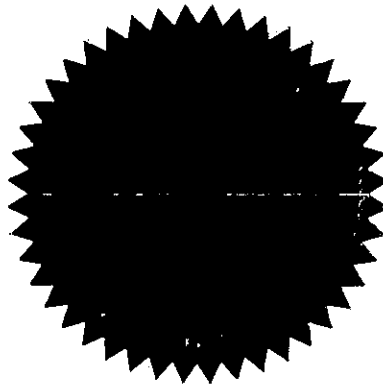


ORDINANCE 5700  
5701  
5702  
5703


**PAMPHLET**

ORDINANCES AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT  
ANNEXING CERTAIN TERRITORY TO THE VILLAGE  
APPROVING A MAP AMENDMENT (REZONING)  
AND  
GRANTING A CONDITIONAL USE FOR EQUIPMENT AND MATERIAL STORAGE

2N700 LOMBARD ROAD



PUBLISHED IN PAMPHLET FORM THIS 22<sup>nd</sup> DAY OF August, 2005  
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,  
DUPAGE COUNTY, ILLINOIS.

  
Brigitte O'Brien  
Village Clerk

**ORDINANCE 5700**

**AN ORDINANCE AUTHORIZING THE  
EXECUTION OF AN ANNEXATION AGREEMENT**

(PC 05-18: 2N700 Lombard Road)

See also Ordinance No.(s) 5701, 5702 & 5703 )

WHEREAS, it is in the best interest of the Village of Lombard, DuPage County, Illinois that a certain Annexation Agreement (hereinafter the "Agreement") pertaining to the properties located at 2N700 Lombard Road, Lombard, Illinois to be entered into; and,

WHEREAS, the Agreement has been drafted and a copy is attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, the developer and the legal owners of the lots of record, which are the subject of said Agreement, are ready, willing and able to enter into said Agreement and to perform the obligations as required thereunder; and,

WHEREAS, the statutory procedures provided in Chapter 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, as amended, for the execution of said Agreement have been complied with; a hearing on said Agreement having been held, pursuant to proper notice, by the President and Board of Trustees on July 21, 2005.

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President and Village Clerk be and hereby are authorized to sign and attest to the Agreement attached hereto and marked Exhibit "A", by and between the Village of Lombard; and,

SECTION 2: This ordinance is limited and restricted to the property generally located at 2N700 Lombard Road, Lombard, Illinois and legally described as follows:

The north 306 feet of the west half of the northwest quarter of the southeast quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois; also

The north 306 feet of the east 66 feet of the southwest quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois.

Parcel Index Number: 03-31-400-001

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

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

First reading waived by action of the Board of Trustees this 18th day of August, 2005.

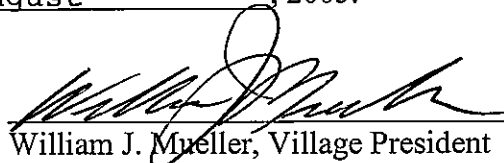
Passed on second reading this 18th day of August, 2005.

Ayes: President Mueller, Trustees Tross, O'Brien, Sebby and Soderstrom

Nays: None

Absent: Trustees Gron and Florey

Approved this 18th day of August, 2005.

  
William J. Mueller, Village President

ATTEST:

  
Brigitte O'Brien, Village Clerk

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Space above reserved for Recorder's use

**ANNEXATION AGREEMENT DATED August 18, 2005 FOR  
2N700 LOMBARD ROAD, LOMBARD, IL**

Parcel No.: 03-31-400-001

**AFTER RECORDING RETURN TO:**

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

**ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this 18 day of August, 2005, by and between the Village of Lombard, a municipal corporation ("VILLAGE") and B. Haney & Sons, Inc., an Illinois Corporation (hereinafter referred to as "OWNER");

**WITNESSETH:**

WHEREAS, OWNER is the record owner of the property legally described in EXHIBIT A, attached hereto and made a part hereof (hereinafter referred to as the "SUBJECT PROPERTY"); and

WHEREAS, the SUBJECT PROPERTY is not annexed to the VILLAGE or any other municipal corporation; and

WHEREAS, OWNER is desirous of annexing the SUBJECT PROPERTY, which is not currently within the corporate limits of the VILLAGE, to the VILLAGE; and

WHEREAS, OWNER is proceeding before the appropriate authorities of the VILLAGE to obtain annexation, a map amendment, zoning and other approvals for the SUBJECT PROPERTY as set forth in this Agreement in order to facilitate the continued use of the SUBJECT PROPERTY as it is currently developed and operated; and

