

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN
AMENDMENT TO AGREEMENT WITH INTERCHANGE PROPERTIES, LLC**

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

Section 1. That an Amendment to Agreement by and between the City of
Urbana, Champaign County, Illinois, and Interchange Properties, LLC, an
Illinois Liability Company, 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:



Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 18th day of July,
2003 .



Tod Satterthwaite, Mayor

FILED

JUL - 1 2004

Phyllis D. Clark
City Clerk

AMENDMENT TO AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

**INTERCHANGE PROPERTIES, LLC,
AN ILLINOIS LIABILITY COMPANY**

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT (including any exhibits and attachments hereto, collectively, this “**Amendment**”) is made and entered into as of September 15, 2003, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the “**City**”), and **Interchange Properties, LLC**, an Illinois limited liability company (the “**Developer**”), with respect to that certain Agreement, dated as of January 29, 2001, (the “**Agreement**”) by and between the City and the Developer. Except as specifically defined in this Amendment, all capitalized words, terms and phrases used in this Amendment shall have the same meanings as respectively ascribed to them in the Agreement.

RECITALS

WHEREAS, the City and the Developer have entered into the Agreement in order to assist the Developer to acquire, construct, extend, improve, rehabilitate and install (or cause to be done) retail automobile stores upon the Project Site; and

WHEREAS, in accordance with and pursuant to the Illinois Enterprise Zone Act (20 ILCS 655/1 et seq.), as supplemented and amended (the “**EZ Act**”), the City has established an enterprise zone (the “**Enterprise Zone**”); and

WHEREAS, in connection with the Enterprise Zone, the City Council of the City (the “**Corporate Authorities**”), on December 3, 1984, adopted Ordinance No. 8485-38, “AN ORDINANCE DESIGNATING AN AREA AS AN ENTERPRISE ZONE”, which, as supplemented and amended on March 18, 1985 by Ordinance No. 8485-65 (collectively, the “**EZ Ordinance**”), was filed with and subsequently certified by the Department of Commerce and Community Affairs (“**DCCA**”) on July 17, 1985; and

WHEREAS, as required by Section 4.1 of the Agreement, the Corporate Authorities, on November 19, 2001, adopted Ordinance No. 2001-10-136, “AN ORDINANCE APPROVING THE ADDITION OF TERRITORY TO THE URBANA ENTERPRISE ZONE (O’Brien Project Area/Interstate 74 and U.S. Route 45)”, a copy of which was subsequently filed with and certified by DCCA, and so added the Project Site to such Enterprise Zone of the City; and

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the “**TIF 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 Corporate Authorities, on December 17, 2001, adopted a series of ordinances, to-wit: Ordinance No. 2001-12-164, “AN ORDINANCE ADOPTING AND APPROVING THE REDEVELOPMENT PLAN AND THE RELATED REDEVELOPMENT PROJECTS FOR THE PROPOSED CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS”; Ordinance No. 2001-12-165, “AN ORDINANCE DESIGNATING THE CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS”; Ordinance No. 2001-12-166, “AN ORDINANCE ADOPTING TAX INCREMENT FINANCING FOR THE CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS”, (collectively, the “**TIF Ordinance**”), certified copies of which were duly filed on December 21, 2001 with the County Clerk of Champaign, County, Illinois, who certified the property tax increment base to the City; and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinance, the City designated the Cunningham Avenue Corridor Redevelopment Project Area (the “**Redevelopment Project Area**”) and approved a related redevelopment plan (entitled “**Cunningham Avenue Corridor Tax Increment Financing Redevelopment Plan**”), as supplemented and amended (the “**Redevelopment Plan**”) including the respective redevelopment projects described therein (collectively, the “**Redevelopment Projects**”); and

WHEREAS, the Project Site is located within the Redevelopment Project Area; and

WHEREAS, the City and the Developer now find it necessary and desirable to supplement and amend certain provisions of the Agreement by the provisions of this Amendment in order to recognize that the Project Site is now included within both the Enterprise Zone of the City and the Redevelopment Project Area, to provide certain tax increment finance incentives now available to

the Developer under the TIF Act and the TIF Ordinance to provide for Special Service Area Financing pursuant to the Special Service Area Tax Act (65 ILCS 200/27-5 et. seq.) (the "SSA Act"), and to modify certain related matters in connection with the development of the Project Site due to changed circumstances arising after the date of the Agreement.

