

## ORDINANCE NO. F-2021

### AN ORDINANCE AUTHORIZING THE SIGNING OF AN ANNEXATION AGREEMENT – 2011 N. STODDARD AVENUE - NIELSEN

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 July 10, 2017 to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an annexation agreement dated July 17, 2017, among the City and Erik W. Nielsen and Christy J. Harrison Schaefer (“Owners”), 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 Owners. 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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:



\_\_\_\_\_  
Amy Bennett Hagen  
City Clerk

#### Roll Call Vote

Ayes:      Councilman Rutledge  
                 Councilman Scalzo  
                 Councilman Barbier  
                 Councilwoman Fitch  
                 Mayor Pro Tem Suess

Nays:      None

Absent:      Mayor Gresk  
                 Councilman Prendiville

Motion Carried Unanimously

Passed: July 17, 2017  
Published: July 18, 2017

**EXHIBIT A**

LOT 13 IN BLOCK 1 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 10, AND PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT NUMBER 175034, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-10-101-010

The subject property is commonly known as 2011 N. Stoddard Avenue, Wheaton, IL 60187.

## **ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT, made and entered into this 17th day of July, 2017 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Erik W. Nielsen and Christy J. Harrison Schaefer ("Owners").

### **WITNESSETH**

WHEREAS, the Owners have an interest in or controls the real estate comprised of a parcel of property approximately .69 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 Owners that all of the Subject Property be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owners desire to construct a single-family residence on the Subject Property substantially in accordance with and pursuant to the preliminary plan prepared by Carradus Land Survey, Inc., Sheet 1-3 dated January 25, 2017 and Sheets A2.1 and A2.2 dated May 17, 2017, hereinafter referred to as "Building Plans" which are 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-2 Residential District; 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 Owners 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.

**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-2 Residential zoning district.

**5. SANITARY SEWER FACILITIES.** The Owners shall connect the new single family residence on the Subject Property to the sanitary sewer main of the City located within the Stoddard Avenue right-of-way. The Owners 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. The Owners shall abandon the existing septic system servicing the property upon connection to the sewer main, in accordance with the requirements of the DuPage County Health Department. If the owners decide not to demolish the existing residence or construction of the new single-family residence is delayed, the existing residence shall be connected to the City's sewer main within two years from the date of this agreement.

**6. STORM WATER FACILITIES.** The Owners agree 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.

**7. WATER FACILITIES.** The Owners shall connect the new single family residence on the Subject Property to the water main of the City located within the Stoddard Avenue right-of-way in accordance with City Code. The Owners 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. The Owners shall abandon the existing well servicing the property

upon connection to the water system, in accordance with the requirements of the DuPage County Health Department. If the owners decide not to demolish the existing residence or construction of the new single-family residence is delayed, the existing residence shall be connected to the City's water main within two years from the date of this agreement.

**8. RECAPTURE AGREEMENT.** As a benefited property identified in a Recapture Agreement dated February 5, 2007 between the City of Wheaton and Airhart Construction, the Owners shall be required to contribute their pro rata share toward the cost of certain public improvements as further described in the Recapture Agreement which is attached to and incorporated into this Agreement as Exhibit "D".

**9. BUILDING PLANS.** The Owners shall be required to submit to the City, plans for the new single-family residence to be constructed on the Subject Property. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton City Code.

**10. 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.

**11. 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 Owners 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.

**12. TREE PRESERVATION.** Prior to the issuance of a Site Development Permit, the Owners 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. The Owners shall cause to be planted street trees planted in accordance with Section 62-294 of the Wheaton City Code and subject to the approval of the Director of Engineering.

**13. 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.

**14. 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.

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

**16. 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.

**17. 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.

**18. INDEMNIFICATION.** Owners shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the actions of the Owners, its agents, assigns, employees, contractors, and subcontractors. Owners 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 Owners shall

provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Owners.

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

**20. 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. Erik W. Nielsen and Christy J. Harrison Schaefer**

2011 N. Stoddard Avenue  
Wheaton, IL 60187

**B. City of Wheaton.**

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

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

**22. DEMOLITION OF EXISTING STRUCTURE.** The demolition of the existing residence located on the Subject Property shall be authorized by this Agreement. Demolition of the existing residence, however, shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the Owners 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. The Owners shall provide written notice to adjacent property Owners prior to the building demolition.

