



**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, FAICP, Director, Community Development Services  
**DATE:** January 22, 2015  
**SUBJECT:** **An Ordinance Approving a Redevelopment Agreement with Stephens Building LLC (218 W Main St – Norm Baxley)**

**AND**

**An Ordinance Revising the Annual Budget Ordinance, FY2014-15  
(Redevelopment Agreement with Stephens Building LLC)**

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## **Introduction and Background**

The City of Urbana has been approached by Norman Baxley and David Borchers with Stephens Building LLC regarding plans to renovate 218 West Main Street, commonly known as the Stephens Building and generally located on the north side of Main Street west of A Plus VIP Lounge. The property was acquired by Mr. Baxley and Mr. Borchers in May of 2013 at auction after it had gone into foreclosure. The Stephens Building has stood vacant and largely unmaintained since 2003 while the previous owners sought to raise funds for improvements.

Mr. Baxley has requested a redevelopment agreement with the City (**Exhibit A Draft Ordinance with Attached Agreement**) to advance his plans to bring 218 West Main back to active use. Norman and Carolyn Baxley are accomplished in renovating, marketing and reoccupying underutilized and historic buildings in Downtown Urbana including Crane Alley and the Cinema Gallery among many others.

The proposed project would result in the renovation of the upper floor into four, two-bedroom, two-bath apartments and the renovation of the first floor into one or two commercial establishments, preferably restaurant or retail. The work would be divided into two phases. Phase I would complete the upper story apartments (**Exhibit B Floor Plan**) as well as upgrade the first floor commercial space to a standard “vanilla box” that will provide the basis for a future custom buildout once tenants are identified. Phase II would complete the buildout of the first floor commercial space for tenants.

The project cost for this first phase is estimated at \$571,000. The project cost for the second phase is estimated at \$440,000. The total private investment, combining these phases and including the purchase price of the building, is estimated at approximately \$1,261,000, including approximately \$1,011,000 in physical improvements.

The project will be consistent with the planning framework established by the applicable City plans covering this area. The subject property is currently zoned B-4 Central Business, which permits by-right the proposed uses. Additionally, the Tax Increment Finance District #1 plan specifically identifies the rehabilitation of buildings along Main Street as a priority for private development assistance. The renovation of the existing building and the proposed use is also consistent with the goals and objectives outlined in the 2012 Downtown Urbana Plan. Finally, the proposed uses are consistent with the needs identified by the survey results and findings of the 2011 Downtown Market Study. Specifically, investment in this iconic, but long-neglected property and the addition of new upper-story apartments to the core downtown are expected to greatly advance the activity and appearance of the western end of Main Street in Downtown Urbana. When combined with the improvements occurring along this block at 214, 210, 208, 206, and 204 West Main Street, this project will fully complete the restoration of this City block—amounting to over \$2.6 million in physical improvements on these properties in the last three years along with the introduction of several new businesses to the downtown market.

## **Discussion**

The attached ordinance approves a Redevelopment Agreement with Stephens Building LLC for property located at 218 West Main Street (**Exhibit C Location Map**). The proposed agreement provides for City assistance through TIF 1 to facilitate the renovation of the building.

Mr. Baxley has requested assistance to improve the financial feasibility of the project consistent with the level of incentive provided for the renovation of 206, 208 and 210 West Main Street. Section 4.1 of the draft agreement provides for a reimbursement of 20% of eligible redevelopment project costs up to a maximum of \$120,000 for Phase I of the project and 20% of eligible redevelopment project costs up to a maximum of \$100,000 for Phase II of the project.

While rebates on incremental property taxes are generally a preferred method of City support for redevelopment agreements, that method of support is not available in this case as the incremental property taxes directly attributable to the project will not be available until shortly before the expiration of TIF 1 in 2016. It is important to note that this incentive is in the form of a reimbursement as a percentage of eligible redevelopment project costs, so the developer will need to make renovations and submit reimbursement requests to the City following those improvements. To further protect the City, Section 4.1 and Section 6.3 state that before payments can be made to the developer, the City must approve all requisitions, and the developer must achieve substantial completion of the project as evidenced by the issuance of a certificate of occupancy. The City will only make available the respective incentives for each phase upon the issuance of a certificate of occupancy and the submittal of receipts for eligible expenses.