WHEREAS, the VILLAGE desires to annex and the OWNER desires to have the SUBJECT PROPERTY annexed to the VILLAGE, and each of the parties desires to obtain assurances from the other as to certain provisions of the zoning and other ordinances of the VILLAGE for the SUBJECT PROPERTY when the same has been annexed and to other matters covered by this Agreement for a period of twenty (20) years from and after the execution of this Agreement; and

WHEREAS, the SUBJECT PROPERTY consists of approximately 5.01 acres of land; and

WHEREAS, there are no electors residing on the SUBJECT PROPERTY; and

WHEREAS, all owner(s) of record of the SUBJECT PROPERTY have signed a Petition for Annexation of the SUBJECT PROPERTY to the VILLAGE (hereinafter referred to as the "Annexation Petition"); and

WHEREAS, an application has heretofore been filed with the VILLAGE Clerk for annexation and zoning of the SUBJECT PROPERTY; and

WHEREAS, said application was forwarded to the Plan Commission of the VILLAGE; and

WHEREAS, a public hearing was held on June 20, 2005, for the purpose of considering whether the SUBJECT PROPERTY should be rezoned, upon the annexation of the SUBJECT PROPERTY, from the R-1 Single-Family Residential District to the I Limited Industrial District, with a conditional use for an existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions and the Plan Commission has submitted to the Corporate Authorities of the VILLAGE (the "Corporate Authorities") their findings of fact and recommendations with respect to said application; and

WHEREAS, a public hearing on this Agreement has been held by the Corporate Authorities on the 18<sup>th</sup> day of August, 2005; and

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

WHEREAS, all public hearings and other actions required to be held or taken prior to the adoption and execution of this Agreement, in order to make the same effective, have been held or taken, including all hearings and actions required in connection with amendments to, variations from and classifications under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code - hereinafter referred to as the "Zoning Ordinance"), the Lombard Sign Ordinance (Chapter 153 of the Lombard Village Code - hereinafter referred to as the "Sign Ordinance"), and the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code - hereinafter referred to as the "Subdivision Ordinance"), such public hearings and other actions having been held pursuant to public notice as required by law and in accordance with all requirements of law prior to adoption and execution of this Agreement; and

WHEREAS, the Corporate Authorities of the VILLAGE and the OWNER deem it to the mutual advantage of the parties and in the public interest that the SUBJECT PROPERTY be annexed to and developed as a part of the VILLAGE as hereinafter provided; and

WHEREAS, the annexation of the SUBJECT PROPERTY as provided herein will promote the sound planning and development of the VILLAGE as a balanced community and will be beneficial to the VILLAGE; and

WHEREAS, OWNER desires to have the entire SUBJECT PROPERTY rezoned to the I Limited Industrial District with a conditional use for an existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions. Moreover, OWNER also desires to seek assurances from the VILLAGE relative to an existing non-potable well located on the SUBJECT PROPERTY.

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

1. **Incorporation of Recitals:** The VILLAGE and OWNER agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.

2. **Development of SUBJECT PROPERTY:** VILLAGE and OWNER agree that the SUBJECT PROPERTY shall be 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 VILLAGE and the OWNER shall cause the annexation of the SUBJECT PROPERTY to occur pursuant to the provisions of Section 5/7-1-8 of Act 5 of Chapter 65 of the Illinois Compiled Statutes. The Village agrees that the plat of annexation of the Subject Property shall not be recorded and the annexation shall not be effective until such time that the Village enters into a development agreement for the property at 1301 North Lombard Road.

4. **Zoning:** Upon annexation of the SUBJECT PROPERTY to the VILLAGE as set forth herein, the Corporate Authorities shall, without further public hearings, immediately rezone and classify the entire SUBJECT PROPERTY from the R1 Single Family Residence District to the I Limited Industrial District under the Zoning Ordinance and grant approval of a conditional use for an existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions .

5. **Site Plan Approval:** OWNER intends to continue to operate the SUBJECT PROPERTY in accordance with the existing plat of survey attached hereto as EXHIBIT B and prepared by Gentile & Associates, dated January 23, 1996 (the "Site Plan"), which Site Plan is hereby incorporated by reference as the same shall be approved by the Village (with any modifications thereto). Except as otherwise specifically provided for herein, said Site Plan is hereby approved as the site plan for the SUBJECT PROPERTY, subject to the provisions of the Village Code. OWNER shall be able to make necessary repairs and/or improvements to any buildings and/or structures erected on the SUBJECT PROPERTY, subject to the provisions of the Village Code. Any modification or intensification to the existing business shall be subject to the provisions established in Section 155.103 (F)(13) of the Zoning Ordinance.



