

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT WITH INTERCHANGE PROPERTIES, LLC,
AN ILLINOIS LIMITED LIABILITY COMPANY**

(O'Brien Development Agreement)

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

Section 1. That an Agreement by and between the City of Urbana and Interchange Properties, LLC, An Illinois Limited Liability Company, in 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.

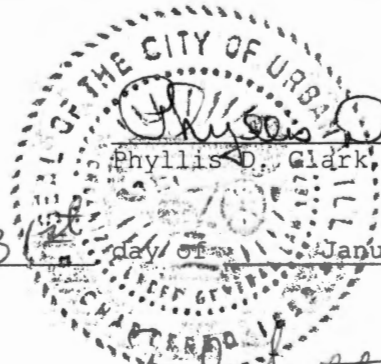
PASSED by the City Council this 29th day of January,
2001.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this 31st day of January,
2001.



Phyllis D. Clark
Phyllis D. Clark, City Clerk

Tod Satterthwaite
Tod Satterthwaite, Mayor

COPY

**AN AGREEMENT BETWEEN THE CITY OF URBANA AND
INTERCHANGE PROPERTIES, LLC**

*This is a
copy from
the packet
from the
Jan. 29 Spec
meeting*

THIS AGREEMENT BETWEEN THE CITY OF URBANA AND INTERCHANGE PROPERTIES, LLC DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 29th day of January, 2001, by and between the City of Urbana, Illinois, a municipal corporation, (hereinafter referred to as the "City"); and Interchange Properties, LLC, an Illinois limited liability company (hereinafter referred to as the "Developer").

RECITALS

WHEREAS, the Developer and/or its affiliates propose to develop and construct several retail automobile stores on the real estate described on Exhibit A attached hereto and made a part hereof (the "Project Site"); and

WHEREAS, pursuant to the terms of the City's home rule powers, the City and the Developer wish to set forth their agreement regarding the acquisition and development of the Project; and

WHEREAS, since the Project and the expansion of new retail into the northwest corridor of the City will be of great economic benefit to the City (in the form of, among other items, increased employment, taxes, investment and commerce), the City agrees to cooperate in this public/private venture in order to attract this economic development to the City; and

WHEREAS, the City proposes to construct certain public improvements that are essential to the Project and surrounding areas which are described on Exhibit B attached hereto and made a part hereof (the "Public Improvements"); and

WHEREAS, the City is a home rule unit pursuant to Section 6 of Article VII of the Constitution of the State of Illinois; and

WHEREAS, without the assistance of the City as set forth in this Agreement, the Developer would not undertake the Project; and

WHEREAS, the City believes that the development of the Project Site is in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of the applicable federal, state and local laws; and

NOW THEREFORE, in consideration of the premises and mutual obligations of the parties hereto, each of them does hereby covenant and agree as follows:

ARTICLE I: CONSTRUCTION OF THE PROJECT

1.1 Project. The Project (the "Project") consists of the following:

(1) The construction of one or more retail automobile store(s) on the Project Site (the "Auto Mall") that are needed to accomplish the relocation set forth in paragraph (2) below; and

(2) The relocation by the O'Brien Auto Team of the following automobile dealerships from their current location at University Avenue and Cunningham Avenue, Urbana, Illinois, to the Project Site: Toyota, Chrysler, Plymouth, Volkswagen, Mazda and Suzuki.

1.2 Submission and Approval of Plans. All work with respect to construction of the Project by the Developer shall be in conformity with this Agreement. No construction of any portion of the Project shall be commenced by the Developer unless it has first complied with the requirements of Section 1.3 hereof.

1.3 Submission and Approval of Plans. All work with respect to each element of the Project set forth in Section 1.1 above shall be in conformity with this Agreement.

1.3.1 Construction Plans. The Developer shall submit to the Community Development Department of the City ("CDD") construction plans ("Construction Plans") for each element of the Project. The CDD shall within thirty (30) days from receipt approve or disapprove the Construction Plans, after reviewing said plans for compliance with all applicable City ordinances. If the CDD disapproves any of the Construction Plans, the Developer shall submit revised plans within a reasonable time from the date of rejection. Upon resubmission, the CDD shall review and approve or disapprove such revised plans within fourteen (14) days of submittal. This process shall repeat until such plans are approved by the CDD. In reviewing said plans, the CDD will take into account the normal and customary costs of constructing elements of this type. Any request for change in the Construction Plans by the CDD shall not cause an unreasonable increase in the costs. The CDD will not unreasonably withhold its approval.

1.3.2 Changes in Construction Plans. Prior to completion of each element of the Project as certified by the CDD, if the Developer desires to make any substantial change in the Construction Plans which significantly affects the appearance, function, or structural integrity of such element, the Developer shall submit the proposed change to the CDD for its approval. If the Construction Plans, as modified by the proposed change, meet all applicable ordinances, the CDD shall approve the proposed change and notify the Developer in writing of its approval. If the CDD disapproves of such changed plans, it shall so advise the Developer within fourteen (14) days of submission and the Developer may submit revised changed plans within a reasonable time from the date of rejection. This process shall repeat until such changed plans are approved by the CDD. If such changed plans are not so approved or rejected within fourteen (14) working days of receipt of the submission by the CDD from the Developer, such changed plans will be deemed approved. The CDD will not unreasonably withhold its approval.

