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**ORDINANCE NO. F-0805**

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN  
ANNEXATION AGREEMENT -  
VACANT PROPERTY NORTH OF 1945 DARLING STREET/  
KELLY CUSTOM HOMES, INC.**

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 April 14, 2003, to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated April 21, 2003, among the City and Kevin Kelly, Kelly Custom Homes, Inc. ("Owners") ("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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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: Councilwoman Johnson  
Mayor Carr  
Councilman Mork  
Councilman Tamm  
Councilman Johnson

Nays: None

Absent: Councilman Gresk  
Councilman Mouhelis

Motion Carried Unanimously

Passed: April 21, 2003

Published: April 22, 2003

## ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 21<sup>st</sup> day of April, 2003 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Kelly Custom Homes Inc. ("Owner") ("Developer").

### WITNESSETH

WHEREAS, the Owner has an interest in or controls the real estate comprised of two lots totaling 15,262 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 Owner that all of said real estate be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owner desires to construct two (2) single family residences on the Subject Property substantially in accordance with and pursuant to the engineers plan dated January 9, 2003 and revised February 13, 2003 prepared by Allen D. Carradus and Associates hereinafter referred to as "Engineers Plan"), a copy of which is marked as Exhibit "B" and is 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

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-4 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 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 R-4, Residential District.

**5. CONNECTION TO THE CITY WATER SYSTEM.** The Owner shall connect the proposed structures on the Subject Property to the water main of the City to be located on Darling Street in accordance with City Code. Owner shall pay all City permit and connection

fees in full force and effect, pursuant to the City Code, at the time of the connection of the Subject Property to the water main.

**6. CONNECTION TO SANITARY SEWER SYSTEM.** The Owners shall connect the proposed homes on Subject Property to the sanitary sewer system at the time connection to City water is made. Owner 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.** 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 Wheaton City Code and all other applicable statutes and ordinances.

**8. CONSTRUCTION OF PUBLIC IMPROVEMENTS.** The Owner agrees to construct a sidewalk and install parkway trees 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 Owner or successor Owners, 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.

**10. SCHOOL AND PARK CASH CONTRIBUTIONS.** The Owner agrees to provide a cash contributions in the amount of Five Thousand Seven Hundred Dollars (\$5,700) for each four bedroom home built on the Subject Property. Said cash contribution represents the cash contribution amount in effect at the time the petition for annexation was signed by the Owner. Said cash contribution shall be paid at the time of building permit. Adjustments to the amount to

be paid will made according to the actual number of bedrooms in each home. Said adjustment will be made according to the formula contained in Article 6 of the Wheaton City Code.

**11. WHEATON PARK DISTRICT ANNEXATION.** Owners agrees to annex, pursuant to Statute, the Subject Property to the Wheaton Park District within one (1) year from the date of this agreement.

**12. CERTIFICATE OF OCCUPANCY.** Following the issuance of certificates of occupancy for the homes by DuPage County, the City shall assume authority over them.

**13. VARIATIONS FROM LOCAL CODES.** The following specific variations and exceptions from the City's ordinances, rules, and codes are permitted with respect to the development of the Subject Property:

- A. The minimum lot width shall be 58.70 feet in lieu of the required 60 feet  
(Section 10.2.4 of the City of Wheaton Zoning Ordinance)

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

**15. 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.

**16. 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.

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

**18. 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.

**19. 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.

**20. 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 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 Owner shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Owner.

**21. BINDING EFFECT.** This Agreement shall be binding upon the parties hereto, their heirs, executors, administrator, 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. Kelly Custom Homes, Inc.**

205 Hillandale Drive  
Bloomington, IL 60108

**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 Owner.

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

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
OWNER

ATTEST:

\_\_\_\_\_



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**EXHIBIT A**

LOTS 26 AND 27 IN WHEATON PARK TERRACE, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 9, 1929 AS DOCUMENT 287630, IN DUPAGE COUNTY, ILLINOIS.

PIN NO. 05-08-208-003  
05-08-208-004