6. **Water Utilities:** Village represents and warrants to OWNER as follows:

- A. That it owns and operates a water distribution system within the VILLAGE for water distribution.
- B. That the VILLAGE system has sufficient capacity to provide potable water to the SUBJECT PROPERTY, such service to be substantially the same as provided to other industrial areas in the VILLAGE being provided with water by the Village.

OWNER, agrees to fully cooperate with the VILLAGE and/or any parties authorized and approved by the VILLAGE to install watermain extensions in accordance with the Subdivision Ordinance, as approved by the Director of Public Works of the Village, or a duly authorized representative, and as set forth in EXHIBIT C attached hereto and incorporated by reference ( the "Utility Plans"), as modified by any final engineering plans hereafter approved by the VILLAGE for the SUBJECT PROPERTY with changes as required. OWNER shall grant or dedicate all easements required by the Village for the construction of the necessary water main extensions serving the SUBJECT PROPERTY. The VILLAGE shall fully cooperate with OWNER with respect to the application for and issuance of Illinois Environmental Protection Agency permits for the construction and connection of the water main extensions.

Upon execution and recording of this Agreement, recording of an annexation plat for the SUBJECT PROPERTY, and upon connection of the SUBJECT PROPERTY to the VILLAGE'S water system, the OWNER shall receive in-VILLAGE rates for water service. Any costs associated with the connection of the SUBJECT PROPERTY to the VILLAGE'S public water system done in conjunction with the reconstruction of the Lombard Road right-of-way shall not be borne by OWNER.

7. **Sanitary Sewer Facilities:** The SUBJECT PROPERTY is not connected to a public sanitary sewer system. Sanitary wastewater facilities are provided by an existing septic field located on the SUBJECT PROPERTY. The SUBJECT PROPERTY is located within the Facilities Planning Area ("FPA") of the Addison Sanitary District. However, the Addison Sanitary District

does not own or operate a public sanitary sewer line within two hundred fifty (250) feet of the SUBJECT PROPERTY. To facilitate the connection of the SUBJECT PROPERTY to a proposed public sanitary sewer line to be located within the Lombard Road right-of-way in front of the SUBJECT PROPERTY and as also depicted in EXHIBIT C (the "Utility Plans"), said line to be connected to the Glenbard Wastewater Authority's wastewater treatment facilities, OWNER shall request in writing that the Village file all petitions and other documents necessary to remove the SUBJECT PROPERTY from the Addison Sanitary District Facility Planning Area and include the SUBJECT PROPERTY in the Glenbard Wastewater Authority's Facility Planning Area, , and the Village will take all necessary actions and will exercise its best efforts to do so (the "FPA Amendment"). OWNER shall execute all documents and take all actions necessary to assist the VILLAGE in these removal and inclusion proceedings. The foregoing provisions of this Section to the contrary notwithstanding, in the event the VILLAGE is unable to achieve such removal and inclusion, the failure to do so shall not be deemed a breach of this Agreement.

Until such time that the SUBJECT PROPERTY can be connected to a public sanitary sewer service, OWNER agrees to operate and maintain the existing septic field on the SUBJECT PROPERTY in compliance with all applicable laws, rules and regulations. Any modifications to the existing septic field, or relocation of the septic field on the SUBJECT PROPERTY shall be subject to review and approval by the VILLAGE and DuPage County.

In the event that said FPA Amendment is approved by all relevant governmental authorities, and upon construction of a sanitary sewer line in the right-of-way on the east side of the SUBJECT PROPERTY, OWNER shall cooperate with the VILLAGE to effectuate the installation and maintenance of sanitary sewer service to the SUBJECT PROPERTY in accordance with the lawful regulations of the GLENBARD WASTEWATER AUTHORITY, the Village's Subdivision Ordinance, or as modified by any final engineering plans hereafter approved by the VILLAGE or the GLENBARD WASTEWATER AUTHORITY for the SUBJECT PROPERTY. OWNER shall grant or dedicate all easements required by the GLENBARD WASTEWATER AUTHORITY or VILLAGE for the construction of the necessary sanitary sewers serving the SUBJECT PROPERTY.