Included in the Council packet as a separate item is a budget amendment for the maximum \$220,000 reimbursement made possible by this agreement (**Exhibit D Budget Amendment Ordinance**).

## **Fiscal Impact**

The costs associated with this redevelopment agreement will be realized by TIF 1. As has been mentioned above, the maximum TIF reimbursement to the developer over the life of the agreement would be up to \$220,000. The anticipated year-end fund balance for TIF 1 is \$278,000 and there are sufficient funds for this project. However, this is likely to be the last major redevelopment project in TIF 1 due to the pending expiration of the TIF and the nearly completed use of the incremental funds it has generated over its life. Also due to the expiration of TIF 1 in 2016, the TIF will not be able to fully recoup its investment in the proposed project; however the purpose of the TIF will be fulfilled by facilitating investment, re-occupancy, new residential units, and positive business activity in the redevelopment area. While the TIF itself will not recoup its investment, the anticipated property tax generated directly by this project for all taxing entities is expected to reach the break-even point in approximately seven years. In addition, the project has the potential to produce sales tax when a retail or restaurant is located on the first floor.

Aside from the direct fiscal impact, the creation of new residential units in the core downtown, the potential for job creation, the positive activity generated in the area, and the reuse and investment in a underutilized, historic building that has been vacant for nearly a decade in the heart of downtown will have a positive impact to the local economy and the vibrancy of Downtown Urbana.

## Options

1. Approve the redevelopment agreement ordinance and budget amendment ordinance as presented
2. Approve the redevelopment agreement ordinance and budget amendment ordinance with changes. It should be noted that any changes will need to be agreed upon by the developer.
3. Deny the redevelopment agreement ordinance and budget amendment ordinance.

## Recommendation

The positive fiscal impact, the creation of new residential units in the core downtown, the potential for job creation, the positive activity generated in the area, and the reuse and investment in a underutilized, historic building, and the opportunity to further the goals various City plans through this project indicate that this agreement is a benefit to the City and TIF District #1.

Staff recommends that the City Council approve the attached redevelopment agreement ordinance and accompanying budget amendment ordinance.

Prepared by:



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Brandon S Boys, Economic Development Manager

Attachments:

- Exhibit A: Draft Ordinance with Agreement
- Exhibit B: Second Story Apartments Floor Plan
- Exhibit C: Location Map
- Exhibit D: Budget Amendment Ordinance

ORDINANCE NO. 2015-01-008

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH STEPHENS  
BUILDING LLC  
(218 West Main Street – Norm Baxley)

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 Stephens Building, 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 Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2015.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

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**REDEVELOPMENT AGREEMENT**

**by and between the**

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

**and**

**STEPHENS BUILDING LLC**

Dated as of February 1, 2015

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**Document Prepared By:**

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

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**EXHIBIT LIST**

EXHIBIT A	Description of Property
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## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is dated for reference purposes only as of February 1, 2015, 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 **Stephens Building LLC**, an Illinois 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 date this Agreement and deliver it to the other (the “**Effective Date**”).

### RECITALS

**WHEREAS**, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (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 a series of ordinances (Ordinance Nos. 8081-61, 8081-62 and 8081-63 on December 22, 1980) including as supplemented and amended by certain ordinances (Ordinance No. 8637 on October 6, 1986, Ordinance No. 9394-100 on May 16, 1994, Ordinance No. 2003-12-148 on December 15, 2003, and Ordinance No. 2004-09-132 on October 4, 2004) (collectively, the “**TIF Ordinances**”); and

**WHEREAS**, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Urbana Downtown Tax Increment Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved the related redevelopment plan, as supplemented and amended (the “**Redevelopment Plan**”), including the redevelopment projects described in the Redevelopment Plan (collectively, the “**Redevelopment Projects**”); and

**WHEREAS**, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to acquire the Property (as defined below) and to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below); and

**WHEREAS**, the Property (as defined below) is within the Redevelopment Project Area; and

**WHEREAS**, the Developer is unwilling to acquire the Property (as defined below) and to undertake the Project (as defined below) without certain tax increment finance incentives from the City, which the City is willing to provide; and

**WHEREAS**, 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 in this Agreement.

**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:

**“City Comptroller”** means the City Comptroller of the City, or his or her designee.

**“Corporate Authorities”** means the City Council of the City.

**“Eligible Redevelopment Project Costs”** means those costs paid and incurred in connection with Phase I and Phase II of the Project which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q)(3) of the TIF Act, including the rehabilitation, reconstruction, repair or remodeling of the existing buildings, fixtures and improvements upon the Property.

