

RECORDING COVER SHEET

AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT (A REAL ESTATE PARCEL WITH PERMANENT INDEX NUMBER 30-21-06-326-015 / JUDY HEIMBURGER TRUST AND TRINITAS DEVELOPMENT LLC) [Ord. 2018-09-058].

*ORDINANCE

*AGREEMENT

Prepared for recording by:

Wendy M. Hundley, Deputy Clerk

400 S. Vine Street, Urbana, IL 61801

Return to:

Charles A. Smyth, City Clerk
City of Urbana
400 S. Vine Street
Urbana, IL 61801

ORDINANCE NO. 2018-09-058

AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT

**(A Real Estate Parcel with Permanent Index Number 30-21-06-326-015 /
Judy Heimburger Trust and Trinitas Development LLC)**

WHEREAS, an annexation agreement between the City of Urbana, Illinois, the Judy Heimburger Trust, and Trinitas Development LLC has been submitted for the Urbana City Council's consideration; and

WHEREAS, said agreement governs a tract totaling approximately 8.38 acres located east of N. Oak Street, west of Cardinal Court, and north of N. Sixth Street, and said tract is legally described as follows:

A portion of the Southwest Quarter of Section 6, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

Except the following:

The south 66 feet of even width of Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

All situated in Champaign County, Illinois and containing 8.38 acres, more or less.

Together with the following described adjacent public right-of-way, which is by operation of the law, automatically annexed with the adoption of an Annexation Ordinance pertaining to this parcel:

That part of Oak Street right-of-way being 50 feet in width as described in a right-of-way dedication recorded in Deed Record Book 789 at Page 370, that lies adjacent to the above described parcel.

All situated in Champaign County, Illinois and containing 0.05 acres, more or less; located east of Oak Street and north of Bradley Avenue, and further referenced as Champaign County permanent index number 30-21-06-326-015; and

WHEREAS, on August 8, 2018, the City Clerk duly published notice in *The News-Gazette*, a newspaper having general circulation in the City of Urbana, Illinois, that a public hearing would be held before the Urbana City Council on the matter of the proposed annexation agreement; and

WHEREAS, on August 27, 2018, the City Clerk also mailed notice of the public hearing to each of the Trustees of the Eastern Prairie Fire Protection District, each Board of Urbana Township Trustee, and the Urbana Township Clerk, Supervisor, and Commissioner of Highways; and

WHEREAS, on September 6, 2018, after due and proper notice, the Urbana Plan Commission held a public hearing to consider the proposed annexation agreement in Case No. 2018-A-01; and

WHEREAS, the Urbana Plan Commission voted 6 ayes and 0 nays to forward a recommendation of approval to the Urbana City Council; and

WHEREAS, on September 10, 2018, the Urbana City Council held a public hearing on the proposed annexation agreement; and

WHEREAS, the City Council has determined that the proposed annexation agreement is in conformance with the goals and objectives of the City of Urbana's 2005 Comprehensive Plan; and

WHEREAS, the 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.

An annexation agreement between the City of Urbana, Illinois, the Judy Heimbürger Trust, and Trinitas Development LLC, 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.

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 as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

The City Clerk is authorized and directed to record in the Office of the Recorder of Deeds and to file with the Champaign County Clerk a certified copy of this Ordinance.


This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of two-thirds of the corporate authorities then holding office (6 of 8 votes) of the City of Urbana, Illinois, at a meeting of the corporate authorities.

PASSED BY THE CITY COUNCIL this 5th day of November, 2018.

AYES: Brown, Hazen, Jakobsson, Roberts, Wu, Marlin


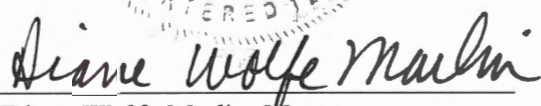
NAYS: Ammons, Miller

ABSTENTIONS:



Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this 7th day of November, 2018.