Any future tap-on, connection, and service fees imposed by the Glenbard Wastewater Authority upon the Subject Property as a direct result of the initial connection of the Subject property to the public sanitary sewer operated by the Village or the Glenbard Wastewater Authority shall not be borne by the Owner unless the Owner prevents the connection of the Subject Property being done concurrently with the reconstruction of the Lombard Road right-of-way.

8. **Storm Drainage Facilities:** The OWNER shall not be required to provide storm drainage facilities for any existing structures on the SUBJECT PROPERTY. The VILLAGE shall not require any additional stormwater improvements to meet the detention requirements of the SUBJECT PROPERTY. However, any future modifications or reconstruction of any buildings, structures and/or parking lot improvements shall be subject to the stormwater management requirements set forth in Chapter 151 of the Lombard Village Code.

9. **Easements:** OWNER shall provide or obtain all easements, both on-site and off-site (if applicable), which are necessary or appropriate to enable the SUBJECT PROPERTY to be properly drained and to receive water, sanitary sewer, electric, telephone, gas, and cable television service, with the VILLAGE being named a grantee in all said easements along with the applicable utility companies and cable television operator. The location for all public improvements shall be as approved by the VILLAGE. Any costs associated with creation of any public utility easements that are required as a direct result of the reconstruction of Lombard Road right-of-way shall not be borne by OWNER.

OWNER shall not provide any easements for cross-access or cross-parking rights on or across any portion of the SUBJECT PROPERTY for the use and/or benefit of adjacent property owners, lessees, occupants, visitors or employees of adjacent and/or abutting properties not located within the corporate limits of the VILLAGE. OWNER further agrees to maintain a physical barrier (i.e., fencing or continuous plant materials) along the north and west property line of the SUBJECT PROPERTY to ensure that access to adjacent properties cannot be achieved from and across the SUBJECT PROPERTY.

10. **Dedication of Lombard Road-of-Way** Associated with the annexation of the SUBJECT PROPERTY, and upon a request by the VILLAGE, OWNER shall cooperate with the VILLAGE to dedicate a portion of the SUBJECT PROPERTY for public right-of-way purposes, as depicted on EXHIBIT D attached hereto and made a part hereof. OWNER shall not be obligated to contribute to or construct any roadway improvements as a condition of this Agreement, but shall fully cooperate with the VILLAGE to facilitate the dedication of the public right-of-way as well as any subsequent construction of roadway improvements within the right-of-way.

11. **Contributions:** OWNER shall have no obligation to make any contribution, in cash or in land, to any school district, park district or library district provided the SUBJECT PROPERTY is operated in substantial conformity with this Agreement or pursuant to such other non-residential development plans as may from time to time be approved by the VILLAGE. The foregoing provision shall not eliminate or reduce OWNER's obligation to pay other fees and charges applicable to the SUBJECT PROPERTY pursuant to VILLAGE ordinances.

Furthermore, in consideration of the voluntary nature of the annexation, the VILLAGE agrees to waive all public hearing fees associated with the annexation and zoning of the SUBJECT PROPERTY.

12. **Non-Conforming Provisions:** Upon approval of this Agreement, the VILLAGE recognizes that the existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions is hereby permitted as a conditional use within the I Limited Industrial District. Nothing in this Agreement shall be construed so as to grant zoning relief or any other relief from the Lombard Village Code for any existing uses or structures on the SUBJECT PROPERTY, other than that noted in Section 4 above. The VILLAGE agrees that any legally permitted and constructed buildings or structures on the SUBJECT PROPERTY prior to the annexation of the SUBJECT PROPERTY shall be recognized by the VILLAGE as legally conforming buildings and structures. However, any expansion, alteration, reconstruction or repair of any such buildings or structures, or any change of land use on the SUBJECT PROPERTY, shall conform to all existing provisions of the Lombard Village Code.

For purposes of this Agreement, a legally permitted and constructed building or structure shall be any building or structure for which a building permit was issued by DuPage County prior to the effective date of this Agreement.

