

ORDINANCE NO. F-0222

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
NORTHEAST CORNER OF BUTTERFIELD ROAD AND
WIESBROOK ROAD/ARMBRUST**

WHEREAS, a written petition has been filed with the City Clerk of Wheaton, Illinois, requesting the annexation to the City of Wheaton, Illinois ("City"), of certain territory contiguous to the boundaries of the City and not within the corporate boundaries of any other municipality, pursuant to a proposed annexation agreement which sets forth the terms and conditions under which annexation shall take place; and

WHEREAS, pursuant to notice, a public hearing was conducted by the City Council on January 12, 1998 and February 23, 1998, to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated March 16, 1998, among the City and Edward J. Wiesbrock, not individually but solely as Trustee under Trust Agreement dated April 10, 1956 and known as Trust No. 1 ("Owners"), and Steven Armbrust. ("Developer") ("Annexation Agreement"), is the direct result of deliberations on the proposed Annexation Agreement pursuant to the public hearing and other meetings before the City Council and City Staff.

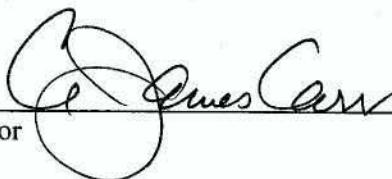
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor of the City is authorized and directed to sign, on behalf of the City, the Annexation Agreement, and the City Clerk is authorized and directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon. A copy of the Annexation Agreement is on file in the Office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

Section 2: The Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owners.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Eckhoff
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilwoman Johnson
Councilman Mork
Councilwoman Davenport

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: March 16, 1998

Published: March 17, 1998

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Prepared by and return to:

Henry S. Stillwell III
Rathje, Woodward, Dyer & Burt
300 E. Roosevelt Road
P.O. Box 786
Wheaton, IL 60189

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 16th day of MARCH, 1998, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City") and Steven M. Armbrust ("Owner").

WITNESSETH

WHEREAS, the Owner holds fee title to the real estate comprised of approximately 1.59 acres, a description of which is set forth on the Plat of Annexation, marked as Exhibit "A", which is attached to and made a part of this Agreement (said real estate will hereafter be referred to in its entirety as "Subject Property" or "Development"); and

WHEREAS, the Subject Property is contiguous to the corporate limits of the City; and

WHEREAS, the Owner desires to develop the Subject Property substantially in accordance with and pursuant to a Concept Plan for Wiesbrook Road Medical Offices prepared by Cemcon, Ltd. dated September 18, 1997 with revision dates of 11/13/97 and 3/5/98 (hereinafter referred to as "Site Plan"), a copy of which is marked as Exhibit "B", attached to and made a part of this Agreement; and

WHEREAS, it is the desire of the Owner that all of said real estate be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the City has concluded that annexation of the Subject Property under the terms and conditions of this Agreement would further the growth of the City, enable the City to control the development of the area, increase the taxable value of the property within the City, extend the corporate limits and jurisdiction of the City, permit the sound planning and development of the City, and otherwise enhance and promote the health, safety, and general welfare of the City; and

WHEREAS, pursuant to the provisions of Section 6.1, *et.seq.*, of the Wheaton City Code and applicable provisions of the Illinois Revised Statutes and Illinois Constitution, a proposed

Annexation Agreement in substance and form of the same as this Agreement was submitted to the Wheaton City Council, and a public hearing was held thereon pursuant to notice as provided by ordinance and statute; and

WHEREAS, the Plan Commission of the City has had such hearings and heard such testimony as prescribed by law with respect to the requested zoning classification of O-R Office and Research; and recommendations made by said commission were submitted to the Wheaton City Council; and

WHEREAS, all owners of record of real property located within 250 feet of the Subject Property, as reflected in the tax records of DuPage County, Illinois, have been duly notified in the manner provided by law; and

WHEREAS, notice has been duly served in the manner provided by statute on the appropriate governmental entities; and an affidavit that service of said notice has been duly served has been placed on record with the Recorder of Deeds, DuPage County, Illinois.

NOW, THEREFORE, in consideration of the foregoing preambles and mutual covenants and Agreements contained herein, the parties hereto agree as follows:

1. **LEGAL CONFORMANCE WITH LAW.** This Agreement is made pursuant to and in accordance with the provisions of the Wheaton City Code and applicable provisions of the Illinois Revised Statutes and Illinois Constitution.

2. **PETITION TO ANNEX.** The Owner has filed with the Clerk of the City, a petition ("Petition for Annexation") pursuant to the provisions of Section 7-1-8 of the Illinois Municipal Code (Ill. Compiled Stat., Ch. 65, par. 5/7-1-8), conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The Petition for Annexation is attached hereto as Exhibit "C". This Agreement in its entirety, together with the aforesaid Petition for Annexation, shall be null, void and of no force and effect unless the Subject Property is validly zoned and classified under the City's Zoning Ordinance as hereinafter set forth and amended.

