

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF A REDEVELOPMENT AGREEMENT
WITH FOX DEVELOPMENT CORPORATION, AN ILLINOIS CORPORATION**

(Office Building At California And Race Streets)

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

Section 1. That a Redevelopment Agreement between the City of Urbana, Illinois and Fox Development Corporation, An Illinois Corporation, dated as of March 1, 2002, 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 4th day of March,
2002.

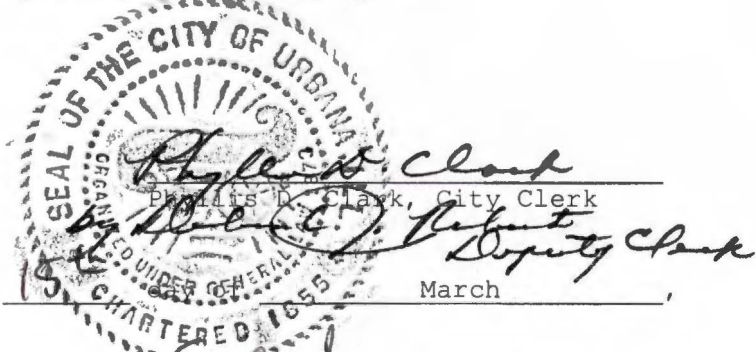
AYES: Chynoweth, Hayes, Huth, Otto, Patt, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this _____ March _____,

2002.



Phyllis D. Clark
Phyllis D. Clark, City Clerk
Deputy Clerk

March _____
Tod Satterthwaite
Tod Satterthwaite, Mayor

FILED

2002 MAY 3 AM 9:47

PHYLLIS D. CLARK
URBAN CITY CLERK

REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**FOX DEVELOPMENT CORPORATION,
AN ILLINOIS CORPORATION**

Dated as of March 1, 2002

Document Prepared By:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Floor
P.O. Box 737
Champaign, IL 61820**

**CITY OF URBANA
RECEIVED**

MAY 03 2002

CITY CLERKS OFFICE

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EXHIBIT B Legal Description of Development Area
EXHIBIT C Site Location Plat of Downtown Urbana Municipal Parking System

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this **“Agreement”**) is made and entered into as of March 1, 2002, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the **“City”**), and **Fox Development Corporation**, an Illinois corporation (the **“Developer”**).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at Section 5/11-74.4-1 et seq. of Chapter 65 of the Illinois Compiled Statutes), as supplemented and amended (the **“Act”**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City has designated the Redevelopment Project Area Number Two (as more particularly described in Exhibit A hereto, the **“Redevelopment Project Area”**) and approved a related redevelopment plan (entitled **“Downtown Urbana Tax Increment Area Two Conservation Redevelopment Plan and Projects”**), as supplemented and amended (respectively, the **“Redevelopment Plan”** and **“Redevelopment Projects”**); and

WHEREAS, in connection with the Redevelopment Projects, Redevelopment Plan and Redevelopment Project Area, the City Council of the City (the **“Corporate Authorities”**) on December 23, 1986, adopted Ordinance No. 8687-45, **“An Ordinance Approving a Redevelopment Plan and Redevelopment Project; Designating a Redevelopment Project Area; Adopting Tax Increment Allocation Financing; and Authorizing the Illinois Department of Revenue to Annually Certify and Cause to be Paid to the City of Urbana, Illinois an Amount Equal to the Increase in the Aggregate Amount of State Sales Taxes Paid by Retailers and Servicemen on Transactions at Places of Business Located Within the Redevelopment Project Area”** (the **“TIF Ordinance”**), a copy of which was duly filed with the County Clerk of Champaign, County, Illinois, who certified the property tax increment base to the City; and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to acquire, construct and install (or cause to be done) certain renovations and improvements to an existing office building, including an the addition thereto of a two-story office building having approximately 11,000 square feet, (including the related real estate and appurtenant facilities), as accomplished in one or more phases; and

WHEREAS, the Developer is unwilling to undertake such development without certain tax increment finance (“TIF”) incentives from the City, which the City is willing to provide, and the City has determined that it is desirable and in the City’s best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

“**Corporate Authorities**” means the City Council of the City.

“**Development Area**” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit B hereto, upon or within which the Private Development is to be located.

“**Eligible Costs**” means those site preparation costs and those interest costs paid and incurred by the Developer which are related to the acquisition, construction and installation of the Private Development and which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q)(2) and (11) of the Act.

“**Fund**” means the “Special Tax Allocation Fund for Redevelopment Project Area Number Two” established under Section 5/11-74.8 of the Act and the TIF Ordinance.

“Incremental Property Taxes” means those incremental real property taxes derived from the Redevelopment Project Area under Section 5/11-74.4-8 of the Act.

“Independent” or **“independent”**, when used with respect to any specified person, means such person who is in fact independent and is not connected with the City or the Developer as an officer, employee, partner, or person performing a similar function, and whenever it is provided in this Agreement that the opinion or report of any independent person shall be furnished, such person shall be appointed or approved by the City, and such opinion or report shall state that the signer had read this definition and that the signer is independent within the meaning hereof.

“Private Development” means, collectively, certain renovations and improvements to an existing office building, including an addition thereto of a two-story office building having not less than 11,000 square feet, all of which is to be located within or upon the Development Area and acquired, constructed and installed in one or more phases by the Developer.

“Reimbursement Amounts” means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.1 (a) of this Agreement.

“Related Agreements” means all option, land acquisition, development, redevelopment, construction, financing, franchise, loan, ground lease and lease agreements, whether now or hereafter existing, executed by the Developer in connection with the Private Development.

“Requisition” means a request by the Developer for an annual payment or reimbursement of Eligible Costs pursuant to the procedures set forth in Section 5.1 of this Agreement.

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

- (a) definitions include both singular and plural.
- (b) pronouns include both singular and plural and cover all genders; and
- (c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) **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.

(b) **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.

(c) **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 any and all financial obligations of the City under this Agreement shall be limited to the availability of such Incremental Property Taxes therefor as may be specified in this Agreement and that 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.

(d) **No Violation.** Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) **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:

(a) **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, 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.

(b) **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 hereunder.

(c) **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's board of directors. 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 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.

(d) **No Violation.** Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) **Consents.** No consent or approval by any governmental authority or other person is required in connection with the execution and delivery by the Developer of this Agreement or the performance thereof by the Developer.

(f) **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 (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 2.3. Related Agreements. The Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect any confidential or proprietary information) in existence as of the date hereof within 30 days of the execution of this Agreement, and thereafter shall deliver copies of any additional Related Agreements (redacted as aforesaid) within 20 days from the date of the execution thereof. Upon request of the City, the Developer shall make available for inspection and review an unaltered copy of all such redacted Related Agreements. The Developer represents and warrants to the City that such Related Agreements now executed and delivered are in full force and effect and have not been cancelled or terminated and that the Developer is not aware of any of its obligations under any of such existing Related Agreements required to be performed on or before the date hereof which have not been performed by the Developer or the other parties thereto.

Section 2.4. 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. The City hereby disclaims any and all warranties with respect to the Private Development, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability or sufficiency of the Incremental Property Taxes for the purposes of this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections of Incremental Property Taxes, and the Developer assumes all risks in connection with the practical realization of any such projections of Incremental Property Taxes.

