

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A REDEVELOPMENT AGREEMENT WITH THE NEW LINCOLN SQUARE, LLC

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

Section 1. That A Redevelopment Agreement By and Between The City of Urbana, Champaign County, Illinois and The New Lincoln Square, 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.

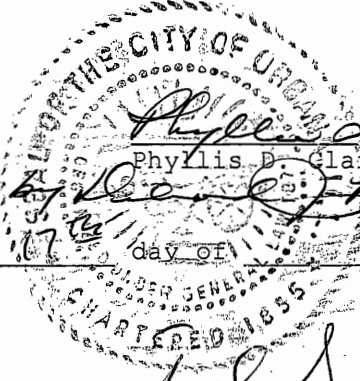
PASSED by the City Council this 6th day of December, 2004.

AYES: Chynoweth, Hayes, Patt, Whelan, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this 17th day of December, 2004.



Phyllis D. Clark
 Phyllis D. Clark, City Clerk
[Signature]
 Deputy Clerk
 day of December,
Tod Satterthwaite
 Tod Satterthwaite, Mayor

REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

THE NEW LINCOLN SQUARE, LLC

Dated as of November 1, 2004

Document Prepared By:

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

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- EXHIBIT A Design Proposal
- EXHIBIT B Description of Development Project Site
- EXHIBIT C An Agreement to Provide Parking Facilities

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this **"Agreement"**) is made and entered into as of November 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 New Lincoln Square, LLC**, 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 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 Downtown Urbana Tax Increment Redevelopment Project Area Number Two (the **"Redevelopment Project Area"**) and approved the related redevelopment plan, as supplemented and amended (the **"Redevelopment Plan"**), including the redevelopment projects described in the Redevelopment Plan (collectively, the **"Redevelopment Projects"**); and

WHEREAS, as contemplated by the Redevelopment Plan and the Redevelopment Projects, the Developer proposes to rehabilitate, reconstruct, repair or remodel (or cause to be done) the Private Development Project (including related and appurtenant facilities as more fully defined below) on the Development Project Site (as defined below); and

WHEREAS, the Development Project Site (as defined below) is within the Redevelopment Project Area; and

WHEREAS, the Developer is unwilling to undertake the Private Development 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:

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

“Design Proposal” means the proposed site plan, index key plan, floor plans and elevations for the Private Development Project as prepared for the Developer by Architectural Spectrum of Champaign, Illinois, a copy of which is attached hereto as Exhibit A.

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

“Eligible Redevelopment Project Costs” means those costs paid and incurred in connection with the rehabilitation, reconstruction, repair or remodeling of the Private Development 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 the Redevelopment Project Area 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 Area by taxing districts that is attributable to the increase in the equalized assessed value of the taxable real property in the Redevelopment Project Area over the equalized assessed value of the taxable real property in the Redevelopment Project Area on January 1, 1986 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 Comptroller of the City for deposit by the Comptroller 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.

“Private Development Project” means the rehabilitation, reconstruction, repair or remodeling of the existing structure upon the Development Project Site into a mixed use residential, office and retail facility substantially in accordance with the Design Proposal.

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

“Related Agreements” means all option, development, redevelopment, construction, financing, franchise, loan, ground lease and lease agreements, whether now or hereafter existing, executed by the Developer in connection with the Private Development 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 manager(s), 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 Private Development 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 Financial Obligations. The City shall have the obligations set forth in this Section 3.1 relative to financing Eligible Redevelopment Project Costs in connection with the Private Development 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 3.1 immediately below, agrees to reimburse the Developer from the Fund such Reimbursement Amounts as are paid and incurred by the Developer and are directly related to the Private Development Project at the Development Project Site as follows:

(a) such Reimbursement Amounts in connection with the Private Development Project in any one calendar year shall be equal: (i) to \$50,000.00 of the Incremental Property Taxes actually received by the City in each such calendar year; plus, (ii) one hundred percent (100%) of the Incremental Property Taxes actually received by the City in any such calendar year which are directly attributable to the Private Development Project at the Development Project Site;

(b) for the purpose of determining the total amount of Incremental Property Taxes which are directly attributable to the Private Development Project at the Development Project Site under clause (ii) of subsection (a) of this Section 3.1 above under circumstances where the Developer is not in default under Section 4.7 of this Agreement, the total equalized assessed value (the "EAV") of the Development Project Site for such calendar year shall be reduced by the initial EAV of the Development Project Site in the agreed amount of \$1,796,190, and the result shall be multiplied by the total tax rate of all taxing districts having taxable property within the Redevelopment Project Area for any such applicable calendar year;

(c) the total amount of all such annual payments of the Reimbursement Amounts pursuant to subsection (a) of this Section 3.1 above shall not exceed the total amount of all Eligible

Redevelopment Project Costs which are directly attributable and allocable to the Private Development Project at the Development Project Site or \$1,100,000.00, whichever is less; and

(d) the obligations of the City to reimburse the Developer for any Reimbursement Amounts under this Section 3.1 shall terminate on December 31 of the calendar year in which the last reimbursement obligation of the City under this Section 3.1 is paid to the Developer in accordance with Article V of this Agreement.

