

ORDINANCE NO. 2001-12-171

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT THIRD AMENDED AND RESTATED WITH UNIVERSITY HOTEL LLC

(Medical Office Buildings)

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

Section 1. That a Redevelopment Agreement Third Amended and Restated between the City of Urbana, Illinois and University Hotel LLC, an Illinois limited liability Company, in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

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

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

AYES:

NAYS:

ABSTAINS:

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

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

\_\_\_\_\_  
Tod Satterthwaite, Mayor

**REDEVELOPMENT AGREEMENT  
THIRD AMENDED AND RESTATED**

**THIS REDEVELOPMENT AGREEMENT, THIRD AMENDED AND RESTATED** including any attachments and exhibits hereto (collectively, this **“Agreement”**) is made and entered into as of the 1st day of January, 2002, 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 **University Hotel LLC**, an Illinois limited liability company (the **“Developer”**), as the assignee under a Partial Assignment and Assumption Agreement dated as of June 29, 2001 by **Provena Properties, Inc.**, an Illinois corporation (formerly known as **Corridor Properties, Inc.**, an Illinois corporation, (**“Corridor”**)).

**RECITALS**

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (Section 5/11-74.4-1 et seq. of Chapter 65 of the Illinois Compiled Statutes), as supplemented and amended (the **“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 has designated the North Campus and King Park Neighborhood Redevelopment Project Area (as more particularly described in Exhibit A hereto, the **“Redevelopment Project Area”**) and approved a related redevelopment plan (entitled **“North Campus and King Park Neighborhood Redevelopment Plan”**) and project, as such related development plan (entitled **“North Campus and King Park Neighborhood Redevelopment Plan, First Amended and Restated”**) has subsequently been supplemented and amended, (the **“Redevelopment Plan”** and **“Redevelopment Project”**); and

**WHEREAS**, in connection with the Redevelopment Project, Redevelopment Plan and Redevelopment Project Area, the City Council of the City (the **“Corporate Authorities”**): (i) on December 18, 1989, adopted Ordinance No. 8990-59, “An Ordinance Approving a Redevelopment Plan and Redevelopment Project; Designating a Redevelopment Project Area; and Adopting Tax Increment Allocation Finance”, which has been duly filed with the County Clerk of Champaign, County, Illinois, who has certified the property tax increment base to the City, and (ii) on December 3, 1990, adopted Ordinance No. 9091-65, “An Ordinance Adopting and Approving a

Redevelopment Plan and Redevelopment Project, First Amended and Restated, for Redevelopment Project Area Number Three” (collectively, the “**TIF Ordinances**”); and

**WHEREAS**, the City and Corridor, the predecessor in interest to the Developer, previously entered into the Redevelopment Agreement dated as of September 1, 1993, as amended by Amendment 1 to the Redevelopment Agreement dated as of August 1, 1994 and Amendment 2 to the Redevelopment Agreement dated as of November 17, 1997 (collectively, the “**Prior Redevelopment Agreement**”) in order to induce Corridor to acquire, construct, extend, improve, rehabilitate and install (or cause to be done) a hotel facility, a medical/office building and/or a restaurant facility (including the related real estate and appurtenant facilities), as accomplished in one or more phases, within the Redevelopment Project Area by providing certain tax increment finance incentives as authorized by the Act from the City; and

**WHEREAS**, effective as of January 1, 2002, the City and the Developer now desire to further supplement, amend and supercede in its entirety the Prior Redevelopment Agreement by the provisions of this Agreement as it pertains to “Block 2” in the “Development Area” (as such terms are defined in the Prior Redevelopment Agreement).

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein and in the Prior Redevelopment Agreement, 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:

“**Development Area**” means, collectively, the real estate consisting of all of “**Block 2**” as described in Exhibit B hereto, upon or within which the Private Development is or will be located.

**“Eligible Costs”** means those interest costs paid and incurred by the Developer related to the acquisition, construction and installation of the Private Development which are to be paid directly from the Fund as provided in Section 5/11-74.4-3(q)(11) of the Act.

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

**“Incremental Property Taxes”** means incremental real property taxes derived from the Redevelopment Project Area under Section 5/11-74.4-8 of the 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 or 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”** means the existing hotel facility and the existing restaurant facility (including the related real estate and appurtenant facilities) which have been acquired, constructed and installed (or caused to be done) in one or more phases by the Developer within the Development Area (collectively, the **“Existing Private Development”**), together with any future expansion or addition to the existing hotel facility which may be acquired, constructed and installed (or caused to be done) in one or more phases by the Developer within the Development Area on or after the effective date of this Agreement (collectively, the **“Future Private Development”**).