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

Section 1. Amendment to Project Definition. Section 1.1(2) of the Agreement, is deleted in its entirety and the following is substituted in lieu thereof:

"(2) The relocation by the O'Brien Auto Team of all of its automobile dealerships located at University Avenue and Cunningham Avenue, Urbana, Illinois to the Project Site (which dealerships currently consist of Toyota, Chrysler, Plymouth, Volkswagen, Mazda and Suzuki); and located at Prospect Avenue, Champaign, Illinois to the Project Site (which dealerships currently consist of Mitsubishi, Hyundai and Kia). Nothing in the Agreement or this Amendment shall prohibit the Developer from selling any of the above described dealerships at any time; and in the event of such sale(s), such sold dealership(s) shall be eliminated from this clause (2)."

Section 2. Commencement and Completion Requirements.

(a) **Commencement Notice.** For the purposes of Section 1.6 of the Agreement, the Developer and the City mutually acknowledge and agree that the Commencement Notice (as defined in Section 2.2.1 of the Agreement) was sent by the Developer to the City on or about July 31, 2001.

(b) **Completion.** The reference to "thirty (30) months" in the second line of Section 1.6.2 of the Agreement is changed to "forty-eight ^{60 BW} (48) months".

Section 3. Extension of Access Road, Phase II. Section 2.15 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

"2.1.5 Extension of Phase II of Access Road. On behalf of the City, the Developer agrees to design, engineer and construct (to City specifications for a City-owned public road) the Access Road, Phase II from the western boundary of the new Farm & Fleet site to the western boundary of the Project Site ("Phase II of Access Road"). The Developer shall complete such construction and have such Phase II of Access Road open to the public prior to the Developer's opening of the Auto Mall to the public. The City agrees to compensate the Developer for its dedication, design, engineering and construction of such Phase II of the Access Road solely out of the proceeds of the SSA Bonds set forth in ARTICLE XII hereof."

Section 4. Amendment to Definition of Available Sales Taxes. The references to \$200,000 in the second and fifth lines in the definition of "Available Sales Taxes" in Section 3.1.1 of the Agreement are each changed to \$250,000.

Section 5. Enterprise Zone. At the end of Section 4.1 of the Agreement, add the following:

"The Project Site has been added to the Urbana Enterprise Zone pursuant to the EZ Act. However, the Developer waives its right to abatement of real estate taxes pursuant to the Urbana Enterprise Zone, provided it receives the TIF Reimbursement Payments and other benefits set forth in this Agreement. The Developer shall be entitled to all other Urbana Enterprise Zone benefits, including the sales tax exemption on building materials incorporated into improvements within the Project Site."

Section 6. Reimbursement of Relocation Expenses. At the end of Section 4.2 of the Agreement, add the following:

"At its sole option, the City may discharge such \$30,000 obligation by reimbursing to the Developer \$30,000 for a portion of the Developer's "Redevelopment Project Costs" as defined in Section 3 of the TIF Act (65 ILCS 5/11 74-.4.3) ("Redevelopment Project Costs") set forth in a Requisition for Reimbursement concurrently submitted to the City by the Developer and accepted by the City. Such reimbursement shall be paid to the Developer in

cash by the City on the first date that an O'Brien Auto Dealership is open to the public on the Project Site."

Section 7. Interest Subsidy. At the end of Section 4.3 of the Agreement, add the following:

"At its sole option, the City may discharge such \$50,000 obligation by reimbursing to the Developer \$50,000 for a portion of the Developer's Redevelopment Project Costs set forth in a Requisition for Reimbursement concurrently submitted to the City by the Developer and accepted by the City. Such reimbursement shall be paid to the Developer in cash by the City on the first date that an O'Brien Auto Dealership is open to the public on the Project Site."

Section 8. New Provisions to Agreement. At the end of ARTICLE X of the Agreement, add the following new ARTICLES XI, XII, XIII and XIV:

"ARTICLE XI: TIF REIMBURSEMENT

"11.1 Conditions Precedent to TIF Reimbursement. The City's obligation to make the TIF Reimbursement Payments as set forth in this Article XI is subject to (a) the substantial completion of construction of the Auto Mall pursuant to the terms of this Agreement; and (b) the opening of the Auto Mall to the public.

