibits attached hereto) is the entire contract between the parties relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties, 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 parties 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 parties, nor will any provision give any third parties

any rights of subrogation or action over or against the parties. 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 will be considered an original and together they will constitute one agreement.

**Section 6.4 Special and Limited Obligation.** This Agreement will constitute special and limited obligation of the parties according to the terms hereof. This Agreement will never constitute a general obligation of the City or the District to which its credit, resources or general taxing powers are pledged.

**Section 6.5 Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver will be deemed to exist unless such waivers are in writing. No such waiver will obligate the waiver of any other right or remedy hereunder, or will be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 6.6 Cooperation and Further Assurances.** The parties 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 District or other appropriate persons all singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 6.7 Notices.** All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement will be in writing and will be executed by the party or an officer, agent or attorney of the party, and will 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 (3<sup>rd</sup>) 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 Urbana Park District:

Executive Director

303 E. University Avenue

Urbana, Illinois, 61801

TEL: (217)367-1536 FAX: (217)367-1391

With a copy to:

Betsy Pendleton Wong

The Executive Center – 115 N. Neil, Suite 101

Champaign, Illinois 61820

TEL: (217)239-1818 FAX: (217)239-2323

City of Urbana, Illinois

Chief Administrative Officer

400 South Vine Street

Urbana, Illinois 61801

TEL: (217)384-2454 FAX: (217)384-2363

With a copy to:

Legal Division

400 South Vine Street

Urbana, Illinois 61801

TEL: (217)384-2464 FAX: (217)384-2363

To:

Five Points Realty, LLC.

Joseph A. Petry

102 East Main Street

Urbana, Illinois 61801

With a copy to:

Patrick F. Fitzgerald

Meyer Capel Law Offices

306 W. Church Street

Champaign, Illinois 61820

TEL: (217) 352-1800

**Section 6.8 Illinois Law.** This Agreement will be construed and interpreted under the laws of the State of Illinois.

**Section 6.9 No Personal Liability of Officials of City.** No covenant or agreement contained in this Agreement will be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City or the District, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City or the District will 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 6.10 Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any party thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement will be controlling.

**Section 6.11 Term.** This Agreement will remain in full force and effect until said Agreement is mutually amended or terminated.

**Section 6.12 Survival.** The agreements, covenants, conditions, representations and remedies set forth in this Agreement shall survive the Closing and shall not be merged upon delivery of the deeds and easements of the parties.

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

**URBANA PARK DISTRICT**

**CITY OF URBANA**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**FIVE POINTS REALTY, LLC,  
an Illinois limited liability company**

**BY:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**REDEVELOPMENT AGREEMENT**

**by and between the**

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

**and**

**FIVE POINTS REALTY, LLC**

Dated as of February 7, 2005

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**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>
<b>ARTICLE I DEFINITIONS</b> .....	2
Section 1.1. Definitions .....	2
Section 1.2. Construction .....	4
<b>ARTICLE II REPRESENTATIONS AND WARRANTIES</b> .....	4
Section 2.1. Representations and Warranties of the City .....	4
(a) Organization and Standing .....	4
(b) Power and Authority .....	4
(c) Authorization and Enforceability .....	4
(d) No Violation .....	5
(e) Governmental Consents and Approvals .....	5
Section 2.2. Representations and Warranties of the Developer .....	5
(a) Organization .....	5
(b) Power and Authority .....	5
(c) Authorization and Enforceability .....	5
(d) No Violation .....	5
(e) Consents .....	6
(f) No Proceedings or Judgments .....	6
Section 2.3. Related Agreements .....	6
Section 2.4. Disclaimer of Warranties .....	6
<b>ARTICLE III CITY'S COVENANTS AND AGREEMENTS</b> .....	7
Section 3.1. City's Financial Obligations .....	7
Section 3.2. City's Redevelopment Obligations .....	8
Section 3.3. City's Covenant to Amend the Redevelopment Plan .....	9
Section 3.4. Defense of Redevelopment Project Area .....	10
<b>ARTICLE IV DEVELOPER'S COVENANTS AND AGREEMENTS</b> .....	10
Section 4.1. Preparation of Design Proposal .....	10
Section 4.2. Commitment to Undertake the Private Development Project and Schedule .....	10
Section 4.3. Compliance with Agreement and Laws During Development .....	11
Section 4.4. Prevailing Rate of Hourly Wages .....	12
Section 4.5. City's Right to Audit Developer's Books and Records .....	12
Section 4.6. Indemnity .....	12
Section 4.7. Continuing Compliance With Laws .....	13
Section 4.8. Real Estate Tax Obligations .....	13

<b>ARTICLE V</b>	<b>PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS ...</b>	<b>14</b>
Section 5.1.	Payment Procedures .....	14
Section 5.2.	Approval and Resubmission of Requisitions .....	14
Section 5.3.	Time of Payment .....	15
Section 5.4.	Shortfalls .....	15
<b>ARTICLE VI</b>	<b>DEFAULTS AND REMEDIES.....</b>	<b>15</b>
Section 6.1.	Defaults - Rights to Cure.....	15
Section 6.2.	Remedies .....	16
Section 6.3.	Costs, Expenses and Fees.....	16
<b>ARTICLE VII</b>	<b>MISCELLANEOUS PROVISIONS.....</b>	<b>17</b>
Section 7.1.	Conditions Precedent.....	17
Section 7.2.	Entire Contract and Amendments .....	17
Section 7.3.	Third Parties .....	17
Section 7.4.	Counterparts .....	17
Section 7.5.	Special and Limited Obligation; Effect of Failure to Amend .....	18
Section 7.6.	Time and Force Majeure .....	18
Section 7.7.	Waiver .....	18
Section 7.8.	Cooperation and Further Assurances .....	19
Section 7.9.	Notices and Communications.....	19
Section 7.10.	Successors in Interest .....	20
Section 7.11.	No Joint Venture, Agency, or Partnership Created.....	20
Section 7.12.	Illinois Law; Venue.....	20
Section 7.13.	No Personal Liability of Officials of City .....	20
Section 7.14.	Repealer.....	20
Section 7.15.	Term .....	21

**LIST OF EXHIBITS**

EXHIBIT A Description of Development Project Site

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is made and entered into as of February 7, 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 **Five Points Realty, LLC**, an Illinois corporation (the **“Developer”**).

### RECITALS

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at 65 ILCS 5/11-74.4-1 *et seq.*), as supplemented and amended (the **“TIF Act”**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the **“Corporate Authorities”**) did adopt an ordinance (Ordinance No. 8687-45 on December 23, 1986) including as supplemented and amended by certain ordinances (Ordinance No. 9394-101 on May 16, 1994 and Ordinance No. 2002-06-064 on June 17, 2002) (collectively, the **“TIF Ordinances”**); and

**WHEREAS**, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Downtown Urbana Tax Increment Redevelopment Project Area Number Two (the **“Redevelopment Project Area”**) and approved the related redevelopment plan, as supplemented and amended (the **“Redevelopment Plan”**), including the redevelopment projects described in the Redevelopment Plan (collectively, the **“Redevelopment Projects”**); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to acquire, construct and install (or cause to be done) the Private Development Project (including related and appurtenant real estate and other 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 Redevelopment Project Area; and

**WHEREAS**, the Developer is unwilling to undertake the Private Development Project



without certain tax increment finance (“TIF”) 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.

“**Design Proposal**” means the proposed site plan, floor plans and elevations for the Private Development Project which is to be prepared for or on behalf of the Developer in accordance with Section 4.1 of this Agreement.

“**Development Project Site**” means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto upon or within which the Private Development Project is to be located, including “Tract A” and “Tract B” thereof as shown on such Exhibit A, provided, however, that the inclusion of “Tract B” as a part of the Development Project Site shall be determined in the sole discretion of the Developer on or before the date specified in Section 4.2 hereof.

“**Eligible Redevelopment Project Costs**” means those costs paid and incurred in connection with the Private Development Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act.

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

**“Incremental Property Taxes”** means in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon taxable real property in the Redevelopment Project Area by taxing districts that is attributable to the increase in the equalized assessed value of the taxable real property in the Redevelopment Project Area over the equalized assessed value of the taxable real property in the Redevelopment Project Area on January 1, 1986 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, has been allocated to and when collected shall be paid to the Comptroller of the City for deposit by the Comptroller into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

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

**“Private Development Project”** means the acquisition, construction and installation of not less than 50,000 square feet of improvements including an urban shopping center complex and other commercial facilities on outlots or parcels upon the Development Project Site, together with all required buildings, structures and appurtenances related thereto and the acquisition of real estate or rights in real estate in connection therewith, all of which is to be completed substantially in accordance with the Design Proposal.

**“Reimbursement Amounts”** means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.1 of this Agreement.

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

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

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

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

## **ARTICLE II** **REPRESENTATIONS AND WARRANTIES**

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

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

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

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City’s Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all

financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

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

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

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

**(a) Organization.** The Developer is a 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, and is in good standing under, the laws of each of the other states where the Developer is required to be qualified to do business.

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

**(c) Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's board of directors. 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. Related Agreements.** Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

**Section 2.4. Disclaimer of Warranties.** The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Private Development Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or

merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

**ARTICLE III**  
**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 financing Eligible Redevelopment Project Costs in connection with the Private Development Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid, the City, subject to the terms, conditions and limitation set forth in this Section 3.1 immediately below, agrees to pay or reimburse the Developer from the Fund such Reimbursement Amounts as are paid and incurred by the Developer and are directly related to the Private Development Project at the Development Project Site as follows:

(a) such Reimbursement Amounts in connection with the Private Development Project in any one calendar year shall be equal to: (i) eighty percent (80%) of the Incremental Property Taxes actually received by the City in each such calendar year which are directly attributable to any retail or hotel/motel use component of the Private Development Project at the Development Project Site; plus, (ii) fifty percent (50%) of the Incremental Property Taxes actually received by the City in any such calendar year which are directly attributable to any office or service use component of the Private Development Project at the Development Project Site;

(b) for the purpose of determining the total amount of Incremental Property Taxes which are directly attributable to each component of the Private Development Project at the Development Project Site under subsection (a) of this Section 3.1 above under circumstances where the Developer is not in default under Section 4.8 of this Agreement, the total equalized assessed value (the "EAV") of the Development Project Site for such calendar year shall be reduced by the initial EAV

of the Development Project Site existing at the time of establishment of the Redevelopment Project Area in the agreed amount of \$810,235, such reduced EAV shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area for any such applicable calendar year, and such result shall be allocated to either the retail use component or the office or service use component on the basis of a per parcel proration if separate parcels are applicable or otherwise on the basis of the gross floor area of each such component of use;

(c) the obligations of the City to pay or reimburse the Developer for any Reimbursement Amounts under this Section 3.1 shall be for a period of ten (10) consecutive calendar years, commencing with the calendar year immediately following the calendar year in which a certificate of occupancy is first issued for any part or phase of the Private Development Project;

(d) the total amount of all such annual payments or reimbursements of the Reimbursement Amounts pursuant to subsection (a) of this Section 3.1 above shall not exceed the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Private Development Project at the Development Project Site; and

(e) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.1 shall terminate on December 31 of the calendar year in which the last reimbursement obligation of the City under subsection (c) of this Section 3.1 is paid to the Developer in accordance with Article V of this Agreement.

(f) to provide such landscaping, utility, environmental, demolition or other infrastructure or beautification projects within the Project Development Site as may be determined by the Developer in an amount up to \$150,000.00, such projects to be completed concurrently with Phase I of the Private Development Project at the sole cost and expense of the City.

**Section 3.2. City's Redevelopment Obligations.** The City hereby covenants and agrees to undertake each of the following redevelopment obligations at the time and in the manner specified as follows:

(a) to undertake cooperative efforts with the Illinois Department of Transportation to facilitate the location of a traffic control signal at the intersection of Crystal Lake Drive and

Cunningham Avenue (U.S. Route 45);

(b) to provide assistance to the Developer in connection with the Developer's preparation of an access and traffic circulation plan for the Development Project Site and the related Design Proposal for the Private Development Project;

(c) to complete the review of the Design Proposal submitted to the City in accordance with Section 4.1 of this Agreement in accordance with the requirements therefore within thirty (30) days of the date that such completed Design Proposal is submitted to the City and to either approve the Design Proposal or provide a written description of the reasons that the Design Proposal has not been approved; and

(d) provided the Developer has submitted a completed application for a special use permit as required under Section 4.1 hereof and that the Design Proposal has been approved by the City (which such approval shall not be unreasonably denied, withheld or delayed), the appropriate staff of the City shall further recommend approval of the Private Development Project to the Plan Commission of the City at a meeting of such Plan Commission to be held at the earliest possible date following the publication of any legally required notice of such meeting.

**Section 3.3. City's Covenant to Amend the Redevelopment Plan.** The City hereby represents that under and pursuant to Section 11-74.4-3(n) of the TIF Act, the City has the power to extend the estimated date of completion of the Redevelopment Projects and retirement of obligations issued to finance Eligible Redevelopment Project Costs from December 31, 2010 to December 31, 2022, the latter date being in the year in which payment to the Comptroller of the City is to be made with respect to Incremental Property Taxes levied in the thirty-fifth calendar year after the year in which the TIF Ordinances initially approving the Redevelopment Project Area was adopted. The City hereby covenants and agrees with the Developer that it shall undertake such actions as maybe necessary or required under the TIF Act to amend the Redevelopment Plan in order to extend the estimated date of completion of the Redevelopment Projects and the retirement of obligations issued to finance Eligible Redevelopment Project Costs to such date as shall occur on or after the expiration of the term of this Agreement.



