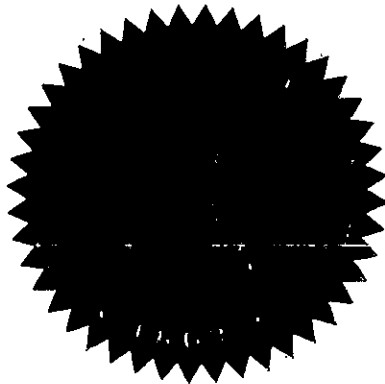


ORDINANCE 5679
5680
5681


PAMPHLET

ORDINANCES AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT,
ANNEXING CERTAIN TERRITORY TO THE VILLAGE OF LOMBARD,
APPROVING A MAP AMENDMENT (REZONING)

19W175 ROOSEVELT ROAD



PUBLISHED IN PAMPHLET FORM THIS 25th DAY OF July, 2005
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,
DUPAGE COUNTY, ILLINOIS.



Brigitte O'Brien
Village Clerk

ORDINANCE 5679

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

(PC 05-02: 19W175 Roosevelt Road)

See also Ordinance No.(s) 5680, 5681)

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 19W175 Roosevelt Road, 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 July 21, 2005.

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 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 117 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

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 _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005.

President Mueller,
Ayes: Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom

Nayes: None

Absent: None

Approved this 21st, day of July, 2005.


William J. Mueller, Village President

ATTEST:


Brigitte O'Brien, Village Clerk

Space above reserved for Recorder's use

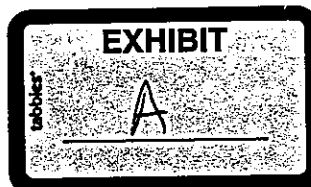
**ANNEXATION AGREEMENT DATED July 21, 2005 FOR
19W175 ROOSEVELT ROAD, LOMBARD, IL
a.k.a. 601 E. ROOSEVELT ROAD, LOMBARD, IL**

Parcel No.: 06-20-200-025

AFTER RECORDING RETURN TO:

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

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ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is made and entered into this 21st day of July, 2005, by and between the Village of Lombard, a municipal corporation (“VILLAGE”) and **19 West LLC**, an Illinois Corporation (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 be in 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

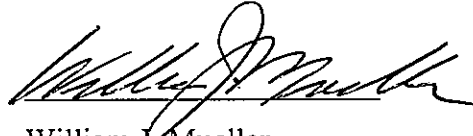
required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

- 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: 7/21/05

OWNER:

ATTEST:

By: _____

Name: _____

Title: _____

Title: _____

DATED: _____

ACKNOWLEDGMENTS

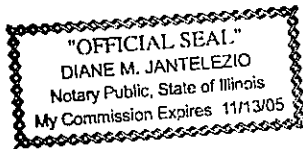
STATE OF ILLINOIS)
) :SS
COUNTY OF DUPAGE)

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 same persons whose names are subscribed to the foregoing instrument, appeared before me this day 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 21st day of July, 2005.

Commission expires 11/13/05, ___.

Diane M. Jantelezio
Notary Public



STATE OF DUPAGE)
) SS
COUNTY OF ILLINOIS)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that the above-named _____ and
_____, are personally known to me to be the _____ and
_____ of _____ and also personally known to me
to be the same persons whose names are subscribed to the foregoing instrument as such
_____ and _____ respectively, and that they appeared before
me this day in person and severally acknowledged that as such _____ and
_____ they signed and delivered the said instrument, consenting to its recordation,
pursuant to authority given by said trust as their free and voluntary act, and as the free and voluntary
act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this ____ day of _____, 2005.

Commission expires _____, _____.

Notary Public

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 the above-named _____, personally known to me
to be the same persons whose names are subscribed to the foregoing instrument appeared before me
this day in Person and severally acknowledged that they signed and delivered the said instrument,
as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2005

Commission expires _____, _____.

Notary Public

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

ORDINANCE 5681

**AN ORDINANCE APPROVING A MAP AMENDMENT (REZONING)
TO THE LOMBARD ZONING ORDINANCE
TITLE XV, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(PC 05-02: 19W175 Roosevelt Road)

(See also Ordinance No.(s) 5679, 5680)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title XV, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, an application has heretofore been filed requesting a map amendment for the purpose of rezoning the property described in Section 2 hereto from the R1 Single-Family Residence District to the B3 Community Shopping District; and,

WHEREAS, a public hearing thereon has been conducted by the Village of Lombard Plan Commission on June 20, 2005 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the rezoning described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

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 Title XV, Chapter 155 of the Code of Lombard, Illinois, otherwise known as the Lombard Zoning Ordinance, be and is hereby amended so as to

rezone the property described in Section 2 hereof from the R-1 Single-Family Residence District to the B3 Community Shopping District.

SECTION 2: This ordinance is limited and restricted to the property generally located at 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 117 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

SECTION 3: That the official zoning map of the Village of Lombard be changed in conformance with the provisions of this ordinance.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005.

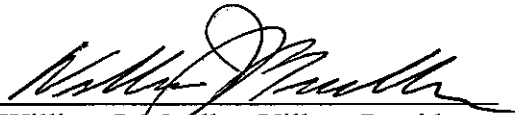
Ayes: Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom

Nayes: None

Absent: None

Approved this 21st day of July, 2005.

Ordinance No. 5681
Re: PC 05-02 (Map Amendment)
Page 3



William J. Mueller, Village President

ATTEST:



Brigitte O'Brien, Village Clerk

ORDINANCE 5681

**AN ORDINANCE APPROVING A MAP AMENDMENT (REZONING)
TO THE LOMBARD ZONING ORDINANCE
TITLE XV, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(PC 05-02: 19W175 Roosevelt Road)

(See also Ordinance No.(s) 5679 and 5680)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title XV, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, an application has heretofore been filed requesting a map amendment for the purpose of rezoning the property described in Section 2 hereto from the R1 Single-Family Residence District to the B3 Community Shopping District; and,

WHEREAS, a public hearing thereon has been conducted by the Village of Lombard Plan Commission on June 20, 2005 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the rezoning described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

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 Title XV, Chapter 155 of the Code of Lombard, Illinois, otherwise known as the Lombard Zoning Ordinance, be and is hereby amended so as to

rezone the property described in Section 2 hereof from the R-1 Single-Family Residence District to the B3 Community Shopping District.

SECTION 2: This ordinance is limited and restricted to the property generally located at 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 147 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

SECTION 3: That the official zoning map of the Village of Lombard be changed in conformance with the provisions of this ordinance.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005.

Ayes: Trustees Gron., Tross, O'Brien, Sebby, Florey and Soderstrom

Nayes: None

Absent: None

Approved this 21st day of July, 2005.

Ordinance No. 5681
Re: PC 05-02 (Map Amendment)
Page 3



William J. Mueller, Village President

ATTEST:



Brigitte O'Brien, Village Clerk

ORDINANCE 5680

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

(PC 05-02: 19W175 Roosevelt Road)

(See also Ordinance No.(s) 5679 and 5681)

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 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 147 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

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 _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005.

Ayes: Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom

Nayes: None

Absent: None


Approved this 21st day of July, 2005.

