

**ORDINANCE NO. F-1940**

**AN ORDINANCE AUTHORIZING THE SIGNING OF A PRE-ANNEXATION AGREEMENT –  
0N468 & 0N474 MORSE STREET - AIRHART**

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 not contiguous to the boundaries of the City and not within the corporate boundaries of any other municipality, a legal description of the subject property is attached hereto as "Exhibit A" , pursuant to a proposed Pre-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 May 9, 2016 to consider the terms and conditions of the proposed Pre-Annexation Agreement; and

WHEREAS, a Pre-Annexation Agreement dated May 16, 2016, among the City and Chicago Title Land Trust Company, as Trustee under Trust No. 6507, Dated November 12, 1982 Grantee under Trust: Airhart Construction, 500 E. Roosevelt Road, West Chicago, IL 60185("Owner") ("Pre-Annexation Agreement"), is the direct result of deliberations on the proposed Pre-Annexation Agreement pursuant to the public hearing and other meetings before the City Council and City Staff.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

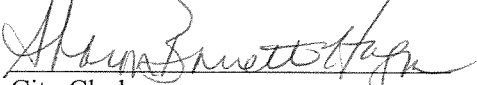
Section 1: The Mayor of the City is authorized and directed to sign, on behalf of the City, the Pre-Annexation Agreement; and the City Clerk is authorized and directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon. A copy of the Pre-Annexation Agreement is attached hereto as "Exhibit B".

Section 2: The Pre-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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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.

ATTEST:

  
City Clerk

  
Mayor

Roll Call Vote

Ayes: Councilman Rutledge  
Mayor Gresk  
Councilman Saline  
Councilman Scalzo  
Councilman Sues  
Councilwoman Fitch  
Councilman Prendiville

Nays: None

Absent: None

Motion Carried Unanimously

Passed: May 16, 2016

Published: May 17, 2016

**EXHIBIT A**

LOTS 4 AND 5 IN BLOCK 4 IN PURNELL GARDENS, BEING A SUBDIVISION IN THE EAST ½ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 7, 1925 AS DOCUMENT 197513, IN DUPAGE COUNTY, ILLINOIS.

0N468 Morse Street, Wheaton, Illinois 60187; P.I.N. 05-08-214-014

0N474 Morse Street, Wheaton, Illinois 60187; P.I.N. 05-08-214-013

## EXHIBIT B

### PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT ("Agreement"), made and entered into this 16<sup>th</sup> day of May, 2016, among the City of Wheaton, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), and Chicago Title Land Trust Company, as Trustee under Trust No. 6507, Dated November 12, 1982 Grantee under Trust: Airhart Construction, 500 E. Roosevelt Road, West Chicago, IL 60185("Owner").

#### WITNESSETH

WHEREAS, Owner has an interest in, or control of, the real estate legally described on Exhibit A, which is attached to and made a part of this Agreement ("Subject Property"), commonly known as 0N468 Morse Street and 0N474 Morse Street, Wheaton, Illinois 60187; and

WHEREAS, the City has concluded that once annexed, the Subject Property 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, the Subject Property is currently vacant; and

WHEREAS, the Subject Property is not presently contiguous to the corporate limits of the City.

NOW, THEREFORE, in consideration of the foregoing preambles and mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. **LEGAL CONFORMANCE WITH LAW.** This Agreement is made pursuant to and in accordance with the provisions of the City Code and applicable provisions of the Illinois Compiled Statutes and the Illinois Constitution.
2. **PETITION TO ANNEX/ANNEXATION AGREEMENT.** Owner has filed with the Clerk of the City, a proper petition, pursuant to the provisions of the Section 7-1-8 of the Illinois Compiled Statutes [65ILCS 5/7-1-8 (1998 State Bar Association Edition)] conditioned on the execution of an pre-annexation agreement to annex the Subject Property to the City. The petition for annexation is incorporated into this Agreement by this reference. This Agreement in its entirety, together with the aforesaid petition for annexation, shall be null, void, and of no force and effect unless the Subject Property is validly zoned and classified under the City's Zoning Ordinance as hereinafter set forth and amended.
3. **ANNEXATION ORDINANCE.** Once the subject property becomes contiguous to the City, the City in its sole discretion, may adopt an ordinance annexing the property into the City. Any and all costs associated with the completion of the annexation shall be borne by the Owner at the time of annexation. The Owner shall fully cooperate with the City in undertaking any and all acts necessary to complete the annexation including having prepared and/or paying all costs associated with a plat of annexation.

Should the Owner fail to cooperate or to resist the annexation which results in litigation between the City and the Owner, the Owner shall pay all of the City's reasonable attorney's fees and costs in enforcing or defending the enforcement of this Agreement in addition to any additional costs to complete the annexation as provided herein. Any and all costs not reimbursed to the City by the Owner within fourteen (14) days of billing may be filed by the City as a lien against the Subject Property and shall be subject to foreclosure in the Eighteenth Judicial Circuit Court, DuPage County, Wheaton, Illinois.

As an alternative to annexation, the City fully retains the right to terminate water service to the Subject Property should the Owner refuse to honor any and all provisions contained in this Agreement. The Owner acknowledges by entering into this agreement that the Owner has no legal right to require the City to provide water services outside of its corporate boundaries in absence of this Agreement.

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 Ordinance, zoning and classifying the Subject Property in the R-4 Residential District zoning classification.

5. DEVELOPMENT/CONSTRUCTION STANDARDS. Any future development of, or construction on, the Subject Property shall be in full conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Code, and other ordinances, codes, rules, and regulations of the City pertaining to the development of the Subject Property to be annexed. The ordinances, codes, rules, and regulations existing on the date of the application for building, or other, permit(s), shall be applicable, except as the same may be specifically amended pursuant to the terms of this Agreement.

