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**SECOND AMENDMENT TO ANNEXATION AGREEMENT
BY AND BETWEEN
VLAND LOMBARD HIGHLAND, LLC
AND THE
VILLAGE OF LOMBARD**

After recording, please return to:
Village of Lombard
Department of Community Development
255 E. Wilson Avenue
Lombard, IL 60148

PERMANENT INDEX NUMBERS: 06-20-110-001, 002, 003, 004 and 005

COMMON STREET ADDRESS: SWC of Roosevelt & Highland/
SEC of Roosevelt & Garfield
Lombard, Illinois

SECOND AMENDMENT TO ANNEXATION AGREEMENT

THIS SECOND AMENDMENT TO ANNEXATION AGREEMENT (“The **Amendment**”) is made and entered into as of this ____ day of May, 2006, by and between the Village of Lombard, a municipal corporation (“The **Village**”) and Vland Lombard Highland LLC, an Illinois limited liability company (“**Developer**”).

WITNESSETH:

WHEREAS, Developer is the record owner of the property legally described in **EXHIBIT A** attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, Developer is also the record owner of that certain property legally described on **EXHIBIT B** attached hereto and made a part hereof, which property is within the corporate territorial limits of the Village and is contiguous to the Property along a portion of the south and west perimeter lines of the Property the “**Adjacent Property**”); and

WHEREAS, Developer acquired the Property from BP Products North America Inc., a Maryland corporation (the “**Prior Owner**”); and

WHEREAS, the Village and the Prior Owner previously entered into an Annexation Agreement, dated May 2, 2002, that governs the annexation, zoning and development of the Property and that was recorded against the Property with the DuPage County Recorder on September 30, 2002 as Document Number R2002-252316 (the “**Agreement**”); and

WHEREAS, pursuant to the Agreement, the Property has been annexed to the Village and has been rezoned to the B-3 Community Shopping District with certain conditional uses as more fully set forth in the Agreement; and

WHEREAS, the Village and the Developer previously entered into a First Amendment to the Agreement, dated October 7, 2004, (the “**First Amendment**”) that governs the annexation, zoning and development of the Property and the Adjacent Property, and that was recorded against the Property and the Adjacent Property with the DuPage County Recorder on December 3, 2004 as Document Number R2004-305031 (the Agreement, as amended by the First Amendment, being hereinafter referred to as the “**Amended Agreement**”); and

WHEREAS, the Developer desires to amend the development plans for the Property and the Adjacent Property for purposes not allowed by the Amended Agreement, and also desires to develop the Property and the Adjacent Property in accordance with a revised site plan, landscape plan and engineering plans that are inconsistent with the provisions of the Amended Agreement, and Developer, therefore, desires to amend the Amended Agreement in certain respects as hereinafter more fully set forth, including, without limitation, with respect to the provisions concerning (1) the

conditional uses that were previously approved for the Property and the Adjacent Property, (2) the variations from the Village's Zoning Ordinance (as defined below) that were previously approved for the Property and the Adjacent Property, and (3) the site plan, landscape plan, sign plan, engineering plans that are referenced in the Amended Agreement; and

WHEREAS, in furtherance of the foregoing, Developer has filed an application with the Village Clerk requesting (1) approval of a conditional use for a planned development amendment in the B-3 Community Shopping District, (2) deviations from the Village's Zoning Ordinance (as defined below), (3) deviations from the Village's Sign Ordinance (as defined below), and (4) conditional uses for a drive-through facility and for an outdoor dining/service establishment (the "**Developer's Second Application**"); and

WHEREAS, the Developer's Second Application was forwarded to the Plan Commission of the Village; and

WHEREAS, a public hearing on the Developer's Second Application was conducted by the Village's Plan Commission on April 17, 2006 pursuant to appropriate and legal notice, and the Plan Commission has submitted to the Corporate Authorities of the Village (the "**Corporate Authorities**") its findings of fact and recommendations with respect to the Developer's Second Application; and

WHEREAS, a public hearing on this Amendment was held by the Corporate Authorities on the ___ day of May, 2006; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the amendment of the Amended Agreement upon and subject to the terms and conditions contained in this Amendment; and

WHEREAS, all public hearings and other actions required to be held or taken prior to the adoption and execution of this Amendment, 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 the "**Zoning Ordinance**"), the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code – hereinafter the "**Subdivision Ordinance**"), and the Lombard Sign Ordinance (Chapter 153 of the Lombard Village Code – hereinafter the "**Sign 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 Amendment; and

WHEREAS, the Corporate Authorities of the Village and the Developer deem it to the mutual advantage of the parties and in the public interest that the Property and the Adjacent Property be developed as a part of the Village as provided in the Amended Agreement as amended by this Amendment; and

WHEREAS, the development of the Property and the Adjacent Property as provided in the Amended Agreement, as amended by this Amendment, will promote the sound planning and development of the Village as a balanced community and will be beneficial to the Village; and

WHEREAS, the Corporate Authorities of the Village have examined the proposed uses by Developer and have determined that said uses and the development of the Property and the Adjacent Property in accordance with the terms of the Amended Agreement as amended by this Amendment comply with the Comprehensive Plan of the Village; and

WHEREAS, Corporate Authorities and the Developer desire to amend the Amended Agreement as hereinafter set forth;

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 the Developer agree that the foregoing recitals are incorporated in this Amendment as if fully recited herein.

2. **Development of the Subject Property**: The Village and the Developer agree that the Property and the Adjacent Property hereinafter collectively referred to as the “**Subject Property**” legally described in Exhibit J attached hereto) shall be developed in accordance with the terms of the Amended Agreement as amended by this Amendment.

3. **Certain Capitalized Terms**. All references in the Amended Agreement to the term “**Subject Property**” shall mean and refer to the Subject Property as defined in this Amendment.

4. **Zoning**: Section 4 of the Amended Agreement is hereby deleted and substituted therefor is the following new Section 4: “Upon annexation of the Subject Property to the Village as set forth herein, the Corporate Authorities shall, without further public hearings, immediately: (a) rezone and classify the entire Subject Property from the R-1 Single Family residence District to the B-3 Community Shopping District under the Zoning Ordinance, with conditional uses for the Subject Property for (i) a planned development consisting of (A) one multi-tenant retail building of approximately ~~7,820~~ 19,760 square feet, and (B) a free standing bank building consisting of approximately ~~4,193~~ 4,042 square feet with related drive-through facility, ~~and (C) future retail and/or restaurant buildings,~~ (ii) a drive-through facility, and (iii) an outdoor dining/service establishment; (b) grant various variations and exceptions from the Village’s ordinances, rules and codes as set forth in Section 15 below; and (c) approve the second resubdivision of the Subject Property in accordance with the “Plat” (as hereinafter defined)”.

5. **Site Plan Approval:** (a) Section 5 of the Amended Agreement is hereby amended by deleting in its entirety the first paragraph thereof and by substituting therefor the following new paragraph: "Developer shall develop the Subject Property in substantial compliance with the Site Plan attached hereto as **EXHIBIT C** and entitled "V-Land Lombard, Roosevelt Rd & Highland Ave, Site Plan – Overall C200", prepared by Woolpert LLC, as last revised on ~~August 5, 2004~~ April 5, 2006 ("**Site Plan**"), which Site Plan is hereby incorporated herein by reference as the same shall be approved by the Village (with any modifications thereto, including those described below in this Section 5). In addition, the Subject Property shall be landscaped in substantial compliance with the landscape plan attached hereto as **EXHIBIT D** and entitled "Landscape Plan LP1" ("**Landscape Plan**") prepared by ~~Arcline Associates~~, as last revised ~~July 2, 2004~~ Woolpert LLC, as last revised on April 5, 2006, which Landscape Plan is hereby incorporated herein by reference as the same is approved by the Village (with any modifications thereto). Further, the Subject Property shall be subdivided in substantial compliance with the plat of subdivision attached hereto and incorporated herein by reference as **EXHIBIT E** and entitled "Preliminary Resubdivision Plat" ("**Plat**") prepared by Woolpert LLP. The buildings to be constructed upon Lot 1 and Lot 2 of the Subject Property (as those Lots are so designated on the Plat) shall substantially conform to the exterior elevations for, respectively, the multi-tenant retail building prepared by Arcline Associates, last revised ~~July 28, 2004~~ March 1, 2006, and the exterior elevations for the bank building prepared by ~~Griskelis Young Harnell~~, last revised ~~August 9, 2004~~ Interplan Midwest LLC Architects, last revised April (date to be inserted), 2006, collectively depicted in **EXHIBIT F** attached hereto and incorporated herein by reference (collectively, the "**Exterior Elevations**").

(b) Additionally, notwithstanding any provision of this Amended Agreement to the contrary, the following shall be requirements of the development of the Subject Property:

~~(i) any trash enclosure screening required by Section 155.710 of the Zoning Ordinance shall be constructed of a material that is consistent with the principal building served by said enclosure;~~

~~(ii) only channel lettering shall be used for wall signs;~~

~~(iii) awnings, if any, shall not contain any text;~~

~~(iv) any watercourse brick that is a part, and near the foundation, of a building shall be compatible with any other brick that forms a part of such building;~~

~~(v) the perimeter of any outdoor dining area shall be fenced, with the design of the fence to be subject to the reasonable prior approval of the Village's Director of Community Development;~~

~~(vi) any Lot forming a part of the Subject Property from time to time that is not developed as part of the Phase I Improvements (as defined in Section 15(e) below) and that does not have a building on it shall be graded to a level surface, seeded and~~

~~maintained in a clean and attractive condition until such time as such Lot is further developed;~~

~~(vii) a post and rail fence shall be installed along the north line of Lot 5 (as designated on the Plat) of the Subject Property, and shall be maintained there until such time as the Tavern (as defined in Section 15(c) below) is demolished pursuant to the provisions of said Section 15(c); and~~

~~(viii) the Landscape Plan shall be modified as follows:~~

~~———(A) additional landscape plantings meeting the transitional landscape yard requirements of the Zoning Ordinance shall be provided along the Subject Property's south property line;~~

~~———(B) additional trees shall be planted around the perimeter of the detention pond that is intended for Lot 4 of the Development, consistent with Section 154.508 of the Subdivision Ordinance; and~~

~~———(C) additional landscape plantings consisting of a shade tree and approved ground cover shall be placed on the landscape island located to the south of the outdoor dining area that is depicted on the Site Plan.~~

- (i) Any trash enclosure screening required by Section 155.710 of the Village Code shall be constructed of material consistent with the principal building to which the enclosure relates.
- (ii) The Developer of the Subject property shall allow for cross-access and cross parking between each lot within the proposed resubdivision of the Subject Property.
- (iii) The Developer shall provide requisite fees to cover the cost of providing parkway trees around the perimeter of the site, consistent with Section 155.705 (C) of the Village Code. Where proposed trees are within an area proposed for an environmental barrier, a vault shall be provided for the trees. Where insufficient right-of-way width precludes placement of parkway trees within the right-of-way itself, the Developer shall install the plantings on the adjacent private property.
- (iv) Should construction on the project not commence within ninety (90) days from the date of approval of the Amendment, the Developer shall provide four inches (4") of graded topsoil over the Subject Property and shall seed the Subject Property.
- (v) The West end-cap tenant space within the multi-tenant retail building shall be developed as a single sit-down restaurant of at least 5,491 square feet in size. The remainder of the multi-tenant retail building shall not be

subdivided or partitioned to have more than five (5) separate tenant spaces or business establishments.

- (vi) Upon a request by the Village, the Developer shall provide for an easement for a future bus shelter to be located adjacent to Roosevelt Road, with the final location to be determined by the Village.
- (vii) To ensure that the proposed signage, awnings and building elevations present a favorable appearance to neighboring properties and are consistent with the planned development objectives, the Subject Property shall be developed and operated as follows:
 - a. Only Channel lettering shall be used for the wall signs.
 - b. The perimeter of the proposed outdoor dining area for the restaurant in the multi-tenant retail building shall be fenced, with the design of the fence subject to the approval of the Director of Community Development.
 - c. All rooftop mechanical equipment shall be screened pursuant to Section 155.221 of the Village Code.
 - d. The North, West and East elevations of the proposed shopping multi-tenant retail building shall be constructed and maintained so as not to have any exterior doors other than those absolutely necessary for customer/employee access or as required by the Lombard Fire Department.