ARTICLE III

CITY'S COVENANTS AND AGREEMENTS

Section 3.1. City's Financial Obligations. The City shall have the obligations set forth in this Section 3.1 relative to financing Eligible Costs in the Development Area. Upon the submission to the City by the Developer of a Requisition for Eligible Costs incurred and paid, the City, subject to the terms, conditions and limitation set forth in this Section 3.1 immediately below, agrees to reimburse the Developer from the Fund such Reimbursement Amounts as are paid and incurred by the Developer and are directly related to the Private Development in the Development Area as follows:

(a) such Reimbursement Amounts in connection with the Private Development shall not exceed in any one calendar year seventy percent (70%) of the Incremental Property Taxes actually received by the City for such calendar year which are directly attributable to the Private Development in the Development Area;

(b) for the purpose of determining the total amount of Incremental Property Taxes actually received by the City for any such calendar year which are directly attributable to the Private Development, the total equalized assessed value (the "EAV") of the Development Area for such calendar year shall be reduced by the EAV of the Development Area for the tax year of 2001 in the agreed amount of \$295,840.00, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area for any such applicable calendar year;

(c) all such annual payments of the Reimbursement Amounts pursuant to subsection (a) of this Section 3.1 above shall not exceed all Eligible Costs qualifying as redevelopment project costs under Section 5/11-74.3(q) (2) and (11) of the Act, which are directly attributable and allocable to the Private Development in the Development Area; and

(d) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.1 shall terminate upon reimbursement by the City in connection with

the Requisition therefor submitted by the Developer in accordance with Section 5.1 of this Agreement on or after September 1, 2009 for calendar year 2008.

Section 3.2. City's Obligation to Provide Parking Spaces. The City hereby covenants and agrees to provide and make available to the Developer, for a term of ten (10) years commencing March 1, 2002, up to seventy-eight (78) parking spaces (the "**Parking Spaces**") in Lot 24 (as shown on the site location plat for the Downtown Urbana Municipal Parking System attached hereto as Exhibit C, the "**Location Plat**") under such terms and conditions as follows:

(a) Forty (40) of the Parking Spaces shall be provided and made available as of March 1, 2002, and the remaining thirty-eight (38) of the Parking Spaces shall be provided and made available as of August 1, 2002.

(b) The City reserves the right, at its sole discretion, to relocate, upon not less than thirty (30) days prior written notice to the Developer, all or any portion of the Parking Spaces to Lots 10E, 10F, 10X or 16, as shown on the Location Plat.

(c) All such Parking Spaces shall be non-reserved and may only be used and occupied by the designees of the Developer upon the display of an identifying permit issued by the City and otherwise in accordance with such other reasonable terms and conditions regulating such parking as may be promulgated from time to time by the City.

(d) The monthly rental amount or fee due and payable by the Developer on or before the 1st day of each three-month period (a "**Quarterly Period**"), commencing March 1, 2002, for each of the Parking Spaces shall be as follows:

From March 1, 2002 to February 28, 2007: \$15.00 per month per Parking Space

From March 1, 2007 to February 29, 2012: \$20.00 per month per Parking Space

Section 3.3. Conditions Precedent. The City's agreements, obligations and undertakings set out in this Agreement, including in particular those contained in Sections 3.1 and 3.2 hereof, are expressly contingent upon the Developer, on or before June 1, 2002, having entered into a contract for the acquisition, construction and installation of the Private Development at a cost of not less than \$900,000.00, having obtained a financing commitment for such acquisition, construction and

installation of the Private Development and having commenced such acquisition, construction and installation in a timely manner as to satisfactorily assure that such acquisition, construction and installation of the Private Development is substantially completed on or before March 31, 2003. If the Developer shall fail to fulfill its obligations under this Section 3.3, the City shall have no further obligations under this Agreement and this Agreement shall thereupon terminate and be of no force or effect.

Section 3.4. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including any payments of any Reimbursement Amounts to be made by the City are contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

ARTICLE IV

DEVELOPER'S COVENANTS

Section 4.1. Agreement to Construct the Private Development. The Developer covenants and agrees to acquire, construct and install, or cause to be acquired, constructed and installed, the Private Development in the manner and with the effect set forth in this Agreement, including at the times set forth in Section 3.3 of this Agreement, substantially in accordance with such site plans as may subsequently be approved by the City in writing.

