

ORDINANCE NO. F-1112

AN ORDINANCE AUTHORIZING THE SIGNING OF AN ANNEXATION AGREEMENT – NORTHEAST CORNER OF GARY AVENUE AND GENEVA ROAD/ SDK MANAGEMENT, 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 November 14, 2005, to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated December 5, 2005, among the City and SDK Management, Inc. ("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.

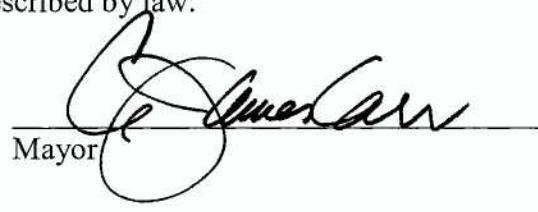
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

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 Owner.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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



Emily M. Connolly
City Clerk

Roll Call Vote

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

Nays: None

Absent: None

Motion Carried Unanimously

Passed: December 5, 2005

Published: December 6, 2005

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 5th day of December, 2005 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and SDK Management, Inc. ("Owner").

WITNESSETH

WHEREAS, the Owner has an interest in or control the real estate comprised of several parcels of property totaling 49,000 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").

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 construct a 4,997 square foot addition onto the existing 3,325 square foot commercial building to be serviced by a 42 space surface parking lot in substantial conformance with the building elevation plans entitled "Geneva Lakes Plaza" prepared by Michele N. Dauns, Architect, dated August 29, 2005 and with the engineering plans entitled "Site Improvements for Geneva Lakes Plaza" prepared by Marchris Engineering, LTD, dated January 10, 2005 and bearing a last revision date of September 19, 2005 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 testimony as prescribed by law with respect to the requested zoning classification of C-5 Planned Commercial 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 have 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-5 Planned Commercial District.

5. CONNECTION TO SANITARY SEWER SYSTEM. The Owner shall connect to the sanitary sewer system owned by the Wheaton Sanitary District located within the Fanchon Road right-of-way. Owner shall pay all Wheaton Sanitary District permit fees in full force and effect at the time of the connection to the sanitary sewer main.

6. STORM WATER FACILITIES. Owner 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, the DuPage County Stormwater and Floodplain Ordinance, and all other applicable statutes and ordinances. The petitioner shall also provide a wetland delineation report for review by the City and DuPage County. At such time the stormwater management facility, located north of the Subject Property in unincorporated DuPage County, becomes contiguous the the City of Wheaton, the Owner shall petition the City for annexation of that property, and work with the Village of Carol Stream to modify the Boundary Agreement between the two communities to allow said annexation.

7. REQUIRED PUBLIC IMPROVEMENTS. Owner shall fully reconstruct Fanchon Street to City standards for the entire frontage of the development.

8. 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 Owner, 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.

9. SIDEWALK CONSTRUCTION. The Owner agrees to construct sidewalks along the rights-of-way of Geneva Road, Fanchon Street and Gary Avenue in accordance with the Wheaton City Code as directed by the Director of Engineering.

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

11. BUILDING PLANS. The Owner shall be required to submit plans for the building to be constructed 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 retail center shall be allowed one ground sign and that ground sign shall comply with the requirements of Article 23.7.1 of the Zoning Ordinance. Additionally, all wall and window signage shall comply with the requirements of Article 23.7.2 of the Zoning Ordinance; and
- B. The proposed landscape plan shall be revised to accommodate foundation plantings along the south and west facades of the building; and
- C. All roof top mechanical equipment shall be screen from view at ground level; and

- D. An eight foot tall, solid wood fence shall be installed along the property line shared with the residential property located at 1N034 Fanchon Street; and
- E. The proposed landscape plan shall be revised by replacing the proposed Norway maple trees located along the property line shared with the residential property located at 1N034 Fanchon Street with spruce trees; and
- F. The proposed trash enclosure shall be constructed of brick similar to that used on the retail building; and
- G. Parking lot lighting shall be required in compliance with Article 22.4.9 of the Zoning Ordinance; and
- H. Parking lot lighting shall be added to the plan in accordance with the requirements of the City Zoning Ordinance; and
- I. A Plat of Resubdivision shall be submitted to the City for approval by the Mayor and City Council and DuPage County. The Plat of Resubdivision must include a restrictive covenant that states that ownership of the lot where the stormwater detention is located must stay with the ownership of the development.

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

13. 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.

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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.

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

21. 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:

21-40

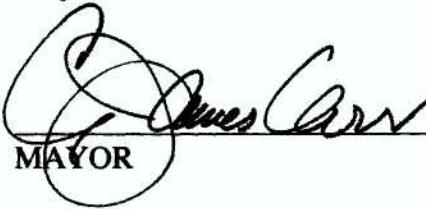
A. **SDK Management, Inc.**
c/o Anthony J. Addante
27w093 Geneva Road
Unit 367
Winfield, IL 60190

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

22. 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:

EXHIBIT A

PARCEL 1: LOTS 13, 14, 15, 16, 17 AND 18 IN BLOCK 24 IN GARY AVENUE GARDENS, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT NUMBER 237266, IN DUPAGE COUNTY, ILLINOIS, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT THE SOUTHEAST CORNER OF LOT 13 AFORESAID; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 51 MINUTES 26 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOTS 13 THROUGH 18, BOTH INCLUSIVE, 155.0 FEET TO THE SOUTHWEST CORNER OF SAID LOT 18; THENCE NORTH 01 DEGREES 20 MINUTES 53 SECONDS EAST, ALONG THE WEST LINE OF LOT 18 AFORESAID, A DISTANCE OF 3.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 3.00 FEET (MEASURED PERPENDICULAR) NORTH OF THE SOUTH LINE OF SAID LOTS 13 TO 18, BOTH INCLUSIVE; THENCE SOUTH 89 DEGREES 51 MINUTES 26 SECONDS EAST, ALONG SAID 3.00 FOOT PARALLEL LINE, 155.0 FEET TO A POINT ON THE EAST LINE OF SAID LOT 13 AT 3.00 FEET NORTH OF THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREES 20 MINUTES 54 SECONDS WEST, 3.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2: LOTS 19, 20, 21 AND 22 IN BLOCK 24 IN GARY AVENUE GARDENS, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT NUMBER 237266, IN DUPAGE COUNTY, ILLINOIS, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT THE SOUTHWEST CORNER OF LOT 22 AFORESAID; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 51 MINUTES 26 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOTS 19, 20, 21 AND 22, A DISTANCE OF 105.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 19; THENCE NORTH 01 DEGREES 20 MINUTES 53 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 19, A DISTANCE OF 10.00 FEET; THENCE NORTH 89 DEGREES 51 MINUTES 26 SECONDS WEST, ALONG A LINE PARALLEL WITH AND 10.00 FEET (MEASURED PERPENDICULAR) NORTH OF SAID SOUTH LINE OF SAID LOTS 19, 20, 21 AND 22, A DISTANCE OF 90.08 FEET TO A POINT 15.00 FEET (MEASURED PERPENDICULAR) EAST OF THE WEST LINE OF SAID LOT 22; THENCE NORTH 44 DEGREES 29 MINUTES 54 SECONDS WEST, 21.08 FEET TO A POINT ON THE WEST LINE OF SAID LOT 22 WHICH IS 25.00 FEET NORTH OF THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 51 MINUTES 40 SECONDS WEST, 25.00 FEET TO THE POINT OF BEGINNING.

PARCEL 3: LOTS 23, 24, 25 AND 26 IN BLOCK 24 IN GARY AVENUE GARDENS, BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT 237266, IN DUPAGE COUNTY, ILLINOIS.

PUBLIC ALLEY: BEGINNING AT THE SOUTHWEST CORNER OF LOT 23 IN BLOCK 24 IN GARY AVENUE GARDENS, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1927 AS DOCUMENT NUMBER 237266; THENCE SOUTH 89 DEGREES 39 MINUTES 53 SECONDS EAST ALONG THE NORTH LINE OF SAID PUBLIC ALLEY, 111.31 FEET; THENCE NORTH 01 DEGREES 28 MINUTES 50 SECONDS EAST ALONG THE WEST LINE OF SAID PUBLIC ALLEY, 107.9 FEET; THENCE SOUTH 89 DEGREES 38 MINUTES 48 SECONDS EAST, 20.00 FEET TO THE EAST LINE OF SAID PUBLIC ALLEY; THENCE SOUTH 01 DEGREES 28 MINUTES 50 SECONDS WEST ALONG SAID EAST LINE, 107.83 FEET; THENCE SOUTH 89 DEGREES 50 MINUTES 19 SECONDS EAST ALONG THE NORTH LINE OF SAID PUBLIC ALLEY, 130.06 FEET; THENCE SOUTH 01 DEGREES 36 MINUTES 17 SECONDS WEST, 20.01 FEET TO THE SOUTH LINE OF SAID PUBLIC ALLEY; THENCE NORTH 89 DEGREES 50 MINUTES 19 SECONDS WEST ALONG SAID SOUTH LINE, 261.16 FEET; THENCE NORTH 00 DEGREES 59 MINUTES 24 SECONDS EAST, 20.34 FEET TO THE POINT OF BEGINNING, DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-05-416-049, 05-05-416-048, 05-05-416-047, 05-05-416-046, 05-05-416-045, 05-05-416-012, 05-05-416-039, 05-05-416-038, 05-05-416-037

The subject property is commonly known as the northeast corner of Geneva Road and Gary Avenue, Carol Stream, IL 60188.