

2004R27003

RECORDED ON

08/20/2004 04:32:58PM

CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA

REC FEE: 39.00

REV FEE:

PAGES: 18

PLAT ACT: 0

Recording Cover Sheet

ORDINANCE NO. 2004-07-080

AN ORDINANCE APPROVING AN AGREEMENT WITH PAUL  
TATMAN (COLORADO AVENUE EXTENSION IMPROVEMENT)

and attached:

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY  
OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, AND PAUL  
TATMAN FOR THE CONSTRUCTION OF COLORADO AVENUE  
EXTENDED DATED AS OF JULY 7, 2004

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

Return to:

Phyllis D. Clark, City Clerk  
City of Urbana  
400 S. Vine Street  
Urbana, IL 61801

**AN ORDINANCE APPROVING AN AGREEMENT  
WITH PAUL TATMAN**

**(Colorado Avenue Extension Improvement)**

WHEREAS, a Development Agreement between the City of Urbana, Illinois and Paul Tatman has been submitted for the Urbana City Council's consideration, a copy of which is attached as Exhibit "A"; and,

WHEREAS, said agreement governs the obligations and responsibilities for the construction of Colorado Avenue extended from its current terminus to the eastern property line owned by Paul Tatman, and thence to Stone Creek Boulevard; and,

WHEREAS, the Development Agreement attached hereto as Exhibit "A" is consistent with and supplements an existing annexation agreement entitled Hingtgen & Naugle Annexation Agreement adopted under Ordinance 2003-12-139; and,

WHEREAS, The Urbana City Council has determined that the proposed Development Agreement is in conformance with the provisions and expectations of the Hingtgen and Naugle Annexation Agreement; and,

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

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

Section 1. The Agreement for the construction of Colorado Avenue extended between the City of Urbana and Paul Tatman, a copy of which is

attached 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 hereby authorized to attest to said execution of said Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

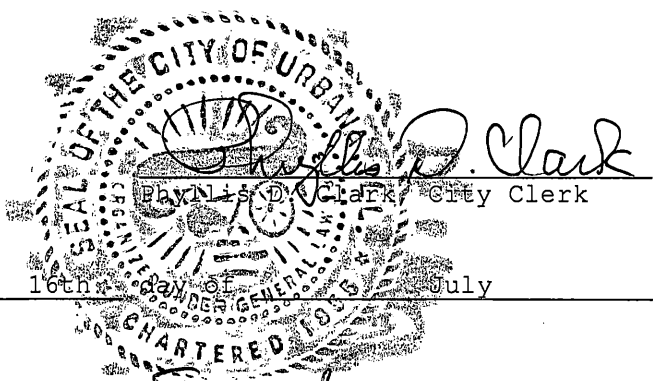
This Ordinance is hereby passed by affirmative vote of a majority of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this 6th day of July, 2004.

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

NAYS:

ABSTAINS:



APPROVED by the Mayor this 16th day of July, 2004.

Tod Satterthwaite  
Tod Satterthwaite, Mayor

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DEVELOPMENT AGREEMENT

By and Between The

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

And

PAUL TATMAN

For the construction of

COLORADO AVENUE EXTENDED

Dated as of July 7, 2004

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (including exhibits and attachments hereto, collectively, this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2004, 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 **Paul Tatman**, (the "**Developer**").

### RECITALS

**WHEREAS**, on the first day of December 2003 the City of Urbana (Corporate Authorities) executed an annexation agreement with Paul Hingtgen, Virgil Naugle and Tatman Enterprises, Inc. (entitled Hingtgen & Naugle Annexation Agreement) under Ordinance No. 2003-12-139 for the annexation and development of approximately 31 acres of property on three tracts located on the south side of Colorado Avenue approximately 394 feet east of Philo Road; and

**WHEREAS**, the Hingtgen & Naugle Annexation Agreement specifies approval for the development of a Planned Unit Development containing a Senior Retirement Center, Residential Condominiums and a single-family subdivision by Paul Tatman; and

**WHEREAS**, the proposed development by Paul Tatman requires the extension of Colorado Avenue from its current terminus to the eastern terminus of the property owned by Paul Tatman, and thence eastward through the property owned by the Atkins Group to connect with Stone Creek Boulevard as a collector level classification level of roadway meeting the requirements of the Urbana Subdivision and Land Development Code; and

**WHEREAS**, Article I, Section 9 of the Hingtgen and Naugle Annexation Agreement specifies that the Corporate Authority and Developer are to confer and negotiate a separate agreement for the construction of Colorado under specific language as follows:

**Section 9. Colorado Avenue.** The Developer agrees to meet and confer with the Corporate Authorities to negotiate a separate agreement concerning the improvement and completion of Colorado Avenue to a collector level classification of roadway. The agreement shall outline the design specifications for the improvements and shall determine the respective obligations of the Developer, City, and other parties' for the engineering, construction and costs for completing improvements to Colorado Avenue.

The engineering design and construction of Colorado Avenue shall include one eight-foot wide multi-use path instead of the standard requirement of a four-foot sidewalk. The purpose of the path is to connect the existing multi-use path at Philo Road and Colorado Avenue to a planned multi-use path at Colorado Avenue and Stone Creek Boulevard.

; and

**WHEREAS**, the Developer has completed construction plans and cost estimates for the extension of Colorado Avenue and such plans have been reviewed by the City Engineer; and

**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**

### **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:

(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 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, other than the Urbana City Council, 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 1.2 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 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. 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.

**(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 1.3 Disclaimer of Warranties.** The City and the Developer acknowledge that neither has made any warranties to the other, except as set forth in this Agreement. 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 of this Agreement.



## ARTICLE II

### **DEVELOPER'S COVENANTS AND AGREEMENTS**

#### **Section 2.1 Construction of Colorado Avenue Extended.**

The Developer agrees to construct all public improvements for Colorado Avenue adjacent to Tracts II and III as described in Annexation Agreement approved as Ordinance 2003-12-139 as an urban, collector-classified roadway. The Developer shall construct improvements to the south half of Colorado Avenue from the western parcel line of Tract II as described in said annexation agreement to its current terminus, and to fully construct the continuation of Colorado Avenue from its current terminus to the eastern property line of the property to be developed by Paul Tatman, and then – contingent upon the dedication of right-of-way by the adjoining property owner to the east -- to make a connection of Colorado Avenue to the stub connector at Stone Creek Boulevard.

#### **Section 2.2 Construction Plans.**

The Developer shall provide a complete set of engineering and construction plans to the City Engineer for review and approval. The construction plans shall indicate Colorado Avenue to be constructed as a collector consistent with the standards of the City of Urbana Land Development and Subdivision Code. The Developer's engineer and the City Engineer shall meet as necessary to develop an approved set of construction plans. The Developer shall provide unit prices to the City Engineer for construction work to be performed.

**Section 2.3 Multi-Use Path.**

The engineering design and construction plans of Colorado Avenue shall include one eight-foot wide multi-use path on the north side of the roadway.

**Section 2.4 Connection to Stone Creek Boulevard**

The Developer shall be responsible for the construction of Colorado Avenue east to the connection with Stone Creek Boulevard, depending upon the dedication of required right-of-way by the adjoining property owner. This connection may require construction of the roadway in two phases – first along that portion owned by the Developer, and secondly along that portion owned by the adjoining property owner to the east. The Developer agrees to assist the Corporate Authorities in coordinating with the neighboring property owner to dedicate the necessary right-of-way consistent with the approved preliminary plat for Stone Creek Subdivision.

**Section 2.5 Timing of Construction.**

Developer Agrees to start construction by September 1, 2004 and complete by September 1, 2005.

**Section 2.6 Maintenance of Development.** The Developer shall at all times acquire, install, construct, operate and maintain the Private Development in conformance with this Agreement and all applicable laws, rules and regulations. Any agreement of the Developer related to the acquisition, installation, construction, development, operation and maintenance of the Private Development with any other party or parties to any such agreements (including tenants) shall, to the extent applicable, contain provisions substantially similar to those required of the Developer under this Agreement.

**Section 2.7 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 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 by the Developer.

**Section 2.8 Indemnity.** The Developer agrees to 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 in connection with the construction of the Private Development, whether or not suit is filed.

**Section 2.9 Compliance with All Laws.** The Developer agrees that in the construction, use, occupation, operation and maintenance of the Private Development, the Developer will comply with all applicable federal and state laws, rules and regulations of City ordinances.

## ARTICLE III

### CITY'S COVENANTS AND AGREEMENTS

**Section 3.1 City's Financial Obligation.** The City agrees to reimburse the Developer a one-time lump sum total of up to sixty-five thousand dollars and no cents (\$65,000.00) towards the costs of completing Colorado Avenue upon the completion of the following:

- a. Completion of the infrastructure improvements and approval from the City Engineer indicating the construction is in conformance with approved construction plans. It is understood that a second, subsequent phase of road construction may be necessary depending upon the timing of dedication of right-of-way by the adjoining property owner for purposes of completing the connection of Colorado Avenue with Stone Creek Boulevard.
- b. Final subdivision platting of the tracts to dedicate the roadway to the City of Urbana for ownership.

**Section 3.2 Construction Plan Approval.** The City agrees to expeditiously review construction and engineering plans for the extension of Colorado Avenue and issue approval from the City Engineer once it is determined the plans are in conformance with applicable city codes and approved agreements.

**Section 3.3 Dedication of Right-of-Way.** The Corporate Authorities agree to coordinate with the adjacent property owner to the east to secure a dedication of right-of-way in order to foster the connection of Colorado Avenue to Stone Creek Boulevard. The dedication and connection of the roadway shall be consistent with the approved preliminary plat for the Stone Creek Subdivision. The Corporate Authorities agree to prepare and record a plat to dedicate this 60-feet of right-of-way.

**Section 3.4 Defense of Development 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 Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the project and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use 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

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

**Section 4.1 Payment Procedures.** The City and Developer intend and agree that the reimbursement amount of up to \$65,000 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 3.1 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 the reimbursement amount for the cost. Payment to the Developer shall be made upon request therefore, in form reasonably acceptable to the City (each being a "Requisition") submitted by the Developer. Each such Requisition shall be accompanied by such documentation by the developer to whom any such costs within the are to be paid.

**Section 4.2 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 the requisition does not satisfy the provisions contained within this agreement. 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 4.3 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 4.2 above.

**ARTICLE V**  
**DEFAULTS AND REMEDIES**

**Section 5.1 Defaults - Rights to Cure.** Failure or delay by either Party to timely perform any term or provision of this Agreement 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, 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 5.2 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 IV 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 5.3 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 reasonable fees of accountants, attorneys, engineers and other professionals.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**Section 6.1 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. This agreement 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 both of the Parties.

**Section 6.2 Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and 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 6.3 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 6.4 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 is 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 4.2 hereof, if, as and when received, and not otherwise.

**Section 6.5 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 disturbances (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 6.6 Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver 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 6.7 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 6.8 Notices and Communications.** 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:

Paul Tatman, Developer  
2802 East Slayback Road  
Urbana, IL 61802  
217-202-0801

To the City:

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

With a copy to:

Legal Division  
400 South Vine Street  
Urbana, Illinois 61801  
Tel: (217) 384-2464  
Fax: (217) 384-2426

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

**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.

**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 Sattat-Uwante

Mayor, City of Urbana

**DEVELOPER**

By: Paul Tatman

Paul Tatman

ATTEST:

Shirley D. Clark  
City Clerk

(SEAL)

ATTEST:

Donna M. Foley  
Notary Public

(SEAL)

