



## 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:** June 4, 2009

**SUBJECT: Redevelopment Agreement with Baku N. Patel (108 West University Avenue)**

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### **Introduction and Background**

The City of Urbana has been approached by Baku Patel, a partner at the law firm of Doyle, Lehman & Patel, regarding interest in constructing a professional office building for their firm at 108 West University Avenue, located at the northeast corner of University Avenue and Race Street. This property is currently vacant and was formerly a Collins Gas Station. Mr. Patel has asked the City to enter into a redevelopment agreement in order to improve the financial feasibility of the project. As the property is located within Tax Increment Finance District 2, a TIF redevelopment agreement is possible to facilitate this redevelopment.

The proposed project is a one story professional office building of at least 3,000 square feet in area which will house the Champaign County offices of Doyle, Lehman, & Patel. The building will have a stone façade and will front onto University Avenue. The accompanying parking will be located to the west of the building and there is room to the north for building expansion in the future. The project will have a construction cost of no less than \$450,000.

The project will be consistent with the planning framework established by the various City plans covering this area. This type of development is permitted by right as part of the B-3 zoning designation for this property. This project is also consistent with the 2005 Comprehensive Plan as this property is designated as Community Business, which calls for businesses along arterial roads or major intersections that are compatible with and offer transitions to surrounding neighborhoods. The Tax Increment Finance District #2 plan specifically anticipates TIF assisted development at this intersection by including the intersection of Race Street and University Avenue as a “Private Development Assistance” project as part of the plan. Finally, the 2002 Downtown Strategic Plan calls for both redevelopment of this property and improvement of public infrastructure in the area by designating this intersection as both a gateway to downtown and an important link between downtown and Crystal Lake Park. Overall, the project is a positive reuse of a vacant parcel that is consistent with the planning framework established by the City and will help to encourage investment in the surrounding properties in the northern part

of downtown.

## **Discussion**

The attached ordinance (Exhibit A) approves a redevelopment agreement with the law firm of Doyle, Lehman & Patel for property located at 108 West University Avenue. This agreement provides for City assistance through TIF 2 to help facilitate the redevelopment of an underutilized vacant site which was formerly a Collins gas station. In discussions with Mr. Patel, initial employment at this location will include three attorneys and one administrative assistant. His projections indicate that they would like to expand staffing with an additional two attorneys, and additional administrative assistant, and one paralegal in the coming years. If business activity warrants additional growth, the parcel will allow for an expansion of both the building and the workforce.

There are several items of note in the agreement. Consistent with prior agreements involving professional office uses, the City agrees to rebate 50% of incremental property taxes generated by the project for a period of 10 years. This benefit is estimated to be approximately \$60,000 to \$70,000 over ten years and is capped at \$75,000 over ten years. Over that same time, TIF 2 will realize approximately \$60,000 to \$70,000 of net tax revenues.

In addition to the annual TIF rebate, the City is offering up to \$45,000 in up-front assistance for curb cut closures on University Avenue and other public infrastructure necessary as part of the project. City assistance for the closure of curb cuts on University Avenue is consistent with the City's effort to remove excess curb cuts to improve safety, aesthetics, and traffic flow in the area. Aside from assisting with curb cut closures, other public infrastructure eligible for TIF assistance under this agreement include items such as replacement of sidewalks, realignment of the Race Street driveway, and asphalt patching within the public right-of-way. These items are eligible for reimbursement as part of TIF 2 due to the public benefit derived as part of these improvements. It should be noted that while these public infrastructure items are included as part of the agreement and obligate the TIF district to fund the improvements, these items, particularly the curb cut closures on University Avenue, are of more benefit to the City and the public than to the private development project or the business involved.

In return for City assistance, the developer has committed to constructing the private development project described above by December 31, 2009.

