

**ORDINANCE NO. F-1304**

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN  
ANNEXATION AGREEMENT -  
1411 SOUTH GABLES BOULEVARD  
TILLMAN**

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 22, 2007, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated November 5, 2007, among the City and J. Robert Tillman ("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.

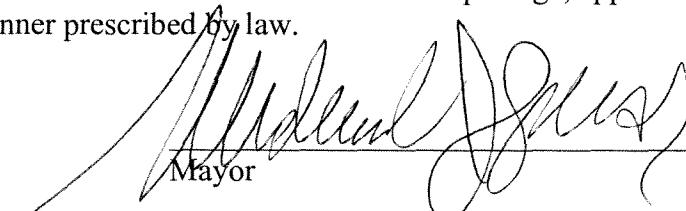
Section 2: The Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owners.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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

Erin M. Condega  
City Clerk

  
Mayor

Roll Call Vote

Ayes: Councilwoman Corry  
Councilman Johnson  
Councilman Levine  
Mayor Gresk  
Councilman Mouhelis  
Councilman Prendiville  
Councilman Suess

Nays: None

Absent: None

Motion Carried Unanimously

Passed: November 5, 2007  
Published: November 6, 2007

## ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 5<sup>th</sup> day of November, 2007 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and J. Robert Tillman ("Owner"). The City, and Owner are sometimes referred to herein individually as "Party" and collectively as the "Parties".

### WITNESSETH

WHEREAS, the Owner has an interest in or control of the real estate comprised of a parcel of property totaling approximately 1.92 acres, a description of which is set forth on the Plat of Annexation, is known commonly as 1411 S. Gables Boulevard, and legally described in 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"); and

WHEREAS, the Owner has an interest in or control of the property immediately to the west of and adjacent to the Subject Property, which is commonly known as 1401 S. Gables Boulevard, and was annexed to the City and developed with a single family home as approved by Ordinance No. F-0002; and

WHEREAS, the Subject Property is contiguous to the corporate limits of the City; and

WHEREAS, it is the desire of the owner that said real estate be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owner desires to consolidate 1401 South Gables Boulevard with 1411 South Gables Boulevard and obtain a special use permit to allow the construction of a pool house and swimming pool, thereto in substantial conformance with the landscape development plan, dated October 18, 2007 entitled "The Tillman Residence" prepared by Hursthause Landscape Architects and Contractors; 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 testimony as prescribed by law with respect to the requested zoning classification of R-2 and issuance of a Special Use Permit to allow the construction of a pool house and swimming pool; and

WHEREAS, notice has been duly served in the manner provided by statute of 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-2 Residential Zoning District Classification with a Special Use Permit to allow the construction of a pool house and swimming pool.

**5. ANNEXATION AND PERMIT FEES.** The amount of the permit or license fees imposed by the City which are applicable to or required to be paid by the Owner or successor Owner, 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.

**6. BUILDING PLANS.** The Owner shall be required to submit plans for the pool house and swimming pool to be constructed on the Subject Property. A building permit must be obtained and the appropriate permit fees paid as required by the City ordinances and this Agreement for the pool house and swimming pool to be constructed on the Subject Property. Said plans shall be subject to the following conditions and requirements:

1. The swimming pool house shall have a minimum rear yard setback of at least 25 feet; and
2. The swimming pool house shall not be used as a separate housekeeping unit and shall not be used for overnight housing by the occupants of the principal structure or their guests; and
3. The applicant submit a topographical survey of the property to determine the exact extent of the flood plain limits on the property.

**7. TREE PRESERVATION.** The Owner shall meet the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance.

**8. 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.

**9. 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.

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

**11. 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.

**12. 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.

**13. 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 actions, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence.

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

**15. 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. **Owner**  
J. Robert Tillman  
1401 South Gables Boulevard  
Wheaton, IL 60187

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

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

**17. 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.

**18. 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.

**19. 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.

**20. 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, and 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.

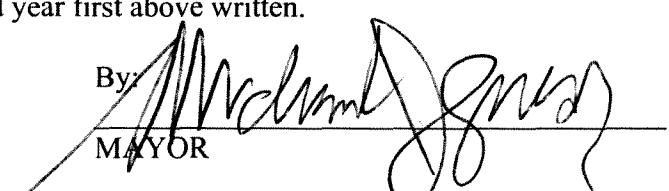
**21. CONFLICT IN REGULATIONS.** The provisions of this Annexation Agreement shall supersede the provisions of any ordinances, codes, or regulations of the City which may be in conflict with the provisions of this Annexation Agreement.

