



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Building Safety Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

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

DATE: November 29, 2012

SUBJECT: AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL ESTATE (Urbana Townhomes – 901 to 1009 S. Lierman Avenue)

Description

On the agenda of the Urbana City Council meeting is an Ordinance that will authorize execution of an agreement for the City to acquire the property known as “Urbana Townhomes” located at 901, 903, 905, 907, 909, 911, 1001, 1003, 1005, and 1009 South Lierman Avenue. There are eight buildings with a total of 93 dwelling units in the complex. The site also includes two undeveloped lots that are currently being used for parking and as green space. The proposed agreement would provide clear title for the property to the City at no cost for acquisition.

Background & Discussion

The apartment complex on the site was originally constructed in the early 1970’s. In the past several years, the overall condition of the apartment complex has declined, due to changes in ownership, foreclosure, bankruptcies, and other factors. In March 2006, Nov-Teca, Inc. of California purchased the property and by 2008 had filed for bankruptcy. In April 2009, Urbana Capital, LLC purchased the property from Nov-Teca and hired a company from Indiana to manage the complex. That property manager was eventually terminated and Urbana Capital hired an on-site manager, who was unable to improve the property conditions or address property repairs effectively due to lack of financial support from Urbana Capital. In July of 2011, as a result of a foreclosure by Deutsche Bank, the court appointed a receiver, Strategic Property Services (SPS) of Foothill Ranch, CA, to manage the property until resolution of the foreclosure.

During this time period, the City has worked with each subsequent owner and the current receiver in an effort to ensure necessary repairs were made to maintain and stabilize the property. However, ineffective local management coupled with insufficient owner support have resulted in chronic non-compliance with codes and the ongoing deterioration of the buildings on the property. As such, the City ultimately found it necessary to condemn the buildings as follows:

1. **Condemnation of 1001 South Lierman & 1003 South Lierman** Two of the eight buildings in the complex, 1001 South Lierman and 1003 South Lierman, were condemned on March 15, 2011, as a result of the code official declaring the buildings as being “Unfit for Human Occupancy” in accordance with 2003 PM 108.3. The City initiated a demolition proceeding in Circuit Court.

Both buildings were ruled by the Court to be, "unsanitary, unsafe, [and] vermin infested" and were found to be "in such a damaged condition that they are hazardous to the life, health, property and safety of the public..." Accordingly, the Court ordered that Urbana Capital, LLC, and Deutsche Bank (as trustee) demolish the buildings within thirty days of July 26, 2012.

2. **Condemnation of 911 South Lierman** On March 5, 2012, the building at 911 South Lierman was condemned as the code official declared the building “Unfit for Human Occupancy” in accordance with 2009 PM 108.1.3.
3. **Condemnation of 901, 903, 905, 907, and 909 South Lierman** The buildings located at 901, 903, 905, 907 and 909 South Lierman were condemned on July 12, 2012, due to the overall continued advanced deterioration of the buildings. On July 25, 2012, the owner’s agent submitted a Uniform Appeal Application requesting that the Property Maintenance Code Board of Appeals “Vacate the Notice of Condemnation” but later withdrew the appeal.

The court ordered demolition of 1001 and 1003 South Lierman has not been undertaken to date because the lender/owner has been working to either sell the property to another entity or to donate the property to the City. Realistically, due to the bankruptcy of the owner, it is highly unlikely that the Court would be able to force the owner to bear the cost of demolition. Rather, the court would likely ultimately allow the City to demolish the buildings at public expense and then to place a demolition lien on the buildings for possible recovery at a later date. This process would take several additional months to complete through the Court system and would leave the status of the property in an uncertain condition.

As of September 15, 2012, all units of the Urbana Townhomes complex were vacated and all main level building openings were boarded. The site has been fenced around the perimeter and is monitored daily by City staff.

Offer to Donate. The lender has been attempting to sell the complex for over a year, but those marketing efforts have not been successful given the cost required to repair these buildings. Since the condemnation appeal was withdrawn on August 30, 2012, the lender/owner has been working with City staff to donate the property to the City. City ownership of the property would allow the City to pursue demolition of the buildings in a timely manner and would then allow the property to be redeveloped in conformance with the City’s plans at a future date.

Proposed Agreement. The result of these negotiations is the attached agreement that provides for the property to be donated to the City. The agreement calls for the lender/owner to deliver clear title to the property to the City. The lender/owner will pay all taxes, all outstanding liens and all closing costs. If the City accepts the donation, the property and all buildings would

become the responsibility of the City to demolish. The site could then be made available for redevelopment with lower-density housing that would be more compatible with the surrounding neighborhood

During the August 13, 2012 City Council meeting, representatives of the Lierman Neighborhood Action Committee presented a petition requesting the City take action to address the blighted property by demolishing the buildings. Having site control would allow the City to remove the deteriorated buildings and will also help advance community efforts to revitalize and stabilize this neighborhood.

Options

1. Approve the Ordinance Authorizing the Acquisition of Certain Real Estate (Urbana Townhomes – 901 to 1009 S. Lierman Avenue)
2. Approve the Ordinance with changes.
3. Do not approve the Ordinance.

Fiscal Impact

Staff estimates the cost for demolition and site clearance would range on the order of \$250,000 to \$300,000, depending on site and market conditions. The estimate includes cost of asbestos assessment but does not include any funds for asbestos abatement, if any is present. Completion of a demolition bid packet will be necessary to determine a more refined cost estimate.

Funds for the demolition could come from a few City sources, including Community Development Block Grant and Capital Improvement Program funds, or some combination thereof. It will likely be necessary to seek grants or loans to supplement these funds in order to complete the demolition. Assistance by the Urbana Fire Rescue Services to help complete the demolition is another possibility. A preliminary budget analysis shows that funds to cover about one-half of the estimated demolition costs are currently available. Once the cost estimate and budget analysis are completed, City staff will bring forward the necessary budget amendment and Annual Action Plan Amendment to City Council for review and approval.

Recommendation

Due to the poor condition of the property, the public safety nuisance it presents, and its significant destabilizing impact on a sensitive neighborhood, staff strongly recommends approval of the Ordinance to authorize the acquisition of the Urbana Townhomes property. It is critical that the disposition of this problem property be brought under the control of the city so that it can be stabilized and once again become an asset to the community, through the provision of open space in the short term and as redeveloped housing in the long-term

Significant progress has been made recently to improve this neighborhood by residents who have worked together in creating a community garden at City-owned property at the southwest corner of Lierman and Washington, and through police and resident efforts to reduce criminal activity in the area. Acquiring the property and removing the blighting influence would further the City's efforts to stabilize and improve the neighborhood.

Memorandum Prepared By:

John A. Schneider, Manager
Building Safety Division

Attachments:

1. AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL ESTATE (Urbana Townhomes – 901 to 1009 S. Lierman Avenue)
2. AGREEMENT FOR DONATION OF REAL ESTATE
3. Site map of Urbana Townhomes – 901-1009 S. Lierman Avenue

ORDINANCE NO. 2012-12-108

AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN REAL ESTATE

(Urbana Townhomes - 901 to 1009 S. Lierman Avenue)

WHEREAS, Section 2-2-12 of the Illinois Municipal Code (65 ILCS 5/2-2-12) provides that incorporated Illinois cities may acquire and hold real property for corporate purposes; and

WHEREAS, Urbana Capital, LLC, a California limited liability company ("Urbana Capital, LLC"), owner of the real estate commonly known as Urbana Townhomes, located at 901, 903, 905, 907, 909, 911, 1001, 1003, 1005, and 1009 South Lierman Avenue, has offered to donate said real estate to the City of Urbana ("City"); and

WHEREAS, the City Council finds that the best interests of the City are served by accepting the donation from Urbana Capital, LLC; and

WHEREAS, the City Council expressly finds and declares that said real estate is needed for governmental purposes of the City.

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

Section 1.

The acquisition of the real estate commonly known as Urbana Townhomes in Urbana, Illinois, and legally described below, substantially on such terms as contained in the Agreement for Donation of Real Estate attached hereto and incorporated herein, is hereby approved:

Lot 2 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at page 260, situated in the City of Urbana, in Champaign County, Illinois.

PIN: 92-21-16-401-014

Commonly known as 901, 903, 905 S. Lierman Ave., Urbana, Illinois

Lot 3 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at page 260, situated in the City of Urbana, in Champaign County, Illinois.