Section 3.2. City's Obligations to Provide Parking. The City hereby covenants and agrees to provide parking for the benefit of the Development Project Site subject to and in accordance with the provisions of An Agreement to Provide Parking Facilities, to be effective as of the first day of the term as specified therein, a copy of which is attached hereto as Exhibit C (the "Parking Agreement").

Section 3.3. City's Covenant to Amend the Redevelopment Plan. The City hereby represents that under and pursuant to Section 11-74.4-3(n) of the TIF Act, the City has the power to extend the estimated date of completion of the Redevelopment Projects and retirement of obligations issued to finance Eligible Redevelopment Project Costs from December 31, 2010 to December 31, 2022, the latter date being in the year in which payment to the Comptroller of the City is to be made with respect to Incremental Property Taxes levied in the thirty-fifth calendar year after the year in which the TIF Ordinances initially approving the Redevelopment Project Area was adopted. The City hereby covenants and agrees with the Developer that it shall undertake such actions as maybe necessary or required under the TIF Act to amend the Redevelopment Plan in order to extend the estimated date of completion of the Redevelopment Projects and the retirement of obligations issued to finance Eligible Redevelopment Project Costs to such date as shall occur on or after the expiration of the term of this Agreement.

Section 3.4. 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, is contrary to law, or in the event that the

legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement. Anything herein to the contrary notwithstanding, the Developer agrees that the City may, to the extent permitted by law, use any Incremental Property Taxes, including any unpaid Reimbursement Amounts, if available, to be redirected to reimburse the City for its defense costs, including without limitation attorneys' fees and expenses.

ARTICLE IV
DEVELOPER'S COVENANTS

Section 4.1. Commitment to Undertake the Private Development Project and Schedule. The Developer covenants and agrees to commence and complete the Private Development Project in accordance with a development schedule (where Phase 1 shall be the office component of the Private Development Project as shown on the Design Proposal and Phase 2 shall be the residential and retail components of the Private Development Project as shown on the Design Proposal) as follows:

<u>Activity</u>	<u>Completion Date</u>
Building Permits-Phase 1	March 31, 2005
Building Permits-Phase 2	Various
Construction-Phase 1	June 30, 2005
Construction-Phase 2	August 1, 2007

During the progress of the Private Development Project, the Developer and the Chief Administrative Officer of the City (the "CAO") may authorize such changes to the proposed uses of the Private Development Project as shown on the Design Proposal or any aspect thereof as may be in furtherance of the general objectives of the Redevelopment Plan and this Agreement and as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or as may be necessary or desirable in the sole discretion of the Developer and the CAO to enhance the economic viability of the Private Development Project; provided, however, that the Developer shall not make any material change to the Private

Development Project as shown on the Design Proposal, whether individually with respect to any phase or in the aggregate, without the advance written consent of the City.

Section 4.2. Compliance with Agreement and Laws During Development. The Developer shall at all times undertake the Private Development Project in conformance with this Agreement and all applicable laws, rules and regulations, including all subdivision, zoning, environmental or other ordinances of the City. Any agreement of the Developer related to the rehabilitation, reconstruction, repair or remodeling of the Private Development Project with any contractor, subcontractor or 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. Prevailing Rate of Hourly Wages. The Developer acknowledges that the Prevailing Wage Act of Illinois (820 ILCS 130/0.01 et seq.) as supplemented and amended (the "PW Act"), may be applicable to all or part of the Private Development Project. As and to the extent required by the PW Act, the Developer agrees to pay or cause to be paid not less than the prevailing rate of hourly wages to all laborers, workers and mechanics employed by the Developer or any contractor or subcontractor in connection with the construction of Private Development Project. The most recently revised prevailing rate of hourly wages, as determined by the Illinois Department of Labor for Champaign County, Illinois in connection with any applicable construction period can be obtained from the City or from the Illinois Department of Labor, including at www.state.il.us/agency/idol/rates/rates.htm.

Section 4.4. Reserved.

Section 4.5. 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 rehabilitation, reconstruction, repair or remodeling of the Private Development Project, whether or not suit is filed.

Section 4.6. Continuing Compliance with Laws. The Developer agrees that upon completion and in the continued use, occupation, operation and maintenance of the Private Development Project thereafter, the Developer will comply with all applicable federal and state laws, rules, regulations and ordinances of the City.

Section 4.7. Real Estate Tax Obligations. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general real estate taxes, and all applicable interest and penalties thereon, that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Development 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 Development 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 Development Project Site upon which the Private Development Project is located and shall be in full force and effect until December 31, ~~2029~~ ²⁰³⁴, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Development 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 4.7 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 Development Project Site or any part thereof.

ARTICLE V
PAYMENT FOR ELIGIBLE REDEVELOPMENT PROJECT COSTS

Section 5.1. Payment Procedures. Except as otherwise provided in Section 7.5 of this Agreement, 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 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 Chief Administrative Officer (the "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 the amount of the total Eligible Redevelopment Project Costs paid and incurred by the Developer have not been sufficiently documented as specified herein. 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 3.1(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 immediately following calendar year or years.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1. Defaults - Rights to Cure. Failure or delay by either party to timely perform any material 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 default 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 having completed the closing in connection with any conventional financing required for the completion of each phase of the Private Development Project on or before November 15, 2004 in connection with Phase 1 and on or before June 30, 2006 in connection with Phase 2, having entered into a construction contract or contracts to undertake such completion of each phase of the Private Development Project on or before December 31, 2004 in connection with Phase 1 and on or before June 30, 2006 in connection

with Phase 2, and having substantially completed each phase of the Private Development Project at a total cost of not less than \$10,000,000.00 on or before the dates specified in Section 4.1 of this Agreement. If the Developer shall fail to provide to the City evidence of the closing in connection with such conventional financing or any such construction contract or contracts or shall otherwise fail to demonstrate that it has fulfilled its obligations on or before each of the dates specified in this Section 7.1 within ten (10) days following written notice of such failure from the City to the Developer, the City shall have no further obligations under this Agreement and this Agreement shall thereupon automatically terminate and be of no force or effect.

Section 7.2 Entire Contract and Amendments. This Agreement (together with the Exhibits A, B and C 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; Effect of Failure to Amend. 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 as is set forth in Section 3.1 hereof, if, as and when received, and not otherwise. Anything to the contrary notwithstanding, however, in the event that the City fails for any reason to amend the Redevelopment Plan in order to extend the date of completion of the Redevelopment Projects and the retirement of obligations issued to finance Eligible Redevelopment Project Costs to such date as shall occur on or after the expiration of the term of this Agreement as provided in Section 3.3 of this Agreement, the City's payment obligations which become due and payable after December 31, 2010 under Section 3.1(a) of this Agreement shall, to the extent Incremental Property Taxes in the Fund have not otherwise been set aside and allocated to the payment thereof, become a general obligation of the City to which its credit, resources or general taxing power are pledged.

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 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:
The New Lincoln Square
201 Lincoln Square
Urbana, IL 61801
Attn: Manager
Tel: (217) 367-4092 / Fax: (217) 367-0557

with a copy to: James Webster
104 W. University Avenue
Urbana, IL 61801
Tel: (217) 344-0973 / Fax: (217) 347-7506

- (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 Private Development 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 of the calendar year in which the last reimbursement obligation of the City becomes due and payable to the Developer under Section 3.1 of this Agreement; provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Sections 4.5 and 4.7 of this Agreement shall be and remain in full force and effect in accordance with the express provisions of each such Section and the City's obligations under Section 3.2 of this Agreement shall be and remain in full force and effect for the term specified in the Parking Agreement..

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

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

(SEAL)

By: Tal Sattellwante
Mayor

ATTEST:

Phyllis D. Clark
City Clerk

Date: 12/9/04

THE NEW LINCOLN SQUARE, LLC

(SEAL)

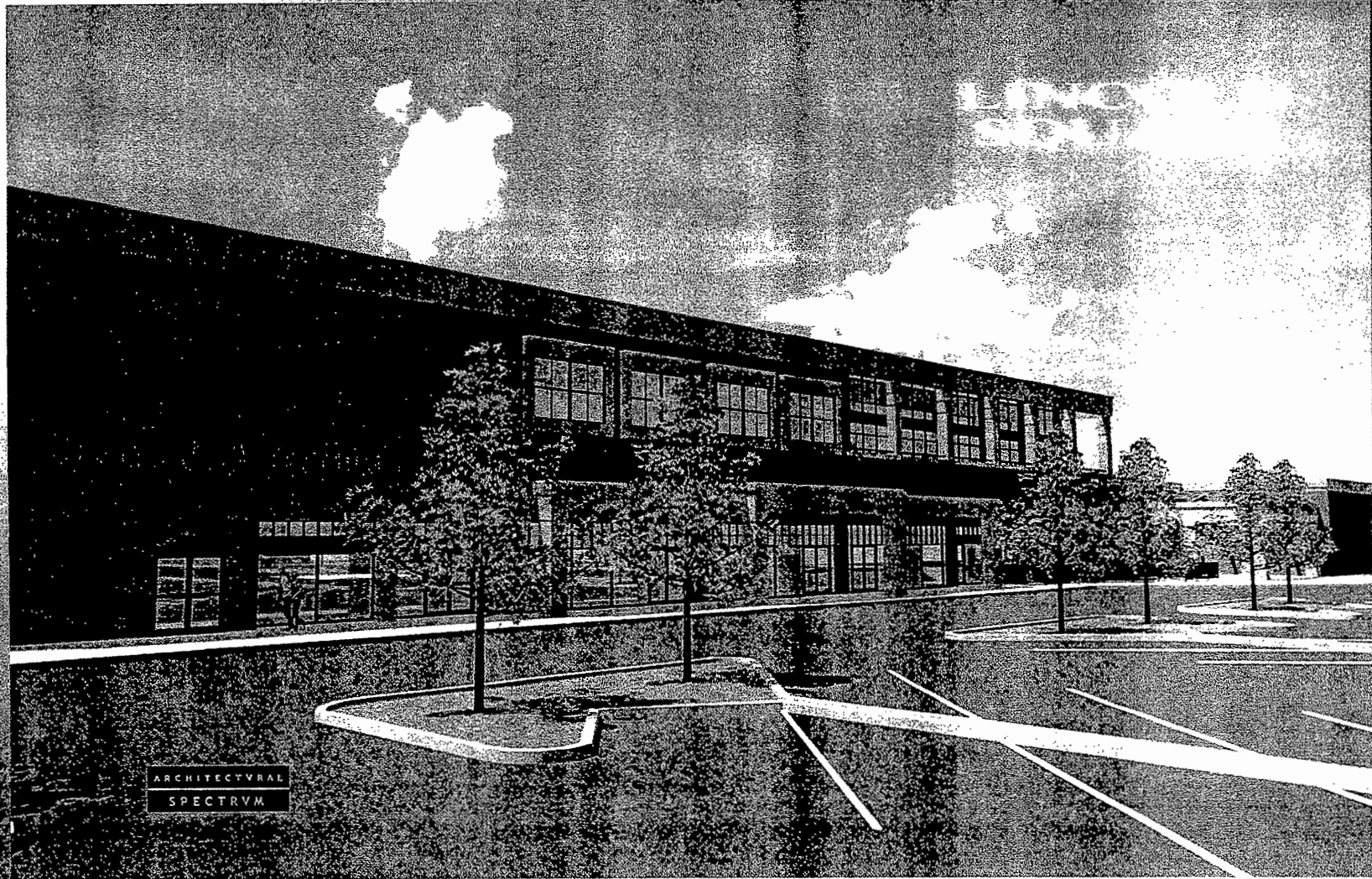
By: [Signature]
Its Manager

Date: 12/15/04

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

EXHIBIT A

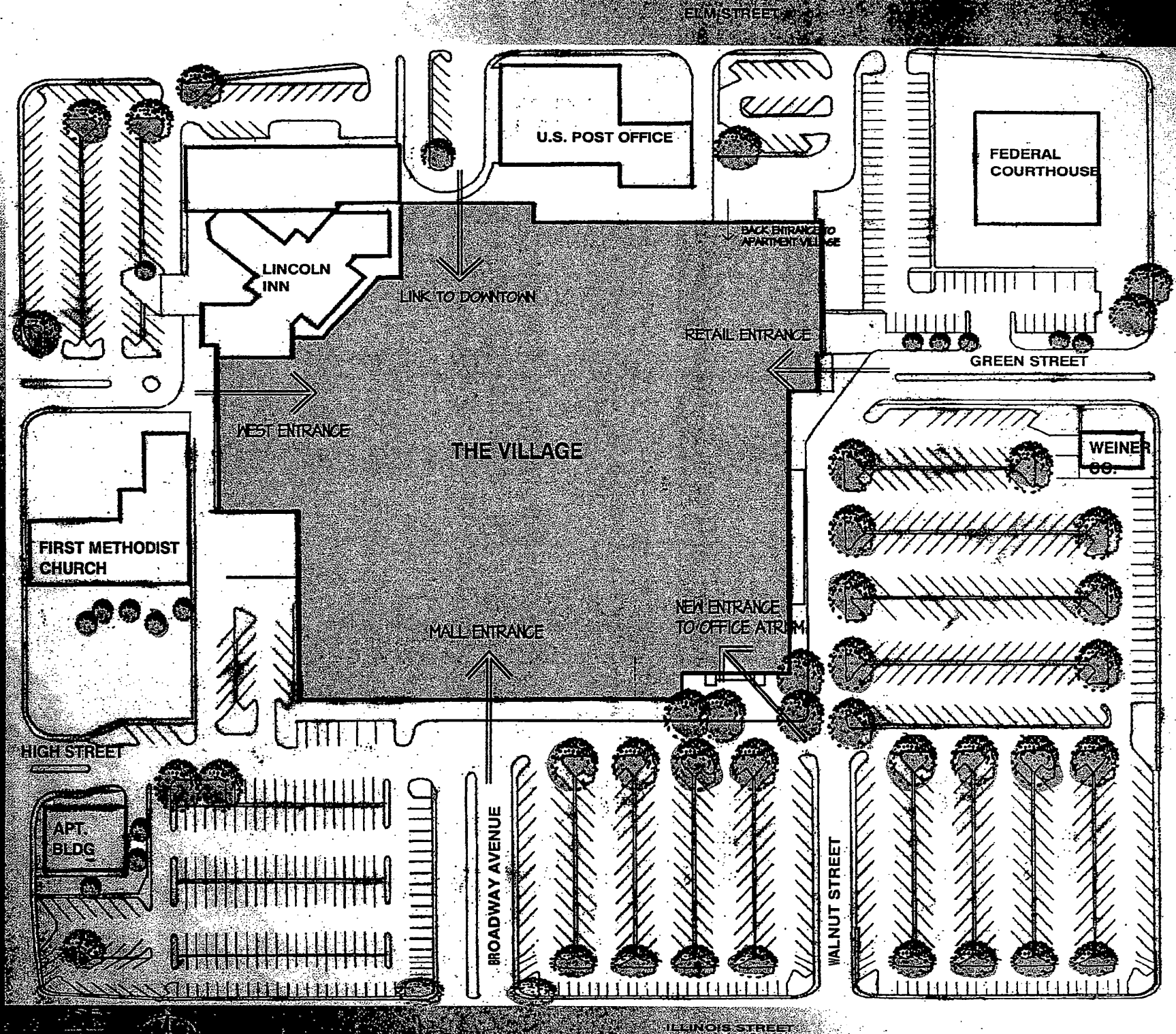
Design Proposal



ARCHITECTURAL
SPECTRUM

The Village at Lincoln Square
Urbana, Illinois





ELM STREET

U.S. POST OFFICE

FEDERAL COURTHOUSE

LINCOLN INN

LINK TO DOWNTOWN

BACK ENTRANCE TO APARTMENT VILLAGE

RETAIL ENTRANCE

GREEN STREET

WEST ENTRANCE

THE VILLAGE

WEINER CO.

FIRST METHODIST CHURCH

NEW ENTRANCE TO OFFICE ATRIUM

MALL ENTRANCE

HIGH STREET

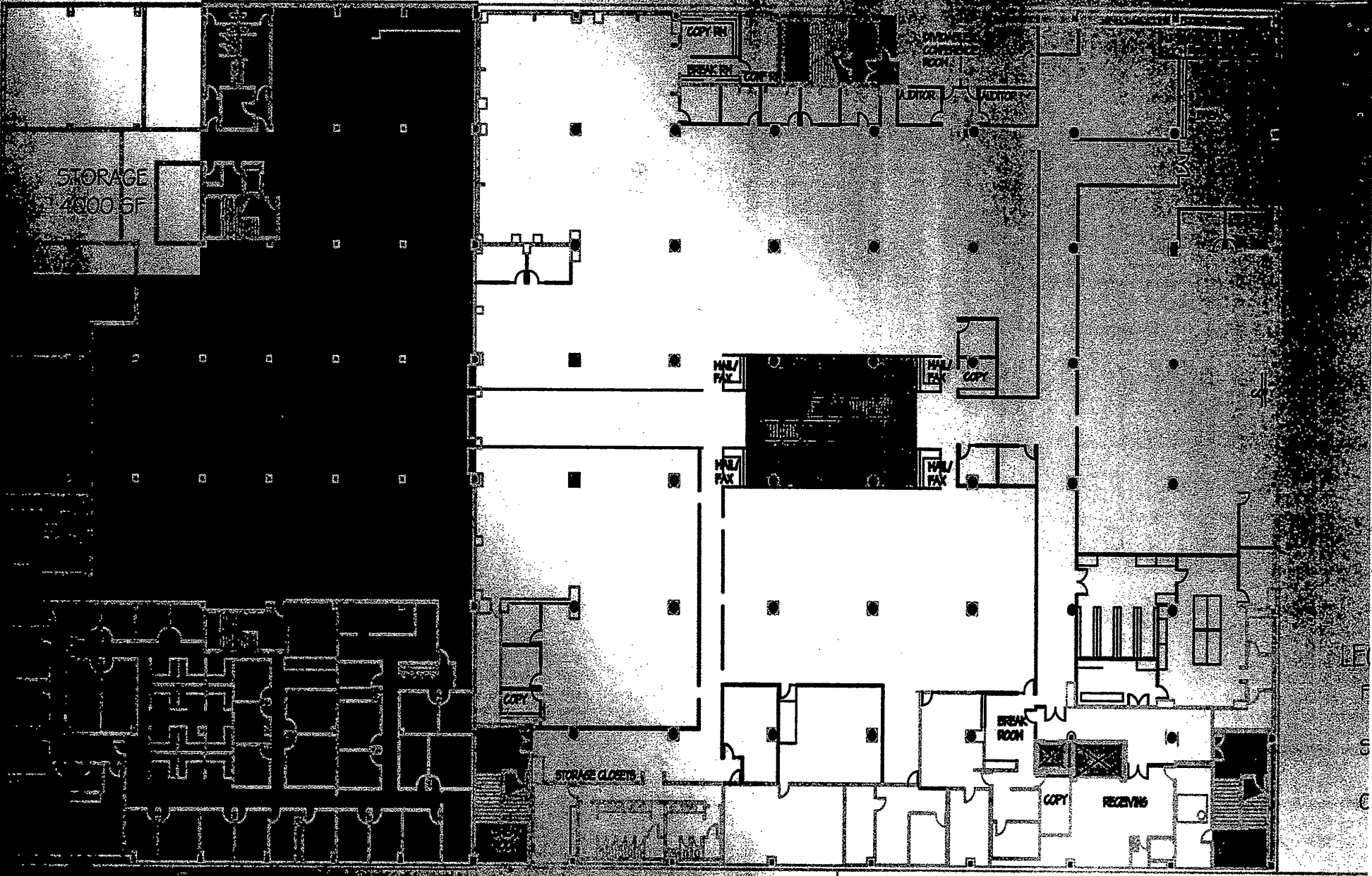
APT. BLDG.