1.4 Certificate of Completion. Promptly after completion of construction of the Project, and upon written request of the Developer, the CDD following the proper inspection, testing and approval will execute and deliver to the Developer a certificate of completion. Said instrument of certification by the CDD shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction with respect to the obligations of the Developer and its successors and assigns that the construction of such element has been completed in accordance with the provisions of this Agreement.

1.5 Form of Certification. The certification provided for in Section 1.4 shall be in such form as will enable it to be recorded in the Office of the Recorder of Deeds, Champaign County, Illinois. If the CDD refuses or fails to provide any certification in accordance with the provisions of this Agreement with respect to an element of the Project, the CDD shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in which respects the Developer has failed to complete construction of such element in accordance with the provisions of this Agreement, or is otherwise in default and what measures or steps will be necessary, in the opinion of the CDD, for Developer to take or perform in order to obtain such certification. Said certification as provided herein shall not be unreasonably withheld by the CDD and such shall be deemed approved if the CDD fails to conform to the provisions of Section 1.4 and this Section 1.5.

1.6 Commencement and Completion Requirements.

1.6.1 Commencement. The Developer shall commence construction of the Auto Mall within thirty (30) days after the date of the Commencement Notice (as defined in Section 2.3.3 below).

1.6.2 Completion. The Developer shall complete construction of the Auto Mall within thirty (30) months after the date of the Commencement Notice. For the purpose of this Section 1.3 and Section 1.4 below, "completion of construction" means the complete construction, except for minor and ancillary alterations or additional work.

1.6.3 Relocation. Developer shall relocate the auto dealerships (as provided in Section 1.1 hereof) within three (3) months after completion of construction of the Project.

1.7 Subdivision. Developer agrees to act as the "subdivider" of the Project Site, and both parties agree to cooperate in such process including the preparation of a preliminary and final plat and on-site engineering prior to the issuance of a building permit.

1.8 Drainage. Subject to final engineering design and its conformance to engineering standards, the City agrees that the Illinois Power easement on the Project Site may be used as a linear detention basin.

1.9 Compensatory Storage. The City agrees to compensatory storage for the Developer's outlot (O'Brien outlot as described on Exhibit A) to negate the need to store water on the outlot tract.

1.10 Dominant Off-site Runoff. The City agrees to open channel flow to convey storm water runoff from the dominant offsite properties (west of Willow Road) through the Project Site.

1.11 Liquor License. The City agrees to provide a Class A liquor license to a qualified applicant for a restaurant on the Developer's outlot.

1.12 Drainage. Developer agrees to accommodate the stormwater detention requirements as result of the public improvements constructed by the City and described herein.

1.13 Vacated Right-of-Way. Developer agrees to accept and maintain any right-of-way vacated by the Illinois Department of Transportation as a result of the public improvements described herein.

ARTICLE II: PUBLIC IMPROVEMENTS

2.1 Public Improvements

2.1.1 Construction by City. The City shall, provided the conditions precedent set forth in Section 2.2 hereof are met, construct the Public Improvements (as described in Exhibit B attached hereto), excluding the extension road referred to in Section 2.1.4 below. The cost of the Public Improvements shall be borne fully by the City and/or other governmental entities.

2.1.2 Commencement and Completion Requirements. The City shall commence construction of the Public Improvements within thirty (30) days of the date after the Commencement Notice but no earlier than August 1, 2001. The City shall complete construction of the Public Improvements prior to the opening of an O'Brien Auto Dealership (defined in Section 3.1.1 hereof) is open to the public. For the purposes of this Section 2.1, "completion of construction of the Public Improvements" means the complete construction of the Public Improvements, except for parking relocation and minor and ancillary alterations or additional work.

2.1.3 Dedication of Rights of Way. Provided the Developer acquires the Project Site, upon request of the City, the Developer shall dedicate to the City at no cost to the City those portions of the Project Site (and land adjacent to the new Farm & Fleet site that is owned by the Developer) as are set forth in construction plans agreed to by the City and the Developer, that are needed to provide the right-of-way for the Public Improvements.

2.1.4 Construction of Illinois Route 45 and Anthony Drive Improvements and Access Road Phase I. Three phases of an "east west" access road are illustrated on Exhibit C. The City agrees to cause the construction, by agreement with Champaign County and the Illinois Department of Transportation, without cost to the Developer, the intersection improvements illustrated on Exhibit B. Said improvements will include the Phase I of the Access Road west of Illinois Route 45 to the western boundary of the new Farm & Fleet site illustrated as "Phase I" on said Exhibit C, said road right-of-way hereafter referred to as "Access Road".

2.1.5 Extension of Access Road, Phase II. The City agrees to fund the construction of the Access Road Phase II, including all engineering costs, from the western boundary of the new Farm & Fleet site to the western boundary of the Project Site (Developer's property). The City has the right to cause the construction of the Access Road Phase II at its own cost at any time. However, if prior to January 1, 2005, building permit(s) are issued by the City for structure(s) to be located on the tract(s) identified as the "Expansion Tract" in Exhibit C attached hereto, and the structure(s) collectively meet one of the two (2) conditions set forth in Section 2.1.5.1 below, the City shall, within 18 months after one of such conditions are met and at no cost to the Developer, construct Phase II of the Access Road as indicated on Exhibit C.