**“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, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Redevelopment Project Area by taxing districts that is attributable to the increase in the equalized assessed value of each taxable lot, block, tract or parcel of real estate within the Redevelopment Project Area over the equalized assessed value of each taxable lot, block, tract or parcel of real estate within the Redevelopment Project Area which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the City Comptroller for deposit by the City Comptroller into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

**“Project”** means, collectively, the rehabilitation, reconstruction, repair or remodeling of the existing buildings, fixtures and improvements upon the Property to provide space for: (i) four, two-bedroom apartments on the second floor of the Property, improvements to the façade and entrances, utility services to the entire building, and “vanilla box” level or improvements on the first floor of the Property including fire separations and sprinkler installation (**“Phase I”**), and (ii) at least one retail, restaurant, or commercial tenant on the first floor of the Property (**“Phase II”**).

**“Project Commencement Date”** means, as applicable, July 1, 2015, the date on or before which construction of Phase I of the Project is to commence, and July 1, 2016, the date on or before which Phase II of the Project is to commence.

**“Property”** means, collectively, the real estate consisting of the parcel or parcels legally described on Exhibit A hereto, upon or within which the Project is to be undertaken and completed.

**“Reimbursement Amount”** means the amount to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 4.1 of this Agreement.

“**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 VI of this Agreement.

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

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

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

(a) **Organization.** The Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois.

(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 members. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

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

(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.

(g) **Maintenance of Existence.** During the term of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois limited liability company.

**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 Property and the 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**  
**CONDITIONS PRECEDENT TO THE UNDERTAKINGS**  
**ON THE PART OF THE DEVELOPER AND THE CITY**

**Section 3.1. Conditions Precedent.** The undertakings on the part of the City as set forth in this Agreement are expressly contingent upon each of the following:

- (1) The Developer shall have obtained approval of the Project in accordance with all applicable laws, codes, rules, regulations and ordinances of the City, including without limitation all applicable subdivision, zoning, environmental, building code or any other land use regulations (collectively, the “**City Codes**”), it being understood that the City in its capacity as a municipal corporation has discretion to approve the Project.

**Section 3.2. Reasonable Efforts and Notice of Termination.** The Developer shall use due diligence to timely satisfy the conditions set forth in Section 3.1 above on or before the applicable Project Commencement Date, but if such conditions are not so satisfied or waived by the City, then the City may terminate this Agreement by giving written notice thereof to the Developer. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

**ARTICLE IV**  
**CITY’S COVENANTS AND AGREEMENTS**

**Section 4.1. City’s TIF Funded Financial Obligations.** The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid and the approval thereof by the City in accordance with Article VI of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 4.1 immediately below, agrees to reimburse the Developer, or to pay as directed by the Developer, from the Fund the **Reimbursement Amount** related to Project at the Property as follows:

Upon the substantial completion of Phase I of the Project as evidenced by the issuance by the City of a certificate of occupancy for Phase I of the Project, the City shall pay or reimburse the Developer an amount equal to twenty percent (20%) of the Eligible Redevelopment Costs up to a maximum of One Hundred and Twenty Thousand Dollars (\$120,000). Upon the substantial completion of Phase II of the Project as evidenced by the issuance by the City of a certificate of occupancy for Phase II of the Project, the City shall pay or reimburse the Developer an amount equal to twenty percent (20%) of Eligible Redevelopment Costs up to a maximum of One Hundred Thousand Dollars (\$100,000.00). Such payment or reimbursement shall be paid at the time and in accordance with Section 6.3 of this Agreement.



**Section 4.2. 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 the payment of the Reimbursement Amount to be paid or reimbursed by the City is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement.

