



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Economic Development Division*

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

**TO:** Laurel Lunt Prussing, Mayor  
*LA*

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

**DATE:** November 8, 2012

**SUBJECT:** **An Ordinance Approving a Second Amendment to a Redevelopment Agreement with Five Points Realty, LLC (Northwest Corner of Cunningham Avenue and University Avenue - Gateway Shoppes)**

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**Introduction and Background**

Representatives of Five Points Realty, LLC have approached the City regarding a proposed amendment to a redevelopment agreement (Exhibit A) related to the northwest corner of Cunningham Avenue and University Avenue, also known as Gateway Shoppes. The requested amendment is primarily related to an extension for the final completion date of the project from December 31, 2012, to December 31, 2015. This date change is necessary as a condition of the developer's bank financing to complete the project.

In February 2005, the City of Urbana entered into a Redevelopment Agreement (Exhibit B - Ordinance 2005-01-014) with Five Points Realty, LLC (the developer) for the redevelopment of the subject property. 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 City 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. Due to changes in the project design and unforeseen infrastructure/environmental remediation costs, the developer worked with the City to amend the redevelopment agreement in May 2008 (Exhibit C - Ordinance 2008-02-006).

With the assistance of the redevelopment agreement, the developer has constructed a 15,000 square foot shopping center and facilitated the development of two out-lots. The 15,000 square foot shopping center is now fully occupied, including tenants such as Rainbow Garden, Po' Boys, City Girl Yogurt, Magic Nails, Great Clips, and The Studio. The two out-lots are occupied by the University of Illinois Employees Credit Union and a building co-occupied by Jimmy

John's and Pancharo's restaurants. The developer has now approached the City to further amend the agreement to allow for more time to complete a second 15,000 square foot retail building.

The proposed completion of the project is consistent with the existing redevelopment agreement and will include a second retail building similar to the existing in-line shopping center building along with the development of the remaining out-lots. The original redevelopment agreement, the approved first amendment, and the proposed second amendment are all consistent with the planning efforts the City has engaged in regarding this property, including the 2002 Downtown Strategic Plan, the 2005 Comprehensive Plan, the 2012 Downtown Plan, and the amended TIF 2 Redevelopment Plan.

## **Discussion**

The proposed ordinance with attached amendment to the redevelopment agreement includes changes in two sections from the 2008 amended redevelopment agreement.

Section 3.2 is proposed to be amended to revise the completion date for the entire project from December 31, 2012, to no later than December 31, 2015. The developer has been successful in securing tenants for the first 15,000 square foot commercial building. However, economic conditions since the agreement was entered into have impacted the construction schedule for the second commercial building. It is important to note that the developer has been aggressively working with potential tenants and development partners on both the second commercial building and the available out-lots. In order to protect the current financing arrangement, and secure additional financing for the remainder of the project, the developer has requested the new completion date in order to remain in compliance with the agreement. Another change in Section 3.2 is to recognize that while payments to the developer under the agreement have started, future payments are contingent upon the completion of the entire project by December 31, 2015.

Additionally, the proposed amendment makes a clarification in Section 3.1(d). The rewritten section acknowledges that the development project site is composed of several parcels, and the obligation of the City to rebate property taxes on those parcels begins in the calendar year following the issuance of a certificate of occupancy.

## **Fiscal Impact**

Gateway Shoppes and the accompanying out-lots are located within Tax Increment Finance District Number 2 (TIF 2). As such, both the expenses and revenues generated by the incremental property taxes will be allocated to TIF 2. Aside from TIF 2 property tax revenue, the City will realize additional general fund revenues in the form of sales tax revenue generated by the project.

While the original agreement and first amendment obligate the City to rebate to the developer a portion of the incremental property taxes related to the project, the proposed changes in the second amendment do not directly affect the rebates, resulting in no direct budgetary impact as a result of the proposed amendment. The project has had a positive fiscal impact to the City and the greater downtown area through sales tax generation, property tax generation, job creation, and increased business activity.

## 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 Second Amended Redevelopment Agreement
- Exhibit B: Original Redevelopment Agreement (2005 Agreement)
- Exhibit C: Redevelopment Agreement First Amended and Restated (2008 Amendment)

CC: Ivan Richardson

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A SECOND AMENDMENT TO REDEVELOPMENT  
AGREEMENT WITH FIVE POINTS REALTY, LLC**

(Northwest Corner of Cunningham Avenue and University Avenue - Gateway Shoppes)

WHEREAS, the City of Urbana ("City") and Five Points Realty, LLC did on the 7<sup>th</sup> day of February 2005, pursuant to Ordinance No. 2005-01-014, enter into a Redevelopment Agreement concerning the subject property; and

WHEREAS, the City and Five Points Realty, LLC did on the 12<sup>th</sup> day of May 2008, pursuant to Ordinance No. 2008-02-006, enter into a Redevelopment Agreement First Amended and Restated concerning the subject property; and

WHEREAS, the City and Five Points Realty, LLC have determined that the best interests of both parties are served by making and entering into an amendment to said agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

A Second Amendment to Redevelopment Agreement between the City of Urbana, Illinois, and Five Points Realty, LLC, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

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 hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSENT:

ABSTAINED:

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

APPROVED BY THE MAYOR this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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**SECOND AMENDMENT TO  
REDEVELOPMENT AGREEMENT**

**by and between the**

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

**and**

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

Dated as of November 1, 2012

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**Document Prepared By:**

**Kenneth N. Beth  
Evans, Froehlich, Beth & Chamley  
44 Main Street, Third Floor  
Champaign, IL 61820**

**SECOND AMENDMENT  
TO REDEVELOPMENT AGREEMENT**

**THIS SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT** (this “**Second Amendment**”) is dated for reference purposes only as of the 1st day of November, 2012, but is actually executed by each of the parties on the dates set forth by each of 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**”), with respect to that certain Redevelopment Agreement First Amended and Restated dated as of May 12, 2008 (the “**Agreement**”), by and between the City and the Developer. This Second Amendment shall become effective as of the last of the City and the Developer to execute and deliver this Second Amendment to the other (the “**Effective Date**”). Except as otherwise specifically defined elsewhere herein, all capitalized words, terms and phrases as used in this Second Amendment shall have the same meanings as respectively ascribed to them in the Agreement.

**RECITALS:**

**WHEREAS**, the City and the Developer find it necessary and desirable to clarify when the obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under Section 3.1(d) of the Agreement are to be commenced; and

**WHEREAS**, under and pursuant to Section 3.2 of the Agreement, the obligations of the City to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1(b)-(d) of the Agreement are expressly contingent upon the Developer having completed the Private Development Project upon Lot 100 of the Development Project Site no later than December 31, 2012; and

**WHEREAS**, the Developer has completed approximately 15,000 square feet of improvements for an urban shopping center complex but has not otherwise completed the construction and installation of the remaining required improvements in connection with the Private Development Project upon Lot 100 of the Development Project Site due to the prevailing economic environment; and

**WHEREAS**, the City is willing to extend the date upon which the Developer is to have completed the construction and installation of the required improvements in connection with the Private Development Project upon Lot 100 of the Development Project Site until December 31, 2015; and

**WHEREAS**, the City and the Developer each now find and determine that it is necessary, desirable and appropriate to supplement and amend the Agreement by this Second Amendment in order to make provision for such clarification of Section 3.1(d) and such extension of the completion date under Section 3.2 of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements by the City and the Developer as parties to the Agreement, including those as contained in this Second Amendment to the Agreement, the City and the Developer do mutually covenant and agree to supplement and amend the Agreement to provide as follows:

**Section 1.** Section 3.1(d) of the Agreement is hereby amended to provide as follows:

(d) the obligation 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 an applicable project which is completed upon each lot having a separate permanent parcel number within the Development Project Site, and shall continue until the termination of TIF for the Redevelopment Project Area in calendar year 2022.

**Section 2.** Section 3.2 of the Agreement is hereby amended to provide as follows:

**Section 3.2. Conditions Precedent.** The obligations of the City to continue to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1(b)-(d) of this Agreement is expressly contingent upon the Developer having completed the Private Development Project no later than December 31, 2015. 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, 2015, 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. Ratification of Agreement.** Except as expressly supplemented and amended as provided in this Second Amendment above, all other provisions of the Agreement shall be and remain in full force and effect. The provisions of the Agreement, as now supplemented and amended by this Second Amendment, are hereby ratified, confirmed and approved by both the City and the Developer.

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

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

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

ATTEST:

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

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

**FIVE POINTS REALTY, LLC**

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

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



COPY

ORDINANCE NO. 2005-01-014

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE  
A REDEVELOPMENT AGREEMENT WITH FIVE POINTS REALTY, LLC

(Five Points Northwest)

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

Section 1. That A Redevelopment Agreement By and Between The City of  
Urbana and Five Points Realty, LLC, in substantially the form of the copy of  
said Agreement attached hereto and hereby incorporated by reference, be and  
the same is hereby authorized and approved.

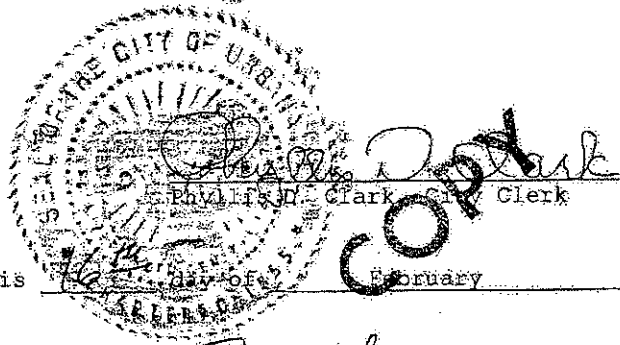
Section 2. That the Mayor of the City of Urbana, Illinois, be and the  
same is hereby authorized to execute and deliver and the City Clerk of the  
City of Urbana, Illinois, be and the same is authorized to attest to said  
execution of said Agreement as so authorized and approved for and on behalf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

PASSED by the City Council this 7th day of February,  
2005.

AYES: Alix, Chynoweth, Hayes, Patty, Roberts, Whelan, Wyman

NAYS:

ABSTAINS:



APPROVED by the Mayor this 7th day of February,  
2005.

Tod Satterthwaite  
Tod Satterthwaite, Mayor

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**REDEVELOPMENT AGREEMENT**

by and between the

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

and

**FIVE POINTS REALTY, LLC**

Dated as of February 7, 2005

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**Document Prepared By:**

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

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EXHIBIT A . Description of Development Project Site

## REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this "Agreement") is made and entered into as of February 7, 2005, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the City of Urbana, Champaign County, Illinois, an Illinois municipal corporation (the "City"), and Five Points Realty, LLC, an Illinois corporation (the "Developer").

### RECITALS

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

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

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to acquire, construct and install (or cause to be done) the Private Development Project (including related and appurtenant real estate and other facilities as more fully defined below) on the Development Project Site (as defined below); and

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

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

without certain tax increment finance ("TIF") incentives from the City, which the City is willing to provide, and the City has determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

#### **ARTICLE I DEFINITIONS**

Section 1.1. **Definitions.** For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

"Corporate Authorities" means the City Council of the City.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

- (a) **Organization and Standing.** The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.
- (b) **Power and Authority.** The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.
- (c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all

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

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

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

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

(a) **Organization.** The Developer is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and is duly qualified to transact business in, and is in good standing under, the laws of each of the other states where the Developer is required to be qualified to do business.

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

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's board of directors. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting

remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) **Consents.** No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by the Developer of this Agreement or the performance thereof by the Developer.

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

**Section 2.3. Related Agreements.** Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

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

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

**ARTICLE III**  
**CITY'S COVENANTS AND AGREEMENTS**

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

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

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

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

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

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

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

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

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

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

Cunningham Avenue (U.S. Route 45);

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

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

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

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

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

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

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

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

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

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

**Section 4.3. Compliance with Agreement and Laws During Development.** The Developer shall at all times undertake the Private Development Project in conformance with this Agreement and all applicable federal and state laws, rules and regulations, including all subdivision, zoning, environmental or other ordinances of the City. Any agreement of the Developer related to the rehabilitation, reconstruction, repair or remodeling of the Private Development Project with any contractor, subcontractor or any other party or parties to any such agreements shall, to the extent



applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 4.4. Prevailing Rate of Hourly Wages.** The Developer acknowledges that the Prevailing Wage Act of Illinois (820 ILCS 130/0.01 et seq.) as supplemented and amended (the "PW Act"), may be applicable to all or part of the Private Development Project. As and to the extent required by the PW Act, the Developer agrees to pay or cause to be paid not less than the prevailing rate of hourly wages to all laborers, workers and mechanics employed by the Developer or any contractor or subcontractor in connection with the construction of Private Development Project. The most recently revised prevailing rate of hourly wages, as determined by the Illinois Department of Labor for Champaign County, Illinois in connection with any applicable construction period can be obtained from the City or from the Illinois Department of Labor, including at [www.state.il.us/agency/idol/rates/rates.htm](http://www.state.il.us/agency/idol/rates/rates.htm).

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

**Section 4.6. Indemnity.** The Developer agrees to forever indemnify and defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract brought against the City arising from any alleged claims, acts or omissions of

such Developer in connection with this Agreement, including the acquisition, construction or installation of the Private Development Project, whether or not suit is filed.

