

ORDINANCE NO. F-1090

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
25W133 AND 25W111 GENEVA ROAD/ELKS FRATERNAL LODGE
S&K DEVELOPMENT, LLC**

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 8, 2005, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated October 17, 2005, among the City and S&K Development, LLC ("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.

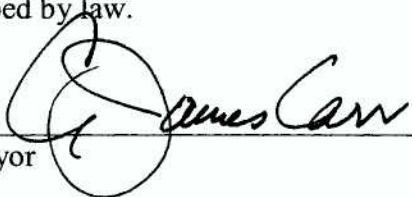
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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

ATTEST:


City Clerk

Ayes:

Roll Call Vote:
Councilman Mouhelis
Councilman Seuss
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine

Nays:

None

Absent:

Councilman Bolds

Motion Carried Unanimously

Passed: October 17, 2005
Published October 18, 2005

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

Scott E. Pointner, Esq.
RATHJE & WOODWARD
300 E. Roosevelt Road, Ste. 300
Wheaton, IL 60187

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 17th day of October, 2005 among the City of Wheaton, Illinois, an Illinois municipal corporation, located in DuPage County, State of Illinois ("City"), and S&K DEVELOPMENT, LLC, an Illinois limited liability company ("S&K") (S&K is sometimes hereinafter referred to as the "Owner"). The City and S&K are sometimes referred to herein individually as "Party" and collectively as the "Parties".

RECITALS:

- A. S&K owns or controls the real estate legally described in Exhibit "A" (the "Subject Property"), comprising approximately +/-1.353 acres.
- B. The Subject Property is located in unincorporated DuPage County, Illinois, and zoned under the DuPage County Zoning Ordinance.
- C. The Subject Property is contiguous to the corporate limits of the City.
- D. It is the desire of the Owner that the Subject Property, pursuant to the provisions of Division 15.1 of Article 11 of Chapter 65 of the Illinois Compiled Statutes and upon the terms and conditions contained in this Agreement, be annexed to the City.
- E. The Owner is desirous of constructing one (1) primary structure for a fraternal organization with a liquor license upon the Subject Property under the R-4 District in DuPage

County and thereafter conveying the Subject Property to WAPITI, Inc., an Illinois not-for-profit corporation (sometimes hereinafter the "Elk's Club") as part of the Owner's development of property south of the Subject Property and upon which the Owner is developing a 19 lot subdivision (sometimes hereinafter "Windham Commons"). In exchange for the City supplying municipal water to the Subject Property pursuant to this Agreement, the Owner hereby agrees, in the event of a Triggering Event as defined below, to take all steps necessary, at its sole cost and expense, to annex the Subject Property into the City and have the Subject Property immediately thereafter re-zoned into the City's R-4 Zoning District.

F. 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.

G. 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.

H. 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.

I. 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.

K. The City, by a favorable vote of at least two-thirds (2/3) of the Corporate Authorities then holding office, has adopted an ordinance authorizing the execution of this Agreement.

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 3/7-1-8], conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached as Exhibit "B".

3. **ANNEXATION ORDINANCE.** The Owner hereby agrees, within 30 days of a Triggering Event (as defined herein), to take all steps necessary, at its sole cost and expense, to annex the Subject Property into the City and have the Subject Property immediately thereafter re-zoned into the City's R-4 Zoning District, including but not limited to submitting to the City a plat of annexation ("Plat of Annexation") and any other documents required to begin the process of annexing the Subject Property into the City. A Triggering Event shall be defined as any one or more of the following events and/or circumstances: 1) If and when the owner of the Subject Property ceases to have a liquor license for the Subject Property; 2) If and when the Subject

Property is no longer used for a not-for-profit civic, service, or charitable fraternal organization, defined as an organization of persons, including but not limited to ethnic organizations, having a common interest, organized and operated exclusively to promote the welfare of its members and to benefit the general public on a continuing and consistent basis; 3) If and when the Subject Property is used in a manner that is defined as an Adult Business Use under the DuPage County Zoning Ordinance; 4) notwithstanding the then-current definition of the term "Adult Business Use" as defined in the DuPage County Zoning Ordinance, if and when any part of the Subject Property is used, in whole or in any part, at any time, for the operation of a massage parlor and/or bathhouse, massage school, or any use of which a significant or substantial portion involves an activity distinguished or characterized by its emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including, but not limited to, the operation of adult bookstore and/or video store, adult mini-motion picture theater, adult motion picture theater, adult motion picture arcade, adult motel, adult card and gift, erotic dancing, erotic photography, or novelty store; or 5) A final determination by the Director of the Department of Economic Development and Planning (or such person duly appointed by the same) that the owner of the Subject Property is no longer using, or is not currently using, the Subject Property for a private club, lodge, or fraternal organization as defined in Section 37-704.2 of the DuPage County Zoning Ordinance (or any successor code section thereto).

The Owner shall keep the City reasonably informed if and when the Owner believes a Triggering Event may be forthcoming. Upon presentation to the City of said Plat of Annexation, the City shall take the steps necessary to complete the annexation of the Subject Property, including but not limited to any ordinances required to effectuate the annexation.

4. **REZONING.** Immediately upon the execution of the ordinance annexing the Subject Property to the City, the City will enact an ordinance approving the re-zoning of the Subject Property to the R-4 Zoning District and allowing the Owner to continue to use the Subject Property as depicted on the site plan attached and incorporated herein as Exhibit "C" (the "Relocated Elk's Club Site Plan") as a permitted non-conforming use, and to continue its use of the Subject Property as a Private Club, although without a liquor license.

5. **OWNERSHIP AND CONTROL OF THE SUBJECT PROPERTY.** The Owner shall have the right to convey, for separate ownership, the Subject Property, and all subsequent owners of the Subject Property shall be bound hereby, with the terms and provisions contained herein running with the land and binding all future owners thereof.

6. **SANITARY SEWER; STORM WATER; BUILDING PERMIT.** The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including (without limitation) the Illinois Environmental Protection Act, permitting the connection onto the sanitary lines of the Wheaton Sanitary District in order to develop and use the Subject Property.

The Owner 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.

On or before the execution of this Agreement, the Owner shall submit its building plans for the new Elk's Club Building to the City to review the same for significant public health, safety, and welfare issues. Regardless of whether a Triggering Event has yet occurred, upon the

date hereof, the Owner shall be entitled to connect the Subject Property to the City's water mains, so long as said connection is in full conformity to the City's standard conditions and requirements for making such a connection.

7. ANNEXATION AND PERMIT FEES. The Owner shall be required to pay to the City the City's required Annexation Fee, permit, license, tap-on or connection fees which are applicable to or required to be paid by the Owner in relation to the connection of the Subject Property to the City's water mains in the amount or rate of said fees in effect at the time of application for the same. Upon the connection of the Subject Property to the City's water mains, the City's standard rates for water services will apply.

8. SCHOOL AND PARK CASH CONTRIBUTIONS. The Owner shall not be required to make cash donations in lieu of actual land dedications otherwise required by the City Code. If on any future date the Subject Property is annexed to the City and improved with one or more residences, the Owner shall pay any land or cash in lieu of land donations required by ordinances in effect at that time.

9. WHEATON PARK DISTRICT ANNEXATION. Owners agree to annex, pursuant to applicable Illinois statute, the Subject Property to the Wheaton Park District within one (1) year from the date of this Agreement.

10. AMENDMENTS TO ORDINANCES. Except as expressly hereinafter provided, upon Annexation to the City, the Subject Property shall be developed and used in conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Codes, and other Ordinances, Codes, Rules and Regulations of the City pertaining to the development of the Subject Property. The Ordinances, Codes, Rules and Regulations existing on the date of

application for building/site development permits shall be applicable, except as this same may be specifically amended pursuant to the terms of this Agreement.

11. WELLS. On or before the execution of this Agreement, the Owner shall abandon and seal all existing water wells on the Subject Property. Moreover, from the date hereof, the Owner shall be prohibited from drilling any new water wells on the Subject Property for any purpose.

12. LIENS AND ENCUMBRANCES; RECAPTURE. The City hereby represents that to the best of its knowledge, there are currently no recapture agreements or recapture ordinances affecting the public utilities which will be utilized to service the Subject Property of which the City has any knowledge or under which the City is or will be required to collect recapture amounts from the Owner or its successors, upon connection of the Subject Property to any of the public utilities contemplated herein. Also, the City does not have any knowledge of any pending or contemplated requests for approval of any such recapture agreement(s) or ordinance(s) which will affect the Subject Property.

Despite the foregoing representations the City does not waive or release any applicable ordinances related to the recapture, or the design or construction of water or sewer mains and their appurtenances for the benefitted properties.

13. Intentionally deleted.

14. GENERAL PROVISIONS.

A. TERM OF AGREEMENT. This Annexation Agreement shall be binding upon the Parties hereto, their respective successors and the assigns for a full term of twenty (20) years from the date of this Agreement. The agreements contained herein expressly survive the

annexation of the Subject Property and shall not be merged or expunged by the annexation of the Subject Property or any part thereof to the City.

B. **INDEMNIFICATION.** The 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. The Owner, as the case may be, 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 City ordinances, subdivision regulations or controls, or as may be required in the City's standard Subdivision Improvement Agreement. The Owner shall further defend and hold the City harmless from any and all actions directed at setting aside any portion of, or all of this Annexation Agreement and/or the annexation and rezoning of the Subject Property.

C. **BINDING EFFECT; RECORDING.** This Agreement shall be binding upon the Parties hereto, their heirs, executors, administrators, assigns, successors, and grantees. It is understood that this Agreement shall run with the land and, as such, shall be assignable to and binding upon subsequent grantees, lessees, and successors in interest of the Owner, and as such, this Agreement and all exhibits hereto shall be recorded with the Recorder of Deeds of DuPage County, Illinois. Upon the conveyance of any of the Owner's interest in the Subject Property to a third party ("Transferee"), the rights and obligations contained herein of such Transferor, shall be deemed assigned to and assumed by such Transferee, and such Transferor shall thereupon be released and discharged by the City from any further obligation pertaining to such identified rights and duties pertaining to the portion of the Subject Property that was transferred. The

Transferee shall thereupon be entitled to exercise all rights and authorities and shall perform all duties and obligations of such Transferor pertaining to the portion of the Subject Property so transferred. The Transferee shall comply with the applicable requirements of this Agreement pertaining to the Annexation of the Subject Property upon a Triggering Event. Any financial guarantee previously posted by the Transferor shall be released by the City upon the delivery to the City by the Transferee of a substitute guarantee in the appropriate amount, in proper form and issued by a financial institution approved by the City, which approval shall not be unreasonably conditioned, delayed or withheld.

D. 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 deemed properly given on the date delivered personally or the second (2nd) business day following the date deposited in the U.S. mail by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- (i) If to the Owner: S&K Development, LLC
Attn: Kelly Knierim
586 Kelly Avenue
Yorkville, IL 60560
- with a copy to: Rathje & Woodward
Attn: Scott E. Pointner, Esq.
300 E. Roosevelt Road, Ste. 300
Wheaton, IL 60187
- with a copy to: Peter R. Vogel, Esq.
416 E. Roosevelt Road, Ste. 105
Wheaton, IL 60187
- (ii) If to City: City of Wheaton
City Clerk
City of Wheaton
303 West Wesley Street

or to such other address as either Party may from time to time specify in writing to the other in accordance with the terms hereof.

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

F. 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.

G. 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.

H. GOVERNING LAW. This Agreement shall be construed and governed by the laws of the State of Illinois.

I. 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.

J. BINDING EFFECT, SUCCESSION IN INTEREST. This Agreement shall constitute a covenant running with the land and be binding upon and inure to the benefit of the

Parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the City and successor municipalities.

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

L. 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. Despite the foregoing, if any Transferee brings litigation to set aside any portion of or all of this Annexation Agreement, the City in its sole discretion may disconnect the property of said Transferee from the City and upon disconnection the City shall have no obligation to provide any utilities whatsoever to said Transferee's property.

M. 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, that 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.

N. 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.

O. 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.

P. NECESSARY ORDINANCES AND RESOLUTIONS. The Parties believe that following approval and execution of (1) this Agreement, (2) the approvals of the preliminary plans, and (3) the approvals of the final plans and plats, all ordinances which are required to give full legal effect to said approvals will be in affect. The City hereby agrees to adopt all ordinances or to correct any technical defects which may arise after the execution of this Agreement which are required to give legal effect to the matters contained in this Agreement, as well as, upon the presentation of a Plat of Annexation and other requirements contained herein from the Owner after a Triggering Event, any ordinance approving the annexation and approval of the use described herein (without a liquor license). To the extent not previously provided for, the City shall pass all ordinances and resolutions necessary to permit the Owner to develop and use the Subject Property in accordance with the provisions of this Agreement.

Q. 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.

[signatures on following page]

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____, and _____, of the CITY OF WHEATON, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said _____ then and there acknowledged that he, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 200_

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____, personally known to me to be the Manager of S&K DEVELOPMENT, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument pursuant to authority given by the Members of said limited liability company, as _____ free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 200_.

Notary Public

IN WITNESS WHEREOF, the Corporate authorities and the 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.

CITY:

By:

MAYOR

ATTEST:

CITY CLERK

OWNER:

S&K DEVELOPMENT, LLC, an Illinois
limited liability company

By:

, Manager

SCHEDULE OF EXHIBITS

EXHIBIT "A":	LEGAL DESCRIPTION OF THE SUBJECT PROPERTY
EXHIBIT "B":	PETITION FOR ANNEXATION
EXHIBIT "C":	RELOCATED ELK'S CLUB SITE PLAN

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

THAT PART OF THE NORTH EAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE NORTH EAST CORNER OF SAID SECTION 8 AND RUNNING THENCE WESTERLY ALONG THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 678 FEET FOR A POINT OF BEGINNING; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 40.00 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 33.00 FEET; THENCE SOUTHERLY PARALLEL WITH THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 152.00 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 143.00 FEET; THENCE SOUTHERLY PARALLEL WITH THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 9.0 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 150.02 FEET; THENCE NORTHERLY PARALLEL WITH THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 201.0 FEET TO THE NORTH LINE OF SAID SECTION 8; THENCE EAST ALONG SAID NORTH LINE, 326.02 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-08-202-001 AND 05-08-202-002

EXHIBIT "B"

CITY OF WHEATON
PETITION FOR ANNEXATION

To: THE WHEATON CITY COUNCIL

Petitioners on oath states as follows:

1. That they are contract purchasers of all of the land within the property described herein.
2. That there are electors residing thereon although said contracts allow the Petitioner to petition the City for Annexation.
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:

See attached

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: April 18, 2005



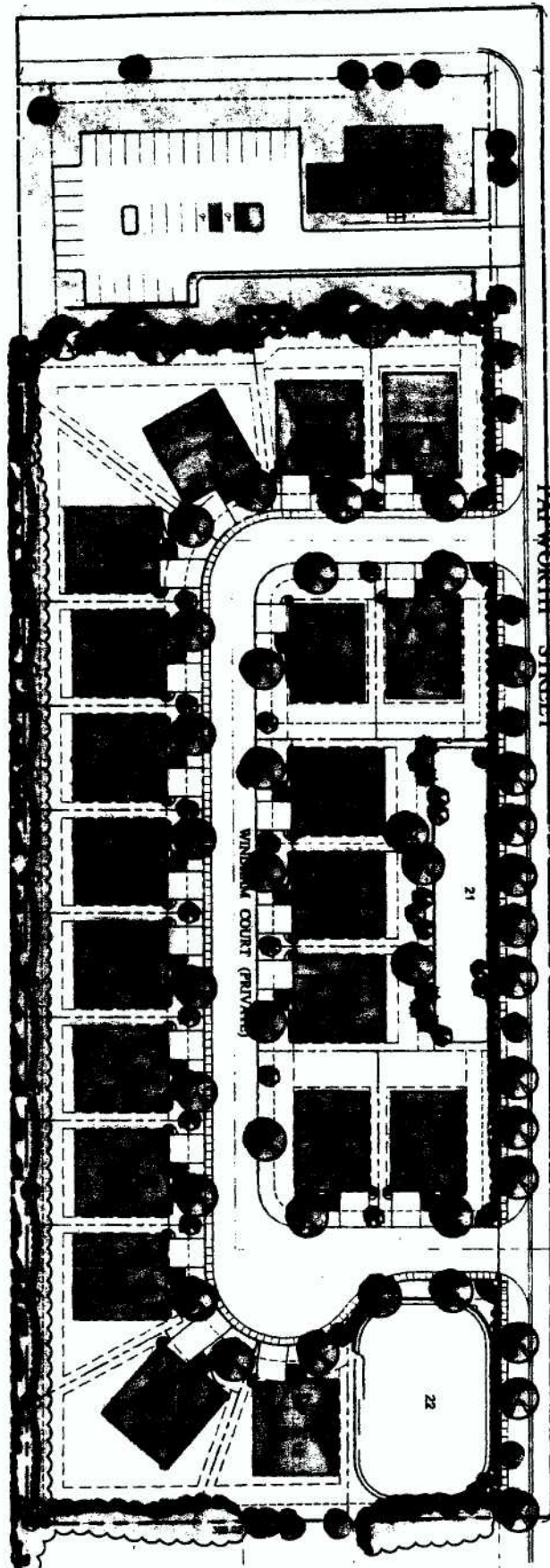
Owner(s) of record of said property630-668-8500
Tel No.630-668-9218
Fax No._____
Elector(s) residing on said propertySubscribed and sworn before me this 18 day of April, 2005
Notary Public

OFFICIAL SEAL
BARBARA LOPRESTI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 08/18/07

F:\SEPS&K Development\Papworth\Annexation\Petition for Annexation.wpd

GENEVA ROAD

EXHIBIT "C"



THE WINDHAM GROUP
BUILDERS AND DEVELOPERS

WINDHAM COMMONS
WHEATON, ILLINOIS

SITE PLAN

DATE: MAY 2005