

ORDINANCE NO. F-1215

**AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
25W411 W. GENEVA ROAD
GANNETT CAPITAL, 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 14, 2006, to consider the terms and conditions of the proposed Annexation Agreement; and

WHEREAS, an Annexation Agreement dated October 16, 2006, among the City and Gannett Capital 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Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.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.

ATTEST:

Emily M. Canaday
City Clerk

Roll Call Vote

Ayes: Councilman Bolds
 Councilwoman Corry
 Councilman Johnson
 Mayor Carr
 Councilman Mouhelis
 Councilman Suess

Nays: None

Absent: Councilman Levine

Motion Carried Unanimously

Passed: October 16, 2006

Published: October 17, 2006

Exhibit "A"

EXHIBIT A

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12 IN BLOCK 1 IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20, 1926 AS DOCUMENT 223492, IN DUPAGE COUNTY, ILLINOIS, EXCEPT THAT PART OF LOT 6 IN BLOCK 1 IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20, 1926 AS DOCUMENT NO. 223492 DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6; THENCE ON AN ASSUMED BEARING OF NORTH 90 DEGREES WEST ALONG THE NORTH LINE OF SAID LOT 6 A DISTANCE OF 15.00 FEET; THENCE SOUTH 44 DEGREES, 33 MINUTES 58 SECONDS EAST TO A POINT ON THE EAST LINE OF SAID LOT 6 THAT IS 15.00 FEET SOUTH OF THE POINT OF BEGINNING, THENCE NORTH 00 DEGREES 52 MINUTES 05 SECONDS EAST, 15.00 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

ALSO THAT PART LYING EASTERLY OF SAID LOT 5 VACATED BY THE PLAT OF VACATION IN THE TOWNSHIP OF MILTON DOCUMENT NO. UN-RECORDED/MISSING OR MORE ACCURATELY DESCRIBED AS FOLLOWS: THAT PART OF THE NORTH-SOUTH 20 FOOT ALLEY LYING WEST OF AND ADJACENT TO LOTS 6 THROUGH 10, BOTH INCLUSIVE, AND EAST OF AND ADJACENT TO THE WEST LINE OF LOT 5 IN BLOCK 1; LYING NORTH OF A LINE DRAWN FROM A POINT ON THE WEST LINE OF SAID LOT 10 (SAID POINT 10.00 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 10) TO THE SOUTHEAST CORNER OF LOT 5 IN BLOCK 1; AND LYING SOUTHERLY OF THE SOUTH LINE OF GENEVA ROAD; ALL IN GRANGE PARK ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 20, 1926 AS DOCUMENT 223492, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-08-103-029, 05-08-103-035

The subject property is commonly known as 25W411 W. Geneva Road, Wheaton, IL 60187.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 16th day of October, 2006 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Gannett Capital, Inc. ("Owner").

WITNESSETH

WHEREAS, the Owner has an interest in or control the real estate comprised of several parcels of property totaling nearly one acre in size, 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 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 8,450 square foot commercial building to be serviced by a 42 space surface parking lot in substantial conformance with the plans entitled "Proposed Multi-Tenant Retail" prepared by Arete 3 Ltd., Sheet SP-1 dated June 15, 2005 and revised March 23, 2006, Sheet SP-2 dated June 15, 2005 and revised February 28, 2006, Sheet LP-1 dated June 15, 2005 and revised May 24, 2006, Sheet EL-1 dated June 15, 2005, Sheet PH-1 dated June 15, 2005 and with the engineering plans entitled "Preliminary Engineering Plan" prepared by Condon Consulting Engineers, dated June 1, 2006 a copy of which are 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; with a Special Use Permit for a Planned Unit Development with a drive-thru lane 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 with a Special Use Permit for a Planned Unit Development with a drive-thru lane.

5. CONNECTION TO SANITARY SEWER SYSTEM. The Owner shall connect to the sanitary sewer system owned by the Wheaton Sanitary District.

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 and stormwater management report for review by the City and DuPage County.

7. 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.

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

9. 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.

10. 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. That the rear of the building be constructed of face brick.
- B. That the parking spaces along the north side of the building be reduced in depth to 16.5 feet and the resulting 3 feet be used along the front of the building for additional sidewalk depth and foundation plantings.
- C. That the photometric plan be revised to conform to the maximum .5 foot-candle level at the property line.
- D. A Plat of Consolidation shall be submitted to the City for approval by the Mayor and City Council and DuPage County.

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

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.

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

20. 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. **Gannett Capital, Inc.**
707 Skokie Boulevard
Suite 210
Northbrook, IL 60062

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

21. 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:

Sandy M. Gunderson
CITY CLERK

OWNER

President over s agent

ATTEST:

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