

ORDINANCE NO. F-1193

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
2 S 426 ORCHARD ROAD
WHEATON DEVELOPMENT GROUP, 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 June 26, 2006, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated August 21, 2006, among the City and Wheaton Development Group, LLC ("Developer") ("Annexation Agreement"), is the direct result of deliberations on the proposed Annexation Agreement pursuant to the public hearing and other meetings before the City Council and City Staff.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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:

Ena M. Convaloy
City Clerk

Mayon

James Carr

Ayes:

Roll Call Vote
Councilman Mouhelis
Councilman Suess
Councilman Bolds
Councilwoman Corry
Mayor Pro Tem Johnson
Councilman Levine

Nays:

None

Absent:

Mayor Carr

Motion Carried Unanimously

Passed: August 21, 2006
Published: August 22, 2006

Passed:
Published:

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 21st day of August, 2006 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Wheaton Development Group, LLC ("Developer").

WITNESSETH

WHEREAS, the Developer has an interest in or controls the real estate comprised of a parcel of property approximately 13.82 acres in size, 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 (the 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 Developer that all of the Subject Property be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Developer desires to construct 33 single family homes on the Subject Property substantially in accordance with and pursuant to the preliminary engineering plan and Landscape Plan dated April 28, 2006 prepared by Webster, McGrath and Alhberg hereinafter referred to as "Site Plans" which is attached to and incorporated into this Agreement as Exhibit "B"; 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 law; and

WHEREAS, the City has had such hearings and heard such testimony as prescribed by law with respect to the annexation and requested zoning classification of R-3 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, together with other good and valuable consideration, the receipt of which the parties acknowledge, 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 Developer 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], conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached to, and incorporated in, this Agreement as Exhibit "C". This Agreement in its entirety, together with the 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 complete signing 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-3 Single Family Residential zoning district.

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 33 detached single family homes. The Subject Property shall be developed in the manner and in accordance with the proposed use as shown on the Site Plans subject to the following conditions and requirements:

- A. The pedestrian walkway easement, located between Lot 14 and 15, shall be fifteen (15) wide.
- B. Any fencing along and adjacent to the pedestrian walkway shall not exceed forty-eight (48) inches in height.
- C. Maintenance of the pedestrian walkway shall be the responsibility of the Homeowner's Association; the terms and provisions of the agreement shall be subject to the reasonable approval of the City Attorney.
- D. The berm on the western end of the Subject property shall be increased in height an additional one (1) foot, and the overflow structure from the detention basin shall be permanent, all subject to the approval of the Director of Engineering.
- E. The pedestrian walkway shall meet, at a minimum, the City's Design Standards for Public Sidewalks.

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.

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 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 10 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.

7. 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. Native plants and wetland plantings shall be used in the stormwater detention basins. The type quality and location of the plants shall be subject to the reasonable approval of the Director of Engineering. The final subdivision plat shall illustrate the southern stormwater detention basin as an outlot with a stormwater management easement dedicated to the City. The outlot shall be conveyed by plat as undivided equal interests to each lot in the subdivision for maintenance purposes. The final design for the storm water facilities shall be subject to the reasonable approval of the Director of Engineering.

8. WATER FACILITIES. The City represents that as of the date of this agreement, the water distribution system of the City currently has sufficient capacity to service the Subject Property with potable water for domestic water consumption and fire flow protection, if the

Subject Property is developed in accordance with this Agreement. 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 water lines of the City in order to develop and use the Subject Property. In addition, the City will accept dedication of all primary water mains constructed by the 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 10 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.

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 improvements 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 Director of Engineering) or one hundred percent (100%) of the contract costs of construction of all of the public facilities. The 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 10 of this Agreement. Developer agrees to cause the letter of credit to be extended to cover the actual time of construction.

The City Engineer may from time to time approve a reduction or reductions in the letter of credit by an amount not in excess of ninety percent (90%) of the value certified by the City Engineer of the completed work, so long as the balance remaining in the letter of credit is at least equal to one hundred twenty five percent (125%) of the cost to complete the remaining public improvements for the Subject Property, plus retention for completed work and inspection and testing fees for the City to inspect the public improvements remaining to be completed.

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 the 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. ORCHARD ROAD STREET IMPROVEMENTS. The Developer agrees to pay the City a recapture payment of one hundred and seven thousand dollars and seventy six cents (\$100,007.76) plus six percent (6%) per annum on this amount from November 1, 2002 to the date of payment to the City; this payment is for the Developer's pro-rata share of the cost of the original Orchard Road improvements heretofore constructed by the City ("Orchard Road Recapture"). The Orchard Road Recapture shall be paid to the City prior to recordation of the final plat of subdivision for the Subject Property.

13. BUILDING PLANS. The Developer shall be required to submit to the City, 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 shall construct all public improvements consistent with the City Code requirements for right-of-way width, street width, street edging (curb and gutter), sidewalks, street lighting, and parkway trees.

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 Developer agrees to provide an aggregate school and park cash contribution in the amount required by the City's Ordinances for each new four bedroom single family detached dwelling unit, representing the cash contribution amount in effect at the time the petition for annexation was signed by the Developer. This cash contribution shall be paid prior to the recordation of the final plat of subdivision. Adjustments to the amount to be paid will be made according to the actual number of bedrooms in each home. This adjustment will be made according to the formula contained in Article 6 of the Wheaton City Code. Developer has agreed to make a separate donation directly to the Wheaton Park District by separate agreement reached on or about June 1, 2006 between Developer and the Wheaton Park District.

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

19. TREE PRESERVATION. Prior to the issuance of a Site Development Permit, the Developer 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. All landscape plantings on the perimeter of the site shall be installed prior to the issuance of a building permit for any of lots and shall be located in an appropriate easement to provide for their continual maintenance. Said easement shall be subject to the reasonable approval of the City Attorney.

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. 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

25. 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 33 single family 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.

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. Developer shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the actions of the Developer, its agents, assigns, employees, contractors, and subcontractors. Developer 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 its actions and conduct. The Developer shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Developer.

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. Wheaton Development Group, LLC
7851 West Ogden Avenue
Lyons, IL 60534

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.

31. RECAPTURE AGREEMENTS. Except as otherwise expressly provided in this Agreement, there are currently no recapture agreements or recapture ordinances effecting public utilities which will be utilized to service the Subject Property which the City has any knowledge of or under which the City is or will be required to collect recapture amount from Developer, or its successors, upon connection of the Subject Property to any of such public facilities.

32. NONCONFORMING STRUCTURES AND USE. Developer and its lawful tenants shall have the right and authority to continue to lease, occupy, operate, maintain, repair, and renew the existing structures located upon the Subject Property for the purposes and uses currently engaged in by the occupants thereof, throughout the remainder of each tenancy thereof and until each such structure is vacated by the occupants thereof and razed by Developer. To the extent that any existing structure or use upon the Subject Property fails to comply with any provision of an applicable ordinance or regulation of the City, such non-complying structure or use shall be treated as a legal non-conforming structure or use pursuant to the applicable provisions of the City's Zoning Ordinance. No alterations to, or retrofitting of, any existing structure or improvement located upon the Subject Property shall be required as a result of the annexation of the Subject Property to the City, it being understood and agreed that each of such structures shall be razed upon termination of existing tenancies. In no case, shall the existing tenancy of the structures continue after August 21, 2007.

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

OWNER

ATTEST:
