

ORDINANCE NO. F-1199

**AN ORDINANCE ANNEXING CERTAIN TERRITORY
TO THE CITY OF WHEATON, ILLINOIS -
2140 N. STODDARD AVE., SECKER SUBDIVISION
AIRHART CONSTRUCTION**

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 contiguous to the boundaries of the City and not within the corporate boundaries of any other municipality, pursuant to a proposed 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 August 14, 2006, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated August 21, 2006 among the City and Airhart Construction ("Developer") ("Annexation Agreement"), is the direct result of deliberations on the proposed Annexation Agreement pursuant to the public hearing and other meetings before the City Council and City Staff.

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

Section 1: The terms, conditions, provisions, and obligations contained in the Annexation Agreement are incorporated into this annexation ordinance by this reference as though fully set forth herein. A copy of the Annexation Agreement is on file in the Office of the City Clerk.

Section 2: The following described territory is hereby annexed to the City:

LOT 1 IN BLOCK 2 (EXCEPT SO MUCH OF THE NORTHERLY PORTIONS OF SAID LOT 1 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915) IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTH WEST QUARTER OF SECTION 10; ALSO THAT PART LYING SOUTH OF THE CENTER LINE OF GENEVA ROAD, OF THE SOUTH WEST QUARTER OF SECTION 3, ALL IN 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.

P.I.N. 05-10-100-009

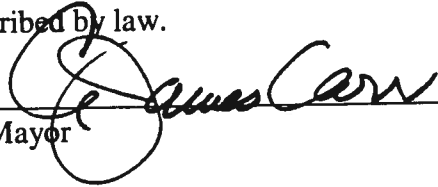
The subject property is commonly known as 2140 N. Stoddard Avenue, Wheaton, IL 60187.

Section 3: The City Clerk is authorized and directed to record with the Office of the Recorder of Deeds, DuPage County, Illinois, and to file with the Office of the County Clerk, DuPage County, Illinois, a certified copy of this ordinance together with the accurate map of the subject property appended to this ordinance.

Section 4: The annexation approved in this ordinance shall be null and void and of no further effect, without further action by the City Council, if the Owner and Developer do not execute and return the Annexation Agreement to the City Clerk within sixty (60) days of the date this Ordinance was passed.

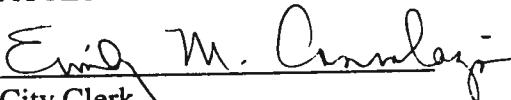
Section 5: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 6: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
Councilman Suess
Councilman Bolds
Councilwoman Corry
Mayor Pro Tem Johnson

Nays: Councilman Levine

Absent: Mayor Carr

Motion Carried

Passed: August 21, 2006
Published: August 22, 2006

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 21st day of August, 2006 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Airhart Construction ("Developer").

WITNESSETH

WHEREAS, the Developer has an interest in or controls the real estate comprised of one lot containing 30,000 square feet, 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 (said real estate will hereafter be referred to in its entirety as "Subject Property").

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

WHEREAS, it is the desire of the Developer that all of said real estate be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Developer desires to construct three single family residences on the Subject Property substantially in accordance with and pursuant to the Preliminary Plat entitled "Secker Subdivision" dated June 12, 2006 prepared by Jacob & Hefner Associates P.C., The Preliminary Engineering Plan entitled "Secker Subdivision" dated June 16, 2006 prepared by Jacob Hefner Associates P.C., and the Preliminary Landscape Plan entitled "Secker Landscape Plan" dated June 14, 2006 prepared by Airhart Construction (hereinafter referred to as "Site Plans"), a copy of which are marked as Exhibit "B" and are attached to and made a part of this Agreement; 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

EXHIBIT "A"

et.seq., of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution, a proposed annexation agreement in substance and form of the same as this Agreement was submitted to the Wheaton City Council, and a public hearing was held thereon pursuant to notice as provided by ordinance and statute; and

WHEREAS, the City has had such hearings and heard such testimony as prescribed by law with respect to the requested zoning classification of R-3 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, 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 Developer has 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 (1998 State Bar Association Edition)], conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached as Exhibit "C". 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. Immediately upon the execution of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

4. REZONING. Immediately after the passage of the ordinance annexing the Subject Property, the City shall, without further hearing, adopt an amendment to its Zoning Map which is part of the Zoning Ordinance of the City and the Comprehensive Plan of the City, zoning and classifying the Subject Property in the R-3, Residential District.

5. CONNECTION TO THE CITY WATER SYSTEM. The Developer shall connect the proposed homes on the Subject Property to the water main of the City located within the right-of-way of Stoddard Avenue and/or Geneva Road in accordance with City Code. Developer 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.

6. CONNECTION TO SANITARY SEWER SYSTEM. The Developers shall connect the proposed homes on Subject Property to the sanitary sewer system of the City located within the right-of-way of Stoddard Avenue at the time connection to City water is made. Developer shall pay all City permit fees in full force and effect pursuant to City Code at the time of the connection to the sanitary sewer main. The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including the Illinois Environmental Protection Act, permitting the construction and connection onto the sanitary mains of the City in order to develop and use the Subject Property.

7. STORM WATER FACILITIES. Developers agree to design and construct suitable storm water facilities for the Subject Property which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code and all other applicable statutes and ordinances.

8. CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Developer agrees to install parkway trees and sidewalks along Geneva Road and Stoddard Avenue in accordance with the standards contained in Chapter 62 of the Wheaton City Code.

9. 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 Developer or successor Developers, contractors, subcontractors, materialmen, 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.

EXHIBIT "A"

10. PARK DISTRICT ANNEXATION. Developers agrees to annex, pursuant to Statute, the Subject Property to the appropriate Park District within one (1) year from the date of this agreement.

11. SCHOOL AND PARK CASH CONTRIBUTIONS. The Developer agrees to provide an aggregate school and park cash contribution in the amount of \$5,700 for each new four bedroom single family detached dwelling unit, representing the cash contribution amount in effect at the time the petition for annexation was signed by the Developer. This cash contribution shall be paid prior to the recordation of the final plat of subdivision. Adjustments to the amount to be paid will made according to the actual number of bedrooms in each home. This adjustment will be made according to the formula contained in Article 6 of the Wheaton City Code.

11. VARIATIONS. The following variations to the applicable Codes and Ordinances are hereby granted as follows:

- Section 62-213; minimum lot area, corner lot: 10,402 square feet in lieu of 12,000 square feet.
- Section 62-214; minimum lot depth: 100 feet in lieu of 132 feet.
- Section 3.4A; minimum rear yard for decks and/or patios: 12.5 feet in lieu of 25 feet.
- Section 9.2.5; minimum front yard; 30 feet in lieu of taking into account the average setback of abutting lots.

For the purposes of this Section, the front yard for Lot #1 shall be that lot line facing Stoddard Avenue.

12. TREE PRESERVATION. Prior to the issuance of a Site Development Permit, the Developer shall comply with the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance, subject to the provisions of the Site Plans and the terms of this

EXHIBIT "A"

Agreement. All landscape plantings along the rear of the lots shall be installed prior to the issuance of a building permit for any of lots and shall be located in an appropriate easement to provide for their continual maintenance. Said easement shall be subject to the reasonable approval of the City Attorney.

13. BUILDING DEMOLITION. The demolition of the existing structure located on the Subject Property shall be authorized by this ordinance. Demolition of said structure, however, shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the Developer shall not be required to wait 30 days prior to commencing demolition from the date of submitting a demolition permit application to the Building and Code Enforcement Department, and shall not be required to hold a "neighbor meeting" at least 30 days prior to submitting an application for building demolition.

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

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

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

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

EXHIBIT "A"

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. INDEMNIFICATION. Developer shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of the Developer, its agents, assigns, employees, contractors, and subcontractors. Developer shall indemnify and hold the City harmless from all causes of action, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence. The Developer shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Developer.

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

21. RECAPTURE AGREEMENTS. The Subject Property is subject to the Lindsay Court Recapture Agreement entered into between the City and the developer of the Lindsay Court Subdivision.

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. **Airhart Construction**
500 East Roosevelt Road
West Chicago, IL 60185

- 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 Developer.

EXHIBIT "A"

IN WITNESS WHEREOF, the Corporate authorities and Developer have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here, all on the day and year first above written.

By

[Signature]
MAYOR

ATTEST:

[Signature]
CITY CLERK

[Signature] PRESIDENT AIRMART CONSTRUCTION
DEVELOPER

ATTEST:

[Signature]
SECRETARY

DEVELOPER

ATTEST:

EXHIBIT "A"

EXHIBIT A

LOT 1 IN BLOCK 2 (EXCEPT SO MUCH OF THE NORTHERLY PORTIONS OF SAID LOT 1 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915) IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTH WEST QUARTER OF SECTION 10; ALSO THAT PART LYING SOUTH OF THE CENTER LINE OF GENEVA ROAD, OF THE SOUTH WEST QUARTER OF SECTION 3, ALL IN 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.

P.I.N. 05-10-100-009

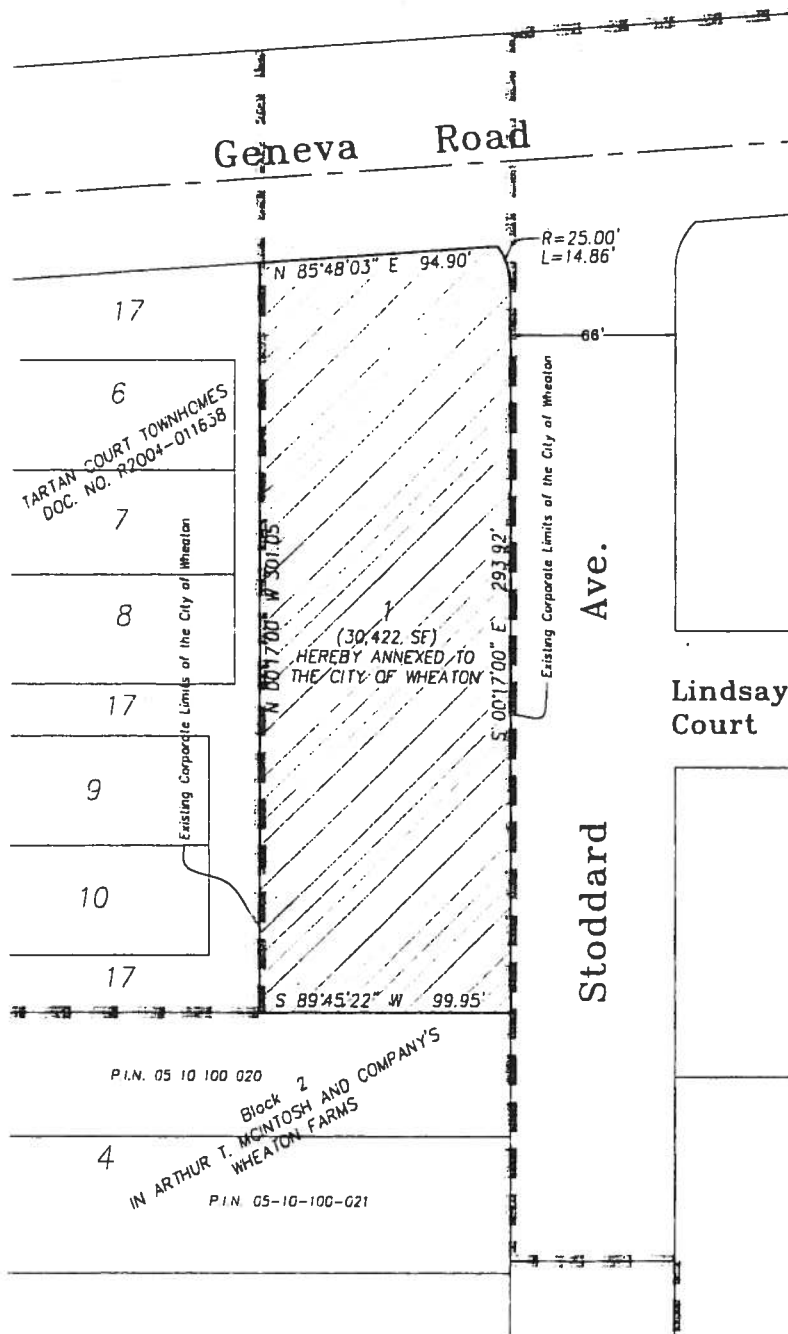
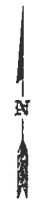
The subject property is commonly known as 2140 N. Stoddard Avenue, Wheaton, IL 60187.

EXHIBIT "A"

Plat of Annexation

05-10-100-009

To
The City of Wheaton, Illinois



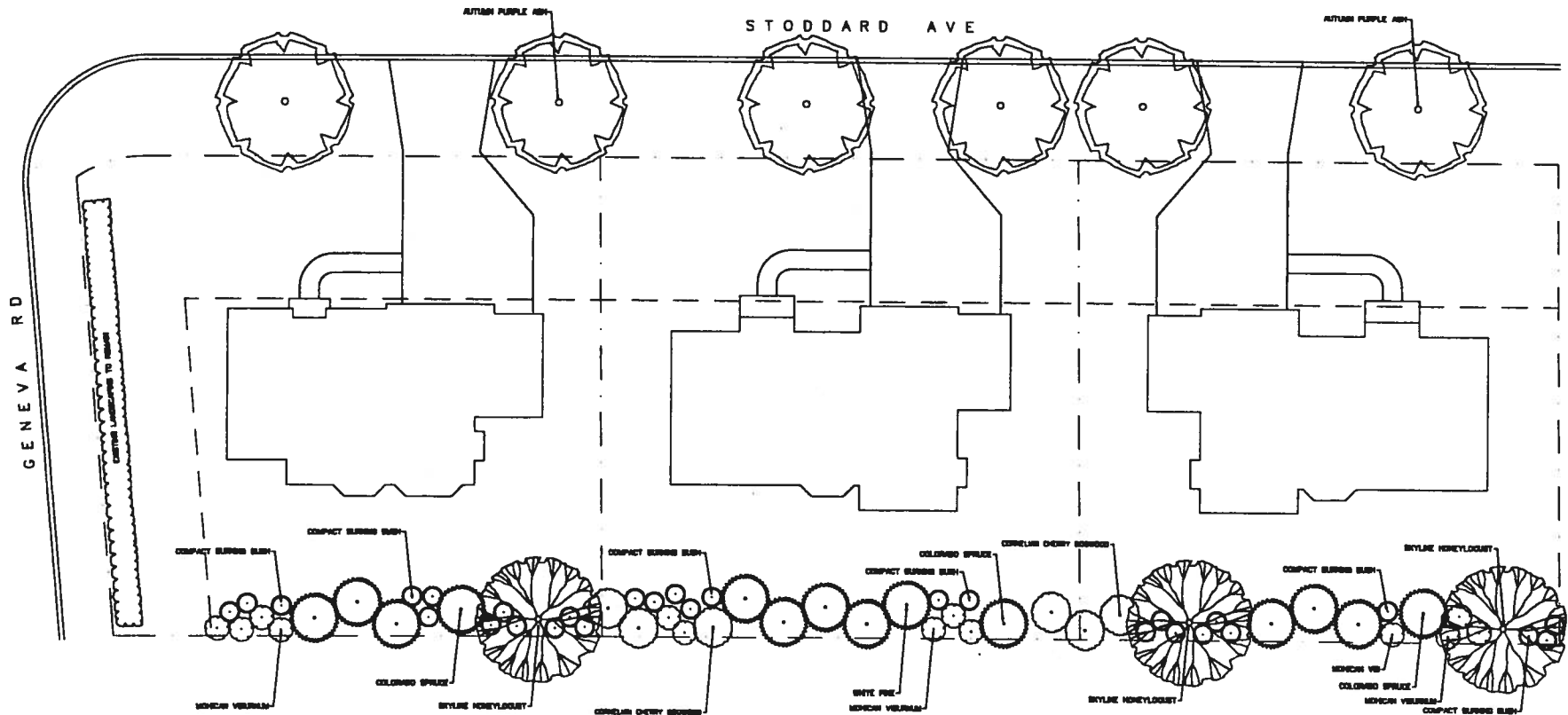
LEGAL DESCRIPTION

LOT 1 IN BLOCK 2 (EXCEPT SO MUCH OF THE NORTHERLY PORTIONS OF SAID LOT 1 AS WAS DEDICATED FOR HIGHWAY PURPOSES IN DOCUMENT 397915) IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE NORTH WEST QUARTER OF SECTION 10; ALSO THAT PART LYING SOUTH OF THE CENTER LINE OF GENEVA ROAD, OF THE SOUTH WEST QUARTER OF THE SOUTH WEST QUARTER OF SECTION 3, ALL IN 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. COMMONLY KNOWN AS: 2140 N STODDARD AVE, WHEATON, IL.

JACOB & HEFNER ASSOCIATES, P.C.
ENGINEERS - SURVEYORS
819 Campus Drive
Joliet, IL 60438
(815) 730-8300 FAX (815) 730-8369
ILLINOIS PROFESSIONAL DESIGN FIRM
LICENSE NO. 164-003073 EXP. 4/30/07

SURVEY NUMBER	D887	
ORDERED BY	Airhart Construction	
DESCRIPTION	Plat of Annexation To The City of Wheaton	
DATE PREPARED	June 12, 2006	
SCALE	1" = 50'	CHECKED BY
PREPARED BY	rip	FIELD CREW

EXHIBIT "B"



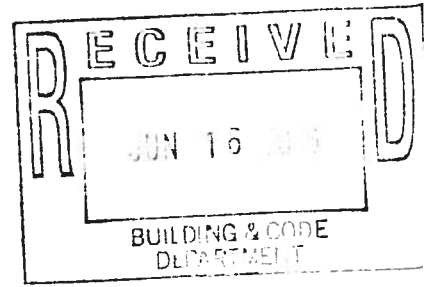
PLANT MATERIAL LIST

4	FRASER & YOUNG PINE	AUTUMN PURPLE ASH	1/2"
5	VERBENA LANTANA WOODRIF	BOYLISTON HONEYLOCUST	1/2"
6	COLONIAL SPRUCE	COLONIAL CHERRY BERRIES	1/2"
7	FIELD SPRUCE	WHITE PINE	1/2"
8	POCA HANDED	COMPACT BURNING BUSH	1/2"
9	LEATHER & SILVER	BOYLISTON HONEYLOCUST	1/2"

AIRHART CONSTRUCTION
 100 S. BROADWAY, SUITE 200, CHICAGO, IL 60604
 SCALE: 1/4" = 1'-0" DRAWN BY: []
 DATE: 11.28.11 PROJECT BY: []
 Secker Landscape Plan
 SHEET NUMBER: []
 1 OF 1

EXHIBIT "C"

CITY OF WHEATON
PETITION FOR ANNEXATION



To: THE WHEATON CITY COUNCIL

Petitioners on oath states as follows:

1. That they are the owners of record of all of the land within the property described herein.
2. That they are the only or (there are other) electors residing thereon. (Circle the appropriate answer).
3. That no portion of the property is within the corporate limits of any municipality.
4. That the property which petitioners desire to have annexed to the City of Wheaton is described as follows:
2140 N. Stoddard Ave., Wheaton, IL 60187 in Dupage County _____
Permanent Index Number - 05 10 100 009 _____
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: June 15 2006.

Owner(s) of record of said property

Name: Douglas R. Secker (Ind.Exec. Estate of Diane G. Secker) Signature: Douglas R. Secker

Address: 1103 Santa Rosa Ave., Wheaton, IL 60187 _____

Tel. No.: (630) 665-2278 _____

Fax No.: _____

Elector(s) residing on said property

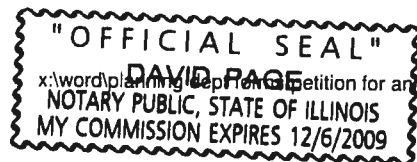
Name: None _____

Name: None _____

Subscribed and sworn before me this 15th day of June 2006.

David Page
Notary Public

April 2005



x:\word\plan\mg\app\form\petition for annexation.doc