

ORDINANCE NO. F-1847

AN ORDINANCE AUTHORIZING THE SIGNING OF AN ANNEXATION AGREEMENT -
0N536 GARY AVENUE - M/I HOMES OF CHICAGO, 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 ("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 November 24, 2014 to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an annexation agreement dated January 26, 2015, among the City and Muehlfelt Land Partnership ("Owner") and M/I Homes of Chicago, LLC ("Developer"), 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:

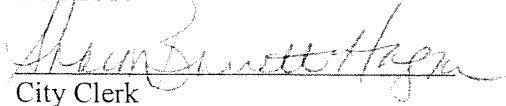
Section 1: The Mayor of the City is authorized to sign (and the City Clerk is directed to attest to the signature of the Mayor) the Annexation Agreement between the City of Wheaton and Owner and Developer. A copy of the Annexation Agreement is on file in the Office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

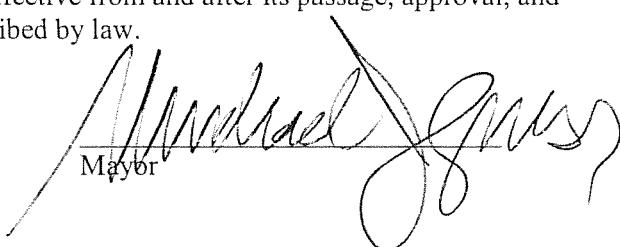
Section 2: The Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Developer.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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


Michael Gresk
City Clerk


Michael Gresk
Mayor

Roll Call Vote

Ayes:	Councilman Scalzo Councilman Suess Councilman Prendiville Councilman Rutledge Councilman Saline Mayor Gresk
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Nays:	None
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Absent:	None
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Motion Carried Unanimously

Passed: January 26, 2015
Published: January 27, 2015

EXHIBIT A

LOT 1 IN MUEHLFELT LAND PARTNERSHIP ASSESSMENT PLAT, BEING PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 27, 2001 AS DOCUMENT NUMBER R2001-032701 (EXCEPT THE SOUTH 100.00 FEET OF THE NORTH 169.71 FEET OF THE WEST 15.00 FEET THEREOF), IN DUPAGE COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, SAID POINT BEING COMMON WITH THE NORTHWEST CORNER OF LOT 2 IN SAID MUEHLFELT PLAT; THENCE SOUTH 00 DEGREES 49 MINUTES 29 SECONDS EAST, 46.54 FEET (46.0 FEET RECORD DISTANCE) ALONG THE EAST LINE OF SAID LOT 1 TO A JOG IN SAID EAST LINE; THENCE SOUTH 88 DEGREES 28 MINUTES 40 SECONDS WEST, 16.00 FEET ALONG SAID JOG TO ANOTHER JOG IN SAID EAST LINE; THENCE SOUTH 00 DEGREES 49 MINUTES 29 SECONDS EAST, 65.00 FEET ALONG SAID JOG TO ANOTHER JOG IN SAID EAST LINE; THENCE SOUTH 88 DEGREES 28 MINUTES 40 SECONDS WEST, 240.82 FEET TO AN INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN BLOCK 8 OF GRANGE PARK ADDITION TO WHEATON RECORDED OCTOBER 20, 1926 AS DOCUMENT NUMBER 223492; THENCE NORTH 00 DEGREES 45 MINUTES 53 SECONDS WEST, 111.46 FEET ALONG SAID SOUTHERLY EXTENSION TO THE NORTH LINE OF SAID LOT 1 IN MUEHLFELT LAND PARTNERSHIP ASSESSMENT PLAT; THENCE NORTH 88 DEGREES 30 MINUTES 09 SECONDS EAST, 256.71 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

P.I.N.: 05-08-116-034

The subject property is commonly known as 0N536 Gary Avenue, Wheaton, IL 60187.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 26th day of January, 2015 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Muehlfelt Land Partnership ("Owner") and M/I Homes of Chicago, LLC ("Developer").

WITNESSETH

WHEREAS, the Owner and/or Developer has an interest in or controls the real estate comprised of a parcel of property approximately 7.224 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 and/or Developer that all of the Subject Property be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owner and/or Developer desires to construct 18 single family homes on the Subject Property substantially in accordance with and pursuant to the plan entitled "Woodlawn Place - Wheaton, Illinois - Preliminary Engineering" prepared by Manhard Consulting, Ltd., Lombard, Illinois, dated October 17, 2014 and revised January 13, 2015, hereinafter referred to as "Site Plan" 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. 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 and/or Developer have 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.

4. ANNEXATION ORDINANCE. Immediately upon the complete signing of this Agreement by all parties, the ordinance annexing the Subject Property to the City shall become effective.

5. REZONING. Immediately upon complete signing of this Agreement by all parties the ordinance annexing the Subject Property to the City shall become effective, and the City shall, without further hearing, amend its Zoning Map, zoning and classifying the Subject Property in the R-3 Single Family Residential Zoning District Classification.

6. DEVELOPMENT STANDARDS. The Site Plan 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 Plan. The Subject Property shall contain a maximum of 18 detached single family homes. 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:

1. A variation to Article 3.4A.5b of the Wheaton Zoning Ordinance to allow the minimum side yard for structures or parts of structures in excess of 1.5 stories and more than 30.0 feet but less than 35.0 feet in height, shall be the lesser of 14% of the lot width or 15.0 feet.; and
2. Proposed Lot 3 shall have a front building setback line of 25.0 feet and a rear building setback line of 45.0 feet.

7. SANITARY SEWER FACILITIES. The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including (without limitation) the Illinois Environmental Protection Act, permitting the connection onto the sanitary lines of the Wheaton Sanitary District in order to develop and use the Subject Property. In addition, the City will accept dedication of all sanitary sewer mains located within the Corporate limits of the City and constructed by Owner and/or Developer in accordance with the final plat on the Subject Property, pursuant to Chapter 62 of the Wheaton City Code. The location and size of sanitary sewer mains to be installed by Owner and/or Developer shall be in conformity with Exhibit "B", subject to final engineering considerations as approved by the Director of Engineering.

8. STORM WATER FACILITIES. Owner and/or 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/or 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 detention basin as an outlet with a stormwater management easement dedicated to the City as shown on the Site Plan. The outlet 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.

9. 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 Owner and/or 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. The location and size of the water lines to be installed by the Owner and/or Developer shall be in conformance with the Site Plan, subject to final engineering considerations as approved by the Director of Engineering.

10. IRREVOCABLE LETTER OF CREDIT. In lieu of construction bond or development bond or bonds, the City shall require 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 Owner and/or 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 Owner and/or Developer completes the items within the letter of credit, the Owner and/or Developer may apply to the City for acceptance of said improvements in accordance with Paragraph 10 of this Agreement. Owner and/or Developer agrees to cause the letter of credit to be extended to cover the actual time of construction.

The Director of Engineering 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 Director of Engineering 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.

11. PROCEDURE FOR ACCEPTANCE OF ANY PUBLIC IMPROVEMENTS.

The procedure for acceptance by the City of any public improvement constructed as part of the development of the Subject Property shall be as provided in the Subdivision Improvement Agreement to be hereafter entered into between the City and the Owner and/or Developer.

12. MINOR CHANGES IN DEVELOPMENT. Minor variations or deviations from the Site Plan 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 upon Final Plat approval.

13. BUILDING PLANS. The Owner and/or 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 and/or Developer 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 Owner and/or 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 Owner and/or 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.

18. WHEATON PARK DISTRICT ANNEXATION. Owner and/or Developer shall 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 Owner and/or 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 Plan and the terms of this Agreement.

20. DEMOLITION OF EXISTING STRUCTURES. The demolition of any existing structures located on the Subject Property shall be authorized by this Agreement and shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the Owner and/or Developer shall not be required to wait 30 days prior to commencing demolition from the date of submitting a demolition permit application to the Building and Code Enforcement Department, and shall not be required to hold a “neighbor meeting” at least 30 days prior to submitting an application for building demolition. Owner and/or Developer shall provide written notice to adjacent property owners prior to the building demolition.

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

22. AMENDMENT OF ANNEXATION AGREEMENT. This Annexation Agreement, and any exhibit attached hereto, may be amended pursuant to the provisions of Chapter 6 of the City Code.

23. TIME OF THE ESSENCE. Time is of the essence of this Agreement. The Owner's and Owner and/or Developer shall execute this Agreement no later than ninety (90) calendar days after the passage of the ordinance approving this Agreement. Failure to execute Agreement within the ninety (90) calendar day period shall render this Agreement null and void without further action of the City's corporate authorities. The Owner, or Owner and/or Developer where appropriate may, by written request to the City's Corporate Authorities, and without amendment to this Agreement, seek an extension of the ninety (90) calendar day requirement so long as the request is submitted no less than fourteen days prior to the expiration of the ninety (90) calendar days.

24. INVALIDITY. If any provision of this Annexation Agreement, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Annexation Agreement and the application of such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

25. 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 and common areas, Owner and/or 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.

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

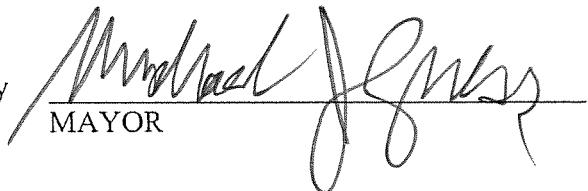
A. **Muehlfelt Land Partnership**
ON578 Knollwood Dr.
Wheaton, IL 60187

B. **M/I Homes of Chicago, LLC**
400 East Diehl Road #230
Naperville, IL 60563

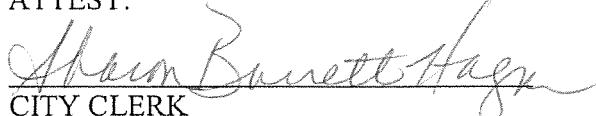
C. City of Wheaton
City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, IL 60189-0727

30. RECORDING. This Agreement shall be recorded by the City Clerk in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Owner and/or Developer.

IN WITNESS WHEREOF, the Corporate authorities and Owner and/or 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.

By 
MAYOR

ATTEST:


CITY CLERK


OWNER

ATTEST:

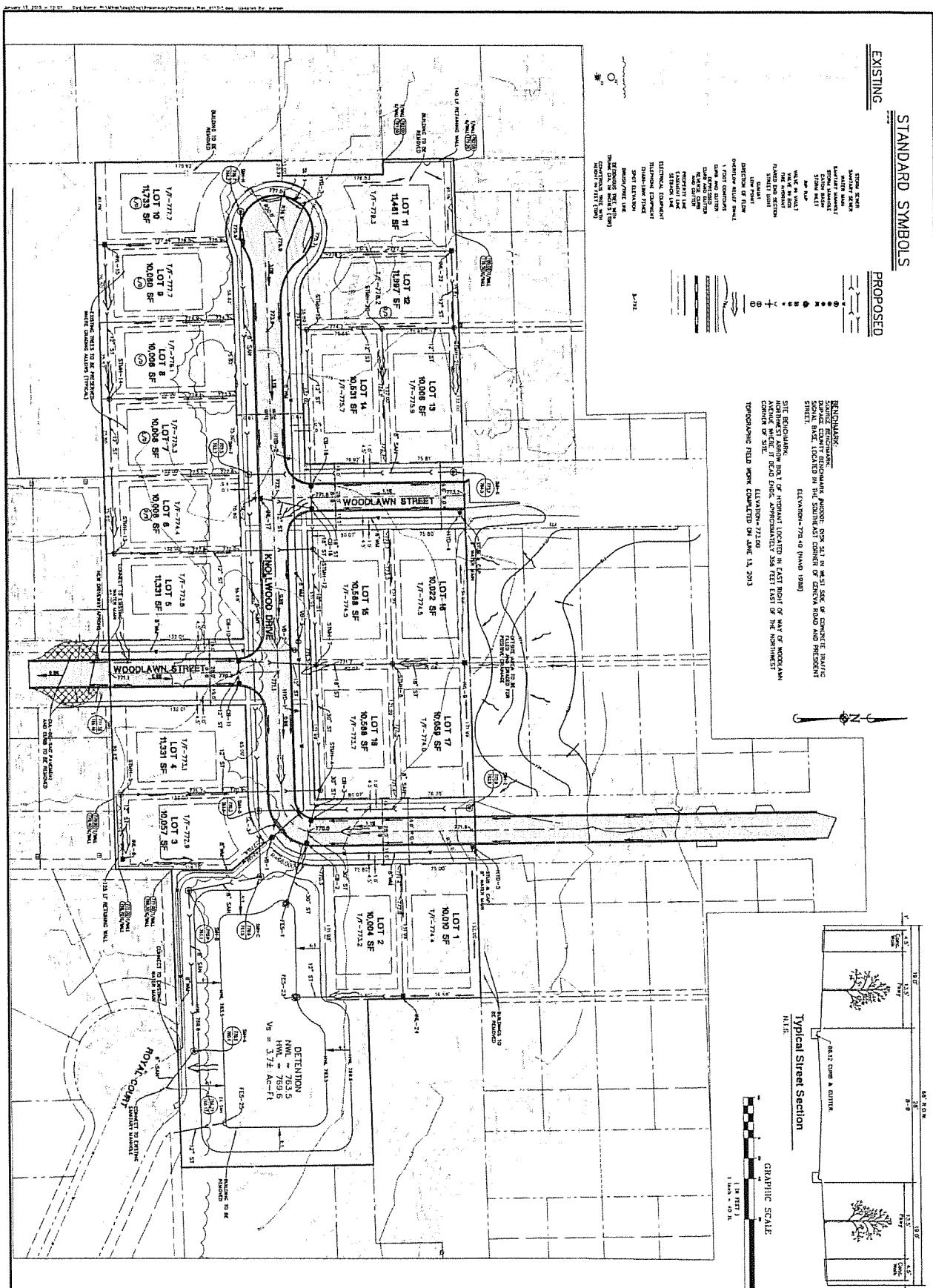

OWNER AND/OR DEVELOPER

ATTEST:



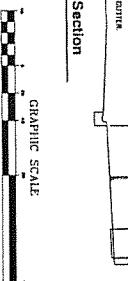
Exhibit "A"

Exhibit "B"



Typical Street Section

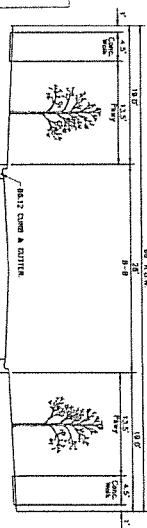
W.I.S.



GRAPHIC SCALE

Typical Street Section

W.I.S.



WOODLAWN PLACE

WHEATON, ILLINOIS

PRELIMINARY ENGINEERING PLAN



Exhibit "C"

**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:

SEE ATTACHED

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: 10.28.14 2014

Owner(s) of record of said property

Name: GARY MOEHFELT

Signature: Gary Moehfert

Address: _____

Tel. No.: 630-337-2750 Fax No.: _____

Elector(s) residing on said property

Name: h-m-c

Name: h-m-c

Subscribed and sworn before me this 28 day of October 2014.

WILLIAM T. BELMONTE
Notary Public

