

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


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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: July 13, 2005 (BOT) Date: July 21, 2005

TITLE: PC 05-02: 19W175 Roosevelt Road

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration a petition requesting that the Village take the following actions on the property:

1. Ordinance approving an Annexation Agreement (2/3 of Corporate Authorities Vote Required);
 2. Ordinance annexing the property into the Village of Lombard; and
 3. Ordinance approving a map amendment to rezone the property from the R1 Single-Family Residence District to the B3 Community Shopping District.
- (UNINCORPORATED)

The Plan Commission recommended approval of this petition.

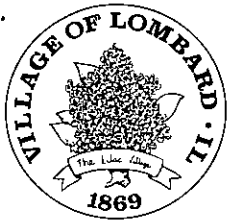
Staff is requesting waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):


Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <u>W. T. Lichter</u>	Date <u>7/13/05</u>

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



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development 

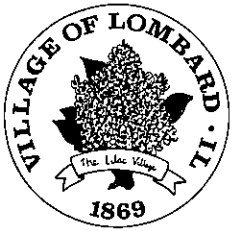
DATE: July 21, 2005

SUBJECT: PC 05-02; 19W175 Roosevelt Road

Attached please find the following items for Village Board consideration as part of the July 21, 2005 Village Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 05-02;
3. An Ordinance approving an Annexation Agreement;
4. An Ordinance annexing the property into the Village;
5. An Ordinance approving a rezoning of the property to the B3 Community Shopping District;
and
6. Site plans associated with the petition.

As the Village Board is canceling its scheduled August 4, 2005 meeting, staff is requesting a waiver of first reading of the aforementioned Ordinances.



VILLAGE OF LOMBARD

255 E. Wilson Avenue
Lombard, IL 60148-3926
(630) 620-5700 FAX: (630) 620-8222
TDD: (630) 620-5812
www.villageoflombard.org

Village President
William J. Mueller

Village Clerk
Brigitte O'Brien

Trustees
Greg Alan Gron, Dist. 1
Richard J. Tross, Dist. 2
John "Jack" T. O'Brien, Dist. 3
Steven D. Sebby, Dist. 4
Kenneth M. Florey, Dist. 5
Rick Soderstrom, Dist. 6

Village Manager
William T. Lichter

July 21, 2005

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

Subject: PC 05-02: 19W175 Roosevelt Road

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner is requesting that the Village take the following actions on the subject property:

1. Approve an Annexation Agreement;
2. Annex the property into the Village of Lombard; and
3. Approve a map amendment to rezone the property from the R1 Single-Family Residence District to the B3 Community Shopping District.

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."

"The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on June 20, 2005. Philip Cohen introduced himself as the representative for the property owner and stated that he was available for questions.

Chairperson Ryan then opened the meeting for public comment. There were no comments in favor or in opposition to the proposal. Chairperson Ryan then requested the staff report.

Jennifer Backensto, Planner I, reiterated the requested actions and summarized the project. She noted that the existing use complies with the recommendations of the Comprehensive Plan. The property is located along the Roosevelt Road commercial corridor and is surrounded on three sides by other commercial properties. The existing uses are compatible with the surrounding land uses to the north, east, and west. The wetland area located on the southern portion of the property creates a buffer between the commercial uses on the property and the single-family residences to the south. Therefore, staff finds that the existing uses are compatible with adjacent land uses.

July 21, 2005

PC 05-02

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Ms. Backensto then discussed the proposed map amendment to the B3 Community Shopping District. Staff finds that this amendment can be supported as the abutting properties to the north, east and west of the project are zoned B3. The zoning designation would be compatible with the adjacent commercial properties and would be consistent with past zoning actions and the trend of development for properties abutting the subject property.

Ms. Backensto concluded by stating that the subject property meets all bulk requirements for the B3 Community Shopping District with the exception of the western interior side yard. The site does not contain enough parking spaces to accommodate the 4 spaces per 1,000 square feet of gross floor area that is required for retail establishments. However, since there are no improvements associated with this petition, staff is comfortable leaving these deficiencies as legal nonconforming. They could then be addressed in the event the property redevelops or switches to a more parking-intensive use such as a restaurant.

