



2022R17204
REC ON: 09/16/2022 02:43:03 PM
CHAMPAIGN COUNTY
AARON AMMONS

**REC FEE: 51.00** 

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STATE TAX:

COUNTY TAX: PLAT ACT:

PAGES 18

# **Recording Cover Sheet**

An Ordinance Amending Northgate Plaza Planned Unit Development
(Rocinante Holdings, LLC at 1502-1/2 Cunningham Avenue / Plan Case 2454-PUD-22)
[Ordinance No. 2022-08-035]

Prepared for recording by:

Phyllis D. Clark, City Clerk

400 S. Vine St., Urbana, IL 61801

(C)
Return to:

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



# CERTIFICATE OF PUBLICATION IN PAMPHLET FORM



I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the 22nd day of August 2022 the City Council of the City of Urbana passed and approved Ordinance No. <u>2022-08-035</u> entitled:

# AN ORDINANCE AMENDING NORTHGATE PLAZA PLANNED UNIT DEVELOPMENT

(Rocinante Holdings, LLC at 1502-1/2 Cunningham Avenue / Plan Case 2454-PUD-22) which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. <u>2022-08-035</u> was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the <u>26th</u> day of <u>August 2022</u>, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

Dated at Urbana, Illinois, this 26th day of August, 2022.



Phyllis D. Clark, City Clerk

#### ORDINANCE NO. <u>2022-08-035</u>

# AN ORDINANCE AMENDING NORTHGATE PLAZA PLANNED UNIT DEVELOPMENT

(Rocinante Holdings, LLC at 1502-1/2 Cunningham Avenue / Plan Case 2454-PUD-22)

WHEREAS, the City of Urbana ("City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Ordinance constitutes an exercise of the City's home rule powers and functions as granted in the Illinois Constitution, 1970; and

WHEREAS, on May 18, 1981, the Urbana City Council passed Ordinance No. 8081-120, approving a planned unit development ("PUD") for Busey 1<sup>st</sup> National, to be known as Northgate Plaza Planned Unit Development, on approximately nine acres generally located at the southeast corner of Cunningham Avenue and Perkins Road; and

WHEREAS, the original PUD Declaration and Development Plan requires all buildings to be accompanied by parking space provision, restricts buildings to delineated Building Areas, limits buildings to one-story in height and complementary to shopping center character, and prohibits recreation and training facilities; and

WHEREAS, Rocinante Holdings, LLC, an owner of one of the parcels, would like to expand their existing recreational facility with a sixty-foot-high structure that would be outside the Building Area designated in the original PUD Declaration and Development Plan, and would eliminate approximately 26 parking spaces, and has applied to amend the PUD Declaration and Development Plan to not restrict this expansion; and

WHEREAS, such application was presented to the Urbana Plan Commission as Plan Case No. 2454-PUD-22, and said commission held a public hearing on the proposed amendment at 7:00 p.m. on July 21, 2022, in accordance with Sections XI-2 and XIII-3 of the Urbana Zoning Ordinance and Section 11-13-14 of the Illinois Municipal Code (65 ILCS 5/11-13-14); and

WHEREAS, after due publication, the Urbana Plan Commission voted with five (5) ayes and zero (0) nays to forward Plan Case 2454-PUD-22 to the Urbana City Council with a recommendation to approve the amendment to the PUD as directed in Section 1 herein, subject to the conditions specified in Section 2 herein; and

WHEREAS, the amendment described herein conforms to the goals, objectives, and policies of the 2005 Comprehensive Plan, as amended from time to time; and

WHEREAS, the City Council, after due consideration, finds that the proposed amendment to the Northgate Plaza Planned Unit Development is consistent with the requirements and general intent of Section XIII-3 of the Urbana Zoning Ordinance, is in the best interests of the residents of the City, and is desirable for the welfare of the City's government and affairs.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

#### Section 1.

The "Declaration of Restrictions, Grant of Easements, and Establishment of Party Wall Rights" and the "Final Development Plan," as recorded in the Champaign County Recorder of Deeds as Document No. 1981R9107, shall be amended as shown in Attachment A, which is hereby incorporated by reference.

