

## ORDINANCE NO. F-1843

### AN ORDINANCE AUTHORIZING THE SIGNING OF AN ANNEXATION AGREEMENT - VACANT LOT LOCATED JUST NORTH OF 1970 NORTH GARY AVENUE - BERGO, INC. - REBECCA LINGO

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 ("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 December 8, 2014 to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an annexation agreement dated January 5, 2015, among the City and Bergo, Inc. - Rebecca Lingo ("Owner"), 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 to sign (and the City Clerk is directed to attest to the signature of the Mayor) the Annexation Agreement between the City of Wheaton and Bergo, Inc. - Rebecca Lingo. 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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:

  
Shain Bennett Hagen  
City Clerk

  
Michael Gresk  
Mayor

#### Roll Call Vote

Ayes:

Councilman Saline  
Mayor Gresk  
Councilman Scalzo  
Councilman Suess  
Councilman Prendiville  
Councilman Rutledge

Nays:                   None

Absent:               None

Motion Carried Unanimously

Passed:               January 5, 2015  
Published:           January 6, 2015

**EXHIBIT A**

LOTS 2 AND 3 (EXCEPT THE EASTERLY 10 FEET THEREOF) BLOCK 6 IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20, 1926 AS DOCUMENT 223492, IN DUPAGE COUNTY, ILLINOIS; ALSO PART OF GARY AVENUE LYING EAST AND ADJOINING SAID PROPERTY.

P.I.N. 05-08-106-034; -035

The subject property is commonly known as the vacant lot located just north of 1970 North Gary Avenue, Wheaton, IL 60187.



## ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 5<sup>th</sup> day of January, 2015 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois (“City”), and Bergo, Inc - Rebecca Lingo (“Owner”).

### WITNESSETH

WHEREAS, the Owner has an interest in or controls the real estate comprised of a parcel of property approximately .32 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 Owner that all of the Subject Property be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owner desires to construct a two-story school building on the Subject Property and incorporate it into the larger campus development legally described in Exhibit “B”, substantially in accordance with and pursuant to the preliminary campus site plan prepared by LaPage Architects, dated August 12, 2014 and revised November 4, 2014, hereinafter referred to as the “Campus Site Plan” which is attached to and incorporated into this Agreement as Exhibit “C”; 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 C-1 Local Business; 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. RECITALS.** The foregoing recitals are incorporated herein as representing the intent of the parties as substantive terms and covenants.

**2. 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.

**3. 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], 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 "D". 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.

**4. ANNEXATION ORDINANCE.** Immediately upon the complete signing of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

**5. 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-1 Local Business zoning district with a special use permit for a planned unit development with the larger campus development.

**6. 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 Zoning Ordinance pertaining to the following items shall be varied pursuant to the terms of this Agreement:

- A. A front landscape setback of 6.0 feet shall be provided in lieu of the required 15.0 feet; and
- B. The exterior of the new school building shall be part frame and masonry construction in lieu of the required one hundred percent (100%) exterior masonry construction.

**7. SITE DEVELOPMENT.** The Owner shall be required to revise the landscape plan prepared by LaPage Architects, dated August 12, 2014 and revised November 4, 2014, hereinafter referred to as the “Landscape Plan”, to replace the two mountain ashes with another type of tree from the “City of Wheaton Approved List of Parkway Trees” and to add additional parkway trees to 1960 North Gary Avenue to visually tie the two sites together.

**8. SANITARY SEWER FACILITIES.** The Owner shall make arrangements with the Wheaton Sanitary District for connection of the new two-story school building on the Subject Property to the sewer main of the District located within the Gary Avenue right-of-way in accordance with City Code. The Owner shall pay all permit and connection fees in full force and effect, pursuant to the City Code, at the time of the connection of the Subject Property to the sewer main.

**9. STORM WATER FACILITIES.** The Owner agrees to design and construct suitable storm water facilities for the Subject Property which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code and all other applicable Federal, State, and local statutes and ordinances governing stormwater management.

**10. WATER FACILITIES.** The Owner shall connect the new two-story school building on the Subject Property to the water main of the City located within the Gary Avenue right-of-way in accordance with City Code. The Owner shall pay all City permit and connection fees in full force and effect, pursuant to the City Code, at the time of the connection of the Subject Property to the water main.

**11. PLAT OF CONSOLIDATION.** The Owner shall be required to submit a Plat of Consolidation to combine the three adjacent parcels owned by the Owner into one platted lot. The plat shall include stormwater management easements over the detention facilities and drainage and utility easements per City Code requirements.

**12. BUILDING PLANS.** The Owner shall be required to submit to the City, plans for the new two-story school building to be constructed on the Subject Property in accordance with and pursuant to the amendment described in Section 5.B of this Agreement, and in compliance with the preliminary building plans prepared by LaPage Architects, dated August 12, 2014 and revised November 4, 2014, hereinafter referred to as “Building Elevations” which are attached to and incorporated into this Agreement as Exhibit “E”. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton City Code.

