

**REGENCY ESTATES
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT (the “Agreement”) is made and entered into this first day of April, 2004, by and between the **VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as “Village”); **ANTONIO RENDINA, AS TRUSTEE OR HIS SUCCESSORS IN TRUST UNDER TRUST AGREEMENT DATED JUNE 28, 2001, F/B/O THE ANTONIO RENDINA FAMILY** and **MILLENNIUM TRUST COMPANY, LLC, SUCCESSOR TO INDEPENDENT TRUST CORPORATION, ORLAND PARK, ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 31, 1987 AND KNOWN AS TRUST NO. 20200**, (hereinafter collectively referred to as “Owner”); and **FREEDOM DEVELOPMENT CORPORATION**, an Illinois corporation (hereinafter referred to as “Developer”).

WITNESSETH:

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

WHEREAS, Developer proposes to develop the Subject Property; and

WHEREAS, the Subject Property is adjacent to and contiguous to the exiting 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 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 approximate four-acre parcel of land and there are no electors residing thereon; and

WHEREAS, all owners of record of the Subject Property have signed a Petition for Annexation of the Subject Property to the Village, which Petition is hereinafter referred to as the “Annexation Petition”; and

WHEREAS, an application has heretofore been filed with the Village Clerk for Zoning of the Subject Property as R2 Single Family Residence District; and

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

WHEREAS, a public hearing was held on January 26, 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 the R-2 Single Family Residence District under the Lombard Zoning Ordinance (Chapter 155 of the Lombard Village Code hereinafter the “Zoning Ordinance”) with a conditional use for a planned development, and the Plan Commission has submitted to the Corporate Authorities of the Village (hereinafter referred to as the “Corporate Authorities”) its findings of fact and recommendations with respect to said application; and

WHEREAS, public hearings on this Annexation Agreement (“Agreement”) were held by the Corporate Authorities on February 19, 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 and Chapter 154 of the Lombard Village Code (hereinafter, the “Subdivision and Development Ordinance”), such public hearings and other actions having been held pursuant to public notice as required by law and in accordance with all requirements of law prior to adoption and execution of this Agreement; and

WHEREAS, the Corporate Authorities of the Village and the Owner and Developer deem it to the mutual advantage of the parties and in the public interest that the Subject Property be annexed to and developed as a part of the Village as hereinafter provided; and

WHEREAS, the development of the 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 the 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-2 Single Family Residence District under the Zoning Ordinance.

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth, the sufficiency of which is acknowledged by all parties, the parties hereto agree as follows:

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

2. DEVELOPMENT OF 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 and made a part hereof. To the extent that any exhibit attached

hereto and made a part of this document is labeled as preliminary, the final documents shall be in substantial compliance with the preliminary documents attached hereto and subsequent to final approval by the Village.

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

4. ZONING. Upon annexation of the Subject Property to the Village as set forth herein, the Corporate Authorities shall, without further public hearings, immediately rezone and classify the entire Subject Property from the R-1 Single Family Residence District to the R-2 Single Family Residence District. In addition, the Corporate Authorities agree to approve a conditional use for planned development, with the following lot deviations:

- A. For Lot 6, reduce the minimum lot width from sixty (60) feet to fifty-five and forty eight one hundredths feet (55.48') ;
- B. For Lot 7, reduce the minimum lot width from sixty (60) feet to fifty-five and forty eight one hundredths feet (55.48') ; and
- C. For Lot 8, reduce the minimum lot width from sixty (60) feet to fifty-five and forty eight one hundredths feet (55.48');

