

ORDINANCE NO. 2001-01-008

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT WITH FRASCA ASSOCIATES,
AN ILLINOIS GENERAL PARTNERSHIP**

(Frasca 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 Frasca Associates, An Illinois General Partnership, 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 B. Clark
Phyllis B. Clark, City Clerk

Tod Satterthwaite
Tod Satterthwaite, Mayor

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (including attachments and exhibits, and hereinafter referred to as the "Agreement") dated as of the 29th day of JANUARY 2008, by and between the City of Urbana, an Illinois home-rule municipality, in Champaign County, Illinois (hereinafter referred to as the "City" or "Corporate Authorities"), and Frasca Associates, An Illinois General Partnership (hereinafter referred to as "Frasca"). The effective date of this agreement is that written above.

RECITALS

WHEREAS, in accordance with and pursuant to the authority granted to units of government in Article VII of the Illinois Constitution of 1990, the City is authorized to enter into agreements that foster economic development; and

WHEREAS, Frasca properties are involved in the development of a major automobile sales mall governed by an Agreement entitled "An Agreement Between the City of Urbana and Interchange Properties, LLC" (hereinafter referred to as the "O'Brien Agreement"); and

WHEREAS, in order to assure for the successful completion of the automobile sales mall and the obligations outlined in the O'Brien Agreement and to assure the proper road and infrastructure development of Frasca's and adjoining properties; and

WHEREAS, the City has determined that development in accordance with the terms and conditions of this Agreement is in the best interests of the citizens of the City of Urbana and in compliance with the City of Urbana's Comprehensive Plan, as amended; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the City and Frasca 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 will have the meaning provided from place to place herein, including as follows:

"City" means the City of Urbana, Illinois, a municipal corporation or its agents, employees and representatives.

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

"Development Area" means, collectively, the real estate bounded by Anthony Drive on the east and south, Airport Road on the north, and Willow Road on west as illustrated in Exhibit "A", attached hereto; and

"Parties," mean, collectively, the City and Frasca.

Section 1.2 Construction. This Agreement, except where the context by clear implication will otherwise require, will be construed and applied as follows:

- (a) definitions include both singular and plural;
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and will not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement will be and are operative provisions of this Agreement and will 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. The City hereby makes certain representations and warranties to Frasca, 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 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, yet such enforceability may be further 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 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 terms, conditions, or provisions of any agreement, rule, regulations, 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 with the exception of the Illinois Department of Transportation where applicable.

Section 2.2 Representations and Warranties of Frasca. Frasca makes the following representations and warranties to the City:

Section 2.2.1 Organization. Frasca is a general partnership duly organized, validly existing and in good standing under the laws of the State of Illinois.

Section 2.2.2 Power and Authority. Frasca 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 Frasca, enforceable against Frasca 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 2.2.4 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 Frasca is a party, or by which Frasca 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 Frasca of this Agreement or the performance thereof by Frasca with the exception of the contingencies contained in this Agreement relating to action to be taken by the City and by the Illinois Department of Transportation, where applicable.

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 Frasca is a party and (b) which will, or could, prevent Frasca's performance of its obligations under this Agreement.

Section 2.3 Disclaimer of Warranties. The City and Frasca acknowledge that neither has made any warranties to the other, except as set forth in this Agreement.

ARTICLE III

THE OBLIGATIONS OF THE CITY

Section 3.1 City's Obligations. The Corporate Authorities of the City hereby covenant and agree with Frasca as follows:

Section 3.1.1 Construction of Illinois Route 45 and Anthony Drive Improvements and Access Road Phase I. Three phases of an access road are illustrated on Exhibit B. The Corporate Authorities agree to cause the construction, by agreement with Champaign County and the Illinois Department of Transportation of the intersection improvements illustrated on Exhibit C. Said improvements will include the extension of the Access Road (Phase I) 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".

Section 3.1.2 Extension of Access Road, Phase II. The Corporate Authorities agree 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 O'Brien site no later than upon the earlier of the expiration of ten (10) years from the date of this Agreement or the point at which development takes place on the remaining Frasca land within the Development Area, as illustrated in Exhibit C, described herein and which adds a minimum of \$1,000,000 assessed valuation of improvements as determined by Cunningham Township Assessor. Said value may include the expansion of any auto sales dealership by Interchange Properties, LLC (O'Brien Agreement) on property north of the Access Road. The City does have the right to cause the construction of the Access Road Phase II at its own cost.

Section 3.1.3 Extension of Access Road, Phase III. If at any time the City causes the construction of the Access Road from the western boundary of the O'Brien property through to Willow Road (Access Road Phase III), the construction costs associated with the building of the Access Road will be paid by the City. The parties agree that any cost sharing by the City of Urbana relating to Phase III of the Access Road other than that resulting from the City causing the construction of the Access Road will be considered by the City only in conjunction with any development that is to take place on the remaining Frasca land within the Development Area. The City has made no commitment to fund these construction costs.

Section 3.1.4 Alignment of the Access Road. The alignment and location of the Access Road as extended to Willow Road will be according to the mutual agreement of the City of Urbana and Frasca, notwithstanding the fact that the Access Road may be platted straight through from Illinois Route 45 to Willow Road. If at some point in the future a development of the remaining Frasca land within the Development Area requires the amendment of that plat in order to accommodate the development, the City agrees to an alternate alignment as long as the Access Road extends through from Illinois Route 45 to Willow Road.

Section 3.1.5 Improvement of Airport Road. The City agrees to cause, at no cost to Frasca, the improvement of Airport Road from Illinois Route 45 to Willow Road to a three-lane urban cross section street no later than January 1, 2005, such improvements to be made using right-of-way obtained from the south side of the current Airport Road. Said improvements include improving the intersection of Illinois Route 45.

ARTICLE IV

FRASCA'S COVENANTS AND AGREEMENTS

Section 4.1. Frasca's Obligations. Frasca hereby covenants and agrees with the Corporate Authorities as follows:

Section 4.1.1 Agreement to Dedicate Rights-of-Way. Frasca agrees to convey any necessary right-of-way to the City from property Frasca owns on the south side of Airport Road,

without charge to the City, from property which it owns to implement any improvements anticipated in this Agreement including the improvement of Airport Road, Willow Road, all phases of the construction of the Access Road, and the improvements to the Illinois Route 45/Anthony Drive Intersection.

Section 4.1.2 Marketing of Frasca Property. Frasca agrees to establish a firm sales price (said price to be set at Frasca's sole discretion) for the remainder of his property in the development area; to market said property by January 1, 2003 with an appropriate public economic development agency and/or private commercial brokerage firm. In addition, Frasca agrees to accept a bonafide offer for the firm sales price when offered.

Section 4.1.3 Annexation of Property. Frasca agrees to annex to the City, within thirty (30) days of the execution of this agreement by the Mayor, any property owned by Frasca which is contiguous to the City; Frasca further agrees to annex to the City any other parcels that Frasca now owns or later acquires within sixty (60) days of such parcel becoming contiguous to the City. If said property is contiguous to Frasca Field Airport, then the parties will enter into an agreement that is substantially similar to the Annexation Agreement between Frasca Associates and the City of Urbana approved by Ordinance No 9192-64 on January 21, 1992, except the general area plan provisions will not apply. In addition, any addendums to the Annexation Agreement dated January 21 will not affect the original terms as they apply to the original parcels governed thereby. As to property that is not contiguous to the airport, earlier annexation agreement terms will not apply except that the City will pay the difference between the unincorporated an incorporated tax rate on such property until it develops.

Section 4.1.4. Sale of Property. Frasca agrees to sell property described in and subject to the terms of a separate agreement between Frasca and Interchange Properties, LLC to Interchange Properties, LLC for the purposes of developing an auto mall and the new construction of a Farm & Fleet retail store no later than August 1, 2001.

Section 4.1.4. Conditions Precedent. The obligations of the parties herein are conditioned on the execution of related agreements between the parties and Interchange Properties, LLC and Farm & Fleet of Monroe, Incorporated and their fulfillment of related obligations. In addition, the obligations of the City are conditioned upon Frasca and Associates'

execution of an annexation agreement for the properties for which he has previously submitted annexation petitions within thirty (30) days of the date of the City's approval of 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 will 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 will give written notice of the alleged default to the party alleged to be in default specifying the default complained of. 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 the defaulting party commences to cure said default, such thirty (30) day period will 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 will be deemed not to constitute a breach of this Agreement. However, a default not cured as provided above will 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 will 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.

Section 5.2 Remedies. The sole remedy of either party in the event of a default by the other party under any of the terms and provisions of this Agreement will be to institute legal action against the other party for specific performance or other appropriate equitable relief.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Entire Contract and Amendments. This Agreement (together with the Exhibits, inclusive, attached hereto) is the entire contract between the City and Frasca relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and Frasca, 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 Frasca 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 Frasca, nor will any provision give any third parties any rights of subrogation or action over or against either the City or Frasca. 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 will be considered an original and together they will constitute one agreement.

Section 6.4 Special and Limited Obligation. This Agreement will constitute special and limited obligation of the City according to the terms hereof. This Agreement will never constitute a general obligation of the City to which its credit, resources or general taxing powers are pledged.

Section 6.5 Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither Frasca nor the City will be deemed in default with respect to any performance obligations under this Agreement on their respective parts to be performed if any

such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lockout or other labor disturbance (whether legal or illegal, with respect to which Frasca, the City and others will have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, war, fuel shortages, accidents, casualties, Acts of God or third parties, or any other cause beyond the reasonable control of Frasca or the City, or for any other reasons not within Frasca's or the City's control.

Section 6.6 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver will be deemed to exist unless such waivers are in writing. No such waiver will obligate the waiver of any other right or remedy hereunder, or will be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 6.7 Cooperation and Further Assurances. The City and Frasca 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 Frasca or other appropriate persons all singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 6.8 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.

Section 6.9 Notices. All notices, demands, request, consents, approvals or other communications or instruments required or otherwise given under this Agreement will be in writing and will be executed by the party or an officer, agent or attorney of the party, and will 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 Frasca:

Rudy Frasca
Frasca International, Inc.
906 E. Airport Road
Urbana, Illinois 61801
TEL: 217-344-9200

And:

Richard Thies, Attorney
Webber & Thies, P.C.
202 Lincoln Square
P.O. Box 189
Urbana, Illinois 61801
TEL: 217-367-1126
FAX: 217-367-3752

To the City:

City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attention: Chief Administrative Officer
TEL: (217) 384-2454
FAX: (217) 384-2363

with a copy to:

Legal Division
400 South Vine Street
Urbana, IL 61801

TEL: (217) 384-2464
FAX: (217) 384-2363

Section 6.11. Successors in Interest. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors and assigns; provided, however, that Frasca may not assign its rights under this Agreement without the express written approval of the City, except that Frasca may assign rights under this Agreement for collateral purposes, but only with the City's written consent which will not be reasonably withheld.

Section 6.12. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement or any actions of the parties to this Agreement will 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 will be construed and interpreted under the laws of the State of Illinois.

Section 6.14. No Personal Liability. No covenant or agreement contained in this Agreement will 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 will 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. In addition, Frasca liability under the terms of the agreement will be limited to the assets of Frasca Associates, An Illinois General Partnership.

Section 6.15. 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 will be controlling.

Section 6.16. Term. This Agreement will remain in full force and effect until said Agreement is mutually amended or rescinded however, the provisions requiring dedication of right-of-way or easements will survive the termination of this Agreement in perpetuity.