PIN: 92-21-16-401-015

Commonly known as 907, 909, 911 S. Lierman Ave., Urbana, Illinois

Lot 11 of Replat of Lot 4 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at Page 300, situated in the City of Urbana, in Champaign County, Illinois

PIN: 92-21-16-401-018

Commonly known as 1001, 1003 S. Lierman Ave., Urbana, Illinois

Lot 10 of Replat of Lot 4 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at Page 300, situated in the City of Urbana,

in Champaign County, Illinois
PIN: 92-21-16-401-017
Commonly known as 1005 S. Lierman Ave., Urbana, Illinois

Lot 9 of Replat of Lot 4 of Woodstone Subdivision, as per plat recorded
in Plat Book "Y" at Page 300, situated in the City of Urbana, in
Champaign County, Illinois
PIN: 92-21-16-401-019
Commonly known as 1009 S. Lierman Ave., Urbana, Illinois

Section 2.

The Mayor, or her designee, be and hereby is authorized to perform all acts necessary on behalf of the City of Urbana to effectuate the acquisition of the real estate and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

This Ordinance shall be in full force and effect from and after its passage.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

AGREEMENT FOR DONATION OF REAL ESTATE

THIS AGREEMENT ("Agreement") is made and entered into between Urbana Capital, LLC, a California limited liability company ("Urbana Capital, LLC") and the City of Urbana, Illinois (the "City") and is effective on the last date signed by a Party hereto ("Effective Date"), with respect to the following:

RECITALS

A. Impac Commercial Capital Corporation made a loan (the "Loan") to Nov-Teca, Inc., a California corporation, evidenced by a Promissory Note in the original principal amount of \$2,910,000.00 and secured by a Mortgaged, Assignment of Rents and Security Agreement in which the Property (as defined in Paragraph 1 below) was pledged as collateral, executed by Nov-Teca, Inc., in favor of Impac Commercial Capital Corporation, and filed for record on April 3, 2006, in the Office of the Recorder of Deeds of Champaign County, Illinois, as Document No. 2006R07870.

B. Subsequent to the Loan being made (i) Deutsche Bank National Trust Company, as Trustee for the Registered Holders of Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-2 ("Deutsche Bank"), became the holder of all right, title and interest in and to the Loan, (ii) Impac Funding Corporation, a Delaware corporation (became Master Servicer for Deutsche Bank) and CFC Transactions, LLC, an Illinois limited liability company, dba Cohen Financial, its subcontractor, (iii) Nov-Teca transferred its ownership of the Property to Urbana Capital, LLC, who became owner of all right, title and interest to the Property and assumed the Loan, and (iv) in a state court action brought by Deutsche Bank against Urbana Capital, LLC, Paul E. Carlson was appointed receiver for the Property, and contracted with Strategic Property Services, Inc., as property manager.

D. Urbana Capital, LLC desires to donate to the City the Property, and the City desires to accept the Property as a contribution without consideration as a gift from Urbana Capital, LLC, subject to the City Council of the City approving this Agreement by resolution or ordinances.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements contained herein, the Parties agree as follows:

1. **Property.** Urbana Capital, LLC hereby agrees to donate and the City hereby agrees to accept, subject to a City Council resolution or ordinance relating to such donation, the following described real estate ("Property") pursuant to the terms hereof:

Lot 2 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at page 260, situated in the City of Urbana, in Champaign County, Illinois.

PIN: 92-21-16-401-014

Commonly known as 901, 903, 905 S. Lierman Ave., Urbana, Illinois

Lot 3 of Woodstone Subdivision, as per plat recorded in Plat Book "Y" at page 260, situated in the City of Urbana, in Champaign County, Illinois.

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Commonly known as 1009 S. Lierman Ave., Urbana, Illinois

2. **Deed.** Urbana Capital, LLC agrees to convey the Property to the City by good and sufficient warranty deed subject only to those exceptions listed in Paragraph 3.2.

3. **Evidence of title.**

3.1 Urbana Capital, LLC shall be responsible for ordering a Commitment for Title Insurance issued by a title insurance company doing business in Champaign County, committing a company to issue a policy in the usual form insurance title to the real estate in the City's name. Urbana Capital, LLC shall be responsible for payment of the title premium and search charges.

3.2 Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record, which do not underlie the improvements; covenants and restrictions of record which do not restrict reasonable use of the Property; existing mortgages to be paid by Urbana Capital, LLC at closing.

