

ORDINANCE NO. O-2023-26

AN ORDINANCE AUTHORIZING THE SIGNING OF AN ANNEXATION AGREEMENT
2021 N. STODDARD AVENUE - COX

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 February 27, 2023 to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, the Annexation Agreement dated August 7, 2023, between the City and Matthew and Melissa Cox ("Owner"), is the result of deliberations on the proposed annexation pursuant to the public hearing and other meetings, and negotiations between City Staff and the Owner.

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 Annexation Agreement between the City of Wheaton and Owner. A copy of the Annexation Agreement is attached herein as Exhibit 'B'.

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

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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


Philip J. Suess
Mayor

ATTEST:


Andrea Rosedale
City Clerk

Ayes:

Roll Call Vote:
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller
Councilwoman Bray-Parker

Nays: None
Absent: Councilman Barbier
Motion Carried Unanimously

Passed: August 7, 2023
Published: August 8, 2023

EXHIBIT 'A'

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

P.I.N. 05-10-101-008

The subject property is commonly known as 2021 N. Stoddard Avenue, Wheaton, IL 60187.

EXHIBIT 'B'
Annexation Agreement

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this 8th day of August, 2023 among the City of Wheaton, Illinois, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), and Matthew and Melissa Cox ("Owners").

WITNESSETH

WHEREAS, the Owners have an interest in or control the real estate comprised of a parcel of property approximately .68 acres in size, commonly known as 2021 N. Stoddard Avenue, PIN 05-10-101-008 ("Subject Property"), a description of which is set forth on the Plat of Annexation, as may be amended, which is attached hereto and incorporated herein as Exhibit "A"; and

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

WHEREAS, it is the desire of the Owners that 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 in accordance with and pursuant to the preliminary plans prepared by Webster, McGrath, & Ahlberg, LTD., sheets C-1 and C-2, dated January 17, 2023, and JMB Architects, LTD., sheets B1 and B2, dated January 18, 2023, which are attached hereto and incorporated herein 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 18-1, *et seq.* of the Wheaton City Code ("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 City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution.

2. PETITION TO ANNEX. The Owners have filed with the City Clerk, 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 hereto and incorporated herein 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. Following approval by the City Council of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

4. REZONING. 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 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.

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 City Code and all other applicable Federal, State, and local statutes and ordinances governing stormwater management.

7. STORM SEWER EASEMENTS. The Owners agree to provide the following: (1) a ten-foot wide public utility drainage easement to the City, as more fully described on the Plat of Annexation attached as Exhibit A; and (2) a ten-foot wide private storm sewer easement to the adjoining property owners of 2034 N. Summit Street. These easements will overlap with one another and shall be located along the south property line of 2021 N. Stoddard Avenue and run the entire length of the south property line.

The private easement shall allow for a maximum of a 4" private storm sewer service to be run from 2034 N. Summit Street to the City Storm Sewer located in Stoddard Avenue. During construction of the single-family residence on the Subject Property, the Owners shall install, or cause to be installed, the 4" private storm sewer service from the City storm sewer to the east property line of the Subject Property. Prior to installation, however, the Owners shall obtain three (3) quotes/proposals for said installation and provide those to the City. The City will choose the quote/proposal most cost effective and advantageous to the City and involved property owners. After installation of the private storm sewer and approval by the City, the City will reimburse the Owners the costs of the permit fee and installation as set forth in the chosen quote/proposal, with said reimbursement to occur within thirty (30) days of receipt of a written request for reimbursement from the Owners. All maintenance costs of the private storm sewer service shall be the responsibility of the property owner of 2034 N. Summit Street after the Owners have completed the construction of the private sewer service from the City storm sewer to the east property line of the Subject Property.

8. WATER FACILITIES. The Owners shall connect the 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 the 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.

9. RECAPTURE AGREEMENT. As a benefited property identified in a Recapture Agreement dated February 5, 2007 between the City and Airhart Construction, the Owners shall be required to contribute their pro rata share toward the cost of certain public improvements

prior to the issuance of a permit as further described in the Recapture Agreement, which is attached hereto and incorporated herein as Exhibit "D".

10. BUILDING PLANS/FRONT YARD SETBACK VARIATION. 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 City Code. With respect to the development and use of the Subject Property, the provisions of the Wheaton Zoning Ordinance pertaining to the following item shall be varied pursuant to the terms of this Agreement: a variation to Article 8.2.5 of the Wheaton Zoning Ordinance to allow a front yard setback of 40 feet in lieu of the required 64.5 feet.