5. SITE PLAN APPROVAL. The Developer shall develop the Subject Property in full compliance with the Site Plan entitled "Regency Estates", prepared by ARC Design Resources, Inc., as last revised on , March 24, 2004 (the "Site Plan") and the plans and specifications, prepared by ARC Design Resources, Inc., as last revised on March 24, 2004 (the "Plans and Specifications"), attached hereto as **EXHIBIT B** and made part hereof, both subject to changes based upon final engineering. In addition, the Subject Property shall be landscaped in full compliance with the landscape plan attached hereto as **EXHIBIT C** and made part hereof and entitled "Landscape Plan" (hereinafter the "Landscape Plan"). Said landscape plan shall also amended to incorporate any additional planting modifications as required by the Village as part of final engineering review and approval and as conditioned within the Ordinance approving the requested planned development. Furthermore, the use and development of the subject property shall be subject to the following additional requirements:

- A. 18th Street shall be improved by the Developer to a fully improved right-of-way from the eastern boundary of the Subject Property, West until it meets the improved portion of 18th Street at Stewart Avenue. For purposes hereof

“improved” shall mean installation of pavement, curb and gutter, street lights in accordance with the Village Code, sidewalks on the north side (only) of 18th Street, storm sewers and necessary landscaping. The Village represents and warrants to the Owner and the Developer that electricity for the street lights for 18th Street and for Regency Court can be obtained through the existing controller located on the property owned by DuPage Medical Center, at no cost to Developer or Owner.

- B. The Developer shall take the necessary steps, at such time as directed by the Village, to landscape the Subject Property with parkway trees planted at the ratio of one (1) for each forty feet (40') of frontage. This requirement shall extend to the right-of-way to be dedicated to the Village for the length of the newly constructed portion of 18th Street from Stewart Avenue to LaLonde Avenue (including around the detention outlot) and within the cul-de-sac street.
- C. Any obligations of current Owners as set forth herein (including but not limited to all financial obligations imposed on the current Owner) shall become the sole responsibility of the Developer as of the closing of Developer's contemplated purchase of the Subject Property from the current Owner, provided the said transaction closes. Upon such closing, the current Owner shall be automatically released from compliance with such obligations to the Village, and the subsequent owner, whether the Developer or another entity, shall be responsible to fulfill all of the Owner's obligations.

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

7. WATER UTILITIES.

- A. Village represents and warrants to Developer as follows:
 - (1) That it owns and operates a water distribution system within the Village.
 - (2) That the Village has sufficient capacity to provide and will provide potable water to the Subject Property, such service to be substantially the same as provided to other residential areas in the Village being provided with water by the Village in terms of quantity, pressure, quality and cost.
- B. Owner and Developer, at their own expense shall install water main extensions in accordance with the Subdivision and Development Ordinance and substantially in compliance with the Plans and Specifications. The parties agree that Owner and Developer shall pay all Village water connection

charges (at the lowest rate applicable to single-family residential properties in the Village at the time of connection.)

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

8. SANITARY SEWER FACILITIES.

- A. Village represents and warrants to Developer as follows:

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

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

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

9. STORM DRAINAGE FACILITIES.

- A. Storm drainage facilities, and retention and/or detention areas (hereinafter, the “Storm Drainage Facilities”) shall be provided and constructed and paid for by Owner and Developer substantially in accordance with the Plans and Specifications on Lot 10 within the Subdivision. The area within the right-of-way of 18th Street shall be excluded from any calculation of the required Storm Drainage Facilities capacity, since that roadway improvement is less than one (1 acre of additional impervious area per DuPage County Division of Transportation guidelines.

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

- B. The west side of the detention basin on Lot 10 shall have a post and rail fence installed along the entire length of the front property line and along the interior lot line within the required thirty-foot front yard for the safety of the public and the adjacent property owners. The fence shall also include a ten foot (10') opening along the front property line to allow for maintenance vehicles and equipment to enter the detention and wetland area. The location and design of the fence shall be consistent with the fence plans included as part of Exhibit B "Plans and Specifications" attached hereto and made a part hereof.
- C. There shall be no direct tie-in of downspouts or sump pumps into any backyard storm sewers on the Subject Property.

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

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

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

13. EASEMENTS. Owner and/or Developer shall provide all easements as depicted on

EXHIBIT D and as required by final engineering plans.

