

YORK CENTER NEIGHBORHOOD
ANNEXATION AGREEMENT (SCHOOL STREET PROPERTIES)

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 17th day of June, 2010, by and between the **VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as "Village"); and

KIMBERLY CAMIRE SEARS

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

WITNESSETH:

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

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

WHEREAS, the Subject Property is approximately .79 acres in size and there are 2 electors residing thereon; and

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

WHEREAS, a public hearing on this Agreement was held by the corporate authorities of the Village (hereinafter referred to as the "Corporate Authorities") on June 17, 2010 and

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

WHEREAS, all public hearings and other actions required to be held or taken prior to the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **SANITARY SEWER FACILITIES.** The Subject Property is located within the Facilities Planning Area (“FPA”) of the Flagg Creek Water Reclamation District (the “District”) and is currently connected to and is served by a sanitary sewer service system provided by the District. The Village agrees to not require the disconnection of the Subject Property from the District provided that the District has sufficient capacity to serve the Subject Property.

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

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

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

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

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

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

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

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

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

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

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

19. **SPECIAL ASSESSMENT OR SPECIAL SERVICE AREA:** Owner agrees that Owner will not object to the creation of a Special Assessment or Special Service Area incorporating the Subject Property with respect to the construction of any public improvements affecting the area of the Subject Property which may become necessary at a future date. The assessment formula for any such future Special Assessment(s) or Special Service Area(s) shall be determined as required by law, taking into account the relative benefit to the Subject Property as a result of the public improvements constructed.

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

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

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

23. GENERAL PROVISIONS.

- A. **Notices.** Notice or other writings which any party is required to, or may wish to, serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village or
Corporate Authorities:

President and Board of Trustees
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

With Copies to:

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

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

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

If to the Owner:

Kimberly Camire Sears
1210 S. School Street
Lombard, IL 60148

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

B. Continuity of Obligations.

- (1) The provisions of this Agreement shall be binding upon the successors in title to the Owner for the term of this Agreement.
- (2) All the terms and conditions of this Agreement shall constitute covenants running with the land.

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

D. Remedies. The Village and Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by either Party, or their successors or assigns, which default exists uncorrected for a period of thirty (30) days after written notice to the Party to such default, the Party seeking to enforce said provision shall have the right of specific performance and if said Party prevails in a court of law, it shall be entitled to specific performance. It is further expressly agreed by and between the Parties hereto that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the Parties, or their successor or successors in title.

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

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

- G. Survival of Representation.** Each of the Parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.
- H. Captions and Paragraph Headings.** The captions and paragraph headings used herein are for convenience only and are not part of this Agreement and shall not be used in construing it.
- I. No Waiver or Relinquishment of Right to Enforce Agreement.** Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other property imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- J. Village Approval or Direction.** Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.
- K. Recording.** A copy of this Agreement and any amendment thereto shall be recorded in the Office of the DuPage County Recorder by the Village, with the terms of this Agreement constituting covenants running with the land for the Term of this Agreement.
- L. Authorization to Execute.** Owner has been lawfully authorized to execute this Agreement on behalf of said Owner. The President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board to execute this Agreement. The Owner and Village shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required, to legally verify the authority to so execute this Agreement on behalf of the respective entities.
- M. Amendment.** This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the Owner and the

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

- N. Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- O. Conflict Between the Text and Exhibits.** In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.
- P. Definition of Village.** When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.
- Q. Execution of Agreement.** This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement.
- R. Terms of Agreement.** This Agreement shall be in full force and effect for a term of twenty (20) years from and after date of execution of this Agreement.
- S. Venue.** The parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

York Center Neighborhood Annexation Agreement
1210 S. School Street

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

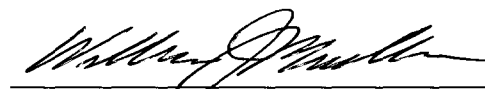
VILLAGE OF LOMBARD

ATTEST:

By:


Brigitte O'Brien
Village Clerk

By:


Name: William J. Mueller
Its: President

Dated: June 17, 2010

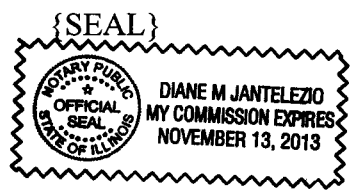
OWNER:

Kimberly Sears

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 17th day of June, 2010 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 17th day of June, 2010.



Diane M Jantelezio
Notary Public
Print Name: Diane M. Jantelezio
My Commission Expires: 11/13/2013

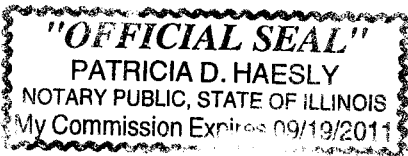
STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that Kimberly A Sparks, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this 19th day of April, 2010 in person and acknowledged that he signed and delivered the said instrument, as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 19th day of April,
2010.

{SEAL}

Patricia D. Haesly
Notary Public
Print Name: PATRICIA D. HAESLY
My Commission Expires: 9-19-2011



SCHEDULE OF EXHIBITS

EXHIBIT A

LEGAL DESCRIPTION

York Center Neighborhood Annexation Agreement
1210 S. School Street

EXHIBIT A

Lot 8 in Block 2 and the South 18.0 Feet of Lot 9 in Block 2 in West York Center Community Co-operative, Inc. Subdivision, being a Subdivision of part of the Northeast $\frac{1}{4}$ of Section 20, Township 39 North, Range 11, East of the Third Principal Meridian, and part of the Northwest $\frac{1}{4}$ of Section 21, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded May 17, 1947 as Document 521197 and Certificate of Correction filed December 17, 1947 as Document 536351, in DuPage County Illinois.

Parcel Identification Number: 06-21-100-009 and 06-21-100-008
Address: 1210 S. School Street, Lombard, IL