Ordinance No. 5680
Re: PC 05-02 Annexation
Page 3



William J. Mueller, Village President

ATTEST:



Brigitte O'Brien, Village Clerk

ORDINANCE 5679

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

(PC 05-02: 19W175 Roosevelt Road)

See also Ordinance No.(s) 5680, 5681

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 19W175 Roosevelt Road, 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 July 21, 2005.

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 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 147 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

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 _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005.

Ayes: President Mueller, Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom

Nays: None

Absent: None

Approved this 21st, day of July, 2005.


William J. Mueller, Village President

ATTEST:


Brigitte O'Brien, Village Clerk

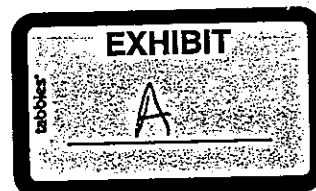
Space above reserved for Recorder's use

**ANNEXATION AGREEMENT DATED July 21, 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 21st day of July, 2005, by and between the Village of Lombard, a municipal corporation (“VILLAGE”) and 19 West LLC, an Illinois Corporation (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: 7/21/05

OWNER:

ATTEST:

By: _____

Name: _____

Title: _____

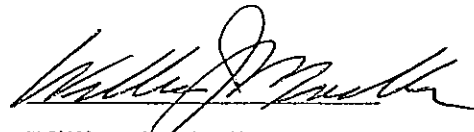
Title: _____

DATED: _____


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: 7/21/05

OWNER:
19 West LLC

ATTEST:

Title: _____

DATED: 9/18/06

By: _____

Name: John Booth

Title: Manager

ACKNOWLEDGMENTS

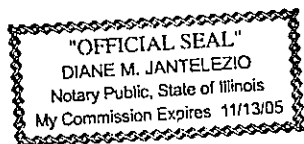
STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

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 same persons whose names are subscribed to the foregoing instrument, appeared before me this day 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 21st day of July, 2005.

Commission expires 11/13, 05.

Diane M. Jantelezio
Notary Public

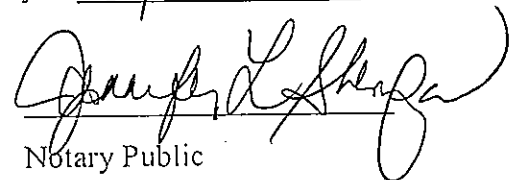


STATE OF DUPAGE)
) SS
COUNTY OF ILLINOIS)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that the above-named John Booth and
_____, are personally known to me to be the Manager and
_____ of 19 West LLC and also personally known to me
to be the same persons whose names are subscribed to the foregoing instrument as such
Manager and _____ respectively, and that they appeared before
me this day in person and severally acknowledged that as such Manager and
_____ they signed and delivered the said instrument, consenting to its recordation,
pursuant to authority given by said trust as their free and voluntary act, and as the free and voluntary
act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 19th day of September, ²⁰⁰⁶~~2005~~.

Commission expires 10-17, 2007.


Notary Public



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 the above-named _____, personally known to me
to be the same persons whose names are subscribed to the foregoing instrument appeared before me
this day in Person and severally acknowledged that they signed and delivered the said instrument,
as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2005

Commission expires _____, _____.

Notary Public

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

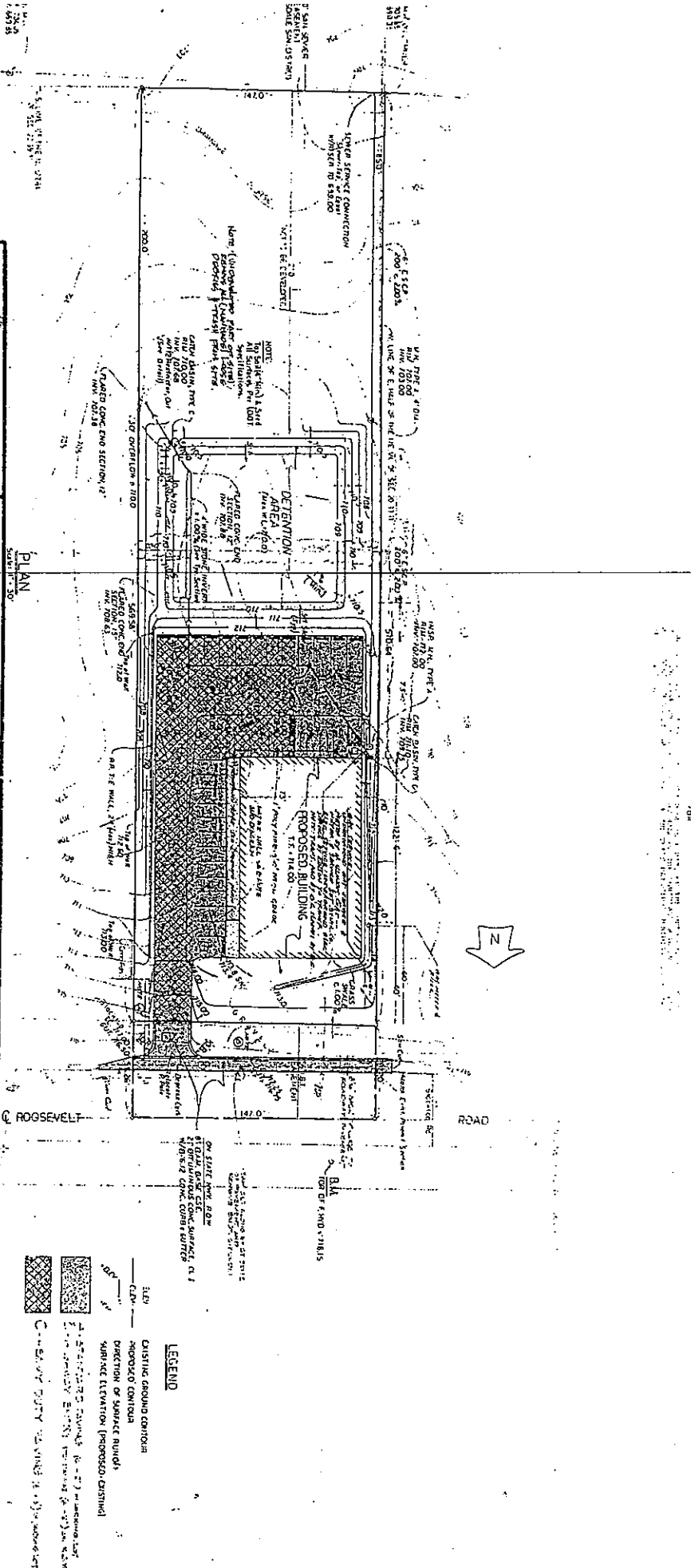
THE WEST 147 FEET OF THE WEST THIRD OF THAT PART OF THE
NORTH 627.84 FEET LYING WEST OF THE EAST 300 FEET OF THE EAST
HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39
NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN
DUPAGE COUNTY, ILLINOIS.

