DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

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

DATE: October 4, 2007

SUBJECT: **Amend a Redevelopment Agreement with The New Lincoln Square, LLC (Lincoln Square Village)**

Introduction and Background

In December 2004, the City of Urbana entered into a Redevelopment Agreement with The New Lincoln Square, LLC (the developer) for the redevelopment of Lincoln Square Village. In the original agreement, the developer committed to a two phase project, Phase I of which was an office component and Phase II of which was a residential component.

While the developer has followed through with the office component that now houses Health Alliance and Carle Human Resources, practical complications with the residential component have prevented the completion of Phase II.

The developer has asked that the City consider an amendment to the original agreement to facilitate redevelopment opportunities at Lincoln Square Village by eliminating reference to the residential component and to ensure that they remain in compliance with the agreement. This amended redevelopment agreement will also assist Lincoln Square in their negotiations to attract a major entertainment tenant and potentially a new retail tenant.

Discussion

The draft amended Redevelopment Agreement (Exhibit A) includes changes to both the City's obligations and the developer's obligations under the original Redevelopment Agreement (Exhibit B).

This amended agreement includes some significant changes to the developer's obligations as compared to the original agreement. Incorporating a residential component into a commercial project that never previously anticipated residential can present many complications. These

complications include proximity to convenient parking (preferably covered), ingress and egress, trash disposal, and a variety of other issues. While these issues are solvable, they have prevented Phase II of the project from moving forward to this point. Although they continue to explore the possibility of moving forward with residential development at Lincoln Square, the developer has requested that the obligation to construct a residential component and any timelines related to that component be removed from the agreement. This request has been made in order to avoid being in default of the agreement, which could hamper partnership, financing, tenant attraction, and redevelopment opportunities at Lincoln Square.

In the amended agreement, the developer now would agree to complete significant improvements, including roof and HVAC replacement by December 31, 2007. These improvements, plus new flooring in the food court area have an estimated cost of just under $1,000,000.

This amended agreement also includes some significant changes to the City's obligations. As part of the original agreement, the City was obligated to rebate 100% of the incremental property taxes generated by Lincoln Square, plus $50,000 per year. The amended agreement continues to offer 100% of the incremental property taxes generated annually for eligible expenses up to a total of $1,100,000, however, the $50,000 per year has been removed. In terms of generating increment, the amended agreement continues to set the initial base equalized assessed value (EAV) at $1,796,190. This means that Lincoln Square Village must reach an EAV of $1,796,190 before the City will be obligated to provide any further reimbursements. With a current EAV of $1,089,200, Lincoln Square would not presently qualify for a TIF reimbursement related to increment generated by the project. It should be noted that the planned improvements coupled with several prospective new tenants should support an increase in the EAV of Lincoln Square, allowing the project to begin approaching the base EAV set forth in this agreement.

Additionally, to assist Lincoln Square management with tenant attraction and retention efforts, the City is offering several additional benefits. First, three TIF Redevelopment Incentive Program (TIF RIP) benefits will be made available for existing and prospective tenants. Also, the City is creating and reserving a Class "A" liquor license for a qualified applicant at Lincoln Square. Finally, the City agrees to facilitate exterior wall signage to maximize visibility for existing and potential tenants of Lincoln Square. These additional benefits will assist Lincoln Square in their negotiations with a major entertainment tenant and a new retail tenant.

The City will also continue to honor the existing parking agreement, which was approved as part of the original Redevelopment Agreement with The New Lincoln Square, LLC.

Aside from changes to the obligations of the City and the developer, there are two additional minor modifications to the agreement. Under the original agreement, requisitions for reimbursement were previously submitted to the CAO. The amended agreement directs the developer to submit those to the Comptroller. Also, the original agreement has a hand-written modification agreed to by both parties that modifies the termination date from December 31, 2029, to December 31, 2034. The amended agreement reaffirms the correct termination date of December 31, 2034.

