

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN  
AGREEMENT WITH ANDRAE'S HARLEY-DAVIDSON, INC.**

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

Section 1. That a Development Agreement Between the City of Urbana and  
Andrae's Harley-Davidson, Inc., 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 16<sup>th</sup> day of April,  
2001.

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

NAYS:

ABSTAINS:

APPROVED by the Mayor this 16<sup>th</sup> day of April,  
2001.

  
Phyllis D. Clark City Clerk  
Rebecca Deputy Clerk  
Tod Satterthwaite  
Tod Satterthwaite, Mayor

# **DEVELOPMENT AGREEMENT**

by and between the

**CITY OF URBANA**

Champaign County, Illinois

**and**

**ANDRAE'S HARLEY-DAVIDSON, INC.**

Dated April 16, 2001

## DEVELOPMENT AGREEMENT

This Development Agreement (including any attachments and exhibits collectively, the “Agreement”) dated as of the 16th day of April, 2001, is by and between the **CITY OF URBANA, an Illinois home-rule municipality, in Champaign County, Illinois, (The “City”), and ANDRAE’S HARLEY-DAVIDSON, INC., an Illinois Corporation (the “Developer”).**

**WHEREAS**, acting through its planning staff, the City’s Department of Community Development Services has reviewed and studied the conditions in the Development Area to determine the need and benefits to the City to develop the area; and

**WHEREAS**, Developer is unwilling to undertake the Private Development without certain guarantees and warranties, including, but not limited to 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 them in the manner set forth herein and as this Agreement may be supplemented and amended; and

**WHEREAS**, Developer has a contract to purchase property (“Land Contract”) from the owners of record of certain real property currently commonly known as 2012 North Lincoln Avenue and adjacent property (as shown on Exhibit A); and

**WHEREAS**, Developer will incur certain development costs including, but not limited to, the cost of acquisition of land and other property, site improvements, utility access, and road access costs, (“Development Costs”); and

**WHEREAS**, the Land Contract is contingent on a satisfactory agreement with the City of Urbana no later than the second City Council meeting in April, 2001; and

**WHEREAS**, this Agreement is effective this date, however, the obligations of the City and Developer are contingent upon Developer closing on the purchase of the Development Area by September 1, 2001.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficient 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 Andrae’s Harley-Davidson, Inc., an Illinois Corporation.

“Development Area” means the real estate upon or within which the Private Development is to be located, which has the common street address of 2012 North Lincoln Avenue and adjacent property shown on Exhibit A, and is identified by Champaign County parcel Index numbers 91-21-05-301-005, 91-21-05-301-006, 91-21-05-301-002 and 91-21-05-301-003 The map and legal

description of Development Area is attached hereto as Exhibit "A".

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

"Private Development" for the purpose of this agreement, means the accomplishment of the following: acquisition of the Development Area, construction of bituminous-surfaced or concrete lot and a new building or buildings as depicted in the site plan attached as Exhibit "C".

## 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 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 City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that such

enforceability may be limited by laws, rulings, and decision 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 of the terms, conditions, or provision 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 a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and is duly qualified to transact business in the State of Illinois, and is in good standing under the laws of each of the other states where the Developer is required to be qualified to do business.

**Section 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.** The execution, delivery and



performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Developer. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by law, rulings and decisions affecting remedies, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

**Section 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 or, 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 to the best of the Developer's knowledge, 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.** To the best of the knowledge of the Developer, no consent or approval by any governmental authority or other person is required in connection with the execution and delivery by the Developer of this Agreement or the performance thereof by the Developer.

**Section 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 2.3 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. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and the Developer assumes all risks in connection with the practical realization of any such private development.

### **ARTICLE III**

#### **CITY'S COVENANTS AND AGREEMENTS**

**Section 3.1 Payment for Partial Development Project Costs.** The City agrees to reimburse the Developer for development project costs (including but not limited to the costs of surveys, appraisals, development plans, site work, demolition, street access, installation of utilities, professional services, clearing, and storm water expenses) in the amount of \$61,000 upon being presented with bills for such amount so as to allow for one payment to the Developer upon the issuance of the certificate of occupancy. Developer agrees to submit such expenses in a format that may be readily determined by the City. The City shall make the above payment to the extent that the Developer submits documentation for eligible project costs in accordance with the procedures established in Article V of this Agreement. This payment is guaranteed by the full faith and credit of the City of Urbana.

**Section 3.2 Property Tax Abatement.** The City shall have the obligation to supervise Enterprise Zone eligible expenses, as set forth below in Section 3.2.1.

**Section 3.2.1 Abatement of Property Tax.** The City recognizes that the Developer is totally dependent upon realizing the anticipated benefits which will result automatically under



existing Enterprise Zone statutes. However, since the Developer is unwilling to proceed with the project unless she receives the independent assurances from the City that these benefits will in fact be realized, and since the City can make such assurances without any cost to the City or likelihood of incurring liability, the City herewith assures Developer that if the real estate taxes on the development are not abated in accordance with State of Illinois statutes, through no fault of the Developer, the City will pay to the Developer the amount that should have been abated, within thirty (30) days of the Developer presenting the City a bill for the real estate taxes on the subject site on which Developer actually paid such taxes in full.

