

ORDINANCE NO. F-1221

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
0N632 GARY AVENUE
WHEATON MONTESSORI SCHOOL**

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 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 September 11, 2006, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated November 6, 2006, among the City and Wheaton Montessori School ("Owner") ("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:

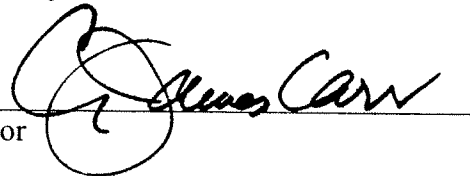
Section 1: The Mayor of the City is authorized and directed to sign, on behalf of the City, the Annexation Agreement, and the City Clerk is authorized and directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon. A copy of the Annexation Agreement is on file in the Office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

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

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

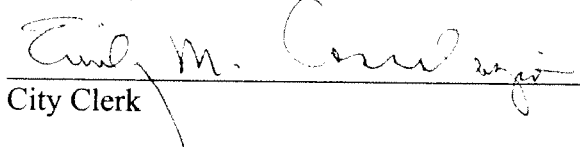
Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Mayor



A handwritten signature in black ink, appearing to read 'Alex Carr', written over a horizontal line.

ATTEST:



A handwritten signature in black ink, appearing to read 'Emily M. Carrington', written over a horizontal line.

City Clerk

Roll Call Vote:

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

Nays: None

Absent: None

Motion Carried Unanimously

Passed: November 6, 2006
Published: November 7, 2006

Exhibit "A"

THE SOUTH HALF OF LOT 6 AND ALL OF LOTS 7, 8 AND 9 IN GRANGE PARK
ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE
NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10
EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT
THEREOF RECORDED OCTOBER 20TH, 1926 AS DOCUMENT 223492 IN DUPAGE
COUNTY, ILLINOIS.

P.I.N. 05-08-106-029

The subject property is commonly known as 0N632 Gary Avenue, Wheaton, IL
60187.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 6th day of November, 2006 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Rebecca Lingo and Elizabeth Berdick ("Owner"). The City, and Owner are sometimes referred to herein individually as "Party" and collectively as the "Parties".

WITNESSETH

WHEREAS, the Owner has an interest in or control the real estate comprised of one parcel of property totaling approximately 26,000 square feet, a description of which is set forth on the Plat of Annexation, and legally described in 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"); and

WHEREAS, a portion of the Subject Property is subject to a Declaration of Restrictive Covenant in which the then owner consented to being annexed to the City of Wheaton in exchange for the privilege of connecting to city water; and

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

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

WHEREAS, the Owner desires to remodel an existing building comprising approximately 2,420 square feet to be serviced by an existing surface parking lot in substantial conformance with the building elevation plans entitled "Right (North) Elevation" and Left (South) Elevation" prepared by Ronald LaPage of LaPage & Associates, Architect, dated June 22, 2006 and with the site plan/engineering plans entitled "Site Plan for Wheaton Montessori School" prepared by Rynear & Son, Inc., dated December 30, 2004 and bearing a last revision date of March 2006; 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

WHEREAS, pursuant to the provisions of Section 6.1 et.seq., of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution, a proposed annexation agreement in substance and form of the same as this Agreement was submitted to the Wheaton City Council, and a public hearing was held thereon pursuant to notice as provided by ordinance and statute; and

WHEREAS, the City has had such hearings and heard testimony as prescribed by law with respect to the requested zoning classification of C-1 Commercial District; and

WHEREAS, notice has been duly served in the manner provided by statute of 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 Owner 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 C-1 Commercial District.

5. ANNEXATION AND PERMIT FEES. The amount of the permit or license fees imposed by the City which are applicable to or required to be paid by the Owner or successor Owner, 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.

6. SCHOOL AND PARK CASH CONTRIBUTIONS. Owner shall have no obligation or responsibility to convey any land or make any cash contributions-in-lieu of land for school and/or park purposes so long as the Subject Property is developed and used for non-residential purposes as contemplated in this Agreement. In the event all or any portion of the Subject Property is hereafter zoned and approved for residential development by the City pursuant to application therefore by an Owner thereof, the Owner of such residentially zoned and developed property shall fully comply with the then applicable requirements of the City Code with respect to contributions for school and park purposes.

7. SIDEWALK. Owner agrees to pay a sidewalk donation as stipulated in Section 58-74(a) of the Wheaton City Code and as directed by the Director of Engineering.

8. BUILDING PLANS. The Owner shall be required to submit plans for the building to be remodeled on the Subject Property. A building permit must be obtained and the appropriate permit fees paid as required by the City ordinances and this Agreement for the building to be constructed on the Subject Property. Prior to the submittal of a building permit, the plans shall be revised in the following manner:

- A. *The school shall be allowed one ground sign and that ground sign shall comply with the requirements of Article 23.7.1(b) of the Zoning Ordinance; and*
- B. *All refuse container/dumpsters screen from view a ground level; and*
- C. *A landscape plan shall be submitted which would provide landscape screening of the parking lot in conformance with the requirements of Article 6 of the City of Wheaton Zoning Ordinance. Said landscape plan shall be subject to the reasonable approval of the Director of Planning and Economic Development; and*
- D. *If provided, any parking lot lighting shall be in compliance with Article 22.4.9 of the Zoning Ordinance; and*
- E. *The Site Plan shall be revised to indicate the removal of additional existing pavement in order for the existing parking lot to comply with the 15 foot setback requirement of the City of Wheaton Zoning Ordinance. The revised Site Plan shall be subject to the reasonable approval of the Director of Planning and Economic Development.*

9. TREE PRESERVATION. The Owner shall meet the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance.

10. ADDRESS. Following Annexation of the Subject Property to the City, the Subject Property shall be provided a City address by the City of Wheaton Department of Engineering in accordance with Section 58-28 of the Wheaton City Code.

11. 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.

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

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

14. 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.

15. 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.

16. INDEMNIFICATION. Owner shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of the Owner, its agents, assigns, employees, contractors, and subcontractors. Owner shall indemnify and hold the City harmless from all causes of actions, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence.

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

18. 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. **Wheaton Montessori**
Rebecca Lingo and Elizabeth Berdick
1970 N. Gary Ave.
Wheaton, IL 60187

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

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

20. PARAGRAPH AND EXHIBIT REFERENCES. All references to section and paragraph numbers contained in this Agreement shall mean the section or paragraph of such number contained in this Agreement, unless otherwise expressly provided therein. All references herein to an Exhibit shall mean such exhibit attached to this Agreement, unless otherwise expressly provided herein.

21. CAPTIONS AND PARAGRAPH HEADINGS. The captions and paragraph headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement nor the meaning of any provision hereof.

22. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

23. AMENDMENT OF ANNEXATION AGREEMENT. This Agreement, and any exhibits or attachments hereto, may be amended from time to time in writing with the consent of the Parties hereto, pursuant to applicable provisions of Chapter 6 of the Wheaton City Code. This Agreement may be amended from time to time by written agreement between the City and the then legal owner of fee title to that portion of the Subject Property which is subject to and affected by such amendment; provided, and such amendment, if not executed by the then legal owner or owners of any other portion of the Subject Property, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Subject Property.

24. 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.

25. **CONVEYANCES.** Nothing contained in this Agreement shall be construed to restrict or limit the right of an Owner, its grantees, successors and assigns, to sell or convey all or any portion of the Subject Property, whether improved or unimproved.

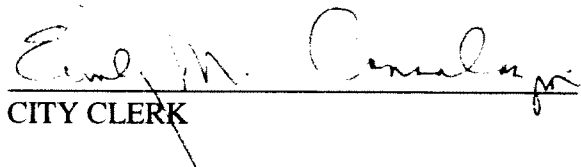
26. **NECESSARY ORDINANCES AND RESOLUTIONS.** The City shall pass all ordinances and resolutions necessary to permit Owners and Developers to develop the Subject Property in accordance with the provisions of this Agreement, provided said ordinances and/or resolutions are not contrary to law.

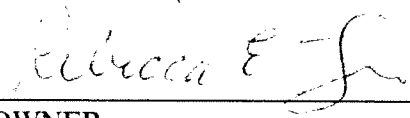
27. **RECITALS AND EXHIBITS.** The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

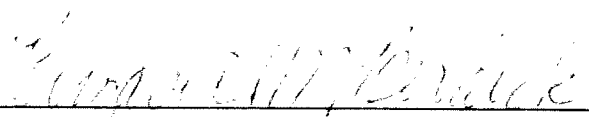
IN WITNESS WHEREOF, the Corporate authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here, all on the day and year first above written.

By: 
MAYOR

ATTEST:


CITY CLERK


OWNER


OWNER

ATTEST:

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THE SOUTH HALF OF LOT 6 AND ALL OF LOTS 7, 8 AND 9 IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20TH, 1926 AS DOCUMENT 223492 IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-08-106-029

The subject property is commonly known as 0N632 Gary Avenue, Wheaton, IL 60187.

EXHIBIT "B"

ARCHITECTURAL, SITE PLAN AND ENGINEERING PLAN

EXHIBIT "C"

PETITION FOR ANNEXATION