
Space above reserved for Recorder's use

**ANNEXATION AGREEMENT DATED _____, 2005 FOR
19W175 ROOSEVELT ROAD, LOMBARD, IL
a.k.a. 601 E. ROOSEVELT ROAD, LOMBARD, IL**

Parcel No.: 06-20-200-025

AFTER RECORDING RETURN TO:

**Village of Lombard
Department of Community Development
255 E. Wilson Avenue
Lombard, IL 60148**

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2005, by and between the Village of Lombard, a municipal corporation (“VILLAGE”) and **19 West LLC**, an Illinois Limited Liability Company (hereinafter referred to as “OWNER”);

WITNESSETH:

WHEREAS, OWNER is the record owner 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 SUBJECT PROPERTY is not annexed to the VILLAGE or any other municipal corporation; and

WHEREAS, OWNER is desirous of annexing the SUBJECT PROPERTY, which is not currently within the corporate limits of the VILLAGE, to the VILLAGE; and

WHEREAS, OWNER is proceeding before the appropriate authorities of the VILLAGE to obtain annexation, map amendment and zoning approvals for the SUBJECT PROPERTY as set forth in this Agreement in order to facilitate the continued use of the SUBJECT PROPERTY; and

WHEREAS, the VILLAGE desires to annex and the OWNER desires to have the SUBJECT PROPERTY annexed to the VILLAGE, and each of the parties desire 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 consists of approximately 2.12 acres of land; and

WHEREAS, there are no electors residing on the SUBJECT PROPERTY; and

WHEREAS, all owner(s) of record of the SUBJECT PROPERTY have signed a Petition for Annexation of the SUBJECT PROPERTY to the VILLAGE (hereinafter referred to as the “Annexation Petition”); and

WHEREAS, an application has heretofore been filed with the VILLAGE Clerk for annexation and zoning of the SUBJECT PROPERTY; and

WHEREAS, said application was forwarded to the Plan Commission of the VILLAGE; and

WHEREAS, a public hearing was held on June 20, 2005, for the purpose of considering whether the SUBJECT PROPERTY should be rezoned, upon the annexation of the SUBJECT PROPERTY, from the R-1 Single-Family Residential District to the B-3 Community Shopping District, and the Plan Commission has submitted to the Corporate Authorities of the VILLAGE (the “Corporate Authorities”) their findings of fact and recommendations with respect to said application; and

WHEREAS, a public hearing on this Agreement has been held by the Corporate Authorities on the 21st day of July, 2005; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the said annexation, zoning and 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, variations from

and classifications under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code - hereinafter referred to as the “Zoning Ordinance”), the Lombard Sign Ordinance (Chapter 153 of the Lombard Village Code - hereinafter referred to as the “Sign Ordinance”), and the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code - hereinafter referred to as the “Subdivision Ordinance”), 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 the mutual advantage of the parties and in the public interest that the SUBJECT PROPERTY be annexed to and developed as a part of 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, OWNER desires to have the entire SUBJECT PROPERTY rezoned to the B-3 Community Shopping District.

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth, 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: VILLAGE and OWNER agree that the SUBJECT PROPERTY shall be used and/or redeveloped in accordance with the VILLAGE’S codes and ordinances, the terms of this Agreement and the exhibits attached hereto.

3. **Annexation:** Subject to the provisions of Article 7 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, the VILLAGE and the OWNER shall cause the annexation of the SUBJECT PROPERTY to occur 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 Corporate Authorities shall, without further public hearings, immediately rezone and classify the entire SUBJECT PROPERTY from the R1 Single Family Residence District to the B3 Community Shopping District under the Zoning Ordinance.

5. **Site Plan Approval:** OWNER intends to continue to operate the SUBJECT PROPERTY in accordance with the existing plat of survey attached hereto as EXHIBIT B and prepared by Civil Engineering Services, Inc. and dated May 16, 1985 (the "Site Plan"), which Site Plan is hereby incorporated by reference as the same shall be approved by the Village (with any modifications thereto).

6. **Water Utilities:** Village represents and warrants to OWNER as follows:

- A. That it owns and operates a water distribution system within the VILLAGE for water distribution.
- B. That the VILLAGE system has sufficient capacity to provide and will continue to provide potable water to the SUBJECT PROPERTY, such service to be substantially the same as provided to other commercial areas in the VILLAGE being provided with water by the Village.

Upon execution and recording of this Agreement and recording of an annexation plat for the SUBJECT PROPERTY, the OWNER shall receive in-Village rates for water service. OWNER agrees to apply for a building permit to connect to the VILLAGE water distribution system within ninety (90) days after receipt of notice from the VILLAGE requesting the OWNER to do so.

Connection to the VILLAGE's water distribution system shall be completed within one-hundred eighty (180) days after receipt of notice from the VILLAGE requesting the OWNER to do so.

7. **Sanitary Sewer Facilities:** The SUBJECT PROPERTY is located within the Facilities Planning Area ("FPA") of the Hinsdale Sanitary District and is currently connected to and is served by a sanitary sewer service system provided by the Hinsdale Sanitary District (the "DISTRICT"). OWNER, at its own expense, shall install and/or maintain sanitary sewer service to the SUBJECT PROPERTY in accordance with the lawful regulations of the DISTRICT, the Village's Subdivision Ordinance, or 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.

8. **Storm Drainage Facilities:** The OWNER shall not be required to provide storm drainage facilities for any existing structures on the SUBJECT PROPERTY. However, any future modifications or reconstruction of any buildings, structures and/or parking lot improvements shall be subject to the stormwater management requirements set forth in Chapter 151 of the Village Code.

9. **Easements:** OWNER shall provide or obtain all easements, both on-site and off-site (if applicable), which are necessary or appropriate to enable the SUBJECT PROPERTY to be properly drained and to receive water, sanitary sewer, electric, telephone, gas, and cable television service, with the VILLAGE being named a grantee in all said easements along with the applicable utility companies and cable television operator. The location for all public improvements shall be as approved by the VILLAGE.

10. **Contributions:** OWNER shall have no obligation to make any contribution, in cash or in land, to any school district, park district or library district provided the SUBJECT PROPERTY is operated in substantial conformity with this Agreement or pursuant to such other non-residential development plans as may from time to time be approved by the VILLAGE. The foregoing

provision shall not eliminate or reduce OWNER's obligation to pay other fees and charges applicable to the SUBJECT PROPERTY pursuant to VILLAGE ordinances. Furthermore, in consideration of the voluntary nature of the annexation, the VILLAGE agrees to waive all public hearing fees associated with the annexation and zoning of the SUBJECT PROPERTY.

11. Non-Conforming Provisions: Upon approval of this Agreement, the VILLAGE recognizes that the existing use of the SUBJECT PROPERTY (i.e., a retail carpet and flooring establishment) constitutes a permitted use within the B3 Community Shopping 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.

12. Fire District: It is the VILLAGE'S and OWNER's intent that, 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 at no cost to the VILLAGE. The VILLAGE agrees to cooperate with the OWNER in said disconnection. OWNER and/or the successor owner of any lot platted within the SUBJECT PROPERTY shall be responsible for the disconnection and shall reimburse the VILLAGE for any funds expended by the VILLAGE, including, but not limited to any payments required by 70 ILCS 705/20(e), and any legal fees and litigation costs, relative thereto. The VILLAGE shall provide notice to the fire protection district in the manner required by law.

13. Annexation to Lombard Park District: OWNER agrees to petition the Lombard Park District to have the SUBJECT PROPERTY annexed to the Lombard Park District upon its annexation to the VILLAGE in the event the SUBJECT PROPERTY is not currently annexed to said Park District.

14. Consent to Creation of a Special Assessment or a Special Service Area: OWNER agrees that it 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.

15. General Provisions:

A. Notices: Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed facsimile transmission provided a hard copy of such notice is deposited in the regular mail addressed to the recipient within twenty-four (24) hours following the facsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

- (1) If to the VILLAGE or
Corporate Authorities:

President and Board of Trustees
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
Phone: (630) 620-5700

Fax: (630) 620-8222

With a copy to:

- (a) Village Manager
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
Phone: (630) 620-5700
Fax: (630) 620-8222

- (b) Director of Community Development
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
Phone: (630) 620-5700
Fax: (630) 620-8222

- (c) Thomas P. Bayer
KLEIN, THORPE AND JENKINS, LTD.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Phone: (312) 984-6400
Fax: (312) 984-6444

- (2) If to OWNER:

19W L.L.C.
30 N. LaSalle Street, Suite 3000
Chicago, IL 60602

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

B. Continuity of Obligations:

(1) This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors in interest, assignees, grantees, lessees, and upon any successor municipal authorities of the VILLAGE and successor municipalities. Upon the conveyance of any of OWNER's interest in any portion of the SUBJECT PROPERTY or its rights and obligations under this Agreement to the other or a third party ("Transferee"), the rights and obligations of OWNER pertaining to such portion of the SUBJECT PROPERTY or rights and obligations hereunder, shall be deemed assigned to and assumed by such Transferee, and OWNER shall thereupon be released and discharged by the VILLAGE from any further obligation pertaining to such identified rights and duties. Subject to the provisions of this Section 15B, the Transferee shall thereupon be entitled to exercise all rights and authorities and shall perform all duties and obligations of OWNER pertaining to such portion of the SUBJECT PROPERTY.

Upon the condition that the requirements of this subsection have been met, this Agreement shall inure to the benefit of and shall be binding upon OWNER's Transferees, and shall be binding upon the VILLAGE and the successor Corporate Authorities of the VILLAGE. In the event that the requirements of this subsection have not been met, this Agreement shall be binding upon, but shall not inure to the benefit of OWNER's Transferees until such time as OWNER has given the VILLAGE the notice required by this subsection 15B.