"11.2 TIF Reimbursement. Subject to all of the conditions set forth in this Agreement, the City shall reimburse the Developer for all of its "Redevelopment Project Costs" as defined in Section 3 of the TIF Act (65 ILCS 5/11-74-4.3) ("Redevelopment Project Costs"), but only out of and to the extent of thirty-six percent (36%) of the Project Site Tax Increment (defined below) for the entire period commencing on the date the TIF Ordinance became effective (December 17, 2001) and ending on December 31 of the fifteen (15th) complete calendar year after the Auto Mall is first open to the public (the "TIF Reimbursement"). Such payments of the TIF Reimbursement ("TIF Reimbursement

Payments") shall be made by the City to the Developer for each calendar year within fifteen (15) days after the Project Tax Increment is deposited (or required to be deposited) for such calendar year in the Special Tax Allocation Fund for the Redeveloper Project Area pursuant to the TIF Act ("Special Tax Allocation Fund"); provided, however, that no TIF Reimbursement Payments shall be made to the Developer unless and until the conditions set forth in Section 11.1 hereof are met.

"Project Site Tax Increment" means, for each calendar year, all ad valorem real estate taxes attributable to the entire Project Site (including, without limitation, all lots, outlots and parcels therein and the Excess Right-of-Way referenced in Article XIV hereof) that are required to be deposited in the Special Tax Allocation Fund.

"11.2.1 Shortfalls. If there is not sufficient Project Site Tax Increment in the Special Tax Allocation Fund in any year to make the TIF Reimbursement Payments to the Developer as required by this Section 11.2 in full, the entire amount of such TIF Reimbursement Payments remaining to be paid shall accrue and, subject to (and in accordance with) the payment requirements set forth in this Section 11.2, shall be paid when (and to the extent that) the Project Site Tax Increment is paid into (or is required to be paid into) the Special Tax Allocation Fund.

"11.2.2 Election to Utilize TIF Reimbursement Payments to Repay SSA Bonds. At any time prior to the issuance of the SSA Bonds, upon written notice to the City, the Developer may cause all or any portion of the TIF Reimbursement Payments to be deposited with the trustee and/or custodian of the SSA Bonds and used to repay such SSA Bonds; and to such extent the SSA Taxes shall be reduced or abated. The balance of the TIF Reimbursement Payments and/or any portion of the amounts thereof deposited with the trustee and/or custodian of the SSA Bonds that

are not so utilized to repay the SSA Bonds shall continue to be paid by the City (or returned by such trustee or custodian) to the Developer. Since the proceeds of the SSA Bonds shall be used to pay Redevelopment Project Costs, the Developer shall not be required to provide documentation of Redevelopment Project Costs, pursuant to Section 11.4 as a prerequisite to the utilization of the TIF Reimbursement Payments, to pay principal and interest on the SSA Bonds.

"11.3 Pledge of Project Site Tax Increment. Subject to all the terms and conditions of this Agreement, the City hereby pledges the Project Site Tax Increment for the payment of the TIF Reimbursement.

"11.4 Documentation of Redevelopment Project Costs. The Developer shall document its Redevelopment Project Costs (as referenced in Section 11.2 of the Agreement) to the reasonable satisfaction of the City by the submission of requisitions for reimbursement in substantially the form of Exhibits 1 and 2 attached hereto and incorporated into this Amendment.

"ARTICLE XII: REIMBURSEMENT OF OTHER REDEVELOPMENT PROJECT COSTS

"The City agrees to reimburse to the Developer a total of \$225,000 for a portion of the Developer's Redevelopment Project Costs set forth in a Requisition for Reimbursement concurrently submitted to the City by the Developer and accepted by the City. Such reimbursement shall be paid to the Developer in cash by the City on the first date that an O'Brien Auto Dealership is open to the public on the Project Site.

"ARTICLE XIII: SPECIAL SERVICE AREA

"13.1 Formation of Special Service Area. In accordance with 35 ILCS 200/27-5, et. seq. (the "SSA Act"), upon written request of the Developer, the City and Developer shall

take all reasonable steps necessary and appropriate to form a special service area (the “SSA”) covering that portion of the Project Site to be designated by the Developer (the “SSA Area”). The Developer (as sole owner of the SSA Area) and the City will execute all consents and other documents necessary to facilitate the timely formation of the SSA.