Chairperson Ryan opened the public hearing for discussion and questions by the Plan Commission.

Commissioner Flint made a motion for approval of the petition, which was seconded by Commissioner Burke.

After due consideration of the petition and the testimony presented, the Plan Commission found that the petition complies with the standards required by the Lombard Zoning Ordinance. Therefore, the Plan Commission, by a roll call vote of 4-0, recommended to the Corporate Authorities **approval** of the petition associated with PC 05-02.

Respectfully,

VILLAGE OF LOMBARD


Donald F. Ryan
Lombard Plan Commission

att-

c. Petitioner

Lombard Plan Commission

VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW GROUP REPORT

TO: Lombard Plan Commission

HEARING DATE: June 20, 2005

FROM: Department of
Community Development

PREPARED BY: Jennifer Backensto, AICP
Planner I

TITLE

PC 05-02; 19W175 Roosevelt Road: The petitioner is requesting that the Village take the following actions on the subject property:

1. Approve an Annexation Agreement;
2. Annex the property into the Village of Lombard; and
3. Approve a map amendment to rezone the property from the R1 Single-Family Residence District to the B3 Community Shopping District.

GENERAL INFORMATION

Petitioner/Agent for Owner: Philip R. Cohen
2525 N. Elston Avenue, Suite D-230
Chicago, IL 60647

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

PROPERTY INFORMATION

Existing Land Use: Retail (carpet and other flooring) store

Size of Property: 1.93 acres

Comprehensive Plan: Recommends Community Commercial

Existing Zoning: DuPage County B-1 Local Business District

Surrounding Zoning and Land Use:

North: B3 Community Shopping District – commercial retail uses

South: DuPage County R-3 Single-Family Residence District – single-family homes

East: B3 Community Shopping District – commercial retail uses

West: B3 PD Community Shopping District Planned Development – High Point Centre shopping center

ANALYSIS

SUBMITTALS

This report is based on the following documents filed with the Department of Community Development on May 31, 2005:

1. Petition for Public Hearing.
2. Proposed Grading & Drainage Plan, prepared by Civil Engineering Services, Inc. and dated May 16, 1985.

DESCRIPTION

The subject property is a commercial building, currently occupied by Carpetville, located on Roosevelt Road immediately east of High Point Centre. There is a designated wetland area on the southern portion of the property.

INTER-DEPARTMENTAL REVIEW COMMENTS

Fire and Building

The Fire Department/Bureau of Inspectional Services has no comments at this time.

Engineering – Public Works

The Public Works Engineering Division has no comments related to drainage, utilities or the public right-of-way.

Engineering – Private Engineering

The Private Engineering Services Division has no comments on this petition.

Utilities

The Utilities Division of the Department of Public Works has no comments.

Planning

Compatibility with the Comprehensive Plan

The Long-Range Plan Map of the Comprehensive Plan recommends that the property be used for Community Commercial uses. The existing uses comply with the recommendations of the Comprehensive Plan.

Compatibility with the Surrounding Land Uses

The property is located along the Roosevelt Road commercial corridor and is surrounded on three sides by other commercial properties. The existing uses are compatible with the surrounding land uses to the north, east, and west. The wetland area located on the southern portion of the property creates a buffer between the commercial uses on the property and the single-family residences to the south. Therefore, staff finds that the existing uses are compatible with adjacent land uses.

Compatibility with the Zoning Ordinance

Upon annexation to the Village, properties are automatically classified as R1 Single-Family Residential properties. The petitioner is requesting a map amendment to zone the properties into the B3 Community Shopping District.

Staff finds that this amendment can be supported as the abutting properties to the north, east and west of the project are zoned B3. The zoning designation would be compatible with the adjacent commercial properties and would be consistent with past zoning actions and the trend of development for properties abutting the subject property.

