

ORDINANCE NO. 2004-09-119

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH TIMPONE PETRY, 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 financial incentives associated with the development of a new mixed commercial/residential building to be located at the northeast corner of the intersection of Race and Water Streets, between the City of Urbana and Timpone Petry, 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 September, 2004.

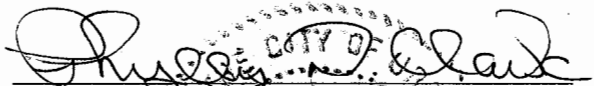
AYES: Chynoweth, Hayes, Otto, Patt, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this 15th day of September

2004.


Phyllis D. Clark, City Clerk



Tod Satterthwaite, Mayor

REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

RACING WATERS, LLC
AN ILLINOIS LIMITED LIABILITY COMPANY

Dated as of September 1, 2004

Document Prepared By:

**Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
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Champaign, IL 61820**

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LIST OF EXHIBITS

- EXHIBIT A Legal Description of City Real Estate
- EXHIBIT B Depiction of Developer Area
- EXHIBIT C Schematic Elevation and Floor Plans
- EXHIBIT D Legal Description of Developer Project Site

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this **"Agreement"**) is made and entered into as of September 1, 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 the _____, an Illinois limited liability company (the **"Developer"**).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (presently codified at 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 City Council of the City (the **"Corporate Authorities"**) did adopt: (i) a series of ordinances (Ordinance Nos. 8081-61, 8081-62 and 8081-63 on December 22, 1980) including as supplemented and amended by certain ordinances (Ordinance No. 8637 on October 6, 1986, Ordinance No. 9394-100 on May 16, 1994, Ordinance No. 2002-06-03 on June 17, 2002, Ordinance No. 2003-03-031 on April 7, 2003 and Ordinance No. 2003-12-148 on December 15, 2003); and (ii) an ordinance (Ordinance No. 8687-45 on December 23, 1986) including as supplemented and amended by certain ordinances (Ordinance No. 9394-101 on May 16, 1994 and Ordinance No. 2002-06-064 on June 17, 2002) (collectively, the **"TIF Ordinances"**); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Urbana Downtown Tax Increment Redevelopment Project Area (the **"Redevelopment Project Area No. 1"**) and the Downtown Urbana Tax Increment Redevelopment Project Area Number Two (the **"Redevelopment Project Area No. 2"**), and, together with the Redevelopment Project Area No. 1, the **"Redevelopment Project Areas"**) and approved related redevelopment plans, as supplemented and amended (collectively, the **"Redevelopment Plans"**) including the respective redevelopment projects described in each of the Redevelopment Plans (collectively, the **"Redevelopment Projects"**); and

WHEREAS, as contemplated by the Redevelopment Plans and the Redevelopment Projects, the Developer proposes to develop the Development Area (as defined below), and, in furtherance thereof, to acquire, construct and install (or cause to be done) the Developer Project (including the related real estate and appurtenant facilities, as more fully defined below) on the Developer Project Site (as defined below); and

WHEREAS, part of the Development Area (as defined below), including the Developer Project Site (as defined below) located therein, is within the Redevelopment Project Area No. 1 and the remainder thereof is within the Redevelopment Project Area No. 2; and

WHEREAS, the Developer is unwilling to undertake the Developer Project 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; 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

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:

“**City Real Estate**” means, collectively, the real estate consisting of the parcel or parcels of real estate within the Developer Project Site which are owned by the City and legally described in Exhibit A hereto.

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

“**Developer Area**” means, collectively, the parcel or parcels of real estate generally depicted on Exhibit B upon which the Developer Project and other related Redevelopment Projects are proposed to be undertaken by the Developer in one or more phases.

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“Developer Project” means the construction of a mixed use residential and commercial/office building to be built substantially in accordance with the schematic elevation and floor plans attached hereto as Exhibit C, including the following: (i) brick and limestone on at least two (2) exterior elevations, (ii) not less than 40 residential units, (iii) approximately 53,000 square feet of which not less than 2,000 square feet thereof is commercial/office on first floor, (iv) 40 parking spaces; (v) approximately 8,000 square feet of storage on the lower level, and (vi) having a total cost of approximately \$4,600,000; all of which is to be located within or upon the Developer Project Site.

“Developer Project Site” means, collectively, the real estate consisting of the parcel or parcels legally described in Exhibit D hereto, upon or within which the Developer Project is to be located.

“Eligible Redevelopment Project Costs” means those costs paid and incurred by the Developer which are related to the construction of the Developer Project and which are authorized to be reimbursed or paid from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act.

