

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: June 12, 2012 (B of T) Date: June 21, 2012

TITLE: 2210 & 2220 Fountain Square Drive (Sunrise Senior Living)

SUBMITTED BY: Department of Community Development *JAD*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a request for a motion authorizing the following:

1. Signature of Village President on a 30 day waiver notice
2. Signatures of Village President and Clerk on an Assignment and Assumption Agreement; and
3. Signature of Village President on an Esoppel Certificate

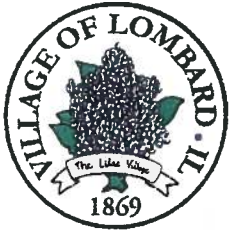
Please place this item on the June 21, 2012 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

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:** David A. Hulseberg, Village Manager

**FROM:** William Heniff, AICP, Director of Community Development *WH*

**DATE:** June 21, 2012

**SUBJECT:** 2210 and 2220 Fountain Square Drive – Sunrise Senior Living

Attached for the Village Board's consideration are the following documents:

- Transmittal Letter requesting a 30 day waiver notice
- Assignment and Assumption Agreement
- Estoppel Certificate

Within the Transmittal Letter dated June 7, 2012 from Metsun Three Lombard IL Senior Living, LLC to the President and Board of Trustees of the Village of Lombard, there is a request to waive the required 30 day notice pursuant to Section 25(D)(2)(b) of the Annexation Agreement. This waiver is being requested due to a scheduled closing on or before Friday, June 29, 2012. By signing the letter on page 2, the Village is agreeing to waive this requirement.

The Assignment and Assumption Agreement is between Metsun Three Lombard IL Senior Living, LLC and Lombard IL Senior Living Owner LLC. Lombard IL Senior Living Owner LLC will assume all rights, title, interest, liabilities and obligations in and to the Annexation and Development Agreements related to Lot 2 in the Fountain Square Subdivision. The consent and release portion of the Agreement will identify Lombard IL Senior Living Owner LLC as the successor pursuant to the previously approved agreements and release Metsun Three Lombard IL Senior Living, LLC from all liabilities and obligations.

The Estoppel Certificate guarantees that all obligations associated with the Annexation and Development Agreements by the owner, as well as with its predecessors in interest, have been satisfied and that nothing remains outstanding.

### **ACTION REQUESTED**

Staff recommends that this item be placed on the June 21, 2012 Village Board Agenda with a motion authorizing:

1. Signature of Village President on a 30 day waiver notice
2. Signatures of Village President and Clerk on an Assignment and Assumption Agreement; and
3. Signature of Village President on an Estoppel Certificate

**METSUN THREE LOMBARD IL SENIOR LIVING, LLC**

c/o Sunrise Senior Living, Inc.  
7900 Westpark Drive, Suite T-900  
McLean, Virginia 22102

June 7, 2012

**VIA FACSIMILE AND FEDERAL EXPRESS**

President and Board of Trustees  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, IL 60148  
Fax: 630-620-8222

**Re: Annexation Agreement regarding the Annexation of Fountain Square Subdivision by the Village of Lombard, Illinois (the "Village"), dated March 23, 1998, and recorded on April 10, 1998 as Document R98-07503 of the Public Records of DuPage County, Illinois (the "Annexation Agreement")**

Dear Ladies and Gentlemen:

Pursuant to Section 25(D)(2)(b) of the above-referenced Annexation Agreement (attached hereto as Exhibit B), please accept this notice on behalf of Metsun Three Lombard IL Senior Living, LLC, a Delaware limited liability company (the "Owner"), the owner of the real property described on the attached Exhibit A (the "Subject Property"), and the obligor of the rights pertaining to the Subject Property pursuant to the Annexation Agreement by virtue of that certain Assignment and Assumption Agreement by and between Sunrise Lombard IL Senior Living, LLC, a Delaware limited liability company, as assignor, and Owner, as assignee, dated as of February 5, 2008, effective as of September 23, 2008, and recorded on September 26, 2008 as Document R2008-145502 of the Public Records of DuPage County, Illinois.

As contemplated by the Annexation Agreement, the Owner desires to transfer all of its right, title, and interest in and to the Subject Property to Lombard IL Senior Living Owner, LLC, a Delaware limited liability company (the "Transferee"), which transfer is currently scheduled to close on or before Friday, June 29, 2012 (the "Closing Date"). The Village hereby acknowledges and agrees to waive the thirty (30) days notice requirement pursuant to Section 25(D)(2)(b) of the Annexation Agreement and accepts this notice with the same effect as if at least thirty (30) days prior notice was provided.

In connection with the foregoing, enclosed herewith please find (i) a copy of the Assignment and Assumption Agreement contemplated by the Annexation Agreement pursuant to which the Transferee agrees to be bound by the Annexation Agreement, and (ii) an estoppel certificate requested by the Transferee to verify the status of the Owner's obligations pursuant to the Annexation Agreement. Please do not hesitate to contact me with any questions regarding the foregoing or the enclosed. In light of the forthcoming Closing Date, I would sincerely appreciate your prompt attention to this matter. Please return an executed PDF copy of this notice to Susan Timoner ([Susan.Timoner@sunriseseniorliving.com](mailto:Susan.Timoner@sunriseseniorliving.com)) at your earliest convenience.


Sincerely,

METSUN THREE LOMBARD IL SENIOR LIVING,  
LLC, a Delaware limited liability company

By: MetSun Three Pool One, LLC, a Delaware limited liability company, its sole member

By: Sun IV LLC, a Delaware limited liability company, its sole member

By: Sunrise Senior Living Investments, Inc., a Virginia corporation, its sole member

By:   
Name: Edwara Burnett  
Title: Vice President

Acknowledged and agreed:

VILLAGE OF LOMBARD

By: \_\_\_\_\_  
Name:  
Title:

June 7, 2012

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cc:

Director of Community Development  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, IL 60148  
Fax: 630-629-2374

Mr. Thomas P. Bayer  
Klein, Thorpe and Jenkins, Ltd.  
Civic Opera Building  
20 North Wacker Drive  
Suite 1660  
Chicago IL 60606  
Fax: 312-984-6444

Village Manager  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, IL 60148  
Fax: 630-620-8222

**EXHIBIT A**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOT 2 IN FOUNTAIN SQUARE, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 29 AND THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1998, AS DOCUMENT NO. R98-139154 IN DUPAGE COUNTY, ILLINOIS.

PIN 06-28-100-011

Commonly known as:

2210 & 2220  
~~xx~~Fountain Square Drive  
(Southwest Corner of 22<sup>nd</sup> Street and Meyers Road)  
Lombard, Illinois 60148

**Exhibit B**

Annexation Agreement

(larger exhibits to Annexation Agreement have not been attached)

898-067503

98 APR 10 PM 2:15

DU PAGE COUNTY

*Attorney*

898-067503

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153 CM*

**ANNEXATION AGREEMENT**

**An Agreement Relating To The  
Annexation, Subdivision and Zoning of  
Fountain Square Subdivision, Lombard, Illinois  
900 E. BUTTERFIELD**

**Dated: March 23, 1998**

**This Instrument Prepared By:  
Robert J. Pugliese  
Lord, Bissell & Brook  
115 S. LaSalle Street  
Chicago, IL 60603**

**After Recording Return To:  
Director of Community Development  
Village of Lombard  
255 E. Wilson Avenue  
Lombard, IL 60148**



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**EXHIBITS**

Exhibit A	Legal Description
Exhibit B	Preliminary Plat of Subdivision
Exhibit C	Requests for Relief
Exhibit D	Special Assessments Improvements List
Exhibit E	Final Plat of Subdivision
Exhibit F	R-4 Preliminary Plan of Planned Development
Exhibit G	R-4 Development Agreement
Exhibit H	B-3 Final Plan of Planned Development
Exhibit I	B-3 Development Agreement
Exhibit J	Assignment and Assumption Agreement

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**ANNEXATION AGREEMENT**

**THIS AGREEMENT** (hereinafter referred to as "this Agreement") made and entered into this 23rd day of March, 1998, by and between the Village of Lombard, a municipal corporation (hereinafter referred to as "Village"); Bethany Theological Seminary, an Illinois not for profit corporation (hereinafter referred to as "Owner"); and Fountain Square of Lombard, LLC, a Delaware limited liability company (hereinafter referred to as "Developer");

