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Space above reserved for Recorder's use

**ANNEXATION AGREEMENT DATED \_\_\_\_\_, 2005  
FOR  
YORKSHIRE WOODS SUBDIVISION, LOMBARD, IL**

Parcel No.: 06-20-301-006 through 009, 015, 016 and part of 035

Common Address: 7, 11, and 105 East 17<sup>th</sup> Street, 19W723 17<sup>th</sup> Street, 6 and 10  
East 20<sup>th</sup> Street and 1710 South Highland Avenue, Lombard, Illinois 60148

**AFTER RECORDING RETURN TO:**

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

**YORKSHIRE WOODS  
ANNEXATION AGREEMENT**

**THIS ANNEXATION AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_\_ day of May, 2005, by and between the **VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as “Village”); \_\_\_\_\_ (hereinafter collectively referred to as “Owner”); and \_\_\_\_\_, an Illinois corporation (hereinafter referred to as “Developer”).

**WITNESSETH:**

**WHEREAS**, the 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**, Developer proposes to develop the Subject Property; and

**WHEREAS**, Developer also proposes to include a tract of land legally described in **EXHIBIT B**, attached hereto and made a part hereof (hereinafter referred to as the “Etz Chaim Detention Property”) previously annexed into the Corporate limits of the Village; and

**WHEREAS**, Developer proposes to develop the Etz Chaim Detention Property along with the Subject Property (hereinafter cumulatively referred to as the “Subdivision Property” and legally described as **EXBIHIT C** attached hereto and made a part hereof); 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 and Developer desire 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 Subdivision Property when the Subject Property 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 approximate 8-acre parcel of land and there are \_\_\_\_\_ electors residing thereon; and

**WHEREAS**, the Subdivision Property is an approximate 8.98-acre parcel of land; and

**WHEREAS**, all owners of record and at least 51 percent of the electors of the Subdivision 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 as R2 Single Family Residence District with a conditional use for a planned development with variations; and

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

**WHEREAS**, a public hearing was held on April 18, 2005, 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 R-2 Single Family Residence District under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code hereinafter the “Zoning Ordinance”) with a conditional use for a planned development, with variations to the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code, hereinafter referred to as the “Subdivision Ordinance”) for the Subdivision Property, and the Plan Commission has submitted to the Corporate Authorities of the Village (hereinafter referred to as the “Corporate Authorities”) its findings of fact and recommendations with respect to said application; and

**WHEREAS**, a public hearing on this Annexation Agreement (“Agreement”) was held by the Corporate Authorities on May 5, 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 and classifications under the Zoning Ordinance and 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 and Developer deem it to the mutual advantage of the parties and in the public interest that the Subject Property be annexed to and developed as a part of the Village as hereinafter provided; and

**WHEREAS**, the development of the Subdivision 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 the Developer and have determined that said uses and the development of the Subdivision 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 sufficiency of which is acknowledged by all parties, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS.** The Village, Owner and Developer agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.

2. **DEVELOPMENT OF SUBDIVISION PROPERTY.** Village, Owner and Developer agree that the Subdivision Property shall be developed in accordance with the terms of this Agreement and the exhibits attached hereto and made a part hereof. To the extent that any exhibit attached hereto and made a part of this document is labeled as preliminary, the final documents shall be in substantial compliance with the preliminary documents attached hereto and subsequent to final subdivision plat approval by the Village.

3. **ANNEXATION.** Subject to the provisions of 65 ILCS 5/7-1-1 *et sequitur*, as soon as reasonably practical after the Developer shall acquire the Subject Property, the parties agree to do all things necessary or appropriate to cause the Subject Property to be duly and validly annexed to the Village. The parties shall cause such annexation to be effected pursuant to the provisions of 65 ILCS 5/7-1-8. In the event that fee title to the Subject Property is not acquired by Developer on or before the date which is one hundred eighty (180) days after the date of execution hereof, and notification is not provided to the Village stating that the Developer has acquired fee title to the Subject Property within two hundred (200) days after the date of execution hereof, this Agreement and the Development Agreement shall become null and void and shall be of no further force and effect and the parties shall have no further liability to each other.

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 R-2 Single Family Residence District. In addition, the Corporate Authorities agree to approve a conditional use for a planned development in relation to the Subdivision Property, with the following variations to the Subdivision Ordinance:

- A. A variation from Section 154.503 (I) to allow for the maximum length of cul-de-sac streets serving a maximum of twenty-five (25) dwelling units to be greater than six hundred sixty (660) feet; and
- B. A variation from Section 154.503 (J) (2) allowing for a street jog with a center-line offset of less than two-hundred (200) feet.

5. **SITE PLAN APPROVAL.** The Developer shall develop the Subdivision Property in full compliance with the Site Plan entitled “Yorkshire Woods”, prepared by Spaceco, Inc., as last revised on, April 11, 2005 (the “Site Plan”) and the plans and specifications, prepared by Spaceco, Inc., dated March 16, 2005 (the “Plans and Specifications”), attached hereto as **EXHIBIT D** and made part hereof, both subject to changes based upon final engineering. In addition, the Subdivision Property shall be landscaped in full compliance with the landscape plan attached hereto as **EXHIBIT E** and made part hereof and entitled “Landscape Plan” (hereinafter the “Landscape Plan”). Said landscape plan shall be amended to incorporate any additional planting modifications as required by the Village as part of final engineering review and approval and as conditioned within the Ordinance approving the requested planned development.

6. **PLAT OF SUBDIVISION.** The Village agrees to approve a preliminary and final plat of subdivision of the Subdivision Property substantially in conformance of the plat attached hereto as **EXHIBIT F**, and made part hereof.

7. **WATER UTILITIES.**

A. Village represents and warrants to Developer as follows:

- (1) That it owns and operates a water distribution system within the Village.
- (2) That the Village has sufficient capacity to provide and will provide potable water to the Subdivision Property, such service to be substantially the same as provided to other single-family residential areas in the Village being provided with water by the Village in terms of quantity, pressure, quality and cost.

B. Owner and Developer, at their own expense shall install water main extensions in accordance with the Subdivision Ordinance and substantially in compliance with the Plans and Specifications. The parties agree that Owner and Developer shall pay all Village water connection charges (at the lowest rate applicable to single-family residential properties in the Village at the time of connection.)

C. Owner and Developer shall grant or dedicate all easements reasonably required by the Village for the construction of the necessary water main extensions serving the Subdivision Property.

8. **SANITARY SEWER FACILITIES.**

A. Village represents and warrants to Developer as follows:

- (1) That it owns and operates a sanitary sewer system within the Village.
- (2) That the Village system has sufficient capacity to provide and will provide sanitary sewer service to the Subdivision Property, such service to be substantially the same as provided to other single-family residential areas in the Village being provided with sanitary sewer by the Village.

B. Owner and Developer, at their own expense, shall install sanitary sewer extensions necessary to serve the Subdivision Property in accordance with the Plans and Specifications. The parties agree Owner and Developer shall pay all Village sanitary sewer connection charges (at the lowest rate applicable to single family residential properties in the Village at the time of connection.)

- C. Owner and Developer shall grant or dedicate all easements reasonably required by the Village for the construction of the necessary sanitary sewer extensions serving the Subdivision Property.

**9. STORM DRAINAGE FACILITIES.**

- A. Storm drainage facilities, and retention and/or detention areas (hereinafter, the “Storm Drainage Facilities”) shall be provided and constructed and paid for by Owner and Developer substantially in accordance with the Plans and Specifications within the Subdivision.

In addition, the Storm Drainage Facilities shall be maintained by the Owner and Developer and/or any subsequent lot owners. Such Storm Drainage Facilities shall be maintained by the Owner and Developer during the course of development, and thereafter shall be maintained by either the Owner and Developer or by the subsequent owner(s), all in accordance with a Declaration of Covenants to be recorded on the Subdivision Property, which Declaration of Covenants shall provide the Village with the right, but not the duty, to go upon any portion of the Storm Drainage Facilities to maintain and/or repair or replace such Storm Drainage Facilities if they are not suitably maintained so that they remain fully operational, and if the Village takes, after ninety (90) day written notice to the Owner and Developer, in its reasonable discretion, any such action, such Declaration of Covenants shall provide that any such owner(s) or the Owner and/or Developer shall immediately upon demand reimburse the Village for all reasonable expenses incurred by the Village against the particular portion of the Subdivision Property, and if not promptly paid, the Declaration of Covenants shall provide the Village the right to record a lien for any such unpaid expenses against the Subdivision Property or any portion thereof, and to foreclose on any such lien. Prior written notice shall not be required in emergency situations. In regard to the Storm Drainage Facilities, provisions specified by the Village’s Director of Community Development shall be set forth on the final Plat of Subdivision and in a Declaration of Covenants to be recorded relative to the Subdivision Property, with said Declaration of Covenants clearly indicating that the language cannot be amended or deleted from said Declaration of Covenants, without the prior written consent of the Village.

**10. UNDERGROUND UTILITIES.** All electrical, telephone, cable television and natural gas distribution facilities installed by Owner/Developer, except electrical transformers and meters for natural gas and electricity, shall be installed underground or located within buildings.

**11. DEVELOPMENT AGREEMENT.** Once the Developer has acquired fee title to the Subdivision Property and assumes the rights and responsibilities of the Owner, the Owner/Developer agrees to enter into a Development Agreement governing development of the Subdivision Property, which shall be substantially in the form as set forth in **EXHIBIT G**, attached

hereto and incorporated herein.

12. **EASEMENTS.** Owner and/or Developer shall provide all easements for public utilities and drainage as depicted on **EXHIBIT F** and as required by final engineering plans.

13. **CABLE TELEVISION.** The Owner and/or Developer shall provide necessary easements for cable television service as also set forth in **EXHIBIT F**.

14. **CONTRIBUTIONS.** There shall be no requirement for Owner and/or Developer to make any contributions to elementary school, middle school, high school, park, library or other service districts.

15. **CONSENT TO CREATION OF A SPECIAL ASSESSMENT OR SPECIAL SERVICE AREA:** Owner and Developer agree that they will not object to the creation of a Special Assessment or Special Service Area incorporating the Subject Property with respect to the construction of any public improvements affecting the area of the Subject Property which may become necessary at a future date. The assessment formula for any such future Special Assessment(s) or Special Service Area(s) shall be determined as required by law, taking into account the relative benefit to the Subject Property as a result of the public improvements constructed.

16. **FEES.** In consideration of the impact of the development of the Subdivision 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 Subdivision Property with water and sewers, Owner and Developer agree 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.

17. **REASONABLENESS OF FEES AND CHARGES.** The parties agree that the connection charges, fees, contributions, dedications and easements required by this Agreement are reasonable in amount, where applicable, and are reasonably related to and made necessary by the development of the Subdivision Property.

18. **DEDICATION OF PUBLIC IMPROVEMENTS.** When Developer has completed all required public improvements, in accordance with the Village's Subdivision Ordinance regulations, and said public improvements have been inspected and approved by the Village Engineer, the Village shall accept said public improvements subject to the two (2) year maintenance guaranty provisions of the Subdivision Ordinance.

19. **FINAL ENGINEERING APPROVAL.** All public improvements required to be constructed hereunder or under the Subdivision Ordinance of the Village shall be paid for, constructed and installed by the Owner and Developer in accordance with final engineering plans approved by the Director of Community Development.

20. **REMOVAL OF STREET IMPROVEMENTS.** In the event that the properties immediately south of the Subdivision Property redevelop as single family residences, with public access thereto being provided from the Subdivision Property, the Village agrees to not require Owner

and Developer shall not be required to pay for the costs of removal of any surplus asphalt or curbing within the right-of-way immediately east of Lot 18 of the Subdivision Property.

**21. ANNEXATION TO LOMBARD PARK DISTRICT.** The Owner and Developer agree to petition the Lombard Park District to have the Subject Property annexed to the Lombard Park District upon its annexation to the Village.

**22. Fire District:** By operation of law and in accordance with Illinois Compiled Statutes Chapter 70, Section 705/20, the Subject Property shall be disconnected from the Glenbard Fire Protection District at no cost to the Village. The Village agrees to cooperate with the Developer in the disconnection. The Developer agrees to be responsible for the disconnection and shall reimburse the Village for any funds expended by the Village, including, but not limited to any legal fees and litigation costs, relative thereto.

**23. RESTRICTIONS ON LOTS 1 THROUGH 4.**

The following development restrictions shall be placed as covenants running with the land in regard to on Lots 1 through 4 of the proposed subdivision of the Subdivision Property, and shall appear on the plat of subdivision that is recorded relative to the subdivision of the Subdivision Property:

- A. Driveway access to 17<sup>th</sup> Street shall be prohibited;
- B. The landscape berm along the north side of the properties shall not be altered, modified or removed without the approval of the Village;
- C. Any landscape plantings proposed for the aforementioned landscape berm shall not be relocated or removed without approval of the Village. In the event that any plant materials die, the respective property owner shall replace the dead materials with new plant materials of a similar species; and
- D. Any fencing erected within the aforementioned landscape berm shall be constructed of wrought iron and shall not exceed four feet (4') in height.

**24. DISCLOSURE OF DEVELOPER**

The Developer, in amassing the proposed Subdivision Property, negotiated a post possession agreement with the owner of one of the acquired properties, to-wit: Gerald M. Rader, the owner of 7 E. 17<sup>th</sup> Street, Lombard, IL.

Pursuant to the purchase agreement for the Rader property, the Developer has agreed to allow Rader to remain in possession of his residence for up to eleven (11) months after the closing of the purchase of said property. Rader understands that the Developer shall be performing various construction tasks during the period he continues to occupy the residence after closing. Rader has agreed to waive any and all damage to his property, temporary interruption of utility services and ingress or egress from the property caused by the construction tasks.

**25.**



**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:

If to the Village or  
Corporate Authorities:                      President and Board of Trustees  
   Village of Lombard  
   255 East Wilson Avenue  
   Lombard, Illinois 60148

With Copies 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

If to the Owner/Developer:                      Gerardi & Sons Development  
   170 Alexandra Way  
   Carol Stream, IL 60188

With a Copy to:                                      \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

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

B. **Continuity of Obligations.**

(2) The provisions of this Agreement, except as to various covenants running with the land and the obligation to provide such and the

further exception set forth below in this subsection, obligating Owner and Developer, shall not be binding upon the successors in title to the Owner and/or Developer who have purchased individual dwellings or improved individual lots as the ultimate consumers thereof (namely the individuals who actually own and reside in the houses to be built on said lots). The provisions of this Agreement shall be binding, however, on any builders who purchase any of the lots for eventual resale to the ultimate consumers thereof. Notwithstanding the foregoing, the provisions relating to Storm Drainage Facilities in Section 9 shall be binding on the ultimate consumers and any builders and shall be considered and are hereby declared as covenants running with the land.

- (3) In the event of any sale or conveyance by Owner and/or Developer of the Subdivision Property or any portion thereof, excluding any sale or conveyance by Owner or Developer of any individual dwellings or individual residential lots while Owner or Developer is acting in the regular course of its business of a developer selling or transferring such dwellings or improved lots to the ultimate consumers thereof, Owner and/or Developer shall notify the Village in writing, within thirty (30) working days after the closing of such sale or conveyance, of any and all successors in title to all or any portion of the Subdivision Property. Such written notice shall include identification of the names(s) of such successor(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 or real estate. Failure to give timely notice shall not constitute a default hereunder, but shall be governed by the remaining provisions of this subsection 25B.
- (4) Upon the condition that the requirements of this subsection 25B have been met, this Agreement shall inure to the benefit of and shall be binding upon Owner and/or Developer'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. In the event that the requirements of this subsection 22B have not been met, this Agreement shall be binding upon, but shall not inure to the benefit of Owner and Developer's successors in any manner in title until such time as Owner or Developer has given the Village the notice required by this subsection.
- (5) Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subdivision Property by Owner and/or Developer in accordance with subsection 25B(3) above, the Owner and Developer

shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon Owner and/or Developer by this Agreement until such obligations have been fully performed or until Village, in the exercise of its reasonable discretion, has otherwise released Owner and/or Developer from any and all such obligations.

(6) Except as otherwise provided in this subsection 25B, all the terms and conditions of this Agreement shall constitute covenants running with the land.

- 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 25T below.
- D. **Remedies.** The Village and Owner and Developer, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns, which default exists uncorrected for a period of thirty (30) days after written notice to any party to such default, the party seeking to enforce said provision shall have the right of specific performance and if said party prevails in a court of law, it shall be entitled to specific performance. 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. **Dedication of Public Lands.** In no event, including (without limitation) the exercise of the authority granted in Section 5/11-12-8 of Division 11 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, shall the Corporate Authorities require that any part of the Subdivision Property be designated for public purposes, except as otherwise provided in this Agreement or except as may be consented to in writing by Owner and Developer.
- F. **Conveyance, Dedication and Donation of Real Estate and Certain Personal Property.** Any conveyance, dedication or donation of real estate required of Owner and/or Developer (hereinafter collectively and individually referred to as “Grantor” in this subsection 25F) to the Village or other governmental authority under this Agreement (hereinafter referred to as “Grantee” in this subsection 25F) shall be made in conformance with the following requirements and any other applicable provisions of this Agreement.

1. Fee Simple Title. The conveyance, dedication or donation shall

be of a fee simple title.

2. Merchantable Title. Title shall be good and marketable.
3. Form and Contents of Deed. The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication or appropriate dedication on a recorded plat of subdivision. The deed, conveyance or dedication may be subject only to:
  - (a) covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purpose for which it is conveyed, dedicated or donated;
  - (b) terms of this Agreement;
  - (c) general taxes for the year in which the deed, conveyance of dedication is delivered or made and for the prior year of the amount of the prior year's taxes is not determined at the time of delivery, conveyance or dedication; and
  - (d) such other exceptions acceptable to the Grantee.
4. Title Insurance. Grantor shall provide to Grantee, not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company acceptable to the Grantee. The commitment for title insurance shall be in usual and customary form subject only to:
  - (a) the usual and customary standard exceptions contained therein;
  - (b) taxes for the year in which the deed is delivered and for the prior year if the amount of such prior year's taxes is not determinable at the time of delivery of the deed, conveyance or dedication; and
  - (c) such other exceptions as are acceptable to the Grantee.

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

issuing the commitment for title insurance, subject only to the exceptions stated above.

All title insurance charges shall be borne by Owner and Developer.

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

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

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

H. **Survival of Representation.** 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.

I. **Captions and Paragraph Headings.** The captions and paragraph headings used herein are for convenience only and are not part of this Agreement and shall not be used in construing it.

J. **Reimbursement to Village for Legal and Other Fees and Expenses.**

1. To the Effective Date of Agreement. The Owner and/or Developer concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall reimburse the Village for the following

expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subdivision 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 expenses.

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 and/or Developer from time to time shall promptly reimburse Village for all reasonable expenses and cost incurred by Village in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses.

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

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

3. In the event that any third party or parties institute any legal proceedings against the Owner and/or Developer and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner and/or Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:
- (a) Owner and Developer 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 reasonable discretion, determines there is, or may probably be, a conflict of interest between Village and Owner and/or Developer, 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 and/or Developer 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 and/or Developer for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against Owner and/or Developer 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 or Developer may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner or Developer.

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 property 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 amendment thereto shall be recorded by the Village at the expense of the Owner and Developer.

N. **Authorization to Execute.** The officers of Owner and Developer executing this Agreement warrant that they have been lawfully authorized by Owner's

and Developer's respective Boards of Directors to execute this Agreement on behalf of said Owner and Developer. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities Village to execute this Agreement. The Owner and Developer and Village shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

- O. **Amendment.** This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the Owner and Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.
- 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 the 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. **Terms of Agreement.** This Agreement shall be in full force and effect for a term of twenty (20) years from and after 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

ATTEST:

By: \_\_\_\_\_  
Village President

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

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

DEVELOPER:

ATTEST:

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

\_\_\_\_\_  
Its \_\_\_\_\_

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

OWNER

ATTEST:

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

\_\_\_\_\_  
Its \_\_\_\_\_

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 \_\_\_\_\_)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be respectively the Owner of the Subject Property at \_\_\_\_\_, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Owner, he signed and delivered the said instrument as Owner of the Subject Property.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_ personally known to me to be the President and Secretary of **GERARDI & SONS DEVELOPMENT CORPORATION, AN ILLINOIS CORPORATION**, appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2005 in person and severally acknowledged that they signed and delivered the said instrument, as the free and voluntary act of said company for the uses and purposes therein set forth.

**GIVEN** under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

{SEAL}

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SCHEDULE OF EXHIBITS**

- EXHIBIT A: Legal Description of Subject Property
- EXHIBIT B: Legal Description of Etz Chaim Detention Property
- EXHIBIT C: Legal Description of Subdivision Property
- EXHIBIT D: Site Plan and Plans & Specifications
- EXHIBIT E: Landscape Plan
- EXHIBIT F: Preliminary Plat of Subdivision
- EXHIBIT G: Preliminary Development Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOTS 31 THROUGH 34 AND THE NORTH 70.00 FEET (AS MEASURED IN RIGHT ANGLES), OF LOTS 27 AND 28 IN FREDERICK H. BARTLETT'S HILLSDALE FARMS RECORDED APRIL 22, 1941 AS DOCUMENT NUMBER 422592, BOOK 24, PAGE 12, BEING A SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE EAST 50 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 19 TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 06-20-301-006 through 009, 015, 016

PROPERTY ADDRESS: 7, 11, and 105 East 17<sup>th</sup> Street, 19W723 17<sup>th</sup> Street, 6 and 10 East 20<sup>th</sup> Street, Lombard, Illinois 60148

**EXHIBIT B**

**LEGAL DESCRIPTION ETZ CHAIM DETENTION PROPERTY**

THAT PART OF LOT 1 AS SHOWN ON THE ETZ CHAIM PLAT OF CONSOLIDATION RECORDED SEPTEMBER 10, 2002 AS DOCUMENT R2002-233574 BEING A SUBDIVISION OF PART OF TRACT 6 AND TRACT 35 IN FREDERICK H. BARTLETT'S HILLDALE FARMS, LYING SOUTH OF THE FOLLOWING DESCRIBED LINE. BEGINNING AT THE NORTHEAST CORNER OF TRACT 34 N FRED'K H. BARTLETT'S HILLSIDE FARMS RECORDED APRIL 22, 1941 AS DOCUMENT NUMBER 422592, BOOK 24, PAGE 12, BEING A SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE EAST 50 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTH 02 DEGREES 29 MINUTES 31 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 34, A DISTANCE OF 336.44 FEET; THENCE NORTH 87 DEGREES 42 MINUTES 16 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 131.97 FEET TO THE EAST LINE OF SAID LOT 1, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 06-20-301-035 part of

PROPERTY ADDRESS: 1710 South Highland Avenue, Lombard, Illinois 60148

## EXHIBIT C

### LEGAL DESCRIPTION OF SUBDIVISION PROPERTY

LOTS 31 THROUGH 34 AND THE NORTH 70.00 FEET (AS MEASURED IN RIGHT ANGLES), OF LOTS 27 AND 28 IN FREDERICK H. BARTLETT'S HILLSDALE FARMS RECORDED APRIL 22, 1941 AS DOCUMENT NUMBER 422592, BOOK 24, PAGE 12, BEING A SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE EAST 50 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 19 TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN DUPAGE COUNTY, ILLINOIS.

ALSO, THAT PART OF LOT 1 AS SHOWN ON THE ETZ CHAIM PLAT OF CONSOLIDATION RECORDED SEPTEMBER 10, 2002 AS DOCUMENT R2002-233574 BEING A SUBDIVISION OF PART OF TRACT 6 AND TRACT 35 IN FREDERICK H. BARTLETT'S HILLDALE FARMS, LYING SOUTH OF THE FOLLOWING DESCRIBED LINE. BEGINNING AT THE NORTHEAST CORNER OF TRACT 34 N FRED'K H. BARTLETT'S HILLSIDE FARMS RECORDED APRIL 22, 1941 AS DOCUMENT NUMBER 422592, BOOK 24, PAGE 12, BEING A SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE EAST 50 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTH 02 DEGREES 29 MINUTES 31 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 34, A DISTANCE OF 336.44 FEET; THENCE NORTH 87 DEGREES 42 MINUTES 16 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 131.97 FEET TO THE EAST LINE OF SAID LOT 1, IN DUPAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS: 06-20-301-006 through 009, 015, 016 and part of 035

PROPERTY ADDRESS: 7, 11, and 105 East 17<sup>th</sup> Street, 19W723 17<sup>th</sup> Street, 6 and 10 East 20<sup>th</sup> Street and 1710 South Highland Avenue, Lombard, Illinois 60148



**EXHIBIT D**

**Site Plan and Plans & Specifications**

**EXHIBIT E**

**Landscape Plan**

**EXHIBIT F**

**Preliminary Plat of Subdivision**

**EXHIBIT G**

**Preliminary Development Agreement**