

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) X Waiver of First Requested
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *duh*

DATE: October 7, 2008 (B of T) Date: October 16, 2008

TITLE: BOT 08-04: 1S154 School Street

SUBMITTED BY: Department of Community Development *MLL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a request for approval of an Ordinance Authorizing the Execution of an Annexation Agreement and an Ordinance Annexing Certain Territory to the Village of Lombard. This request is associated with the annexation of the Village Booster station at 1420 S. Meyers Road. (UNINCORPORATED)

Staff recommends approval of this request.

Staff is requesting waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X

Finance Director X

Village Manager X

David A. Hulseberg

Date

10/08/08

Date

Date

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, Village Manager

FROM: William J. Heniff, AICP *WJH*
Director of Community Development

DATE: October 16, 2008

SUBJECT: BOT 08-04: 1S154 School Street-Annexation

In order to facilitate the timely annexation of the Village Booster station at 1420 S. Meyers Road, staff has been working with property owners regarding annexation of selected properties along School and 14th Streets. This request seeks approval of an annexation agreement and annexation of the aforementioned property.

BACKGROUND

As part of the review of the Village's plans to construct a Water Booster Station at 1420 S. Meyers Road (along 14th Street), staff was informed by DuPage County that the building permit costs for the booster station would be \$47,000. Rather than paying the permit fee, staff initiated a discussion among selected property owners along School Street to see if they would be interested in annexation. If all of the property owners agreed to annex, the Village can annex the Lombard Fellowship Church/Booster Station site and forgo the permit fees.

The Village currently owns and operates an existing water main within the School Street right of way in front of the subject property. As an incentive to encourage property owners to agree to annex at this time, the Village crafted an annexation agreement that is similar in form to the agreement currently being offered to the York Center Community neighborhood. However, this agreement is only being made to selected residences along School and 14th Street that can directly connect to the Village's water main. This agreement also provides for a waiver of all connection fees, all building permit fees, water meter fees and a reimbursement of the construction costs to connect the property to the existing water line along School Avenue. Staff notes that although construction costs on private property would typically not be covered by the Village, we note that there is a significant public benefit as the cost of each of the connections (estimated to be about \$7,500) would be less than the overall County permit fee. We also note that expending funds in this manner would also provide tangible benefits to the affected properties.

This agreement differs from the other agreements along School Street as the current property owner still had an outstanding assessment placed on their property by the York Center Community Cooperative. In order for the deed to be released to the resident, the assessment had to be paid in full. To facilitate this action, the Village agrees to pay the assessment and in return the resident agrees to repay the Village through installment payments placed on future water bills. This will ensure that public funds will not be utilized to pay for a private assessment.

Should the annexation agreement and annexation be approved, the properties will be zoned R0 Single-Family Residence District by default, as set forth in Section 155.403 of the Zoning Ordinance. No other zoning actions accompany the petition.

Staff will coordinate the connection process with the property owners. We intend on following a process similar in nature to the one used for the Northeast Lombard sanitary sewer relocation project.

ACTION REQUESTED

Attached for Village Board consideration is an Ordinance granting approval of an Annexation Agreement and an Ordinance granting approval of the annexation of the subject property. Staff recommends a waiver of first reading of the Ordinances so that the properties can be recorded in a timely manner and the booster station project can continue on schedule.

BOT08-04



LOMBARD CORPORATE BOUNDARY

1S154 SCHOOL ST

1009268

10621100005

18W720

0621100006

18W684

1S074

0621101013
18W665

0621101014
1S140

0621101015
1S154

0621101016
18W680

18W681
0621101006

18W711
0621101005

18W725
0621101004

800
0621101003

18W680
0621101012

18W710
0621101011

18W724
0621101010

816
0621101009

SCHOOL ST

14TH ST

0621102033 1237

0621102020 1300

0621102009 1304

0621102010 1308

0621102011 1312

0621102012 1312

0621102013 1312

0621102014 1320

0621102028

0621102028

MEYERS RD

1301

1305

1311

1317

0621111001

0621111003
1420

0621111020 1400

**AN ORDINANCE AUTHORIZING THE
EXECUTION OF AN ANNEXATION AGREEMENT**

(BOT 08-04: 1S154 School Street)

(See also Ordinance No.(s) _____)

WHEREAS, it is in the best interest of the Village of Lombard, DuPage County, Illinois that a certain Annexation Agreement (hereinafter the "Agreement") pertaining to the properties located at 1S154 School Avenue, Lombard, Illinois to be entered into; and,

WHEREAS, the Agreement has been drafted and a copy is attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, the developer and the legal owners of the lots of record, which are the subject of said Agreement, are ready, willing and able to enter into said Agreement and to perform the obligations as required thereunder; and,

WHEREAS, the statutory procedures provided in Chapter 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, as amended, for the execution of said Agreement have been complied with; a hearing on said Agreement having been held, pursuant to proper notice, by the President and Board of Trustees on October 16, 2008.

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President and Village Clerk be and hereby are authorized to sign and attest to the Agreement attached hereto and marked Exhibit "A", by and between the Village of Lombard; and,

SECTION 2: This ordinance is limited and restricted to the property generally located at 1S154 School Street, Lombard, Illinois containing 0.33 acres more or less and legally described as follows:

Lot 9 in Block 4 and the School Street right of way lying east of and adjacent to said Lot 9 in West York Center Community Co-Operative, Inc. Subdivision, being a Subdivision in part of the

North 60 acres of the East half of the Northeast Quarter of Section 20, and part of the West 30 acres of the Northwest Quarter of the Northwest Quarter of Section 21, all in Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded April 19, 1947 as Document No. 521197, in DuPage County, Illinois.

Parcel Number: 06-21-101-015

SECTION 3: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this _____ day of _____, 2008.

First reading waived by action of the Board of Trustees this _____ day of _____, 2008.

Passed on second reading this _____ day of _____, 2008.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2008.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published this _____ day of _____, 2008.

Brigitte O'Brien, Village Clerk

YORK CENTER NEIGHBORHOOD
ANNEXATION AGREEMENT (SCHOOL STREET PROPERTIES)

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 200____, by and between the **VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as "Village"); and

(hereinafter cumulatively referred to as "Owner"). (The Owner and the Village being hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties.");

WITNESSETH:

WHEREAS, the Owner is the record owner(s) of the property legally described in **EXHIBIT A**, attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Village desires to annex and the Owner desires to have the Subject Property annexed to the Village as soon as reasonably practicable following the establishment of contiguity between the corporate boundaries of the Village and the Subject Property, and each of the Parties desires to obtain assurances from the other as to certain provisions of the zoning and other ordinances of the Village for the Subject Property when the same has been annexed and to other matters covered by this Agreement for a period of twenty (20) years from and after the execution of this Agreement; and

WHEREAS, the Subject Property is approximately _____ acres in size and there are two (2) electors residing thereon; and

WHEREAS, all owners of record of the Subject Property and at least fifty-one percent (51%) of the electors residing on the Subject Property have signed a petition for annexation of the Subject Property to the Village, which petition is hereinafter referred to as the "Annexation Petition"; and

WHEREAS, a public hearing on this Agreement was held by the corporate authorities of the Village (hereinafter referred to as the "Corporate Authorities") on _____, 200____; and

WHEREAS, the Parties wish to enter into a binding agreement with respect to the said annexation, zoning and future development and for other related matters pursuant to the provisions of Division 15.1 of Article 11 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, and upon the terms and conditions contained in this Agreement; and

WHEREAS, all public hearings and other actions required to be held or taken prior to the adoption and execution of this Agreement, in order to make the same effective, have been held or

taken, including all hearings and actions required in connection with amendments to and classifications under the and Chapters 154 and 155 of the Lombard Village Code (hereinafter, the "Subdivision Ordinance and the "Zoning Ordinance" respectively"), such public hearings and other actions having been held pursuant to public notice as required by law and in accordance with all requirements of law prior to adoption and execution of this Agreement; and

