

ORDINANCE NO. F-1050

AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
ON625, ON645, ON659, ON689 GARY AVENUE
ARMBRUST PROPERTIES, LLC & GARY AVENUE MEDICAL, LLC

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 April 11, 2005, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated June 6, 2005, among the City and Armbrust Properties, LLC and Gary Avenue Medical, LLC ("Developers") ("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.

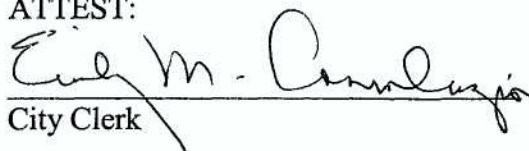
Section 2: The Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owners.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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


City Clerk

Ayes: Roll Call Vote
Councilman Mouhelis
Councilman Seuss
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine
Nays: None
Absent: None

Motion Carried Unanimously

Passed: June 6, 2005
Published: June 7, 2005

ANNEXATION AGREEMENT

between

CITY OF WHEATON, ILLINOIS
GARY AVENUE MEDICAL, LLC
ARMBRUST PROPERTIES, LLC

Dated: June 6, 2005

TABLE OF CONTENTS

| <u>Paragraph</u> | | <u>Title</u> |
|------------------|--|--------------|
| Recitals | | 1 |
| 1 | Legal Conformance with Law | 3 |
| 2 | Petition to Annex | 3 |
| 3 | Annexation Ordinance | 4 |
| 4 | Rezoning/PUD Concept Plan | 4 |
| 4.A. | Rezoning | 4 |
| 4.B. | PUD Concept Plan | 4 |
| 5 | Ownership and Control of PUD | 7 |
| 6 | Sanitary Sewer Facilities | 8 |
| 7 | Irrevocable Letter of Credit | 9 |
| 8 | Minor Changes in Development | 9 |
| 9 | Building Plan | 10 |
| 10 | Stop Orders | 10 |
| 11 | Annexation and Permit Fees | 10 |
| 12 | School and Park Contributions | 10 |
| 13 | Wheaton Park District Annexation | 11 |
| 14 | Property Owners' Association - Maintenance | 11 |
| 15 | Amendments to Ordinances | 12 |
| 16 | Disconnection | 13 |
| 17 | General Provisions | 13 |
| 17.A. | Term of Agreement | 13 |
| 17.B. | Indemnification | 13 |
| 17.C. | Binding Effect | 14 |
| 17.D. | Notices | 14 |
| 17.E. | Recording | 15 |
| 17.F. | Paragraph and Exhibit References | 15 |
| 17.G. | Caption and Paragraph Headings | 15 |
| 17.H. | Governing Law | 15 |
| 17.I. | Counterparts | 15 |
| 17.J. | Binding Effect, Succession in Interest | 15 |
| 17.K. | Time of the Essence | 16 |
| 17.L. | Invalidity | 16 |
| 17.M. | Amendment of Annexation Agreement | 16 |
| 17.N. | Conflict in Regulations | 17 |
| 17.O. | Conveyances | 17 |
| 17.P. | Necessary Ordinances and Resolutions | 17 |
| 17.Q. | Recitals and Exhibits | 17 |
| | Signature Page | 18 |
| Exhibit "A": | Legal Description of GAM Property | |
| Exhibit "B": | Legal Description of AP Property | |
| Exhibit "C": | Legal Description of Previously Annexed Parcel | |
| Exhibit "D": | Petitions for Annexation | |
| Exhibit "E": | Conceptual Site Plan | |

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Henry S. Stillwell III
Rathje & Woodward
300 E. Roosevelt Road
P.O. Box 786
Wheaton, IL 60187

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 6th day of June, 2005 among the City of Wheaton, Illinois, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), GARY AVENUE MEDICAL, LLC, an Illinois limited liability company ("GAM") and ARMBRUST PROPERTIES, LLC, an Illinois limited liability company ("AP"). GAM and AP are sometimes referred to individually as an "Owner" or "Developer" and collectively as the "Owners" or "Developers". The City, GAM and AP are sometimes referred to herein individually as "Party" and collectively as the "Parties".

RECITALS:

A. GAM owns or controls the real estate legally described in Exhibit "A" ("GAM Property").

B. AP owns or controls the real estate legally described in Exhibit "B" ("AP Property"). The GAM Property and AP Property are sometimes referred to herein collectively as the "Subject Property".