“Fund” means, collectively, the “Special Tax Allocation Fund” for each of the Redevelopment Project Areas established under Section 5/11-74.8 of the TIF Act and the TIF Ordinances.

“Incremental Property Taxes” means in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon taxable real property in the Redevelopment Project Areas by taxing districts that is attributable to the increase in the equalized assessed value of the taxable real property in the Redevelopment Project Areas over the equalized assessed value of the taxable real property in the Redevelopment Project Areas on January 1, 2003 which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, has been allocated to and when collected shall be paid to the Treasurer of the City for deposit by the Treasurer into the Fund established to pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF 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 by the Developer and 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.

“Reimbursement Amounts” means, collectively, amounts to be reimbursed or paid from the Fund to the Developer by the City under and pursuant to Section 3.2(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 Developer Project.

“Requisition” means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article V 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 limited liability company 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 action on the part of the Developer's members or managers, as the case may be. 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. Upon the request of the City, the Developer shall deliver true, complete and correct copies of all Related Agreements (redacted by the Developer to protect

any confidential or proprietary information). 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 Developer Project, 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 Redevelopment Obligations. The City hereby covenants and agrees to undertake each of the following redevelopment obligations at the time and in the manner specified as follows:

(a) to transfer and convey title by warranty deed to the City Real Estate located within the Developer Project Site and to provide a phase 1 environmental audit in connection therewith, such transfer and conveyance to be made for a purchase price of One Dollar (\$1.00) concurrently with the closing of any mortgage financing by the Developer in connection with the Developer Project at the Developer Project Site;

(b) to extend City streetscape improvements, including lighting and sidewalk improvements, along Race Street and Water Street adjacent to the Developer Project Site at City expense, such extension to be completed concurrently with completion of the Developer Project;

(c) to pay the costs to relocate the existing overhead power lines upon the Developer Project Site to such area thereon for which the Developer has granted an easement for such purposes and to cooperate with the Developer to expedite any such relocation;

(d) to review and issue any required City permits for the Developer Project not later than five (5) business days after any and all required submittals in connection therewith have been delivered to the City;

(e) to cause the Developer Project, including any partial floor, to be inspected by the applicable inspection authority of the City on the next business day following a request by the Developer for such inspection;

(f) to construct such additional parking spaces in City parking lot No. 25 as may be determined necessary by the City to replace any parking spaces displaced by the Developer Project;

(g) to accept clay fill from the Developer Project Site at the City landfill site and/or at such other locations as determined by the City where such clay fill may be utilized; and

(h) to amend each of the Redevelopment Plans in order to extend the dates of completion of the Redevelopment Projects in each of the Redevelopment Project Areas to such dates as shall occur on or after the expiration of the term of this Agreement.

Section 3.2. City's Financial Obligations. The City shall have the obligations set forth in this Section 3.2 relative to financing Eligible Redevelopment Project Costs in connection with the Developer Project. Upon the submission to the City by the Developer of a Requisition for Eligible Redevelopment Project Costs incurred and paid, the City, subject to the terms, conditions and limitation set forth in this Section 3.2 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 Developer Project at the Developer Project Site as follows:

(a) such Reimbursement Amounts in connection with the Developer Project shall not exceed in any one calendar year eighty percent (80%) of the Incremental Property Taxes actually received by the City in each such calendar year which are directly attributable to the Developer Project at the Developer Project Site;

(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 Developer Project, the total equalized assessed value (the "EAV") of the Developer Project Site for such calendar year shall be reduced by the initial EAV of the Developer Project Site in the agreed amount of \$12,640.00, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Areas for any such applicable calendar year;

(c) the total amount of all such annual payments of the Reimbursement Amounts pursuant to subsection (a) of this Section 3.2 above shall not exceed the total amount of all Eligible Redevelopment Project Costs which are directly attributable and allocable to the Developer Project at the Developer Project Site; and

(d) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.2 shall be for a period of ten (10) calendar years, commencing with the calendar year following the calendar year in which a certificate of occupancy is issued for the Developer Project, and shall terminate upon reimbursement by the City in accordance with Article V of this Agreement on or after December 31 of the calendar year in which any such Reimbursement Amounts in connection with the Developer Project become due and payable pursuant to this Section 3.2.

