

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT
WITH TOWN AND COUNTRY APARTMENTS, LLC**

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

Section 1. That a Development Agreement authorizing allocation of funds for the improvement of Oakland Avenue and the vacation of Boyden Street right-of-way, between the City of Urbana and Town & Country Apartments, LLC, in substantially 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 7th day of July, 2003.


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

NAYS:

ABSTAINS:

APPROVED by the Mayor 18th day of July,

2003.



Phyllis D. Clark

 Phyllis D. Clark, City Clerk

Robert J. Roberts

 Deputy Clerk

James H. Hayes, Jr.

 Tod Satterthwaite, Mayor

(James H. Hayes, Jr., Mayor Pro-Tem)

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF URBANA AND
TOWN AND COUNTRY APARTMENTS, LLC.**

This Development Agreement (including any attachments and exhibits collectively, the "Agreement") by and between the City of Urbana, an Illinois Home Rule municipality, Champaign County, Illinois ("the City") and Town and Country Apartments, LLC. (hereafter "Developer"), dated the 9th day of July, 2003, even though the parties have executed this Agreement on different dates.

WHEREAS, Developer is the owner of a multi-building complex of residential apartments, commonly known as Town and Country Apartments; and

WHEREAS, Oakland Avenue is one of the principal entrances to such complex; and

WHEREAS, the pavement on Oakland Avenue has failed and is badly in need of repair;

and

WHEREAS, Developer has agreed, if Oakland Avenue is reconstructed, to construct certain improvements adding to the existing Town and Country Apartment complex, and further to contribute funds for the reconstruction of Oakland Avenue; and

WHEREAS, the facilitation of development and reconstruction of Oakland Avenue by leveraging private funds are in the public interest.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual promises herein contained, the parties agree as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1 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 1.2 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 1.3 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. And to the extent, if at all, anything to be done under this Agreement by the City which is not in conformance with statutes, the provisions of this Agreement shall control, it being the intention of the City to invoke its constitutional Home Rule powers and Article VII, Section 10 (Intergovernmental Cooperation) of the Illinois Constitution to support the provisions of this agreement.

Section 1.4 Validity. 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, however, 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.

Section 1.5 No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with,

violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree or other law by which the City may be bound.

Section 1.6 Governmental Consents and Approvals. No consent or approval by any governmental authority other than the City is required in connection with the execution and delivery by the City of this Agreement.

Section 1.7 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 1.8 Organization. The Developer is a Delaware Limited Liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, 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.

Section 1.9 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 1.10 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, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 1.12 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.

Section 1.13 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.

Section 1.14 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 1.15 Disclaimer of Warranties. The City and the Developer acknowledge that none 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 II

CITY OBLIGATIONS

Section 2.1. Pursuant to the provisions hereof, the City shall construct, to City standards, the right-of-way pavement from Cunningham Avenue east to the Town and Country Apartment

complex a new concrete pavement, curb and gutter, sidewalks, street lights and storm sewers (“pavement project”). Engineering design and construction inspection will be performed by the City staff. New concrete driveway approaches will be provided to each business driveway or parking lot. The City agrees to advertise for bids for the pavement project by the 15th day of February, 2004 and undertake construction of the pavement project without delay thereafter.

Section 2.2. This entire Agreement is contingent upon the City of Urbana vacating Boyden Street right-of-way from Oakland Avenue north to the northern most point of such right-of-way that the Developer owns the abutting property on both sides of the said right-of-way, all at no costs to the Developer, by August 20, 2003.

Section 2.3. If Developer meets its obligation under 3.1 by April 1, 2005, the City shall reserve one retail incentive T.I.F. loan up to Sixty Thousand (\$60,000) Dollars as provided for and pursuant to program guidelines for a period of thirty-six (36) months from date of this Agreement; and

Section 2.4. If the City has commenced construction of Oakland Avenue in accordance with section 2.1 above and Developer does not meet its obligation under 3.1 by October 1, 2004, then instead of 25% contribution of the actual cost of construction of reconstructed Oakland Avenue (with a \$37,500 limit) as set forth in 3.3, Developer will contribute 33-1/3% of the actual cost of construction with a \$49,995 limit and, furthermore, unless the Developer completes construction of the improvements described in 3.1, by April 1, 2005, the City will not be obligated to perform the obligation under 2.3, and instead of a contribution of 33-1/3% of the actual cost of reconstruction of Oakland Avenue, Developer shall contribute forty percent (40%) of said costs with a limit of \$60,000.

ARTICLE III

DEVELOPER'S OBLIGATIONS

Section 3.1. Developer agrees to start construction of residential buildings containing as many units as zoning permits (estimated at 48 apartment units) at an estimated cost of not less than Two Million (\$2,000,000) Dollars by October 1, 2004, on the property described in Exhibit "A", provided, however, Developer is not obligated to start the project by a specific date. The term "start construction" as used herein shall mean the Developer satisfying each of the following:

- (a) Providing evidence of a financial commitment to construct the improvements;
- (b) Obtaining a building permit from the City to construct the improvements;
- (c) Entering into a contract to construct the improvements;
- (d) The installation and approval by the City of the footings and foundations for the improvements; and
- (e) Certification by the City's Director of Public Works that at least 25% of the improvements have been constructed.

Section 3.2. Developer promises to use its best efforts to market and identify a potential tenant and attempt to reach a satisfactory lease arrangement with such, to construct retail space of not less than four thousand (4,000) square feet on the property described in Exhibit "A".

Section 3.3. Developer will contribute twenty-five percent (25%) of the actual cost of construction of the reconstructed Oakland Avenue, including street lights, storm sewers and other appurtenances, but exclusive of engineering and construction management costs, however not to exceed, Thirty-Seven Thousand, Five Hundred (\$37,500) Dollars. Of the actual amount so due, Twenty Thousand (\$20,000) Dollars shall be paid within five (5) days following the award

of bid to reconstruct Oakland Avenue as described herein, and Developer's remaining payment shall be due within thirty (30) days of the City submitting an invoice to Developer for the sums due.

ARTICLE IV

DEFAULTS AND REMEDIES

Section 4.1 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 other Party. 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 can not reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such 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. However, the provisions of this Section shall not apply to Section 2.4.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties.

Section 5.2 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 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 5.3 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 5.4 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.

Section 5.5 Legally Valid and Binding. This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

Section 5.6 Waiver. Any Party to this Agreement may elect to waive or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 5.7 Cooperation and Further Assurances. The City and the Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 5.8 Notices. All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Developer:

Town and Country Apartments, LLC.
c/o BNG Management
55 West Monroe Street
Suite 990

Chicago, IL 60603
Attn: Joel Levin

To the City of Urbana:

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

With a copy to:

Legal Division
400 South Vine Street
Urbana, Illinois 61801
Phone: (217) 384-2464
Fax: (217) 384-2460

Section 5.9 Successors in Interest. This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns.

Section 5.10 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

Section 5.11 Illinois Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois.

Section 5.12 Costs and Expenses. If either Party defaults in the performance of its obligations hereunder, the Parties agree that the defaulting Party shall pay the non-defaulting Party's costs of enforcing the defaulting Party's obligations under this Agreement, including but not limited to attorneys' fees and expenses.

Section 5.13 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 5.14 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.

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

Date: 7/9/03

TOWN AND COUNTRY APARTMENTS, LLC.

By: [Signature]

Its: MANAGER

Date: 6/11/03

(SEAL)
ATTEST:
[Signature]
City Clerk
[Signature]
Deputy Clerk

ATTEST:
[Signature]
Notary Public
Date: 7/9/03
"OFFICIAL SEAL"
JACK WAALER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/08/05