



DEPARTMENT OF

**COMMUNITY DEVELOPMENT
SERVICES**

Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden

FROM: Elizabeth H. Tyler, AICP, Director

DATE: February 8, 2007

SUBJECT: East Campus Commercial Project Phase II Agreement (Gregory Place II)

Description

Following-up on the success of Gregory Place I, which was completed in 2004, Gregory Place II, L.L.C. (the Developer) has asked Urbana City Council to consider an agreement necessary for the development of the East Campus Commercial Project Phase II, also known as Gregory Place II. Gregory Place II will be a five-story project consisting of no less than 54,000 gross square feet of commercial space and no less than 140 luxury residential units. The project will include first floor retail, second floor offices, and three floors of luxury residential units. It will be located to the east of the Phase I development, across Gregory Place.

In a related action, City Council will be asked to approve a rezoning of the subject site from R-5, Medium High Density Multiple Family Residential to CCD, Campus Commercial District, and a Special Use Permit, both of which are necessary to make the project possible. On January 18, 2007, Plan Commission unanimously recommended approval for both Plan Case 1959-M-05 (rezoning) and Plan Case 1959-SU-05 (SUP).

The proposed Development Agreement addresses items pertaining to use of right-of-way and economic development assistance for future retail tenants.

Background

On April 7, 2003, the Urbana City Council approved a Development Agreement with Gregory Place L.L.C. to make possible the first phase of the East Campus Commercial Project, known as Gregory Place. Phase I is a four-story mixed-use building with first floor retail and residential above. The residential component of Phase I is currently completely leased and the commercial component is 85% leased with strong interest in the two remaining commercial spaces.

Due to the success of the first phase, the Developer has decided to move forward with Gregory Place II and has obtained approval from the University of Illinois to proceed with the development on

University-owned property. As indicated above, the agreement for Gregory Place II involves development of a five-story project consisting of no less than 54,000 gross square feet of commercial space and no less than 140 luxury residential units.

Issues and Discussion

There are several items of interest from the proposed agreement that should be highlighted. As part of the agreement, the City agrees to waive the cost of retiring the minimum number of parking meters necessary for the developer to create curb cuts for access to the project. The Developer has worked with staff to minimize the impact to existing parking spaces, and it is estimated that there will be a net loss of only one City of Urbana metered parking space.

Also included in the agreement, the City agrees to reserve a class “A” liquor license for a qualified applicant, but limits the license by requiring that 50% of the sales for the license holder be food sales. This restriction will ensure that any liquor sales requiring a liquor license will be secondary to a larger restaurant operation.

Additionally, the City agrees to reserve up to three 0% interest retail tenant improvement loans of up to \$30,000 with an additional grant of up to \$1,000. The agreement also calls out the types of businesses that would qualify for assistance. This is consistent with the previous agreement for Phase I. Tenants from Phase I used three \$1,000 start-up grants and one interest subsidy. This assistance was helpful in the successful leasing efforts in Phase I.

As part of the agreement, the City will also contribute \$10,000 for sidewalk extension “bump-outs” at the southeast and southwest corners of Oregon Street and Gregory Place. These extensions are designed to improve pedestrian safety and are consistent with the recommendations of the Campus Area Transportation Study Phase II.

The Developer’s responsibilities include a commitment to construct a five-story mixed-use project of no less than 54,000 gross square feet of commercial, including first floor retail and second floor office, and no less than 140 luxury residential units at a construction cost of at least \$8,500,000. The Developer also agrees to complete the project by August 15, 2009.

As part of this agreement, the Developer also agrees to install, operate, and maintain decorative street lighting at the Developer’s cost. This street lighting will be on the north and south side of the project and will be consistent with the decorative street lighting installed as part of Phase I. In order to make this decorative street lighting possible, two right-of-way use agreements for Oregon Street and Nevada Street are incorporated into and attached to the development agreement.

It should also be noted that, while the agreement for Phase I required a section for payment in lieu of taxes, the agreement for Phase II does not require a similar provision. As the land for Phase I was owned by the University of Illinois and less than one acre, per Illinois statutes, that portion of the project was not subject to standard real estate taxation. Therefore, the agreement for Phase I required a provision for payment in lieu of taxes. Although the land for Phase II is also owned by the University of Illinois, it is greater than one acre, and as such, is subject to standard real estate taxation for improvements.

Fiscal Impact

As has been indicated above, the agreement includes a project cost of no less than \$8,500,000. Assuming a market value of 90%, we can assume a taxable value for the project of \$7,650,000. Based on that taxable value, the City can expect approximately \$32,900 in annual property tax revenue with a total annual property tax benefit to all taxing districts of almost \$210,000.

This figure is based on property tax alone, and does not include potential sales tax revenues from future retail tenants. It is difficult to estimate sales tax revenues attributable to this project as that number will be determined by the number and type of future retail tenants.

The City is contributing \$10,000 toward sidewalk extensions to improve pedestrian safety as well as three interest-free tenant loans with accompanying grants. However, with the revenues generated by both property taxes and sales tax, the City will recapture its investment in a relatively short period of time.

Options

The City Council has the following options with respect to this Development Agreement:

1. The City Council may authorize the Mayor to enter into the proposed Development Agreement with Gregory Place II, L.L.C.
2. The City Council may authorize the Mayor to enter into the proposed Development Agreement with Gregory Place II, L.L.C., subject to specific modifications.
3. The City Council may deny authorization to enter into the proposed agreement.

Recommendation

Staff recommends that the Committee of the Whole forward the attached ordinance and Development Agreement to the City Council's regular meeting scheduled on February 19, 2007 with a motion for approval.

Prepared by:

Tom Carrino, Economic Development Manager

Exhibits:

- A. Ordinance
- B. Development Agreement

cc: Scott Kunkel

ORDINANCE NO. 2007-02-023

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH GREGORY PLACE II, L.L.C.

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

Section 1. That a Development Agreement between the City of Urbana and Gregory Place II, L.L.C., 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 _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Laurel Lunt Prussing, Mayor

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF URBANA AND

GREGORY PLACE II, L.L.C

This Development Agreement (including any attachments and exhibits collectively, the “Agreement”) is dated as of the ____ day of _____, 2007, is by and between the CITY OF URBANA, and Illinois home-rule municipality, in Champaign County, Illinois (the “City”), and GREGORY PLACE II, L.L.C., an Illinois Limited Liability Corporation (“GPII” or the “Developer”), even though the parties have executed this Agreement on different dates.

WHEREAS, due to the chance positioning of the University of Illinois on the border between the Cities of Champaign and Urbana, most commercial development that serves the University population occurred within the corporate limits of the City of Champaign; and

WHEREAS, the University of Illinois purchased several commercial uses for University academic building expansion over the last thirteen years thereby reducing the tax base of Urbana and further limiting commercial opportunities in the east campus area; and

WHEREAS, it has been a long term goal of the City of Urbana to encourage commercial development in the campus community in the City of Urbana to better serve the student population in Urbana and to gain some reasonable share of sales tax revenues; and

WHEREAS, the City of Urbana in cooperation with the University have jointly developed plans for a commercial development in the area of Gregory Place between Nevada Street and Oregon Street, which plans include the vacation of Gregory Place right-of-way; and

WHEREAS, the joint efforts of the City of Urbana and the University resulted in the University soliciting requests for proposals for the development envisaged, and as a result of the consideration of the various proposals, the University selected Gregory Place, L.L.C. to go forward with the development; and

WHEREAS, Phase I of the development was successfully completed in 2004; and

WHEREAS, the University has authorized Gregory Place II, LLC to proceed with Phase II of the development (hereafter simply “Development”), it is now appropriate for the relationship between Gregory Place II, LLC and the City of Urbana with regard to the Development to also be refined and delineated.

NOW THEREFORE, IT IS AGREED AS FOLLOWS between the City of Urbana (hereafter simply “City”) and Gregory Place II, LLC (Hereafter simply “Developer” of “GPII”):

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

Section 1.2 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.

Section 1.3 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. And to the extent, if at all, anything to be done under this Agreement by the City which is not in conformance with

statutes, the provisions of this Agreement shall control, it being the intention of the City to invoke its constitutional Home Rule powers and Article VII, Section 10 (Intergovernmental Cooperation) of the Illinois Constitution to support the provisions of this agreement.

Section 1.4 Validity. 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, however, 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.

Section 1.5 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.

Section 1.6 Governmental Consents and Approvals. No consent or approval by any governmental authority other than the City is required in connection with the execution and delivery by the City of this Agreement.

Section 1.7 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:

Section 1.8 Organization. The Developer is a Illinois Limited Liability corporation 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.

Section 1.9 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.

Section 1.10 Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Developer. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by law, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

Section 1.12 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.

Section 1.13 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.

Section 1.14 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 (a) to which the Developer is a party and (b) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

Section 1.15 Disclaimer of Warranties. The City and the Developer acknowledge that none has made any warranties to the other, except as set forth in this Agreement. Nothing has come to the attention of the Developer to question the assumptions or conclusions or other terms and the Developer assumes all risks in connection with the practical realization of any such private development.

ARTICLE II

CITY OBLIGATIONS

The City will continue to devote staff time and resources as necessary to assist in the development of a cooperative plan with the University of Illinois and GPII to facilitate the Development on the real estate described in Exhibit "A", and in particular, the City commits itself to the following:

Section 2.1. Expeditious Review. The City agrees to complete a building plan review within seven (7) days of the receipt of final plans and to conduct building inspections within 24 hours from request.

Section 2.2. Parking Meter Removal. The City agrees to waive the cost of retiring the minimum number of parking meters necessary for Developer to create curb cuts as required to provide access to the new parking area for the Development.

Section 2.3. Agreement for Use of Right-of-Way. The City further covenants and agrees to grant the Developer a limited right to install decorative streetlights, consistent with the decorative streetlights installed as part of the Phase I development, on the south side of Oregon Street, immediately north of the development, and the north side of Nevada Street, immediately south of the Development, such right to be in such form and substance as set forth in Exhibit A and Exhibit B, attached hereto and hereby incorporated herein by this reference thereto. Developer agrees that the cost of installing, operating, maintaining, and replacing the decorative streetlights shall be the responsibility of Developer.

Section 2.4. Outdoor Seating. The City agrees to work cooperatively with Developer should future commercial tenants in the Development desire outdoor seating areas. Developer agrees that outdoor seating shall not extend into City right of way or hinder pedestrian traffic on public sidewalks in City right of way. Developer and/or commercial tenants shall be responsible for all permits and fees associated with the outdoor seating areas.

Section 2.5. Liquor License. The City agrees to reserve for a qualified applicant, a class 'A' liquor license for a restaurant establishment on the site where 50% of the sales of said establishment are food sales.