2.1.5.1 To require the City to construct the Phase II of the Access Road, one of the following two conditions:

- i. The structure(s) described in the building permit(s) that are issued are estimated by the Cunningham Township Assessor to be likely to have an equalized assessed valuation in the aggregate in excess of \$1,000,000. If there are approved modifications to the building permit(s), the estimate of the Cunningham Township Assessor may be revised accordingly; or
- ii. The Comptroller of the City reasonably determines the probable "Sales Taxes" to be received by the City from the proposed structure(s) described in the building permit(s) are likely to exceed \$65,000 per year in the aggregate. "Sales Taxes" as used herein, mean the following taxes which would be received by the City if the project is implemented:

Retailers Occupation Tax;
Use Tax;
Service Use Tax;
Service Occupation Tax.

The structure(s) described in (i) and (ii) above must be business(es) that are new to the City of Urbana and cannot be relocation(s) of business(es) already existing in Urbana or retail business(es) existing in the City of Champaign or the Village of Savoy.

2.1.5.2 Alternatively, if the Developer constructs the Phase II of the Access Road prior to one of the conditions in Section 2.1.5.1 being met, the City shall be obligated to reimburse the Developer for construction of such extension road only upon the satisfaction of one of the conditions in Section 2.1.5.1, provided one of such conditions is met within a period of five (5) years from the date of this Agreement.

2.2 Conditions Precedent to City Obligations to Construction Public Improvements. The City shall have no obligations with respect to the Public Improvements (as set forth in Section 2.1 hereof), including without limitation no obligations to finance, acquire or construct, unless and until the following conditions are met to the satisfaction of the City in its sole discretion:

2.2.1 Commencement Notice. The Developer delivers to the City an unconditional written commitment from the Developer to proceed with construction of the Project (the "Commencement Notice").

2.2.2 Acquisition of Project Site and Related Land; Sale to Farm & Fleet. The Developer acquires the entire Project Site (except for any environmental hazardous properties that need to be remedied before acquired) and adjacent approximate 28 acres (for a new Farm & Fleet Store) and sells such approximate 28 acres to Farm & Fleet of Monroe, Illinois or affiliate.

If the conditions set forth in this Section 2.2 are not satisfied on or prior to September 30, 2001, this Agreement shall terminate upon written notice by either the Chief Administrative Officer of the City to the Developer or by the Developer to the City, as the case may be, and the parties shall have no further rights or obligations hereunder.

2.3 Conditions Precedent to City Sales Tax Rebate Obligation. The City's obligations to make the Annual Sales Tax Rebate Payouts set forth in ARTICLE III hereof are subject to the following conditions being met:

2.3.1 Satisfaction of Other Conditions. The conditions set forth in Section 2.2 hereof are met.

2.3.2 Opening of O'Brien Auto Dealership. An O'Brien Auto Dealership (defined in Section 3.1 hereof) is opened to the public on the Project Site.

ARTICLE III: SALES TAX REBATE

3.1 Sales Tax Rebate. To induce the Developer to develop the Project, the City shall pay the Developer and its successors and assigns with respect to the Project Site the amounts set forth in this Article III.

3.1.1 Annual Sales Tax Rebate Payments. Within one hundred twenty (120) days after the end of each calendar year beginning with the first calendar year that an automobile dealership controlled by Joseph D. O'Brien, Jr. (an "O'Brien Auto Dealership") is open to the public on the Project Site, and ending with the calendar year in which the thirteenth (13th) anniversary of the date that such O'Brien Auto Dealership is first open to the public on the Project Site, the City shall pay to the Developer the Available Sales Taxes (the "Annual Sales Tax Rebate Payments"), subject to the Aggregate Payment Cap set forth in Section 3.1.2 below and other limitations and restrictions set forth in Section 3.1.3 and other sections of this Agreement.

"Available Sales Taxes" shall mean fifty percent (50%) of the amount of the following taxes received by the City with respect to the Project Site in excess of \$200,000 in each calendar year after the Project opens: Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax. With respect to the calendar year that the Project opens, the \$200,000 floor shall be prorated based upon the proportion of said calendar year that the Project is open.

3.1.2 Aggregate Payment Cap. The City shall be obligated to make the Annual Sales Tax Rebate Payments set forth in Section 3.1.1 above until and only until the Developer has received Annual Sales Tax Rebate Payments equal to \$1,500,000 ("Aggregate Payment Cap").

3.1.3 Termination of the City Obligations. The City's obligations to make the Annual Sales Tax Rebate Payments shall terminate and be of no further force or effect upon the first to occur of the following:

(i) The City has made Annual Sales Tax Rebate Payments under this Section 3.1 equal to the Aggregate Payment Cap set forth in Section 3.1.2 hereof;

(ii) The first calendar year in which there is no longer any retail automobile dealerships on the Project Site;

(iii) The last day of the calendar year in which the thirteenth (13th) anniversary of the opening date of the first O'Brien Auto Dealership on the Project Site.

