

ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, _____, by and between the Village of Lombard, a municipal corporation (hereinafter referred to as "Village"); LUCILLE BLAIDA, IDA KESZEG AND ARPAD KESZEG (hereinafter collectively referred to as "Owner"); and THE DEARBORN-BUCKINGHAM GROUP, INC. (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 sometimes referred to as the "Subject Property"); and

WHEREAS, Developer 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 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 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 3.5 acre parcel of land and there are three (3) electors residing thereon; and

WHEREAS, all owner(s) of record of the Subject Property, and at least 51% of the electors residing thereon have/has signed a Petition for Annexation of the Subject Property to the Village, which Petition is hereinafter referred to as the "Annexation Petition"; and

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

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

WHEREAS, a public hearing was held on September 20, 2004, for the purpose of considering whether the Subject Property should be rezoned, upon its annexation, from the R-1 Single Family Residence District to R-4 Limited General Residence under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code hereinafter the "Zoning Ordinance"), with a conditional use for a planned development a variation from Section 155.408 (F)(3)(b) of the Lombard Zoning Ordinance to reduce the corner side yard setback from twenty (20) feet to fifteen (15) feet and an amendment to the Village's Comprehensive Plan to designate the property for Low-Medium Density Residential land uses, and the Plan Commission has submitted to the Corporate Authorities of the Village (hereinafter referred to as the "Corporate Authorities") their findings of fact and recommendations with respect to said application; and

WHEREAS, a public hearing on this Annexation Agreement ("Agreement") has been held by the Corporate Authorities on the 7th day of October, 2004, 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, 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 their 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 Developer 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; and

WHEREAS, the Developer desires to have the Subject Property rezoned to the R-4 Limited General Residence District with a conditional use for a planned development a variation from Section 155.408 (F)(3)(b) of the Lombard Zoning Ordinance to reduce the corner side yard setback

from twenty (20) feet to fifteen (15) feet and an amendment to the Village's Comprehensive Plan to designate the property for Low-Medium Density Residential land uses; and

WHEREAS, the Plan Commission has previously recommended that Developer be allowed to develop the Subject Property in accordance with a Preliminary Geometric Plan prepared by SpaceCo, Inc. updated October 21, 2004 (the "Site Plan"), subject to certain conditions.

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, Owner and Developer agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.
2. **Development of Subject Property**: Village, Owner and Developer 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 parties agree to do all things necessary or appropriate to cause the Subject Property to be duly and validly annexed to the Village as promptly as practicable after the execution of this Agreement. The parties shall cause such annexation to be effected pursuant to the provisions of Section 5/7-1-8 of Act 5 of Chapter 65 of the Illinois Compiled Statutes.
4. **Zoning**: Upon annexation of the Subject Property to the Village as set forth herein, the Corporate Authorities shall, without further public hearings, immediately rezone and classify the entire Subject Property from the R-1 Single Family Residence District to the R-4 Limited General Residence District under the Zoning Ordinance, with a conditional use for a planned

development, a variation from Section 155.408 (F)(3)(b) of the Lombard Zoning Ordinance to reduce the corner side yard setback from twenty (20) feet to fifteen (15) feet and an amendment to the Village's Comprehensive Plan to designate the property for Low-Medium Density Residential land uses.

5. Site Plan Approval: The Developer shall develop the Subject Property in full compliance with the Site Plan attached hereto as EXHIBIT B and entitled, "Preliminary Geometric Plan", prepared by Spaceco, Inc., as last revised on October 21, 2004 (the "Site Plan"), which Site Plan is hereby incorporated by reference as the same shall be approved by the Village (with any modifications thereto), the preliminary plat of subdivision, prepared by TFW Surveying & Mapping, Inc., as last revised September 19, 2004 (the "Preliminary Plat", attached hereto as EXHIBIT C). In addition, the Subject Property shall be landscaped in substantial compliance with the landscape plan attached hereto as EXHIBIT D and entitled "Preliminary Landscape Plan" (hereinafter the "Landscape Plan") prepared by Pugsley & LaHaie as last revised on September 20, 2004, subject to Subsection C below. Furthermore, the use and development of the Subject Property shall be subject to the following additional requirements:

A. That the Owner and Developer shall develop the Subject Property in accordance with the Site Plan.

B. That the Owner and Developer shall satisfactorily address all of the comments within the IDRC report, dated September 20, 2004, and attached hereto as EXHIBIT E and made part hereof.

C. That the Owner and Developer shall submit a revised landscape plan in conjunction with the final engineering/geometric plans. Said plan shall meet the landscape planting requirements as required by the Zoning Ordinance and the Subdivision Ordinances.

D. That the Owner and Developer shall submit revised architectural drawings depicting the final proposed design palette of the structures, the design of which shall be subject to the approval of the Director of Community Development.

E. In the event an agreement is not reached between the Village and the Illinois State Toll Highway Authority regarding the surplus of right-of-way, the Village agrees to grant Developer a variation to reduce the corner side yard setbacks from 20' to 15' for lots 1 and 4 as depicted on the Site Plan (EXHIBIT B).

Except as otherwise specifically provided for herein, said Site Plan is hereby approved as the site plan for the development of the Subject Property as supplemented by the Landscape Plan, but it is acknowledged by the Owner and Developer that such approval does not constitute approval as a preliminary plat under the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code (hereinafter the "Subdivision Ordinance") regulations since further details must be finalized to meet the requirements of said Subdivision Ordinance.

6. Building Elevations: Developer agrees to construct a townhome units within the Subject Property in substantial accordance with the Conceptual Architectural elevations attached hereto as EXHIBIT F and made a part hereof .

7. Water Utilities: Village represents and warrants to Developer 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 and will provide adequate potable water to the Subject Property, such service to be substantially the same as provided to other multi-family residential areas in the Village being provided with water by the Village.

Owner and Developer, at their own expense shall install water main extensions in accordance with the Subdivision and Development Ordinance and in accordance with the plans and specifications prepared by Spaceco Inc., last revised October 21, 2004, as approved by the Director of Community Development and set forth in EXHIBIT B attached hereto. Owner and Developer agree to pay all Village water connection charges but in no event shall Developer be required to pay water connection charges which exceed one hundred twenty percent (120%) of the charges in effect at the time of this agreement. Owner and Developer shall grant or dedicate all easements required by the Village for the construction of the necessary water main extensions serving the Subject Property.

8. Sanitary Sewer Facilities: Village represents and warrants to Developer as follows:

A. That it owns and operates a sanitary sewer system within the Village for sewage disposal.

B. That the Village system has sufficient capacity to provide and will provide adequate sanitary sewer service to the Subject Property, such service to be substantially the same as provided

to other multi-family residential areas in the Village being provided with sanitary sewer by the Village.

Owner and Developer, at their own expense, shall install sanitary sewer service to the Subject Property in accordance with the Subdivision Ordinance and in accordance with the plans and specifications prepared by Spaceco Inc., last revised October 21, 2004, as approved by the Director Community Development and set forth in EXHIBIT B attached hereto. Owner and Developer agree to pay all Village sanitary sewer connection charges. Owner and Developer shall grant or dedicate all easements required by the Village for the construction of the necessary sanitary sewers serving the Subject Property.

9. Storm Drainage Facilities: Storm drainage facilities, and retention and/or detention areas shall be provided and constructed and paid for by Owner and Developer in accordance with final engineering plans approved by the Director of Community Development (or substantially in accordance with the preliminary engineering plans approved by the Director of Community Development) and attached hereto as EXHIBIT B. In addition, the storm drainage facilities and any wetland areas shall be maintained by the Owner and Developer and/or any subsequent lot owners. In the event that the storm drainage facilities originally installed for the Subject Property are insufficient, Owner and Developer shall add additional storm drainage facilities as may be required by the Director of Community Development. Such storm water drainage facilities and any wetland areas 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 and restrictions to be

recorded on the Subject Property, which declaration shall be in accordance with the required format as set forth in the Subdivision Ordinance and subject to approval by the Director of Community Development. Such declaration shall provide the Village with the right, but not the duty, to go upon any portion of the Subject Property 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, in its sole discretion, any such action, such declaration 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 Subject Property, and, if not promptly paid, the declaration shall provide the Village with the right to record a lien for any such unpaid expenses against the Subject Property or any portion thereof, and to foreclose on any such lien.

In addition to the stormwater detention facilities depicted on EXHIBIT B, it is acknowledged that a portion of the storm drainage facilities may be located in the side and/or back yards of individual lots. For all such lots, Owner and Developer must:

A. Fully disclose to all buyers of such lots the size and nature of such facilities, the prohibition against changing the grade of such facilities, that the lots are subject to a declaration of covenants and restrictions granting the Village the right, but not the duty, to enter upon the property to ensure that the facilities are properly maintained at the expense of the owners, and, in general, how such facilities will affect the use and enjoyment of the lot (i.e., how long they will hold water, how wet they will be in times of rain, etc.). Such notice shall be given in writing to any such buyers prior to or at the time the contract for sale of any such lots is entered into, or for those lots which

may already have been tentatively sold, then prior to the execution date of this Agreement for any such sold lots, and further Owner and Developer must produce evidence satisfactory to the Director of Community Development that the buyers have been so notified; and

B. Provide a letter satisfactory to the Director of Community Development to be attached to each of the building permits for such lots when they are issued, which letter again will notify the applicant of the prohibition against changing the grade of such facilities and the other information required in A above.

Moreover, the Village and the Developer agree to the following additional stormwater requirements as part of the development of the Subject Property in order to address stormwater management design concerns:

- A. The Developer, or any successor homeowner associations established in relation to the Subject Property, shall maintain at least a \$1,000,000 general liability insurance policy for the benefit of the Developer, or any successor homeowner associations over the stormwater detention basin, as depicted in EXHIBIT B.
- B. A consulting engineer hired by the Columbine Glen Homeowner's Association shall be allowed to review the stormwater management plans and calculations submitted to the Village, as part of the Village's building permit process for the development of the Subject Property by the Developer prior to a site improvements permit being issued.

- C. The stormwater management plan for the development of the Subject Property shall demonstrate no adverse impact for the Columbine Glen stormwater detention basin, as required by the DuPage County Ordinance.
- D. The Developer shall provide a copy of the approved as-built plans for the stormwater management facilities for the Subject Property to the Village for transmittal to the Columbine Glen Homeowner Association's consulting engineer.

10. Underground Utilities: All electrical, telephone, cable television and natural gas distribution facilities, except electrical transformers and meters for natural gas and electricity, shall be installed underground or located within buildings.

11. Illinois State Toll Highway Authority Agreement: The Village recognizes that the property legally described in EXHIBIT G is owned by the Illinois State Toll Highway Authority (ISTHA) (the "Tollway Property"). The Developer and the Village agree to do all things necessary or appropriate to cause the ownership of the Tollway Property become vested to the Village for public right-of-way purposes as promptly as practicable after the execution of this Agreement. Upon the transfer of ownership/dedication as right-of-way to the Village by ISTHA, the Village agrees vacate the Tollway Property (less any land required for public right-of-way purposes) to the Developer. Any costs associated with the vacation of the Tollway Property, including but not limited to platting costs, legal fees or fees assessed to the Village by ISTHA shall be fully reimbursed by the Developer prior to recording of the associated plat of vacation for the Tollway Property.

12. Development Agreement. Once the Developer has acquired ownership of the Subject Property, and assumes the rights and responsibilities of the Owner, the Owner and Developer agree to enter into a Development Agreement governing development of the Subject Property, which shall be substantially in the form as set forth in **EXHIBIT H**, attached hereto and made part herein.

13. Vacation of Cul-De-Sac Bulb. The Village recognizes that the proposed Buckingham Court right-of-way depicted on the Site Plan, and proposed to be constructed as part of the development of the Subject Property may be extended beyond its proposed terminus on the Subject Property at a future date. In the event that the Village approves such a right-of-way extension, the Village agrees to vacate any surplus right-of-way within the cul-de-sac bulb consistent with 65 ILCS 5/11-91-1 and as depicted in **EXHIBIT I** attached hereto and made a part hereof. All costs associated with the preparation, approval and recording of the plat of vacation shall be borne by the owner of the portion of the Subject Property immediately adjacent to the vacated right-of-way.

14. Cable Television: The Owner and/or Developer shall provide necessary easements for cable television service to each residential unit within the subdivision.

In addition, Developer shall install and construct all necessary cable and other appurtenances in order to serve each of the residential units in the subdivision with cable television; provided, however, at the sole option of the Village, the Village may accept from Developer, without further amendment to this Agreement:

A. Either a cash donation in lieu of construction and installation in an amount determined by the Village as being the cash equivalent of the cost of installation; or

B. A lesser amount as determined by the Village provided that the cable television company pays for the remainder of the cost of installation and construction.

The Village will discuss with the cable television company whether it is willing to share the cost of installation and construction of such cable television facilities.

15. Easements: Owner and/or Developer shall provide all easements, both on-site and off-site (if applicable), which may be required by the Director of Community Development 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 a named 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 and as shown on final engineering plans to be approved by the Director of Community Development.

16. Fees. The 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. No other fees shall be required.

17. Reasonableness of Fees and Charges: Owner and Developer further 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 Subject 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 Director of Community Development, the Village shall accept said public improvements subject to the two (2) year maintenance guaranty provisions of the Subdivision Ordinance. Notwithstanding this Section, Storm Drainage Facilities, as referenced in Section 9 hereof, shall remain owned by and maintained by the Owner and Developer, and any subsequent owner(s). The Village acknowledges that to the best of its knowledge there is no recapture due and owing from the Developer for any public improvement benefit heretofore.

19. 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 fire protection district in which it is located 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.

20. Final Engineering Approval: All public improvements required to be constructed hereunder or under the Subdivision and Development 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.

21. Recapture of Pleasant Lane Construction Costs: The parties recognize hereto that the Owner and Developer is obligated to fully improve Pleasant Lane adjacent to the Subject

Property. Pursuant to Section 154.307 of the Subdivision Ordinance, the Village shall allow for a recapture agreement for public improvements in compliance with 65 ILCS 5/9-5-1. Owner and Developer and Village will enter into a Recapture Agreement under the terms of which Owner and Developer shall be entitled to recapture a portion of its costs concurrent with the subsequent development of properties adjacent to the portion of Pleasant Lane which was improved by Owner and Developer, as identified in **EXHIBIT J** “the Form Recapture Agreement”. Once the actual costs of construction are known for the Pleasant Lane improvements, the Village shall enter into a recapture agreement with the Owner and Developer, with the dollar amount based upon the following formula:

$$\frac{\text{Pleasant Lane Frontage (expressed in feet) for Parcel to be newly Annexed}}{\text{Total Number of Feet of Pleasant Lane Improved by Developer}} \times \text{Cost of Improvement of Pleasant Lane as Certified by Developer's Engineer}$$

Increased by a factor of ____% per annum, not cumulative, until paid.

For purposes hereof, the “Cost of Improvement of Pleasant Lane” shall be defined as all of the Developer’s Costs expended in compliance with Paragraph 5A hereof. A notice of this Right of Recapture shall be recorded against each of the parcels situated north of the Subject Property, at the expense of the Developer. The foregoing right of recapture shall be waived with respect to any of the parcels in question in the event the Developer, or any affiliate of the Developer, acquires title to such parcel.

22. 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 or Developer:

David O'Keefe
SCHAIN, BURNEY, ROSS & CITRON, LTD.

222 North LaSalle, 19th Floor
Chicago, IL 60601

With a copy to:

Christopher F. Coleman
THE DEARBORN BUCKINGHAM GROUP, INC.
1775 Winnetka Road, Suite 102
Northfield, IL 60093

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) 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 individual residential lots from Owner or Developer while Owner or Developer is acting in the regular course of its business as a developer selling or transferring such dwellings or improved individual lots to 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.

(2) In the event of any sale or conveyance by Owner and/or Developer of the Subject 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 ten (10) working days after the closing of such sale or conveyance, of any and all successors in title to all or any portion of the Subject Property. Such written notice shall include identification of the name(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 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 22B.

(3) Upon the condition that the requirements of this subsection 22B 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

(4) Owner and Developer, or their respective successors per 22B(1) above, 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, at its sole option, has otherwise released Owner and/or Developer from any or all of such obligations.

(5) Except as otherwise provided in this subsection 22B, 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 22T 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 Subject Property be designated for public purposes, except as otherwise provided in this Agreement or except as may be consented to in writing by Owner 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 21F to the Village or other governmental authority under this Agreement (hereinafter referred to as "Grantee" in this subsection 22F 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 purposes for which it is being conveyed, dedicated or donated;
- (b) terms of this Agreement;
- (c) general taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of the prior year's taxes is not determinable 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;
- (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 attorneys' 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 Subject Property, whether improved or unimproved, except as otherwise specifically set forth herein.

H. **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.

I. **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.

J. **Reimbursement of Village for Legal and Other Fees and Expenses:**

(1) **To 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 Subject

Property:

- (a) the reasonable 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 and/or Developer 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 and/or Developer upon its request, by a sworn statement of the Village; and such 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.

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 sole 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.

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 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: here 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 at the expense of the Owner and Developer.

N. Authorization to Execute: he 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 Village Board of the 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 the 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. 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

ATTEST:

By: _____
Village President

Deputy 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 Barbara A. Johnson, personally known to me to be the Deputy 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 Deputy 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 _____ and
_____, are personally known to me to be the _____
President and _____ Secretary of _____
_____ and also personally known to me to be the same persons whose
names are subscribed to the foregoing instrument as such _____ and
_____ 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, pursuant to authority given by the Board of
Directors of said Corporation as their free and voluntary act, and as the free and voluntary act and
deed of said Corporation, for the uses and purposes therein set forth, and the said
_____, then and there acknowledged that said _____-
_____ Secretary as custodian of the corporate seal of said Corporation caused said seal to be
affixed to said instrument as said _____ Secretary's own free and voluntary act and
as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, _____.

Commission expires _____, _____.

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 _____ and
_____, are personally known to me to be the
_____ President and _____ Secretary of
_____ and also personally known to me to be the same persons whose names are
subscribed to the foregoing instrument as such _____ and
_____ 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, pursuant to authority given by
_____ as their free and voluntary act, and as the free and
voluntary act and deed of said _____, for the uses and purposes therein set
forth, and the said _____, then and there acknowledged that said
_____ Secretary as custodian of the corporate seal of said _____ caused
said seal to be affixed to said instrument as said _____ Secretary's own free and
voluntary act and as the free and voluntary act of said _____, for the uses
and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, _____.

Commission expires _____, _____.

Notary Public

SCHEDULE OF EXHIBITS

- EXHIBIT A LEGAL DESCRIPTION OF SUBJECT PROPERTY
- EXHIBIT B PRELIMINARY GEOMETRIC PLAN
- EXHIBIT C PRELIMINARY PLAT OF SUBDIVISION
- EXHIBIT D PRELIMINARY LANDSCAPE PLAN
- EXHIBIT E VILLAGE OF LOMBARD INTER-DEPARTMENTAL REVIEW REPORT
- EXHIBIT F CONCEPTUAL ARCHITECTURAL ELEVATIONS
- EXHIBIT G LEGAL DESCRIPTION ILLINOIS STATE TOLL HIGHWAY AUTHORITY
PROPERTY
- EXHIBIT H PRELIMINARY DEVELOPMENT AGREEMENT
- EXHIBIT I VACATION OF RIGHT-OF-WAY EXHIBIT
- EXHIBIT J FORM RECAPTURE AGREEMENT

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

BUCKINGHAM ORCHARD

LOTS 18 AND 19 IN MILTON TOWNSHIP SUPERVISORS ASSESSMENT PLAT NO. 1
(ALSO KNOWN AS PLEASANT HILLS WEST) OF PART OF THE EAST ½ OF SECTION 1,
TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN,
ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT
452574, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-01-401-045, 05-01-401-044, & 05-01-401-047

PROPERTY ADDRESS: 615 & 617 W. Pleasant Lane, Lombard, IL 60148

EXHIBIT B

PRELIMINARY GEOMETRIC PLAN

EXHIBIT C

PRELIMINARY LANDSCAPE PLAN

EXHIBIT D

PRELIMINARY PLAT OF SUBDIVISION

EXHIBIT E

**VILLAGE OF LOMBARD
INTER-DEPARTMENTAL REVIEW REPORT**

EXHIBIT F
CONCEPTUAL ARCHITECTURAL ELEVATIONS

EXHIBIT G

LEGAL DESCRIPTION

**ILLINOIS STATE TOLL HIGHWAY AUTHORITY PROPERTY
(THE TOLLWAY PROPERTY)**

THAT PART OF LOTS 18 AND 19 (EXCEPT THE NORTH 348.50 FEET OF THE EAST 125.0 FEET OF LOT 19) IN MILTON TOWNSHIP SUPERVISOR'S ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS: PLEASANT HILLS WEST) OF THE EAST ½ OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 18 FOR A POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 24 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOTS 18 AND 19, 175.02 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 59 SECONDS WEST, 44.08 FEET; THENCE SOUTH 84 DEGREES 53 MINUTES 20 SECONDS WEST, 58.46 FEET TO AN ANGLE POINT; THENCE NORTH 86 DEGREES 55 MINUTES 45 SECONDS WEST, 115.96 FEET TO A POINT ON THE WEST LINE OF SAID LOT 18; THENCE NORTH 00 DEGREES 37 MINUTES 59 SECONDS EAST ALONG SAID WEST LINE OF SAID LOT 18, 45.00 FEET TO THE POINT OF BEGINNING.

ALSO, THAT PART OF THE NORTH 348.50 FEET OF THE EAST 125.0 FEET OF LOT 19 IN MILTON TOWNSHIP SUPERVISOR ASSESSMENT PLAT NUMBER 1, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452574, IN DUPAGE COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY FOR A POINT OF BEGINNING, THENCE SOUTH 89 DEGREES, 24 MINUTES 02 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 19, 110.33 FEET; THENCE SOUTH 00 DEGREES, 37 MINUTES 59 SECONDS WEST, 33.00 FEET TO AN ANGLE POINT; THENCE SOUTH 84 DEGREES 53 MINUTES 20 SECONDS WEST, 111.40 FEET TO A POINT ON THE WEST LINE OF THE AFOREMENTIONED PROPERTY; THENCE NORTH 00 DEGREES 37 MINUTES 59 SECONDS EAST ALONG SAID WEST LINE, 44.08 FEET TO THE POINT OF BEGINNING.

EXHIBIT H
PRELIMINARY DEVELOPMENT AGREEMENT

EXHIBIT I

VACATION OF RIGHT-OF-WAY EXHIBIT

EXHIBIT J

FORM RECAPTURE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the VILLAGE OF LOMBARD, a municipal corporation of the County of DuPage, in the State of Illinois (hereinafter referred to as "VILLAGE" and _____ (hereinafter referred to as "DEVELOPER");

WITNESSETH

WHEREAS, the VILLAGE owns and operates a sanitary sewer collection system, storm water system, and water distribution system; and,

WHEREAS, the VILLAGE has jurisdiction over the construction, maintenance and repair of local streets and traffic control; and,

WHEREAS, the DEVELOPER is the owner of the following described property (hereinafter referred to as ("SUBJECT SITE')):

P.I.N.:

Commonly known as:

and

WHEREAS, the DEVELOPER intends to develop/has developed the SUBJECT SITE in accordance with its zoning classification under the VILLAGE'S Zoning Ordinance for _____ uses; and,

WHEREAS, the DEVELOPER intends to construct/has constructed the following public utilities relative to the development of the SUBJECT PROPERTY: _____

(hereinafter referred to as the "PUBLIC UTILITY IMPROVEMENTS'); and,

WHEREAS, all of the aforesaid construction will be carried out/has been carried out and completed in strict compliance with all VILLAGE ordinances and codes, and plans, and specifications approved by the VILLAGE; and,

Exhibit J
Form Recapture Agreement
(Continued)

WHEREAS, the cost for the aforesaid PUBLIC UTILITY IMPROVEMENTS is estimated to be/was \$ _____, which estimated cost/final cost has been reviewed and approved by the VILLAGE; and,

WHEREAS, the construction of the aforesaid PUBLIC UTILITY IMPROVEMENTS by the DEVELOPER will, in addition to benefiting the SUBJECT SITE, also benefit the property located at _____ if and when said property is developed; and,