#### Section 2.

This amendment is effective only upon fulfillment of the following conditions:

- That the applicant must obtain consent to the modifications of the Declaration and Development Plan from all of the property owners and the tenants of Parcel A; and
- That construction of the proposed climbing facility must be in general conformance with the site plan as included in the Application as "Urbana Boulders Climbing Addition" dated June 17 and "Urbana Boulders Addition" dated June 24, 2022, as shown in Attachment B, which is hereby incorporated by reference.

#### Section 3.

Upon approval of this Ordinance, the City Clerk is directed to record a certified copy of this Ordinance with the Champaign County Office of Recorder of Deeds. The City Clerk is directed to publish this

Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

### PASSED BY THE CITY COUNCIL this 22nd day of August, 2022.

AYES: Wu, Kolisetty, Bishop, Wilken, Quisenberry

NAYS: None

ABSTENTIONS: None

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this 2415

day of August, 2022.

# DECLARATION OFRESTRICTIONS, GRANT OF EASEMENTS AND ESTABLISHMENT OF PARTY WALL RIGHTS

THIS DECLARATION OF RESTRICTIONS, AND ESTABLISHMENT OF PARTY WALL RIGHTS, GRANT OF

EASEMENTS, AND ESTABLISHMENT OF PARTY WALL RIGHTS, is made as of this \_\_\_\_ day of \_\_\_\_, 2022, by insert name of

Declarant, hereinafter called "Declarant." This instrument is, for convenience, hereinafter referred to as a "Declaration."

#### PRELIMINARY:

- 1. Declarant owns certain real property situated in the City of Urbana, County of Champaign, State of Illinois, described in Exhibit A, attached hereto and incorporated herein by reference. Said real property is divided into three (3) Parcels, which are hereinafter referred to separately as Parcels A, B, and C, which Parcels are hereinafter collectively referred to as the "Shopping Center." Attached hereto as Exhibit B is a plot plan of the Shopping Center, which is hereby incorporated herein by reference.
- 2. Declarant plans the development of the Shopping Center as an integrated retail sales area for the mutual benefit of all real property in the Shopping Center, and for such purposes Declarant does hereby fix and establish easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as 'Restrictions'), upon and subject to which all of said Shopping Center, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such restrictions shall run with the land and shall inure to and pass with said property and shall apply to and bind the respective successors in interest thereof, and all and each thereof, and is imposed upon said property as a mutual equitable servitude in favor of said property and any portion thereof.
- 3. Declarant anticipates the partial development of Parcels A and C at the present time and contemplates that Parcel B and the balance of Parcel C will also be ultimately developed for integration into the Shopping Center but, except as shown on Exhibit B, there are no firm plans for the development of Parcel B and the balance of Parcel C at the present time. Declarant does desire to provide certain restrictions and rights affecting Parcels B and C at this time, however, in contemplation of their proposed integration into the Shopping Center.

#### I. COMMON AREA DEVELOPMENT

- 1. For the purposes of this Agreement, all of the area within the Shopping Center to be used in common shall be referred to as "Common Area" and said Common Area effectively includes all areas within the Shopping Center other than "Building Areas. Said Common Area is delineated on the plot plan, which is Exhibit B hereto, and said Common Area shall be developed substantially as shown on said Exhibit B.
- 2. In the development and use of Parcels A, B and C, there should not be established or maintained any building, structure, or areas for the transaction of business, whether for retail stores or other purposes, for which there shall not be established and maintained a Common Area providing for parking facilities in a ratio as shown on the attached plot plan marked Exhibit B.

