



**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, FAICP, Director, Community Development Services

**DATE:** July 31, 2008

**SUBJECT: Real Estate Option and Contract for 302 West Springfield Avenue (Allman's Auto Repair)**

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**Introduction and Background**

In March 2007, the City entered into a Real Estate Option and Contract (Option) with Carl Allman to purchase the Allman's Auto Repair site at 302 West Springfield Avenue. The City has since extended that Option in October 2007 and February 2008. As part of those Options, the City conducted a series of "Phase II" environmental assessments on the site. The City is now in the process of working with environmental engineers and the Illinois Department of Environmental Protection (IEPA) related to environmental issues. City staff is also working with both neighboring property owners and potential developers for the redevelopment of the Allman site and the larger surrounding area. In order to complete the due diligence process and continue discussion of redevelopment opportunities, City staff has requested a time extension for the Option.

**Discussion**

The legal representatives of the current owner have suggested the two parties should enter into a new Real Estate Option and Contract, rather than extend the original Option. City staff have reviewed the draft document and are satisfied that it provides the City the same rights and privileges as the original Option with the additional time necessary to complete the Phase II environmental testing and exploration of redevelopment opportunities. The proposed option period offer by the current owner is for an additional five months through December 22, 2008. It should be noted that the time frame for review of environmental work on this site by IEPA is uncertain and may necessitate additional extensions of this Real Estate Option and Contract in the future.

It is also important to note that the redevelopment of this site is consistent with the Tax Increment Finance District Number Two Plan, the Downtown Strategic Plan, and the 2005 Comprehensive Plan.

## **Fiscal Impact**

The costs associated with the Real Estate Option and Contract were budgeted as part of FY 07-08 and have been encumbered for this year's Tax Increment Finance District Two budget.

## **Options**

1. Approve the motion as presented.
2. Approve the motion with changes.
3. Deny the motion.

## **Recommendation**

Staff recommends that the City Council approve the proposed motion.

Prepared by:

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Tom Carrino, Economic Development Manager

Attachments:

Draft Real Estate Option and Contract

## REAL ESTATE OPTION AND CONTRACT

This Real Estate Option and Contract (the "Contract") is made as of the date of the last to execute of the parties hereto (the "Effective Date") by and between the City of Urbana, Champaign County, Illinois (the "Optionee/Purchaser") and the undersigned party, executing this Contract as the Optionor/Seller (the "Optionor/Seller").

### WITNESSETH

WHEREAS, Optionor/Seller is the owner of certain real estate as later more specifically described in this Contract; and

WHEREAS, the Optionee/Purchaser desires to obtain an option to purchase said real estate on such terms and conditions as are provided for herein; and

WHEREAS, the parties agreed upon the terms and conditions relating to an Option for the Purchase of the property, and now wish to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Contract, the Optionor/Seller and the Optionee/Purchaser hereby agree as follows:

Section 1. Grant of Option. Optionor/Seller, in consideration of Five Thousand Dollars (\$5,000.00) paid by Optionee/Purchaser to Optionor/Seller (the "Option Fee"), receipt of which is acknowledged by Optionor/Seller, grants to Optionee/Purchaser the exclusive right and option to purchase, on the following terms and conditions (the "Option"), the real estate or portions thereof, together with all improvements and appurtenances, situated in the City of Urbana, Champaign County, Illinois, the legal description of which is:

A part of the Northeast Quarter of the Northwest Quarter of Section Seventeen (17), Township Nineteen (19) North, Range Nine (9) East of the Third Principal Meridian, described and bounded by a line as follows, to-wit:

Commencing at a point in the East line of said Quarter Quarter Section, one hundred twenty-eight and four-hundredths (128.04) feet South of the Northeast corner thereof, said point being also the intersection of said East Quarter Quarter section line and the center line of Main Street in the City of Urbana, thence Northwestwardly along said center line of Main Street, a distance of two hundred forty-four and forty-three hundredths (244.43) feet to the Northeasterly corner of a tract of land conveyed by Illinois Power and Light Corporation to Firestone Tire and Rubber Company, by deed dated December 8, 1934, recorded in the Recorder's Office of Champaign County, Illinois, in Book 234 of Deeds, at page 62, thence South along the East line of the premises so conveyed to the Firestone Tire and Rubber Company, as aforesaid, a distance of one hundred twenty-three and fifteen hundredths (123.15) feet, more or less, to the North line of Western Avenue in the City of Urbana, thence East a distance of two hundred twenty-six and twenty-nine hundredths (226.29) feet, more or less, to the East line of said Quarter Quarter Section, thence North along said East Quarter Quarter section line to the place of beginning, situated in the City of Urbana, County of Champaign, and State of Illinois, subject to the rights of the public in and to such portion of the real estate hereinbefore described as may line within the boundaries of said Main Street, and further subject to any rights which The Firestone Tire and Rubber Company may have in the west wall of that portion of the building now standing on the above described premises.

(the "Real Estate"), together with all and any of Optionor/Seller's interest in any real estate adjacent to the above-described parcels. Legal description is subject to minor modifications based on title commitment.

Section 2. Option Periods. The term of this Option shall be for a period commencing upon execution and continuing until 5:00 p.m. on December 22, 2008.

Section 3. Purchase Price. Optionee/Purchaser agrees to pay to Optionor/Seller the total sum of Two Hundred Twenty-Two Thousand Five Hundred Dollars (\$222,500.00) for the Real Estate, which amount, adjusted by prorations and credits allowed the parties by this Contract, shall be paid to Optionor/Seller at closing if Optionee/Purchaser elects to exercise this Option.

Section 4. Special Covenants. During any Option periods, as described in Section 2 hereof, the Optionor/Seller shall not create any leases, liens, mortgages clouds on title or other encumbrances, (except as the Optionee/Purchaser shall in writing consent to), with respect to the Real Estate. The Optionor/Seller hereby covenants that the persons or the entities executing this Contract as the Optionor/Seller are the owners of record of the Real Estate.

Section 5. Evidence of Title. In the event that Optionee/Purchaser elects to exercise this Option, Optionor/Seller shall, within a reasonable time, deliver to Optionee/Purchaser, as evidence of Optionor/Seller's title, a Commitment for Title Insurance issued by a title insurance company regularly doing business in the county where the real Estate is located, committing the company to issue a policy in the usual form insuring title to the Real Estate in Optionee/Purchaser's name for the amount of the purchase price.

Optionor/Seller shall be responsible for payment of the owner's premium and Optionor/Seller's search charges. Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record, which do not underlie the improvements; covenants and restrictions of record which are not violated by the existing improvements or the present use of the Real Estate and which do not restrict reasonable use of the Real Estate; existing mortgages to be paid by Optionor/Seller or assumed by Optionee/Purchaser at closing. If title evidence discloses exceptions other than those permitted, Optionee/Purchaser shall give written notice of such exceptions to Optionor/Seller within a reasonable time. Optionor/Seller shall have a reasonable time to have such title exceptions removed, or any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Optionor/Seller is unable to cure such exception, then Optionee/Purchaser shall have the option to terminate this Contract in which case Optionee/Purchaser shall be entitled to refund of any Option Fee or Additional Option Fee.

Section 6. Environmental Audit. Buyer has previously obtained and may, at its own expense, obtain further environmental evaluation of the Property if deemed necessary by Buyer; and Buyer's agent shall be granted access to the Property for such purpose at all reasonable times. Buyer is aware of the existence of certain environmental concerns or violation of environmental laws or regulation and may, any time prior to the closing, indicate that Buyer is unwilling to accept the property in its current condition without some adjustment of the purchase price. If the parties do not come to an agreement regarding an adjustment of the purchase price based upon the costs to remediate such concerns or violations within thirty (30) days of such written notification to Seller of such concerns, then Buyer shall have the right to terminate this agreement by written notice of such election delivered to Seller. In such event, the Optionee/Purchaser shall not be entitled to any refund of any option payments previously made.

In the event the remediation qualifies for any governmental program or contribution, each of the parties will cooperate to facilitate such qualification and the Optionee/Purchaser shall be entitled to receive any and all benefit offered by such program in the event Optionee/Purchaser exercises this Option to Purchaser.