**W I T N E S S E T H:**

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

**WHEREAS**, Owner and Developer have proposed a seven lot subdivision of the Subject Property as shown on Exhibit F attached hereto and made a part hereof and for convenient reference portions of the Subject Property may hereafter be referred to variously as proposed Lots 1 through 7, all of which collectively constitute the Subject Property; and

**WHEREAS**, Developer seeks to facilitate the development of the Subject Property; and

**WHEREAS**, the Subject Property does not lie within the corporate limits of any municipality in Illinois and is adjacent to and contiguous to the existing corporate boundaries of the Village; and

**WHEREAS**, the Village desires to annex the Subject Property and Owner and Developer desire to have the Subject Property annexed to the Village and each of the parties desires to obtain and requires 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 an approximately 51 acre parcel of land and there are no electors residing thereon; and

**WHEREAS**, all owners of record of the Subject Property have duly executed an Amended and Conditional Petition for Annexation of the Subject Property to the Village, which Petition was filed and received by the Village on July 1, 1997 and is hereinafter referred to as the "Annexation Petition"; and

**WHEREAS**, applications have heretofore been filed with the Village Clerk for Zoning of the Subject Property and for other development approvals; and

**WHEREAS**, said applications were forwarded to the Plan Commission of the Village;  
and

**WHEREAS**, a public hearing was held on November 12, 1997, November 24, 1997 and December 10, 1997, for the purpose, among other things, of considering whether the Subject Property should be rezoned from the R-1 Single Family Residence District to the R-4 Limited General Residence District, in part, with a Conditional Use for a Planned Development, and to the B-3 Community Shopping District, in part, with a Conditional Use for a Planned Development, all as set forth on Exhibit C attached hereto, all under Title 15, Chapter 155 of the Lombard Municipal Code (hereafter "the Lombard Zoning Ordinance"), and the Plan Commission has submitted to the Corporate Authorities of the Village (hereinafter referred to as the "Corporate Authorities") their findings of fact and recommendations with respect to said applications; and

**WHEREAS**, a public hearing on this Annexation Agreement ("Agreement") has been held by the Corporate Authorities on the 22nd day of January, 1998; 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 3 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 Lombard Zoning Ordinance, and all other actions set forth on Exhibit C, 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 Owner and/or Developer 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 development 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 examined the proposed uses proposed by Developer and have determined that said uses and the development of the Subject Property in accordance with this Agreement comply with the Comprehensive Plan of the Village; and

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**WHEREAS**, the Plan Commission has recommended that certain variances, exceptions and/or modifications be granted from the Lombard Zoning Ordinance; Title 15, Chapter 154 of the Lombard Municipal Code (hereafter "the Lombard Subdivision and Development Ordinance"); and Title 15, Chapter 153 of the Lombard Municipal Code (hereafter "the Lombard Sign Ordinance") in accordance with the terms of this Agreement; and

**WHEREAS**, Owner and Developer desire to have proposed Lot 1 of the Subject Property rezoned to the R-4 Limited General Residence District with a conditional use for a Planned Development and to have proposed Lots 2 through 7 of the Subject Property rezoned to the B-3 Community Shopping District with a conditional use for a Planned Development, all pursuant to the provisions of the Lombard Zoning Ordinance as hereinabove specified; and

**WHEREAS**, in reliance upon the existing ordinances, codes and regulations of the Village and the continued effectiveness of said ordinances, codes and regulations for the period hereinafter set forth, as the same may be modified herein or amended pursuant to the terms hereof, and in further reliance upon the Village's execution of this Agreement and the Village's performance of the undertakings and covenants hereinafter set forth on its part to be performed and kept, Owner and Developer have submitted, or have caused to be submitted, the aforementioned Petitions to the Village; and

**WHEREAS**, it is the desire of the Village, Owner and Developer that the development of the Subject Property proceed as conveniently as possible, subject to the Village's ordinances, codes and regulations now or hereafter in force and effect, as modified or amended by this Agreement, and subject further to the terms and conditions hereinafter set forth; and

1999-057503

**WHEREAS**, following the aforementioned public hearings, the Village, by a vote of two-thirds of the Corporate Authorities then holding office, adopted an ordinance authorizing and directing the Village President to execute, and the Village Clerk to attest, this Agreement on behalf of the Village.

**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, Owner and Developer agree that the foregoing recitals are material to this Agreement and are incorporated in this Agreement as if fully recited herein.
2. **Development of Subject Property:** Village, Owner and Developer agree that the Subject Property shall be developed in accordance with 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 parties agree to do all things necessary or appropriate to cause

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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. The Village shall notify all entities or persons of such annexation and undertake all necessary recordings in accordance with any and all statutory and ordinance requirements. No action shall be taken by the Village to annex any part or portion of the Subject Property until and unless this Agreement has been fully executed by the Village, Owner and Developer.

**4. Mutual Assistance:** The parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intent of the parties as reflected by the terms of this Agreement, including, without limitation, the giving of such notices, the holding of such public hearings and the enactment by the Village of such resolutions and ordinances, the execution of such permits, applications and agreements, and the taking of such other actions as may be necessary to enable the parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the objectives of this Agreement and the intentions of the parties as reflected by the terms of this Agreement.

**5. Financing of Certain Public Improvements:** The parties shall cooperate fully with each other and do all acts necessary in accordance with all applicable law to provide for financing of the public improvements listed on Exhibit D hereto by a special assessment as authorized and specified in Sections 5/9-2-1 et seq. of Act 5 of Chapter 65 of the Illinois Compiled Statutes. The parties further agree that the special assessment shall be allocated solely to the Subject Property, subject to the then owner(s) right to direct allocations as may be appropriate upon any division(s) of ownership of the Subject Property. The parties further agree to use best efforts to expedite the construction of these public improvements in order to facilitate the earliest possible development and occupancy of the Subject Property. In the event DuPage County does not fund or construct its planned Meyers Road improvements in 1999, Developer will be accountable for the construction of said improvements in 2000, but the Village, at Developer's option, will construct same as a Special Assessment project assessed solely against the Subject Property.

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**6. Village Warranty as to Necessary Steps:** The Village represents and warrants that it shall take such actions as may be required and necessary: (a) to adopt such ordinances as may be necessary to annex the Subject Property to the Village and to zone and classify the Subject Property so that it can be developed and used in the manner described in this Agreement; and (b) to enable the Village to execute this Agreement and fully carry out and perform the terms, covenants, agreements, duties and obligations herein contained on its part to be kept and performed. If, for any reason, the annexation of the Subject Property or the zoning of the Subject Property is ruled invalid, in whole or in part, the Corporate Authorities shall expeditiously take such actions, (including the giving of such notices, the holding of such public hearings and the adoptions of such ordinances and resolutions) as may be necessary to give effect to the spirit of this Agreement.

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**7. Subdivision Approval and Zoning/Site Plan Review:** Upon annexation of the Subject Property to the Village as set forth herein, the Corporate Authorities shall, without further public hearings, immediately do the following subject to such terms and conditions set forth in the respective ordinances referenced below:

a. Approve preliminary and final plats of subdivision of the Subject property in the forms attached hereto respectively as Exhibits B and E;

b. Approve ordinances in accordance with all applicable provisions of the Lombard Zoning Ordinance, as follows:

(1) Rezoning proposed Lot 1 from the R-1 Single Family Residence District to the R-4 Limited General Residence District with a conditional use for a Planned Development. Said Planned Development Ordinance shall allow Planned Development exceptions or waiver of any procedural, informational, substantive or other regulations of the Lombard Zoning Ordinance, Subdivision and Development Ordinance and Sign Ordinance as may be necessary to allow approval of a final planned development plan which substantially conforms to the Preliminary Planned Development Plan attached hereto as Exhibit F. All uses and development of proposed Lot 1 shall comply with the terms and conditions of the Development Agreement attached hereto as Exhibit G and the Planned Development Ordinance to be approved by the Village;

(2) Rezoning proposed Lots 2 through 7 from the R-1 Single Family Residence District to the B-3 Community Shopping District with a conditional use for a Planned Development and a conditional use to allow more than one principal building on a lot subject to Site Plan approval. Said Planned Development Ordinance shall allow Planned Development exceptions or waiver of any procedural, informational, substantive regulations or other of the Lombard Zoning Ordinance, Subdivision and Development Ordinance, and Sign Ordinance as may be necessary to allow approval of the Final Planned Development Plan attached hereto as Exhibit II and shall provide for the development of proposed Lots 2 through 7 in compliance with the Development Agreement attached hereto and incorporated herein as Exhibit I and the Final Planned Development Plan. Said Planned Development Ordinance further shall grant certain variations from Sections 155.508 B.3 and 155.508 C.6.b of the Lombard Zoning Ordinance to (a) allow multifamily uses on proposed Lot 2 of no more than 135 dwelling units to exceed forty percent of the floor area of the Planned Development, (b) exempt from the forty percent site area and floor area limits on use exceptions any uses which the Development Agreement allows as permitted uses regardless of whether the Lombard Zoning Ordinance allows such uses in a B-3 District, and (c) allow required transitional landscape yards to be reduced or eliminated where such a transitional landscape yard is or will be provided in whole or in part on proposed Lot 1 or where adjoining uses are both residential. All uses and development of proposed Lots 2 through 7 shall comply with the terms and conditions of the Development Agreement and the Planned Development Ordinance to be approved by the Village;

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c. Approve all necessary ordinances or resolutions to authorize execution, and execute, the Development Agreements attached here as Exhibits G and I;

d. Record all approved ordinances, plats, plans, or other items where the recording of such documents is a prerequisite to the issuance of building permits for the Subject Property and all conditions of approval which are prerequisite to recording have been satisfied.

With respect to proposed Lot 1, no further zoning approval shall be required as a prerequisite to the receipt by Owner or Developer of the building permits necessary to the development of proposed Lot 1 in substantial conformance to the Preliminary Planned Development Plan attached hereto as Exhibit F other than obtaining approval and recording of a Final Planned Development Plan in accordance with Sections 155.501 through 155.510 of the Lombard Zoning Ordinance.

With respect to proposed Lots 2 through 7, no further zoning approval shall be required as a prerequisite to the receipt by Owner or Developer of the building permits necessary to the development of the property in conformance to the Final Planned Development Plan attached hereto as Exhibit H, provided, however, that for proposed Lots 2, 5, 6 and 7, except as otherwise provided in the Development Agreement, no permits for foundations or above-ground structures shall be issued until Site Plan approval has been obtained in accordance with the provisions of the Development Agreement and the following: Site Plan approval shall require the affirmative majority vote of a quorum of the Plan Commission acting at a public meeting, without the necessity of public notice or public hearing, following review by the Director of Community Development, who shall receive advice on such reviews by the Inter-Departmental Review Committee. If the Plan Commission has not approved, conditionally approved, or rejected a Site Plan within forty-five (45) days of proper application, the Site Plan shall be deemed rejected unless the applicant has consented in writing to an extension of time. Any failure of the Plan Commission to grant Site Plan approval shall be appealable directly to the Corporate Authorities. The Corporate Authorities may affirm, reverse, or modify the action of the Plan Commission and may attach such conditions as they deem appropriate. If the Corporate Authorities have not acted upon any such appeal within thirty (30) days of the filing of the appeal with the Director of Community Development, the submitted Site Plan shall be deemed to be rejected unless the appealing party has consented in writing to an extension of time.

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The parties acknowledge that development of all of the Property may progress over one or more years. Accordingly, all provisions of the Lombard Zoning Ordinance which provide for expiration or revocation of variations on conditional use permits or other development approvals shall not apply to the Property.

8. **Engineering Plans:** The Village approves the Final Engineering Plans prepared by Bollinger & Lach Associates, as last revised on **March 20, 1998** (the "Final Engineering Plans"), which Final Engineering Plans are incorporated by reference. The

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Subject Property shall be developed in compliance with the Final Engineering Plans subject to any amendments approved by the Director of Community Development or his/her designee. With respect to the applications of Owner and/or Developer for approval of a preliminary and final plats of resubdivision, the Village's approval of these Final Engineering Plans shall constitute approval of final engineering. In any Site Plan review or resubdivision of proposed lots 2, 5, 6 or 7 the preliminary and final engineering plans for each use or user shall be in compliance with these approved Final Engineering Plans. Any major deviation from the approved Final Engineering Plans shall require a Planned Development amendment.

**9. Water Utilities:** Village represents and warrants to Developer as follows:

A. That it owns and operates a water distribution system within the Village for water distribution and that it will install water main extensions in accordance to Paragraph 5 of this Agreement and Exhibit D hereto.

B. That the Owner and/or Developer shall have the right to connect extensions of those water mains subject only to payment of applicable water tap-on charges, if any, and no other fees or charges (including, without limitation, recapture fees) of any kind or nature whatsoever. Any extensions of said water mains to serve the Subject Property which are to be owned by the Village, as set forth on the Final Engineering Plans, will be constructed by the Village pursuant to a local improvements program as set forth in Paragraph 5 above, and the owners of the Subject Property shall be responsible for repayment of such improvements costs pursuant to a special assessment as set forth in Paragraph 5 of this Agreement. Further, Owner and/or Developer shall grant or dedicate all easements required by the Village for the construction of the necessary water main extensions and water mains serving the Subject Property.

C. That the Village 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 residential and commercial areas in the Village being provided with water by the Village.

**10. Sanitary Sewer Facilities:** The parties agree that the sanitary sewer service of the Subject Property shall be provided through the Hinsdale Sanitary District. Any extensions of the sanitary sewers to serve the Subject Property which are to be dedicated to the Hinsdale Sanitary District, as set forth on the Final Engineering Plans, will be constructed by the Village pursuant to a local improvements program as set forth in Paragraph 5 above and the owners of the Subject Property shall be responsible for repayment of such improvements costs pursuant to a special assessment as set forth in Paragraph 5 of this Agreement. Owner and/or Developer agree to pay all sanitary sewer connection charges payable to the Hinsdale Sanitary District. Owner and/or Developer shall grant or dedicate all easements required by the Village or by the Hinsdale Sanitary District for the construction of the necessary sanitary sewers serving the Subject Property.

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**11. Storm Drainage Facilities:** Storm drainage facilities, including retention and/or detention areas, shall be provided and constructed and paid for by Owner and/or Developer in accordance with the Final Engineering Plans. Ownership and maintenance of the Storm Drainage Facilities shall be in accordance with the respective Development Agreements and provisions provided on the Final Plat of Subdivision.

**12. Underground Utilities:** All newly installed electrical, telephone, cable television and natural gas distribution facilities, except electrical transformers and meters for natural gas and electricity, shall be installed underground or located within buildings. In addition, the parties desire that existing utilities at the perimeter of the Subject Property along Meyers Road and Butterfield Road may be re-installed underground, if feasible, and that at Owner's option declared no later than thirty (30) days after annexation of the Subject Property the Village shall undertake such work as part of a local improvement as set forth in Paragraph 5 above. Owner and/or Developer shall be responsible for the payment of such improvements costs pursuant to a special assessment.

**13. Cable Television:** The Owner and/or Developer shall provide necessary easements for cable television service to be provided to each residential structure and commercial unit on the Subject Property.

In addition, Owner and/or Developer shall install and construct all necessary cable and other appurtenances in order to extend service to each of the residential structures on the Subject Property with cable television or shall make such agreements with a Village authorized cable television company to provide such facilities.

**14. Easements:** The record owner of the Subject Property, or such relevant portion thereof, at the time easements are required to be granted to facilitate development of the Subject Property as set forth in this Agreement, shall provide all easements which may be required by the Director of Community Development or the Hinsdale Sanitary District 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 a named grantee in all said easements along with the applicable utility companies and cable television operator. All easements shall be in a form customarily accepted by the Village, or Hinsdale Sanitary District, respectively, and subject to the reasonable approval of the Director of Community Development. The location for all public improvements shall be as approved by the Village and as shown on Final Engineering Plans approved by the Village. No parking shall be allowed within five feet (5') of the utility line.

**15. Contributions:** Unless expressly set forth in this Agreement or the respective Development Agreements, the Village shall not require Owner and/or Developer to make any contributions or land donations for any perceived impacts of development, including but not limited to contributions or land donations for schools, parks or library purposes.

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16. **Fees:** The Village represents and warrants that Owner and/or Developer will not be responsible for any fees not heretofore paid to the Village as a result of the annexation, rezoning, or other matters addressed in this Agreement, except as set forth in Paragraph 25L below and the Village's generally applicable water tap-on fees, if any.