#### II. EASEMENTS

- 1. Declarant does hereby establish in favor of all subsequent owners and occupants of the Shopping Center, their customers and invitees, non-exclusive easements for the ingress and egress and for the passage and parking of motor vehicles into, out of, on, over and across all parking areas, driveways and service areas from time to time established on the Parcels of the Shopping Center, so that the Shopping Center may be used as an integrated area by the owners and occupants thereof and their customers and invitees.
- 2. Declarant does hereby establish in favor of all sub-sequent owners and occupants of the Shopping Center, their customers and invitees, non-exclusive easements for the ingress and egress and passage of pedestrians into, out of, on, over and across the Common Area from time to time established on the Parcels of the Shopping Center, so that the Shopping Center may be used as an integrated area by the owners and occupants thereof and their customers and invitees.
- 3. Declarant does hereby establish in favor of all subsequent owners of any portion of the Shopping Center non-exclusive easements under, through and across the Common Area of their respective Parcels for water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones or electrical conduits or systems, gas mains, other public utilities, and service easements. All such systems, structures, mains, sewers, conduits, lines and other public utilities instrumentalities shall be installed and maintained below the ground level or surface of such easements.
- 4. Declarant does hereby establish in favor of all subsequent owners of Parcels within the Shopping Center where the Building Areas on said Parcels are immediately adjacent easements for footings, foundations, and eaves (which includes, but is not limited to canopies and marquees) appurtenant to any building or structure on any such Parcel in the Shopping Center which may encroach into or over an adjoining Parcel. Such encroachments, however, unless otherwise agreed by the adjoining Parcel owners, shall be limited to a horizontal extension of not more than three (3) feet; and provided further that such easements for foundations or footings shall not be effective if a building has been constructed and exists within the applicable easement area, and the easement for overhangs in the event a building has been constructed within the applicable easement area shall be effective only with respect to that area above the existing building. In the event any easement for foundations or footings is utilized, the owner subject to the easement area shall have the right to use as a foundation for the wall of any building constructed on its Parcel any foundation or footing installed in the easement area granted pursuant to the provisions of this paragraph. It is the intention of Declarant hereby to provide that in consideration for the establishment of such easement over a particular parcel that the owner of such parcel shall have the right to use such extended foundations or footings in connection with any building constructed on such parcel so as to eliminate the need for any wasted space between buildings by allowing the walls of such buildings to be constructed immediately adjacent to each other.

- 5. Should any building constructed within the Shopping Center inadvertently encroach on any Parcel adjacent to said building in an area not covered pursuant to paragraph 4 above, which encroachment does not extend three (3) feet, the owner of the adjacent Parcel shall be deemed to have granted a perpetual easement for such encroachment.
- 6. Declarant does hereby establish in favor of all subsequent owners and occupants of Parcel A an easement over that portion of Parcel C shown on the attached Exhibit B for the purpose of maintaining, locating and erecting a free-standing pylon sign tower and sign to be located upon said Parcel, which easement shall also encompass the necessary wiring, conduit and attendant services thereto. The occupant of the building designated as "Drug Store" on Parcel C shall have the right (subject to local ordinance) to erect and maintain a sign on said pylon sign tower by paying to the occupant of the building located on Parcel A, one-half of the initial cost of constructing said sign tower, base and electrical service thereto. Said occupant of the building designated "Drug Store" on Parcel C shall submit the plan and specifications for said sign to the occupant of the building located on Parcel A for its prior written approval as to design and location thereof. Each of the signs located on said tower or towers shall be separately metered to the owner thereof.