The subject property meets all bulk requirements for the B3 Community Shopping District with the exception of the western interior side yard (see Table 1). The site does not contain enough parking spaces to accommodate the 4 spaces per 1,000 square feet of gross floor area that is required for retail establishments. However, since there are no improvements associated with this petition, staff is comfortable leaving these deficiencies as legal nonconforming. They could then be addressed in the event the property redevelops or switches to a more parking-intensive use (such as a restaurant).

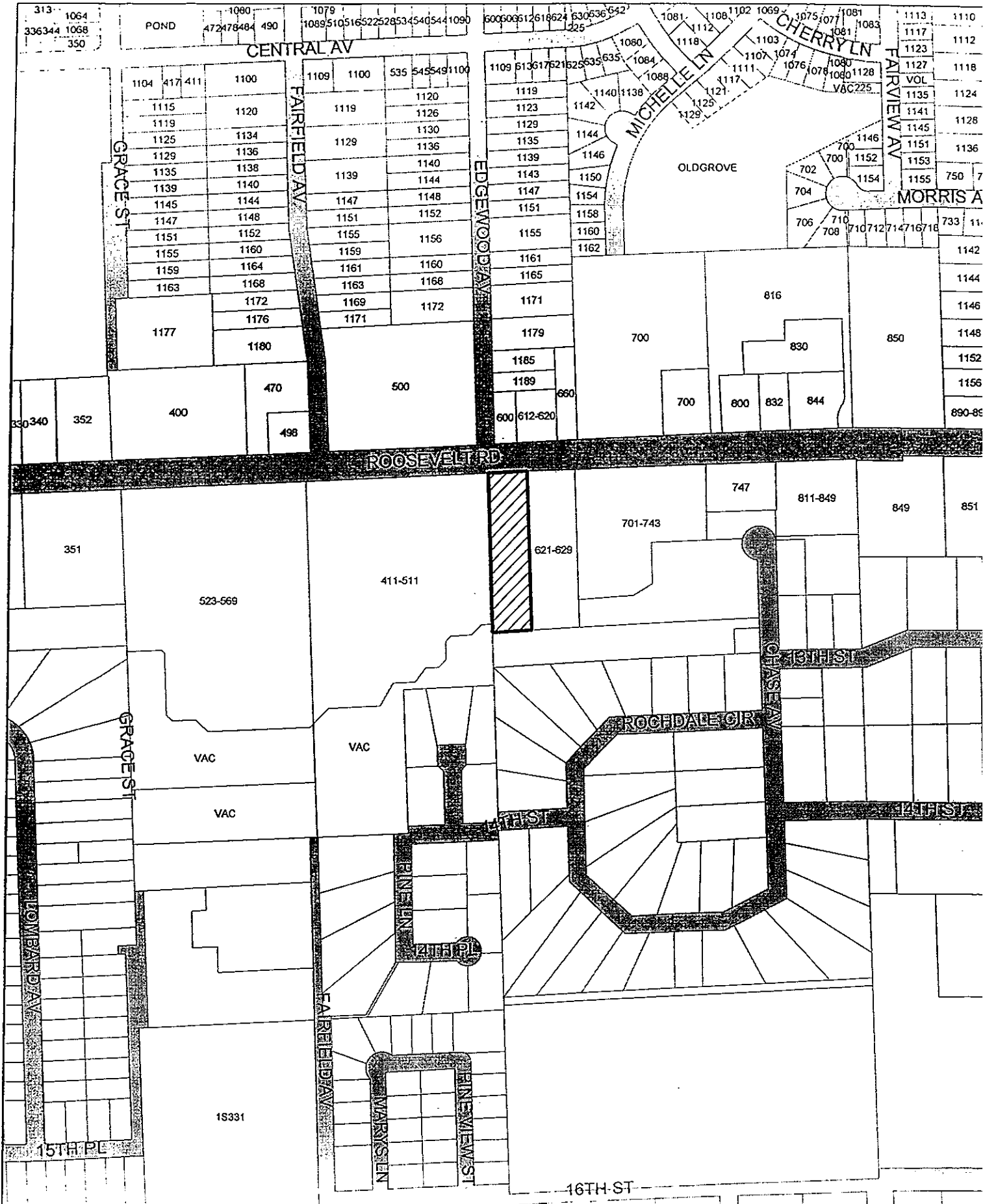
Table 1: Bulk Requirements for B3 Community Shopping District

	Code Requirements	Existing Conditions
Lot area	20,000 sq. ft.	84,285 sq. ft.
Lot width	100 feet	147 feet
Front yard setback	30 feet	40 feet
Interior side yard setback	10 feet	9 feet and 64.5 feet (approx.)
Rear yard setback	30 feet	330 feet
Height	30 feet or 2 stories	1 story
Open space	10%	70%
Parking spaces	35 (4 per 1,000 sq.ft.)	32 (approx.)

Location Map

PC 05-02: 19W175 Roosevelt Road (Carpetville)

N



PHILIP R. COHEN + ASSOCIATES
ARCHITECTS + PLANNERS

June 10, 2005

Village of Lombard
Attn: William Heniff
255 E. Wilson Avenue
Lombard, IL

Re: PC 05-02: 19W175 Roosevelt Road, Lombard
Petitioner: 19W175 LLC

Dear Mr. Heniff:

Concerning the Village of Lombard annexation of the referenced property, the Petitioner's response to the standards for the proposed B-3 zoning as spelled out in SECTION 155.103 (e)(8)(a) OF THE LOMBARD ZONING ORDINANCE is as follows:

1. B-3 zoning is consistent with the Village of Lombard Comprehensive Plan for the general area of this said property.
2. The proposed zoning and existing use is compatible with the existing uses of property in the general area of this said property, compatible with the zoning classification within the general area of this said property, and is suitable for the present use and proposed continued use of the property.
3. B-3 zoning for the said property is consistent with the zoning classification of the Roosevelt Road Commercial Corridor.
4. The property and proposed zoning and use is consistent with the objectives of the current Comprehensive Plan for the Village of Lombard.

Sincerely,



Philip R. Cohen, Architect
As Representative of 19W175 LLC

2525 N. Elston Ave D-230,
Chicago, Illinois 60647
Voice: 773.252-5141
Cell: 312-401-5575
Fax: 773.394-7421

ORDINANCE _____

AN ORDINANCE AUTHORIZING THE
EXECUTION OF AN ANNEXATION AGREEMENT

(PC 05-02: 19W175 Roosevelt Road)

See also Ordinance No.(s)_____)

WHEREAS, it is in the best interest of the Village of Lombard, DuPage County, Illinois that a certain Annexation Agreement (hereinafter the "Agreement") pertaining to the properties located at 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

Ordinance No. _____
Re: PC 05-02 Annexation Agreement
Page 2

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 ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____, day of _____, 2005.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Space above reserved for Recorder's use

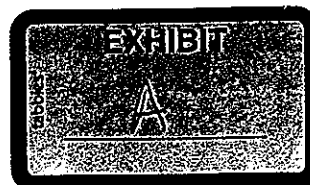
**ANNEXATION AGREEMENT DATED _____, 2005 FOR
19W175 ROOSEVELT ROAD, LOMBARD, IL
a.k.a. 601 E. ROOSEVELT ROAD, LOMBARD, IL**

Parcel No.: 06-20-200-025

AFTER RECORDING RETURN TO:

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

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ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2005, by and between the Village of Lombard, a municipal corporation ("VILLAGE") and 19 West LLC, an Illinois 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: _____

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 _____ day of _____, 2005.

Commission expires _____, ____.

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 _____

**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)_____)

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 ____ day of _____, 2005.

Passed on second reading this ____ day of _____, 2005.

Ayes: _____

Nayes: _____

Absent: _____

Approved this ____ day of _____, 2005.

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

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

ORDINANCE _____

**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) _____)

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

Ordinance No. _____
Re: PC 05-02 (Map Amendment)
Page 2

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 _____ day of _____, 2005.

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

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2005.

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

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk