

VILLAGE OF LAKE ZURICH  
Planning & Zoning Commission  
70 East Main Street



**Wednesday, August 21, 2024, 7:00 p.m.**

**AGENDA**

1. CALL TO ORDER AND ROLL CALL: Chairperson Orlando Stratman, Vice-Chair Antonio Castillo, Joe Giannini, Sean Glowacz, Scott Morrison, Mike Muir and Ildiko Schultz.
2. CONSIDERATION OF MINUTES AND FINDINGS OF THE COMMISSION
  - A. Minutes of the Planning and Zoning Commission Meeting, on [July 17 and July 18, 2024](#). Motion to approve the minutes.
3. PUBLIC MEETING  
(This agenda item includes items that do not require public testimony)  
No items received for consideration.
4. PUBLIC HEARING  
(This agenda item includes proposals presented to the Planning & Zoning Commission requiring public testimony, discussion and recommendation to the Village Board for final action.)
  - A. 189 South Rand Road – Special Use Permit (2024-11)  
Application for a Special Use Permit for an establishment offering amusement devices (including, but not limited to, racecar, golf, and flight simulators) within a commercial tenant space in Lakeview Plaza located in the B-3 Regional Shopping District.  
*Applicant: Viktor Magula & Taras Bezruchko*  
*Owner: Knapp Investments, LLC*
  - B. 474 Rush Court – Variation (2024-12)  
Application for a variation to allow for the construction of a terrace (paver patio) within the rear yard setback at the property located within the R-5 single-family residential district.  
*Applicants and Owners: Mr. Chad and Ms. Michelle Pratt.*

C. Miscellaneous Amendments to the Lake Zurich Building and Zoning Codes (2024-13):

Staff of the Community Development Department propose various miscellaneous housekeeping amendments to the Lake Zurich Building and Zoning Codes as necessary, to enhance the effectiveness of the codes.

5. OTHER BUSINESS

6. STAFF REPORTS

This is an opportunity for staff of the Community Development Department to report on matters of interest to the Planning & Zoning Commission

7. PUBLIC COMMENT

This is an opportunity for residents to comment briefly on matters included on the agenda and otherwise of interest to the Commission. Public Comment is limited to 30 minutes total and up to 5 minutes per speaker.

8. ADJOURNMENT

The Village of Lake Zurich is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations so that they can observe or participate in this meeting, or who have questions regarding the accessibility of the meeting or the Village's facilities, should contact the Village's ADA coordinator at (847) 438-5141 (TDB #438-2349) promptly to allow the Village to make reasonable accommodation.

VILLAGE OF LAKE ZURICH  
Planning & Zoning Commission  
70 East Main Street



Wednesday, July 17, 2024, 7:00 p.m.

**1. CALL TO ORDER** at 7.00pm by Chairperson Orlando Stratman

**ROLL CALL:** Chairperson Orlando Stratman, Vice-Chair Antonio Castillo, Commissioners Sean Glowacz, Jake Marx, Scott Morrison, and Ildiko Schultz. Commissioners Joe Giannini and Mike Muir were absent. Also present: Community Development Dir. Sarosh Saher, Village Planner Colleen McCauley.

Chairperson Stratman clarified that Commissioner Morrison, who is an alternate member, will be a full voting member due to the absences.

**2. CONSIDERATION OF MINUTES AND FINDINGS OF THE COMMISSION**

**A. Minutes of the Planning and Zoning Commission Meeting, on June 19, 2024.**

Commissioner Schultz corrected the spelling of her last name.

Motion to approve the minutes with the amendment as noted was made by Commissioner Marx, seconded by Commissioner Schultz.

**AYES:** 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

**NAYS:** 0

**ABSENT:** 2 Commissioners Giannini, Muir.

**MOTION CARRIED.**

**3. PUBLIC MEETING**

No items received for consideration.

**4. PUBLIC HEARING**

Motion to open the public hearing for the following applications:

Application PZC 2024-08 for a Special Use Permit for a Planned Unit Development (PUD) at 670 South Old Rand Road. The Application was continued from the June 19, 2024 meeting of the PZC.

Application PZC 2024-09 for a fence Variation at 1073 Avery Ridge Circle.

Application PZC 2024-10 for a Special Use Permit at 865 Telser Road.

Application PZC 2024-06 for a Special Use Permit at 909 South Rand Road, was made by Commissioner Marx, seconded by Commissioner Morrison.

**AYES:** 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

**NAYS:** 0

**ABSENT:** 2 Commissioners Giannini, Muir.

**MOTION CARRIED.**

Public Hearing started at 7.04pm

Chairperson Stratman gave the Oath to those who were giving testimony.

*Continued Item:*

**A. 670 South Old Rand Road – Special Use Permit (2024-08) Continued:**

Application for a Planned Unit Development to allow for the development of a property with a new residential subdivision containing a mix of single-family attached townhomes and single-family detached homes. The project will also require a rezoning of the property to the appropriate multiple-family zoning classification.

*Applicant: Mr. Lawrence M. Freedman, of Ash, Anos, Freedman & Logan, LLC*

*Owner: Mr. Henry C. Joern of Ingleside, IL*

Chairperson Stratman asked Dir. Saher to clarify the discrepancies from last month's meeting.

Dir. Saher explained that the two acres of wetland, on the approximate nine-acre site, will be maintained. The creek on site will be restored and additional stormwater detention facilities will be added.

Dir. Saher noted that the development, a mix of townhomes and single-family homes, would serve as a transition between the single-family neighborhoods and the nearby dissimilar zoning districts.

The phrase "older vintage", used in the staff report, referred to the homes constructed in the 1960s and was not meant to suggest a negative connotation.

The density of the proposed development is largely in keeping with other townhome subdivisions within the Village. The average density for these types of developments is six units per acre, with this project being around five units per acre.

Dir. Saher clarified that the traffic study was completed in May of 2024, with the study being conducted on April 22 and 23 of 2024.

The home located at 700 South Old Rand Road is sixty-five feet from the closest townhome on Buesching Road.

The proposal will include proper screening for the homes from the south, with a solid fence and year-round landscaping.

Dir. Saher introduced Mr. Lawrence Freedman who is the attorney representing OSK Capital Partners.

Mr. Lawrence Freedman, Mr. David Haymes, and Ms. Heather Faircloth gave a presentation about the changes made to the development plan. The revised plan has reduced the number of townhomes along South Old Rand Road from seven units to five units. The number of stories for those townhomes has been reduced from three-stories down to two-stories.

## **PUBLIC TESTIMONY.**

Residents Mary Ann Phillips, Gary Levine, Brian Hart, Elizabeth Hart, and Chirag Patel expressed the following concerns:

Several residents were displeased with the revised number of units for the proposed development and believe it to still be too dense. Traffic, safety, and noise on South Old Rand Road are concerns that the residents think will only be made worse by the new development. Light trespassing into the neighborhood was also a mentioned worry.

Dir. Saher clarified that the development will be held to the standards of the illumination zoning code which regulates that the lighting cannot exceed half of a foot candle at the boundary of the property and cannot exceed ten foot candles within the property. Any lighting at the entries or exits of the development will be shielded so that the light falls within the boundary of the property.

Property owners Henry Joern, Bill Joern, and Linda Joern spoke in support of the development and believe it will be an attractive addition to the village.

Resident Michael Hilt commented that Old Rand Road is in significant need of repair. He also expressed concerns that the Homeowners Association for the proposed development will have too many expensive responsibilities.

Dir. Saher stated that there are Homeowner Associations for more recent developments within the village, and that they are able to manage the maintenance of their private roads.

Motion to close the public hearing on Application PZC 2024-08 and move to deliberation was made by Commissioner Glowacz, seconded by Commissioner Marx.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini., Muir.

MOTION CARRIED.

During deliberations Commissioner Castillo noted that he sees this project as having more positives than negatives.

Commissioner Marx commented that there is a need for diverse housing, not just single-family homes. The proximity of the development to the Main Street Area will encourage walkability within the village.

Chairperson Stratman echoed the residents' desire for a walkable community, as voiced at the Comprehensive Plan meetings. The development's location and construction of sidewalks, crosswalks, and lighting, directly addresses these requests.

Commissioner Glowacz stated that the one-story deduction to the townhomes along Old Rand Road is a significant change.

Commissioner Schultz noted that the townhomes would provide a downsized housing option for residents that would like to stay in Lake Zurich. The crosswalk needs to be safe and have flashing lights to slow traffic down.

Commissioner Morrison stated that the development will provide a nice transition between the different land uses in the area. He agreed that the change from three-story to two-story townhomes is a significant change.

On Application PZC 2024-08: A motion was made by Commissioner Marx, seconded by Commissioner Schultz, to receive into the public record the staff review of compliance of this Application with the zoning standards as presented by staff; and to receive the testimony presented by the Applicants, by members of the public, by the PZC Members, and by Village Staff at tonight's Public Hearing; and make these standards and testimony a part of the official record for the Application and Findings of the PZC; and to recommend that the Village Board approve the application for a Special Use Permit for a Planned Unit Development (PUD) and map amendment for the development of the property with a mix of single-family homes and townhomes located within the R-1/2 Single-Family Residential District.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini, Muir.

MOTION CARRIED.

**B. 865 Telser Road—Special Use Permit (2024-10):**

Application for a Special Use Permit for a high-end automotive detailing business within an industrial tenant space located in the I Industrial District.

*Applicant: Luminescent Detailing*

*Owner: Zen Properties, LLC*

Dir. Saher introduced the owner of Luminescent Detailing, Mr. Frank Travaglio.

Mr. Travaglio gave some background on his business and explained why he is seeking a Special Use Permit.

Motion to close the public hearing on Application PZC 2024-10 and move to deliberation was made by Commissioner Morrison, seconded by Commissioner Marx.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini, Muir.

MOTION CARRIED.

There was no deliberation.

On Application PZC 2024-10: A Motion was made by Commissioner Schultz, seconded by Commissioner Morrison, to receive into the public record the staff review of compliance of this Application with the zoning standards as presented by staff; and to receive the testimony presented by the Applicants, by members of the public, by the PZC Members, and by Village Staff at tonight's Public Hearing; and make these standards and testimony a part of the official record for the Application and Findings of the PZC; and to recommend that the Village Board approve the application for a Special Use Permit for a high-end automotive detailing business within an industrial tenant space located in the I Industrial District.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini, Muir.

MOTION CARRIED.

A motion was made by Commissioner Marx, seconded by Commissioner Morrison, to continue the public hearing for the remaining applicants until tomorrow, Thursday, July 18, 2024.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini, Muir.

MOTION CARRIED.

## **5. OTHER BUSINESS**

There was none

## **6. STAFF REPORTS**

Dir. Saher reported that a Special Use Permit at 909 South Rand Road and a Variation at 1073 Avery Ridge Circle will be reviewed at tomorrow's PZC meeting.

## **7. PUBLIC COMMENT**

There were none.

## **8. ADJOURNMENT**

Motion to adjourn the meeting made by Commissioner Marx., seconded by Commissioner Schultz.

AYES: 6 Commissioners Castillo, Glowacz, Marx, Morrison, Schultz, Chairperson Stratman.

NAYS: 0

ABSENT: 2 Commissioners Giannini, Muir.

MOTION CARRIED.

Meeting adjourned at 8.58pm

Respectfully submitted:

Colleen McCauley, Village Planner.

Approved by:

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Chairperson Orlando Stratman.

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Date

VILLAGE OF LAKE ZURICH  
Planning & Zoning Commission  
70 East Main Street



**Thursday, July 18, 2024, 7:00 p.m.**

**1. CALL TO ORDER** at 7.00pm by Chairperson Orlando Stratman

**ROLL CALL:** Chairperson Orlando Stratman, Vice-Chair Antonio Castillo, Commissioners Jake Marx and Scott Morrison. Commissioners Mike Muir, Ildiko Schultz, Sean Glowacz, and Joe Giannini were absent. Also present: Community Development Dir. Sarosh Saher, Village Planner Colleen McCauley.

Chairperson Stratman clarified that Commissioner Morrison, who is an alternate member, will be a full voting member due to absences.

**2. CONSIDERATION OF MINUTES AND FINDINGS OF THE COMMISSION**

The minutes and findings of the PZC Special Meeting from the June 26, 2024 were approved before adjournment.

**3. PUBLIC MEETING**

No items received for consideration.

**4. PUBLIC HEARING**

Motion to open the public hearing for the following applications:

Application PZC 2024-09 for a fence Variation at 1073 Avery Ridge Circle.

Application PZC 2024-06 for a Special Use Permit at 909 South Rand Road, was made by Commissioner Marx, seconded by Commissioner Morrison.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

Public Hearing started at 7.02pm

Chairperson Stratman gave the Oath to those who were giving testimony.

**A. 1073 Avery Ridge Circle – Fence Variation (2024-09):**

Application for a variation of the height of a new fence proposed in the corner side yard for a property within Avery Ridge Subdivision, located within the R-5 single-family residential district.

*Applicants and Owners: Mr. Patrick and Ms. Kelly Kraus.*

Mr. Patrick Kraus gave a presentation on his proposal for the fence variation.

Chair Stratman noted that the neighboring properties, as well as Avery Ridge's Homeowners Association provided their approval for the fence.

Chair Stratman asked for comments from the public and there were none.

Motion to close the public hearing on Application PZC 2024-09 and move to deliberation was made by Commissioner Marx, seconded by Commissioner Morrison.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

During deliberations Commissioner Castillo stated that he sees no negative impact and that it will be in conformance with the subdivision's existing fencing.

On Application PZC 2024-09: A motion was made by Commissioner Marx, seconded by Commissioner Morrison, to receive into the public record the staff review of compliance of this Application with the zoning standards as presented by staff; and to receive the testimony presented by the Applicants, by members of the public, by the PZC Members, and by Village Staff at tonight's Public Hearing; and make these standards and testimony a part of the official record for the Application and Findings of the PZC; and to recommend that the Village Board approve the application for a Variation for the height of a new fence proposed in a corner side yard in the Avery Ridge Subdivision located within the R-5 Single Family Residential District.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

**B. 909 South Rand Road – Special Use Permit (2024-06):**

Application for a Special Use Permit to establish a cannabis dispensary operated by Dutchess at the property located in the B-1 Local and Community Business District.

*Applicants: JAS Management LLC and Rubino Ventures, LLC*

*Owner: JAS Management LLC*

Dir. Saher confirmed that proper notice was provided for all items and then he introduced Mr. Jason Sfire, the owner of the property, and Mr. Tyler Manic, the attorney for Dutchess. Mr. Jason Sfire gave a PowerPoint presentation of the proposed building. He showed images the new site plan, parking, landscaping, lighting, and elevations.

Mr. Jason Sfire introduced the tenant, Dutchess, which included their attorney, representative, and design team, who gave an overview of the cannabis dispensary's business plan. The presentation detailed the hours of operation, number of staff members, security plan, site plan, signage, and a construction timeline.

**PUBLIC TESTIMONY.**

Resident William Howarth, 328 Denberry Drive, raised a concern about his privacy regarding the surveillance cameras

Motion to close the public hearing on Application PZC 2024-06 and move to deliberation was made by Commissioner Marx, seconded by Commissioner Morrison.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

Deliberations followed with discussion on security and positive comments regarding the proposed development.

Dir. Saher clarified that there will be no on-premises consumption, there will be no visibility of the product from the outside, there will be no attention-attracting lighting, and that Dutchess will need to go through all necessary permitting processes.

A recommendation for an additional condition was made for Special Use permits, from hereon, to be valid for one year for single-site developments.

The other conditions to be added are for a six-foot fence and for all security cameras to be directed onto the subject property, with particular respect to not include properties to the west and south.

On Application PZC 2024-06: A Motion was made by Commissioner Marx, seconded by Commissioner Morrison, to receive into the public record the staff review of compliance of this Application with the zoning standards as presented by staff; and to receive the testimony presented by the Applicants, by members of the public, by the PZC Members, and by Village Staff at tonight's Public Hearing; and make these standards and testimony a part of the official record for the Application and Findings of the PZC; and to recommend that the Village Board approve the application for a Special Use Permit to establish a cannabis dispensary operated by Dutchess at the property located in the B-1 Local and Community Business District.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

## 5. OTHER BUSINESS

There was none

## 6. STAFF REPORTS

Dir. Saher reported that there are two applications and a few text amendments planned for the August meeting.

## 7. CONSIDERATION OF MINUTES AND FINDINGS OF THE COMMISSION

### A. Minutes of the Planning and Zoning Commission Special Meeting, on June 26, 2024.

Motion to approve the minutes was made by Commissioner Marx, seconded by Commissioner Morrison.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

## 8. PUBLIC COMMENT

There were none.

## 9. ADJOURNMENT

Motion to adjourn the meeting made by Commissioner Marx, seconded by Commissioner Morrison.

AYES: 4 Commissioners Castillo, Marx, Morrison, Chairperson Stratman.

NAYS: 0

ABSENT: 4 Commissioners Muir, Schultz, Glowacz, Giannini.

MOTION CARRIED.

Meeting adjourned at 8.30pm

Respectfully submitted:

Colleen McCauley, Village Planner

Approved by:

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Chairperson Orlando Stratman.

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Date



*At the Heart of Community*

**APPLICATION PZC 2024-11**

**PZC Hearing Date: August 21, 2024**

**AGENDA ITEM 4.A**

**STAFF REPORT**

To: Chairperson Stratman and Members of the Planning & Zoning Commission

From: Sarosh Saher, Community Development Director

CC: Colleen McCauley, Village Planner  
Mary Meyer, Building Services Supervisor

Date: August 21, 2024

Re: PZC 2024-11:– Special Use Permit for an Establishment that Offers Coin Operated Amusement Devices (including, but not limited to, racecar, golf, and flight simulators)  
189 South Rand Road – The Simulation Zone

**SUBJECT**

Mr. Viktor Magula and Mr. Taras Bezruchko of The Simulation Zone, (the “Applicant”), with the consent of Knapp Investments, (the “Owner”), request a Special Use Permit to allow for an establishment offering coin operated amusement devices (including, but not limited to, racecar, golf, and flight simulators), at the property commonly known as 189 South Rand Road and legally described in Exhibit A attached hereto (the “Subject Property”).

**GENERAL INFORMATION**

Requested Action: Special Use Permit

Current Zoning: B-3 Regional Shopping

Current Use: Vacant

Proposed Use: Coin Operated Amusement Devices (7993)

Property Location: 189 South Rand Road

Applicants: Viktor Magula and Taras Bezruchko, The Simulation Zone

Owner: Knapp Investments, LLC

Staff Coordinator: Colleen McCauley, Village Planner

## **LIST OF EXHIBITS**

- A. Legal Description
- B. Public Hearing Sign
- C. Site Photos
- D. Aerial Map
- E. Zoning Map
- F. Parcel Map
- G. Development Application and Attachments
- H. Development Review Comments

## **BACKGROUND**

Mr. Viktor Magula and Mr. Taras Bezruchko of The Simulation Zone (the “Applicant”), are applying with the permission of the owner of the property, Knapp Investments, LLC, for approval of a Special Use Permit to operate an establishment that offers coin operated amusement devices (including, but not limited to, racecar, golf, and flight simulators), to be located at 189 South Rand Road, and legally described in Exhibit A attached hereto (the “Subject Property”). The Applicant filed an application with the Village of Lake Zurich received on June 24, 2024 (the “Application”) seeking:

- Special Use Permit approval for “Coin Operated Amusement Devices” – SIC #7993 which falls under the major group “Amusement and Recreation Services” – SIC #79.

The Subject Property is located within the Village’s B-3 Regional Shopping District. The multi-tenant building, Lakeview Plaza Shopping Center, is approximately 52,400 square feet and is comprised of twenty-five rental units. The suite at 189 South Rand Road is approximately 4,700 square feet, and will be equipped with a kitchen, bar, party room, and a large central area where the simulators will be located.

The Simulation Zone will offer realistic racing, golf, flight, and other experiences through simulation technology. The primary type of simulator will cater to racing enthusiasts, with each racing simulator equipped with technology that includes motion platforms, high-resolution displays, and realistic steering wheels and pedals.

Customers can pay per race or reserve time slots for two or three hours. They will offer a variety of racing sessions, host events, leagues, and tournaments. There will be a party room to host private parties along with reserved racing sessions for customers to celebrate events. Pricing packages will

vary to accommodate different preferences and budgets. Choices include single sessions, multi-session passes, and group discounts. The Simulation Zone will encourage repeat business by providing incentives such as loyalty programs and referral bonuses.

The Simulation Zone will have a lounge area where customers who are not using the simulators can socialize, watch races on the TVs, and order food and beverages. Additionally, after obtaining a liquor license from the Village Manager's Office, The Simulation Zone will offer alcoholic beverages from the bar.

The hours of operation will be from 2:00 p.m. – 10:00 p.m. on Monday through Thursday and 10:00 a.m. – 10:00 p.m. on Friday through Sunday.

There will be four employees on site during the hours of operation.

Pursuant to public notice published on July 27, 2024, in the Daily Herald, a public hearing has been scheduled with the Lake Zurich Planning & Zoning Commission for August 21, 2024, to consider the Application. On July 24, 2024 the Village posted a public hearing sign on the Subject Property (Exhibit B).

Staff offers the following additional information:

- A. Courtesy Review.** Due to the low impact, courtesy review was not recommended.
- B. Zoning History.** The property is located on Lot 1 in the Lakeview Subdivision and is zoned within the B-3 Regional Shopping Business District, which permits coin operated amusement devices as a special use. The property is within a multi-tenant commercial strip mall building known as Lakeview Plaza, which has historically been zoned for commercial uses.  
Records indicate the building on the property was constructed in 1988.
- C. Surrounding Land Use and Zoning.** The subject property is located on South Rand Road on the west side of Lake Zurich. The areas surrounding the Subject Property to the north and to the south are also zoned within the B-3 Regional Shopping Business District. The properties to the east, across US Highway Route 12, are zoned within the R-5 Single-Family Residential District and the OS Open Space District, with Paulus Park located across the street. To the west and rear of the Subject Property, properties are zoned within the R-6 Multiple Family Residential District and the OS Open Space District.
- D. Trend of Development.** The subject property is located within a well-established retail center along the Rand Road corridor. Rand Road is a regional arterial street that connects a number of communities in Southwest Lake County and surrounding counties to Lake Zurich.

The Subject Property is also adjacent to the rear yard of the Knollwood Subdivision Clubhouse. The properties are separated by a grade change containing a retaining wall topped by a fence accompanied by a landscape buffer between the two properties.

**E. Zoning District.** The zoning code provides for three (3) zoning districts for business and commercial uses. When taken together, these districts are intended to permit development of property for the full range of business and commercial uses needed to serve the citizens of Lake Zurich and the surrounding suburban area.

The B-3 Regional Shopping Business District is intended to provide locations for major retail centers. The regulations are designed to encourage a broad range of attractive retail and compatible service uses in those centers.

## **GENERAL FINDINGS**

Staff has evaluated the requested Special Use Permit individually for the current and proposed operations of the business and offers findings and recommendation on specific sections of the Code, in particular, provided recommendations and conditions on how the proposed operations can be conducted in compliance with the Standards for Special Use Permits.

### **9-19-3: STANDARDS FOR SPECIAL USE PERMITS.**

Staff has reviewed the application and found that the proposal will continue to remain in substantial conformance with the standards for Special Use Permits as outlined below.

**A. General Standards:** No special use permit shall be recommended or granted unless the applicant shall establish substantial conformance with the following:

- 1. Zoning Code and Plan Purposes:** The proposed use and development will be in harmony with the general and specific purposes for which this zoning code was enacted and for which the regulations of the district in question were established and with the general purpose and intent of the official comprehensive plan.

**Staff Response: Standard met. The proposed land use for a coin operated amusement device establishment is classified as a special use within the B-3 Regional Shopping Business District, and in conformance with the “Commercial” land use designation of the currently adopted Comprehensive Plan.**

- 2. No Undue Adverse Impact.** The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the area, or the public health, safety, and general welfare.

**Staff Response: Standard met. The proposed land use is consistent with other uses within the Lakeview Plaza Shopping. All activities will take place within**

the enclosed commercial building and will have minimal impact to the immediately adjacent parcels.

3. No Interference with Surrounding Development. The proposed use and development will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable district regulations.

**Staff Response: Standard met. The land use will be operated entirely within the enclosed building on the property. All parking will be accommodated for on the property, with the Lakeview Plaza Shopping Center having an ample amount of parking on site. Based on the frequency of customers to the proposed business, there is sufficient parking to accommodate the customers and employees on the property without interfering with the use, development and operations of adjacent properties.**

4. Adequate Public Facilities. The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools, or the applicant will provide adequately for such services.

