**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Economic Development Division*

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

**TO:** Laurel Lunt Prussing, Mayor

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

**DATE:** November 29, 2007

**SUBJECT:** **Second Supplemental Memo on the Redevelopment Agreement with TC-Met Urbana, LLC (Trammell Crow 1008-1012 West University)**

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The purpose of this memo is to supplement the original and supplemental memo on the redevelopment agreement with TC-Met Urbana, LLC, dated November 8, 2007, and November 21, 2007, respectively. At the Special City Council meeting on November 26, 2007, City Council continued consideration of the attached ordinance and redevelopment agreement to allow representatives of the developer and the City to draft language agreeable to both parties related to the leasing of the non-residential portion of the project.

The main issue to be resolved is the process for the developer to lease the non-residential portion of the project to a non-retail user. While both the developer and the City would prefer to have retail businesses located on the ground floor of the project, the developer has argued that market conditions may dictate the need to lease that space to a non-retail user. The language in the existing draft redevelopment agreement would require the developer to seek City Council approval to lease to a non-retail user. The revised language would eliminate the requirement to seek City Council approval, however, it does require that the developer make a good faith effort to lease the space to a retail user for one year from the completion of the project, after which the developer can lease the space to any user consistent with City regulations.

## Options

1. Approve the ordinance as presented

2. Approve the ordinance with changes to the agreement. It should be noted that any changes to the agreement will need to be agreed upon by the developer.

3. Deny the ordinance.

## Recommendation

Staff recommends that the City Council approve the attached ordinance.

Prepared by:

_____

Tom Carrino, Economic Development Manager

Attachments:

Exhibit A: Draft Ordinance with Agreement and Conceptual Site Design

ORDINANCE NO. 2007-11-125

AN ORDINANCE APPROVING A REDEVELPMENT AGREEMENT WITH TC-MET URBANA, LLC
(Trammell Crow 1008-1012 West University Avenue)

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

Section 1. That a Redevelopment Agreement Between the City of Urbana and TC-Met Urbana, 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 _____, 2007.

AYES:

NAYS:

ABSTAINS:

_____
Phyllis Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2007.

_____

Laurel Lunt Prussing, Mayor

**REDEVELOPMENT AGREEMENT**

**by and between the**

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

**and**

**TC-MET URBANA, LLC**
**A DELAWARE LIMITED LIABILITY COMPANY**

Dated as of November 1, 2007

**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

# REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (including any exhibits and attachments hereto, collectively, this **"Agreement"**) is made and entered into as of November 1, 2007, 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 **TC-Met Urbana, LLC**, a Delaware limited liability company (the **"Developer"**). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and deliver this Agreement to the other (the **"Effective Date"**).

## RECITALS

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at 65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the **"TIF Act"**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the **"Corporate Authorities"**) did adopt an ordinance (Ordinance No. 8990-59 on December 18, 1989) including as supplemented and amended by certain ordinances (Ordinance No. 9091-65 on December 3, 1990 and Ordinance No. 2002-06-065 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 North Campus and King Park Redevelopment Project Area (the **"Redevelopment Project Area"**) and approved a related North Campus and King Park Redevelopment Plan, as supplemented and amended by the North Campus and King Park Redevelopment Plan, First Amended and Restated (collectively, the **"Redevelopment Plan"**) including the respective redevelopment projects described in the Redevelopment Plan (collectively, the **"Redevelopment Projects"**); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to develop the Development Project Site (as defined below), and, in furtherance thereof, to acquire, construct and install (or cause to be done) the Development Project (including the related appurtenant facilities, as more fully defined below) on the Development Project Site (as defined below); and

**WHEREAS**, a part of the Development Project Site (as defined below) on which the Development Project is to be located is within the Redevelopment Project Area; and

**WHEREAS**, the Developer is unwilling to undertake the 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 site plan and the schematic elevation and floor plans for the Development Project, a copy of which is attached hereto as Exhibit A.

**"Development Project"** means the construction of a mixed use residential and retail/commercial building, including approximately 9,000 square feet of retail space (the **"Retail Space"**), to be built substantially in accordance with the Design Proposal within or upon the Development Project Site at a total cost of not less than $17,000,000.