Diane Wolfe Marlin, Mayor

Annexation Agreement

This annexation agreement is made between the City of Urbana, Illinois ("Urbana"), the Judy Heimburger Trust (the "Owner"), and Trinitas Development LLC, an Indiana limited liability company (the "Developer"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto. The parties agree as follows:

1. **The Property.** The Owner is the owner of record of the real property having permanent index number 30-21-06-326-015, consisting of approximately 8.38 acres in unincorporated Champaign County (the "Property"). The Property is legally described on Exhibit A. Exhibit B is a true and accurate representation of the Property. The Developer proposes to purchase the Property from the Owner for development purposes. Exhibit C is a general area plan showing the Developer's intended use of the Property.
2. **Annexation.**
 - A. The Owner, Developer, and Urbana shall take all actions necessary or appropriate to cause the Property to be validly annexed to Urbana as provided in this agreement and pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.*, as amended. The Property is contiguous to Urbana and may be immediately annexed.
 - B. The Owner and Developer hereby waive all rights to disconnect the Property from Urbana during the term of this agreement.
3. **Zoning.**
 - A. Classification. Upon passage of the ordinance annexing the Property to Urbana, Urbana shall classify the Property as part of the R-4 Medium Density Multiple-Family Residential zoning district. Urbana shall not rezone the Property during the term of this agreement except upon a written amendment to this agreement.
 - B. Ordinance amendments. Urbana reserves the right to amend the Urbana City Code and the Urbana Zoning Ordinance even if such amendments affect the Property. During the 20 years following the effective date of this agreement, unless the Owner, Developer, or successor or successors in title consent, Urbana shall not enforce any ordinance applicable to the Property relating to subdivision controls, zoning, official plans, or occupancy permits and related restrictions that is more restrictive or that imposes greater obligations than (1) the ordinances of Urbana in force on the effective date of this agreement; or (2) the terms of this agreement.
 - C. Rezoning. Neither the Owner nor the Developer shall petition for Champaign County rezoning of the Property without a written amendment to this agreement.
4. **Owner's and Developer's duties.**
 - A. Before annexation. At all times prior to annexation, the Owner and Developer shall have the following duties.
 - (1) **Compliance with law.** Except as otherwise provided in this agreement, the Owner and Developer shall use the Property in compliance with all applicable federal and state laws and all Urbana zoning and building codes and regulations in effect on the effective date of this agreement or an amendment thereto.

- (2) Annexation petition upon transfer. As a condition of a transfer of ownership of the whole or any part of the Property, the Owner shall require the new owner and all electors who will reside on the Property so conveyed to sign a legally sufficient irrevocable petition for annexation. Not more than 10 days after the transfer occurs, the Owner shall deliver such petition to Urbana's Planning Division Manager. As a condition of any subsequent sale of the whole or any part of the Property, the Owner shall also require the subsequent owner to obtain an irrevocable petition for annexation from succeeding buyers and electors who will reside on the Property and to deliver such petition to Urbana's Planning Division Manager not more than 10 days after the transfer occurs, for as long as this agreement is in effect. If the Owner fails to comply with this subsection, and if annexation of the Property or any part of it is delayed or contested by any subsequent owner as a result, the Owner will be liable to Urbana for all real estate taxes and other taxes that would have been due to Urbana had annexation been completed as provided in this agreement.
 - (3) Recording of covenants. If Urbana has not already annexed the Property, the Owner shall record covenants in a form approved by Urbana's Legal Division containing notice that each subsequent owner and elector residing on the Property is required to sign a petition for annexation at Urbana's request. In addition to recording this notice in the covenants applicable to the whole Property, the Owner shall record this notice in the chain of title of each individual permanent index number assigned to any division of the Property.
 - B. After annexation. At all times after annexation, the Owner and Developer shall have the following duties.
 - (1) Zoning designation. The Owner and Developer shall comply with all applicable provisions of the Urbana Zoning Ordinance, including those relating to non-conforming structures and uses. The Owner and Developer shall accept the Urbana R-4 Medium Density Multiple-Family Residential zoning classification, as provided for in the Urbana Zoning Ordinance, as amended.
 - (2) Code compliance. The Owner and Developer shall comply with all Urbana ordinances in effect unless expressly waived or varied in this agreement. The Owner and Developer shall cause all new development, construction, or additions on the Property to comply with the approved site plan for the Property, if any, and all codes, rules, regulations, orders, and other requirements of Urbana. The Owner and Developer shall submit all building construction and landscaping plans to Urbana for review and shall pay all building permit fees.
5. **Urbana's duties.** Urbana shall annex the Property in accordance with the terms and conditions set forth in this agreement. Urbana shall enact all ordinances and resolutions necessary to effectuate this agreement.
6. **Owner's and Developer's representations.** The Owner and Developer represent to Urbana as follows.
- A. Consent of lender. If a mortgage or other lien encumbers the Property, the Owner has provided Urbana with a written acknowledgement from each mortgagee, lienholder, and holder of any security interest affecting title to the Property, or any part thereof, that this agreement will at all times inure to the benefit of and be binding upon such mortgagee, lienholder, or other person having an interest in the Property.
 - B. Authority. The persons signing this agreement on behalf of the Owner and Developer have been authorized and empowered to enter into this agreement by and on behalf of such

Owner and Developer, and this agreement is a legal, valid, and binding obligation of the Owner and Developer, enforceable against the Owner and Developer in accordance with its terms.

- C. Petition for annexation. The Owner has filed with Urbana a written petition signed by the Owner and all electors residing on the Property requesting annexation of the Property to Urbana and being in proper form to allow annexation of the Property pursuant to the Illinois Municipal Code, as amended.

7. **Urbana's representations.** Urbana represents to the Owner and Developer as follows:

- A. Authority. The person signing this agreement on behalf of Urbana has been authorized and empowered to enter into this agreement by and on behalf of Urbana; and Urbana has taken or will take all actions necessary to authorize the execution, delivery, and performance of this agreement.
- B. Public hearings. Prior to execution of this agreement, Urbana has held all public hearings required by law.

8. **Term.** This agreement will be binding upon the parties and their respective successors and assigns for 20 years commencing as of the effective date of this agreement. If any of the terms of this agreement, or the annexation or zoning of the Property, is challenged in any court proceeding, or if Urbana files a court action to enforce this agreement, then, to the extent permitted by law, the period of time during which such litigation is pending will not be included in calculating the term of this agreement. The expiration of the term of this agreement will not affect the continuing validity of the zoning of the Property or any ordinance enacted by Urbana pursuant to this agreement.

9. **Enforcement.** Any party, or the successor or successors in title of any party hereto, may either in law or in equity, by suit, action, mandamus, injunction, or other proceedings enforce, and compel performance of this agreement. Upon breach by the Owner or Developer, or the successor or successors in title of the Owner or Developer, Urbana may refuse the issuance of any permits or other approvals or authorizations relating to development of or construction on the Property.

10. **Indemnification.** The Owner and Developer shall indemnify and defend Urbana, its officers, employees, and agents against all claims, liability, or damage, including without limitation attorney's fees, arising from or in any way related to the performance or failure to perform the provisions of this agreement, except to the extent caused by the gross negligence or willful misconduct of Urbana, its officers, employees, or agents. This section will survive the termination of this Agreement.

11. **Entire agreement; amendments.** This agreement constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be modified or rescinded except by a writing signed by all parties.

12. **Assignment.** The Owner's and Developer's rights and privileges provided pursuant to this agreement are personal to the Owner and Developer and are not assignable or voluntarily transferable by the Owner or Developer without the express written consent of Urbana, which consent shall not be unreasonably withheld. Such consent will not constitute an amendment to this agreement and may be given without the requirement of notice or a public hearing, except as required by the Illinois Open Meetings Act. The Owner's and Developer's obligations, undertakings, and guarantees specifically made in this agreement will continue in full force and effect and will not be affected insofar as Urbana is concerned by any sale, transfer, or assignment of any interest in any portion of the Property. Notwithstanding anything contained herein to the contrary, Developer may assign this agreement to a Developer Affiliate without Urbana's consent so long as such applicable assignee complies with the requirements of Section 4 hereof. For purposes of this Section 12, the term "Developer's Affiliate" shall mean any entity that controls or is controlled by or is under common control with Developer and whose

members have at least a 50% common economic interest (based on projected future cash flows) as Developer.

13. **Notices.** Except where the terms of this agreement expressly provide otherwise, the parties shall give all notices required or permitted by this agreement in writing, addressed as set forth below, unless another address is provided in writing. Notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier.

Urbana: City of Urbana Planning Division Manager, 400 S. Vine Street, Urbana, Illinois 61801

Owner: Judy Heimburger Trust, 2934 E. Stone Creek Blvd.; Urbana, Illinois 61802

Developer: Trinitas Development LLC, c/o Trinitas Ventures LLC, 201 Main Street, Suite 1000, Lafayette, Indiana 47901

14. **Waiver.** The failure of any party to insist upon the strict and prompt performance of any term, covenant, or condition of this agreement will not be deemed to waive or to relinquish that party's right thereafter to enforce any such term, covenant, or condition unless the party's waiver is in writing.

15. **Severability.** If any court of competent jurisdiction invalidates any provision of this agreement, other than the provisions relating to the requested zoning changes and the ordinances adopted in connection therewith, such provision will be deemed to be excised here from, and the invalidity thereof will not affect any of the other provisions contained in this agreement.

16. **No presumption.** The parties have had full opportunity to review and to participate in the drafting of this agreement and all documents attached as exhibits. Accordingly, the parties shall construe this agreement without regard to any presumption or other rule of construction whereby any ambiguities within this agreement would be construed or interpreted against the party causing the document to be drafted.

17. **City Council approval.** This agreement will be valid only after the Urbana City Council approves it by resolution or ordinance.

18. **Covenant running with the land.** The terms of this agreement constitute a covenant running with the land and will inure to the benefit of and be binding upon the successors in title and assigns of the Owner and Developer and each of them, as to all or any part of the Property, and upon the successor municipalities of Urbana and the successor corporate authorities of each of them.

19. **Recording of agreement.** Not more than 30 days after the effective date of this agreement, Urbana shall record this agreement, or a suitable memorandum hereof, in the Champaign County Office of the Recorder of Deeds at the Owner's sole cost and expense.

20. **Exhibits.** All exhibits and schedules attached to this agreement are incorporated into this agreement and are made a part of this agreement by this reference.

21. **Third-party beneficiaries.** This agreement is made for the mutual benefit of the parties hereto and is not intended to confer any rights to any third party. No third party may bring any action to enforce any of the terms in this agreement.

[Signature page follows]

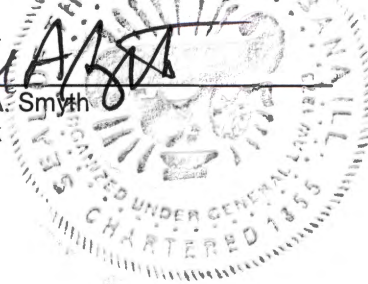
City of Urbana, Illinois

By: *Diane Wolfe Marlin*
Diane Wolfe Marlin
Mayor

Date: 11.7.18, 2018

Attest:

Charles A. Smyth
Charles A. Smyth
City Clerk



Attachments: Exhibit A Legal Description
 Exhibit B Annexation Plat
 Exhibit C General Area Plan

EXHIBIT A

A portion of the Southwest Quarter of Section 6, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

Except the following:

The south 66 feet of even width of Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

All situated in Champaign County, Illinois and containing 8.38 acres, more or less.

Together with the following described adjacent public right-of-way, which is by operation of the law, automatically annexed with the adoption of an Annexation Ordinance pertaining to this parcel:

That part of Oak Street right-of-way being 50 feet in width as described in a right-of-way dedication recorded in Deed Record Book 789 at Page 370, that lies adjacent to the above described parcel.

All situated in Champaign County, Illinois and containing 0.05 acres, more or less.

EXHIBIT B

A portion of the Southwest Quarter of Section 6, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, more particularly described as follows:

Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

Except the following:

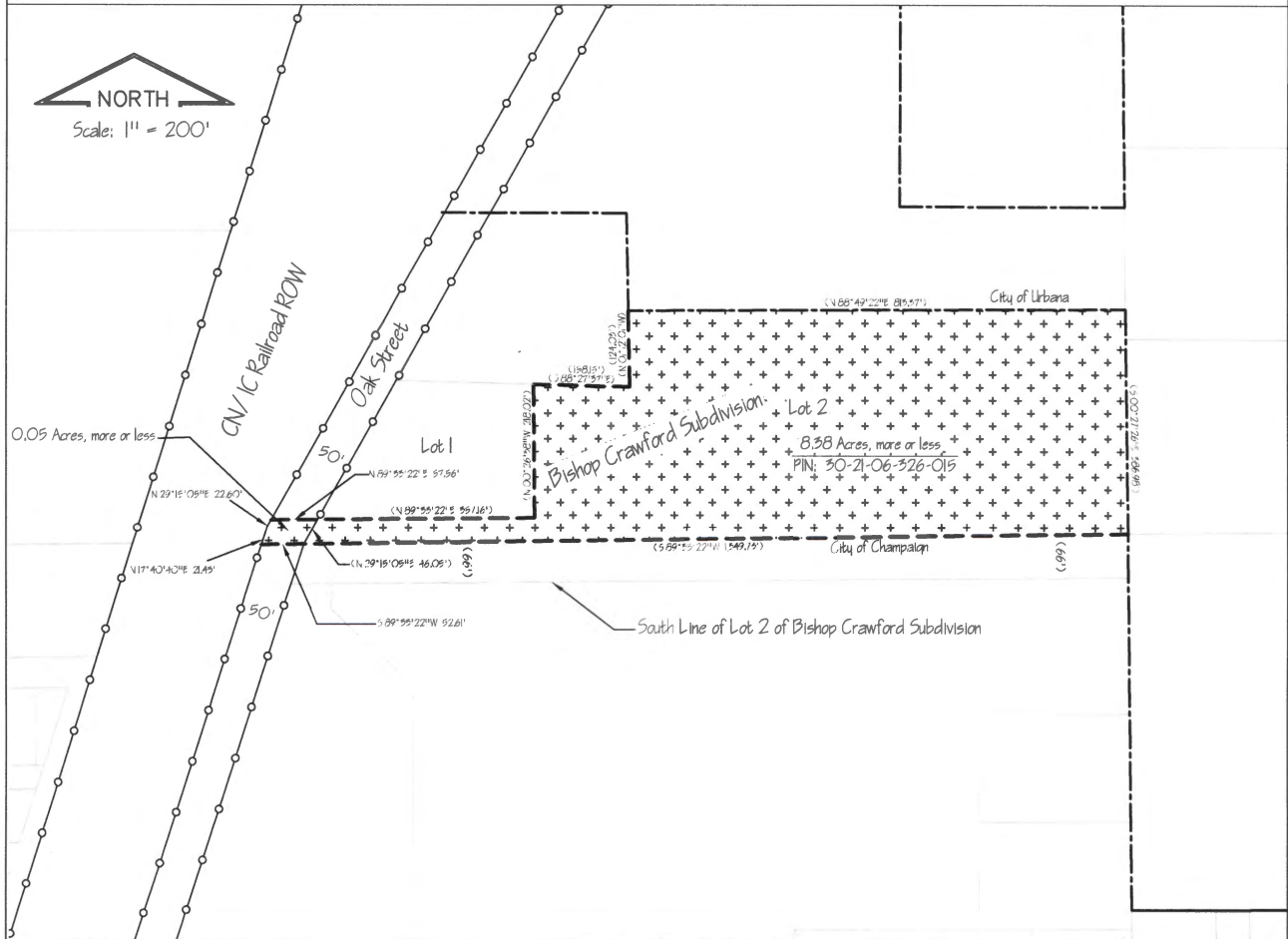
The south 66 feet of even width of Lot 2 of the Bishop Crawford Subdivision recorded as document number 2013R27410, dated November 21, 2013, in the office of the recorder of Champaign County, Illinois.

All situated in Champaign County, Illinois and containing 8.38 acres, more or less.

Together with the following described adjacent public right-of-way, which is by operation of the law, automatically annexed with the adoption of an Annexation Ordinance pertaining to this parcel:

That part of Oak Street right-of-way being 50 feet in width as described in a right-of-way dedication recorded in Deed Record Book 789 at Page 370, that lies adjacent to the above described parcel.

All situated in Champaign County, Illinois and containing 0.05 acres, more or less.



**MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2018-XX-XXX
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: SEPTEMBER XX, 2018**

- AREA OF ANNEXATION
- EXISTING CITY LIMITS
- NEW CITY LIMITS
- RIGHT-OF-WAY

**ENGINEERING
DIVISION**



CITY ENGINEER/PUBLIC WORKS DIRECTOR

CAD: D.A.R. 09/06/2018
CHECKED: W.R.G. XX/XX/2018