Section 3.3. Defense of Redevelopment Project Area. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF 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 Areas are otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Areas 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 Developer Project. The Developer covenants and agrees to acquire, construct and install, or cause to be acquired, constructed and installed, the Developer Project in the manner and with the effect set forth in this Agreement, substantially in accordance with such schematic elevation and floor plans as set forth in Exhibit C. In the event that the Developer proposes any revisions to such schematic elevation and floor plans, such proposed revisions shall be submitted to the City's Chief Administrative Officer (the "CAO") for review. If any such proposed revisions result in any substantial deviation in such schematic elevation and floor plans as determined solely by the CAO, any such proposed revisions shall be subject to the prior approval of the Corporate Authorities of the City.

Section 4.2. Acquisition, Construction and Installation of Developer Project. The Developer shall at all times acquire, construct and install the Developer Project 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, and, to the extent applicable, the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois. Any agreement of the Developer related to the acquisition, construction, installation and development of the Developer Project 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 Developer Project and the total amount of related Eligible Redevelopment Project 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 Developer Project in order to confirm that any such Eligible Redevelopment Project Costs claimed to have been paid and incurred by the Developer were directly related and allocable to the costs of the Developer Project 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 Developer Project, 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 Developer Project, 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 Developer Project Site. 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 Developer Project Site 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 Developer Project Site upon which the Developer Project is located and shall be in full force and effect until December 31, 2016, upon which date this covenant shall terminate and be of no further

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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 the Developer Project Site 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. Nothing contained within this Section 4.6 shall be construed, however, to prohibit the Developer from initiating and prosecuting at its own cost and expense any proceedings permitted by law for the purpose of contesting the validity or amount of real property taxes assessed and levied upon the Developer Project Site or any part thereof.

Section 4.7. Obligation to Further Cooperate. The Developer agrees to coordinate the planning and development of the remaining phases of the Developer Area with the City in a timely manner.

ARTICLE V

PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

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

The City hereby designates the City's CAO as its representative to coordinate the authorization of disbursement of any annual Reimbursement Amounts for the Eligible Redevelopment Project Costs. Payments to the Developer of any Reimbursement Amounts for Eligible Redevelopment Project Costs shall be made upon request therefor, in form reasonably acceptable to the City (each being a "Requisition") submitted by the Developer with respect to Eligible Redevelopment Project Costs incurred but not previously submitted. Each such Requisition shall be accompanied by such documentation by any financial institution to whom any

such interest costs constituting Eligible Project Redevelopment Costs are paid or by an Independent accountant which shows and verifies that any such Eligible Project Redevelopment Costs have been paid and incurred by the Developer.

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 Eligible Redevelopment Project Costs paid and incurred by the Developer, or (ii) such Eligible Redevelopment Project Costs being directly related to the costs paid or incurred by the Developer for the Developer Project at the Developer Project Site. 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. Upon the approval of any of the applicable Requisitions as set forth in Section 5.2 above, the City shall pay each of the applicable annual Reimbursement Amounts to the Developer within thirty (30) days after the receipt by the City of the last installment of the Incremental Property Taxes during that calendar year.

Section 5.4. Shortfalls. If any Requisition is not paid in full in any calendar year due to any of the limitations specified for Reimbursement Amounts in Section 3.2(a) hereof, the entire amount of any Requisition remaining to be paid shall accrue and, subject to and in accordance with the payment procedures set forth in this Article V, shall be paid as a part of any applicable annual Reimbursement Amount in the next or any succeeding calendar year at the time of payment.

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. Conditions Precedent. The agreements, obligations and undertakings of the City as set forth in this Agreement are expressly contingent upon the Developer, on or before October 31, 2004, having obtained an irrevocable commitment for conventional financing for the construction of the Developer Project, having entered into a contract to undertake the completion of Developer Project at a total cost of not less than \$4,600,000.00, and having commenced construction in a timely manner as to satisfactorily assure that the Developer Project is substantially completed on or before September 30, 2005. If the Developer shall fail to provide to the City executed copies of such irrevocable commitment for conventional financing and such contract or shall otherwise fail to demonstrate that it has fulfilled its obligations under this Section 7.1 on or before October 31, 2004, the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no force or effect; provided further, however, that this Agreement shall also terminate and be of no force and effect in the event the City has transferred and conveyed title to the City Real Estate to the Developer pursuant to Section 3.1(a) hereof and the Developer abandons or otherwise fails to commence the construction of the Developer Project for any reason on or before December 31, 2004, in which such event the Developer covenants and agrees and shall remain obligated to immediately transfer and reconvey the City Real Estate to the City free and clear of all encumbrances and without cost to the City.

Section 7.2 Entire Contract and Amendments. This Agreement (together with the Exhibits A, B, C and D 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 7.3. 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 7.4. 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 7.5. Special and Limited Obligation. This Agreement shall constitute a 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 Developer Project at the Developer Project Site as is set forth in Section 3.2 hereof, if, as and when received, and not otherwise.

