

AN ORDINANCE REVISING THE ANNUAL BUDGET ORDINANCE

(Five Points Development Agreement)

WHEREAS, the Annual Budget Ordinance of and for the City of Urbana, Champaign County, Illinois, for the fiscal year beginning July 1, 2003, and ending June 30, 2004, (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 Ordinance be and the same is hereby revised to provide as follows:

FUND:	Tax Increment Financing District Two
AMOUNT:	\$100,000
ADD EXPENSE:	Five Points Development Incentive
REDUCE:	Fund Balance

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 This Ordinance shall be effective immediately upon passage and approval and shall not be published.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 5th day of April,
2004 .

AYES: Chynoweth, Hayes, Huth, Otto, Patt, Wyman, and
Mayor Satterthwaite

NAYS:

ABSTAINS:

APPROVED by the Mayor this 16th day of April,
2004 .

Phyllis D. Clark
Phyllis D. Clark, City Clerk
Robert J. Hill
Robert J. Hill, Deputy Clerk

James H. Hayes, Jr.
James H. Hayes, Jr., Mayor
JAMES H. HAYES, Jr.
MAYOR Pro-tem

**REDEVELOPMENT AGREEMENT
FIRST AMENDED AND RESTATED**

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**FIVE POINTS NORTHEAST,
an Illinois limited liability company**

Dated as of April 1, 2004

Document Prepared By:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
P.O. Box 737
Champaign, IL 61820**

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EXHIBIT A	Legal Description of Redevelopment Project Area
EXHIBIT B	Legal Description of Development Area (Phase I)
EXHIBIT C	Legal Description of Development Area (Phase II)
EXHIBIT D	Promissory Note
EXHIBIT E	Mortgage

REDEVELOPMENT AGREEMENT FIRST AMENDED AND RESTATED

THIS REDEVELOPMENT AGREEMENT FIRST AMENDED AND RESTATED (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is made and entered into as of April 1, 2004, 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 **Five Points Northeast**, an Illinois limited liability company (the **“Developer”**).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at Section 5/11-74.4-1 *et seq.* of Chapter 65 of the Illinois Compiled Statutes), as supplemented and amended (the **“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 has designated the Redevelopment Project Area Number Two (as more particularly described in Exhibit A hereto, the **“Redevelopment Project Area”**) and approved a related redevelopment plan (entitled “Downtown Urbana Tax Increment Area Two Conservation Redevelopment Plan and Projects”), as supplemented and amended (respectively, the **“Redevelopment Plan”** and **“Redevelopment Projects”**); and

WHEREAS, in connection with the Redevelopment Projects, Redevelopment Plan and Redevelopment Project Area, the City Council of the City (the **“Corporate Authorities”**) on December 23, 1986, adopted Ordinance No. 8687-45, “An Ordinance Approving a Redevelopment Plan and Redevelopment Project; Designating a Redevelopment Project Area; Adopting Tax Increment Allocation Financing; and Authorizing the Illinois Department of Revenue to Annually Certify and Cause to be Paid to the City of Urbana, Illinois an Amount Equal to the Increase in the Aggregate Amount of State Sales Taxes Paid by Retailers and Servicemen on Transactions at Places of Business Located Within the Redevelopment Project Area”, including as subsequently supplemented and amended (collectively, the **“TIF Ordinance”**), copies of which were duly filed with the County Clerk of Champaign, County, Illinois; and

WHEREAS, the City and the Developer previously entered into the Redevelopment Agreement dated as of September 1, 2003 (the "**Prior Redevelopment Agreement**") in order to induce the Developer to acquire and improve (or cause to be done) certain parcels of real estate and appurtenant facilities, as accomplished in one or more phases, and to market the same for commercial development by providing certain tax increment finance incentives from the City as authorized by the Act; and

WHEREAS, the Developer proposes to acquire and improve (or cause to be done) certain additional parcels of real estate and appurtenant facilities adjacent to such previously acquired parcels of real estate in a subsequent phase, and to market all such parcels of real estate together for commercial development; and

WHEREAS, the Developer is unwilling to undertake such acquisition and improvement without certain tax increment finance incentives from the City, which the City is willing to provide, and the City has determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth herein and as this Agreement may be further supplemented and amended; and

WHEREAS, effective as of April 1, 2004, the City and the Developer now desire to further supplement, amend and supersede in its entirety the Prior Redevelopment Agreement by the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and in the Prior Redevelopment Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

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

“Development Area” means, collectively, the real estate consisting of the Development Area (Phase I) and the Development Area (Phase II), upon or within which the Private Development is to be undertaken.

“Development Area (Phase I)” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit B hereto, commonly known as 510 North Cunningham Avenue, Urbana, Illinois.

“Development Area (Phase II)” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit C hereto, commonly known as 520 North Cunningham Avenue, Urbana, Illinois.

“Development Loans” means two (2) separate loans from the Fund, one in connection with the Private Development of Development Area (Phase I) and the other in connection with the Private Development of Development Area (Phase II), each in the not to exceed principal amount of \$100,000.00 and at a non-default interest rate of 0% per annum.

“Eligible Costs” means those property assembly costs paid and incurred by the Developer which are related to the Private Development and which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q)(2) of the Act.

“Fund” means the “Special Tax Allocation Fund for Redevelopment Project Area Number Two” established under Section 5/11-74.8 of the Act and the TIF Ordinance.

“Incremental Property Taxes” means those incremental real property taxes derived from the Redevelopment Project Area under Section 5/11-74.4-8 of the Act.

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

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

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

“Private Development” means, collectively, the acquisition of land and other property, or rights or interests therein, including the demolition of buildings, site preparation, the remediation of environmental contamination and the clearing and grading of land, all of which is to be accomplished within or upon the Development Area in one or more phases by the Developer.

“Related Agreements” means all option, land acquisition, development, redevelopment, construction, financing, franchise, loan, ground lease and lease agreements, whether now or hereafter existing, executed by the Developer in connection with the Private Development.

“Requisition” means a request by the Developer for a Loan Advance in connection with the payment or reimbursement of Eligible Costs pursuant to the procedures set forth in Section 5.1 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 an Illinois limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, and is duly qualified to transact business in, and is in good standing under, the laws of each of the other states where the Developer is required to be qualified to do business.

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

(c) **Authorization and Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's members or managers, as applicable. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

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

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

(f) **No Proceedings or Judgments.** There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 2.3. Related Agreements. The Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information) in existence as of the date hereof within 30 days of the execution of this Agreement, and thereafter shall deliver copies of any additional Related Agreements (redacted as aforesaid) within 20 days from the date of the execution thereof. Upon request of the City, the Developer shall make available for inspection and review an unaltered copy of all such redacted Related Agreements. The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

Section 2.4. Disclaimer of Warranties. The City and the Developer acknowledge that neither has made any warranties to the other, except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Private Development, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III

CITY'S COVENANTS AND AGREEMENTS

Section 3.1. City's Financial Obligations. The City shall have the obligations set forth in this Section 3.1 relative to financing Eligible Costs at the Development Area. Subject to the terms and conditions of Section 3.2 of this Agreement, the City agrees to provide to or for the benefit of the Developer each of the Development Loans. The Development Loans shall each be payable in full no later than three (3) years after the date of the first advance for each of the Development Loans. Each of the Development Loans shall be a straight line of credit. Any Loan Advance under each of the Development Loans shall only be made upon the submission to the City of a Requisition for Eligible Costs incurred or paid in accordance with the procedures set forth in Section 5.1 of this Agreement.

Section 3.2. Conditions Precedent. The respective obligations of the City to provide each of the Development Loans to or for the benefit of the Developer under this Agreement is contingent upon the following as applicable to each:

(a) The Developer shall have acquired title to the Development Area (Phase I) on or before October 1, 2003, and have entered into a binding contract with Fumeida, Inc., an Illinois corporation ("**Fumeida**") to purchase Development Area (Phase II), including the right to demolish and remove any and all improvements thereon, on or before May 17, 2004, subject only to: 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 are not violated by the existing improvements or the present use and proposed Private Development, and, in connection with the Development Area (Phase I) only, an existing mortgage to The Edgar County Bank & Trust Company, Paris, Illinois, securing a loan with an outstanding principal balance in the approximate amount of \$600,000.00, all as evidenced by a title commitment for each of the Development Loans issued by a title company regularly doing business in Champaign County, Illinois; and

(b) The payment of the Lender's title policy premium and any related search charges and the execution and delivery by the Developer (and/or Fumeida, as applicable, in connection with the Development Area (Phase II)) of promissory notes substantially in the form of that attached hereto as Exhibit D and mortgages substantially in the form of that attached hereto as Exhibit E in connection with each of the Development Loans.