“13.2 SSA Bonds. The City agrees to cooperate with the Developer in the issuance of (i) tax-exempt special service area bonds (“Tax-Exempt SSA Bonds”) and/or (ii) taxable special service area bonds (“Taxable SSA Bonds”) in amounts and on terms and conditions determined by the Developer and reasonably acceptable to the City after consultation with Bond Counsel. The Tax-Exempt SSA Bonds and the Taxable SSA Bonds are hereinafter referred to as the “SSA Bonds”. The determination of what portion, if any, of the SSA Bonds shall qualify as Tax-Exempt SSA Bonds shall be made by the Developer and the City after consultation with Bond Counsel. The proceeds of the SSA Bonds shall be used as follows:

"(a) Pay for or reimburse the Developer for its allocated cost of all rights of way necessary for construction of the public roads associated with the Project (the “Public Roads”);

"(b) Pay for or reimburse the Developer for design, engineering and construction costs of the public roads constituting part of the Project and dedicated by the Developer to the City;

"(c) Pay or reimburse the Developer for the Developer’s allocated cost of the tract of land within the Project Site used for the regional detention basin and the construction of the regional detention basin and all related plans, specifications and engineering costs;

"(d) Pay or reimburse the Developer for property assembly/site preparation costs and other items qualifying for special service area financing under the SSA Act (not

otherwise paid or reimbursed by the City; provided, however, that such payments or reimbursements shall be limited to Redevelopment Project Costs (if and to the extent the Developer elects to utilize the TIF Reimbursement Payments to repay the SSA Bonds);

"(e) Pay for capitalized interest and the reserve fund(s) on such SSA Bonds; and

"(f) Pay for the costs of issuance, underwriting fees, credit enhancement fees and legal fees (of the Developer and City) with respect to such SSA Bonds.

"13.3 Repayment of the SSA Bonds Given Pledged Revenues. The SSA Bonds shall be repayable solely from (i) the SSA Taxes set forth in Section 13.4 hereof, and (ii) the TIF Reimbursement Payments (set forth in Article XI hereof) if the Developer elects to utilize the TIF Reimbursement Payments to repay the SSA Bonds (collectively, the "Pledged Revenues"); and shall not be general obligations of the City. Notwithstanding anything to the contrary, except for the levying of the SSA Taxes and the payment of the TIF Reimbursement, the City shall have absolutely no liability with respect to the repayment of SSA Bonds.

"13.3.1 Developer Credit Enhancement. To "credit enhance" the SSA Bonds (or either of them), the Developer may, in its sole discretion, prior to the closing of the sale of the SSA Bonds, elect to either (i) execute it and/or cause its affiliates to execute a written undertaking to pay such SSA Taxes; (ii) provide credit enhancement of the SSA Bonds (or any of them) in the form of bond insurance and/or a direct pay letter of credit for the principal amount of the SSA Bonds (or any of them) plus one months' interest, and, in such event, if the Developer so elects, the SSA Bonds may (if the Developer so desires) bear a "low floater" variable rate of interest; (iii) purchase and hold the SSA Bonds (or any of them); and/or (iv) assign as security for the SSA Bonds (or any of them) all or any portion of the TIF

Reimbursement Payments (set forth in Article XII of this Agreement) and/or the Annual Sales Tax Rebate Payments (set forth in Article III of this Agreement).

"13.3.2 Deposit of Pledged Revenues. The Pledged Revenues (referenced in Section 13.3 hereof) shall be deposited by the City in accounts designated by the ordinance of the City authorizing the issuance of the SSA Bonds for repayment of the SSA Bonds. If such Pledged Revenues for any calendar year exceed amounts required for repayment of debt service on the SSA Bonds in such year, they shall be applied to pay debt service on the SSA Bonds in subsequent years or applied to redeem the SSA Bonds in accordance with the agreements pursuant to which the SSA Bonds will be issued. Any and all amounts of the Pledged Revenues not so utilized to pay and/or redeem the SSA Bonds shall be paid to the Developer.

"13.4 SSA Tax Levy. Pursuant to the SSA Act and subject to the conditions set forth in this Section 13.4 and all other sections of this Agreement, upon written request of the Developer, the City shall levy a direct annual tax ("SSA Tax") over twenty (20) years or other time period acceptable to the Developer, on an ad valorem or a "special tax" basis, on all real property within the SSA Area in an amount sufficient to pay all principal and interest payments on the SSA Bonds when due. The City shall abate the SSA Tax to the extent that the SSA Taxes on deposit (or other funds on deposit from any other source), on the date of abatement, are sufficient to make all principal and interest payments on the SSA Bonds scheduled during the next twelve (12) months immediately succeeding the date of abatement.