Fiscal Impact

Lincoln Square Village is located within Tax Increment Finance District Number 2 (TIF 2). As such, a majority of both the expenses and revenues generated as a result of this amended redevelopment agreement will be allocated to TIF 2.

As part of the original redevelopment agreement approved in 2004, the City offered 100% of the incremental property taxes generated by the project plus $50,000 per year for eligible expenses. Over 2005 and 2006, the developer incurred costs for eligible expenses in excess of $100,000 for Phase I of the development project outlined in the original agreement. Regardless of whether the proposed amended redevelopment agreement is approved by Council, the City has an obligation to reimburse the developer up to $100,000 for those eligible expenses. This amount has been budgeted in this year's TIF 2 budget.

The City is also offering three TIF RIP benefits to qualified users. This program includes a buy-down of 5.5% interest on a $60,000 loan plus a grant of up to $6,000. The 5.5% buy down generally equates to approximately $7,750. A $7,750 buy-down plus a $6,000 grant offered three times equals a total benefit of approximately $41,250. Although this benefit was not budgeted specifically for Lincoln Square, the TIF RIP program is budgeted annually as part of the TIF 2 budget.

As has been explained above, the City, as part of the original agreement and the amended agreement, has agreed to reimburse the developer 100% of the incremental property taxes generated by the project for eligible expenses up to $1,100,000. As has also been explained above, the current EAV of the property is $1,089,200, which is below the base EAV value of $1,796,190 used to calculate the increment generated. Therefore, Lincoln Square is currently generating no incremental property taxes and is not eligible for an incremental property tax reimbursement from the City. While this means there is currently no budgetary impact related to this provision, it is expected that Lincoln Square will, at some point, be assessed at a level that will generate incremental property taxes. The timeline and scope for this reimbursement will vary depending on future tenant attraction, redevelopment efforts, and investment in the property.

Options

1. Approve the ordinance as presented

2. Approve the ordinance with changes. It should be noted that any changes will need to be agreed upon by the current property owner.

3. Deny the ordinance.

Recommendation

Staff recommends that the City Council approve the attached ordinance.

Prepared by:

_____

Tom Carrino, Economic Development Manager

Attachments:

Exhibit A: Amended Draft Redevelopment Agreement
Exhibit B: Original Redevelopment Agreement

ORDINANCE NO. 2007-10-114

AN ORDINANCE APPROVING AN AMENDMENT
TO A REDEVELOPMENT AGREEMENT WITH THE NEW LINCOLN SQUARE, LLC
(2007)

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

Section 1. That an Amendment to Redevelopment Agreement Between the City of Urbana and The New Lincoln Square, LLC in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Assignment and Estoppel Certificate as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2007.

AYES:

NAYS:

ABSTAINS:

_____
Phyllis Clark, City Clerk

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

_____

Laurel Lunt Prussing, Mayor

REDEVELOPMENT AGREEMENT
FIRST AMENDED AND RESTATED

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

THE NEW LINCOLN SQUARE, LLC

Dated as of October 1, 2007

Document Prepared By:

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

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LIST OF EXHIBITS

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 October 1, 2007, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the **"City"**), and **The New Lincoln Square, LLC**, an Illinois limited liability company (the **"Developer"**).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at 65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the **"TIF Act"**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the **"Corporate Authorities"**) did adopt an ordinance (Ordinance No. 8687-45 on December 23, 1986) including as supplemented and amended by certain ordinances (Ordinance No. 9394-101 on May 16, 1994, Ordinance No. 2002-06-064 on June 17, 2002 and Ordinance No. 2005-03-032 on March 21, 2005) (collectively, the **"TIF Ordinances"**); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Downtown Urbana Tax Increment Redevelopment Project Area Number Two (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 City and the Developer previously entered into a Redevelopment Agreement dated as of November 1, 2004 (the **"Prior Redevelopment Agreement"**) in order to induce the Developer to rehabilitate, reconstruct, repair or remodel (or cause to be done) the Private Development Project (including related and appurtenant facilities as more fully defined below) on the Development Project Site (as defined below); and