**ARTICLE V**  
**DEVELOPER'S COVENANTS**

**Section 5.1. Commitment to Undertake and Complete Project.** The Developer covenants and agrees to commence Phase I and Phase II of the Project on or before the applicable Project Commencement Date for Phase I and Phase II and to have Phase I and Phase II of the Project completed on or before December 31, 2016. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of any required permits and any failure on the part of the City to grant or issue any such required permit shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

**Section 5.2. Compliance with Agreement and Laws During Project.** The Developer shall at all times undertake the Project, including any related activities in connection therewith, in conformance with this Agreement and all applicable City Codes, and, to the extent applicable, the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois. Any agreement of the Developer related to the 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 5.3. Continuing Compliance with Laws.** The Developer agrees that in the continued use, occupation, operation and maintenance of the Property, the Developer will comply with all applicable federal and state laws, rules, regulations and all applicable City Codes and other ordinances.

**Section 5.4. Tax and Related Payment Obligations.** The Developer agrees to pay and discharge, promptly and when the same shall become due, all general ad valorem real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property 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 Property upon which the Project is undertaken and shall be in full force and effect until December 31, 2040, 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 Property, 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 5.4 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 taxes, assessments, charges or other impositions levied or imposed upon the Property or any part thereof.

## **ARTICLE VI**

### **PAYMENT PROCEDURES FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS**

**Section 6.1. Payment Procedures.** The City and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amount shall be paid solely, and to the extent available, from Incremental Property Taxes that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that the Reimbursement Amount shall be disbursed by the City Comptroller 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 City Comptroller as its representative to coordinate the authorization of disbursement of the Reimbursement Amount for the Eligible Redevelopment Project Costs. Payments to the Developer of the Reimbursement Amount 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 upon completion of the Eligible Redevelopment Project Costs which have been incurred and paid. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable, receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ affidavits or lien waivers.

**Section 6.2. Approval and Resubmission of Requisitions.** The City Comptroller shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; (ii) any subsequent amendment of the TIF Act or any subsequent decision of a court of competent jurisdiction makes any such payment to not be authorized; or (iii) a “Default” under Section 7.1 of this Agreement by the Developer has occurred and is continuing.. If a Requisition is disapproved by such City 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, if that is the basis for denial. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

**Section 6.3. Time of Payment.** Provided that performance of this Agreement has not been suspended or terminated by the City under Article VII hereof, the City shall pay:

(a) up to the first \$120,000 of the Reimbursement Amount which is approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after: (i) the date of the approval of any such Requisitions; or (ii) the date of substantial completion of Phase I of the Project as provided in Section 4.1 of this Agreement, whichever date in clause (i) or clause (ii) is later; and

(b) up to the \$100,000 balance of the Reimbursement Amount which is approved by any one or more Requisitions under this Article to the Developer within thirty (30) calendar days after: (i) the date of the approval of any such Requisitions; or (ii) the date of substantial completion of Phase II of the Project as provided in Section 4.1 of this Agreement, whichever date in clause (i) or clause (ii) is later.

## **ARTICLE VII**

### **DEFAULTS AND REMEDIES**

**Section 7.1. Events of Default.** The occurrence of any one or more of the events specified in this Section 7.1 shall constitute a “**Default**” under this Agreement.

**By the Developer:**

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

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

**By the City:**

(1) The failure by the City to pay the Reimbursement Amount which becomes due and payable in accordance with the provisions of this Agreement; and

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

**Section 7.2. Rights to Cure.** The party claiming a Default under Section 7.1 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, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as



provided above shall constitute a “**Breach**” under 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 any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

**Section 7.3. Remedies.** Upon the occurrence of an Breach 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 Breach under this Agreement by the Defaulting Party shall be to institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to proceedings to compel any legal action for specific performance or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of an Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Annual Reimbursement Amounts which become due and payable in accordance with the provisions hereof is due to insufficient Incremental Property Taxes being available to the City, any such failure shall not be deemed to be a Default or a Breach on the part of the City.

**Section 7.4. Costs, Expenses and Fees.** Upon the occurrence of a Default or an Breach 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 VIII**

### **RELEASE, DEFENSE AND INDEMNIFICATION OF CITY**

**Section 8.1. Declaration of Invalidity.** Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 8.1 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any, in the event of a Breach of this Agreement by the City.

**Section 8.2. Damage, Injury or Death Resulting from Project.** The Developer releases from and covenants and agrees that the City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.3. Damage or Injury to Developer and Others.** The City and its Corporate Authorities, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct, gross negligence, or acts or omissions of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

**Section 8.4. No Personal Liability.** All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Annual Reimbursement Amounts which may become due and payable under the terms of this Agreement.

**Section 8.5. City Not Liable for Developer Obligations.** Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach under this Agreement; provided that nothing in this Section 8.5 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts in the event of a Breach of this Agreement by the City.

**Section 8.6. Actions or Obligations of Developer.** The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the Project, and **(iii)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

**Section 8.7. Environmental Covenants.** To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents,

employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: (i) any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (ii) (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this paragraph, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Section 8.8. Notification of Claims.** Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

**Section 9.1. Entire Agreement and Amendments.** This Agreement (together with Exhibit A attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

**Section 9.2. 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 any 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 9.3. 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 9.4. 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 under Section 4.1 hereof only such amount of the Incremental Property Taxes as is set forth in Section 4.1 hereof, if, as and when received, and not otherwise.

**Section 9.5. 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 9.6. 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 9.7. 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 9.8. 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:  
Stephens Building LLC  
510 West Main Street  
Urbana, IL 61801  
Attn: Matthew Cho  
Tel: (217) 418-9502/ Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_
- (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 9.9. Assignment.** The Developer agrees that it shall not sell, assign or otherwise transfer any of its rights and obligations under this Agreement without the prior written consent of the City. Except as authorized in this Section above, any assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with the City's prior written 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 applicable parties thereto.

**Section 9.10. Successors in Interest.** Subject to Section 9.9 above, 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 9.11. No Joint Venture, Agency, or Partnership Created.** Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

**Section 9.12. Illinois Law; Venue.** This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

**Section 9.13. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate

upon the date that the Reimbursement Amount is paid to the Developer in accordance with Section 6.3 of this Agreement, provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.4 and Article VIII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

**Section 9.14. 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 9.15. 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.

[Signature page immediately following this page}



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

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

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

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

**STEPHENS BUILDING LLC**

By: \_\_\_\_\_  
Its Authorized Member

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

[Exhibit A follows this page and is an integral part of this Agreement in the context of use.]

**EXHIBIT A**

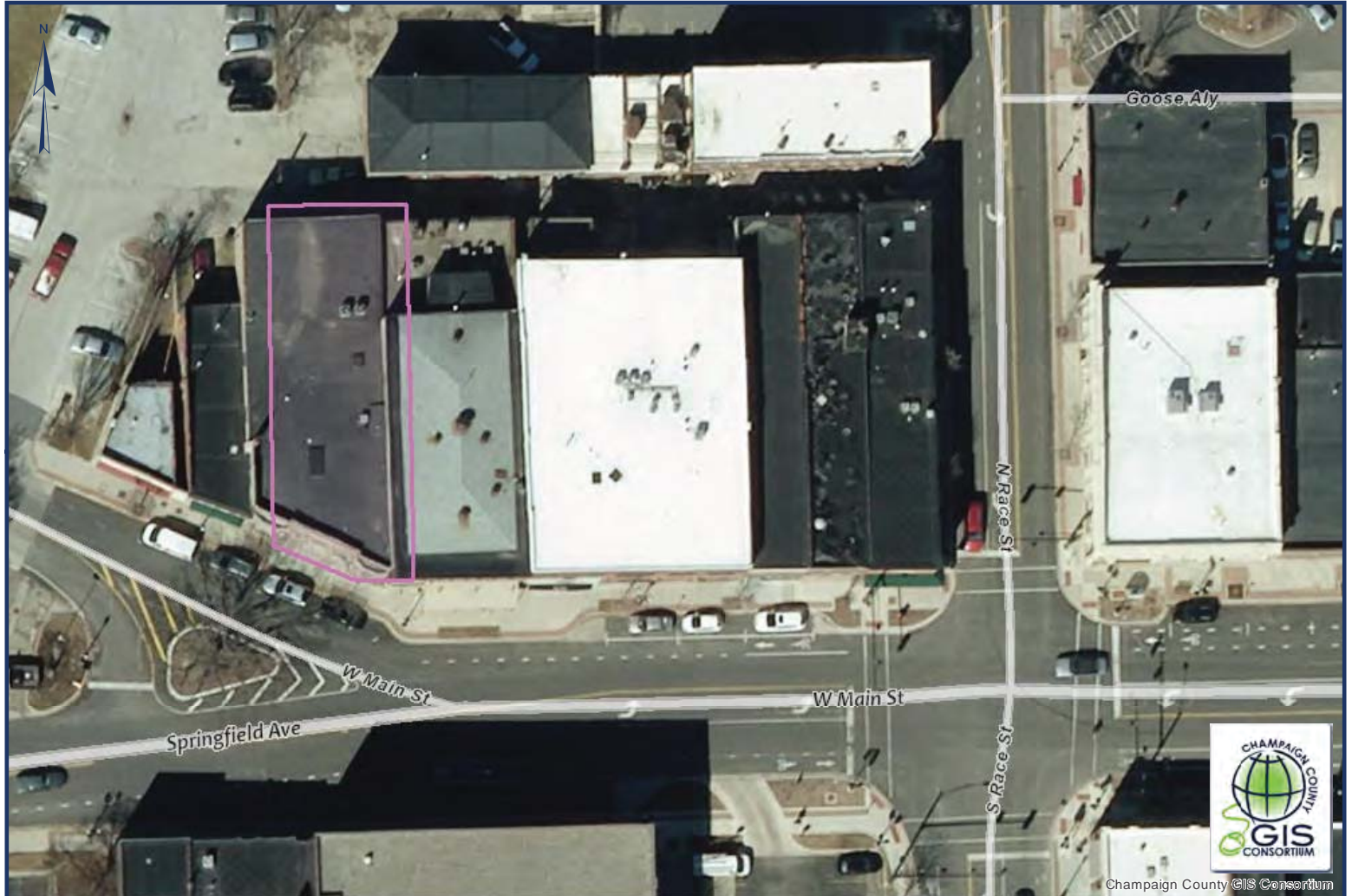
**Description of Property**

Commonly known as 218 West Main Street.

PIN: 92-21-17-201-001



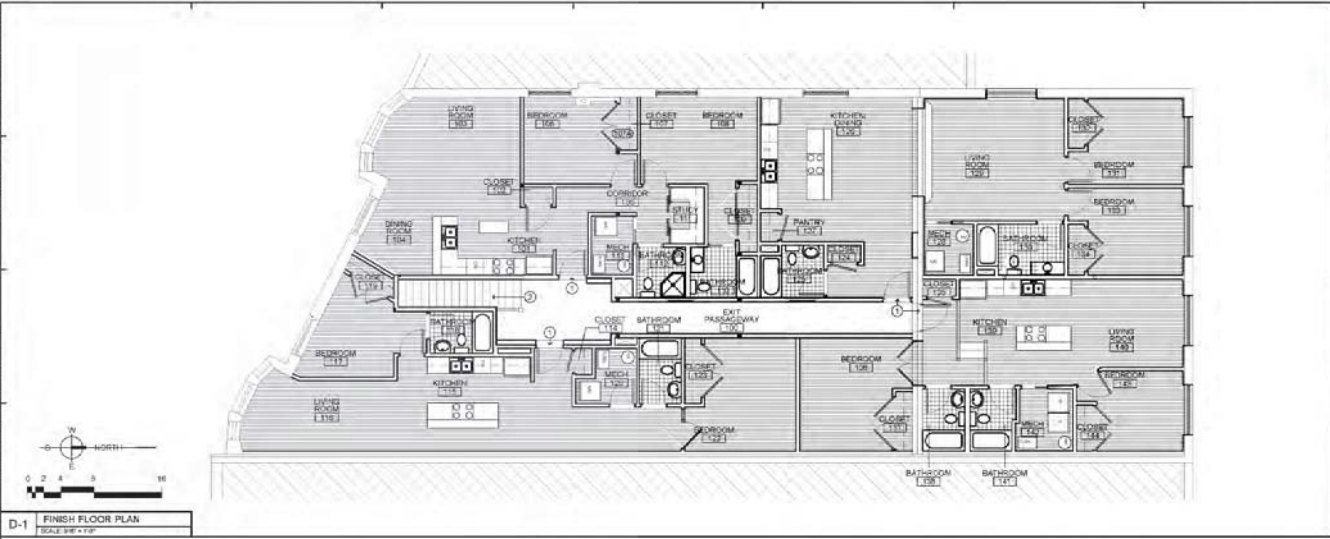
## Exhibit C - 118 W Main Street - Stephens Building