**Staff Response: Standard met. The proposed development is currently served by and will continue to be served adequately by essential public facilities and services such as streets, utilities and other municipal services. No change in impact are anticipated at this time.**

5. No Traffic Congestion. The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through the surrounding streets.

**Staff Response: Standard met. The subject property is accessible via Rand Road, a regional arterial street that links several communities in Southwest Lake County and nearby areas to Lake Zurich. For those traveling south on Rand Road, direct access to the building is available. Travelers heading north can turn left onto Honey Lake Road to reach the drive on the property's north side.**

**The Lakeview Plaza Shopping Center has ample parking spaces and accessible spaces to support the new business at the Subject Property.**

6. No Destruction of Significant Features. The proposed use and development will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of significant importance.

**Staff Response: Standard met. The proposed use will not result in the destruction or removal of any natural features.**

7. **Compliance with Standards.** The proposed use and development complies with all additional standards imposed on it by the particular provision of this Code authorizing such use.

**Staff Response: Standard met. This request for a Special Use Permit is to establish a business that offers coin operated amusement devices (including, but not limited to, racecar, golf, and flight simulators). There are no additional standards imposed on this proposed land use.**

8. **Positive Effect.** The proposed special use creating a positive effect for the zoning district, its purpose, and adjacent properties shall be placed before the benefits of the petitioner.

**Staff Response: Standard met. The proposed development will continue to uphold the established character of the Rand Road commercial corridor. The proposed business will fill a vacancy in an established shopping center.**

**The proposed land use will provide a unique entertainment option for the Village's residents. Additionally, with the granting of the Special Use Permit, a new business will be able to operate along the commercial corridor in the Village of Lake Zurich.**

- B. **Special Standards for Specified Special Uses.** When the district regulations authorizing any special use in a particular district impose special standards to be met by such use in such district, a permit for such use in such district shall not be recommended or granted unless the applicant shall establish compliance with such special standards.

**Staff Response: Standard met. The proposed use is not accompanied by any special standards for its establishment. Staff will ensure that compliance is established before any additional permits are issued.**

- C. **Considerations.** In determining whether the applicant's evidence establishes that the foregoing standards have been met, the Plan Commission and the Board of Trustees shall consider:

1. **Benefit.** Whether and to what extent the proposed use and development at the particular location requested is necessary or desirable to provide a service or a facility that is in the interest of the public convenience or that will contribute to the general welfare of the neighborhood or community.

**Staff Response: Standard met. The business will provide a convenient location for a unique amenity within the community.**

2. **Alternative Locations.** Whether the purposes of the zoning code can be met by the location of the proposed use and development in some other area or zoning district that may be more appropriate than the proposed site.

**Staff Response:** Coin operated amusement devices (SIC #7993) are a special use within the Village's Business districts.

**The applicants have not indicated an intention of looking for an alternative location. Any alternative location in a business district would be subject to requirements that are no different from the current location.**

**There is no evidence that the proposed location at the Subject Property is inappropriate for the proposed land use, so an alternative location would not be any more appropriate than the proposed location.**

3. **Mitigation of Adverse Impacts.** Whether all steps possible have been taken to minimize any substantial or undue adverse effects of the proposed use and development on the immediate vicinity through building design, site design, landscaping, and screening.

**Staff Response:** Standard met. The coin operated amusement device establishment will function in a way to prevent any undue adverse effect on itself or on surrounding property in relation to its location, design and operation. All primary activities of the proposed use are located within the enclosed tenant space.

## **RECOMMENDATION**

The recommendation of the Planning and Zoning Commission should be based on the standards included in the following Sections of the Lake Zurich Municipal Code:

- Section 9-19-3: Standards for Special Use Permits

Based on the review of staff, the standards for approval have been met and therefore staff recommends that the Planning and Zoning Commission make these standards a part of the official record of the Application.

Staff of the Community Development Department therefore recommends the approval of Application PZC 2024-11, subject to the following conditions:

1. Substantial conformance with the following documentation submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
  - a. Zoning Application, Cover Letter, and business plan information dated June 26, 2024, and prepared by Mr. Viktor Magula and Mr. Taras Bezruchko.
  - b. Exhibit A: Basic Lease Terms between the landlord, Knapp Investments, LLC, a Missouri limited liability company, and the tenant, Simulation Zoe, Inc., an Illinois corporation.
  - c. Exhibit B – Existing Floor plan, on page 5 of 11 of the business plan prepared by Mr. Viktor Magula and Mr. Taras Bezruchko, dated June 26, 2024, showing proposed room configuration and layout of the proposed establishment.
2. The Special Use Permit is granted to allow The Simulation Zone to establish a coin operated amusement device business within the tenant space located in the building at 189 South Rand Road, and such special use shall expire if this business ceases operating at the subject property. However, such use may continue without further consideration with a change in ownership as long as the location, design and operation of the land use remains substantially unchanged.
3. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.

Respectfully Submitted,

Colleen McCauley, Village Planner

**LAKE ZURICH PLANNING & ZONING COMMISSION**  
**FINAL FINDINGS & RECOMMENDATIONS**

**189 South Rand Road**  
**August 21, 2024**

The Planning & Zoning Commission recommends approval of Application **PZC 2024-11**, and the Planning & Zoning Commission adopts the findings as contained within the Staff Report dated **August 21, 2024** for this Application and subject to any changes or approval conditions as listed below:

1. Substantial conformance with the following documentation submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
  - a. Zoning Application, Cover Letter, and business plan information dated June 26, 2024, and prepared by Mr. Viktor Magula and Mr. Taras Bezruchko.
  - b. Exhibit A: Basic Lease Terms between the landlord, Knapp Investments, LLC, a Missouri limited liability company, and the tenant, Simulation Zoe, Inc., an Illinois corporation.
  - c. Exhibit B – Existing Floor plan, on page 5 of 11 of the business plan prepared by Mr. Viktor Magula and Mr. Taras Bezruchko, dated June 26, 2024, showing proposed room configuration and layout of the proposed establishment.
2. The Special Use Permit is granted to allow The Simulation Zone to establish a coin operated amusement device business within the tenant space located in the building at 189 South Rand Road, and such special use shall expire if this business ceases operating at the subject property. However, such use may continue without further consideration with a change in ownership as long as the location, design and operation of the land use remains substantially unchanged.
3. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.

Without any further additions, changes, modifications and/or approval conditions.  
 With the following additions, changes, modifications and/or approval conditions:

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Planning & Zoning Commission Chairman

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

PARCEL 1: LOT 1 IN THE FINAL PLAT OF LAKEVIEW SUBDIVISION, A SUBDIVISION OF PART OF THE NORTH 1/2 OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1997 AS DOCUMENT 3960071 IN LAKE COUNTY, ILLINOIS.

Common Street Address: 189 South Rand Road  
Property Index Number (PIN): 14-19-104-001

**EXHIBIT B**

**PUBLIC HEARING SIGNS PRESENT AT SUBJECT PROPERTY**







# 189 S Rand Road

Special Use Permit



0 50 100 200 feet

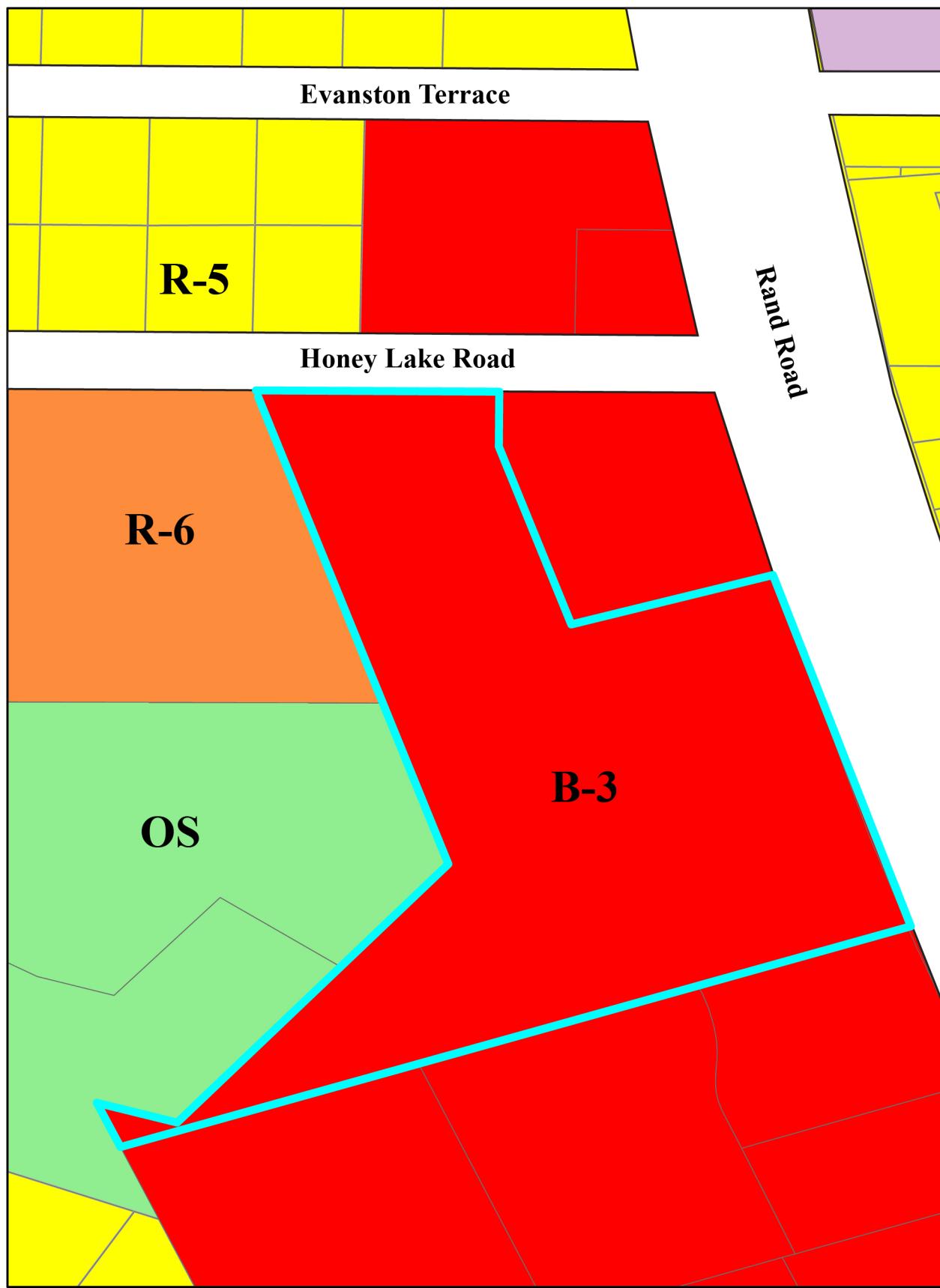
Tax Parcel Lines

Subject Property



# 189 S Rand Road

Special Use Permit



N

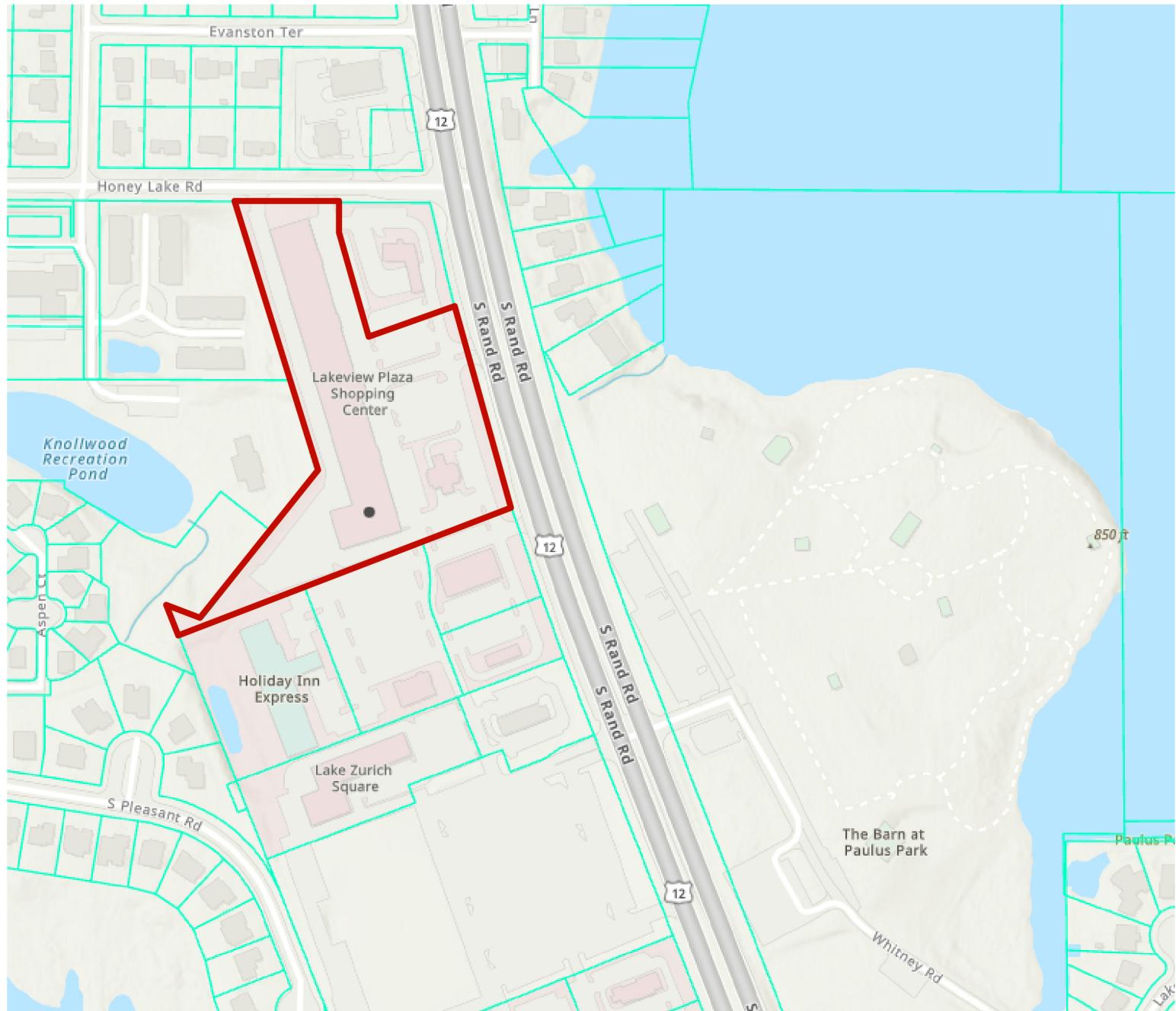
0 50 100 200 feet

	R-5		Open Space
	R-6		B-3
	B-1		Subject Property



# 189 S Rand Road

Special Use Permit



N



Subject Property



(Please Type or Print)

## ZONING APPLICATION

Community Development Department

505 Telser Rd.

Lake Zurich, IL 60047

Phone: (847) 540-1696

Fax: (847) 540-1769

1. Address of Subject Property: 189 S Rand Road, Lake Zurich, IL 60047

2. Please attach complete legal description

3. Property Identification number(s): 14-19-104-001

4. Owner of record is: Knapp Investments LLC Phone: 630-212-6587

E-Mail Dan@CambiumRE.com Address: 3S221 Route 59, Warrenville, IL 60555

5. Applicant is (if different from owner): Viktor Magula & Taras Bezruchko Phone: 312-515-9944

E-Mail magulainc@gmail.com Address: 5105 Tollview Dr, Ste 110, Rolling Meadows, IL 60008

6. Applicant's interest in the property (owner, agent, realtor, etc.): Leasehold

7. All existing uses and improvements on the property are: Outlined in the narrative attachment.

8. The proposed uses on the property are: Same as above.

9. List any covenants, conditions, or restrictions concerning the use, type of improvements, setbacks, area, or height requirements placed on the Subject Property and now of record and the date of expiration of said restrictions:  
N/A

10. Describe any contract or agreement of any nature relevant to the sale or disposal of the Subject Property:  
Tenant has entered into a 66 month lease with the owners of record.

11. For applications requiring a public hearing, please attach a list which contains the PIN, owner, and owner's mailing address of all properties located within 250 feet (excluding all Public Right-of-Ways) of the Subject Property.

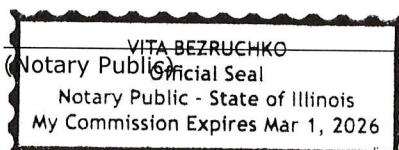
THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND CORRECT.

THE APPLICANT ALSO ACKNOWLEDGES IF THE CONSULTANT EXPENSES EXCEED THE INITIAL ESCROW DEPOSIT, THE APPLICANT WILL REIMBURSE THE ACCOUNT IMMEDIATELY.

Viktor Magula  
(Name of applicant)

  
(Signature of applicant)

Subscribed and sworn to before me this 26 day of June, 2024.



My Commission Expires 03/01/2026

(Name of Owner, if different)

(Signature of Owner, if different)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

(Notary Public)

My Commission Expires \_\_\_\_\_

**Business Plan:** Simulation Zone Inc.

**Location:** 33-193 S Rand Rd, Lake Zurich, IL 60047

**1. Executive Summary:** Simulation Zone is a state-of-the-art entertainment venue offering realistic racing experiences through high-end simulation technology using advanced custom build machines and operated by the most up-to-date hardware and software. Our center will cater to racing enthusiasts, gamers, corporate team-building events, and parties, engaging racing tournaments and events. Located in a high-traffic area with ample parking, our goal is to provide an immersive and thrilling experience for customers of all ages and skill levels.

**2. Business Description:** Simulation Zone will offer a range of racing simulators equipped with cutting-edge technology, including motion platforms, high-resolution displays, and realistic steering wheels and pedals. Customers can choose from a variety of racing experiences, including iRacing, Formula 1, NASCAR, rally racing, and more. In addition to individual racing sessions, we will host competitive events, leagues, and tournaments for both casual and professional racers. Our facility will also have a lounge area where customers can socialize, watch live races on big screens, and enjoy refreshments including alcoholic beverages. Also we will have private party rooms that can be rented along with racing sessions to celebrate all kind of events for our customers.

**2.1 Business Model:** A combination of pay-per-race and 2-3 hours' time slots reservations, with additional revenue from in-house food and beverage purchases and merchandise sales with providers on the contract basis.

**3. Market Analysis:** The market for simulation racing has been growing rapidly, fueled by the popularity of racing video games, esports, and the desire for immersive experiences. The global racing simulator market size and share are currently valued at USD 479.06 million in 2023. It is anticipated to generate an estimated revenue of USD 1,713.16 million by 2032, according to the latest study by Polaris Market Research. Racing enthusiasts, gamers, corporate groups, and event planners represent our target demographic. With a diverse range of offerings, we aim to appeal to both hardcore racing fans and casual gamers looking for a fun and unique entertainment experience.

**4. Marketing and Sales Strategy:** Our marketing efforts will focus on both online and offline channels. This will include social media campaigns, targeted advertising on gaming platforms and forums, partnerships with local businesses and event organizers, and hosting promotional events to generate buzz and attract customers, and hosting tournaments to attract users. We will offer various pricing packages to accommodate different budgets and preferences, including single sessions, multi-session passes and group discounts. Additionally, we will provide incentives such as loyalty programs (coupons) and referral bonuses to encourage repeat business and customer referrals.

**5. Operations Plan:** Simulation Zone will be open seven days a week, with flexible hours to accommodate customer demand. We plan to be opened Monday - Thursday from 4pm till 10pm and Friday - Sunday from 11 am till 10 pm. Our facility will be staffed by experienced racing enthusiasts who are passionate about providing exceptional service and ensuring that customers have an enjoyable and memorable experience. We will invest in regular maintenance and upgrades to keep our simulators running smoothly and up-to-date with the latest racing software and hardware developments. Safety protocols will be implemented to ensure that customers can race with confidence and peace of mind.

**6. Financial Plan (first 6-9 months):** The initial startup costs will include leasing a suitable location, acquiring racing simulators and equipment, furnishing the facility, marketing expenses, and operational costs. We will secure funding through a combination of personal investment, loans, and potentially seeking investors or partnerships in future growth. Revenue will be generated through session fees, event bookings, merchandise sales, concessions, and sponsorship opportunities as well as selling to order food and beverages. We will carefully monitor expenses and revenue streams to ensure profitability and sustainability as we scale our operations and expand our customer base.

*Based on our calculations, we can estimate the following (full capacity) revenue generation by Sim Machines only at the start of business:*

*2 (3 hrs time slots) X \$50 = \$100 per day X 10 units = \$1000 a weekday X 4 = \$4,000*

*3 (3 hrs time slots) X \$50 = \$150 per day X 10 units = \$1500 a weekend X 3 = \$4,500*

*So, in total we have \$8,500 a week x 52 weeks = \$442,000 a year or \$36,800/month*

**6.1. Racing simulators (Rigs):** The approximate cost of one machine is around \$25-30K

WHAT'S INCLUDED

Seat Slider Rails and Adjustment Bar  
4 x Floor Saving Rubber Feet  
Red Profile Strips  
10 x Cable Clips

Other Parts Included

160mm x 40mm Black Anodized Aluminium Chassis  
120mm x 40mm Black Anodized Aluminium Wheel Supports  
4-Way Fully Adjustable Pedal Mount (pre-drilled for pedals)  
All Mounting Fixtures  
Upgraded 40x40mm Corner Brackets  
Strengthened 160x40mm Corner Brackets  
Assembly Tool Kit Included

Seat Options

GT Race Seat, Rally Seat, Recline Seat or No Seat

Wheel Mount Options

Heavy Duty, no Flex Wheel Deck, Direct Drive Front Mount or Fanatec Podium DD1 DD2 - All with full slide and angle adjustment.

D-Box Gen 5 4250I Motions System

3 High Resolution 32" LED Monitors with 144 Hz Refresh Rates

Last Generation PC operated by Intel i9 Processor with custom build accessories.

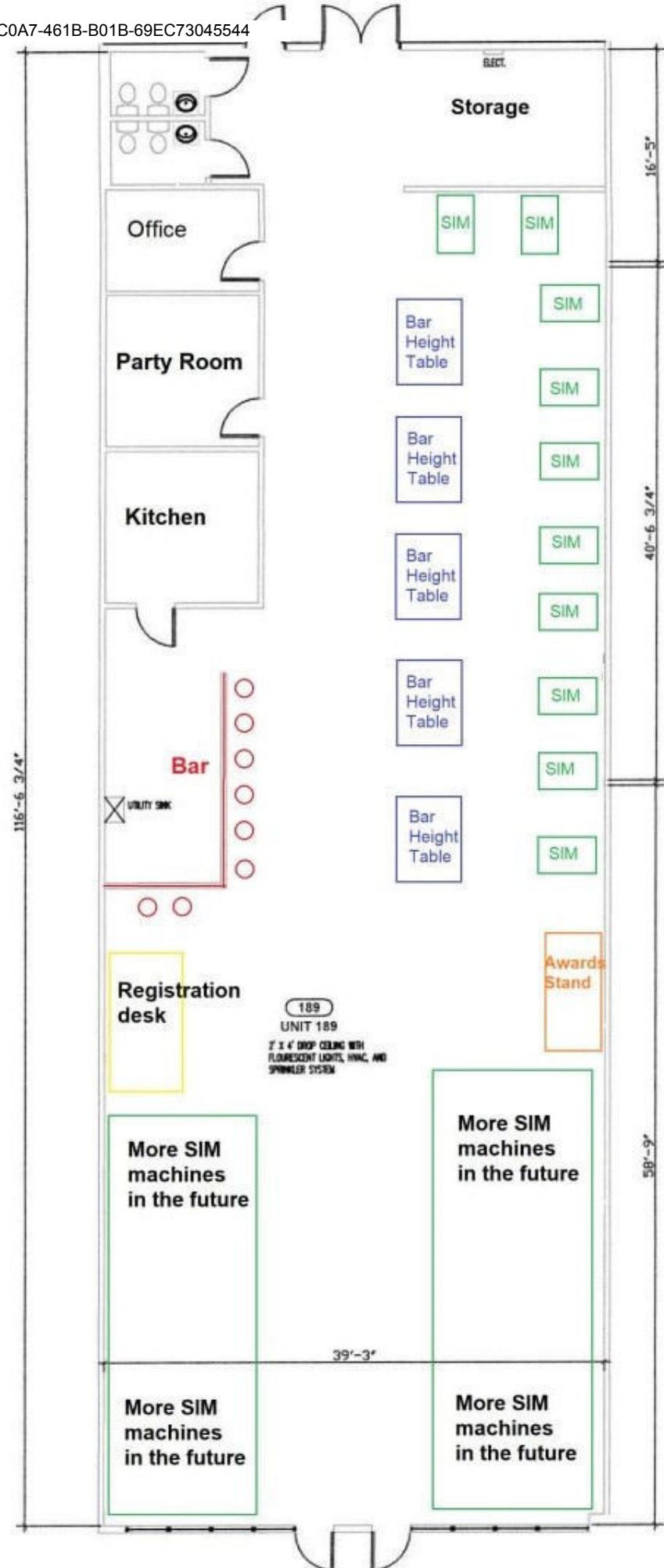
**6.2. Secondary gears for revenue generation (9-12 months):**

In the lounge zone we will have PS5 system setups that can allow people play while waiting for the available time slot or machine. Also, we are planning on getting VR systems in the special dedicated zones that can allow to raise traffic for people with younger children. Plus having dedicated party rooms will be beneficial.