**13. 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.

**14. 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 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.

**15. TREE PRESERVATION.** Prior to the issuance of a Site Development Permit, 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.

**16. 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.

**17. 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.

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

**19. 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.

**20. 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.

**21. INDEMNIFICATION.** Owner shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the actions 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 its actions and conduct. 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.

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

**23. 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. **Bergo, Inc. - Rebecca Lingo**  
1970 North Gary Avenue  
Wheaton, IL 60187
  
- B. **City of Wheaton**  
City Clerk  
City of Wheaton  
303 West Wesley Street  
Wheaton, IL 60189-0727

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

**25. CITY ADDRESS.** Following the annexation of the Subject Property to the City, the subject property will be known as 1980 North Gary Avenue.

**26. SIDEWALK.** If required by the City, the owner shall construct a public sidewalk along the Gary Avenue frontage of the Subject Property. If the City does not require a public sidewalk along the Gary Avenue frontage of the Subject Property, the Owner shall pay to the City a sidewalk contribution equal to 100 percent of the cost of constructing in lieu of the installation of said public sidewalk, in accordance with Section 58-74(a) of the Wheaton City Code. The cost shall be determined by the Director of Engineering and payment of same shall be made at the time of application of a building permit.

IN WITNESS WHEREOF, the Corporate authorities and Owner has 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

Michael J. West

ATTEST:

Shawn Bennett Hagen  
CITY CLERK

Rebecca E. Lutz  
OWNER

ATTEST:

**EXHIBIT A**

**PLAT OF ANNEXATION**

# PLAT OF ANNEXATION

TO THE  
CITY OF WHEATON

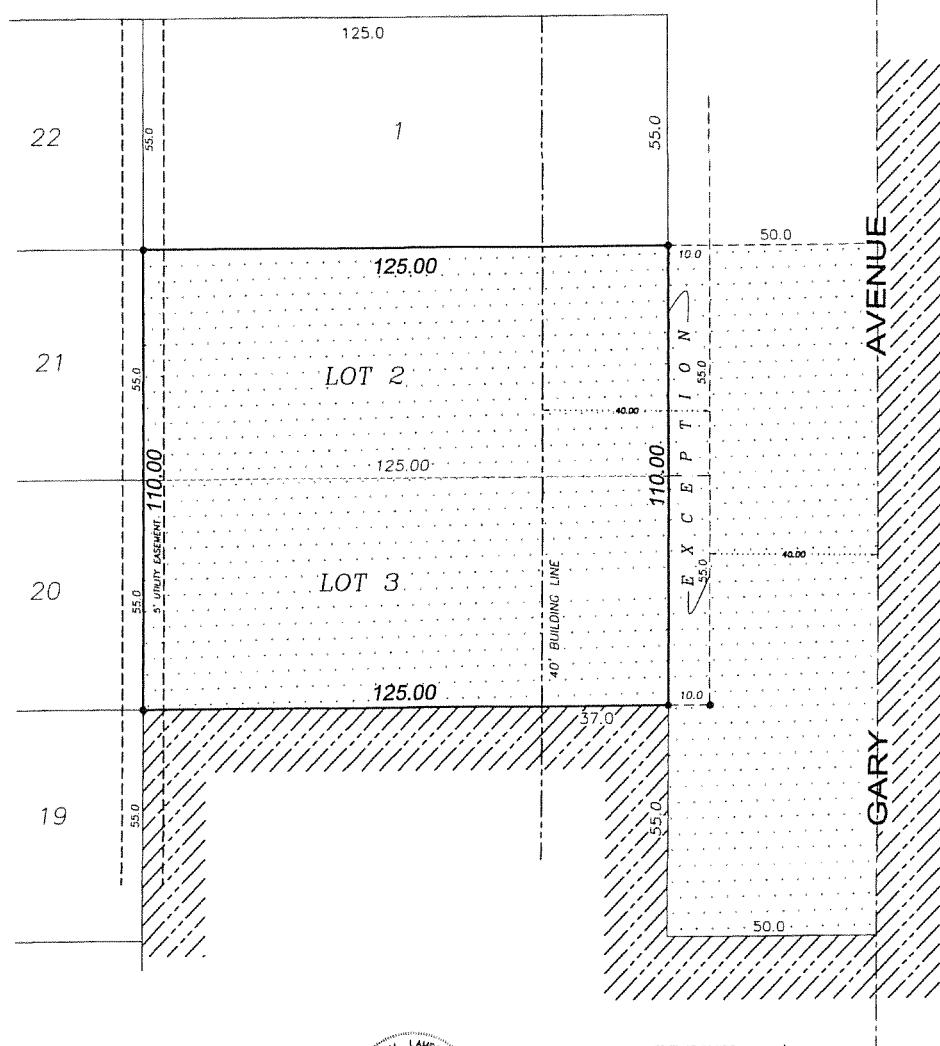
LEGAL DESCRIPTION OF THE LAND HEREBY ANNEXED

LOTS 2 AND 3 (EXCEPT THE EASTERLY 10 FEET THEREOF) BLOCK 6 IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20, 1926 AS DOCUMENT 223492, IN DUPAGE COUNTY, ILLINOIS; ALSO PART OF GARY AVENUE LYING EAST AND ADJOINING SAID PROPERTY.

P.I.N.: 05-08-106-034  
P.I.N.: 05-08-106-035

MARION 66 AVENUE  
(UNIMPROVED)

SCALE: 1-20  
E



LAND SURVEYOR'S CERTIFICATE



STATE OF ILLINOIS )  
COUNTY OF DUPAGE )  
THIS IS TO CERTIFY THAT I, NORBERT V. LAMBERT JR., AN ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR, HAVE PLATED FOR THE PURPOSE OF ANNEXATION TO CITY OF WHEATON THE PROPERTY SHOWN AND DESCRIBED ON THE ANNEXED PLAT, WHICH TO THE BEST OF MY KNOWLEDGE AND BELIEF, IS A CORRECT REPRESENTATION THEREOF.

*Norbert V. Lambert Jr.*  
ILLINOIS LAND SURVEYOR NO. 1840651, LICENSE EXPIRES 11/30/14  
ILLINOIS DESIGN FIRM NO. 1840651

ORDERED BY: *LaPage* ORDER NO. 11 A 00 FILE NO. 130

**LAMBERT & ASSOCIATES**  
LAND SURVEYORS  
955 WEST LIBERTY DR., WHEATON, IL 60187  
PHONE: (630) 653-6331 FAX: (630) 653-6396

• = FOUND IRON STAKE  
○ = SET IRON STAKE

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )  
THE ANNEXED PLAT IS IDENTIFIED AS REPRESENTATIVE OF THE PROPERTY INCORPORATED INTO AND MADE PART OF THE CITY OF WHEATON, AS PER ORDINANCE NO. \_\_\_\_\_.  
ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES OF SAID CITY.

DATED THE \_\_\_\_ DAY OF \_\_\_\_\_ 2014.

CITY OF WHEATON

PRESIDENT

COUNTY RECORDER'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )  
THIS INSTRUMENT, NO. \_\_\_\_\_, WAS FILED FOR RECORD IN THE RECORDER'S OFFICE OF DUPAGE COUNTY.  
ILLINOIS, THIS \_\_\_\_ DAY OF \_\_\_\_\_ AD \_\_\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ M.

COUNTY RECORDER

**EXHIBIT B**

CAMPUS LEGAL DESCRIPTION

BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 8,  
TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN  
DUPAGE COUNTY, ILLINOIS.

LOTS 2 AND 3 (EXCEPT THE EASTERLY 10 FEET THEREOF) BLOCK 6 IN GRANGE  
PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE  
NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE  
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED  
OCTOBER 20, 1926 AS DOCUMENT 223492, IN DUPAGE COUNTY, ILLINOIS.

LOT 1 IN WICK'S CONSOLIDATION PLAT, BEING A SUBDIVISION OF PART OF THE  
NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE  
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED  
APRIL 23, 1990 AS DOCUMENT R90-047593, IN DUPAGE COUNTY, ILLINOIS.

LOT 1 IN WHEATON MONTESSORI SCHOOL CONSOLIDATION PLAT OF THE SOUTH  
HALF OF LOT 6 AND ALL OF LOTS 7, 8 AND 9 IN BLOCK 6 IN GRANGE PARK  
ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST  
QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD  
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID CONSOLIDATION  
RECORDED APRIL 9, 2007 AS DOCUMENT R2007-064464, IN DUPAGE COUNTY,  
ILLINOIS.

P.I.N. 05-08-106-034; -035; -037

The subject property is commonly known as the vacant lot located just north of 1970 North Gary Avenue; 1960 and 1970 North Gary Avenue Wheaton, IL 60187.

## **EXHIBIT C**

### **CAMPUS SITE PLAN**



**EXHIBIT D**

**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:

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See attached Legal Description for Consolidated Plat

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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: August 12 20 14

**Owner(s) of record of said property**

Name: Bergo, Inc. - Rebecca Lingo

Signature: Rebecca E Lingo

Address: 1970 N. Gary Avenue

Tel. No.: (630) 653-5100 Fax No.: \_\_\_\_\_

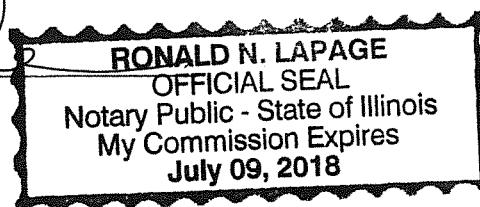
**Elector(s) residing on said property**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Subscribed and sworn before me this 12<sup>th</sup> day of August 20 14.

*Ronald N. Lapage*  
Notary Public



## **EXHIBIT E**

### **BUILDING ELEVATIONS**