"Any "special tax" basis of the SSA Tax desired by the Developer must be proposed by the Developer to the City at least thirty (30) days prior to the proposed closing date of the SSA Bonds; and as a condition of any and all obligations of the City to issue the SSA Bonds

secured by a SSA Tax levied on a special tax basis, such special tax basis of the SSA Tax must be acceptable in form and content to both the Developer and the City in their respective and sole and absolute discretions.

"13.5 Timeline. Provided the Developer sends to the City the written request set forth in Section 13.1 of this Agreement, the City agrees to take all reasonable steps to form the SSA, levy the SSA Tax and issue the SSA Bonds (including, without limitation, the publication of notices, holding of public hearings and enactment of necessary ordinances) as expeditiously as possible.

"ARTICLE XIV: CONVEYANCE OF IDOT EXCESS RIGHT-OF-WAY

"Subject to the approval of IDOT, the City agrees to (i) secure the transfer from IDOT to the City of the excess right-of-way along Route 45 depicted on Exhibit 3 attached hereto and incorporated herein (the "Excess Right-of-Way") and (ii) immediately thereafter convey such Excess Right-of-Way to the Developer, all at no cost to the Developer. Such Excess Right-of-Way is hereby included as part of the Project Site for all purposes of this Agreement."

Section 9. Ratification. Except as expressly supplemented and amended by this Amendment, all other provisions of the Agreement shall be and remain in full force and effect. Such other provisions of the Agreement, as supplemented by this Amendment, are hereby ratified, confirmed and approved by both the City and the Developer. In the case of conflict between this Amendment and the Agreement, this Amendment shall control.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City and the Developer have caused this Amendment 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:

By: Ryann D. Clark
City Clerk

Date: 7/1/04

INTERCHANGE PROPERTIES, LLC, an Illinois liability company

By: [Signature]
Joseph D. O'Brien, Jr., Manager

EXHIBITS

- Exhibit 1 - Requisition for Reimbursement of Redevelopment Project Costs
- Exhibit 2 - Requisition for Reimbursement of Interest Costs
- Exhibit 3 - Surplus Right-of-Way

803-459.d8

EXHIBIT 1

REQUISITION FOR REIMBURSEMENT OF REDEVELOPMENT PROJECT COSTS

Interchange Properties, LLC (the "Developer") does hereby certify to the City of Urbana (the "City") as follows:

1. That the Developer has paid the following parties the following amounts for the items listed below, each of which constitutes "Redevelopment Project Costs" as defined in an Agreement between the City and the Developer, dated January 29, 2001, as amended by an Amendment to Agreement, dated September 15, 2003, (collectively, the "Agreement").

<u>Party Paid</u>	<u>Redevelopment Project Cost</u>	<u>Amount</u>
_____	_____	_____

[Paid invoices or other evidence of payment are attached]

2. That it requests a payment in the total amount of \$ _____ pursuant to the above referenced Agreement.

INTERCHANGE PROPERTIES, LLC

By: _____

Print Name: _____

Title: _____

EXHIBIT 2

REQUISITION FOR REIMBURSEMENT OF INTEREST COSTS

Interchange Properties, LLC (the "Developer") does hereby certify to the City of Urbana (the "City") as follows:

1. That the Developer has during calendar year _____ incurred and/or paid the following interest to the following parties with respect to the "Project", as defined in an Agreement between the City and the Developer, dated January 29, 2001, as amended by an Amendment to Agreement, dated September 15, 2003, (collectively, the "Agreement").

<u>Party</u>	<u>Description of Loan</u>	<u>Interest Paid</u>
_____	_____	_____

[Paid invoices or other evidence of payment are attached.]