3.1.4 Sales Tax Information. The Developer agrees to provide to the City, or make reasonable efforts to cause occupants of the Project Site to provide to the City, information regarding sales and uses taxes necessary for the City to calculate the Available Sales Taxes.

ARTICLE IV: OTHER OBLIGATIONS OF CITY

4.1 Enterprise Zone. The City will submit application to the State of Illinois to request the Project Site to be added to Urbana Enterprise Zone pursuant to the Illinois Enterprise Zone Act (20 ILCS 655/1 et seq.) no later than 30 days after the effective date of this agreement, or the date all property is located within the City or Urbana, whichever is later.

4.2 Reimbursement of Relocation Expense. The City shall reimburse the Developer \$30,000 to defray a portion of its relocation expenses upon the opening of an O'Brien Auto Dealership on the Project Site.

4.3 Interest Subsidy. To reimburse the Developer for the cost of carrying the Project Site and the existing Farm & Fleet store during construction of the new Farm & Fleet store, the City shall reimburse to the Developer \$50,000 upon the opening of an O'Brien Auto Dealership on the Project Site.

4.4 Zoning. The City shall cooperate with the Developer in rezoning the entire Project Site "B-3" and in issuing all necessary special or conditional use permits so as to permit the development and operation of the Project on the Project Site.

4.5 Signs. Notwithstanding anything in the Urbana Zoning Ordinance to the contrary, the Developer and its successors and assigns with respect to the Project Site shall be allowed no less than ten (10) free standing signs, each no less than seventy-five (75) feet in height and one hundred fifty (150) square feet in area.

ARTICLE V: REPRESENTATIONS OF THE DEVELOPER

The Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

5.1 Organization. The Developer is a limited liability company duly organized and existing under the laws of the State of Illinois and has been duly qualified to transact business in Illinois.

5.2 Authorization. The Developer has power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

5.3 Non-Conflict or Breach. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.

5.4 Pending Lawsuits. There are no lawsuits either pending or threatened that would affect the ability of the Developer to proceed with the construction and development of the Project on the Project Site.

ARTICLE VI: REPRESENTATIONS OF THE CITY

The City represents, warrants and agrees as a basis for the undertakings on its part contained herein that:

6.1 Organization and Authorization. The City is a municipal corporation organized and existing under the laws of the state of Illinois, and has the power to enter into and by proper action has been duly authorized to execute, deliver and perform this Agreement.

6.2 Non-Conflict or Breach. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound.

6.3 Pending Lawsuits. There are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

ARTICLE VII: DEVELOPER INDEMNIFICATION OF CITY

7.1 Indemnification. The Developer agrees to indemnify and save the City and its officers and employees harmless against all claims by or on behalf of any person, firm or corporation arising from (i) the Developer's operation or management of the Project, or from any work of or thing done by the Developer on the Project Site, or any work or activity of the Developer in connection with the construction of the Project and the Public Improvements; (ii) any breach or default on the part of the Developer in the performance of any of its obligations under or in respect of this Agreement; (iii) any act of negligence of the Developer or any of its agents, contractors, servants or employees; (iv) any violation by the Developer of any easements, conditions, restrictions, building regulations, zoning ordinances, environmental regulations or land use regulations affecting the Project Site or the Project; or (v) any violation by the Developer of state or federal securities law in connection with the offer and sale of interests in any part of the Project. The Developer agrees to indemnify and save the City harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Developer, upon receipt of notice in writing from the City setting forth the particulars of such claim or action, the Developer shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the City.

ARTICLE VIII: PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

8.1 Prohibition Against Transfer of Project and Project Site Prior to Completion of Construction. The Developer represents and agrees that prior to completion of construction of the Project as certified by the City (in accordance with Section 1.4 hereof), the following prohibitions and restrictions shall apply to the transfer of all or any portion of the Project and the assignment of any rights of the Developer under this Agreement:

8.1.1 Prohibitions. Except only by way of security for a mortgage only for the purpose of obtaining financing necessary to enable the Developer to purchase the Project Site and construct the Project, the Developer has not made or created, and will not, prior to the completion of construction of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement, the Project or any part thereof or any interest therein, or any contract agreement to do any of the same, except for utility easements, without the prior written approval of the City Council.

8.1.2 Conditions for Approval. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval pursuant to this Section 8.1, that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or related to part of the Project, such obligations to the extent that they relate to such part).

(b) Any proposed transferee, by instrument in writing reasonably satisfactory to the City Attorney and in a form recordable among the land records, shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of , or any other successor in interest whatsoever to, the Project, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the City Council) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City, of any rights or remedies or controls regarding the Project and the construction thereof that the City would have had, had there been no such transfer.

(c) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer.

(d) The Developer and its transferee shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of this Agreement.

8.2 Transfer of Project and Project Site After Completion of Construction. After completion of construction of the Project as certified by the CDD (in accordance with Section 1.4 hereof), the Developer (and any subsequent owner of the Project or Project Site or any part

thereof) may transfer the Project or Project Site or its rights under this Agreement (or any portion thereof) without the consent of the City Council; provided that any proposed transferee, by instrument in writing reasonably satisfactory to the City Council and in a form recordable among the land records, shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent that they relate to so such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project or this Agreement, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or this Agreement or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the City, of any rights or remedies or controls regarding the Project and the construction thereof that the City would have had, had there been no such transfer.