C. That portion of the GAM Property legally described in Exhibit "C" has previously been annexed to the City and is currently zoned R-1 under the City's Zoning Ordinance ("Previously Annexed Parcel").

D. The balance of the Subject Property excluding the Previously Annexed Parcel, is located in unincorporated DuPage County and zoned under the DuPage County Zoning Ordinance ("Annexing Property").

E. The Annexing Property is contiguous to the corporate limits of the City.

F. It is the desire of Owners that all of the Annexing Property be annexed to the City under the terms and conditions of this Agreement, and that the entirety of the Subject Property be submitted to and found under the terms and conditions of this Agreement.

G. Owners are desirous of constructing a mixed use, multi-building non-residential development upon the Subject Property, including, without limitation, facilities for retail and service commercial, medical office and financial institution facilities, under the C-5 District, with a special use for planned unit development ("PUD"), of the City's Zoning Ordinance.

H. The City has concluded that annexation of the Annexing 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.

I. 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.

J. The City has had such hearings and heard such testimony as prescribed by law with respect to the requested zoning classification of C-5 Planned Commercial District with issuance of a special use permit for a PUD.

K. 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.** Owners have filed with the Clerk of the City, petitions pursuant to the provisions of Section 7-1-8 of the Illinois Compiled Statutes [63 ILCS 3/7-1-8 (2002 State Bar Association Edition)], conditioned upon the signing of this Agreement, to annex the Annexing Property to the City. The petitions are attached as Exhibit "D". This Agreement in its entirety, together with the aforesaid petitions 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 Annexing Property to the City.

4. **REZONING/PUD CONCEPT PLAN.**

- A. 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 C-5 Planned Commercial District with issuance of a provisional special use permit for a planned unit development. The provisional special use permit for a planned unit development shall become final upon approval of a final PUD plan for the Subject Property by the City's Corporate Authorities.
- B. PUD Concept Plan: In conjunction with the rezoning and special use for PUD provided in Paragraph 4.A. of this Agreement, Owners have submitted that certain conceptual PUD site plan attached as Exhibit "E" ("Concept Plan"). The City has reviewed and approved the Concept Plan with respect to the number of buildings and general buildings and land use locations (i.e., medical and professional offices, retail commercial and

financial institution with drive-thru facilities) for the Subject Property.

The Parties agree that the development and use of the Subject Property shall generally conform to the Concept Plan, including the location of the two-story medical office building on the GAM Property and the financial institution with drive-thru facilities on the southerly portion of the AP Property. The Parties further agree and acknowledge, however, that the Concept Plan has not been designed to properly address and conform with all of the technical requirements under the City Code applicable to the development of the Subject Property, including, without limitation:

- (i) conformance with requirements pertaining to the minimum building and impervious surface setbacks from the perimeter property line;
- (ii) conformance with minimum site landscaping and perimeter landscape buffer requirements;
- (iii) calculation, design, and sizing of required storm water management facilities;
- (iv) compliance with minimum off-street parking requirements;
- (v) analysis and design of public street access locations and intersection improvement designs;
- (vi) compliance with applicable signage limitations; and

- (vii) compliance with other applicable ordinance requirements or legally appropriate discretionary conditions, including but not limited to building materials and design, required by the City's Corporate Authorities.

Prior to the development of any portion of the Subject Property in general conformance with the Concept Plan, Owners shall, at their expense, cause to be prepared and submitted to the City Council for City Council review and approval in conformance with applicable procedures of the City, all appropriate plans, studies and calculations required for preliminary and final PUD plans approval, including, without limitation, the following:

- (a) Preliminary/final plat of subdivision;
- (b) Preliminary/final PUD site plan;
- (c) Preliminary/final PUD landscaping plan;
- (d) Preliminary/final exterior building elevations;
- (e) Preliminary/final PUD signage plan;
- (f) Preliminary/final PUD photometric plan;
- (g) Preliminary/final engineering plans;
- (h) Stormwater study report and calculations;
- (i) Traffic study pertaining to onsite traffic circulation, external access, intersection improvements and such other traffic related consideration as may be reasonably required by the City; and

- (j) Any other plans, studies, calculations or drawings required by City Ordinance or reasonably necessary for final planned unit development approval.

Items (a) through (j) are referred to herein collectively as the "PUD Materials". The PUD Materials from time to time submitted for the Subject Property or any portion thereof may be submitted in a preliminary form, with final plans submitted following preliminary approval, or in a combined preliminary/final form, thereby eliminating the requirement of subsequent final plan review at the election of the applicable Owner or Developer. The proposed development of the Subject Property in substantial conformity with the PUD Materials shall comply with all of the applicable requirements of the City Code, unless otherwise hereafter approved by the City Council as a part of its review and consideration of the PUD Materials. Nothing contained in this Agreement or in the Concept Plan shall constitute or in any manner be construed to constitute the approval by the City of any variation, deviation or departure from the existing standards and requirements of the City Code applicable to the development and use of the Subject Property. Each Owner shall have the right to from time to time request one or more deviations or variations from applicable requirements of the City Code at the time or times PUD Materials are submitted or at such other times as an Owner may elect,

however, the City shall have no obligation to approve any such requested deviation or variation nor shall this Agreement or the Concept Plan be construed to in any manner alter, lessen or restrict the City's otherwise applicable rights, powers and authorities with respect to its consideration, approval or denial of any such request. The PUD may, at Owners' election, be developed in one or more phases, provided each such phase complies with the PUD Materials approved by the City Council pertaining thereto and incorporates satisfactory access, parking, utility service and stormwater management improvements sufficient to properly service such development phase.

5. OWNERSHIP AND CONTROL OF PUD. Owners shall have the right to maintain separate ownership of the GAM Property and AP Property and may from time to time elect to establish separate outlots for one or more of the buildings being a part of the PUD pursuant to a plat or plats of subdivision from time to time reviewed and approved by the City. The initial submission of PUD Materials by Owners shall include a plat of subdivision creating at least two subdivided lots consisting of the GAM Property and the AP Property and such additional lot or lots therein for one or more of the buildings approved pursuant to the PUD Materials as an Owner may deem appropriate for the ownership and control of the PUD. Any lot from time to time created for one or more of the buildings within the PUD pursuant to a plat of subdivision approved by the City need not have frontage on a public street nor comply with any minimum size, setback or other bulk requirements, provided such lot is subjected to, obligated

under and benefited by the RCOE, as hereinafter defined, and otherwise complies with the standards established for the PUD pursuant to the PUD Materials approved by the City. In any event, the number of additional lots from time to time established for a building within the PUD shall not exceed the number of buildings from time to time approved pursuant to the PUD Materials. All lots from time to time established within the Subject Property shall be a part of the PUD and subject to the PUD Materials. Nothing contained herein, however, shall prohibit or limit an Owner's right to establish condominium ownership of a building developed by such Owner provided all condominium owners shall take ownership subject to the PUD Materials and the RCOE. As a part of the initial submission of PUD Materials for the Subject Property, Owners shall submit the form reciprocal construction, operation and easement agreement ("RCOE") which Owners intend to execute and record against the Subject Property, as a covenant running with the land, which provides for the unified control of the Subject Property in furtherance of the PUD as required pursuant to applicable ordinances of the City. Prior to commencing the initial development of the PUD the RCOE, in a form approved by the city attorney, which approval shall not be unreasonably denied or delayed, shall be recorded against the Subject Property. The RCOE shall be subject to amendment from time to time in compliance with the terms and provisions of the RCOE pertaining thereto.

6. 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 the manner contemplated in this Agreement. In addition, the maintenance of all sanitary sewer mains and appurtenances located within the Corporate limits of the City and constructed on the Subject Property by an Owner or Developer in accordance with PUD Materials approved by the City Council, shall remain the responsibility of such Owner or Developer or applicable association of owners established by Owners for the Subject Property, unless otherwise dedicated to, owned and maintained by the City.

7. 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 as a part of the development of the Subject Property. Said letter of credit shall be in the amount of one hundred twenty-five percent (125%) of the Owner's or 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 PUD Improvement Agreement in the form as provided by the City. As the applicable Owner or Developer completes the items within the letter of credit, the Owner or Developer may apply to the City for acceptance of said improvements in accordance with applicable ordinances of the City. Each Owner and Developer depositing such letter of credit agrees to cause the letter of credit to be extended to cover the actual time of construction.

8. MINOR CHANGES IN DEVELOPMENT. Minor variations or deviations from the PUD Materials from time to time hereafter approved by the City Council may be necessary in order to solve engineering layout and design problems and other problems not reasonably foreseen at this time as long as the same density of development is maintained and the development conforms to the applicable subdivision and zoning ordinances of the City. These issues shall be handled in conformance with Section 5.11.F. of the Wheaton Zoning Ordinance.

9. BUILDING PLAN. Owners and Developers, as the case may be, shall be required to submit a building plan and building permit application for each building to be constructed as a part of the PUD on the Subject Property. A building permit must be obtained and the appropriate permit fee paid as required by the applicable Wheaton ordinances for each building to be constructed.

10. 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 Owners or Developers or successor Developers, 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 the same.

11. SCHOOL AND PARK CASH CONTRIBUTIONS. Owners and Developers shall have no obligation or responsibility to convey any land or make any cash contributions-in-lieu of land for school and/or park purposes so long as the Subject Property is developed and

used for non-residential purposes as contemplated in this Agreement. In the event all or any portion of the Subject Property is hereafter zoned and approved for residential development by the City pursuant to application therefore by an Owner thereof, the Owner or Developer of such residentially zoned and developed property shall fully comply with the then applicable requirements of the City Code with respect to contributions for school and park purposes.

12. WHEATON PARK DISTRICT ANNEXATION. Owners agree to annex, pursuant to applicable Illinois statute, the Subject Property to the Wheaton Park District within one (1) year from the date of this Agreement.

13. PROPERTY OWNERS' ASSOCIATION – MAINTENANCE. For the funding and implementation of the care and maintenance of common facilities within the Subject Property, including without limitation, driveways, stormwater detention facilities, signage and landscaped areas to the extent all or any of the same are shared for the common benefit of the PUD, Owners shall establish an association of owners ("Owners' Association") obligating the owners of all of the lots and/or condominium units, as the case may be, within the Subject Property to participate in the care and maintenance of such common facilities. The RCOE shall provide for such an Owners' Association and shall further provide for the right and authority, but not the obligation, of the City to enforce proper maintenance and care of the stormwater detention 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 RCOE without the City's prior written consent.

14. 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 Owners:

- (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) Curb, gutter and street construction and pavement standards for private driveways and parking areas.

In any event, the City agrees that the Subject Property shall be allowed to be developed as a PUD with three (3) non-residential buildings in the manner provided for in this Agreement, the provisions of any City ordinance in affect at the time of application for a site development/building permit to the contrary notwithstanding.

15. DISCONNECTION. In the event within two (2) years following the date of this Agreement Owners fail to submit at least preliminary PUD Materials for the Subject Property for City review and consideration or, in the event such preliminary PUD Materials are submitted by Owners to the City but the Corporate Authorities in the reasonable discretion granted to them, under Illinois law in approving or rejecting a PUD plan, rejects the final plan, the City shall have the right, but not the obligation, to take all necessary and appropriate action to disconnect the entirety (but not less than all) of the Subject Property from the City and terminate this Agreement by ordinance duly adopted by the City Council ("Disconnection Ordinance"). No Disconnection Ordinance shall be effective unless the City Council holds a public hearing thereon and gives Owners not less than fifteen (15) days prior written notice of such hearing date and the nature of the action being considered. Upon the approval by the City of PUD Materials for all or any portion of the Subject Property, the right of the City to disconnect the Subject Property as provided in this Paragraph 15 shall terminate and be of no further force or effect.

16. FIRE LANE AGREEMENT. The Owner/Developer shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial compliance with Exhibit "F".

17. GENERAL PROVISIONS.

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

B. **INDEMNIFICATION.** The applicable Owner or Developer responsible therefore shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of such Owner or Developer, its agents, assigns, employees, contractors, and subcontractors. The applicable Owner or Developer, as the case may be, 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 applicable Owner or Developer shall provide the City with certificates of insurance as required by any PUD Improvement Agreement hereafter entered between the City and such Owner or Developer.

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

D. **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 properly given on the date delivered personally or the second (2nd) business day

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

- (i) If to Owners/Developers: Gary Avenue Medical, LLC
Attn: Dr. Steve Armbrust
2001 W. Wiesbrook Road
Wheaton, IL 60187
- and Armbrust Properties, LLC
Attn: Dr. Steve Armbrust
2001 W. Wiesbrook Road
Wheaton, IL 60187
- with a copy to: Rathje & Woodward
Attn: Henry S. Stillwell III
300 E. Roosevelt Road
Wheaton, IL 60187
- (ii) If to City: City of Wheaton
City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60189-0727

or to such other address as either Party may from time to time specify in writing to the other in accordance with the terms hereof.