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

15. SPECIAL ASSESSMENTS. The Village agrees that no special assessments or special service area shall be made applicable to the Subject Property during the first three (3) years of this Agreement, without the prior written consent of the Owner.

16. FEES. In consideration of the impact of the development of Subject Property on the Village, and in consideration of water mains, sanitary sewer mains and storm sewer mains previously installed by the Village to assist in the serving of the Subject Property with water and sewers, Owner 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. The parties agree that all such fees and charges shall be at the lowest rate applicable to single family residential properties in the Village at the time of permit issuance.

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

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

19. *RESERVED*

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

22. GENERAL PROVISIONS.

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

If to the Village or
Corporate Authorities:

President and Board of Trustees
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

With Copies to:

Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Director of Community Development
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Thomas P. Bayer
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

If to the Owner:

c/o Antonio Rendina
173 Saddlebrook Drive
Oak Brook, Illinois 60523

With a Copy to:

Louis V. Pavone
Loss, Pavone & Orel
1920 South Highland Avenue
Suite 333
Lombard, Illinois 60148

If to the Developer:

Jeffrey R. Brown
Freedom Development Corp.
P. O. Box 6150
Villa Park, Illinois 60181

With a Copy to:

Richard Heidecke
Heidecke Law Offices
720 Enterprise Drive
Oak Brook, Illinois 60523

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

B. Continuity of Obligations.

- (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 improved individual lots as the ultimate consumers thereof (namely the individuals who actually own and reside in the houses to be built on said lots). The provisions of this Agreement shall be binding, however, on any builders who purchase any of the lots for eventual resale to the ultimate consumers thereof. Notwithstanding the foregoing, the provisions relating to Storm Drainage Facilities in Section 9 shall be binding on the ultimate consumers and any builders and shall be considered and are hereby declared as covenants running with the land.
- (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 thirty (30) working days after the closing of such sale or conveyance, of any and all successors in title to all or any portion of the Subject Property. Such written notice shall include identification of the names(s) of such successor(s), the date of such sale or conveyance, and a copy of the title opinion identifying the grantee, the real estate sold or conveyed, and such other information as is usually and customarily included in a title opinion for the sale or conveyance or real estate. Failure to give timely notice shall not constitute a default hereunder, but shall be governed by the remaining provisions of this subsection 22B.
- (3) Upon the condition that the requirements of this subsection 22B have been met, this Agreement shall insure 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) Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner and/or Developer in accordance with subsection 22B(3) above, the Owner and Developer shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon Owner and/or Developer by this Agreement until such obligations have been fully performed or until Village, in the exercise of its reasonable discretion, has otherwise released Owner and/or Developer from any and all such obligations.
- (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 22F) 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 purpose for which it is conveyed, dedicated or donated;
 - (b) terms of this Agreement;
 - (c) general taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year of the amount of the prior year’s taxes is not determined at the time of delivery, conveyance or dedication; and
 - (d) such other exceptions acceptable to the Grantee.
4. Title Insurance. Grantor shall provide to Grantee, not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company acceptable to the Grantee. The commitment for title insurance shall be in usual and customary form subject only to:
 - (a) the usual and customary standard exceptions contained therein;
 - (b) taxes for the year in which the deed is delivered and for the prior year if the amount of such prior year’s taxes is not determinable at the time of delivery of the deed, conveyance or dedication; and
 - (c) such other exceptions as are acceptable to the Grantee.

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

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

5. Taxes, Liens, Assessments, Etc. General taxes and all other taxes, assessments, liens and charges of whatever nature affecting the real estate shall be paid and removed prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly pay the same upon determination of such amount and that it will indemnify, hold harmless and defend the Village and Grantee, if other than the Village, against any loss or expense, including but not limited to attorney's fees and expenses of litigation, arising as a result of a breach of the foregoing covenant.
 6. Delivery of Deed, Conveyance or Dedication. To the extent not provided in this Agreement, delivery of the deed, conveyance or dedication shall occur at a date, time and place mutually agreeable to Grantor and Grantee, otherwise at a date, time and place set by Grantee not less than thirty (30) days nor more than forty-five (45) days after notice thereof is given by Grantee to Grantor.
- G. **Conveyances.** Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner and/or Developer to sell or convey all or any portion of the Subject Property, whether improved or unimproved, except as otherwise specifically set forth herein.
- H. **Survival of Representation.** Each of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.
- I. **Captions and Paragraph Headings.** The captions and paragraph headings used herein are for convenience only and are not part of this Agreement and shall not be used in construing it.