3. **ANNEXATION ORDINANCE.** Immediately upon the execution of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

4. **REZONING.** Immediately after the passage of the ordinance annexing the Subject Property, the City shall, without further hearing, adopt an amendment to its Zoning Map which is part of the Zoning Ordinance of the City and Comprehensive Plan of the City, zoning and classifying the subject property in the O-R Office and Research Zoning District.

5. **DEVELOPMENT STANDARDS.** The Subject Property shall be developed in substantial conformity with the Site Plan, for a one story office building containing

approximately 10,000 square feet at ground level and 10,000 square feet in the basement ("Office Building"). The Office Building shall be occupied for uses permitted under the O-R Office and Research Zoning District of the City, including, without limitation, medical and professional offices. The development of the Subject Property shall be in full conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Code, and other ordinances, codes, rules, and regulations of the City as they presently exist and as amended, except as otherwise provided in this Agreement.

6. FINAL PLANS. Prior to development of the Subject Property Owner shall submit to the City for its review and approval a final plat of subdivision for the Subject Property consolidating the underlying lots into a single lot ("Final Plat") and final engineering plans for the development of the Subject Property as provided for herein ("Final Engineering"). The Final Plat and Final Engineering, as from time to time modified pursuant to Paragraph 11 of this Agreement, are collectively referred to as the "Final Plans". The Final Plans shall not require review by the City Plan Commission, and shall be submitted directly to the City Council for review and action following review and comments by the City staff.

7. SANITARY SEWER FACILITIES. The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including (without limitation) the Illinois Environmental Protection Act, permitting the connection onto the sanitary lines of the Wheaton Sanitary District in order to develop and use the subject property. Owner agrees to annex to the Wheaton Sanitary District. In addition, the City will accept dedication of all sanitary sewer mains located within the Corporate limits of the City and constructed by developer in accordance with the Final Plans. Location and size of sanitary sewer mains to be installed by Owner shall be in substantial conformity with Exhibit "B" attached hereto subject to final engineering considerations.

8. WATER FACILITIES. The City will accept dedication of all primary water mains constructed by the Owner in accordance with the Final Plans. Location and size of the water mains to be installed by Owner shall be in substantial conformity with Exhibit "B", subject to final engineering considerations.

9. STORM WATER FACILITIES. Owner agrees to design and construct suitable storm water facilities for the Subject Property which comply with the requirements and standards contained in Chapter 12 ½ of the Wheaton City Code, the DuPage County Countywide Storm water and Flood Plain Ordinance, and all other applicable statutes and ordinances.

10. IRREVOCABLE LETTER OF CREDIT. In lieu of construction bond or development bond or bonds, the City will accept an irrevocable letter of credit from a reputable banking institution to guarantee construction and quality of all public facilities to be constructed as a part of the Development. Said letter of credit shall be in the amount of one hundred twenty-five percent (125%) of the Owner's engineer's estimate of construction costs (as approved by the

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City Engineer) or one hundred percent (100%) of the contract costs of construction of all of the public facilities. Said letter of credit shall be in a format approved by the City Attorney and shall be payable to the City of Wheaton.

The letter of credit shall be issued and presented to the City on or before the date that the City executes the Final Plat. As the Owner completes the items within the letter of credit, the Owner may apply to the City for acceptance of said improvements in accordance with Paragraph 11 of this Agreement. Owner agrees to cause the letter of credit to be extended to cover the actual time of construction.

11. PROCEDURE FOR ACCEPTANCE OF ANY PUBLIC IMPROVEMENTS. The procedure for acceptance by the City of any public improvement constructed as a part of the development of the Subject Property shall be as provided in the Subdivision Improvement Agreement to be hereafter entered into between the City and Owner.

12. MINOR CHANGES IN DEVELOPMENT. Minor variations or deviations from the Site Plan may be necessary in order to solve engineering layout and design problems and other problems not reasonably foreseen at this time, including street and lot changes, as long as the same density is maintained and the lots conform to the development and zoning ordinances. The City shall enact such resolutions and ordinances as may be necessary to accommodate such changes in order to comply with the spirit and intent of this Agreement.

13. SCHOOL AND PARK LAND DONATIONS OR CASH CONTRIBUTIONS. Because of the Subject Property's office/research land use designation, the City agrees that no land donations or cash contributions to Unit School District #200 and the Wheaton Park District are required.

14. WIESBROOK ROAD CONTRIBUTION. The Owner shall pay to the City the sum of \$40,685.00 as and for Owner's sole contribution for one half of the cost of the future improvements to Wiesbrook Road adjacent to the Subject Property. The Wiesbrook Road Contribution shall be payable prior to recordation of the Final Plat. The amount of the contribution is calculated at \$123.89 per lineal footage of Subject Property's frontage along Wiesbrook Road.

15. SIDEWALK IMPROVEMENTS. The Owner shall cause the construction of a public sidewalk along the east side of Wiesbrook Road and the north side of Butterfield Road adjacent to the Subject Property.

16. RESTRICTION ON FUTURE EXPANSION. Owner, for himself and his successors, assignees and grantees, agreed and covenantd that the development of the Subject Property shall be limited to the single story Office Building, with basement, as defined in Paragraph 5 of this Agreement. Owner shall not seek or effectuate any expansion of the size of

the Office Building beyond the 10,000 square feet on each level approved hereunder, whether upon the Subject Property or through the assemblage or incorporation of adjacent real estate with the Subject Property. This covenant and restriction against expansion of the size of the Office Building shall constitute a restrictive covenant running with the land, binding upon the Subject Property, its owners and lessees.

17. AMENDMENTS TO ORDINANCES. Except as expressly hereinafter provided, the Subject Property shall be developed and used in conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Codes, and other Ordinances, Codes, Rules and Regulations of the City pertaining to the development of the Subject Property. The Ordinances, Codes, Rules and Regulations existing on the date of application for building/site development permits shall be applicable, except as the same may be specifically amended pursuant to the terms of this Agreement. The foregoing provisions to the contrary notwithstanding, with respect to the development and use of the Subject Property, the provisions of the Wheaton City Code pertaining to the following items which are in affect on the date of this Agreement, except as to any such item which is otherwise amended or varied pursuant to the terms of this Agreement, shall remain applicable to the Subject Property for a period of two (2) years following the date hereof without regard to their subsequent amendment, modification or repeal, unless otherwise consented to in writing by Owner:

- A. Minimum size of yards and setbacks;
- B. Maximum building height (not to exceed thirty-five feet);
- C. Maximum lot coverage;
- D. Minimum lot width;
- E. Maximum floor area ratio;
- F. Minimum lot size;
- G. Minimum landscape and screening requirements;
- H. Minimum lot depth;
- I. Minimum storm water retention/detention requirements;
- J. Minimum off-street parking ratios.

In any event, the City agrees that the Subject Property shall be allowed to be developed with the Office Building, the provisions of any City ordinance in affect at the time of application for a site development/building permit to the contrary notwithstanding.

18. FREE STANDING SIGNAGE. Owner shall be permitted to construct and maintain one (1) on-site free standing, illuminated monument identification sign which shall comply with the following criteria:

- A. The monument sign structure, including the base, shall not exceed seven feet (7') in height above ground level, and the total sign structure, including

the land berm, if provided thereunder, shall not exceed eleven feet (11') above the adjacent parking lot grade.

- B. Each side of the monument sign face shall not exceed twenty-four (24) square feet, not including the sign structure.
- C. The monument sign shall be constructed with material generally similar to the material used for the exterior walls of the Office Building.

No other free standing signage shall be permitted upon the Subject Property other than directional, fire lane, handicapped parking and similar informational signage as permitted pursuant to applicable ordinances of the City.

19. ANNEXATION AND PERMIT FEES. The amount of the permit, license, tap-on or connection fees imposed by the City which are applicable to or required to be paid by the Owner or successor developers, contractors, subcontractors, materialmen, or others performing work or supplying materials in connection with the development or construction of improvements on the development shall be the amount or rate of said fees in effect at the time of application for same.

20. BUILDING PLANS. The Owner shall be required to submit plans for each building to be constructed in the Development. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton ordinances for each building to be constructed in the Development.

21. STOP ORDERS. The City reserves the right to terminate and stop all activities at the job site, with written notice, to correct a situation which presents a direct hazard to the public health, safety, and welfare. Any such stop work order shall be issued in accordance with the provisions of the Wheaton City Code and adopted Building Codes.

22. CONFLICT IN REGULATIONS. The provisions of this Annexation Agreement shall supersede the provisions of any ordinances, codes, or regulations of the City which may be in conflict with the provisions of this Annexation Agreement.

23. AMENDMENT OF ANNEXATION AGREEMENT. This Annexation Agreement, and any exhibit attached hereto, may be amended pursuant to the provisions of Chapter 18 of the City Code.

24. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

25. INVALIDITY. If any provision of this Annexation Agreement, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, is held

invalid, the validity of the remainder of this Annexation Agreement and the application of such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

26. TERM OF AGREEMENT. This Agreement shall be binding upon the parties hereto, their respective successors and the assigns for a period of twenty (20) years following the date of this Agreement.

