



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Economic Development Division*

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

**TO:** Laurel Lunt Prussing, Mayor

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

**DATE:** February 21, 2008

**SUBJECT:** **Amend a Redevelopment Agreement with Five Points Realty, LLC  
(Northwest Corner of Cunningham Avenue and University Avenue -  
Gateway Shops)**

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**Introduction and Background**

In February 2005, the City of Urbana entered into a Redevelopment Agreement with Five Points Realty, LLC (the developer) for the redevelopment of the northwest corner of Cunningham Avenue and University Avenue, also known as Gateway Shops. The developer has since improved the elevation of the property and installed a considerable amount of infrastructure in the form of parking lots, lighting, stormwater, sanitary sewer, and sidewalk improvements. The intersection of Broadway Avenue and University Avenue has required additional attention with unexpected environmental remediation in the form of an engineered barrier at the northeast corner of the intersection and additional road improvements required by the Illinois Department of Transportation as a condition of project approval. These improvements will be installed at the developer's expense. With most of the infrastructure complete, the developer has aggressively marketed the property to potential users, including the first out-lot tenant, the University of Illinois Employees Credit Union.

The developer has requested a number of changes to the original redevelopment agreement in order to recognize changes to the proposed project concept, to incorporate increases in environmental and site preparation costs, and to better establish the incremental tax allocation for the project to facilitate sale of the out-lots. Once the redevelopment agreement is amended, the developer anticipates immediate commencement of in-line shop construction.

The proposed development concept potentially includes a new hotel/motel development, an upscale in-line shopping center, and complementary out-lot uses. Both the original redevelopment agreement and the proposed amended redevelopment agreement are consistent with the planning efforts the City has engaged in regarding this property, including the 2002 Downtown Strategic Plan, the 2005 Comprehensive Plan, and the Tax Increment Finance District Number 2 (TIF 2) Plan. In July 2006, the Urbana City Council approved a special use permit (2003-SU-06), a rezoning (2003-M-06), and a preliminary and final plat (2003-S-06) for

the project. The property is located in TIF 2, and, as such, the proposed plan is also consistent with both the original 1986 TIF 2 Plan and the 2005 TIF 2 Plan Amendment. The City has also facilitated a land swap between the developer and the Urbana Park District through a tri-party agreement approved by City Council in February of 2006.

## **Discussion**

The proposed Redevelopment Agreement Ordinance with the First Amended and Restated Redevelopment Agreement (Exhibit A) includes a series of proposed changes from the original Redevelopment Agreement (Exhibit B), described as follows.

The amended agreement has several changes in the definition section. The original agreement defined eligible redevelopment project costs as everything allowed by the TIF act. The amended agreement limits eligible costs to land acquisition, demolition, and site preparation.

The definition of private development project has changed significantly. The original agreement called for 50,000 square feet of total improvements, including the large commercial parcel and the out-lots. The revised development plan anticipates that the developer will sell the out-lots to individual end-users, who will construct their own buildings. Therefore the revised agreement refines the definition, offers several options, and does not include the out-lots. The definition now calls for:

1. Not less than approximately 30,000 square feet of shopping center improvements.
2. An 80-130 room hotel/motel plus not less than approximately 10,500 square feet of shopping center improvements.
3. A 130 or more room hotel/motel.

These options were negotiated with the developer and each option represents an approximately equal tax revenue scenario for the City taking into account property tax, sales tax, and hotel/motel tax.

There are several proposed changes related to the calculation of the City's financial obligations. As with the original agreement, the amended agreement continues to offer an 80% incremental property tax rebate for retail uses and a 50% rebate for uses other than retail. However, the amended agreement now has a definition of retail use that includes any business that pays sales tax or hotel/motel tax. The City has also proposed to amend the initial equalized assessed value of \$810,235 set in the original agreement. Due to potential complications in calculating the TIF increment on the project's out-lots and portion of the project included in the Park District land swap, the amended agreement provides for the base Equalized Assessed Value (EAV) to be recalculated annually using information provided by the Champaign County Clerk's office.