Section 2.6. Retail Tenant Incentives. The City agrees to reserve up to three (3) 0% interest retail tenant improvement loans of up to \$30,000, with an additional grant of up to \$1000 each for opening expenses as evidenced by a certificate of occupancy with the following restrictions:

A. Compliance with underwriting criteria of participating lenders and city program guidelines;

B. Loans/grants shall be limited to the following uses:

- (1). Apparel shop
- (2). Art and Craft store
- (3). Art Supplies
- (4). Bakery
- (5). Bicycle sales
- (6). Bookstore
- (7). Coffee shop
- (8). Computer supply
- (9). Confectionary
- (10). Delicatessen
- (11). Drug store
- (12). Dry goods
- (13). Electronics sales
- (14). Jewelry Sales
- (15). Meat or fish market
- (16). Music store
- (17). Photocopying Service
- (18). Restaurant
- (19). Shoe store
- (20). Sporting goods
- (21). Stationery/gift shop
- (22). Video store

(23). Other equivalent or similar uses

Section 2.7. Marketing Assistance. The City agrees to provide marketing assistance via the City of Urbana web site and Community Development Services staff.

Section 2.8. Intersection Bumpouts. Subject to review and approval by the City Engineer, upon completion of the work by the Developer, the City will contribute a total of \$10,000 toward the installation of corner sidewalk extensions into the southeast and southwest corner of the intersection of Oregon Street and Gregory Place. Said payment will be made within 30 days after receipt of an invoice for such work.

ARTICLE III

DEVELOPER'S OBLIGATIONS

The Developer agrees as follows:

Section 3.1. Development. The Developer agrees to build on the real property described in Exhibit C a five-story mixed use development, depicted in Exhibit D, consisting of no less than 54,000 gross square feet of commercial space and no less than 140 residential units (55 two-bedroom and 85 one-bedroom units) ("Phase II" or "Development") or equivalent at a construction cost in excess of at least \$8,500,000.

Section 3.2. Completion Date. The Developer agrees to complete said construction as set forth in Section 3.1 for occupancy no later than August 15, 2009.

Section 3.3. Real Estate Taxes. Because the development will occur on real estate described in Exhibit C which is owned by the University of Illinois and is thus normally exempt from

standard real estate taxation, Developer has agreed to increase the site area to greater than one acre, eliminating the requirement for a leasehold valuation approach for real estate tax assessment, as provided in 35 ILCS 200/15-55, and instead providing for standard real estate tax assessment.

ARTICLE IV.

DEFAULTS AND REMEDIES

Section 4.1 Defaults - Rights to Cure. Failure or delay by either Party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the other Party. Except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which can not reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of such default, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, 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.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Developer, and may not be modified or amended except by a written instrument executed by the Parties.

Section 5.2 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to 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 5.3 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 5.4 Special and Limited Obligation. This Agreement shall constitute special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged.

Section 5.5 Legally Valid and Binding. This Agreement shall constitute a legally valid and binding obligation of the City according to the terms hereof.

Section 5.6 Waiver. Any Party to this Agreement may elect to waive or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 5.7 Cooperation and Further Assurances. The City and the Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 5.8 Notices. All notices, demands, requests, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Developer:

Scott Kunkel
Gregory Place II, LLC
C/O JSM Development
505 South Fifth Street
Champaign, Illinois 61820
Phone (217) 359-5828
Fax (217) 359-5839

To the City:

Bruce K. Walden, Chief Administrative Officer
City of Urbana, Illinois

400 South Vine Street
Urbana, Illinois 61801
Phone: (217) 384-2454
Fax: (217) 384-2426

With a copy to:

Legal Division
400 South Vine Street
Urbana, Illinois 61801
Phone: (217) 384-2464
Fax: (217) 384-2460

Section 5.9 Successors in Interest. This Agreement shall only be binding upon and inure to the benefit of the Parties hereto and their respectively authorized successors and assigns.

Section 5.10 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

Section 5.11 Illinois Law. This Agreement shall be construed and interpreted under the laws of the State of Illinois.

Section 5.12 Costs and Expenses. If either Party defaults in the performance of its obligations hereunder, the Parties agree that the defaulting Party shall pay the non-defaulting Party's costs of enforcing the defaulting Party's obligations under this Agreement, including but not limited to attorneys' fees and expenses.

Section 5.13 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 5.14 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.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

CITY OF URBANA, ILLINOIS

GREGORY PLACE II, LLC

By: _____
Mayor

By: _____

Date: _____

Its: _____

Date: _____

(SEAL)

ATTEST:

ATTEST:

Notary Public

City Clerk

Date: _____

EXHIBIT A

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Nevada Street Between Gregory Place and Lincoln Avenue)

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Nevada Street Between Gregory Place and Lincoln Avenue)

THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter “City”), and Gregory Place II, LLC (hereinafter “Apartments”),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Apartments do mutually covenant and agree as follows:

A. Nevada Street is a 60-foot dedicated right-of-way between the vacated eastern right-of-way of Gregory Place and the western right-of-way of Lincoln Avenue.

B. The Apartments is herein granted by the City a limited right to install up to two (2) streetlights within the Nevada Street right-of-way (hereinafter “streetlights”). This limited right is wholly dependent upon the Apartments, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Apartments expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Apartments, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement provided that Apartments shall have a period to cure any such failure as otherwise set forth herein. This Agreement may be terminated at any time without notice upon the express written consent of both Parties. Either Party may terminate this Agreement for cause by giving written notice to the other Party at least forty-five (45) days prior to the proposed termination. For the purposes of this section, “for cause” means the breach of any material provision of this Agreement, which remains uncured for a period of thirty (30) days after serving the written notice thereof. A notice of termination shall specify the “cause” upon which such termination is based. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Apartments of the hereinabove described right-of-way shall at all times be subordinate to the City’s use of said right-of-way. This license does not authorize the placing of any conduit, wire, fiber, poles or other appurtenances above ground, except for streetlights and handholes or other appurtenances that are commonly associated with streetlight installations.