Provided, however, in the event any construction, improvement, or development is effected on the Subject Property prior to it becoming annexed to the City, the construction, improvement, or development shall conform to either the building and development codes of the County of DuPage or the City, whichever is or are more restrictive, as determined by the City.

6. VARIATIONS FROM LOCAL CODES. Immediately after the passage of the ordinance annexing the Subject Property, the City shall zone the Subject Property as provided for in paragraph four (4) of this Agreement. There shall be no variations from the City's ordinances or rules.

7. CONNECTION TO THE CITY WATER SYSTEM. The Owner shall connect the single-family homes to be constructed on the Subject Property to the water main of the City located within the Morse Street right-of-way in accordance with City Code. Such connection to City water shall occur in conjunction with a permit to build each single-family home. The Owner shall pay all City permit and connection fees in full force and effect, pursuant to the City Code, at the time of the connection of the Subject Property to the water main. The Owner shall abandon any existing well(s) servicing the property upon connection to the City's water system as in accordance with Section 74-233 of the City Code.

8. WATER UTILITY RATE. Notwithstanding any provision of the City Code to the contrary, the water rate/cost for City water provided to the Subject Property shall be based upon the same rate/cost that is charged to owners of real estate within the City.

9. SANITARY SEWER FACILITIES. The Owner shall connect the Subject Property to the sanitary sewer line located in the Morse Street right-of-way in accordance with conditions established by the Wheaton Sanitary District. Such connection to the sanitary sewer shall occur in conjunction with a permit to build each single-family home. The Owner shall pay all permit and connection fees in full force and effect at the time of the connection of the Subject Property to the sanitary sewer line. The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal, State, Municipal law, including, without limitation, the Illinois Environmental Protection Agency and the Wheaton Sanitary District.

10. FIRE PROTECTION. The City shall furnish fire protection at a rate of \$.296 per \$100 of assessed valuation per residential unit per year with assessed valuation determined by the Township Assessor on an annual basis. The payment for said fire protection service shall be made to the City on an annual basis and within thirty (30) days of receipt by the Owner of an invoice from the City. The fire protection rate shall remain in place until such time as the Subject Property is annexed to the City or the City establishes an alternative rate/fee for the area surrounding the Subject Property.

11. CITY ADDRESS. Upon the passage of the ordinance annexing the Subject Property, Owner shall, forthwith, change the address of the Subject Property from the current County address to a City address as directed by the City.

12. FUTURE PUBLIC IMPROVEMENTS. Owner understands that the City customarily requires the Owner of real estate being annexed to the City to install various public improvements as required by the City Code, including, but not limited to, sanitary sewer mains, water mains, streets, 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 Owner to construct the public improvements along the Morse Street frontage of Subject Property without a unified construction effort along Morse Street. In lieu of the Owner constructing the public improvements at this time, the Owner agrees that should the City construct public improvements along Morse Street fronting the Subject Property, the Owner shall pay their fair share of costs of the design and construction of said public improvements.

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

14. PLAT OF ANNEXATION. The Owner shall provide to the City a Plat of Annexation once the Subject Property becomes contiguous to the City.

15. 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.

16. AMENDMENT OF PRE-ANNEXATION AGREEMENT. This Agreement may be amended pursuant to the provisions of the City Code, Zoning Ordinance and Illinois Municipal Code.

17. TERM OF AGREEMENT. This Agreement shall be binding upon the parties hereto, their respective successors and assigns, until the City Council makes a final determination whether to annex the Subject Property once it becomes contiguous to the City.

18. BINDING EFFECT. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, assigns, successors, and grantees. This Agreement shall be recorded at the Owner's expense by the City Clerk and all provisions hereof shall be a covenant running with the land. If this Agreement expires or is determined invalid for any reason whatsoever and the Subject Property has not been annexed to the City prior to the expiration or declaration of invalidity, the City shall have no obligation, and the Owner shall have no right to the continued provision of sewer and/or water by the City, unless the Owner enters into a new pre-annexation agreement acceptable to the City at that time. The Owner acknowledges and covenants that in absence a written contract, obligating the City to provide sewer and/or water, the City shall have no obligation to provide the Subject Property with either or both, despite the costs incurred by Owner in the extension, connection or maintenance of water and/or sewer utilities.

19. 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:

Owner: Chicago Title Land Trust Company, as Trustee  
Trust No. 6507, dated November 12, 1982  
Grantee under Trust: Airhart Construction  
500 East Roosevelt Road  
West Chicago, Illinois 60185; and

City: City Manager  
City of Wheaton  
303 West Wesley Street, Box 727  
Wheaton, Illinois 60189-0727

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the date first above written.

City of Wheaton, an Illinois  
Municipal Corporation

By: Michael J. Gues  
Mayor

ATTEST:  
Shawn Barnett Hogan  
City Clerk

CHICAGO TITLE LAND TRUST COMPANY, as Trustee aforesaid.

Owner

By: Maureen Paige 5/13/16  
MAUREEN PAIGE, Trust Officer

ATTEST:

Attestation not required  
Pursuant to corporate by-laws

Trustee's Exoneration on reverse side.

EXHIBIT A

Legal Description of Subject Property

LOT 4 AND 5 IN BLOCK 4 IN PURNELL GARDENS, BEING A SUBDIVISION IN THE EAST ½ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 7, 1925 AS DOCUMENT 197513, IN DUPAGE COUNTY, ILLINOIS.

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