8.3 Status of Assignee. Any assignee of the Developer under the provisions hereof shall be considered the "Developer" for all purposes of this Agreement.

8.4 No Release of Developer. Any consent by the City to any total or partial transfer of the Project or the Project Site or this Agreement shall not be deemed a release of the Developer from any of its obligations hereunder, or from any conditions or restrictions to which the Developer is subject, unless the Developer is expressly released in writing by the City.

ARTICLE IX: DEFAULT AND REMEDIES

9.1 Events of Default. The following shall be events of default ("Events of Default") with respect to this Agreement:

9.1.1 If any material representation made by the Developer or City in this Agreement, or in any certificate, notice, demand or request made by the Developer or City, in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or

9.1.2 Breach by the Developer or City of any material covenant, warranty or obligation set forth in this Agreement.

9.2 Remedies of Default. In the case of an Event of Default by either party hereto or any successors to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If, in such case action is not taken, or not diligently pursued, or the Event of Default shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations.

In case the City or Developer shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

9.3 Other Rights and Remedies of City and Developer: Delay in Performance Waiver.

9.3.1 No Waiver by Delay. Any delay by the City or the Developer in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the City or Developer should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by the City or Developer with respect to any specific Event of Default by the Developer or City under this Agreement be considered or treated as a waiver of the rights of the City or Developer under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by the City or Developer.

9.3.2 Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by either such party with respect to the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

9.3.3 Delay in Performance. For the purposes of any of the provisions of this Agreement except with regard to payment of real estate taxes as provided herein, neither the City, nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or in default of, its obligations with respect to the acquisition or preparation of the Project Site for development, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of the public enemy, acts of federal, state or local government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City or Developer with respect to the acquisition or construction of the Project shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section, shall within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, of the cause or causes thereof, and requested an extension of the period of enforced delay. Such extensions of schedule shall be agreed to in writing by the parties hereto.

ARTICLE X: MISCELLANEOUS

10.1 Authorized Representatives

10.1.1 Developer. By complying with the notice provisions hereof, the Developer shall designate an authorized representative from time to time, who, unless applicable law requires action by the Members of the Developer, shall have the power and authority to make or grant or do all things, requests, demands, approvals, consents, agreements and other actions required or described in this Agreement for and on behalf of the Developer.

10.1.2 City. By complying with the notice provisions hereof, the City shall designate an authorized representative from time to time, who shall communicate with the Developer on behalf of the City. Such representative shall not have the authority to make agreements on behalf of the City.

10.2 Entire Agreement. The terms and conditions set forth in this Agreement and exhibits attached hereto supersede all prior oral and written understandings and constitute the entire agreement between the City and the Developer.

10.3 Binding Upon Successors in Interest. This Agreement shall be binding upon all the parties hereto and their respective heirs, successors, administrators, assigns or other successors in interest.

10.4 Titles of Paragraphs. Titles of the several parts, paragraphs, sections or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provision hereof.

10.5 Notices. Notices of demands hereunder shall be in writing and shall be served (a) by personal delivery; or (b) by certified mail, return receipt requested to the Chief Administrative Officer, City Hall, 400 South Vine Street, Urbana, Illinois 61801 (with copies to the City Regal Division), or to the Developer at 1601 Fort Jesse Road, Normal, Illinois 61761-0899, (with a copy to John S. Elias, 416 Main Street, Suite 1400, Peoria, Illinois 61602), or to the last known address of either party or to the address provided by any assignee if such address has been given in writing. In the event said notice is mailed, the date of service of such notice shall be deemed to be two (2) business days after the date of delivery of said notice to the United States Post Office. [Either party may change its address by notifying the other party in accordance with this notice provision.]

10.6 Severability. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.

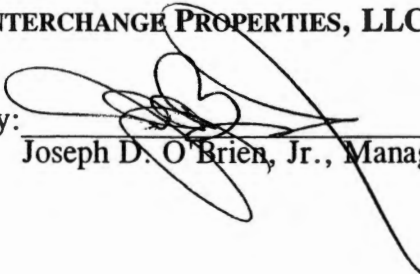
10.7 Further Assistance and Corrective Instruments. The City and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required by the parties hereto, for carrying out the intention of or facilitating the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused their respective seals to be affixed and attested thereto as of the date first above written.

