

## ORDINANCE NO. F-0729

AN ORDINANCE AUTHORIZING THE SIGNING  
OF A PRE-ANNEXATION AGREEMENT -  
1S774 CARROL GATE ROAD/HURLEY

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 not contiguous to the boundaries of the City and not within the corporate boundaries of any other municipality, pursuant to a proposed pre-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 June 10, 2002 to consider the terms and conditions of the proposed pre-annexation agreement; and

WHEREAS, a pre-annexation agreement dated June 17, 2002, among the City and Peter and Heather Hurley ("Owner") ("Pre-Annexation Agreement"), is the direct result of deliberations on the proposed Pre-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 to sign, on behalf of the City; and the City Clerk is hereby directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon to the Pre-Annexation Agreement, which 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 as "Exhibit A".

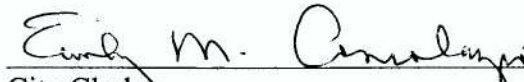
Section 2: The Pre-Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, Du Page County, Illinois, at the expense of the Owner.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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 Mork  
Councilman Mouhelis  
Councilman Eckhoff  
Councilman Gresk  
Councilman Johnson  
Mayor Carr

Nays:

None

Absent:

Councilwoman Johnson

Motion Carried Unanimously

Passed: June 17, 2002

Published: June 18, 2002

**PRE-ANNEXATION AGREEMENT**

THIS PRE-ANNEXATION AGREEMENT ("Agreement"), made and entered into this 17th day of June, 2002, among the City of Wheaton, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), and Peter G. and Heather S. Hurley ("Owner").

**WITNESSETH**

WHEREAS, Owner has an interest in, or control of, the real estate legally described on Exhibit A, which is attached to and made a part of this Agreement ("Subject Property"), commonly known as 1S774 Carrol Gate Road; and

WHEREAS, the City has concluded that once annexed, the Subject Property 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, the Subject Property is not presently contiguous to the corporate limits of the City.

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 City Code and applicable provisions of the Illinois Compiled Statutes and the Illinois Constitution.

**2. PETITION TO ANNEX/ANNEXATION AGREEMENT.** Owner has filed with the Clerk of the City, a proper petition, pursuant to the provisions of the Section 7-1-8 of the Illinois Compiled Statutes [65ILCS 5/7-1-8 (1998 State Bar Association Edition)] conditioned on the execution of an pre-annexation agreement to annex the Subject Property to the City. The petition for annexation is incorporated into this Agreement by this reference. 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.** Once the Subject Property becomes contiguous to the City, the City, in its sole discretion, may initiate the appropriate public hearings and notices



to require the Subject Property to be annexed to the City and thereafter 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 Ordinance, zoning and classifying the Subject Property in the R-3 Residential District zoning classification.

**5. DEVELOPMENT/CONSTRUCTION STANDARDS.** Any future development of, or construction on, 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 pertaining to the development of the Subject Property to be annexed. The ordinances, codes, rules, and regulations existing on the date of the application for building, or other, permit(s), shall be applicable, except as the same may be specifically amended pursuant to the terms of this Agreement.

Provided, however, in the event any construction, improvement, or development is effected on the Subject Property prior to it becoming annexed to the City, the construction, improvement, or development shall conform to either the building and development codes of the County of DuPage or the City, whichever is or are more restrictive, as determined by the City.

**6. VARIATIONS FROM LOCAL CODES.** Immediately after the passage of the ordinance annexing the Subject Property, the City shall zone the Subject Property as provided for in paragraph four (4) of this Agreement and approve the following variations from the City's Ordinances and Codes:

- A. Side Yard Setback - 8.96 feet as opposed to the required 12.96 feet per Section 3.4(a)5(b) of the Wheaton Zoning Ordinance.

**7. WATER UTILITY RATE.** Notwithstanding any provision of the City Code to the contrary, the water rate/cost for City water provided to the Subject Property shall be based upon the same rate/cost that is charged to owners of real estate within the City.

**8. CITY ADDRESS.** Upon the passage of the ordinance annexing the Subject Property, Owner shall, forthwith, change the address of the Subject Property from the current County address to a City address as directed by the City and/or the United States office.

**9. FUTURE PUBLIC IMPROVEMENTS.** Owner understands that the City customarily requires the Owner of real estate being annexed to the City to install various public improvements as required by the City Code, including, but not limited to, sanitary sewer mains,

water mains, streets, sidewalks, and street lighting ("public improvements") within and/or adjacent to the property to be annexed to the City.

At this time, however, the City agrees it would not be in the City's best interest to require the Owner to construct the public improvements along the Carrol Gate Road frontage of Subject Property without a unified construction effort along Carrol Gate Road. In lieu of the Owner constructing the public improvements at this time, the Owner agrees that should the City construct public improvements along Carrol Gate Road fronting the Subject Property, the Owners shall pay their fair share of costs of the design and construction of said public improvements.

**10. CONDITION OF PUBLIC IMPROVEMENTS.** The City shall have no obligation of any kind with respect to the public improvements presently existing within and adjacent to the Subject Property. Once the Subject Property is annexed to the City, the City shall maintain the public improvements within and adjacent to the Subject Property in the customary manner in which it maintains public improvements.

**11. PLAT OF ANNEXATION.** The Owner shall provide to the City a Plat of Annexation once the Subject Property becomes contiguous to the City.

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

**13. AMENDMENT OF ANNEXATION AGREEMENT.** This Agreement may be amended pursuant to the provisions of the City Code, Zoning Ordinance and Illinois Municipal Code.

**14. TERM OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their respective successors and assigns for a full term of twenty (20) years from the date of this Agreement.

**15. BINDING EFFECT.** This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, assigns, successors, and grantees; and this Agreement shall be recorded in the Office of the DuPage Recorder of Deeds at the expense of the Owner.

**16. 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



delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

Owner: Peter and Heather Hurley  
1S774 Carrol Gate Road  
Wheaton, Illinois 60187; and

City: City Manager  
City of Wheaton  
303 West Wesley Street, Box 727  
Wheaton, Illinois 60189-0727.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date first above written.

**City of Wheaton**, an Illinois Municipal Corporation

**Owner**

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

Mayor

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

ATTEST:

City Clerk

ATTEST:

## EXHIBIT A

OF LOT 5 AND THE SOUTH 30.0 FEET OF LOT 4 IN BLOCK 3 IN WHEATON TERRACE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 7, 1927, AS DOCUMENT 229363, IN DUPAGE COUNTY, ILLINOIS.

PIN NO. 05-20-314-016