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

**Section 4.8. Real Estate Tax Obligations.** The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Project Site. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Project Site under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Project Site upon which the Private Development Project is located and shall be in full force and effect until December 31, 2030, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Development Project Site the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 4.7 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own

cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of real property taxes assessed and levied upon the Development Project Site or any part thereof.

**ARTICLE V**  
**PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS**

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

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

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

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

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

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

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

**Section 6.1. Defaults - Rights to Cure.** Failure or delay by either party to timely perform any material term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of. Except as required to protect against immediate, irreparable harm, the party asserting a default may not institute proceedings against the other party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which cannot reasonably be cured within such

thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

**Section 6.2. Remedies.** In the event of a breach of this Agreement by the Developer under any of the terms and provisions hereof, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party in the event of a breach of this Agreement by the other party under any of the terms and provisions hereof shall be to institute legal action against the other party for specific performance or other appropriate equitable relief. Except for any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement.

**Section 6.3. Costs, Expenses and Fees.** If either party defaults in the performance of its obligations hereunder, and is determined in default of this Agreement by a court of competent jurisdiction, each of the parties agree that the defaulting party shall pay the non-defaulting party's costs, expenses and fees of enforcing the defaulting party's obligations under this Agreement, including but not limited to reasonable fees of accountants, attorneys, engineers and other professionals.

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

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

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

**Section 7.3. Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

**Section 7.4. Counterparts.** Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

**Section 7.5. Special and Limited Obligation; Effect of Failure to Amend.** This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations hereunder only such amount of the Incremental Property Taxes as is set forth in Section 3.1 hereof, if, as and when received, and not otherwise. Anything to the contrary notwithstanding, however, in the event that the City fails for any reason to amend the Redevelopment Plan in order to extend the date of completion of the Redevelopment Projects and the retirement of obligations issued to finance Eligible Redevelopment Project Costs to such date as shall occur on or after the expiration of the term of this Agreement as provided in Section 3.3 of this Agreement, the City's payment obligations which become due and payable after December 31, 2010 under Section 3.1(a) of this Agreement shall, to the extent Incremental Property Taxes in the Fund have not otherwise been set aside and allocated to the payment thereof, become a general obligation of the City to which its credit, resources or general taxing power are pledged.

**Section 7.6. Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties or for any other reasons not within the Developer's or the City's control.

**Section 7.7. Waiver.** Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is

in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 7.8. Cooperation and Further Assurances.** The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 7.9. Notices and Communications.** All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

(i) In the case of the Developer, to:

Five Points Realty, LLC  
102 East Main Street  
Urbana, IL 61801  
Attn: Joseph A. Petry  
Tel: (217) 333-4260

(ii) In the case of the City, to:

City of Urbana, Illinois  
400 South Vine Street  
Urbana, IL 61801  
Attn: Chief Administrative Officer  
Tel: (217) 384-2455 / Fax: (217) 384-2363



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

**Section 7.10. Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns; provided, however, that the Developer may not assign its rights under this Agreement prior to the completion of the Private Development Project without the express written consent of the City.

**Section 7.11. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

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

**Section 7.13. No Personal Liability of Officials of City.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

**Section 7.14. Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

**Section 7.15. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until December 31 of the calendar year in which the last payment or reimbursement obligation of the City becomes due and payable to the Developer under subsection (c) of Section 3.1 of this Agreement; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.6 and 4.8 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section and the City's obligations under Section 3.2 of this Agreement shall be and remain in full force and effect for the term specified in the Parking Agreement..

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

CITY OF URBANA, CHAMPAIGN COUNTY,  
ILLINOIS

(SEAL)

By: Tal Sattler  
Mayor

ATTEST:

Theresa A. Clark  
City Clerk  
by Debra J. Holcomb Deputy Clerk  
Date: 16 February 2005

FIVE POINTS REALTY, LLC

By: Jessie Richardson

Partner

By: Joseph A. Fuly

Partner

Date: Feb 14, 2005

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

EXHIBIT A

Description of Development Project Site

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1:

LOT 1 OF SHELBY'S REPLAT OF PART OF LOTS 1, 2, 3, 4, 5 AND 6 OF THE BELLE BARR SURVEY, SITUATED IN THE CITY OF URBANA, AS PER PLAT RECORDED IN PLAT BOOK "AA" AT PAGE 218, AS DOCUMENT 88 R 13872, SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

TRACT 2:

A TRACT OF LAND BEING PART OF LOT 32 OF HIRAM SHEPHERD'S ADDITION TO URBANA, AND A PART OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN CHAMPAIGN COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF LOT 32 OF HIRAM SHEPHERD'S ADDITION TO THE CITY OF URBANA, AND 169.2 FEET NORTH OF THE SOUTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE WEST A DISTANCE OF 100 FEET, THENCE SOUTH TO THE NORTH LINE OF UNIVERSITY AVENUE, THENCE EAST ALONG THE NORTH LINE OF UNIVERSITY AVENUE TO THE WEST LINE OF THE CUNNINGHAM AVENUE (U.S. ROUTE 45) RIGHT OF WAY, THENCE IN A NORTHEASTERLY DIRECTION ALONG THE WEST LINE OF THE CUNNINGHAM AVENUE RIGHT OF WAY TO A POINT ON SAID WEST LINE 169.2 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 8, THENCE WEST TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM (SHOULD BE "SUBJECT TO") THAT PART OF LOT 32 GRANTED TO THE STATE OF ILLINOIS IN DEDICATION OF RIGHT OF WAY FOR PUBLIC ROAD PURPOSES RECORDED FEBRUARY 6, 2001, AS DOCUMENT 2001 R 2553, IN CHAMPAIGN COUNTY, ILLINOIS.

TRACT 3:

THAT PART OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF LOT 32 IN HIRAM SHEPHERD'S ADDITION TO THE CITY OF URBANA WITH A LINE WHICH IS 169.20 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 8; THENCE NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 32 AND THE EASTERLY LINE OF LOTS 31, 28 AND 27 IN SAID HIRAM SHEPHERD'S ADDITION, TO THE POINT OF INTERSECTION WITH A LINE WHICH IS MIDWAY BETWEEN THE NORTH BOUNDARY AND THE SOUTH BOUNDARY OF SAID LOT 27; THENCE WESTERLY ALONG SAID CENTERLINE OF LOT 27 TO A POINT IN THE WEST LINE OF SAID LOT, SAID POINT BEING IN THE WEST LINE OF HIRAM SHEPHERD'S ADDITION AFORESAID; THENCE NORTH ALONG SAID WEST LINE TO A POINT IN THE SOUTH LINE OF CRYSTAL LAKE PARK ADDITION TO URBANA; THENCE WEST ALONG SAID SOUTH LINE TO A POINT OF INTERSECTION WITH A LINE WHICH IS 183 FEET WEST OF AND PARALLEL WITH THE SAID WEST LINE OF HIRAM SHEPHERD'S ADDITION; THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT WHICH IS 169.20 FEET NORTH OF THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 8; THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE TO THE POINT OF BEGINNING, EXCEPTING FROM SAID DESCRIBED PREMISES SUCH PARTS, IF ANY, LYING SOUTH OF THE NORTH LINE OF LOT 5 AND ITS EASTERLY AND WESTERLY EXTENSION THEREOF OF BELLE BARR'S SURVEY OF PART OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 8;

ALSO EXCEPTING THEREFROM (SHOULD BE "SUBJECT TO") THOSE PARTS OF LOT 32 HERETOFORE GRANTED TO THE PEOPLE OF THE STATE OF ILLINOIS FOR HIGHWAY PURPOSES, AS SHOWN IN DEDICATION OF RIGHT OF WAY FOR PUBLIC ROAD PURPOSES, DATED JUNE 20, 1933 AND RECORDED JUNE 22, 1933, IN BOOK 229, PAGE 208 AS DOCUMENT 263 138;

ALSO EXCEPTING THEREFROM (SHOULD BE "SUBJECT TO") THOSE PARTS OF SAID LOTS 28, 31 AND 27 AS HAVE BEEN CONVEYED TO THE STATE OF ILLINOIS FOR HIGHWAY PURPOSES, AS SHOWN IN RIGHT OF WAY DEED, DATED APRIL 4, 1935 AND RECORDED SEPTEMBER 18, 1935 IN BOOK 234, PAGE 278 AS DOCUMENT 278838;

ALSO EXCEPTING THEREFROM THAT PORTION TAKEN BY THE STATE OF ILLINOIS FOR HIGHWAY PURPOSES IN COMMON LAW CASE 68 L 832 IN THE CIRCUIT COURT OF CHAMPAIGN COUNTY, ILLINOIS;

AND ALSO EXCEPTING THEREFROM (SHOULD BE "SUBJECT TO") THOSE PARTS OF LOTS 27, 28, 31 AND 32 GRANTED TO THE STATE OF ILLINOIS IN DEDICATION OF RIGHT OF WAY FOR PUBLIC ROAD PURPOSES RECORDED FEBRUARY 6, 2001, AS DOCUMENT 2001 R 2553, IN CHAMPAIGN COUNTY, ILLINOIS.

