



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, Director

DATE: January 20, 2005

SUBJECT: **Redevelopment Agreement between City of Urbana and Blackrock Properties, Inc.**

Description

The purpose of this memorandum is to seek approval for the Mayor to enter into a pre-development agreement with Blackrock Properties, Inc. in consideration of its desire to construct a minimum of 50,000 square feet of new retail, service and office space, located on a 10-acre site, at the northwest corner of the “Five Points” intersection (see attached location exhibit). The developer envisions a combination of hotel, restaurant, shopping center, and outlot retail development on the site, as generally portrayed in the attached conceptual site plan. The agreement would provide the developer with assurances of future City assistance that are necessary to complete a planned purchase of the property. Under the terms of the development agreement, detailed development plans would be prepared at a future date for City review and approval. Special Use Permit approval would also be necessary for the shopping center component of the project.

Under the terms of the agreement, the cost of the proposed project, including purchase price and construction, shall be at least \$7,000,000. If approved, the agreement would require the City to provide Tax Increment Finance (TIF) assistance to Blackrock Properties, Inc. for a period of 10 years at an amount not to exceed \$1,000,000. In addition, the City would be obligated to commit \$100,000 towards public improvements at the site. The most recent construction/acquisition estimates of the developer (as of January 20, 2005), are now at \$9,250,000. Accordingly, the developer has requested that the limits in the Draft Development Agreement be modified and that the City consider eliminating or accelerating the \$1,000,000 so as to avoid undue constraints on project intensity.

Other City obligations include extending the duration of the Tax Increment Finance District 2 to 2022 and working with the Illinois Department of Transportation (IDOT) towards placement of a traffic signal at the intersection of Cunningham Avenue and Crystal Lake Drive. Provision of these incentives is pursuant to the satisfactory completion of the developer’s obligations within the

timelines specified in the attached agreement. The development would be completed in phases, with buildout expected to be completed by the end of 2009.

Background

The principal of Blackrock Properties (Mr. Joe Petry) has been collaborating with City staff to build upscale commercial space on the subject property located at the northwest corner of Cunningham and University Avenues. The developer has identified a market for increased retail, service and office space in Urbana, and a strong potential at this specific location. The site is currently occupied by the O'Brien Auto Park, which will relocate to an expanded site at 1107 O'Brien Drive under a development agreement approved by the City on January 29, 2001, and amended on July 7, 2003. Demolition of current structures will commence within twelve months after O'Brien Auto Park vacates the premises and construction will be completed within three years after that point. A land swap with the Urbana Park District would need to be completed to achieve the site configuration shown on the attached exhibit.

In order to make the project feasible, Blackrock Properties have requested certain incentives from the City in return for their investment in the site. The City would provide TIF assistance for 10 years in an amount not to exceed 80% of incremental tax revenues generated by the retail space in the project and no more than 50% of incremental tax revenues generated by the office and service space. In addition, to help beautify the proposed project area and establish it as a key entrance to the downtown, the City will construct necessary access and streetscaping improvements in the City right-of-ways at the site. All City obligations would be contingent upon the acquisition of building permits and the substantial completion of the project.

The proposed redevelopment will take advantage of the very high traffic volumes that are present at this location and would create more urban commercial activity in this area, helping to link to the rest of downtown as envisioned in the Downtown Strategic Plan. To help accommodate this activity and improve traffic circulation in the vicinity, the City will work with IDOT to promote the construction of traffic control signal at the intersection of Cunningham (U.S. Route 45) and Crystal Lake Drive. Commitment to construction of this signal improvement was previously provided by IDOT as a partial remedy to changed access patterns at the University/Cunningham intersection.

To fulfill its obligations in the Redevelopment Agreement Blackrock Properties Inc. will commit to the following:

- Submit to the City, by May 1, 2005, an application for a special use permit for use of the project site as a PUD/shopping center including related shopping center signage. Blackrock will also submit at this time, for review by the City, facility designs that conform to the Downtown Strategic Plan.
- Acquire fee simple title to the entire project site by June 1, 2005.
- Complete demolition of existing structures and prepare site for construction by

November 1, 2006.

- Complete construction of Phase 1 of the redevelopment project (e.g., hotel and restaurant components) by June 1, 2008
- Complete construction of the remainder of the redevelopment project by November 1, 2009

Issues

The property proposed for development falls within the boundaries of Tax Increment Finance District 2 (as shown on attached exhibit. The TIF district was established as part of the Urbana Downtown Tax Increment Area II Conservation-Redevelopment Plan and Projects (TIF 2 Plan, adopted December 15, 1986, and currently proposed for amendment). The TIF 2 allows for the City of Urbana to apply TIF funds for public infrastructure and other eligible improvements within the Redevelopment Project Area. The City is currently in the process of amending the TIF 2 Plan to extend the duration of the TIF 2 District until December 31, 2022. This amendment will accommodate the proposed redevelopment project and fulfill a city obligation under the agreement.

The proposed development is generally consistent with the TIF 2 Plan and Downtown Strategic Plan. As stated in the Downtown Strategic Plan (adopted February 4, 2002), the area at the intersection of Cunningham and University Avenues (Five Points) is desirable for retail, service and office redevelopment, since it is a key entrance to the downtown. An exhibit from the Downtown Strategic Plan illustrating this concept is attached. Through the development review and special use permit process, the City will seek to ensure site conformance to the goals of the Downtown Strategic Plan, including the concept of establishing a gateway presence. Commercial redevelopment is already occurring on the northeast corner of Five Points under a development agreement (approved September 2, 2003 and amended April 1, 2004). It is hoped that other new commercial development projects will be attracted by this activity to help serve the retail and service needs of the community and region.

The leveraging of public funds to redevelop and improve properties in the Five Points area is consistent with the goals of the TIF 2 Plan and the Downtown Strategic Plan, as is the use of TIF 2 funds for public infrastructure improvements. It is also a goal of the plans to increase the amount of retail business space in the City of Urbana and to increase the property tax base within the TIF 2 District. In light of these facts, it is in the City's best interest to provide certain financial incentives in order to allow this project to occur.

Fiscal Impact

The current Equalized Assessed Valuation (EAV) of the proposed development site is \$903,650 and the TIF Base Year EAV is \$810,235. The completed project is projected to have an EAV of at least \$2,200,000, yielding an increase of approximately \$1,390,000 above the base year. This increase in EAV will generate about \$118,400 annually in TIF 2 revenues. The estimated annual cost to the

City for the TIF assistance would range from approximately \$59,200 to \$94,700 for 10 years and would be provided from the project's resulting incremental revenues to the TIF 2 fund. The TIF assistance would be capped at \$1,000,000 over the ten-year period.

In return for these incentives the City would receive benefits in the form of additional sales tax revenue generated by the project, increased EAV, and increased tax increment for TIF 2, ranging from between \$24,000 to \$60,000 for the duration of the agreement and another \$120,000 annually until December 31, 2022. Additionally, this project would help spur further interest in the Five Points and downtown area for commercial development; would draw increased visitors to the downtown area creating a spillover effect benefiting all nearby businesses; and would help fulfill a key element of the Downtown Strategic Plan.

If the construction/acquisition cost is set at a minimum \$9,250,000, the EAV could be as high as \$3,085,000. Adjusting for the base EAV of \$810,235, this would generate approximately \$194,000 annually in TIF 2 revenues. TIF assistance could range from \$97,000 to \$155,200 per year, depending upon the amount of retail versus office space. Accordingly, the developer has requested that the TIF assistance be capped at a higher amount than \$1,000,000 so as not to act as a constraint upon the project. He has also requested that the amount to be devoted to public improvements be increased above the \$100,000 set in the agreement, due to unanticipated costs such as utility relocation and environmental clean-up needs.

Options

The city council has the following options in regards to this redevelopment agreement:

- The City Council may authorize the Mayor to enter into the proposed Redevelopment Agreement with Blackrock Properties, Inc.
- The City Council may authorize the Mayor to enter into the proposed Redevelopment Agreement with Blackrock Properties, Inc. subject to specific changes to be identified and agreed to by the developer.
- The City Council may deny authorization to enter into the proposed Redevelopment Agreement with Blackrock Properties, Inc.

Recommendations

The proposed retail redevelopment project is consistent with the goals of the TIF 2 Plan and the Downtown Strategic Plan. It will provide increased tax revenues to the City and create and attract increased retail and service opportunities to the community. Staff requests City Council approval of the development agreement between the City of Urbana and Blackrock Properties, Inc. as generally described herein, through approval of the proposed ordinance and development agreement.

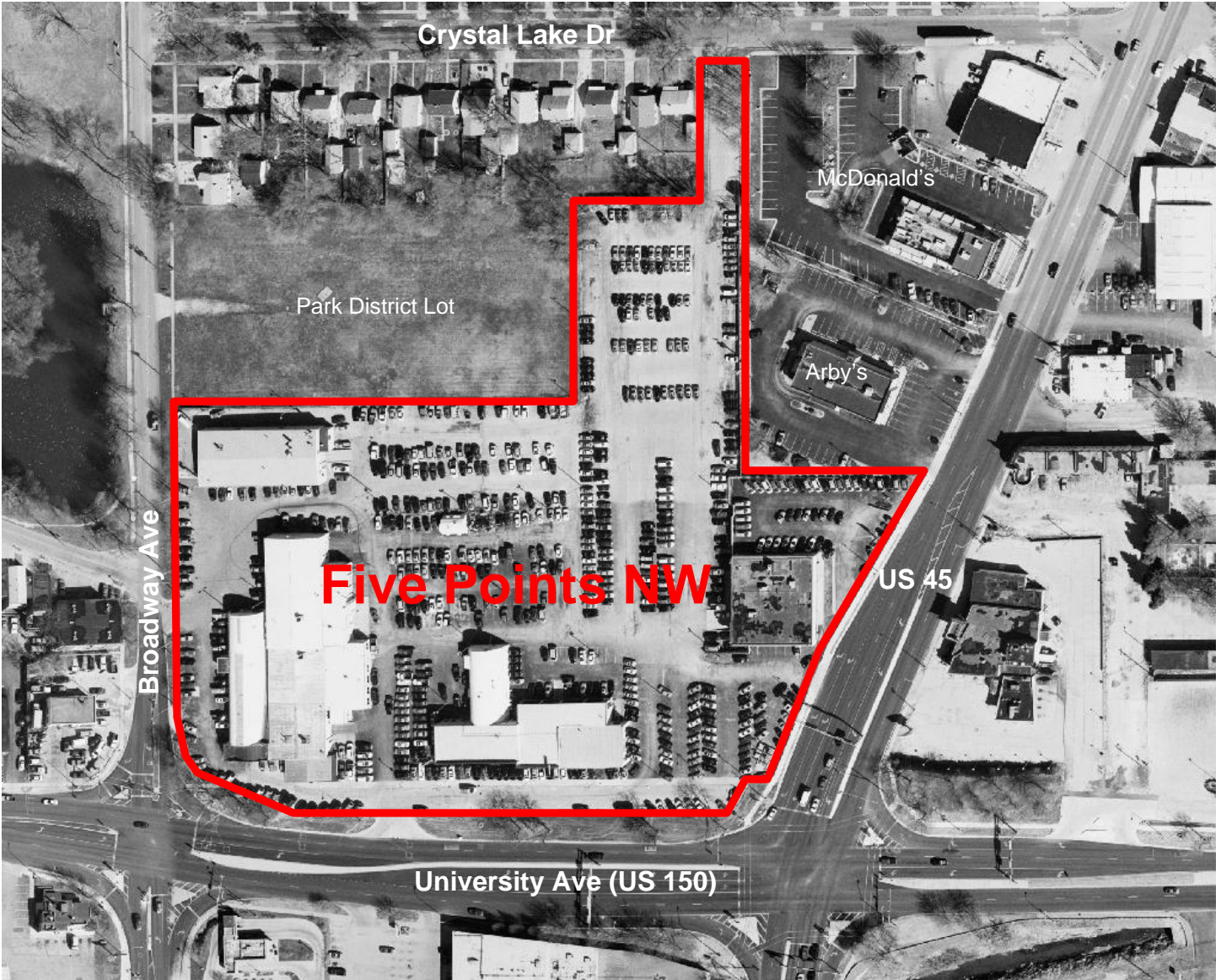
Attachments: A. Site Location

- B: Conceptual Site Plan
- C: TIF District 2 Map
- D. Downtown Strategic Plan Exhibit
- E. Ordinance
- D: Draft Development Agreement

Prepared by:

John Regetz, Economic Development Manager

Exhibit B

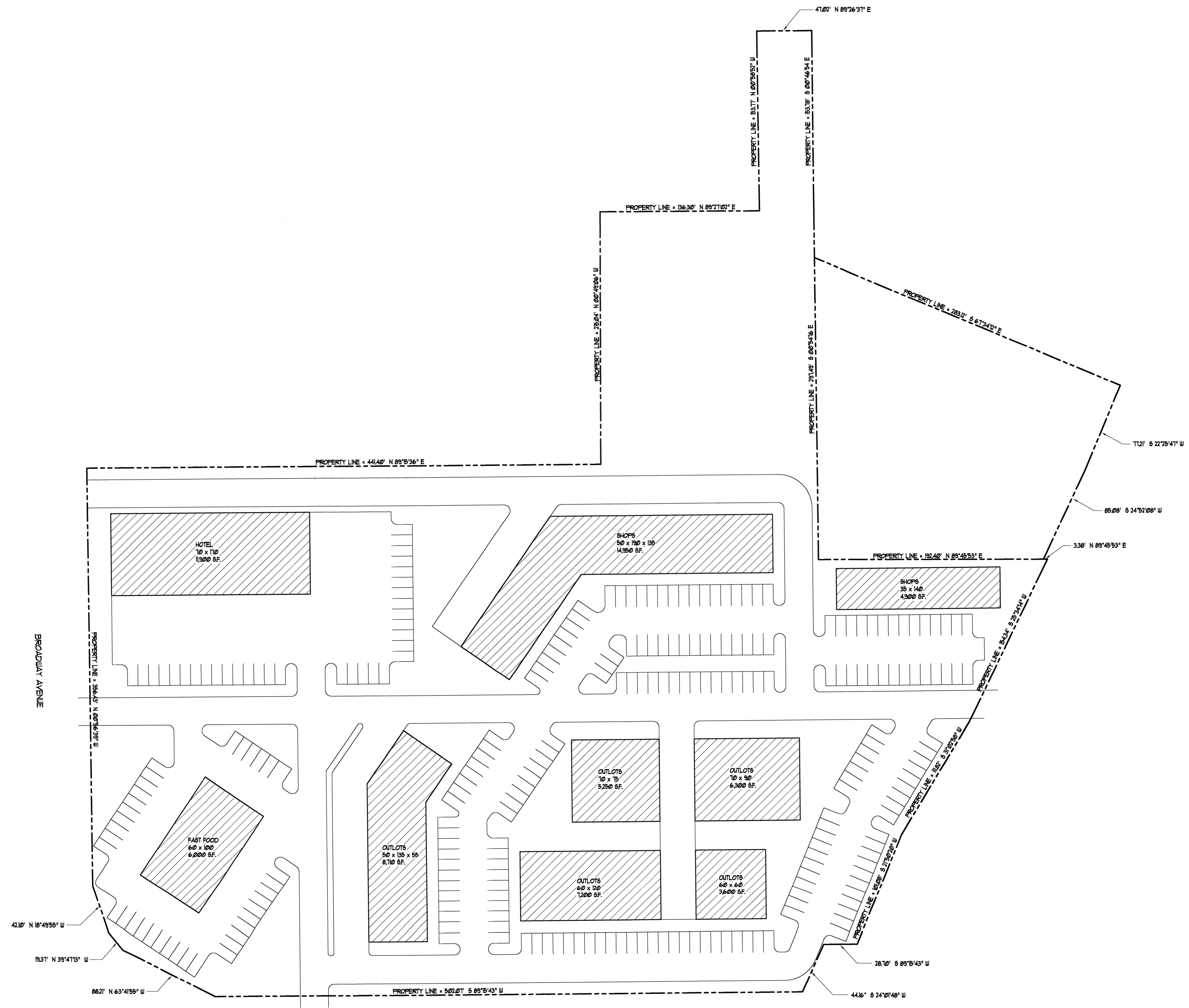


Five Points Northwest Location Aerial Map



Subject Site





BROADWAY AVENUE

UNIVERSITY AVENUE

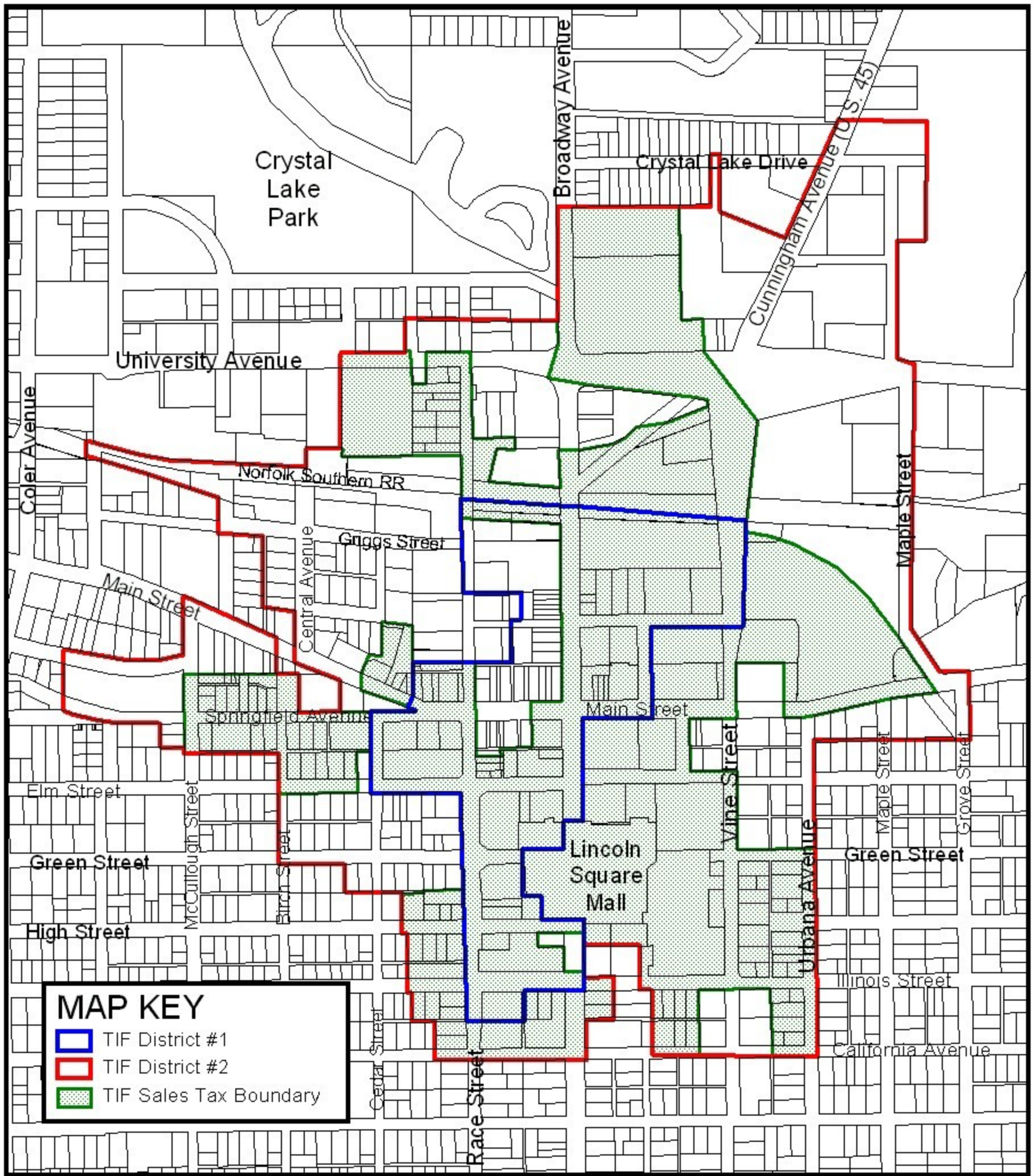
4 SITE PLAN - OPTION 3
 01 SCALE: 1" = 40'-0"
 NORTH

PROJECT #
 DATE: 22DEC04
 REV/CON:

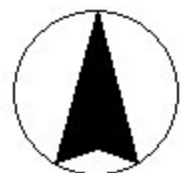
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These drawings and specifications are the property and copyright of Andrew Fell Architecture and Design and shall not be used on any other work except by written agreement with the Architect. Only written dimensions shall be used. Do not scale drawings. Dimensions shown on drawings shall be brought to the notice of the Architect prior to the commencement of any work.

SHEET
 51



Tax Increment Finance Districts 1 & 2



ORDINANCE NO. 2005-01-014

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REDEVELOPMENT AGREEMENT WITH
BLACKROCK PROPERTIES, INC

(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 Blackrock Properties,Inc., 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 _____ day of _____,
2005.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2005.

Tod Satterthwaite, Mayor

REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

BLACKROCK PROPERTIES, INC.

Dated as of February 1, 2005

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 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 1, 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 **Blackrock Properties, Inc.**, 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.

“**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 a hotel/motel facility, a restaurant facility, 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 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 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 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 or \$1,000,000.00, whichever is less; 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.

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 provide improvements such as access, utility relocation, landscaping, streetscape or other beautification projects in the public right-of-way surrounding the Development Project Site as may be determined by the City in an amount up to \$100,000.00, such improvements to be completed as required in connection with the progress of the Private Development Project at the sole cost and expense of the City;

(b) 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);

(c) 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;

(d) 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

(e) 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 the hotel/motel facility and the restaurant facility) as follows:

<u>Activity</u>	<u>Completion Date</u>
Acquire fee simple title to the entire Development Project Site	March 1, 2005
Submit Design Proposal and related application for Special Use Permit	May 1, 2006
Demolition and Site Preparation of Development Project Site	November 1, 2006

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.

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:
Blackrock Properties, Inc.
102 East Main Street
Urbana, IL 61801
Attn: _____
Tel: (217) 333-4260 / Fax: (217) ____ - ____

- (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: _____
Mayor

ATTEST:

City Clerk

Date: _____

BLACKROCK PROPERTIES, INC.

By: _____
Its sole shareholder, director and officer

Date: _____

[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