CITY OF URBANA, ILLINOIS

INTERCHANGE PROPERTIES, LLC

By: _____
Its: Mayor

By:  _____
Joseph D. O'Brien, Jr., Manager

Attest:

By: _____
Its: City Clerk

Accepted as to Form:

By: _____
Its: City Attorney

EXHIBITS:

- EXHIBIT A - PROJECT SITE
- EXHIBIT B - PUBLIC IMPROVEMENTS
- EXHIBIT C - EAST/WEST ACCESS ROAD AND EXPANSION TRACT

800-1297.d3

EXHIBIT B

PUBLIC IMPROVEMENTS

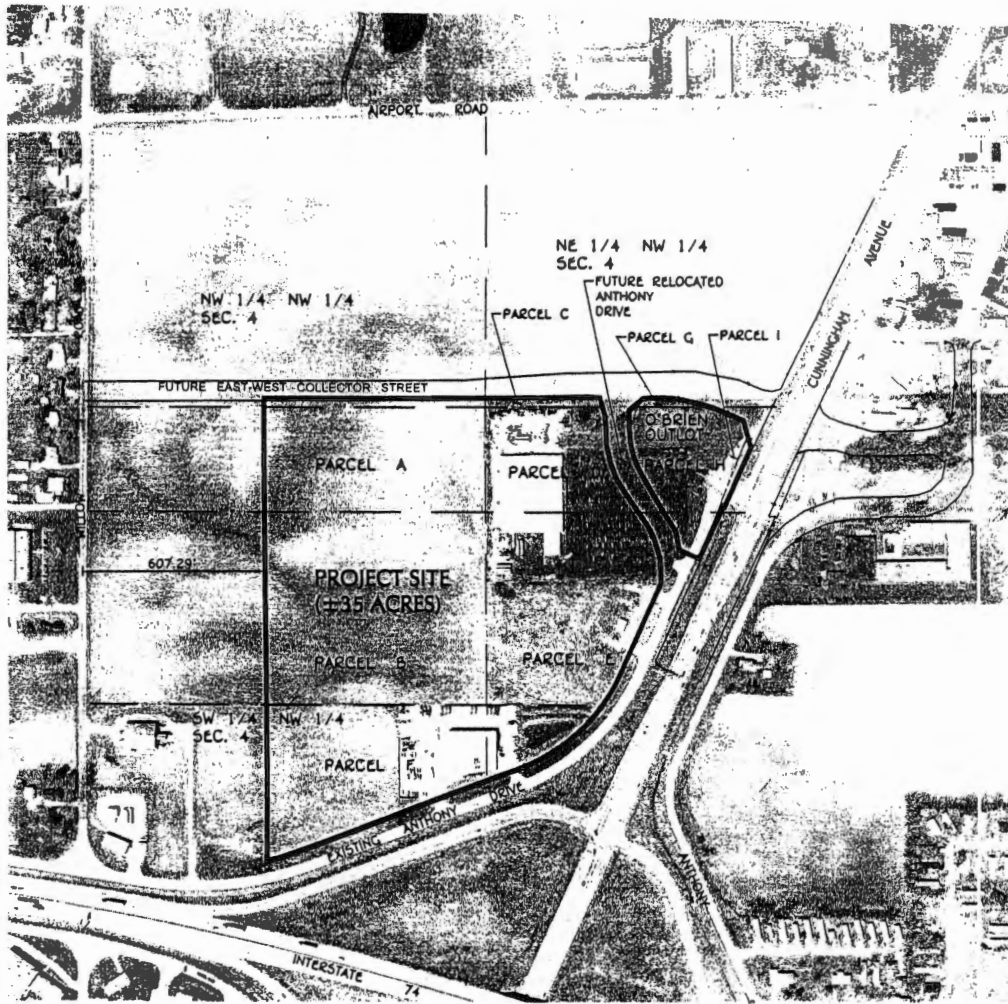
EXHIBIT A

PROJECT SITE

EXHIBIT C

EAST/WEST ACCESS ROAD AND EXPANSION TRACT

[To be Supplied by City]



PROJECT SITE DESCRIPTION

PART OF THE NW 1/4 OF SECTION 4, T. 19 N., R. 9 E. OF THE 3RD P.M. GENERALLY DESCRIBED AS FOLLOWS:

DEVELOPMENT TRACT (±35 ACRES)

PARCEL A (FRASCA PROPERTY):
THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NW 1/4 OF THE NW 1/4 OF SECTION 4 EXCEPT THE WEST 607.29 FEET THEREOF, AND THAT PART OF THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NW 1/4 OF THE NW 1/4 OF SECTION 4 LYING SOUTH OF THE FUTURE EAST-WEST COLLECTOR STREET, EXCEPT THE WEST 607.29 FEET THEREOF, AND

PARCEL B (FRASCA PROPERTY):
THE NORTH 1/2 OF THE SW 1/4 OF THE NW 1/4 OF SECTION 4 EXCEPT THE WEST 607.29 FEET THEREOF, AND

PARCEL C (FRASCA PROPERTY):
THAT PART OF THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NE 1/4 OF THE NW 1/4 OF SECTION 4 LYING SOUTH OF THE FUTURE EAST-WEST COLLECTOR STREET AND WEST OF THE FUTURE RELOCATED ANTHONY DRIVE, AND

PARCEL D (FARM & FLEET):
THAT PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NE 1/4 OF THE NW 1/4 OF SECTION 4 LYING WEST OF THE FUTURE RELOCATED ANTHONY DRIVE, AND ALL OF THE NORTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SECTION 4 LYING WEST OF THE FUTURE RELOCATED ANTHONY DRIVE, EXCEPT PARCEL E DESCRIBED FOLLOWING, AND

