The meeting will also be live streamed and recorded.

Join by phone: (312) 626-6799, Meeting ID: 825 6006 2151 and Password: 851617
- You will be automatically muted. If you would like to speak, you need to press *9 to raise your hand and let the meeting administrator know you would like to speak. Once it is your turn to speak, you will receive a notification asking you to press *6 to unmute yourself. Please announce your name and address before commenting and ensure you are in a quiet place.

Join by computer/smartphone: [https://us02web.zoom.us/j/82560062151](https://us02web.zoom.us/j/82560062151)
- You will be automatically muted. If you would like to speak, click on the “Raise Hand” button to let the meeting administrator know you would like to speak. When it is your turn to speak, you will receive a notification that the meeting administrator is asking you to press “unmute.” Please announce your name and address before commenting and ensure you are in a quiet place.

Public comments can be made by:
- In person at 7:00 p.m. on Monday, February 27, 2023, during the Public Comment portion of the Public Hearing.
- Virtually at 7:00 p.m. on Monday, February 27, 2023, during the Public Comment portion of the Public Hearing.
- Email the City Council at allcouncil@wheaton.il.us before 5:00 p.m. on Monday, February 27, 2023.

AGENDA

I. Call to Order and Roll Call

II. ZA #23-03/ Annexation/ 2021 N. Stoddard Avenue/ Cox
   A. Presentation
   B. Public Comment
   C. Council Comment

III. Adjournment
MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Tracy L. Jones, Staff Planner
       Joseph E. Tebrugge, Director of Engineering

DATE: February 27, 2023

SUBJECT: ZA #23-03/ Annexation/ 2021 N. Stoddard Avenue/ Cox

On Monday, February 27, 2023, the City Council, acting as a hearing body, will conduct a public hearing regarding a petition for annexation of a 30,000 square foot vacant parcel of land located at 2021 N. Stoddard Avenue and rezoning of the subject property to the R-2 Residential District to connect to City water and sewer to allow the construction of a new single-family residence on the subject property.

The petition for annexation is attached as Exhibit A, plat of annexation is attached as Exhibit B, preliminary engineering and building plans are attached as Exhibit C, and the draft Annexation Agreement is attached as Exhibit D.

Background Information

Applicant: The Windham Group, Builders and Developers, P.O. Box 307, Wheaton, IL, 60187 on behalf of the property owners, Matthew and Melissa Cox, 2041 Windham Circle, Wheaton, IL 60187

Subject Property: 2021 N. Stoddard Avenue, Wheaton, IL 60187

Parcel Size: 30,000 square feet

Proposed Zoning: R-2 Residential District

Comprehensive Plan: Residential

Surrounding Conditions: North: Single-Family Residential/ R-3 Residential
South: Single-Family Residential/ Unincorporated
East: Single-Family Residential/ R-3 Residential
West: Single-Family Residential/ R-2 Residential
Planning Department Concerns and Comments

The applicant is requesting annexation of the property located at 2021 N. Stoddard Avenue and rezoning of the subject property to the R-2 Residential District to connect to City water and sewer to allow the construction of a new single-family residence on the subject property. The R-2 District requires a minimum lot width of 90 feet, minimum lot depth of 132 feet, and minimum lot size of 14,000 square feet. Both the subject property and the new single-family residence meet all the bulk regulations in the R-2 Residential District, except for the required front yard setback which is discussed later in this report. The adjacent residence to the north is zoned R-3 Residential and the adjacent residence to the south is unincorporated. There are existing R-2 parcels to the south and west of the subject property. The subject property is one of three remaining unincorporated parcels on this block of Stoddard Avenue. The property is designated as residential by Wheaton’s Comprehensive Plan.

Front Yard Setback Variation
As previously mentioned, the applicant is requesting a variation to Article 8.2.5 of the Wheaton Zoning Ordinance to allow the construction of a new single-family residence with a front yard setback of 40.0 feet in lieu of the required 64.5 feet. The Zoning Ordinance determines the required front yard setback for the subject property by taking the average setback of the adjacent properties. The adjacent residence to the north (incorporated; zoned R-3 Residential) has a setback of 31.0 feet and the adjacent residence to the south (unincorporated) has a setback of 98.0 feet; an average of 64.5 feet. The adjacent residence to the south will most likely be annexed to the City and demolished. Staff does not feel that the adjacent residence to the south (with a setback of nearly 100 feet) should be used as a determining factor in the setback of the subject property as it is inconsistent with the majority of the existing residences on the block.

Article 5.7 of the Wheaton Zoning Ordinance typically requires the applicant to address seven variation evidence standards to establish that the variation would not be detrimental to the public health, safety, morals, comfort, convenience, or general welfare of the neighboring property owners. While the applicant is not required to specifically address these standards as part of the annexation public hearing, staff still used them as a guide to determine the appropriateness of the front yard setback variation request, and staff has determined that the request is appropriate and reasonable.

Engineering Department Concerns and Comments

Floodplain
The subject site does not contain a floodplain or a wetland pursuant to the regulatory maps used for such determinations, nor does it trigger the City of Wheaton requirement to provide detention for the project.

Plat of Annexation
It is required that the plat of annexation be revised to provide 5’ Public Utility and Drainage Easements along both the north and south property lines and a 10’ Public Utility and Drainage Easement along the east property line. Additionally, staff recommends that a 10’ private storm sewer service easement shall be added along the south property line from the owner of 2021 Stoddard Avenue to the owner of 2034 Summit Street.
**Preliminary Engineering Plan**

The provided preliminary engineering plan currently shows revised grading in the rear yard which alters the direction of the existing drainage pattern and increases the tributary area to a known area of flooding. This is required to be revised as a part of the final permitting process. Additionally, the existing south side yard swale has been substantially eliminated and needs to be restored to maintain the existing drainage pattern.

The proposed curb and gutter shown on the preliminary engineering plan is required to be eliminated and the roadside ditch fully restored along the front of the subject property. Additionally, the roadside ditch in front of 2015 Stoddard Avenue is required to be cleaned enough to ensure that roadside drainage continues from the restored ditch in front of 2021 Stoddard, through the invert of the culvert at 2015 Stoddard, and down to the existing culvert of 2011 Stoddard.

The proposed sidewalk is required to be extended as shown, however the grade of the sidewalk is required to match the existing elevation of the public right of way more closely.

The preliminary engineering plan shall be subject to further staff review prior to the issuance of a site development permit.

**Recapture Agreement**

There is a recapture against the property at 2021 N. Stoddard Avenue for public improvements that were installed as a part of the Mackenzie Place and Makenzie Place Phase Two Subdivisions which must be paid at the time the property connects to City or is annexed into the City. The public improvements included roadway, sanitary main, and water main improvements which benefitted this property. The total current cost of the required recapture is $27,926.09.

**Staff Recommendation**

The proposed annexation will 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. Staff recommends approval of the proposed annexation, as presented in the attached annexation agreement.
CITY OF WHEATC
PETITION FOR ANNEX

Exhibit A

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 2023

Owner(s) of record of said property

Name: Matthew & Melissa Cox

Signature: ____________________________

Address: 204| Windham Cir., Wheaton, IL 60187

Tel. No.: (608) 385-0004

Elector(s) residing on said property

Name: None

Name: ______________________________

Subscribed and sworn before me this 17th day of January 2023.

Notary Public

"OFFICIAL SEAL"
KELLY A KNIERIM
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/11/2023
ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT made and entered into this ___ day of __________, 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, 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"); and

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 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 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 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 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.** Upon the complete signing 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 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.

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. **PRIVATE STORM SEWER EASEMENT.** The Owners agree to provide a ten-foot private storm sewer service easement to the adjoining property owners of 2034 N. Summit Street. This easement shall be located along the south property line of 2021 N. Stoddard Avenue and run the entire length of the south property line. The 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. All installation and maintenance costs of the private
storm sewer service would remain the responsibility of the property owner of 2034 N. Summit Street and the property of 2021 N. Stoddard would not be allowed to tie into this private storm sewer service.

8. 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 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 as further described in the Recapture Agreement, which is attached to and incorporated into this Agreement as Exhibit "D”.

10. 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 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 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, 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.

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 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 City Code. The cost shall be determined by the Director of Engineering and payment of same shall be made at the time of application for a building permit.

25. **FUTURE PUBLIC IMPROVEMENTS.** The 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.

26. **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 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
EXHIBIT A

PLAT OF ANNEXATION
EXHIBIT C

PETITION FOR ANNEXATION
EXHIBIT D

RECAPTURE AGREEMENT
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.

[Signature]
City Clerk

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

[Signature]
Mayor

Attest:

[Signature]
City Clerk

Ayes: Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine
Councilman Mouhelis
Councilman Suess

Nays: None

Absent: None

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 know 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
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

[Signature]
Mayor

Attest:

[Signature]
City Clerk

AIRHART CONSTRUCTION CORP.

[Signature]
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 know 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 6th day of February, 2007.

Notary Public

SEAL

OFFICIAL SEAL
Notary Public - State of Illinois
SHARON BARRETT-HAGEN
My Comm. Expires MAY 2, 2009

FRED BUCHOLZ   R2007-035601  DUPAGE COUNTY RECORDER
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, ____________________________, who is personally know 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

"OFFICIAL SEAL"
MARK D. GLASSMAN
Notary Public, State of Illinois
My Commission Expires 06/27/2007

FRED BUCHOLZ   R2007-035601   DUPAGE COUNTY RECORDER
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

<table>
<thead>
<tr>
<th>Benefited Property</th>
<th>Property Frontage (L.F.)</th>
<th>Roadway</th>
<th>Watermain</th>
<th>Sanitary</th>
<th>Total</th>
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<td>#1 2021 N. Stoddard Av</td>
<td>100</td>
<td>$6,206.00</td>
<td>$2,636.00</td>
<td>$2,151.00</td>
<td>$10,993.00</td>
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<td>$2,636.00</td>
<td>$2,151.00</td>
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<td>$2,636.00</td>
<td>$2,151.00</td>
<td>$10,993.00</td>
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<td>#5 2003 N. Stoddard Av</td>
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<td>$2,636.00</td>
<td>$2,151.00</td>
<td>$10,993.00</td>
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