

ORDINANCE NO. F-0937**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
2S545 WIESBROOK ROAD
LIFETIME CONSTRUCTION, 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 August 9, 2004, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated August 16, 2004, among the City and Lifetime Construction, Inc. ("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.

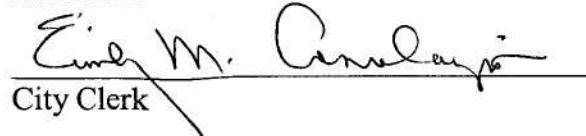
Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

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 Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays: None

Absent: None

Motion Carried Unanimously

Passed: August 16, 2004
Published: August 17, 2004

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 16th day of August, 2004 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Lifetime Construction, Inc. ("Developer").

WITNESSETH

WHEREAS, the Developer has an interest in or controls the real estate totaling approximately .86 acres in size, 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 two (2) single family residences on the Subject Property substantially in accordance with and pursuant to the preliminary plat dated June 14, 2004 prepared by Harold F. Steinbrecher, Jr. entitled "Fortiers Subdivision" hereinafter referred to as "site 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

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 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. DEVELOPMENT STANDARDS. The Site Plan has been reviewed by the corporate authorities of the City, and is hereby approved as the Preliminary Plat for the subdivision of the Subject Property. The City agrees to approve the final plat of subdivision provided said final plat, final engineering and such other final plans, as are required by the City's ordinances, are duly submitted and comply with the City's ordinance, this Agreement, and are consistent with the Site Plan. The Subject Property shall contain a maximum of 2 dwelling units. The Subject Property shall be developed in the manner and in accordance with the proposed uses as shown on the Site Plan. The Development shall be in full conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Code, and other ordinances, codes, rules, and regulations of the City pertaining to the development of the Subject Property to be annexed, as amended by the Site Plan.

6. DEMOLITION OF EXISTING STRUCTURES. Article XII, Demolition of Buildings, Chapter 22, Wheaton City Code require a specific procedure for the demolition of structures within the City. Recognizing the existing structures on the Subject Property could be demolished prior to the Subject Property's annexation to the City without compliance with Article XII of the Wheaton City Code, and the fact that the Engineers Plan presented to the City at the annexation public hearing had shown the demolition of the existing structures, the City agrees to approve the demolition as provided for by the Engineers Plan. Notwithstanding the foregoing, the Developer shall be required to file a demolition application on the form provided by the City. Such demolition shall be done in accordance with the provisions of the BOCA

Building Codes in force at the time and any additional requirements or conditions placed on the Developers by the Building and Code Enforcement Department of the City.

7. CONNECTION TO THE CITY WATER SYSTEM. The Developer shall connect the proposed homes on the Subject Property to the water main of the City 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. The Developer shall abandon all equipment connected to any existing well servicing the Subject Property upon connection to the City's water system as approved by the Director of Engineering.

8. CONNECTION TO SANITARY SEWER SYSTEM. The Developer shall connect the proposed homes on Subject Property to the sanitary sewer system at the time connection to City water is made. Developer shall pay all permit fees in full force and effect 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 connection onto the sanitary mains of the City in order to develop and use the Subject Property.

9. STORM WATER FACILITIES. Developer agrees to design and construct suitable storm water facilities for the Development which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code, the DuPage County Countywide Stormwater and Floodplain Ordinance, and all other applicable statutes and ordinances.

10. IRREVOCABLE LETTER OF CREDIT. In lieu of construction bond or development bond or bonds, the City will accept an irrevocable letter of credit from a reputable banking institution to guarantee construction and quality of all public and storm water management facilities to be constructed in the Development. Said letter of credit shall be in the amount of one hundred twenty-five percent (125%) of the Developer's engineer's estimate of

construction costs (as approved by the City Engineer) or one hundred percent (100%) of the contract costs of construction of all of the public facilities. Said letter of credit shall be in a format approved by the City Attorney and shall be payable to the City of Wheaton.

The letter of credit shall be issued and presented to the City on or before the date that the City executes a Subdivision Improvement Agreement in the form as provided by the City. As the Developer completes the items within the letter of credit, the Developer may apply to the City for acceptance of said improvements in accordance with Paragraph 11 of this Agreement. Developer agrees to cause the letter of credit to be extended to cover the actual time of construction.

11. WIESBROOK ROAD IMPROVEMENT. The Developer shall pay to the City the sum of Twenty-Nine Thousand Twenty-Six dollars (\$29,026.00) plus six percent (6%) annual simple interest calculated from December 1, 1999, as and for Developer's contribution for one half of the cost of the Wiesbrook Road improvements fronting the Subject property heretofore completed by the City. The Wiesbrook Road Contribution shall be due and payable prior to recordation of the final plat for the Development.

12. BUILDING PLANS. The Developer shall be required to submit plans for each home to be constructed in the development. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton ordinances for each building to be constructed in the development.

13. 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 Wheaton city Code and adopted Building Codes.

14. CONSTRUCTION OF PUBLIC IMPROVEMENTS. The Developer agrees to install parkway trees along Wiesbrook Road in accordance with the standards contained in Chapter 62 of the Wheaton City Code.

15. 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, 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.

16. SCHOOL AND PARK CASH CONTRIBUTIONS. The Developer agrees to provide a cash contribution according to the formula contained in Article 6 of the Wheaton City Code.

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

18. TREE PRESERVATION. The Developer shall comply with the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance.

19. 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.

20. 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.

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

22. 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.

23. CONSEQUENCE OF NON-DEVELOPMENT. Any portion of the subject property which has not been completely developed in full compliance with this Annexation Agreement as of the termination date of this Agreement shall automatically revert to the R-1 zoning classification without the necessity of a public hearing or City action; and any special use permit or other permission to develop the property granted herein shall automatically terminate.

24. 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.

25. 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.

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

27. 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:

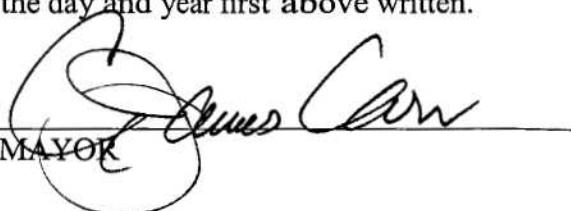
A. Lifetime Construction, Inc.
29W700 Waverley Avenue
Warrenville, IL 60555

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

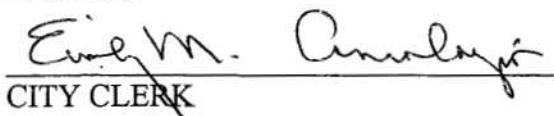
28. RECORDING. This Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Developer.

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


MAYOR

ATTEST:


CITY CLERK

DEVELOPER

ATTEST:

EXHIBIT A

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH AND SOUTH DIVISION LINE OF THE SOUTHEAST QUARTER OF SAID SECTION WITH THE EAST WEST SECTION LINE OF SAID SECTION 30 AND RUNNING THENCE SOUTH $88^{\circ} 55'$ WEST ALONG THE QUARTER SECTION LINE, 2661.0 FEET TO AN IRON PIPE IN THE CENTER LINE OF THE PUBLIC HIGHWAY KNOWN AS WIESBROOK ROAD AT A POINT THAT IS 5.30 CHAINS EAST OF THE WEST QUARTER SECTION CORNER OF SAID SECTION 30; THENCE SOUTH $35^{\circ} 22' 30''$ WEST ALONG THE CENTER LINE EOF SAID ROAD, 547.03 FEET; THENCE SOUTH $21^{\circ} 00'$ WEST ALONG SAID CETNER LINE, 326.8 FEET; THENCE SOUTH $9^{\circ} 24'$ WEST ALONG SAID CENTER LINE, 191.5 FEET FOR A PLACE OF BEGINNING; THENCE SOUTH $80^{\circ} 36'$ EAST AT RIGHT ANGLES WITH SAID CENTER LINE, 255.0 FEET; THENCE SOUTH $9^{\circ} 24'$ WEST, PARALLEL WITH SAID CETNER LINE, 170.82 FEET; THENCE NORTH $80^{\circ} 36'$ WEST, AT RIGHT ANGLES WITH THE LAST DESCRIBED COURSE, 255.0 FEET TO THE AFORESAID CENTER LINE OF WIESBROOK ROAD; THENCE NORTH $9^{\circ} 24'$ EAST ALONG SAID CENTER LINE, 170.82 FEET TO THE PLACE OF BEGINNING, ALL IN DU PAGE COUNTY, ILLINOIS. P.I.N. 04-25-405-003