**"Development Project Site"** means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit B hereto, upon or within which the Development Project is to be located.

**"Eligible Redevelopment Project Costs"** means those costs paid and incurred by the Developer in connection with the Development Project Site and the 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 as of January 1, 1986 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, has been allocated to and when collected shall be paid to the Treasurer of the City for deposit by the Treasurer into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

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

**"Reimbursement Amounts"** means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.2(a) of this Agreement.

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

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

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

(a) definitions include both singular and plural;

(b) pronouns include both singular and plural and cover all genders;

(c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof; and

(d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

## ARTICLE II

## REPRESENTATIONS AND WARRANTIES

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

**(a) Organization and Standing**. The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

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

**(c) Authorization and Enforceability**. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

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

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

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

**(a) Organization**. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business in, and is in good standing under, the laws of the State of Illinois and 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 member. 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 (which may be redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

**Section 2.4. Disclaimer of Warranties**. The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the 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. 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" on or before the "Completion Date" in accordance with the schedule set forth below:

| Activity | Completion Date |
|---|---|
| Apply for building permit for Development Project | January 31, 2008 |
| Deliver to the City a budget itemizing all costs to complete the Development Project in an amount not less than $17,000,000 | March 31, 2008 |
| Undertake demolition and site preparation of Development Project Site | March 31, 2008 |
| Award initial contract for construction of Development Project | March 31, 2008 |

If the Developer shall fail to demonstrate that it had in fact fulfilled its respective obligation in connection with each "Activity" on or before the applicable "Completion Date", the City shall have the right and option to immediately terminate this Agreement by providing written notice of such termination upon the Developer, in which event the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no force or effect.

**Section 3.2. City's Financial Obligations**. The City shall have the obligations set forth in this Section 3.2 relative to financing Eligible Redevelopment Project Costs in connection with the 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 3.2 immediately below, agrees to reimburse the Developer from the Fund such Reimbursement Amounts as are paid and incurred by the Developer and are directly related to the Development Project at the Development Project Site as follows:

(a) such Reimbursement Amounts in connection with the Development Project shall not exceed in any one calendar year sixty-three and one-half percent (63.5%) of the Incremental Property Taxes actually received by the City in each such calendar year which are directly attributable to the Development Project at the Development Project Site;

(b) for the purpose of calculating the total amount of Incremental Property Taxes for any such calendar year which are directly attributable to the Development Project, the total equalized assessed value (the **"EAV"**) of the Development Project Site for such calendar year shall be reduced by the initial EAV of the Development Project Site in the agreed amount of $23,380, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Areas for any such applicable calendar year;

(c) the total amount of all such annual payments of the Reimbursement Amounts pursuant to this Section 3.2(a) above shall not exceed the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Development Project at the Developer Project Site or $1,250,000, whichever is less; and

(d) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.2 shall be for a maximum period of four (4) calendar years, commencing with the calendar year following the calendar year in which a certificate of occupancy is issued for the Development Project, and shall terminate upon reimbursement by the City in accordance with Article V of this Agreement not later than December 31 of the fifth calendar year in which any such Reimbursement Amounts in connection with the Developer Project become due and payable pursuant to this Section 3.2.

**Section 3.3. Defense of Redevelopment Project Area**. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amounts to be made by the City are contrary to law, or in the event that the legitimacy of the Redevelopment Project Area are otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

## ARTICLE IV

## DEVELOPER'S COVENANTS

**Section 4.1. Commitment to Undertake the Development Project and Schedule**. The Developer covenants and agrees to substantially complete, as evidenced by the issuance of a certificate of occupancy, the Development Project on or before July 31, 2009. During the progress of the Development Project, the Developer and the Mayor of the City may authorize such changes to the 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 Mayor to enhance the economic viability of the Development Project; provided, however, that the Developer shall not make any material change to the 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 Corporate Authorities.