TRACT 4:

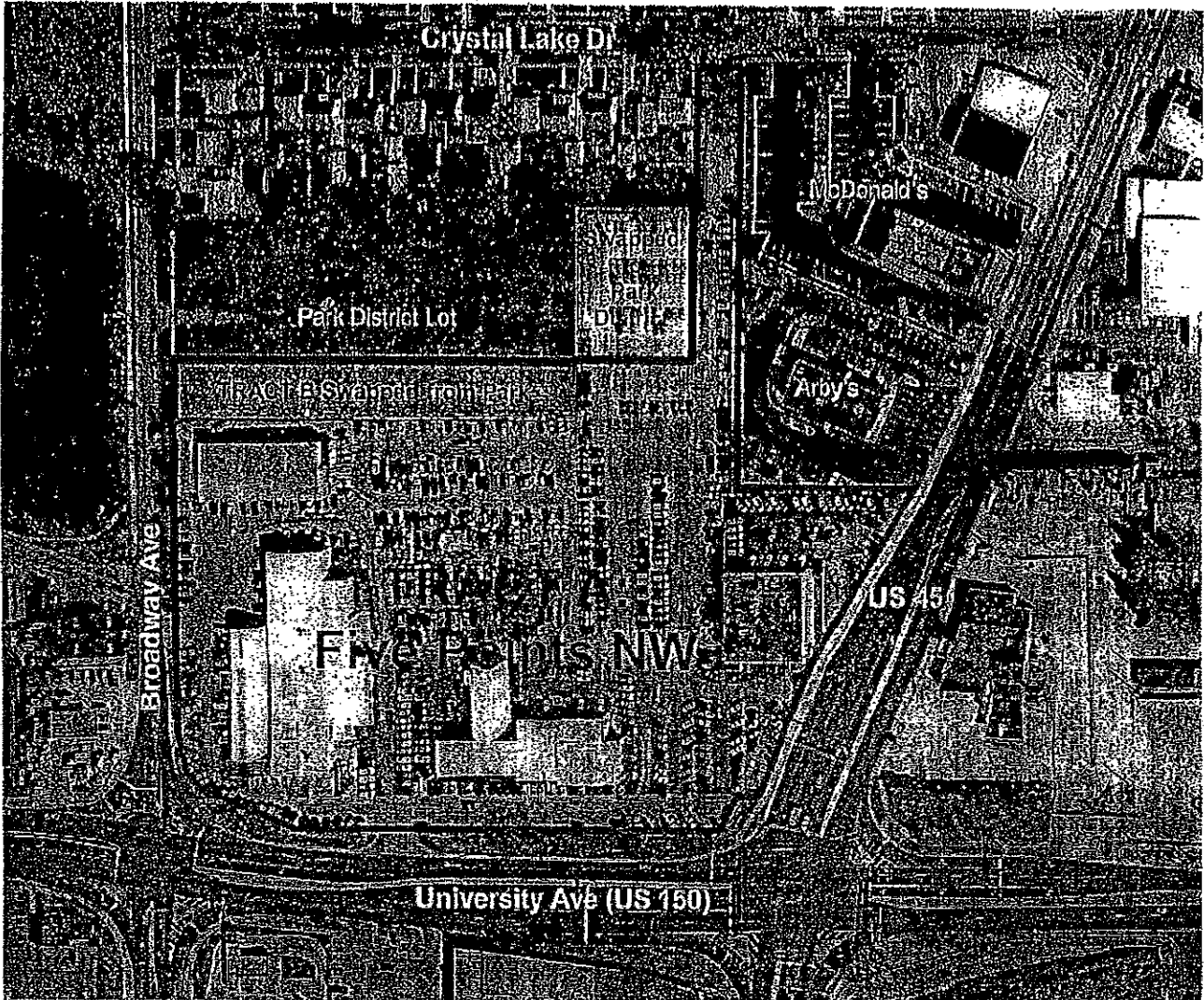
LOT 29 OF CRYSTAL LAKE PARK ADDITION TO THE CITY OF URBANA, ILLINOIS, AS PER PLAT RECORDED IN PLAT BOOK "H," ON PAGE 76, IN THE OFFICE OF THE CHAMPAIGN COUNTY RECORDER, EXCEPTING THEREFROM A STRIP OF GROUND 5 FEET IN WIDTH OFF OF THE NORTH AND OF SAID LOT; IN CHAMPAIGN COUNTY, ILLINOIS.

