

ORDINANCE NO. 2003-04-035

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF URBANA AND GREGORY PLACE, L.L.C.

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

Section 1. That a Development Agreement Between the City of Urbana and Gregory Place, L.L.C., 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. 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 Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Tod Satterthwaite, Mayor

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF URBANA AND**

**GREGORY PLACE L.L.C**

This Development Agreement (including any attachments and exhibits collectively, the “Agreement”) is dated as of the \_\_\_\_ day of April, 2003, is by and between the CITY OF URBANA, and Illinois home-rule municipality, in Champaign County, Illinois (the “City”), and GREGORY PLACE L.L.C., an Illinois Limited Liability Corporation (“GP” or the “Developer”), even though the parties have executed this Agreement on different dates.

WHEREAS, due to the chance positioning of the University of Illinois on the border between the Cities of Champaign and Urbana, most commercial development that serves the University population occurred within the corporate limits of the City of Champaign; and

WHEREAS, the University of Illinois purchased several commercial uses for University academic building expansion over the last ten years thereby reducing the tax base of Urbana and further limiting commercial opportunities in the east campus area; and

WHEREAS, it has been a long term goal of the City of Urbana to encourage commercial development in the campus community in the City of Urbana to better serve the student population in Urbana and to gain some reasonable share of sales tax revenues; and

WHEREAS, the City of Urbana in cooperation with the University have jointly developed plans for a commercial development in the area of Gregory Place between Nevada Street and Oregon Street, which plans include the vacation of Gregory Place right-of-way; and

WHEREAS, the joint efforts of the City of Urbana and the University resulted in the University soliciting requests for proposals for the development envisaged, and as a result of the consideration of the various proposals, the University has selected Gregory Place L.L.C. (hereafter simply referred to as “GP”) to go forward with the development; and

WHEREAS, having selected GP as a developer and the parties being in the stage of refining plans, it is now appropriate for the relationship between GP and the City of Urbana with regard to the development to also be refined and delineated.

NOW THEREFORE, IT IS AGREED AS FOLLOWS between the City of Urbana (hereafter simply “City”) and GP:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

Section 1.1 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:

Section 1.2 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.

Section 1.3 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. And to the extent, if at all, anything to be done under this Agreement by the City which is not in conformance with statutes, the provisions of this Agreement shall control, it being the intention of the City to invoke its

constitutional Home Rule powers and Article VII, Section 10 (Intergovernmental Cooperation) of the Illinois Constitution to support the provisions of this agreement.

Section 1.4 Validity. 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, however, 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.

Section 1.5 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.

Section 1.6 Governmental Consents and Approvals. No consent or approval by any governmental authority other than the City is required in connection with the execution and delivery by the City of this Agreement.

Section 1.7 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:

Section 1.8 Organization. The Developer is a Illinois Limited Liability corporation 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.

Section 1.9 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.

Section 1.10 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Developer. 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 law, 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.

Section 1.12 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.

Section 1.13 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.

Section 1.14 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 (a) to which the Developer is a party and (b) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 1.15 Disclaimer of Warranties. The City and the Developer acknowledge that none has made any warranties to the other, except as set forth in this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and the Developer assumes all risks in connection with the practical realization of any such private development.

## ARTICLE II

### CITY OBLIGATIONS

The City will continue to devote staff time and resources as necessary to assist in the development of a cooperative plan with the University of Illinois and GP to facilitate the development of a commercial venture on the real estate described in Exhibit "A", and in particular, the City commits itself to the following:

Section 2.1. Expeditious Review. The City agrees to complete a building plan review within seven (7) days of the receipt of final plans and to conduct building inspections within 24 hours from request.

Section 2.2. Parking Meter Removal. The City agrees to cooperate with plans to remove certain City parking meters, the removal of which are necessary for completion of the development project.

Section 2.3. Liquor License. The City agrees to reserve for a qualified applicant, a class ‘A’ liquor license for a restaurant establishment on the site where 50% of the sales of said establishment are food sales.