**22. 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.

**23. 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. The Plat of Consolidation of the subject property is hereby approved by the Mayor and City Council. The Mayor is hereby authorized to sign, and the City Clerk shall attest to the signature thereof, Tillman's Plat of Consolidation, prepared by Richard J. Steinbrecher, Professional Land Surveyor, Inc. dated August 23, 2007.

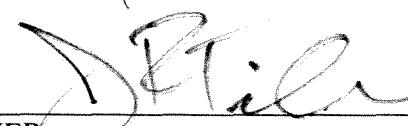
**24. RECITALS AND EXHIBITS.** The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

**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.

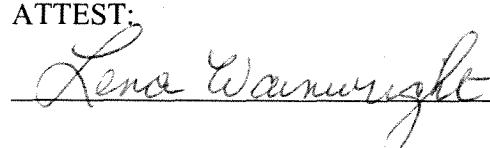
By:   
MAYOR

ATTEST:

  
CITY CLERK

By:   
OWNER

ATTEST:

  
Lena Wainwright

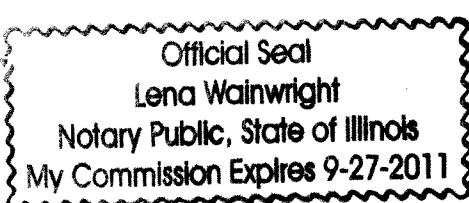


EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT 1 IN PROPERTY OWNER'S DIVISION OF LOT 1 OF HADLEY ESTATES, BEING A SUBDIVISION OF PART OF SECTION 20. TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MAY 15<sup>TH</sup>, 1947, AS DOCUMENT 521041, ALSO THAT PART OF THE WESTERLY 80 FEET, AS MEASURED ON THE SOUTHERLY LINE AND PARALLEL THERETO, OF LOT 2 (ALSO CALLED TRACT 2) IN HADLEY ESTATES LYING NORTHERLY OF THE SOUTHERLY LINE OF LOT 1 IN SAID PROPERTY OWNER'S DIVISIONS EXTENDED EASTERLY, ACCORDING TO THE PLAT OF SAID HADLEY ESTATES RECORDED NOVEMBER 20, 1943, AS DOCUMENT 456070, IN THE RECORDER'S OFFICE OF DU PAGE COUNTY, ILLINOIS.

P.I.N. 05-20-400-001 AND 05-20-400-008

The subject property is commonly known as 1411 South Gables Boulevard, Wheaton, IL 60187.

EXHIBIT "B"

SITE PLAN, ARCHITECTURAL PLANS AND LANDSCAPING PLAN

Landscape Development For The  
**THE TILLMAN RESIDENCE**

1401 South Gables Boulevard, Wheaton, Illinois 60187

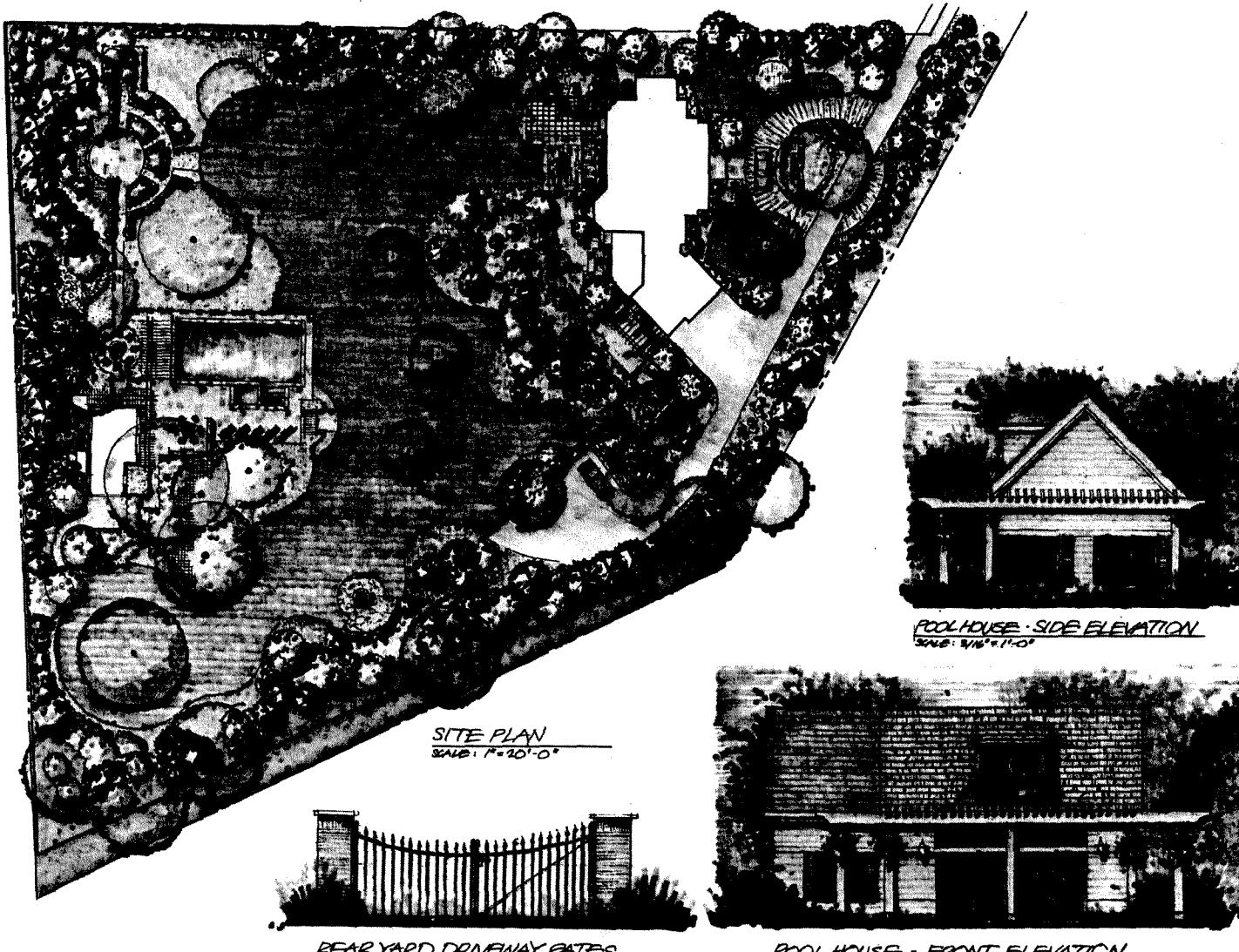


EXHIBIT "C"

PETITION FOR ANNEXATION

**CITY OF WHEATON**  
**PETITION FOR ANNEXATION**

To: THE WHEATON CITY COUNCIL

Petitioners on oath states as follows:

1. That they are the owners of record of all of the land within the property described herein.
2. That (they are the only) or (there are other) electors residing thereon. (Circle the appropriate answer).
3. That no portion of the property is within the corporate limits of any municipality.
4. That the property which petitioners desire to have annexed to the City of Wheaton is described as follows:

1401 S. Gables to add (2) adjacent lots  
directly behind residence. (1411 Gables)

5. That this petition shall be in full force and effect from and after the date hereof and until the property is contiguous and annexed to the City of Wheaton.

**WHEREFORE**, the applicant petitions that the property be annexed by ordinance to the City of Wheaton, Illinois, in accordance with the appropriate statutes.

The undersigned on oath states that he/she has read the foregoing petition for annexation, has knowledge of the allegations contained therein, and that said allegations are true and correct to the best of his/her knowledge.

Date: Sept. 4 2007

Owner(s) of record of said property

Name: J. Robert Tillman

Signature: DRT

Address: 1401 S. Gables Blvd. Wheaton IL 60187

Tel. No.: 630.681.8308

Fax No.: 630.920.0222

Elector(s) residing on said property

Name: —

Name: —

Subscribed and sworn before me this 4th day of September 2007.

Janet O. Christman  
Notary Public