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

F. PARAGRAPH AND EXHIBIT REFERENCES. All references to section and paragraph numbers contained in this Agreement shall mean the section or paragraph of such number contained in this Agreement, unless otherwise expressly provided therein. All references

herein to an Exhibit shall mean such exhibit attached to this Agreement, unless otherwise expressly provided herein.

G. CAPTIONS AND PARAGRAPH HEADINGS. The captions and paragraph headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement nor the meaning of any provision hereof.

H. GOVERNING LAW. This Agreement shall be construed and governed by the laws of the State of Illinois.

I. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

J. BINDING EFFECT, SUCCESSION IN INTEREST. This Agreement shall constitute a covenant running with the land and 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. Except as otherwise expressly provided herein, upon the conveyance or assignment by Owners and/or Developers of its interest in the Subject Property to any successor, assign, or nominee, such Owner and/or such Developer, as the case may be, shall be released from any and all further liability or responsibility under this Agreement, and the City shall thereafter look only to the successor, assign, or nominee of such Owner and/or such Developer as the case may be, concerning the performance of such duties and obligations of such Owner and such Developer hereby undertaken.

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

L. 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 entire Agreement shall be deemed invalid and the City shall disconnect the entirety of the Property. Upon disconnection, the City shall have no obligation to provide the Property with public utilities.

M. AMENDMENT OF ANNEXATION AGREEMENT. This Agreement, and any exhibits or attachments hereto, may be amended from time to time in writing with the consent of the Parties hereto, pursuant to applicable provisions of Chapter 6 of the Wheaton City Code. This Agreement may be amended from time to time by written agreement between the City and the then legal owner of fee title to that portion of the Subject Property which is subject to and affected by such amendment; provided, that such amendment, if not executed by the then legal owner or owners of any other portion of the Subject Property, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Subject Property.

N. 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.

O. CONVEYANCES. Nothing contained in this Agreement shall be construed to restrict or limit the right of an Owner, its grantees, successors and assigns, to sell or convey all or any portion of the Subject Property, whether improved or unimproved.

P. NECESSARY ORDINANCES AND RESOLUTIONS. The City shall pass all ordinances and resolutions necessary to permit Owners and Developers to develop the Subject Property in accordance with the provisions of this Agreement, provided said ordinances and/or resolutions are not contrary to law.

Q. RECITALS AND EXHIBITS. The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

[signatures on following page]

IN WITNESS WHEREOF, the Corporate authorities and Developer 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:

By:

MAYOR

ATTEST:

CITY CLERK

OWNERS/DEVELOPERS:

GARY AVENUE MEDICAL, LLC, an Illinois
limited liability company

By: _____

_____, Manager

ARMBRUST PROPERTIES, LLC, an Illinois
limited liability company

By: _____

_____, Manager

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____, and _____, 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 _____ and _____, 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 _____ then and there acknowledged that he, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as his 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 _____ day of _____, 2004.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____, personally known to me to be the Manager of GARY AVENUE MEDICAL, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument pursuant to authority given by the Members of said limited liability company, as _____ free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2005.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY, that _____, personally known to me to be
the Manager of ARMBRUST PROPERTIES, LLC, and personally known to me to be the same
person whose name ius subscribed to the foregoing instrument, appeared before me this day in
person and acknowledged that as such Manager, __he signed and delivered the said instrument
pursuant to authority given by the Members of said limited liability company, as _____ free and
voluntary act, and as the free and voluntary act and deed of said limited liability company, for
the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2005.

Notary Public

annex agr 05.rtf
050905;051005;053105

SCHEDULE OF EXHIBITS

| | |
|--------------|--|
| EXHIBIT "A": | Legal Description of GAM Property |
| EXHIBIT "B": | Legal Description of AP Property |
| EXHIBIT "C": | Legal Description of Previously Annexed Parcel |
| EXHIBIT "D": | Petitions for Annexation |
| EXHIBIT "E": | Conceptual Site Plan |
| EXHIBIT "F": | Fire Lane Agreement |

EXHIBIT "A"

LEGAL DESCRIPTION OF GAM PROPERTY

LEGAL DESCRIPTION OF AP PROPERTY

EXHIBIT "C"

LEGAL DESCRIPTION OF PREVIOUSLY ANNEXED PARCEL

annex agr 05.rtf
050905;051005;053105

EXHIBIT "D"

PETITIONS FOR ANNEXATION

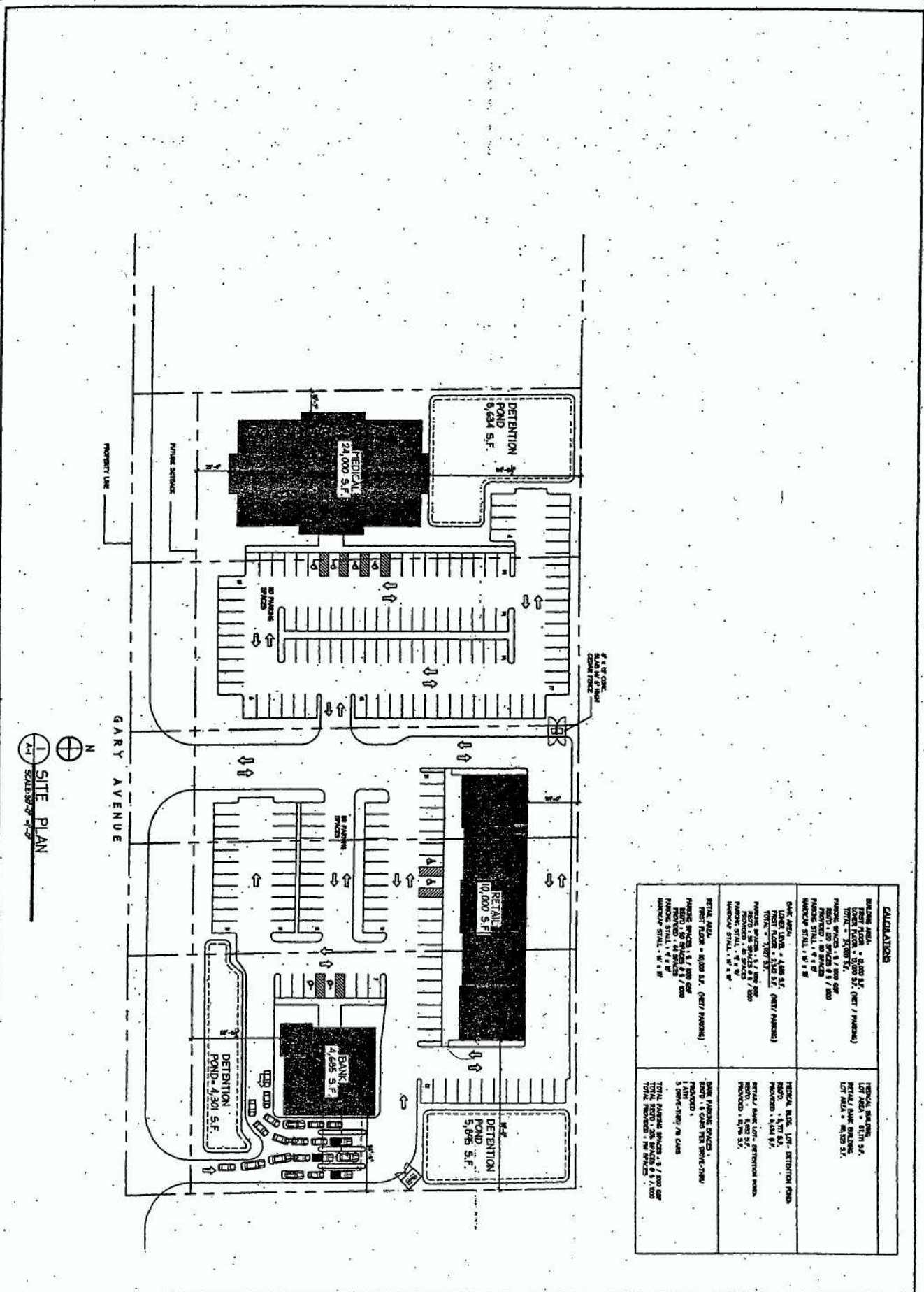
(See following _____ pages)

EXHIBIT "E"

CONCEPTUAL SITE PLAN

(See following 1 page)

Exhibit "E"



| CALCULATION | |
|---|---|
| BUILDING AREA: MEDICAL - 24,000 S.F. (NET / PARKING) RETAIL - 10,000 S.F. (NET / PARKING) BANK - 4,605 S.F. (NET / PARKING) TOTAL - 38,605 S.F. PARKING SPACES: 15 / 100 GAR PARKING STALL: 4' x 8' | NET AREA: 38,605 S.F. NET AREA: 38,605 S.F. NET AREA: 38,605 S.F. |
| LOT AREA: 148,000 S.F. (NET / PARKING) LOT AREA: 148,000 S.F. (NET / PARKING) LOT AREA: 148,000 S.F. (NET / PARKING) TOTAL - 148,000 S.F. PARKING STALL: 4' x 8' | NET AREA: 148,000 S.F. NET AREA: 148,000 S.F. NET AREA: 148,000 S.F. |
| DETENTION POND: 9,634 S.F. DETENTION POND: 5,095 S.F. DETENTION POND: 4,301 S.F. TOTAL - 19,030 S.F. | DETENTION POND: 9,634 S.F. DETENTION POND: 5,095 S.F. DETENTION POND: 4,301 S.F. TOTAL - 19,030 S.F. |

N
 SITE PLAN
 SCALE: 1" = 20'

EXHIBIT "F"

FIRE LANE AGREEMENT

(FIRE LANE DESIGNATION AND ENFORCEMENT AGREEMENT)

THIS AGREEMENT is made and entered into this day of , 2005, by and between the City of Wheaton, an Illinois Municipal Corporation, 303 W. Wesley Street, Wheaton, Illinois 60189 (hereinafter referred to as "CITY") and (hereinafter referred to as "OWNER(S)"), OWNER(S) of the property located at , Wheaton, within the corporate limits of the City of Wheaton, Illinois (hereinafter referred to as "Subject Property"), and which is legally described below:

LEGAL AND PIN

RECITALS

WHEREAS, the OWNER(S) desire to establish Fire Lanes upon the Subject Property to improve the health and safety of the citizens of Wheaton; and

WHEREAS, the CITY believes that it is in the best interests of the public health and safety that Fire Lanes be established, maintained and enforced upon the Subject Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the OWNER(S) and CITY agree to the following in regards to the Subject Property:

1. The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S), shall identify the specific Fire Lane locations within the Subject Property which shall, pursuant to the terms of this Agreement and Ordinance No. F-, be regulated. The specific locations of the Fire Lane(s) to be enforced shall be as set forth

on the Site Plan ("Plan") attached hereto and fully incorporated into this Agreement as Exhibit "A". The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S) or designated representative may from time to time mutually agree to amend the Fire Lane(s) location(s) as set forth in the Site Plan. At such time, the Site Plan shall be amended and appended to this Agreement as an Amended Exhibit "A".

2. The OWNER(S), are responsible for providing any required pavement markings.

3. The OWNER(S), at their sole expense, shall be responsible for obtaining, erecting and maintaining the appropriate signage in accordance with applicable CITY and State of Illinois regulations and specifications.

4. The CITY shall inspect and approve the signage prior to entering into this Agreement. The CITY Fire Chief, Chief of Police or their designated representative may require additional signage and/or pavement markings, if it is later determined that the inspected and approved signage does not provide adequate notification of the established fire lanes.

5. Upon execution of this Agreement, the CITY will enforce the Fire Lane parking and standing prohibitions and the Fire Lane maintenance requirements contained in sections 70-355 and 30-2 of the Wheaton City Code in regards to the Subject Property. No "special duty" to third persons shall be imposed by this Agreement. The CITY's enforcement obligation shall be legally the same as it is with all other ordinances.

6. This Agreement may be terminated by the City by providing not less than thirty (30) days notice to the Owner party of the intention to terminate this Agreement.

7. This Agreement shall be assignable by OWNER(S) to their successors in interest upon the sale or lease of the Subject Property.

8. The OWNER(S) hereby agrees to release and hold harmless, indemnify and defend (including the payment of all costs and attorneys' fees) the CITY, its Officers, Agents and Employees, in connection with any and all actions or claims for any loss,

damage, personal injury or death occurring as a consequence of the performance of this Agreement.

9. The sole remedy available to the OWNER(S), upon any breach of this Agreement by the CITY, shall be the termination of the Agreement. It is of the essence of this Agreement that the CITY shall not be liable in money damage for any breach of this Agreement.

10. Whenever notice to the CITY is required, it shall be addressed to:

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

Whenever notice to the Owner is required, it shall be addressed to:

IN WITNESS WHEREOF, the parties hereto have executed this instrument by their duly authorized officers of the day and year first above written.

CITY OF WHEATON, ILLINOIS, a Municipal Corporation

BY: _____
City Manager

ATTEST: _____
City Clerk

BY: _____

ATTEST: _____