17. **Reasonableness of Fees and Charges:** Owner and/or Developer further agree that any connection charges, fees, contributions, dedications and easements required by this Agreement are reasonable in amount, where applicable, and are reasonably related to and made necessary by the development of the Subject Property.

18. **Dedication of Public Improvements:** When Owner and/or Developer have completed all required public improvements, in accordance with the Village's Subdivision and Development Ordinance regulations, and said public improvements have been inspected and approved by the Director of Community Development, the Village shall accept said public improvements subject to the maintenance provisions of the Subdivision and Development Ordinance. This provision does not apply to those public improvements to be constructed by the Village in accordance with Paragraph 5 of this Agreement. Notwithstanding this paragraph, Storm Drainage Facilities shall not be dedicated to or accepted by the Village but shall be owned and maintained in accordance with the respective Declaration of Covenants.

19. **Fire District:** If, in accordance with Illinois Compiled Statutes Chapter 70, Section 705/20, the York Center Fire Protection District files a petition to prevent automatic disconnection of the Subject Property from the York Center Fire Protection District, Owner and/or Developer shall use all reasonable efforts to challenge the petition and to pursue disconnection of the Subject Property from the York Center Fire Protection District at no cost to the Village. The Village agrees to cooperate with Owner and/or Developer in the disconnection. Owner and/or Developer agrees to be responsible for the disconnection and shall reimburse the Village for any funds reasonably and necessarily expended by the Village, including, but not limited to any legal fees and litigation costs relative thereto through trial and intermediate appellate court review, but only if the Village first gives Owner and/or Developer written notice prior to incurring such fees or costs and allowing Owner and/or Developer a reasonable time to avoid any need for the Village to incur such fees or costs.

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20. **Final Engineering Approval:** Except as otherwise provided herein, all public improvements required to be constructed hereunder or under the Subdivision and Development Ordinance of the Village shall be paid for, constructed and installed by Owner and/or Developer in accordance with the Final Engineering Plans.

21. **Annexation to Lombard Park District:** The parties acknowledge that the Subject Property currently is part of the York Center Park District. If at any time during the term of this Agreement the Subject Property or any part thereof ceases to be included in the York Center Park District, or the York Center Park District ceases to exist, the then record owner of the relevant portion of the Subject Property at such time shall petition for annexation

to the Lombard Park District and shall take all necessary and customary actions to become annexed to the Lombard Park District.

**22. Building and Other Permits:**

A. The Issuance of Permits: The Village shall issue each building permit for which Owner and/or Developer, or either of its duly authorized representatives, shall apply within the earliest practical time. If the application is disapproved, the Village shall provide the applicant with a statement in writing specifying the reasons for denial of the application including specification of the requirements of law which the application and supporting documents fail to meet. The Village agrees to issue such building permits upon the applicant's compliance with those requirements of law so specified by the Village. The Village acknowledges that in accordance with the Development Agreements incorporated herein Owner and/or Developer, or such duly authorized representatives, may apply for, and the Village shall issue, building permits to begin construction upon portions of the Subject Property prior to the availability of public sanitary and water facilities to serve the structures to be constructed provided that the scope of the work to be performed prior to the provision of such sanitary and water facilities does not present potential harm to public health, safety or welfare. Notwithstanding the foregoing, no permit shall be issued for above-foundation construction until working fire hydrants capable of flowing one thousand gallons per minute (1,000 gpm) are installed within three hundred feet (300') of the structure.

B. Temporary Structures: The Village shall permit Owner and/or Developer, or either of its duly authorized representatives, to install temporary sewage storage or treatment and water facilities (other than wells) to serve sales offices, temporary structures and any models permitted under this Agreement, provided that such temporary sewage storage or treatment and water facilities shall be removed and disconnected at Owner's and/or Developer's sole cost at such time as public sewer and water systems become available and the structures are connected thereto. All temporary structures shall be constructed, located or assembled by permit and shall not be used until the Director of Community Development and/or his/her designee has approved the structure for use; provided, this restriction shall not apply to trailers except for permitting and approval of utilities and accessibility.

**23. Certificates of Occupancy:**

A. Partial Occupancy: The Village shall issue certificates of occupancy in multi-tenant commercial buildings on a unit-by-unit basis provided that the unit to be occupied is completed and the construction of the entire building has progressed to the point where the Village's Fire Chief has made a reasonable determination that all fire protection and safety equipment is operational throughout the structure. The Village shall issue certificates of occupancy in multi-family residential buildings on a floor-by-floor basis provided the floor to be occupied has been completed and the construction of the entire building has progressed to the point where the Village Fire Chief has made a reasonable determination that all fire protection and safety equipment is operational throughout the structure.

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B. Issuance of Certificates: The Village shall issue certificates of occupancy for any building, structure or dwelling on the Subject Property within five (5) working days of proper application therefore or within five (5) working days of the receipt of the last documents or information required to support such application, whichever is later. If the application is disapproved, the Village shall provide the applicant with a statement in writing of the reasons for denial of the application including specifications of the requirements of law which the applicant and supporting documents fail to meet. The Village agrees to issue such Certificates upon the applicant's compliance with those requirements so specified by the Village.

C. Temporary Certificates: Temporary certificates of occupancy shall be issued by the Village when adverse weather conditions do not permit outside painting, landscaping, driveway construction or final grading of individual buildings, appurtenances or site areas. Temporary or partial certificates of occupancy shall be issued by the Village for any finished part or portion of a building, structure or a unit, which is otherwise not completely finished, provided that, as determined by the Director of Community Development:

1. Said part or portion is designed for or capable of separate use or occupancy;
2. Said part or portion is safe for the use or occupancy intended;
3. Sewer, streets, water and drainage are properly installed to the building, structure or unit containing said finished part of portion; and
4. The Village has received such deposits or security it reasonably requires to guarantee the completion of the work.

D. Utility Connections: No certificate of occupancy shall be applied for by Owner and/or Developer or issued by the Village until the building or structure which is the subject of the application is connected to and able to be served by the public sewer and water systems, provided, however, that Conditional Certificates of Occupancy may be issued for models and sales offices as herein provided.

E. Sales Office: Owner shall have the right to construct and maintain sales offices on the Subject Property, including sales offices within a model dwelling unit. Owner shall be required to obtain building permits and certificates of occupancy with respect to such sales offices subject to the provisions of this Agreement.

24. Stop Orders: Except in cases of emergency where an immediate danger to life or health exists, the Village shall not issue any stop orders directing work stoppage on buildings or other part of any phase of development within the Subject Property without first giving at least twenty-four (24) hours notice to Owner and/or Developer and the applicant for the building permit for the building for which stop order is being issued, in the manner

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provided for herein, and any such notice shall cite the applicable provision of law or this Agreement allegedly violated or shall state in substance the reason for the stop order. Upon receipt of such notice, Owner and/or Developer shall take immediate steps to correct any violation and, provided such steps are promptly commenced and diligently pursued, no stop order shall issue.

**25. General Provisions:**

A. **Inconsistent and More Restrictive Amendments and Provisions:** The Village agrees that should any existing code, ordinance, rule or regulation, including, without limitation, those codes, ordinances, rules and regulations covered in the subject matter of this Agreement, which may relate to the annexation, zoning or subdivision of the Subject Property and to the use of improvements, buildings and appurtenances on the Subject Property and to all other development of any kind or character on that Subject Property, be hereafter amended or interpreted in any way that is inconsistent with or more restrictive than the terms and provisions of this Agreement, then the terms and provisions hereof, under such circumstances, shall constitute lawfully authorized, approved and binding amendments to the terms of any such inconsistent or more restrictive code, ordinance, rule or regulation as it relates to the Subject Property, but only for the term of this Agreement at which point any development not conforming with such amendments or interpretations shall be legally non-conforming unless and until a variation or other relief is granted by the Village.

B. **Less Restrictive Amendments and Provisions:** The Village agrees that should any now or hereafter existing code, ordinance, rule or regulation be adopted, enacted, modified, amended, interpreted or otherwise changed in any way so as to be less restrictive than the provisions now applicable to the Subject Property, including, without limitation, restrictions affecting zoning, subdivision, land development, construction and use of improvements, buildings and appurtenances and all other development of any kind or character on the Subject Property, then such less restrictive provisions shall inure to the benefit of Owner and, anything herein to the contrary notwithstanding, Owner may elect to proceed with the development of, construction upon and use of the Subject Property in accordance with any less restrictive code, ordinance, rule or regulation applicable generally to all properties within the Village. Provided, however, that this provision is not intended to abrogate or supersede any private covenants or agreements which may be recorded against the Subject Property.

C. **Notices:** Notice or other writings which any party is required to, or may wish to, serve upon any other party in connections with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or by facsimile transmission which shall be effective only if receipt of transmission is confirmed by a transmission confirmation sheet, addressed as follows:

(1) If to the Village or Corporate Authorities:  
President and Board of Trustees  
VILLAGE OF LOMBARD  
255 East Wilson Avenue

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Lombard, Illinois 60148  
FAX: 630-620-8222

With a copy to:

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

(b) Director of Community Development  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, Illinois 60148  
FAX: 630-629-2374

(c) Thomas P. Bayer  
KLEIN, THORPE AND JENKINS, LTD.  
Civic Opera Building  
20 North Wacker Drive  
Suite 1660  
Chicago, IL 60606  
FAX: 312-984-6444

(2) If to the Owner:

President  
Bethany Theological Seminary  
615 National Road West  
Richmond, IN 47374-4019  
FAX: 765-983-1840  
with a copy to:

Mr. Thomas Karaba  
Crowley, Barrett & Karaba, Ltd.  
20 S. Clark Street  
Suite 2310  
Chicago, IL 60603  
FAX: 312-726-2741

(5) If to the Developer:

Fountain Square of Lombard, LLC  
c/o CHS DuPage One LLC, Manager

298-057503



Mr. Dennis Stine  
The Shaw Company  
Sears Tower  
Suite 325  
Chicago, IL 60606  
FAX: 312-382-8815

with a copy to:

Mr. Robert J. Pugliese  
Lord, Bissell & Brook  
115 S. LaSalle Street  
Chicago, IL 60603  
FAX: 312-443-0336

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

D. Continuity of Obligations:

1. This Agreement shall inure to the benefit of and shall be binding upon Owner's and Developer's successors in any manner in title, including any homeowners or property owners associations who may take title to common areas, but not purchasers or lessors of individual dwelling units, and shall inure to the benefit of and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

2. Owner and Developer acknowledge and agree that the obligations assumed by each of them under this Agreement, including the respective Development Agreements, shall be binding upon them respectively and, except as limited aforesaid, any and all of their respective heirs, successors, and assigns and the successor record owners and/or successor developers of all or any portion of the Subject Property. To assure that such heirs, successors, and assigns have notice of this Agreement and the obligations created by it, Owner and Developer agree:

(a) that this Agreement shall be recorded with the DuPage County Recorder of Deeds;

(b) to require, prior to the transfer of title to all or any portion of the Subject Property, the transferee of said portion of the Subject Property to be bound by the provisions of this Agreement pursuant to the execution of an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), said Assignment and Assumption Agreement to be in a form substantially in conformance with Exhibit J attached hereto and made a part hereof. The Village agrees that upon a successor becoming bound to the personal obligations created herein in the manner provided herein, the personal liability of Owner and/or Developer or other predecessor obligor under this Agreement shall be released. Except

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for individual dwelling units, Owner agrees to notify the Village in writing at least thirty (30) days prior to any date upon which Owner intends to transfer a legal or beneficial interest in any portion of the Subject Property to a transferee (other than Developer who hereby agrees to the terms of the Assignment and Assumption Agreement and to be bound thereby upon taking a legal or beneficial interest in any portion of the Subject Property). Any such notice given prior to the effective date of this Agreement shall be effective on the date given. Owner or any other predecessor obligor shall, at the same time, provide the Village with a fully executed copy of the hereinabove required Assignment and Assumption Agreement by the transferee to be bound by the provisions of this Agreement. In the event any transferee requires proof that a particular provision of this Agreement has been satisfied, the Village agrees to issue a written statement as to which provisions of this Agreement, if any, have been satisfied.

3. All the terms and conditions of this Agreement shall constitute covenants running with the land.

E. 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 or actions taken and required to such terms 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 25V below.

F. Remedies: The Village, Owner and Developer, 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, 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 and 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 at law or in equity.

G. Dedication of Public Lands: 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, except as otherwise provided in this Agreement or except as may be consented to in writing by Owner and/or Developer.

H. Conveyance, Dedication and Donation of Real Estate and Certain Personal Property: Any conveyance, dedication or donation of real estate required of Owner and/or Developer (hereinafter collectively and individually referred to as "Grantor" in this subsection 25I) to the Village or other governmental authority under this Agreement shall be made in conformance with the following requirements and any other applicable provisions of this Agreement.

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- (1) Fee Simple Title: The conveyance, dedication or donation shall be of a fee simple title.
- (2) Merchantable Title: Title shall be good and marketable.
- (3) Form and Contents of Deed: The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication or appropriate dedication on a recorded plat of subdivision.

The deed, conveyance or dedication may be subject only to:

- (a) covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
- (b) terms of this Agreement, including the terms of the Development Agreements which are incorporated herein;
- (c) general taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of the prior year's taxes is not determinable at the time of delivery, conveyance or dedication;
- (d) terms of other agreements, covenants, easements, or declarations recorded against the real estate pursuant to the direction, approval or participation by the Village; and
- (e) such other exceptions acceptable to the grantee.

(4) Title Insurance: Grantor shall provide to grantee, not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company acceptable to the grantee. The commitment for title insurance shall be in usual and customary form subject only to the matters set forth in sub-paragraph 25H(3)(a) above and the usual and customary standard exceptions contained therein.

The commitment for title insurance shall be in the amount of the fair market value of the real estate and shall be dated not more than twenty (20) days prior to the time for delivery of the deed, conveyance or dedication. Grantor shall further cause to be issued within thirty (30) days after delivery of the deed, conveyance or dedication a title insurance policy in such amount from the company issuing the commitment for title insurance, subject only to the exceptions stated above.

All title insurance charges shall be borne by Grantor.

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(5) **Taxes, Liens, Assessments, Etc.:** General taxes and all other taxes, assessments, liens and charges of whatever nature affecting the real estate shall be paid and removed prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly pay the same upon determination of such amount and that it will indemnify, hold harmless and defend the Village against any loss or expense, including but not limited to attorneys' fees and expenses of litigation, arising as a result of a breach of the foregoing covenant.

(6) **Delivery of Deed, Conveyance or Dedication:** To the extent not provided in this Agreement, delivery of the deed, conveyance or dedication shall occur at a date, time and place mutually agreeable to Grantor and Village, otherwise at a date, time and place set by Village not less than thirty (30) days nor more than forty-five (45) days after notice thereof is given by Village to Grantor.

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

J. **Survival of Presentations:** Each of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Annexation 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.

K. **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.

L. **Reimbursement of Village for Legal and Other Fees and Expenses:** Owner and/or Developer shall receive a credit for all application fees paid to the Village which shall be applied to the obligations of Owner and/or Developer set forth in subparagraphs (1) and (2) below.

(1) **To Effective Date of Agreement:** The Owner and/or Developer, concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (a) the costs incurred by the Village for engineering services;
- (b) all reasonable attorneys' fees incurred by the Village in connection with this Annexation Agreement and the annexation and zoning of the Subject Property; and

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- (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

(2) From and After Effective Date of Agreement: Except as provided in this subsection, upon demand by Village made by and through its President, Owner and/or Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by 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, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of public improvements.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Owner and/or Developer upon request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner and/or Developer at either's option from additional documents designated from time to time by the Owner and/or Developer relevant to determining such costs and expenses.

Notwithstanding the foregoing, Owner and/or Developer 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 the Owner and/or Developer and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner and/or Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (a) Owner and/or Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, which is binding upon the Village, without the approval of the Village, which shall not be unreasonably withheld. If any such settlement, compromise or judgment is not binding upon the Village, this restriction shall not apply. Unreasonableness shall be determined by whether any such settlement, compromise or failure to appeal an adverse judgment materially impairs the benefits to the Village under this Agreement.

- (b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner and/or Developer, on an issue having a potentially substantial adverse effect on the Village, then the Village shall have the option of having its own legal counsel represent it or participate in the common defense at its own expense.