Section 7.6. 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 7.7. 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 7.8. 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 7.9. 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:

Attn: _____

Tel: () - / Fax: () -

- (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) 384-2455 / 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 7.10. 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 the Developer may not assign its rights under this Agreement prior to the completion of the Developer Project without the express written consent of the City.

Section 7.11. 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 7.12. 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, 2016; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.4 and 4.6 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section.

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**

(SEAL)

By: *Paul Sestak-Huante*
Mayor

ATTEST:

Phyllis D. Clark
City Clerk by *Deborah P. Palumbo*
Deputy Clerk
Date: 10/12/04

Roxie Winters LLC
an Illinois limited liability company

(SEAL)

By: *Ryan M. Johnson*
Its: _____
Date: 10/12/04

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

EXHIBIT A

A part of the Southeast Quarter of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, being more particularly described as follows:

Lots 1, 2, 3, and 4 of G. O. Shafer's Subdivision of the West 2/3 of the Southwest ¼ of Outlot 1 of the Original Town (now City) of Urbana, as per plat recorded in Plat Record "C" at page 252; and the West ½ of the East 57 feet and 9 inches of the Southwest ¼ of Outlot 1 of the Outlots of the original Town (now City) of Urbana, Illinois, as per plat recorded in Deed Record "A" at page 16, all being a part of the Southwest ¼ of the Southeast ¼ of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian; also;

Beginning at the Southwest Corner of Outlot 1 of the Original Town (now City) of Urbana, thence West along the North side of Water Street 51.6 feet to the East line of Race Street; thence North along the East line of Race Street 107.24 feet to a point which is also described as the Northwest Corner of G.O. Shafer's Subdivision of the West 2/3 of the Southwest ¼ of Outlot 1 of the Original Town of Urbana; thence East 51.6 feet; thence South 107.24 feet to the point of beginning, situated in Champaign County, Illinois, it being intended hereby to include all lands, if any, lying between said Outlot 1 of the Original Town of Urbana and the East line of Race Street within said G.O. Shafer's Subdivision, situated in Champaign County, Illinois.

AND;

Lot 4 of Timpone Plaza, as shown on a plat prepared April 26, 1996 by David E. Atchley, Illinois Professional Land Surveyor Number 2590, and recorded September 18, 1996, in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois.

AND;

A part of the east-west public alley vacated by City of Urbana Ordinance Numbers 2003-05-049 and 2003-05-050, being more particularly described as follows;

All of the westerly 138.09 feet of the east-west public alley adjacent to Lot 2 of Besore Brothers Estate Replat as shown on a plat prepared July 14, 1922 and recorded in Plat Book "D" at page 282 in the Office of the Recorder of Deeds, Champaign County, Illinois, said alley also being all of the said east-west public alley adjacent to Lot 4 of Timpone Plaza, as shown on a plat dated April 26, 1996, prepared by David E. Atchley, Illinois Professional Land Surveyor Number 2950, and recorded in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois. Said alley containing 1,657.08 S.F., more or less, all situated in the City of Urbana, Champaign County, Illinois.

and;

The southerly 8.77 feet of the westerly 6.50 feet of the easterly 47.82 feet of the east-west public alley adjacent to Lot 2 of Besore Brothers Estate Replat as shown on a plat prepared July 14, 1922 and recorded in Plat Book "D" at page 282 in the Office of the Recorder of Deeds, Champaign County, Illinois, said alley also being adjacent to Lot 3 of Timpone Plaza an Addition to Urbana, Illinois, as shown on a plat dated April 26, 1996, prepared by David E. Atchley, Illinois Professional Land Surveyor Number 2950, and recorded in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois and being further described as follows:

Commencing at the southwest corner of Lot 3 of said Timpone Plaza; thence, S 1°52'36" E (an assumed bearing), along the southerly extension of the west line of said Lot 3, a distance of 3.23 feet, to the Point of Beginning; thence, N 88°17'21" E, along a line 3.23 feet southerly of and parallel with the north line of said east-west public alley, a distance of 6.50 feet, to the northerly extension of the easterly line of a tract described in a Warranty Deed, dated September 20, 1999 and recorded as Document Number 99R28449 in the Office of the Recorder of Deeds, Champaign County, Illinois; thence, S 01°52'39" E, along said northerly extension, a distance of 8.77 feet, to the south line of said east-west public alley; thence, S 88°17'21" W, along said south line, a distance of 6.50 feet, to the southerly extension of the westerly line of said Lot 3; thence, N 01°52'39" W, along said southerly extension, a distance of 8.77 feet, to the Point of Beginning, containing 57.03 square feet, more or less, all situated in the City of Urbana, Champaign County, Illinois.