**Section 4.2. Compliance with Agreement and Laws During Development**. The Developer shall at all times acquire, construct and install the Development Project in conformance with this Agreement, the Design Proposal and all applicable laws, rules and regulations, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use ordinances of the City, and, to the extent applicable, the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois. The Developer shall cause the Development Project to be designed, constructed and installed utilizing innovative and effective techniques in energy conservation that meet or exceed the standards required by Illinois Energy Conservation Code. Any agreement of the Developer related to the acquisition, construction, installation and development of the Development Project with any contractor, subcontractor or supplier shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 4.3. City's Right to Audit Developer's Books and Records**. The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Development 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 Development 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 Development Project that was financed by the Developer and in fact paid and incurred by the Developer.

**Section 4.4. Indemnity**. The Developer covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses resulting from the acquisition, construction and installation of the Development Project, any development activities in connection with the Development Project or any use, operation, maintenance or occupancy of the Development Project by the Developer and its agents, contractors and subcontractors with respect to the Development Project and this Agreement, and to indemnify and hold and save the City and its officers, agents, employees, engineers and attorneys (the **"Indemnitees"**) harmless of, from and against such claims, damages, demands, expenses, liabilities and losses, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of the negligence or willful misconduct of the City or other Indemnitees.

**Section 4.5. Continued Compliance With All Laws**. The Developer agrees that in the continued use, occupation, operation and maintenance of the Development Project following its completion, the Developer will comply with all applicable federal and state laws, rules and regulations and all applicable City ordinances, codes and regulations.

**Section 4.6. Real Estate Tax Obligations**. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable

interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Project Site. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Project Site under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Project Site upon which the Developer Project is located and shall be in full force and effect until December 31, 2027, 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 4.6 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of real estate taxes assessed and levied upon the Development Project Site or any part thereof.

**Section 4.7. Leasing of Retail Space**. By not later than six (6) months after receipt of a building permit for the Development Project and continuing for a period of one (1) year after the date that the Development Project is substantially complete, as evidenced by the issuance of a certificate of occupancy, the Developer shall, through a professional leasing company, market the Retail Space within the Development Project to prospective tenants whose use of such Retail Space is subject to the payment of sales taxes (**"Retail Tenants"**) and, during such period, shall not lease

the Retail Space to other than a Retail Tenant. In the event that such Retail Space or any such part thereof has not been leased to one or more Retail Tenants during such period or it thereafter becomes vacant, while Developer shall continue to seek Retail Tenants, the Developer may lease such vacant Retail Space or any part thereof to other prospective tenants, whether or not such tenant's use is subject to the payment of sales tax.

## ARTICLE V

## PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

**Section 5.1. Payment Procedures**. The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes attributable to the Development Project at the Development Project Site that are actually received and deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts shall be disbursed by the Comptroller of the City for payment to the Developer in accordance with the procedures set forth in this Section 6.1 of this Agreement.

The City hereby designates the Comptroller of the City (the **"Comptroller"**) as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a **"Requisition"**) submitted by the Developer on or after September 1 of each applicable calendar year with respect to any Eligible Redevelopment Project Costs incurred but not previously submitted. Each such Requisition shall be accompanied by such documentation or by the statement or report of an Independent accountant which shows and verifies that any such Eligible Project Redevelopment Costs have in fact been paid and incurred by the Developer.

**Section 5.2. Approval and Resubmission of Requisitions**. The Comptroller shall give the Developer written notice disapproving any Requisition within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that either of the following have not been

sufficiently documented or specified herein: (i) the amount of the total Eligible Redevelopment Project Costs paid and incurred by the Developer, or (ii) such Eligible Redevelopment Project Costs being directly related to the costs paid or incurred by the Developer for the Development Project at the Development Project Site. If a Requisition is disapproved by such Comptroller, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

**Section 5.3. Time of Payment**. Upon the approval of an applicable Requisition as set forth in Section 6.2 above, the City shall pay each of the applicable annual Reimbursement Amounts to the Developer within thirty (30) days after the receipt by the City of the last installment of the Incremental Property Taxes in any applicable calendar year.

**Section 5.4. Shortfalls**. If any Requisition is not paid in full in any calendar year due to any of the limitations specified for Reimbursement Amounts in Section 3.2(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 as a part of any applicable annual Reimbursement Amounts in the next or any succeeding calendar year at the time of payment.