C. The construction and installation of said facility or any change thereof including extension, reduction or removal of the streetlights shall be subject to the issuance of a permit therefore by the City’s Director of Public Works (hereinafter referred to as “Director”). No streetlights shall be laid or installed in or under any streets, alleys or other public way until the Director therefore issues a permit. Said permit shall indicate the time, manner and place of laying or installing the streetlights. Permit approval shall be granted if the proposed improvements are consistent with the use of the public way granted by this Agreement. The application for a permit shall be accompanied by prints, plans and maps showing the proposed location of the streetlights to be laid or installed, the location of each streetlight to be entered,

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

and the number and placement of handholes or other openings to gain access to said streetlights. In the event of an emergency which the Apartments believes poses a threat of immediate harm to the public or to any of the Apartments' streetlights, the Apartments shall be permitted access to the public way to mitigate the threatened harm without the benefit of a permit, provided however the Apartments shall advise the Municipality of the emergency at its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation, operation, replacement, and maintenance of streetlights in the said right-of-way, which is shown on Exhibit A, which is attached to and incorporated into this agreement, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director, this Agreement shall immediately lapse and terminate. If the City believes that any streetlights of the Apartments are no longer in use by the Apartments or are otherwise abandoned by the Apartments, the City may notify the Apartments in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice must give the Apartments at least thirty (30) days to respond. If the Apartments demonstrate that the streetlights are still in use by the Apartments and are not otherwise abandoned by the Apartments, this Agreement shall remain in force and effect according to its terms. If the Apartments do not demonstrate within thirty (30) days of the notice that the streetlights are in use by the Apartments and are not otherwise abandoned by the Apartments, this Agreement shall be deemed lapsed and terminated. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

E. The Apartments, after doing any work shall, at its sole cost and expense, promptly repair and restore the site including all sidewalks, parkways or pavements disturbed by the Apartments to the condition in which they existed prior to the performance of the work, or nearly as practicable as determined by the City in the exercise of its reasonable discretion. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Apartments, then the Apartments, as soon as climatic conditions will reasonably permit shall promptly, and no more than fifteen days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by the Apartments. Such restoration shall be completed within ten (10) days after the date of commencement of such restoration work. In the event that the Apartments fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have no obligation to, perform such work and recover from the Apartments any costs and expenses the City incurs. In the event that such public way or improvement cannot be so repaired, replaced or restored, the Apartments shall justly compensate the City. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. The Apartments shall keep all structures which it shall construct by virtue of this Agreement, in a reasonably safe condition at all times, and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property. Any damage caused by the Apartments to any other utility

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

including storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or any facilities from the University of Illinois or any other utility company shall, at its sole cost and expense, promptly repair and restore said damaged facility.

F. In the event of an emergency, defined as imminent peril to person or property, or when the Apartments has inadequately complied with an order of the Director pursuant to Paragraph (B) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (B) impracticable under the circumstances present, the Apartments consents and agrees that the City or its duly authorized agent may remove the streetlights, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Apartments. Should the Apartments fail in any way to make timely payment to the City for such costs and expenses, the Apartments agree to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. The Apartments agree to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the installation of the streetlights, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Apartments shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. The Apartments acknowledge that it shall be fully responsible and bear all costs associated with any and all maintenance, replacement, or repair of the streetlights.

I. The Apartments shall provide as-built plans to the City, upon completion of the installation of the streetlights, in an electronic format compatible with the City's Geographic Information System within ninety (90) days of the completion of the streetlight work.

J. Annual payments shall be made to the City in the amount of one dollar and sixty-two cents (\$1.62) per lineal foot of licensed property. The amounts herein set for compensation shall, on January first of each year beginning January 1, 2008, be adjusted by the Consumer Price Index published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

K. The license granted pursuant to this article may not be transferred without the express written consent of the City, provided that such consent shall not be unreasonably withheld.

L. This license shall be non-exclusive. No license granted under this authority shall confer any exclusive right, privilege, or license to occupy the rights-of-way for any purpose.

M. No license granted under this authority shall convey any right, title, or interest in rights-of-way but shall be deemed a license only to use and occupy the right-of-way for the

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *Gregory Place II, LLC*
(700 South Gregory Place)

jurisdiction, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore, remain in full force and effect.

U. This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the Parties, and may be changed, modified or amended only by mutual written agreement executed by them.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the day and year first above written.

CITY OF URBANA, ILLINOIS

By: _____
Laurel Lunt Prussing, Mayor

ATTEST:

Phyllis D. Clark, City Clerk

* * *

GREGORY PLACE II, LLC

By: _____
(Signature)

(Print Name & Title)

ATTEST:

(Signature)

(Print Name & Title)

Prepared by and please return recorded copy to:

Jim Gitz, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801

EXHIBIT B

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Oregon Street Between Gregory Place and Lincoln Avenue)

AGREEMENT FOR USE OF RIGHT-OF-WAY

(Oregon Street Between Gregory Place and Lincoln Avenue)

THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter “City”), and Gregory Place II, LLC (hereinafter “Apartments”),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Apartments do mutually covenant and agree as follows:

- A. Oregon Street is a 60-foot dedicated right-of-way between the vacated eastern right-of-way of Gregory Place and the western right-of-way of Lincoln Avenue.

