

ORDINANCE NO. F-1267

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
1100 WHEATON OAKS COURT
ELLIOT**

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 March 12, 2007, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated April 2, 2007, among the City and Robert J. Elliot ("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 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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

ATTEST:


City Clerk

Roll Call Vote

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

Nays: Councilman Suess

Absent: Councilman Johnson

Motion Carried

Passed: April 2, 2007
Published: April 3, 2007

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 3rd day of April, 2007 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Robert J. Elliot ("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 of the real estate comprised of a parcel of property totaling approximately 10,000 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, the Owner has an interest in or control of the property immediately to the north of and adjacent to the Subject Property, which was developed as an office building and associated parking in 1984 as approved by Ordinance No. E-1387 and Resolution R-13-84; 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 construct an approximately 2,460 square foot addition and remodel the existing building to create a structure containing approximately 15,000 square feet and to expand the drives and parking facilities ancillary thereto in substantial conformance with the site plan, preliminary engineering plan, and landscape plans entitled "1100 Wheaton Oaks Court" prepared by Webster, McGrath, and Alhberg, Ltd. dated January 17, 2007; 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 O-R Office Research; 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 O-R Office Research Zoning District Classification.

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. BUILDING PLANS. The Owner shall be required to submit plans for the building to be expanded 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 applicant shall provide parking lot lighting in accordance with Article 22.4.9 of the Wheaton Zoning Ordinance; and
- B. All plans shall be revised to provide landscape islands with shade trees on both ends of the center parking row; and

- C. Upon application for a building permit to expand the existing office building, the applicant shall demonstrate conformance with the parking requirements of the Wheaton Zoning Ordinance; and
- D. Any building addition to the existing office building shall fit within the "building expansion area" as shown on the Site and Preliminary Engineering Plan and match the existing building design and materials; and
- E. The applicant shall obtain from an environmental specialist a report verifying the location of the adjacent wetland boundary prior to permitting for the proposed site improvements.

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

9. 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.

10. 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.

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

12. 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.

13. 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.

14. 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.

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

16. 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. **Owner**
Robert J. Elliot
21W171 Hill Avenue
Glen Ellyn, IL 60137

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

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

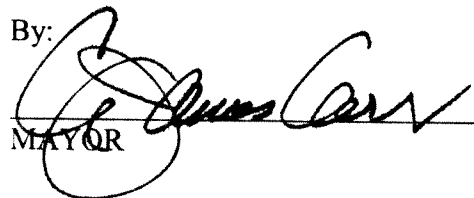
23. CONVEYANCES. Nothing contained in this Agreement shall be construed to restrict or limit the right of an Owner, its grantees, successors and assigns, to sell or convey all or any portion of the Subject Property, whether improved or unimproved.

24. 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.

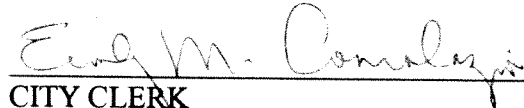
25. RECITALS AND EXHIBITS. The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

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

By:

OWNER

ATTEST:

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THAT PART OF THE SOUTH HALF OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHEAST CORNER OF LOT 4 IN OYER'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 6, 1911 AS DOCUMENT 102898 (SAID SOUTHEAST CORNER ALSO BEING THE SOUTHWEST CORNER OF LOT 3 IN WHEATON OAKS O-R ZONED P.U.D., ACCORDING TO THE PLAT THEROF RECORDED NOVERMBER 19, 1976, AS DOCUMENT R76-84406); THENCE EAST, ON THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 20.0 FEET TO THE PLACE OF BEGINNING; THENCE SOUTH, AT 90 DEGREES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 20.0 FEET; THENCE EAST, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 259.95 FEET TO THE POINT ON A LINE DRAWN AT 90 DEGREES TO SAID SOUTH LINE THROUGH A POINT 150.0 FEET WEST OF THE SOUTHEAST CORNER OF LOT 3; THENCE SOUTH, AT 90 DEGREES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 60 FEET; THENCE EAST, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 80.0 FEET TO THE SOUTH LINE OF SAID LOT 3 AT A POINT 90.0 FEET WEST OF THE SOUTHEAST CORNER THEREOF; THENCE WESTERLY, ON SAID SOUTH LINE, A DISTANCE OF 319.73 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-08-417-009, 05-08-306-048

The subject property is commonly known as the property immediately south of 1100 Wheaton Oaks Court, Wheaton, IL 60187.

EXHIBIT "B"

ARCHITECTURAL, SITE PLAN AND ENGINEERING PLAN

EXHIBIT "C"

PETITION FOR ANNEXATION

STATE OF ILLINOIS
COUNTY OF DUPAGE

To: Mayor and City Council
City of Wheaton, Illinois

PETITION FOR ANNEXATION

The undersigned, as owners of record of the property described in Exhibit "A" attached hereto and pursuant to Sections 5/7-1-8 of Chapter 65 of the Illinois Compiled Statutes (2006 ed.), respectfully represents unto the Mayor and City Council of the City of Wheaton ("City") as follows:

1. That the undersigned is the owner of record of the real estate legally described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter sometimes referred to as "Subject Property").
2. That the Subject Property constitutes a contiguous tract of land.
3. That the Subject Property is not within the corporate limits of any municipality.
4. That the Subject Property is within an unincorporated area of DuPage County but is contiguous to the existing corporate limits of the City.
5. That there are no electors residing on the Subject Property.
6. That the undersigned is the sole owner of record of the Subject Property.
7. That the undersigned is desirous of annexing the Subject Property to the City, provided that prior to annexation of the Subject Property a certain annexation agreement is executed by and between the undersigned, Developer and the City, pursuant to the provisions of Section 5/11-15.1, et seq., of Chapter 65, of the Illinois Compiled Statutes (2006 ed.), which annexation agreement shall encompass and pertain to the entirety of the Subject Property.
8. That prior to the annexation of the Subject Property to the City, the undersigned shall submit to the City a plat of annexation depicting and legally describing the Subject Property.
9. That the undersigned hereby authorizes Henry Stillwell, as attorney, or such other person or persons as may from time to time be designated in writing by the undersigned, to proceed with all necessary and appropriate meetings and public hearings before the corporate authorities of the City for the purpose of effectuating the purpose of this Petition.

WHEREFORE, the undersigned prays as follows:

1. That the corporate authorities of the City will hold such public hearings as are required by law.