**23. SIDEWALK.** The Owners shall pay to the City a sidewalk contribution equal to 100 percent of the cost of constructing a public sidewalk along the Stoddard Avenue frontage of the Subject Property 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.

**24. FUTURE PUBLIC IMPROVEMENTS.** Owners understand that the City customarily requires the Owners of real estate being annexed to the City to install various public improvements as required by the City Code, including, but not limited to, full street improvements, sidewalks, and street lighting ("public improvements") within and/or adjacent to the property to be annexed to the City.

At this time, however, the City agrees it would not be in the City's best interest to require the Owners to construct the public improvements along the Stoddard Avenue frontage of the Subject Property without a unified construction effort along Stoddard Avenue. In lieu of the Owners constructing the public improvements at the time of annexation, the Owners agree that should the City construct public improvements along Stoddard Avenue fronting the Subject Property, the Owners shall pay their fair share of costs of the design and construction of said public improvements as determined by the City Engineer.

**25. CONDITION OF PUBLIC IMPROVEMENTS.** The City shall have no obligation of any kind with respect to the public improvements presently existing within Stoddard Avenue adjacent to the Subject Property. Once the Subject Property is annexed to the City, the City shall maintain the public improvements within Stoddard Avenue adjacent to the Subject Property in the customary manner in which it maintains public improvements.

IN WITNESS WHEREOF, the Corporate authorities and Owners 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

---

OWNERS

ATTEST:

---

**EXHIBIT A**

**PLAT OF ANNEXATION**



**EXHIBIT B**

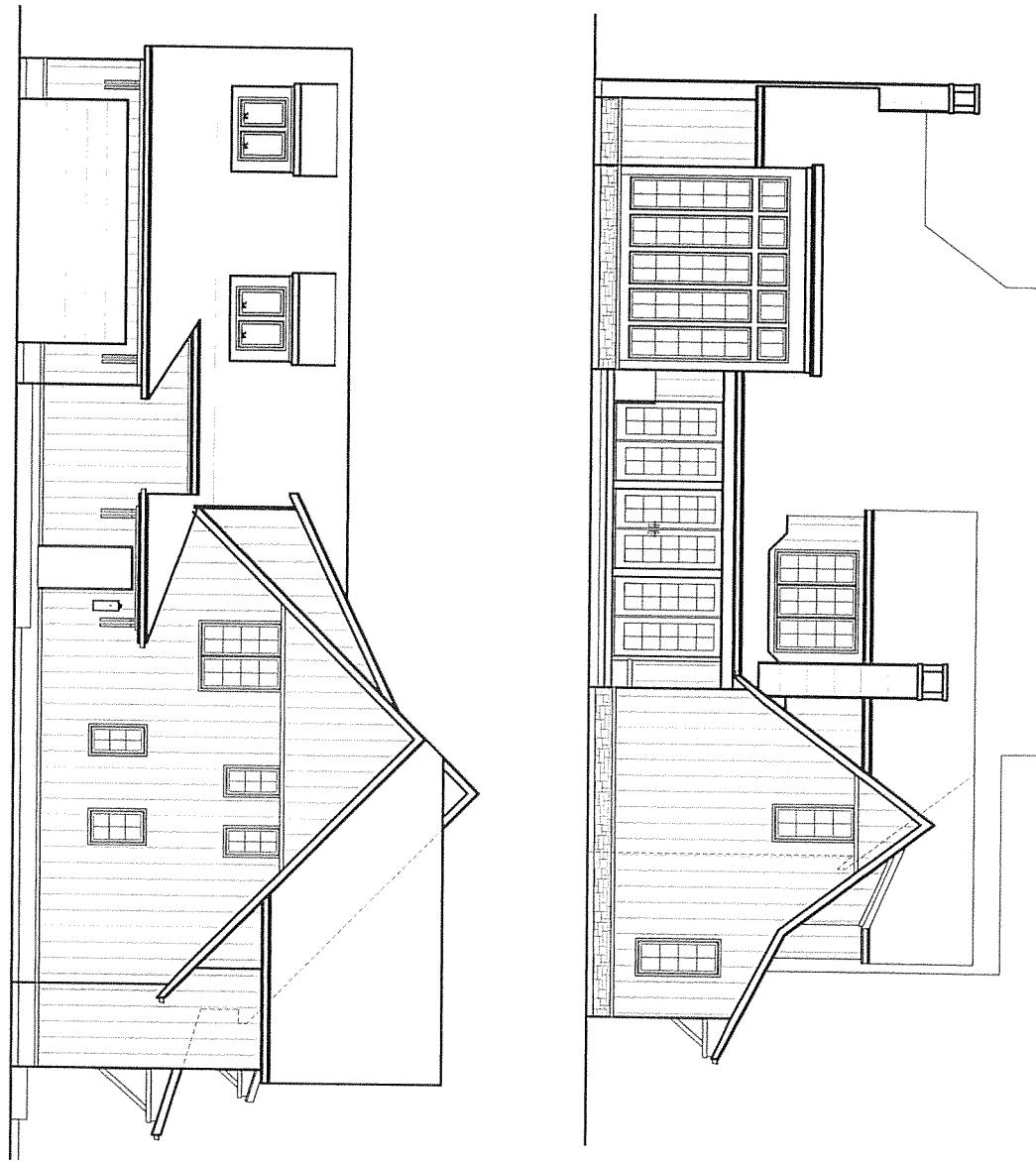
**BUILDING PLANS**











THE NIELSEN - HARRISON RESIDENCE  
2011 STODARD AVENUE KHEATON, ILLINOIS

Architectural Drawing  
2011 Stodard Avenue  
Kheaton, Illinois  
Architect: Studio 1 Architects  
Date: May 11, 2007  
Revised: 10/2007  
Scale: 1/4" = 1'-0"

A.2.2

STUDIO 1  
ARCHITECTS  
1105 Paragon Avenue  
Western Springs, IL  
708.270.1124  
e-mail: [info@studio1architects.com](mailto:info@studio1architects.com)

## 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:

2011 N. Stoddard, Wheaton  
(See Attached Legal Description)

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: May 23 2017

Owner(s) of record of said property  
Christy J. Harrison Schaefer  
Name: Erik W. Nielsen

Signature: 

Address: 2011 Stoddard Ave., Wheaton, IL 60187

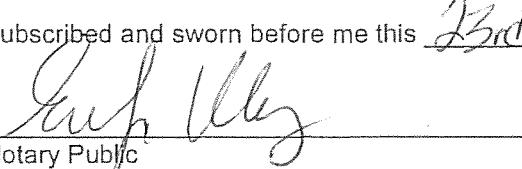
Tel. No.: 312-635-1830 Fax No.: 312-322-9927

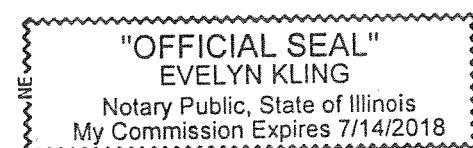
Elector(s) residing on said property

Name: none

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

Subscribed and sworn before me this 23rd day of May 2017

  
Notary Public



**EXHIBIT D**

**RECAPTURE AGREEMENT**

RECAPTURE AGREEMENT

This Agreement made and entered into this 5<sup>th</sup> day of February, 2007, by and between the CITY OF WHEATON, an Illinois municipal corporation (hereinafter referred to as the "City"), and AIRHART CONSTRUCTION CORP. (hereinafter referred to as the "Developer");

WITNESSETH;

WHEREAS, the City is an Illinois Municipal corporation exercising home rule powers pursuant to Article VII of the Constitution of Illinois, 1970, and pursuant to Chapter 50 of the Wheaton City Code; and

WHEREAS, Developer is the legal or beneficial owner of the real property legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Subject Property is located within the corporate limits of the City; and

WHEREAS, the Subject Property constitutes 7.9 acres at the northwest corner of Stoddard Avenue and Daly Road and is commonly known as Mackenzie Place and Mackenzie Place Phase 2 subdivisions (hereinafter referred to as the "Development"); and

WHEREAS, the City has recognized that certain public improvements needed to be modified or added to service the Development; and

WHEREAS, certain public improvements were required by the City; and

WHEREAS, the Developer has installed the public improvements required by the City; and

James M. Miller

WHEREAS, the installation of such public improvements to serve the Subject Property will, in the opinion of the corporate authorities of the City, provide a benefit for and will be used by the owners of the property legally described in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as the "Benefited Property"); and

WHEREAS, the Developer is desirous of obtaining from the City an agreement that the owners of the Benefited Property shall be required to contribute their pro rata share toward the cost of the installation of the public improvements, at such time as a permit is requested and granted for connection to the public improvements by the corporate authorities of the City, or annexation of the Benefited Property to the City by the corporate authorities of the City, and

WHEREAS, Corporate Authorities of the City caused to be conducted a hearing on this proposed Recapture Agreement, said hearing having been conducted on the 8<sup>th</sup> day of January, 2007, at Wheaton City Hall, pursuant to notice.

NOW THEREFORE, in consideration of the foregoing premises and the covenants and conditions, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties agree as follows:

**1. Improvements to be Completed.** The Developer has caused the public improvements found in Paragraph 4, and as required by the City, to be substantially completed.

**2. Conveyance of Improvements.** The Developer hereby agrees to transfer all his rights, titles, and interest in and to said improvements installed on the Subject Property or located within the public right-of-way and easements adjacent to the Subject Property and/or the Benefited Property to the City, by executing a Bill of Sale therefore in favor of the City in a form acceptable to the City Attorney. The work has been completed subject to the inspection and approval of the City Director of Engineering. The City hereby agrees to accept such a Bill of Sale and shall, subsequent to said conveyance, use, operate, and maintain said improvements. The Developer for the work herein specified guarantees that the workmanship and material furnished under the specifications and used in said work shall be furnished and performed in

accordance with well known established practices and standards recognized by engineers in the trade. All such work is to be new and of the best grade of their respective kinds for the purpose.

**3. Benefited Property.** The Corporate authorities of the City have determined that the parcels of property described in Exhibit "B" attached hereto and referred to as the Benefited Property will benefit from the construction of said improvements referred to in Paragraph 1.

**4. Benefiting Improvements, Recapture Expenses.** Exhibit "C" of this agreement is a schedule of those elements of the required public improvements referred to in Paragraph 1, deemed by the corporate authorities of the City to provide a benefit to the owners of the Benefited Property together with a list of expenses to be suitable for recapture ("Recapture Expenses"). The Recapture Expense shall bear annual interest from and after the date of this agreement of six percent (6%) per annum, compounded annually, which rate shall apply throughout the term hereof.

**5. Collection of Recapture Expense.** The City shall assess against and collect from the person(s) or entity(s) owning the Benefited Property, or any portion thereof, their successors and assigns, the Recapture Expense set forth in Paragraph 4. The City shall collect from the owner or its agent of the Benefited Property or any portion thereof that amount of the Recapture Expense commensurate with the portion of the Benefited Property affected as set forth in Paragraph 4 herein, at such time as, (i) issuance of a permit to connect to the public improvements by the corporate authorities of the City, or (ii) annexation of the Benefited Property by the corporate authorities of the City, and as provided for in Exhibit "C" attached hereto and made a part of hereof.

**6. Payment of Recapture Expense.** All Recapture Expense collected by the City pursuant to this Agreement shall be paid to the Developer or his successors or assigns within sixty (60) days after collection by the City. It is understood and agreed that the City's obligation to reimburse the Developer shall be limited to funds collected from such Recapture Expense and payments made hereunder shall be made solely out of said funds. This Agreement shall not be

Done this 20th day of

construed as creating any obligation upon the City to make payments from its general corporate funds or revenue.

**7. City's Obligations.** The City, its officers, employees, and agents, shall make all reasonable efforts to make collections of Recapture Expenses. The City or any of its officials or employees shall not be liable in any manner for failure to make such collections. The Developer agrees to hold the City, its officers, employees, and agents, harmless for the unintentional failure to collect said fees. However, the Developer or City may sue any party owing Recapture Expenses for collection, and in the event the Developer prosecutes a collection law suit, the City agrees to cooperate in its collection attempts by allowing full and free access to its books and records. In the event the City and any of its agents, officers, or employees is made a party Defendant in any actual or threatened litigation arising out of or resulting from this Agreement and/or the City's execution thereof, the Developer or its heirs, successors, assigns, and purchasers, shall defend such litigation, including the interest of the City, and shall further release and hold the City harmless from any Judgment entered against the Developer and/or the City and shall further indemnify the City from any loss resulting therefrom, including reasonable attorney's fees.

**8. City's Collection of Other Fees and Charges.** Nothing shall limit or in any way affect the rights of the City to collect other fees and charges pursuant to City ordinances, resolutions, motions, or policies, as the fees provided for herein are in addition to such other City fees and charges.

**9. Term.** This Recapture Agreement shall be in full force and effect for a period of twenty (20) years from the date hereof, unless sooner terminated by the Agreement of the parties hereto or by the completion of all duties to be performed hereunder. To the extent that the owner(s) of the Benefited Property, or any portion thereof, fail to request a permit from the city for connection to the public improvements, or request annexation to the City, within the said twenty (20) years, then this Recapture Agreement, and each and every duty or undertaking set forth herein, shall become null and void and of no further force and effect.