AND ALSO AS FILED FOR RECORD AS DOCUMENT 2002 R 14237 IN THE OFFICE OF THE RECORDER OF CHAMPAIGN COUNTY AS FOLLOWS:

TRACT 5:

A PORTION OF THE UNIVERSITY AVENUE RIGHT-OF-WAY BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, URBANA, CHAMPAIGN COUNTY, ILLINOIS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT 32 AS DESCRIBED IN PETITION FOR CONDEMNATION NO. 68-L-832 IN THE CIRCUIT COURT OF CHAMPAIGN COUNTY, ILLINOIS; THENCE N89°-46'-00"E, AN ASSUMED BEARING, ALONG THE EXISTING NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE, 599.22 FEET; THENCE S24°-46'-00"W, 44.14 FEET; THENCE S89°-46'-00"W, ALONG A LINE PARALLEL WITH, AND 40.00 FEET SOUTHERLY OF, THE SAID EXISTING NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE, 502.07 FEET; THENCE N63°-14'-00"W, 88.11 FEET, TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 0.5056 ACRES (22,025.804 S.F.), MORE OR LESS, ALL SITUATED IN THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS.



# Five Points Northwest Location Aerial Map



Subject Site



Exhibit C

2 copies

COPY Tom

ORDINANCE NO. 2008-02-006

AN ORDINANCE APPROVING AN AMENDMENT  
TO A REDEVELOPMENT AGREEMENT WITH FIVE POINTS REALTY, LLC

(Northwest Corner of Cunningham Avenue and University Avenue - Gateway Shops)

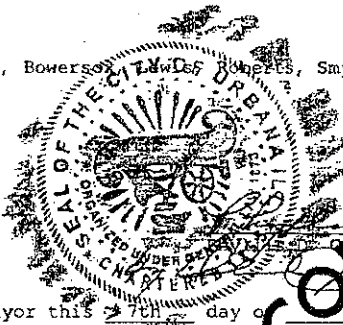
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
URBANA, ILLINOIS, as follows:

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 3rd day of March,  
2008.

AYES: Barnes, Bowersox, ~~McLellan~~, Roberts, Smyth, Stevenson  
NAYS:  
ABSTAINS:



*[Signature]*  
City Clerk  
*[Signature]*  
Deputy Clerk  
APPROVED by the Mayor this 7th day of March,  
2008.

*[Signature]*  
Laurel Luit Prussing, Mayor



COPY

**FILED**

MAY 12 2008

Phyllis D. Clark  
City Clerk

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**REDEVELOPMENT AGREEMENT  
FIRST AMENDED AND RESTATED**

MAY 12 2008

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~~

*May 12, 2008*

---

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**Document Prepared By:**

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

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**LIST OF EXHIBITS**

**EXHIBIT A Final Plats for Development Project Site**

REDEVELOPMENT AGREEMENT

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THIS REDEVELOPMENT AGREEMENT FIRST AMENDED AND RESTATED (including any exhibits and attachments hereto, collectively, this "Agreement") is made and entered into as of <sup>May 12</sup> 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

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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

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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

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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.

COPY

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.



COPY

**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

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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:

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(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

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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

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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

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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

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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.



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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

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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.

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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

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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

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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

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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.

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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: 5/12/08  
 Deputy Clerk

FIVE POINTS REALTY, LLC,

(SEAL)

By:   
Its Authorized Member

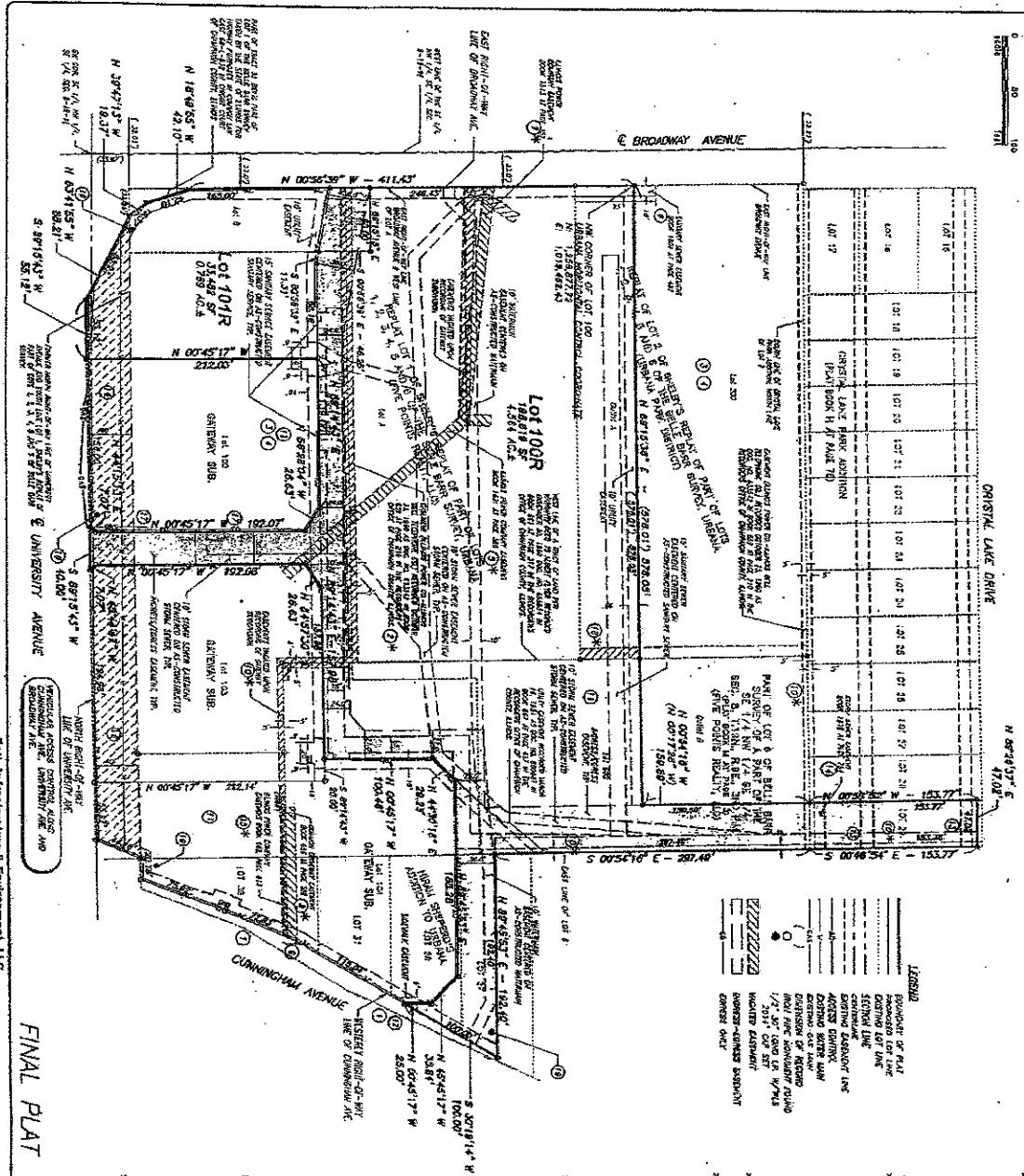
Date: 2/12/08

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





REPLAT LOTS 100 and 101 of GATEWAY SUBDIVISION  
P. of the N 1/2 of the SE 1/4 of Section 8, T.19N., R.9E. of the 3rd P.M.  
City of Urbana, Champaign County, Illinois



FINAL PLAT

Drawn by: Foth Infrastructure & Environment, LLC

LEGEND table with 2 columns: Symbol and Description. Includes symbols for easements, utilities, and various boundaries.

- \* 1. Dimensions measured (SEE NOTE 10) ON WATERED OFF LOTS 2, 3, 7, 8, 9, 10, 11 AND 18 UPON RECORDING OF THIS SUBDIVISION.
\* 2. Right of way shall not be shown unless it is a part of the land.
\* 3. Right of way shall not be shown unless it is a part of the land.
\* 4. Right of way shall not be shown unless it is a part of the land.
\* 5. Right of way shall not be shown unless it is a part of the land.
\* 6. Right of way shall not be shown unless it is a part of the land.
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\* 8. Right of way shall not be shown unless it is a part of the land.
\* 9. Right of way shall not be shown unless it is a part of the land.
\* 10. Right of way shall not be shown unless it is a part of the land.

8002080845  
4/5/07

Foth Infrastructure & Environment, LLC logo and contact information. Includes 'Foth' logo, 'Infrastructure & Environment, LLC', and 'Foth Infrastructure & Environment, LLC'.