5238

ached

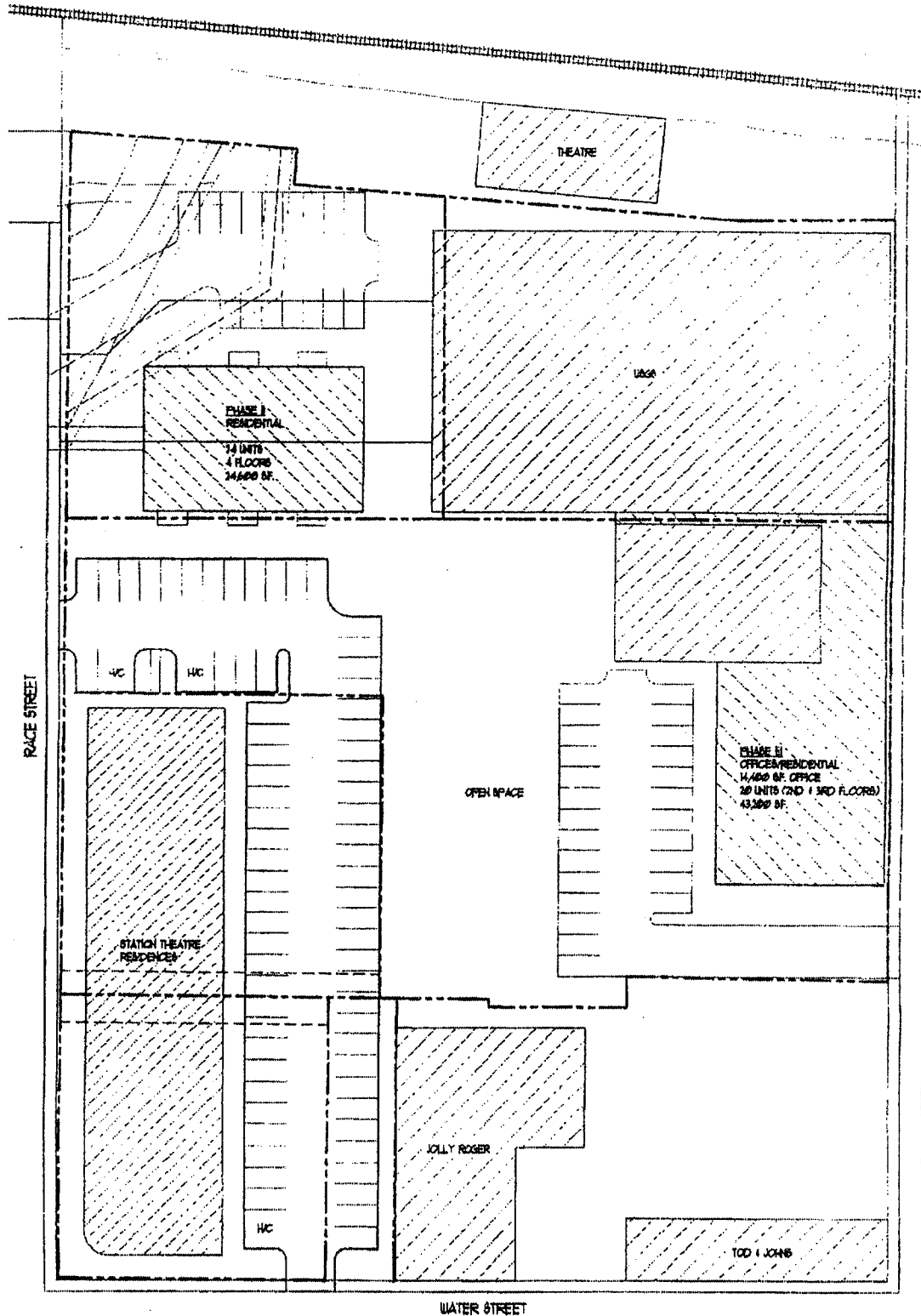
4-021

7/16
IN PRO
F. E. E.

No. 3
P. 1

-006

EXHIBIT B

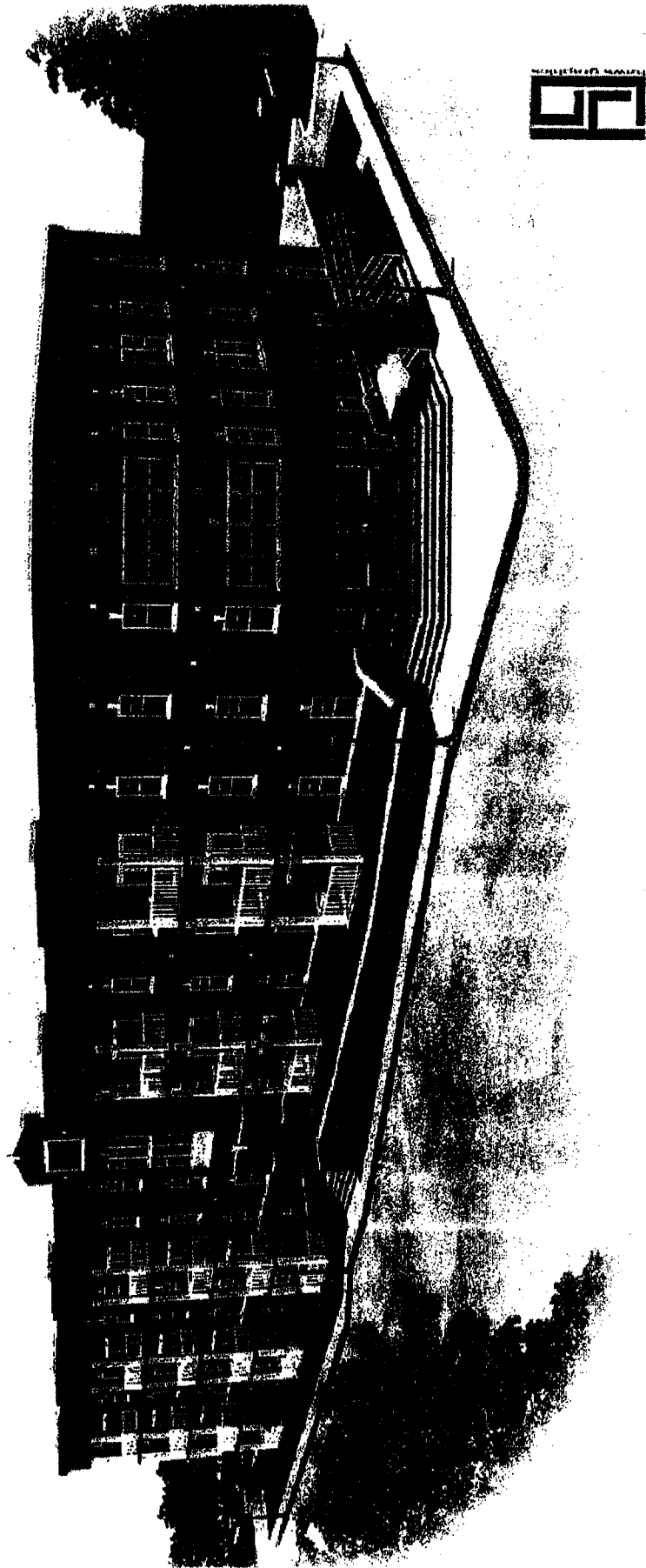


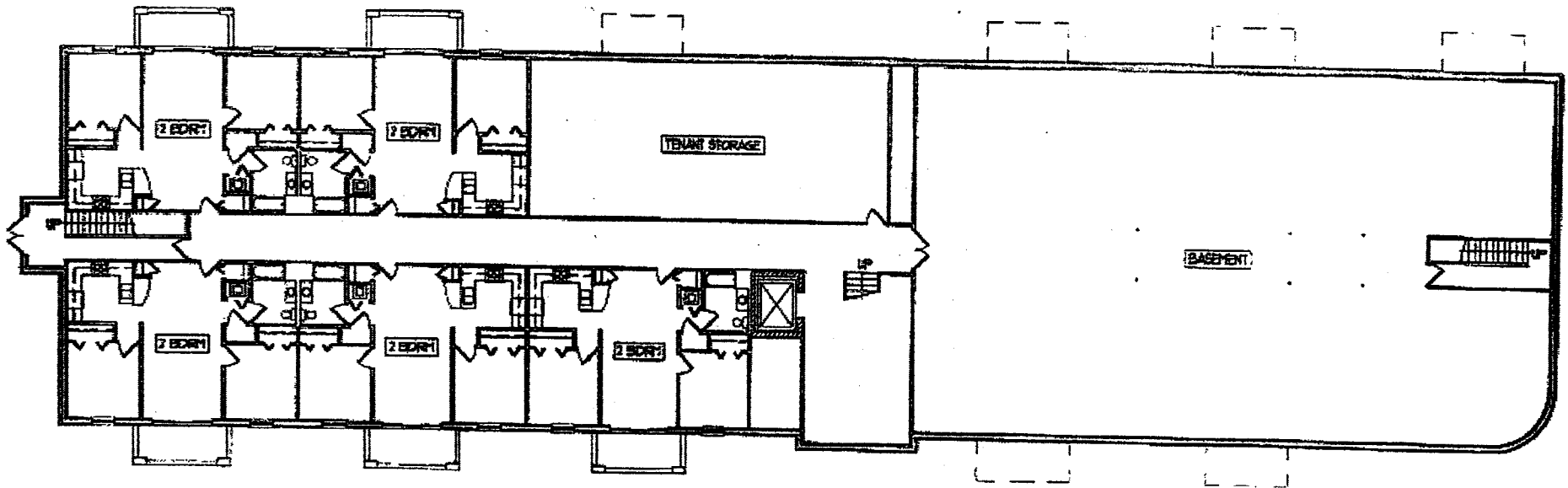
STATION THEATRE RESIDENCES - PHASE II AND III