**Section 3.3 Street Access and Lighting.** Developer may construct two accesses on Killarney, one on Linview and one on Lincoln. The sidewalk requirement is waived. The City will add maintain and light, at least 2 new street lights on Killarney and at least one on Linview so long as the one on Linview can be on the same circuit.. The street lights shall be installed and in use no later than the date when the occupancy permit is issued.

**Section 3.4 Enterprise Zone Sales Tax Waiver.** Developer shall be eligible for an Enterprise Zone sales tax waiver , including but not limited to, a waiver for the entire sales tax amount for materials purchased in the City and used for construction in accordance with the City's current Enterprise Zone waiver provisions. Developer agrees to take reasonable steps to purchase an amount of materials in Urbana which will result in a rebate amount (net of price differentials) of at least \$1,125/\$100,000 spent for the Private Development. Developer shall take into account the quality and price of such materials in comparison to the quality and price of materials available outside the City. The advantage of the Enterprise Zone tax waiver will be calculated to be "net" of

any increase in price by purchasing materials in Urbana compared to another source. The Developer will keep reasonable records to show a reasonable attempt to comply with the agreement to attempt to purchase materials in the City. The City shall pay to the Developer the amount of any shortfall in benefits under this subparagraph of an amount no less than \$1,125/\$100,000 for the construction project. Such guarantee, if any is due, shall be paid to the Developer , upon completion of the construction and upon presentation of sales receipts indicating the amount of sales tax paid (and comparable prices, if applicable).

**Section 3.5 Low Interest Loan.** The City will take steps to encourage the availability of a loan in the amount of at least \$200,000 at an interest rate no greater than the then current interest offered by the Regional Plan Commission Program to be amortized over a 25 year amortization schedule with a balloon payment 10 years after the issuance of the occupancy permit for the building. The Developer agrees to apply for and pursue such loan. This loan shall be obtained with the assistance of the City through the County of Champaign. The security offered for this loan shall be junior only to the security of the primary lender. (The interest benefit, in comparison with “market rate” is anticipated to be at least 2%.)

**Section 3.7 Interstate Sign.** The City recognizes the desire on the part of Developer to have the benefit of an interstate sign of 172.5 square feet which has an elevation similar to the Ramada sign to the north. The City and the Developer recognize that in order to obtain permission for such a sign, it must be reviewed by the Zoning Board of Appeals, approved by the Board, and in some cases, approved by the City Council. The Developer agrees to obtain further advice from its marketing and construction advisors as to the sign required by this location. The parties recognize that this agreement is contingent upon Developer receiving permission to construct a sign,

which (after further consultation with its marketing and construction advisors) in Developer's opinion, is required at the site.

**Section 3.8 Parking and Detention.** Parking requirements for a 25,000 square foot building shall be 49 spaces, and for a 35,000 square foot building shall be 60 spaces. Recognizing that it is for purposes of a motorcycle dealership, 1 motorcycle space shall equal 1 car space up to a maximum of 25% of the parking requirement. 7,200 cubic feet of storm water detainage shall be provided by the Developer.

**Section 3.9 Existing Facility of Developer.** The parties recognize that the existing facility being used by the Developer on East Main Street in Urbana consists of their commercial facility on the ground level and a residence on the second level. The City assures that the building may continue to be occupied by owner or successor with a commercial use on the main floor and a residential use on the second floor, as a matter of right. Furthermore, the City guarantees that it will honor the ruling of the City of Urbana Community Development Administrator (Zoning Officer) regarding the existing facility being used by the Developer on East Main Street in Urbana for both commercial use on the main floor and residential use on the second floor as a matter of right so long as the current structure is in existence and not destroyed to the extent that the cost of reconstruction or repair would exceed sixty percent (60%) of the fair market value of the building as it was immediately prior to the damage.

## **ARTICLE IV**

### **DEVELOPER'S COVENANTS**

**Section 4.1 Agreement to Purchase Real Estate.** The Developer agrees to purchase the



Development Area on or before September 1, 2001, (so long as all contingency provisions in the purchase contract are fulfilled).

**Section 4.2 Building Renovation and Addition Construction.** The Developer expects to invest approximately \$2,000,000 in the purchase, equipping and construction of the Private Development. Developer agrees that the initial principal use shall be motorcycle sales.

**Section 4.3 Documentation of Development Project Costs.** The Developer shall submit to the City evidence of development project costs and other necessary documents to evidence compliance with the Developer's obligations as requested by the Chief Administrative Officer.

**Section 4.4 Compliance with All Laws.** The Developer agrees that in the construction of the Private Development and any related public improvements, the Developer will comply with all applicable laws with respect to the work to be undertaken under this Agreement, except as exceptions may be allowed herein.

## **ARTICLE V**

### **PAYMENT FOR ELIGIBLE PROJECT COSTS**

**Section 5.1 Payment Procedures.** The City and Developer agree that payments which are an obligation of the City to reimburse the Developer as provided in Article III of this Agreement shall be disbursed by the Comptroller of the city to the Developer according to the procedures set forth in this Section 5.1 of this Agreement.

