

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: March 9, 2004 (B of T) Date: March 18, 2004

TITLE: BOT 04-02: 1400 S. Fairfield Avenue

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development staff transmits for your consideration its recommendation regarding the above-referenced petition. This petition requests an Amendment to Ordinance 5360, adopted September 18, 2003, relative to the Annexation Agreement for the Fairfield Glen Development. (UNINCORPORATED)

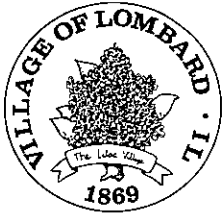
The petitioner is requesting waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X W.T. Lichter Date 3/10/04

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *D&H*

DATE: March 18, 2004

SUBJECT: BOT 04-02: 1400 S. Fairfield Avenue (Amendment to the Fairfield Glen Annexation Agreement)

Staff has received a request from the property owner and the proposed developer for the Fairfield Glen Townhome Development requesting amendments to the Annexation Agreement approved on September 18, 2003. Specifically, the current property owner is seeking a modification to the agreement fully removing his obligations upon his sale of the subject property to the developer. The developer is also seeking approval of language that would allow for a substitute developer.

Village Counsel has reviewed the proposed language amendments and finds the changes to be acceptable.

Staff has attached copies of the following items for Board consideration as part of the March 18, 2004 Village Board meeting:

1. Request letter from the developer's Counsel;
2. A draft Ordinance granting approval of the requested amendments; and
3. A copy of the draft Amendment to the Annexation Agreement.

RECOMMENDATION

Staff recommends approval of the requested amendment. The developer also requests a wavier of first reading of the Ordinance approving the amendment.

LAW OFFICES

ASH, ANOS, FREEDMAN & LOGAN, L.L.C.
77 WEST WASHINGTON STREET - SUITE 1211
CHICAGO, ILLINOIS 60602

JOSEPH ASH
GEORGE J. ANOS
LAWRENCE M. FREEDMAN
BRUCE T. LOGAN
BARRY ASH

TELEPHONE
AREA 312-346-1390
FAX: 312-346-7847

February 20, 2004

FEDERAL EXPRESS

Mr. William Heniff
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148

COMMUNITY DEVELOPMENT
RECEIVED FEB 23 2004

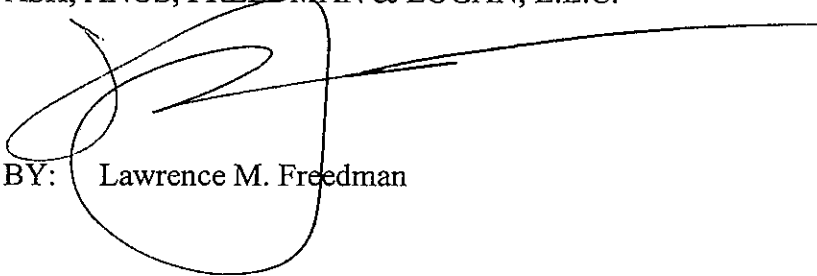
Re: Fairfield Glen
Annexation Agreement Amendment

Dear Bill:

In conjunction with the captioned Amendment, which as I understand it will be considered by the Board of Trustees on March 18, 2004, I am writing this letter to respectfully request that there be a waiver of first reading of the ordinance approving it so that the original Annexation Agreement and this Amendment can both be signed and recorded in order that the Annexation can be finalized and we can then proceed with development of the project. Thank you.

Very truly yours,

ASH, ANOS, FREEDMAN & LOGAN, L.L.C.

BY:  Lawrence M. Freedman

LMF:hkf

cc: Mr. Scott Pointner
Mr. Mark Janeck

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING AN AMENDMENT
TO ORDINANCE 5360, ADOPTED SEPTEMBER 18, 2003,
RELATIVE TO THE ANNEXATION AGREEMENT
FOR THE FAIRFIELD GLEN DEVELOPMENT**

(BOT 04-02: Fairfield Glen Subdivision)

(See also Ordinance No.(s) 5360 through 5364)

WHEREAS, NORTH STAR TRUST COMPANY, as Trustee of Trust No. 8305, VINCENT and HELEN BOLGER, Beneficiaries (hereinafter collectively referred to as "Owner") and INSIGNIA HOMES, L.L.C., an Illinois Limited Liability Company, (hereinafter referred to as "Developer") have petitioned the Village for an amendment to Ordinance Number 5360, adopted September 18, 2003 (hereinafter "Amendment Number One") to said Ordinance providing for an annexation agreement relative to the property described in Section 3 below (hereinafter the "Subject Property"); and

WHEREAS, said petition of the Owner and Developer requests an amendment to Ordinance Number 5360 so as to provide for amended provisions relative to the Owner's obligations relative to said agreement upon sale of the Subject Property to the Developer; and

WHEREAS, said petition of the Owner and Developer requests an amendment to Ordinance Number 5360 to include provisions for a substitute Developer for the proposed development on the Subject Property; and

WHEREAS, a public hearing was held by the Corporate Authorities of the Village on March 18, 2004, pursuant to appropriate and legal notice, for the purpose of considering the petition of the Owner and Developer for the Amendment Number One; and

WHEREAS, Amendment Number One has been drafted and a copy is attached hereto and incorporated herein as Exhibit "A"; 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 Ordinance 5360, adopted September 18, 2004, is hereby amended to include Amendment Number One attached hereto and marked Exhibit "A", by and between the Village of Lombard.

SECTION 2: That the Village President and Village Clerk be and hereby are authorized to sign and attest to said Amendment Number One, by and between the Village of Lombard.

SECTION 3: This Ordinance is limited and restricted to the property generally located at 1400 South Fairfield Avenue, Lombard, Illinois; legally described as follows:

PARCEL 1:

THAT PART OF LOTS 42-A AND 42-B OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE SOUTHWEST 1/4, THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452575, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 42-A; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 255.09 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTH LINE OF LOTS 42-A, A DISTANCE OF 160.14 FEET; THENCE SOUTHERLY AT AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED, ALONG A LINE PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 82.67 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 55.83 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET TO A POINT 187.50 FEET NORTH OF THE SOUTH LINE OF SAID LOT 42-C; THENCE WESTERLY ALONG A LINE PARALLEL WITH AND 187.50 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 93.97 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 55.83 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 82.67 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PART OF LOTS 42-A AND 42-B, OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE

SOUTHWEST 1/4, THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT NO. 462575, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 42-A; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 415.23 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED, ALONG A LINE PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 82.67 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 55.83 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET TO A POINT 187.50 FEET NORTH OF THE SOUTH LINE OF SAID LOT 42-C; THENCE EASTERLY ALONG A LINE PARALLEL WITH AND 187.50 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 288.19 FEET TO A POINT ON THE EAST LINE OF SAID LOT 42-B; THENCE NORTHERLY ALONG THE EAST LINES OF SAID LOTS 42-B AND 42-A, A DISTANCE OF 311.82 FEET TO THE NORTHEAST CORNER OF SAID LOT 42-A; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 254.35 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART DEDICATED FOR PUBLIC HIGHWAY.

PARCEL 3:

LOT 42 OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452575, IN DUPAGE COUNTY, ILLINOIS.

Parcel Numbers: 06-20-201-001 and 008

SECTION 4: That all other portions of Ordinance Number 5360, adopted September 18, 2004, and not amended by this Ordinance, shall remain in full force and effect.

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 _____, 2004.

Ordinance No. _____
Re: BOT 04-02 (Agreement Amendment)
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First reading waived by action of the Board of Trustees this _____ day of _____,
2004.

Passed on second reading this _____ day of _____, 2004.

Ayes: _____

Nays: _____

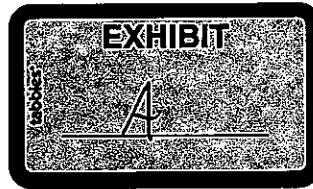
Absent: _____

Approved this _____ day of _____, 2004.

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk



FIRST AMENDMENT TO ANNEXATION AGREEMENT

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT made and entered into this _____ day of March, 2004 by and between **THE VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as the "Village"); **NORTH STAR TRUST COMPANY**, as Trustee of Trust No. 8305, **VINCENT** and **HELEN BOLGER**, Beneficiaries (hereinafter collectively referred to as "Owner") and **INSIGNIA HOMES, L.L.C.**, an Illinois Limited Liability Company, (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the parties hereto did heretofore enter into a certain Annexation Agreement as of September 18, 2003 with respect to certain property commonly known as Fairfield Glen (the "Annexation Agreement"); and

WHEREAS, the parties hereto do hereby intend to amend the Annexation Agreement upon the terms and conditions as are more fully hereinafter set forth; and

WHEREAS, a public hearing was held on _____, 2004 for the purpose of

considering an Amendment to the Annexation Agreement by Corporate Authorities; and

WHEREAS, the parties hereto deem it to be to the mutual advantage of the parties and in the public interest that the Annexation Agreement be amended as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto do hereby agree that the Annexation Agreement be and is hereby amended to provide as follows:

1. New Section 23.W. is hereby deemed to be included and made a part of the Annexation Agreement as follows:

“Notwithstanding anything to the contrary herein contained, it is understood that Developer and/or its nominee has entered into a contract with Owner to purchase the Subject Property, and it is contemplated by Owner and Developer that Developer or its nominee will ultimately perform the obligations of Owner under this Agreement. Accordingly, it is understood that the parties have requested, and the Village has agreed, not to finalize the enactment of the Ordinance annexing the Subject Property until such time as the Village is in receipt of written notice from Owner notifying the Village that Developer or its nominee has acquired the Subject Property.

It is further agreed that upon the acquisition of the Subject Property by the Developer or its nominee, all obligations of the Owner under this Agreement shall become the obligations of the party acquiring title to the Subject Property, and that Owner shall have no further obligations to the Village pursuant to the terms of this Agreement, and that all such obligations shall become those of the party acquiring title to the Subject Property.

It is further agreed that the Village has agreed to process Developer’s request for final plat and other approvals notwithstanding the provisions of this paragraph so long as the Developer agrees to compensate the Village for any and all costs and fees incurred by the Village in processing and reviewing such request, as well as any reimbursable costs and fees incurred to date by the Village (said reimbursable fees and costs being those reimbursable to the Village pursuant to the terms of this Agreement), in the event the Developer or

its nominee does not acquire the Subject Property. In order to secure the payment of such costs and fees, the Developer agrees, upon execution of the First Amendment to Annexation Agreement, to deposit with the Village the sum of ONE THOUSAND TWO HUNDRED (\$1,200.00) DOLLARS. At such time as the Village is in receipt of notice from Owner that the Subject Property has in fact been transferred to Developer or its nominee, and that said Ordinance annexing the Subject Property can be filed with the County Clerk, said deposit shall be returned to Developer.”

2. New Section 23.X. is hereby deemed to be included and made a part of the Annexation Agreement as follows:

“Notwithstanding anything to the contrary contained herein, it is understood that Developer may designate as its nominee a substitute developer to develop the Subject Property pursuant to the terms and provisions of this Agreement. Accordingly, it is understood, and the Village has agreed, that in the event prior to commencement of construction on the Subject Property, Developer advises the Village in writing that it has transferred its rights and obligation as Developer under this Agreement, and that such transferee has expressly assumed all of the obligations of the Developer under this Agreement, then in such event all obligations of Developer under the Agreement shall become the obligations of such transferee, and in such event, Developer shall have no further obligations to the Village pursuant to the terms of this Agreement, and all such obligations shall become those such transferee.”

3. Except as expressly herein provided, the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals upon the

date first written.

VILLAGE OF LOMBARD, a municipal corporation,

BY: _____
Village President

ATTEST:

Village Clerk

DEVELOPER:

INSIGNIA HOMES, L.L.C., an Illinois Limited Liability Company,

BY: _____
Manager

ATTEST:

Its: _____

OWNER:

NORTH STAR TRUST COMPANY, not personally but as Trustee aforesaid,

BY: _____

ATTEST:

Its: _____

VINCENT BOLGER

HELEN BOLGER