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

ARTICLE IV

DEVELOPER'S COVENANTS

Section 4.1. Agreement to Undertake the Private Development. The Developer covenants and agrees to undertake the Private Development in the manner and with the effect set forth in this Agreement, including at the times set forth in Section 3.2 of this Agreement. In addition, the Developer covenants and agrees to undertake each of the following:

(a) to demolish, clear and remove any existing buildings or structures located upon the Development Area (Phase I) on or before October 1, 2003 and upon the Development Area (Phase II) on or before August 17, 2004;

(b) to remediate in a timely manner any environmental contamination that may be located upon Development Area (Phase I), and, at such time as the Developer acquires title thereto, Development Area (Phase II); and

(c) to develop plans and any proposals, including detailed building plans, in order to market the Development Area in cooperation with the City for retail business.

Section 4.2. Acquisition, Construction and Installation of Private Development. The Developer shall at all times cause the Private Development to proceed in conformance with this Agreement and all applicable laws, rules and regulations, including all subdivision, zoning, environmental or other land use ordinances of the City. Any agreement of the Developer related to the Private Development with any other party or parties to any such agreements shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

Section 4.3. [RESERVED]

Section 4.4. Indemnity. The Developer agrees to forever indemnify and defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract brought against the City arising from any alleged claims, acts or omissions of such Developer in connection with this Agreement, including any matter or thing in connection with the Private Development, whether or not suit is filed.

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

Section 4.6. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of Development Area (Phase I) and, at such time as the Developer acquires title thereto, Development Area (Phase II). The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Area under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable

agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Area upon which the Private Development is located and shall be in full force and effect until December 31, 2023, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to such land the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect.

ARTICLE V

PAYMENT FOR ELIGIBLE COSTS

Section 5.1. Payment Procedures. The City and the Developer agree that the Eligible Costs constituting any Loan Advance shall be paid solely, and to the extent available, from Incremental Property Taxes deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Loan Advance to be disbursed by the Comptroller of the City for payment to the Developer shall be in accordance with the procedures set forth in this Section 5.1 of this Agreement. The City hereby designates the City's Chief Administrative Officer, or the designee thereof, (the "CAO") as its representative to coordinate the authorization of disbursement of any Loan Advance for the Eligible Costs. Payments to or at the direction of the Developer of any Loan Advance for Eligible Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a "**Requisition**") submitted by the Developer from time to time stating:

- (i) that certain Eligible Costs have been completed and have either been approved or accepted by the Developer;

- (ii) the dollar amount of the Loan Advance to be advanced in connection with such request; and
- (iii) the dollar amount of the Eligible Costs remaining to be paid.

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

Section 5.2. Approval and Resubmission of Requisitions. The CAO shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. If a Requisition is disapproved by such CAO, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 5.3. Time of Payment. The City shall pay the Loan Advance to or at the direction of the Developer within thirty (30) days of the approval of the Requisition as set forth in Section 5.2 above.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.1. Defaults - Rights to Cure. Except as otherwise provided in Section 6.4 of this Agreement below in connection with defaults and remedies related to the Development Loans, any other failure or delay by either party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays shall, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default specifying the default complained of. Except as required to protect against immediate, irreparable harm, the party asserting a default may not institute proceedings against the other party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which

cannot reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Section 6.2. Remedies. The only other remedy available to either party in the event of a breach of this Agreement by the other party under any of the terms and provisions hereof shall be to institute legal action against the other party for specific performance or other appropriate equitable relief. Except for any Loan Advance which shall become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement. The provisions of this Section 6.2 shall not be applicable, however, to the indemnity obligations of the Developer under Section 4.4 of this Agreement.