This map application was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CCGISC), or other CCGISC member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this application is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this application and information contained herein. The use of this application constitutes acknowledgement of this disclaimer.

Date: Thursday, January 22, 2015

C:\Users\jg0232\OneDrive\Projects\215 W. Main St. - Rehab & New Apartments\A603.dwg AUG 19, 2014, 10:00 AM PLOT SCALE IS ACCURATE ONLY IF PLOT SIZE IS 6250x4



D-1 FINISH FLOOR PLAN  
SCALE: 1/8" = 1'-0"

**GENERAL NOTES**

1. SEE ROOM FINISH SCHEDULE FOR MORE INFORMATION
- 2.

**REVISION NOTES**

- ① → FIRE RATED SADDLE THRESHOLD
- ② → STRIP AND REFINISHED EXISTING EXIT STAIR TREADS

**LEGEND**

- HARDWOOD FLOORING. SEE ROOM FINISH SCHEDULE FOR MORE INFORMATION.
- CERAMIC TILE FLOORING. SEE ROOM FINISH SCHEDULE FOR MORE INFORMATION.
- CARPET FLOORING. SEE ROOM FINISH SCHEDULE FOR MORE INFORMATION.



ARCHITECTURAL FINISHES, LLC  
100 N. WASHINGTON ST. #100  
CHICAGO, IL 60602  
TEL: 312.467.1100  
WWW.ARFINISHES.COM

NO.	DATE	DESCRIPTION

FINISH FLOOR PLAN  
REHAB & NEW APARTMENTS  
**STEPHEN'S BUILDING**  
215 W. MAIN STREET URBANA, IL

DESIGNER	ALH
DRAWN	EAH
CHECKED	KES
PROJECT NO.	6238
DATE	08/23/2014

**A603**

**ORDINANCE NUMBER 2015-01-009**

**AN ORDINANCE REVISING THE ANNUAL BUDGET ORDINANCE, FY2014-15**

(Redevelopment Agreement with Stephens Building, LLC)

WHEREAS, the Annual Budget Ordinance of and for the City of Urbana, Champaign County, Illinois, for the fiscal year beginning July 1, 2014, and ending June 30, 2015, (the "Annual Budget Ordinance") has been duly adopted according to sections 8-2-9.1 et seq. of the Illinois Municipal Code (the "Municipal Code") and Division 2, entitled "Budget", of Article VI, entitled "Finances and Purchases", of Chapter 2, entitled "Administration", of the Code of Ordinances, City of Urbana, Illinois (the "City Code"); and

WHEREAS, the City Council of the said City of Urbana finds it necessary to revise said Annual Budget Ordinance by deleting, adding to, changing or creating sub-classes within object classes and object classes themselves; and

WHEREAS, funds are available to effectuate the purpose of such revision; and

WHEREAS, such revision is not one that may be made by the Budget Director under the authority so delegated to the Budget Director pursuant to section 8-2-9.6 of the Municipal Code and section 2-133 of the City Code.

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

Section 1. That the Annual Budget be and the same is hereby revised to provide as follows:

FUND: Tax Increment Financing District One Fund

ADD EXPENSE : Stephens Building Development Costs  
T09 1 1300-3054 \$220,000

REDUCE : Fund Balance  
T09 0 0001-0199 \$220,000

Section 2. This Ordinance shall be effective immediately upon passage and approval and shall not be published.

Section 3. This Ordinance is hereby passed by the affirmative vote of two-thirds of the members of the corporate authorities then holding office, the "ayes" and "nays" being called at a regular meeting of said Council.

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

AYES:  
NAYS:  
ABSTAINED:

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

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

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor