

ORDINANCE NO. F-1024

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT –
MCKENZIE PLACE – AIRHART CONSTRUCTION**

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 October 25, 2004, to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated April 4, 2005, among the City and Airhart Construction ("Owner") ("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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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.

ATTEST:

Emily M. Conroy
City Clerk



Mayor

Roll Call Vote

Ayes: Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork
Councilman Mouhelis
Councilman Bolds
Councilwoman Corry

Nays: None

Absent: None

Motion Carried Unanimously

Passed: April 4, 2005
Effective: April 6, 2005
Published: April 6, 2005

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 4th day of April, 2005 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Airhart Construction ("Owner") ("Developer").

WITNESSETH

WHEREAS, the Owner has an interest in or controls the real estate comprised of several parcels of property totaling approximately 5.4 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 23 unit attached townhome development and four single family homes on the Subject Property substantially in accordance with and pursuant to the preliminary engineering and site plans dated August 15, 2004 prepared by Jacob Hefner Associates and conceptual landscape plan dated August 27, 2004 prepared by Airhart Construction, 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 R-2 Single Family Residential; 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 and R-2 Single Family Residential. That portion of the Subject Property to be zoned R-5 Residential District is legally described in Exhibit "A-1" attached hereto and made a part hereof ("R-5 Parcel") and that portion of the Subject Property to be zoned R-2 Single Family Residential District is legally described in Exhibit "A-2" attached hereto and made a part hereof ("R-2 Parcel").

5. DEVELOPMENT STANDARDS. The Site Plans have 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 23 attached dwelling units and four detached single family homes. 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 and/or this Agreement.

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 representative drawings of the proposed exterior elevations of the attached single family dwelling units prepared by Airhart Construction, and of the detached single family dwelling units prepared by Airhart Construction (“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 “B”, 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. WATER FACILITIES. The City will accept dedication of all primary water mains constructed by Developer in accordance with the final plat of subdivision and final engineering for the Subject Property pursuant to Chapter 62 of the Wheaton City Code, as modified by Paragraph 11 in this Agreement. Location and size of the water lines to be installed by the Developer shall be in conformance with the Site Plans, subject to final engineering considerations as approved by the Director of Engineering. At a minimum, water mains shall be constructed along Daly Road from a connection with the existing President Street water main to a connection with the existing Daly Road water main approximately 150 feet east of Stoddard Avenue; and, along Stoddard Avenue from a connection with the proposed Daly Road water main to a connection with the existing Stoddard Avenue water main approximately 100 feet north of the north line of the Subject Property.

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 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.

11. 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.

12. 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.

13. PRESIDENT STREET IMPROVEMENTS. The Developer agrees to pay the City a recapture payment of TWENTY-SIX THOUSAND THREE HUNDRED EIGHTY-EIGHT DOLLARS AND NO/100 (\$26,388.00) plus interest at a rate of eight percent (8%) per annum from May 1, 1991 to the date of payment for the Developer's prorata share of the cost of the President Street improvements heretofore constructed by the City ("President Street Recapture"). The President Street Recapture shall be paid to the City prior to recordation of the final plat of subdivision for the Subject Property. The City agrees to reimburse the Developer from the President Street Recapture an amount equal to the actual cost to construct portions of the water mains required under Paragraph 9 of this Agreement which extend beyond the limits of the adjacent rights-of-way of the Subject Property (approximately 250 feet, total) ("Offsite Water Mains"). The actual cost of the Offsite Water Mains shall be

reviewed and approved by the Director of Engineering.

14. 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.

15. 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.

16. CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Owner agrees to construct sidewalks and install parkway trees within the adjacent parkways of President Street, Stoddard Avenue and Daly Road fronting the Subject Property in accordance with the standards contained in Chapter 62 of the Wheaton City Code. The Developer further agrees to re-construct the street pavements following completion of all public underground utility work within the rights-of-way of Daly Road and Stoddard Avenue adjacent to the Subject Property. The design of the re-constructed street pavements shall conform to the design standards of the City as approved by the Director of Engineering, and shall not include curb and gutter, storm sewer, or additional pavement width than that which exists prior to development of the Subject Property.

17. 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.

18. SCHOOL AND PARK CASH CONTRIBUTIONS. Owner agrees to provide an aggregate school and park cash contribution in the amount of \$44,422.00 (“Aggregate School/Park Contribution”) representing the cash contribution amount in effect pursuant to Article V of Chapter 62 of the Wheaton City Code at the time the petition for annexation was signed by Owner. The Aggregate School/Park Contribution includes the credit given for the nine (9) three bedroom detached single family dwellings located, or previously located, on the Subject Property. The Aggregate School/Park Contribution constitutes the sole and exclusive obligation of Owner and the Subject Property with respect to contributions for school and park purposes and no contribution of land for such purposes shall be required. The Aggregate School/Park Contribution shall be paid by Owner prior to the recordation of the final plat of subdivision. Adjustments to the Aggregate School/Park Contribution will be made on a dwelling unit by dwelling unit basis at the time each building permit is issued therefore based upon the actual number of bedrooms in such dwelling unit. In calculating the Aggregate School/Park Contribution three (3) bedrooms for each attached single family dwelling and four (4) bedrooms for each detached single family dwelling has been assumed. Said adjustments will be made according to the formula contained in said Article V of Chapter 62 of the Wheaton City Code.

19. 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.

20. TREE PRESERVATION. The Owner shall comply with the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance, subject to the provisions of the Site Plans and the terms of this Agreement.

21. 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.

22. 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.

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

24. 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.

25. CONSEQUENCE OF NON-DEVELOPMENT. Any portion of R-5 zoned property 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 in such event any special use permit or other permission to develop the property granted herein shall automatically terminate.

26. 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. The Owner shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial conformance with Exhibit "E".

27. RECAPTURE AGREEMENT. As a condition to the approval of the Site Plans and Owner's proposed development of the Subject Property, the City has required Owner to construct certain public improvements within the public right-of-ways for Stoddard Ave. and Daly Rd., including, without limitation, street improvements and pavement (without curb and gutter), sanitary sewer, water main, storm sewer and other public improvements as are included in the final engineering plans approved by the City for the development ("Recapture Items"). The City has determined that the Recapture Items, which are to be dedicated to the public, may be used for the benefit of real estate other than the Subject Property. Owner is desirous of entering into a recapture agreement with the City to provide for Owner's recovery of one-half of the design, construction and City acceptance costs for the Recapture Items incurred by Owner pursuant to the applicable provisions of Chapter 50 of the Wheaton City Code. The City agrees that upon the submission by Owner to the City of all materials required pursuant to said Chapter 50, the City shall give such notices and hold such hearing in accordance with the provisions of said Chapter 50 for the purpose of entering into a recapture agreement with Owner with respect to the Recapture Items, and shall further enter into such recapture agreement provided the City

determines that the requirements and provisions of said Chapter 50 pertaining thereto have been satisfied by Owner.

28. 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 this 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 five (5) years following the date hereof without regard to their subsequent amendment, modification or repeal, unless otherwise consented to in writing by Developer.

- (a) Minimum size of yards and setbacks;
- (b) Maximum building height;
- (c) Maximum lot coverage;
- (d) Minimum lot width;
- (e) Maximum floor area ratio;
- (f) Minimum lot size;
- (g) Minimum usable open space
- (h) Minimum lot depth;
- (i) Minimum storm water retention/detention requirements;
- (j) Curb, gutter and street construction and pavement standards for private streets and cul-de-sacs.

In any event, the City agrees that the Subject Property shall be allowed to be developed with four (4) detached single family and twenty-three (23) attached townhome residential dwelling units,

the provisions of any City ordinance in affect at the time of application for a site development/building permit to the contrary notwithstanding.

29. 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.

30. 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.

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

32. 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. Airhart Construction
500 East Roosevelt Road
West Chicago, IL 60185

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

33. RECORDING. This Agreement shall be recorded in the Office 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:

Eric M. Condraju
CITY CLERK

OWNER

ATTEST:

OWNER

ATTEST: