

RESOLUTION NO R-53-12

RESOLUTION AUTHORIZING THE ANNEXATION
TO THE CITY OF GAITHERSBURG
OF APPROXIMATELY 27.89 ACRES OF LAND
LOCATED ADJACENT TO THE PRESENT CORPORATE LIMITS AND TO
ESTABLISH MXD (MIXED USE DEVELOPMENT) ZONING FOR SAID LAND,
KNOWN AS THE SEARS PROPERTY (THE GREAT INDOORS AND
SEARS SERVICE CENTER & REPAIR), LOCATED AT
16331 & 16401 SHADY GROVE ROAD, GAITHERSBURG, MARYLAND, AND
ADJACENT ROAD RIGHTS-OF-WAY

ANNEXATION X-184

WHEREAS, the Mayor and City Council of Gaithersburg have received a petition requesting the enlargement of the corporate boundaries of the City of Gaithersburg so as to include the above-noted parcel, and

WHEREAS, the signatures of said petition for annexation have been verified and it has been ascertained that the persons signing said petition are owners of not less than twenty-five percent (25%) of the assessed valuation of the real property located in the area to be annexed, and constitute not less than twenty-five percent (25%) of the persons who reside in the area to be annexed, and who are registered as voters in County elections in the precincts in which the territory to be annexed is located, and

WHEREAS, the properties are within the defined maximum expansion limits of the City of Gaithersburg, as established in the Municipal Growth Element of the 2003 Master Plan of the City of Gaithersburg, adopted on April 6, 2009, and

WHEREAS, the Sears-Great Indoors property is recommended for Commercial/Industrial-Research-Office land use designation and either the MXD (Mixed Use Development) Zone or CD (Corridor District) Zone in the Land Use Element of the 2009 Master Plan of the City of Gaithersburg, adopted December 19, 2011, and

WHEREAS, under the annexation petition, the properties would be rezoned from Montgomery County's R&D (Research and Development) Zone to the City of Gaithersburg's MXD (Mixed Use Density Residential) Zone, and

WHEREAS, the Mayor and City Council introduced the resolution to petition the City to annex the subject property on March 5, 2012, and

WHEREAS, the Planning Commission, after holding a public discussion at their March 21, 2012, Meeting and allowing for written testimony until April 11, 2012, reviewed the application at their April 18, 2012, Meeting and recommended approval of the proposed annexation of property and rezoning the property to the City's MXD Zone,

WHEREAS, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning, on April 26, 2012, unanimously voted to recommend

approval of the annexation and the zoning of the property to the MXD Zone, with recommended measures, and

WHEREAS, the Mayor and City Council, following the proper notification and posting of the property, conducted a public hearing on May 21, 2012, on the subject annexation and held the record open for additional written testimony until July 5, 2012, and

WHEREAS, the Planning, Housing and Economic Development Committee of the Montgomery County Council on June 11, 2012, reviewed the subject petition and the City's request for the express approval to zone the property to the MXD Zone,

WHEREAS, the Montgomery County Council, sitting as the District Council for that portion of the Maryland - Washington Regional District in Montgomery County, Maryland, on July 31, 2012, approved a resolution for the City of Gaithersburg to reclassify the Sears Great Indoors property from the County's Research and Development (R&D) Zone to the City's Mixed Use Development (MXD) Zone, and

WHEREAS, the Mayor and City Council, on August 6, 2012, reopened the record for the submission of the Montgomery County Council's action and additional supporting exhibits

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Gaithersburg, that the corporate boundaries of the City of Gaithersburg be, and they hereby are, enlarged by including therein the following area

DESCRIPTION OF PROPERTY TO BE ANNEXED INTO
THE CITY OF GAITHERSBURG, MARYLAND,
GAITHERSBURG (NO 9) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