**10. Subsequent Beneficial Owners.** The recapture fees imposed herein shall apply to the successors and assigns of the current owners of the Benefited Property holding title upon occurrence of the preconditions of payment of the recapture expenses as is set forth in Paragraph 5 of this Agreement.

#### 11. Miscellaneous Provisions.

A. Amendment: This Agreement may be amended upon the mutual consent of the parties hereto from time to time by written instrument and in conformity with all applicable statutory and ordinance requirements, and without the consent of any other person or corporation owning the Benefited Property of any portion thereof.

B. Binding Effect: Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Developer and any successor municipal corporation of the City.

C. Enforcement: Any party to this Agreement, or their respective successors or assigns may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of this Agreement.

D. Recordation: A true and correct copy of this Recapture Agreement, shall be recorded by the City with the DuPage County Recorder of Deeds, so as to provide owner(s) of the Benefited Property, its successors and assigns, with notice of the terms hereof. The cost of such recordation shall be paid by the Developer.

### E. Notices:

If to City: City of Wheaton  
303 W. Wesley Street  
Wheaton, IL 60187

With a copy to: Edward J. Walsh, Jr.  
601 W. Liberty Drive  
P.O. Box 999  
Wheaton, IL 60189-0999

If to Developer: Airhart Construction  
500 E. Roosevelt Road  
West Chicago, IL 60185

With a copy to:

Or at such other place or places as the parties may from time to time designate in writing.

F. Severability: The invalidity or unenforceability of any of the provisions hereof, or of any charge imposed as to any portion of the property deemed benefited, shall not affect the validity or enforceability of the remainder of this Agreement or the charges imposed.

G. Complete Agreement: This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other prior agreement (oral or otherwise) regarding the subject matter of this Agreement shall be deemed to exist to bind the parties.

H. Captions and Paragraph Headings: The captions and paragraph headings incorporated herein are for convenience only and are not part of this Agreement, and further shall not be used to construe the terms hereof.

I. Governing Law: This Agreement and the application of the terms contained herein shall be governed by the laws of the State of Illinois.

J. No Assumption or Obligation: Notwithstanding anything contained herein to the contrary, it is understood and agreed by and between the parties hereto that nothing contained

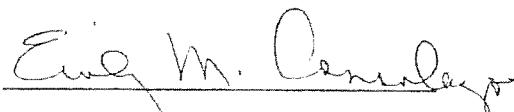
herein shall in any manner be construed to constitute an assumption or undertaking by Developer to construct or complete the subject improvements on the Subject Property and/or the Benefited Property. The City agrees and acknowledges that the construction of the said public improvements by Developer shall be in the sole discretion of the Developer. Non-performance by Developer shall terminate the City's obligations provided herein and the Recapture rights of Developer.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day and date first written above.

THE CITY OF WHEATON, an Illinois municipal corporation

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

AIRHART CONSTRUCTION CORP.

  
\_\_\_\_\_  
President

2007 AGENDA

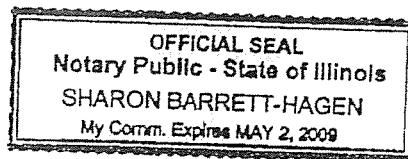
STATE OF ILLINOIS )  
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that C. James Carr, Mayor of the City of Wheaton, Illinois and Emily M. Consolazio, City Clerk of the City of Wheaton, Illinois, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively, appeared before me this date 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 the City of Wheaton, a municipal corporation, for the uses and purposes therein set forth; and that said City Clerk then and there acknowledged that she, as custodian of the corporation, did affix the seal of said corporation to said instrument as her 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 10<sup>th</sup> day of February, 2007.

Notary Public

SEAL



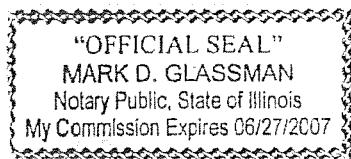
STATE OF ILLINOIS )  
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that, Cont M Arhart, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this date in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12<sup>th</sup> day of February, 2007

Notary Public

SEAL



20070212

EXHIBIT "A"

**SUBJECT PROPERTY LEGAL DESCRIPTION**

EXHIBIT "A"

Subject Property Legal Description – Mackenzie Place Recapture

ALL OF MACKENZIE PLACE SUBDIVISION BEING A SUBDIVISION IN THE  
NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF  
THE THIRD PRINCIPAL MERIDIAN, RECORDED DECEMBER 13, 2005 AS DOCUMENT  
NUMBER R2005-275049, IN DUPAGE COUNTY, ILLINOIS, AND

ALL OF MACKENZIE PLACE PHASE 2 SUBDIVISION A SUBDIVISION IN THE  
NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF  
THE THIRD PRINCIPAL MERIDIAN, RECORDED JULY 18, 2006 AS DOCUMENT  
NUMBER R2006-136329, IN DUPAGE COUNTY, ILLINOIS.

PIN's:

0-000001

**EXHIBIT "B"**

**BENEFITED PROPERTY DESCRIPTIONS**

2007 0001

EXHIBIT "B"

Benefited Property Descriptions - Mackenzie Place Recapture

Parcel #1

LOT 15 IN BLOCK 1 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

2021 N. Stoddard Avenue  
Wheaton, IL 60187

PIN 05-10-101-008

Parcel #2

LOT 14 IN BLOCK 1 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

2015 N. Stoddard Avenue  
Wheaton, IL

PIN 05-10-101-009

Parcel #3

LOT 13 IN BLOCK 1 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

2011 N. Stoddard Avenue  
Wheaton, IL

PIN 05-10-101-010

R 2017.02461

Parcel #4

LOT 12 IN BLOCK 1 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

2007 N. Stoddard Avenue  
Wheaton, IL

PIN 05-10-101-011

Parcel #5

THE WEST HALF OF LOT 11 IN BLOCK 1 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

2003 N. Stoddard Avenue  
Wheaton, IL

PIN 05-10-101-012

Parcel #6

THE WEST HALF OF LOT 16 IN BLOCK 3 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

1925 N. President Street  
Wheaton, IL

PIN 05-10-103-021

Parcel #7

THE EAST HALF OF LOT 16 IN BLOCK 3 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

1010 Daly Road  
Wheaton, IL

PIN 05-10-103-022

Parcel #8

THE WEST HALF OF LOT 1 IN BLOCK 3 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

1014 Daly Road  
Wheaton, IL

PIN 05-10-103-011

Parcel #9

THE EAST HALF OF LOT 1 IN BLOCK 3 IN ARTHUR T. MACINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 10, AND PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT 175034, IN DUPAGE COUNTY, ILLINOIS.

1928 N. Stoddard Avenue  
Wheaton, IL

PIN 05-10-103-012

2027-AZG7n1

EXHIBIT "C"

RECAPTURE EXPENSES

Exhibit "C"

Mackenzie Place Recapture Agreement

Summary of Recapture Expenses

Benefited Property	Property Frontage (L.Ft.)	Roadway	Watermain	Sanitary	Total
#1 2021 N. Stoddard Av	100	\$ 6,206.00	\$ 2,636.00	\$ 2,151.00	\$ 10,993.00
#2 2015 N. Stoddard Av	100	\$ 6,206.00	\$ 2,636.00	\$ 2,151.00	\$ 10,993.00
#3 2011 N. Stoddard Av	100	\$ 6,206.00	\$ 2,636.00	\$ 2,151.00	\$ 10,993.00
#4 2007 N. Stoddard Av	100	\$ 6,206.00	\$ 2,636.00	\$ 2,151.00	\$ 10,993.00
#5 2003 N. Stoddard Av	100	\$ 6,206.00	\$ 2,636.00	\$ 2,151.00	\$ 10,993.00
Stoddard Totals	500	\$ 31,030.00	\$ 13,180.00	\$ 10,755.00	\$ 54,965.00
#6 1925 N. President St	180	\$ 11,163.60	\$ 6,260.40	\$ -	\$ 17,424.00
#7 1010 Daly Rd	120	\$ 7,442.40	\$ 4,173.60	\$ -	\$ 11,616.00
#8 1014 Daly Rd	150	\$ 9,303.00	\$ 5,217.00	\$ -	\$ 14,520.00
#9 1928 N. Stoddard Av	150	\$ 9,303.00	\$ 5,217.00	\$ -	\$ 14,520.00
Daly Totals	600	\$ 37,212.00	\$ 20,868.00	\$ -	\$ 58,080.00
Grand Totals		\$ 68,242.00	\$ 34,048.00	\$ 10,755.00	\$ 113,045.00

Q2007-026601