**Section 3.4. Defense of Redevelopment Project Area.** In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amounts to be made by the City, is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

**ARTICLE IV**  
**DEVELOPER'S COVENANTS AND AGREEMENTS**

**Section 4.1. Preparation of Design Proposal.** The Developer covenants and agrees to cause the Design Proposal to be prepared by an architect or firm of architects substantially in conformity with the requirements of the Downtown Strategic Plan of the City, the Redevelopment Plan (including as subsequently amended pursuant to Section 3.3 hereof), and all subdivision, zoning, environmental or other applicable regulations of the City and State of Illinois and to submit such Design Proposal to the City for review. Concurrently with the submittal of the Design Proposal for review, the Developer shall further file with the City a completed application for a special use permit to permit the use of the Development Project Site for a "commercial PUD/shopping center", including related shopping center signage, under the applicable provisions of the Urbana Zoning Ordinance, as amended.

**Section 4.2. Commitment to Undertake the Private Development Project and Schedule.** The Developer covenants and agrees to commence and complete the Private Development Project at a total cost of not less than \$7,000,000.00 in accordance with the Design Proposal and a development schedule (where Phase 1 shall be not less than 15,000 square feet of improvements involving newly constructed buildings) as follows:

<u>Activity</u>	<u>Completion Date</u>
Acquire fee simple title to “Tract A” of the Development Project Site	March 1, 2005
Acquire fee simple title to “Tract B” of the Development Project Site (but only if the Developer determines to make such acquisition and include “Tract B” as a part of the Development Project Site)	March 1, 2006
Submit Design Proposal and related application for Special Use Permit	May 1, 2006
Demolition and Site Preparation of Development Project Site	March 1, 2007
Building Permit – Phase 1	December 1, 2006
Construction – Phase 1	June 1, 2008
Construction – Remainder of Private Development Project	November 1, 2009

During the progress of the Private Development Project, the Developer and the Chief Administrative Officer of the City (the “CAO”) may authorize such changes to the proposed uses of the Private Development Project as shown on the Design Proposal or any aspect thereof as may be in furtherance of the general objectives of the Redevelopment Plan and this Agreement and as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or as may be necessary or desirable in the sole discretion of the Developer and the CAO to enhance the economic viability of the Private Development Project; provided, however, that the Developer shall not make any material change to the proposed uses of the Private Development Project as shown on the Design Proposal, whether individually with respect to any phase or in the aggregate, without the advance written consent of the City.

**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 and state laws, rules and regulations, including all subdivision, zoning, environmental or other ordinances of the City. Any agreement of the Developer related to the rehabilitation, reconstruction, repair or remodeling of 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. Prevailing Rate of Hourly Wages.** The Developer acknowledges that the Prevailing Wage Act of Illinois (820 ILCS 130/0.01 et seq.) as supplemented and amended (the “PW Act”), may be applicable to all or part of the Private Development Project. As and to the extent required by the PW Act, the Developer agrees to pay or cause to be paid not less than the prevailing rate of hourly wages to all laborers, workers and mechanics employed by the Developer or any contractor or subcontractor in connection with the construction of Private Development Project. The most recently revised prevailing rate of hourly wages, as determined by the Illinois Department of Labor for Champaign County, Illinois in connection with any applicable construction period can be obtained from the City or from the Illinois Department of Labor, including at [www.state.il.us/agency/idol/rates/rates.htm](http://www.state.il.us/agency/idol/rates/rates.htm).

**Section 4.5. City’s Right to Audit Developer’s Books and Records.** The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer’s principal office during normal business hours) the Developer’s books and records relating to the total amount of all costs paid or incurred by the Developer for the Private Redevelopment Project and the total amount of related Eligible Redevelopment Project Costs, including, if any, loan agreements, notes or other obligations in connection with any indebtedness of the Developer directly related to such costs paid or incurred by the Developer for the Private Redevelopment Project in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Private Redevelopment Project that was financed by the Developer and in fact paid and incurred by the Developer.

**Section 4.6. 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 acquisition, construction or installation of the Private Development Project, whether or not suit is filed.

**Section 4.7. Continuing Compliance with Laws.** The Developer agrees that upon completion and in the continued use, occupation, operation and maintenance of the Private Development Project or any part thereof thereafter, the Developer will comply with all applicable federal and state laws, rules, regulations and ordinances of the City.