## ARTICLE VI

## DEFAULTS AND REMEDIES

**Section 6.1. Events of Default**. The occurrence of any one or more of the events specified in this Section 6.1 shall constitute a **"Default"** under this Agreement.

(a) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement or any of the Related Agreements that is false or misleading in any material respect;

(b) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement or any of the Related Agreements;

(c) The failure by the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V of this Agreement; and

(d) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

**Section 6.2. Rights to Cure**. The party claiming a Default under Section 6.1 of this Agreement (the **"Non-Defaulting Party"**) shall give written notice of the alleged Default to the other party (the **"Defaulting Party"**) specifying the Default complained of. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, but may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances, deemed reasonably adequate by the Non-Defaulting Party, from the Defaulting Party that the Defaulting Party will cure the Default and remain in compliance with its obligations under this Agreement. A Default not cured within thirty (30) days as provided above shall constitute an **"Event of Default"** under this Agreement; provided, however, that if the Default is not capable of being cured within such thirty (30) day period, it shall not be deemed to be an Event of Default hereunder if the Default is commenced to be cured within such thirty (30) day period and is thereafter diligently and continuously prosecuted until finally cured. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Event of Default shall not operate as a waiver of any such Default, Event of Default or of any other rights or remedies it may have as a result of such Default or Event of Default.

**Section 6.3. Remedies**. Upon the occurrence of an Event of Default under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of an Event of Default under this Agreement by the Defaulting Party shall be to institute legal action against the Defaulting Party for specific performance or other appropriate equitable relief. Except for the payment of any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any

monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof is due to insufficient Incremental Property taxes which are directly attributable to the Development Project at the Development Project Site being actually received by the City, any such failure shall not be deemed to be a Default on the part of the City.

**Section 6.4. Costs, Expenses and Fees**. Upon the occurrence of a Default which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

## ARTICLE VII

## TRANSFER LIMITATIONS

**Section 7.1 Representation as to Development**. The Developer represents to the City that its purchase of the Development Project Site, and its other undertakings under this Agreement, are for redevelopment purposes and not for speculation in land holding. The Developer acknowledges that, in view of the importance of the development of the Development Project to the general welfare of the City, and the substantial financing that has been made available by the City for the purpose of making such development possible, the nature and scope of the particular improvements of the Development Project as specified in the Design Proposal and this Agreement are of particular concern to the City. The Developer further acknowledges that the City is willing to enter into this Agreement with the Developer because of such nature and scope of the Development Project.

**Section 7.2. Limitations on Assignment**. The Developer agrees that it shall not sell, assign or otherwise transfer its rights and obligations under this Agreement in whole without the

prior written consent of the City, except for: (i) any assignment of this Agreement as collateral, or (ii) any related sale, assignment or transfer of this Agreement in whole which is made to an assignee in connection with a conveyance to such assignee of all right, title and interest of the Developer in and to the Development Project Site. In no event shall the Developer have the right to sell, assign or otherwise transfer any of its rights or obligations under this Agreement in part to any assignee. Except as otherwise provided in this Section, any assignment in whole without the City's consent or any assignment in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer authorized in this Section, including any without the City's consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the assignee thereof. Any assignment of this Agreement as authorized and becoming effective under this Section shall release and discharge the assignor from any further rights and obligations under this Agreement.

**Section 7.3. Information as to Partners and/or Stockholders**. In order to assist in the effectuation of the purposes of this Article VII of this Agreement, the Developer agrees that during the period between execution of this Agreement and the substantial completion of the Development Project as evidenced by the issuance of a certificate of occupancy by the City, the Developer will promptly notify the City in writing of any and all changes in control of the Developer, other than to an affiliate of Developer. The term control (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of interests in such entity, by contract, or otherwise. The term "affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under the common control with Developer or one or more of Developer's partners, members or shareholders, as the case may be.

## ARTICLE VIII

## MISCELLANEOUS PROVISIONS

**Section 8.1 Entire Contract and Amendments**. This Agreement (together with the Exhibits A and B attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. 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 8.2. 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 8.3. 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 8.4. Special and Limited Obligation**. This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations hereunder only such amount of the Incremental Property Taxes attributable to the Development Project at the Development Project Site as is set forth in Section 3.2 hereof, if, as and when received, and not otherwise.