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

1. To the Effective Date of Agreement. The Owner and/or Developer concurrently with annexation and zoning of the Subject Property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the 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 expenses.
2. From and After Effective Date of Agreement. Except as provided in this subsection upon demand by Village made by and through its Director of Community Development, Owner and/or Developer from time to time shall promptly reimburse Village for all reasonable expenses and cost incurred by Village in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses.

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

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

In the event that any third party or parties institute any legal proceedings against the Owner and/or Developer and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner and/or Developer, on notice from Village shall assume, fully

and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

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

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

- K. **No Waiver or Relinquishment of Right to Enforce Agreement.** Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other property imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- L. **Village Approval or Direction.** Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this

Agreement.

- M. **Recording.** A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Owner and Developer.
- N. **Authorization to Execute.** The officers of Owner and Developer executing this Agreement warrant that they have been lawfully authorized by Owner's and Developer's respective Boards of Directors to execute this Agreement on behalf of said Owner and Developer. The President and Deputy 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 promises, inducements, agreements, conditions and understandings between the Owner and Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.
- P. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- Q. **Conflict Between the Text and Exhibits.** In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.
- R. **Definition of Village.** When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.
- S. **Execution of Agreement.** This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the effective date of this Agreement.
- T. **Terms of Agreement.** This Agreement shall be in full force and effect for a term of twenty (20) years from and after date of execution of this Agreement.

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

23. RECAPTURE OF 18TH STREET CONSTRUCTION COSTS. The parties recognize hereto that the Owner/Developer is obligated to fully improve 18th Street from Stewart Avenue to a point perpendicular with 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/Developer and Village will enter into a Recapture Agreement under the terms of which Owner/Developer shall be entitled to recapture a portion of its costs concurrent with the subsequent development of properties adjacent to the portion of 18th Street which was improved by Owner/Developer, as identified in **EXHIBIT E** “the Recapture Agreement”. Once the actual costs of construction are known for the 18th Street improvements, the Village shall enter into a recapture agreement with the Owner/Developer, with the dollar amount based upon the following formula:

$$\frac{\begin{array}{l} 18^{\text{th}} \text{ Street Frontage} \\ \text{(expressed in feet) for} \\ \text{Parcel to be newly Annexed} \end{array}}{\begin{array}{l} \text{Total Number of Feet of} \\ 18^{\text{th}} \text{ Street Improved by} \\ \text{Developer} \end{array}} \times \begin{array}{l} \text{Cost of Improvement of} \\ 18^{\text{th}} \text{ Street as} \\ \text{Certified by Developer's Engineer} \end{array}$$

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

For purposes hereof, the “Cost of Improvement of 18th Street” 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 three (3) parcels situated west of the Subject Property, at the expense of the Developer. The foregoing right of recapture shall be waived with respect to any of the three (3) parcels in question in the event the Developer, or any affiliate of the Developer, acquires title to such parcel.

24. CURB CUTS.

- A. The Village hereby agrees that the Developer may, irrespective of Village ordinances regarding frontage, construct driveways (with corresponding curb cuts) on each lot in the subdivision of the Subject Property having a width not to exceed twenty (20) feet.
- B. The Village agrees that Lot 1 in the subdivision of the Subject Property may have one curb cut, of a width not to exceed twenty (20) feet onto 18th Street.