**Section 4.8. 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, 2030, 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**  
**PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS**

**Section 5.1. Payment Procedures.** Except as otherwise provided in Section 7.5 of this Agreement, the City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amounts shall be paid or reimbursed solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts shall be disbursed by the Comptroller of the City for payment or reimbursement to the Developer in accordance with the procedures set forth in this Section 5.1 of this Agreement.

The City hereby designates the City’s Chief Administrative Officer (the “**CAO**”) as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments or reimbursements to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer on or after September 1 in each calendar year in which any Reimbursement Amounts become due and payable or reimbursable by the City under Section 3.1 of this Agreement. If not previously submitted, each such Requisition shall be accompanied by such documentation or by the statement or report of an Independent accountant which shows and verifies that any such Eligible Project Redevelopment Costs have been paid and incurred by the Developer.

**Section 5.2. Approval and Resubmission of Requisitions.** The CAO shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that the amount of the total Eligible Redevelopment Project Costs paid and incurred by the Developer have not been sufficiently documented as specified herein. If a Requisition is disapproved by such CAO, the reasons for

disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

**Section 5.3. Time of Payment.** Upon the approval of any of the applicable Requisitions as set forth in Section 5.2 above, the City shall pay or reimburse each of the applicable annual Reimbursement Amounts to the Developer within thirty (30) days after the receipt by the City of the applicable Requisition or the last installment of the Incremental Property Taxes during that calendar year, whichever is later.

**Section 5.4. Shortfalls.** If any Requisition is not paid or reimbursed in full in any calendar year due to any of the limitations specified for Reimbursement Amounts in Section 3.1(a) hereof, the entire amount of any Requisition remaining to be paid shall accrue and, subject to and in accordance with the payment procedures set forth in this Article V, shall be paid, if at all, as a part of any applicable annual Reimbursement Amounts which becomes due and payable or reimbursable in the immediately following calendar year or years for which any such payment or reimbursement is to be made as specified in subsection (c) of Section 3.1 hereof.

## **ARTICLE VI** **DEFAULTS AND REMEDIES**

**Section 6.1. 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 6.2. 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, 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 Reimbursement Amounts which become due and payable in accordance with the provisions of Article V 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 6.3. 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 VII**  
**MISCELLANEOUS PROVISIONS**

**Section 7.1. Conditions Precedent.** The agreements, obligations and undertakings of the City as set forth in this Agreement are expressly contingent upon the Developer having completed each “Activity” described in Section 4.2 of this Agreement on or before the “Completion Date” specified in such Section 4.2, at a total cost of not less than \$7,000,000.00 for the entire Private Development Project as completed. If the Developer shall fail to provide to the City evidence of such completion or shall otherwise fail to demonstrate that it has fulfilled its obligations in connection with each “Activity” on or before the applicable “Completion Date” within ten (10) days following written notice of such failure from the City to the Developer, the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no force or effect.

**Section 7.2 Entire Contract and Amendments.** This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

**Section 7.3. 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 7.4. 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 7.5. Special and Limited Obligation; Effect of Failure to Amend.** 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 Incremental Property Taxes as is set forth in Section 3.1 hereof, if, as and when received, and not otherwise. Anything to the contrary notwithstanding, however, in the event that the City fails for any reason to amend the Redevelopment Plan in order to extend the date of completion of the Redevelopment Projects and the retirement of obligations issued to finance Eligible Redevelopment Project Costs to such date as shall occur on or after the expiration of the term of this Agreement as provided in Section 3.3 of this Agreement, the City's payment obligations which become due and payable after December 31, 2010 under Section 3.1(a) of this Agreement shall, to the extent Incremental Property Taxes in the Fund have not otherwise been set aside and allocated to the payment thereof, become a general obligation of the City to which its credit, resources or general taxing power are pledged.

**Section 7.6. 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 7.7. 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 7.8. 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 7.9. 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:  
  
Five Points Realty, LLC  
102 East Main Street  
Urbana, IL 61801  
Attn: Joseph A. Petry  
Tel: (217) 333-4260
  
- (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 7.10. 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 7.11. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

**Section 7.12. Illinois Law; Venue.** This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

**Section 7.13. 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 7.14. 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 7.15. 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 payment or reimbursement obligation of the City becomes due and payable to the Developer under subsection (c) of Section 3.1 of this Agreement; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.6 and 4.8 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section and the City's obligations under Section 3.2 of this Agreement shall be and remain in full force and effect for the term specified in the Parking Agreement..

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

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

(SEAL)

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

ATTEST:

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

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

**FIVE POINTS REALTY, LLC**

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

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

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

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

**EXHIBIT A**

**Description of Development Project Site**