2. That it requests a payment in the amount of \$ _____ pursuant to the above referenced Agreement.

INTERCHANGE PROPERTIES, LLC

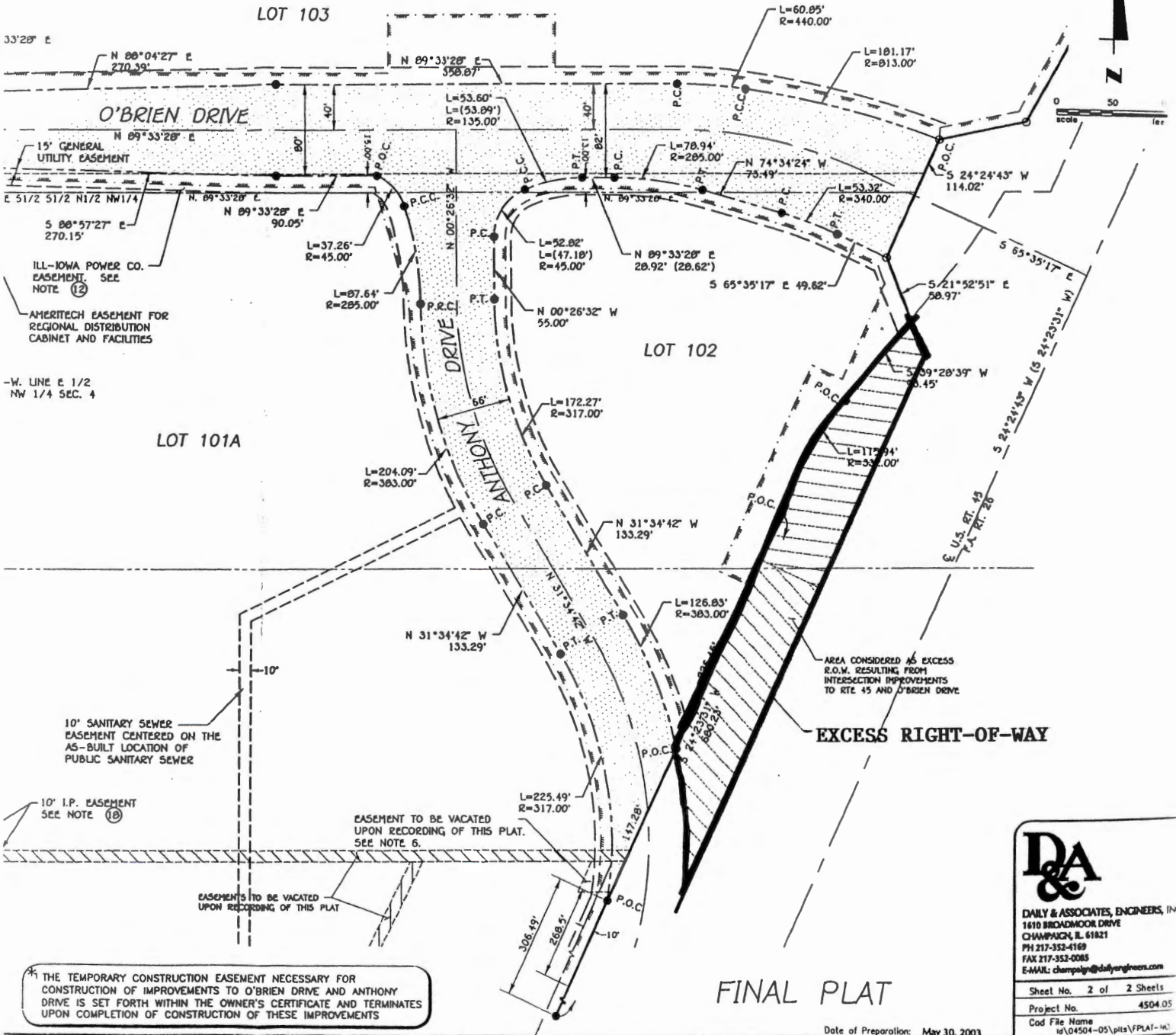
By: _____

Print Name: _____

Title: _____

**EXHIBIT 3
EXCESS RIGHT-OF-WAY**

TY AUTO PARK SUBDIVISION NO. 1
THE NORTH 1/2, SEC. 4, T.19N., R.9E., 3rd P.M.
CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS



DA
DAILY & ASSOCIATES, ENGINEERS, INC.
1610 BROADMOOR DRIVE
CHAMPAIGN, IL 61821
PH 217-352-4169
FAX 217-352-0085
E-MAIL: champain@dailyngeers.com

Sheet No. 2 of 2 Sheets
Project No. 4504.05
Cod File Name 16\04504-05\plots\FPLAT-10