BROADWAY AVENUE

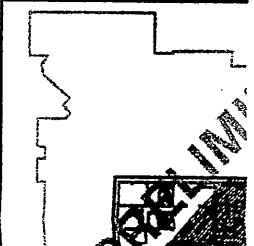
WALNUT STREET

VINE STREET

ILLINOIS STREET

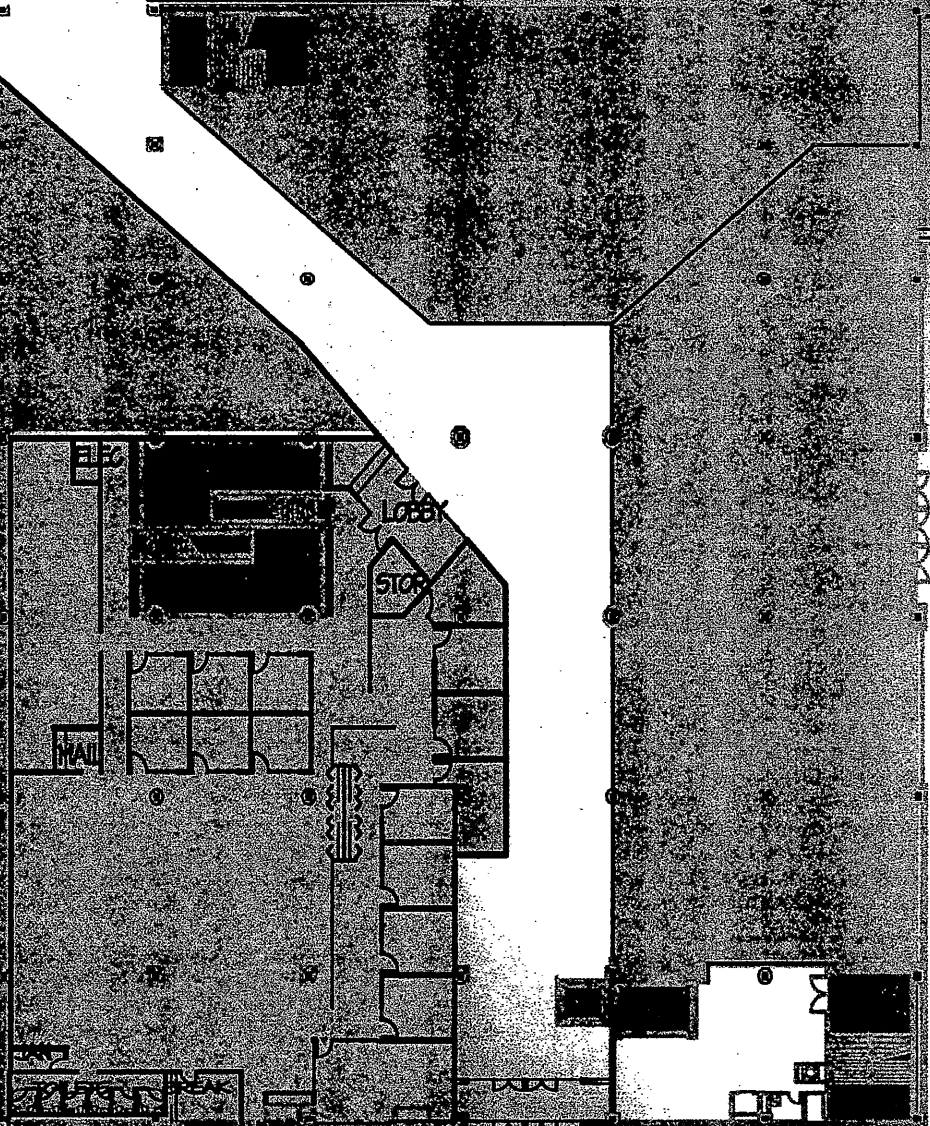


KEYPLAN

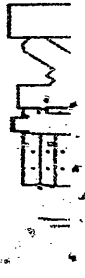


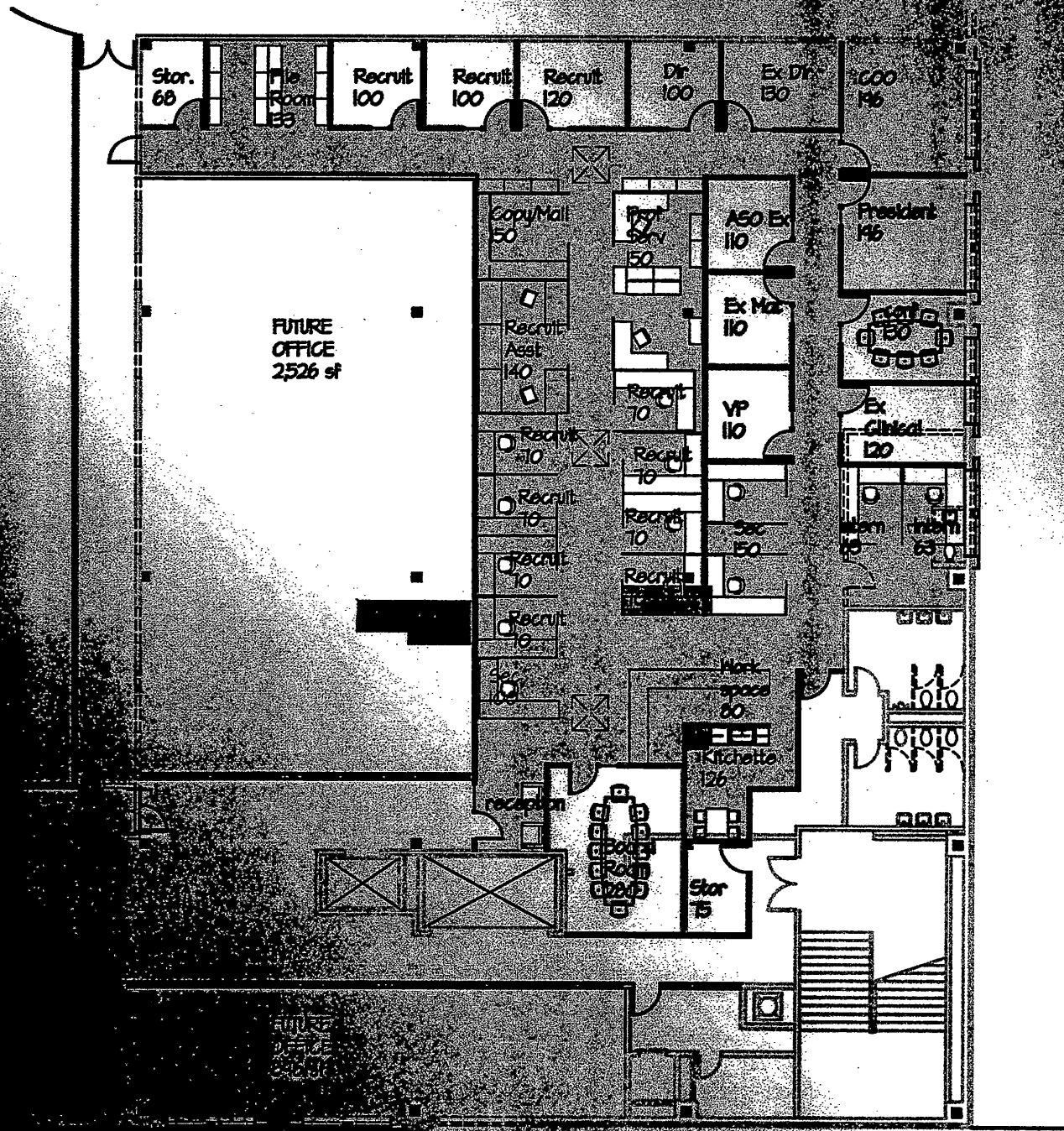
RENDERING & MAIN SET
