

ORDINANCE NO. 2014-03-027

**AN ORDINANCE AMENDING THE ADDENDUM TO THE GOODYEAR REAL ESTATE
OPTION AND CONTRACT
(202 South Vine Street - Goodyear)**

WHEREAS, In February 2010, the Council adopted an ordinance (2010-02-006), approving an option contract with Hershel C. Tummelson Family Trust and the Darius E. Phebus Family Trust (Sellers) to acquire the real estate where the Goodyear store is located; and

WHEREAS, The purchase was part of a plan to redevelop the entire block immediately north of the City building. As part of a due diligence effort, the City obtained an Environmental Audit which indicated the existence of some contamination on the site that would require remediation. To address the unknown costs of remediation, the parties entered into an agreement to place One Hundred Thousand Dollars (\$100,000.00) of the purchase in escrow with BankChampaign. This Agreement entitled "Addendum to Goodyear Real Estate Option and Contract" was adopted by the Council on the 18th day of January, 2011. (Ordinance No. 2011-01-005, hereafter "Addendum"). The Addendum provided that the City could use the escrowed funds to pay the costs of necessary remediation when the extent of such was known. Any leftover funds not being so used by May 1, 2015, would be released to the Sellers; and

WHEREAS, In exchange for the escrow arrangement, the City agreed to release, indemnify and hold harmless the Sellers, their successors and assigns from any liability for contamination on the subject real estate existing at the time of closing, and to release and indemnify and hold harmless their tenants, Urbana Tire Company, Inc., and Donald A. Fitzgerald for liability for remediation of the contamination revealed by the HDC Engineering audit report referenced herein; and

WHEREAS, When the City acquired the Goodyear parcel, Donald A. Fitzgerald (hereafter Fitzgerald) was the business tenant and had been for many years. Fitzgerald and Sellers had an agreement that Fitzgerald was responsible to pay for all costs for remediation of any contamination on the site. In 2013, Fitzgerald sold the business to True Tire & Automotive Company, but Fitzgerald remained liable to the Sellers, under his agreement, to pay the costs of remediation despite the sale to the City; and

WHEREAS, Fitzgerald desires to end his open ended obligation to pay the costs for remediation and has offered to pay to the City, the sum of Three Thousand Dollars (\$3,000.00) to release him and the Sellers from the obligation to pay any future costs of remediation, and release the \$100,000.00 in escrow to the Sellers. Although the exact nature and extent of the existing contamination are still unknown, recent further investigation supports the conclusion that any contamination is minor and unlikely to cost more than Three Thousand Dollars (\$3,000.00) if remediation were undertaken as part of a new construction in a redevelopment project. If the remediation effort is not undertaken by May 1, 2015, the entire \$100,000.00 in escrow funds are automatically released to the Sellers.


AND THUS, BE IT ORDAINED that the Addendum dated February 10, 2011, is hereby amended to approve the Amendment to the Escrow Agreement attached hereto as Exhibit A

PASSED by the City Council this 17th day of March, 2014.

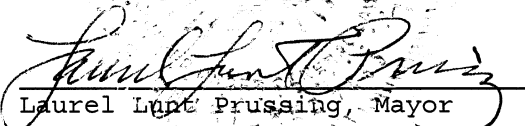
AYES: Ammons, Brown, Jakobsson, Madigan, Marlin, Roberts, Smyth

NAYS:

ABSTAINS:


Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 18th day of March, 2014.


Laurel Lunt Prussing, Mayor

AMENDED ESCROW AGREEMENT

THE UNDERSIGNED HEREIN ENTER INTO THIS ESCROW AGREEMENT WITH BANKCHAMPAIGN, NA ("Escrow Agent"), AND STATE AS FOLLOWS:

1. The undersigned request that escrow agent hold in escrow (in an interest bearing federally insured account) the amount of \$100,000.00. It is specifically acknowledged and agreed by all the parties that the purpose of this agreement is to set aside funds to reimburse the City of Urbana for funds expended for remediation of environmental contamination at 202 S. Vine Street, Urbana, Illinois.

2. Upon delivery to the escrow agent of a written acknowledgement, signed by the Comptroller, that the City has received the sum of Three Thousand Dollars (\$3,000.00) from Donald A. Fitzgerald, the escrow agent shall distribute the balance of the account, including interest accrued, as follows:

A. Twenty-Three percent (23%) to Hurshal C. Tummelson Marital Trust, Jo Elaine Tummelson, Trustee, EIN: 27-6556423 c/o E. Phillips Knox, Tummelson, Bryan & Knox, LLP, P.O. Box 99, Urbana, IL 61803-0099;

B. Twenty-Seven percent (27%) to Hurshal C. Tummelson Family Trust, Jo Elaine Tummelson, Trustee, EIN: 27-6556423 c/o E. Phillips Knox, Tummelson, Bryan & Knox, LLP, P.O. Box 99, Urbana, IL 61803-0099;

C. Fifty percent (50%) to Darius E. Phebus Trust, Busey Trust Company, Trustee, EIN: 36-7394214; c/o E. Phillips Knox, Tummelson, Bryan & Knox, LLP, P.O. Box 99 Urbana, IL 61803-0099;

3. Interest earned on the account shall be payable to the entities set forth in paragraph 3 above, in the proportions indicated in said paragraph.

4. If the payment of \$3,000.00 to the City as described in paragraph 2 above is not made prior to July 1, 2014, the Escrow Agent shall disburse funds from the account to the City of Urbana upon presentation of verified statements signed by the Comptroller of the City of Urbana that such funds are required to reimburse the City for out-of-pocket expenses incurred to remediate contamination at 202 S. Vine Street, Urbana, Illinois, provided, however, that any funds in the escrow account that are not so distributed to the City prior to May, 2015, shall be paid to the entities as set forth in Section 2 above.

5. Escrow agent has received an escrow fee of \$1,500.00, in advance, which covers the term of this agreement.

6. Escrow agent shall only be liable for gross negligence in the performance or non-performance of it duties under this agreement. In the event of any uncertainty as to the proper disbursement of the escrowed funds, the escrow agent may request the joint direction of the parties to this agreement and withhold making disbursement until it receives either A) joint

written direction from the parties or B) order of a court of competent jurisdiction. For purposes of this joint written direction, the escrow agent shall recognize attorney E. Phillips Knox as the authorized agent for the Hurshal C. Tummelson Marital and Family Trusts and the Darius E. Phebus Trust. The authority of the City of Urbana shall be recognized as either: The City Comptroller or the Mayor.

7. Upon distribution of the balance of the account in accordance with paragraph 2 above, the City agrees to release, indemnify and hold harmless the Sellers, their successors and assigns, together with Urbana Tire Company, Inc. and Donald A. Fitzgerald, from any liability for contamination of the subject real estate in accordance with Section 2 of that certain Addendum to Goodyear Real Estate Option and Contract entered into by the Sellers and the City on February 10, 2011.

In witness whereof, the parties in interest have executed this Amended Agreement this 7th day of April, 2014.

Hurshal C. Tummelson Marital and Family Trusts

By: Jo Elaine Tummelson
Jo Elaine Tummelson

Darius E. Phebus Trust,
Busey Trust Company, Trustee


By: AB Grant
Trust Officer

City of Urbana
Champaign County, Illinois

By: Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

This Amended Agreement is accepted this 8th day of April,
2014, by BankChampaign, NA, as escrow agent.

BankChampaign, NA

By:  SVP

Prepared by:
Jack Waaler
Special Counsel
City of Urbana
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Urbana, IL 61801
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