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

**“Related Agreements”** means all option, land acquisition, 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.

“**Requisition**” means a request by the Developer for an annual payment or reimbursement of Eligible Costs pursuant to the procedures set forth in Section 5.1 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 company 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.

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

**(d) No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or

provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

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

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

**Section 2.3. Related Agreements.** Within 30 days of the execution of this Agreement or within 20 days from the date of the execution and delivery thereof, as the case may be, true, complete and correct copies of all Related Agreements, redacted by the Developer to protect any confidential or proprietary information, shall be provided to the City. Upon request of the City, the Developer shall make available for inspection and review an unaltered copy of all such redacted Related Agreements. 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, 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 Costs in the Development Area. Upon the submission to the City by the Developer of Requisitions for Eligible 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 interest costs as may be paid and incurred by the Developer as are directly related to the Private Development in the Development Area as follows:

(a) Such reimbursement in connection with the Existing Private Development shall not exceed in any one calendar year: (i) thirty percent (30%) of the annual interest costs paid and incurred by the Developer related to the Existing Private Development in the Development Area in any such calendar year; or (ii) eighty percent (80%) of the Incremental Property Taxes actually received by the City for such calendar year which are directly attributable to the Existing Private Development in the Development Area; whichever amount in (i) or (ii) above is less, reduced by (iii) the applicable portion of such lesser amount, determined as set forth in (i) and (ii) above, which is directly attributable to either the hotel facility or the restaurant facility, as prorated on a day for day basis, for any period in any such calendar year that either such hotel facility or such restaurant facility is not continuously operated or otherwise open for business on a regular continuing basis as a hotel facility or a restaurant facility, as applicable, unless the Corporate Authorities subsequently otherwise agree in writing; provided, however, that any such reduction as provided in (iii) above shall not be applicable to any temporary or interim periods of fourteen (14) or less continuous days.

(b) Such reimbursement in connection with the Future Private Development shall not exceed in any one calendar year (i) thirty percent (30%) of the annual interest costs paid and



incurred by the Developer related to the Future Private Development in the Development Area in any such calendar year; or (ii) eighty percent (80%) of the Incremental Property Taxes actually received by the City for such calendar year which are directly attributable to the Future Private Development in the Development Area; whichever amount in (i) or (ii) above is less, reduced by (iii) the applicable portion of such lesser amount, determined as set forth in (i) and (ii) above, which is directly attributable to the hotel facility, as prorated on a day for day basis, for any period in any such calendar year that such hotel facility is not continuously operated or otherwise open for business on a regular continuing basis as a hotel facility, unless the Corporate Authorities subsequently agree in writing; provided, however, that any such reduction as provided in (iii) above shall not be applicable to any temporary or interim periods of fourteen (14) or less continuous days.

(c) For the purpose of determining the total amount of Incremental Property Taxes actually received by the City for any such calendar year which are directly attributable to the Private Development, the total equalized assessed value (the “**EAV**”) of the Development Area for such calendar year shall be reduced by the initial EAV of the Development Area in the agreed amount of \$207, 940, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area in such calendar year. Such determined amount of total Incremental Property Taxes which are directly attributable to the Private Development shall be allocated, if at all, between the Existing Private Development and the Future Private Development in the following manner:

(i) the amount allocated to the Existing Private Development shall be equal to the total amount of Incremental Property Taxes actually received by the City attributable to the Private Development, multiplied by a fraction, the numerator of which shall be the EAV of the Private Development in the year in which any such acquisition, construction and installation of the Future Private Development is commenced and the denominator of which is the EAV of the Private Development in the year immediately succeeding the completion of the acquisition, construction and installation of the Future Private Development; and

(ii) the amount allocated to the Future Private Development shall be equal to the amount of Incremental Property Taxes actually received by the City attributable to the Private Development reduced by the amount allocated to the Existing Private Development as described in (i) above.

(d) The total of all such annual payments of the Reimbursement Amounts pursuant to this Section 3.1 shall not exceed the total of: (i) costs paid or incurred by the Developer for the Private Development; plus, (ii) all qualifying redevelopment project costs as specified in Section 5/11-74.3(q)(11) of the Act which are directly attributable to the Private Development in the Development Area.