Parcel Index Number: 06-20-200-025

EXHIBIT B

EXISTING SITE PLAN FOR THE SUBJECT PROPERTY

PROJECT GRADING & DRAINAGE PLAN



LEGEND

- EXISTING GROUND CONTOUR
- PROPOSED GROUND
- DIRECTION OF SURFACE RUNOFF
- SURFACE ELEVATION (PROPOSED/EXISTING)
- PROPOSED CONCRETE CONSTRUCTION
- PROPOSED CONCRETE CONSTRUCTION
- PROPOSED CONCRETE CONSTRUCTION

GENERAL NOTES

ALL EXIST AND WATER MAIN CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

THE DESIGN, MAINTENANCE AND DRAINAGE CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

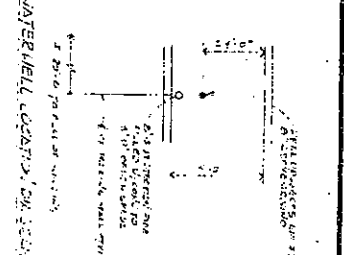
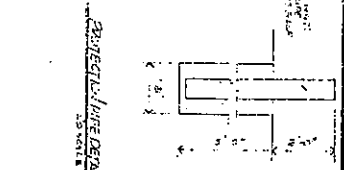
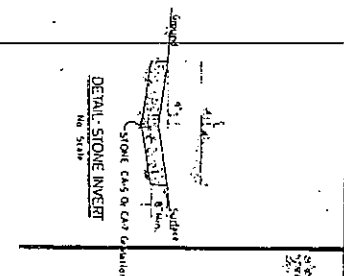
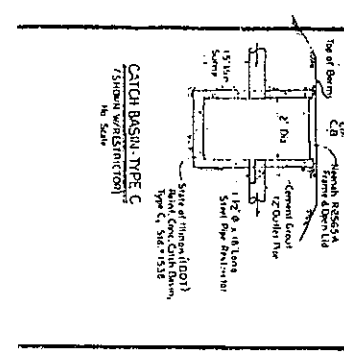
WORK ON THE ROOSEVELT MAIN R.O. 4. SHALL INCLUDE 1. WORK FROM THE START OF ALLIANCE EXISTING GROUND RELATIONS TO THE PROPOSED EXISTING GROUND SHALL BE COMPLETED WITH THIS MAIN TO STARTING END.

PROPOSED CONSTRUCTION / SPECIFICATION FOR CONSTRUCTION

1. **PROPOSED CONSTRUCTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

2. **PROPOSED CONSTRUCTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

3. **PROPOSED CONSTRUCTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.



WATERWELL DETENTION

1. **WATERWELL DETENTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

2. **WATERWELL DETENTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

3. **WATERWELL DETENTION** SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR WATER MAIN CONSTRUCTION IN ILLINOIS.

DATE: 11/15/11
 DRAWN BY: J. J. J. J.
 CHECKED BY: J. J. J. J.
 APPROVED BY: J. J. J. J.

**WATERMAIN CONSTRUCTION REIMBURSEMENT AGREEMENT FOR
19W175 ROOSEVELT ROAD**

THIS AGREEMENT is entered into on this 21ST day of SEPTEMBER, 2006, by the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "**Village**"); and 19WLLC, an Illinois Limited Liability Company (hereinafter referred to as "**Owner**"); (the Village and Owner are sometimes referred to herein individually as a "Party" or collectively referred to as the "**Parties**").

WITNESSETH:

Pursuant-to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, and 65 ILCS 5/8-11-20, and in consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a municipality lawfully existing under the constitution and laws of the State of Illinois.
- B. 19WLLC, is the owner of record for certain existing property improved with a retail commercial building (the "**Subject Property**") legally described in EXHIBIT "A" attached hereto and made part hereof, and located within the boundaries of the Village.
- C. Owner intends to improve the Subject Property with a public watermain connection and water service line to service the business establishment located on the Subject Property.
- D. The Village represented as part of an annexation agreement between the Owner and the Village (said annexation agreement having been approved by the Village on July 21, 2005 pursuant to Ordinance 5679) that it owns and maintains a public watermain to serve the water needs of the Subject Property, however, this representation did not address additional watermain improvements that would be required by the Village in order to provide water service into the building located on the Subject Property.
- E. In order to accommodate the watermain connection proposed by the Owner, the Village requires a watermain extension from its current watermain termination point East of the Subject Property to an existing watermain located West of the Subject Property, as depicted on EXHIBIT "B" attached hereto and made a part hereof (the "**Watermain**

Extension”), as the service line proposed by the Owner exceeds the length requirements set forth within the Village Code for utility connections.

- F. The Village is desirous of having the business on the Subject Property operated in accordance with the Village Code in order to service the needs of the Village and its residents.
- G. The Watermain Extension, if completed, will improve water quality and service in the vicinity of the Subject Property.
- H. In light of the foregoing, a portion of the cost of the Watermain Extension should properly be paid for by the Village, and, as such, the Village contemplates certain incentives under the terms and conditions hereinafter set forth to assist in the construction of same.
- I. The parties hereto acknowledge, and Owner represents and warrants, that while the Owner will construct the Watermain Extension, the Watermain Extension requires economic assistance from the Village in order to complete the same, and, but for the economic assistance to be given by the Village, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- J. For the purposes of this Agreement, the use of the terms "Sales Tax" and "Sales Tax Revenues" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as the "State") for distribution to the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, and the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, (as said Acts maybe amended) and which are collected by the State and distributed to the Village (currently such net portion is one percent (1%) of the total amount of gross sales within the Village, which are subject to the aforementioned taxes).

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by Owner on or before the dates hereinafter specified. In the event Owner does not comply in all material respects with the conditions precedent set forth in this Article II, then all obligations on the part of the Village pursuant to this Agreement shall be cancelled, and the Village shall have no further obligations with regard to the Watermain Extension, and any right on the part of Owner to demand performance thereof shall be deemed waived and also cancelled and of no force and effect.

- A. By September 1, 2007, Owner shall have applied for a building permit with the Village for the Watermain Extension, and have supplied the Village with an engineer's cost estimate for the Watermain Extension. If the contractor's cost proposal for the watermain extension exceeds the Engineer's Cost Estimate for the work to be performed, then the Owner shall submit the costs to the Village for approval prior to authorizing the contract to perform the public watermain construction activity.
- B. By October 1, 2007, Owner must have obtained final approval of its plans from any other governmental unit or agency, which has jurisdiction or authority over any portion of the Watermain Extension and/or plans. The submitted plans (hereinafter the "Final Plans") associated with the permit shall be in accordance with the regulations and ordinances of the Village, it being understood that the Village in its capacity as a municipal corporation has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve the final plan for the Watermain Extension, except for its willful misconduct. The "Final Plans" shall mean any and all documents, plans and drawings submitted to the Village in order to obtain any permit required by the Village relative to the Watermain Extension.
- C. By December 1, 2007, Owner must have completed the Watermain Extension and delivered to the Village a certified statement in regard to the total cost of the Watermain Extension along with a Bill of Sale for said Watermain Extension. Said certification shall be over the signature of the chief financial officer of Owner. Owner shall allow the Village Manager or his designee to review a breakdown of and supporting documentation for Owner's investment in the Watermain Extension.

III. UNDERTAKINGS ON THE PART OF THE VILLAGE

- A. Upon satisfaction by Owner of all the conditions hereinabove stated in Article II, delivery to the Village of a certificate from Owner that all representations and warranties contained in Article V hereof are true and correct, and acceptance of the Watermain Extension by the Village as part of the Village's water system, the Village shall begin to make the Annual Installment Payment provided for below.
- B. The Village hereby agrees to pay Owner the Annual Installment Payment (as hereafter defined), beginning the last to occur of December 31, 2007 or the date that Owner has leased the Subject Property to a tenant and the tenant has taken possession of the Subject Property, and continuing on each anniversary thereof for (i) five (5) years or (ii) until the Village has paid Owner the total cost of the Watermain Extension as certified pursuant to Article II Section C., whichever occurs first, subject to the following calculations, deductions, terms and conditions:

1) The "**Annual Installment Payment**" shall mean an amount equal to the Sales Tax Revenues received by the Village from the State of Illinois, which are generated from sales on the Subject Property during the twelve month period preceding the payment date as referenced above. All amounts paid to Owner will be due and payable, solely from the Sales Tax Revenues received by the Village from the Subject Property, on the dates provided herein.

2) In no event shall the Village be obligated under this Agreement to make Annual Installment Payments to Owner, which, in the aggregate over the life of this Agreement, exceed the total certified costs for the Watermain Extension.

3.) Prior to making each Annual Installment Payment, the Village shall mail to Owner a letter, itemizing the gross Sales Tax receipts received from the State of Illinois for the preceding year, from retail sales on the Subject Property, any deductions to be retained by the Village, and the net dollar amount to be paid to Owner pursuant to this Agreement.

C. The Village shall provide for Annual Installment Payments required under this Agreement by appropriating an adequate amount therefor in its annual budget ordinance for the fiscal years in which such payments are due. The payments shall be the limited obligation of the Village payable solely out of the Sales Tax Revenues received from retail sales on the subject Property.

D. In the event Owner fails to deliver to the Village all of the foregoing certifications within the time periods set forth, or otherwise materially violates any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to Owner until such time as any such failure or violation is corrected to the reasonable satisfaction of the Village, and all rights of Owner to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected.

IV. UNDERTAKINGS ON THE PART OF OWNER

A. Owner shall complete the Watermain Extension in accordance with the schedule set forth herein and in accordance with the Final Plans, and all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, and all rules and regulations thereunder.

B. Owner recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Watermain Extension, including but not limited to approval of the Final Plans, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to

any claim against or liability to the Village pursuant to this Agreement, unless such failure arises out of the negligence or misconduct of the Village. Notwithstanding the foregoing the Village shall not exercise its authority under the subsection in an unreasonable manner.

- C. Owner shall provide the Village with a power of attorney letter addressed to, and in a form satisfactory to, the Illinois Department of Revenue authorizing the Illinois Department of Revenue to release to the Village Finance Director, for each calendar month, all gross revenue and Sales Tax Revenues information relating to retail sales on the Subject Property, which letter shall authorize such information to be released to the Village and shall be in the form attached hereto as EXHIBIT "C", and made part hereof, or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. No payments required under this Agreement shall have to be made by the Village without receipt of satisfactory information from the Illinois Department of Revenue indicating the Sales Tax Revenues generated from retail sales on the Subject Property for the time period covered by the applicable Annual Installment Payment. All such information received by the Village shall be considered confidential proprietary information and shall not be disclosed to any other person or entity by the Village or its Finance Director without the written consent of the business entity paying the Sales Tax Revenues to the Illinois Department of Revenue. For the purposes of this subsection it is the intent of the parties that such information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.
- D. Owner hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that it may at any time be lawfully finally assessed with respect to the Subject Property; provided, however, that Owner may withhold any such tax payment for which it has filed a formal protest, with a certified copy forwarded to the Village, pursuant to a prescribed statutory procedure allowing for such nonpayment until the protest has been ruled upon; provided further, however, that any payment required after such protest is ruled upon shall be promptly paid.
- E. Owner shall give the Village notice regarding any defaults on the payment of any Sales Tax due to the Illinois Department of Revenue from retail sales on the Subject Property.

V. REPRESENTATIONS AND WARRANTIES OF OWNER

- A. Owner hereby represents and warrants that the Watermain Extension requires economic assistance from the Village in order to complete it in accordance with the approved Final Plans, and, but for the economic assistance to be given by the Village as heretofore stated, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.

- B. Owner hereby represents and warrants that the Watermain Extension shall be constructed and fully completed in a good and workmanlike manner in accordance with the Final Plans approved by the Village.
- C. Owner hereby represents and warrants that it will not knowingly violate any applicable Village zoning ordinance or regulation, building or fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Subject Property unless they are being contested in a lawful manner.
- D. Owner hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State of Illinois, County of DuPage or the United States of America, and all agencies thereof as they relate to the Watermain Extension, unless they are being contested in a lawful manner.
- E. Owner hereby represents and warrants that it is an Illinois limited liability company in good standing.
- F. Owner will begin construction on the Watermain Extension on or before November 1 2007 except in the event Owner is unable to begin said construction due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war, casualty or act of God or other similar event beyond the reasonable control of Owner.
- G. Owner hereby represents and warrants that attached as EXHIBIT "A" is the legal description of the Subject Property and that said legal description is accurate and correct.

VI. DEFAULTS

The occurrence of any one of the following shall constitute an event of default by Owner under this Agreement:

- A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified;
- B. **Failure** of a representation or warranty of Owner contained herein to be materially true and correct when made.
- C. In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either Party hereto or bound by this Agreement, such Party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within the sixty (60) day period and the defaulting

Party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such Party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other Party. No waiver made by either Party with respect to any specific default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting Party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting Party in enforcing this Agreement. In the event of any litigation between the Parties hereto resulting from a breach of this Agreement, the prevailing Party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

VII. NOTICES

All notices and requests required pursuant to this Agreement shall be sent by personal delivery or certified mail, return receipt requested, and addressed as follows:

If to Owner:

19WLLC
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

With copies to:

Steven A. Felsenthal
Sugar, Friedberg, and Felsenthal LLP
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

Phil Cohen
2525 N. Elston Avenue, Suite D-230
Chicago, IL 60647

If to the Village: Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148

With copies to: Finance Director
Village of Lombard
255 East Wilson
Lombard, Illinois 60148

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

Thomas P. Bayer, Village Attorney
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Dr.
Suite 1660
Chicago, IL 60606

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

VIII. LAW GOVERNING

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and for the purposes of any lawsuit between the parties concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois.

IX. ASSIGNMENT

Owner shall not assign this Agreement to any person or entity without the prior written consent of the Village. No such assignment shall be effective, even if consented to by the Village, unless and until the assignee assumes in writing the obligations of Owner hereunder, and upon such assumption in writing, Owner shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement.

X. TIME

Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

XI. BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Village and Owner and their respective successors and assigns, subject however to the provisions of Articles IX and XII hereof.

XII. LIMITATIONS OF LIABILITY

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Owner hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents or employees in excess of such amounts and all and any such rights or claims of Owner against the Village, its officers, agents or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Owner, its officers, agents or employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Owner, its officers, agents and employees in excess of their obligations hereunder.

XIII. CONTINUITY

Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the assignment by Owner of this Agreement, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it by this Agreement until such obligations have been fully performed or until the Village, at its sole option, has otherwise released Owner from any or all of such obligations.

XIV. 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.

XV. 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 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.

XVI. SECTION HEADINGS AND SUBHEADINGS

All Article headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

XVII. AUTHORIZATION TO EXECUTE

The manager of Owner who has executed this Agreement warrants that he/she has lawfully authority to execute this Agreement on behalf of the Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. Owner and the Village shall deliver, upon request, to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

XVIII. AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between 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 are herein set forth. 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.

XIX. COUNTERPARTS

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

XX. CONFLICT BETWEEN THE TEXT AND EXHIBITS

In the event of a conflict in the provision of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

XXI. SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of any of its monetary obligations under Section III of this Agreement, then this Agreement shall terminate.

XXII. DEFINITION OF VILLAGE

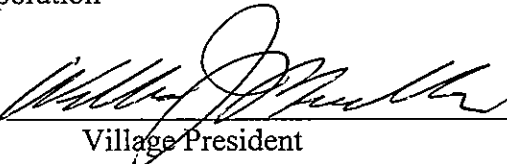
When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

XXIII. EXECUTION OF AGREEMENT

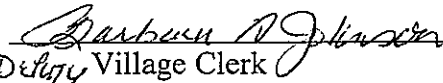
This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

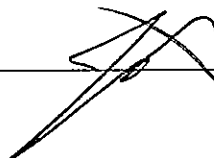
VILLAGE OF LOMBARD, an Illinois Municipal Corporation

By: 
Village President

ATTEST:

By: 
Deputy Village Clerk

OWNER
19 West LLC

By: 
Manager

ACKNOWLEDGMENTS

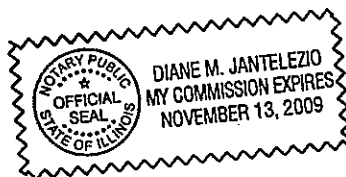
STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

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 same persons whose names are subscribed to the foregoing instrument, appeared before me this day 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 26th day of September, 2006.

Commission expires 11-13-09 , .

Diane M. Jantelezio
Notary Public



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 the above-named John Booth, personally known to me to be the Manager of 19WLLC and also personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, and that he/she appeared before me this day in person and acknowledged that as such Manager, he/she signed and delivered the said instrument, consenting to its recordation, pursuant to authority given by said company, as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 10th day of September,

2006.

Commission expires 10-17, 2007.

Jennifer L. Sherpan
Notary Public

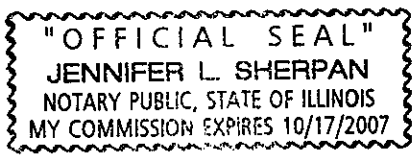


EXHIBIT A
Legal Description for Subject Property

THE WEST 117 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

EXHIBIT B
Public Watermain Exhibit

Exhibit B

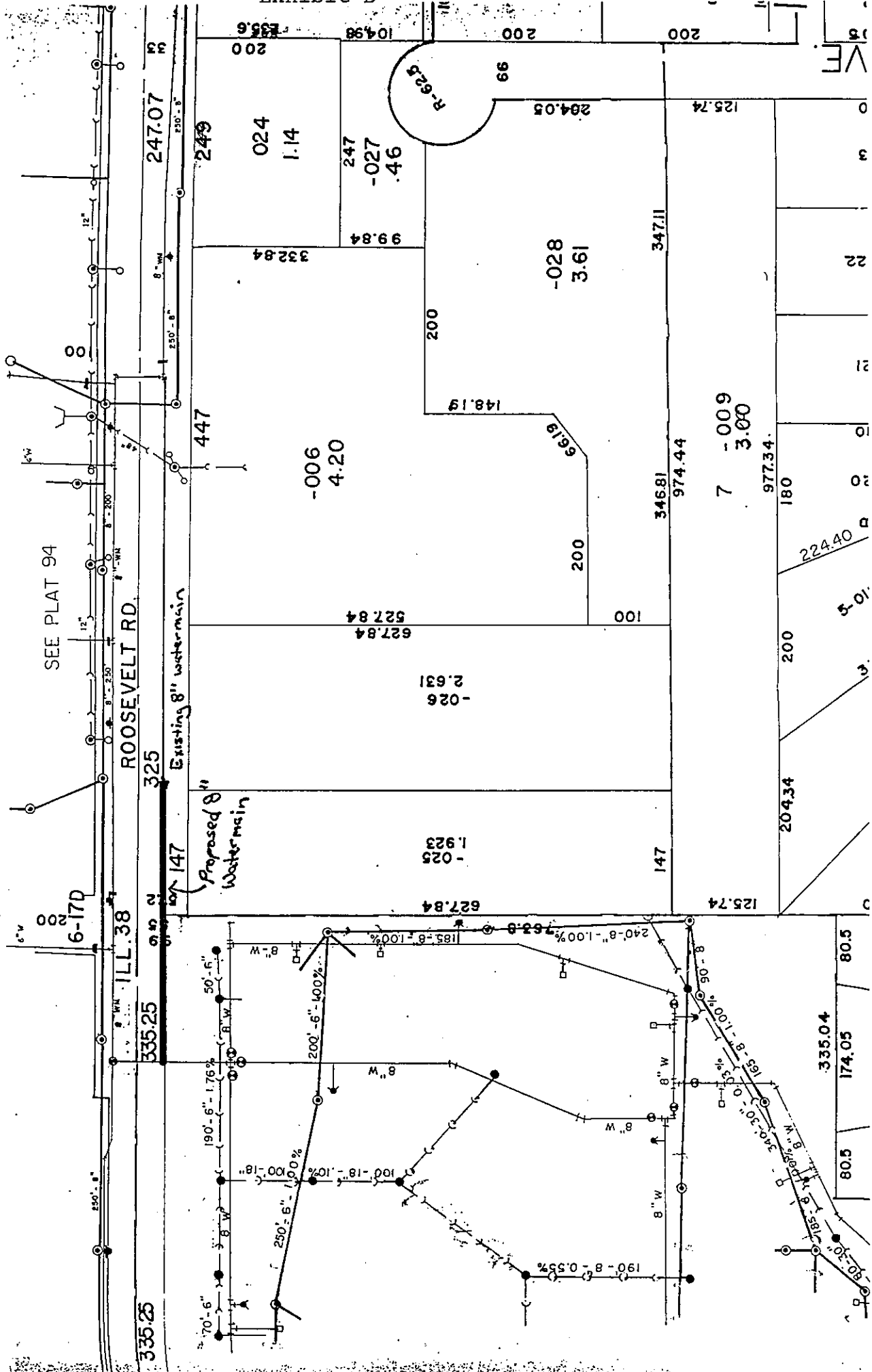


EXHIBIT C

**POWER OF ATTORNEY LETTER AUTHORIZING
THE ILLINOIS DEPARTMENT OF REVENUE
TO RELEASE GROSS REVENUE AND SALES TAX INFORMATION
TO THE VILLAGE OF LOMBARD**

The undersigned is an authorized officer (agent, principal) of _____ ("Taxpayer") which is doing business as a _____ (the "Store") located at 19W175 Roosevelt Road, in Lombard, Illinois (the "Village").

In order to induce the development of the Store, the Village is utilizing certain sales tax revenues in order to provide for reimbursement for construction of a public watermain.

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("DOR") to release to the Village the monthly amount of municipal retailer's occupation tax and municipal service occupation tax generated by Taxpayer, as shown in required filings with DOR.

TAXPAYER

By: _____

TAXPAYER ILLINOIS SALES TAX # _____

SUBSCRIBED and SWORN
before me this _____ day of _____, 20____.

NOTARY

(Seal)

**WATERMAIN CONSTRUCTION REIMBURSEMENT AGREEMENT FOR
19W175 ROOSEVELT ROAD**

THIS AGREEMENT is entered into on this 21ST day of SEPTEMBER, 2006, by the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "Village"); and 19WLLC, an Illinois Limited Liability Company (hereinafter referred to as "Owner"); (the Village and Owner are sometimes referred to herein individually as a "Party" or collectively referred to as the "Parties").

WITNESSETH:

Pursuant-to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, and 65 ILCS 5/8-11-20, and in consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a municipality lawfully existing under the constitution and laws of the State of Illinois.
- B. 19WLLC, is the owner of record for certain existing property improved with a retail commercial building (the "Subject Property") legally described in EXHIBIT "A" attached hereto and made part hereof, and located within the boundaries of the Village.
- C. Owner intends to improve the Subject Property with a public watermain connection and water service line to service the business establishment located on the Subject Property.
- D. The Village represented as part of an annexation agreement between the Owner and the Village (said annexation agreement having been approved by the Village on July 21, 2005 pursuant to Ordinance 5679) that it owns and maintains a public watermain to serve the water needs of the Subject Property, however, this representation did not address additional watermain improvements that would be required by the Village in order to provide water service into the building located on the Subject Property.
- E. In order to accommodate the watermain connection proposed by the Owner, the Village requires a watermain extension from its current watermain termination point East of the Subject Property to an existing watermain located West of the Subject Property, as depicted on EXHIBIT "B" attached hereto and made a part hereof (the "Watermain

Extension”), as the service line proposed by the Owner exceeds the length requirements set forth within the Village Code for utility connections.

- F. The Village is desirous of having the business on the Subject Property operated in accordance with the Village Code in order to service the needs of the Village and its residents.
- G. The Watermain Extension, if completed, will improve water quality and service in the vicinity of the Subject Property.
- H. In light of the foregoing, a portion of the cost of the Watermain Extension should properly be paid for by the Village, and, as such, the Village contemplates certain incentives under the terms and conditions hereinafter set forth to assist in the construction of same.
- I. The parties hereto acknowledge, and Owner represents and warrants, that while the Owner will construct the Watermain Extension, the Watermain Extension requires economic assistance from the Village in order to complete the same, and, but for the economic assistance to be given by the Village, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- J. For the purposes of this Agreement, the use of the terms "Sales Tax" and "Sales Tax Revenues" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as the "State") for distribution to the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, and the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, (as said Acts maybe amended) and which are collected by the State and distributed to the Village (currently such net portion is one percent (1%) of the total amount of gross sales within the Village, which are subject to the aforementioned taxes).

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by Owner on or before the dates hereinafter specified. In the event Owner does not comply in all material respects with the conditions precedent set forth in this Article II, then all obligations on the part of the Village pursuant to this Agreement shall be cancelled, and the Village shall have no further obligations with regard to the Watermain Extension, and any right on the part of Owner to demand performance thereof shall be deemed waived and also cancelled and of no force and effect.

- A. By September 1, 2007, Owner shall have applied for a building permit with the Village for the Watermain Extension, and have supplied the Village with an engineer's cost estimate for the Watermain Extension. If the contractor's cost proposal for the watermain extension exceeds the Engineer's Cost Estimate for the work to be performed, then the Owner shall submit the costs to the Village for approval prior to authorizing the contract to perform the public watermain construction activity.
- B. By October 1, 2007, Owner must have obtained final approval of its plans from any other governmental unit or agency, which has jurisdiction or authority over any portion of the Watermain Extension and/or plans. The submitted plans (hereinafter the "Final Plans") associated with the permit shall be in accordance with the regulations and ordinances of the Village, it being understood that the Village in its capacity as a municipal corporation has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve the final plan for the Watermain Extension, except for its willful misconduct. The "Final Plans" shall mean any and all documents, plans and drawings submitted to the Village in order to obtain any permit required by the Village relative to the Watermain Extension.
- C. By December 1, 2007, Owner must have completed the Watermain Extension and delivered to the Village a certified statement in regard to the total cost of the Watermain Extension along with a Bill of Sale for said Watermain Extension. Said certification shall be over the signature of the chief financial officer of Owner. Owner shall allow the Village Manager or his designee to review a breakdown of and supporting documentation for Owner's investment in the Watermain Extension.

III. UNDERTAKINGS ON THE PART OF THE VILLAGE

- A. Upon satisfaction by Owner of all the conditions hereinabove stated in Article II, delivery to the Village of a certificate from Owner that all representations and warranties contained in Article V hereof are true and correct, and acceptance of the Watermain Extension by the Village as part of the Village's water system, the Village shall begin to make the Annual Installment Payment provided for below.
- B. The Village hereby agrees to pay Owner the Annual Installment Payment (as hereafter defined), beginning the last to occur of December 31, 2007 or the date that Owner has leased the Subject Property to a tenant and the tenant has taken possession of the Subject Property, and continuing on each anniversary thereof for (i) five (5) years or (ii) until the Village has paid Owner the total cost of the Watermain Extension as certified pursuant to Article II Section C., whichever occurs first, subject to the following calculations, deductions, terms and conditions:

1) The "Annual Installment Payment" shall mean an amount equal to the Sales Tax Revenues received by the Village from the State of Illinois, which are generated from sales on the Subject Property during the twelve month period preceding the payment date as referenced above. All amounts paid to Owner will be due and payable, solely from the Sales Tax Revenues received by the Village from the Subject Property, on the dates provided herein.

2) In no event shall the Village be obligated under this Agreement to make Annual Installment Payments to Owner, which, in the aggregate over the life of this Agreement, exceed the total certified costs for the Watermain Extension.

3.) Prior to making each Annual Installment Payment, the Village shall mail to Owner a letter, itemizing the gross Sales Tax receipts received from the State of Illinois for the preceding year, from retail sales on the Subject Property, any deductions to be retained by the Village, and the net dollar amount to be paid to Owner pursuant to this Agreement.

C. The Village shall provide for Annual Installment Payments required under this Agreement by appropriating an adequate amount therefor in its annual budget ordinance for the fiscal years in which such payments are due. The payments shall be the limited obligation of the Village payable solely out of the Sales Tax Revenues received from retail sales on the subject Property.

D. In the event Owner fails to deliver to the Village all of the foregoing certifications within the time periods set forth, or otherwise materially violates any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to Owner until such time as any such failure or violation is corrected to the reasonable satisfaction of the Village, and all rights of Owner to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected.

IV. UNDERTAKINGS ON THE PART OF OWNER

A. Owner shall complete the Watermain Extension in accordance with the schedule set forth herein and in accordance with the Final Plans, and all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, and all rules and regulations thereunder.

B. Owner recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Watermain Extension, including but not limited to approval of the Final Plans, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to

any claim against or liability to the Village pursuant to this Agreement, unless such failure arises out of the negligence or misconduct of the Village. Notwithstanding the foregoing the Village shall not exercise its authority under the subsection in an unreasonable manner.

- C. Owner shall provide the Village with a power of attorney letter addressed to, and in a form satisfactory to, the Illinois Department of Revenue authorizing the Illinois Department of Revenue to release to the Village Finance Director, for each calendar month, all gross revenue and Sales Tax Revenues information relating to retail sales on the Subject Property, which letter shall authorize such information to be released to the Village and shall be in the form attached hereto as EXHIBIT "C", and made part hereof, or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. No payments required under this Agreement shall have to be made by the Village without receipt of satisfactory information from the Illinois Department of Revenue indicating the Sales Tax Revenues generated from retail sales on the Subject Property for the time period covered by the applicable Annual Installment Payment. All such information received by the Village shall be considered confidential proprietary information and shall not be disclosed to any other person or entity by the Village or its Finance Director without the written consent of the business entity paying the Sales Tax Revenues to the Illinois Department of Revenue. For the purposes of this subsection it is the intent of the parties that such information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.
- D. Owner hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that it may at any time be lawfully finally assessed with respect to the Subject Property; provided, however, that Owner may withhold any such tax payment for which it has filed a formal protest, with a certified copy forwarded to the Village, pursuant to a prescribed statutory procedure allowing for such nonpayment until the protest has been ruled upon; provided further, however, that any payment required after such protest is ruled upon shall be promptly paid.
- E. Owner shall give the Village notice regarding any defaults on the payment of any Sales Tax due to the Illinois Department of Revenue from retail sales on the Subject Property.

V. **REPRESENTATIONS AND WARRANTIES OF OWNER**

- A. Owner hereby represents and warrants that the Watermain Extension requires economic assistance from the Village in order to complete it in accordance with the approved Final Plans, and, but for the economic assistance to be given by the Village as heretofore stated, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.

B. Owner hereby represents and warrants that the Watermain Extension shall be constructed and fully completed in a good and workmanlike manner in accordance with the Final Plans approved by the Village.

C. Owner hereby represents and warrants that it will not knowingly violate any applicable Village zoning ordinance or regulation, building or fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Subject Property unless they are being contested in a lawful manner.

D. Owner hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State of Illinois, County of DuPage or the United States of America, and all agencies thereof as they relate to the Watermain Extension, unless they are being contested in a lawful manner.

E. Owner hereby represents and warrants that it is an Illinois limited liability company in good standing.

F. Owner will begin construction on the Watermain Extension on or before November 1, 2007 except in the event Owner is unable to begin said construction due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war, casualty or act of God or other similar event beyond the reasonable control of Owner.

G. Owner hereby represents and warrants that attached as EXHIBIT "A" is the legal description of the Subject Property and that said legal description is accurate and correct.

VI. DEFAULTS

The occurrence of any one of the following shall constitute an event of default by Owner under this Agreement:

A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified;

B. Failure of a representation or warranty of Owner contained herein to be materially true and correct when made.

C. In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either Party hereto or bound by this Agreement, such Party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within the sixty (60) day period and the defaulting

Party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such Party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other Party. No waiver made by either Party with respect to any specific default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting Party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting Party in enforcing this Agreement. In the event of any litigation between the Parties hereto resulting from a breach of this Agreement, the prevailing Party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

NOTICES

VII.

All notices and requests required pursuant to this Agreement shall be sent by personal delivery or certified mail, return receipt requested, and addressed as follows:

If to Owner:

19WLLC
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

With copies to:

Steven A. Felsenthal
Sugar, Friedberg, and Felsenthal LLP
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

Owner shall not assign this Agreement to any person or entity without the prior written consent of the Village. No such assignment shall be effective, even if consented to by the Village, unless and until the assignee assumes in writing the obligations of Owner hereunder, and upon such assumption in writing, Owner shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement.

IX. ASSIGNMENT

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and for the purposes of any lawsuit between the parties concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois.

VIII. LAW GOVERNING

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

Phil Cohen
 2525 N. Elston Avenue, Suite D-230
 Chicago, IL 60647

Village Manager
 Village of Lombard
 255 E. Wilson Avenue
 Lombard, IL 60148

Finance Director
 Village of Lombard
 255 East Wilson
 Lombard, Illinois 60148

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

Thomas P. Bayer, Village Attorney
 Klein, Thorpe and Jenkins, Ltd.
 20 N. Wacker Dr.
 Suite 1660
 Chicago, IL 60606

With copies to:

If to the Village:

Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the assignment by Owner of this Agreement, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it by this Agreement until such obligations have been fully performed or until the Village, at its sole option, has otherwise released Owner from any or all of such obligations.

XIII. CONTINUITY

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Owner hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents or employees or claims of Owner against the employees in excess of such amounts and all and any such rights or claims of Owner against the Village, its officers, agents or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Owner, its officers, agents or employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Owner, its officers, agents and employees in excess of their obligations hereunder.

XII. LIMITATIONS OF LIABILITY

This Agreement shall inure to the benefit of and shall be binding upon the Village and Owner and their respective successors and assigns, subject however to the provisions of Articles IX and XII hereof.

XI. BINDING EFFECT

Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

X. TIME

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Owner and the Village relative to the subject matter thereof, and there

XVIII. AMENDMENT

The manager of Owner who has executed this Agreement warrants that he/she has lawfully authority to execute this Agreement on behalf of the Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. Owner and the Village shall deliver, upon request, to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

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All Article headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

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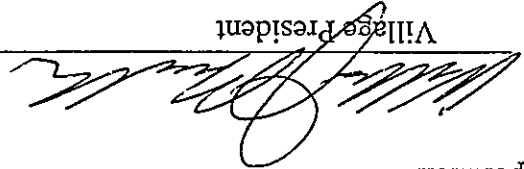
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XIX. COUNTERPARTS

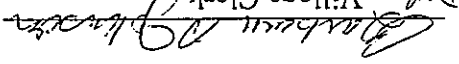
are no promises, agreements, conditions or understandings either oral or written, expressed or implied, between them, other than are herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

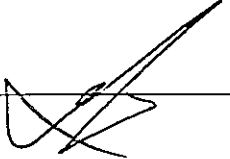
VILLAGE OF LOMBARD, an Illinois Municipal Corporation

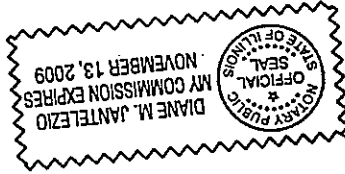
By:  Village President

ATTEST:

By:  Deputy Village Clerk

OWNER
19 West LLC

By:  Manager



Diane M. Jantelzio
Notary Public

Commission expires 11-13-09

GIVEN under my hand and official seal, this 26th day of September, 2006.

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 same persons whose names are subscribed to the foregoing instrument, appeared before me this day 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.