**13. Non-potable Well.**

Two existing private wells currently exist on the SUBJECT PROPERTY – one well provides potable water for the B. Haney & Sons building while the second well provides water for irrigation purposes for the existing mulch piles on the SUBJECT PROPERTY. The VILLAGE agrees to a variation from Section 51.02 of the Lombard Village Code to allow for the existing second private well to remain on the SUBJECT PROPERTY for non-potable water purposes. Said second well shall only be used as part of the existing landscape operations permitted on the SUBJECT PROPERTY and/or for dust control purposes associated with the storage of landscape mulch material on the SUBJECT PROPERTY. Said second well shall be owned, operated and maintained subject to all applicable regulations of the VILLAGE and the DuPage County Health Department. OWNER shall not be required to cap and remove said second well unless the following events occurs:

- (1) The SUBJECT PROPERTY is sold to another party who operates a business establishment other than that which is approved as part of this Agreement; or
- (2) Significant health concerns exist because the current water supply system is inadequate to supply safe water to the SUBJECT PROPERTY, as determined by the VILLAGE and/or DuPage County, including, but not limited to, the failure of the second well. In regard to this subsection, the second well shall be sealed no more than 90 days after official notice from the Village to do so.

**14. Reserved:**

**15. Fire District:** It is the VILLAGE'S and OWNER's intent that, by operation of law and in accordance with Illinois Compiled Statutes Chapter 70, Section 705/20, the SUBJECT PROPERTY shall, upon its annexation to the VILLAGE, be disconnected from the fire protection district in which it is located. The OWNER agrees to cooperate with the VILLAGE in regard to facilitating said disconnection. The VILLAGE, however, shall be primarily responsible for the

disconnection and shall make any payments required by 70 ILCS 705/20(e) or pay any legal fees and litigation costs incurred by the VILLAGE relative thereto. The VILLAGE shall provide notice to the fire protection district in the manner required by law.

16. **Annexation to Lombard Park District:** OWNER agrees to petition the Lombard Park District to have the SUBJECT PROPERTY annexed to the Lombard Park District upon its annexation to the VILLAGE in the event the SUBJECT PROPERTY is not currently annexed to said Park District.

17. **Consent to Creation of a Special Service or Special Assessment :** OWNER agrees that it will not object to the imposition of a Special Service Area or Special Assessment incorporating the SUBJECT PROPERTY with respect to the construction of any public improvements affecting the area of the SUBJECT PROPERTY and which may become necessary at a future date. The assessment formula for any such future Special Service or Special Assessment Area(s) shall be determined as required by law, taking into account the relative benefit to the SUBJECT PROPERTY as a result of the public improvements constructed. However, the VILLAGE agrees that it will not impose a Special Service Area or Special Assessment on the SUBJECT PROPERTY for a period of fifteen (15) years from the date of approval of this Agreement.

18. **General Provisions:**

A. **Notices:** Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed facsimile transmission provided a hard copy of such notice is deposited in the regular mail addressed to the recipient within twenty-four (24) hours following the facsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

- (1) If to the VILLAGE or  
Corporate Authorities:

President and Board of Trustees

VILLAGE OF LOMBARD

255 East Wilson Avenue

Lombard, Illinois 60148

Phone: (630) 620-5700

Fax: (630) 620-8222

With a copy to:

(a) Village Manager

VILLAGE OF LOMBARD

255 East Wilson Avenue

Lombard, Illinois 60148

Phone: (630) 620-5700

Fax: (630) 620-8222

(b) Director of Community Development

VILLAGE OF LOMBARD

255 East Wilson Avenue

Lombard, Illinois 60148

Phone: (630) 620-5700

Fax: (630) 620-8222

(c) Thomas P. Bayer

KLEIN, THORPE AND JENKINS, LTD.

20 N. Wacker Drive, Suite 1660

Chicago, Illinois 60606

Phone: (312) 984-6400

Fax: (312) 984-6444

(2) If to OWNER:

B. Haney & Sons  
2N700 Lombard Road  
Lombard, IL 60148

With a copy to:

E. Paul Lanphier  
Lanphier & Kowalkowski, Ltd.  
568 Spring Road, Suite B  
Elmhurst, IL 60126

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

B. Continuity of Obligations:

(1) This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors in interest, assignees, grantees, lessees, and upon any successor municipal authorities of the VILLAGE and successor municipalities. Upon the conveyance of any of OWNER's interest in any portion of the SUBJECT PROPERTY or its rights and obligations under this Agreement to the other or a third party ("Transferee"), the rights and obligations of OWNER pertaining to such portion of the SUBJECT PROPERTY or rights and obligations hereunder, shall be deemed assigned to and assumed by such Transferee, and OWNER shall thereupon be released and discharged by the VILLAGE from any further obligation pertaining to such identified rights and duties. Subject to the provisions of this Section 18B, the Transferee shall thereupon be entitled to exercise all rights and authorities and shall perform all duties and obligations of OWNER pertaining to such portion of the SUBJECT PROPERTY.



