



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

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

DATE: November 15, 2012

SUBJECT: Supplemental Memo:

An Ordinance Approving a Second Amendment to a Redevelopment Agreement with Five Points Realty, LLC (Northwest Corner of Cunningham Avenue and University Avenue - Gateway Shoppes)

Introduction and Background

At the Committee of the Whole meeting on November 13, 2012, the Committee forwarded an ordinance approving a Second Amendment to a Redevelopment Agreement with Five Points Realty, LLC to City Council with a recommendation for approval. An additional necessary date change has been identified since the meeting and is incorporated into the attached revised amendment.

Discussion

As discussed at the November 13th meeting, the developer has approached the City regarding a date change for the completion of the Gateway Shoppes project from December 31, 2012, to December 31, 2015. The Committee of the Whole reviewed the proposed amendment which included the date change in Section 3.2. However, Section 4.2 of the existing agreement also references the completion date for the project of December 31, 2012. The latest version of the draft amendment incorporates the new proposed completion date of December 31, 2015 in Section 4.2. Other than the date change to Section 4.2, the proposed amendment is identical to what was presented to the Committee of the Whole on November 13, 2012. Additionally, the proposed ordinance (Exhibit A) is identical to what was presented to the Committee of the Whole.

Fiscal Impact

The fiscal impact of the proposed amendment is the same as what was presented to the Committee of the Whole on November 13, 2012.

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: Ordinance with Second Amended Redevelopment Agreement

Exhibit A

ORDINANCE NO. 2012-11-104

**AN ORDINANCE APPROVING A SECOND AMENDMENT TO REDEVELOPMENT
AGREEMENT WITH FIVE POINTS REALTY, LLC**

(Northwest Corner of Cunningham Avenue and University Avenue - Gateway Shoppes)

WHEREAS, the City of Urbana ("City") and Five Points Realty, LLC did on the 7th day of February 2005, pursuant to Ordinance No. 2005-01-014, enter into a Redevelopment Agreement concerning the subject property; and

WHEREAS, the City and Five Points Realty, LLC did on the 12th day of May 2008, pursuant to Ordinance No. 2008-02-006, enter into a Redevelopment Agreement First Amended and Restated concerning the subject property; and

WHEREAS, the City and Five Points Realty, LLC have determined that the best interests of both parties are served by making and entering into an amendment to said agreement.

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

Section 1.

A Second Amendment to Redevelopment Agreement between the City of Urbana, Illinois, and Five Points Realty, LLC, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

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 hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

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

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

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

Laurel Lunt Prussing, Mayor

**SECOND AMENDMENT TO
REDEVELOPMENT AGREEMENT**

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**FIVE POINTS REALTY, LLC,
AN ILLINOIS LIMITED LIABILITY COMPANY**

Dated as of November 1, 2012

Document Prepared By:

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

**SECOND AMENDMENT
TO REDEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT (this “**Second Amendment**”) is dated for reference purposes only as of the 1st day of November, 2012, but is actually executed by each of the parties on the dates set forth by each of their respective signatures below, by and between the City of Urbana, Champaign County, Illinois, an Illinois municipal corporation (the “**City**”), and Five Points Realty, LLC, an Illinois limited liability company (the “**Developer**”), with respect to that certain Redevelopment Agreement First Amended and Restated dated as of May 12, 2008 (the “**Agreement**”), by and between the City and the Developer. This Second Amendment shall become effective as of the last of the City and the Developer to execute and deliver this Second Amendment to the other (the “**Effective Date**”). Except as otherwise specifically defined elsewhere herein, all capitalized words, terms and phrases as used in this Second Amendment shall have the same meanings as respectively ascribed to them in the Agreement.

RECITALS:

WHEREAS, the City and the Developer find it necessary and desirable to clarify when the obligations of the City to reimburse the Developer for any Annual Reimbursement Amounts under Section 3.1(d) of the Agreement are to be commenced; and

WHEREAS, under and pursuant to Section 3.2 of the Agreement, the obligations of the City to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1(b)-(d) of the Agreement are expressly contingent upon the Developer having completed the Private Development Project upon Lot 100 of the Development Project Site no later than December 31, 2012; and

WHEREAS, the Developer has completed approximately _____ square feet of improvements for an urban shopping center complex but has not otherwise completed the construction and installation of the remaining required improvements in connection with the Private Development Project upon Lot 100 of the Development Project Site due to the prevailing economic environment; and

WHEREAS, the City is willing to extend the date upon which the Developer is to have completed the construction and installation of the required improvements in connection with the Private Development Project upon Lot 100 of the Development Project Site until December 31, 2015; and

WHEREAS, the City and the Developer each now finds and determines that it is necessary, desirable and appropriate to supplement and amend the Agreement by this Second Amendment in order to make provision for such clarification of Section 3.1(d) and such extension of the completion date under Section 3.2 of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements by the City and the Developer as parties to the Agreement, including those as contained in this Second Amendment to the Agreement, the City and the Developer do mutually covenant and agree to supplement and amend the Agreement to provide as follows:

Section 1. Section 3.1(d) of the Agreement is hereby amended to provide as follows:

(d) the obligation of the City to reimburse the Developer for any Annual Reimbursement Amounts under this Section 3.1 shall commence with the calendar year immediately following the

calendar year in which a certificate of occupancy is issued for an applicable project which is completed upon each lot having a separate permanent parcel number within the Development Project Site, and shall continue until the termination of TIF for the Redevelopment Project Area in calendar year 2022.

Section 2. Section 3.2 of the Agreement is hereby amended to provide as follows:

Section 3.2. Conditions Precedent. The obligations of the City to continue to make any payments of the Annual Reimbursement Amounts as set forth in Section 3.1(b)-(d) of this Agreement is expressly contingent upon the Developer having completed the Private Development Project no later than December 31, 2015. If the Developer shall fail to demonstrate that it has in fact fulfilled its obligation to complete the Private Development Project on or before December 31, 2015, the City shall have the right and option to immediately terminate this Agreement by providing written notice of such termination upon the Developer, in which event the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no further force or effect.

Section 3. Section 4.2 of the Agreement is hereby amended to provide as follows:

Section 4.2. Commitment to Undertake the Private Development Project. The Developer covenants and agrees to commence and complete the Private Development Project at a total cost of not less than \$3,500,000.00 in accordance with the Design Proposal on or before December 31, 2015. During the progress of the Private Development Project, the Developer and the Community Development Director of the City (the “**Director**”) may authorize such changes to the Design Proposal or any aspect thereof as may be in furtherance of the general objectives of the Redevelopment Plan and this Agreement and as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or as may be necessary or desirable in the sole discretion of the Developer and the Director to enhance the economic viability of the Private Development Project; provided, however, that the Developer shall not make any material change to the Design Proposal, whether individually with respect to any phase or in the aggregate, without the advance written consent of the Corporate Authorities of the City.

Section 4. Except as expressly supplemented and amended as provided in this Second Amendment above, all other provisions of the Agreement shall be and remain in full force and effect. The provisions of the Agreement, as now supplemented and amended by this Second Amendment, are hereby ratified, confirmed and approved by both the City and the Developer.

[The remainder of this page is intentionally left blank.]

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

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

By: _____
Mayor

ATTEST:

City Clerk

Date: _____

FIVE POINTS REALTY, LLC

By: _____
Its Authorized Member

Date: _____