In the event of any sale or conveyance by OWNER of the SUBJECT PROPERTY or any portion thereof, OWNER shall notify the VILLAGE in writing, within ten (10) working days after the closing of such sale or

conveyance, of any and all Transferees to all or any portion of the SUBJECT PROPERTY. Such written notice shall include identification of the name(s) of such Transferee(s), the date of such sale or conveyance, and a copy of the title opinion identifying the grantee, the real estate sold or conveyed, and such other information as is usually and customarily included in a title opinion for the sale or conveyance of real estate. Failure to give timely notice shall not constitute a default hereunder, but shall be governed by the remaining provisions of this subsection 15B.

- 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 provided in subsection 15U 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 any party, or their successors or assigns, which default exists uncorrected for a period of ten (10) days after written notice to any party to such default, or such longer period as may be reasonable under the circumstances, 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 or other equitable or legal remedy plus the right to recover from the defaulting party the expenses of said litigation including, but not limited to, reasonable attorneys' fees. It is further expressly agreed by and between the parties hereto that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the parties, or their successor or successors in title.

- E. Controlling Effect: All provisions, conditions and regulations as set forth in this Agreement and the documents or plans to which it refers shall supersede all VILLAGE ordinances, codes and regulations (other than those which relate to environmental, fire and police protection) that are in conflict with the Agreement, if any, as they may apply to the SUBJECT PROEPRTY. For this reason, the corporate authorities of the VILLAGE shall adopt such ordinances as may be necessary to implement the terms and provisions of this Agreement.
- F. Mutual Assistance: The parties hereto agree to take such actions, including the approval, execution and delivery of documents and instruments, and in the VILLAGE'S case the adoption of ordinances and resolutions, as may be necessary or appropriate from time to time, to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent.
- G. 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.
- H. The VILLAGE agrees, during the term of this Agreement, that it will take no action to disconnect the SUBJECT PROPERTY from the VILLAGE.
- I. Survival of Representations: 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.

- J. Captions and Paragraph Headings: The captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.
- K. Reimbursement of VILLAGE for Legal and Other Fees and Expenses From and After Effective Date of Agreement: Except as provided in this subsection, upon demand by the VILLAGE made by and through its President, OWNER from time to time shall promptly reimburse the VILLAGE for all reasonable expenses and costs incurred by the VILLAGE in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of public improvements, and the review by VILLAGE consultants of plans and materials submitted by OWNER.

Such costs and expenses incurred by the VILLAGE in the administration of this Agreement shall be evidenced to the OWNER upon OWNER's request, by a sworn statement of the VILLAGE; and such costs and expenses may be further confirmed by OWNER at their option from additional documents designated from time to time by OWNER relevant to determining such costs and expenses.

Notwithstanding the foregoing, OWNER shall in no event be required to reimburse VILLAGE or pay for any expenses or costs of VILLAGE as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by VILLAGE ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against OWNER and/or the VILLAGE, which relate to the terms of this Agreement, then, in that event, OWNER, on notice from the VILLAGE shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

(a) OWNER shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the VILLAGE.

(b) If the VILLAGE, in its sole discretion, determines there is, or may probably be, a conflict of interest between the VILLAGE, and OWNER on an issue of importance to the VILLAGE having a potentially substantial adverse effect on the VILLAGE, then the VILLAGE shall have the option of being represented by its own legal counsel. In the event the VILLAGE exercises such option, then OWNER shall reimburse the VILLAGE, from time to time on written demand from the President of VILLAGE and notice of the amount due, for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the VILLAGE in connection therewith.

c. In the event the VILLAGE institutes legal proceedings against OWNER for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against OWNER all expenses of such legal proceedings incurred by VILLAGE, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the VILLAGE in

connection therewith (and any appeal thereof). OWNER may, in its sole discretion, appeal any such judgment rendered in favor of the VILLAGE against OWNER.

- L. 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 party 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.

- M. 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.

- N. Recording: A copy of this Agreement and any amendments thereto shall be recorded by the VILLAGE at the expense of the OWNER.

- O. Authorization to Execute: The officers of OWNER executing this Agreement warrant that they have been lawfully authorized by OWNER's respective Boards of Directors to execute this Agreement on behalf of said OWNER. The President and 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 evidence the authority to so execute this Agreement on behalf of the respective entities.

- P. Amendment: This Agreement sets forth all the 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, express or implied, between them, other than are 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.
- Q. Counterparts: This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- R. 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 this Agreement shall control and govern.
- S. 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.
- T. 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.
- U. Term of Agreement: This Agreement shall be in full force and effect for a term of twenty (20) years from and after the date of execution of this Agreement.

V. 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, an Illinois
Municipal corporation

William J. Mueller
Village President

Brigitte O'Brien
Village Clerk

DATED: _____

OWNER:

ATTEST:

By: _____

Name: _____

Title: _____

Title: _____

DATED: _____

SCHEDULE OF EXHIBITS

- EXHIBIT A: Legal Description of SUBJECT PROPERTY
EXHIBIT B: Existing Site Plan for the SUBJECT PROPERTY

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THE WEST ONE-THIRD (EXCEPT THE WEST 147.0 FEET THEREOF) OF THAT PART OF THE NORTH 627.84 FEET LYING WEST OF THE EAST 300 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PARCEL NO.: 06-20-200-026

EXHIBIT B

EXISTING SITE PLAN FOR THE SUBJECT PROPERTY