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2009R26572

RECORDED ON

09/02/2009 03:36:42PM

CHAMPAIGN COUNTY

RECORDER

BARBARA A. FRASCA

REC FEE: 34.00

RHSPS Fee:

REV FEE:

PAGES 13

PLAT ACT: 0

PLAT PAGE:

Recording Cover Sheet

ORDINANCE NO. 2007-12-140

AN ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTION OF AN ANNEXATION AGREEMENT (23.124-
ACRE TRACT OF LAND LOCATED NORTH OF SALINE
COURT / CHAMPAIGN ASPHALT, LLC, PLAN CASE 2007-
A-03a)

[AGREEMENT ATTACHED]

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801



Return to:

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

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION
OF AN ANNEXATION AGREEMENT**

**(23.124-Acre Tract of Land Located North of Saline
Court / Champaign Asphalt, LLC, Plan Case 2007-A-03a)**

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

WHEREAS, said agreement governs a tract of land totaling approximately 13.89 acres located approximately 325 feet north of Saline Court, and is legally described as follows:

TRACT "A"

PART OF THE NORTH 1311.10 FEET OF THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NE $\frac{1}{4}$ OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M.; THENCE S. $00^{\circ}13'21''$ W., (URBANA HORIZONTAL CONTROL BEARING) ALONG THE EAST LINE OF SAID NE $\frac{1}{4}$ OF SECTION 31, 1311.24 FEET TO THE SOUTH LINE OF THE NORTH 1311.10 FEET OF THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SAID SECTION 31; THENCE S. $89^{\circ}22'19''$ W., ALONG SAID SOUTH LINE, 366.04 FEET TO THE NORTHEAST CORNER OF LOT 204A OF EMULSICOAT-NLAIP-LOT 204A SUBDIVISION, RECORDED MAY 25, 2006 AS DOCUMENT NO. 2006R13247 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS; THENCE CONTINUING S. $89^{\circ}22'19''$ W., ALONG SAID SOUTH LINE AND NORTH LINE OF SAID LOT 204A, 609.12 FEET TO A CORNER OF SAID LOT 204A, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD; THENCE N. $17^{\circ}39'30''$ E., ALONG THE EAST LINE OF SAID LOT 204A, SAID LINE LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF AND PARALLEL TO SAID CENTERLINE, 1374.49 FEET; THENCE N. $01^{\circ}13'35''$ W., ALONG SAID EAST LINE OF LOT 204A, 6.03 FEET TO THE NORTH LINE OF SAID NE $\frac{1}{4}$ OF SECTION 31; THENCE N. $89^{\circ}22'19''$ E. ALONG SAID NORTH LINE, 563.42 FEET TO THE POINT OF BEGINNING, CONTAINING 23.124 ACRES, MORE OR LESS, CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 2nd day of December, 2007 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held with the City Council of Urbana on the matter of the proposed Annexation Agreement and the proposed rezoning of the tract; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to each of the Trustees of the Eastern Prairie Fire Protection District on the matter; and

WHEREAS, on the 17th day of December, 2007, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

WHEREAS, prior to the aforesaid public hearing held by the Urbana City Council, after due and proper notice, a public hearing was held before the Urbana Plan Commission on the 6th day of December, 2007, to consider the proposed Annexation Agreement and the rezoning from Champaign County AG-2, Agriculture to City IN, Industrial Zoning District upon annexation in Plan Cases No. 2007-A-03a and 2056-M-07; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be 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 between the City of Urbana and Champaign Asphalt, LLC, a copy of which is attached and hereby incorporated by reference, is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, 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.

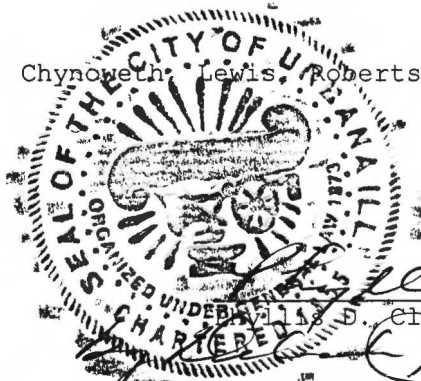
PASSED by the City Council this 17th day of December

2007

AYES: Barnes, Bowersox, Chynoweth, Lewis, Roberts, Smyth, Stevenson

NAYS:

ABSTAINS:



D. Clark
D. Clark, City Clerk
17th
Clark

APPROVED by the Mayor this 28th day of December,

2007

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

FILED

SEP 01 2009

Phyllis D. Clark
City Clerk

Annexation Agreement

(Champaign Asphalt)

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 **Champaign Asphalt, LLC** (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, Champaign Asphalt, LLC is the Owner of record of a certain parcel of real estate located at the north end of Saline Court, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as Tract "A", or "the tract", which was subdivided as Lot 101 from the Squires Tract; and

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

WHEREAS, the tract is contiguous to the City of Urbana and may be immediately annexed; and

WHEREAS, the tract is currently zoned Champaign County AG-2, Agriculture in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial, under the terms and provisions 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 tract as described herein as IN, Industrial generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; 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. Ownership and Annexation. The Owner represents that the Owner is the sole record Owner of the property described in Exhibit A and that the Owner shall, within thirty (30) days of the approval of this agreement cause the tracts 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.

The 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 property. 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 covenant and such will constitute a covenant running with the land. The Owner agrees for itself, 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. Authority to Annex. The Owner agrees and hereby stipulates that the City, by its approval, execution or delivery of this Agreement does not in any way relinquish or waive any authority it may have to annex the tract in the absence of this Agreement.

Section 3. Zoning. The Owner acknowledges that upon annexation, the tract will be rezoned from Champaign County AG-2, Agriculture to City IN, Industrial Zoning District. The Owner agrees that, unless changed upon the initiative of the Owner, the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. The Owner agrees to use the tract only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

Section 4. Special Use Permit: The Owner agrees to the following conditions of a Special Use Permit granted by Article II Section 3 of this Agreement, which will allow an asphalt blending, storage and distribution plant in the IN, Industrial zoning district as an "All Other Industrial Use" which is permitted by Urbana Zoning Ordinance Table IV-1.

1. This Special Use Permit shall be applicable only to the confines of Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A"

2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit "C" Site Diagram.
3. The layout of the site shall be in substantial conformity with Exhibit "C" Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit granted herein and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.
4. The Owner shall install an additional entrance on the eastern edge of the property when the adjacent tract is developed and access becomes available.
5. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A" shall be in conformity with all applicable State and Federal regulations including Illinois Environmental Protection Agency regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and ground water protection.

Section 5. Land Uses. The Owner agrees that the uses of the tract shall be limited to those allowed within the IN, Industrial Zoning District and as allowed by the Special Use Permit.

Section 6. Building Code Compliance. The Owner agrees to cause all new development, construction, remodeling or building additions on said tracts to be in conformance with all applicable City of Urbana codes and regulations including building, zoning and subdivision codes.

Section 6. School District Petition: The Owner agrees to petition for the disconnection of said Tract "A" from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute, within 60 days of the approval of this agreement.

Section 7. Amendments Required. 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 tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by the Owner and the City. Said action includes petitioning for a county rezoning of said tracts without written amendment to this Agreement.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1. Annexation. The Corporate Authorities agree to annex said tract 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 tract to the City.

Section 2. Zoning. The Corporate Authorities agree to annex the tract with a zoning classification of IN, Industrial.

Section 3. Special Use Permit: The Corporate Authorities agree with this annexation agreement to grant a Special Use Permit to allow the Owners to construct an asphalt production facility use on the subject property under the “All Other Industrial Uses” land use category in the IN, Industrial Zoning District. The Corporate Authorities further agree that the granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the asphalt production facility use:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

Section 4. Enterprise Zone. The City will submit application to the State of Illinois to request the subject tract to be added to the Urbana Enterprise Zone pursuant to the Illinois Enterprise Zone Act (20 ILCS 655/1 et seq.) no later than 90 days after the effective date of this agreement, or the date all property is located within the City of Urbana, whichever is later.

Section 5. Amendments. The City shall take no action nor omit to take action during the term of this Agreement which act or omission, as applied to the tract, would be a breach hereof, without first procuring a written amendment to this Agreement duly executed by the Owner, or the Owner’s successors or assigns, of the portion of the tract which is directly the subject of the amendment.

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

tract 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. By mutual agreement, the term of this Agreement may be extended.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner or the Owner's 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 life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, 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 no party will take 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 the Owner and the City.

Section 4. Enforcement. The Owner and Corporate Authorities agree and hereby stipulate that any 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 the party not in default may 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 tract.

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 bana:

Laurel Lunt Prussing
Mayor

Owner:

James L. Lamb

Date

9/1/09

Date

ATTEST:

Angela M. Johnson
Notary Public

Phyllis D. Clark
City Clerk

Deputy Clerk
Date 9-1-09

Date

OFFICIAL SEAL
ANGELA M. JOHNSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-4-2012

Exhibit A

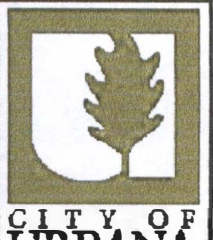
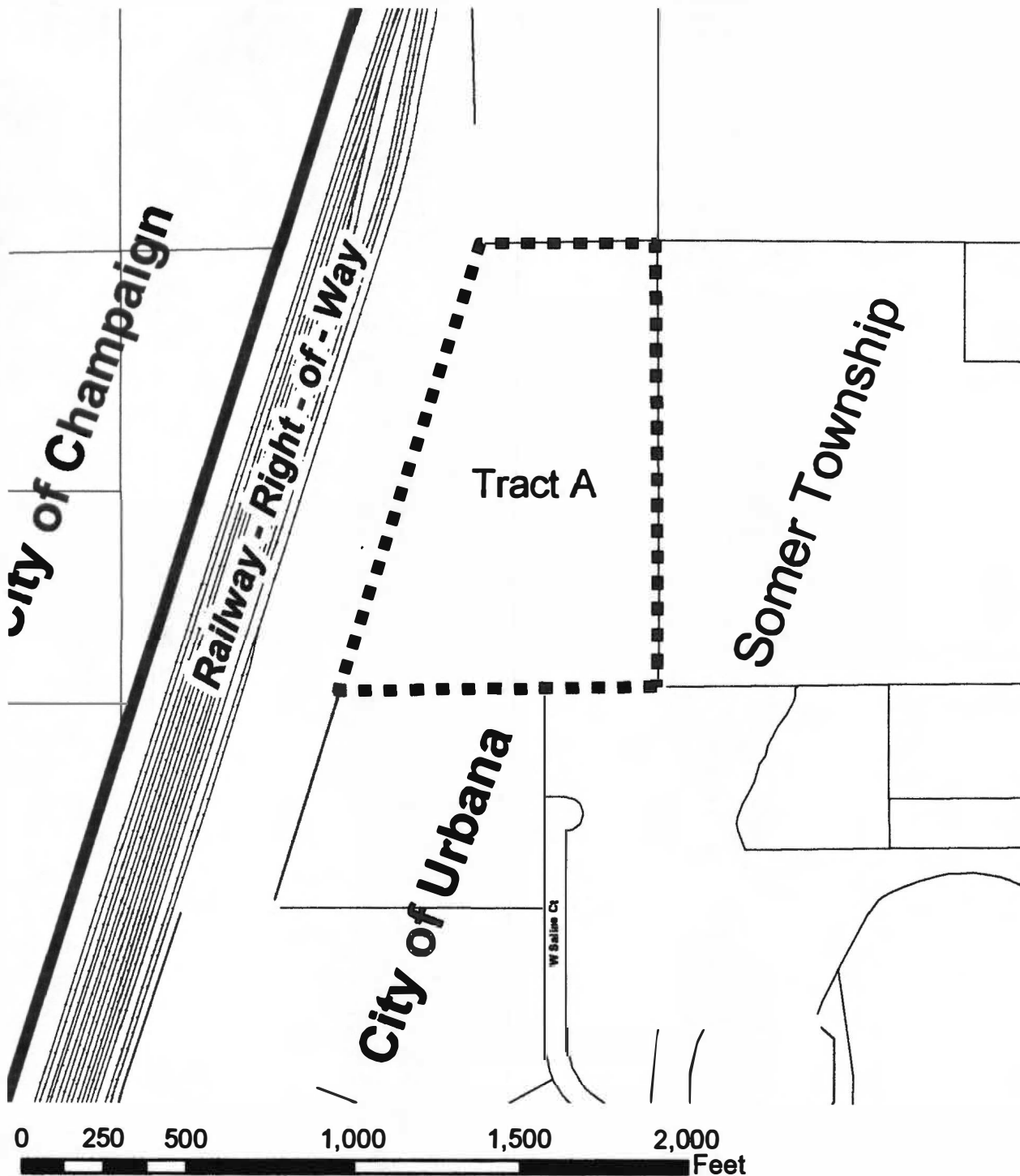
Legal Description

PART OF THE NORTH 1311.10 FEET OF THE NE ¼ OF THE NE ¼ OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NE 1/4 OF SECTION 31, T. 20 N., R. 9 E. OF THE 3RD P.M.; THENCE S. 00°13'21" W., (URBANA HORIZONTAL CONTROL BEARING) ALONG THE EAST LINE OF SAID NE 1/4 OF SECTION 31, 1311.24 FEET TO THE SOUTH LINE OF THE NORTH 1311.10 FEET OF THE NE 1/4 OF THE NE 1/4 OF SAID SECTION 31; THENCE S. 89°22'19" W., ALONG SAID SOUTH LINE, 366.04 FEET TO THE NORTHEAST CORNER OF LOT 204A OF EMULSICOAT-NLAIP-LOT 204A SUBDIVISION, RECORDED MAY 25, 2006 AS DOCUMENT NO. 2006R13247 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS; THENCE CONTINUING S. 89°22'19" W., ALONG SAID SOUTH LINE AND NORTH LINE OF SAID LOT 204A, 609.12 FEET TO A CORNER OF SAID LOT 204A, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD; THENCE N. 17°39'30" E., ALONG THE EAST LINE OF SAID LOT 204A, SAID LINE LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF AND PARALLEL TO SAID CENTERLINE, 1374.49 FEET; THENCE N. 01°13'35" W., ALONG SAID EAST LINE OF LOT 204A, 6.03 FEET TO THE NORTH LINE OF SAID NE 1/4 OF SECTION 31; THENCE N. 89°22'19" E. ALONG SAID NORTH LINE, 563.42 FEET TO THE POINT OF BEGINNING, CONTAINING 23.124 ACRES, MORE OR LESS, CHAMPAIGN COUNTY, ILLINOIS.

WITNESSED AND SUBSCRIBED AT CHAMPAIGN, ILLINOIS, THIS 10TH DAY OF MAY, 2006.

F



Plan Case: 2007-A-03

Subject: Annexation Agreement with Rezoning to IN, Industrial

Location: North of Saline Court and west of North Lincoln Avenue

Zoning District: County AG-2

Petitioner: Champaign Asphalt, LLC / Emulsicoat, Inc