3.3 If title evidence discloses exceptions other than those permitted, the City shall give written notice of such exceptions to Urbana Capital, LLC within a reasonable time. Urbana Capital, LLC will have a reasonable time to have such title exceptions removed, or, any such exception which may be removed by the payment of money may be cured by payment in full at the time of closing. If Urbana Capital, LLC is unable to cure such exception, then the City shall have the option to terminate this Agreement.

4. **Taxes, assessments, and charges.** Real estate taxes for all prior years shall be at Urbana Capital, LLC's expense. General taxes for the current year shall be prorated. Special assessments levied prior to date shall be paid by Urbana Capital, LLC, and those levied after the date hereof shall be paid by the City.

5. **Possession.** Urbana Capital, LLC shall deliver possession of the Property to the City concurrently with the closing of this transaction, said closing to take place not later than December 31, 2012, at the Urbana City Building, 400 S. Vine Street, Urbana, Illinois, 61801, or at such other place as the Parties may agree. Urbana Capital, LLC shall provide the City with all keys to the Property no later than the closing date.

6. **Encumbrances.** Urbana Capital, LLC warrants that no contracts for the furnishing of any labor or material to the Property or the improvements thereon, and no security agreements or leases in respect to any goods or chattels that have been or are to become attached to the Property or any improvements thereon as fixtures, will at the time of closing be outstanding and not fully performed and satisfied, and further warrants that there are not and will not at the time of the closing be any unrecorded leases or contracts relating to the Property. Urbana Capital, LLC shall provide evidence that all outstanding utility bills have been paid as of the closing date.

7. **Representations.**

7.1 Representations of Urbana Capital, LLC. Urbana Capital, LLC represents that the persons executing this Agreement on its behalf have the authority to do so and to bind Urbana Capital, LLC according to its terms.

7.2 Representations of the City.

7.2.1 Authority. The City represents that the persons executing this Agreement on its behalf have the authority to do so and to bind City according to its terms.

7.2.2 "As Is" Condition. The City acknowledges and agrees that, except as specifically provided in Sections 6 and 7.1 herein, Urbana Capital, LLC has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value of the Property; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which the City may conduct thereon, including the possibilities for future development of the Property; (d) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (e) the manner, quality, state of repair or lack of repair of the Property (including, but not limited to the improvements and all building systems); (f) the nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (g) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (h) the manner or quality of the construction or materials, if any, incorporated into the Property; (i) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, Title III of the Americans With Disabilities Act of 1990, Illinois Health & Safety Code, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the foregoing; (j) the presence or absence of hazardous materials at, on, under, or adjacent to the Property; (k) the content, completeness or accuracy of the due diligence materials or preliminary report regarding title; (l) the conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to the City; (m) the conformity of the Property to past, current or future applicable zoning or building requirements; (n) deficiency of any undershoring; (o) deficiency of any drainage; (p) the fact that all or a portion of the Property may be located on or near an earthquake fault line; (q) the existence of vested land use, zoning or building entitlements affecting the Property; or (r) with respect to any other matter, the City further acknowledges and agrees that having been given the opportunity to inspect the Property and review information and documentation affecting the Property and except as otherwise expressly provided herein, the City is relying solely on its own investigation of the Property, and review of such information and documentation, and not on any information provided or to be provided by Urbana Capital, LLC; and further the City is relying on its extensive experience and knowledge of Illinois real property (including, but not limited to, owning, managing, and operating real property similar in character to the Property). The City further acknowledges and agrees that any information made available to the City or provided or to be provided by or on behalf of Urbana Capital, LLC with respect to the Property was obtained from a variety of sources and that Urbana Capital, LLC has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The City agrees to fully and irrevocably release Urbana Capital, LLC and Urbana Capital, LLC's successors and assigns in regard to all information and documentation affecting the Property which was obtained by Urbana Capital, LLC, and from any and all claims that the City may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation; provided, however, the City will indemnify Urbana Capital, LLC for any liability arising out of any claim or action the City brings against such sources or providers of information. Urbana Capital, LLC is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The City further acknowledges and agrees that to the maximum extent permitted by law, the transfer of the

Property as provided for herein is made on an "As Is" condition and basis with all faults, and that Urbana Capital, LLC has no obligations to make repairs, replacements or improvements except as may otherwise be expressly stated herein.