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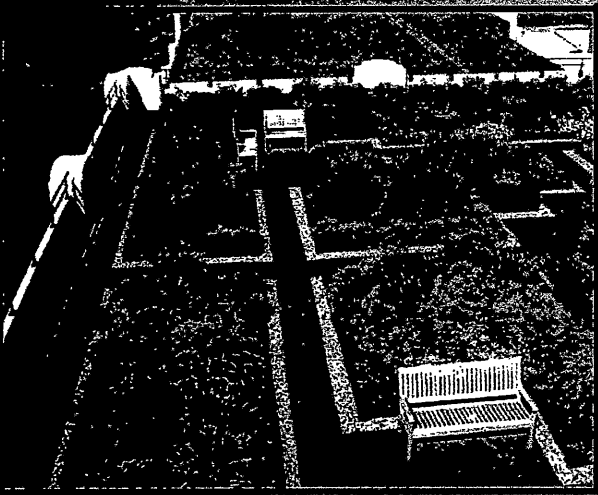
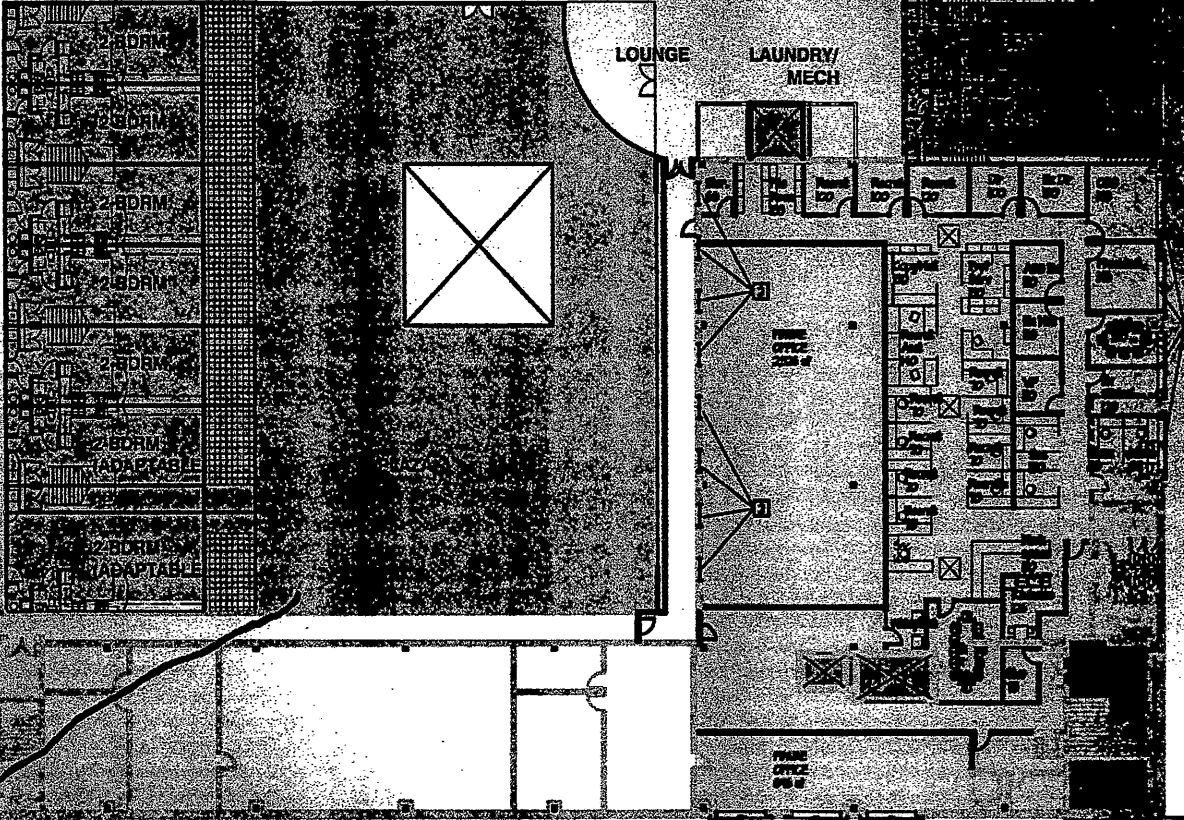
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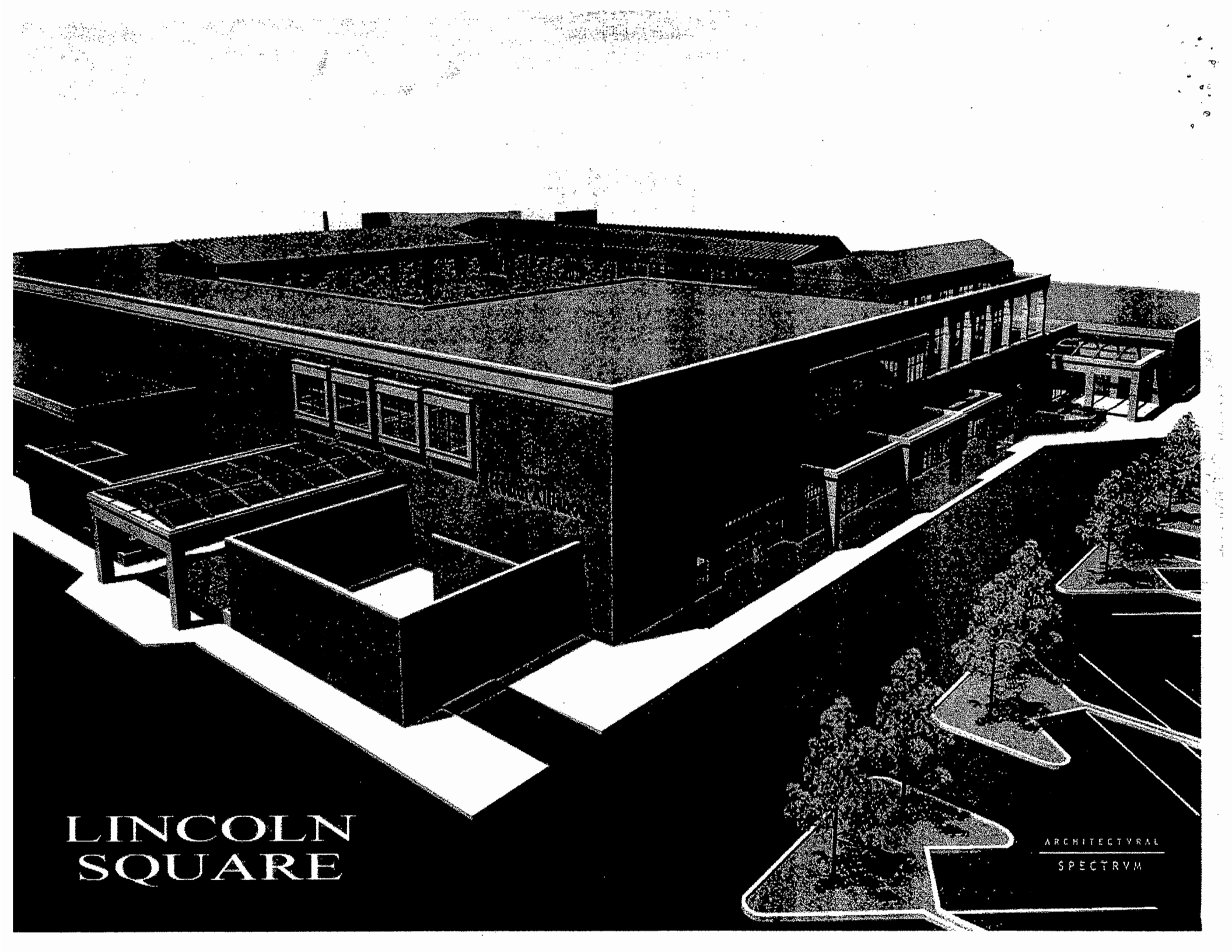
ARY



STRATUM MED
SCHEME B (67301 SF)
 SCALE 1/8" = 1'-0" 12/04

PRELIMINARY

EXAMPLE OF GREEN ROOF APPLICATION



LINCOLN
SQUARE

ARCHITECTURAL
SPECTRUM

EXHIBIT B

Description of Development Project Site

Lot 1 and Lot 10 of the Central Business Addition to the City of Urbana, Champaign
County, Illinois

EXHIBIT C

An Agreement to Provide Parking Facilities