



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

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

DATE: March 6, 2014

SUBJECT: **An Ordinance Amending the Addendum to the Goodyear Real Estate Option and Contract (202 South Vine Street – Goodyear)**

Introduction and Background

In February 2010, Urbana City Council adopted an ordinance (Ordinance No. 2010-02-006), approving an option and contract with the Hershel C. Tummelson Family Trust and the Darius E. Phebus Family Trust to acquire real estate at 202 South Vine Street, occupied by Goodyear Tire. 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 two minor areas of contamination on the site that would require remediation. That audit defined the maximum area of contamination, but additional testing was determined to be necessary to better define the contamination. Rather than engage in additional testing at the time, the parties entered into an agreement for the City to purchase the property and for the sellers to place \$100,000 of the purchase price in escrow to fund as yet undefined remediation efforts. This agreement, entitled “Addendum to Goodyear Real Estate Option and Contract”, was adopted by Urbana City Council in January 2011 (Ordinance No. 2011-01-005). The addendum provided that the City could use the escrowed funds to pay for costs necessary to obtain a No Further Remediation (NFR) determination from the Illinois Environmental Protection Agency or for actual environmental clean-up costs. The addendum also stated that any escrowed funds not used by May 1, 2015, would be released back to the sellers.

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 environmental audit.

When the City acquired the Goodyear parcel, Donald A. Fitzgerald, the former owner of Goodyear Tire, was the business tenant and had been for many years. Mr. Fitzgerald and the sellers had a separate agreement stating that Mr. Fitzgerald was responsible to pay the sellers for the costs of remediation of any contamination on the site charged to the escrow account by the City. In 2013, Mr. Fitzgerald sold the business to True Tire & Automotive Company, but remained liable to the sellers under his agreement to pay the costs of remediation despite the sale to the City.

Mr. Fitzgerald's representatives have approached the City with a desire to end his open-ended obligation to pay the costs for remediation and have offered to pay to the City \$3,000 to release him and the sellers from the obligation to pay any future costs of remediation, and to release the \$100,000 in escrow to the sellers. City staff have negotiated the terms of the release, which positions the City to remediate the contamination on the site with maximum flexibility. Attached is an ordinance amending the escrow agreement (Memo Exhibit A), which is an attachment to the Addendum to the Goodyear Real Estate Option and Contract (Memo Exhibit B). Mr. Fitzgerald's representatives and representatives of the original sellers have reviewed and approved the draft amended escrow agreement.

The City is poised to pursue redevelopment of the larger site through the issuance of a Request for Qualifications (RFQ) for commercial real estate marketing services. Approval of the proposed ordinance assists that effort by providing a level of certainty for prospective developers on environmental remediation.

Discussion

Although the exact nature and extent of the existing contamination are not exactly defined, Mr. Fitzgerald recently funded a new environmental audit to better define existing conditions. The recent further investigation supports the conclusion that the contamination is minor in nature and is unlikely to cost more than \$3,000 when remediation is undertaken as part of a new redevelopment project. The recent audit places the cost of soil removal for one area of contamination at approximately \$630. However, the estimate does not include soil removal for the second area of contamination, does not include costs for additional testing in the future as part of soil removal, and assumes a construction crew is mobilized and on-site. The \$3,000 negotiated amount covers removal of soil at both contaminated locations, mobilization for soil removal, additional testing upon soil removal, and disposal of contaminated soil.

Of particular note in the amended escrow agreement are Sections two, four, and seven. Section two lays out the \$3,000 payment and the release of the \$100,000 escrow. Section four sets the deadline for the \$3,000 payment at July 1, 2014. If the payment is not received by that date, the \$100,000 escrow would remain in effect. Section seven reaffirms the release of liability established in the original agreement.

One area of contaminated soil lies beneath the existing building. The most cost effective way to remove the contamination is to wait until the building is demolished and earthwork is being conducted as part of a redevelopment. While the City is prepared to release an updated RFQ to attract a redevelopment project for the site, Goodyear continues to be a successful business, and has a lease with the City through April 2015. The timing of that lease is designed to allow for Goodyear to continue operating while not prohibiting the long term redevelopment of the site. The proposed arrangement provides that the \$3,000 payment to the City from Mr. Fitzgerald has no time limit on the use of funds. The existing arrangement allows for remediation costs to be incurred until May 1, 2015, but then any funds remaining in the escrow revert back to the sellers. The proposed arrangement allows for the City to wait until after the demolition of the Goodyear building and site work begins on a redevelopment project.

Fiscal Impact

This ordinance will result in a \$3,000 payment to the City of Urbana for environmental remediation costs on the Goodyear site. The ordinance releases \$100,000 currently held in escrow for remediation costs, but the timing of remediation is such that it is unlikely that the City will be able to use those funds effectively before the May 1, 2015 deadline.

Options

1. Approve the draft ordinance as presented.
2. Approve the draft ordinance with changes. It should be noted that any changes will need to be agreed upon by the other parties.
3. Deny the draft ordinance.

Recommendation

The ordinance secures private funding for remediation activities on property currently owned by the City. The ordinance grants the City maximum flexibility on the timing of those remediation activities and eliminates the May 1, 2015, deadline in the original agreement. This ordinance also provides a prospective developer a level certainty related to contamination on the Goodyear site.

Staff recommends that the City Council approve the attached draft ordinance.

Prepared by:

Tom Carrino, Economic Development Manager

Attachments:

Memo Exhibit A: Draft Ordinance with Attached Amended Escrow Agreement

Memo Exhibit B: Approved Addendum to the Goodyear Real Estate Option and
Contract with Original Escrow Agreement

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.

Memo Exhibit A

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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

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

Laurel Lunt Prussing, Mayor

Ordinance Exhibit A

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

Ordinance Exhibit A

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 _____ day of _____, 2014.

Hurshal C. Tummelson Marital and Family Trusts

By: _____
Jo Elaine Tummelson

Darius E. Phebus Trust,
Busey Trust Company, Trustee

By: _____
Trust Officer

City of Urbana
Champaign County, Illinois

By: _____
Laurel Lunt Prussing, Mayor

Ordinance Exhibit A

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

BankChampaign, NA

By: _____

Prepared by:
Jack Waaler
Special Counsel
City of Urbana
400 S. Vine Street
Urbana, IL 61801
(217)384-2464

ADDENDUM TO
GOODYEAR REAL ESTATE OPTION AND CONTRACT

WHEREAS, in Ordinance 2010-02-006, the council approved what is titled the Goodyear Real Estate Option and Contract on the 1st day of February, 2010 relating to

Lots 9 and 12 of William T. Webber's Subdivision of Outlots 5, 6 and 7
To the Town of Urbana, situated in the County of Champaign, State of
Illinois

Commonly known as 202 South Vine Street, Urbana, Illinois

PIN: 92-21-17-233-001; and

WHEREAS, the option period has been extended two times as approved by ordinances 2010-08-074 and 2010-11-109; and

WHEREAS, the said Option Agreement permits the Buyer to obtain an environmental audit of the subject property; and

WHEREAS, pursuant to such authority, the City did obtain an environmental audit report from HDC Engineering which report indicated some contamination on the subject parcel; and

WHEREAS, the contract in paragraph 5(c) thereof, provides that if contamination was found, the parties would try to come to an agreement to adjust the purchase price based upon the costs of environmental remediation; and

WHEREAS, the parties have negotiated and conferred regarding an escrowed adjustment to the purchase price and desire to put their agreement for such in writing, and, on that basis the City has exercised its Option to purchase the subject property.

NOW THEREFORE, it is agreed as follows:

Section 1. That at the closing of the aforesaid transaction, One Hundred Thousand Dollars (\$100,000) of the sale's proceeds otherwise due to Seller under the Option/Contract shall

be placed in an escrow account to be held therein pursuant to the attached Escrow Agreement and the conditions set forth in this Addendum to be utilized to remediate the contamination to levels acceptable under the rules and regulations of the Illinois Environmental Protection Agency and limit the liability of the Sellers, their successors and assigns, and their tenants to said amount with any unused escrow proceeds to be paid over to the Sellers. Escrow fees shall be paid one-half by the Seller and one-half by the City.

Section 2. In consideration of the establishment and funding of said escrow, the City agrees 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.

Section 3. The funds held in the escrow account shall be released to the City by the Escrow Agent upon receipt from the City Comptroller of the verified statement that such monies are required to reimburse the City for out-of-pocket expenses incurred by the City to remediate contamination on the subject property. The contamination as used herein refers to those substances defined as contaminants in the Illinois Environmental Protection Act. The necessity of incurring such costs, and the reasonableness thereof to remediate such contamination, shall be in the sole determination of the City.

Section 4. Within thirty (30) days after receipt from the Illinois EPA of a No Further Remediation Letter (NFR Letter), for the subject parcel, the balance remaining in the escrow account if any, shall be released as follows:

- (a) Fifty Percent (50%) to Hurshal C. Tummelson Marital and Family Trusts

(b) Fifty Percent (50%) to Darius E. Phebus Trust.

Section 5. Any interest earned on the escrow account shall be the sole property of the Sellers.

Section 6. If the escrow account is not released in accordance with Section 3 above, by the 1st day of May, 2015, the account shall be closed and the Escrow Agent shall distribute the balance remaining in the account as follows:

(a) Fifty Percent (50%) to Hurshal C. Tummelson Marital and Family Trusts

(b) Fifty Percent (50%) to Darius E. Phebus Trust.

Section 7. Upon establishment of the escrow account and the placing of One Hundred Thousand Dollars (\$100,000) in the account, the City shall deliver to Seller and Tenant the release document attached hereto by delivery of the same to their agent, E. Phillips Knox.

Optionor/Seller:

Hurshal C. Tummelson Estate

BY: *Jo Elaine Tummelson*
Jo Elaine Tummelson, Executor

Darius E. Phebus Trust,
Busey Trust Company, Trustee

BY: *[Signature]*
Trust Officer

Dated: 1-27-11

Optionee/Purchaser:

The City of Urbana,
Champaign County, Illinois

BY: *[Signature]*
Laurel Lunt Prussing, Mayor

Dated: Feb. 10, 2011

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 ST., URBANA, ILLINOIS PRIOR TO MAY 1, 2015.

2. 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.

3. THE BALANCE, IF ANY, IN THE ACCOUNT SHALL BE DISBURSED AS HEREINAFTER PROVIDED UPON THE EARLIER OF THE FOLLOWING:

A. PRESENTATION TO THE ESCROW AGENT BY THE CITY OF URBANA OF A "NO FURTHER REMEDIATION LETTER" ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY FOR THE PROPERTY AT 202 S. VINE STREET, URBANA, ILLINOIS.

B. MAY 1, 2015.

UPON THE EARLIER OF THE ABOVE EVENTS, THE ESCROW AGENT SHALL DISTRIBUTE THE BALANCE OF THE ACCOUNT, INCLUDING ANY ACCRUED INTEREST THEREON 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;

4. INTEREST EARNED ON THE ACCOUNT SHALL BE PAYABLE TO THE ENTITIES SET FORTH IN PARAGRAPH 3 ABOVE, IN THE PROPORTIONS INDICATED IN SAID PARAGRAPH.

5. ESCROW AGENT SHALL RECEIVE AN ESCROW FEE OF \$1,500.00, IN ADVANCE, WHICH SHALL COVER THE TERM OF THIS AGREEMENT.

6. ESCROW AGENT SHALL ONLY BE LIABLE FOR GROSS NEGLIGENCE IN THE PERFORMANCE OR NON-PERFORMANCE OF ITS 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.

IN WITNESS WHEREOF, THE PARTIES IN INTEREST HAVE EXECUTED THIS AGREEMENT THIS 21st DAY OF February, 2011.

HURSHAL C. TUMMELSON MARITAL AND FAMILY TRUSTS

BY: Jo Elaine Tummelson
Jo Elaine Tummelson, Trustee

DARIUS E. PHEBUS TRUST,
BUSEY TRUST COMPANY, TRUSTEE

BY: Egon Beyer
Trust Officer

CITY OF URBANA,
CHAMPAIGN COUNTY, ILLINOIS

BY: Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

THIS AGREEMENT IS ACCEPTED THIS 1st DAY OF March, 2011 BY BANKCHAMPAIGN, NA, AS ESCROW AGENT.

BANKCHAMPAIGN, NA

BY: [Signature]