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In the event any of the parties institute legal proceedings against any other party to this Agreement for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment in favor of the prevailing party all expenses of such legal proceedings incurred by the prevailing party, including but not limited to the court costs and reasonable attorneys' fees, witness fees and reimbursed expenses, expert witness fees, etc., incurred by the prevailing party in connection therewith (and any appeal thereof).

**M. 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.

**N. 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. Approval of direction of the Corporate Authorities of the Village shall not require any super-majority vote unless otherwise required by the ordinances of the Village or by law.

**O. Recording:** A copy of this Agreement and any amendments thereto shall be recorded by the Village at the expense of the Owner and/or Developer.

**P. Authorization to Execute:** The officers and/or managers, as the case may be, of Owner and Developer executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on behalf of said Owner and Developer respectively. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Owner and Developer 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.

**Q. Amendment and Integration:** This Agreement, including the Exhibits hereto, sets forth all the promises, inducements, agreements, conditions and understandings between Owner, Developer 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.

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R. Counterparts: This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

S. 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, other than the Development Agreements whose text shall control and govern, the text of this Agreement shall control and govern.

T. 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.

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

V. 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.

W. 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.

X. Severability: In the event that any phrase, paragraph, article or portion of this Agreement is found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Agreement. None of the parties hereto shall contest the validity, legality or enforceability of any phrase, article or provision of this Agreement.

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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

By: [Signature]  
President

ATTEST:

[Signature]  
Village Clerk  
[Signature]  
Deputy Clerk

DATED: March 23, 1998

DEVELOPER:

FOUNTAIN SQUARE OF LOMBARD, L.L.C.  
a Delaware limited liability company

By: CHS DuPage One, L.L.C., its manager

CHS DuPage One, L.L.C.  
a Delaware limited liability company,  
Its Manager

[Signature]  
Dennis Stine  
Its Manager

OWNER:  
BETHANY THEOLOGICAL SEMINARY,  
an Illinois not-for-profit corporation,  
formerly known as Bethany Biblical Seminary

By: [Signature]  
Eugene F. Roop  
Its President

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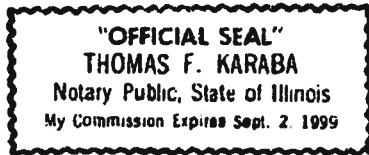
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                                  )SS  
COUNTY OF DUPAGE    )

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I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Eugene F. Roop, personally known to me to be the President of Bethany Theological Seminary, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such and respectively, and that he appeared before me this day in Person and severally acknowledged that as such President he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said Corporation as his free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 22nd day of March, 1998.

Commission expires September 2, 1999.



Thomas F. Karaba  
Notary Public

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ACKNOWLEDGMENTS

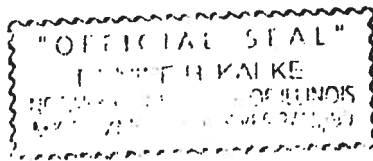
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  )SS  
COUNTY OF DUPAGE    )

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 Lorraine G. Gerhardt, 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 23<sup>rd</sup> day of March 1998.

Commission expires 2/18 1999.

*Edward R. Kalke*  
Notary Public



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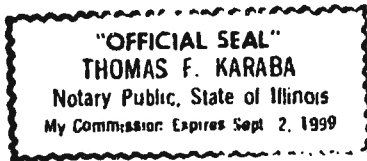
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

On this 22nd day of March, 1998 before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Dennis J. Stine, being the person authorized by CHS DuPage One, LLC, a Delaware limited liability company ("Company"), to execute such instrument, to me personally well known, who stated that he was a Manager of said Company, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 22nd day of March, 1998.

GIVEN under my hand and Notary Seal this 22nd day of March, 1998.

Commission expires September 2, 1999.



Thomas F. Karaba  
Notary Public

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EXHIBIT A

PARCEL NO. 1:

THAT PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 28 AFORESAID; THENCE SOUTH ON THE WEST LINE OF SECTION 28, AFORESAID, 1957.45 FEET TO THE CENTER LINE OF OLD BUTTERFIELD ROAD; THENCE NORTHEASTERLY ALONG THE CENTER LINE OF OLD BUTTERFIELD ROAD, 1868.70 FEET TO THE CENTER LINE OF MEYERS ROAD, BEING THE SOUTHEAST CORNER OF SCHOOL LOT; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF MEYERS ROAD, 1062.62 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF NORTHWEST QUARTER OF SECTION 28 AFORESAID; THENCE WEST ON THE NORTH LINE OF SECTION 28, AFORESAID, 1324.36 FEET TO THE POINT OF BEGINNING; EXCEPT THEREFROM THE NORTH 231.56 FEET OF THE WEST 1020 FEET OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (AS MEASURED ALONG THE NORTH AND WEST LINES OF SAID NORTHWEST QUARTER) NOW SUBDIVIDED INTO BETHANY BIBLICAL SEMINARY SUBDIVISION RECORDED AS DOCUMENT R62-17770; ALSO EXCEPT THEREFROM THAT PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF OLD BUTTERFIELD ROAD WITH THE CENTER LINE OF MEYERS ROAD; THENCE NORTHWESTERLY ALONG THE CENTER LINE OF MEYERS ROAD FOR A DISTANCE OF 112.96 FEET TO A POINT; THENCE SOUTHWESTERLY ALONG A LINE THAT FORMS AN ANGLE OF 99 DEGREES 02 MINUTES TO THE LEFT WITH A PROLONGATION OF THE LAST DESCRIBED COURSE FOR A DISTANCE OF 108.95 FEET TO A POINT IN WEST LINE OF THE UTOPIA SCHOOL LOT; THENCE SOUTHEASTERLY ALONG SAID WEST LOT LINE THAT FORMS AN ANGLE OF 80 DEGREES 58 MINUTES TO THE LEFT WITH A PROLONGATION OF THE LAST DESCRIBED COURSE FOR A DISTANCE OF 115.33 FEET TO A POINT IN THE AFORESAID CENTER LINE OF OLD BUTTERFIELD ROAD; THENCE NORTHEASTERLY ALONG SAID CENTER LINE THAT FORMS AN ANGLE OF 100 DEGREES 16 MINUTES TO THE LEFT WITH A PROLONGATION OF THE LAST DESCRIBED COURSE FOR A DISTANCE OF 108.98 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING; ALSO EXCEPT THEREFROM THAT PART THEREOF CONVEYED TO THE STATE OF ILLINOIS IN DOCUMENT NUMBER R74-38421, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 28; THENCE SOUTH ALONG THE

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EAST LINE OF SAID NORTHWEST QUARTER, FOR A DISTANCE OF 480.8 FEET TO ITS POINT OF INTERSECTION WITH THE CENTER LINE OF FA ROUTE 131; THENCE SOUTHWESTERLY ALONG SAID CENTER LINE FOR A DISTANCE OF 1100.1 FEET TO ITS POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EXISTING CENTER LINE OF MEYERS ROAD; THENCE NORTHERLY ON SAID SOUTHERLY EXTENSION AND ON SAID EXISTING CENTER LINE OF MEYERS ROAD ALONG A LINE WHICH FORMS AN ANGLE OF 108 DEGREES 46 MINUTES TO THE RIGHT WITH A PROLONGATION OF SAID FA ROUTE 131 CENTER LINE COURSE FOR A DISTANCE OF 151.1 FEET TO A POINT ON A SOUTHEASTERLY LINE (AS DEFINED IN A DEDICATION TO THE STATE OF ILLINOIS RECORDED MAY 18, 1949 AS DOCUMENT NO. 568067) OF THE BETHANY THEOLOGICAL SEMINARY PROPERTY FOR A POINT OF BEGINNING; THENCE SOUTHWESTERLY ON THE LAST DESCRIBED PROPERTY LINE ALONG A LINE WHICH FORMS AN ANGLE OF 99 DEGREES 02 MINUTES TO THE LEFT WITH A PROLONGATION OF THE LAST DESCRIBED COURSE, FOR A DISTANCE OF 72.1 FEET TO A POINT; THENCE NORTHERLY ALONG A LINE FOR A DISTANCE OF 197.9 FEET TO A POINT 50.0 FEET NORMALLY DISTANT WESTERLY OF SAID EXISTING MEYERS ROAD CENTER LINE, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY LINE OF MEYERS ROAD; THENCE EASTERLY ALONG A LINE NORMAL TO SAID EXISTING MEYERS ROAD CENTER LINE FOR A DISTANCE OF 50.0 FEET TO A POINT ON SAID EXISTING MEYERS ROAD CENTER LINE; THENCE SOUTHEASTERLY ALONG SAID EXISTING MEYERS ROAD CENTER LINE FOR A DISTANCE OF 185.5 FEET TO THE POINT OF BEGINNING; ALSO EXCEPT THEREFROM THAT PART DEDICATED FOR BUTTERFIELD ROAD RECORDED AS DOCUMENT NUMBER 387284 AND AS DOCUMENT NUMBER 386643; ALSO EXCEPT THEREFROM THAT PART DEDICATED FOR MEYERS ROAD RECORDED AS DOCUMENT NUMBER R62-38610; ALSO EXCEPT THEREFROM THAT PART DEDICATED FOR 22ND STREET RECORDED AS DOCUMENT NUMBER 968458. ALL IN DuPAGE COUNTY, ILLINOIS.

PARCEL NO. 2:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 29, AFORESAID; THENCE WEST ON THE NORTH LINE OF SECTION 29 AFORESAID, 70.0 FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF SECTION 29 AFORESAID, 736.60 FEET, THENCE SOUTHWESTERLY ON A LINE FORMING AN INTERIOR ANGLE OF 191 DEGREES 50 MINUTES 48 SECONDS WITH THE LAST DESCRIBED COURSE, 787.50 FEET; THENCE SOUTHEASTERLY ON A LINE FORMING AN INTERIOR ANGLE OF 140 DEGREES 55 MINUTES 12 SECONDS WITH THE LAST DESCRIBED COURSE, 506.25 FEET TO THE CENTER LINE OF OLD BUTTERFIELD ROAD AT ITS INTERSECTION WITH THE EAST LINE OF SECTION 29, AFORESAID; THENCE

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NORTH ON THE EAST LINE OF SECTION 29, AFORESAID, 1957.45 FEET TO THE POINT OF BEGINNING; EXCEPT THEREFROM THAT PART DEDICATED FOR BUTTERFIELD ROAD RECORDED AS DOCUMENT NUMBER 387284 AND AS DOCUMENT NUMBER 386643; ALSO EXCEPT THEREFROM THAT PART DEDICATED FOR 22ND STREET PER DOCUMENT NUMBER R65-11923; ALL IN DuPAGE COUNTY, ILLINOIS.

PARCEL NO.3:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, AND 9 (INCLUSIVE) IN BETHANY BIBLICAL SEMINARY SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CENTER OF MEYERS ROAD ACCORDING TO THE PLAT THEREOF RECORDED JUNE 6, 1962 AS DOCUMENT R62-17770, IN DUPAGE COUNTY, ILLINOIS.

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# FOUNTAIN SQUARE

MAP A REPRESENTS PART OF THE SUBDIVISION PLAN OF LOT 1 AND THE  
SUBDIVISION PLAN OF LOT 2, TRACT 10, RANGE 11 EAST OF THE  
100th MERIDIAN, IN BUTTERFIELD, ALABAMA

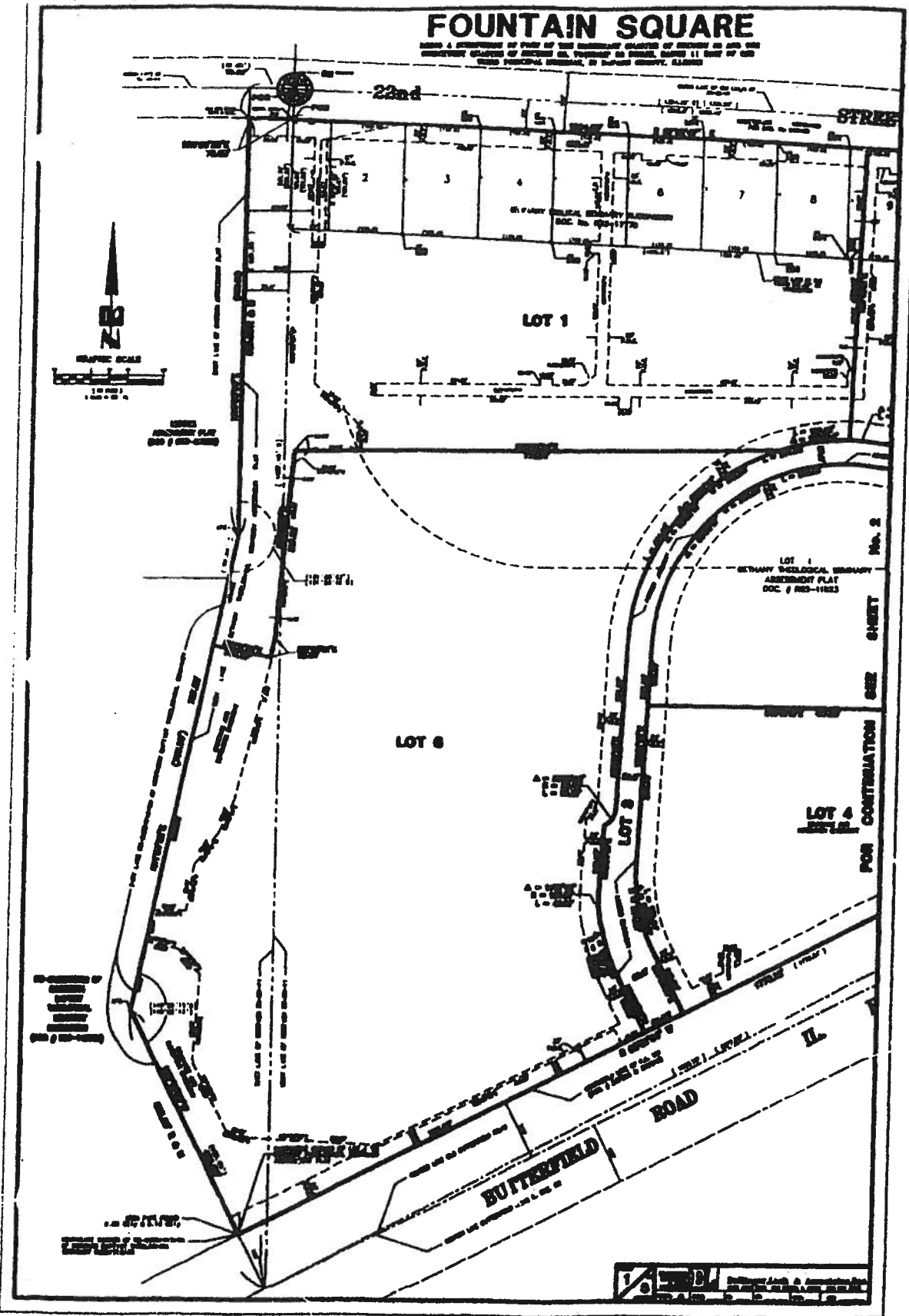
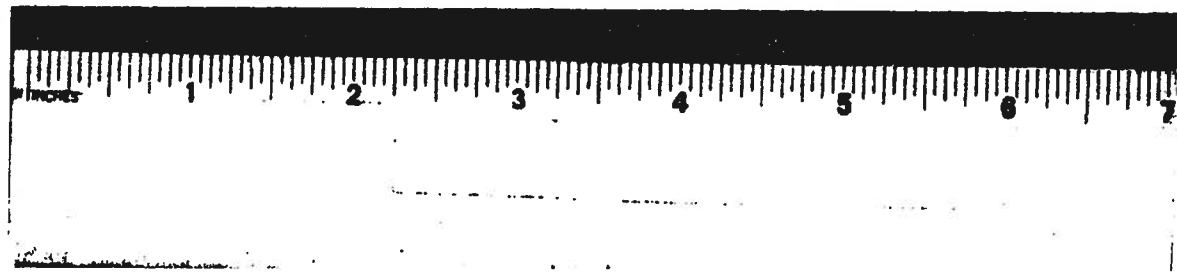


EXHIBIT B R98-067503

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Prepared by:  
Daniel Backer, Esq.  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, New York 10019

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between METSUN THREE LOMBARD IL SENIOR LIVING, LLC, a Delaware limited liability company (“Assignor”), and LOMBARD IL SENIOR LIVING OWNER, LLC, a Delaware limited liability company (“Assignee”).

**WHEREAS**, the Village of Lombard, a municipal corporation (the “Village”), Bethany Theological Seminary, an Illinois not-for-profit corporation, and Fountain Square of Lombard L.L.C. (“Fountain”), entered into an Annexation Agreement dated March 23, 1998, which incorporates by reference a Development Agreement (collectively, as it may be amended, modified or supplemented from time to time, the “Agreement”) regarding the real property commonly known as Fountain Square, and which Agreement was recorded by the DuPage County Recorder of Deeds on April 10, 1998 as Document Number R98-067503; and

**WHEREAS**, Assignor acquired an interest in the Assigned Property, as defined herein, pursuant to that certain Assignment and Assumption Agreement by and between Sunrise Lombard IL Senior Living, LLC, a Delaware limited liability company, as assignor, and Assignor, as assignee, dated as of February 5, 2008 to be effective as of September 23, 2008, which Assignment and Assumption Agreement was recorded by the DuPage County Recorder of Deeds on September 26, 2008 as Document R2008-145502; and

**WHEREAS**, Assignor desires to assign to Assignee all of its right, title and interest in and to the Agreement related to Lot 2 in the Fountain Square Subdivision in the Village of Lombard, DuPage County, Illinois, containing approximately 4.387± acres being purchased by Assignee (the “Assigned Property”), and more particularly described on Exhibit A attached hereto and made part hereof, and Assignee desires to accept said assignment and to assume all of Assignor’s liabilities and obligations related to or arising from and under the Agreement as the Agreement relates to the Assigned Property as referred to therein and the incorporated Development Agreement pertaining thereto;

**NOW, THEREFORE**, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged: (a) Assignor does hereby assign, transfer and convey unto Assignee all of Assignor’s right, title and interest in and to the Agreement and any benefits hereinafter derived thereunder but only as such rights, title and interests relate to the Assigned Property; and (b) Assignee does hereby unconditionally assume and promise to pay and perform in full, from and after 12:01 A.M. on the date written above, all obligations and liabilities of Assignor related to or arising under the Agreement as it relates to the Assigned Property, which accrue as of the date hereof. This Assignment and Assumption Agreement shall be governed by the laws of the State of Illinois.

Assignor represents and warrants that it has not pledged, assigned, sold or otherwise transferred any of its rights, title, and interest in, to and under the Agreement to any person or entity other than to Assignee pursuant to this Assignment and Assumption Agreement.

[Signature page follows]

**IN WITNESS WHEREOF**, this Assignment and Assumption Agreement is executed as of the date first noted above.

ASSIGNOR:

METSUN THREE LOMBARD IL SENIOR LIVING, LLC, a Delaware limited liability company

By: MetSun Three Pool One, LLC, a Delaware limited liability company, its sole member

By: Sun IV LLC, a Delaware limited liability company, its sole member

By: Sunrise Senior Living Investments, Inc., a Virginia corporation, its sole member

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

LOMBARD IL SENIOR LIVING OWNER, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:

The foregoing Assignment and Assumption Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of Sunrise Senior Living Investments, Inc., a Virginia corporation, the sole member of Sun IV LLC, a Delaware limited liability company, the sole member of MetSun Three Pool One, LLC, a Delaware limited liability company, the sole member of METSUN THREE LOMBARD IL SENIOR LIVING, LLC, a Delaware limited liability company, on behalf of the company and for the purpose contained herein.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF FLORIDA, ORANGE COUNTY, ss:

The foregoing Assignment and Assumption Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of LOMBARD IL SENIOR LIVING OWNER, LLC, a Delaware limited liability company, on behalf of the company for the purpose contained herein.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CONSENT AND RELEASE**

The undersigned, being the \_\_\_\_\_ of the Village of Lombard, the remaining party to the Agreement as it relates to the Assigned Property, hereby consents to this Assignment and Assumption Agreement on behalf of the Village of Lombard, and forever releases the Assignor, together with its successors, assigns, heirs, and personal representatives, other than the Assignee, from all liabilities and obligations related to or arising under the Agreement, which relate to the Assigned Property.

VILLAGE OF LOMBARD,  
a municipal corporation

By: \_\_\_\_\_ Attest: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Its: \_\_\_\_\_ Its: \_\_\_\_\_

STATE OF ILLINOIS, DUPAGE COUNTY, ss:

The foregoing Assignment and Assumption Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Village of Lombard, State of Illinois, for the purpose contained herein.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOT 2 IN FOUNTAIN SQUARE, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 29 AND THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1998, AS DOCUMENT NO. R98-139154 IN DUPAGE COUNTY, ILLINOIS.

PIN 06-28-100-011

Commonly known as:

2210 & 2220

~~XX~~Fountain Square Drive

(Southwest Corner of 22<sup>nd</sup> Street and Meyers Road)

Lombard, Illinois 60148

## ESTOPPEL CERTIFICATE

This Estoppel Certificate is made this \_\_\_ day of June, 2012, by the Village of Lombard, a municipal corporation (the "Village"), to and in favor of (i) Metsun Three Lombard IL Senior Living, LLC, a Delaware limited liability company (the "Owner"), (ii) Lombard IL Senior Living Owner, LLC, a Delaware limited liability company (the "Transferee"), and (iii) The Prudential Insurance Company of America ("Prudential", and together with the Owner and Transferee, the "Certified Parties"), together with each of their respective successors and assigns.

### RECITALS:

A. The Village is a party to, and has the authority to administer, that certain Annexation Agreement, together with all exhibits, attachments and addenda thereto, regarding the Village of Lombard, Illinois, dated March 23, 1998, and recorded on April 10, 1998 as Document R98-07503 of the Public Records of DuPage County, Illinois (the "Annexation Agreement");

B. The Owner is the owner of that certain parcel of property more particularly described on the attached Exhibit A (the "Subject Property"), which Subject Property is subject to the terms of the Annexation Agreement;

C. The Owner is the obligor of the rights and obligations pertaining to the Subject Property pursuant to the Annexation Agreement by virtue of that certain Assignment and Assumption Agreement by and between Sunrise Lombard IL Senior Living, LLC, a Delaware limited liability company, as assignor, and Owner, as assignee, dated as of September 23, 2008 and recorded on September 26, 2008 as Document R2008-145502 of the Public Records of DuPage County, Illinois;

D. As contemplated by Section 25(D)(2)(b) of the Annexation Agreement, the Owner desires to transfer and convey the Subject Property to the Transferee, including, without limitation, all of its rights and obligations pursuant to the Annexation Agreement; and

E. Prior to accepting and assuming the Owner's obligations pursuant to the Annexation Agreement, the Transferee and Prudential have requested certain assurances from the Village, as more particularly set forth herein.

### CERTIFICATION

The Village hereby certifies to the Certified Parties as follows:

1. All obligations of the Owner, together with its predecessors in interest, with respect to the Subject Property pursuant to the Annexation Agreement have been satisfied in all respects.

2. All approvals required under the Annexation Agreement for the construction of new improvements, or modifications of any kind or degree to existing improvements, on the



Subject Property, as of the date hereof, have been given, and that all such improvements on the Subject Property are in compliance with the Annexation Agreement.

3. Neither the Subject Property, nor the Owner, is in default under the Annexation Agreement, as of the date hereof and that no event has occurred that with the passage of time or the giving of notice, or both, would constitute a default by the Owner with respect to the Subject Property.

4. That there are no unpaid assessments, fees, or other charges or expenses due or owing by the Owner with respect to the Subject Property pursuant to the Annexation Agreement.

5. That the Annexation Agreement is unmodified and in full force and effect.

6. The Village hereby waives the thirty (30) day notice requirement set forth in Section 25(D)(2)(b) of the Annexation Agreement and acknowledges and agrees that the written notice dated June \_\_, 2012 delivered by Owner to the Village with respect to the proposed conveyance of the Subject Property from the Owner to the Transferee satisfies the requirements of Section 25(D)(2)(b).

7. The statements contained herein may be relied upon by the Certified Parties the foregoing certifications made herein shall be binding on the Village and its successors and assigns.

Unless otherwise defined herein, all terms used herein shall have the meaning ascribed to them in the Annexation Agreement.

Executed by the duly authorized representative of the Village on the date first above written.

THE VILLAGE OF LOMBARD,  
a Municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