Additionally, the developer has incurred higher than expected infrastructure and environmental costs, totaling almost \$2,000,000 to date. As such, the developer has asked that the City increase its up-front contribution from \$150,000 to \$200,000 to help defray some of those costs. Also,

the original agreement offered a TIF increment rebate for 10 years from the completion of the project. In order to expedite the project, the amended agreement promotes the developer moving forward with construction by offering a TIF rebate through 2022. This change means that the sooner the project is completed, the longer the developer will collect a TIF rebate.

In return, the developer agrees to construct or facilitate the construction of a project consistent with the three options mentioned above. Another change from the original development agreement is the total project cost. The original agreement committed the developer to complete the construction of the entire project site, including out-lots, at a total cost of not less than \$7,000,000. In the amended agreement, the developer is responsible only for the construction and site improvements on Lot 100 (the large lot on the north side of the site upon which the in-line shops and/or hotel/motel will be built), at a total cost of \$3,500,000. The out-lots are not included as these will be developed by third parties, such as the University of Illinois Employees Credit Union. The developer has also asked that the deadline for completion be moved back to December 31, 2012, with the understanding that moving forward expeditiously is in the best interest of both the City and the developer.

## **Fiscal Impact**

Gateway Shops and the accompanying out-lots are located within Tax Increment Finance District Number 2 (TIF 2). As such, a majority of both the expenses and revenues generated as a result of this amended redevelopment agreement will be allocated to TIF 2.

As mentioned above, as part of the original redevelopment agreement approved in 2005, the City offered \$150,000 for landscaping, utility, environmental, demolition, or other infrastructure or beautification projects for the site. Due to higher than expected site work expenses totaling almost \$2,000,000 to date, the developer has asked that the City increase that contribution to \$200,000. The \$50,000 in additional cost can be reallocated from the TIF 2 fund balance and will help to expedite the development of Gateway Shops. A budget amendment is presented separately for this adjustment.

Based on the project cost for Lot 100 of \$3,500,000 established in the amended agreement and using estimates for possible out-lot development scenarios, it is possible to approximate the City's annual TIF revenues and rebate to the developer. The University of Illinois Employees Credit Union has an estimated construction cost of over \$1,600,000. It is necessary to make some assumptions about end users and construction costs for the remainder of the out-lots. One possible development scenario is a drug store on one out-lot, and casual dining restaurants on the remaining two out-lots. The construction costs for such establishments can be estimated based on current projects occurring elsewhere in the City. A reasonable estimate for a new drug store is \$1,000,000, and for a casual dining restaurant is \$850,000. An estimate for the construction cost for the entire site includes Lot 100 (\$3,500,000), the University of Illinois Employees Credit Union (\$1,600,000), a drug store (\$1,000,000), and two casual dining restaurants (\$850,000 each) totaling \$7,800,000, or \$7,500,000 to be conservative.

With a market value of \$7,500,000, the project can be expected to generate an initial total annual TIF revenue of approximately \$138,000. Depending on the retail versus non-retail mix of the project, the City, per the amended agreement, has committed to rebating to the developer between \$69,000 (50%) and \$110,500 (80%) of the \$138,000 annually. Taking into account that annual rebate, TIF can reasonably expect an initial annual net revenue of between \$27,500 and \$69,000. Through 2022, assuming a 3% rate of inflation and the first tax year being 2010, the total TIF rebate to the developer can be estimated at between \$1,170,000 and \$1,872,000, with approximate total TIF revenue between \$468,000 and \$1,170,000 accruing to the TIF 2 fund. Netting out the \$200,000 up-front contribution established in the amended agreement, TIF 2 will realize a total net benefit of between **\$268,000** and **\$970,000** over the ten year period.

Aside from property tax revenues, the City can also potentially expect sales tax and/or hotel motel tax revenue. Although it is impossible to calculate potential sales tax revenues without a better understanding of the final tenant mix, staff has compared the proposed project with similarly sized shopping centers. It has been projected that development scenario one, which includes an in-line shopping center with no hotel/motel, would generate approximately **\$128,000** in sales tax revenues annually.

Using data provided by the Champaign County Convention and Visitors Bureau, it is possible to make some assumptions to calculate potential hotel/motel tax. Under development scenario three, a 130+ room hotel/motel will generate approximately **\$127,000** in hotel/motel tax annually.

Development scenario two has both a retail and hotel/motel component. An 80 room hotel/motel plus 10,500 of retail space can be expected to generate a total of approximately **\$125,000** of sales tax and hotel/motel tax annually. It should be noted that the sales and hotel/motel tax figures mentioned above in all three development scenarios account only for Lot 100, and do not estimate sales or hotel/motel tax revenues for the out-lots.

Using the above annual estimate of \$125,000, the total sales and hotel/motel tax revenue generated over the life of the agreement is approximately \$15,000,000. This benefit to the City's general fund coupled with the \$268,000 to \$970,000 net benefit to TIF 2 results in total revenue of between **\$15,268,000** to **\$15,970,000** over the life of the agreement accruing to the City.

As has been demonstrated above, this project, facilitated by the proposed amended development agreement, will have a significant positive fiscal impact on both City revenues and TIF 2 revenues.

## Options

1. Approve the ordinance as presented

2. Approve the ordinance with changes. It should be noted that any changes will need to be agreed upon by the current property owner.
3. Deny the ordinance.

## **Recommendation**

Staff recommends that the City Council approve the attached ordinance.

Prepared by:

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Tom Carrino, Economic Development Manager

Attachments:

- Exhibit A: Ordinance with Amended Draft Redevelopment Agreement
- Exhibit B: Original Redevelopment Agreement

CC: Joseph Petry  
Ivan Richardson  
Patrick Fitzgerald

ORDINANCE NO. 2008-02-006

AN ORDINANCE APPROVING AN AMENDMENT  
TO A REDEVELOPMENT AGREEMENT WITH FIVE POINTS REALTY, LLC  
(Northwest Corner of University Avenue and Cunningham Avenue – Gateway Shops)

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

Section 1. That an Amendment to Redevelopment Agreement Between the City of Urbana and Five Points Realty, LLC in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

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

PASSED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2008.

AYES:

NAYS:

ABSTAINS:

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

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2008.

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

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**REDEVELOPMENT AGREEMENT  
FIRST AMENDED AND RESTATED**

**by and between the**

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

**and**

**FIVE POINTS REALTY, LLC,  
AN ILLINOIS LIMITED LIABILITY COMPANY**

Dated as of January 1, 2008

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**Document Prepared By:**

**Kenneth N. Beth  
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P.O. Box 737  
Champaign, IL 61820**

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<b>EXHIBIT A</b>	<b>Final Plats for Development Project Site</b>
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## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT FIRST AMENDED AND RESTATED** (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is made and entered into as of January 1, 2008, 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 limited liability company (the **“Developer”**). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and deliver this Agreement to the other (the **“Effective Date”**).

### 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 and Ordinance No. 2005-03-032 on March 21, 2005) (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 Two (the **“Redevelopment Project Area”**) and approved the related Downtown Urbana Tax Increment Financing District Two Redevelopment Plan, as supplemented and amended (collectively, the **“Redevelopment Plan”**) including the respective redevelopment projects described in the Redevelopment Plan (collectively, the **“Redevelopment Projects”**); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the City and the Developer previously entered into a Redevelopment Agreement dated as of February 1, 2005 (the **“Prior Redevelopment Agreement”**) in order to induce the Developer to acquire, construct and install (or cause to be done) the Private Development Project (including

related and appurtenant facilities as more fully defined in the Prior Redevelopment Agreement) on the Development Project Site (as defined in the Prior Redevelopment Agreement); and

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

**WHEREAS**, the Developer was unwilling to undertake the Private Development Project (as defined in the Prior Redevelopment Agreement) without certain tax increment finance (“**TIF**”) incentives from the City, which the City was willing to provide, and the City determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth in the Prior Redevelopment Agreement; and

**WHEREAS**, the City and the Developer now desire to supplement, amend and supersede in its entirety the Prior Redevelopment Agreement by the provisions of this Agreement in order to enhance the marketability and economic viability of the Private Redevelopment Project (as defined below); 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 and the schematic elevation and floor plans for Lot 100 of the Private Development Project which is to be prepared for and 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 lots shown on the Final Plat of Gateway Subdivision, including the Replat Lots 100 and 101 of Gateway

Subdivision, copies of which are attached hereto as Exhibit A, upon or within which the Development Project is to be located.

**“Eligible Redevelopment Project Costs”** means those costs paid and incurred by the Developer which are incurred in connection with the acquisition of land or rights or interests therein, demolition of buildings and site preparation related to the Development Project Site and which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q)(2) 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 as of 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 Treasurer of the City for deposit by the Treasurer 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 demolition of buildings and site preparation for a multi-lot subdivision upon the Development Project Site, together with the construction and

installation of any one of the following alternative projects upon Lot 100 of the Development Project Site:

1. not less than approximately 30,000 square feet of improvements for an urban shopping center complex; or
2. an 80-130 room hotel/motel facility and not less than approximately 10,500 square feet of improvements for an urban shopping center complex; or
3. a 130 or more room hotel/motel facility.

**“Reimbursement Amounts”** means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.2(a) of this Agreement.

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

**“Retail Use”** means any activity or use for which any lot, or any building or part of any building, is subject to the payment of the Retailer’s Occupation Tax imposed by the State of Illinois under Act 120 of Chapter 35 of the Illinois Compiled Statutes or the Hotel/Motel Use Tax imposed by the City under Article V of Chapter 22 of the Urbana City Code.

**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; and
- (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 company duly organized, validly existing and in good standing under the laws of the State of Illinois.

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

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's members. 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 (which may be 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 reimburse the Developer from the Fund such Reimbursement Amounts as are paid and incurred by the Developer and are directly related to the Development Project at the Development Project Site as follows:



(a) such Reimbursement Amounts in connection with the Private Development Project shall initially be payable in the amount of \$200,000.00 upon the execution and delivery of this Agreement;

(b) such Reimbursement Amounts in connection with the Private Development Project shall annually be payable in amounts as follows (the “**Annual Reimbursement Amounts**”):

(i) eighty percent (80%) of the Incremental Property Taxes actually received by the City in each such applicable calendar year which are attributable to a Retail Use within the Development Project Site;

plus

(ii) fifty percent (50%) of the Incremental Property Taxes actually received by the City in each such applicable calendar year which are attributable to any use other than a Retail Use within the Development Project Site;

(c) for the purpose of calculating the total amount of Incremental Property Taxes for any such calendar year which are directly attributable to each lot having a separate permanent parcel number within the Private Development Project, the total equalized assessed value (the “**EAV**”) of each lot having a separate permanent parcel number at the Development Project Site for such calendar year shall be reduced by the initial EAV of the Development Project Site as assigned to each lot within the Development Project Site by the Champaign County Clerk and the result for each such lot 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;

(d) the obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under this Section 3.1 shall commence with the calendar year immediately following the calendar year in which a certificate of occupancy is issued for the applicable project to be completed upon Lot 100 as a part of the Private Development Project, and shall continue until the termination of TIF for the Redevelopment Project Area in calendar year 2022.

**Section 3.2. Conditions Precedent.** The obligations of the City to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1(b)-(d) of this Agreement are

expressly contingent upon the Developer having completed the Private Development Project no later than December 31, 2012. If the Developer shall fail to demonstrate that it has in fact fulfilled its obligation to complete the Private Development Project on or before December 31, 2012, the City shall have the right and option to immediately terminate this Agreement by providing written notice of such termination upon the Developer, in which event the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no further force or effect.

**Section 3.3. 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 are contrary to law, or in the event that the legitimacy of the Redevelopment Project Area are 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**

**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 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 and approval if not otherwise in compliance with the special use permit for the Development Project Site as approved pursuant to Ordinance No. 2006-07-105. Any such further review and approval by the City under this Section shall be limited to confirming whether such Design Proposal qualifies as one of the alternative

projects specified for Lot 100 of the Development Project Site within the meaning of the Private Development Project.

**Section 4.2. Commitment to Undertake the Private Development Project.** The Developer covenants and agrees to commence and complete the Private Development Project at a total cost of not less than \$3,500,000.00 in accordance with the Design Proposal on or before December 31, 2012. During the progress of the Private Development Project, the Developer and the Community Development Director of the City (the “**Director**”) may authorize such changes to 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 Director to enhance the economic viability of the Private Development Project; provided, however, that the Developer shall not make any material change to the Design Proposal, whether individually with respect to any phase or in the aggregate, without the advance written consent of the Corporate Authorities of the City.

**Section 4.3. Compliance with Agreement and Laws During Development.** The Developer shall at all times acquire, construct and install the Private Development Project in conformance with this Agreement, the Design Proposal and all applicable laws, rules and regulations, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use ordinances of the City, and, to the extent applicable, the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois. Any agreement of the Developer related to the acquisition, construction, installation and development of the Private Development Project with any contractor, subcontractor or supplier shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 4.4. 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 Development Project and the total amount of related Eligible Redevelopment Project Costs in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Private Development Project that was in fact paid and incurred by the Developer.

**Section 4.5. Indemnity.** The Developer covenants and agrees to indemnify and hold and save the City and its officers, agents, employees, engineers and attorneys (the “**Indemnitees**”) harmless of, from and against all claims, damages, demands, expenses, liabilities and losses, resulting from the acquisition, construction and installation of the Private Development Project, any development activities in connection with the Private Development Project or any use, operation, maintenance or occupancy of the Private Development Project by the Developer or any of its agents, contractors, subcontractors, successors or assigns, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of the negligence or willful misconduct of the City or other Indemnitees.

**Section 4.6. Continued Compliance With All Laws.** The Developer agrees that in the continued use, occupation, operation and maintenance of the Private Development Project following its completion, the Developer will comply with all applicable federal and state laws, rules and regulations and all applicable City ordinances, codes and regulations.

**Section 4.7. 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 any lot upon 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 estate 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.** The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes attributable to the Private Development Project at the Development Project Site that are actually received and deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts shall be disbursed by the City Comptroller of the City (the “**City Comptroller**”) for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the City Comptroller as its representative to coordinate the authorization of disbursement of any Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments 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 with respect to any Eligible Redevelopment Project Costs incurred but 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 in fact been paid and incurred by the Developer.

**Section 5.2. Approval and Resubmission of Requisitions.** The City Comptroller shall give the Developer written notice disapproving any Requisition within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that either of the following have not been sufficiently documented or specified: (i) the amount of the total Eligible Redevelopment Project Costs paid and incurred by the Developer, or (ii) such Eligible Redevelopment Project Costs being directly related to the costs paid or incurred by the Developer for the Private Development Project at the Development Project Site. If a Requisition is disapproved by such Comptroller, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

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

**Section 5.4. Shortfalls.** If any Requisition is not paid in full in any calendar year due to any of the limitations specified for Annual Reimbursement Amounts in Section 3.2(b)-(d) 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 as a part of any applicable Annual Reimbursement Amounts in the next or any succeeding calendar year at the time of payment.

## ARTICLE VI

### DEFAULTS AND REMEDIES

**Section 6.1. Events of Default.** The occurrence of any one or more of the events specified in this Section 6.1 shall constitute a “**Default**” under this Agreement.

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

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

(c) The failure by the City to pay any Reimbursement Amounts, including any Annual Reimbursement Amounts, which become due and payable in accordance with the provisions of Article V of this Agreement; and

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

**Section 6.2. Rights to Cure.** The party claiming a Default under Section 6.1 of this Agreement (the “**Non-Defaulting Party**”) shall give written notice of the alleged Default to the other party (the “**Defaulting Party**”) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such written notice, but may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances, deemed reasonably adequate by the Non-Defaulting Party, from the Defaulting Party that the Defaulting Party will cure the Default and remain in compliance with its obligations under this Agreement. A Default not cured within thirty (30) days as provided above shall constitute an “**Event of Default**” under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Event of Default shall not operate as a waiver

of any such Default, Event of Default or of any other rights or remedies it may have as a result of such Default or Event of Default.

**Section 6.3. Remedies.** Upon the occurrence of an Event of Default under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of an Event of Default under this Agreement by the Defaulting Party shall be to institute legal action against the Defaulting Party for specific performance or other appropriate equitable relief. Except for the payment of any Reimbursement Amounts, including any Annual 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. In the event that any failure of the City to pay any Reimbursement Amounts, including any Annual Reimbursement Amounts, which become due and payable in accordance with the provisions of Article V hereof is due to insufficient Incremental Property taxes which are directly attributable to the Development Project at the Development Project Site being actually received by the City, any such failure shall not be deemed to be a Default on the part of the City.

**Section 6.4. Costs, Expenses and Fees.** Upon the occurrence of a Default which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.



## ARTICLE VII

### MISCELLANEOUS PROVISIONS

**Section 7.1 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, including in particular the Prior Redevelopment Agreement, and may not be modified or amended except by a written instrument executed by both of the parties.

**Section 7.2. 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 7.3. 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 7.4. 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 Incremental Property Taxes attributable to the Private Development Project at the Development Project Site as is set forth in Section 3.1 hereof, if, as and when received, and not otherwise.

**Section 7.5. Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any

such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

**Section 7.6. 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 7.7. 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 7.8. 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:  
Five Points Realty, LLC  
102 E. Main Street  
Urbana, IL 61801  
Attn: Joseph A. Petry  
Tel: (217) 333-4260 / Fax: (217) 367-4020
  
- (ii) In the case of the City, to:  
City of Urbana, Illinois  
400 South Vine Street  
Urbana, IL 61801  
Attn: Community Development Director  
Tel: (217) 384-2439 / Fax: (217) 384-0200

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

**Section 7.9. Assignment.** The Developer shall have the right to sell, convey, transfer or lease any of the lots within the Development Project Site but shall not sell, assign or otherwise transfer its rights and obligations under this Agreement, in whole or in part, without the prior written consent of the City, other than in whole to: (i) an entity resulting from a merger or consolidation of the Developer or any affiliate, parent or subsidiary of the Developer or (ii) a lender as collateral for the Private Development Project or (iii) a bona fide purchaser in connection with a sale, conveyance and transfer, or a lessee in connection with a ground lease, of all of Lot 100 of the Private Development Project. Except as provided in the preceding sentence, any assignment in whole or in part without the City's consent shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer of this Agreement in whole or in part, including any without the City's consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered

instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the assignee thereof.

**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, assigns and legal representatives (including any successors and assigns of Lot 100 within the Development Project Area and any successor Corporate Authorities).

**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 Urbana City Code or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

**Section 7.15. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until reimbursement of all Reimbursement Amounts under Section 3.1 hereof on or before December 31, 2022; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 4.7 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of such Section.

**Section 7.16. Recordation of Agreement.** Either party may record this Agreement or a Memorandum of this Agreement in the office of the Champaign County Recorder at any time following its execution and delivery by both parties.

**Section 7.17. Construction of Agreement.** This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

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

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

(SEAL)

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

ATTEST:

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

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

**FIVE POINTS REALTY, LLC,**

(SEAL)

By: \_\_\_\_\_  
Its Authorized Member

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

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

**EXHIBIT A**

**Final Plats for Development Project Site**