The City hereby designates the City's Chief Administrative, or the designee thereof, (the "CAO") as its representative to coordinate the authorization of disbursement of such amount as may be due to the Developer from the City as Development Project Costs. Payments to the Developer

shall be made within 30 days after proper application therefor.

**Section 5.2 Approval and Resubmission of Documentation.** If a request for payment is disapproved, the CAO shall give the Developer written notice of such disapproval of the documentation within 10 days after receipt thereof. Approval cannot be unreasonably withheld. If disapproved, the notice shall contain reasons for such disapproval, and Developer may then resubmit.

## **ARTICLE VI**

### **DEFAULTS AND REMEDIES**

**Section 6.1 Defaults - Rights to Cure.** Failure or delay by any Party to timely perform any term or provision of this Agreement, or taking an action a party agreed not to take, shall constitute a default under this Agreement. The Party who so fails or delays, or takes an action forbidden by this Agreement, must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the defaulting Party. Except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the defaulting Party until 30 days after having given such notice. If such default is cured within such 30 day period, the default shall not be deemed to constitute a breach of this Agreement. If the Party in default states its reasons why the default is one which cannot be cured within such 30 day period, such 30 day period shall be extended, in writing, for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within



such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

**Section 6.3 Remedies.** The remedy of any Party in the event of a default by the other Party under any of the terms and provisions of this Agreement, may not include specific performance but may include other appropriate equitable relief. The Developer shall be subject to monetary damages pursuant to this Agreement, not to exceed the cost of payments to the Developer in Section 3.1 and 3.2.1 and reasonable attorney's fees. The City shall be subject to monetary damages pursuant to this Agreement to include reasonable attorney's fees.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISION**

**Section 7.1 Entire Contract and Amendments.** This Agreement (together with Exhibit A, attached hereto) is the entire contract between the City and the Developer relating to the subject matter thereof, supersedes all prior and contemporaneous negotiations, understandings and agreement, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by all of the Parties.

**7.2 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.

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

**7.4 Time and Force Majeure.** Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall 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, lock-out or other labor disturbances (whether legal or illegal, with respect to which the Developer or the City and others shall 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 condition, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riot, insurrections, war, fuel shortages, accidents, casualties, Acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City, or for any other reasons not within the Developer’s or the City’s control.

**7.5 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 7.6 Cooperation and Further Assurances.** The City and the Developer covenant and agree 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 of the better assuring, pledging,

assigning and confirming unto the City and the Developer all and singular the rights, property and revenues covenants, agreed, conveyed, assigned, transferred and pledged under this Agreement.

**Section 7.7 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 day from 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:

Andrae's Harley-Davidson, Inc.  
Attention: Sharon Andrae  
1401 East Main Street  
Urbana, IL 61801  
Telephone: (217) 328-2092  
Facsimile: (217) 328-2095

With an Informational Copy to:

Carl M. Webber  
202 Lincoln Square  
P.O. Box 189  
Urbana, IL 61803-0189  
Telephone: (217) 367-1126  
Facsimile: (217) 367-3752

To the City:

Chief Administrative Officer  
400 South Vine Street  
Urbana, IL 61801  
Telephone: (217) 384-2454  
Facsimile: (217) 384-2426

With a Copy to:

Legal Division  
400 South Vine Street  
Urbana, IL 61801  
Telephone: (217) 384-2464  
Facsimile: (217) 384-2363

**Section 7.7 Assignment and Successors in Trust.** This Agreement shall be binding on all successors and assigns. This Agreement may be assigned with the written consent of the Corporate Authorities, which consent may not be unreasonably withheld.

**Section 7.8 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 hereto or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

**Section 7.9 Illinois Law.** This Agreement shall be construed and interpreted under the laws of the State of Illinois.

**Section 7.10 No Personal Liability of Officials of the 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 this execution, delivery and performance of this Agreement.

**Section 7.11 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 provision of this Agreement, the provision of this Agreement shall be controlling.

**Section 7.12 Term.** This Agreement shall remain in full force and effect until all payments anticipated hereunder are paid or excused.

**Section 7.13 Contingency.** This Agreement is contingent on Developer purchasing, and closing the purchase of the Development Area.

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

CITY OF URBANA, ILLINOIS

By Tal Satterthwaite  
Mayor

ATTEST:

Phyllis W. Clark  
City Clerk

ANDRAE'S HARLEY-DAVIDSON, INC.

By Sharon Andrae

Its \_\_\_\_\_

ATTEST:

Randy L. Simpson  
Secretary



**EXHIBIT A**  
**DEVELOPMENT AREA**

**SALES PLAT**  
**A PART OF LINCOLN COMMERCE CENTER**  
**URBANA, ILLINOIS**

U.S. 1-74  
F.A. RT. 39

2

3

KILLARNEY

STREET

N

0 25 50 100

SCALE 1"=100'

LINCOLN AVENUE

LINVIEW AVENUE

15

14

13

12

102180 SQ FT  
2.3 ACRES

5

**HDC**  
ENGINEERING, INC.

201 West Springfield, Suite 300,  
Champaign, Illinois 61824-0140  
Phone No. 217-352-6976