- B. The Apartments is herein granted by the City a limited right to install up to two (2) streetlights within the Oregon Street right-of-way (hereinafter “streetlights”). This limited right is wholly dependent upon the Apartments, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Apartments expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Apartments, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement provided that Apartments shall have a period to cure any such failure as otherwise set forth herein. This Agreement may be terminated at any time without notice upon the express written consent of both Parties. Either Party may terminate this Agreement for cause by giving written notice to the other Party at least forty-five (45) days prior to the proposed termination. For the purposes of this section, “for cause” means the breach of any material provision of this Agreement, which remains uncured for a period of thirty (30) days after serving the written notice thereof. A notice of termination shall specify the “cause” upon which such termination is based. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Apartments of the hereinabove described right-of-way shall at all times be subordinate to the City’s use of said right-of-way. This license does not authorize the placing of any conduit, wire, fiber, poles or other appurtenances above ground, except for streetlights and handholes or other appurtenances that are commonly associated with streetlight installations.

- C. The construction and installation of said facility or any change thereof including extension, reduction or removal of the streetlights shall be subject to the issuance of a permit therefore by the City’s Director of Public Works (hereinafter referred to as “Director”). No streetlights shall be laid or installed in or under any streets, alleys or other public way until the Director therefore issues a permit. Said permit shall indicate the time, manner and place of laying or installing the streetlights. Permit approval shall be granted if the proposed improvements are consistent with the use of the public way granted by this Agreement. The application for a permit shall be accompanied by prints, plans and maps showing the proposed location of the streetlights to be laid or installed, the location of each streetlight to be entered,

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

and the number and placement of handholes or other openings to gain access to said streetlights. In the event of an emergency which the Apartments believes poses a threat of immediate harm to the public or to any of the Apartments' streetlights, the Apartments shall be permitted access to the public way to mitigate the threatened harm without the benefit of a permit, provided however the Apartments shall advise the Municipality of the emergency at its earliest reasonable opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation, operation, replacement, and maintenance of streetlights in the said right-of-way, which is shown on Exhibit A, which is attached to and incorporated into this agreement, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director, this Agreement shall immediately lapse and terminate. If the City believes that any streetlights of the Apartments are no longer in use by the Apartments or are otherwise abandoned by the Apartments, the City may notify the Apartments in writing that the City is asserting its right to declare this agreement lapsed and terminated. Such notice must give the Apartments at least thirty (30) days to respond. If the Apartments demonstrate that the streetlights are still in use by the Apartments and are not otherwise abandoned by the Apartments, this Agreement shall remain in force and effect according to its terms. If the Apartments do not demonstrate within thirty (30) days of the notice that the streetlights are in use by the Apartments and are not otherwise abandoned by the Apartments, this Agreement shall be deemed lapsed and terminated. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

E. The Apartments, after doing any work shall, at its sole cost and expense, promptly repair and restore the site including all sidewalks, parkways or pavements disturbed by the Apartments to the condition in which they existed prior to the performance of the work, or nearly as practicable as determined by the City in the exercise of its reasonable discretion. In the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Apartments, then the Apartments, as soon as climatic conditions will reasonably permit shall promptly, and no more than fifteen days from receipt of notice from the City to do so, cause such sidewalk, parkway or pavement to be repaired or restored to the condition in which it existed before said sidewalk, parkway or pavement was disturbed by the Apartments. Such restoration shall be completed within ten (10) days after the date of commencement of such restoration work. In the event that the Apartments fails to commence and complete the restoration work in the manner and within the time periods prescribed herein, the City may, but shall have no obligation to, perform such work and recover from the Apartments any costs and expenses the City incurs. In the event that such public way or improvement cannot be so repaired, replaced or restored, the Apartments shall justly compensate the City. All excavations in lawns or grassy parkways shall be immediately backfilled, tamped and then restored within a reasonable time thereafter to the original condition with sod or hydroseed in accordance with the applicable provisions of this Agreement. The Apartments shall keep all structures which it shall construct by virtue of this Agreement, in a reasonably safe condition at all times, and shall maintain such traffic control and protection during the construction, repair or renewal work performed hereunder as will reasonably avoid danger to life, limb and property. Any damage caused by the Apartments to any other utility

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

including storm and sanitary sewers and their services, street lighting, traffic signals, field tiles or any facilities from the University of Illinois or any other utility company shall, at its sole cost and expense, promptly repair and restore said damaged facility.

F. In the event of an emergency, defined as imminent peril to person or property, or when the Apartments has inadequately complied with an order of the Director pursuant to Paragraph (B) above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph (B) impracticable under the circumstances present, the Apartments consents and agrees that the City or its duly authorized agent may remove the streetlights, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Apartments. Should the Apartments fail in any way to make timely payment to the City for such costs and expenses, the Apartments agree to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. The Apartments agree to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the installation of the streetlights, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Apartments shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

H. The Apartments acknowledge that it shall be fully responsible and bear all costs associated with any and all maintenance, replacement, or repair of the streetlights.

I. The Apartments shall provide as-built plans to the City, upon completion of the installation of the streetlights, in an electronic format compatible with the City's Geographic Information System within ninety (90) days of the completion of the streetlight work.

J. Annual payments shall be made to the City in the amount of one dollar and sixty-two cents (\$1.62) per lineal foot of licensed property. The amounts herein set for compensation shall, on January first of each year beginning January 1, 2008, be adjusted by the Consumer Price Index published by the United States Department of Labor, Chicago area, all items for all urban consumers, or other generally recognized index which succeeds the Consumer Price Index.

K. The license granted pursuant to this article may not be transferred without the express written consent of the City, provided that such consent shall not be unreasonably withheld.

L. This license shall be non-exclusive. No license granted under this authority shall confer any exclusive right, privilege, or license to occupy the rights-of-way for any purpose.