PARCEL E (LEE PROPERTY):
THAT PART OF THE FOLLOWING DESCRIBED TRACT LYING WEST OF THE FUTURE RELOCATED ANTHONY DRIVE, BEGINNING AT THE NW CORNER OF THE SOUTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SECTION 4, THENCE NORTH 403.8 FEET; THENCE EAST 578.18 FEET TO THE WEST LINE OF U.S. ROUTE 45; THENCE SOUTHWEST, ALONG SAID WEST LINE, 448.28 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SAID SECTION 4, THENCE WEST, ALONG SAID NORTH LINE, 338.50 FEET TO THE POINT OF BEGINNING, AND

PARCEL F (VALENTINE PROPERTY):
LOT 2 OF REINHOLD - LINDMAN SUBDIVISION, A SUBDIVISION IN CHAMPAIGN COUNTY, ILLINOIS, AS PER PLAT RECORDED IN PLAT BOOK AA AT PAGE 237 IN THE OFFICE OF THE RECORDER OF CHAMPAIGN COUNTY,

DEVELOPMENT TRACT (O'BRIEN OUTLOT)

PARCEL G (FRASCA PROPERTY):
THAT PART OF THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NE 1/4 OF THE NW 1/4 OF SECTION 4, LYING SOUTH OF THE FUTURE EAST-WEST COLLECTOR STREET AND EAST OF THE FUTURE RELOCATED ANTHONY DRIVE, AND

PARCEL H (FARM & FLEET):
THAT PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NE 1/4 OF THE NW 1/4 OF SECTION 4 LYING WEST OF THE WEST LINE OF U.S. ROUTE 45 AND LYING EAST OF THE FUTURE RELOCATED ANTHONY DRIVE, AND ALL OF THE NORTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SECTION 4 LYING WEST OF THE WEST LINE OF U.S. ROUTE 45 AND LYING EAST OF THE FUTURE RELOCATED ANTHONY DRIVE, EXCEPT BEGINNING AT THE NW CORNER OF THE SOUTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SECTION 4, THENCE NORTH 403.8 FEET; THENCE EAST 578.18 FEET TO THE WEST LINE OF U.S. ROUTE 45; THENCE SOUTHWEST, ALONG SAID WEST LINE, 448.28 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SE 1/4 OF THE NW 1/4 OF SAID SECTION 4, THENCE WEST, ALONG SAID NORTH LINE, 338.50 FEET TO THE POINT OF BEGINNING, AND

PARCEL I (I.D.O.T.):
THAT PART OF THE VACATED RIGHT-OF-WAY OF ANTHONY DRIVE, LYING EAST OF AND ADJACENT TO PARCEL D DESCRIBED ABOVE, LYING SOUTH OF THE FUTURE EAST-WEST COLLECTOR STREET AND EAST OF THE FUTURE RELOCATED ANTHONY DRIVE,

SAID DEVELOPMENT TRACT (O'BRIEN OUTLOT) CONTAINING ±3 ACRES,

ALL IN CHAMPAIGN COUNTY, ILLINOIS, ALL SUBJECT TO SURVEY AND SUBJECT TO ESTABLISHING THE FINAL LOCATION OF THE WEST RIGHT-OF-WAY LINE OF RELOCATED ANTHONY DRIVE WHICH BASE DATA HEREIN HAS BEEN TAKEN FROM THE ANTHONY DRIVE / U.S. ROUTE 45 INTERSECTION DESIGN STUDY BY CLARK DIETZ, INC., DATED MARCH 24, 2000.

INTERCHANGE
PROPERTIES, LLC



DAILY & ASSOCIATES ENGINEERS, INC.
1810 BROADMORRIS DRIVE
CHAMPAIGN, IL 61821
PH 217-343-4169
FAX 217-343-4086
EMAIL daily@dailyandco.com

Sheet No.	Rev. Date

Date of Preparation: **January 29, 2003**
Designed By: _____ Drawn By: _____
Checked By: _____ Approved By: _____

Drawing Title

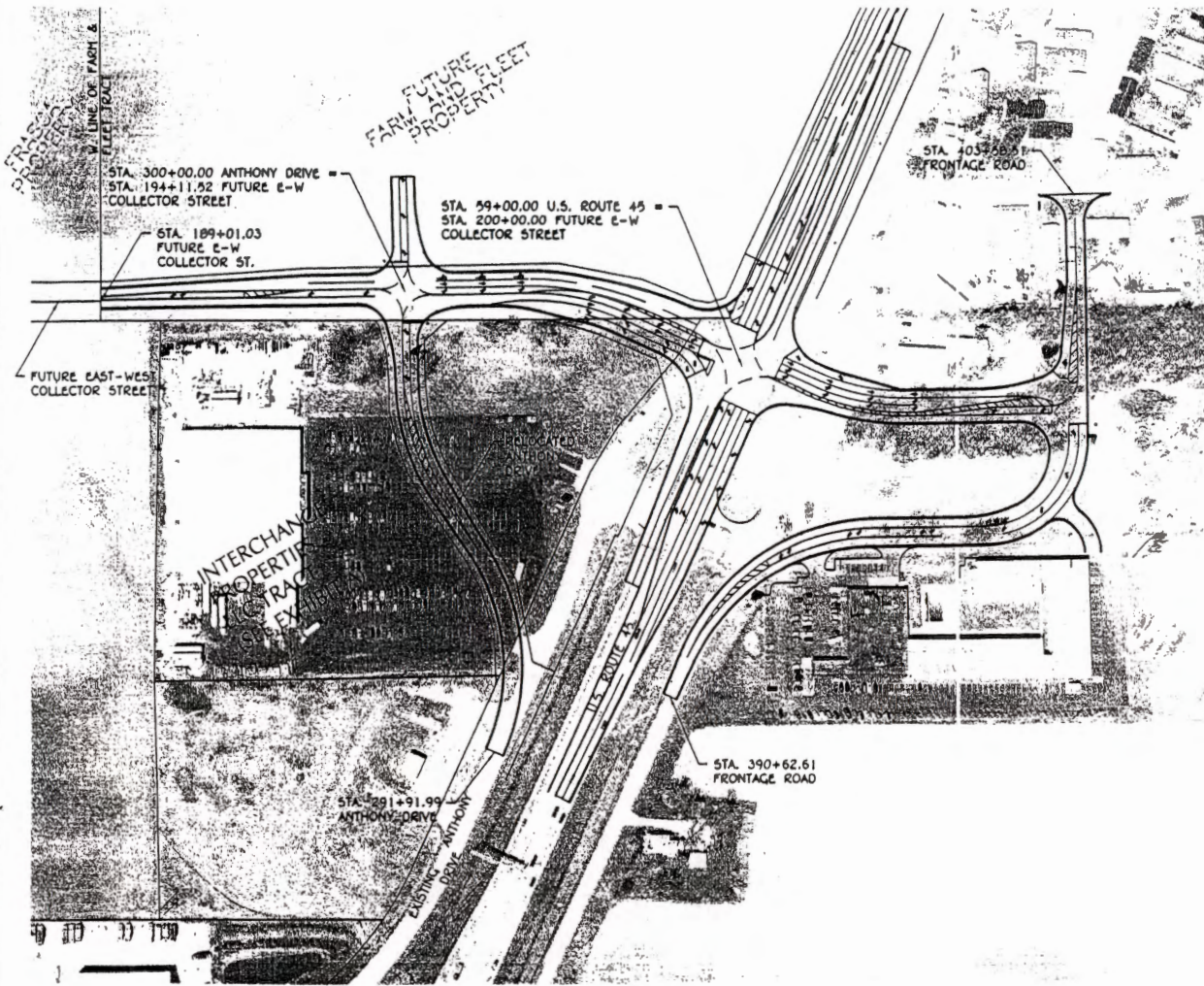
EXHIBIT A

Project No. **4804.05**

Sheet No. **1** of 1 Sheets

Cad File Xref's

Cad File Name
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CONSTRUCTION OF PUBLIC IMPROVEMENTS CAUSED BY THE CITY OF URBANA SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

1. RIGHT-OF-WAY NECESSARY TO CONSTRUCT THE IMPROVEMENTS
2. PAVEMENT, PAVEMENT WIDENING, CURB AND GUTTER, SHOULDERS, STORM SEWER SYSTEMS AND CULVERTS.
3. PAVEMENT MARKINGS, DELINEATORS AND TRAFFIC SIGNS.
4. TRAFFIC SIGNALS AND APPURTENANCES.
5. REMOVAL OF EXISTING PAVEMENT, SHOULDERS, CURBS, CULVERTS AND OTHER ROADWAY FEATURES AS NECESSARY, INCLUDING BUILDING DEMOLITION.
6. EARTHWORK, RESTORATION OF SURFACE AREAS, SEEDING, SODDING, MULCH AND NUTRIENTS.
7. COMMERCIAL DRIVEWAY PAVEMENTS WITHIN THE RIGHT-OF-WAY
8. FEES, EXPENSES AND WORK NECESSARY FOR UTILITY RECONSTRUCTION OR RELOCATION DUE TO CONSTRUCTION OF PUBLIC IMPROVEMENTS.

NOTE: DELINEATION OF IMPROVEMENTS AS SHOWN ARE FROM BASE DATA TAKEN FROM ANTHONY DRIVE / U.S. ROUTE 45 INTERSECTION DESIGN STUDY BY CLARK DIETZ INC., DATED MARCH 24, 2000.

INTERCHANGE PROPERTIES, LLC



D&A
 DAILY & ASSOCIATES, ENGINEERS, INC.
 1816 BRIDGECROCK DRIVE
 CHAMPAIGN, IL 61821
 PH 217-383-4169
 FAX 217-383-0088
 EMAIL: dd@dailyeng.com

Sheets Rev.	Rev. Date

Date of Preparation: January 25, 2001
 Designed By: _____ Drawn By: KJ
 Checked By: _____ Approved By: TJ

Drawing Title
EXHIBIT B

Project No. 4504.05

Sheet No. 1 of 1 Sheets

Cad File Ref's

Cad File Name
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Exhibit "C" O'Brien Development Agreement



**Community
Development
Services**



Prepared January 24, 2001 by pal