

ORDINANCE NO. 1999-05-035

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN ANNEXATION AGREEMENT
(James Burch)**

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois, and James Burch has been submitted for the Urbana City Council's consideration, a copy of which is attached; and

WHEREAS, said agreement governs tracts totaling approximately 6.443 acres located at 1702, 1704 and 1706 North Cunningham Avenue, and having permanent index numbers 30-21-04-352-015, 30-21-04-352-018, and 30-21-04-352-019, and said tracts are legally described as follows:

A TRACT OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THE BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, PROCEED ON AN ASSUMED BEARING OF SOUTH 89° 04' 42" WEST 60.00 FEET ALONG THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 01° 27' 43" WEST 210.54 FEET PARALLEL WITH THE EAST LINE OF THE SUBDIVISION OF "LOT 1 OF A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4"; THENCE SOUTH 89° 04' 42" WEST 302.10 FEET; THENCE NORTH 66° 08' 00" WEST 412.52 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF U.S. ROUTE 45 (CUNNINGHAM AVENUE); THENCE NORTH 23° 52' 00" EAST 279.73 FEET ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE; THENCE NORTH 88° 34' 03" EAST 615.28 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 01° 27' 43" EAST 642.96 FEET ALONG THE SAID EAST LINE TO THE TRUE POINT OF BEGINNING ENCOMPASSING 6.443 ACRES MORE OR LESS IN CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, the proposed Annexation Agreement conforms to the goals and objectives of the City of Urbana's Comprehensive Plan, as amended; and

WHEREAS, after due and proper publication, the Urbana City Council held a public hearing on May 17, 1999 to consider said Annexation Agreement.

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed Annexation Agreement is in the best interests of the City of Urbana and its citizens.

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

Section 1. That the Annexation Agreement among the City of Urbana, Illinois, and James Burch, a copy of which is attached 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 hereby authorized to attest to said execution of said Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council on the 17th day of May, 1999.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Wyman, and Mayor Satterthwaite

NAYS:

ABSTAINED:

PASSED by the City Council on this 17th day of May, 1999.



Phyllis D. Clark, City Clerk

APPROVED by the Mayor the 20th day of May, 1999.

Tod Satterthwaite
Tod Satterthwaite, Mayor

ANNEXATION AGREEMENT

Burch Annexation Agreement

1702, 1704 and 1706 North Cunningham Avenue

THIS AGREEMENT is made and entered into by and between the City of Urbana, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and James Burch (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, James Burch is the Owner of record of real estate parcels totaling approximately 6.443 acres, located at 1702, 1704 and 1706 North Cunningham Avenue, and having permanent index numbers 30-21-04-352-015, 30-21-04-352-018 and 30-21-04-352-019, the legal description of which real estate is set form in Exhibit A attached hereto and referenced herein as "the tracts".

WHEREAS, the attached map, labeled Exhibit B, is a true and accurate representation of the tracts to be annexed to the City of Urbana under the provisions of this agreement.

WHEREAS, the tracts are contiguous to the City of Urbana, and said Owner and the City determine that immediate annexation of the tracts, less and excepting a portion of the tracts commonly known as 1702 North Cunningham Avenue, referenced herein as the "Shamrock Tavern tract", with the legal description attached hereto as Exhibit C, is in the best interest of both parties; and

WHEREAS, the City and the Owner find it necessary and desirable that the tracts, currently zoned County B-4, General Business, and County R-3, Single and Two-Family Residential, be annexed to the City with a zoning classification of B-3, General Business, for all of the tracts less and excepting an approximate sixty foot (60') by two-hundred and ten foot (210') portion on the tracts, and R-3, Single and Two-Family Residential for the approximate sixty foot (60') by two-hundred and ten foot (210') portion on the tracts under the terms and provision of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tracts as described herein reflects the goals, objectives and policies set forth in the City's 1982 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER

The Owner agrees to the following provisions:

Section 1:

- (a) The Owner represents that the Owner is the sole record Owner of the tracts described in Exhibit A and that the Owner shall, within thirty (30) days of the approval of this agreement cause the tracts, less and excepting the Shamrock Tavern tract as otherwise provided in Section 10 of this agreement, to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tracts occurs, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such. (The City shall furnish to Owner the appropriate form to satisfy this obligation.)
- (b) Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if owner fails to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owners as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for himself, successor and assigns, and all other persons intended

herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

Section 2: The Owner agrees to accept the direct conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance Section IV-5 and as such exists at the time of annexation. Furthermore, the Owner agrees to abide by all applicable development regulations existing at the time of annexation.

Section 3: The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tracts, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the City. Said action includes petitioning for a county rezoning of said tracts without a written amendment to this Agreement.

Section 4: The Owner agrees that any development as defined in the Urbana Subdivision and Land Development Code, which occurs on the tracts shall require the submission and approval of a stormwater drainage plan, and such plan shall provide adequate drainage and detention provisions for the adjacent three (3) parcels commonly know as 1602 North Cunningham, 806 Perkins Road, and 810 Perkins Road. The stormwater detention plan must meet the requirements as specified by the Urbana Subdivision and Land Development Code.

Section 5: The Owner agrees to cause all new development, construction, demolition or additions on said tracts to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owner agrees to obtain all relevant City permits for the same.

Section 6: The Owner or his assigns, will demolish or remove the residential structure presently located at 1706 North Cunningham Avenue within a time period of five (5) years of the approval of this agreement. The Owner agrees to obtain all relevant City permits for the same.

Section 7: The Owner agrees to provide the City with sales tax information reasonably necessary for the City to determine payments owed by the City to Champaign County, if any, as the result of annexation of the tracts.

Section 8: The City agrees to grant a conditional use permit for a warehouse, self-storage facility, which will include a residence structure for staff of the facility, and proposed to be located on the eastern portion of the tracts. The conditional use permit is subject to the following conditions:

- a) The ingress/egress will be from North Cunningham Avenue only.
- b) For screening purposes, a solid six foot fence will be constructed on the east property line of the portion of the tracts that will contain the warehouse, self-storage facility, in conformance with Section VI-5 G., 2., d. of the Urbana Zoning Ordinance.
- c) Signs for the warehouse, self-storage facility will not exceed the provisions as specified in Article IX of the Urbana Zoning Ordinance.
- d) A fire hydrant location and installation plan must meet the requirements as specified by the Urbana Fire Department.
- e) The existing G and G Specialties machine shop structure currently located on the portion of the tracts where the proposed warehouse, self-storage facility will be located, may continue to function as a machine shop for a period of one (1) year following the approval of this Annexation Agreement, therefore allowing multiple principle uses on a single lot for a period of one year. In the event that the machine shop shall continue operating beyond one (1) year of this agreement, the Owner agrees that the machine shop structure must be brought into conformance with the City of Urbana Existing Structures Code on a time table subject to the approval of the Director of Community Development Services. If the use terminates after one (1) year of this agreement, then the building shall be demolished.
- f) The location of all proposed structures, access lanes, fire hydrants, fences and all other related site features shall be built in substantial conformance with the site plan attached hereto as Exhibit D.

Section 9: The City recognizes that the Owner has three (3) curb cuts that serve the tracts fronting North Cunningham Avenue. The City acknowledges that at some point in the future the Owner may request permission from IDOT to alter the ingress and egress to the subject property with 253.92' of frontage to North Cunningham Avenue. The City will work in cooperation with IDOT regarding the placement of the three (3) curb cuts as long as said request does not ask for more than three (3) curb cuts onto the tracts.

Section 10: The following conditions apply to the Shamrock Tavern tract:

- a) As long as the establishment of the Shamrock Tavern operates as a tavern under a valid liquor license, then the Shamrock Tavern tract shall be annexed into the City when the City elects, however, no sooner than three (3) years following the effective date of this agreement.
- b) If at the time of annexation the Shamrock Tavern tract contains a tavern with a valid liquor license, then the City agrees to make available one Class A Liquor License for such establishment to a qualified applicant.

- c) In the event that the Shamrock Tavern or its successor ceases to operate a tavern with a valid liquor license, the Shamrock Tavern tract will be required to annex into the City within six (6) months of the cease of operation date.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1: The Corporate Authorities agree to annex said tracts subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owner, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tracts to the City.

Section 2: The Corporate Authorities agree that the tracts will be zoned B-3, General Business, less and accepting an easterly sixty (60) foot by two-hundred and ten (210) foot portion on the tracts which will be zoned R-3, Single and Two-Family Residential per the conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance or whatever zoning classification is provided for in such conversion table at the time of annexation. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tracts. Furthermore, the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

ARTICLE III: GENERAL PROVISIONS

Section 1: Term of this Agreement -- This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tracts under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner, his/her (their) successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

Section 2. Covenant running with the land -- The terms of this Agreement constitute a covenant running with the land for the term of this Agreement unless specific terms are expressly made binding beyond the term of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessee, executors, assigns and successors in interest of the Owner as to all or any part of the tracts, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

Section 3. Binding Agreement upon parties -- The Corporate Authorities and Owner agree that neither party will take no action or omit to take action during the term of this Agreement which act or omission as applied to the tracts would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owner and the City.

Section 4. Enforcement -- The Owner and Corporate Authorities agree and hereby stipulate that no party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tracts.

Section 5. Severability -- If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

Section 6. Effective Date -- The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

IN WITNESS WHEREOF, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

Corporate Authorities
City of Urbana:

Tod Satterthwaite
Tod Satterthwaite, Mayor

5/20/99
Date

ATTEST:
Phyllis D. Clark
Phyllis D. Clark
City Clerk
May 20, 1999
Date

Owner:

[Signature]
6/8/99
Date

ATTEST:
Vivian P. Petrotte
Notary Public
6/8/99
Date



Exhibits attached and made a part of this Agreement:

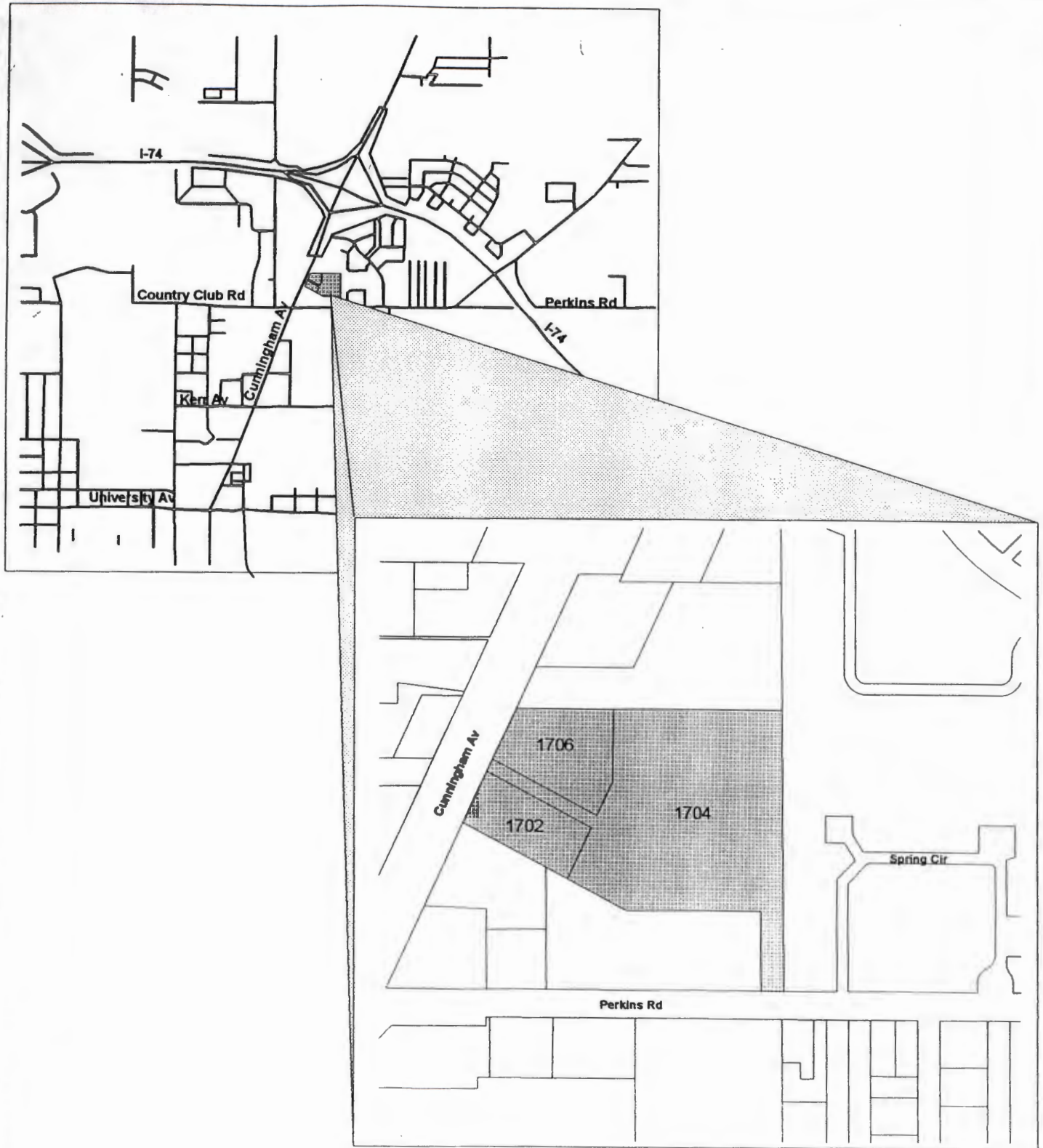
- Exhibit A: Legal Descriptions
- Exhibit B: Location Map
- Exhibit C: Shamrock Tavern Tract
- Exhibit D: Site Plan, Warehouse, Self-Storage Facility

EXHIBIT A

Legal Description Burch Tracts

A TRACT OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THE BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, PROCEED ON AN ASSUMED BEARING OF SOUTH 89° 04' 42" WEST 60.00 FEET ALONG THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 01° 27' 43" WEST 210.54 FEET PARALLEL WITH THE EAST LINE OF THE SUBDIVISION OF "LOT 1 OF A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4"; THENCE SOUTH 89° 04' 42" WEST 302.10 FEET; THENCE NORTH 66° 08' 00" WEST 412.52 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF U.S. ROUTE 45 (CUNNINGHAM AVENUE); THENCE NORTH 23° 52' 00" EAST 279.73 FEET ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE; THENCE NORTH 88° 34' 03" EAST 615.28 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 01° 27' 43" EAST 642.96 FEET ALONG THE SAID EAST LINE TO THE TRUE POINT OF BEGINNING ENCOMPASSING 6.443 ACRES MORE OR LESS IN CHAMPAIGN COUNTY, ILLINOIS.



Community
Development
Services

Location Map
Burch Annexation



Not to Scale
April 1999

EXHIBIT C
LEGAL DESCRIPTION
SHAMROCK TAVERN TRACT
1702 N. CUNNINGHAM, URBANA

A tract of land being a part of the Southwest Quarter of the Southwest Quarter of Section 4, Township 19 North, Range 9 East of the Third Principal Meridian, the boundary of which is described as follows:

Beginning at the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section 4, proceed North 01° 27' 43" West 210.54 feet along the East line of the Subdivision of "Lot 1 of a subdivision of the Southwest Quarter of the Southwest Quarter of Section 4" thence South 89° 04' 42" West 362.10 feet; thence North 66° 08' 00" West 149.52 feet to the True Point of Beginning; thence North 66° 08' 00" West 263.00 feet to the Easterly right-of-way line of U. S. Route 45 (Cunningham Avenue); thence North 23° 52' 00" East 125.00 feet along the said Easterly right-of-way line; thence South 66° 08' 00" East 263.00 feet; thence South 23° 52' 00" West 125.00 feet to the True Point of Beginning, encompassing 0.755 acres more or less in Champaign County, Illinois.

Prepared by: HDC Engineering, Inc.
 201 W. Springfield Ave., Suite 300
 P.O. Box 140
 Champaign, IL 61824-0140

Date: April 14, 1999

HDC Project No.: 99043