27. CONSEQUENCE OF NON-DEVELOPMENT. Any portion of the Subject Property which has not been developed in substantial compliance with this Agreement as of the termination date of this Agreement shall automatically revert to the R-1 zoning classification without the necessity of a public hearing or City action; and any special use permit or other permission to develop the Subject Property granted herein shall automatically terminate. The issuance of an occupancy certificate by the City for an office building constructed upon the Subject Property in substantial conformity with the Site Plan, or an amendment thereto approved by the City, shall verify development in compliance with this Paragraph 27 and this Paragraph 27 shall thereafter be of no further force or effect.

28. INDEMNIFICATION. Owner shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of the Owner, its agents, assigns, employees, contracts, and subcontractors. Owner shall indemnify and hold the City harmless from all causes of action, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence. The Owner shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Owner.

29. BINDING EFFECT. This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the City and successor municipalities. Upon the conveyance of Owner's interest in the Subject Realty to a third party ("Transferee"), the rights and obligations of Owner hereunder shall be deemed assigned to and assumed by such Transferee, and Owner shall thereupon be released and discharged by the City from any further obligation pertaining to such rights and duties. The Transferee shall thereupon be entitled to exercise all rights and authorities and shall perform all duties and obligations of Owner hereunder. In the event of a transfer, sale or assignment of a Transferee's rights and obligations to another Transferee, the conveying Transferee shall be released of such rights and obligations and the new Transferee shall thereafter be entitled to and bound by such rights and obligations.

30. NOTICES. Notices or other writings which any party is required to, or may wish to, serve upon any other party in connection with this Agreement shall be in writing and shall be deemed effectively given on the date delivered personally or the second business day

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following deposit in the U.S. mail, certified or registered mail; return receipt requested, postage prepaid, addressed as follows:

A. Owner: Dr. Steven M. Armbrust
125 Tennyson
Wheaton, IL 60187

with a copy to: Mr. Henry S. Stillwell, III
Rathje, Woodward, Dyer & Burt
300 E. Roosevelt Road
P.O. Box 786
Wheaton, IL 60189

B. City of Wheaton: City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60187

31. **RECORDING.** This Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Owner.

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IN WITNESS WHEREOF, the Corporate authorities and the Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here, all on the day and year first above written.

CITY:

CITY OF WHEATON, an Illinois municipal corporation

By: James Carr
MAYOR

Attest: Cindy M. Consalago
CITY CLERK

OWNER:

Steven M. Armbrust
Steven M. Armbrust

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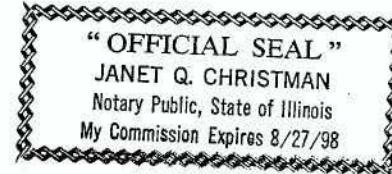
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STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that C. JAMES CARR, MAYOR, and EMILY M. CONSOLAZIO
CITY CLERK, of the CITY OF WHEATON, an Illinois municipal corporation, who are personally
known to me to be the same persons whose names are subscribed to the foregoing instruments as
such MAYOR and CITY CLERK, respectively, appeared before me this day in person and
acknowledged that they signed and delivered the said instrument as their own free and voluntary
act and as the free and voluntary act of said corporation, for the uses and purposes therein set
forth; and the said CITY CLERK then and there acknowledged that she, as custodian of the records
of the corporation, did affix the corporate seal of said corporation to said instrument as her own
free and voluntary act and as the free and voluntary act of said corporation, for the uses and
purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of MARCH, 1998.

Janet Q. Christman
Notary Public



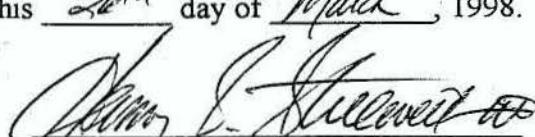
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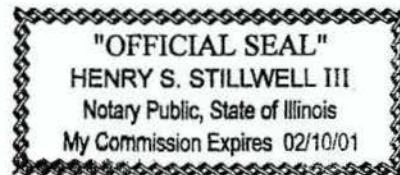
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STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that STEVEN M. ARMBRUST, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of March, 1998.


Henry S. Stillwell III
Notary Public



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SCHEDULE OF EXHIBITS

EXHIBIT "A": Legal Description of Subject Property

EXHIBIT "B": Site Plan

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EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOTS 32, 33 AND 34 IN WIESBROCK'S SUBDIVISION, A SUBDIVISION OF PART OF THE WIESBROCK FARM IN THE SOUTH EAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 21, 1956 AS DOCUMENT 793559, IN DUPAGE COUNTY, ILLINOIS.

Permanent Parcel #'s: 04-25-405-004, 04-25-405-005 and 04-25-405-006

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EXHIBIT "B"

SITE PLAN