The obligations of the City to reimburse the Developer for the Reimbursement Amount under this Section 3.1 shall terminate upon reimbursement by the City in connection with the Requisition therefor submitted therefor by the Developer on or after September 1, 2012 for calendar year 2011.

**Section 3.2. Defense of Redevelopment Project Area.** In the event that any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amount to be made by the City are contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amount, 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. Acquisition, Construction and Installation of Future Private Development.** If undertaken, the Developer shall at all times acquire, construct and install the Future Private Development in conformance with this Agreement and all applicable laws, rules and regulations. Any agreement of the Developer related to the acquisition, construction and installation of the Future Private Development with 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 4.2. City's Right to Audit Developer's Books and Records.** The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Private Development and the total amount of related Eligible 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 Development in order to confirm that the interest costs claimed to have been paid and incurred by the Developer were directly related to the costs of the Private Development financed by the Developer and in fact paid and incurred by the Developer.

**Section 4.3. Indemnity.** The Developer agrees to 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 in connection with this Agreement, including the acquisition, construction and installation of the Private Development, or any part thereof, whether or not suit is filed.

**Section 4.4. Compliance With All Laws.** The Developer agrees that in the use, occupation, operation and maintenance of the Private Development, including any Future Private Development, the Developer will comply with all applicable federal and state laws, rules, regulations and city ordinances.

## ARTICLE V

### **PAYMENT FOR ELIGIBLE PROJECT COSTS**

**Section 5.1. Payment Procedures.** The City and the Developer agree that the Eligible Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes attributable to the Private Development within the Development Area deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts be disbursed by the Comptroller of the City for payment to the Developer shall be 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, or the designee thereof, (the "CAO") as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Costs. Payments to the Developer of any annual Reimbursement Amounts for Eligible 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 of each year, beginning September 1, 2002. Each such Requisition shall be accompanied by such documentation by the lending institution to whom any such interest costs are paid or by an Independent accountant acceptable to the CAO which shows and verifies both the total costs paid and incurred by the Developer for the Private Development as well as the total interest cost paid and incurred by the Developer in connection with any financing of the Private Development in the Development Area for the immediately preceding calendar year.

**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 either of the following have not been sufficiently documented or specified herein: (i) the amount of the total interest costs paid and incurred by the Developer during the preceding calendar year, or (ii) such total interest costs being directly related to the financing of costs paid or incurred by the Developer for the Private Development in the Development Area. If a Requisition is disapproved by such CAO, the reasons for disallowance will be set forth in writing and the Developer may resubmit such Requisitions 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.** The City shall pay the Reimbursement Amount to the Developer within thirty (30) days of the approval of the Requisition as set forth in Section 5.2 above.

## ARTICLE VI

### **DEFAULTS AND REMEDIES**

**Section 6.1. Defaults - Rights to Cure.** Failure or delay by either party to timely perform any 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 in breach of this Agreement as determined 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 the reasonable fees of accountants, attorneys, engineers and other professionals.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

**Section 7.1. Entire Contract and Amendments.** This Agreement (together with the Exhibits A and B attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. As of January 1, 2002, this Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, including in particular the Prior Redevelopment Agreement between the City and the Developer with respect to Block 2 (as defined therein), 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 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 percentage of the Incremental Property Taxes attributable to the Private Development in the Development Area as is set forth in Section 3.1(a) and (b) hereof, if, as and when received, and not otherwise.

**Section 7.5. Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, 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, or for any other reasons not within the Developer’s or the City’s control.

**Section 7.6. Waiver.** Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 7.7. Cooperation and Further Assurances.** The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 7.8. Notices and Communications.** All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:  
University Hotel LLC  
c/o Hospitality Specialists, Inc.  
5 Shenandoah  
Jacksonville, IL 62650  
Attn: John A. Mann  
Tel: (217) 235-2220  
Fax: (217) 243-4233
  
- (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) 384-2454  
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 7.9. 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 Developer may not assign its rights under this Agreement without the express written approval of the City, which shall not be unreasonably withheld or delayed.

**Section 7.10. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the parties to this Agreement shall be construed by either of the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

**Section 7.11. Verification of Tax Increment.** The City and Developer shall fully cooperate in connection with obtaining certified copies of all real estate tax bills for the taxable property constituting the Private Development.

**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.** This Agreement shall remain in full force and effect until December 1, 2012, or until otherwise terminated pursuant to the terms hereof. However, the provisions of Section 4.3 of this Agreement shall survive termination of this Agreement.

