

FRED BUCHOLZ
DUPAGE COUNTY RECORDER
DEC.30,2008 2:50 PM
OTHER 06-21-102-010
019 PAGES R2008-181907

ORDINANCE 6270

**AUTHORIZING THE EXECUTION
OF AN ANNEXATION AGREEMENT**

Address: 1308 S. Meyers Road, Lombard, IL 60148

PIN: 06-21-102-010

Return To:

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

ORDINANCE 6270

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

(PC 08-14: 1308 S. Meyers Road)

(See also Ordinance No.(s) 6271,6272)

WHEREAS, it is in the best interest of the Village of Lombard, DuPage County, Illinois that a certain Annexation Agreement (hereinafter the "Agreement") pertaining to the properties located at 1308 S. Meyers Road, Lombard, Illinois to be entered into; and,

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

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

WHEREAS, the statutory procedures provided in Chapter 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, as amended, for the execution of said Agreement have been complied with; a hearing on said Agreement having been held, pursuant to proper notice, by the President and Board of Trustees on November 6, 2008.

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

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

SECTION 2: This ordinance is limited and restricted to the property generally located at 1308 S. Meyers Road, Lombard, Illinois containing 0.72 acres more or less and legally described as follows:

LOT 7 IN DEICKE'S DIVISION OF THAT PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED

Ordinance No. 6270
Re: PC 08-14
Page 2

JULY 9, 1924 IN BOOK 11 OF PLATS, PAGE 52 AS DOCUMENT 179881, IN DU
PAGE COUNTY, ILLINOIS.

PIN: 06-21-102-010

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

Passed on first reading this ____ day of _____, 2008.

First reading waived by action of the Board of Trustees this 6th day of November, 2008.

Passed on second reading this 6^h day of November, 2008.

Ayes: President Mueller, Trustees Gron, Tross, O'Brien, Moreau, Fitzpatrick and Soderstrom

Nayes: None

Absent: None

Approved this 6th day of November, 2008.


William J. Mueller, Village President

ATTEST:


Brigitte O'Brien, Village Clerk

ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this 6th day of NOVEMBER, 2008, by and between the Village of Lombard, a municipal corporation (hereinafter referred to as "Village"); and Philip and Linda Giordano (hereinafter collectively referred to as "Owner");

WITNESSETH:

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

WHEREAS, the Subject Property is not yet adjacent to or contiguous with the existing corporate boundaries of the Village; and

WHEREAS, the Village desires to annex and the Owner desires to have the Subject Property annexed to the Village as soon as reasonably practicable following the establishment of contiguity between the corporate boundaries of the Village and the Subject Property, and each of the parties desires to obtain assurances from the other as to certain provisions of the zoning and other ordinances of the Village for the Subject Property when the same has been annexed and to other matters covered by this Agreement for a period of twenty (20) years from and after the execution of this Agreement; and

WHEREAS, the Subject Property is an approximately 0.68-acre parcel of land and there are _____ electors residing thereon; and



WHEREAS, all owner(s) of record of the Subject Property and at least 51% of the electors residing thereon 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, all subsequent owner(s) of record of the Subject Property and all electors hereafter residing on the Subject Property shall be bound by the Annexation Petition and shall execute and submit an updated version of the Annexation Petition immediately preceding the annexation of the Subject Property to the Village as provided for in Paragraph 3 of this Agreement; and

WHEREAS, a public hearing on this Annexation Agreement ("Agreement") has been held by the Corporate Authorities on the 6th day of November, 2008; 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 deem it to the mutual advantage of the parties and in the public interest that, as soon as legally permissible, the Subject Property be annexed to 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

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

1. **Incorporation of Recitals**: The Village and Owner agree that the foregoing recitals are incorporated in this Agreement as if fully recited herein.
2. **Development of Subject Property**: The Village and Owner agree that the Subject Property shall be developed in accordance with the terms of this Agreement.
3. **Annexation**: Subject to the provisions of Article 7 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, the parties agree to do all things necessary or appropriate to cause the Subject Property to be duly and validly annexed to the Village as promptly as practicable after the execution of this Agreement and following the establishment of contiguity between the corporate boundaries of the Village and the Subject Property. 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-0 Single Family Residence District to the R-1 Single Family Residence District under the Zoning Ordinance. Owner agrees that all uses carried out upon the Subject Property prior to its annexation, whether or not a permitted use under the County Zoning Ordinance, shall conform with the permitted uses under the R-0 District of the Zoning Ordinance unless otherwise approved by the Village pursuant to proper application and applicable hearings as required by law. The parties shall further 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.

5. Connection to Sanitary Sewer: The Village agrees that the Owner shall not be required to connect to Village sanitary sewer until such time as one of the following events occurs:

- A. The septic system on the Subject Property fails;
- B. The Subject Property is sold; or
- C. The Subject Property is subdivided.

6. Utility Connection Fees: The Owner agrees to pay the following fees to the Village for utility connections to the Subject Property at such time as the Owner desires to connect to Village utilities or one of the events listed in Section 5 (above) occurs:

- A. Sewer connection fee in the amount of one-half (1/2) the amount stated in Section 50.100 (A) of the Village Code (Water and Sewer Connection Charges), to be paid upon connection to the Village sanitary sewer system.