11. STOP WORK 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 City Code and adopted Building Codes.

12. 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, 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.

13. TREE PRESERVATION. Prior to the issuance of a Building 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 in accordance with Section 62-294 of the City Code and subject to the approval of the Director of Engineering.

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

15. AMENDMENT OF ANNEXATION AGREEMENT. This Agreement, and any exhibit attached hereto, may be amended pursuant to the provisions of Chapter 18 of the City Code.

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

17. INVALIDITY. If any provision of this 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 Agreement and the application of such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

18. 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.

19. NO LIABILITY ON THE PART OF THE CITY. The Owners acknowledge and agree that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Subject Property or any improvements thereon, or the issuance of any approvals, permits or acceptances for the development or use of the Subject Property or any improvements thereon, and that the City's review and approval of any such plans and any improvements and issuance of any such approvals or permits does not, and shall not, in any way, be deemed to insure the Owners, or any of their heirs or assigns against damage or injury of any kind.

20. INDEMNIFICATION. The Owners shall indemnify and hold the City, its officials, officers, employees and agents, harmless from all claims, causes of action, suits, judgments, settlements, legal fees and all other costs for injuries or damages to persons and property which arise out of this Agreement, including but not limited to the following: injuries due to the actions of the Owners, its agents, assigns, employees, contractors, and subcontractors; the City's review and approval of any plans for the Subject Property; the issuance of any approval, permit, or acceptance for the Subject Property or any improvements thereon; the development, construction, maintenance or use of the Subject Property or the improvements thereon; the zoning of the Subject Property, or any other action or conduct of the City. 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.

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

22. 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. Matthew and Melissa Cox
2021 N. Stoddard Avenue
Wheaton, IL 60187

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

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

24. SIDEWALK. The Owners shall install a public sidewalk along the Stoddard Avenue frontage of the Subject Property pursuant to the requirements of the City Code.

25. OTHER PUBLIC IMPROVEMENTS. The Owners shall re-grade the roadside ditch located in the City's right-of-way on the east side of Stoddard Avenue per the direction of the City's Engineer so that stormwater can flow through said ditch from 2021 N. Stoddard Avenue to 2011 N. Stoddard Avenue.

IN WITNESS WHEREOF, the City 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:

Andrea Rosedale
CITY CLERK

CITY CLERK

Philip J. Sauer
MAYOR

OWNERS

ATTEST:

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IN WITNESS WHEREOF, the City 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

Melissa Cox
OWNERS

ATTEST:

Kathy A. Kinsler

EXHIBIT A

PLAT OF ANNEXATION

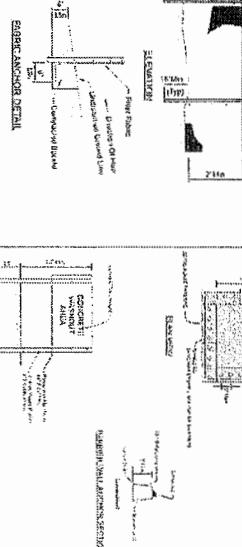
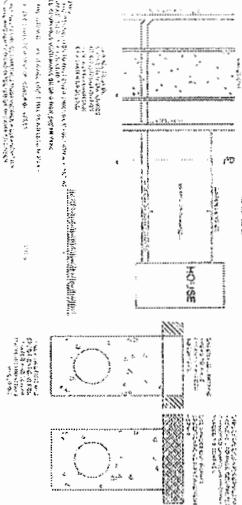
EXHIBIT B

PRELIMINARY PLANS

SANITARY SEWER SERVICE LATERAL DETAIL

DRIVE APPROACH & SIDEWALK SPECIFICATIONS

SPLIT FENCE PLAN



WATER SERVICE CONNECTION DETAIL

STORM SEWER SERVICE CONNECTION DETAIL



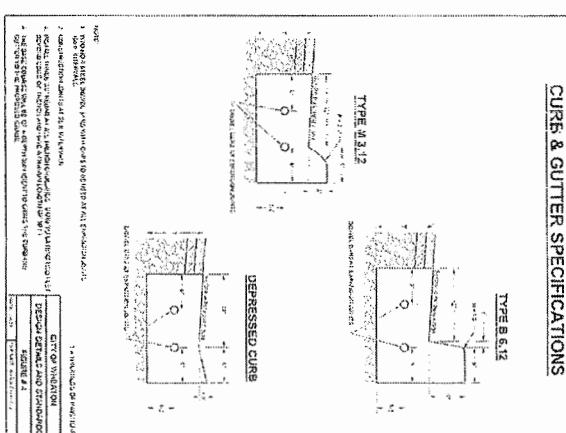
SINGLE FAMILY RESIDENCE
2021 N. STOBBARD AVENUE, WHEATON, IL

PROPOSED
WATERFRONT ROAD



WEBSTER, MCGRATH & AHLBERG, LTD.
WMA
Engineering, Land Planning, Land Development
Construction Project Management
Architectural Services
Planning Services
Environmental Services
Surveying Services
Geotechnical Services

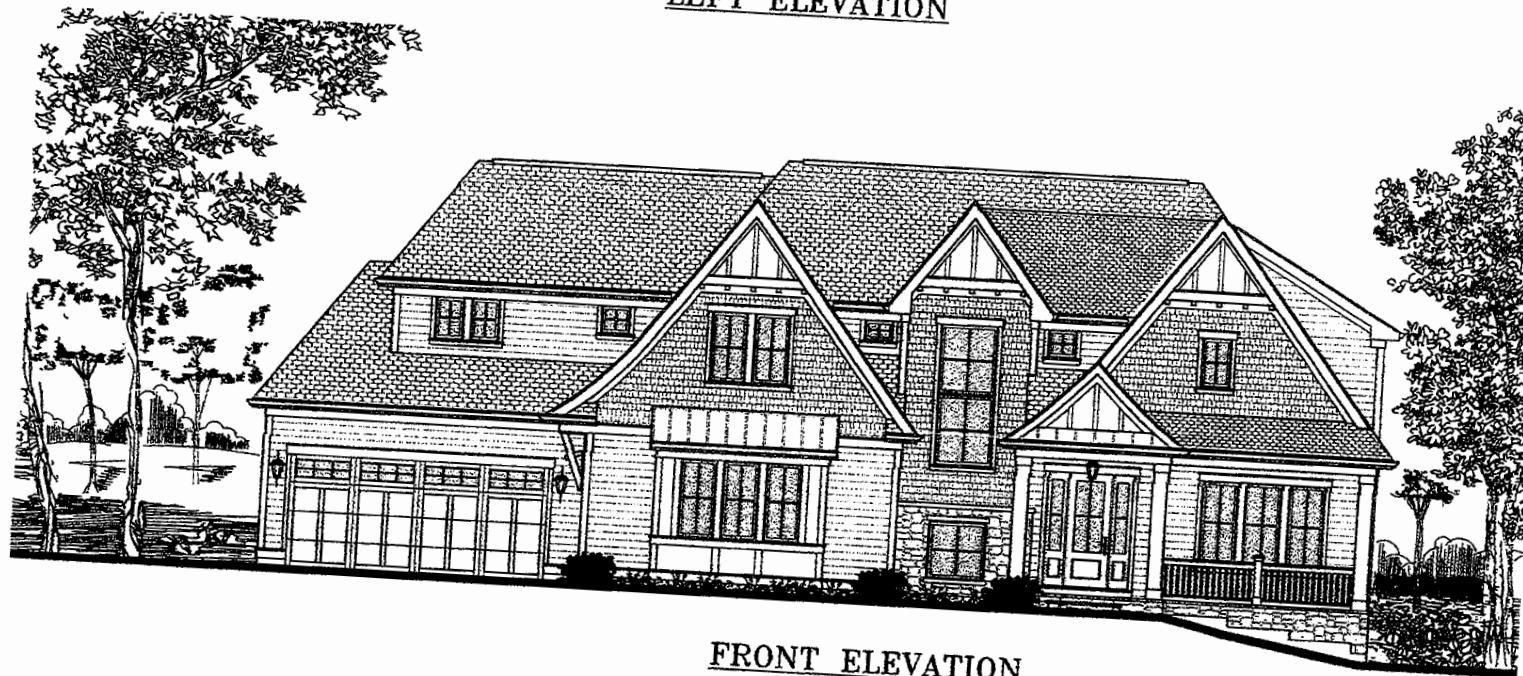
DETAILS
C-2



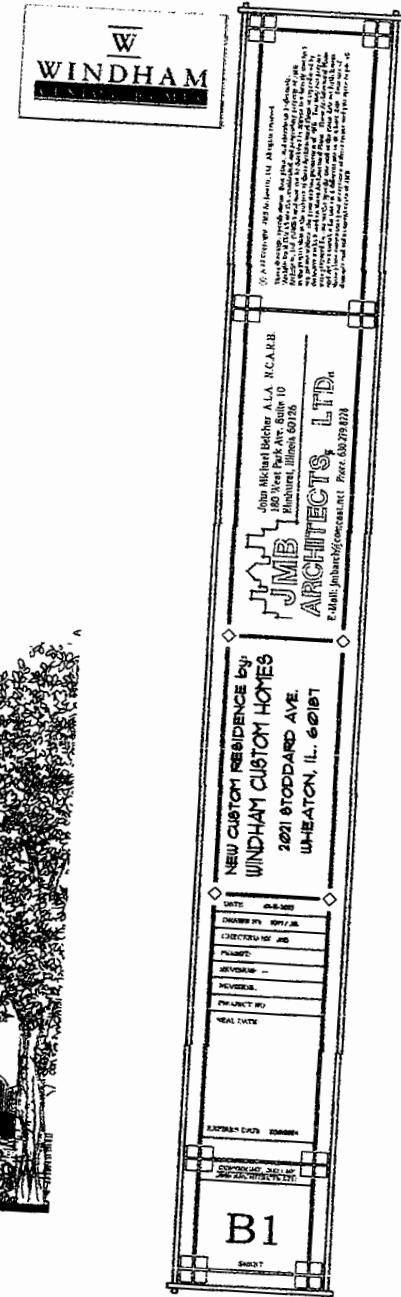
SECTION	DESCRIPTION	SIZE	THICKNESS	GRADE
TYPE A 3.12	DEPRESSED CURB	12"	4"	TEMPERATURE-CURING CONCRETE
TYPE B 6.12	DEPRESSED CURB	12"	4"	TEMPERATURE-CURING CONCRETE
TYPE C 6.12	DEPRESSED CURB	12"	4"	TEMPERATURE-CURING CONCRETE
TYPE D 6.12	DEPRESSED CURB	12"	4"	TEMPERATURE-CURING CONCRETE



LEFT ELEVATION



FRONT ELEVATION





RIGHT ELEVATION



REAR ELEVATION

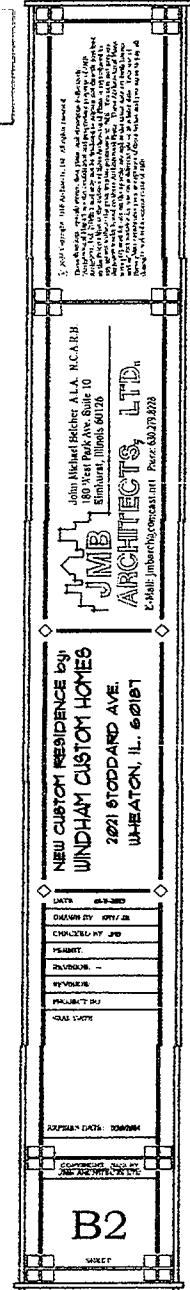


EXHIBIT C

PETITION FOR ANNEXATION

(

CITY OF WHEATON
PETITION FOR ANNE)

Exhibit C

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:

2021 Stoddard Avenue, Wheaton, IL 60187

(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: January 17 20 23

Owner(s) of record of said property

Name: Matthew & Melissa Cox

Signature: Melissa Cox

Address: 2041 Windham Cir., Wheaton, IL 60187

Tel. No.: (608) 385-0004

Fax No.: _____

Elector(s) residing on said property

Name: None

Name: _____

Subscribed and sworn before me this 17th day of January 20 23.

Kelly A. Knierim
Notary Public



EXHIBIT D

RECAPTURE AGREEMENT



Exhibit D

FRED BUCHOLZ
DUPAGE COUNTY RECORDER
FEB.27,2007 11:38 AM
05-10-101-008
OTHER
019 PAGES R2007-035601

Mayor
C. James Carr

City Council
Alan Bolds
Liz Corry
Dave Johnson
Howard Levine
Tom Mouhelis
Phil Suess

City Manager
Donald B. Rose

CITY OF WHEATON, ILLINOIS

RESOLUTION NO. R- 12-07

A RESOLUTION AUTHORIZING THE EXECUTION OF A RECAPTURE AGREEMENT FOR MACKENZIE PLACE AND MACKENZIE PLACE PHASE 2 SUBDIVISIONS

I HEREBY CERTIFY that I am the City Clerk of the City of Wheaton, DuPage County, Illinois, and that, as such City Clerk, I have the custody of the papers, entries, records and ordinances of said City.

I FURTHER CERTIFY that the attached is a true and correct copy of City of Wheaton Resolution No. R- 12-07 which was adopted by the Wheaton City Council on Monday, February 5, 2007.

I have hereunto set my hand and affixed the seal of said City this 6th day of February, 2007.

Emily M. Consolazio
City Clerk

(PREPARED BY/RETURN TO)
Emily Consolazio, City Clerk
City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187

City of Wheaton 303 W. Wesley Street Box 727 Wheaton, IL 60189-0727
630-260-2000 630-260-2017 FAX 630-260-8090 TDD www.wheaton.il.us

RESOLUTION NO. R-12-07

A RESOLUTION AUTHORIZING THE EXECUTION OF
A RECAPTURE AGREEMENT FOR
MACKENZIE PLACE AND MACKENZIE PLACE PHASE 2 SUBDIVISIONS

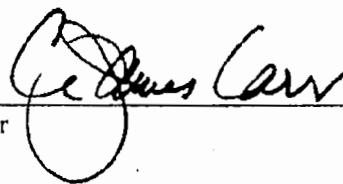
WHEREAS, Chapter 50 of the Wheaton City Code, "Recapture Agreements and Financing Certain Municipal Improvements" authorizes the City to enter into recapture agreements for the reimbursement of certain costs associated with the construction of public improvements;

WHEREAS, on January 8, 2007, the Wheaton City Council held a public hearing in accordance with the provisions of Chapter 50 of the Wheaton City Code to consider a proposed recapture agreement presented by Airhart Construction Corp. for certain costs incurred with the construction of public improvements for the Mackenzie Place and Mackenzie Place Phase 2 subdivisions.

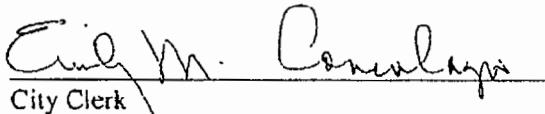
NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is authorized to sign a recapture agreement between the City of Wheaton and Airhart Construction Corp. dated February 5, 2007, and the City Clerk is authorized and directed to attest to the signature of the Mayor.

BE IT FURTHER RESOLVED that the recapture agreement shall be recorded in the office of the DuPage County Recorder at the expense of Airhart Construction Corp.

ADOPTED the 5th day of February, 2007.


Mayor

Attest:


City Clerk

Ayes:	Councilman Bolds Councilwoman Corry Councilman Johnson Mayor Carr Councilman Levine Councilman Mouhelis Councilman Suess
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Nays:	None
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Absent:	None
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Motion Carried Unanimously

RECAPTURE AGREEMENT

This Agreement made and entered into this 5th 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

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 8th 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

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
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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



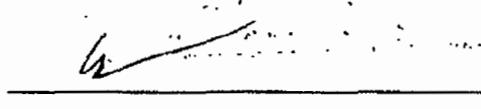
Mayor

Attest:



City Clerk

AIRHART CONSTRUCTION CORP.



President

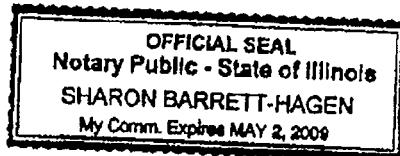
STATE OF ILLINOIS)
COUNTY OF DUPAGE)

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 10th 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, Court M. Arikat, 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 12th day of February, 2007

Notary Public

SEAL

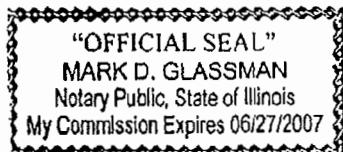


EXHIBIT "A"

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:

EXHIBIT "B"

BENEFITED PROPERTY DESCRIPTIONS

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

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

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

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