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

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

(SEAL)

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

ATTEST:

\_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

**UNIVERSITY HOTEL LLC**, an Illinois limited liability company

\_\_\_\_\_  
John A. Mann, Member

\_\_\_\_\_  
James L. Mann, Member

\_\_\_\_\_  
Daniel D. Johnson, Member

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

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

**EXHIBIT A**

**Legal Description of Redevelopment Project Area**

## **EXHIBIT B**

### **Legal Description of Development Area**

The Development Area is the real estate in the City of Urbana, Illinois, bounded by Park Avenue to the north, Mathews Avenue to the west, University Avenue to the south and Goodwin Avenue to the east, more particularly described as follows:

All of Block 2 of Mrs. L. J. Romine's Subdivision of Block A of the Seminary Addition to Urbana, as shown on a plat recorded in Plat Book A at Page 248 in the Office of the Recorder, Champaign County, Illinois.

---

---

**REDEVELOPMENT AGREEMENT  
THIRD AMENDED AND RESTATED**

**by and between the**

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

**and**

**UNIVERSITY HOTEL LLC,  
AN ILLINOIS LIMITED LIABILITY COMPANY**

Dated as of January 1, 2002

---

---

**Document Prepared By:**

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

## TABLE OF CONTENTS

		<u>Page</u>
<b>ARTICLE I</b>	<b>DEFINITIONS</b> .....	2
Section 1.1.	Definitions .....	2
Section 1.2.	Construction .....	4
<b>ARTICLE II</b>	<b>REPRESENTATIONS AND WARRANTIES</b> .....	4
Section 2.1.	Representations and Warranties of the City .....	4
	(a) Organization and Standing .....	4
	(b) Power and Authority .....	4
	(c) Authorization and Enforceability .....	4
	(d) No Violation .....	5
	(e) Governmental Consents and Approvals .....	5
Section 2.2.	Representations and Warranties of the Developer .....	5
	(a) Organization .....	5
	(b) Power and Authority .....	5
	(c) Authorization and Enforceability .....	5
	(d) No Violation .....	5
	(e) Consents .....	6
	(f) No Proceedings or Judgments .....	6
Section 2.3.	Related Agreements .....	6
Section 2.4.	Disclaimer of Warranties.....	6
<b>ARTICLE III</b>	<b>CITY’S COVENANTS AND AGREEMENTS</b> .....	7
Section 3.1.	City’s Financial Obligations .....	7
Section 3.2.	Defense of Redevelopment Project Area .....	9
<b>ARTICLE IV</b>	<b>DEVELOPER’S COVENANTS</b> .....	9
Section 4.1.	Acquisition, Construction and Installation of Future Private Development	9
Section 4.2	City’s Right to Audit Developer’s Books and Records .....	10
Section 4.3	Indemnity.....	10
Section 4.4	Compliance With All Laws.....	10
<b>ARTICLE V</b>	<b>PAYMENT FOR ELIGIBLE PROJECT COSTS</b> .....	10
Section 5.1.	Payment Procedures .....	10
Section 5.2.	Approval and Resubmission of Requisitions .....	11
Section 5.3.	Time of Payment .....	11

<b>ARTICLE VI</b>	<b>DEFAULTS AND REMEDIES.....</b>	<b>12</b>
Section 6.1.	Defaults - Rights to Cure.....	12
Section 6.2.	Remedies .....	12
Section 6.3.	Costs, Expenses and Fees .....	13
<b>ARTICLE VII</b>	<b>MISCELLANEOUS PROVISIONS .....</b>	<b>13</b>
Section 7.1.	Entire Contract and Amendments .....	13
Section 7.2.	Third Parties .....	13
Section 7.3.	Counterparts .....	14
Section 7.4.	Special and Limited Obligation.....	14
Section 7.5.	Time and Force Majeure .....	14
Section 7.6.	Waiver.....	14
Section 7.7.	Cooperation and Further Assurances .....	15
Section 7.8.	Notices and Communications .....	15
Section 7.9.	Successors in Interest .....	16
Section 7.10.	No Joint Venture, Agency, or Partnership Created .....	16
Section 7.11.	Verification of Tax Increment .....	16
Section 7.12.	Illinois Law; Venue .....	16
Section 7.13.	No Personal Liability of Officials of City .....	16
Section 7.14.	Repealer.....	17
Section 7.15.	Term .....	17

**LIST OF EXHIBITS**

- EXHIBIT A      Legal Description of Redevelopment Project Area  
EXHIBIT B      Legal Description of Development Area