M. No license granted under this authority shall convey any right, title, or interest in rights-of-way but shall be deemed a license only to use and occupy the right-of-way for the

**AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)**

limited purposes and term stated on the grant. No license granted under this authority shall be construed as any warranty of title.

N. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

O. Notices transmitted to either party to this Agreement shall be addressed as follows. All notices required under this agreement shall be in writing. Notices shall be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the address of the respective Party as stated below, or to any changed address either Party may have fixed by notice. Notice shall be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice shall be deemed given on the date of the mailing.

<u>To the City:</u>	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Chief Administrative Officer City of Urbana 400 South Vine Street Urbana, Illinois 61801
---------------------	--	---

To the Apartments: Gregory Place II, LLC
Attention: Scott Kunkel
JSM Management
505 South Fifth Street
Champaign, Illinois 61820

Either party may designate by written notice a different address to which notices shall be sent.

Q. The Apartments shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

R. The initial term of this Agreement shall be twenty (20) years from the date of execution. Upon expiration of the initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) additional years, unless, no less than 90 days prior to the expiration of the current term, either party provides written notice to the other party of the intent not to renew.

S. The Apartments shall comply with all ordinances of the City of Urbana, including but not limited to all generally-applicable provisions regarding rights-of-way, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement. The Apartments shall comply with all conditions of permits issued to it.

T. In the event any one or more of the provisions contained in this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a Court of competent

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *Gregory Place II, LLC*
(700 South Gregory Place)

jurisdiction, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore, remain in full force and effect.

U. This Agreement and any written exhibits or addenda to it constitute the entire Agreement between the Parties, and may be changed, modified or amended only by mutual written agreement executed by them.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the day and year first above written.

CITY OF URBANA, ILLINOIS

By: _____
Laurel Lunt Prussing, Mayor

ATTEST:

Phyllis D. Clark, City Clerk

* * *

GREGORY PLACE II, LLC

By: _____
(Signature)

(Print Name & Title)

ATTEST:

(Signature)

(Print Name & Title)

Prepared by and please return recorded copy to:

Jim Gitz, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Gregory Place II, LLC
(700 South Gregory Place)

limited purposes and term stated on the grant. No license granted under this authority shall be construed as any warranty of title.

N. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

O. Notices transmitted to either party to this Agreement shall be addressed as follows. All notices required under this agreement shall be in writing. Notices shall be personally hand delivered or mailed by certified U.S. mail, return receipt requested, addressed to the address of the respective Party as stated below, or to any changed address either Party may have fixed by notice. Notice shall be deemed effective upon actual receipt of the notice, or, if certified mail delivery is not accomplished, notice shall be deemed given on the date of the mailing.

<u>To the City:</u>	Mayor City of Urbana 400 South Vine Street Urbana, Illinois 61801	Chief Administrative Officer City of Urbana 400 South Vine Street Urbana, Illinois 61801
---------------------	--	---

To the Apartments: Gregory Place II, LLC
Attention: Scott Kunkel
JSM Management
505 South Fifth Street
Champaign, Illinois 61820

Either party may designate by written notice a different address to which notices shall be sent.

Q. The Apartments shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

R. The initial term of this Agreement shall be twenty (20) years from the date of execution. Upon expiration of the initial term or any renewal term, this Agreement shall automatically renew for a subsequent term of five (5) additional years, unless, no less than 90 days prior to the expiration of the current term, either party provides written notice to the other party of the intent not to renew.

S. The Apartments shall comply with all ordinances of the City of Urbana, including but not limited to all generally-applicable provisions regarding rights-of-way, as such ordinances are now or hereafter amended, except to the extent that such ordinances directly and irreconcilably conflict with an express provision of this Agreement. The Apartments shall comply with all conditions of permits issued to it.

T. In the event any one or more of the provisions contained in this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect by a Court of competent

EXHIBIT C

LEGAL DESCRIPTION OF DEVELOPMENT SITE

The west 31 feet of the south 20 feet and the west 17 feet of the north 136 feet of Lot 7

and

Lot 8

and

The east 52 feet and the west 13' of the north 22 feet of the south 94' of Lot 9

All in the Forestry Heights Addition to the City of Urbana, Champaign County, Illinois

AND

The east 52 feet and the north 15 feet of the west 13' and west 13' of the north 47 feet of the south 59 feet of Lot 28

and

Lot 29

and

The west 31 feet of the north 20 feet and the west 17 feet of the south 137 feet of Lot 30

