



MEMORANDUM

TO: Mayor Prussing
Members, Urbana City Council

FROM: Bruce Walden, CAO

DATE: July 20, 2005

RE: Redevelopment Agreement Between the City and CTC Properties, LLC (K-Mart Site Re-Use)

Summary

The purpose of this memo is to seek approval of the Urbana City Council to enter into a redevelopment agreement for the re-use of the vacant K-Mart site on Philo Road. The project proposed is a \$20,000,000 multi-use facility with 300 multi-family units and 40,000 square feet of retail space. The redevelopment agreement (attached) specifies the obligations of the developer in terms of investment, timing and development plan. The agreement also specifies the obligations of the City, which include reimbursement for the demolition of the existing vacant K-Mart building.

Purchase Contract Contingency

The developer has entered into a contract to purchase the K-Mart site contingent upon reaching a satisfactory development agreement with the City of Urbana as well as the standard due diligence items related to environmental review and standard practices. It is anticipated that upon approval of the development agreement, the developer will close on the property within forty-five days.

Background

Over the past several months, the City has been cooperating with residents, business owners and other stakeholders to implement a new revitalization strategy for the Philo Road Business District. The plan, entitled the "Philo Road Business District Revitalization Action Plan," dated January 20, 2005, was adopted on February 7, 2005 by the City

Council. The plan was developed partially in response to the recent closing of three retail businesses that occupied large parcels of land, namely the K-Mart, Jerry's IGA and the former Jewel stores. The vacancy of these buildings and parcels has created a perception of decline in the area that needs to be addressed in a sensible and timely manner.

The plans for the redevelopment of the site coincide well with the planning objectives and other developments within the area, many of which are outlined in the Philo Road Action Plan. These objectives were based on input from nearby residents, business owners and other stakeholders from meetings, interviews and surveys.

There are several overall objectives outlined in the Philo Road Plan. One of the key objectives is "to improve the image of the Philo Road Business District." This objective recognizes the importance of the appearance and vitality of the District as reflective of the neighborhood and of the City as a whole. Another objective mentioned is to "investigate site redevelopment uses." This project will improve the image of the District and will accomplish other objectives through redevelopment of a vacant, blighted-looking site along Philo Road and increased activity in the area. The addition of new residents as well as additional unique retail opportunities are expected to attract more visitors to the area and help sustain existing businesses.

Issues and Discussion

The agreement would enable the developer to redevelop the site with a mixed use commercial and residential facility consisting of approximately 40,000 square feet of retail space and a minimum of 300 residential units in two phases. The first phase will entail the demolition, clearance and removal of the existing building and debris from the site as well as any clearing and grading of land required, with the second phase to entail the construction of the new project. The first phase would be required to be completed no later than November 1, 2005. The project will be built in accordance with a site plan to be approved by the City, but substantially similar to that attached to the agreement, with the second phase to be completed no later than December 31, 2007.

A City obligation under the agreement is to reimburse \$285,000 to the developer to be used for eligible costs of demolition, site preparation and clearance and grading of land on the existing site. Payment shall be made in accordance with procedures set forth in the agreement. The second major obligation of the City is to assure the connection of Florida Avenue to Route 130 is accomplished in a timely manner. The developer is not willing to proceed with this project without such assurances.

The City has identified this street project as a top CIP priority and budgeted accordingly. It must be understood that, while City staff believes the road can be constructed by voluntary agreement of the adjoining land owners, we are committing to request a Court-approved road extension project if voluntary efforts are not successful in the next 24 months.

Zoning and Land Use

The K-Mart site is zoned B-3, General Business, which permits by right the planned use. Additional subdivision of the property may require a Minor Development Review and platting.

Fiscal Impact

The expenditure by the City under the agreement would total \$285,000. The payment shall be made only upon submission to the City of a requisition for eligible costs incurred or paid in accordance with procedures set forth in the agreement.

As the site is redeveloped and occupied, it is expected that there will be a substantial increase in property taxes that will be generated as compared to the current site, as well as additional sales taxes from retail uses. The project will have an estimated development cost of approximately \$20,000,000 which will generate approximately \$400,000 in annual tax revenue. The project will also indirectly benefit the City through increased patronage of nearby existing businesses, which will in turn generate additional sales tax revenue for the City. It will also likely spin off additional projects in the area.

Options

The City Council has the following options with respect to this Redevelopment Agreement:

1. The City Council may authorize the Mayor to enter into the proposed agreement with CTC Properties, LLC.
2. The City Council may authorize the Mayor to enter into the proposed agreement subject to specific modifications.
3. The City Council may deny authorization to enter into the proposed agreement.

Recommendation

Staff recommends that the Committee of the Whole forward the attached ordinance and agreement to the City Council's Special Council Meeting on August 8, 2005, with a motion for approval.

BKW:ss

Attachment

ORDINANCE NO. 2005-07-115

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT
INCENTIVE AGREEMENT WITH CTC PROPERTIES, LLC.

(K-Mart Site Re-Use)

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

Section 1. That a Development Incentive Agreement Between the City of
Urbana and CTC Properties, LLC., in substantially the form of the copy of
said Agreement attached hereto, be and the same is hereby approved.

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

PASSED by the City Council this _____ day of _____,
2005.

AYES:
NAYS:
ABSTAINS:

Phyllis D. Clark, City Clerk

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

Laurel Lunt Prussing, Mayor

DEVELOPMENT INCENTIVE AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**CTC PROPERTIES LLC,
AN ILLINOIS LIMITED LIABILITY COMPANY**

Dated as of August 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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EXHIBIT A	Legal Description of Development Project Site
EXHIBIT B	Promissory Note
EXHIBIT C	Mortgage
EXHIBIT D	Site Development Plan

DEVELOPMENT INCENTIVE AGREEMENT

THIS DEVELOPMENT INCENTIVE AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is made and entered into as of August 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 **CTC Properties LLC, an Illinois limited liability company** (the “**Developer**”).

RECITALS

WHEREAS, the Developer proposes to acquire, construct and install (or cause to be done) the Private Development Project (including related and appurtenant facilities as more fully defined below) on the Development Project Site (as defined below); and

WHEREAS, the Development Project Site (as defined below), is within the Philo Road Business District Redevelopment Area for which certain development incentives may be provided; and

WHEREAS, the Developer is unwilling to undertake the Private Development Project without certain 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.

“**Development Loan**” means a loan in the not to exceed principal amount of \$285,000.00 at a non-default interest rate of 0% per annum.

“**Development Project Site**” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit A hereto, upon or within which the Private Development Project is to be undertaken.

“Eligible Costs” means those costs attributable to the demolition of the existing structure, site preparation and the clearing and grading of land upon the Development Project Site which are paid and incurred by the Developer in connection with the Private Development Project and which are authorized to be reimbursed or paid under Section 3.1 of this Agreement.

“Loan Advance” means, collectively, an amount of loan proceeds to be advanced from time to time by the City in connection with the Development Loan to or at the direction of the Developer under and pursuant to Section 3.1 of this Agreement.

“Loan Documents” means, collectively, the Promissory Note attached hereto as Exhibit B and the Mortgage attached hereto as Exhibit C as described in Section 3.2(b) of this Agreement.

“Permitted Encumbrances” means the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record, which do not underlie the proposed Private Development, covenants and restrictions of record which are not violated by the proposed Private Development, and a mortgage to secure a construction loan for Phase II of the Private Development Project.

“Private Development Project” means, collectively, the acquisition, construction and installation of a mixed use commercial and residential facility having approximately 40,000 square feet of retail space and not less than 300 residential units (together with the related real estate, demolition of buildings, site preparation and appurtenant facilities), all of which is to be accomplished within or upon the Development Project Site in two phases by the Developer in accordance with the Site Development Plans as follows:

Phase I: the demolition, clearance and removal of any existing buildings and structures and debris from the Development Project Site and the clearing and grading of land as required upon the Development Project Site.

Phase II: the completion of the remainder of the Private Development Project.

“Site Development Plans”, means collectively, the site development plan attached hereto as Exhibit D depicting the new mixed use commercial and residential facility to be constructed and installed within or upon the Development Project Area in accordance with Phase II of the Private Development Project, including the schematic elevations and floor plans for such Phase II of the Private Development Project.

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 funds 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 operated with management vested in its _____.

(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.** 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. 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. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections associated with any of the provisions of this Agreement.

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 at the Development Project Site. Subject to the terms and conditions of Section 3.2 of this Agreement, the City agrees to provide to the Developer the Development Loan. The Development Loan shall be subordinate to a construction loan for Phase II of the Private Development Project and shall be payable in full no later than August 31, 2007. The Development Loan shall be a straight line of credit. Any Loan Advance under the Development Loan shall only be made upon the submission to the City of a Requisition for Eligible Costs incurred or paid in accordance with the procedures set forth in Section 5.1 of this Agreement.

Section 3.2. Conditions Precedent. The obligation of the City to provide the Development Loan to the Developer under this Agreement is contingent upon each of the following:

(a) The Developer shall have acquired title to the Development Project Site, subject only to the Permitted Encumbrances, all as evidenced by a title commitment for such Development Loan issued by a title company regularly doing business in Champaign County, Illinois; and

(b) The payment of the Lender's title policy premium and any related search charges and the execution and delivery by the Developer, including each of the Developer's principals in their personal capacity, of a promissory note substantially in the form of that attached hereto as Exhibit B and by the Developer of a mortgage substantially in the form of that attached hereto as Exhibit C in connection with the Development Loan.

Section 3.3. Discharge of Development Loan. Anything to the contrary in the Loan Documents notwithstanding, in the event that the Private Development Project is substantially completed and open for business on or before August 31, 2007, the Development Loan shall be deemed fully paid and discharged.

Section 3.4. Extension of Florida Avenue. The Corporate Authorities of the City agree to use their best efforts to extend or cause the extension of Florida Avenue from its present terminus at Abercorn Street easterly to High Cross Road (State Route 130) on or before August 31, 2007, and if such extension is not completed or otherwise provided for by such date, to take any such further

action as may be necessary to acquire such right-of-way in order to pursue the completion of such extension with all due diligence.

Section 3.5. Defense of Agreement. In the event that any court or governmental agency having jurisdiction over enforcement of the subject matter contemplated by this Agreement shall determine that this Agreement, including any Loan Advance to be made by the City, or any discharge thereof, are contrary to law, the City will defend the integrity of this Agreement.

ARTICLE IV

DEVELOPER'S COVENANTS

Section 4.1. Agreement to Undertake the Private Development. The Developer covenants and agrees to undertake the Private Development Project in the manner and with the effect set forth in this Agreement, substantially in accordance with the Site Development Plans, including as such Site Development Plans, as modified by the Developer, may be subsequently approved by the City in writing. In addition, the Developer covenants and agrees to undertake each of the following:

(a) to complete the Private Development-Phase I by demolishing, clearing and removing the existing structure located within or upon the Development Project Site on or before November 1, 2005; and

(b) to complete the Private Development-Phase II by commencing such further acquisition, construction and installation of the Private Development in a timely manner as to satisfactorily assure that such acquisition, construction and installation of the Private Development is substantially completed and open for business on or before August 31, 2007.

Section 4.2. Acquisition, Construction and Installation of Private Development Project. The Developer shall at all times cause the Private Development Project to be acquired, constructed and installed in conformance with this Agreement and all applicable laws, rules and regulations, including all subdivision, zoning, environmental or other land use ordinances of the City. Any agreement of the Developer related to the Private Development Project 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 4.3. [RESERVED]

Section 4.4. 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 the

Developer in connection with this Agreement, including any matter or thing in connection with the Private Development Project, whether or not suit is filed.

Section 4.5. Compliance With All Laws. The Developer agrees that in the performance, use, occupation, operation and maintenance of the Private Development Project, the Developer will comply with all applicable federal and state laws, rules and regulations and all applicable City ordinances.

Section 4.6. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Area. 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 Area upon which the Private Development is located and shall be in full force and effect until December 31, 2025, 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 such land 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.

ARTICLE V

PAYMENT FOR ELIGIBLE COSTS

Section 5.1. Payment Procedures. The City and the Developer intend and agree that any Loan Advance to 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 Loan Advance for the Eligible Costs. Payments to or at the direction of the Developer of any Loan Advance for Eligible Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a “**Requisition**”) submitted by the Developer from time to time stating:

- (i) that certain Eligible Costs have been completed and have either been approved or accepted by the Developer;
- (ii) the dollar amount of the Loan Advance to be advanced in connection with such request; and
- (iii) the dollar amount, if any, of the Eligible Costs remaining to be paid.

Any such requisition shall be accompanied by such documentation as may reasonably be requested by the CAO, including contractor’s affidavits or lien waivers, as applicable.

Section 5.2. Approval and Resubmission of Requisitions. The CAO shall give the Developer written notice disapproving the Requisition within ten (10) days after receipt thereof. If a Requisition is disapproved by such CAO, the reasons for disallowance will be set forth in writing and the Developer may resubmit the 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. The City shall make the payment or reimbursement to or at the direction of 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. Except as otherwise provided in Section 6.4 of this Agreement below in connection with defaults and remedies related to the Development Loan, any other 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 shall, 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. 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 payment or reimbursement which shall become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any other monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement. The provisions of this Section 6.2 shall not be applicable, however, to the indemnity obligations of the Developer under Section 4.4 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 breach 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.

Section 6.4. Development Loan. The rights and obligations of the parties in connection with the Development Loan, including any defaults and remedies associated therewith, shall be as otherwise set forth in the Loan Documents and Section 3.3 of this Agreement, anything to the contrary in this Article VI of this Agreement notwithstanding.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1 Entire Contract and Amendments. This Agreement (together with the Exhibits A to D, inclusive, attached hereto) is the entire agreement between the City and the

Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

Section 7.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 7.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 7.4. Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute “unavoidable delays”): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City, or for any other reasons not within either the Developer’s or the City’s control.

Section 7.5. 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 7.6. 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 7.7. 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:

Tel: (____) ____ - _____

Fax: (____) ____ - _____

- (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 7.8. 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 consent of the City, which shall not be unreasonably withheld or delayed.

Section 7.9. 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 7.10. 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 7.11. 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 7.12. 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 7.13. Superceder. 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 7.14. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until August 31, 2007, including as such date may be extended, if at all, by any "unavoidable delays" as defined in Section 7.5 of this Agreement. Anything to the contrary notwithstanding, however, the Developer's obligations under Sections 4.4, 4.5 and 4.6 of this Agreement shall be and remain in effect in accordance with the express provisions of such Sections.

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: _____

CTC PROPERTIES LLC

By: _____
Its _____

Date: _____

[Exhibits A to D, inclusive, follow this page and are integral parts of this Agreement in the context of use.]

EXHIBIT A

Legal Description of Development Project Site

EXHIBIT B

Promissory Note

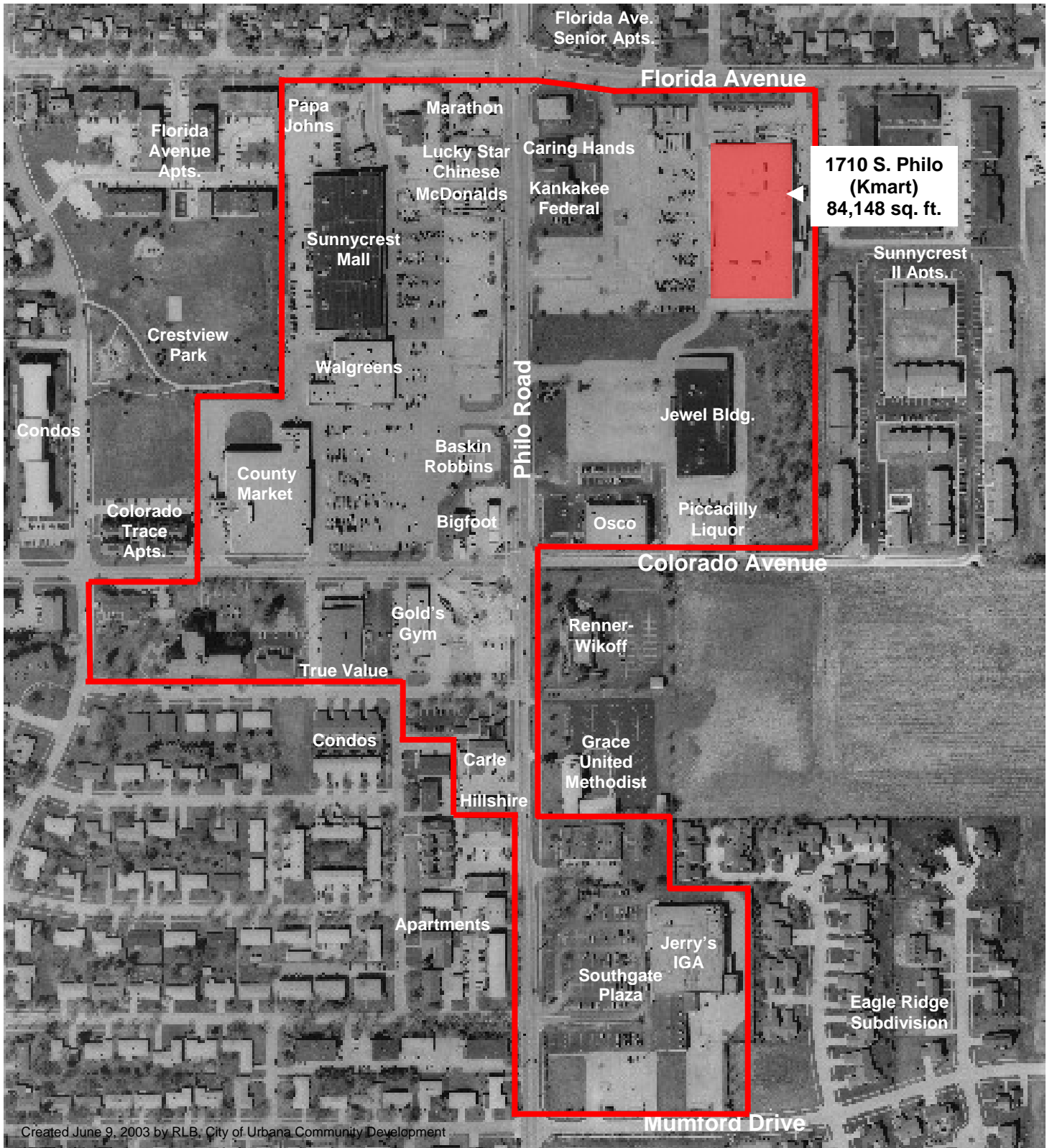
EXHIBIT C

Mortgage

EXHIBIT D

Site Development Plan

SOUTHEAST URBANA BUSINESS DISTRICT



Created June 9, 2003 by RLB, City of Urbana Community Development

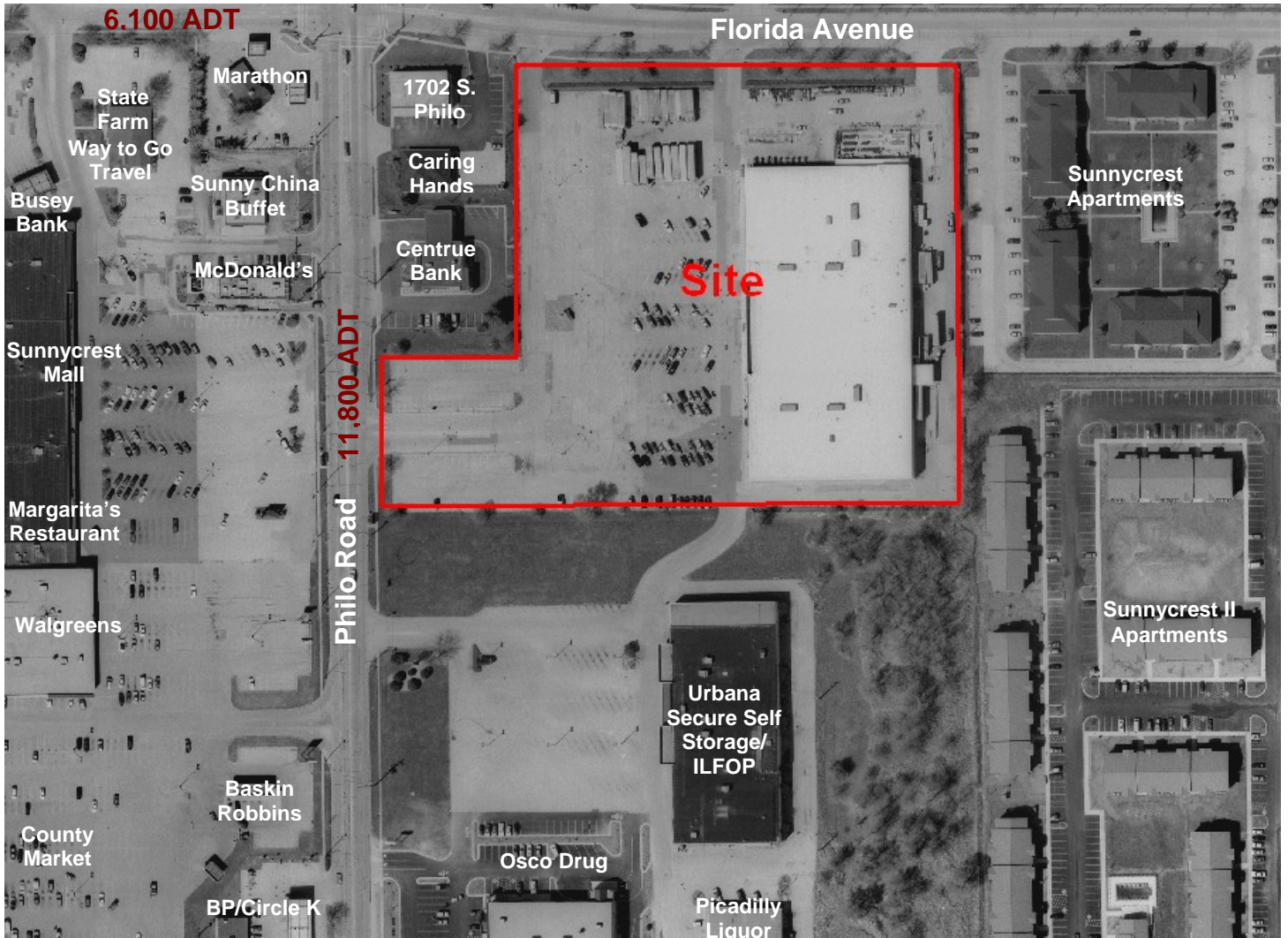
 District Boundary

SOUTHEAST URBANA BUSINESS NEIGHBORHOOD BOUNDARY MAP



Kmart Site

1710 S. Philo Rd., SE Corner Florida & Philo



- Area:** ~8.69 acres, 229 ft frontage on Philo Road, 585 feet along Florida Avenue
- Zoned:** B3, General Business
- Utilities:** All utilities to the site, Ameren IP Power, Illinois-American Water, City Sewers
- Parking:** Currently 465 spaces on west portion of site, repaved in last 5 years
- Access:** Existing driveway access off Philo Road and Florida Avenue
- Setback:** 15 ft buffer required on front, 5 ft if landscaped, 10 ft rear and 5 ft side yards
- Transport:** Bus Line, Avg. Daily Traffic: Philo S. of Florida – 11,800, Florida W. of Philo – 6,100
- Building:** 84,180 sq. ft., masonry structure w/ split face concrete block façade, rubber roof