WHEREAS, the Corporate Authorities of the Village and the Owner deem it to be to the mutual advantage of the Parties and in the public interest that the Subject Property be annexed to the Village as hereinafter provided; and

WHEREAS, the annexation of the Subject Property as provided herein will promote the sound planning and development of the Village as a balanced community and will be beneficial to the Village; and

WHEREAS, the Corporate Authorities of the Village have determined that the existing land use of the Subject Property, as a single-family residence, is in accordance with this Agreement and complies with the Comprehensive Plan of the Village;

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties hereto, the Parties hereto agree as follows:

1. **INCORPORATION OF RECITALS.** The Village and Owner agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.

2. **DEVELOPMENT OF SUBJECT PROPERTY.** The Village and Owner agree that the Subject Property shall be developed in accordance with the terms of this Agreement. Notwithstanding the provisions of the Zoning Ordinance and the Subdivision Ordinance, and the ability of the Owner to comply therewith, the Owner agrees that the Subject Property, or any part thereof, shall not be subdivided or resubdivided or consolidated with contiguous property in order to be subdivided, during the Term of this Agreement. Owner further agrees not to record a tax division of any portion of the Subject Property with the DuPage County Recorder of Deeds, as a means to circumvent the provisions set forth herein, during the Term of this Agreement. The provisions of this Section shall not apply to any divisions of any portion of the Subject Property resulting from the dedication of land for public purposes, nor shall this Section apply to any portion of the Subject Property that is required to be subdivided or consolidated pursuant to a Court Order.

3. **ANNEXATION.** Subject to the provisions of Article 7 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, the Parties agree to do all things necessary or appropriate to cause the Subject Property to be duly and validly annexed to the Village as promptly as practicable after the execution of this Agreement and following the establishment of contiguity between the corporate boundaries of the Village and the Subject Property. The Parties shall cause such annexation to be effected pursuant to the provisions of Section 5/7-1-8 of Act 5 of Chapter 65 of the Illinois Compiled Statutes.

4. ZONING. Upon annexation of the Subject Property to the Village as set forth herein, the Subject Property shall be zoned R0 Single Family Residence District, by operation of law.

5. NON-CONFORMING PROVISIONS. Upon approval of this Agreement, the Village recognizes that the existing use of the Subject Property (i.e., a single family residence) constitutes a permitted use within the R0 Single Family Residence District as expressed in the Zoning Ordinance. Nothing in this Agreement shall be construed so as to grant zoning relief or any other relief from the Village Code for any existing uses or structures on the Subject Property, other than that noted in Section 4 above. The Village agrees that any legally permitted and constructed buildings or structures on the Subject Property shall be recognized by the Village as legal conforming buildings and structures if constructed in compliance with the codes and ordinances of the Village, or as legal non-conforming buildings and structures if not currently in compliance with the codes and ordinances of the Village. However, any expansion, alteration, reconstruction or repair of any such buildings or structures, or any change of land use on the Subject Property, shall conform to all existing provisions of the Village Code once the Subject Property is annexed to the Village. After the Agreement is entered into, but prior to annexation, any expansion, alteration, reconstruction or repair of any such buildings or structures, or any change of land use on the Subject Property, shall conform to all existing provisions of the Village Code unless said conformity would be in violation of any DuPage County regulations applicable to the Subject Property.

6. PLATS OF SURVEY. Owner shall provide the Village with a plat of survey, if available, and/or a copy of the deed for the Subject Property.

7. RIGHT OF WAY DEDICATION. If any portion of the Subject Property is located within an area currently platted with an easement for a public street, Owner shall provide for the dedication of said easement areas for public right-of-way purposes. The costs of preparing the plat of dedication shall be borne by the Village.

8. PUBLIC RIGHT-OF WAY IMPROVEMENTS. The Village agrees that the street(s) adjacent to the Subject Property may remain as an underimproved street(s) (as defined in the Subdivision Ordinance) during the life of this Agreement. The Village reserves the right to require full public improvements for any new development activity occurring on the Subject Property, as required by the Subdivision Ordinance. The Village also reserves the right to construct, or have constructed, public roadway and infrastructure improvements within any dedicated rights-of-way or roadway easements, if such improvements are necessary for public health and safety purposes.

Moreover, the Village reserves the right to construct or have constructed public right-of-way improvements along 14th Street and School Street to address the potential future needs associated with York Center School or future development on the east side of School Street. The costs to pay for such future improvements would either be paid for through a Special Assessment levied against the abutting properties, or a required developer contribution, if the improvements pertain to development on the east side of School Street.

9. WATER UTILITIES.

The Subject Property is currently serviced by a public watermain and service line owned and operated by DuPage County. However, the Subject Property abuts the School Street right-of-way, in which is located a public watermain under the jurisdictional control of the Village (hereinafter the "School Street Watermain". In regard to said School Street Watermain, the Village represents and warrants to Owner that the Village owns and operates a water distribution system within the Village for water distribution, and that the Village's watermain system has sufficient capacity to provide, and will provide, potable water to the Subject Property, such service to be substantially the same as provided to other areas in the Village being provided with water by the Village. In consideration of the unique nature of the annexation being contemplated by this Agreement, the Owner and Village hereby agree as follows:

A. Upon annexation of Subject Property into the Village, the Village shall do all things necessary and appropriate to facilitate the connection of the single family residence on the Subject Property to the School Street Watermain.

B. Upon annexation of the Subject Property into the Village, the Owner shall do all things necessary and appropriate to facilitate the connection of the single-family residence on the Subject Property to the School Street Watermain.

C. The Village shall waive all Village water connection fees, building permit fees, inspection fees and water meter fees associated with the connection of the existing single-family residence on the Subject Property to the School Street Watermain, including any such fees associated with any Village required modifications to the existing water service line.

D. Upon satisfactory completion of the connection of the existing single-family residence on the Subject Property to the School Street Watermain, the Village agrees to reimburse the Owner and/or Owner's cost of work performed as part of this connection project.

E. In order to receive full reimbursement for the connection project as set forth in Subsection D above, Owner shall follow the procedures for reimbursement as required by the Village.

F. Owner agrees to connect the Subject Property to the School Street Watermain within one (1) year from the execution date of this Agreement, or within sixty (60) days of the annexation of the Subject Property by the Village, whichever occurs last.

G. In consideration of the Village's payment of \$2,695.68 on behalf of the Owner to the York Center Community Cooperative to be applied toward payment of an outstanding assessment owed by the Owner, Owner agrees to allow the Village to assess a one hundred dollar (\$100.00) monthly reimbursement fee to each water bill commencing upon the issuance of the first water bill and continuing until the \$2,695.68 is repaid to the Village in full. As Village water bills are issued on a bi-monthly basis, each water bill will reflect a \$200.00 fee. Owner further recognizes that if the applicable water bill and the companion reimbursement fee are not repaid in a timely manner, as set forth on the water bill, the Village reserves the right to discontinue water service to the subject property.

10. SANITARY SEWER FACILITIES. The Subject Property is located within the Facilities Planning Area ("FPA") of the Flag Creek Water Reclamation District (the "District") and is currently connected to and is served by a sanitary sewer service system provided by the District.

The Village agrees to not require the disconnection of the Subject Property from the District provided that the District has sufficient capacity to serve the Subject Property.

Owner, at Owner's sole cost and expense, shall install and/or maintain sanitary sewer service to the Subject Property in accordance with the lawful regulations of the District and the Village's Subdivision Ordinance, as modified by any final engineering plans hereafter approved by the Village or the District for the Subject Property. Owner shall grant or dedicate all easements required by the District or the Village for the construction of the necessary sanitary sewers serving the Subject Property. Owner further agrees to pay the District for any future tap-on, connection, and service fees imposed upon the Subject Property by the District.