6. **Signage:** Section 6 of the Amended Agreement is hereby deleted in its entirety and substituted therefor is the following new Section 6: “Developer agrees to construct a system of signage throughout the Subject Property in accordance with the Exterior Elevations and in full compliance with the Sign Ordinance of the Village, as varied or amended by this Agreement.”

7. **Water Utilities:** Section 7 of the Amended Agreement is hereby deleted in its entirety and substituted therefor is the following new Section 7: “The Subject Property has water service available from the Village. Developer, at its own expense, shall install water main extensions in accordance with the lawful requirements of the Village, the Subdivision Ordinance, as varied by this Agreement, and in substantial compliance with the plans and specifications entitled “V-Land Lombard Preliminary Site Improvement Plans”, prepared by Woolpert LLC, dated ~~August 5, 2004~~ April 5, 2006, approved by the Director of Public Works of the Village, or a duly authorized representative, and set forth in **EXHIBIT H** attached hereto and incorporated herein by reference (“**Engineering Plans**”), as modified by any final engineering plans hereafter approved by the Village for the Subject Property with changes as required. Owner and Developer shall grant or dedicate all easements required by the Village for the construction of the necessary water main extensions serving the Subject Property. The Village shall fully cooperate with Developer with respect to the application for and issuance of Illinois Environmental Protection Agency permits for the construction and connection of the water facilities. Developer agrees to pay the Village the tap-on,

connection and service fees imposed upon the Subject Property by the Village relative to water service.”

8. **Sanitary Sewer Facilities.** The term “Engineering Plans”, as used in Section 8 of the Amended Agreement, shall mean the Engineering Plans, as defined in this Amendment.

9. **Storm Drainage Facilities.** The term “Engineering Plans”, as used in Section 9 of the Amended Agreement, shall mean the Engineering Plans, as defined in this Amendment.

10. **Variations and Exceptions from Local Codes:** Section 15 of the Amended Agreement is hereby deleted in its entirety and substituted therefor is the following amended Section 15: “The specific variations and exceptions from the Village's ordinances, rules, and codes, as set forth in **EXHIBIT I** attached hereto and made a part hereof, have been requested, approved and shall be permitted with respect to the development, construction, and use of the Subject Property. In the event there are any technical variations or deviations that are presently indicated on the Site Plan, but not explicitly stated on the attached **EXHIBIT I**, that shall in no way invalidate or nullify the Site Plan. Rather, those variations or deviations that are not so indicated shall nevertheless be considered lawful and approved variations or deviations, as if fully set forth on the attached **EXHIBIT I**.”

11. **Village Acknowledgements.** The Village acknowledges the following, each of which is made as of the date of this Amendment:

(a) Neither the Developer nor the Prior Owner are in default under the Amended Agreement, including, without limitation, under Section 23(B)(2) of the Amended Agreement.

(b) The condition described in Section 23(B)(4) of the Amended Agreement has been fully and completely satisfied in accordance with the terms of the Amended Agreement.

(c) The Village is not owed any monies pursuant to Section 23(H) of the Amended Agreement. Developer agrees that, concurrently with the approval of this Amendment, it shall reimburse the Village for the following expenses incurred in the preparation and review of this Amendment, and any ordinances, letters of credit, plats, easements or other documents in connection with this Amendment: (i) the reasonable costs incurred by the Village for engineering services; (ii) all reasonable attorneys' fees incurred by the Village in connection with the preparation and review of this Amendment; and (iii) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expenses.

12. **Exhibits.** The exhibits that are attached to and made a part of this Amendment supersede and nullify their counterpart exhibits that are attached to the First Amendment.

13. **Effectiveness of the Agreement.** The Amended Agreement (including the exhibits that are a part thereof), except to the extent expressly amended by this Amendment, remains in full force and effect. In the event of any conflict between the expressly stated provisions of this Amendment and the expressly stated provisions of the Amended Agreement, this Amendment shall govern and control.