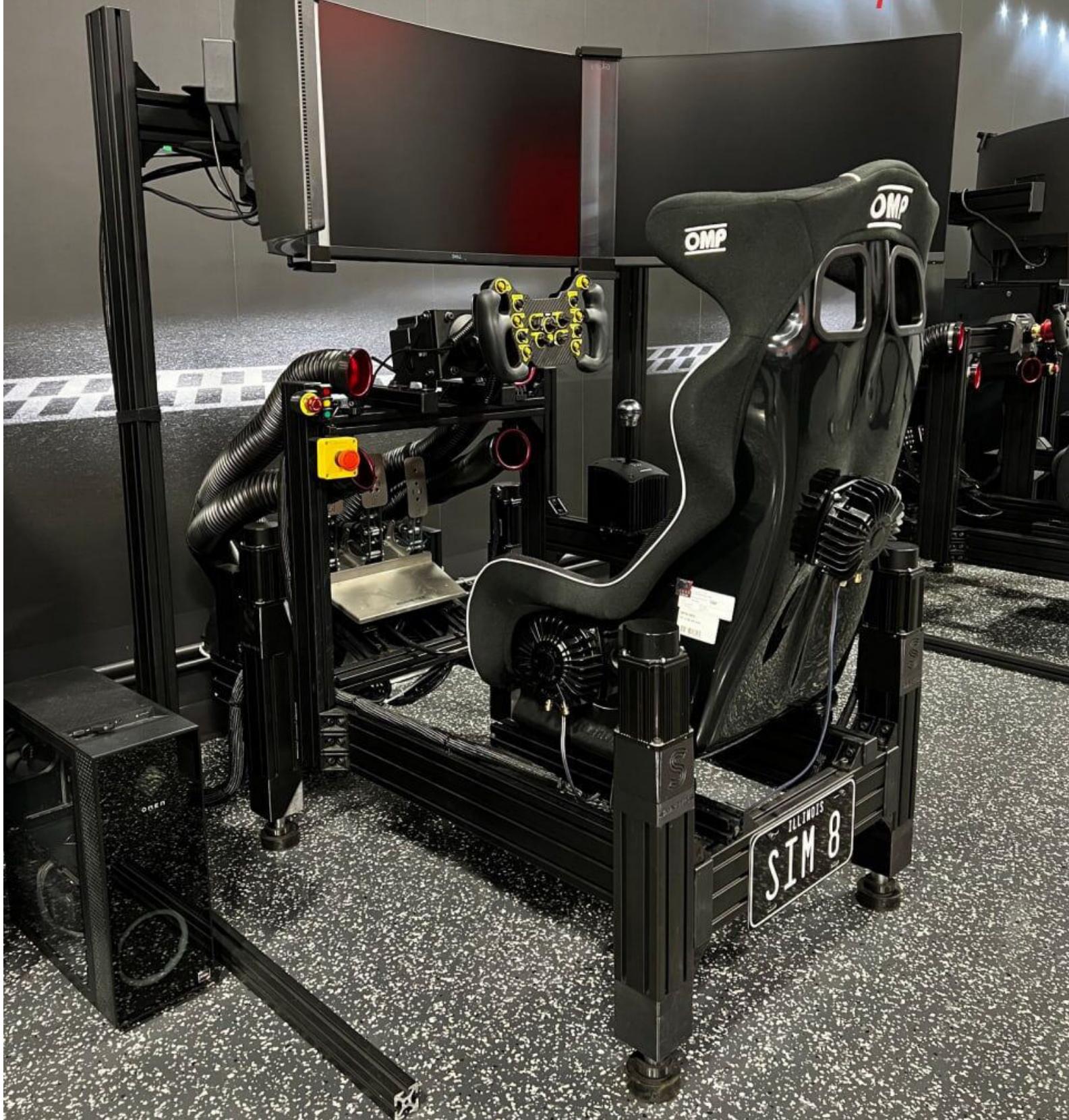
### **6.3. Third step setup (12-18 months):**

After deploying the first stage with all the racing machines we would like to introduce to our customers full bar with alcoholic beverages and kitchen with food and snacks. That will increase our revenue and will have a great addition to services offered in the lounge zone.

**7. Conclusion:** Simulation Zone aims to become the premier destination for simulation racing enthusiasts and gamers in our region. By offering high-quality experiences, excellent customer service, and a dynamic entertainment environment, we are confident that we can achieve success and become a valuable asset to the local community.



*Main Simulation - 10 ps*



## Golf Simulator:

**6.2. Secondary gears  
for revenue generation  
(9-12 months):**



# Flight simulator

**6.2. Secondary gears for revenue generation  
(9-12 months)**



# VR Motion 9D Simulator



Virtual Reality 9D Egg Simulator VR Motion Ride 720 Degree



# 9D VR Flight Cockpit Simulator 360 Rotating



## BASIC LEASE TERMS

A). Shopping Center: Lakeview Plaza  
41-193 South Rand Road  
Lake Zurich, Illinois 60047  
52,400 total rentable square feet

B). Premises: Suite 189, consisting of approximately 4,700 rentable square feet

C). Landlord: Knapp Investments, LLC, a Missouri limited liability company

D). Tenant: Simulation Zone, Inc., an Illinois corporation

E). Permitted Use: Retail offering Simulation/video entertainment with food and bar service

F). Term: 66 Months

G). Commencement Date: The Completion Date. Additionally, Commencement Date of the Lease shall be contingent upon Tenant obtaining special use permit, business license and other required municipal approvals for its Permitted Use from the Village of Lake Zurich ("Governmental Approvals"). If such Governmental Approvals are not granted, this Lease shall be terminated and any deposits or payment made by Tenant under the Lease shall be returned. See Section 3.

H). Expiration Date: 11:59 p.m. on the date which is 66 full calendar months following the Completion Date; see Section 3

I). Rent Commencement Date: 180 days following the Commencement Date

J). Base Rent:

<b>TERM</b>	<b>MONTHLY RATE</b>	<b>RENT/SF</b>
Months 1-6	Abated	Abated
Months 7-12	\$5,483.34	\$14.00
Months 13-24	\$5,875.00	\$15.00
Months 25-66	\$6,266.67	\$16.00

K). Rent Abatement Period: Months 1 - 6

L). Reserved

M). Reserved

N). Tenant's Pro Rata Share: 8.97%

O). Security Deposit: \$14,000 [TBD upon Landlord's review of Tenant/Guarantor financials]

P). Allowance: None, however Landlord shall be responsible for the cost of Landlord's Work; see Section 13.

Q). Notice Address:

**If to Landlord:**  
Knapp Investments, LLC  
c/o Cambium Realty  
3S221 Route 59  
Warrenville, IL 60555

Attn: Dan Shafron

**If to Tenant:**  
Simulation Zone Inc

5105 Tollview Dr Ste 110 Rolling Meadows, IL 60008  
Attn: Viktor Magula

R). Authorized Broker: Vertical Brokerage, Inc.

S). Guarantor: Viktor Magula

Taras Bezruchko

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## RETAIL LEASE AGREEMENT

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This Lease ("Lease") is made and entered into as of 6/12/2024 (the "Effective Date") by and between Landlord and Tenant. The Basic Lease Terms provisions set forth above shall be incorporated as if fully set forth herein and all capitalized terms used but not otherwise defined in this Lease shall have the meaning ascribed to the in the Basic Lease Terms provisions.

In consideration of the mutual covenants and agreements herein stated, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord solely for the below purpose the Premises, together with the appurtenances thereto.

### **1. PREMISES and SHOPPING CENTER:**

**A.** The Shopping Center shall include therewith any buildings, parking areas, sidewalks, drive lanes, service areas, detention areas and other improvements thereon and made a part thereof (collectively hereinafter, the "Shopping Center"). The Premises is identified on the diagram attached hereto as Exhibit A.

**B.** The "Common Areas" of the Shopping Center shall consist of all portions of the Shopping Center not occupied by buildings and made available for the nonexclusive use of all occupants of the Shopping Center and their respective customers, employees and invitees including, without limitation, all parking areas and facilities, driveways, roadways, entrances, exits, walkways, sidewalks, loading areas, lighting facilities, traffic control signs and fences. Landlord hereby gives and grants to Tenant during the Term, for the benefit of Tenant and Tenant's permitted subtenants, licensees and concessionaires and their respective employees, agents, customers and invitees, the non-exclusive irrevocable right to use all of the Common Areas in common with Landlord and all other tenants and occupants of the Shopping Center.

**2. USE.** The Premises shall be used and occupied for the Permitted Use only, and for no other use or purposes whatsoever without Landlord's prior written consent in Landlord's sole and absolute discretion. Tenant shall comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdiction thereof) relating to the use, condition or occupancy of the Premises.

**3. TERM.** This Lease shall be effective upon the full execution hereof. Landlord shall deliver the Premises to Tenant, and the initial Term of this Lease shall commence on the Commencement Date and shall terminate at 11:59 p.m. on the Expiration Date, unless sooner terminated pursuant to the terms of this Lease. For the purposes hereof, a "Lease Year" shall be the period commencing on the Commencement Date and ending on the day immediately preceding the first anniversary of the Commencement Date and thereafter, a Lease Year shall consist of successive periods of twelve (12) calendar months. If the Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period of time from said Commencement Date to the end of the month in which said Commencement Date occurs plus the following twelve (12) calendar months. Promptly following the Commencement Date, Landlord and Tenant shall execute a commencement memorandum substantially in the form as Exhibit B, attached hereto, memorializing the Commencement Date, Completion Date, Expiration Date, Rent Abatement Period, and any other relevant provision hereof. Notwithstanding anything herein contained to the contrary, Commencement Date of the Lease shall be contingent upon Tenant obtaining required Governmental Approvals. If such Governmental Approvals are not granted, this Lease shall be terminated and any deposits or payment made by Tenant under the Lease shall be returned. Tenant shall promptly apply for all Governmental Approvals following the execution of this Lease and shall thereafter diligently pursue the same. In the event Tenant has not received the Governmental Approvals within 90 days of the Effective Date of this Lease (the "Approvals Deadline"), Tenant may terminate this Lease by providing written notice to Landlord prior to the Approvals Deadline. If Tenant receives the Governmental Approvals or fails to terminate this Lease as set forth herein prior to the Approvals Deadline, the termination right of Tenant hereunder shall no null and void and of no further force or effect, and this Lease shall continue throughout the Term and any extension(s) thereof. If Tenant properly terminates this Lease as set forth in this Section, the Lease shall be of no

further force or effect, and Landlord shall promptly return the Security Deposit to Tenant. Tenant shall promptly and continuously keep Landlord apprised of its efforts to obtain the Governmental Approvals.

#### **4. RENT.**

- A. BASE RENT.** Tenant shall pay Landlord (or Landlord's agent, if so specified) as rent ("Base Rent") for the Premises the sum set forth in the Basic Lease Terms above, monthly in advance, beginning on the Rent Commencement Date through the Expiration Date, at Landlord's address stated below or such other address as Landlord may designate in writing.
- B. PAYMENT.** Rent payable hereunder shall be paid in advance on the first day of each and every calendar month during the Term hereof. Base Rent and all other rent provided herein shall be paid to Landlord without deduction or offset in lawful money of the United States of America. All amounts under this Lease shall be payable to Landlord at Landlord's Notice Address or to such other person or at such other place as Landlord may from time to time designate in writing. All sums due and payable under this Lease shall be deemed Rent for the purpose of this Lease.
- C. RENT ABATEMENT.** Base Rent and Additional Rent shall be abated during the first one hundred eighty (180) days following the Commencement Date (the "Rent Abatement Period"). During the Rent Abatement Period, Tenant shall be responsible for the payment of all utilities and any other charges owed pursuant to this Lease. In the event Tenant is in default of this Lease beyond any applicable notice and cure period, at any time during the Rent Abatement Period, the Rent abated hereunder shall cease and Tenant's obligation to pay Rent shall continue as if no Rent Abatement Period exists until such time as Tenant's default is cured.
- D. LATE PAYMENT.** Any Base Rent, additional rents, as hereinafter provided, and any other amounts due from Tenant to Landlord under this Lease shall be collectively known as "Rent". All Rent and other sums payable hereunder by Tenant which are not paid within five (5) days of the date on which it is due, shall incur a "Late Charge" equal to five percent (5%) of the amount past due. Landlord and Tenant agree that such Late Charge represents a fair and reasonable estimate of the expenses that Landlord will incur by reason of such late payment by Tenant. Acceptance of such Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any such past due amounts, nor prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease or at law or in equity. Such Late Charge shall constitute additional rental payable by Tenant under this Lease and is in addition to, and separate from, the Rent and other charges payable under this Lease by Tenant. Further, all Rent not paid within five (5) days of the date on which it is due shall bear interest from the date due to the date paid at the rate of fifteen percent (15%) per annum.
- E.** The covenants herein to pay Base Rent and Additional Rent (collectively, "Rent") shall be independent of any other covenants set forth in this Lease.

#### **5. RESERVED.**

#### **6. ADDITIONAL RENT.**

- A. TAXES.** Landlord shall cause to be paid all taxes levied or assessed against the Shopping Center before they become delinquent and the parties further agree as follows:

(i) As Additional Rent Tenant shall pay Landlord an amount equal to the taxes applicable to Tenant's pro rata share (as hereinafter defined) of the Shopping Center for each calendar year of the Term except that the amount to be paid by Tenant with respect to the calendar years during which the Term begins and ends shall be adjusted pro rata on the basis of the number of days of the term falling within said years.

(ii) For the purposes of this Section, "taxes" shall include but not be limited to the following: Real estate taxes, general and special (including interest payable with any installments); any other such taxes, charges and assessments which are levied with respect to the buildings and any improvements, fixtures and equipment on the premises; any taxes with respect to the possession, leasing, operation, management, alteration, repair or use of the Premises or any portion thereof, fees or assessments for any governmental services to the premises; any gross receipts tax and/or any

tax which shall be levied in addition to or in lieu of real estate possessory interest or personal property taxes under this lease; and any fees, expenses or costs incurred by Landlord in protesting any assessments, levies or tax rate that result in the reduction of tax liability.

(iii) From time to time, but in no event less than once a year, Landlord shall deliver to Tenant a statement estimating Tenant's pro rata share of taxes for the current or following calendar year, as the case may be, and Tenant shall pay to Landlord, together with the installments of Base Rent due hereunder, an amount equal to one twelfth (1/12<sup>th</sup>) of such estimated amount; provided, however, that Landlord shall deliver to Tenant a statement in reasonable detail showing the actual amount due from Tenant for each year, and if Tenant's share as per such statement is greater than the installments paid by Tenant on account thereof Tenant shall promptly remit such deficiency to Landlord. If Tenant's pro rata share as per such statement is less than the installments paid by Tenant, Landlord shall retain such excess sum to be applied towards Tenant's share of any current or future taxes for the following year.

## **B. INSURANCE PREMIUMS.**

(i) As Additional Rent, upon the commencement of the Term hereof (subject to any rent abatement), Tenant covenants to pay Tenant's pro rata share of the insurance premiums applicable to the Shopping Center for each calendar year of the Term except that the amount to be paid by Tenant with respect to the calendar years during which the Term begins and ends shall be adjusted pro rata on the basis of the number of days of the Term falling within said years.

(ii) From time to time, but in no event less than once a year, Landlord shall deliver to Tenant a statement, and Tenant shall pay to Landlord, together with the installments of Base Rent due hereunder, an amount equal to one-twelfth (1/12<sup>th</sup>) of such estimated amount of the insurance premiums; provided, however that Landlord shall deliver to Tenant a copy of the actual insurance premiums for each such year, together with a statement in reasonable detail showing the actual amount due from Tenant for insurance premiums for each such year, and if Tenant's share as per such statement is greater than the installments paid by Tenant on account thereof, Tenant shall promptly remit such deficiency to Landlord. If Tenant's pro rata share as per such statement is less than the insurance premium installments paid by Tenant, Landlord shall retain such excess sum to be applied towards Tenant's pro rata share of insurance premiums for the following year.

## **C. COMMON AREA MAINTENANCE AND OPERATING COSTS.**

(i) Operating Costs shall mean any and all costs and expenses of every kind and nature paid or incurred by Landlord (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing, lighting, repairing, replacing, cleaning and maintaining the Common Areas of the Shopping Center, including but limited to such maintenance and repair as shall be required in Landlord's judgment to upgrade, maintain and preserve the Common Areas in suitable condition and status, management fees for the Shopping Center, an administrative fee equal to fifteen percent (15%) of all Additional Rent in a given calendar year, all cost related to roof repairs, all expenses of security and fire protection including at the option of the Landlord servicing Tenant with fire extinguishers (if and to the extent such service provided by Landlord), pedestrian and vehicular traffic direction and control, all costs and expenses of cleaning, removing of rubbish, dirt, debris, snow and ice, all costs and expense of maintaining, planting, replanting and replacing flowers and landscaping; water and sewerage charges; professional fees including, but not limited to, accounting and legal fees relating to the common areas, required licenses and permits; all costs and expenses for supplies and operation of loud speakers and any other sound equipment; all costs and expenses incurred by Landlord in the testing, maintaining and repairing of sprinkler and other systems in any located in the Common Areas or at Landlord's option in the Premises; all charges for the use and service of utility services for the Common Areas, including, but not limited to, heating, ventilating and air conditioning costs and all costs and expenses of maintaining lighting fixtures including the light bulbs and electric current, maintenance of all utility facilities not maintained by the utility company, all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulations or assessed against or imposed on the Common Areas or any part thereof with regard or in connection with impacts on public services, facilities or infrastructure; depreciation, interest and all other costs resulting from improvement or additions imposed and required by regulatory agencies; cost of equipment, machinery and facilities not properly chargeable to capital; reasonable depreciation of equipment, machinery and

facilities; rents paid for the leasing of equipment, machinery and facilities and finance charges paid for the purchase of equipment, machines and facilities which are capital assets and are used in the operation of the Common Areas, and other costs as Landlord may reasonably determine for the proper operation and maintenance of the Common Areas; all costs and expenses directly relating to the parking facilities.

(ii) The provisions of this Lease notwithstanding, Operating Costs shall not include the following:

- (a) Costs incurred with respect to the installation of leasehold improvements for tenants in the Shopping Center or incurred in renovating or otherwise improving, decorating, painting, or redecorating vacant space for tenants of the Shopping Center or costs associated with correcting defects in the initial design or construction of the Shopping Center or the common areas of the Shopping Center;
- (b) Costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants of the Shopping Center;
- (c) Capital costs except for those that reduce other operating costs of the Shopping Center, amortized over the useful life of the asset, but only to the extent of the reduction of other operating costs;
- (d) Expenses in connection with services or other benefits offered to other tenants in the Shopping Center, but not to Tenant;
- (e) Costs of services provided by Landlord affiliates to the extent that such costs exceed the cost of such services rendered by unaffiliated third parties on a competitive basis;
- (f) Legal fees, space planner fees, real estate broker leasing commissions, and advertising expenses incurred in connection with the original development or original leasing of the Shopping Center or future leasing of the Shopping Center;
- (g) Depreciation, interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Shopping Center;
- (h) Fines or penalties, and interest accrued thereon, incurred as a result of late payments by Landlord;
- (i) Any income, capital levy, capital stock, succession, transfer, franchise, gift, estate or inheritance taxes;
- (j) Any ground lease rental;
- (k) Depreciation, amortization and interest payments;
- (l) Costs arising from Landlord's charitable or political contributions;
- (m) Costs arising from condemnation that are not reimbursed by condemnation awards and that do not otherwise constitute an operating cost of the Shopping Center;
- (n) Any bad debt loss, rent loss, or reserves for bad debt or rent loss;
- (o) Landlord's entertainment expenses and travel expenses, except for those travel expenses that are necessary, reasonable and incurred in connection with Landlord's operation of the Shopping Center;
- (p) Costs incurred by Landlord in connection with Landlord electing to cause the operating costs to be audited by an independent accounting firm; and
- (q) Expenses directly resulting from the negligence of the Landlord, its agents, servant or employees.

(iii) From time to time, but in no event less than once a year, Landlord shall deliver to Tenant a statement, and Tenant shall pay to Landlord, together with the installments of Base Rent due hereunder, an amount equal to one-twelfth (1/12<sup>th</sup>) of such estimated amount of the Operating Costs; provided, however that Landlord shall deliver to Tenant a copy of the actual Operating Costs for each such year, together with a statement in reasonable detail showing the actual amount due from Tenant for Operating Costs for each such year, and if Tenant's share as per such statement is greater than the installments paid by Tenant on account thereof, Tenant shall promptly remit such deficiency to Landlord. If Tenant's pro rata share as per such statement is less than the Operating Costs installments paid by Tenant, Landlord shall retain such excess sum to be applied towards Tenant's pro rata share of Operating Costs for the following year.

(iv) The amounts payable by Tenant pursuant to this Section 6 shall collectively be referred to as "Additional Rent," and together with Base Rent, the "Rent." Landlord, at the end of the term, shall be entitled upon thirty (30) days' prior written notice to charge Tenant's security deposit, if any, for Additional Rent payments due hereunder but not paid.

(v) Notwithstanding anything to the contrary herein contained, should any of the services provided by Landlord under the Lease are interrupted or terminated (a "Service Interruption") and if as a result of such Service Interruption, the Premises or any portion thereof are rendered untenantable and such Service Interruption continues for a period in excess of five (5) days, then all Rent shall abate as to those portions of the Premises rendered untenantable from and after the date of the Service Interruption and shall continue until such service is restored to such space and such space is again tenantable. The foregoing rental abatement shall constitute Tenant's sole and exclusive remedy involving or with respect to a Service Interruption. Tenant shall give Landlord prompt notice of any Service Interruption.

**7. UTILITIES.** The Premises are separately metered and Tenant shall be solely responsible for and promptly pay all charges for heat, gas, electricity, water and any other utilities consumed in the Premises. Should Landlord elect to supply the water, gas, heat, electricity or any other utility used or consumed in the Premises, Tenant agrees to purchase and pay for the same as Additional Rent at the rate paid by the Landlord, which rate shall be market competitive. In no event shall Landlord be liable for any interruption in the supply of any such utilities to the Premises, unless Landlord elects to supply the same. Additionally, Tenant shall be solely responsible for the removal of Tenant's trash and Tenant shall at all times throughout the Term and any extension thereof, maintain in full force and effect a trash removal contract providing for the regular and timely removal of Tenant's trash.

**8. SECURITY DEPOSIT.** Upon the execution of this Lease, Tenant shall deposit with Landlord the Security Deposit as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of Rent, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default or for the payment of any other amount which the Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is used or applied, Tenant shall within five (5) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material breach of and default under this Lease affording Landlord all remedies reserved herein. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest thereon. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or at Landlord's option to the last assignee of Tenant's interest hereunder) at the Expiration Date and upon Tenant's vacation of the Premises.

**9. ASSIGNMENT AND SUBLETTING.** Tenant shall not, and shall not be permitted to at any time or for any reason, assign this Lease or mortgage, pledge, transfer, encumber or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease the Premises or any part thereof, without the express prior written consent of Landlord which consent shall be in Landlord's sole and absolute discretion, but shall not be unreasonably withheld, and any attempt to do any of the foregoing shall be void and of no effect. Notwithstanding the preceding sentence to the contrary, Tenant may, without Landlord's consent, assign the Lease or sublet all or a part of the Premises to an Affiliate of Tenant; or to any entity which either (i) acquires all or substantially all of the stores of Tenant operating under a permitted trade name of Tenant, or (ii) acquires the Premises as part of a "Regional Sale" of other locations

in the same general geographic area of the Premises; or in connection with a merger, consolidation, or public offering by Tenant or an Affiliate of Tenant. For purposes of this Section, the term "Affiliate" shall mean an entity that is directly or indirectly controlled by Tenant, or is the successor-in-interest to Tenant by way of merger, consolidation, reorganization, sale of stock of Tenant or sale of all or substantially all of the assets of Tenant. Any subletting of the Premises or any portion thereof, notwithstanding the consent of the Landlord, (a) shall not constitute a waiver of Landlord's rights hereunder, (b) shall not be for any use which will violate the exclusive use, restrictions, or rights granted to or inuring to the benefit of any other tenant in the Shopping Center, (c) shall not in any manner release Tenant from its continued liability and responsibility for the performance of and compliance with the provisions of this Lease and its covenants and obligations hereunder, (d) upon the acceptance of any rental payments or other remuneration by Landlord from any sublessee, shall not constitute approval of any sublease by Landlord, and (e) as to any sublessee, such sublessee shall comply with the provisions of this Lease as if such sublessee was the tenant hereunder.