Section 7. Taxes and Assessments. In the event that the Optionee/Purchaser elects to exercise this option, Seller shall pay prior to closing or give credit to Buyer at the time of closing for all general real estate taxes, sewer benefit taxes, sanitary district user charges, if any, and special assessments, if any, now a lien on the Property or outstanding, except the general real estate taxes, sewer benefit taxes and sanitary district user charges for the current year which shall be prorated between the parties as of the date of closing on the calendar year basis, using the most recent ascertainable tax figures for such computation. Seller shall give Buyer credit at the closing against the purchase price for its prorated share of the said current taxes.

Section 8. Exercise of Option and Closing. The Option herein provided to the Optionee/Purchaser shall be exercised and the closing of this transaction shall occur either by the fact of concluding the purchase and taking possession within any Option period or by notice in writing to the Optionor/Seller within any Option period and with the fact of concluding the purchase and taking possession within sixty (60) days of such notice, at the time and place in Champaign County designated by Optionee/Purchaser.

Section 9. Notices. Notice of a request to extend or an election to exercise this Option shall be made by Optionee/Purchaser addressed to Optionor/Seller as follows:

Carl Allman  
c/o Blake Weaver  
Novak Weaver Solberg  
130 W. Main Street  
Urbana, IL 61801

All notices to the Optionee/Purchaser shall be addressed as follows:

Mayor Laurel Lunt Prussing  
City of Urbana  
400 South Vine Street  
Urbana, IL 61801

All notices provided for herein shall be deemed to have been duly given, if and when deposited in the U.S. Mail, postage prepaid and addressed to the Optionor/Seller at the above listed address, or when delivered personally to such party.

Section 10. Termination by Transferee Where Property is Damaged or Destroyed. If, prior to closing, the improvements on the Property, are destroyed or materially damaged by fire or other casualty, then the Optionee/Purchaser may, at its option, rescind this Agreement, or Optionee/Purchaser may nevertheless agree to continue this Agreement, close and take possession of the property, in which event Optionee/Purchaser shall be entitled to settle the loss with the insurers and collect the full amount thereof for Optionee/Purchaser's own use. Optionor/Seller shall furnish all necessary proofs of loss, assignment of claim and other reasonable assistance as needed.

Section 11. Memorandum of Contract. The Optionee/Purchaser may and is hereby authorized to file in the appropriate real estate records, either a copy of this Contract or an appropriate memorandum of the existence of this Contract, identifying the Real Estate, the Optionor/Seller, the Optionee/Purchaser and a brief summary of this contract.

Section 12. Default and Enforcement. Default under this Contract shall mean failure to timely and fully perform with respect to any term or provision hereof. The Optionor/Seller and the Optionee/Purchaser shall have all rights and remedies available to them in law and in equity. The Optionor/Seller shall be liable for any consequential damages with respect to any willful default to close on the Real Estate transaction as hereby contemplated. No failure by the Optionor/Seller or the Optionee/Purchaser to elect to declare a default hereunder shall be deemed a waiver of their respective rights to make such election, and a waiver in one case shall not be a waiver of another. Default by the Optionor/Seller or the Optionee/Purchaser shall entitle the non-defaulting party to claim as damages all reasonable costs, attorney's fees and expenses incurred in connection with enforcement of this Contract, whether by suit or otherwise.

Section 13. Agreements and Binding Effect. This Contract shall be binding upon the Optionor/Seller and the Optionee/Purchaser, and their respective successors and assigns, according to its tenor and import. When any term or provision of this Contract directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Time is of the essence of this Contract.

Section 14. Amendments. This Contract may be amended from time to time, but only in writing by the Optionor/Seller and the Optionee/Purchaser.

Section 15. Execution and CounterParts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. By executing this contract, the persons executing it as Optionor/Seller covenant that they are the record owners of the Real Estate, and all of the record owners thereof, and have full power and authority to so execute and deliver this Contract.

Section 16. Assignment of Option. This Option may be assigned by either party even without the approval of the other party, and it shall remain a binding obligation.

This Contract is made as of the date of the last to execute of the parties hereto.

**Optionor/Seller:**  
Carl Allman  
406 Carrie Avenue  
Urbana, IL

**Optionee/Purchaser:**  
The City of Urbana,  
Champaign County, Illinois

\_\_\_\_\_  
Carl Allman

By: \_\_\_\_\_  
Laurel Lunt Prussing, Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_