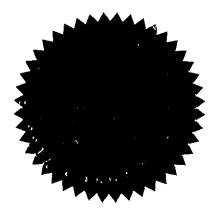
ORDINANCE 4921

PAMPHLET

FRONT OF PAMPHLET

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT

201 EAST ROOSEVELT ROAD (FORMERLY 19W655 ROOSEVELT ROAD)



PUBLISHED IN PAMPHLET FORM THIS <u>22ND</u> DAY OF <u>JANUARY</u>, 2001 BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS.

Mraewel W. Wardel Lorraine G. Gerhardt Village Clerk

ORDINANCE 4921

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT

(PC 00-47: 201 East Roosevelt Road) (formerly known as 19 W 655 Roosevelt Road)

(See also Ordinance No(s). 4922 & 4923

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 property generally located at 201 E. Roosevelt Road (formerly known as 19 W 655 Roosevelt Road) 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 lot(s) 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 execution of said Agreement complies with the statutory procedures as required by Chapter 65, ILCS 5/7-1-1; a hearing on said Agreement having been held, pursuant to proper notice, by the President and Board of Trustees on January 18, 2000.

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 Michelle L. Burton Trust No. 9 under Trust Agreement dated December 20, 1990 c/o Mr. George Pulice, Trustee, 404 Royal Glen Court, Oak Brook, Illinois, 60521.

Section 2: This ordinance is limited and restricted to the property generally located at 201 East Roosevelt Road, Lombard, Illinois and legally described as follows:

LOT 4, EXCEPT THE EAST 21.0 FEET, IN ROOSEVELT HIGHLAND SHOPPING CENTER, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE

Ordinance No. 4921

Re: PC 00-47: 201 E. Roosevelt Road

Page 2

NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 26, 1954, AS DOCUMENT 738449, IN DUPAGE COUNTY, ILLINOIS.

Parcel No. 06-20-100-008

Section 3: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

William J. Mueller Village President

Passed on first reading this 4th day of January , 2001.
First reading waived by action of the Board of Trustees thisday of, 2001.
Passed on second reading this 18th day of January , 2001.
Ayes: President Mueller, Trustees Borgatell, Tross, Schaffer, Sebby, Florey, Kufrin, Jr
Nayes: None
Absent: None
Approved this 18th day of January , 2001.

ATTEST:

Lorraine G. Gerhardt

Village Clerk

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ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this 18th day of January, 2001, by and between the Village of Lombard, a municipal corporation (hereinafter referred to as "Village") and Michelle L. Burton Trust No. 9 under Trust Agreement dated December 20, 1990 c/o Mr. George Pulice, Trustee, 404 Royal Glen Court, Oak Brook, Illinois, 60521 (hereinafter collectively referred to as "Owner").

WITNESSETH:

WHEREAS, Owner is the record owner of the parcel of 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 adjacent to and contiguous to the existing corporate boundaries of the Village; and

WHEREAS, the Village desires to annex and Owner desires to have the Subject Property annexed to the Village and the parties desire to obtain assurances from the others 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 26,644 square foot parcel of land, and there are no electors residing thereon; and

WHEREAS, all owner(s) of record of the Subject Property have signed a Petition for Annexation of the Subject Property to the Village, which Petition is hereinafter referred to as the "Annexation Petition"; and

WHEREAS, an application has heretofore been filed with the Village Clerk for zoning of the Subject Property; and

WHEREAS, said application was forwarded to the Plan Commission of the Village; and
WHEREAS, public hearings were held on November 20, 2000, and December 18, 2000,
for the purpose of considering whether the Subject Property should be rezoned, upon its annexation,
from the R-1 Single Family Residence District to the B-3 Community Shopping District, with
conditional uses for a restaurant, including entertainment, dancing, and/or amusement devices, and
an outdoor restaurant service area, under the Lombard Zoning Ordinance (Chapter 155 of the
Lombard Village Code, hereinafter the "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 the rezoning; and

