

ORDINANCE NO. F-0817

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
2129 PRESIDENT STREET, 1012 GENEVA ROAD, 1020 GENEVA ROAD
MCNAUGHTON BUILDERS, INC ON BEHALF OF THE
MARYANN MUEHLFELT TRUST**

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 legally described in Exhibit 'A' which is 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 February 24, 2003 and continued to April 14, 2003 to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated April 21, 2003, among the City and McNaughton Builders, Inc. ("Owners") ("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, DuPage 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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:

Evelyn M. Connelley
City Clerk

Ayes:

Roll Call Vote

Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork
Councilman Mouhelis
Councilwoman Corry

Nays:

Councilman Bolds

Absent:

None

Motion Carried

Passed: May 19, 2003

Published: May 20, 2003

Passed:

Published:

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 21st day of April, 2003 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and James McNaughton Builders, Inc. ("Owner") ("Developer").

WITNESSETH

WHEREAS, the Owner has an interest in or controls the real estate comprised of several parcels of property totaling approximately 3.26 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").

WHEREAS, the Subject Property is contiguous to the corporate limits of the City; 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 Owner desires to construct a 15 unit attached townhome development on the Subject Property substantially in accordance with and pursuant to the preliminary engineering and site plans dated January 6, 2003 prepared by William F. Lorek, P.E; and conceptual landscape plan dated January 15, 2002 prepared by Ives/Ryan Group, Inc., . hereinafter referred to as "Site Plans", a copy of which is marked as Exhibit "B" and is attached to and made a part 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 Compiled 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 City has had such hearings and heard such testimony as prescribed by law with respect to the requested zoning classification of R-5 Residential District with issuance of a special use permit for a planned unit development; 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 Compiled Statutes and Illinois Constitution.

2. PETITION TO ANNEX. The Owner has filed with the Clerk of the City, a petition pursuant to the provisions of Section 7-1-8 of the Illinois Compiled Statutes [65 ILCS 5/7-1-8 (1998 State Bar Association Edition)], conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached 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 the Comprehensive Plan of the City, zoning and classifying the Subject Property in the R-5 Residential District with issuance of a special use permit for a planned unit development.

5. **DEVELOPMENT STANDARDS.** The Site Plans has been reviewed by the corporate authorities of the City, and is hereby approved as the Preliminary Plat for the subdivision of the Subject Property. The City agrees to approve the final plat of subdivision provided said final plat, final engineering and such other final plans, as are required by the City's ordinances, are duly submitted and comply with the City's ordinance, this Agreement, and are consistent with the Site Plans. The Subject Property shall contain a maximum of 15 dwelling units. The Subject Property shall be developed in the manner and in accordance with the proposed uses as shown on the Site Plans. The Development 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, as amended by the Site Plans.

The Owner shall provide to the City such documents and cross access easements which would allow the private roadway, if desired by the City, to be interconnected with a future townhome project. Such documents and easements shall be subject to the reasonable approval of the City Attorney. Each Deed shall be subject to the Declaration of Covenants, Conditions and Restrictions, which said Declaration will provide for the future roadway extension, if required.

6. PLANNED UNIT DEVELOPMENT. In furtherance of the review and approval by the City of the Subject Property, Developer has submitted a representative drawing of the proposed front exterior elevation of the attached single family dwelling units dated December 17, 2002 prepared by Steven C. Olson Ltd., Architects ("Exterior Elevation Plan"), copies of which are attached hereto as Exhibit "D". The Subject Property shall be developed in substantial conformity with the Site Plans and Exterior Elevation Plan.

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. 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 plat on the Subject Property, pursuant to Chapter 62 of the Wheaton City Code, as modified by Paragraph 11 of this Agreement. Location and size of sanitary sewer mains to be installed by Developer shall be in conformity with Exhibit "C", subject to final engineering considerations.

8. STORM WATER FACILITIES. Developer agrees to design and construct suitable storm water facilities for the Development which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code, the DuPage County Countywide Stormwater and Floodplain Ordinance, and all other applicable statutes and ordinances.

9. 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 and storm water management facilities to be constructed in the Development. Said letter of credit shall be in the amount of one hundred twenty-five percent (125%) of the Developer's engineer's estimate of

construction costs (as approved by the 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 a Subdivision Improvement Agreement in the form as provided by the City. As the Developer completes the items within the letter of credit, the Developer may apply to the City for acceptance of said improvements in accordance with Paragraph 11 of this Agreement. Developer agrees to cause the letter of credit to be extended to cover the actual time of construction.

10. PROCEDURE FOR ACCEPTANCE OF ANY PUBLIC IMPROVEMENTS.

The procedure for acceptance by the City of any public improvement constructed as 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 Developer.

11. MINOR CHANGES IN DEVELOPMENT. Minor variations or deviations from the Site Plans 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 subdivision and zoning ordinances of the City. 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.