**Section 8.5. Time and Force Majeure**. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute

"unavoidable delays"): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

**Section 8.6. Waiver**. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

**Section 8.7. Cooperation and Further Assurances**. The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

**Section 8.8. Notices and Communications**. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer

at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

(i) In the case of the Developer, to:
TC-MET URBANA, LLC
601 NW Loop 410, Suite 350
San Antonio, TX 78205
Attn: Chris Harness
Tel: (210) 225-1000 / Fax: (210) 223-9647

(ii) In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Community Development Director
Tel: (217) 384-2439 / Fax: (217) 384-0200

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

**Section 8.9. Successors in Interest**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

**Section 8.10. 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 8.11. 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 8.12. 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 8.13. 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, to the extent lawful.

**Section 8.14. Term**. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until the completion of the Development Project and the reimbursement of all Reimbursement Amounts under Section 3.2 hereof; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section.

**Section 8.15. Recordation of Agreement**. Either party may record this Agreement or a Memorandum of this Agreement in the office of the Champaign County Recorder at any time following its execution and delivery by both parties.

**Section 8.16. Construction of Agreement**. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

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

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

By:_____
Mayor

ATTEST:

_____
City Clerk

Date:_____

**TC-MET, LLC, a Delaware limited liability company**

By: TC-Met Student Housing, LLC, a Delaware limited liability company, its sole member

By: TC Student Housing, Inc., a Delaware corporation, its managing member

By:_____
Christopher C. Harness, President

Date:_____

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

**EXHIBIT A**

**Design Proposal**

**EXHIBIT B**

**Legal Description of Development Project Site**

LEGAL DESCRIPTION:

The East 135 feet of Lot 1, and all of Lots 9, 11 and 12, in John W Stipes Subdivision in the City of Urbana, Illinois, as per plat shown in Plat Book "B" at page 12, situated in Champaign County, Illinois. More commonly known as 1008 and 1010 West University, Urbana, Illinois.

Permanent Index Nos. 91-21-07-431-019, 91-21-07-431-021, and 91-21-07-431-009

AND

Lot 10 in John W. Stipes Subdivision in the City of Urbana, Illinois, as per plat shown in Plat Book "B" at page 12, situated in Champaign County, Illinois. Most commonly known as 1012 W. University, Urbana, Illinois.

Permanent Index No. 91-21-07-431-007

AND

Beginning at the Northwest Corner of Lot 1 of John W. Stipes Subdivision, Urbana, Illinois, said point being on the Southerly right-of-way line of the Norfolk and Western Railway Company, proceed thence North 00 degrees 10 minutes 21 seconds East, 21.33 feet along the East line of Goodwin Avenue to the Northerly right-of-way line of the Norfolk and Western Railway Company, said line being coincidental with the Southerly right-of-way line of the Penn Central Railroad; thence South 70 degrees 02 minutes 19 seconds East, 411.00 feet along the Northerly right-of-way line of the Norfolk and Western Railway Company, thence South 68 degrees 01 minutes 28 seconds East 158.13 feet to a point on the Northerly extension of the East line of Lot 9 of John W. Stipes Subdivision; thence South 00 degrees 01 minutes 49 seconds East, 31.50 feet along the Northerly extension of the said East line to the Southerly right-of-way line of the Norfolk and Western Railway Company, also being the Northerly line of John W. Stipes Subdivision; thence North 70 degrees 31 minutes 48 seconds West, 70.39 feet along the Southerly line of said railway company to a point being on the East line of Lot 1 of John W. Stipes Subdivision; thence North 00 degrees 06 minutes 46 seconds West, 21.23 feet along the said East line of Lot 1, being coincidental with the Southerly right-of-way line of Norfolk and Western Railway Company, thence North 70 degrees 31 minutes 49 seconds West, 493.93 feet along the Southerly right-of-way line of said Railroad to the true point of beginning, said property lying contiguous to the West limit of the property conveyed to Consolidated Railway Corporation by deed dated October 15, 1990, lying East of Goodwin Avenue, in Champaign County, Illinois.