In addition to these fees, the Owner agrees to pay all applicable permit (including, but not limited to building permit) fees as required by Village Ordinances at the time of application for the

respective permits. Owner further agrees that the connection charges 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.

7. **Subdivision**: The Owner shall be allowed to subdivide the Subject Property into two (2) developable Lots of Record as permitted under the Lombard Subdivision and Development Ordinance (Chapter 154 of the Lombard Village Code), provided said subdivided lots comply with the Village Code.

8. **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:

Linda and Philip Giordano
1746 S. LaLonde
Lombard, Illinois 60148

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

B. Binding Agreement This Agreement shall insure to the benefit of and shall be binding upon Owner's successors in any manner in title, and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

C. Court Contest: In the event the annexation of the Subject Property, the classification of the Subject Property for zoning purposes or other terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending, including (without limitation) the appeal time therefor, shall not be included, if allowed by law, in calculating the twenty (20) year period mentioned in subsection R below.

D. Remedies: The Village and Owner, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party, or their successors or assigns, which default exists uncorrected for a period

of ten (10) days after written notice to any party to such default, 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. Conveyances: Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner to sell or convey all or any portion of the Subject Property, whether improved or unimproved.

F. Survival of Representations: Each of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.

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

H. Reimbursement of Village for Legal and Other Fees and Expenses:

(1) To Effective Date of Agreement: The Owner concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and

any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (a) the costs incurred by the Village for engineering services;
- (b) all reasonable attorneys' fees incurred by the Village in connection with this Agreement and the annexation and zoning of the Subject Property; and
- (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

(2) **From and After Effective Date of Agreement:** Except as provided in this subsection upon demand by Village made by and through its Director of Community Development, Owner from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of public improvements.

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

Notwithstanding the foregoing, Owner shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed

or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against the Owner and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner, on notice from Village, shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (a) Owner shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Owner shall reimburse the Village, from time to time on written demand from the Director of Community Development and notice of the amount due, for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

In the event the Village institutes legal proceedings against Owner 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 all expenses of such legal proceedings incurred by Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith (and any appeal thereof). Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner.

I. 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.

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

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

L. Authorization to Execute: The Owner executing this Agreement warrants that they have lawful authority to execute this Agreement. 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.

M. Amendment: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement

shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

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

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

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

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

R. **Term of Agreement:** This Agreement shall be in full force and effect for a term of twenty (20) years from and after the date of execution of this Agreement.

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

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

VILLAGE OF LOMBARD

ATTEST:

Dejitta O'Brien
Village Clerk

By: *[Signature]*
Village President

DATED: NOVEMBER 6, 2008

OWNER:

ATTEST:

Its _____

By: *[Signature]*
Its _____

DATED: _____

OWNER:

ATTEST:

Its _____

By: *Linda Jordan*
Its _____

DATED: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

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 10th day of NOVEMBER, 2008.

Commission expires JUNE 10, 2009.

Barbara A Johnson
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF No Page)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Linda Giordano

_____, 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 he/she signed and delivered the said instrument, as his/her free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 30th day of April, 2008.

My commission expires Nov. 1, 2008.

William J Heniff
Notary Public

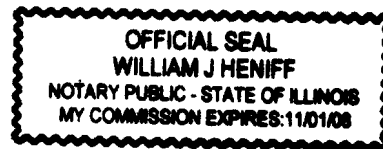


EXHIBIT A – LEGAL DESCRIPTION

LOT 7 IN DEICKE'S DIVISION OF PART OF THE NORTHWEST QUARTER
OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
RECORDED JULY 9, 1924 AS DOCUMENT 179881, IN DUPAGE COUNTY,
ILLINOIS.

PIN: 06-21-102-010

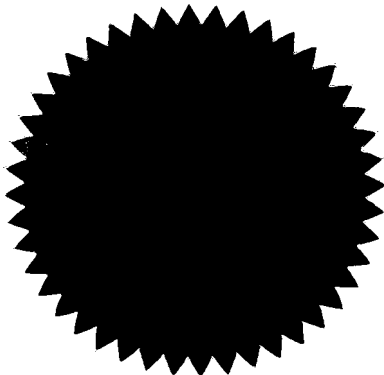


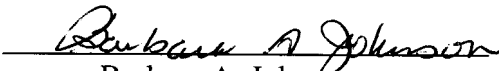
I, Barbara A. Johnson, hereby certify that I am the duly qualified Deputy Village Clerk of the **Village of Lombard**, DuPage County, Illinois, as authorized by Statute and provided by local Ordinance, and as such Deputy Village Clerk, I maintain and am safekeeper of the records and files of the President and Board of Trustees of said Village.

I further certify that attached hereto is a
copy of ORDINANCE 6270
AUTHORIZING THE EXECUTION OF AN
ANNEXATION AGREEMENT

of the said Village as it appears from the official records of said Village duly approved this 6th day of November, 2008.

In Witness Whereof, I have hereunto affixed my official signature and the Corporate Seal of said **Village of Lombard**, Du Page County, Illinois this 18th day of November, 2008.




Barbara A. Johnson
Deputy Village Clerk
Village of Lombard
DuPage County, Illinois