{THIS SPACE INTENTIONALLY LEFT BLANK—SIGNATURE PAGE TO FOLLOW}

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: _____
Name: Barbara Johnson
Its: Deputy Village
Clerk

By: _____
Name: William J., Mueller
Its: President, Village of Lombard

Dated: _____, 2004

DEVELOPER:

FREEDOM DEVELOPMENT CORPORATION

By: _____
Its: _____

By: _____
Name: Jeffrey R. Brown
Its: President

Dated: _____, 2004

OWNER:

ANTONIO RENDINA, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED JUNE 28, 2001 FOR THE BENEFIT OF THE ANTONIO RENDINA FAMILY

ATTEST:

By: _____
Its: _____

By: _____
Name: Antonio Redina
Its: Trustee, as aforesaid

Dated: _____, 2004

MILLENNIUM TRUST COMPANY, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED MARCH 31, 1987 AND KNOWN AS TRUST NUMBER 20200

ATTEST:

By: _____
Its: _____

By: _____
Name: _____
Its: _____

Dated: _____, 2004

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 of _____, 2004 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 _____, 2004.

{SEAL}

Notary Public
Print Name: _____
My Commission Expires: _____

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 **ANTONIO RENDINA, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED JUNE 28, 2001 FOR THE BENEFIT OF THE ANTONIO RENDINA FAMILY**, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this ____ day of _____, 2004 in person and acknowledged that he signed and delivered the said instrument, as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2004.

{SEAL}

Notary Public
Print Name: _____
My Commission Expires: _____

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 _____ and _____ personally known to me to be the _____ and _____ of **MILLENNIUM TRUST COMPANY, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED MARCH 31, 1987 AND KNOWN AS TRUST NUMBER 20200**, appeared before me this ____ day of _____, 2004 in person and severally acknowledged that they signed and delivered the said instrument, as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2004.

{SEAL}

Notary Public
Print Name: _____
My Commission Expires: _____

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 **JEFFREY R. BROWN** and _____ personally known to me to be the President and Secretary of **FREEDOM DEVELOPMENT CORPORATION, AN ILLINOIS CORPORATION**, appeared before me this ____ day of _____, 2004 in person and severally acknowledged that they signed and delivered the said instrument, as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2004.

{SEAL}

Notary Public
Print Name: _____
My Commission Expires: _____

SCHEDULE OF EXHIBITS

- EXHIBIT A: Legal Description
- EXHIBIT B: Site Plan and Plans & Specifications
- EXHIBIT C: Landscape Plan
- EXHIBIT D: Preliminary Plat of Subdivision
- EXHIBIT E: Form Recapture Agreement
- EXHIBIT F: Preliminary Development Agreement

EXHIBIT A

LEGAL DESCRIPTION

REGENCY ESTATES

PARCEL 1.

THE WEST 175.0 FEET OF THE WEST 206.50 FEET OF THE SOUTH 499.0 FEET OF THE NORTH 1497.0 FEET OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

ALSO KNOWN AS LOT 18 IN YORK TOWNSHIP SUPERVISOR'S ASSESSMENT PLAT NO. 1 (HIGHLAND ROAD FARM) OF THE EAST ½ OF THE SOUTHWEST ¼; THE WEST ½ OF THE SOUTHEAST ¼ AND THE SOUTH 1332.0 FEET OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452575, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2.

LOT 17 IN YORK TOWNSHIP SUPERVISOR'S ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST ½ OF THE SOUTHWEST ¼, THE WEST ½ OF THE SOUTHEAST ¼ AND THE SOUTH 1332 FEET OF THE WEST ½ OF THE NORTHEAST ¼ 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.

PERMANENT INDEX NUMBER: 06-20-306-014
PERMANENT INDEX NUMBER: 06-20-306-013

PROPERTY ADDRESS: 19 W 416 East 18TH Street and
312 East 18TH Street
Lombard, Illinois 60148

EXHIBIT B

Site Plan and Plans & Specifications

EXHIBIT C
Landscape Plan

EXHIBIT D

Preliminary Plat of Subdivision

EXHIBIT E

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'S and _____, a _____ (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 E
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 E
 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