Section 2.4. Retail Tenant Incentives. The City agrees to reserve up to three (3) 0% interest retail tenant improvement loans of up to \$30,000, with an additional grant of up to \$1000 each for opening expenses as evidenced by a certificate of occupancy with the following restrictions:

A. Compliance with underwriting criteria of participating lenders and city program guidelines;

B. Loans/grants shall be limited to the following uses:

- (1). Apparel shop
- (2). Art and Craft store
- (3). Art Supplies
- (4). Bakery
- (5). Bicycle sales
- (6). Bookstore
- (7). Coffee shop
- (8). Computer supply
- (9). Confectionary
- (10). Delicatessen

- (11). Drug store
- (12). Dry goods
- (13). Electronics sales
- (14). Jewelry Sales
- (15). Meat or fish market
- (16). Music store
- (17). Photocopying Service
- (18). Restaurant
- (19). Shoe store
- (20). Sporting goods
- (21). Stationery/gift shop
- (22). Video store
- (23). Other equivalent or similar uses

Section 2.5. Marketing Assistance. The City agrees to provide marketing assistance via the City of Urbana web site and Community Development Services staff.

Section 2.6 Special Use Permit. The City agrees to expeditiously process appropriate Special Use Permit requests for proposed development of the site consistent with the requirements of the Campus Commercial District as set forth in the Urbana Zoning Ordinance.

### ARTICLE III

#### DEVELOPER'S OBLIGATIONS

The Developer agrees as follows:



Section 3.1. Development. The Developer agrees to build on the real property described in Exhibit "A" a four-story mixed use development consisting of no less than 21,000 gross square feet of commercial space and no less than 96 residential units (54 two-bedroom and 42 one-bedroom units) ("Phase 1") or equivalent at a construction cost in excess of at least \$5,500,000.

Section 3.2. Completion Date. The Developer agrees to complete said construction as set forth in Section 3.1 for occupancy no later than August 15, 2005.

Section 3.3. Payment in Lieu of Taxes. Because the development will occur on real estate described in Exhibit "A" which is owned by the University and is thus exempt from real estate taxes, it is anticipated that the only real estate taxes to be collected by the County Collector relating to the development will be those taxes assessed on the lease between the University and GP. In consideration of the above promises by the City of Urbana, which are acknowledged to be of significant value, the Developer agrees to pay to the City, in addition to the aforesaid leasehold taxes, the differential, if any, between those taxes extended on the aforesaid leasehold and the payments calculated as provided below:

A. Definitions. The following terms and phrases as used herein shall have the meaning ascribed to them below.

(1) Lease. A lease agreement between GP and the University of Illinois relating to the area described in Exhibit A.

(2) Leasehold Tax means all real estate taxes extended against GP as Lessee under the Lease.

(3) Development. The real estate and improvements located on the area described in Exhibit “A”, also sometimes called “Phase 1”.

(4) Calculated Fair Market Value Impact Fee. Shall be calculated as follows: The agreed net leasable comparable tax rate of \$1.83 per square foot, multiplied by the net leasable square foot of residential space in the development of 40,000 yields a base fair market value impact fee (residential) of \$73,200. To the base Fair Market Value Impact Fee (residential) each year thereafter shall be added the net leasable square footage of 18,000 square feet commercial space in a graduated manner as follows:

1. Year 2

40,000 x \$1.83	\$73,200	base fair market value impact fee (residential)
18,000 x \$1.83 x .2	6,588	
	\$79,788	total calculated fair market value impact fee

2. Year 3

40,000 x \$1.83	\$73,200	base fair market value impact fee (residential)
18,000 x \$1.83 x .4	13,176	
	\$86,376	total calculated fair market value impact fee

3. Year 4

40,000 x \$1.83	\$73,200	base fair market value impact fee (residential)
18,000 x \$1.83 x .6	19,764	
	\$92,964	total calculated fair market value impact fee

4. Year 5

40,000 x \$1.83	\$73,200	base fair market value impact fee (residential)
18,000 x \$1.83 x .8	\$26,352	
	\$99,552	total calculated fair market value impact fee

5. Year 6 and beyond

40,000 x \$1.83	\$73,200	base fair market value impact fee (residential)
18,000 x \$1.83	32,940	

\$106,140 total fair market value impact fee plus escalator at the percentage indicated by the escalator calculation set forth below

Escalator Calculation. The escalator shall be calculated by taking the average of the following two amounts:

1. The percentage of increase in net operating income of the development as shown on the relevant year Federal Income Tax returns of the Developer; and
2. The percentage of change in the Consumer Price Index (CPI-U, U.S. Average 1984-100 Index), but not greater than 4%.

B. Calculation. Commencing with the first calendar year for which any Leasehold Taxes are assessed to GP relating to the leasehold with the University which has improvements for which a City of Urbana Certificate of Occupancy has been issued, GP shall pay to the City of Urbana the amount of money that represents the difference between the Leasehold Tax payment required thereon and the Total Calculated Fair Market Value Impact Fee. Payment of the difference shall be made to the City of Urbana at the same time that said Leasehold Tax Payments are due. After deducting a reasonable amount for administrative costs, the City shall distribute such funds to the same taxing bodies that extended a tax in the Leasehold Tax bill and in the same relative proportions. Developer shall satisfy its payment obligations hereunder by making its annual payments to the City of Urbana, and Developer assumes no liability in connection with the subsequent distribution of those monies to the taxing bodies.

C. Phase 2 Land Area. To the extent that Developer is selected to proceed with a “Phase 2” project to develop the real estate contiguous to the east side of Gregory Place and to the extent Gregory Place is vacated by the City of Urbana so that the total contiguous area of Phases 1 and 2 become greater than one acre in size, it is agreed that if real property taxation is implemented as an “over one acre leasehold estate”, as provided in 35 ILCS 200/15-55, that the impact fee provided for herein will cease upon such “over one acre” taxation taking effect.



## ARTICLE IV.

### DEFAULTS AND REMEDIES

Section 4.1 Defaults - Rights to Cure. Failure or delay by either Party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the other Party. Except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which can not reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

Section 5.1 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties.

Section 5.2 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 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 5.3 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 5.4 Special and Limited Obligation. This Agreement shall constitute special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged.

Section 5.5 Legally Valid and Binding. This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

Section 5.6 Waiver. Any Party to this Agreement may elect to waive or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 5.7 Cooperation and Further Assurances. The City and the Developer each covenants and agrees 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 5.8 Notices. All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Developer:

Scott Kunkel  
Gregory Place, LLC  
C/O JSM Development  
505 South Fifth Street  
Post Office Box 2972  
Champaign, Illinois 61801  
Phone (217) 359-5828  
Fax (217) 359-5839

To the City:

Bruce K. Walden, Chief Administrative Officer  
City of Urbana, Illinois  
400 South Vine Street  
Urbana, Illinois 61801  
Phone: (217) 384-2454  
Fax: (217) 384-2426

With a copy to:

Legal Division  
400 South Vine Street  
Urbana, Illinois 61801  
Phone: (217) 384-2464  
Fax: (217) 384-2460

Section 5.9 Successors in Interest. This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns.

Section 5.10 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

Section 5.11 Illinois Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois.

Section 5.12 Costs and Expenses. If either Party defaults in the performance of its obligations hereunder, the Parties agree that the defaulting Party shall pay the non-defaulting Party's costs of enforcing the defaulting Party's obligations under this Agreement, including but not limited to attorneys' fees and expenses.

Section 5.13 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 5.14 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.

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

**CITY OF URBANA, ILLINOIS**

**GREGORY PLACE, LLC**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)

ATTEST:

ATTEST:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_