

ORDINANCE NO. 9495-16

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A
REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA,
CHAMPAIGN COUNTY, ILLINOIS AND MILLIE DURST TRUST

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois to enter into a Redevelopment Agreement by and Between the City of Urbana, Champaign County, Illinois and Millie Durst Trust; and

WHEREAS, a written copy of such Agreement is now before this meeting.

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

Section 1. That the Council hereby approves the City entering into a Redevelopment Agreement by and between the City of Urbana, Champaign County, Illinois and Millie Durst Trust.

Section 2. That the Mayor is hereby authorized to execute and deliver such Agreement on behalf of the City. The Agreement shall be in substantially the form which is before this Council, a copy of which is attached hereto and incorporated herein. The City Clerk is authorized to attest to such execution thereof.

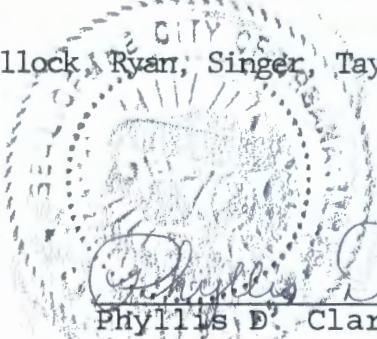
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 1st day of August, 1994.

AYES: Hayes, Patt, Pollock, Ryan, Singer, Taylor, Whelan

NAYS:

ABSTAINED:

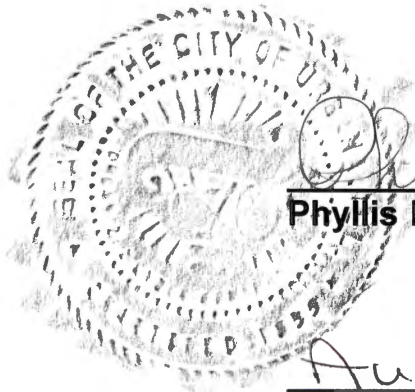


Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 15th day of August, 1994.

Tod Satterthwaite
Tod Satterthwaite, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN ORDINANCE
NO. 9495-16 AND IS INCORPORATED THEREIN BY REFERENCE.



Phyllis D. Clark
Phyllis D. Clark, City Clerk

August 3, 1994
Date

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including attachments and exhibits, the "Agreement") dated as of the first day of August, 1994, is made by and between the City of Urbana, an Illinois home rule municipality, in Champaign County, Illinois (the "City"), and the Millie Durst Trust, Mildred L. Durst Trustee (the "Developer").

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (Section 5/11-74.4-1 et seq. of Chapter 65 of the Illinois Compiled Statutes, as supplemented and amended, 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, collectively, the "Act"), the City has designated the North Campus and King Park Neighborhood Redevelopment Project Area (as more particularly described in Exhibit A hereto, the "Redevelopment Project Area") and approved a related redevelopment plan (entitled "North Campus and King Park Neighborhood Redevelopment Plan") and project, as such related development plan (entitled "North Campus and King Park Neighborhood Redevelopment Plan, First Amended and Restated") has subsequently been supplemented and amended (the "Redevelopment Plan" and "Redevelopment Project"); and

WHEREAS, in connection with the Redevelopment Project, Redevelopment Plan and Redevelopment Project Area, the City Council of the City (the "Corporate Authorities"): (i) on December 18, 1989, adopted Ordinance No. 8990-59, "An Ordinance Approving a Redevelopment Plan and Redevelopment Project; Designating a Redevelopment Project Area; and Adopting Tax Increment Allocation Finance," which has been duly filed with the County Clerk of Champaign County, Illinois, who has certified the property tax increment base to the City, and (ii) on December 3, 1990, adopted Ordinance No. 9091, "An Ordinance Adopting and Approving a Redevelopment Plan and Redevelopment Project, First Amended and Restated, for Redevelopment Project Area Number Three" (collectively, the "TIF Ordinances"); and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Project, the Developer proposes to acquire, construct, extend, improve, rehabilitate and install (or cause to be done) a building subject to real estate tax, of approximately ten thousand (10,000) square feet including leasable space together with adjacent parking (the "**Private Development**"); and

WHEREAS, acting through its planning staff, the City's Department of Community Development Services (the "**Planners**"), has reviewed and studied the conditions in the Redevelopment Project Area with a view toward analyzing those area conditions that exist or reasonably could be expected to exist that are deleterious to the development, operation and maintenance of the Redevelopment Project Area and which constitute such Redevelopment Project Area as a "conservation area" under the Act; and

WHEREAS, the Developer is unwilling to undertake the Private Development without certain tax increment finance ("**TIF**") incentives from the City, which the City is willing to provide, and the City has determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, certain direct incentives are required to be offered by the Developer as a prerequisite to developer building the private development; and

WHEREAS, the Developer will incur certain Redevelopment Project Costs including, but not limited to, the cost of acquisition of land and other property, demolition, and site clearance.

