

**AN ORDINANCE AUTHORIZING THE MAYOR  
TO EXECUTE A DEVELOPMENT INCENTIVE AGREEMENT  
WITH CHAMPAIGN-URBANA MOTEL LIMITED PARTNERSHIP**

(Holiday Inn Express)

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

Section 1. That An Agreement Between The City of Urbana, Illinois and  
Champaign Urbana Motel Limited Partnership, 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.

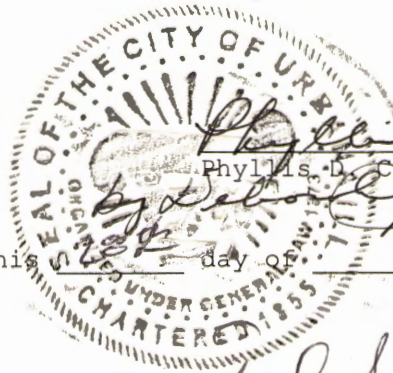
PASSED by the City Council this 21st day of February,  
2005.

AYES: Alix, Chynoweth, Hayes, Patt, Roberts, Whelan, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ February,  
2005.



*Phyllis D. Clark*  
Phyllis D. Clark, City Clerk

*Robert J. Roberts*  
Deputy Clerk

*Tod Satterthwaite*  
Tod Satterthwaite, Mayor

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**DEVELOPMENT INCENTIVE AGREEMENT**

**by and between the**

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

**and**

**CHAMPAIGN URBANA MOTEL LIMITED PARTNERSHIP  
AN ILLINOIS LIMITED PARTNERSHIP**

Dated as of March 1, 2005

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**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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**LIST OF EXHIBITS**

EXHIBIT A      Legal Description of Development Project Site  
EXHIBIT B      Site Plan

## DEVELOPMENT INCENTIVE AGREEMENT

**THIS DEVELOPMENT INCENTIVE AGREEMENT** (including any exhibits and attachments hereto, collectively, this “**Agreement**”) is made and entered into as of March 1, 2005, 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 **Champaign Urbana Motel Limited Partnership**, an Illinois limited partnership (the “**Developer**”).

### RECITALS

**WHEREAS**, the Developer proposes to acquire, construct and install (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 Developer is unwilling to undertake the Private Development Project without certain 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.

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

“**Private Development Project**” means the acquisition, construction and installation upon the Development Project Site of each of the following: (i) a motel facility containing not less than 72 separate room accommodations (“**Phase I**”); and (ii) a stand alone convention facility containing not less than 15,000 square feet (“**Phase II**”).

“**Site Plan**” means the preliminary layout of the Development Project Site as depicted on the attached Exhibit B.

**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 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 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 partnership duly organized, validly existing and in good standing under the laws of the State of Illinois, the general partner of which is Glen Garrison.

**(b) Power and Authority.** The Developer is the sole owner of the Development Project Site and 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 general partner. 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. 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. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and provisions of any projections associated with any of the provisions of this Agreement.

### **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 providing the following financial incentives in connection with the Private Development Project:

**(a) Phase I.** The City covenants and agrees to reserve or appropriate funds in an amount not less than \$75,000.00 to undertake utility relocations or extensions or to provide public



improvements such as street lights, sidewalks or driveway approaches for Phase I of the Private Development Project; and

(b) **Phase II.** The City covenants and agrees to provide such other financial incentives in connection with Phase II of the Private Development Project as may set forth in either a supplement and amendment to this Agreement or a separate agreement.

**Section 3.2. City's Obligation to Participate in Phase II Preliminary Design Work.** In connection with the Developer's obligations under Section 4.2 of this Agreement below, the City covenants and agrees to provide staff and other resources to the Developer for the purposes of participating in the development of engineering, drainage, zoning and other municipal considerations related to the completion of a design proposal for Phase II of the Private Development Project.

**Section 3.3. Interstate Oriented Signage.** The City, by and through its administrative staff, covenants and agrees to recommend the approval of a major variance for an interstate oriented sign for the Private Development Project sufficient to assure visibility to both eastbound and westbound traffic on Interstate 74.

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

**Section 4.1. Agreement to Construct the Private Development Project.** The Developer covenants and agrees to commence and complete the Private Development Project in the manner and with the effect set forth in this Agreement, substantially in accordance with such schedule as follows:

<b><u>Activity</u></b>	<b><u>Completion Date</u></b>
Construction—Phase I	January 15, 2006
Design Proposal—Phase II	March 1, 2006

**Section 4.2. Developer Design Obligation.** The Developer covenants and agrees to contract for such professional architectural and engineering services as may be required to complete a design proposal for Phase II of the Private Development Project on or before the date specified therefore in Section 4.1 of this Agreement above.

**Section 4.3. Compliance with Agreement and Laws During Development.** The Developer shall at all times undertake Phase I of the Private Development Project in conformance with this Agreement and all applicable federal, state and local laws, rules and regulations, including all subdivision, zoning, environmental or other ordinances of the City. Any agreement of the Developer related to Phase I 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 4.4. 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 Private Development Project, whether or not suit is filed.

**Section 4.5. Continuing Compliance with Laws.** The Developer agrees that upon completion and in the continued use, occupation, operation and maintenance of Phase I 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 4.6. 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 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, 2025, 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**

### **DEFAULTS AND REMEDIES**

**Section 5.1. 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 5.2. Remedies.** In the event of a breach of this Agreement by the Developer under any of the terms and provisions hereof, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party in the event of a breach of this Agreement by the other party under any of the terms and provisions hereof shall be to institute legal action against the other party for specific performance or other appropriate equitable relief. Except for any payments which become due and payable in accordance with the provisions of subsection (a) of Section 3.1 hereof, under no circumstances shall the City be subject to any monetary liability or be liable for damages (compensatory or punitive) under any of the other provisions, terms and conditions of this Agreement.

**Section 5.3. Costs, Expenses and Fees.** If either party defaults in the performance of its obligations hereunder, and is determined in 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 VI**

### **MISCELLANEOUS PROVISIONS**

**Section 6.1. 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 Phase I of the Private Development Project and having entered into a construction contract or contracts to undertake such completion of Phase I of the Private Development Project at a total cost of not less than \$4,000,000.00 on or before June 1, 2005. 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 on or before the date specified in this Section 6.1 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 and effect.

**Section 6.2. Entire Contract and Amendments.** This Agreement (together with Exhibits A and B 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 6.3. 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 6.4. 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 6.5. Special and Limited Obligation.** This Agreement shall constitute a special and limited obligation of the City according to the terms hereof.

**Section 6.6. 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 6.7. 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 6.8. 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 6.9. 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:  
Johnson Development Company  
1999 Wabash Avenue, Suite 206  
Springfield, IL 62704  
Attn: Glen Garrison  
Tel: (217)793-1005/ Fax: (217)793-1041
  
- (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 6.10. 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 6.11. 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 6.12. 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 6.13. 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 6.14. 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 6.15. Term.** Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect until March 1, 2006; 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 or manager(s) as of the date set forth below.

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

(SEAL)

By: Tal Sattulwala  
Mayor

ATTEST:

Shirley D. Clark  
City Clerk

Date: March 24, 2005

**CHAMPAIGN URBANA MOTEL LIMITED  
PARTNERSHIP**

By: Glen Garrison  
Glen Garrison  
Its General Partner

Date: 3-17-05

[Exhibits A and B follow this page and are an integral part of this Agreement in the context of use.]

**EXHIBIT A**

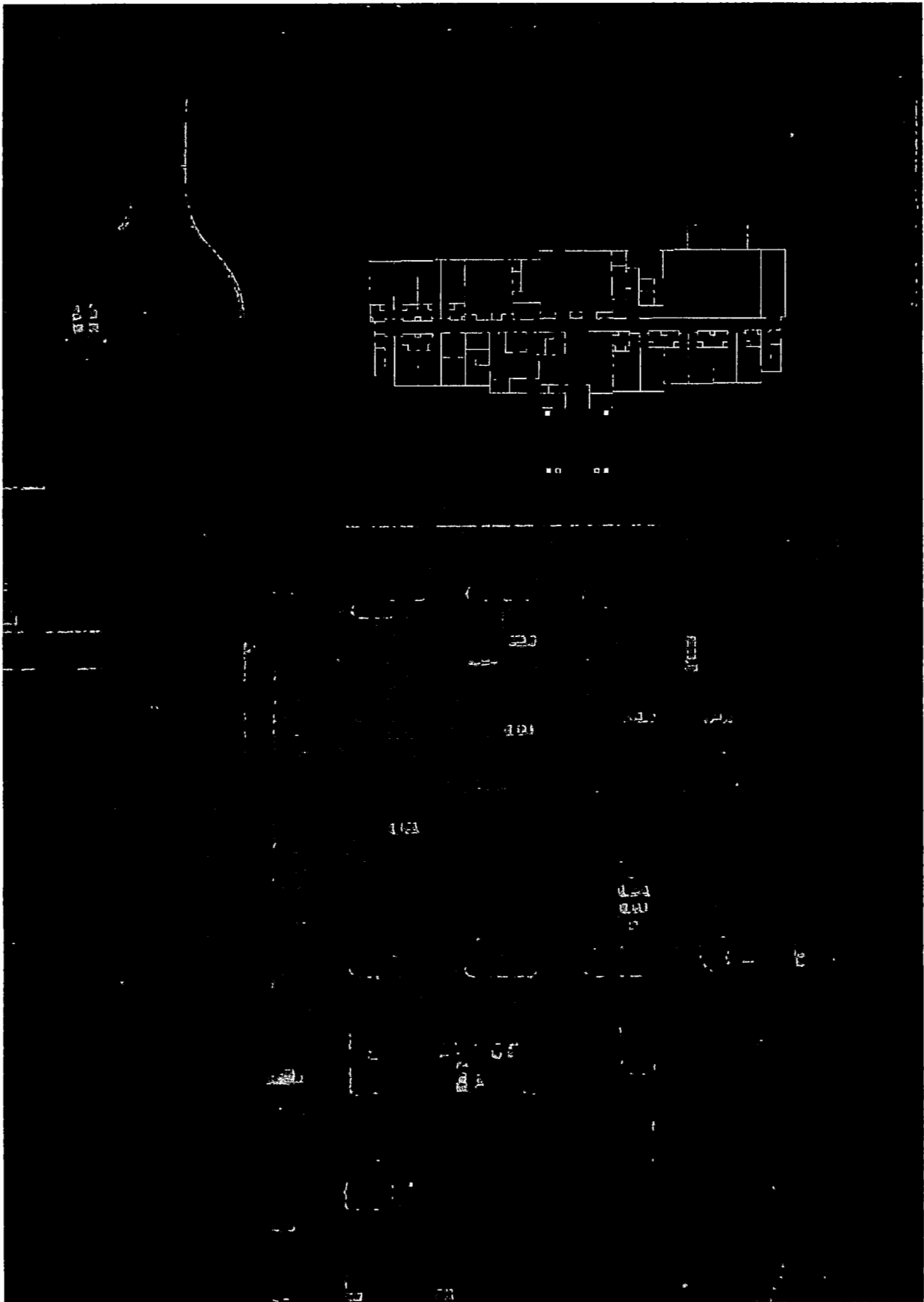
**Description of Development Project Site**

BEGINNING AT AN IRON PIPE SURVEY MONUMENT FOUND AT THE NORTHWEST CORNER OF LOT 1 IN GEORGE JOHNSON FIRST SUBDIVISION, URBANA, CHAMPAIGN COUNTY, ILLINOIS AS FILED FOR RECORD IN BOOK "CC" AT PAGE 97 IN THE OFFICE OF THE RECORDER OF CHAMPAIGN COUNTY, ILLINOIS; THENCE NORTH 89 DEGREES 06 MINUTES 59 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY LINE OF F.A.I. ROUTE 74, A DISTANCE OF 294.92 FEET TO AN IRON PIPE SURVEY MONUMENT FOUND AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 53 MINUTES 15 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 1, SAID LINE ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF KENYON ROAD, A DISTANCE OF 294.14 FEET TO AN IRON PIPE SURVEY MONUMENT SET; THENCE SOUTH 89 DEGREES 06 MINUTES 59 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 297.44 FEET TO AN IRON PIPE SURVEY MONUMENT SET ON THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 23 MINUTES 49 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 294.15 FEET TO THE POINT OF BEGINNING, CONTAINING 2.00 ACRES, MORE OR LESS, ALL SITUATED IN URBANA, CHAMPAIGN COUNTY, ILLINOIS.

**EXHIBIT B**

**Site Plan**





## Holiday Inn Express Proposed Site Plan



Proposed Property Line

