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Space above reserved for Recorder's use

**ANNEXATION AGREEMENT DATED OCTOBER \_\_\_\_, 2005 FOR  
1S771 VISTA AVENUE, LOMBARD, IL**

Parcel No.: 06-20-406-006

**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 \_\_\_\_\_ day of October, 2005, by and between the Village of Lombard, a municipal corporation ("VILLAGE") and Kinman Enterprises, LLC (hereinafter referred to as "Owner").

**WITNESSETH:**

**WHEREAS**, the 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 proposes to develop 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 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 is an approximately 0.56 acre parcel of land and there are no electors residing thereon; and

**WHEREAS**, upon annexation of the Subject Property the Village will be approving a two-lot plat of resubdivision relative to same, with said resubdivision to be approved pursuant to the provisions set forth in this Agreement; 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**, a public hearing on this Annexation Agreement ("Agreement") has been held by the Corporate Authorities on the 20th day of October, 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**, upon completion of the watermain extension to be constructed by the Owner to serve the Subject Property, the Village has agreed to enter into a recapture agreement relative thereto, all as more fully set forth in Section 8 below; and **WHEREAS**, pursuant to Section 154.203(E) of the Lombard Village Code, a variation to deviate from Section 154.302 of the Lombard Village Code, which requires that a sidewalk be constructed along Vista Avenue, is being forwarded directly to the Board of Trustees for a public hearing, as there were no concurrent actions requiring Plan Commission review or recommendation; and

**WHEREAS**, all 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 Zoning Ordinance (Chapter 155 of the Lombard Village Code), 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 deems 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 by Owner 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;

**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.

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 approval and 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 entire Subject Property shall be classified under the R-1 Single Family Residence District by operation of law.

5. **Subdivision and Development:** A variation is hereby granted from Section 154.302 of the Lombard Village Code, eliminating the requirement to provide a sidewalk along Vista Avenue adjacent to the Subject Property.

6. **Development of the Subject Property:** The Owner represents that it proposes to construct a new single-family residence on the Subject Property (hereinafter “the New Residence”) immediately north of the existing single-family residence (hereinafter the “Existing Residence”) on the Subject Property. The Village hereby represents that the Village will issue a building permit to allow for the construction of the New Residence and allow for the Existing Residence to temporarily remain on the Subject Property, subject to the following conditions:

- A. At such time that the construction of the New Residence has been completed, final inspections by the Village have been conducted, and the Village has determined, in its sole discretion, that the construction of the New Residence is complete and in full compliance with the Lombard Village Code, the Village will issue a Conditional Certificate of Occupancy, provided that the Owner has applied for and received a demolition permit for the razing of the Existing Residence located on the Subject Property.
- B. The Owner shall commence and complete the razing of the Existing Residence within thirty (30) days from the date of issuance of the Conditional Certificate of Occupancy for the New Residence. This date may be extended by mutual agreement of the Village and Owner based upon *force majeure*.
- C. In the event that the Owner does not complete the razing of the Existing Residence within said thirty (30) day period, subject to the extension provisions of subsection B above, the Village shall have the authority to hold any bond(s) and/or letter(s) of credit associated with the construction of the Existing Residence and/or utilize said bond(s) and/or letter(s) of credit to pay for the costs of removal of the Existing Residence. In this regard, Owner hereby consents to the Village's use of said bond(s) and/or letter(s) of credit for the purposes set forth herein, and authorizes the Village to enter the Subject Property and carry-out any such demolition.

D. Upon completion of the removal of the Existing Residence from the Subject Property, the Owner shall apply for a Final Certificate of Occupancy for the New Residence. Provided that the Owner has met all provisions of Village Code, the Village shall issue a Final Certificate of Occupancy for the New Residence at said time.

7. **Resubdivision Provisions:** The Village hereby represents that the Village will approve a two (2)-lot resubdivision as depicted on the Plat of Subdivision attached hereto as “Exhibit B” and made a part hereof. Said Plat of Subdivision shall not be considered approved, nor shall it be recorded, until such time that the Existing Residence located on the Subject Property is razed.

8. **Water-Main Extension:** The Owner shall construct a watermain extension to servie the Subject Property, as more fully depicted on Exhibit “C” attached hereto and made part hereof. Upon completion of said watermain extension, the Village will enter into a recapture agreement with the Owner, in the format attached hereto as Exhibit “D” and made part hereof, with the proration of the costs of said watermain extension, between the Owner and those other proeprties that will benefit from the construction of said watermain extension, being subject to the approval of the Director of Community Development.

9. **Fees:** In consideration of the impact of the development of Subject Property on the Village, and in consideration of water mains, sanitary sewer mains and storm sewer mains previously installed by the Village to assist in the serving of the Subject Property with water and sewers, Owner agrees to pay all applicable permit (including, but not limited to building permit)

and utility connection fees as required by Village Ordinances at the time of application for the respective permits. Owner further agrees that the connection charges and fees 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.

**10. Annexation to Lombard Park District:** The 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.

**11. General Provisions:**

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

- (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 the Owner:

Kinman Enterprises, LLC  
10 E. 22<sup>nd</sup> Street, Suite 116  
Lombard, IL 60148

With a copy to:

Walter J. O'Brien II  
O'Brien & Associates, P.C.  
1900 Spring Road, Suite 501  
Oak Brook, Illinois 60523

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

**B. Binding Agreement** This Agreement shall insure 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.

**C. Court Contest:** In the event the annexation of the Subject Property, the classification of the Subject Property for zoning purposes or other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending,

including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period mentioned in subsection 11 R below.

**D. Remedies:** The Village and Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by either party, or their successors or assigns, which default exists uncorrected for a period of ten (10) days after written notice to the other 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. Further, the parties agree that, in the event either party is required to bring a suit in a court of law to enforce the terms of this Annexation Agreement, the successful party shall be entitled to recover from the unsuccessful party all of the successful party's costs and expenses; including, but not limited to, its reasonable attorneys' fees.

**E. 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.

**F. 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.

**G. 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.

**H. 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 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 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.

**(2) From and After Effective Date of Agreement:** Except as provided in this subsection upon demand by Village made by and through its Director of Community Development, Owner 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 upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner at either's option from additional documents designated from time to time by the Owner relevant to determining such costs and expenses.

Notwithstanding the foregoing, Owner shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

(3) In the event that any third party or parties institute any legal proceedings against the Owner and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner, 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 shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal

counsel. In the event the Village exercises such option, then Owner shall reimburse the Village, from time to time on written demand from the Director of Community Development and notice of the amount due, for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

(4) In the event the Village institutes legal proceedings against Owner for violation of this Agreement and secures a judgment in its favor in said legal proceedings, the court having jurisdiction thereof shall determine and include in its judgment against Owner all expenses of such legal proceedings incurred by Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith (and any appeal thereof). Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner. Further, in the event the Village does not receive a judgment against the Owner in said legal proceedings, the terms of paragraph D above shall apply.

**I. 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.

**J. Village Approval or Direction:**

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the

Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

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

**L. Authorization to Execute:** The Manager of Owner executing this Agreement warrant that he/she has been lawfully authorized 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. 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.

**M. 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.

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

**O. Conflict Between the Text and Exhibits:** In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

**P. Definition of Village:** When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

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

**R. 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.

**S. Venue:** The parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

**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: \_\_\_\_\_  
Village President

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ATTEST:

\_\_\_\_\_  
Village Clerk

DATED: \_\_\_\_\_



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OWNER:

Kinman Enterprises, LLC

By: \_\_\_\_\_  
Its Manager

DATED: \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF ILLINOIS    )  
  ) SS  
COUNTY OF DUPAGE )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the Village of Lombard, and Brigitte O'Brien, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Commission expires \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
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 \_\_\_\_\_ is personally known to me to be the Manager of Kinman Enterprises, LLC and also personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, and that he/she appeared before me this day in Person and severally acknowledged that as such Manager he/she signed and delivered the said instrument, pursuant to authority given by Operating Agreement of Kinman Enterprises, LLC as his/her free and voluntary act, and as the free and voluntary act and deed of said Kinman Enterprises, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this \_\_\_\_ day of \_\_\_\_\_, 2005.

Commission expires: \_\_\_\_\_, \_\_\_\_\_.

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

**EXHIBIT A – LEGAL DESCRIPTION**

LOTS 148 IN CONGRESS KNOLLS UNIT NUMBER THREE, BEING A SUBDIVISION OF PART OF SECTIONS 20 AND 21, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 21, 1955 AS DOCUMENT NUMBER 753822, IN DUPAGE COUNTY, ILLINOIS.

Common Address: 1S771 Vista Avenue

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**EXHIBIT B – PLAT OF RESUBDIVISION**