BEING part of Parcel A as shown on a plat of subdivision entitled "Parcel A – Sears Addition to Shady Grove" and recorded among the Land Records of Montgomery County, Maryland as Plat Number 7952, part of the right of way for Interstate Route 370 as shown on State of Maryland - Department of Transportation - State Highway Administration - State Roads Commission Right of Way Plats Numbered 48474 and 48475, and part of the right of way for Shady Grove Road Parcel A – Sears Addition to Shady Grove being all of the property acquired by Sears, Roebuck and Co , a New York corporation, from Consortium One, L P , a Delaware limited partnership, Marc F Solomon, David B Fink, Susan H Fink, and Solomon Family Limited Partnership, by a deed dated December 6, 2000 and recorded among the Land Records of Montgomery County, Maryland in Liber 18628 at folio 354 The right of way for Interstate Route 370 being 1) part of the property acquired by the State of Maryland, to the use of the State Highway Administration, of the Department of Transportation from Robert Huyett Teunis, Betty Lu Teunis, Ralph Dewey Teunis, Jr , and Doris Douglas Teunis by a deed dated September 20, 1989 and recorded among the Land Records of Montgomery County, Maryland in Liber 9043 at folio 676, 2) part of the property acquired by State Roads Commission of the State Highway Administration, acting for and on behalf of the State of Maryland, from Betty Brown Casey, Sole Surviving Trustee of the Betty Brown

Casey Trust, et al, by consent inquisition in the Circuit Court for Montgomery County, Maryland and recorded among the Land Records of Montgomery County, Maryland in Liber 8440 at folio 243, and 3) part of the property acquired by the State Roads Commission of the State Highway Administration acting for and on behalf of the State of Maryland, from Kenneth O Peters as described in a Writ of Possession, Law No 65117, dated April 4, 1985 and filed in the Circuit Court for Montgomery County, Maryland The right of way for Shady Grove Road being 1) all of the land dedicated to public use as shown on the aforementioned Plat Number 7952, 2) part of the property acquired by Montgomery County, Maryland from Virginia K. Casey Visnich by a deed dated October 24, 1973 and recorded among the Land Records of Montgomery County, Maryland in Liber 4470 at folio 73, and 3) all of the property acquired by Montgomery County, Maryland from Kenneth O Peters and Ethel E Peters by a deed dated December 10, 1973 and recorded among the Land Records of Montgomery County, Maryland in Liber 4480 at folio 162 and being more particularly described as follows

BEGINNING for the same at the end of the 8th or South 40° 40' 58" West, 69 83 foot line described in an Annexation Agreement by Gateway Investment Associates Limited Partnership, a Virginia limited partnership, Residence Inn by Marriott, Inc , a Delaware corporation, Robert H Teunis, Betty Lu Teunis, Ralph D Teunis, Jr , Doris Teunis and The Mayor and Council of The City of Gaithersburg, and recorded among the aforementioned Land Records in Liber 9556 at folio 771, thence running with all of said 8th line, reversed, as described in said annexation agreement and running with all of the easterly or South 40° 40' 58" West, 69 83 foot plat line as shown on a plat of subdivision entitled "GATEWAY COMMONS" and recorded among the aforementioned Land Records as Plat Number 18415 the following course and distance

- 1 North 40° 44' 23" East, 69 83 feet to a point; thence running across the right of way of Interstate Route 370 as shown on the aforementioned Right of Way Plats Numbered 48474 and 48475 and across Shady Grove Road the following course and distance
- 2 South 82° 46' 56" East, 932 68 feet to a point at the westerly end of the northerly or South 54° 33' 55" East, 668 85 foot line of Parcel A as shown on the aforementioned Plat Number 7952, thence running with said line and binding on the North 53° 56' 17 3" West, 668 89 foot line as described in a deed from Eugene B Casey and Virginia Casey Visnich to U S Postal Service and recorded among the aforementioned Land Records in Liber 5943 at folio 65, passing over an iron pipe found at 38 79 feet, the following course and distance
- 3 South 53° 56' 52" East, 648 85 feet to a rebar and cap found at the end of the 3rd or North 36° 03' 43" East, 600 00 foot line of Exhibit C as described in a deed from Whiteacre Maryland Associates to Northeast Maryland Waste Disposal Authority and recorded among the aforementioned Land

Records in Liber 11236 at folio 694, thence running with the 3rd and 2nd lines, reversed, of Exhibit C as described in Liber 11236 at folio 694 the following 2 courses and distances

- 4 South 36° 03' 08" West, 600 00 feet to a rebar and cap found, thence
- 5 South 53° 56' 52" East, 20 00 feet to a rebar and cap found on the easterly or South 35° 26' 05" West, 910 00 foot line of Parcel A as shown on the aforementioned Plat Number 7952, thence running with part of said easterly parcel line, and binding on the North 36° 02' 36" East, 910 00 foot line as described in an Inquisition in the Circuit Court for Montgomery County, Maryland, Law 42450, and recorded among the Land Records of Montgomery County, Maryland in Liber 5369 at folio 441 the following course and distance
- 6 South 36° 03' 08" West, 310 00 feet to a rebar and cap found, thence running with the southerly or North 54° 33' 55" East, 664 94 foot line of Parcel A as shown on the aforementioned Plat Number 7952 and binding on the outline of the property described in Liber 5369 at folio 441 the following course and distance
- 7 North 53° 56' 52" West, 664 96 feet to a point; thence running across Shady Grove Road and across the right of way of Interstate Route 370 as shown on the aforementioned Right of Way Plats Numbered 48474 and 48475 the following course and distance
- 8 North 53° 56' 52" West, 1054 99 to a point on the on the 10th or South 40° 48' 48" West, 771 72 foot line of the existing City of Gaithersburg corporate limits as described in the aforementioned annexation agreement recorded in Liber 9556 at folio 771, thence running with said 10th line, reversed, and binding on the easterly plat line as shown on a plat of subdivision entitled "GATEWAY COMMONS" and recorded among the aforementioned Land Records as Plat Number 18414 the following course and distance
- 9 North 40° 52' 13" East, 118 31 feet to an iron pipe found, thence running with all of the 9th line, reversed, of the existing City of Gaithersburg corporate limits as described in the aforementioned annexation agreement and binding on the southerly plat lines as shown on the aforementioned Plat Number 18414 and Plat Number 18415 the following course and distance

10 North 74° 44' 41" East, 349 39 feet to the Point of Beginning, containing 1214950 square feet or 27 89141 acres of land

BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that this Resolution shall become effective forty-five (45) days following its adoption, unless a prompt petition for referendum thereon shall be filed as permitted by law, and provided further that the notice required by law shall be published not fewer than four (4) times, at not less than weekly intervals, in *The Gaithersburg Gazette*, a newspaper of general circulation in the City of Gaithersburg

BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that the property described above being land annexed to the City, be and is hereby classified in the MXD (Mixed Use Development) Zone, upon the effective date of this Resolution

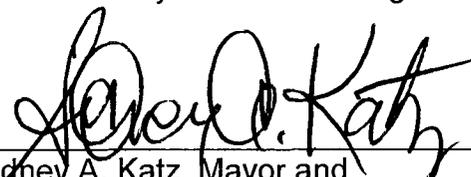
BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that this annexation shall be subject to the terms and conditions of an annexation agreement by and between the Property Owner and the City of Gaithersburg and any amendment which may be hereafter enacted

BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that promptly after this Resolution shall become effective, the City Manager shall send copies of said Resolution to the following

<u>Number of Copies</u>	<u>Agency</u>
1	Department of Legislative Reference
1	Clerk of the Circuit for Montgomery County
1	Supervisor of Assessments for Montgomery County
1	Maryland-National Capital Park and Planning Commission

BE IT FURTHER RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that the property described above and persons residing therein, if any, shall, after the effective date of this Resolution, be subject to all of the Charter laws, ordinances and resolutions of the City of Gaithersburg, Maryland

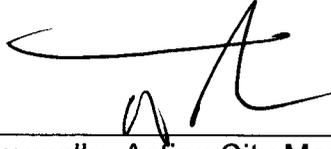
ADOPTED by the Mayor and City Council of the City of Gaithersburg this 6th day of August, 2012



Sidney A. Katz, Mayor and
President of the Council

THIS IS TO CERTIFY that the foregoing Resolution was introduced by the City Council of the City of Gaithersburg on the 5th day of March, 2012, and Adopted by the City Council, in public Meeting assembled, on the 6th day of August, 2012

This annexation will become effective on the 20th day of September, 2012

A handwritten signature in black ink, appearing to read 'Tony Tomasello', written over a horizontal line.

Tony Tomasello, Acting City Manager