12. PRESIDENT STREET IMPROVEMENT. The Developer shall pay to the City the sum of Eighteen Thousand Three Hundred Twenty Five dollars plus eight percent (8%) annual simple interest calculated from May 1, 1991, as and for Developer's sole contribution for one half of the cost of the President Street improvements fronting the Subject property heretofore

completed by the City. The President Street Contribution shall be due and payable prior to recordation of the final plat for the Development.

13. BUILDING PLANS. The Developer 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.

14. 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.

15. CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Owner agrees to construct sidewalks and install parkway trees along Geneva Road and President Street in accordance with the standards contained in Chapter 62 of the Wheaton City Code.

16. 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 Owners, contractors, subcontractors, material men, or others performing work or supplying materials in connection with the development or construction of improvements on the Subject Property shall be the amount or rate of said fees in effect at the time of application for same.

17. SCHOOL AND PARK CASH CONTRIBUTIONS. The Owner agrees to provide a cash contribution in the amount of Two Thousand Five Hundred Nineteen Dollars (\$2,519.00) for each three bedroom home built on the Subject Property. Said cash contribution represents the cash contribution amount in effect at the time the petition for annexation was signed by the Owner. Said cash contribution shall be paid at the time of building permit. Adjustments to the

amount to be paid will be made according to the actual number of bedrooms in each home. Said adjustment will be made according to the formula contained in Article 6 of the Wheaton City Code.

18. WHEATON PARK DISTRICT ANNEXATION. Owner agrees to annex, pursuant to Statute, the Subject Property to the Wheaton Park District within one (1) year from the date of this agreement.

Subject Property shall be the amount or rate of said fees in effect at the time of application for same.

19. TREE PRESERVATION. The Owner shall comply with the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance.

20. 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.

21. AMENDMENT OF ANNEXATION AGREEMENT. This Annexation Agreement, and any exhibit attached hereto, may be amended pursuant to the provisions of Chapter 6 of the City Code.

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

23. 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.

24. CONSEQUENCE OF NON-DEVELOPMENT. Any portion of Parcel A which has not been completely developed in full compliance with this annexation 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 property granted herein shall automatically terminate.

25. PROPERTY OWNERS' ASSOCIATION – MAINTENANCE. For the funding and implementation of the care and maintenance of common facilities within the subject Property, including without limitation, any stormwater detention facility, common areas, and landscaping walls, Developer shall establish a homeowner's association obligating the owners of all of the lots within the Subject Property to participate in the care and maintenance of such common facilities. The declaration of covenants providing for such a homeowner's association shall further provide for the right and authority, but not the obligation, of the City to enforce proper maintenance and care of such common facilities, and the right of the City to carry out such maintenance and care and collect the cost thereof from those lot owners responsible for the same, including the right of lien against the real property owned by such owner within the Subject Property. Such maintenance responsibilities and rights of the City shall not be amendable under the declaration of covenants without the City's prior written consent.

26. TERM OF AGREEMENT. This Annexation Agreement shall be binding upon the parties hereto, their respective successors and the assigns for a full term of ten (10) years from the date of this Agreement.

27. 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, contractors, 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.

28. BINDING EFFECT. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, assigns, successors, and grantees.

29. 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:

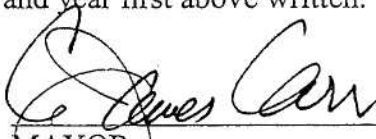
A. James McNaughton Builders, Inc.
123 E. Ogden Avenue
Hinsdale, IL 60521

B. City of Wheaton.
City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60189-0727

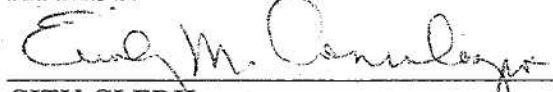
30. RECORDING. This Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Owner.

IN WITNESS WHEREOF, the Corporate authorities and 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.

By


MAYOR

ATTEST:


CITY CLERK

ATTEST:

ATTEST:

OWNER

OWNER

EXHIBIT A

PARCEL 1: THE NORTH 75 FEET OF THE SOUTH 200 FEET OF LOTS 17 AND 18 IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-002

PARCEL 2: THE NORTH 75 FEET OF THE SOUTH 125 FEET OF LOTS 17 AND 18 IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TPO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-003

PARCEL 3: THE SOUTH 50 FEET OF LOTS 17 AND 18 IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH. RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-004

PARCEL 4: THE NORTH HALF OF LOT 15 AND THE SOUTH 50 FEET OF LOT 16 IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-010 05-10-100-006

PARCEL 5: LOT 16 (EXCEPT THE SOUTH 25 FEET THEREOF) AND (EXCEPT SO MUCH OF THE NORTHERLY PORTION OF SAID LOT 16 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915) IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-005

PARCEL 6: LOT 3 (EXCEPT SO MUCH OF THE NORTHERLY PORTION OF SAID LOT 3 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915(IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-007

PARCEL 7: LOT 2 (EXCEPT SO MUCH OF THE NORTHERLY PORTION OF SAID LOT 2 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915) IN BLOCK 2 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, AND PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS. P.I.N. 05-10-100-008