**10. COLLECTION OF RENT AFTER ASSIGNMENT.** If Tenant: (a) assigns its interest in this Lease to another party, (b) subleases any portion of the Premises to another party, (c) grants or conveys to another party Tenant's interest in this Lease for purposes of a loan or extension of credit to Tenant or any mortgage, pledge, transfer, encumbrance or hypothecation of Tenant's interest in this Lease, or (d) grants to another party the right to use, occupy or enjoy the Leases Premises including, without limitation, as a concessionaire or licensee, Landlord may collect Base Rent, Additional Rent and any and all other sums and charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to the terms of this Lease from such assignee, sublessee, mortgagee, party to whom the leasehold interest was pledged, transferred, encumbered or hypothecated, such concessionee or licensee, or such other party, user or occupant and apply the amounts to the amounts owed by Tenant to Landlord under this Lease at Landlord's discretion, but any such transaction or collection of rent and other charges and sums or application thereof by Landlord shall not release Tenant from (or be deemed a waiver by Landlord of) the provisions this Lease or release Tenant from Tenant's obligations for payment of Base Rent, Additional Rent and any and all other sums and charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to the terms of this Lease or release Tenant from any other covenants, duties and obligations under this Lease.

**11. TENANT NOT TO MISUSE.** Tenant will not permit any unlawful or immoral practice, with or without Tenant's knowledge or consent, to be committed or carried on in the Premises by Tenant or by any other person. Tenant will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified. Tenant will not keep or use or permit to be kept or used in or on the Premises or any place contiguous thereto any flammable fluids or explosives, without the written permission of Landlord first had and obtained. Tenant will not load floors beyond the floor load rating prescribed by applicable municipal ordinances. Tenant will not use or allow the use of the Premises for any purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

**12. USE RESTRICTIONS.** Tenant further agrees to conform to the following provisions during the entire Term: (a) Tenant will not conduct any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale or make any unlawful use of the Premises or permit any unlawful use thereof; (b) Tenant shall not use the malls, parking areas, sidewalks adjacent to the Premises or other Common Areas on the Shopping Center for business purposes without the previous written consent of the Landlord; (c) Tenant shall keep the doors and display windows of the Premises clean and shall keep the same electrically lighted during such periods of time as Tenant is required to operate its business in the Premises pursuant to paragraph (g) of this Section; (d) Tenant shall receive and deliver goods and merchandise only in the manner, at such times, and in such areas, as may be reasonably designated by Landlord; (e) Landlord shall have the right, at Landlord's sole discretion, to require Tenant to remove any sign visible from any portion of the Premises that is not in keeping with the standards of the Shopping Center or the community in which it sits. Any signs desired by Tenant for Landlord approval shall be indicated in Tenant's Plans and Specs to be submitted to Landlord for approval; (f) Tenant shall not perform any act or carry on any practice which may injure the Premises or any other part of the Shopping Center, or cause any offensive, excessive or obnoxious odors or loud noise (including the use of loudspeakers), or constitute a nuisance or menace to any other occupant or other persons in the Shopping Center or adjacent thereto; (g) Tenant binds and obligates itself to occupy and use the entire Premises continuously during the entire Term at least six (6) days per week during reasonable business hours for the purpose provided above and will operate such business during such period with diligence, in accordance with the best standards of operation of such business, and in a manner reasonably calculated to produce maximum sales in the Premises; (h)

Tenant shall at all times fully and adequately heat and/or air condition (as the circumstances require) the Premises; (i) Tenant shall replace promptly, at its expense, any broken door closure and any cracked or broken glass on the Premises with glass of like kind and quality; (j) Tenant shall install and maintain a locking system for the Premises in accordance with Landlord's standard requirements; (k) All trash, refuse, and the like, shall be kept in covered metal cans, which metal cans shall be kept within the Premises at all times, and in no event stored outside of the same. Tenant shall be responsible, at its sole cost and expense, for the removal of its trash and rubbish. In the event Landlord has established or should establish a common trash and rubbish removal or disposal program at the Shopping Center, Tenant shall participate in such program; (l) Tenant agrees to cause its employees to park their cars only on areas designated by Landlord for parking in or on the Premises; (m) Tenant shall not use the Premises for any of the uses set forth in Exhibit C attached hereto and incorporated herein or in contradiction or violation of any exclusive or restricted use in any lease of any tenant of the Shopping Center (or any encumbrance of record affecting the Shopping Center) as of the Effective Date, and shall indemnify, defend and hold Landlord harmless for any breach or violation (including any anticipated or attempted breach or violation) by Tenant hereof; (n) Tenant shall keep the Premises in safe, sanitary and good condition and repair at all times during the Term of this Lease; (o) Tenant shall be authorized to use the Premises for the Use set forth in Paragraph 2 herein. For all purposes of this Section, in each instance where Landlord's consent may be required, Landlord may provide such consent in Landlord's sole and absolute discretion.

**13. LANDLORD'S WORK.** Landlord shall deliver the Premises to Tenant in compliance with all applicable laws and with the work shown on the initial space plan (the "Space Plan") and accompanying scope notes set forth on Exhibit D, attached hereto and incorporated herein ("Landlord's Work") substantially completed. Promptly following the execution of this Lease, Landlord and Tenant shall cooperate to obtain a full set of construction drawings based upon the Space Plan (the "Working Drawings"). The materials, scope of Landlord's Work and Working Drawings shall be subject to the mutual approval of Landlord and Tenant. Landlord shall perform Landlord's Work at Landlord's cost pursuant to the mutually agreed upon Working Drawings and shall substantially complete Landlord's Work as soon as is reasonably practicable following the Effective Date utilizing a general contractor of Landlord's choice. Landlord's Work shall be deemed to be "substantially completed" for all purposes under this Lease if and when (i) Landlord tenders possession of the Premises to Tenant, with Landlord's Work completed except for so-called "punchlist items" (e.g., minor details of construction or decoration or mechanical adjustments that can be completed within thirty (30) days, except for such matters which are beyond Landlord's reasonable control, so long as Landlord is pursuing such matters with commercially reasonable diligence) which do not materially interfere with Tenant's operation of its business from the Premises, Tenant's ability to complete any improvements to the Premises to be made by Tenant, or Tenant's ability to install furniture, fixtures or equipment at the Premises), irrespective of whether Tenant accepts possession of the Premises at that time. Landlord shall apply for all necessary building permits for Landlord's Work (the "Permits") promptly following the execution of this Lease and shall diligently pursue the same. Landlord's Work shall be completed by licensed contractors and all plans, architectural and otherwise, shall be approved in writing by Landlord prior to the commencement of Tenant's Work, which approval will not be unreasonably withheld, conditioned or delayed. The date on which Landlord substantially completes Landlord's Work shall be the "Completion Date. Landlord's Work shall conform to the requirements of all governmental authorities having jurisdiction over the Shopping Center and shall comply with all applicable laws, rules and regulations applicable to the Shopping Center.

**14. TENANT'S WORK AND APPROVALS.** Prior to opening for business to the public, Tenant, at Tenant's sole cost and expense, agrees to complete the construction of its Premises to a finished condition required for a Certificate of Occupancy and opening for business to the public (collectively referred to as "Tenant's Work"). Tenant shall be responsible, at Tenant's sole cost and expense for installing and providing all furniture, fixtures, equipment and décor not provided as part of Landlord's Work.

## **15. RESERVED.**

**16. ACCEPTANCE OF PREMISES.** Except as expressly provided herein, for the purposes of this Lease, Landlord's knowledge and phrases of similar import shall mean the actual knowledge of Landlord, without independent verification or investigation, and shall not mean that Landlord is charged with knowledge of the acts, omissions and/or knowledge of Landlord's predecessors-in-title to the Premises and/or the Shopping Center (hereinafter collectively, the "Property"). Except as specifically and expressly set forth herein, Landlord makes no warranty or representation whatsoever, express or implied, regarding the condition, or the fitness for any particular purpose or use, of the Property

leased hereunder. Tenant acknowledges and agrees that it is leasing the Property "AS IS, WHERE IS, WITH ALL FAULTS" on the Effective Date. Tenant acknowledges and agrees that upon the Effective Date, Landlord shall lease to Tenant and Tenant shall lease from Landlord accept the Property from Landlord "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Lease and any document executed by Landlord and delivered to Tenant at the Effective Date. Except as expressly set forth in this Lease, Tenant has not relied and will not rely on, and Landlord has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto made or furnished by Landlord or any real estate broker, attorney, agent or third party representing or purporting to represent Landlord, to whomever made or given, directly or indirectly, orally or in writing. **TENANT FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LANDLORD HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.** Tenant represents that it is a knowledgeable, experienced and sophisticated Tenant of real estate and that, except as expressly set forth in this Lease, it is relying solely on its own expertise and that of Tenant's consultants in leasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Landlord. Tenant will conduct such inspections and investigations of the Property as Tenant deems necessary prior to executing the Lease, including, but not limited to, the title, physical and environmental conditions thereof, and shall rely upon same. By executing this Lease, Tenant acknowledges that Landlord has afforded Tenant a full opportunity to conduct such investigations of the Property as Tenant deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any defects or Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Landlord, or its attorneys, agents or employees with respect thereto, other than such representations, warranties and covenants of Landlord as are expressly set forth in this Lease. At the Effective Date, Tenant shall assume the risk that adverse matters, including, but not limited to, adverse title, physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Tenant's inspections and investigations. **THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS LEASE.**

**17. REPAIRS AND MAINTENANCE.** Tenant shall keep the Premises and appurtenances thereto in a clean, slightly and healthy condition, and in good repair, and according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at Tenant's own expense, and shall yield the same back to Landlord upon the termination of this Lease, whether such termination shall occur by expiration of the Term, or in any other manner whatsoever, in the same condition of cleanliness, repair and sightlines as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Tenant shall make all necessary repairs and renewals upon the Premises including to the plumbing and electrical systems serving the Premises, exterior glass doors, rear, side or other exterior metal doors and related weather stripping, plate glass, and replace broken globes, glass (including doors and windows) and fixtures with materials of the same size and quality as that broken, and shall insure all glass in windows and doors of the Premises at Tenant's own expense. If, however, the Premises shall not thus be kept in good repair and in a clean, slightly and healthy conditions by Tenant, as aforesaid, Landlord may enter the same, or by Landlord's agents, servants or employees, without such entering causing or constituting a termination of this Lease or an interference with the possession of the Premises by Tenant, and Landlord may replace the same in the condition of repair, sightliness, healthiness and cleanliness as existed at the date of execution hereof, and Tenant agrees to pay Landlord in thus replacing the Premises in that condition. Tenant shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures. Notwithstanding anything contained in this Section, or elsewhere in this Lease to the contrary, Landlord shall not be responsible for, and shall have no obligation or liability for any costs and expenses for any maintenance, repair, replacement and/or damage costs and expenses of or to the HVAC system or any other systems or part of the Premises anywhere under this Lease that is caused by, occasioned by, the fault of, or due to, the errors, omissions, willful misconduct or negligence, or default or breach or violation of any provision of this Lease by, Tenant and/or its agents, servants, employees, contractors, customers, licensees, designees and/or invitees and/or any Tenant Parties, or for any reason within Tenant's control or due to any theft or vandalism or similar damage thereto, for which Tenant shall bear the sole cost and expense of such maintenance, repairs, replacements and/or damage as Tenant's sole and absolute responsibility, liability and obligation.

Throughout the Term, Tenant shall be responsible, at Tenant's cost, for the maintenance, repair and replacement of the water heater unit(s) serving the Premises. Tenant shall be responsible, at Tenant's cost, for the maintenance and repair of the HVAC unit(s) serving the Premises. Tenant, at Tenant's cost, shall maintain throughout the Term and any extension(s) thereof an annual HVAC service contract for the HVAC unit(s) serving the Premises, which shall require at least quarterly inspection/preventative maintenance calls each year throughout the Term. Provided that Tenant maintains in effect the HVAC service contract as set forth herein, Landlord shall be responsible, at Landlord's cost for the replacement of the HVAC unit(s) serving the Premises.

Tenant shall not make or permit any penetration in the roof above the Premises or elsewhere above the Shopping Center, and Tenant shall not make or permit any modification or work to the flashing around the rooftop air conditioning units. If any roof penetration is required in connection with Tenant's obligations hereunder, Tenant shall first notify Landlord prior to any work being performed and Landlord shall have the first right (but shall not be obligated) to perform such roof penetration at Tenant's sole cost and expense, which shall be paid upon demand, otherwise such roof penetration shall be made by Tenant at Tenant's sole cost and expense after Tenant receives Landlord's prior written consent and which shall be made to Landlord's satisfaction. In no event shall Tenant (and its agents, servants, employees, contractors, customers, designees, licensees and invitees) make, permit or cause any violation of or to Landlord's roof warranty(ies).

If Landlord considers necessary any repairs, maintenance or replacements required to be performed by Tenant, under this Lease, and if Tenant refuses or neglects to perform same after reasonable notice (except in the event of an emergency, when no prior notice shall be required), Landlord shall have the right (but shall not be obligated), to perform such repair, maintenance or replacement and Tenant will pay the cost thereof on demand.

Tenant will not commit waste but will maintain the Premises in a clean, and reasonably attractive condition and in good repair, and shall also keep adjacent sidewalks clean. Upon termination of this Lease, Tenant will surrender the Premises to Landlord in broom-clean and sanitary condition, and otherwise in the condition which existed at the commencement of this Lease, excepting only ordinary wear and tear, damage arising from acts of God, modifications to the Premises approved by Landlord, and any damage required hereunder to be repaired by Landlord. Upon termination or expiration of this Lease, Tenant will also surrender to Landlord all keys, codes and manuals to the Premises and the systems and property contained or situated therein.

Throughout the Term and any extension(s) thereof, Landlord shall be responsible for the maintenance, repair and replacement of the exterior walls and structural portions of the Shopping Center, including the foundation, plumbing and utility systems providing service up to the Premises (provided, however, than any repairs or replacements to the same resulting from the gross negligence, willful misconduct of Tenant or Tenant's agents, employees or invitees shall be the sole responsibility of Tenant). Further, throughout the Term and any extension(s) thereof, Landlord shall be responsible for the replacement of the parking lot and roof of the Shopping Center.

**18. ACCESS TO PREMISES.** Tenant shall allow Landlord or any person authorized by Landlord free access to the Premises for the purpose of examining or exhibiting the same, or to make any repairs or alterations thereof which Landlord may see fit to make, and Tenant will allow Landlord to have placed upon the Premises at all times notices of "For Sale" and "For Rent", and Tenant will not interfere with the same.

**19. NON-LIABILITY OF LANDLORD.** Except as provided by law of the state in which the Shopping Center is located, and except for the negligence or willful misconduct of Landlord, its agents or employees, Landlord shall not be liable to Tenant for any damages or injury to Tenant or its property occasioned by the failure of Landlord to keep the Premises in repair, and shall not be liable for any injury done or occasioned by wind or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes, or steam pipes, or from broken stairs, porches, railing or walks, or from the backing up of any sewer pipe or down-spout, or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain, or any other pipe or tank in, upon or about the Premises or the building of which they are a part nor from the escape of steam or hot water from any radiator, it being agreed that said radiators are under the control of Tenant, nor for any such damage or injury occasioned by water, snow or ice being upon or coming through the roof, skylight, trap-door, stairs, walks or any other place upon or near the Premises, or otherwise, nor for any such damage or injury done occasioned by the falling of any fixture, plaster or stucco, nor for the damage or injury arising from any act, omission or negligence of co-tenants or of other persons, occupants of

the same building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or of Landlord's agents or Landlord, all claims for any such damage or injury being hereby expressly waived by Tenant.

Notwithstanding anything to the contrary herein, Landlord shall (i) repair any and all damage to the Premises, and (ii) reimburse Tenant for any and all damages to Tenant's leasehold improvements, furniture, fixture, equipment and inventory, as a result of any water infiltration, fire, or casualty not caused by Tenant or its employees or invitees.

**20. RESTRICTIONS (SIGNS, ALTERATIONS, FIXTURES).** Tenant, at Tenant's sole cost and expense, shall be allowed to install building signage over the exterior of the Premises in accordance with Exhibit E, attached hereto. Tenant's signage shall at all times comply with all applicable laws, regulations and ordinances. Tenant shall not otherwise attach, affix or exhibit or permit to be attached, affixed or exhibited, except by Landlord or its agent, any articles of permanent character or any sign, attached or detached, with any writing or printing thereon, to any window, floor, ceiling, door or wall in any place in or about the Premises, or upon any of the appurtenances thereto, without in each case the written consent of Landlord first had and obtained, such consent to be at Landlord's sole and absolute discretion; and shall not commit or suffer any waste in or about said Premises; and shall make no changes or alterations in the Premises by the erection of partitions or the papering of walls, or otherwise, without the consent in writing of Landlord, such consent to be at Landlord's sole and absolute discretion; and in case Tenant shall affix additional locks or bolts on doors or window, or shall place in the Premises lighting fixtures or any fixtures of any kind, without the consent of Landlord first had and obtained, such locks, bolts and fixtures shall remain for the benefit of Landlord, and without expense of removal or maintenance to Landlord. Landlord shall have the privilege of retaining the same if Landlord desires. If Landlord does not desire to retain the same, Landlord may remove and store the same, and Tenant agrees to pay the expenses of removal and storage thereof. The provisions of this paragraph shall not however apply to Tenant's trade fixtures, equipment and movable furniture.

**21. LIABILITY INSURANCE.** From and after the date on which Landlord tenders possession of the Premises to Tenant, and during the Term and at any other time that Tenant enters upon or has access to the Premises, Tenant, at Tenant's sole expense, shall keep in full force and effect a policy of public liability and property damage insurance from a A-company or better as determined by A.M. Best & Company rating bureau, with respect to the Premises, and also shall keep in full force an insurance policy for worker's compensation on any all employees of the Tenant and shall provide evidence of said insurance policy for to Landlord prior to Tenant's entry upon the Premises, and with each policy renewal period and the business operated by Tenant and any subtenants of the Tenant in the Premises in which the limits of public liability shall not be less than \$1,000,000.00 per person and \$1,000,000.00 per accident and \$2,000,000.00 aggregate and in which the property damage liability shall not be less than \$300,000.00. The policy shall name Landlord, any person, firm or corporations designated by Landlord and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord ten (10) days prior written notice. A copy of the policy or a certificate of insurance shall be delivered to Landlord within thirty (30) days from the date of this Lease. If such certificate is not provided within thirty (30) days from the date of this Lease, Landlord has the right, but not the obligation, to secure such coverage and bill Tenant for the premium as additional Rent. Landlord bears the risk of and shall insure, as practical or required by a lender of Landlord, the operation of the Shopping Center as a whole and the common facilities. Such insurance shall include, but is not limited to, general liability, umbrella liability, bodily injury, public liability, property damage liability, automobile insurance, sign insurance and the like in limits selected by Landlord. Landlord bears the risk of and shall keep the buildings of the Shopping Center and any improvements forming at any time a part of the Common Areas insured against loss or damage by fire, with extended coverage and vandalism and malicious mischief endorsement or their equivalents, with such insurance companies as Landlord shall select and in amounts not less than ninety-five percent (95%) of the replacement cost of the building and structures insured with loss payable thereunder to Landlord and to any authorized encumbrances of Landlord (with standard mortgagee loss payable clause) in accordance with their respective interests. Landlord reserves the right to place other coverage as may be required by a mortgagee or as determined necessary by Landlord, similar to other commercial buildings in the area.

**22. INCREASE IN FIRE INSURANCE PREMIUM.** Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article that may be prohibited by the standard form of fire insurance policy. Tenant further agrees to comply with recommendations as issued from time to time by Landlord's insurance carrier. Tenant agrees to pay any increase in premiums for fire and extended insurance that may be charged during the Term on the amount

of such insurance which may be carried by Landlord on said Premises or the building of which they are a part, resulting from the type of merchandise sold, or the type of business activity conducted by Tenant in the Premises (except for the Permitted Use). In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule issued by the organization setting the insurance rate on the Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire and extended coverage insurance rate on the Premises.

In the event Tenant's occupancy (except for the Permitted Use) causes an increase of premium for the fire, boiler, and/or casualty rates on the Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Premises, Tenant shall pay the additional premium on the fire, boiler and/or casualty insurance policies by reason, thereof. Tenant also shall pay in such event; any additional premium on the rent insurance policy that may be carried by Landlord for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect and shall be due from, and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and paid as, Additional Rent.

**23. INDEMNIFICATION OF LANDLORD.** Tenant hereby indemnifies Landlord, Landlord's beneficiaries (if any), Landlord's mortgagee (if any) and Landlord's property manager, if any, and their respective agents, officers, employees and contractors (collectively, the "Landlord Indemnified Parties"), and saves the Landlord Indemnified Parties harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, Tenants or concessionaries. In case any Landlord Indemnified Parties shall, without fault on their part, be made parties to any litigation commenced by or against Tenant, the Tenant shall protect and hold Landlord and any of Landlord Indemnified Parties (and each of them) harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord and Landlord's beneficiaries in connection with such litigation. Tenant shall also pay all costs, expenses and attorney's fees that may be incurred or paid by Landlord and any of Landlord Indemnified Parties in enforcing the covenants and agreements in this Lease.

**24. ENVIRONMENTAL RESTRICTIONS.** During the Term, except for cleaning supplies used in the ordinary course of Tenant's business, Tenant agrees not to use or permit the use of the Premises for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste, except as is normally generated in compliance with all applicable law, including but not limited to regulations under OSHA, and Tenant shall indemnify and hold Landlord and Landlord's mortgagees (lenders) harmless from any and all costs, expenses, losses, actions, suits, claims, judgments, and any other liability whatsoever in connection with a breach by Tenant of any federal, state or local environmental protection laws and regulations.

**25. FIRE AND CASUALTY.** In case the Premises shall be rendered untenable by fire, explosion or other casualty, Landlord may, at its option, terminate this Lease or repair the Premises within sixty (60) days. If Landlord does not repair the Premises within said time, or the building containing the Premises shall have been wholly destroyed, the Term hereby created shall cease and terminate.

**26. TERMINATION; HOLDING OVER.** At the termination of the Term of this lease, by lapse of time or otherwise, Tenant will yield up immediate possession of the Premises to Landlord, in good condition and repair, loss by fire and ordinary wear expected, and will return the keys therefore to Landlord at the place of payment of Rent. If Tenant retains possession of the Premises or any part thereof after the termination of the Term by lapse of time or otherwise, then Landlord may at its option within thirty (30) days after termination of the Term serve written notice upon Tenant that such holding over constitutes either (a) a renewal of this Lease for one year, and from year to year thereafter, at double the rental (computed on an annual basis) specified in Section 1, or (b) creation of a month to month tenancy, upon the terms of this Lease except at double the monthly rental specified in Section 1, or (c) creation of a tenancy at sufferance, at a rental rate of 150% of the previous year's rent, for the time Tenant remains in possession. If no such written notice is served then a tenancy at sufferance with rental as stated at (c) shall have been created. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as hereinafter set

forth; nor shall receipt of any Rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Lease for a breach of any of the covenants herein.

**27. LANDLORD'S REMEDIES.** If Tenant shall vacate or abandon the Premises or permit the same to remain vacant or unoccupied for a period of ten (10) days, or in case of the non-payment of the Rent reserved hereby, or any part thereof and such non-payment continues for a period of five (5) days after Tenant's receipt of written notice from Landlord, or of the breach of any covenant in this Lease contained, Tenant's right to the possession of the Premises thereupon shall terminate with or (to the extent permitted by law) without any notice or demand whatsoever, and the mere retention of possession thereafter by Tenant shall constitute a forcible detainer of the Premises; and if the Landlord so elects, but not otherwise, and with or without notice of such election or any notice or demand whatsoever, this Lease shall thereupon terminate, and upon the termination of the Tenant's right of possession, as aforesaid, whether this Lease be terminated or not, Tenant agrees to surrender the Premises immediately, without the receipt of any demand for Rent, notice to quit or demand for possession of the Premises whatsoever, and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without a process of law, and to expel and to remove Tenant or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenant and other persons as may reasonably be necessary, and Landlord may re-possess itself of the Premises as of Landlord's former estate, but such entry of the Premises shall not constitute a trespass of forcible entry or detainer, nor shall it cause a forfeiture of Rents due by virtue thereof, nor a waiver of any covenant, agreement or promise in this Lease contained, to be performed by Tenant. Tenant hereby waives all notice of any election made by Landlord hereunder, demand for Rent, noticed to quit, demand for possession, and any and all notices and demand whatsoever, of any and every nature, which may or shall be required by any statue of this state relating to forcible entry and detainer, or to landlord and Tenant, or by the common law, during the term of this Lease or any extension thereof. The acceptance of Rent, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach by Tenant, or the giving or making of any or demand, whether according to any statutory provisions or not, or any act or series of acts except an express written waiver, shall not be construed as a waiver of Landlord's rights to act without notice or demand or of any other right hereby given Landlord, or as an election not to proceed under the provisions of this Lease.

**28. RIGHT TO RELET.** If Tenant's right to the possession of the Premises shall be terminated in any way, the Premises, or any part thereof, may but need not (except as provided by Illinois statute), be relet by Landlord, for the account and benefit of Tenant, for such rent and upon such terms and to such person and for such period or periods as may seem fit to the Landlord, but Landlord shall not be required to accept or receive any tenant offered by the Tenant, not to do any act whatsoever or exercise any diligence whatsoever, in or about the procuring of any care or diligence by Landlord in the reletting thereof; and if a sufficient sum shall not be received from such reletting to satisfy the Rent hereby reserved, after paying the expenses of reletting and collection, including commissions to agents, and including also expenses of returning the space to the condition it was in when originally leased, Tenant agrees to pay and satisfy all deficiency; but the acceptance of a tenant by Landlord, in place of Tenant, shall not operate as a cancellation hereof, nor to release Tenant from the performance of any covenant, promise or agreement herein contained, and performance by any substituted tenant by the payment of Rent, or otherwise, shall constitute only satisfaction pro tanto of the obligations of Tenant arising hereunder.

**29. COST AND FEES.** Tenant shall pay upon demand all of Landlord's costs, charges and expenses, including fees of attorneys, agents and others retained by Landlord, incurred in enforcing any of the obligations of Tenant under this Lease or in any litigation, negotiation, or transaction in which Landlord shall, without Landlord's fault, become involved through or on account of this Lease.

**30. LANDLORD'S LIEN.** Landlord shall have a first lien upon the interest of Tenant under this Lease (except for Tenant's personal property and equipment), to secure the payment of all moneys due under this Lease, which lien may be foreclosed in equity at any time when money is overdue under this Lease: and the Landlord shall be entitled to name a receiver of said leasehold interest, to be appointed in any such foreclosure proceeding, who shall take possession of said Premises and who may relet the same under the orders of the court appointing him.

**31. REMOVAL OF OTHER LIENS.** In the event any lien upon Landlord's title results from any act or neglect of Tenant, and Tenant fails to remove said lien within fifteen (15) days after Landlord's notice to do so, Landlord may

remove the lien by paying the full amount thereof or otherwise and without any investigation or consent of the validity thereof, and Tenant shall pay Landlord upon request the amount paid out by Landlord in such behalf, including Landlord's costs, expense and counsel fees.

**32. REMEDIES NOT EXCLUSIVE.** The obligation of Tenant to pay the Rent reserved hereby during the balance of the Term hereof, or during any extension hereof, shall not be deemed to be waived, released or terminated, nor shall the right and power to confess judgment given in paragraph 16 hereof be deemed to be waived or terminated by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Tenant's right to possession of the Premises. The Landlord may collect and receive any Rent due from Tenant, and payment or receipt thereof shall not waive or affect any such notice, demand, suit, or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Landlord may have by virtue hereof.

**33. ESTOPPEL CERTIFICATES.** Tenant agrees that, from time to time, within ten (10) days of a written request by Landlord, Tenant will execute and deliver to Landlord or to any mortgagee of Landlord's interest in the Building or any purchaser or prospective purchaser of Landlord's interest in the Shopping Center or the Premises a statement in form and content supplied by Landlord certifying: (a) that this Lease is unmodified and in full force and effect (or if there have been any modifications, identifying the modifications and certifying that the Lease as modified is in full force and effect, or an explanation as to why this Lease is not in full force and effect, as may be the case); (b) the dates to which Rent and any other charges have been paid; (c) the Commencement Date and the Expiration Date; (d) that Landlord is not in default in the performance of any of its obligations under the terms of this Lease or, if any such default is claimed, the exact nature thereof in detail; and (e) such other matters as Landlord or any such other party may reasonably request.

**34. SUBORDINATION TO MORTGAGES.** This Lease, and the rights of Tenant hereunder, shall be subordinate to the lien or liens of any mortgage or mortgages which now or at any time hereafter encumber the Shopping Center and to all advances made or hereafter to be made upon the security thereof. Tenant acknowledges that the current mortgage holder has the unilateral right to subordinate the lien and security interest of the mortgage and the other loan documents to this Lease. If requested by the holder of any such mortgage or mortgages, Tenant shall execute and deliver to such holder an instrument in commercially reasonable form and substance within ten (10) days of Tenant's receipt of the same, specifically subordinating this Lease to the lien of such mortgage or mortgages, provided, however, Tenant's quiet use and enjoyment and possession of the Premises under this Lease shall not be disturbed so long as Tenant is not in default beyond any applicable notice and cure periods, nor shall the rights and obligation of the parties be modified. Landlord shall use reasonable efforts to cause any new mortgagee to execute a subordination, non-disturbance and attornment agreement on the mortgagee's standard form which shall provide in general that so long as Tenant does not default under this Lease and complies with all provisions in this Lease and attorns to the mortgagee in the event mortgagee takes possession of the Premises that Tenant's quiet use and enjoyment and possession of the Premises under this Lease shall not be disturbed so long as Tenant is not in default beyond any applicable notice and cure periods, nor shall the rights and obligation of the parties be modified. In the event the lien of any mortgage is foreclosed upon or the Shopping Center is conveyed to any mortgagee, such mortgagee will not have any liability for any breach of the Lease by Landlord which occurs prior to the date the mortgagee (or its designee) acquires title to the Shopping Center.

**35. BROKERS.** Landlord and Tenant represent and warrant that they have not dealt with any broker other than Authorized Broker. Landlord shall be responsible for the payment of a commission to the Authorized Broker pursuant to a separate written agreement. Tenant shall hold harmless and indemnify Landlord from and against any and all costs (including attorneys' fees), expense or liability for any compensation, commission, and charges claimed by any broker by, through or under Tenant other than the Authorized Broker with respect to this Lease or the negotiation thereof. Landlord shall hold harmless and indemnify Tenant from and against any and all costs (including attorneys' fees), expense or liability for any compensation, commission, and charges claimed by any broker by, through or under Landlord other than the Authorized Broker with respect to this Lease or the negotiation thereof.

**36. NOTICES.** Notices or demands required or permitted to be given hereunder shall be given in writing by United States registered or certified mail, return receipt requested, with postage prepaid, or by a nationally recognized overnight courier and addressed to the receiving party at the notice address set forth in the Basic Lease Terms above.

**37. MISCELLANEOUS.** (a) Provisions typed on this Lease and all riders attached to this Lease and signed by Landlord and Tenant are hereby made part of this Lease; (b) Tenant shall keep and observe such reasonable rules and regulations now or hereafter required by Landlord, which may be necessary for the proper and orderly care of the building of which the Premises are a part. The Rules and Regulations are attached hereto as Exhibit F; (c) All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns; (d) The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to exclude or waive the right to the use of another; (e) The words "Landlord" and "Tenant" wherever used in this Lease shall be construed to mean Landlords and Tenants in all cases where there is more than one Landlord or Tenant, and to apply to individuals, male or female, or to firms or corporations, as the same may be described as Landlord or Tenant herein, and the necessary grammatical changes shall be assumed in each case as though fully expressed. If there is more than one Tenant the warrant of attorney is given jointly and severally and shall authorize the entry of appearance of, and waiver of issuance of process and trial by jury by, and confession of judgment against any one or more of such Tenants, and shall authorize the performance of every other act in the name of and on behalf of any one or more of such Tenants.

**38. SEVERABILITY.** If any clause, phrase, provision or portion of this Lease or the application thereof to any person or circumstance shall be invalid, or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this lease nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.

**39. HOURS OF OPERATION/CONTINUOUS OPERATIONS.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall operate its business in the Premises at least at such hours and on such days and in such months as are standard for similar retail uses in the geographical area of the Shopping Center. Landlord shall not have any right to dictate Tenant's hours of operations. Tenant shall not be required to observe extended holiday or seasonal hours, but may choose to do so if Landlord extends the operating hours of the Shopping Center.

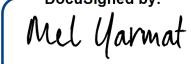
**THE SUBMISSION OF THIS LEASE FOR EXAMINATION BY TENANT AND/OR EXECUTION THEREOF BY TENANT DOES NOT CONSTITUTE A RESERVATION OF OR OPTION FOR THE PREMISES OR A RIGHT TO TENANT TO LEASE THE PREMISES. THIS LEASE SHALL BECOME EFFECTIVE ONLY UPON THE EXECUTION BY ALL PARTIES HERETO, LANDLORD'S RECEIPT OF TENANT'S FULLY EXECUTED COUNTERPART OF THIS LEASE, LANDLORD'S RECEIPT OF ANY GUARANTOR'S FULLY EXECUTED GUARANTY UNDER THIS LEASE, LANDLORD'S RECEIPT OF ANY ADVANCE RENT, LANDLORD'S RECEIPT OF ANY SECURITY DEPOSIT, AND LANDLORD'S DELIVERY TO TENANT OF LANDLORD'S FULLY EXECUTED COUNTERPART OF THIS LEASE.**

*[Remainder of page intentionally left blank; signature page to follow]*

WITNESS the execution hereof, in any number of counterpart copies, each of which counterpart copies shall be deemed to be an original for all purposes, as of the day and year first above written.

**LANDLORD:**

**KNAPP INVESTMENTS, LLC,**  
a Missouri limited liability company

By:   
Name: Mel Yarmat  
Title: Member

**TENANT:**

**SIMULATION ZONE, INC.,**  
a(n) Illinois Corporation

By:   
Name: VIKTOR Magula  
Title: Officer

EXHIBIT A  
Premises

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(Attached)

EXHIBIT B

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**FORM OF COMMENCEMENT DATE MEMORANDUM**

THIS COMMENCEMENT DATE MEMORANDUM, made as of \_\_\_\_\_, 20\_\_\_\_, by and between **Knapp Investments, LLC** ("Landlord"), and **Simulation Zone, Inc.** ("Tenant").

**Recitals:**

A. Landlord and Tenant are parties to that certain Retail Lease Agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_\_\_, for Unit 189 containing approximately 4,700 rentable square feet located in the \_\_\_\_\_ Shopping Center (the "Shopping Center").

B. Tenant is in possession of the Premises and the Term has commenced.

C. Landlord and Tenant desire to enter into this Commencement Date Memorandum confirming, among other things, the Commencement Date.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The actual Commencement Date is \_\_\_\_\_, 20\_\_\_\_.
2. The actual Expiration Date is \_\_\_\_\_, 20\_\_\_\_.
3. The Rent Abatement Period shall commence on \_\_\_\_\_, 20\_\_\_\_, and expire on \_\_\_\_\_, 20\_\_\_\_.
4. The Base Rent table set forth in the Basic Provisions is deleted in its entirety and replaced with the following: [Existing Base Rent table to be updated with dates instead of Lease Years].

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Commencement Date Memorandum to be executed as of the date and year first above written.

**LANDLORD:**

**KNAPP INVESTMENTS, LLC,**  
a Missouri limited liability company

**TENANT:**

**SIMULATION ZONE, INC.,**  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C

### RESTRICTED USES AND EXCLUSIVE USES

A. RESTRICTED USES: Tenant agrees that no portion of the Premises shall be used or operated:

1. A tavern, bar, nightclub, discotheque or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant in which the sale of alcoholic beverages therein comprises not more than thirty-three (33%) percent of gross sales of food and beverages;
2. A bowling alley or pool hall;
3. A theater (motion picture or live performance);
4. A health club, spa or gymnasium;
5. An automobile or truck repair service station or truck stop; car rental agency;
6. A flea market;
7. A school (which does not include a day care center for children);
8. A car wash;
9. An adult type bookstore or other establishment selling or exhibiting pornographic materials or live nudity;
10. A massage parlor;
11. A skating rink;
12. A mortuary;
13. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction);
14. A landfill, garbage dump or for the dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters located in the rear of any building);
15. Any fire sale, going out of business sale, bankruptcy sale, auction house operation or similar sale (unless pursuant to a court order);
16. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pick up and deliver by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;
17. Any automobile, truck, trailer, R.V. or other motor vehicle sales, leasing, display or repair;

18. Any living quarters, sleeping apartments, or lodging rooms;
19. Veterinary hospital or animal raising or boarding facilities (except that this restriction shall not be deemed to preclude the operation of pet shops);
20. Any establishment renting, selling or exhibiting pornographic materials (except that a national movie store similar to a Blockbuster Video or Hollywood Video, or a national bookstore such as a Barnes & Noble or Borders Books, shall not be prohibited provided they operate their stores in the Shopping Center in a similar manner as their other stores);
21. Industrial or manufacturing facility;
22. Off track betting facility or gaming establishment;
23. Gun store;
24. Ballroom, dance hall, bingo hall or parlor, auditorium, meeting hall or other place of public assembly;
25. Warehouse, storage or for any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
26. "Second-hand" store whose principal business is selling used merchandise, thrift shops, Salvation Army type stores, "goodwill" type stores, and similar businesses;
27. A tire sales and service, oil and lube shop, and paint and/or body shop;
28. Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;
29. Tattoo parlor;
30. Restaurant, medical, office (unless incidental to the Permitted Use under the Lease), or other commercial uses;
31. Use, or permit to be used, the sidewalks adjacent to any tenant's space, or any other portion of the Common Area for the sale or display of any merchandise or for any other business, occupation, or undertaking; provided, however, the foregoing restrictions shall not be deemed to limit or restrict, subject to Landlord's prior written approval which approval shall not be unreasonably withheld, conditioned or delayed (a) outdoor restaurant seating, (b) occasional outdoor seasonal sales by a grocery store or supermarket, or (c) occasional outdoor promotional events, subject to all applicable laws, codes, statutes, rules and regulations;
32. Use, or permit to be used, any sound broadcasting system or amplifying device which can be heard outside of such tenant's space.
33. Church or related religious facility or religious reading room;

B. EXCLUSIVE USES: Tenant acknowledges receipt by, and disclosure to, Tenant from and by Landlord of any and all encumbrances, exclusives and restrictions affecting the Premises, the Shopping Center and Tenant's Permitted Use of the Premises hereunder, and further Tenant hereby agrees that the Premises or any portion thereof or any assignee or subtenant thereof (or any interest thereunder) shall not be used or operated by Tenant or any assignee or subtenant thereof in a manner that would violate such

encumbrances, exclusives and restrictions. Landlord will not lease space within the Plaza to anyone where the primary purpose of operating is the manufacturing, production, or sale of coffee or coffee beans without Tenant's prior written consent.

## EXHIBIT D

### LANDLORD'S WORK

Prior to the Commencement Date Landlord shall, at Landlord's cost, perform the following:

1. Architectural drawings for scope of work of the Working Drawings.
2. Demolition per Working Drawings.
3. Construct rooms per Working Drawings.
4. Update bathrooms to meet space requirements per Working Drawings.
5. Construct a kitchenette room per Working Drawings that at minimum includes a double sink, hand sink, counter tops and cabinets.
6. Provide rough-in plumbing for future bar.
7. Distribute electrical for Tenant's equipment per Working Drawings.
8. Provide drop ceiling throughout the Premises painted black.
9. Install LED lighting throughout the Premises per Working Drawings.
10. Paint walls in Tenant's specified colors.
11. Install epoxy flooring throughout the Premises.
12. Bring up to code all plumbing, electrical and ensure Premises is up to code including sprinklers.

## EXHIBIT E

### SIGN CRITERIA

The Sign Criteria set forth herein shall govern the design, construction and installation of all signs to be installed by Tenant. Concerning any questions of interpretation of these sign criteria, Landlord shall make the final and controlling determination.

#### DESIGN CRITERIA FOR TENANT SIGNAGE

1. Tenant shall be required to identify its premises by signs which shall be attached only to the building fascia per Landlord approved drawings. Each Tenant shall be allowed one sign (except for end units).
2. Uniform store identification sign for Tenant's service door shall be supplied by Landlord at Tenant's expense. Tenant shall not post any additional signs in service area. The signs will consist of the store address and store name. They will be 4" vinyl letters of one color for the total center and mounted at a uniform height for consistency.
3. The stamps, or decals of manufacturers or installers on signs shall not be visible.
4. No "box" or self-enclosed signs shall be allowed at the Property, channel lettering only.
5. Each sign should utilize photometric timers to properly turn "on" and "off" at dusk and dawn.
6. Signs should be designed with the latest energy efficient bulbs, preferably LED if possible

#### CRITERIA FOR FASCIA IDENTIFICATION SIGNS

The content of identification signs shall be limited to the store name. The use of a crest, shield, logo or other established corporate insignia which has been customarily displayed or associated with the store name shall be permitted subject to Landlord's written approval and its area shall be within the allowable sign area.

#### APPROVAL OF LOCAL GOVERNMENTAL AUTHORITIES

Tenant shall not commence to install any signage until Tenant has received full and final written approval from all applicable governmental and quasi-governmental bodies in conformance and compliance with their rules, regulations, laws and ordinances governing the signage including, without limitation, the quantity, placement, design, construction and installation thereof.

ALL DEVIATIONS FROM THESE SIGN CRITERIA ARE STRICTLY SUBJECT TO THE PRIOR WRITTEN APPROVAL BY THE LANDLORD OR IT'S AUTHORIZED REPRESENTATIVE.

## EXHIBIT F

### RULES AND REGULATIONS OF THE SHOPPING CENTER

1. Any sign, lettering, picture, notice or advertisement installed on or in any part of the Premises and visible from the exterior of the Shopping Center, or visible from the exterior of the Premises, shall be installed at Tenant's sole cost and expense, and in such manner, character and style as Landlord may approve in writing. Anything herein to the contrary notwithstanding, approval as to signs shall be subject to Landlord's approval which may be withheld in Landlord's sole discretion. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without any liability and may charge the expense incurred by such removal to Tenant.

2. No awning or other projection shall be attached to the outside walls of the Shopping Center or the Premises. No curtains, blinds, shades or screens visible from the exterior or the Shopping Center or visible from the exterior of the Premises, shall be attached to or hung in, or used in connection with any window or door of the Premises without the prior written consent of Landlord. Such curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. Tenant shall not permit any holiday oriented decorations to be displayed outside the Premises or on sidewalks without Landlord written approval.

3. Tenant, its servants, employees, customers, invitees and guests shall not obstruct Common Areas of the Shopping Center. Tenant shall not place objects against glass partitions or doors or windows which would be unsightly from the Shopping Center Common Areas or from the exterior of the Shopping Center, and will promptly remove any such objects upon notice from Landlord.

4. Tenant shall not make excessive noises, cause disturbances or vibrations or use or operate any electrical or mechanical devices that emit excessive sound or other waves or disturbances or create obnoxious odors, any of which may be offensive to the other tenants and occupants of the Shopping Center, or that would interfere with the operation of any device, equipment, radio, television broadcasting or reception from or within the Shopping Center or elsewhere, and shall not place or install any projections, antennas, aerials or similar devices inside or outside of the Premises or on the Shopping Center.

5. Tenant shall not waste electricity, water or air conditioning furnished by Landlord, if any, and shall cooperate fully with Landlord to insure the most effective operation of the Shopping Center's heating and air conditioning systems.

6. Tenant assumes full responsibility for protecting its space from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed and secured after normal business hours.

7. In no event shall Tenant bring into the Shopping Center inflammables, such as gasoline, kerosene, naphtha and benzene, or explosives or any other article of intrinsically dangerous nature or inflammable or combustible fluid (except for ordinary cleaning products used in the normal course of business) or material, or use any method of heating or air conditioning other than that supplied by Landlord. If, by reason of the failure of Tenant to comply with the provisions of this paragraph, any insurance premium for all or any part of the Shopping Center shall at any time be increased, Tenant shall make immediate payment of the whole of the increased insurance premium, without waiver of any of the Landlord's other rights at law or in equity for Tenant's breach of this Lease.

8. Tenant shall comply with all applicable federal, state and municipal laws, ordinances and regulations, and building rules, and shall not directly or indirectly make any use of the Premises which may be prohibited by any of the foregoing or which may be dangerous to persons or property or may increase the cost of insurance or require additional insurance coverage.

9. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's reasonable opinion tends to impair the reputation of the Shopping Center or its desirability as a Shopping Center, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

10. The Premises shall not be used for cooking (as opposed to heating of food), lodging, sleeping or for any immoral or illegal purposes.

11. Unless expressly permitted by the Landlord, no additional locks or similar devices shall be attached to any door or window. In the event Tenant installs additional locks on any doors at the Premises, Tenant shall provide Landlord with keys thereto. Upon termination of this Lease or of the Tenant's possession, the Tenant shall surrender all keys of the Premises and shall explain to the Landlord all combination locks on safes, cabinets and vaults.

12. Any carpeting cemented down shall be installed with a releasable adhesive. In the event of a violation of the foregoing by Tenant, Landlord may charge the expense incurred by such removal to Tenant.

13. The water and wash closets, drinking fountains and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, coffee grounds or other substances shall be thrown therein. The bathrooms, mop sinks, toilet rooms, urinals, wash bowls or other apparatus shall not be used for any purpose other than that which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused such breakage, stoppage or damage. All damages resulting from any misuse of the fixtures shall be borne by the Tenant who, or whose employees, agents, guests, concessionaire, visitors or licensees, shall be caused the same. No person shall waste water by interfering or tampering with the faucets or otherwise.

14. No electric or other wires for any purpose shall be brought into the Premises without Landlord's written permission specifying the manner in which the same may be done. Tenant shall not overload any utilities serving the Premises. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

15. Tenant employee parking is limited to areas specifically designated as "Employee Parking". At no time and for no reason shall Tenant or its employees park in any other area of the Shopping Center unless solely as a customer. Landlord reserves the right to tow, without notice and at vehicle owner's expense, any tenant or employee vehicle parked in any area of the Shopping Center not expressly designated as Employee Parking.

16. No dog or other animal shall be allowed in the Shopping Center by Tenant.

17. All loading, unloading, receiving or delivery of goods, supplies or disposal of garbage or refuse shall be made only through entryways provided for such purposes. Tenant shall be responsible for any damage to the Shopping Center or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

18. All safes, equipment or other heavy articles shall be carried in or out of the Premises only in such manner as shall be prescribed in writing by Landlord, and Landlord shall in all cases have the right to specify the proper position of any such safe, equipment or other heavy article, which shall only be used by Tenant in a manner which will not interfere with or cause damage to the Premises or the Shopping Center in which it is located, or to the other tenants or occupants of the Shopping Center. Tenant shall be responsible for any damage to the building or the property of its employees or others and injuries sustained by any person

whomsoever resulting from the use or moving of such articles in or out of the Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

19. Canvassing, soliciting, and peddling in or about the Shopping Center is prohibited and Tenant shall cooperate to prevent the same.

20. Wherever in these Rules and Regulations the word "Tenant" occurs, it is understood and agreed that it shall mean Tenant's associates, employees, agents, clerks, invitees, and visitors and Tenant Parties. Wherever in these Rules and Regulations the word "Landlord" occurs, it is understood and agreed that it shall mean Landlord's successors, assigns, agents, clerks, servants, and visitors.

21. Tenant, its servants, employees, customers, invitees and guests shall, when using the parking facilities in and around the Shopping Center, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no parking zone. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicle shall be parked overnight.

22. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Shopping Center during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Shopping Center and the property therein. Landlord shall in no case be liable for damages for any error or other action taken with regard to the admission to or exclusion from the Shopping Center of any person.

23. All entrance doors to the Premises shall be locked when the Premises is not in use. All common corridor doors, if any, shall also be closed during times when the air conditioning equipment in the Shopping Center is operating so as not to dissipate the effectiveness of the system or place an overload thereon.

24. If the Premises are equipped with heating facilities separate from those in the remainder of the Shopping Center, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

25. Tenant and Tenant's employees, agents, visitors and licensees shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord or Landlord's agents may from time to time adopt. Notice of any additional rules and regulations shall be given in such manner as Landlord may elect.

26. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of these Rules and Regulations when it is deemed necessary, desirable, or proper, in Landlord's reasonable judgment, for the best interest of the tenants of the Shopping Center.

EXHIBIT G

GUARANTY

Taras Bezruchko

6/12/2024

viktor Magula

THIS GUARANTY (this "Guaranty") is made as of 6/12/2024 by viktor Magula, an individual ("Guarantor"), in favor of **Knapp Investments, LLC**, a Missouri limited liability company ("Landlord").

W I T N E S S E T H:

WHEREAS, Landlord and Simulation Zone, Inc., a(n) Illinois corporation ("Tenant"), entered into that certain Retail Lease, dated as of the date hereof (the "Lease"), pursuant to which Tenant leases that certain Premises from Landlord, as more particularly set forth in the Lease.