WHEREAS, the DEVELOPER should be reimbursed by the owners of said benefited property if and when it is developed; and,

WHEREAS, the DEVELOPER agrees to convey the title to all of the aforesaid PUBLIC UTILITY IMPROVEMENTS to the VILLAGE by a legally proper Bill of Sale;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual promises and agreements herein contained, including, but not limited to, the construction of the aforesaid PUBLIC UTILITY IMPROVEMENTS, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. That DEVELOPER will, at its sole expense, complete the construction of all the aforesaid PUBLIC UTILITY IMPROVEMENTS in conformance with the plans and specifications prepared by _____, dated the _____ day of _____, 20 __, and approved by the VILLAGE.

2. Upon acceptance of all of the aforesaid PUBLIC UTILITY IMPROVEMENTS by the VILLAGE, the DEVELOPER shall convey to the VILLAGE, by a legally proper Bill of Sale, all of said PUBLIC UTILITY IMPROVEMENTS and appurtenances incidental thereto. Such conveyance shall be free and clear of all liens or encumbrances relative to said improvements. Upon acceptance of said PUBLIC UTILITY IMPROVEMENTS by the VILLAGE, the VILLAGE shall have complete control thereof including the determination of all future use and connections thereto, and shall be responsible for the operation, maintenance, repair and replacement of said PUBLIC UTILITY IMPROVEMENTS.

Exhibit J
Form Recapture Agreement
(Continued)

3. DEVELOPER'S estimated/actual costs for said PUBLIC UTILITY IMPROVEMENTS is made up of the following:

1. Water Main Construction	\$ _____
2. Storm Sewer Construction	\$ _____
3. Sanitary Sewer Construction	\$ _____
4. Roadway Construction	\$ _____
5. Traffic Signal Construction	\$ _____
6. Construction of Traffic Related Improvements	\$ _____
7. Engineering and Inspection Fees	\$ _____
TOTAL	\$ _____

The VILLAGE agrees to reimburse DEVELOPER for a portion of said total amount not to exceed \$ _____, said \$ _____ to be payable by the VILLAGE to the DEVELOPER solely and exclusively from collections from the owners of the property described on Exhibit "A", attached hereto and made part hereof, which will be benefited by the construction of said PUBLIC UTILITY IMPROVEMENTS by DEVELOPER if and when said property is developed (hereinafter the "BENEFITED PROPERTY"). The amounts to be collected in relation to each individual parcel, tract or lot shall be as set forth on Exhibit "A".

Said \$ _____ is to be collected by the VILLAGE from the owner(s) of said BENEFITED PROPERTY if and when said owner(s) apply to the VILLAGE for a building permit to develop said BENEFITED PROPERTY, or any portion thereof, or at such time as said owner(s) seek to connect to the storm and sanitary sewers and/or watermain constructed by DEVELOPER.

4. It is further understood and agreed to that under no circumstances will the General Fund of the VILLAGE be in any way obligated for said amount to be reimbursed to DEVELOPER, nor shall the VILLAGE be liable for its failure or neglect to collect said \$ _____ from the owner(s) of the BENEFITED PROPERTY described in Exhibit "A". The VILLAGE is only obligated to pay DEVELOPER from those funds the VILLAGE actually collects from the owner(s) of said BENEFITED PROPERTY.

5. This Agreement shall remain in full force and effect until the ____ day of _____, _____; after said date the BENEFITED PROPERTY set forth in Exhibit "A" shall no longer be liable for payment of the \$ _____.

Form Recapture Agreement
(Continued)

6. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, provided, however, that DEVELOPER shall not assign its interests under this Agreement without the prior written consent of the VILLAGE.

7. The VILLAGE is hereby authorized to record this Agreement with the Recorder of Deeds of DuPage County, Illinois.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed in duplicate by their duly authorized representatives all on the day and year first above written, pursuant to a proper resolution of the respective governing body of each party hereto.

VILLAGE OF LOMBARD

By: _____
Village President

(Corporate Seal)

ATTEST:

Village Clerk

DEVELOPER

By: _____

(Corporate Seal)

ATTEST:

Secretary