#### III. OPERATION AND MAINTENANCE OF COMMON AREA

- 1. Areas to be used for motor vehicle parking purposes by employees or occupants of the Shopping Center may be designated within the Shopping Center from time to time by the owners of Parcels A, Band C, and the tenant, if any, of Parcel A acting unanimously. No employee of any owner, lessee, or other occupant of any part of the Shopping Center shall use any portion of the Common Area for motor vehicle parking purposes except such area or areas as may be designated in writing for such purposes as provided herein.
- 2. The owners of each of the parcels in the Shopping Center shall pay all taxes and assessments when due on their respective parcels. Each of said owners shall provide public liability insurance with limits of not less than \$300,000.00 for each individual and \$500,000.00 for each accident, and \$100,000.00 for property damage to cover all claims or judgments arising from the use of their respective parcels, and each shall supply the others, or the others' tenants, with certificates of such insurance. The policies of such insurance shall provide that the insurance represented by such certificate shall not be changed or cancelled without the giving of ten (10) days written notice to the holder of such insurance and, the holder of such certificates. The owners of each of the parcels in the Shopping Center shall maintain the Common Areas on their respective parcels, as shown on Exhibit B, in good condition and repair, including without limitation striping, patching, resurfacing, cleaning, drainage, providing electrical service thereto, and keeping same free of ice and snow. It is understood and agreed, however, that the owner of Parcel A shall be responsible for reimbursing to the owner of Parcel C for any maintenance cost and charges for the maintenance and the repair of the retention basin as shown on Exhibit B for 47.13% of such maintenance charges and costs. If any of such owners shall fail to so pay taxes and assessments when due, or maintain such insurance, or fail to so maintain said Common Area, the other owners or tenants of owners may pay said taxes, provide such insurance and/or perform such maintenance as required. The curing owner or

owner's tenant may then bill the defaulting owner for the expense incurred. The defaulting owner shall then have fifteen (15) days within which to pay said bill, and if the defaulting owner does not so pay, the curing owner shall have a lien on the parcel of said defaulting owner for the amount of said bill, which amount shall bear interest at the rate of fifteen per cent (15%) per annum until paid.

The lien provided for above may be filed for record by the curing owner as a claim of lien against the defaulting owner in the office of the Recorder of Deeds of Champaign County, Illinois, signed and verified, which shall contain at least:

- (i) A statement of the unpaid amount of costs and expenses.
- (ii) A description of the portion of the Shopping Center which is the subject of the lien; and
- (iii) The name of the owner or reputed owner of the property, which is the subject of the alleged lien.

  Such lien, when so filed and recorded against the real property described in said lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing such lien. Such lien shall be for the use and benefit of the person curing the default of the defaulting owner, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.
- 3. No building, structure or barriers of any kind shall be erected on any portion of Parcels A, Band C, except upon those portions designated "Building Area," "Barrier Median" and "Pylon Sign," on Exhibit B hereof, with the exception that there may be constructed and maintained upon or over said property a canopy or canopies projecting from such building area; and normal foundations and doors for ingress and egress may project from such building area; and, further, signs may be erected upon said canopy or canopies, so long as said signs do not obstruct the signs of the owners, or owners' tenants, of the other parcels. No signs other than the signs provided hereinabove, directional signs for guidance upon the parking and driveway areas, and the pylon signs depicted on Exhibit B hereof, shall be erected upon the parking area, driveway area, or building area, except such as are approved in writing by the owners of the respective parcels, plus the tenant, if any, of Parcel A.

#### IV. PARTY WALL AND BUILDING RESTRICTIONS

1. The southerly wall of the building, which is located on Parcel A, as depicted upon Exhibit B, is hereby declared to be a party wall. The owner of Parcel C, its tenants, successors, grantees, or assigns, shall have the right to use such wall as a party wall of a one (1) story building without having to obtain any permission or consent from the then owner or tenant, if any, of Parcel A; provided, however, that before said owner, tenant, successor, grantee or assign shall commence using such wall as a party wall, it shall first have paid to the party who developed Parcel A with buildings or its assigns, one-half of the cost incurred by said party developing Parcel A of constructing that portion of the party wall to be used by said owner, tenant, successor, grantee or assign (said cost being as determined by said party developing Parcel A), said sum to be equal to one-half of the product obtained by multiplying the per square foot cost of constructing the party wall by the number of square feet of said party wall to be used by said owner, tenant, successor, grantee or assign. Declarant does hereby establish an easement for the use of said party wall, both above

and below the surface of the ground, and including the footings and foundations thereof, for the purpose of constructing and maintaining s id party wall and for the purpose of inserting in the party wall such beams, trestles, plates and other supports as the owner, tenant, successors, grantees or assigns may desire in order for the maintenance and construction of its building; provided, the same shall not weaken, damage or otherwise injure the party wall. In the case of weakening, damage to or destruction of the party wall or any part thereof, including but not limited to, the footings and foundations thereof, the expense of strengthening, rebuilding or repairing the party wall shall be borne equally by the respective owners of the Parcels utilizing the same; provided, however, that in the event such weakening, damage or destruction is the result of one of the parties' negligent acts or omission, such expense shall be borne solely by the negligent or omitting party. The length or the height of the party wall shall not be extended without first obtaining the express written consent of the respective owners of the parcels utilizing the same, plus the tenant of Parcel A, if any. In addition, the owners of the respective parcels shall carry and pay for fire insurance with extended coverage endorsement covering their improvements on the respective parcels, and each shall name the other as co-insureds under such insurance policies as to the party wall and shall furnish certificates of insurance showing such designation.

2. All buildings constructed on Parcels A, B and C shall be sprinklered by adequate automatic sprinkler system or shall contain an outside wall constructed so as to be considered a standard firewall meeting all the standards of the Illinois Inspection Bureau and allowing the rating of any building as a separate and distinct unit from any other building built on the respective parcels.

#### V. GENERAL PROVISIONS

1. Covenants Run With The Land. Each easement, restriction and covenant over the respective parcels shall be appurtenant to and for the benefit of the other parcels and each part thereof. Each covenant, restriction and undertaking as to the respective parcels shall be a burden thereon for the benefit of the other parcels and each part thereof.

The restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon the Declarant, its successors, grantees and assigns; provided, however, that if any owner sells an portion or all of its interest in any parcel owned by such owner and obtains from the purchaser thereof an express agreement by which the purchaser assumes and agrees to be bound by the covenants and agreements herein contained, the vendor shall thereupon be released and discharged from any and all further obligations under this Agreement as such owner in connection with the property sold by it.

- 2. Duration. Except as otherwise provided herein, each easement created hereunder shall be for a perpetual duration and each covenant, restriction, and undertaking of this Declaration shall be for the term of fifty-five (55) years from the date hereof.
- 3. Injunctive Relief. In the event of any violation or threatened violation by any owner, lessee, or occupant of any portion of the Shopping Center of any of the terms, covenants, and conditions herein contained, in addition to the other remedies herein provided, any or all of the owners of the property included within the Shopping Center, and the tenant, if any, of Parcel A, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

- 4. Modification Provision. This Agreement may not be modified in any respect whatsoever, or rescinded in whole or in part, except with the consent of all of the owners of the respective parcels, plus the tenant of Parcel A, if any, of the real property comprising the Shopping Center, and then only by written instrument duly executed and acknowledged by all of said owners, plus the tenant of Parcel A, if any, duly recorded in the office of the Recorder of Champaign County, Illinois. It is further understood and agreed this agreement shall not be changed without the approval of the City Council of the City of Urbana, Illinois in respect to the following provisions: All of the following sections: Section I, II with the exception of paragraph 6, the first sentence of paragraph 3 of Section III.
- 5. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.
- 6. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle any owner to cancel, rescind or otherwise to terminate this Agreement, but such limitation shall not affect in any manner, any other rights or remedies which such owner may have hereunder by reason of any breach of this Agreement. Any breach of any of said covenants or restrictions, however, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants or restrictions shall be binding upon and effective against such owner of any of said property or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
- 7. Validity and Severance. If any clause, sentence or other portion of this Agreement shall become illegal, null and void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion thereof shall remain in full force and effect.
- 8. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, under-takings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, *insert name of Declarant* on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking, or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, Declarant has executed this instrument, all as of the day and year first above written.

DECLARANT

insert name of Declarant	
By:	

ATTEST:

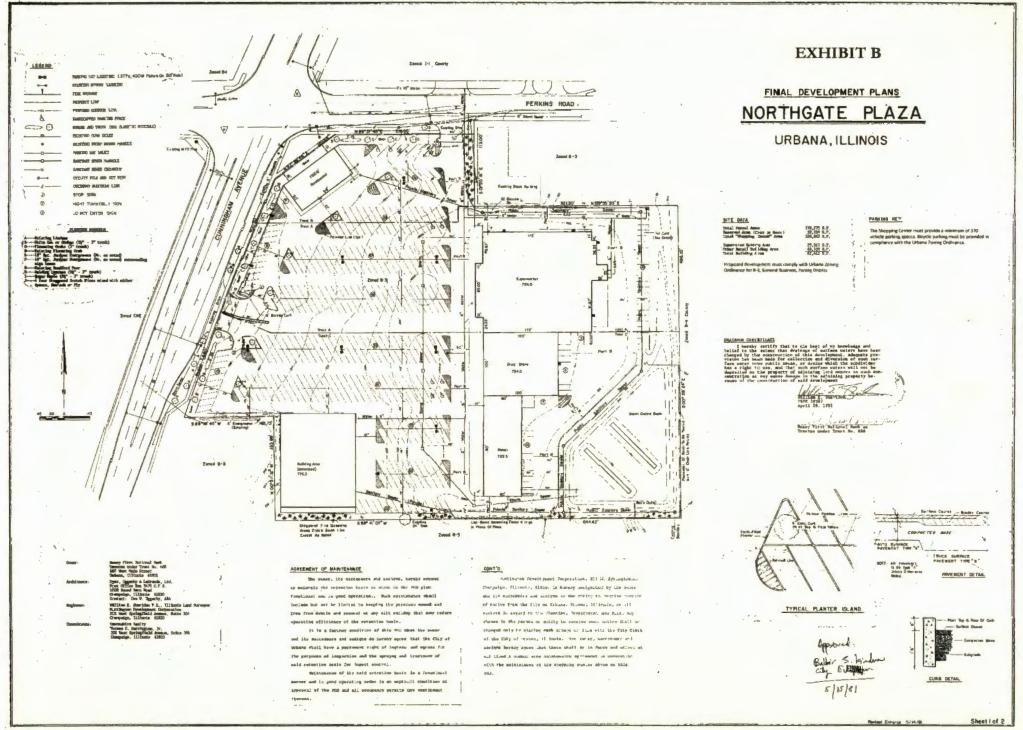
By: \_\_\_\_\_

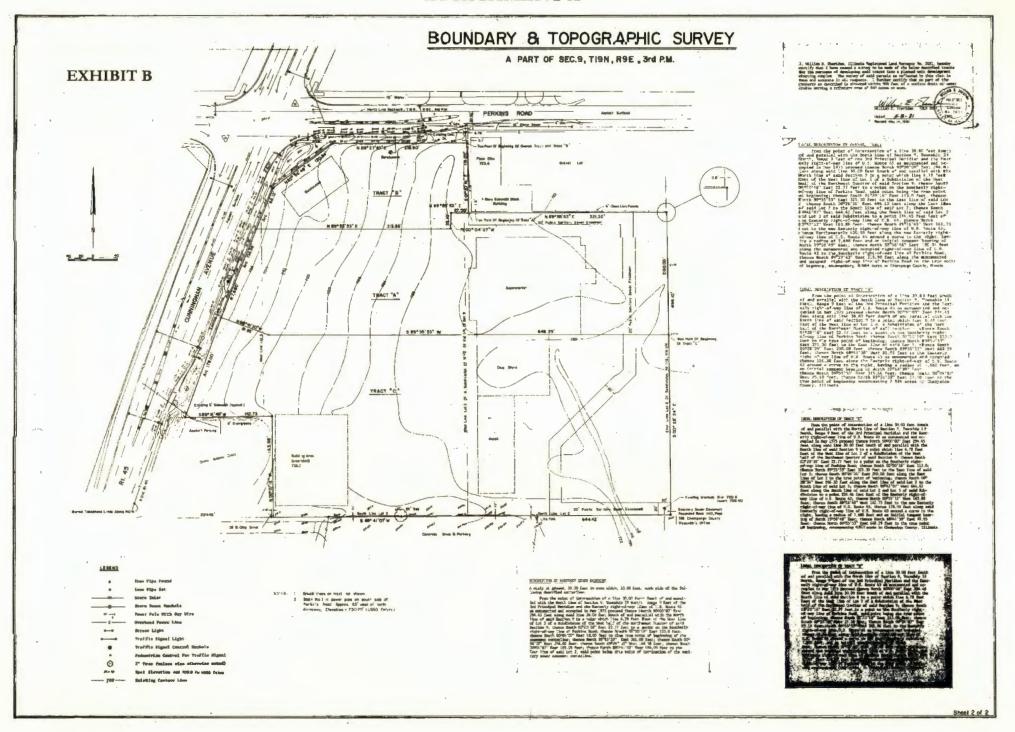
NOTARY PUBLIC STATEMENT FOLLOWS:

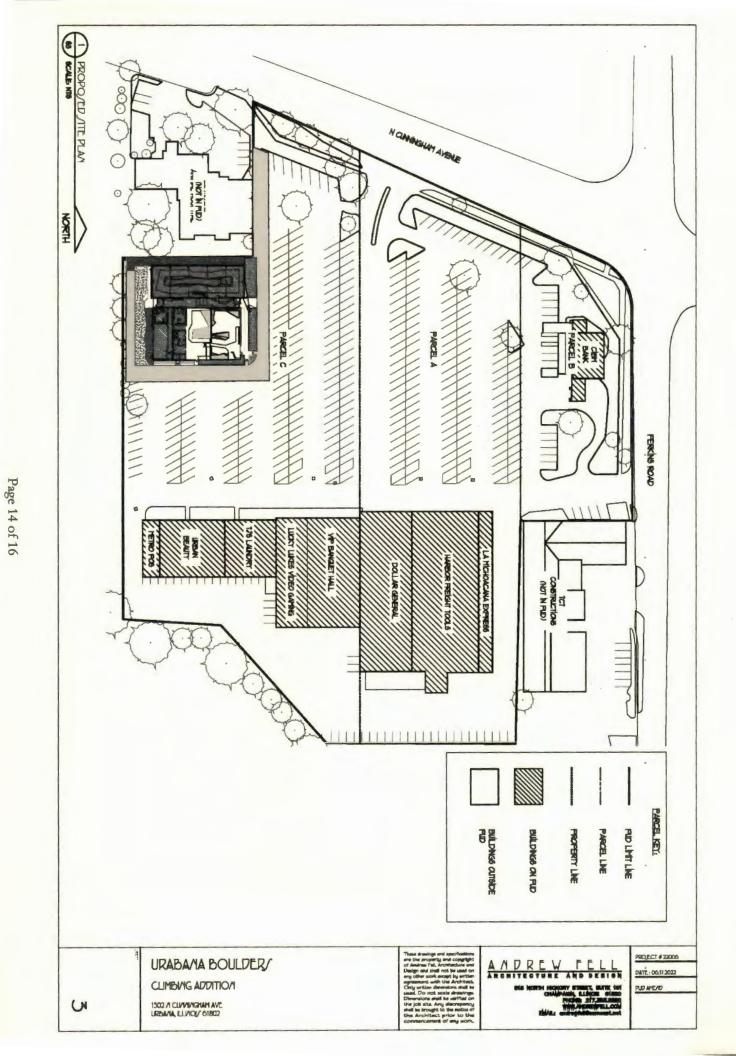
#### EXHIBIT A

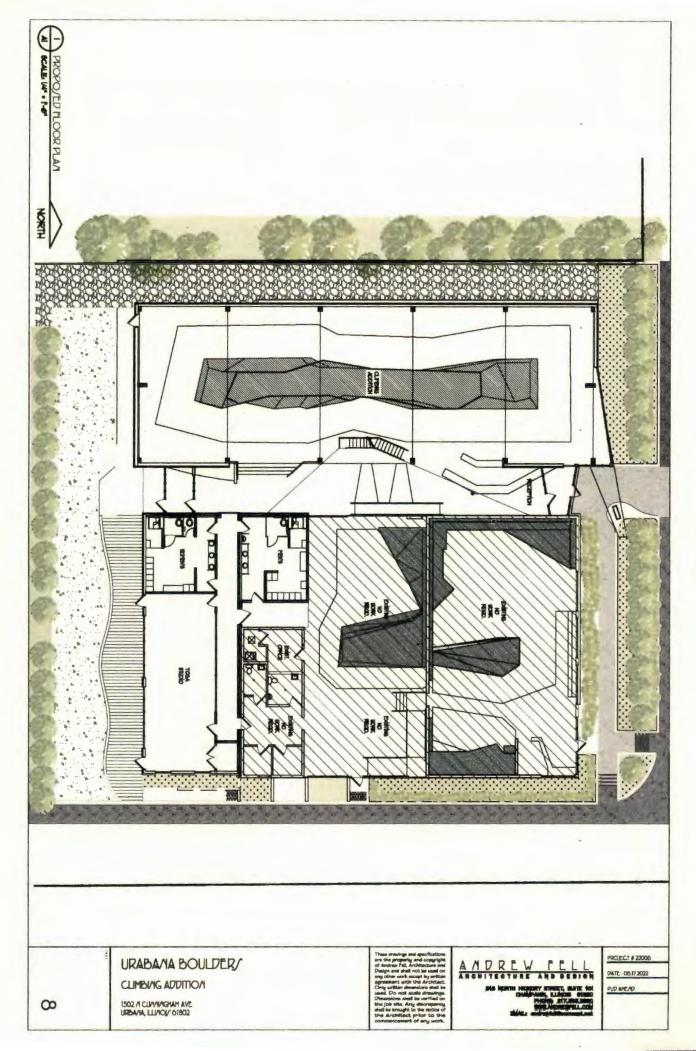
#### LEGAL DESCRIPTION OF OVERALL TRACT

From the point of intersection of a line 30.00 feet South of and parallel with the North Line of Section 9, Township 19 North, Range 9 East of the 3rd Principal Meridian and the Easterly right-of-way line of U.S. Route 45 as monumented and occupied in May 1975 proceed thence North 90°00'00" East 291.45 feet along said line 30.00 feet South of and parallel with the North line of said Section 9 ton point which lies 6.78 feet East of the West line of Lot 2 of a Subdivision of the West half of the Northwest Quarter of said Section 9; thence South 01°20'16" East 22. 77 feet to a point on the Southerly right-of-way line of Perkins Road, said point being the true point of beginning; thence South 01 °20'16" East 113. 0 feet; thence North 89°55'53" East 321.30 feet to the East line of said Lot 2; thence South 00°28'24" East 496.10 feet along, the East line of said Lot 2 to the South line of said Lot 2; thence South 89°41'07" West 644.42 feet along the South line of said Lot 2 and Lot 3 of said Subdivision to a point 224.45 feet East of the Easterly right-ofway line of U.S. Route 45; thence North 00°57'12" West 163.88 feet; Thence South 89°16'45" West 142.73 feet to the new Easterly right-of-way line of U.S. Route 45; thence Northeasterly 400.50 feet along the new Easterly right-of-way line of U.S. Route 45 around a curve to the right, having a radius of 7,680 feet and an initial tangent bearing of North 19°58'49" East; thence North 52°56'46" East 120.84 feet along the monumented and occupied right-of-way line of U.S. Route 45 to the Southerly right-of-way line of Perkins Road; thence North 89°27'13" East 218.90 feet along the monumented and occupied right-of-way line of Perkins Road to the true point of beginning encompassing 8.684 acres, in Champaign County, Illinois.









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