Initials of City

Initials of Urbana Capital, LLC

7.2.3 Hazardous Material Release and Waiver, and Indemnification.

7.2.3.1 The City, on behalf of itself, its successors, assigns and successors-in-interest, hereby waives, releases and forever discharges Urbana Capital, LLC and its successors, assigns, partners, agents and affiliates (collectively "Indemnitees"), and hereby waives, releases and forever discharges Indemnitees, from and against any and all liabilities, claims, demands, suits, judgments, causes of action (including, but not limited to, causes of action arising under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq.), whether direct or indirect, known or unknown, arising out of, related in any way to, or resulting from or in connection with, in whole or in part, the presence or suspected presence of "Hazardous Materials" (as defined below) in, on, under, or about the Property.

As used herein, the term "Hazardous Material(s)" means any chemical, substance, material, controlled substance, object, condition, wastes, living organisms or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, petroleum hydrocarbons and petroleum products, lead, asbestos, radon, polychlorinated biphenyls ("PCBs") and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or local law based upon, directly or indirectly, such properties or effects.

The provisions of this Section 7.2.3.1 shall not be limited in any way by any other terms of this Agreement.

7.2.3.2 In the event that the City transfers the Property to another person or entity, then the City shall fully indemnify Indemnitees, from and against any and all liabilities, claims, demands, suits, judgments, causes of action (including, but not limited to, causes of action arising under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq.), whether direct or indirect, known or unknown, arising out of, related in any way to, or resulting from or in connection with, in whole or in part, the presence or suspected presence of "Hazardous Materials" (as defined above) in, on, under, or about the Property. The provisions of this Section 7.2.3.2 shall not be applicable in the event that the presence of hazardous materials first occurred in, on, under, or about the Property during the time period that the City owned the Property.

8. **Indemnifications and Releases.**

8.1 Indemnification of the City. Urbana Capital, LLC hereby agrees to hold harmless, protect, defend and indemnify the City from any claims arising out of, in connection with or incidental to any inaccuracy in or breach of any representation or warranty of Urbana Capital, LLC or resulting from any breach or default by Urbana Capital, LLC under this Agreement.

8.2 Indemnification of Urbana Capital, LLC. The City hereby agrees to hold harmless, protect, defend and indemnify Urbana Capital, LLC from any claims arising out of, in connection with or incidental to any inaccuracy in or breach of any representation or warranty of the City or resulting from any breach or default by the City under this Agreement.

8.3 Mutual Release. The City and all related and unrelated entities (collectively, the "Donee-Related Parties"), jointly and severally release and forever discharge Urbana Capital, LLC, Deutsche Bank, IMPAC FUNDING CORPORATION, CFC TRANSACTIONS, LLC dba Cohen Financial, Paul E. Carlson, Strategic Property Services, Inc., , and each of their respective successors, assigns, partners, directors, officers, employees, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders and representatives (the "Donor-Related Parties") from all liabilities, obligations, costs, expenses, claims and damages, at law or in equity, known or unknown, which they may now hold or claim to hold under common law or statutory right, arising in any manner out of the Property, or any of the documents, instruments or any undertaking they may have required through the date of this Agreement or which relate to enforcing this Agreement (collectively, the "Released Claims"), to the extent the basis for the Released Claims first arose prior to the Effective Date; and the Donor-Related Parties jointly and severally release the Donee-Related Parties of the Released Claims. As to the Released Claims, the Donee-Related Parties, to the extent they are releasing the Donor-Related Parties, are a Releasing Party, and to the extent that the Donor-Related Parties are releasing the Donee-Related Parties of the Released Claims, they are a Releasing Party. Without limiting the generality of the foregoing, these releases shall include the following matters: all aspects of this Agreement and the Property, any negotiations, demands or requests with respect thereto. Each Releasing Party agrees that this release is a full, final and complete release and that it may be pleaded as an absolute bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by such Releasing Party, or anyone claiming by, through or under such Releasing Party with respect to the Released Claims. Each Releasing Party agrees that this release is binding upon it and its respective successors and assigns. Each Releasing Party waives any limitation on the scope of a general release as set forth in this Section 8.3, including claims which it does not know or suspect to exist in its favor at the time of executing this Agreement.

9. **Closing.** The Parties desire to effectuate a transfer of title of the Property to the City on or before December 31, 2012 (the "Closing Date").

9.1 To conclude the Closing:

- (a) The City shall cause a warranty deed executed by Urbana Capital, LLC to be recorded, and thereafter a copy mailed to Urbana Capital, LLC, and
- (b) The title and insurance company shall issue a policy as provided in Section 3 of this Agreement.