## **Fiscal Impact**

Both the costs and revenues associated with this redevelopment agreement will be realized by TIF 2. As has been mentioned above, the maximum TIF rebate to the developer over the life of the agreement is up to \$75,000. As part of this agreement, the developer will also be reimbursed up to \$45,000 for public infrastructure improvements, making the total potential TIF

commitment over a ten year period approximately \$120,000.

As part of this project, TIF 2 will realize approximately \$6,000 to \$7,000 of net revenue annually for the term of the agreement, which equates to a total of approximately \$60,000 to \$70,000 in total net revenue over the ten year period. Upon the expiration of the agreement, TIF 2 will receive the entire incremental amount of approximately \$12,000 to \$14,000 annually, depending on annual valuation increases. This equates to approximately a 10 year payback for the up to \$75,000 in direct subsidy to the developer and approximately a 13 year payback on the full \$120,000 TIF commitment as part of this agreement.

Also, as part of this agreement, City Council will review a budget amendment for \$45,000 to fund the public infrastructure improvements included as part of this agreement.

## **Options**

1. Approve the redevelopment agreement ordinance and budget amendment ordinance as presented
2. Approve the redevelopment agreement ordinance and budget amendment ordinance with changes. It should be noted that any changes will need to be agreed upon by the developer.
3. Deny the redevelopment agreement ordinance and budget amendment ordinance.

## **Recommendation**

The positive fiscal impact, coupled with the prospect of facilitating the redevelopment of a vacant parcel indicates that this agreement is a benefit to the City and TIF 2. This new construction project offers an opportunity to promote investment in the area. The immediate creation of four jobs and potentially eight or more jobs into the future adds an additional benefit to the local economy.

Staff recommends that the City Council approve the attached redevelopment agreement ordinance and accompanying budget amendment ordinance.

Prepared by:

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Tom Carrino, Economic Development Manager

Attachments:

Exhibit A: Draft Ordinance with Agreement and Conceptual Site Design  
Exhibit B: Location Map

ORDINANCE NO. 2009-06-061

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH BAKU N. PATEL  
(108 West University Avenue)

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

Section 1. That a Redevelopment Agreement Between the City of Urbana and Baku N. Patel 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 \_\_\_\_\_, 2009.

AYES:

NAYS:

ABSTAINS:

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

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

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**REDEVELOPMENT AGREEMENT**

**by and between the**

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

**and**

**BAKU N. PATEL**

Dated as of June 1, 2009

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**Document Prepared By:**

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

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**LIST OF EXHIBITS**

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EXHIBIT B	Legal 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 June 1, 2009, 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 **Baku N. Patel**, an individual person, of Urbana, Illinois (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”**) adopted 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 Developer proposes to acquire, construct and install (or cause to be done) the Private Development Project (including related and appurtenant facilities as more fully defined below) on the Development Project Site (as defined below); and

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

**WHEREAS**, the Developer is unwilling to undertake the Private Development Project (as defined below) 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 in this Agreement; 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 the Private Development Project attached hereto as Exhibit A.

**“Development Project Site”** means, collectively, the real estate consisting of the parcel described in the attached Exhibit B, 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 acquisition, construction and installation of a professional office building of not less than 3,000 square feet to be built 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(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.

**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 an individual person.

**(b) Power and Authority.** The Developer is the sole owner of record of the Development Project Site and has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

**(c) Authorization and Enforceability.** 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 and Approvals** . 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 annually be payable in such amount as is equal to fifty percent (50%) of the Incremental Property Taxes actually received by the City in each such applicable calendar year which are directly attributable to the Private Development Project at the Development Project Site (the “**Annual Reimbursement Amounts**”);
- (b) for the purpose of calculating the total amount of Incremental Property Taxes for any such calendar year which are directly attributable to the Private Development Project, 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 as assigned by the Champaign County Clerk in the agreed amount of \$30,590.00, and the result 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;
- (c) 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 Private Development Project, and shall continue for a period of ten (10) consecutive years.

(d) the total amount of all such payments of the Annual Reimbursement Amounts pursuant to this Section 3.1 shall not exceed the total amount of all Eligible Redevelopment Costs or Seventy-Five Thousand Dollars (\$75,000.00), whichever is less.

**Section 3.2. City's Redevelopment Obligations.** In connection with the completion of the Private Development Project, the City and the Developer covenant and agree that the following public improvements (collectively, the "**Public Improvements**") are necessary or desirable to be undertaken:

(a) the replacement of certain curbing and sidewalks within the University Avenue right-of-way adjacent to the Private Development Site, including the removal and closure of the existing curb cuts within such right-of-way; and

(b) the replacement of certain curbing and sidewalks within the Race Street right-of-way, including the closure and removal of the existing curb cut and construction and installation of a new curb cut for an access drive to the Private Development Site.

Upon the submittal of a proper invoice for the completion of such Public Improvements in accordance with such standards as may be applicable thereto, the City agrees to fund such Public Improvements in an amount up to but not exceeding Forty-Five Thousand Dollars (\$45,000.00), with any amount over such Forty-Five Thousand Dollars (\$45,000.00) being the responsibility of the Developer.

**Section 3.3. Conditions Precedent.** The obligations of the City to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1 of this Agreement are expressly contingent upon the Developer having completed the Private Development Project no later than December 31, 2009. 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, 2009, 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 3.4. 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 or other amounts to be made by the City are 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 Annual 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. Commitment to Undertake the Private Development Project.** The Developer covenants and agrees to commence and complete the Private Development Project at a total construction cost of not less than \$450,000.00 in accordance with the Design Proposal on or before December 31, 2009. 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 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 4.2. 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 4.3. 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 and were in fact paid and incurred by the Developer.

**Section 4.4. 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 4.5. 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 shall comply with all applicable federal and state laws, rules and regulations and all applicable City ordinances, codes and regulations.

**Section 4.6. Real Estate Tax Obligations.** The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Project Site. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Project Site under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Project Site upon which the Private Development Project is located and shall be in full force and effect until December 31, 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 or any part thereof, 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 4.6 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 directly 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 Article V.

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 applicable documentation as may be acceptable to the City 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 3.1 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. Defaults.** 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 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; Events of Default.** 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 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 damages under any of the other provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay 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 Exhibits A and B 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 7.2. 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:  
Baku N. Patel  
Doyle, Lehman & Patel, P.C.  
1022 N. Vermilion Street  
Danville, IL 61832  
Tel: (217) 446-3844 / Fax: (217) 446-1734
  
- (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 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. 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 such of their respective successors, assigns and legal representatives as are authorized under and pursuant to Section 7.9 of this Agreement above.

**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 the last of the Annual Reimbursement Amounts under Section 3.1 hereof has been made; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 4.6 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.

[The signature page immediately follows this page.]

**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**

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

ATTEST:

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

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

**BAKU N. PATEL**

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

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

STATE OF ILLINOIS            )  
  )        **SS.**  
COUNTY OF CHAMPAIGN    )

I, the undersigned, a notary in and for said County and State aforesaid, DO HEREBY CERTIFY, that **LAUREL LUNT PRUSSING**, personally known to me to be the Mayor of the City of Urbana, Champaign County, Illinois, and **PHYLLIS CLARK**, personally known to me to be the City Clerk of the City of Urbana, Champaign County, Illinois, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledge that as such Mayor and City Clerk, respectively, they signed and delivered the said instrument of writing as Mayor and as City Clerk of said City of Urbana, and caused the seal of said City to be affixed thereto, pursuant to the authority given by the City Council of said City, as their free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS            )  
  )        **SS.**  
COUNTY OF CHAMPAIGN    )

I, the undersigned, a notary in and for said County and State aforesaid, DO HEREBY CERTIFY, that **BAKU N. PATEL**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Design Proposal**

**EXHIBIT B**

**Legal Description of Development Project Site**

# Exhibit "B": Location Map



108 W. University Avenue