EXHIBIT C

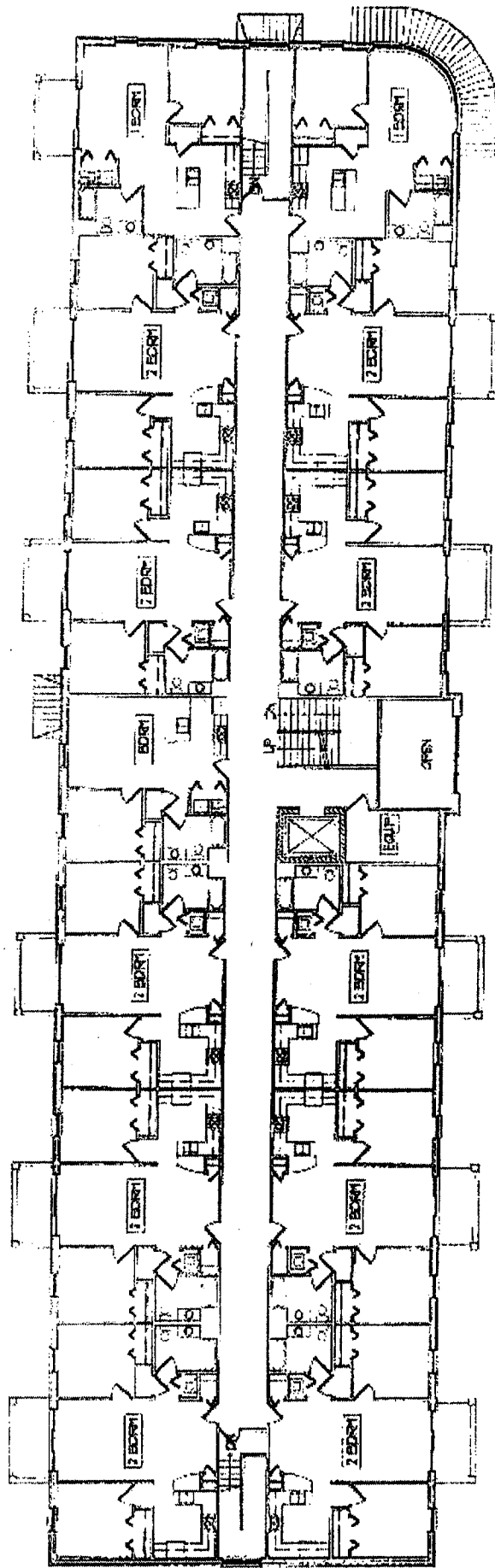
Schematic Elevations and Floor Plans





SCHEMATIC LOWER LEVEL PLAN

SCALE: 3/8" = 1'-0"



SCHEMATIC SECOND & THIRD FLOOR PLAN
SCALE 1/4" = 1'-0"

EXHIBIT D

Legal Description of Developer Project Site

PIN: _____

EXHIBIT D

A part of Lot 3 of Timpone Plaza, as shown on a plat prepared April 26, 1996 by David E. Atchley, Illinois Professional Land Surveyor Number 2590, and recorded September 18, 1996, in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois, being more particularly described as follows:

Commencing at the northwest corner of said Lot 3, thence, S 00 DEGREES 21 MINUTES 10 SECONDS W, an assumed bearing, along the westerly line of said Lot 3, and the easterly Right-of-Way line of Race Street, a distance of 16.50 feet, to the Point of Beginning; thence, N 90 DEGREES 00 MINUTES 00 SECONDS E, along a line parallel with and 16.50 feet southerly of, the northerly line of said Lot 3, a distance of 138.09 feet, to the northerly extension of the easterly line of Lot 4 of said Timpone Plaza; thence, S 00 DEGREES 21 MINUTES 10 SECONDS W, along said northerly extension of the easterly line of Lot 4, a distance of 60.63 feet, to the northeast corner of said Lot 4; thence, N 89 DEGREES 28 MINUTES 50 SECONDS W, along the north line of said Lot 4, said line also being a southerly line of said Lot 3, a distance of 138.09 feet, to the northwest corner of said Lot 4, said point also being a southwesterly corner of said Lot 3 and also being on said easterly Right-of-Way line of Race Street; thence, N 00 DEGREES 21 MINUTES 10 SECONDS E, along the westerly line of said Lot 3, and said easterly Right-of-Way line of Race Street, a distance of 59.38 feet, to the Point of Beginning, having an area of 8282.842 square feet, more or less, all situated in the City of Urbana, Champaign County, Illinois.

And;

A part of the Southeast Quarter of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, being more particularly described as follows:

Lots 1, 2, 3, and 4 of G. O. Shafer's Subdivision of the West 2/3 of the Southwest 1/4 of Outlot 1 of the Original Town (now City) of Urbana, as per plat recorded in Plat Record "C" at page 252; and the West 1/2 of the East 57 feet and 9 inches of the Southwest 1/4 of Outlot 1 of the Outlots of the original Town (now City) of Urbana, Illinois, as per plat recorded in Deed Record "A" at page 16, all being a part of the Southwest 1/4 of the Southeast 1/4 of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian; also;

Beginning at the Southwest Corner of Outlot 1 of the Original Town (now City) of Urbana, thence West along the North side of Water Street 51.6 feet to the East line of Race Street; thence North along the East line of Race Street 107.24 feet to a point which is also described as the Northwest Corner of G.O. Shafer's Subdivision of the West 2/3 of the Southwest 1/4 of Outlot 1 of the Original Town of Urbana; thence East 51.6 feet; thence South 107.24 feet to the point of beginning, situated in Champaign County, Illinois, it being intended hereby to include all lands, if any, lying between said Outlot 1 of the Original Town of Urbana and the East line of Race Street within said G.O. Shafer's Subdivision, situated in Champaign County, Illinois.

AND;

Lot 4 of Timpone Plaza, as shown on a plat prepared April 26, 1996 by David E. Atchley, Illinois Professional Land Surveyor Number 2590, and recorded September 18, 1996, in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois.

AND;

A part of the east-west public alley vacated by City of Urbana Ordinance Numbers 2003-05-049 and 2003-05-050, being more particularly described as follows;

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and;

The southerly 8.77 feet of the westerly 6.50 feet of the easterly 47.82 feet of the east-west public alley adjacent to Lot 2 of Besore Brothers Estate Replat as shown on a plat prepared July 14, 1922 and recorded in Plat Book "D" at page 282 in the Office of the Recorder of Deeds, Champaign County, Illinois, said alley also being adjacent to Lot 3 of Timpone Plaza an Addition to Urbana, Illinois, as shown on a plat dated April 26, 1996, prepared by David E. Atchley, Illinois Professional Land Surveyor Number 2950, and recorded in Plat Book "CC" at page 203 in the Office of the Recorder of Deeds, Champaign County, Illinois and being further described as follows:

Commencing at the southwest corner of Lot 3 of said Timpone Plaza; thence, S 1°52'36" E (an assumed bearing), along the southerly extension of the west line of said Lot 3, a distance of 3.23 feet, to the Point of Beginning; thence, N 88°17'21" E, along a line 3.23 feet southerly of and parallel with the north line of said east-west public alley, a distance of 6.50 feet, to the northerly extension of the easterly line of a tract described in a Warranty Deed, dated September 20, 1999 and recorded as Document Number 99R28449 in the Office of the Recorder of Deeds, Champaign County, Illinois; thence, S 01°52'39" E, along said northerly extension, a distance of 8.77 feet, to the south line of said east-west public alley; thence, S 88°17'21" W, along said south line, a distance of 6.50 feet, to the southerly extension of the westerly line of said Lot 3; thence, N 01°52'39" W, along said southerly extension, a distance of 8.77 feet, to the Point of Beginning, containing 57.03 square feet, more or less, all situated in the City of Urbana, Champaign County, Illinois.