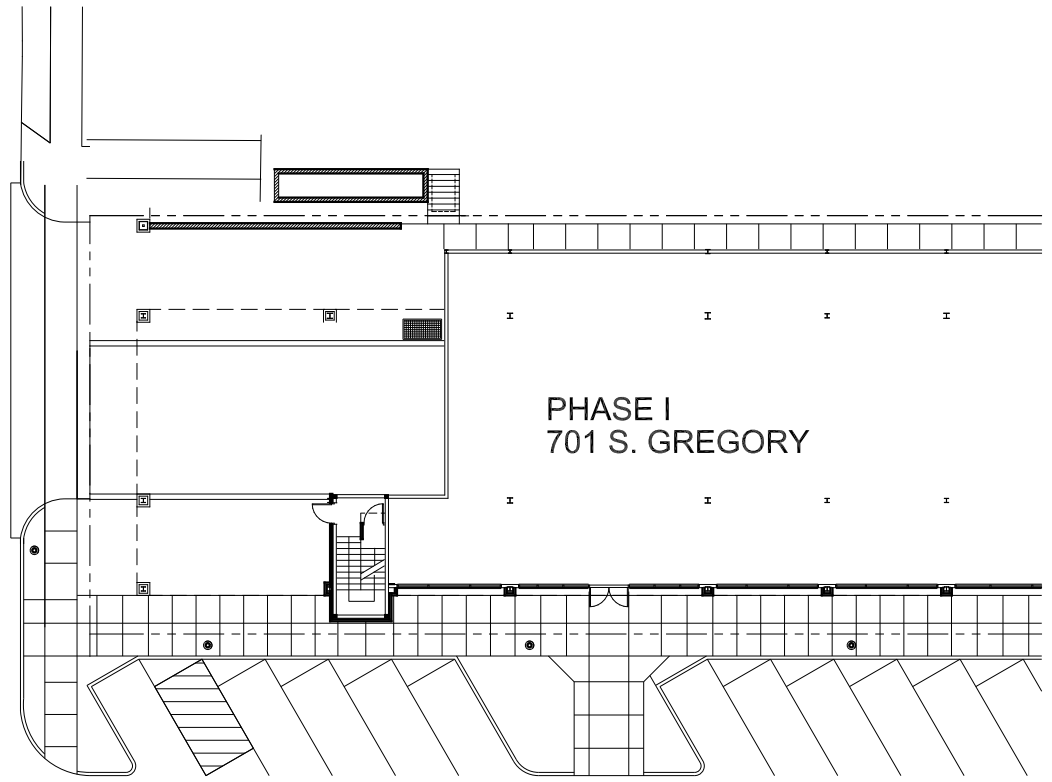
All in the University Addition to the City of Urbana, Champaign County, Illinois.

Said legal description describes a total of 43,594 square feet.

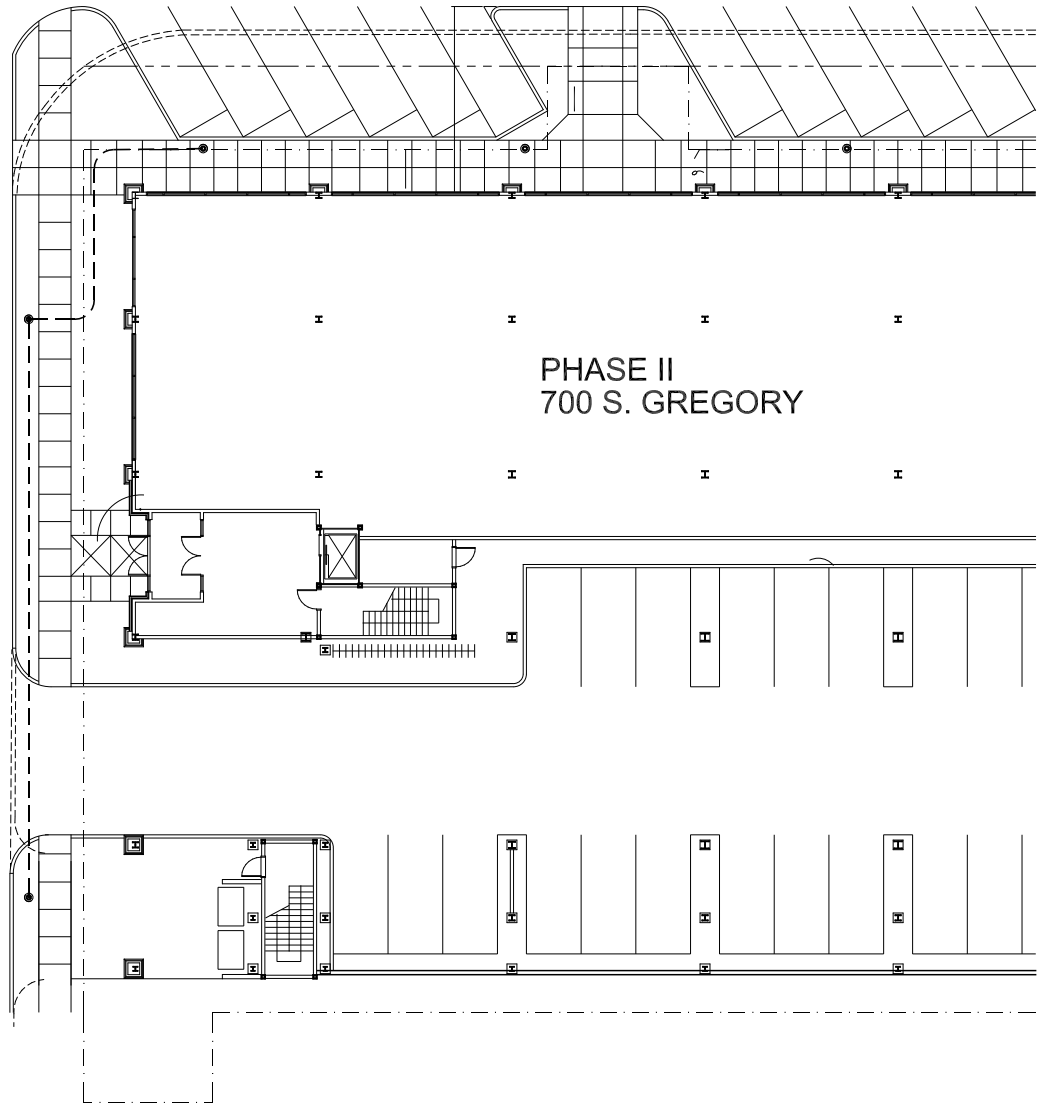
EXHIBIT D

SITE LAYOUT AND ELEVATIONS

NEVADA STREET



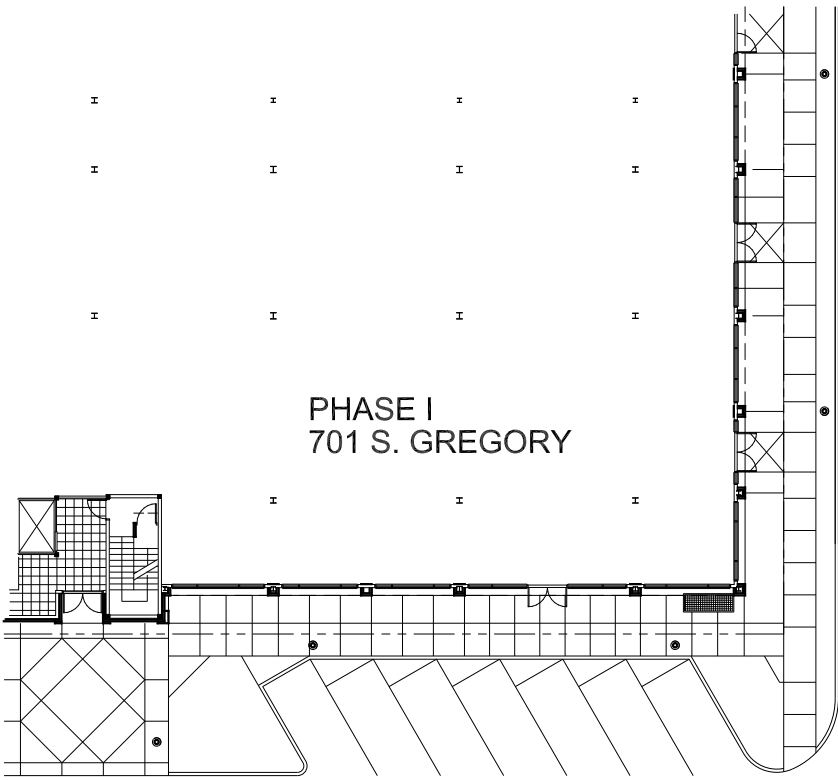
GREGORY PLACE



90 LF. RIGHT-OF-WAY OCCUPANCY
TYP. 3/4" CONDUIT W/ (3) #10

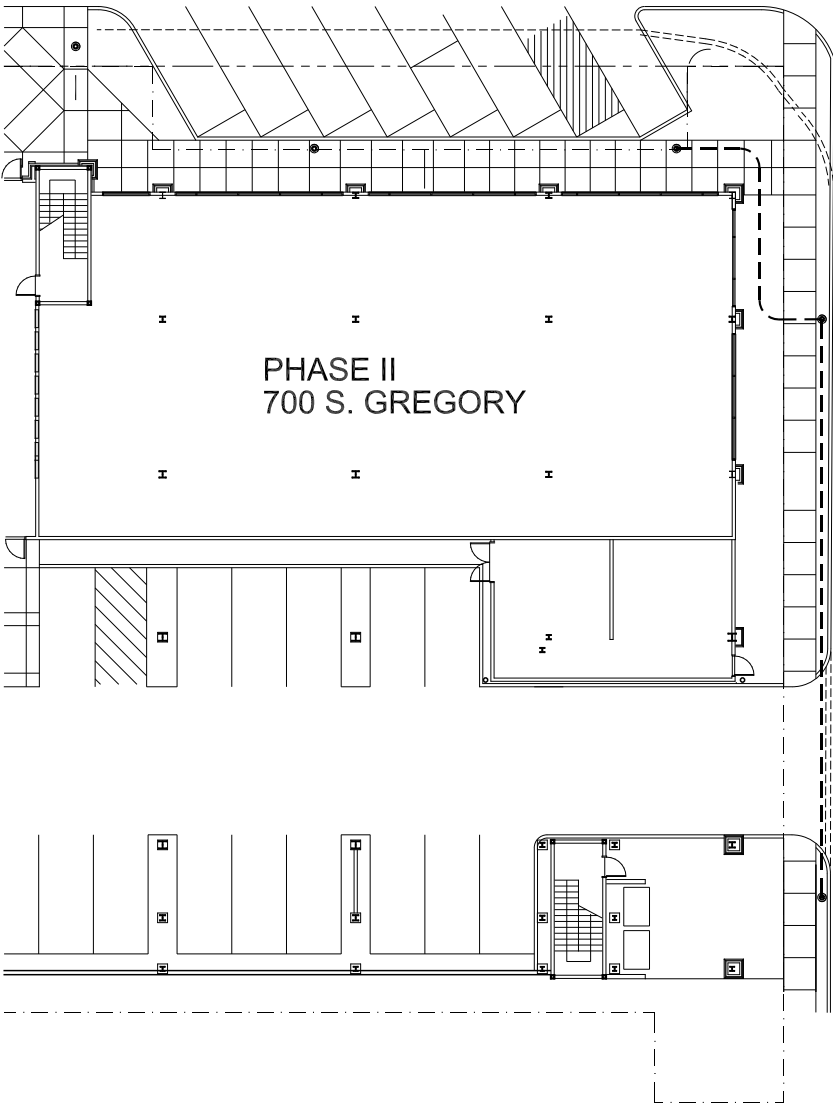
EXHIBIT A





PHASE I
701 S. GREGORY

GREGORY PLACE



PHASE II
700 S. GREGORY

90 LF. RIGHT-OF-WAY OCCUPANCY
TYP. 3/4" CONDUIT W/ (3) #10

OREGON STREET

EXHIBIT A