WHEREAS, the Development Project Site (as defined below) is within the Redevelopment Project Area; and

WHEREAS, the Developer was unwilling to undertake the Private Development Project (as defined below) without certain tax increment finance incentives from the City, which the City was willing to provide, and the City determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth in the Prior Redevelopment Agreement; and

WHEREAS, the City and the Developer now desire to supplement, amend and supersede in its entirety the Prior Redevelopment Agreement by the provisions of this Agreement in order to enhance the marketability and economic viability of the Private Redevelopment Project (as defined below); and

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

ARTICLE I
DEFINITIONS

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

"City Comptroller" means the City Comptroller of the City, or his or her designee.

"Corporate Authorities" means the City Council of the City.

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

"Eligible Redevelopment Project Costs" means those costs paid and incurred in connection with the rehabilitation, reconstruction, repair or remodeling of the Private Development Project and which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act.

"Fund" means, collectively, the "Special Tax Allocation Fund" for the Redevelopment Project Area established under Section 5/11-74.8 of the TIF Act and the TIF Ordinances.

"Incremental Property Taxes" means in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon taxable real property in the Redevelopment Project Area by taxing districts that is attributable to the increase in the equalized assessed value of the taxable real property in the Redevelopment Project Area over the equalized assessed value of the taxable real property in the Redevelopment Project Area on January 1, 1986 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, has been allocated to and when collected shall be paid to the 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.

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

"Private Development Project" means the rehabilitation, reconstruction, repair or remodeling of the existing structure upon the Development Project Site into a mixed use office and retail facility.

"Reimbursement Amounts" means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.1 of this Agreement.

"Related Agreements" means all option, 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 Project.

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

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

(a) definitions include both singular and plural.

(b) pronouns include both singular and plural and cover all genders; 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, 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 manager(s). This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

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

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

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

Section 2.3. Related Agreements. Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information). The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

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

conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III
CITY'S COVENANTS AND AGREEMENTS

Section 3.1. City's Financial Obligations. The City shall have the obligations set forth in this Section 3.1 relative to financing Eligible Redevelopment Project Costs in connection with the Private Development Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid in accordance with Article V of this Agreement, the City, subject to the terms, conditions and limitation set forth in this Section 3.1 immediately below, agrees to reimburse the Developer from the Fund such Reimbursement Amounts as are directly related to the Private Development Project at the Development Project Site as follows:

(a) such Reimbursement Amounts in connection with the Private Development Project in any one calendar year shall be equal to the amount of the Incremental Property Taxes actually received by the City in any such calendar year which are directly attributable to the Private Development Project at the Development Project Site;

(b) for the purpose of determining the total amount of Incremental Property Taxes which are directly attributable to the Private Development Project at the Development Project Site, the total equalized assessed value (the **"EAV"**) of the Development Project Site for such calendar year shall be reduced by the initial EAV of the Development Project Site in the agreed amount of $1,796,190, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area for any such applicable calendar year;

(c) the total amount of all such annual payments of the Reimbursement Amounts pursuant to this Section 3.1(a) above shall not exceed the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Private Development Project at the Development Project Site or $1,100,000.00, whichever is less; and

(d) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.1 shall terminate no later than December 31, 2022, or such earlier date upon which the total amount of the reimbursement obligation of the City under this Section 3.1 is paid to the Developer in accordance with Article V of this Agreement.

Section 3.2. City's Obligations to Provide Parking. The City hereby covenants and agrees to provide parking for the benefit of the Development Project Site subject to and in accordance with the provisions of An Agreement to Provide Parking Facilities, to be effective as of the first day of the term as specified therein, a copy of which is attached hereto as Exhibit B (the **"Parking Agreement"**).