STATE OF ILLINOIS)
) SS)
COUNTY OF DUPAGE)

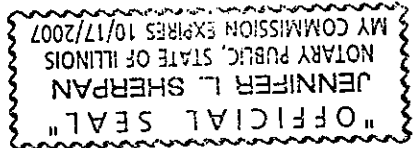
ACKNOWLEDGMENTS

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 the above-named Wm Both, personally

known to me to be the Manager of 19WLLC and also personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, and that he/she appeared before me this day in person and acknowledged that as such Manager, he/she signed and delivered the said instrument, consenting to its recordation, pursuant to authority given by said company, as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 19th day of September, 2006.



Commission expires 10-17, 2007.

Jennifer L. Sheppan
Notary Public

Parcel Index Number: 06-20-200-025

THE WEST 117 FEET OF THE WEST THIRD 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.

Legal Description for Subject Property

EXHIBIT A

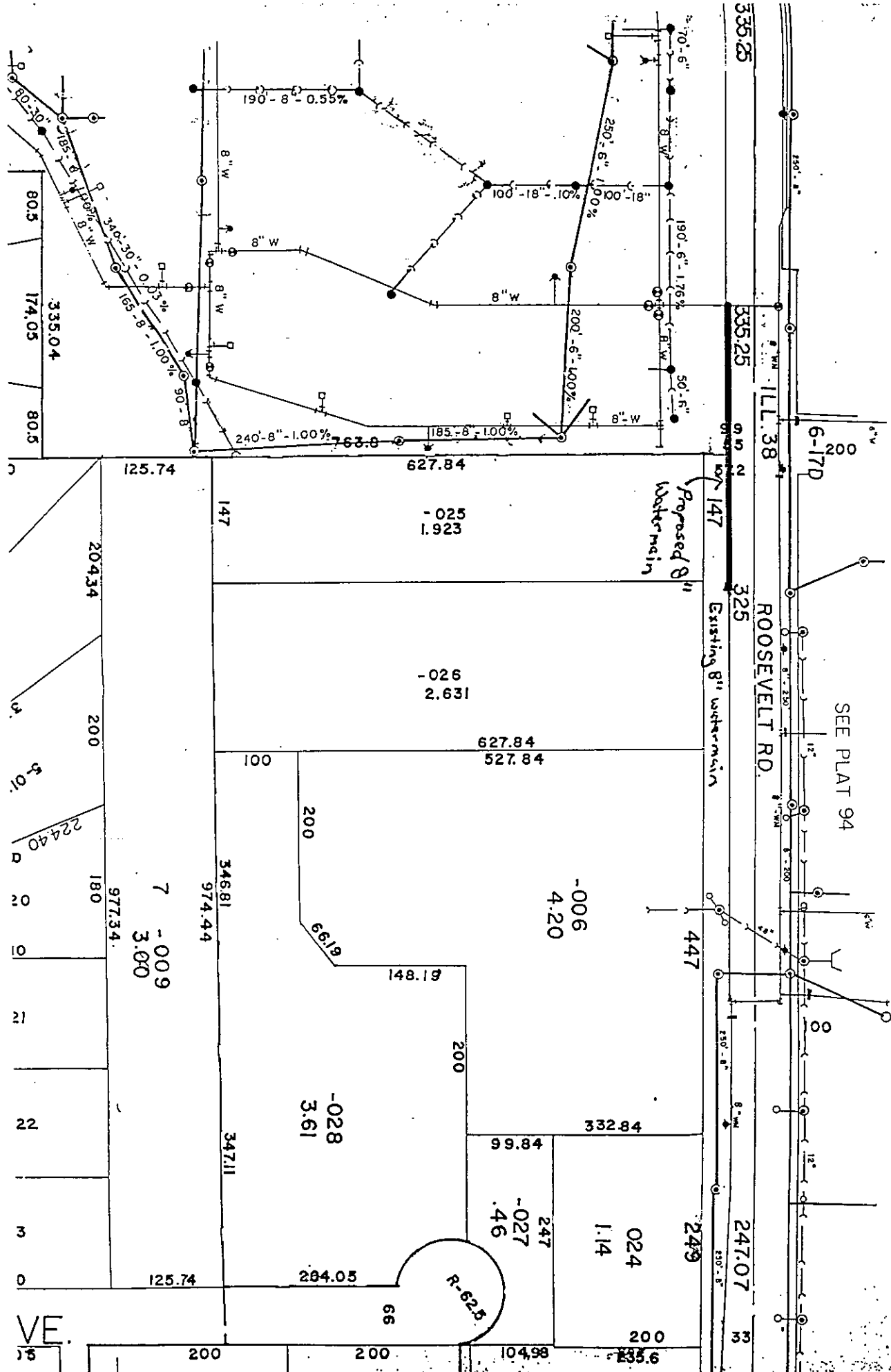


Exhibit B

VE

EXHIBIT C

POWER OF ATTORNEY LETTER AUTHORIZING
THE ILLINOIS DEPARTMENT OF REVENUE
TO RELEASE GROSS REVENUE AND SALES TAX INFORMATION
TO THE VILLAGE OF LOMBARD

The undersigned is an authorized officer (agent, principal) of _____ ("Taxpayer") which is doing business as a _____ (the "Store") located at 19W175 Roosevelt Road, in Lombard, Illinois _____ (the "Village").

In order to induce the development of the Store, the Village is utilizing certain sales tax revenues in order to provide for reimbursement for construction of a public watermain.

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("DOR") to release to the Village the monthly amount of municipal retailer's occupation tax and municipal service occupation tax generated by Taxpayer, a shown in required filings with DOR.

TAXPAYER

By: _____
TAXPAYER ILLINOIS SALES TAX # _____

SUBSCRIBED and SWORN
before me this _____ day of _____, 20____
NOTARY

(Seal)

ORDINANCE 5680

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

(PC 05-02: 19W175 Roosevelt Road)

(See also Ordinance No.(s) 5679, 5681)

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 19W175 Roosevelt Road, Lombard, Illinois and legally described as follows:

THE WEST 117 FEET OF THE WEST THIRD 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 Index Number: 06-20-200-025

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.

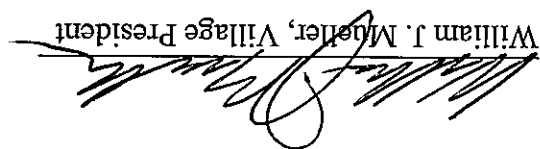
SECTION 5: This ordinance shall be in full force and effect from and after
its passage and approval as provided by law.

Passed on first reading this _____ day of _____, 2005.
First reading waived by action of the Board of Trustees this 21st day of July _____,
2005.

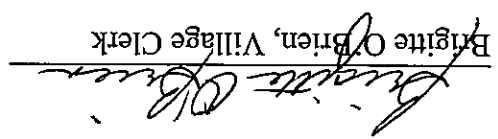
Passed on second reading this 21st day of July _____, 2005.

Ayes: Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom
Nays: _____ None
Absent: _____ None

Approved this 21st day of July _____, 2005.


William J. Mueller, Village President

ATTEST:


Brigitte O'Brien, Village Clerk

C

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P