Upon the condition that the requirements of this subsection have been met, this Agreement shall inure to the benefit of and shall be binding upon OWNER's Transferees, and shall be binding upon the VILLAGE and the successor Corporate Authorities of the VILLAGE. In the event that the requirements of this subsection have not been met, this Agreement shall be binding upon, but shall not inure to the benefit of OWNER's Transferees until such time as OWNER has given the VILLAGE the notice required by this subsection 18B.

In the event of any sale or conveyance by OWNER of the SUBJECT PROPERTY or any portion thereof, OWNER shall notify the VILLAGE in writing, within ten (10) working days after the closing of such sale or conveyance, of any and all Transferees to all or any portion of the SUBJECT PROPERTY. Such written notice shall include identification of the name(s) of such Transferee(s), the date of such sale or conveyance, and a copy of the title opinion identifying the grantee, the real estate sold or conveyed, and such other information as is usually and customarily included in a title opinion for the sale or conveyance of real estate. Failure to give timely notice shall not constitute a default hereunder, but shall be governed by the remaining provisions of this subsection 18B.

- C. Court Contest: In the event the annexation of the SUBJECT PROPERTY, the classification of the SUBJECT PROPERTY for zoning purposes or other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending, including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period provided in subsection 18T below.
- D. Remedies: The VILLAGE and OWNER, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns,

which default exists uncorrected for a period of ten (10) days after written notice to any party to such default, or such longer period as may be reasonable under the circumstances, the party seeking to enforce said provision shall have the right of specific performance and if said party prevails in a court of law, it shall be entitled to specific performance or other equitable or legal remedy plus the right to recover from the defaulting party the expenses of said litigation including, but not limited to, reasonable attorneys' fees. It is further expressly agreed by and between the parties hereto that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the parties, or their successor or successors in title.

- E. Controlling Effect: All provisions, conditions and regulations as set forth in this Agreement and the documents or plans to which it refers shall supersede all Village ordinances, codes and regulations (other than those which relate to environmental, fire and police protection) that are in conflict with the Agreement, if any, as they may apply to the Subject Property. For this reason, the corporate authorities of the Village shall adopt such ordinances as may be necessary to implement the terms and provisions of this Agreement.
  
- F. Mutual Assistance: The parties hereto agree to take such actions, including the approval, execution and delivery of documents and instruments, and in the Village's case the adoption of ordinances and resolutions, as may be necessary or appropriate from time to time, to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent.
  
- G. Conveyances: Nothing contained in this Agreement shall be construed to restrict or limit the right of OWNER to sell or convey all or any portion of the

SUBJECT PROPERTY, whether improved or unimproved, except as otherwise specifically set forth herein.

- H. The VILLAGE agrees, during the term of this Agreement, that it will take no action to disconnect the SUBJECT PROPERTY from the VILLAGE.
- I. Survival of Representations: Each of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.
- J. Captions and Paragraph Headings: The captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.
- K. 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.
- L. 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.


- M. Recording: A copy of this Agreement and any amendments thereto shall be recorded by the VILLAGE.
- N. Authorization to Execute: The officers of OWNER executing this Agreement warrant that they have been lawfully authorized by OWNER's respective Boards of Directors to execute this Agreement on behalf of said OWNER. The President and Clerk of the VILLAGE hereby warrant that they have been lawfully authorized by the VILLAGE Board to execute this Agreement. The OWNER and VILLAGE shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.
- O. Amendment: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the OWNER and the VILLAGE relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.
- P. Counterparts: This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- Q. Conflict Between the Text and Exhibits: In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of this Agreement shall control and govern.

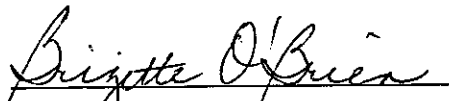
- R. Definition of VILLAGE: When the term VILLAGE is used herein it shall be construed as referring to the Corporate Authorities of the VILLAGE unless the context clearly indicates otherwise.
- S. Execution of Agreement: This Agreement shall be signed last by the VILLAGE and the President of the VILLAGE shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement.
- T. 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.
- U. Venue: The parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

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

VILLAGE OF LOMBARD, an Illinois

Municipal corporation

  
\_\_\_\_\_  
William J. Mueller  
Village President

  
\_\_\_\_\_  
Brigitte O'Brien  
Village Clerk

DATED: August 18, 2005

OWNER:

ATTEST:

Richard J. Haney  
Title: Secretary - Richard J. Haney

DATED: 11/9/05

By: David R. Haney

Name: David R. Haney

Title: President

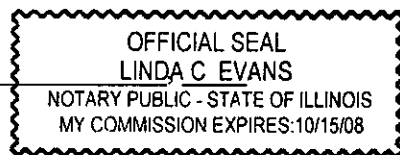


STATE OF DUPAGE )  
 ) SS  
COUNTY OF ILLINOIS )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that the above-named David R. Haney and  
Richard J. Haney, are personally known to me to be the President and  
Secretary of B. Haney & Sons, Inc and also personally known to me  
to be the same persons whose names are subscribed to the foregoing instrument as such  
President and Secretary respectively, and that they appeared before  
me this day in person and severally acknowledged that as such President and  
Secretary they signed and delivered the said instrument, consenting to its recordation,  
pursuant to authority given by said trust as their free and voluntary act, and as the free and voluntary  
act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 9th day of November, 2005.

Commission expires \_\_\_\_\_



Linda C. Evans  
Notary Public

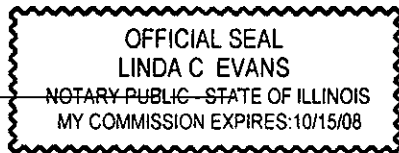


STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that the above-named David R. Haney, personally known to me  
to be the same persons whose names are subscribed to the foregoing instrument appeared before me  
this day in Person and severally acknowledged that they signed and delivered the said instrument,  
as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 9th day of November, 2005

Commission expires \_\_\_\_\_



*Linda C Evans*  
\_\_\_\_\_  
Notary Public

SCHEDULE OF EXHIBITS

- EXHIBIT A: Legal Description of SUBJECT PROPERTY
- EXHIBIT B: Site Plan for the SUBJECT PROPERTY
- EXHIBIT C: Utility Plans for Lombard Road Right-of-Way and the SUBJECT  
PROPERTY
- EXHIBIT D: Lombard Road Right-of-Way Dedication

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THE NORTH 306 FEET OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART THEREOF CONVEYED TO THE PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS) IN DUPAGE COUNTY, ILLINOIS; ALSO

THE NORTH 306 FEET OF THE EAST 66 FEET OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART THEREOF CONVEYED TO THE PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS) IN DUPAGE COUNTY, ILLINOIS.

Parcel Number: 03-31-400-001

Address: 2N700 Lombard Road







**ORDINANCE 5701**

**AN ORDINANCE ANNEXING CERTAIN TERRITORY  
TO THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS**

(PC 05-18: 2N700 Lombard Road)

(See also Ordinance No.(s) 5700, 5702, 5703 )

WHEREAS, a written petition, signed by the legal owners and electors of record of all land within the territory hereinafter described, has been filed with the Village Clerk of the Village of Lombard, DuPage County, Illinois, requesting that said territory be annexed to the Village of Lombard; and,

WHEREAS, the said territory is not within the corporate limits of any municipality, but is contiguous to the Village of Lombard; and,

WHEREAS, all notices of said annexation, as required by (Chapter 65 ILCS 5/7-1-1), have been given to the appropriate parties in a timely manner as required by Statute (copies of said Notices being attached hereto as Exhibit "A", and made part hereof).

WHEREAS, it is in the best interest of the Village of Lombard that said territory be annexed thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the territory described in Section 2 below be and the same is hereby annexed to the Village of Lombard, DuPage County, Illinois, pursuant to (Chapter 65 ILCS 5/7-1-8).

SECTION 2: This ordinance is limited and restricted to the property indicated on the attached Plat of Annexation attached hereto as Exhibit "B", and generally located at 2N700 Lombard Road, Lombard, Illinois and legally described as follows:

The north 306 feet of the west half of the northwest quarter of the southeast quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois; also

The north 306 feet of the east 66 feet of the southwest quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois.

Parcel Index Number: 03-31-400-001

SECTION 3: The new boundary of the Village of Lombard shall extend to the far side of any adjacent rights-of-way, and shall include all of every right-of-way within the area annexed hereby.

SECTION 4: The Village Clerk is hereby directed to record with the Recorder of Deeds and to file with the County Clerk, a certified copy of this Ordinance, and the original Plat of Annexation.

SECTION 5: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

First reading waived by action of the Board of Trustees this 18th day of August, 2005.

Passed on second reading this 18th day of August, 2005.