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

CITY OF URBANA, ILLINOIS

By: Tal Sattethwaite


Mayor

Date: 1/29/01

ATTEST:

Phyllis D. Clark
City Clerk by Deborah J. Robert Deputy Clerk
Date: 1/29/01

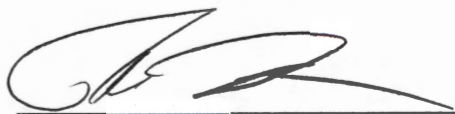
FRASCA ASSOCIATES, AN ILLINOIS GENERAL PARTNERSHIP

By:  _____

Its: General Partner

Date: 1/29/01

ATTEST:

 _____

Date: 1/29/01

Exhibit A -

Exhibit "A"

Development Area

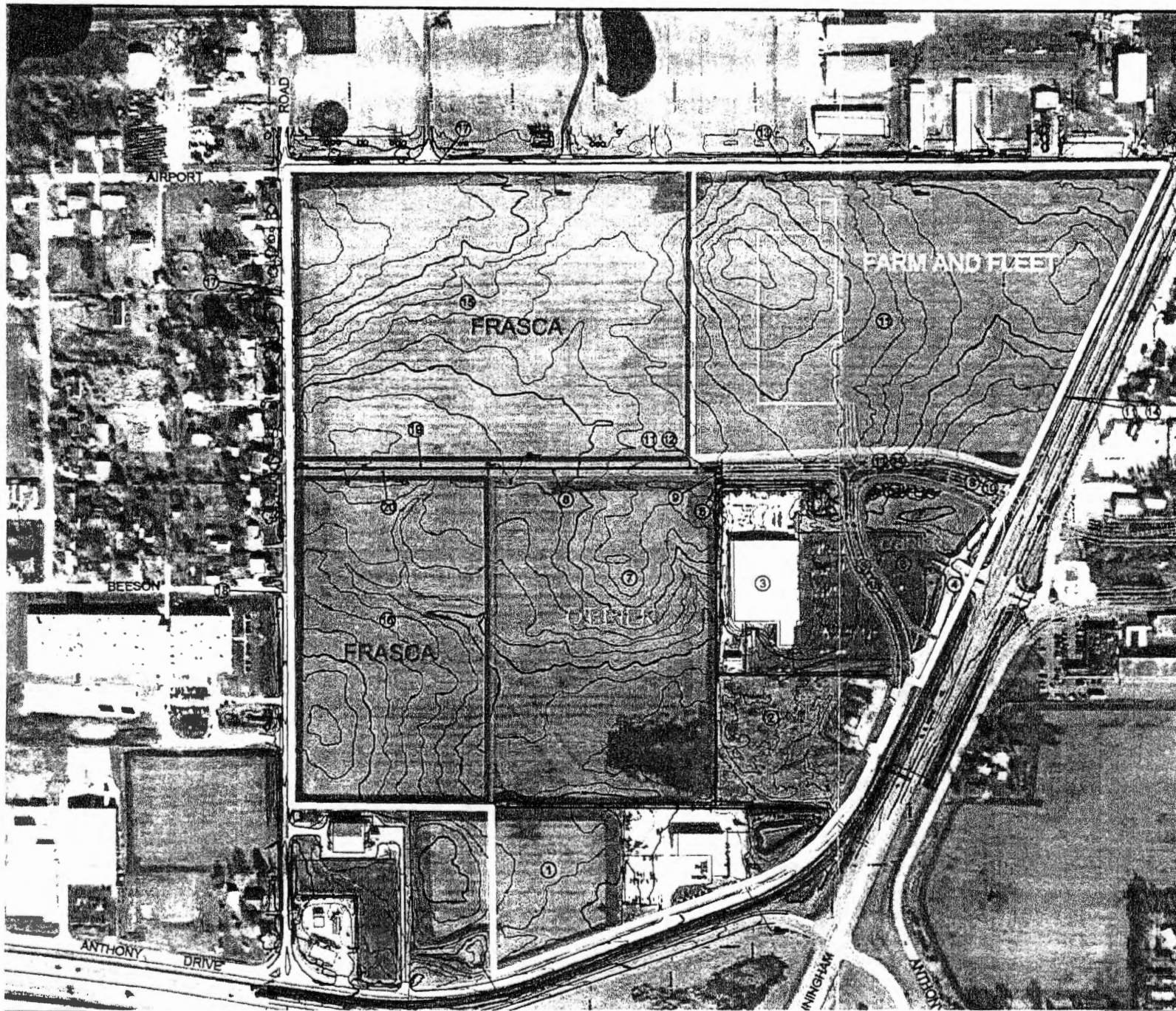


Exhibit "C" Frasca Development Agreement