WHEREAS, to induce Landlord to execute and deliver the Lease, Guarantor has agreed to guaranty, and be responsible for, Tenant's obligations under the Lease as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

Guarantor hereby guarantees, absolutely, unconditionally, to Landlord the full payment when due and performance of all obligations of Tenant pursuant to the Lease, including, without limitation, (i) the payment of Rent, (ii) the costs incurred in seeking a termination of the Lease and recovering vacant possession of the Premises after a default by Tenant under the Lease, including, without limitation, reasonable attorneys' fees and disbursements, and (iii) the costs incurred to satisfy any mechanic's liens arising out of any improvements or alterations performed by or on behalf of Tenant in the Premises.

This Guaranty is an absolute and unconditional guaranty of payment (and not of collection) and of performance. The liability of Guarantor is coextensive with that of Tenant and this Guaranty shall be enforceable against Guarantor without the necessity of any suit or proceeding on Landlord's part of any kind or nature whatsoever against Tenant and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waive. Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of (x) the assertion or the failure to assert by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the terms, covenants and conditions of the Lease, or (y) any non-liability of Tenant under the Lease, whether by insolvency, discharge in bankruptcy or any other defect or defense that may now or hereafter exist in favor of Tenant.

This Guaranty shall be a continuing guaranty, and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of (a) any modification, amendment, extension, renewal or assignment of the Lease, or (b) any modification or waiver of any of the terms, covenants or conditions of the Lease by Landlord and Tenant, or (c) any extension of time that may be granted by Landlord to Tenant, or (d) any consent, release, indulgence or other action, inaction or omission under or with respect to the Lease, or (e) any dealings or transactions or matter or thing occurring between Landlord and Tenant, or (f) any bankruptcy, insolvency, reorganization, liquidation, arrangement, assignment for the benefit of creditors, receivership, trusteeship or similar proceeding affecting Tenant, whether or not notice thereof is given to Guarantor.

No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty or failure to exercise the same shall operate as a waiver of or otherwise affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

No waiver or modification of any provision of this Guaranty or any termination of this Guaranty shall be effective unless in writing, signed by Landlord, nor shall any such waiver be applicable except in the specific instance for which given.

All of Landlord's rights and remedies under the Lease and this Guaranty, now or hereafter existing, at law, in equity or by statute or otherwise, are intended to be distinct, separate and cumulative and no exercise or partial exercise of any such right or remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

As a further inducement to Landlord to make and enter into the Lease, and in consideration thereof, Landlord and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, LANDLORD AND GUARANTOR SHALL AND DO HEREBY WAIVE TRIAL BY JURY. Without regard to principles of conflicts of laws, the validity, interpretation, performance and enforcement of this Guaranty shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, Guarantor have executed this Guaranty as of the date first above written.

DocuSigned by:  
  
Taras Bezruchko  
ED09BB28E87648D..  
Taras Bezruchko

33 Wedgwood Dr  
Hawthorn Wood,

**GUARANTOR:**  
Dostojnički  
Viktor Magula  
3A/80 JD1P4946476  
Name: VIKTOR Magula

ADDRESS: 1011 Glacier Pkwy  
047 Algonquin, IL 60102

086981461

SSN: 324080737

June 24, 2024

TO: Mr. Orlando Stratman, Chairperson  
Planning & Zoning Commission

Dear Mr. Stratman,

We are applying for a Special Use Permit to operate a business located at 189 Rand Road, Lake Zurich, Illinois. The business, The Simulation Zone, is described in an attached business plan along with a preliminary floor plan. We have entered into a long-term lease (see attached, fully executed Lease) and the renovation of the space will be performed by the property owner.

Parking will be satisfied by the adjacent shopping center lot, which has approximately 4.6 spaces per 1,000 square feet of leasable building space.

We anticipate 4 employees and hours of operation as follows:

Monday - Thursday - 2 pm till 10 pm.

Friday - Sunday - 10 am till 10 pm.



*At the Heart of Community*

COMMUNITY DEVELOPMENT DEPARTMENT

505 Telser Road  
Lake Zurich, Illinois 60047

(847) 540-1696  
Fax (847) 726-2182  
LakeZurich.org

## APPLICATION PZC 2024-12

PZC Meeting Date: August 21, 2024

## AGENDA ITEM 4.B

### STAFF REPORT

To: Chairperson Stratman and Members of the Planning & Zoning Commission

From: Sarosh Saher, Community Development Director

CC: Colleen McCauley, Village Planner  
Mary Meyer, Building Services Supervisor

Date: August 21, 2024

Re: PZC 2024-12 – Zoning Variation for a Patio  
474 Rush Court

### SUBJECT

Mr. Chad and Ms. Michelle Pratt (the “Applicant” and “Owner”) request a Variation from Zoning Code Section 9-3-11-6-h, “Specified Structures and Uses in Required Yards” pursuant to section 9-3-11-C-3, Residential Minimum Yards: Rear Yard, to allow for the construction of a patio (referred to as a “Terrace” in the Lake Zurich Zoning Code) that will encroach into the required 20-foot rear yard setback at the property commonly known as 474 Rush Court, legally described in Exhibit A attached hereto (the “Subject Property”). The property is located in the Sparrow Ridge Subdivision.

### GENERAL INFORMATION

Requested Action: Variation of Rear Yard Setback for Terraces (Patios)

Current Zoning: R-5 Single Family Residential District

Current Use Single Family Home

Property Location: 474 Rush Court

Applicant and Owner: Mr. Chad and Ms. Michelle Pratt

Staff Coordinator: Colleen McCauley, Village Planner

## **LIST OF EXHIBITS**

- A. Legal Description
- B. Public Meeting Sign
- C. Site Photos
- D. Aerial Map
- E. Zoning Map
- F. Parcel Map
- G. Development Application and Attachments
- H. Development Review Comments

## **BACKGROUND**

Mr. Chad and Ms. Michelle Pratt (the “Applicant” and “Owner”) are the owners of the property located at 474 Rush Court, and legally described in Exhibit A attached hereto (the “Subject Property”). The Applicant filed an application with the Village of Lake Zurich received on July 18, 2024 (the “Application”) seeking:

- A Variation from Code Section 9-3-11-E-6-h, “Specified Structures and Uses in Required Yards” pursuant to Section 9-3-11-C-3, Residential Minimum Yards: Rear Yard

The Subject Property is located within the Village’s R-5 Residential District that provides for single-family homes. The R-5 zoning district requires a 30-foot setback from the rear lot line for primary and accessory structures. Terraces may be located no less than 20 feet from the rear lot line or 5 feet from any interior side lot line (as provided for in Item 6-h). In the case of the Subject Property, the terrace is proposed to be constructed 15.5 feet from the rear lot line which will encroach into the rear yard setback by 4.5 feet. The terrace will not encroach into the interior side yard or front yard setback.

Note: the term “Terrace” is used in place of “Patio” within Title 9 “Zoning” of the Lake Zurich Municipal Code. The definition of “Terrace” is as follows:

**TERRACE:** A level plane or surfaced patio, abutting a principal building at grade with no railings or other vertical structural elements and not covered by any permanent structure.

No definition for “Patio” is provided in the Municipal Code.

Terraces are additionally subject to the provisions of the Village of Lake Zurich Zoning Code and the 2012 International Building Code. Such provisions require a concrete terrace to have a 6x6 #10 wire mesh with a minimum of 4” of compacted gravel base, CA-6, and a minimum of 4 inches of poured concrete. A brick paver patio, which the Applicant is proposing, requires a minimum of 6-12 inches of base gravel and 1-1 ½ inches of bedding. The bedding must be installed on 4-inch-high lifts with the appropriate edge restraints.

The Subject Property currently has a legally nonconforming deck in the rear yard that is 16.5 feet in length and 24 feet in width, locating the deck 15.5 feet from the rear yard lot line. The proposed patio will replace the existing deck and maintain these current setbacks.

The Applicant is proposing to install a paver patio that is 16.5 feet in length and 29 feet in width. The proposed paver patio will be built in line with the west side of the house and extend 29 feet to the east.

The Applicant will obtain the clearance from all utility companies to install the paver patio in their rear yard prior to construction. There are no Village utility easement requirements or grade concerns that would prevent a patio from being constructed in the rear portion of this lot. The Applicant has obtained the consent of the owners of the two adjacent neighbors for the construction of the patio.

Pursuant to public notice published on July 27, 2024, in the Daily Herald, a public hearing has been scheduled with the Lake Zurich Planning & Zoning Commission for August 21, 2024, to consider the Application. On July 24, 2024, the Village posted a public hearing sign on the Subject Property (Exhibit B).

Staff offers the following additional information:

- A. Courtesy Review.** Due to the low impact of this project, courtesy review was not recommended.
- B. Zoning History.** The property is located within the Sparrow Ridge Subdivision on Lot 24, which was recorded on March 14, 1988 in Lake County and is zoned within the R-5 Single Family Residential District. The home was built in 1988.
- C. Surrounding Land Use and Zoning.** The subject property is zoned within the R-5 Single Family Residential District. All surrounding properties are zoned within the R-5 Single Family Residential District and are improved with residences within Sparrow Ridge's Subdivision which developed in the late 1980s.
- D. Trend of Development.** The residence at 474 Rush Court was constructed in 1988. It is a two-story home and is similar to the other homes in the subdivision that were also constructed in the late 1980s.
- E. Zoning District.** The zoning code provides for four (4) zoning districts for single-family residential development. The single-family districts provide for a limited range of single-family detached housing densities consistent with the village's established single-family residential neighborhoods. The R-5 district allows for somewhat higher density residential use and smaller lot sizes.

Taken as a whole, the residential district regulations are intended to preserve established neighborhoods and encourage new residential development, but only in a manner consistent with the overall character of the village.

## **GENERAL FINDINGS**

Staff of the Community Development Department's development review team has evaluated the development against the various standards and provisions of the Lake Zurich Municipal Code and offers findings on the following specific sections of the Code.

### **9-17-4: STANDARDS FOR VARIATIONS.**

A. General Standard: No variation shall be granted pursuant to this chapter unless the applicant shall establish that carrying out the strict letter of the provisions of this zoning code would create a particular hardship or a practical difficulty. Such a showing shall require proof that the variation being sought satisfies each of the standards set forth in this section.

**Staff Response: Standard met. Applicant has shown proof that there is a practical difficulty in constructing the terrace in compliance with the provisions of the current zoning code. The terrace would be restricted in size due to the rear yard dimensions and setbacks. The Subject Property having a depth of 90 feet makes it difficult to construct a conforming terrace of an average depth. The variation being sought will provide utility to the proposed terrace and satisfy each of the standards set forth in this section.**

B. Unique Physical Condition: The subject property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use or structure, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the subject property that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current owner of the lot.

**Staff Response: Standard met. Lot 24 of the Sparrow Ridge Subdivision is on a corner lot and is comparatively the same size as the neighboring properties. The lot has a relatively smaller rear yard, with its 90-foot lot depth, compared to the lots within the subdivision across Lexington Lane which have a depth of 100 feet.**

**This configuration is not conducive to accommodating most types of backyard accessory structures. The proposed terrace therefore requires a variation to encroach into the rear yard setback and give it the necessary depth to make it a usable feature.**

C. Not Self-Created: The aforesaid unique physical condition is not the result of any action or inaction of the owner, or of the owner's predecessors in title and known to the owner prior to acquisition of the subject property, and existed at the time of the enactment of the

provisions from which a variation is sought or was created by natural forces or was the result of governmental action, other than the adoption of this zoning code, for which no compensation was paid.

**Staff Response: Standard met. The unique or extraordinary physical condition was not the result of any action of the property owner, rather a result of the design and configuration of the original developer.**

D. Denied Substantial Rights: The carrying out of the strict letter of the provision from which a variation is sought would deprive the owner of the subject property of substantial rights commonly enjoyed by owners of other lots subject to the same provision.

**Staff Response: Standard met. The owners are requesting an outdoor 16.5-foot by 29-foot terrace on their property. Denying the terrace to be built would deny the property owners the opportunity to enjoy a feature offered to other residents in the community.**

E. Not Merely Special Privilege: The alleged hardship or difficulty is not merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely an inability to make more money from the use of the subject property; provided, however, that where the standards herein set out exist, the existence of an economic hardship shall not be a prerequisite to the grant of an authorized variation.

**Staff Response: Standard met. The hardship does not involve the inability of the owner to enjoy any special privilege in using the property. Granting the variation will allow the current owner to enjoy the paved outdoor space that is traditional and customary to the enjoyment and use of a residential property.**

F. Code and Plan Purposes: The variation would not result in a use or development of the subject property that would be not in harmony with the general and specific purposes for which this zoning code and the provision from which a variation is sought were enacted or the general purpose and intent of the official comprehensive plan.

**Staff Response: Standard met. Granting the variation would not change the residential use of the Subject Property. The location and design of the home, the patio and other accessory structures will continue to remain in harmony with the residential purpose of the zoning code and comprehensive plan.**

G. Essential Character of the Area: The variation would not result in a use or development on the subject property that:

1. Detimental to Enjoyment: Would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, development, or value of property or improvements permitted in the vicinity; or

**Staff Response:** Standard met. If the Applicant is granted the requested variation, it will not create a negative effect on public welfare, enjoyment, development, or value of property.

2. Light and Air: Would materially impair an adequate supply of light and air to the properties and improvements in the vicinity; or

**Staff Response:** Standard met. Granting of the variation would have no effect on the supply of light and air to the subject property or those properties in the vicinity as the Applicants only wish to construct a terrace that encroaches 4.5 feet into the rear yard setback. The terrace is proposed to be built to modern standards of the building and zoning code.

3. Congestion: Would substantially increase congestion in the public streets due to traffic or parking; or

**Staff Response:** Not Applicable. Granting of the variation would not affect any congestion due to traffic or parking as the land use or density of the property is not being altered.

4. Flood or Fire: Would unduly increase the danger of flood or fire; or

**Staff Response:** Standard met. The proposed terrace will conform to current zoning building codes and therefore would not impede the drainage flow on the property.

5. Tax Public Facilities: Would unduly tax public utilities and facilities in the area; or

**Staff Response:** Standard met. No utilities are proposed to be connected to the proposed terrace. Granting of the variation would therefore not cause the property to unduly tax public utilities or facilities in the area since its function would not change.

6. Endangerment: Would endanger the public health or safety.

**Staff Response:** Standard met. The proposed variation would not affect the public's health, safety or welfare.

H. No Other Remedy: There is no means other than the requested variation by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject property.

**Staff Response:** Standard partially met. The patio is only being constructed in the proposed location to give the rear yard the desired utility.

However, the patio could be constructed at a depth of 12 feet to maintain the required 20-foot rear yard setback.

However, this would diminish the amount of usable space, as the existing deck on the property has a depth of 16.5 feet. The Applicants have had this deck since they moved into the home in 2002. They have grown accustomed to using and enjoying this outdoor space. The proposed patio, by virtue of it being constructed at grade will further diminish the bulk previously created by the deck that was constructed above grade. It will retain the same 16.5 feet depth from the house and will be 15.5 feet from the rear lot line.

Further, the owners of the adjacent properties have not objected to the construction of the terrace as proposed and have all submitted letters of support.

Staff therefore recommends approval of the variation, despite the partial compliance with this standard.

## **RECOMMENDATION**

The recommendation of the Planning and Zoning Commission should be based on the standards included in the following Sections of the Lake Zurich Municipal Code:

- Section 9-17-4: Standards for Variations

Section 9-17-5 entitled “Variation less than requested” provides the PZC with the option of granting a variation less than or different from that requested when the record supports the applicant's right to some relief but not to the relief requested.

Based on the review of the standards for approval which have been met with the exception of Standard H, staff recommends that the Planning and Zoning Commission make these standards a part of the official record of the Application.

Further, based on the existing conditions and mitigation (reduction in bulk) proposed by the owner as further described in the staff response to Standard H, Staff of the Community Development Department recommends the approval of PZC 2024-12, subject to the following conditions:

1. Substantial conformance with the following documentation submitted as part of the application and subject to revisions required by Village Staff, Village Engineer, and any applicable governmental agencies:
  - a. Zoning Application dated July 18, 2024, prepared by the Applicants Chad and Michelle Pratt, homeowners of 474 Rush Court; and Cover Letter.
  - b. Exhibit A: Legal Description of the Subject Property.
  - c. Plat of Survey provided by Chad and Michelle Pratt.
  - d. Letters of Consent from neighbors submitted July 18, 2024.
  - e. Terrace proposal prepared by Chad and Michelle Pratt, submitted July 18, 2024.
2. As further mitigation for construction of the terrace, the applicant shall agree not to further reduce the setback of the terrace in the rear yard or increase its depth beyond what is being proposed.
3. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.

Respectfully submitted,

Colleen McCauley, Village Planner

**LAKE ZURICH PLANNING & ZONING COMMISSION**  
**FINAL FINDINGS & RECOMMENDATIONS**

**474 RUSH COURT**  
**AUGUST 21, 2024**

The Planning & Zoning Commission recommends approval of Application **PZC 2024-12**, and the Planning & Zoning Commission adopts the findings as contained within the Staff Report dated **August 21, 2024** for this Application and subject to any changes or approval conditions as listed below:

1. Substantial conformance with the following documentation submitted as part of the application and subject to revisions required by Village Staff, Village Engineer, and any applicable governmental agencies:
  - f. Zoning Application dated July 18, 2024, prepared by the Applicants Chad and Michelle Pratt, homeowners of 474 Rush Court; and Cover Letter.
  - g. Exhibit A: Legal Description of the Subject Property.
  - h. Plat of Survey provided by Chad and Michelle Pratt.
  - i. Letters of Consent from neighbors submitted July 18, 2024.
  - j. Terrace proposal prepared by Chad and Michelle Pratt, submitted July 18, 2024.
2. As further mitigation for construction of the terrace, the applicant shall agree not to further reduce the setback of the terrace in the rear yard or increase its depth beyond what is being proposed.
3. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.  
  
 Without any further additions, changes, modifications and/or approval conditions.  
 With the following additions, changes, modifications and/or approval conditions:

---

Planning & Zoning Commission Chairman

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOT 24 IN BLOCK 5 IN SPARROW RIDGE UNIT II, BEING A SUBDIVISION IN THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED MARCH 14, 1988 AS DOCUMENT 2664163, IN LAKE COUNTY, ILLINOIS.

Common Street Address: 474 Rush Court  
Property Index Number (PIN): 14-28-110-014

**EXHIBIT B**

**PUBLIC HEARING SIGNS PRESENT AT SUBJECT PROPERTY**



View of the house and backyard from the side street W Lexington Ln.



View of the backyard from the rear yard of adjoining neighbor at 477 Newberry Ct.





# 474 Rush Court

Terrace Variation



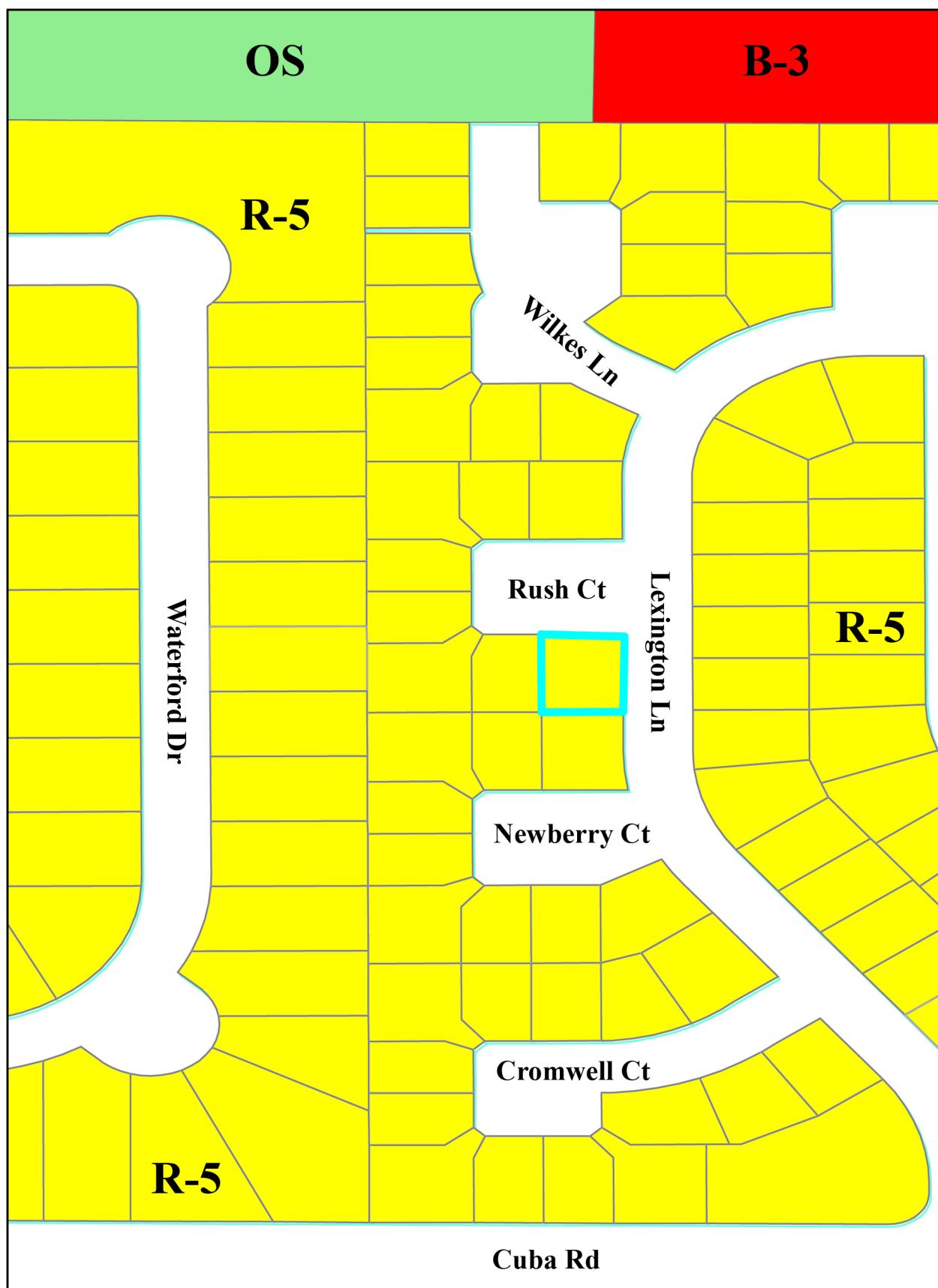
0 50 100 200 feet

Subject Property



# 474 Rush Court

Terrace Variation



0 50 100 200 feet

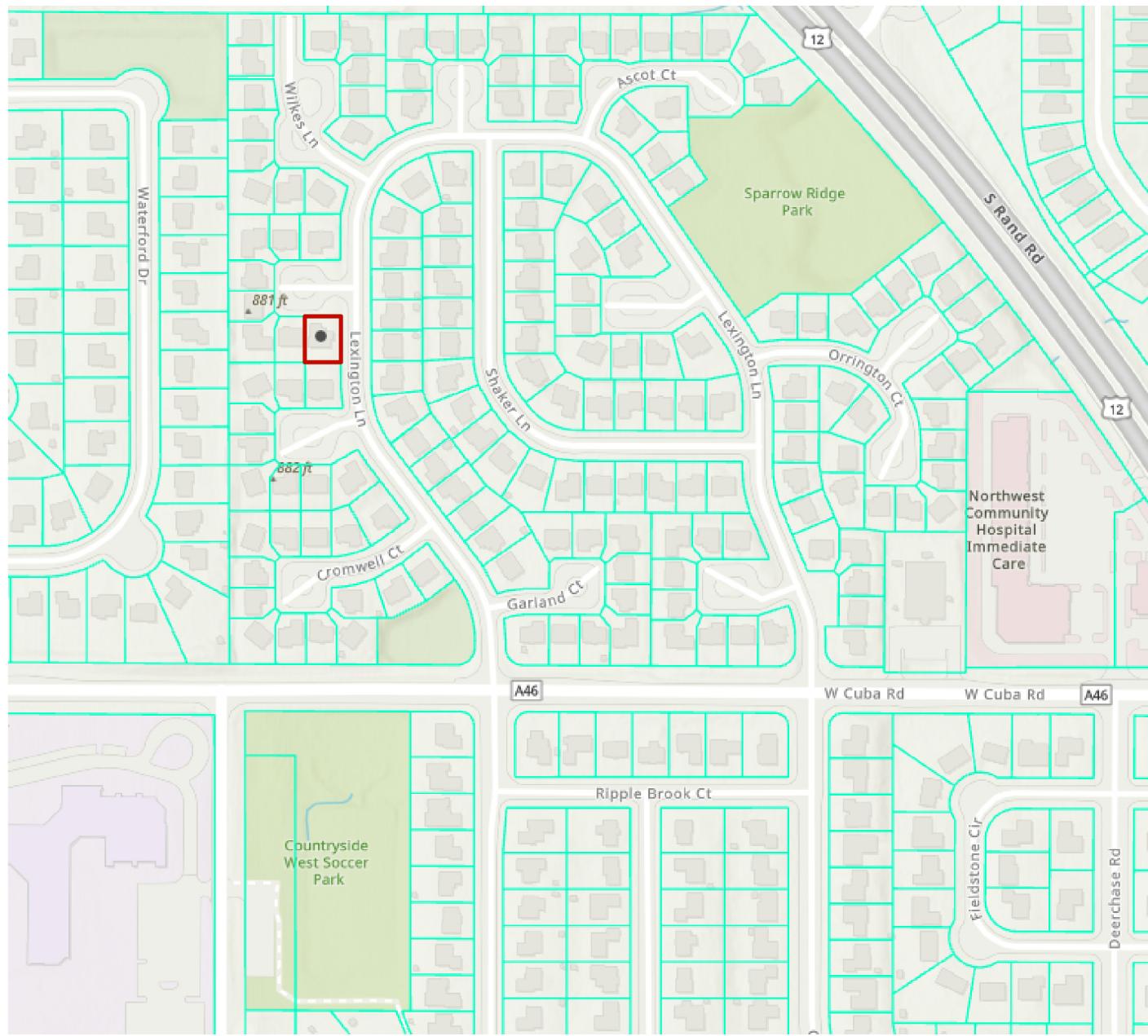
□ Subject Property

<span style="background-color: lightgreen; border: 1px solid black; display: inline-block; width: 10px; height: 10px;"></span>	Open Space
<span style="background-color: red; border: 1px solid black; display: inline-block; width: 10px; height: 10px;"></span>	B-3
<span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 10px; height: 10px;"></span>	R-5



# 474 Rush Court

Terrace Variation



N



Subject Property





# ZONING APPLICATION

Community Development Department

505 Telser Rd.

Lake Zurich, IL 60047

Phone: (847) 540-1696

Fax: (847) 540-1769

(Please Type or Print)

1. Address of Subject Property: 474 Rush Ct, Lake Zurich, IL 60047
2. Please attach complete legal description
3. Property Identification number(s): 1428110014
4. Owner of record is: Chad & Michelle Pratt Phone: 847.668.9211  
E-Mail chadpratt8@gmail.com Address: 474 Rush Ct, Lake Zurich, IL 60047
5. Applicant is (if different from owner): same as above Phone: \_\_\_\_\_  
E-Mail \_\_\_\_\_ Address: \_\_\_\_\_
6. Applicant's interest in the property (owner, agent, realtor, etc.): Owner
7. All existing uses and improvements on the property are: Residential
8. The proposed uses on the property are: replace existing deck with a paver patio
9. List any covenants, conditions, or restrictions concerning the use, type of improvements, setbacks, area, or height requirements placed on the Subject Property and now of record and the date of expiration of said restrictions: current rear lot line setbacks fall within the existing deck that is grandfathered in
10. Describe any contract or agreement of any nature relevant to the sale or disposal of the Subject Property: none
11. For applications requiring a public hearing, please attach a list which contains the PIN, owner, and owner's mailing address of all properties located within 250 feet (excluding all Public Right-of-Ways) of the Subject Property.

THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND CORRECT.

THE APPLICANT ALSO ACKNOWLEDGES IF THE CONSULTANT EXPENSES EXCEED THE INITIAL ESCROW DEPOSIT, THE APPLICANT WILL REIMBURSE THE ACCOUNT IMMEDIATELY.

Chad Pratt  
(Name of applicant)

Subscribed and sworn to before me this 19 day of July, 2024.

Lindsey Cesar  
(Notary Public)

Chad Pratt  
(Signature of applicant)

My Commission Expires 01/28/2027

Chad Pratt Michelle Pratt  
(Name of Owner, if different)

Chad Pratt Michelle Pratt  
(Signature of Owner, if different)

Subscribed and sworn to before me this 19 day of July, 2024.

Lindsey Cesar  
(Notary Public)

**"OFFICIAL SEAL"**  
**LINDSEY CESAR**  
Notary Public, State Of Illinois  
Commission No. 975790  
My Commission Expires 07/28/2027

07/28/2027

Please indicate what zoning relief your application requires. For assistance, please contact Staff.

**Zoning Code Map** Amendment to change zoning of Subject Property from \_\_\_\_\_ to \_\_\_\_\_

**Zoning Code Text** Amendment to amend the following section(s) of the Zoning Code \_\_\_\_\_

(See Section 18-103 of the Lake Zurich Zoning Code for specific standards. If a specific parcel is the subject of this amendment, then provide the additional information listed in Section 18-103C.)

Special Use Permit/Amendment for \_\_\_\_\_

(See Section 19-103 of the Lake Zurich Zoning Code for specific standards.)

Planned Unit Development/Major Adjustment/Amendment

(Planned Unit Developments are a distinct category of special use and are intended to create a more desirable environment than through strict application of the zoning and subdivision regulations. See Section 22-105 of the Lake Zurich Zoning Code for specific standards. Please list all the 'modifications' requested in the cover letter.)

Variation for \_\_\_\_\_ a paver patio to replace deck that is grandfathered in from current code guidelines for rear lot line setback

(See Section 17-104 of the Lake Zurich Zoning Code for specific standards. Please indicate what your specific hardships are in the cover letter.)

Modification to the Land Development Code (includes retaining walls more than 2 feet in height)

(See Section 10-6-18 of the Land Development Code for specific standards.)

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Preliminary Plat of Subdivision

Final Plat of Subdivision or Amendment to Plat of Subdivision

(See Sections 10-5-2 and 10-5-9 of the Land Development Code for specific standards.)

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Site Plan Approval/Major Adjustment/Amendment

(See Section 20-103 of the Lake Zurich Zoning Code for specific standards.)

Exterior Appearance Approval or Amendment

(See Section 21-103 of the Lake Zurich Zoning Code for specific standards.)

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## **APPLICATION TO ANNEX CERTAIN TERRITORY**

All land annexed to the Village is classified automatically after such annexation in the R-1\2 Single Family Residential District. The owner must file an application for a Zoning Map amendment if he or she desires a different zoning classification for the Subject Property.

Petition to Annex Certain Territory (Please complete attached petition)

Application to Annex Certain Territory

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## **COMPREHENSIVE PLAN APPLICATION**

Comprehensive Plan **Map** Amendment for \_\_\_\_\_

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Comprehensive Plan **Text** Amendment for \_\_\_\_\_

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To:  
Orlando Stratman  
Chairperson of the Planning & Zoning Commission  
Village of Lake Zurich  
505 Telser Rd, Lake Zurich, IL 60047

Regarding:  
Paver Patio Variance  
474 Rush Ct, Lake Zurich, IL 60047

I am seeking a paver patio variation for my single-family home located at 474 Rush Ct in Lake Zurich, IL. My requested variance would involve replacing the existing deck and the current zoning rules require a 20' setback from the rear lot line.

The current deck measures 16.5' in length from the house and ~15.5' from the rear lot line, which is non-compliant to the current code of 23' setback from the rear lot line. The deck is grandfathered in since it was built prior to 1993. I am respectfully requesting to install a paver patio of 29' width by 16.5' length to replace the existing deck. The patio proposal retains the same 16.5' length from the house and 15.5' from the rear lot line as the current deck.

My wife and I have been residing at this residence since September 2002 and strive to make our home aesthetically pleasing and safe for our family and friends to enjoy spending time outdoors. The back of the house is South facing in full sun, so having a paver patio will be better suited to endure the sun for many years over the alternative of having to refurbish and maintain the deck. The current deck also covers a basement window well (non-egress), whereas the patio will now expose that opening so it will be safer.

Our surrounding neighbors are in similar situations with narrow backyards and have patios and/or elevated 2nd story decks that do not meet current code. Not allowing outdoor living spaces of adequate size would be a detriment to the use of the space and value of our properties.

We have already spoken to our adjoining neighbors regarding the proposed project and they have assured us they do not have any concerns with the proposal.

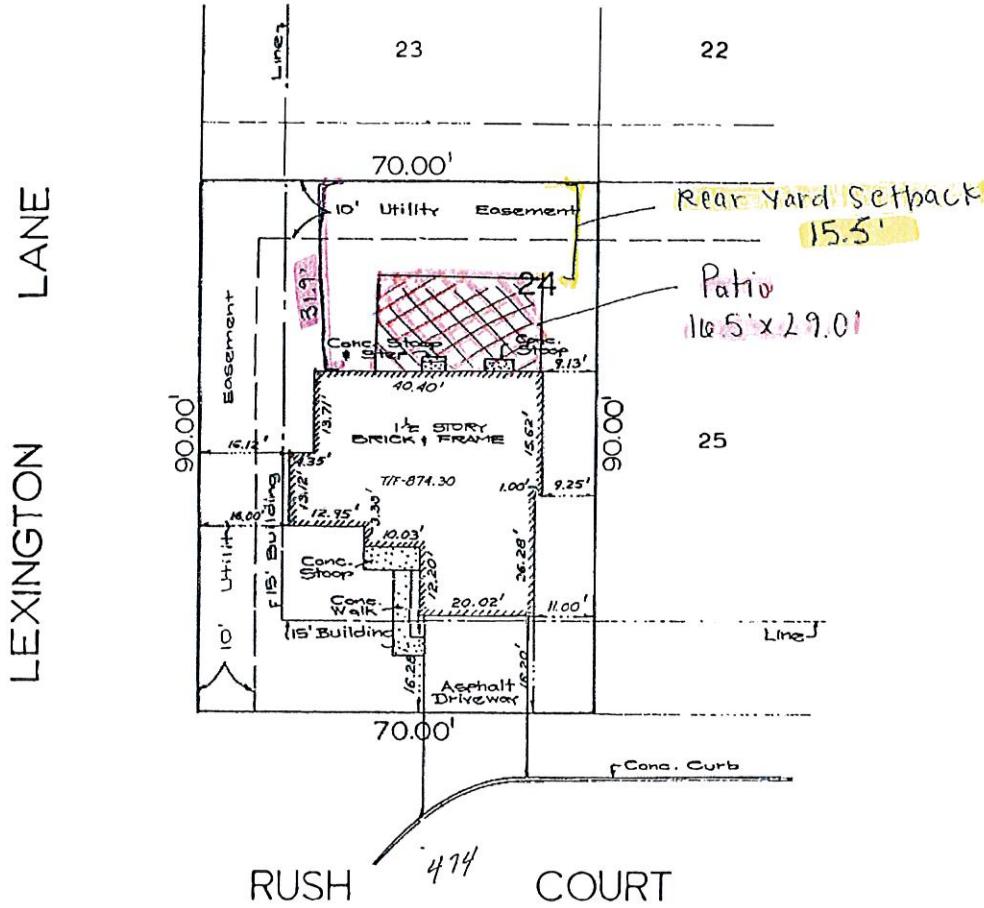
Thank you for your time concerning this variance.

Respectfully,  
Chad & Michelle Pratt  
m: 847.668.9211

LUDLOW AND ASSOCIATES, INC.  
 Construction and Land Surveyors  
 7225 Caldwell, Niles, Ill., 60648.  
 Tel. (312) 647-7757

# PLAT OF SURVEY

LOT 24 IN BLOCK 5 IN SPARROW RIDGE-UNIT 2 SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 14<sup>TH</sup> 1988 AS DOCUMENT NO. 2664163 IN THE VILLAGE OF LAKE ZURICH, LAKE COUNTY, ILLINOIS.



SCALE: 1" = 20'

Compare all points before  
 building by same and at  
 once report any difference.  
 Structure located APRIL 5<sup>TH</sup> 1988

Allen D. Ludlow  
 ILLINOIS REGISTERED LAND SURVEYOR NO 35 1954

UPDATED: July 16, 1988.

STATE OF ILLINOIS  
 COUNTY OF COOK } ss

I, ALLEN D. LUDLOW Do hereby Certify that  
 the above described property has been  
 surveyed under my supervision, in the manner  
 represented on the plat hereon drawn.

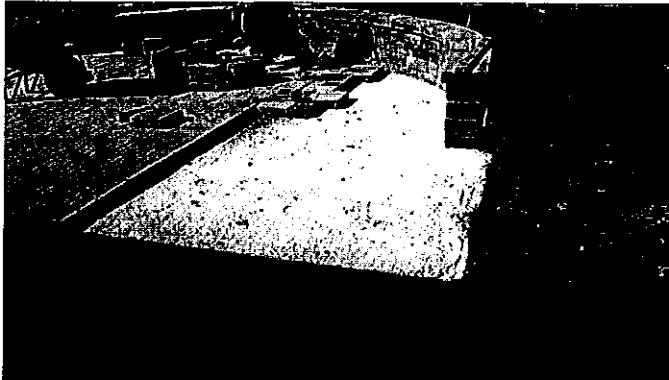
Dimensions are shown in feet and decimals  
 and are corrected to a temperature of  
 62° Fahrenheit.

Niles, Illinois, APRIL 5<sup>TH</sup> A.D.1988

Allen D. Ludlow  
 ILLINOIS REGISTERED LAND SURVEYOR NO 35 1954



*At the Heart of Community*



## Rules & Restrictions

\*Plans for patios shall include all measurements of the proposed patio showing all adjacent structures and equipment and setbacks.

\*Proper clearances shall be maintained around all Com Ed service pedestals to allow the removal of the lower front covers.

\*Concrete shall not hinder the natural flow of drainage away from foundations.

\*A gravel base is required.

\*All vegetation shall be removed before the gravel base is installed. Provide grading details if the removed soil is planned to be used on site.

\*All concrete patios shall be formed, with mesh installed and string lines in place at the time of inspection. Provide proper control joints.

\*Call J.U.L.I.E. (800-892-0123) before digging.

\*Provide code compliant graspable handrails for 3 or more risers.

## Additional Paver Brick Rules & Restrictions

\*Submit specifications indicating the amount of base and the amount of bedding. Patios require a minimum of 6-12" of base and 1-11/2" of bedding. Install the base in 4" lifts.

\*Edge restraints must be installed.

\*The base, bedding, and paver bricks shall be compacted.

# Patios

Residential  
Concrete & Brick

## Locations

\*Patios cannot be placed within 20 feet of any front, corner side, or rear lot line, and not within 5 feet of any interior side lot line.

\***Patios may not be placed in any easements, regardless if it complies with setbacks.**

## Costs

\$30.00 Plan Review Fee

\$45.00 Permit Fee

Additional fees for electric/plumbing, or engineering may apply depending on the project.

## Note:

\*Steps- Maximum riser height of a step is 7 3/4" and the minimum depth is 10".

\*Maximum riser difference allowed is 3/8".

\*If an inspector needs to return more than once for the same phase of any required inspection, a \$90.00 re-inspection fee will be required to be paid before the re-inspection takes place.

## Inspections

\*Inspections are scheduled for A.M. or P.M. Monday through Friday with 48 hours advance notice 847-540-1696 x8150. Call before 1:00 P.M. two days before you want your inspection. Same day re-inspections are not available.

\*A Pre-pour/base inspection is required before pouring concrete or installing brick.

\*Underground electric/plumbing inspections may be required, depending on project.

\*In some cases, a final inspection may be needed by the building and/or engineering department(s).

7/19/24  
Date

**AFFIDAVIT OF TITLE  
COVENANT AND WARRANTY**

---

**STATE OF Illinois**

)  
) SS.  
)

**COUNTY OF Lake**

The undersigned affiant, being first duly sworn, on oath says, and also covenants with and warrants to the grantee hereinafter named:

Chad A. Pratt and Michelle S. Pratt

That affiant has an interest in the premises described below or in the proceeds thereof or is the grantor in the deed dated August 30, 2002, to Chad A. Pratt and Michelle S. Pratt, grantee, conveying the following described premises:

See Legal Description Attached Hereto As Exhibit A

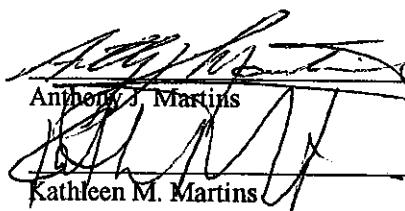
That no labor or material has been furnished for premises within the last four months, that is not fully paid for.

That since the title date of July 12, 2002, in the report on title issued by Republic Title Company, affiant has not done or suffered to be done anything that could in any way affect the title to premises, and no proceedings have been filed by or against affiant, nor has any judgment or decree been rendered against affiant, nor is there any judgment, note or other instrument that can result in a judgment or decree against affiant within five days from the date hereof.

That the parties, if any, in possession of premises are bona fide tenants only, and have paid promptly and in full their rent to date, and are renting from July to Aug, and not for any longer term, and have no other or further interest whatsoever in premises.

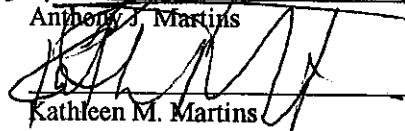
That all water taxes, except the current bill, have been paid, and that all the insurance policies assigned have been paid for.

That this instrument is made to induce, and in consideration of, the said grantee's consummation of the purchase of premises.

  
\_\_\_\_\_  
Anthony J. Martins

(SEAL)

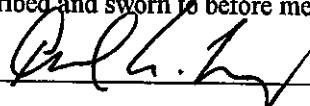
(SEAL)

  
\_\_\_\_\_  
Kathleen M. Martins

(SEAL)

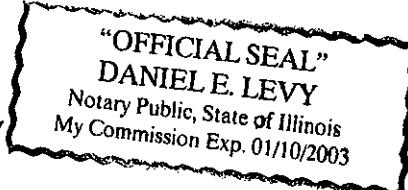
(SEAL)

Subscribed and sworn to before me this 30 day of August, 2002.

  
\_\_\_\_\_  
Notary Public



Chicago Title Insurance Company



Letter of Consent from Adjoining Neighbors

I, JAMES D HAFF, am the legal owner of the property located at 477 N NEWBERRY CT, LAKE ZURICH, IL, 60047, which

is an adjoining property to the petitioner's address: 474 Rush Ct, Lake Zurich, IL 60047. I am aware that a variation to install a paver patio to replace the existing deck that extends 16' in length from the house and I have reviewed the plans as presented to me by the property owners, Chad & Michelle Pratt, for the proposed paver patio project plan.

I have NO OBJECTION to granting my consent for their request to install a patio that is 12' from the rear lot line.

JAMES D HAFF

Neighbors Name

James D Haff

Neighbors Signature

Letter of Consent from Adjoining Neighbors

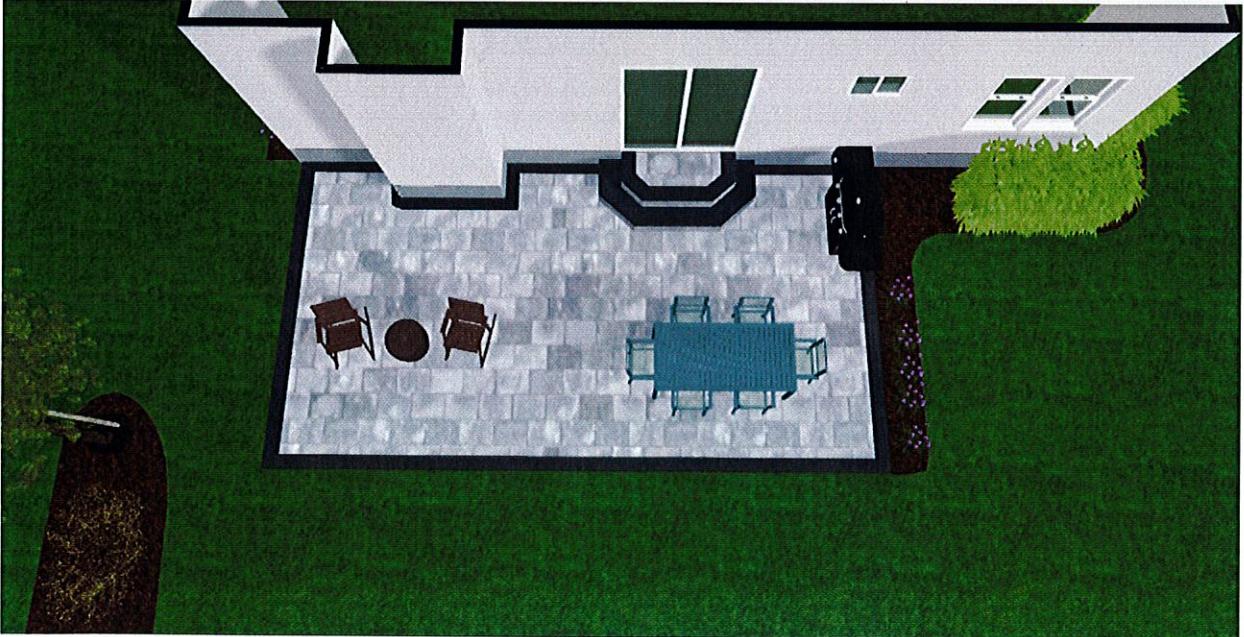
I, Josephine Teuber, am the legal owner of the property located at 468 Rush Ct, Lake Zurich 60047, which is an adjoining property to the petitioner's address: 474 Rush Ct, Lake Zurich, IL 60047. I am aware that a variation to install a paver patio to replace the existing deck that extends 16' in length from the house and I have reviewed the plans as presented to me by the property owners, Chad & Michelle Pratt, for the proposed paver patio project plan.

I have NO OBJECTION to granting my consent for their request to install a patio that is 12' from the rear lot line.

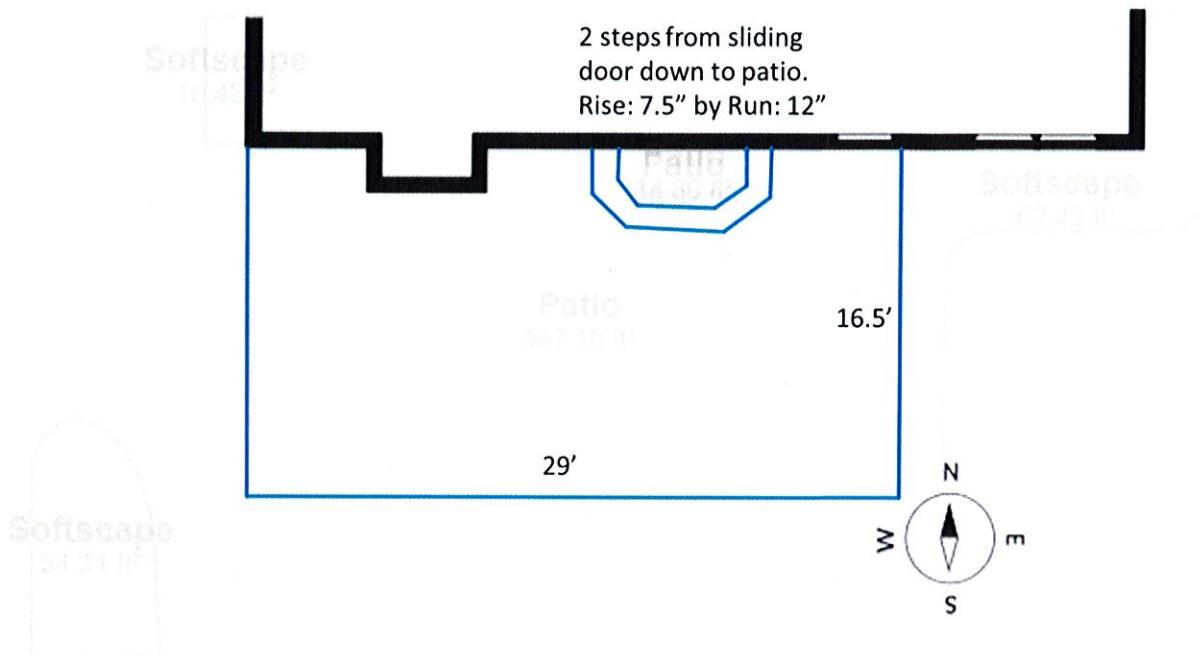
Josephine Teuber  
Neighbors Name

Josephine Teuber  
Neighbors Signature

Proposed paver patio renderings

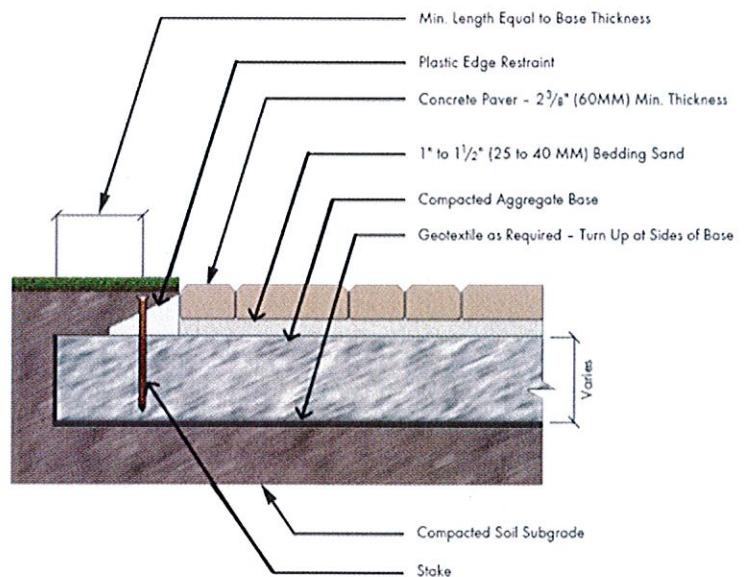


## Paver Patio Plans



### Paver Installation:

- Compacted Soil with geotextile underlayment
- Sub-base will consist of 3/4" crushed rock 6-8" in depth
- Leveling base of 3/8" crushed limestone 1.5" in depth
- Concrete Paver : 2 3/8" thickness, varying LxW to interlock pattern
- Use plastic edging with stakes to lock in pavers





*At the Heart of Community*

COMMUNITY DEVELOPMENT DEPARTMENT

505 Telser Road  
Lake Zurich, Illinois 60047

Phone (847) 540-1696  
Fax (847) 726-2182  
LakeZurich.org

**APPLICATION PZC 2024-13**  
**PZC Hearing Date: August 21, 2024**

**AGENDA ITEM 4.C**

**STAFF REPORT**

To: Chairperson Stratman and Members of the Planning & Zoning Commission

From: Sarosh Saher, Community Development Director

CC: Mary Meyer, Building Services Supervisor

Re: PZC 2024-13 Zoning Application for Amendments to the  
Lake Zurich Zoning Code

**SUBJECT**

The Village of Lake Zurich, (the “Applicant”) requests amendments to the text of the Lake Zurich Zoning Code for the purpose of clarifying and increasing the effectiveness of the code. These include miscellaneous and procedural amendments.

**GENERAL INFORMATION**

Requested Action: Text Amendments

Applicant: Village of Lake Zurich

Staff Coordinator: Sarosh Saher, Community Development Director

**LIST OF EXHIBITS**

- A. Development Application and Attachments
- B. Draft Ordinance Language

## BACKGROUND

The Village of Lake Zurich (the “Applicant”), is the Applicant for the proposed text amendment to the Lake Zurich Zoning Code. Staff offers the following additional information:

- **Courtesy Review.** Due to the miscellaneous nature of the amendments, no courtesy review of the Village Board was requested.
- **Proposed Amendments.** The following is a summary of the language that is proposed to be amended in the various sections of the Lake Zurich Zoning Code:
  1. *Section 9-19-6: Limitations on Special Use Permits:* Amend the time period for the validity of a Special Use Permit from two (2) years to one (1) year. This limitation will not apply to Planned Unit Developments (PUDs) on properties with 2 or more lots of record as they involve a greater complexity and final site and engineering plan approval before a permit and can be issued for construction. PUDs are a type of Special Use Permit.
  2. *Section 9-9-2: Temporary Uses:* Amend and update the definitions, time period and allowances for temporary uses.

## GENERAL FINDINGS

Staff of the Community Development Department offers the following findings on the amendments to the sections of the Code.

### 9-18-3 STANDARDS FOR AMENDMENTS

A. **Standards:** Amending the zoning map or the text of the zoning code is a matter committed to the sound legislative discretion of the board of trustees and is not dictated by any set standard. However, in determining whether a proposed amendment should be granted or denied, the board of trustees shall act in what it reasonably believes to be in the best interest of the general public, and may consider, among other factors, the following factors as they may be relevant to a particular application:

1. The consistency of the proposed amendment with the purposes of this zoning code.

**Staff Response: Standard met. The proposed are amendments to the text of the Lake Zurich Zoning Code. Staff has found the proposed amendments will enhance the purposes of the zoning code as they relate to the proper definition and interpretation of the codes.**

2. The community need for the proposed amendment and for the uses and development it would allow.

**Staff Response: Standard met. The amendments to the code are part of routine review and amendment to the codes to enhance their effectiveness.**

3. If a specific parcel of property is the subject of the proposed amendment, then the following factors:

**Staff Response: Not Applicable. The text amendments do not pertain to any specific property, rather they are applicable to all property within the community.**

## **RECOMMENDATION**

The recommendation of the Planning and Zoning Commission should be based on the standards included in the following Sections of the Lake Zurich Municipal Code:

- Section 9-18-3: Standards for Amendments

Based on the review of staff, the standards for approval have been met and therefore staff recommends that the Planning and Zoning Commission make these standards a part of the official record of the Application.

Staff of the Community Development Department therefore recommends the approval of Application PZC 2024-13. Staff further finds that the amended Lake Zurich Building and Zoning Codes:

1. Will enhance the effectiveness of the Lake Zurich Municipal Code;
2. Will provide the Village Board with additional clarity, flexibility and opportunity to properly regulate development in the community;
3. Will not negatively affect Lake Zurich's efforts to promote a positive image; and
4. Will not adversely affect the Village's ability in enforcing other regulations pertaining to Building, Zoning, Land Development or any other code or ordinance that protects the health, safety and welfare of the community.

Respectfully Submitted,

Sarosh Saher,  
Community Development Director

**LAKE ZURICH PLANNING & ZONING COMMISSION**  
**FINAL FINDINGS & RECOMMENDATIONS**

**MISCELLANEOUS AND PROCEDURAL AMENDMENTS TO THE**  
**LAKE ZURICH ZONING CODE**  
**August 21, 2024**

The Planning & Zoning Commission recommends approval of Application PZC 2024-13, and the Planning & Zoning Commission adopts the findings as contained within the Staff Report dated **August 21, 2024** for this Application for the following reasons:

1. Will enhance the effectiveness of the Lake Zurich Municipal Code;
2. Will provide the Village Board with additional clarity, flexibility and opportunity to properly regulate development in the community;
3. Will not negatively affect Lake Zurich's efforts to promote a positive image; and
4. Will not adversely affect the Village's ability in enforcing other regulations pertaining to Building, Zoning, Land Development or any other code or ordinance that protects the health, safety and welfare of the community.

Without any further additions, changes, modifications and/or approval conditions.  
 With the following additions, changes, modifications and/or approval conditions:

---

Planning & Zoning Commission Chairman



# ANNEXATION AND ZONING APPLICATION

Community Development Department

505 Telser Rd.

Lake Zurich, IL 60047

Phone: (847) 540-1696

Fax: (847) 540-1769

(Please Type or Print)

1. Address of Subject Property: N/A

2. Please attach complete legal description

3. Property Identification number(s): N/A

4. Owner of record is: N/A Phone: \_\_\_\_\_

E-Mail \_\_\_\_\_ Address: \_\_\_\_\_

5. Applicant is (if different from owner): Village of Lake Zurich Phone: 847-540-1696

E-Mail \_\_\_\_\_ Address: 70 E Main Street

6. Applicant's interest in the property (owner, agent, realtor, etc.): N/A

7. All existing uses and improvements on the property are: N/A

8. The proposed uses on the property are: N/A

9. List any covenants, conditions, or restrictions concerning the use, type of improvements, setbacks, area, or height requirements placed on the Subject Property and now of record and the date of expiration of said restrictions:

N/A

10. Describe any contract or agreement of any nature relevant to the sale or disposal of the Subject Property:

N/A

11. For applications requiring a public hearing, please attach a list which contains the PIN, owner, and owner's mailing address of all properties located within 250 feet (excluding all Public Right-of-Ways) of the Subject Property.

THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND CORRECT.

THE APPLICANT ALSO ACKNOWLEDGES IF THE CONSULTANT EXPENSES EXCEED THE INITIAL ESCROW DEPOSIT, THE APPLICANT WILL REIMBURSE THE ACCOUNT IMMEDIATELY.

Sarosh Saher  
(Name of applicant)

Subscribed and sworn to before me this 23<sup>rd</sup> day of July, 2024.

Nader A. Herles  
(Notary Public)



(Name of Owner, if different)

(Signature of Owner, if different)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

(Notary Public)

My Commission Expires \_\_\_\_\_

**Village of Lake Zurich  
Proposed Text Amendment**

Amendments to Title 9 of the Lake Zurich Municipal Code

Proposal: Various miscellaneous and procedural amendments to the text of the zoning code to enhance its effectiveness.

The Village of Lake Zurich (the “Applicant”), is the Applicant for the proposed text amendment to the Lake Zurich Zoning Code.

Submitted by:



Sarosh Saher, Community Development Director  
Village of Lake Zurich  
505 Telser Road  
Lake Zurich, IL 60047

Dated: July 23, 2024

**VILLAGE OF LAKE ZURICH  
NOTICE OF PUBLIC HEARING**

PUBLIC NOTICE IS HEREBY GIVEN to all persons that the Village of Lake Zurich Planning & Zoning Commission shall conduct a public hearing on **August 21, 2024**, at 7:00 P.M. in the Board Room of the Lake Zurich Village Hall, 70 East Main Street, Lake Zurich, Illinois, for the purpose of considering a zoning application filed by the Village requesting various miscellaneous amendments to the text of the Lake Zurich Zoning, Land Development, Building and Property Maintenance Codes as necessary. A copy of the application and the Zoning Code are on file with, and available for public inspection during regular Village business hours at the Lake Zurich Community Development Department.

At said public hearing, the Planning & Zoning Commission shall accept all testimony and evidence pertaining to said application and shall consider any and all possible zoning actions, including granting amendments to the text of the Lake Zurich Municipal Code that may be necessary or convenient to accomplish such actions. All interested persons are invited to attend and be heard.

Orlando Stratman

Chairperson, Planning & Zoning Commission

Published in Daily Herald July 27, 2024 (4617753)

### **Special Use Permits**

Amendment of the time period for the validity of a Special Use Permit from two (2) years to one (1) year. This limitation shall not apply to Planned Unit Developments (PUDs) on properties with 2 or more lots of record as they involve a greater complexity and final site and engineering plan approval before a permit and can be issued for construction. PUDs are a type of Special Use Permit.

#### **9-19-6: LIMITATIONS ON SPECIAL USE PERMITS:**

Subject to an extension of time granted by the village manager pursuant to subsection 9-12-1J of this title, no special use permit shall be valid for a period longer than one (1) year unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion or unless a certificate of zoning compliance, a temporary or final certificate of occupancy is issued and a use commenced within that period. Special use permits for Planned Unit Developments on properties associated with two or more lots of record shall be valid for a period no longer than two (2) years and subject to the same terms and provisions contained within this paragraph.

A. A special use permit shall be deemed to authorize only the particular use for which it was issued, and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of six (6) consecutive months or more. Except when otherwise provided in the ordinance granting a special use permit, a special use permit shall be deemed to relate to, and be for the benefit of, the use and lot in question rather than the owner or operator of such use or lot.

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**Temporary Uses:** Amend and update the definitions, time period and allowances for temporary uses as follows:

9-9-2: TEMPORARY USES:

A. Authorization: Subject to the limitations of this section, temporary uses as hereinafter specified are permitted in the zoning districts hereinafter specified. All temporary uses shall be approved by the village manager except as otherwise specifically provided in subsection D of this section. In this chapter, the reference to the village manager shall also include his/her designee.

A. Purpose. The purpose of this Section is to allow for short-term activities that would be compatible with adjacent and surrounding uses when conducted in compliance with this Chapter.

B. Definition: A “temporary use” is a land use activity that:

1. Is interim, non-permanent, and/or seasonal in nature, and not conducted for more than 180 consecutive days in duration.

2. Is established for a fixed period of time with the intent to discontinue such use upon the expiration of such time; and

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1

3. Does not involve the construction or alteration of any permanent structure.

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4. May not meet the normal development or land use standards of the applicable zoning district, but may otherwise be acceptable because of its temporary nature.

C. Village Approval Required; Special Standards For Approval And Revocation Of Approval:

1. Approval Required: Except as provided in subsection D1 of this section, no temporary use shall be established or maintained unless approved by the village manager or, if specifically required in the regulations of this section, by the board of trustees. Permitted temporary uses of public owned or leased buildings and property shall be exempt from this requirement.

2. Basis For Denial: Approval may be denied if the village manager determines that the applicant has failed to comply with the terms or conditions of any previously issued zoning certificate for a temporary use or that the permanent use of the subject property fails to comply in all respects with the provisions of all village ordinances regulating the development, use, and maintenance of the property. Approval shall be denied if the village manager determines that the public health, safety, or welfare would be, or may reasonably be expected to be, impaired by the issuance thereof.

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3. Conditions On Approval: Any approval may be conditioned on such special requirements as the village manager may determine are necessary to achieve the purposes of this zoning code and to protect the public health, safety, and welfare.

4. Revocation Of Approval: Any approval shall be revoked if any of the standards and conditions imposed pursuant to this section are violated.

D. Permitted Temporary Uses: Subject to the specific regulations and time limits that follow and to the other applicable regulations of the district in which the use is permitted, the following temporary uses and no others are permitted in the zoning districts herein specified:

1. House, apartment, garage, and yard sales in any residential district. Such use shall be limited to a period not to exceed three (3) consecutive days, and no more than two (2) such sales shall be conducted from the same residence in any twelve (12) month period.

2. Indoor and outdoor art, craft, rummage, and plant shows, exhibits, and sales. In any business, office, industrial, open space, or institutional building district; provided, however, that any such use shall require the specific review and approval of the village manager on the bases of the adequacy of the parcel size, parking provisions, and traffic access and the absence of undue adverse impact on other properties. Every such sale shall be limited to a period not to exceed three (3) days.

3. Farm product sales. In any business, office, or industrial district, but only in compliance with the following conditions:

a. Seller Produced Goods Only: No product may be exhibited or offered for sale except those products grown or produced by the person offering them for sale.

b. Number And Duration Of Sales Limited: Not more than one such farm product sale shall be conducted on the same premises in any seven (7) day period. Every such sale shall be limited to a period not to exceed eight (8) consecutive hours.

4. Seasonal Christmas tree and Halloween pumpkin sales. In any business or industrial district; and, when conducted by a not for-profit religious, philanthropic, or civic group or organization on property owned or leased by such group or organization, in any office, open space, or institutional building district; provided, however, any such use shall require the specific review and approval of the village manager on the bases of the adequacy of the parcel size, parking provisions, and traffic access and the absence of undue adverse impact on other properties. Such use shall be limited to a period not to exceed sixty (60) days. Display of Christmas trees or Halloween pumpkins need not comply with the yard requirements of this zoning code, except that no tree pumpkin patch shall be displayed within the sight triangle defined in subsection 4-2-1-3C of the Lake Zurich municipal code.

5. Contractors' offices and equipment sheds. In any district when accessory to a construction project. No such use shall contain any sleeping or cooking accommodations. Such use shall be limited to a period not to exceed the duration of the active construction phase of such project or one year, whichever is less, except with the prior approval of the village manager or by means of a development agreement executed by the developer/property owner and the village containing the terms and conditions governing the proposed or ongoing construction project.

6. Real estate offices, including model units. In any district when accessory to a new development. No such use shall contain any sleeping or cooking accommodations unless located in a model dwelling unit. Such use shall be limited to the period of the active selling or leasing of units or space in such development and to activities related to the development in which such office is located. No such office shall be used as the general office or headquarters of any firm.

7. Special Events including but not limited to amusement rides, arts and crafts exhibits, auctions, carnivals, circuses, concerts, fairs, farmer's markets, festivals, flea markets, food events and outdoor entertainment/sporting events. In any Deleted: Carnivals and circuses nonresidential district; provided, however, that any such use shall require the specific review and approval of the village manager on the bases of the adequacy of the parcel size, parking provisions, and traffic access and the absence of undue

adverse impact on other properties. Such use shall be limited to a period not to exceed ten (10) days. Such use need not comply with the yard requirements of this zoning code. Such use need not comply with the maximum height requirements of this zoning code. Any concessionaire responsible for the operation of any such events shall:

**Deleted:** carnival or circus

- a. Submit in advance of the event date a site layout displaying adequate ingress and egress routes for emergency vehicles and no dead-end aisles; and
- b. Provide fire extinguishers of a type and at site locations approved by the village manager; and
- c. Provide and service refuse containers in the number and locations required by the village manager; and
- d. Provide for a thorough cleanup of the site upon termination of the event; and
- e. Upon written notice from the village manager, terminate the use of any amusement device or structure found by the manager to pose a threat to the public safety.

8. Tents. In any district, in connection with any permitted, accessory, temporary, or special use.

No tent shall be allowed to remain for a period of more than four (4) days, unless expressly granted by the village manager for a total period of time not to exceed 180 days within a 12-month period on a single property. Further, unless **Deleted:** u waived in writing by the village manager, every tent shall comply with the bulk, space, and yard requirements applicable to accessory uses pursuant to subsection 9-9-1D of this chapter, and shall be installed in compliance with the provisions of the International Fire Code as adopted by the Village.

9. Sidewalk sales. In the B-1, B-2, and B-3 districts but only with respect to:

- a. The display and sale of plant materials during the period of March 1 through September 30 (but in no event for more than 90 successive days or more than 180 days during any calendar year); or
- b. An areawide sidewalk sale involving substantially all of the merchants on abutting, similarly zoned lots for a period not in excess of four (4) successive days; provided that the village manager determines that such sales will not unduly interfere with pedestrian traffic.

10. Outdoor display of retail merchandise. In the B-1, B-2, and B-3 districts, but only after the specific review and approval of the village manager on the bases of public safety, interference with vehicular or pedestrian traffic, and absence of undue adverse impacts. Unless waived by the village manager, such use shall not occur more than four (4) **Deleted:** s times in any calendar year, and no such use shall continue for a period in excess of thirty(30) successive days.

11. Civic uses of public property. In any district, any civic use of any public buildings or property when authorized by the governmental agency owning or controlling such property; provided that the village manager determines that such use will not result in any undue interference with vehicular or pedestrian traffic or any undue adverse effect on neighboring streets or property.

12. Others. In any district, any other temporary use consistent with the purposes of this zoning code and with the regulations of the district in which such use would be located; provided, however, that any such use shall require the specific prior approval of the board of trustees.

13. Temporary Storage Containers.

a. Definitions: "Temporary storage container" shall mean any temporary, transportable, movable or portable container or pod, which is delivered to and placed outdoors on private property for storage, loading and unloading of household or business items or other tangible personal property. A temporary storage container does not include any of the following:

- (1) A debris dumpster or dump trailer related to ongoing construction subject to permits issued under Titles 8, 9 and 10 of the Lake Zurich Municipal Code.
- (2) A temporary construction trailer, sales trailer or other trailer subject to a temporary use permit or Development/Annexation Agreement related to construction activity on the premises.
- (3) A temporary storage container that is located on property owned or used by a unit of local, state or federal government or a railroad.

b. General Limitations:

- (1) A temporary storage container shall not be utilized for the purpose of conducting business, selling merchandise or property, dwelling, living, habitation, camping, cooking, or recreation. It is the intent of this Chapter to expressly limit, except as provided herein, the placement and use of any temporary storage container as an accessory building or storage building on residentially and non-residentially zoned land.
- (2) A temporary storage container shall not be used for the storage of construction equipment, building materials, hazardous or flammable substances.
- (3) A temporary storage container shall not be placed on a non-paved surface, unimproved yard, roadway, alley, parkway, other publicly-owned right-of-way, sidewalk, easement for ingress and egress, access lane or aisle, fire access lane, public utility easement, location that obstructs traffic visibility, or other location not specifically identified as acceptable within the provisions of this Section.
- (4) A temporary storage container shall not be placed, maintained or stored in a manner that will or may interfere with Village operations including, but not limited to, snow removal, street cleaning or capital improvements.
- (5) The stacking or placement of any items on top of or around any temporary storage container shall be strictly prohibited.

c. Residential Zoning Districts:

- (1) Maximum Allowable Size: The maximum allowable size for a temporary storage container in a residential zoning district shall be sixteen feet (16') in length, eight feet (8') in width, nine feet (9') in height.
- (2) Placement of Residential Temporary Storage Containers:
  - (A) Residential temporary storage containers on single-family and two-family dwellings shall be placed on an asphalt or concrete driveway or other paved surface identified and approved by the village.
  - (B) Residential temporary storage containers on multiple-family dwellings may be placed upon a parking area or parking lot constructed of a concrete or asphalt surface, provided that the placement of such container does not impede the

flow of vehicular or pedestrian traffic, occupy off-street parking spaces required by the Code, or interfere with the normal operation of the permanent use on the property.

(3) Setbacks: Temporary storage containers shall be located at least five feet from any lot line, a public right-of-way and any public sidewalk.

(4) Maximum Number Of Containers: The maximum number of temporary storage containers permitted on any property at one time in a residential zoning district shall be one (1). No more than two Temporary Storage Container Permits shall be issued for the same property in any 12-monthperiod.

(5) Time Period: The maximum time period permitted for temporary storage containers shall be no more than sixty (60) days within a calendar yard. The zoning official shall have discretion to grant extensions to said time period.

(6) Where applicable, placement of temporary storage containers shall be approved by the homeowner's association. In no instance shall the requirements of the association be less restrictive than those contained within this section.

d. Nonresidential Zoning Districts:

(1) Maximum Allowable Size: The maximum allowable size for a temporary storage container in a nonresidential zoning district shall be fifty feet (50') in length, eight feet (8') in width, nine feet (9')in height.

(2) Placement Of Commercial Storage Containers: Commercial storage containers shall be placed at the side or the rear of the building and shall not be readily visible from a public street whenever possible. Containers shall not be stacked on top of each other, but only be placed directly upon the ground on which they are located.

(3) Setbacks: Temporary storage containers shall be located at least five feet from any lot line, a public right-of-way and any public sidewalk.

(4) Maximum Number Of Containers: The maximum number of temporary storage containers permitted on any property at one time in a commercial zoning district shall be two (2). No more than two Temporary Storage Container Permits shall be issued for the same property in any 12-monthperiod.

(5) Time Period: Temporary storage containers may be placed on the premises for the duration of the approved temporary use permit and shall be removed from the property upon expiration of such permit. The zoning official shall have the discretion to extend the time period for removal of temporary storage containers.

(6) Temporary Surplus Storage: Temporary surplus merchandise storage associated with a commercial retail enterprise shall be allowed to remain on the premises for the time period allowed in the temporary use permit, and their removal may be extended at the discretion of the zoning official.

(7) Where applicable, placement of temporary storage containers shall be approved by the property owner's association. In no instance shall the requirements of the association be less restrictive than those contained within this section.

E. Bulk, Space, And Yard Regulations: Except as expressly provided otherwise in subsection D of this section, every temporary use shall comply with the bulk, yard, and space regulations applicable in the district in which such temporary use is located.

F. Use Limitations:

1. General Limitations: Every temporary use shall comply with the limitations made applicable to specified temporary uses by subsection D of this section. No temporary use shall be permitted in any district if it would have a significant negative impact, including aesthetic impact, on any adjacent property or on the area, as a whole, in which it is located.
2. Hours And Days Of Operation: No temporary use shall be operated during any hours or on any days of the week except such as are designated by the village manager on the basis of the nature of the temporary use and the character of the surrounding area.
3. Public Safety: No temporary use shall be permitted that will result in an undue on site or off-site threat to public safety. No temporary use shall be operated except in accordance with such restrictions and conditions as the village manager may require in connection with such certification.
4. Traffic: No temporary use shall be permitted if additional vehicular traffic reasonably expected to be generated by such temporary use would have undue detrimental effects on surrounding streets and uses.
5. Conflicts With Other Temporary Uses: No temporary use shall be permitted if such use would conflict with another previously authorized temporary use.
6. Sign Limitations: Except as otherwise expressly authorized by the Lake Zurich municipal code, signs shall be located only on the same zoning lot as the temporary use, be limited to no more than one per street frontage, be set back at least six feet (6') from the front lot line, be no larger than six (6)square feet in area in any residential district or twenty (20) square feet in area in any other district, be of sturdy construction, and not be detrimental to the character of the area. Such signs shall not be erected sooner than twenty-four (24) hours before the commencement of the temporary use and shall be removed within twenty-four (24) hours following the termination of the temporary use.
7. Parking: Before approving any temporary use, the village manager or board of trustees, as applicable, shall make an assessment of the total number of off-street parking spaces that will be reasonably required in connection with the proposed temporary use, on the basis of the particular use, its intensity, and the availability of other parking facilities in the area, and shall approve such temporary use only if such off-street parking is provided. No temporary use shall be authorized that would, in the opinion of the manager, unreasonably reduce the amount of off-street parking spaces available for use in connection with permanent uses located on the zoning lot in question.
8. Restoration: All premises and property shall be restored to a clean and good condition and to a condition at least equal to the condition present immediately prior to establishment of the temporary use. All damage to any premises or property, whether public or private, shall be immediately repaired by the applicant.
9. Additional Conditions: Every temporary use shall, in addition, comply with, and the village manager may impose, such other conditions as may reasonably be necessary to achieve the purposes of this zoning code or to protect the public health, safety, and welfare.

[10. Extensions for Temporary Use Permits. The village manager may extend the time period for a Temporary Use to run beyond the original approval and in conformance with all remaining terms and provisions of this Section. In no event shall the permit for such Temporary Use exceed a total of 180 days in any 12-month period.](#)