Ayes: Trustees Tross, O'Brien, Sebby and Soderstrom


Nayes: None

Absent: Trustees Gron and Florey




Ordinance No. 5701  
Re: PC 05-18 Annexation  
Page 3

Approved this 18<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
William J. Mueller, Village President

ATTEST:

  
\_\_\_\_\_  
Brigitte O'Brien, Village Clerk

**ORDINANCE 5702**

**AN ORDINANCE APPROVING A MAP AMENDMENT (REZONING)  
TO THE LOMBARD ZONING ORDINANCE  
TITLE 15, CHAPTER 155 OF THE CODE OF LOMBARD, ILLINOIS**

(PC 05-18; 2N700 Lombard Road)

(See also Ordinance No.(s) 5700, 5701 & 5703)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, an application has heretofore been filed requesting a map amendment for the purpose of rezoning the property described in Section 2 hereto from the R1 Single Family Residence District to the I Limited Industrial District; and,

WHEREAS, a public hearing thereon has been conducted by the Village of Lombard Plan Commission on July 18, 2005, pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the rezoning described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

**SECTION 1:** That Title 15, Chapter 155 of the Code of Lombard, Illinois, otherwise known as the Lombard Zoning Ordinance, be and is hereby amended so as to rezone the property described in Section 2 hereof from the R1 Single Family Residence District to the I Limited Industrial District.

**SECTION 2:** The map amendment is limited and restricted to the property located at 2N700 Lombard Road, Lombard, Illinois, and legally described as follows:

The north 306 feet of the west half of the northwest quarter of the southeast quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois; also

The north 306 feet of the east 66 feet of the southwest quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois.

Parcel Index Number: 03-31-400-001

SECTION 3: That the official zoning map of the Village of Lombard be changed in conformance with the provisions of this ordinance.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

First reading waived by action of the Board of Trustees this 18th day of August,

Passed on second reading this 18th day of August, 2005.

Ayes: Trustees Tross, O'Brien, Sebby and Soderstrom

Nayes: None

Absent: Trustees Gron and Florey

Approved this 18th day of August, 2005.

  
William J. Mueller, Village President

Ordinance No. 5702  
Re: PC 05-18 Map Amendment  
Page 3

ATTEST:

  
\_\_\_\_\_  
Brigitte O'Brien, Village Clerk

**ORDINANCE NO. 5703**

**AN ORDINANCE GRANTING A CONDITIONAL USE  
FOR A CONTRACTORS EQUIPMENT AND MATERIAL STORAGE YARD  
IN THE I LIMITED INDUSTRIAL DISTRICT**

(PC 05-18: 2N700 Lombard Road)

(See also Ordinances 5700, 5701 & 5702)

WHEREAS, the President and Board of Trustees of the Village of Lombard have heretofore adopted the Lombard Zoning Ordinance, otherwise known as Title 15, Chapter 155 of the Code of Lombard, Illinois; and,

WHEREAS, an application has heretofore been filed requesting approval of a conditional use pursuant to Section 155.418 (C)(10) of the Zoning Ordinance for a landscape contractors equipment and material storage yard (a contractor's establishment providing existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions) on the subject property located within the I Limited Industrial District; and,

WHEREAS, a public hearing on such application has been conducted by the Village of Lombard Plan Commission on July 18, 2005 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the conditional use described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

**SECTION 1:** That the Ordinance is limited and restricted to the property generally located at 2N700 Lombard Road, Lombard, Illinois, and legally described as follows:

Ordinance No 5703

Re: PC 05-18

Page 2

The north 306 feet of the west half of the northwest quarter of the southeast quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois; also

The north 306 feet of the east 66 feet of the southwest quarter of Section 31, Township 40 North, Range 11, East of the Third Principal Meridian, (except that part thereof conveyed to the Public Service Company of Northern Illinois) in DuPage County, Illinois.

Parcel Index Number: 03-31-400-001

SECTION 2: That a conditional use for a landscape contractors equipment and material storage yard (a contractor's establishment providing existing tree service, wood waste recycling and manufacturing of landscape mulch together with related storage and allied business transactions) on the subject property legally described in Section 1 above.

SECTION 3: This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

First reading waived by action of the Board of Trustees this 18th day of August, 2005.

Passed on second reading this 18th day of August, 2005.

Ayes: Trustees Tross, O'Brien, Sebby and Soderstrom

Nays: None

Absent: Trustees Gron and Florey

Approved this 18th day of August, 2005.

  
William J. Mueller, Village President

Ordinance No. 5703

Re: PC 05-18

Page 3

ATTEST:

  
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Brigitte O'Brien, Village Clerk

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