Section 6.3. Costs, Expenses and Fees. If either party defaults in the performance of its obligations hereunder, and is determined in breach of this Agreement by a court of competent jurisdiction, each of the parties agree that the defaulting party shall pay the non-defaulting party's costs, expenses and fees of enforcing the defaulting party's obligations under this Agreement, including but not limited to reasonable fees of accountants, attorneys, engineers and other professionals.

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

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1 Entire Contract and Amendments. This Agreement (together with the Exhibits A to E, inclusive, attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, and may not be modified or amended except by a written instrument executed by both of the parties.

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

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

Section 7.4. Special and Limited Obligation. This Agreement shall constitute special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations hereunder only such amount of the Incremental Property Taxes attributable to the Private Development in the Development Area as is set forth in Section 3.1(a) hereof, if, as and when received, and not otherwise.

Section 7.5. 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, or for any other reasons not within the Developer’s or the City’s control.

Section 7.6. 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 7.7. 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 7.8. 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:

Five Points Northeast, LLC
c/o James Burch
2404 N. Mattis Avenue
Champaign, IL 61820
Tel: (217) 359-8333
Fax: (217) 359-9766

- (ii) In the case of the City, to:

City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Chief Administrative Officer
Tel: (217) 384-2454
Fax: (217) 384-2363

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

Section 7.9. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns; provided, however, that Developer may not assign its rights under this Agreement without the express written consent of the City, which shall not be unreasonably withheld or delayed.

Section 7.10. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 7.11. Verification of Tax Increment. The City and Developer shall fully cooperate in connection with obtaining certified copies of all real estate tax bills for the taxable property constituting the Private Development.

Section 7.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

Section 7.13. No Personal Liability of Officials of City. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

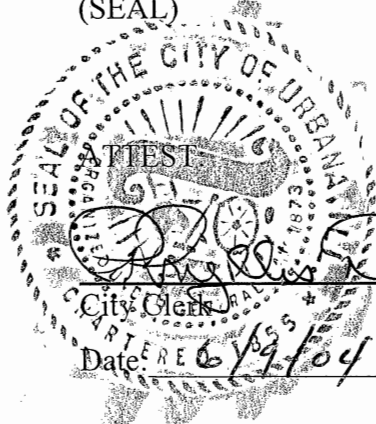
Section 7.14. Superseder. Except for any Loan Documents executed in connection therewith, this Agreement supersedes and completely replaces the Prior Redevelopment Agreement in its entirety. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

Section 7.15. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until September 1, 2006. Anything to the contrary notwithstanding, however, the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in effect in accordance with the express provisions of such Sections.

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

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

By: Tal Satterthwaite
Mayor

(SEAL)

TEST
Angela D. Clark
City Clerk
Date: 6/9/04

FIVE POINTS NORTHEAST, LLC

By: James Banks
Its [Member/Manager]
Date: 6/9/04

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

EXHIBIT A

Legal Description of Redevelopment Project Area

EXHIBIT B

Legal Description of Development Area (Phase I)

EXHIBIT C

Legal Description of Development Area (Phase II)

EXHIBIT D

Promissory Note

EXHIBIT E

Mortgage

EXHIBIT A

Legal Description of Redevelopment Project Area

Exhibit "A"
City of Urbana TIF II

A portion of Section 8 and 17, Township 19 North, Range 9 East of the Third Principal Meridian, situated in the City of Urbana, Champaign County, State of Illinois, being generally bounded by Crystal Lake Drive on the North, Maple Street on the East, California Street on the South and Orchard Street on the West, being further described as follows:

Beginning at the intersection of the West right-of-way line of Orchard Street and the North line of the Consolidated Railway Corporation's railroad right-of-way; thence Easterly along said railroad right-of-way to an extension of the East line of the Big Wheel Survey; thence Northerly 90 feet, more or less, to a property line; thence Easterly along said property line 150 feet, more or less, to the West line of Leal Park; thence Northerly along said Park to the North right-of-way line of University Avenue; thence Easterly along University Avenue to the West right-of-way line of Lake Street; thence Northerly along Lake Street 144 feet to the North line of an east-west alley; thence Easterly along said alley to the East right-of-way line of Race Street; thence Southerly along Race Street 13.6 feet to a property line; thence Easterly along said property line 181 feet to the center of a vacated alley; thence Northerly along the center of said vacated alley 4.2 feet, more or less, to a property line; thence Easterly along said property line to the West right-of-way line of Broadway Avenue; thence Northerly along Broadway Avenue to the extension of the South line of Crystal Lake Park Addition; thence Easterly along said South line to the West line of Lot 29 of said Addition; thence Northerly along said Lot 29 to the North right-of-way line of Crystal Lake Drive; thence Easterly along Crystal Lake Drive 47.05 feet; thence Southerly along the extension of the East line of said Lot 29 a distance of 248.76 feet to a property line; thence Southeasterly along said property line 284.31 feet to the West right-of-way line of Cunningham Avenue; thence Northeasterly along Cunningham Avenue to a point 196 feet North of the centerline of Crystal Lake Drive; thence Easterly to the intersection of the East right-of-way line of Cunningham Avenue with the South property line of a 0.95 Acre parcel having its North property line on the East 1/4 Section line of said Section 8; thence Easterly along said South property line to the West line of Lot 2 of Webber Estate Subdivision; thence Southerly along said Lot 2 a distance of 548.6 feet to a property line; thence Westerly along said property line to the East right-of-way line of Maple Street; thence Southerly along Maple Street to the centerline of the University Avenue pavement; thence Easterly along said centerline to the extension of the East right-of-way line of Maple Street South of University Avenue; thence Southerly along the East right-of-way line of Maple Street to the North right-of-way line of Main Street; thence Easterly along Main Street to the extension of the East right-of-way line of Grove Street; thence Southerly along Grove Street to the extension of the South line of an alley commonly known as Fish Alley; thence Westerly along Fish Alley to a point 138 feet West of the West right-of-way line of Grove Street; thence Northerly 6 feet to the center of Fish Alley; thence Westerly along the centerline of the vacated portion of Fish Alley to the East right-of-way line of Maple Street; thence Southerly along Maple Street 6 feet; thence Westerly along the South line of Fish Alley to the East right-of-way line of Urbana Avenue; thence Southerly along Urbana Avenue to the South right-of-way line of California Avenue; thence Westerly along California Avenue to the East right-of-way line of Vine Street; thence Westerly to the intersection of the West right-of-way line of Vine Street with the South right-of-way line of California Avenue; thence Westerly along California Avenue to the West right-of-way line of Walnut Street; thence Northerly along the East line of Beck's Addition to the Southeast corner of Lot 4 of said Addition; thence Easterly to the Southwest corner of Lot 4 of Myers & Besores Addition; thence Northerly along the West line of said Lot 4 to the South right-of-way line of Illinois Street; thence Westerly along Illinois Street to the East line of Beck's Addition; thence Northerly along the West line of Walnut Street to a property line 132.9 feet North of the North right-of-way line of Illinois Street; thence Westerly along said property line to the East right-of-way line of Broadway Avenue; thence Southerly along Broadway Avenue to the South line of Illinois Street; thence Easterly along Illinois Street 127.5 feet; thence Southerly to the Northwest corner of Lot 5 of Beck's Addition; thence Westerly along the South line of Cedar Alley to the East right-of-way line of Broadway Avenue; thence Southerly along Broadway Avenue to the South right-of-way line of California Avenue; thence Westerly along California Avenue to a point 132 feet West of the West right-of-way line of Race Street; thence Northerly along a property line 165.5 feet to the south line of Cedar Alley; thence Westerly along Cedar

Alley 103 feet, more or less; thence Northerly along a property line 127.5 feet to the South right-of-way line of Illinois Street; thence Westerly along Illinois Street 8 feet, more or less; thence Northerly along a property line 249.6 feet to the South right-of-way line of High Street; thence Westerly along High Street 28.875 feet; thence Northerly along a property line 75.5 feet to the South line of High Alley; thence Westerly along High Alley to the West right-of-way line of Cedar Street; thence Northerly 6 feet to the centerline of vacated High Alley; thence Westerly along said centerline 111.5 feet; thence Northerly along Birch Street to the South line of Fish Alley; thence Westerly along Fish Alley to the West line of McCullough Street; thence Northerly along McCullough Street 30.14 feet to a property line; thence Westerly along said property line 101.71 feet; thence Northerly along the West line of Lot 1 of Sutton's Subdivision to the South right-of-way line of Springfield Avenue; thence Westerly along the South right-of-way of Springfield Avenue to the extension of the West line of Lot 5 of Block 10 of Sim's Addition; thence Northerly along said Lot 5 a distance of 189 feet, more or less, to the South right-of-way line of Stoughton Street; thence Northeasterly along a line perpendicular to said right-of-way line 66 feet to the North right-of-way line of Stoughton Street; thence Southeasterly along the North right-of-way line of Stoughton Street and along its curve to the left, to its intersection with the West right-of-way line of McCullough Street; thence Northerly along McCullough Street to the North right-of-way line of Main Street; thence Southeasterly along Main Street to the extension of a property line located 82 feet East of the East line of Lot 2 of the Subdivision of Lot A of a Subdivision of the South Part of the Southwest Quarter of said Section 8; thence Southerly across the Main Street right-of-way and along said property line to the South line of said Section 8; thence Easterly along said South line to a property line located 90 feet East of the East line of Porter Replat; thence Southerly along said property line to the North right-of-way line of Springfield Avenue; thence Easterly along Springfield Avenue 179.79 feet to another property line; thence Northerly along said property line to the South right-of-way line of Main Street; thence Northwesterly along the South right-of-way line of Main Street to the West right-of-way line of Central Avenue; thence Northerly along Central Avenue to the Southeast corner of Lot 10 of C.W. Smith's Subdivision; thence Westerly along the South line of said Lot 10 a distance of 139.5 feet to the West line of a north-south alley; thence Northerly along said alley to the South right-of-way line of Griggs Street; thence Westerly along Griggs Street to the East right-of-way line of McCullough Street; thence Westerly to the intersection of the South right-of-way line of Griggs Street with the West right-of-way line of McCullough Street; thence Northerly along McCullough Street to the Northeast corner of Lot 1 of Block 1 of Colonel S.T. Busey's Third Addition; thence Northwesterly along the North line of said Addition and along an extension of said line to the west right-of-way line of Orchard Street; thence Northerly along Orchard Street to the point of beginning;

Except;

The tract of land known as the Downtown Urbana Conservation-Redevelopment District as described in City Ordinance 8081-62, passed on December 15, 1980;

Encompassing 173 Acres, more or less, all situated in the South half of Section 8 and the North half of Section 17, Township 19 North, Range 9 East of the Third Principal Meridian in the City of Urbana, Champaign County, State of Illinois.

EXHIBIT B

Legal Description of Development Area (Phase I)

Exhibit "B"

Phase I

A tract of ground bounded and described as follows: Beginning at the Northeast corner of University Avenue (U.S. Route 150) and Cunningham Avenue (U.S. Route 45) as the intersection exists after August 29, 1957 and as the beginning point was marked that date with a steel pipe by now deceased surveyor Mack Kinch and which pipe and point also was accepted May 1, 1979 by Illinois Land Surveyor Charles S. Danner; thence Northerly along the Easterly line of the Cunningham Avenue as located by Surveyor Danner and disclosed by his unrecorded plat of survey on a local bearing of North 22 Degrees 43 Minutes 38 Seconds East 73.37 feet to the Northeast corner of a concrete right-of-way marker set by authority of the Illinois Department of Transportation; continuing North 22 Degrees 43 Minutes 38 Seconds East 176.55 feet to the Southeast corner of a similar concrete marker; thence North 87 Degrees 51 Minutes 53 Seconds East 130.47 feet to the former position of a steel survey marker set by Surveyor Kinch May 12, 1952, as reestablished by Surveyor Danner May 1, 1979; thence South 00 Degrees 00 Minutes 00 Seconds East 244.87 feet to a buried steel survey marker set by Surveyor Danner to mark the North line of University Avenue; thence South 89 Degrees 40 Minutes 00 Seconds West 162.75 feet along a line determined in 1979 by Surveyor Danner to be the North line of University Avenue; thence North 80 Degrees 45 Minutes 30 Seconds West 65.03 feet to the point of beginning, and

A tract of ground bounded and described as follows: Beginning at the Northeast corner of a concrete right-of-way marker set by Authority of the Illinois Division of Highways to represent the Easterly right-of-way line of state bond issue Route number 25, 40 feet Easterly of the centerline station 271 plus 18 as said centerline was constructed in the 1930's, said concrete marker also bearing North 22 Degrees 43 Minutes 38 Seconds East 73.37 feet from a steel survey marker set by Illinois Land Surveyor Charles S. Danner, May 1, 1979, to mark the then intersection of the North line of University Avenue and the East line of Cunningham Avenue in Urbana, Illinois; thence South 87 Degrees 51 Minutes 53 Seconds West 5.43 feet to the Southeast corner of a concrete right-of-way marker also set by the authority of the Illinois Division of Highways; thence continuing South 87 Degrees 51 Minutes 53 Seconds West 2.29 feet more or less to the Easterly line of Cunningham Avenue as dedicated (66 feet wide) in Hiram Shepard's Addition to the City of Urbana, Illinois, thence Northeasterly along the East line of Cunningham Avenue as so dedicated to a point which bears South 87 Degrees 51 Minutes 53 Seconds West from a cross cut in asphalt pavement which cross bears North 22 Degrees 43 Minutes 38 Seconds East 176.55 feet from the point of beginning; thence North 87 Degrees 51 Minutes 53 Seconds East 7.72 feet more or less to a point which bears North 22 Degrees 43 Minutes 38 Seconds East 176 feet from the point of beginning; thence South 22 Degrees 43 Minutes 38 Seconds West 176.55 feet to the point of beginning, all situated in Champaign County, Illinois.

EXHIBIT C

Legal Description of Development Area (Phase II)

EXHIBIT "C"

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

Part of the East Half of the Southeast Quarter of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian and part of Lots 26, 29, 30, 33, 34 and 35 of Hiram Shepherd's Addition to the City of Urbana, as per plat recorded in Deed Record 32 at page 240, more particularly described as follows:

That vacated portion of North Maple Street in the City of Urbana, Illinois, commencing at the Southwest corner of the intersection of Park Street and Maple Street, thence South 250 feet, thence East 10 feet, thence North 260 feet, thence West 10 feet, thence South 10 feet to the place of beginning, and that vacated portion of Park Street commencing at the Southwest corner of the intersection of North Maple Street and East Park Street in the City of Urbana, Illinois, thence West along the South line of Park Street 300 feet, thence North 10 feet, thence East 300 feet, thence South 10 feet to the place of beginning, situated in the City of Urbana, in Champaign County, Illinois, as vacated by Ordinance dated May 18, 1964 and recorded August 18, 1964 in book 767 at page 128 as document 716962; AND

Beginning 616.9 feet West and 926.28 feet South of the Northeast corner of the Southeast Quarter of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, being the Southwest corner of the intersection of East Park Street and North Maple Street; thence Southerly along the West line of Maple Street making an angle on the Southwest of 89 degrees 46 minutes a distance of 250 feet; thence Westerly making an angle on the Northwest of 90 degrees 10 minutes a distance of 262 feet; thence Southerly making an angle on the North and West of 269 degrees 46 minutes a distance of 95.75 feet to the North line of University Avenue; thence Westerly along the North line of said University Avenue making an angle on the Northwest of 90 degrees 20 minutes a distance of 50.05 feet; thence Northerly making an angle on the Northeast of 89 degrees 40 minutes a distance of 244.87 feet; thence Westerly making an angle on the North and East of 272 degrees 09 minutes a distance of 130.62 feet to the East line of Cunningham Avenue (U.S. Route 45); thence Northerly along the East line of Cunningham Avenue making an angle on the Northeast of 65 degrees 10 minutes a distance of 114.8 feet to the South line of Park Street; thence Easterly along the South line of Park Street making an angle to the Southeast of 112 degrees 59 minutes a distance of 398.11 feet to the place of beginning, all situated in the City of Urbana, in Champaign County, Illinois.

EXHIBIT D

Promissory Note