REDEVELOPMENT AGREEMENT

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, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meaning provided from place to place herein, including as follows:

"City" means the City of Urbana, Champaign County, Illinois.

"Corporate Authorities" means the City Council of the City of Urbana, Illinois.

"Developer" means Mildred L. Durst as Trustee under the Mildred Durst Trust. Developer may, in accordance with its needs, assign this Agreement to officers of a corporation, the majority of the stock of which is owned by Mildred L. Durst or to a member of her immediate family, as the "Developer," in which case, the rights and obligations of the Developer under this Agreement shall apply only to the assignee. Any such assignee shall be termed the "Developer."

"Development Area" means the real estate described herein, upon or within which the Private Development is to be located at the corner of Goodwin and University Avenues, more specifically described as follows:

The South 30 feet of the West 127.31 feet of Lot 1, and all of Lots 2 and 3 of Stipe's Subdivision of the City of Urbana, Champaign County, Illinois.

Parcel #91-21-07-431-002 (aka Sullivan Plumbing/1112 West University Avenue)

Parcel #91-21-07-431-003 (aka BCP Food Service, Inc./1110 West University Avenue)

Part of Parcel #91-21-07-431-015 (aka Odman Hecker/508 North Goodwin Avenue)

"E.A.V." means equalized assessed valuation as determined and authorized by the Champaign County Supervisor of Assessments in accordance with the procedures set forth in Section 95, 108 a and 146 of the Revenue Act of 1939, (Sections 205/95, 205/108a and 205/146 of Chapter 35 of the Illinois Compiled Statutes) as supplemented and amended.

"Fund" means the "Special Tax Allocation Fund for Redevelopment Project Area Number Three" established under Section 5/11-74.8 of the TIF Act.

"Parties" means, collectively, the City and the Developer.

"Private Development" means the new construction project of approximately ten thousand (10,000) square feet including all necessary demolition and parking construction.

"Property Tax Appeal" means any appeal to the Champaign County Board of Review under the procedures set forth in the Revenue Act of 1939 (Section 205/1 et. seq. of Chapter 35 of the Illinois Compiled Statutes), as supplemented and amended, or any appeal to the Cunningham Township Assessor.

"TIF Act" shall mean the Tax Increment Allocation Redevelopment Act (Section 5/11-74.4-1 et. seq. of Chapter 65 of the Illinois Compiled Statutes).

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.
- (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:

Section 2.1.1 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 2.1.2 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.

Section 2.1.3 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 full faith and credit of the City.

Section 2.1.4 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 2.1.5 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:

Section 2.2.1 Organization. The Developer is Mildred L. Durst as Trustee under the Mildred L. Durst Trust duly organized, validly existing and in good standing under the laws of the State of Illinois.

Section 2.2.2 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 2.2.3 Authorization and Enforceability. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms.

Section 2.2.4 No Violation. To the best of Developer's knowledge, 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 2.2.5 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, except as shown in this Agreement.

Section 2.2.6 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 2.2.7 Related Agreements. Within 30 days of the execution thereof, or within 20 days from the date of delivery hereof, as the case may be, true, complete and correct copies of all option, land acquisition, development, redevelopment, construction, financing agreements in connection with the Private Development (collectively, the "Related Agreements") shall be provided to the City. 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, except the requirement to extend options.

Section 2.3 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.

ARTICLE III

CITY'S COVENANTS AND AGREEMENTS

Section 3.1 Relocation Payment. The City of Urbana shall, upon issuance of a certificate of occupancy permit (which issuance shall not be unreasonably withheld) for the Redevelopment Project, pay the Developer a relocation payment of five thousand dollars (\$5,000).

Section 3.2 Exercising Eminent Domain. The City shall not exercise its powers of eminent domain to acquire Private Development Area during the term of Tax Increment Financing District Number Three, nor, to the extent legal and enforceable, for a term of any successor TIF District which includes the Private Development Area, or twenty years from the date of this Agreement, whichever is longer.

Section 3.3 Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amount to be made by the City are 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.

Section 3.4 Approve Subdivision of Odman-Hecker Parcel. The City agrees that it will approve a properly filed request to subdivide the Odman-Hecker Tract. The City knows of no reason such a subdivision will not be promptly approved upon submission of appropriate request.

ARTICLE IV

DEVELOPER'S COVENANTS

Section 4.1 Agreement to Construct the Private Development. The Developer covenants and agrees to install and construct, or cause to be installed and constructed, and occupy said Private Development no later than April 1, 1995, in the manner and with the effect set forth in this Agreement, substantially in accordance with such Site Plan attached hereto. All dates relating to construction, occupancy and any other matter discussed herein shall be subject to the "Force Majeure" provision below.

Section 4.2 Maintenance of Project. The Developer shall at all times acquire, install, construct, operate and maintain the Private Development in conformance with this Agreement and all applicable laws, rules and regulations for a period of ten years from this date. Any agreement of the Developer related to the acquisition, installation, construction, development, operation and maintenance of the Private Development with any other party or parties to any such agreements (including tenants) shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

Section 4.3 Approvals. The City and Developer agree to cooperate with each other to make any changes in the site plan, including any rights-of-way required in order to obtain IDOT approval. The Developer shall comply with all subdivision, zoning, environmental or other land use requirements of the City and other jurisdictions with regulating authority. The City agrees to provide zoning site plan approval sufficient for the Private Development per the attached Site Plan.

Section 4.4 Property Tax Appeal. The Developer agrees, that for a period of ten years from the date of the Developer's occupation of the Project Development, not to appeal any real estate tax assessment for the property described in Exhibit A, which would cause the assessed value of such property and improvements to be reduced below the sum of \$250,000 equalized assess valuation.

This is not a requirement that the assessment be no less than \$250,000, and it may be that the township assessor might assess the property at less than \$250,000. This paragraph only precludes formal appeal to the Board of Review attempting to reduce it below the amount of \$250,000. Furthermore, if comparable property in the City has been reduced in value because of reduction in the value of property generally throughout the City, and if that continues for a period of two years, then the \$250,000 figure shall be adjusted in the same percentage amount as comparable properties have been adjusted through Cunningham Township. The parties agree to rely on the Cunningham Township assessor to make such adjustment under the circumstances as described in this term.

Section 4.5 Compliance With All Laws. The Developer agrees that in the construction of the Private Development, the Developer will comply with all applicable laws with respect to the work to be undertaken under this Agreement.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1 Defaults - Rights to Cure. Failure or delay by either Party to timely perform any term or provision of this Agreement shall, after the notice and cure period below, constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such failure, immediately commence to cure, correct or remedy such failure and thereafter proceed with diligence to cure such failure. The Party claiming such failure shall give written notice of the alleged failure to the other Party. The Party asserting a failure may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such failure is cured within such thirty (30) day period, the failure shall not be deemed to constitute a breach of this Agreement. If the failure 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 failure, so long as there is diligent proceeding to cure such failure. If such failure is cured within such extended period, the failure shall not be deemed to constitute a breach of this Agreement. However, a failure not cured as provided above shall constitute a default and be 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 VI
MISCELLANEOUS PROVISIONS

Section 6.1 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 both of the Parties.

Section 6.2 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 6.3 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 6.4 Special and Limited Obligation. This Agreement shall constitute a general obligation of the City to which its credit, resources or general taxing power are pledged.

Section 6.5 Legally Valid and Binding. This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

Section 6.6 Time and Force Majeure. Time is of the essence of this Agreement; provided, however, in the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act (other than a party's payment of a monetary obligation hereunder) required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, civil commotion, extraordinary adverse weather conditions of prolonged duration, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Contract, then provided the party intending to claim the benefit of this section gives written notice to the other part as soon as practicable of the existence of such cause for hinderance or delay, the performance of such acts shall be excused for the period of the delay. In addition to other unavoidable causes which hinder, delay

or prevent the timely performance of any act required hereunder, if Developer does not obtain possession of 1110 and 1112 West University Avenue, Urbana, Illinois by 11:00 p.m. on November 1, 1994, or if Developer must remediate environmental problems on the site and such remediation efforts require significant delay in starting construction of the new structure, such conditions shall be treated the same as those causes listed above. A "significant" delay is defined as a delay of two weeks, or a delay which, when all then-current circumstances are taken into account, may cause a risk of the completion not being in accordance with the planned date, whichever is less.

Section 6.7 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 6.8 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 6.9 Severability. If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of such section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, so long as the purposes intended by this Agreement are met.

Section 6.10 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:

Mildred L. Durst
1304 West University Avenue
Urbana, IL 61801

With a copy to:

Carl Webber
Webber and Thies Law Offices
202 Lincoln Square
Urbana, Illinois 61801
Tel: (217) 367-1126
Fax: (217) 367-3752

To the City:

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

With a copy to:

Legal Division
400 South Vine Street
Urbana, Illinois 61801
Tel: (217) 384-2464
Fax: (217) 384-2363

Section 6.11 Successors in Interest. This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and not their respectively authorized successors and assigns.

Section 6.12 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 6.13 Illinois Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois.

Section 6.14 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 6.15 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 6.16 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.

Section 6.17 Term. This Agreement shall remain in full force and effect until August 1, 2004 or until termination of the Redevelopment Project Area or until otherwise terminated pursuant to the terms hereof.

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.

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.



(SEAL)

ATTEST:

Richard D. Clark
City Clerk

CITY OF URBANA, ILLINOIS

By: Tom Satterthwaite
Mayor

Mildred L. Durst Trust

By: Mildred L. Durst Trustee

Its: _____

(SEAL)

ATTEST:

Secretary