10. **General Provisions.**

10.1 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

10.2 Entire Agreement. This Agreement contains the entire integrated agreement between the Parties respecting the subject matter of this Agreement and supersedes all prior or contemporaneous understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or in writing, between or among the Parties to this Agreement relating to the subject matter of this Agreement which are not fully expressed in this Agreement. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to those terms and they may not be contradicted by evidence of any prior agreement or of any

contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Agreement.

10.3 Legal Advice, Neutral Interpretation; Headings. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. Headings used in this Agreement are for convenience of reference only and shall not be used in constructing this Agreement.

10.4 Choice of Law; Jurisdiction. This Agreement and the Parties' actions under this Agreement shall be governed and construed in accordance with the laws of the State of Illinois, without regard to its conflicts of law provisions, and any action based on or alleging a breach of this Agreement must be brought in a State court in Champaign County, Illinois. In addition, each Party agrees to submit to the personal jurisdiction and venue of such courts.

10.5 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, unless severance of such provision would materially alter the bargained-for exchange reflected by this Agreement as a whole.

10.6 Waiver of Covenants, Conditions or Remedies. The waiver by one Party of the performance of any covenant, condition or promise under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant, condition or promise under this Agreement. The waiver by either or both Parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provision in this Agreement for any remedy shall to exclude other consistent remedies unless they are expressly excluded.

10.7 Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

10.8 Amendment. This Agreement may be amended at any time by the written agreement of the City and Urbana Capital, LLC.

10.9 Relationship of Parties. Nothing contained in this Agreement shall constitute either Party the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the Parties hereto, nor is either Party granted any right or authority to assume or create any obligation or responsibility on behalf of the other Party, nor shall either Party be in any way liable for any debt of the other.

10.10 No Third Party Benefit. This Agreement is intended to benefit only the Parties hereto and their assigns, as well as any of the Donor-Related Parties and Donee-Related Parties.

10.11 Time of the Essence. Time shall be of the essence as to all dates and times of performance, whether contained herein or contained in any escrow instructions to be executed pursuant to this Agreement, and all escrow instructions shall contain a provision to this effect.

10.12 Further Acts. Each Party agrees to perform any further acts and to execute, acknowledge and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

10.13 Assignment. Such Parties shall be binding upon all assignees and intended beneficiaries of the Parties.

10.14 Attorneys' Fees. If any Party brings an action or proceeding (including arbitration) involving the Property, to enforce the terms hereof, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

10.15 Manner of Giving Notice. All notices and demands which either Party is required or desires to give to the other shall be given in writing by personal delivery, express courier service or by telecopy with electronic confirmation of receipt, provided that if any Party gives notice of a change of name, address or telecopy number, notices to that Party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective upon receipt by the Party to whom notice or a demand is being given.

To City of Urbana:

CITY OF URBANA, ILLINOIS
400 South Vine Street
Urbana, IL 61801
Attn: Legal Division
Telephone: (217) 384-2464
Facsimile: (217) 384-2460

To Donor:

Urbana Capital, LLC
c/o Mark Kaner/Chris Renard
23586 Calabasas Road, Suite 100
Calabasas, CA 91302
Telephone: (818) 222-2800
Facsimile: (818) 222-1893

With copies to:

GERSON LAW FIRM APC
Attn: Gordon L. Gerson
9255 Towne Centre, Suite 300
San Diego, CA 92121
Telephone: (858) 452-5400
Facsimile: (858) 452-5410

Steven Anderson
Law Office of Steven Anderson
2949 N. Troy St.

Chicago, IL 60618
Telephone: (312) 450-3513
Facsimile: (206) 666-5278

10.16 Survival. The provisions of Sections 7, 8 and 10, as well as any provision relating to a closing cost shall survive the Closing and the consummation of the transactions contemplated by this Agreement.

11. **City Council Approval**. This Agreement will be valid only after its approval by resolution or ordinance of the Urbana City Council.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

Donor

Urbana Capital, LLC,
a California limited liability company

By: _____

Print Name: _____

Its: _____

Date: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

APPROVED AS TO FORM:

Attorney for Donor

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Donee

City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801

By: _____
Laurel Lunt Prussing, Mayor

Date: _____

ATTEST:

Phyllis D. Clark, City Clerk

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____

Urbana Townhomes - 901 to 1009 S. Lierman Avenue