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

VILLAGE OF LOMBARD, an Illinois

Municipal corporation

By: _____

Name: _____

Title: Its President

Name: _____

Title: Village Clerk

DEVELOPER

VLAND LOMBARD HIGHLAND, LLC

By: _____

Name: Steven J. Panko

Title: Its Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 2 AND 3 AND THE EAST 21 FEET OF LOT 4 IN ROOSEVELT HIGHLANDS SHOPPING CENTER, BEING A SUBDIVISION OF PART OF THE WEST ½ OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 26, 1954 AS DOCUMENT 738449, IN DU PAGE COUNTY, ILLINOIS.

EXHIBIT B

LEGAL DESCRIPTION OF THE ADJACENT PROPERTY

PARCEL 1:

LOT 4 (EXCEPT THE EAST 21 FEET) IN ROOSEVELT HIGHLANDS SHOPPING CENTER, A SUBDIVISION OF PART OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 26, 1954 AS DOCUMENT 738449, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

LOT 1 IN MERL RESUBDIVISION OF LOT 33, EXCEPT THE WEST 25 FEET THEREOF, ALL OF LOTS 34, 35, 36, 37, 38, 39 AND 40, ALL IN HARRISON HOMES, INC. LOMBARD VILLA UNIT NUMBER 2, BEING A SUBDIVISION OF PART OF WEST ½ OF THE NORTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 22, 1976 AS DOCUMENT R76-84675, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

LOT 2 MERL RESUBDIVISION OF LOT 33, EXCEPT THE WEST 25 FEET THEREOF, ALL OF LOTS 34, 35, 36, 37, 38, 39 AND 40, ALL IN HARRISON HOMES, INC. LOMBARD VILLA UNIT NUMBER 2, BEING A SUBDIVISION OF PART OF WEST ½ OF THE NORTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 22, 1976 AS DOCUMENT R76-84675, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT C

SITE PLAN

EXHIBIT D

LANDSCAPE PLAN

EXHIBIT E

PRELIMINARY RESUBDIVISION PLAT

EXHIBIT F

EXTERIOR ELEVATIONS

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

ENGINEERING PLANS

EXHIBIT I

VARIATIONS AND EXCEPTIONS

NOTE: ALL LOT DESIGNATIONS ON THIS EXHIBIT I ARE TO THE LOTS, AS SHOWN ON THE PRELIMINARY SUBDIVISION PLAT ATTACHED AS EXHIBIT E TO THE SECOND AMENDMENT TO ANNEXATION AGREEMENT TO WHICH THIS EXHIBIT I IS ALSO ATTACHED.

FOR LOT 1:

- a. A deviation from Section 155.706 (C) and 155.709 (B) of the Village Code reducing the required perimeter parking lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access and parking;
- b. A deviation from Section 153.234(F) of the Village Code to allow for a free-standing sign to be located closer than seventy-five feet (75') from the center line of the adjacent right-of-way; and
- c. A deviation from Section 153.505 (B)(17)(b)(2) of the Village Code to allow for more than one (1) wall sign for interior tenants.

FOR LOT 2:

- a. A variation from Sections 155.706 and 155.709 of the Village Code to reduce requisite parking lot and perimeter landscaping requirements;
- b. A deviation from Section 155.706 (C) and 155.709 (B) of the Village Code reducing the required perimeter parking lot landscaping from five feet (5') to zero feet (0') to provide for shared cross-access and parking;
- c. A deviation from Section 153.505 (B)(17)(a)(2) of the Village Code to allow for more than one (1) wall sign on a street frontage.

EXHIBIT J

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

Lots 1 through 5 in V-Land Lombard Highland Subdivision, being a subdivision of part of the west one-half of the northwest quarter of Section 20, Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded November 18, 2005 as Document R2005-258891, in DuPage County, Illinois.

Parcel Numbers: 06-20-110-001, 002, 003, 004, and 005

**201, 205 and 211 E. Roosevelt Road; 1200 South Highland Av.;
and 112-116 & 120-124 E. 13th Street (Southwest Corner of
Roosevelt & Highland), Lombard, Illinois**