11. STORM DRAINAGE FACILITIES. Upon annexation of the Subject Property to

the Village, the Owner shall not be required to provide storm drainage facilities for any existing structures on the Subject Property, nor shall the Village require any additional stormwater improvements to be made to meet the detention requirements of the Village. However, any future modifications to or reconstruction of, any existing buildings, structures and/or parking lot improvements on the Subject Property, or any new construction on the Subject Property, shall be subject to the stormwater management requirements set forth in Chapter 151 of the Village Code.

Any future storm drainage facilities, including, but not limited to, retention and/or detention areas (hereinafter, collectively the "Storm Drainage Facilities") shall be provided and constructed and paid for by the Owner and developed in accordance with the Subdivision Ordinance, as modified by any final engineering plans hereafter approved by the Village for the Subject Property.

In addition, any future Storm Drainage Facilities shall be maintained by the Owner and/or any subsequent owner. Such Storm Drainage Facilities shall be maintained by the Owner during the course of development, and thereafter shall be maintained by either the Owner or by the subsequent owner(s). The Village shall be provided with the right, but not the duty, to go upon any portion of the Subject Property to maintain and/or repair or replace such Storm Drainage Facilities if they are not suitably maintained so that they remain fully operational, and if the Village takes, after ninety (90) days written notice to the Owner, in its reasonable discretion, any such action, the Owner shall immediately upon demand reimburse the Village for all reasonable expenses incurred by the Village against the Subject Property, and, if not promptly paid, the Village shall have the right to record a lien for any such unpaid expenses against the Subject Property or any portion thereof, and to foreclose on any such lien. Prior written notice shall not be required in emergency situations. In regard to the Storm Drainage Facilities, provisions specified by the Village's Director of Community Development shall be set forth on any future final plats of subdivision.

12. UNDERGROUND UTILITIES. Upon annexation of the Subject Property to the

Village, the Owner shall not be required to bury electrical, telephone, cable television and natural gas distribution facilities that currently exist on the Subject Property. However, for any future installation of utilities, the Village hereby agrees to work with the Owner to facilitate any required burial. The Village shall not be responsible for any costs associated with the burial of such facilities.

13. **EMINENT DOMAIN.** The Village hereby agrees not to use its rights of eminent domain as a means to change the terms and conditions of this Agreement or as a means of redevelopment of the Subject Property for private commercial uses. However, nothing herein shall preclude the Village from using its rights of eminent domain for purely public purposes relating to infrastructure or roadway improvements, as set forth by State Statute, except as otherwise provided in this Agreement.

14. **EASEMENTS.** Owner shall provide any required easements for cable television, public utility and/or drainage purposes as required by the Village Code.

15. **CONTRIBUTIONS.** There shall be no requirement for the Owner to make any contributions to an elementary school, middle school, high school, park, library or other service districts as part of the annexation to the Village.

16. **FIRE DISTRICT.** By operation of law and in accordance with Illinois Compiled Statutes, Chapter 70, Section 705/20, the Subject Property shall, upon its annexation to the Village, be disconnected from the fire protection district in which it is located. The Village agrees to assist Owner in said disconnection and reimburse Owner for any reasonable costs or fees that may be involved. This provision shall not apply if the Subject Property is required to remain in another fire protection district to ensure the contiguity of the fire protection district's boundaries. The Village shall provide notice to the fire protection district in the manner required by law.

17. **ANNEXATION TO LOMBARD PARK DISTRICT:** Owner agrees to petition the Lombard Park District to annex the Subject Property to the Lombard Park District upon its annexation to the Village for any portion of the Subject Property that is not currently located within the corporate limits of the Lombard Park District. For any portions of the Subject Property that are currently located within the corporate limits of another park district, Owner shall have the right to petition to disconnect from the corporate limits of the other park district and request annexation into the Lombard Park District. If such disconnection is approved by the other park district, then Owner shall be required to annex into the Lombard Park District. The Village agrees to assist Owner in petitioning for annexation and/or disconnection and to reimburse Owner for any reasonable costs or fees that may be involved.

18. **BONFIRES.** Ceremonial/recreational fires shall be allowed so long as all rules and regulations of the State of Illinois, DuPage County, the Village, and the applicable Fire Protection District are followed. Owner shall apply for and receive approval from the relevant governmental entities prior to establishing such a bonfire. Owner also recognizes that if such bonfire activity is prohibited by any of the governmental entities noted within this Section in the future, the rights granted within this Section shall no longer be in effect.

19. **SPECIAL ASSESSMENT OR SPECIAL SERVICE AREA:** Owner agrees that Owner will not object to the creation of a Special Assessment or Special Service Area incorporating the Subject Property with respect to the construction of any public improvements affecting the area of the Subject Property which may become necessary at a future date. The assessment formula for

any such future Special Assessment(s) or Special Service Area(s) shall be determined as required by law, taking into account the relative benefit to the Subject Property as a result of the public improvements constructed.

20. FEES. In consideration of the impact of the annexation of the Subject Property on the Village, Owner agrees to pay all applicable permit (including, but not limited to a building permit) and utility connection fees as required by Village Ordinances at the time of application for the respective permits. However, the Village will not charge any utility connection fees, including water connection fees, for lines or connections presently in existence on the Subject Property.

21. FUTURE ANNEXATION OF PROPERTY CONTIGUOUS TO SUBJECT

PROPERTY: To the extent that any property that is contiguous to the Subject Property is conveyed to the Owner pursuant to the Order and Plan of Dissolution related to Case No. 00 CH 01177 (Circuit Court for DuPage County), it shall be considered part of the Subject Property, and subject to this Agreement, and the Parties agree to enter into a properly approved amendment to this Agreement to formalize same.

22. FINAL ENGINEERING APPROVAL. All future public improvements that are required to be constructed hereunder or under the Subdivision Ordinance shall be paid for, constructed and installed by the Owner in accordance with final engineering plans approved by the Village.

23. GENERAL PROVISIONS.

A. Notices. Notice 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 registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village or
Corporate Authorities:
President and Board of Trustees
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

With Copies to:

Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Director of Community Development
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

or to such other address as any Party may from time to time designate in a written notice to the other Party.

B. Continuity of Obligations.

(1) The provisions of this Agreement shall be binding upon the successors in title to the Owner for the term of this Agreement.

(2) All the terms and conditions of this Agreement shall constitute covenants running with the land.

C.

Court Contest. In the event the annexation of the Subject Property, the classification of the Subject Property for zoning purposes or other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending, including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period mentioned in subsection 23R below.

D.

Remedies. The Village and Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions, or conditions of this Agreement by either Party, or their successors or assigns, notice to the Party to such default, the Party seeking to enforce said provision shall have the right of specific performance and if said Party prevails in a court of law, it shall be entitled to specific performance. It is further expressly agreed by and between the Parties hereto that the remedy of specific performance herein shall not be exclusive of any other remedy afforded by law to the Parties, or their successor or successors in title.

E.

Dedication of Public Lands. Except as required under the Subdivision Ordinance relative to the future redevelopment of the Subject Property, or as

If to the Owner:

Thomas P. Bayer
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

otherwise permitted in this Agreement, or as may be consented to in writing by Owner, in no event, including (without limitation) the exercise of the authority granted in Section 5/11-12-8 of Division 11 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, shall the Corporate Authorities require that any part of the Subject Property be designated for public purposes.

F. Conveyances. Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner to sell or convey all or any portion of the Subject Property, whether improved or unimproved, except as otherwise specifically set forth herein.

G. Survival of Representation. Each of the Parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.

H. Captions and Paragraph Headings. The captions and paragraph headings used herein are for convenience only and are not part of this Agreement and shall not be used in construing it.

I. No Waiver or Relinquishment of Right to Enforce Agreement. Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other property imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

J. Village Approval or Direction. Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

K. Recording. A copy of this Agreement and any amendment thereto shall be recorded in the Office of the DuPage County Recorder by the Village, with the terms of this Agreement constituting covenants running with the land for the Term of this Agreement.

L. Authorization to Execute. Owner has been lawfully authorized to execute

this Agreement on behalf of said Owner. The President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board to execute this Agreement. The Owner and Village shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required, to legally verify the authority to so execute this Agreement on behalf of the respective entities.

M. Amendment. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, expressed or implied, between them other than those herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

N. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

O. Conflict Between the Text and Exhibits. In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

P. Definition of Village. When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

Q. Execution of Agreement. This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement.

R. Terms of Agreement. This Agreement shall be in full force and effect for a term of twenty (20) years from and after date of execution of this Agreement.

S. Venue. The parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this Agreement on the day and year first above written.

VILLAGE OF LOMBARD

ATTEST:

By:

Brigitte O'Brien
Village Clerk

Dated: _____, 200

By:

Name: William J. Mueller
Its: President

OWNER:

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 WILLIAM J. MUELLER, personally known to me to be the President of the Village of Lombard, and BRIGITTE O'BRIEN, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day of _____, 200__ in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 200__.

{SEAL}

Notary Public
Print Name:
My Commission Expires: _____

SCHEDULE OF EXHIBITS

EXHIBIT A:

Legal Description: 1S154 School Street, Lombard

Lot 9 in Block 4 and the School Street right of way lying east of and adjacent to said Lot 9 in West York Center Community Co-Operative, Inc. Subdivision, being a Subdivision in part of the North 60 acres of the East half of the Northeast Quarter of Section 20, and part of the West 30 acres of the Northwest Quarter of the Northwest Quarter of Section 21, all in Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded April 19, 1947 as Document No. 521197, in DuPage County, Illinois.

Parcel Number: 06-21-101-015

**AN ORDINANCE ANNEXING CERTAIN TERRITORY
TO THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS**

(BOT 08-04: 1S154 School Street)

(See also Ordinance No.(s) _____)

WHEREAS, a written petition, signed by the legal owners and electors of record of all land within the territory hereinafter described, has been filed with the Village Clerk of the Village of Lombard, DuPage County, Illinois, requesting that said territory be annexed to the Village of Lombard; and,

WHEREAS, the said territory is not within the corporate limits of any municipality, but is contiguous to the Village of Lombard; and,

WHEREAS, all notices of said annexation, as required by (Chapter 65 ILCS 5/7-1-1), have been given to the appropriate parties in a timely manner as required by Statute (copies of said Notices being attached hereto as Exhibit "A", and made part hereof).
WHEREAS, it is in the best interest of the Village of Lombard that said territory be annexed thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the territory described in Section 2 below be and the same is hereby annexed to the Village of Lombard, DuPage County, Illinois, pursuant to (Chapter 65 ILCS 5/7-1-8).

SECTION 2: This ordinance is limited and restricted to the property indicated on the attached Plat of Annexation attached hereto as Exhibit "B", and generally located at 1S154 School Street, Lombard, Illinois and legally described as follows:

Lot 9 in Block 4 and the School Street right of way lying east of and adjacent to said Lot 9 in West York Center Community Co-Operative, Inc. Subdivision, being a Subdivision in part of the North 60 acres of the East half of the Northeast Quarter of Section 20, and part of the West 30 acres of the Northwest Quarter of the Northwest Quarter of Section 21, all in Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded April 19, 1947 as Document No. 521197, in DuPage County, Illinois.

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SECTION 3: The new boundary of the Village of Lombard shall extend to the far side of any adjacent rights-of-way, and shall include all of every right-of-way within the area annexed hereby.

SECTION 4: The Village Clerk is hereby directed to record with the Recorder of Deeds and to file with the County Clerk, a certified copy of this Ordinance, and the original Plat of Annexation.

SECTION 5: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this _____ day of _____, 2008.
First reading waived by action of the Board of Trustees this _____ day of _____, 2008.

Passed on second reading this _____ day of _____, 2008.

Ayes: _____
Nays: _____
Absent: _____
Approved this _____ day of _____, 2008.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published this _____ day of _____, 2008.

Brigitte O'Brien, Village Clerk