Section 4.2. Acquisition, Construction and Installation of Private Development. The Developer shall at all times acquire, construct and install the Private Development in conformance with this Agreement and all applicable laws, rules and regulations, including all subdivision, zoning, environmental or other land use ordinances of the City. Any agreement of the Developer

related to the acquisition, construction, installation and development of the Private Development with any other party or parties to any such agreements shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

Section 4.3. City's Right to Audit Developer's Books and Records. The Developer agrees that the City or its agents shall have the right and authority to review and audit, from time to time (at the Developer's principal office during normal business hours) the Developer's books and records relating to the total amount of all costs paid or incurred by the Developer for the Private Development and the total amount of related Eligible Costs, including, if any, loan agreements, notes or other obligations in connection with any indebtedness of the Developer directly related to such costs paid or incurred by the Developer for the Private Development in order to confirm that any site preparation costs or interest costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Private Development that was financed by the Developer and in fact paid and incurred by the Developer.

Section 4.4. Indemnity. The Developer agrees to forever indemnify and defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of contract brought against the City arising from any alleged claims, acts or omissions of such Developer in connection with this Agreement, including the acquisition, construction and installation of the Private Development, whether or not suit is filed.

Section 4.5. Compliance With All Laws. The Developer agrees that in the use, occupation, operation and maintenance of the Private Development, the Developer will comply with all applicable federal and state laws, rules and regulations and City ordinances.

Section 4.6. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development Area. The Developer, including any others claiming by or through it, hereby covenants and agrees not to file any application for property tax exemption for any part of the Development Area under any applicable provisions of the

Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Development Area upon which the Private Development is located and shall be in full force and effect until December 31, 2022, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to such land the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect.

ARTICLE V

PAYMENT FOR ELIGIBLE COSTS

Section 5.1. Payment Procedures. The City and the Developer agree that the Eligible Costs constituting the Reimbursement Amounts shall be paid solely, and to the extent available, from Incremental Property Taxes attributable to the Private Development within the Development Area that are deposited in the Fund and not otherwise. The City and the Developer intend and agree that any Reimbursement Amounts be disbursed by the Comptroller of the City for payment to the Developer shall be in accordance with the procedures set forth in this Section 5.1 of this Agreement.

The City hereby designates the City's Chief Administrative Officer, or the designee thereof, (the "CAO") as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a "Requisition") submitted by the Developer on or after September 1 of each

year, beginning September 1, 2003 with respect to Eligible Costs incurred in the calendar year 2002. Each such Requisition shall be accompanied by such documentation by the contractor to whom any such site preparation costs within the Development Area are paid, by the lending institution to whom any such interest costs are paid or by an Independent accountant acceptable to the CAO which shows and verifies both the total costs paid and incurred by the Developer for the site preparation costs within the Development Area as well as the total interest cost paid and incurred by the Developer in connection with any financing of the Private Development in the Development Area for the immediately preceding calendar year.

Section 5.2. Approval and Resubmission of Requisitions. The CAO shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that either of the following have not been sufficiently documented or specified herein: (i) the amount of the total site preparation costs or interest costs paid and incurred by the Developer during the preceding calendar year, or (ii) such site preparation costs or total interest costs being directly related to the costs paid or incurred by the Developer for the Private Development in the Development Area. If a Requisition is disapproved by such CAO, the reasons for disallowance will be set forth in writing and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required. The same procedures set forth herein applicable to disapproval shall apply to such resubmittals.

Section 5.3. Time of Payment. The City shall pay the Reimbursement Amounts to the Developer within thirty (30) days of the approval of the Requisition as set forth in Section 5.2 above.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.1. Defaults - Rights to Cure. Failure or delay by either party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default,

immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The party claiming such default shall give written notice of the alleged default to the 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 such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which cannot reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

Section 6.2. Remedies. In the event of a breach of this Agreement by the Developer under any of the terms and provisions hereof, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party in the event of a breach of this Agreement by the other party under any of the terms and provisions hereof shall be to institute legal action against the other party for specific performance or other appropriate equitable relief. Except for any Reimbursement Amounts which become due and payable in accordance with the provisions of Article V hereof, under no circumstances shall the City be subject to any monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement.

Section 6.3. Costs, Expenses and Fees. If either party defaults in the performance of its obligations hereunder, and is determined in breach of this Agreement by a court of competent

jurisdiction, each of the parties agree that the defaulting party shall pay the non-defaulting party's costs, expenses and fees of enforcing the defaulting party's obligations under this Agreement, including but not limited to reasonable fees of accountants, attorneys, engineers and other professionals.

ARTICLE VII

MISCELLANEOUS PROVISIONS

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

Section 7.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 7.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 7.4. Special and Limited Obligation. This Agreement shall constitute special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged. The City pledges to the payment of its obligations hereunder only such amount of the Incremental Property Taxes attributable to the Private Development in the Development Area as is set forth in Section 3.1(a) hereof, if, as and when received, and not otherwise.

Section 7.5. 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 disturbance (whether legal or illegal, with respect to which the Developer, 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 conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, 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.

Section 7.6. 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 7.7. 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 for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 7.8. Notices and Communications. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to

have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (i) In the case of the Developer, to:

Fox Development Corporation
1909 Fox Drive
Champaign, IL 61820
Attn: David Cocagne
Tel: (217) 351-1430
Fax: (217) 356-0556

- (ii) In the case of the City, to:

City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Chief Administrative Officer
Tel: (217) 384-2454
Fax: (217) 384-2363

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 7.9. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns; provided, however, that Developer may not assign its rights under this Agreement without the express written consent of the City, which shall not be unreasonably withheld or delayed.

Section 7.10. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the

City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 7.11. Verification of Tax Increment. The City and Developer shall fully cooperate in connection with obtaining certified copies of all real estate tax bills for the taxable property constituting the Private Development.

Section 7.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois.

Section 7.13. No Personal Liability of Officials of City. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the Corporate Authorities nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 7.14. Repealer. To the extent that any ordinance, resolution, rule, order or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

Section 7.15. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until December 31, 2009. Anything to the contrary notwithstanding, however, the City's obligations under Section 3.2 of this Agreement shall be and remain in effect until February 29, 2012, and the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in effect in accordance with the express provisions of such Sections.

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 below.

**CITY OF URBANA, CHAMPAIGN COUNTY,
ILLINOIS**

By: *Tal Sattellwhite*
Mayor



ATTEST:
Phillip D. Clark
City Clerk *by Deborah J. Roberts*
Deputy Clerk
Date: *4-2-02*

**FOX DEVELOPMENT CORPORATION, an
Illinois corporation**

(SEAL)
By: *Peter M H*
Its: _____

ATTEST:
Kim B Ky
Secretary
Date: _____

[Exhibits A to C, inclusive, follow this page and are integral parts of this Agreement in the context of use.]

EXHIBIT A

Legal Description of Redevelopment Project Area

The Urbana Tax Increment II Redevelopment Project Area boundaries are shown on the Tax Increment II District Boundary Map in Appendix A.

The project area is generally bounded by Crystal Lake Drive on the North, Maple Street on the East, California Street on the South and Orchard Street on the West.

The exact legal description of the Urbana Tax Increment II Project Area boundaries is as follows:

A portion of Section 8 and 17, Township 19 North, Range 9 East of the Third Principal Meridian, situated in the City of Urbana, Champaign County, State of Illinois, further described as follows:

Beginning at the intersection of the West right-of-way line of Orchard Street and the North line of the Consolidated Railway Corporation's railroad right-of-way; thence Easterly along said railroad right-of-way to an extension of the East line of the Big Wheel Survey; thence Northerly 90 feet, more or less, to a property line; thence Easterly along said property line 150 feet, more or less, to the West line of Leal Park; thence Northerly along said Park to the North right-of-way line of University Avenue; thence Easterly along University Avenue to the West right-of-way line of Lake Street; thence Northerly along Lake Street 144 feet to the North line of an east-west alley; thence Easterly along said alley to the East right-of-way line of Race Street; thence Southerly along Race Street 13.6 feet to a property line; thence Easterly along said property line 181 feet to the center of a vacated alley; thence Northerly along the center of said vacated alley 4.2 feet, more or less, to a property line; thence Easterly along said property line to the West right-of-way line of Broadway Avenue; thence Northerly along Broadway Avenue to the extension of the South line of Crystal Lake Park Addition; thence Easterly along said South line to the West line of Lot 29 of said Addition; thence Northerly along said Lot 29 to the North right-of-way line of Crystal Lake Drive; thence Easterly along Crystal Lake Drive 47.05 feet; thence Southerly along the extension of the East line of said Lot 29 a distance of 248.76 feet to a property line; thence Southeasterly along said property line 284.31 feet to the West right-of-way line of Cunningham Avenue; thence Northeasterly along Cunningham Avenue to a point 196 feet North of the centerline of Crystal Lake Drive; thence Easterly to the intersection of the East right-of-way line of Cunningham Avenue with the South property line of a 0.95 Acre parcel having its North property line on the East 1/4 Section line of said Section 8; thence Easterly along said South property line to the West line of Lot 2 of Webber Estate Subdivision; thence Southerly along said Lot 2 a distance of 548.6 feet to a property line; thence Westerly along said property line to the East right-of-way line of Maple Street; thence Southerly along Maple Street to the centerline of the University Avenue pavement; thence Easterly along said centerline to the extension of the East right-of-way line of Maple Street

South of University Avenue; thence Southerly along the East right-of-way line of Maple Street to the North right-of-way line of Main Street; thence Easterly along Main Street to the extension of the East right-of-way line of Grove Street; thence Southerly along Grove Street to the extension of the South line of an alley commonly known as Fish Alley; thence Westerly along Fish Alley to a point 138 feet West of the West right-of-way line of Grove Street; thence Northerly 6 feet to the center of Fish Alley; thence Westerly along the centerline of the vacated portion of Fish Alley to the East right-of-way line of Maple Street; thence Southerly along Maple Street 6 feet; thence Westerly along the South line of Fish Alley to the East right-of-way line of Urbana Avenue; thence Southerly along Urbana Avenue to the South right-of-way line of California Avenue; thence Westerly along California Avenue to the East right-of-way line of Vine Street; thence Westerly to the intersection of the West right-of-way line of Vine Street with the South right-of-way line of California Avenue; thence Westerly along California Avenue to the West right-of-way line of Walnut Street; thence Northerly along the East line of Beck's Addition to the Southeast corner of Lot 4 of said Addition; thence Easterly to the Southwest corner of Lot 4 of Myers & Besores Addition; thence Northerly along the West line of said Lot 4 to the South right-of-way line of Illinois Street; thence Westerly along Illinois Street to the East line of Beck's Addition; thence Northerly along the West line of Walnut Street to a property line 132.9 feet North of the North right-of-way line of Illinois Street; thence Westerly along said property line to the East right-of-way line of Broadway Avenue; thence Southerly along Broadway Avenue to the South line of Illinois Street; thence Easterly along Illinois Street 127.5 feet; thence Southerly to the Northwest corner of Lot 5 of Beck's Addition; thence Westerly along the South line of Cedar Alley to the East right-of-way line of Broadway Avenue; thence Southerly along Broadway Avenue to the South right-of-way line of California Avenue; thence Westerly along California Avenue to a point 132 feet West of the West right-of-way line of Race Street; thence Northerly along a property line 165.5 feet to the south line of Cedar Alley; thence Westerly along Cedar Alley 103 feet, more or less; thence Northerly along a property line 127.5 feet to the South right-of-way line of Illinois Street; thence Westerly along Illinois Street 8 feet, more or less; thence Northerly along a property line 249.6 feet to the South right-of-way line of High Street; thence Westerly along High Street 28.875 feet; thence Northerly along a property line 75.5 feet to the South line of High Alley; thence Westerly along High Alley to the West right-of-way line of Cedar Street; thence Northerly 6 feet to the centerline of vacated High Alley; thence Westerly along said centerline 111.5 feet; thence Northerly along Birch Street to the South line of Fish Alley; thence Westerly along Fish Alley to the West line of McCullough Street; thence Northerly along McCullough Street 30.14 feet to a property line; thence Westerly along said property line 101.71 feet; thence Northerly along the West line of Lot 1 of Sutton's Subdivision to the South right-of-way line of Springfield Avenue; thence Westerly along the South

right-of-way of Springfield Avenue to the extension of the West line of Lot 5 of Block 10 of Sim's Addition; thence Northerly along said Lot 5 a distance of 189 feet, more or less, to the South right-of-way line of Stoughton Street; thence Northeasterly along a line perpendicular to said right-of-way line 66 feet to the North right-of-way line of Stoughton Street; thence Southeasterly along the North right-of-way line of Stoughton Street and along its curve to the left, to its intersection with the West right-of-way line of McCullough Street; thence Northerly along McCullough Street to the North right-of-way line of Main Street; thence Southeasterly along Main Street to the extension of a property line located 82 feet East of the East line of Lot 2 of the Subdivision of Lot A of a Subdivision of the South Part of the Southwest Quarter of said Section 8; thence Southerly across the Main Street right-of-way and along said property line to the South line of said Section 8; thence Easterly along said South line to a property line located 90 feet East of the East line of Porter Replat; thence Southerly along said property line to the North right-of-way line of Springfield Avenue; thence Easterly along Springfield Avenue 179.79 feet to another property line; thence Northerly along said property line to the South right-of-way line of Main Street; thence Northwesterly along the South right-of-way line of Main Street to the West right-of-way line of Central Avenue; thence Northerly along Central Avenue to the Southeast corner of Lot 10 of C.W. Smith's Subdivision; thence Westerly along the South line of said Lot 10 a distance of 139.5 feet to the West line of a north-south alley; thence Northerly along said alley to the South right-of-way line of Griggs Street; thence Westerly along Griggs Street to the East right-of-way line of McCullough Street; thence Westerly to the intersection of the South right-of-way line of Griggs Street with the West right-of-way line of McCullough Street; thence Northerly along McCullough Street to the Northeast corner of Lot 1 of Block 1 of Colonel S.T. Busey's Third Addition; thence Northwesterly along the North line of said Addition and along an extension of said line to the west right-of-way line of Orchard Street; thence Northerly along Orchard Street to the point of beginning;

except the tract of land known as the Downtown Urbana Conservation-Redevelopment District as described in City Ordinance 8081-62, passed on December 15, 1980;

encompassing 173 Acres, more or less, all situated in the South half of Section 8 and the North half of Section 17, Township 19 North, Range 9 East of the Third Principal Meridian in the City of Urbana, Champaign County, State of Illinois.

The Redevelopment Project Area so described above is generally bounded on the North by Saline Ditch, Crystal Lake Drive, and Park Street; on the East by Maple Street and Urbana Avenue; on the South by California Avenue; and on the West by Orchard Street and McCullough Street. The area excludes an area previously designated as a Redevelopment Project Area on December 15, 1980.

EXHIBIT B

Legal Description of Development Area

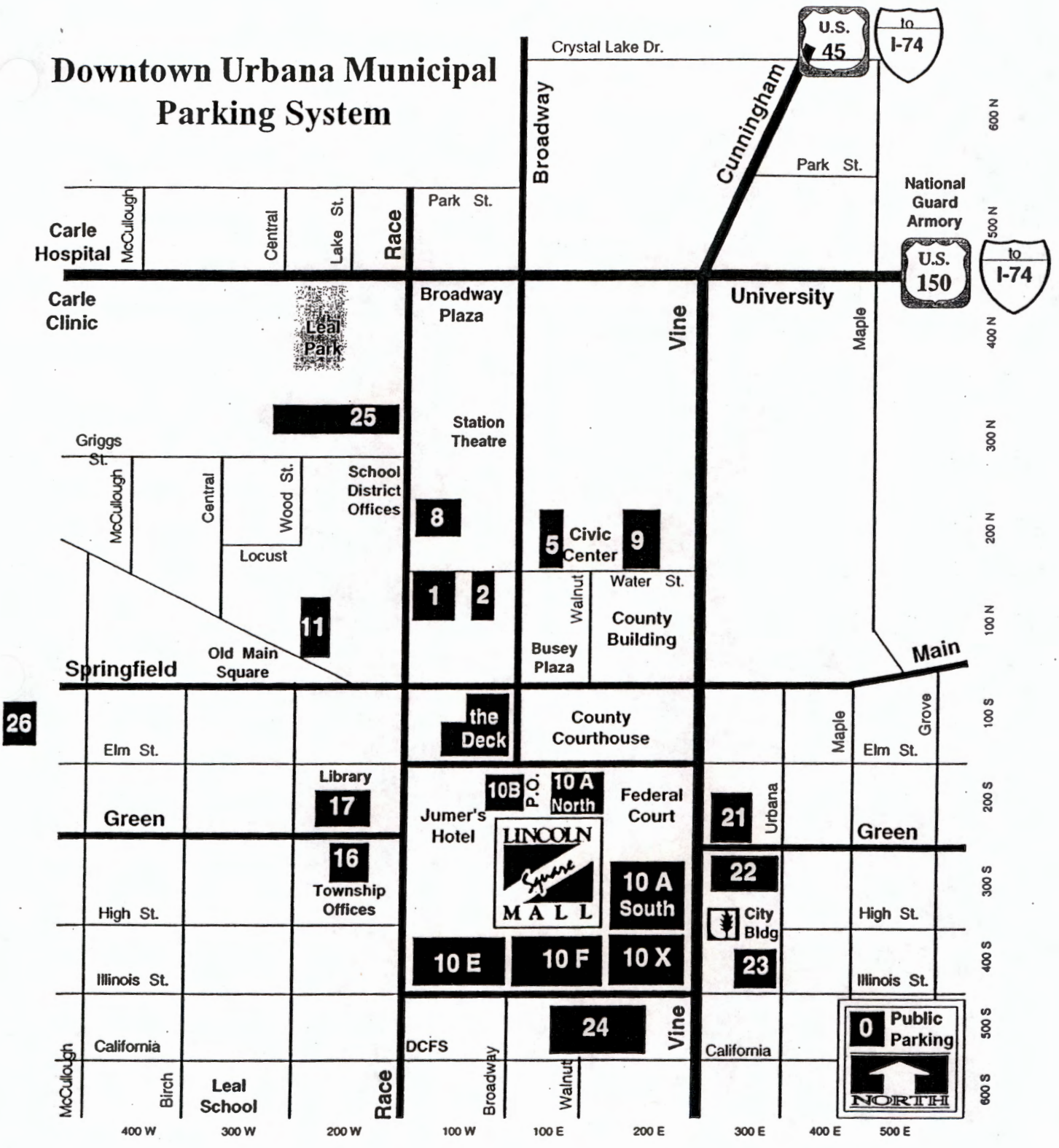
Lots 31, 32 and 33 of James S. Busey's Addition to the Town, now City of Urbana, as per plat recorded in Deed Record "D" at page 282, situated in the City of Urbana, in Champaign County, Illinois.

PIN: 92-21-17-252-009

EXHIBIT C

Site Location Plat of Downtown Urbana Municipal Parking System

Downtown Urbana Municipal Parking System



Downtown Urbana Municipal Parking System