WHEREAS, public hearings on this Annexation Agreement ("Agreement") were held by the Corporate Authorities on the 7th day of December, 2000 and the 4th day of January 2001; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the said annexation and zoning and for other related matters pursuant to the provisions of Division 15.1 of

Article 11 of Act 5 of Chapter 65 of the <u>Illinois Compiled Statutes</u>, 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, 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 deem it to the mutual advantage of the parties and in the public interest that the Subject Property be annexed to the Village as hereinafter provided; and

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

WHEREAS, the Corporate Authorities of the Village have examined the existing uses of the Subject Property and have determined that said uses of the Subject Property in accordance with this Agreement comply with the Comprehensive Plan of the Village; and

WHEREAS, Owner desires to have the Subject Property ultimately rezoned to the B-3 Community Shopping District under the Zoning Ordinance, with the conditional uses as noted above;

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth, the parties hereto agree as follows:

- 1. <u>Incorporation of Recitals</u>: The Village and Owner agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.
- 2. <u>Improvement of Subject Property</u>: The Village and Owner agree that the Subject Property shall be improved 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 the Subject Property to be duly and validly annexed to the Village as promptly as practicable after the execution of this Agreement. The parties shall cause such annexation to be effected pursuant to the provisions of Section 5/7-1-8 of Act 5 of Chapter 65 of the Illinois Compiled Statutes.
- 4. Zoning: Upon annexation of the Subject Property to the Village as set forth herein, the Corporate Authorities shall, without further public hearings, immediately rezone and classify the entire Subject Property from the R-1 Single Family Residence District to the B-3 Community Shopping District under the Zoning Ordinance, with conditional uses for a restaurant, including entertainment, dancing and/or amusement devices, and an outdoor restaurant seating area.
- 5. Parking Lot Improvements: Owner shall make certain improvements to the parking lot for the Subject Property, including certain landscaping improvements (hereinafter collectively referred to as the "Improvements"), in full compliance with the Site Plan prepared on August 14, 2000 and attached hereto as EXHIBIT B (hereinafter referred to as the "Site Plan") and Owner shall cause the Improvements to be completed at its sole cost and expense on or before September 30, 2001.

- 6. Signage Improvements: Owner shall bring all signage on the Subject Property into compliance with the requirements of Village Code within seven (7) years from the date of this Agreement. Notwithstanding the foregoing, in the event that ownership of the Subject Property changes, including a change in the beneficial ownership of the trust that serves as Owner, but exclusive of changes in legal or beneficial ownership wherein the new legal or beneficial owner is a member of the Michelle L. Burton family, or in the event that any occupant/tenant of the Subject Property changes from the occupant/tenants as of the date of this Agreement (hereinafter a "Signage Triggering Event"), all signage on the Subject Property shall be brought into compliance with the requirements of the Village Code within thirty (30) days of said Signage Triggering Event.
- 7. Water Utilities: Owner shall not initially be required to connect the building(s) on the Subject Property to the Village's water distribution system, but hereby agrees to install water main extensions and connect to such water distribution system when either Roosevelt Road is reconstructed along the South side of the Subject Property, the well on the Subject Property fails or ownership of the Subject Property changes, including a change in the beneficial ownership of the trust that serves as Owner, but exclusive of changes in legal or beneficial ownership wherein the new legal or beneficial owner is a member of the Michelle L. Burton family (hereinafter a "Water Triggering Event"). Any such watermain extension installation and connection to the Village's water distribution system shall take place within ninety (90) days after the occurrence of a Water Triggering Event. At the time that Owner connects the building (s) located on the Subject Property to the Village's water distribution system, Owner shall pay all connection charges and grant or dedicate to the Village or obtain on behalf of the Village, any easements required for the

construction of the necessary water main extensions serving the Subject Property, all at no cost or expense to the Village.

8. <u>Contributions</u>: Owner will make the following contributions:

School: None.

Parks: None.

<u>Library</u>: None.

- 9. <u>Fees</u>: In consideration of the annexation of the Subject Property into the Village pursuant to the terms and provisions of this Agreement, the Village will pay any and all fees relating to such annexation and Owner shall not be required to pay any fees relating to the annexation and rezoning of the Subject Property.
- Statutes Chapter 70, Section 705/20, the Subject Property shall be disconnected from the fire protection district in which it is located and the Village shall pay any and all costs and expenses relating to such disconnection. Owner agrees to cooperate with the Village in the disconnection. The Village shall be responsible for any funds expended by the Village, including, but not limited to, any legal fees and litigation costs relative thereto.
- Park District to have the Subject Property annexed to the Lombard Park District upon its annexation to the Village, provided that any fees, costs or expenses relating to the annexation petition process shall be paid by the Village.

- 12. Licenses and Permits: Provided the Owner and/or tenant of the restaurant use on the Subject Property is qualified, as required by the provisions of the Village Code to hold each license or permit requested, and provided that the restaurant premises proposed for licensing/permitting meets the requirements of the Village Code applicable to the issuance of each license or permit requested, the Village shall issue in relation to said restaurant use on the Subject Property, all Village Code required licenses and permits including, but not limited to, the following licenses and permits.
 - A. Liquor License;
 - B. Coin-Operated Amusement Device License(s);
 - C. Billiard License;
 - **D.** Food Handler License;
 - E. Tobacco Dealer License; and
 - F. Alarm Permit

The nature, extent and class of each license or permit shall be determined by the Village based upon the actual restaurant use as of the date of the annexation of the Subject Property.

13. General Provisions:

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

Corporate Authorities:

President and Board of Trustees VILLAGE OF LOMBARD 255 East Wilson Avenue Lombard, Illinois 60148

With a copy to:

Village Manager VILLAGE OF LOMBARD 255 East Wilson Avenue Lombard, Illinois 60148

Director of Community Development VILLAGE OF LOMBARD 255 East Wilson Avenue Lombard, Illinois 60148

Thomas P. Bayer KLEIN, THORPE AND JENKINS, LTD. 20 North Wacker Drive Suite 1660 Chicago, Illinois 60606

(2) If to Owner:

Michelle L. Burton Trust No. 9 under Trust Agreement dated December 20, 1990 c/o Mr. George Pulice, Trustee
404 Royal Glen Court
Oak Brook, Illinois 60521

With a copy to:
Gerard A. Para
Attorney at Law
5565 RFD
Long Grove, Illinois 60047

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 inure to the benefit of and shall be binding upon Owner's successors in any manner in title, and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.
- (2) Notwithstanding any provision of this Agreement to the contrary, each party shall at all times during the term of this Agreement remain liable to the other party for the faithful performance of all obligations imposed upon such party by this Agreement until such obligations have been fully performed or until such party has otherwise been released by the other party from any or all of such obligations.
- C. <u>Court Contest</u>: In the event the annexation of the Subject Property, the classification of the Subject Property for zoning purposes or other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending, including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period mentioned in subsection 13S below.
- D. Remedies: The Village, Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by either party, or their successors or assigns, which default exists uncorrected for a period of thirty (30) days after written notice to the party to such default, the party seeking to enforce said provision shall have the right of specific performance and if said party prevails in a court of law, it shall be entitled to specific performance. It is further expressly agreed by and between the parties hereto

that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the parties, or their successor or successors in title.

- E. <u>Dedication of Public Lands</u>: 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 <u>Illinois Compiled Statutes</u>, 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.
- F. <u>Conveyances</u>: Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner to sell or convey all or any portion of the Subject Property, whether improved or unimproved, except as otherwise specifically set forth herein.
- G. Survival of 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.
- H. <u>Captions and Paragraph Headings</u>: 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.
- I. No Obligation on the Part of the Owner for Reimbursement of Village for
 Legal and Other Fees and Expenses:

- (1) To Effective Date of Agreement: The Owner concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall not have any obligation to reimburse the Village for any expenses incurred by the Village in the preparation and review of this Agreement, or any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property, including, but not limited too:
 - (a) the costs incurred by the Village for engineering services;
 - (b) all attorneys' fees incurred by the Village in connection with this Agreement and the annexation and zoning of the Subject Property; and
 - (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.
- Owner shall also have no obligation to reimburse the Village for any expenses or 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.
- J. No Waiver or Relinquishment of Right to Enforce Agreement: Failure of either 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 the other party imposed, shall not constitute or be construed as a waiver or relinquishment of either party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

- K. <u>Village Approval or Direction</u>: 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.
- L. Recording: A copy of this Agreement and any amendments thereto shall be recorded by the Village at its sole cost and expense. A file-stamped copy bearing the date of recording and the Recorder's number shall be provided to Owner at Village expense.
- M. <u>Authorization to Execute</u>: The representative(s) of Owner executing this

 Agreement warrant that they have been lawfully authorized by Owner 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 of the Village to execute this Agreement. Owner and the
 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.
- N. <u>Amendment</u>: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, 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.

- O. <u>Counterparts</u>: This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- P. <u>Conflict Between the Text and Exhibits</u>: In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.
- Q. <u>Definition of Village</u>: 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.
- R. 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.
- S. <u>Term of Agreement</u>: 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.
- T. <u>Venue:</u> 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

ATTEST:

Village President

DATED: January 18, 2001

201 E.	Roosevelt Road -	Annexation	Agreement
Page 1:	5		

<u>OWNER</u>

By:
George Pulice, as Trustee Under Trust
Agreement Dated December 20, 1990,
and known as the Michelle L. Burton
Trust No. 9.

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 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 18 day of 2001.

Commission expires 2/18,2003.

Notary Public

"OFFICIAL SEAL"
DENISE R. KALKE
Notary Public, State of Illinois
My Commission Expires 02/18/2003

ACKNOWLEDGMENTS

STATE OF ILLINOIS) SS	
COUNTY OF DUPAGE)	
I, the undersigned, a Notary Public, in and thereby Certify that George Pulice, as Trustee Un 1990 and known as the Michelle L. Burton Trust No. 9, a person whose name is subscribed to the foregoing insperson and acknowledged that as such Trustee he signe free and voluntary act, and as the free and voluntary act purposes therein set forth.	and personally known to me to be the same strument, appeared before me this day in and delivered the said instrument, as his
GIVEN under my hand and official seal, this	
	Notary Public

EXHIBIT "A"

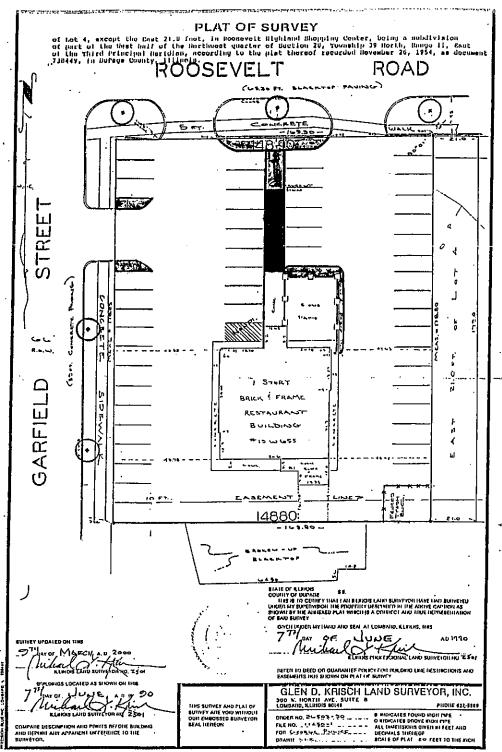
LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT 4, EXCEPT THE EAST 21.0 FEET, IN ROOSEVELT HIGHLAND SHOPPING CENTER, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 26, 1954, AS DOCUMENT 738449, IN DUPAGE COUNTY, ILLINOIS.

Parcel No. 06-20-100-008

EXHIBIT "B"

SITE PLAN



REVISED SITE PLAN

LEGEND

- CURBING TO BE ADDED
- -SIDEWALK



-LANDSCAPING



- BRICK PAVERS



-PARKWAY TREES

-X-X-X

-FENCING FOR TRASH ENCLOSURE

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