Section 3.3. TIF Redevelopment Incentive Program. The City will provide financial incentives in the form of an interest subsidy and, if qualified, a grant under the TIF Redevelopment Program of the City for up to three (3) tenants of the Developer who each meet established criteria for such financial incentives in order to facilitate the construction or rehabilitation of any such tenant's leased premises at the Development Project Site.

Section 3.4. Liquor License. During the term of this Agreement, upon the written request of the Developer, the City agrees to provide and allow for the issuance of one additional Class "A" license for a restaurant/entertainment facility which shall permit the sale and/or dispensing, as the case may be, of alcoholic beverages in a restaurant/entertainment facility to be located within the Development Project Site. Upon application, the City will cause the creation of and the Mayor, as local liquor control commissioner, will issue such license provided that the applicant shall meet each and every provision of Chapter 3, entitled "Alcoholic Liquors", of the Urbana City Code (the **"Liquor Ordinance"**) and the Liquor Control Act of 1934 (235 ILCS 5/1-1, et seq.) relating to applications, qualifications, regulations and restrictions for operators of establishments serving, dispensing or selling alcoholic beverages. It is expressly understood by the parties that, notwithstanding any other provision of this Agreement, any changes in, modifications of or amendments to the Liquor Control Ordinance that shall impose more restrictive requirements and regulations on establishments serving, dispensing or selling alcoholic beverages or operators or

licensees thereof shall be applicable to any establishment situated within the Development Project Site. The Liquor Control Ordinance, as it may be supplemented and amended from time to time, shall operate uniformly and without exception on all persons and establishments within the class to which it relates. No license that may be issued hereunder shall be effective for a period in excess of the term applicable to the respective classification as provided in the Liquor Control Ordinance.

Section 3.5. Wall Signage. The City agrees to facilitate the use of exterior wall signage upon the existing structure on the Development Project Site in order to maximize signage visibility for existing and potential future tenants in accordance with zoning ordinance interpretations existing at the time of the Prior Redevelopment Agreement by allowing up to ten percent (10%) of each face of such existing structure for wall signs or wall mounted signs.

Section 3.6. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amounts to be made by the City, 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. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

ARTICLE IV
DEVELOPER'S COVENANTS

Section 4.1. Commitment to Undertake Required Improvements. The Developer covenants and agrees to commence and complete certain improvements to the Private Development Project, including replacing and/or repairing the HVAC system and the roof of the building and correcting all other violations of the building codes and ordinances of the City on or before December 31, 2007.

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

Section 4.3. City's Right to Audit Developer's Books and Records. The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Private Development Project and the total amount of related Eligible Redevelopment Project Costs, including, if any, loan agreements, notes or other obligations in connection with any indebtedness of the Developer directly related to such costs paid or incurred by the Developer for the Private Development Project in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Private Development Project that was financed by the Developer and in fact paid and incurred by the Developer.

Section 4.4. Indemnity. The Developer covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses resulting from the acquisition, construction and installation of the Private Development Project, any development activities in connection with the Private Development Project or any use, operation, maintenance or occupancy of the Private Development Project by the Developer or any of its agents, contractors,

subcontractors, lessees or invitees with respect to the Private Development Project and this Agreement, and to indemnify and hold and save the City and its officers, agents, employees, engineers and attorneys (the **"Indemnitees"**) harmless of, from and against such claims, damages, demands, expenses, liabilities and losses, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of the sole negligence or willful misconduct of the City or other Indemnitees.

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

Section 4.6. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Project Site. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Project Site under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Project Site upon which the Private Development Project is located and shall be in full force and effect until December 31, 2034, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other

party; provided, however, upon request of any party in title to the Development Project Site the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect. Nothing contained within this Section 4.6 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of real property taxes assessed and levied upon the Development Project Site or any part thereof.

ARTICLE V
PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

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

The City hereby designates the City Comptroller as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a **"Requisition"**) submitted by the Developer with respect to Eligible Redevelopment Project Costs incurred and paid but not previously submitted. Each such Requisition shall be accompanied by appropriately supporting documentation, including, as applicable: (i) receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors' affidavits or lien waivers; (ii) an affidavit by any financial institution which verifies the annual amount of interest costs constituting Eligible Project Redevelopment Costs, if any, that were paid; or (iii) an affidavit by an Independent accountant

which verifies that any such Eligible Project Redevelopment Costs have been paid and incurred by the Developer.

Section 5.2. 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 all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein. 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. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 5.3. Time of Payment. Upon the approval of any of the applicable Requisitions as set forth in Section 5.2 above, the City shall pay each of the applicable annual Reimbursement Amounts to the Developer within thirty (30) days after the receipt by the City of the last installment of the Incremental Property Taxes during that calendar year.

Section 5.4. Shortfalls. If any Requisition is not paid in full in any calendar year due to any of the limitations specified for Reimbursement Amounts in Section 3.1(a) hereof, the entire amount of any Requisition remaining to be paid shall accrue and, subject to and in accordance with the payment procedures set forth in this Article V, shall be paid as a part of any applicable annual Reimbursement Amount in the next or any succeeding calendar year or years at the time specified in Section 5.3 hereof.

ARTICLE VI
DEFAULTS AND REMEDIES

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

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

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

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

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

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

Section 6.3. Remedies. Upon the occurrence of an Event of Default under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence

of an Event of Default under this Agreement by the Defaulting Party shall be to institute legal action against the Defaulting Party for specific performance or other appropriate equitable relief. Except for the payment of any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement. In the event that any failure of the City to pay any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof is due to insufficient Incremental Property taxes which are directly attributable to the Development Project at the Development Project Site being actually received by the City, any such failure shall not be deemed to be a Default on the part of the City.

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

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.1 Entire Agreement and Amendments. This Agreement (together with the Exhibits A and B attached hereto) is the entire agreement between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, including in particular the Prior Redevelopment Agreement, and may not be modified or amended except by a written instrument executed by both of the parties. Upon the execution and delivery of this Agreement, all rights and

obligations of both the Developer and the City under the Prior Redevelopment Agreement shall be terminated, discharged and no longer of any force and effect.

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 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 3.1 hereof only such amount of the Incremental Property Taxes attributable to the Private Development Project at the Development Project Site as is set forth in Section 3.1 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.

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:
The New Lincoln Square
201 Lincoln Square
Urbana, IL 61801
Attn: Manager
Tel: (217) 367-4092 / Fax: (217) 367-0557

with a copy to: James Webster
104 W. University Avenue
Urbana, IL 61801
Tel: (217) 344-0973 / Fax: (217) 347-7506

(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 7.9. Assignment. The Developer shall have the right to sell, assign or otherwise transfer its rights and obligations under this Agreement to any assignee in whole without the prior written consent of the City, but shall not have the right to sell, assign or otherwise transfer its rights and obligations under this Agreement to any assignee in part. Any assignment in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer authorized in this Section, including any without the City's consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the party thereto.

Section 7.10. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

Section 7.11. 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 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. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

Section 7.15. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until December 31 of the calendar year in which the last of the reimbursement obligations of the City become due and payable under Section 3.1 hereof; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section.

Section 7.16. 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 7.17. Construction of Agreement. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

IN WITNESS WHEREOF, the City and the Developer 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

(SEAL)

By:_____
Mayor

ATTEST:

_____
City Clerk

Date:_____

THE NEW LINCOLN SQUARE, LLC

(SEAL)

By:_____
Its Manager

Date:_____

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

EXHIBIT A

Description of Development Project Site

Lot 1 and Lot 10 of the Central Business Addition to the City of Urbana, Champaign County, Illinois

EXHIBIT B

An Agreement to Provide Parking Facilities