

**To: Mayor and Liquor Commissioner  
City of Naperville  
Steve Chirico**

**From: Irene F Bahr, Attorney on Behalf of  
Star 7 Corporation dba Star 7 Liquor and Tobacco  
4067 S Route 59, Naperville, IL 60564**

**Date: November 20, 2018**

**MEMORANDUM REQUESTING**  
**RELIEF FROM SECTION S13.0 OF ANNEXATION AGREEMENT**  
**SADDLEWOOD COMMERCIAL COMPLEX**

Pursuant to a discussion with the above Attorney for Star 7, and Jennifer Lutzke of the City of Naperville Legal Department, and at the request of Ms. Lutzke for a memorandum of position, this Memorandum is submitted.

For the following reasons, Star 7 Corporation (hereinafter Star 7), believes

- (A.) That provision S13.0 of said Annexation Agreement, is void and unenforceable as to the authority of Star 7 to sell alcohol at its above location, based on the Illinois Liquor Control Act provisions and requirements as to status of Annexed Territories, therein and on the Illinois Municipal Code; and/or
- (B.) That based on Section 3-3-6, of the Naperville Liquor and Tobacco Code, a variance to the Liquor License Requirements for a Class D license should be granted as allowed by said provision and the equities of the situation; and/or
- (C.) That the City of Naperville's Municipal Code be amended to allow the issuance of a liquor license in a commercial center of the size of the subject property as provided for/allowed in Section S13.0 of said Annexation agreement. A suggested draft ordinance narrowly tailored and not precedent setting should be adopted and is attached as Exhibit A.

**A. The provision S13.0 of said Annexation Agreement, is**  
**Void and Unenforceable as to the authority of Star 7 to sell alcohol**  
**at its above location, based on the Illinois Liquor Control Act provisions and**  
**requirements as to status of Annexed Territories**

Section S13.0 was entered into on December 13, 2006, by the City of Naperville and Saddlewood Naperville LLC, owner of the property on which Star 7 is located. The Mayor was authorized by the City Council to execute the Annexation Agreement. See Ex. A for the Agreement and Authorization Ordinance. This Annexation Agreement purports to have the authority to make the location dry after a period of 13 years, without a referendum.

Star 7 was not a party to this agreement and was not made a party to this agreement. Prior to the Annexation of this property, Star 7 held a liquor license from Will County to sell packaged goods at retail in this exact location.

The rights and protections of Star 7 as a retail purveyor of alcohol are established by the Illinois Liquor Control Act. Under those provisions, when an area that is wet and has a liquor license, as is the case here, is annexed it cannot be made "dry", without and until a referendum by the voters of all of Naperville, would make it dry. There was no such referendum. The City cannot change the status by a private contract as stated in Anderson v Nick.

***The provisions of the 1934 act are therefore decisive that the sale of intoxicating liquor in cities, villages and incorporated towns cannot, in default of authority derived from an election called and held subsequent to the passage of the 1934 act and prior to the passage of the municipal ordinance, be prohibited by the initiatory act of the city council or president and board of trustees of such city, village or incorporated town. Anderson v. Nick, 401 ILL. 508; 84 N.E. 2d 395, 398 (Illinois Supreme Court, 1949).***

The relevant provisions of the Liquor Control Act in the instant matter are:

(235 CS 5/9-1) (from Ch. 43, par. 166)

....

"Annexed area" means a territory which has attached to and become a part of a different political subdivision or precinct. The term shall be an appropriate designation only until the area to which it attaches holds a referendum hereunder.

....

(235 ILCS 5/9-8) (from Ch. 43, par. 173)

***Sec. 9-8. The status of all the territory within any political subdivision or precinct, relative to the sale at retail of alcoholic liquor, or the sale at retail of alcoholic liquor other than beer containing not more than 4% of alcohol by weight, or the sale at retail of alcoholic liquor containing more than 4% of alcohol by weight except in the original package and not for consumption on the premises, as the case may be, shall remain the same, notwithstanding any change which may be made in the limits of any such political subdivision or precinct until the voters thereof have changed such status as to annexed or disconnected areas under the provisions of Section 9-9 of this Article, or until the voters have changed such status for areas other than annexed or disconnected areas under the provisions of Section 9-2 or Section 9-10.***

(Source: P.A. 84-716.)

....

*(235 ILCS 5/9-9) (from Ch. 43, par. 173.1)*

***Sec. 9-9. The status of an annexed area or disconnected area, relative to the sale at retail of alcoholic liquor pursuant to Section 9-8, shall remain the same until changed in accordance with the following provisions:***

(a) Upon the filing, in the office of the clerk of the political subdivision or precinct of which the annexed area or disconnected area becomes a part, of a petition directed to such clerk, containing the signatures of not less than 25% of the legal voters residing in such annexed or disconnected area, to submit to the voters thereof the proposition to continue its current status, the clerk shall certify that proposition to the proper election officials, who shall submit the proposition to the voters of the annexed or disconnected area at an election in accordance with the general election law. The petition shall be supported by an affidavit made by one or more of the petitioners and stating that the signatures represent not less than 25% of the legal voters residing in the annexed or disconnected area. The provisions in Sections 9-1, 9-2, 9-4, 9-5, 9-6 and 9-7 shall apply except where they conflict with this Section, in which event the provisions of this Section shall control. If a majority of the voters voting upon such proposition in any such annexed or disconnected area vote "NO", the current status shall cease in that area; or

(b) Upon the filing in the office of the clerk of the political subdivision of which the annexed area or disconnected area becomes a part of a petition directed to such clerk containing the signatures of not less than 66 2/3% of all the legal voters residing in the annexed or disconnected area to change the status in that annexed or disconnected area relative to the sale at retail of alcoholic liquor by either:

- (1) discontinuing any existing prohibition, or
- (2) prohibiting the sale at retail of alcoholic liquor, or
- (3) prohibiting the sale at retail of alcoholic liquor other than beer containing not more than 4% of alcohol by weight, or
- (4) prohibiting the sale at retail of alcoholic liquor containing more than 4% of alcohol by weight except in the original package and not for consumption on the premises, the requirements for an election in subsection (a) above shall be waived.

The requirement of Section 9-4 regarding verification of a petition shall apply to this petition. Thirty days following the filing of such petition, the requested status, as specified in such petition, shall become effective in the annexed or disconnected area, unless within the 30 day period, written verified objections by a voter residing in the annexed or disconnected area are filed with the clerk. The objections shall be limited to an attack upon the validity of the petition and its execution. In such event, the clerk shall forthwith submit to the Circuit Court for the county in which the area is located, the petition and objections thereto. A hearing shall be held thereon within 30 days after the petition and objections are filed with the court. If the court finds that the petition is valid and properly executed, the court shall enter an order finding that the petition is valid. Thereupon, the requested status shall be effective. If the court finds that the petition is not valid, the petition shall be dismissed.

...

*(235 ILCS 5/9-18) (From Ch.43, par 181)*

*Sec. 9-18. Nothing in this Article shall be construed to forbid or present the sale of alcoholic liquor according to the terms of a license theretofore regularly issued in good faith according to law until after the final disposition of the case wherein an election result, indicating that the sale of alcoholic liquor is prohibited, is contested....*

Additionally, the Illinois Municipal Code provides that an annexed territory must remain as before the annexation until a referendum is held.

*65 ILCS 5/7-1-44) (from Ch. 24, par. 7-1-44)*

*Sec. 7-1-44. All valid ordinances or resolutions of, and all valid decisions determined through a referendum of the voters in, the whole or a part of any municipality which is annexed in whole or part to another municipality, regulating or prohibiting the sale of alcoholic liquor shall remain valid, notwithstanding the annexation, until validly changed by a compliance with "An Act relating to alcoholic liquors," approved January 31, 1934, as heretofore and hereafter amended. However, the local liquor control commission and commissioner of the annexing municipality shall have jurisdiction over the annexed territory. (Source: Laws 1961, p. 576.)*

**B. It is Within the Power and Equities of the Naperville Liquor Control Commissioner To Grant a Variance to the Current Class D License Held by Star 7, Without Any Modification to the Ordinance or Setting any Precedent.**

The Annexation Agreement is for a term of 20 years, Ordinance 06-138, passed June 20, 2006. (Ex. A, Item G19.1 Annexation Agreement). The Ordinance and Agreement were Recorded with the Will County Recorder on December 15, 2006. For a reason not known to Star 7, the terms of item S13.1 purport to require termination of the lease and privilege to operate a liquor store no later than April 30, 2019 and is not coterminous with the Annexation Agreement.

At the time that the Agreement was formulated, the Naperville liquor code prohibited the issuance of a liquor license to a premises located in a shopping center unless the center was 60,000 square feet of gross building floor area, but provided that

*The prohibitions set forth in this subsection [i.e. center of 60,000] shall not apply to renewal of existing liquor licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued. Section 3-3-19-1: 5.5.2 (see Memo P. 2, Dated November 15, 2005 from Pat Lord, Senior Assistant City Attorney, to George Pradel, Liquor Commissioner provided to Star 7 through a FOIA response from City of Naperville, hereinafter Lord memo.)*

Based upon this language, the City's legal opinion provided in said memo was that the Liquor Commissioner could "grandfather" Star 7's premises so that ***"... a liquor establishment may continue to operate there even though it is located on less than 60,000 square feet of gross floor area ...." Lord Memo P. 2 & 3.***

It is clear from the history at the time this annexation was entered into, that any existing license would be renewed, even if not in a center of 60,000 sq. feet and was "grandfathered" by the terms of the ordinance, not by the graces of the then liquor commissioner. The Liquor Commissioner had no authority to impose an end to the renewal privilege contrary to the law existing at the time.

Although paragraph 3-3-19-1:5.5.2, has been replaced in the current code, new provision 3-3-6, provides the power to the Liquor Commissioner to allow a variance to **any** liquor license applicant or current liquor license holder based on certain factors. Thus, instead of limiting such a variance to Class D license holders, the Code more broadly now provides that a variance to any liquor license holder is within the power of the Liquor Commissioner to give.

The Standards to be applied by the Liquor Commissioner in considering the request for a variance are set forth in the 3-3-6, as follows:

- 1. Any liquor license applicant or current liquor license holder may submit an application requesting approval of a variance to the following sections of this Title: requirements of premises or additional liquor license restrictions.***

Star 7 is a current liquor license holder with a license issued by the City of Naperville and is requesting a variance to the requirements of the Class D license.

- 2. Applications for said variances shall be made to the local Liquor and Tobacco Control Commissioner in writing, signed by the applicant, verified by oath or affidavit and shall contain statements and information and be in the form provided.***

This submission is signed by the Attorney for Star 7, and verified under oath on behalf of Star 7. If an additional form is required, please supply that for filing.

- 3. Upon filing a variance application, the petitioner shall pay a four hundred dollar (\$400.00) fee for processing the application.***

Star 7 will pay this fee when the City has advised. Since the City legal representative requested this memo in order that Star 7 could present its position as to why it feels it is entitled to continue to be licensed by the city, it is premature to pay this fee at this time.

***4. Upon determination that the variance application is complete, the Liquor Commission shall review said application and render a recommendation which shall be subject to final review by the City Council. Any recommendation by the Liquor Commission and any decision by the City Council shall be predicated on evidence and finding that:***

***4.1. The variance is in harmony with the general purpose and intent of the Liquor Control Ordinance and the variance is not precedent setting;***

***4.2. Strict enforcement of the Liquor Control Ordinances would result in practical difficulties due to special and/or unusual circumstances surrounding the property and circumstances substantially outside the petitioner's control; and***

***4.3. The variance, if granted, will not alter the essential character of the liquor establishment or underlying liquor license requirements and will not be a substantial detriment to adjacent property.***

The variance is in harmony with the general purpose and intent of the liquor Control Ordinance and is not precedent setting. This licensee is in a very unique position. This business is located on a piece of property originally located in unincorporated Will County, and fully licensed to sell alcohol at retail. At that time, the owners of the property were unwilling to agree to an annexation if it would put its tenant, Star 7, in a position where it would be illegal for them to continue operating as a liquor store. See Lord Memo, page 1, Exhibit B. The only issue was the size of the shopping center. Today, that remains the only issue. Star 7 has operated as a package goods liquor store at this same location, first in Will County, and since 2006 in the City of Naperville. It has had no liquor violations or discipline. It has passed all checks to make sure it is in compliance. The variance should be specific as applicable to establishments annexed into the City of Naperville from Unincorporated Will County before 2007, held a liquor license from Will County allowing the sale of packaged goods of alcohol, and is located in a shopping center of at least 40,000 square feet of gross building floor area (per Lord Memo, P.2., Ex. B). The variance should be effective as to any purchaser of the stock and assets of Star 7 Corporation and any subsequent purchasers of same, as provided in S13.1 of the Annexation Agreement, and as previously allowed in Section 3-3-19-1: 5.5.2 (quoted in Lord memo above).

The Annexation Agreement stated that if the Municipal Code was amended to allow the issuance of a license for a commercial Center of the size of this property, the instant use could continue. The Municipal Code has been amended since this original agreement to allow discretion in the Liquor Commission, with review by the Liquor Commission and the City Council, to grant variances. In passing this change to the Ordinance, the City Council recognized that unique circumstances require unique solutions that can be tailored to address inequities, but limit them to those unique situations. The equities of this particular and limited situation should come within the purposes for which a variance should and were intended to be granted.

There was a determination previously, as evidenced by the issuance of a license to Star 7 for 13 years, that under these limited circumstances, granting a license to Star 7 would not be precedent setting.

Strict enforcement of the Liquor Control Ordinances would result in practical difficulties due to special and/or unusual circumstances surrounding the property and circumstances substantially outside the petitioner's control. Star 7 was never a party to the Annexation Agreement which was made between the City of Naperville and Saddlewood Naperville LLC. Star 7 was not represented in those negotiations. No notice specifically to Star 7 was provided regarding this agreement or its terms. The Liquor Commissioner at the time deemed it proper and appropriate to permit an exception under 5.2 of the Ordinance to allow Star 7 to continue to operate. Star 7 currently has a lease with the Landlord for its location which began September 1, 2003 (prior to the annexation) and which was amended twice, once in 2009, and again in 2014. That Second amendment to the lease runs from May 1, 2014 to April 30, 2019, with a Lease Renewal Option from May 1, 2019 through April 30, 2024.

Additionally, as outlined in Item A of this memo above, because a City-Wide referendum to change the status of this location from wet to dry would be a burden on the City and its citizens, this limited situation presents special and unusual circumstances surrounding the property. The Annexation was totally outside of the control of Star 7.

The variance, if granted, will not alter the essential character of the liquor establishment or underlying liquor license requirements and will not be a substantial detriment to adjacent property. This business has been operating in the same manner, as a package liquor store, since 2003 (before the Annexation). It continued to operate under a Class D license since the

Annexation in 2006. The character of the business has not and will not change. It has had no adverse effect on the adjacent properties. In the Lord Memo, Ex. B, it was stated that the Liquor Commissioner reviewed the information and a background check of Star 7. The City continues to examine the background of all renewal applicants and nothing has been found to disqualify Star 7 from continuing to hold their liquor license. See Lord Memo page 2, Ex. B. Star 7 would still have to comply with all other conditions of the Class D license, as it has done and continues to do. The only exception would be as to the size of the shopping center.

- 5. The variance, if granted, shall be subject to the transferability restrictions established in Section 3-3-5 of this Title. Upon suspension, revocation, or nonrenewal of a liquor license, said variance shall also become null and void.***

The transferability restrictions of section 3-3-5 provide in relevant part:

***Any sale, transfer, or assignment of more than fifty percent (50%) of the shares of a corporation shall terminate said liquor license for the purpose of payment of a fee for a first and initial liquor license. Sec 3-3-5(6) Emphasis added.***

This provision does not affect the ability to sell the stock or assets, only whether an additional fee would be due. As previously stated, the variance should be effective as to any purchaser of the stock and assets of Star 7 Corporation and any subsequent purchasers of same, as provided in S13.1 of the Annexation Agreement so that it would not become void unless the license is revoked.

***C. Neither Points A or B above Require an Amendment to the Naperville Liquor Ordinance, However, a Code Amendment Could also be an Option to Allow Star 7 to Continue to Operate and Hold a Naperville Liquor License.***

In addition to following the legal requirements in the Illinois Liquor Control Act regarding treatment of existing licensees when their location is annexed into a municipality, or creating a variance as allowed by the Naperville Code of Ordinances, there is another way to resolve this matter. That would be to create a narrow amendment to the Class D license description or the creation of a Class D1 license category as a matter of equity.



Attached as Exhibit C, is a suggested amendment to the current Naperville Liquor Ordinance which would treat Star 7 fairly, and prevent opening wide the current Class D Package license. This could be modified to create an entirely new Class D-1 license if the City preferred. The 40,000 sq. ft. requirement should be modified to fit this shopping center which the landlord tells Star is 40,590. The Lord memo indicates that the shopping center is 44,000 if you include all buildings in the center. The CVS at Ogden and Naperville Roads is, I believe, included with the main buildings so that it meets the square footage requirement and would not standing on its own meet the 60,000 plus square foot requirement, on information and belief.

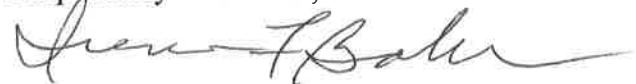
### Conclusion

It is well established, as stated in Goode v Thomas, 334 N.E.2d 300, 302, (3d dist., 1975), that

*... although a liquor license is a privilege, not a right, a person entitled to sell liquor is entitled to fair treatment when public officers, grant, deny, suspend or revoke liquor licenses. Shoot v. Illinois Liquor Control, 30 Ill.2d 570, 198 N.E.2d 497 (1964). Good cause must be shown for denial of a license, and, where the evidence establishes that an officer arbitrarily abused his discretion in failing to issue a license, mandamus will issue compelling him to grant the license. Stevens v. County of Lake, 24 Ill.App.3d 51, 320 N.E.2d 263 (2d Dist., 1974); McCray v. Daley, 133 Ill.App.2d 67, 272 N.E.2d 815 (1st Dist., 1971); Daley v. License Appeal Commission, 63 Ill.App.2d 43, 211 N.E.2d 573 (1st Dist., 1965).*

Absent a City wide referendum conducted in accordance with the terms of the Illinois Liquor Control Act, this property remains wet and cannot be made dry by the Annexation Agreement or Ordinance. The licensee retains the right to continue to sell packaged alcohol, as it has since 2006. A variance based on the factors laid out in the Naperville Liquor Ordinance can be granted which would not be precedent setting or allow other businesses to avail themselves of this exception as the conditions are narrow and confining. An amendment to the Class D license can also make clear that these conditions for a variance are incorporated in the Ordinance itself, rather than requiring a variance.

Respectfully Submitted,



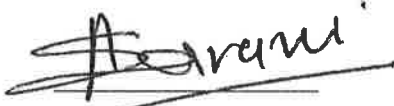
Irene F Bahr  
Attorney for Star 7 Corporation

In The Matter of

Star 7 Corporation dba Star 7 Liquor and Tobacco  
4067 S Route 59, Naperville, IL 60564

Affidavit in Support of Memo  
Memorandum Requesting  
Relief from Section S13.0 Of Annexation Agreement  
Saddlewood Commercial Complex

Now comes the undersigned, on behalf of the Licensee corporation and does swear/affirm that the statements contained in the attached Memorandum are true and correct to the best of his knowledge.

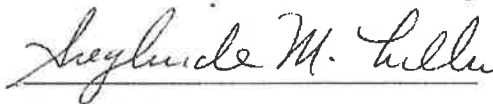


AMIRAS SAVANI

President of Star-7 Corporation

Subscribed and Sworn/Affirmed to before me

This 16 Day of November, 2018



Notary Public



A

P.I.N. 01-16-205-005  
01-16-205-006  
01-16-205-007

**PREPARED BY:**

CITY OF NAPERVILLE  
LEGAL DEPARTMENT  
630/420-4170

**RETURN TO:**

CITY OF NAPERVILLE  
CITY CLERK'S OFFICE  
P.O. BOX 3020  
400 SOUTH EAGLE STREET  
NAPERVILLE, IL 60566-7020

**Laurie McPhillips 40P** R 2006208014  
Will County Recorder Page 1 of 40

PC2 Date 12/15/2006 Time 10 29.11  
Recording Fees 60 75  
IL Rental Hsng Support Prog. 0 00

P C Case 1540

**ORDINANCE NO. 06 - 138**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN  
ANNEXATION AGREEMENT FOR THE PROPERTY  
LOCATED AT 10300-10350 STATE ROUTE 59  
COMMONLY KNOWN AS SADDLEWOOD COMMERCIAL COMPLEX**

**WHEREAS**, Saddlewood Naperville, LLC has petitioned the City of Naperville for annexation and zoning of the real property located at 10300-10350 State Route 59, commonly known as Saddlewood Commercial Complex, described in Exhibit A and depicted on Exhibit B ("Subject Property"), and

**WHEREAS**, the owner of the Subject Property is ready, willing, and able to enter into an annexation agreement and to perform the obligations as required, and

**WHEREAS**, the City Council of the City of Naperville has determined that it is in the best interest of the City of Naperville to enter into the Annexation Agreement attached as Exhibit C, and

**WHEREAS**, the petitioner and the City have fully complied with the statutory procedures for the approval and execution of the Annexation Agreement provided in state and local law

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:**

**SECTION 1:** The Mayor is authorized and directed to execute and the City Clerk is authorized and directed to attest the Annexation Agreement

**SECTION 2:** The City Clerk is authorized and directed to record a certified copy of the Annexation Agreement in the office of the Will County Recorder after its execution and attachment of all appropriate exhibits

**SECTION 3** This Ordinance shall be in full force and effect upon its passage and approval

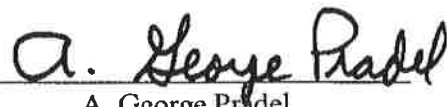
PASSED this 20<sup>th</sup> day of June, 2006

AYES            FURSTENAU, KRAUSE, SENGER, WEHRLI, PRADEL, BOYAJIAN,  
ELLINGSON

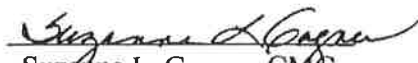
NAYS            NONE

ABSENT        MILLER, ROSANOVA

APPROVED this 21<sup>st</sup> day of June, 2006

  
A. George Pradel  
Mayor

ATTEST

  
Suzanne L. Gagner, CMC  
City Clerk

R2006 - 208014

## SADDLEWOOD COMMERCIAL COMPLEX

### LEGAL DESCRIPTION

LOTS 3, 4 AND 5 IN OHTI SUBDIVISION, A RESUBDIVISION OF LOTS 132 AND 133, ANDERMANN ACRES UNIT NO FIVE, A SUBDIVISION OF PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1987 AS DOCUMENT NO R87-36381, EXCEPTING THEREFROM THAT PART THEREOF DEDICATED TO THE STATE OF ILLINOIS BY DOCUMENT R94-92869, (SAID EXCEPTED PARCEL ALSO BEING DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3, THENCE ON AN ASSUMED BEARING OF SOUTH 01 DEGREES 53 MINUTES 06 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 30 00 FEET, THENCE NORTH 46 DEGREES 39 MINUTES 35 SECONDS WEST 42.59 FEET TO THE NORTH LINE OF SAID LOT 3, THENCE NORTH 88 DEGREES 33 MINUTES 56 SECONDS EAST ALONG SAID NORTH LINE 30 00 FEET TO THE POINT OF BEGINNING,) ALL IN WILL COUNTY, ILLINOIS.

AND

THAT PART OF LOT 132 DESCRIBED BY BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 132 AND RUNNING THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ON A CURVE HAVING A RADIUS OF 60 FEET AN ARC DISTANCE OF 118.15 FEET (THE LONG CHORD OF SAID CURVE BEING THE NORTH LINE OF ALICE LANE, AS DEDICATED IN SAID PLAT OF ANDERMANN ACRES, UNIT FIVE, SAID LONG CHORD MEASURING 99 97 FEET) THE CENTER OF THE ABOVE DESCRIBED CURVES BEING A POINT 0.19 FEET SOUTH OF THE CENTER LINE OF SAID ALICE LANE AND 50 11 FEET WEST OF THE POINT OF INTERSECTION OF SAID CENTER LINE WITH THE EXTENSION OF THE EAST LINES OF SAID LOTS 131 AND 132, ALL IN ANDERMANN ACRES, UNIT FIVE, A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 9, 1973 AS DOCUMENT R73-24098, IN WILL COUNTY, ILLINOIS.

Permanent Index Numbers: 01-16-205-005-0000, 01-16-205-006-0000, and 01-16-205-007-0000

Common Street Address. 10300-10350 State Route 59 and 10331 Helene Avenue, Naperville, Illinois

EXHIBIT A

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R2006 - 208014

Created 9-8-05  
Last revised 6-1-06

**PROPERTY ADDRESS:**

10300 - 10350 Illinois Rte 59  
10331 Helene Avenue

**P.I.N.**

01-16-205-005  
01-16-205-006  
01-16-205-007

**RETURN TO:**

CITY Clerk  
Post Office Box 3020  
Naperville, IL 60566-7020

**ANNEXATION AGREEMENT**  
**SADDLEWOOD COMMERCIAL COMPLEX**

THIS ANNEXATION AGREEMENT is entered into this 13<sup>th</sup> day of December, 2006, between the CITY OF NAPERVILLE, an Illinois municipal corporation, with offices at 400 South Eagle Street, Naperville, Illinois 60540, (hereinafter referred to as the "CITY") and SADDLEWOOD NAPERVILLE LLC, with offices at 1564 West Algonquin Road, Hoffman Estates, Illinois 60195 (hereinafter referred to as the "OWNER", "DEVELOPER" or "OWNER and DEVELOPER")

**RECITALS**

WHEREAS, the OWNER is the owner of record of all of the real property described in EXHIBIT "A", attached hereto and incorporated herein by reference, which property is contiguous to the CITY and not within the corporate limits of any municipality (hereinafter referred to as the "SUBJECT PROPERTY"), and

WHEREAS, the OWNER has signed and filed a Petition for Annexation and Zoning with the Naperville City Clerk, for all of the territory described in EXHIBIT "A", which territory is

situated in the unincorporated area of the County of Will, Illinois, and is presently contiguous to the CITY, and

WHEREAS, all notices, publications, public hearings and all other matters attendant to such Petition for Annexation and Zoning, have been given, held or performed as required by statute or the CITY'S ordinances, regulations, and procedures, and

WHEREAS, the CITY'S corporate authorities have considered the annexation of the SUBJECT PROPERTY and have determined the Petition for Annexation and Zoning to be in order, and

WHEREAS, the OWNER proposes that the SUBJECT PROPERTY be developed pursuant to the zoning classification(s) and conditional use specified in the CITY'S Zoning Ordinance, the General Conditions and attached Special Conditions, incorporated herein by reference, which together constitute the terms and conditions of this Agreement, and

WHEREAS, in addition to the matters specified above, the parties hereto have considered all other matters and hereby agree that the development of the SUBJECT PROPERTY for the uses permitted in the B2 District of the CITY'S Zoning Ordinance and in accordance with the terms and conditions of this Agreement will inure to the benefit and improvement of the CITY and its residents and will promote the CITY'S sound planning and development and will otherwise enhance and promote the general welfare of the CITY'S residents, and

WHEREAS, in reliance upon the continued effectiveness of the CITY'S existing ordinances, codes and regulations for the period specified in this Agreement, the CITY and the OWNER are willing to undertake certain obligations as set forth in this Agreement and have materially changed their positions in reliance upon the undertakings provided herein, and

WHEREAS, the CITY and the OWNER have determined that the development of the SUBJECT PROPERTY should proceed as conveniently as possible and be subject to the ordinances, codes and regulations of the CITY, now in force and effect as amended from time to time, unless specifically amended as part of the special terms and conditions contained in this Agreement

NOW THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties agree that



**GENERAL CONDITIONS FOR  
THE ANNEXATION OF THE SUBJECT PROPERTY**

**G1.0 RECITALS.**

G1 1 The above-stated Recitals are a material part of this Agreement and are hereby incorporated in this Subsection G1 1 by reference

**G2.0 ANNEXATION AND ZONING.**

G2 1 Within sixty (60) days after the execution of this Agreement, or within thirty (30) days of the payment of all applicable fees and submittal of all documents necessary for recording of this Agreement, whichever is later, the CITY shall enact and adopt ordinances for the annexing and zoning the SUBJECT PROPERTY in accordance with Section S1 0 of this Agreement

G2 2 In the event all fees are not paid or all documents are not received by the CITY from OWNER and DEVELOPER within one (1) year of the date of this Agreement, this Agreement shall be null and void and all rights and obligations hereunder shall then terminate

G2 3 Notwithstanding the area, lot, yard, and height standards contained in the Naperville Zoning Code for the zoning classification granted pursuant to this Agreement, after the fifth (5th) year after this Agreement is approved, if the SUBJECT PROPERTY is developed with any residential uses, the SUBJECT PROPERTY may only be developed with residential uses which comply with the density limitations specified in the then-current existing Comprehensive Plan for the land uses including the zoning classification applicable to the SUBJECT PROPERTY

**G3.0 ANNEXATION AND PERMIT FEES.**

G3 1 The OWNER and DEVELOPER has paid all applicable annexation and permit fees specified in Section S2 0 in accordance with Section 1-9E-1 of the Naperville Municipal Code

**G4.0 PARK DISTRICT ANNEXATION.**

G4 1 OWNER and DEVELOPER has filed concurrently herewith a petition executed by OWNER to annex the SUBJECT PROPERTY to the Naperville Park District Said

petition is conditional and not effective until annexation of the SUBJECT PROPERTY to the City of Naperville

**G5.0 TRANSPORTATION IMPACT FEES.**

G5 1 OWNER and DEVELOPER shall pay a Transportation Impact Fee in accordance with Ordinance 06-060, as amended from time to time to the extent that may be required by the applicable ordinance

**G6.0 SIDEWALKS AND OTHER TRANSPORTATION RELATED PUBLIC IMPROVEMENTS.**

G6 1 The OWNER and DEVELOPER shall, at its sole cost and expense, construct and install, or pay the cost of the installation of sidewalks along the entire frontage of collector and arterial rights-of-way adjacent to the SUBJECT PROPERTY in accordance with the CITY of Naperville Municipal Code, as amended from time to time

G6 2 At the time of Final Plat approval for those portions of the SUBJECT PROPERTY adjacent to the collector and/or arterial rights-of-way the OWNER and DEVELOPER shall, at the sole discretion of the CITY,

- 1 construct sidewalks along said roadway or
- 2 pay to the CITY the estimated costs of the construction of the sidewalks along said roadways

Upon payment, OWNER and DEVELOPER shall have no further obligation to construct said sidewalk

**G7.0 UTILITY LINES AND EASEMENTS.**

G7 1 The OWNER and DEVELOPER shall grant to the CITY, at no cost to the CITY, any easements within the SUBJECT PROPERTY which the CITY may determine are necessary for the purposes of constructing, installing, replacing and maintaining sanitary sewers, water mains, electric service facilities, and other utilities necessary or incidental to service the SUBJECT PROPERTY, as shown on the Final Plat of Subdivision which is attached hereto

G7 2 The CITY shall allow the OWNER and DEVELOPER to use appropriate easements obtained by the CITY from other parties for the purpose of providing sanitary sewers, water mains and other utilities to service the SUBJECT PROPERTY

**G8.0 WATER SUPPLY AND DISTRIBUTION SYSTEM AND SANITARY  
SEWER COLLECTION SYSTEM.**

G8 1 The OWNER and DEVELOPER shall be solely responsible for the cost and expense incurred to extend the CITY's water distribution system and sanitary sewer collection system to the SUBJECT PROPERTY. Payment shall be due at the time a building permit is issued if the CITY constructs and installs the proposed extension or any portion thereof.

G8 2 Prior to the construction of any such extension, and upon the written request of the OWNER and DEVELOPER, the CITY shall enter into a cost recapture agreement, in a form acceptable to the City Attorney, which shall be recorded against title for the properties reasonably expected to benefit from the extension of the water distribution system and sanitary sewer collection system.

G8 3 The CITY shall permit the connection of the existing structures and the structures reasonably contemplated to be built on the SUBJECT PROPERTY to the CITY's water supply and distribution system and sanitary sewer collection system, and to supply water and collection facilities thereto to the same extent as may be supplied to other structures and areas within the CITY.

G8 4 The OWNER and DEVELOPER shall be responsible for the cost of all water lines and sanitary sewer lines and related appurtenances located on the SUBJECT PROPERTY.

G8 5 The OWNER and DEVELOPER shall also be responsible to pay for all infrastructure availability charges, connection fees and user fees for the CITY's water distribution system and sanitary sewer collection system as set forth in the CITY'S ordinances, rules, and regulations.

**G9.0 WASTEWATER TREATMENT PLANT CAPACITY.**

G9 1 The CITY guarantees that at the time building permits are requested, sufficient wastewater treatment plant capacity shall exist to provide complete and adequate wastewater treatment services for the SUBJECT PROPERTY without payment of any fees other than those specified in Subsection G9 2 of this Agreement.

G9 2 The OWNER and DEVELOPER shall pay all applicable wastewater infrastructure availability charges, connection fees and customary wastewater user fees in

accordance with Title 8 of the Naperville Municipal Code, as amended and any rules and regulations promulgated pursuant to Title 8

**G10.0 UTILITY OVERSIZING.**

G10 1 The DEVELOPER shall construct and install at its sole cost and expense all water and sanitary sewer lines shown on the approved final engineering plans submitted for development of the SUBJECT PROPERTY

G10 2 The CITY shall pay for oversized water or sanitary sewer lines constructed as required by the CITY in accordance with the provisions of this Section to provide for increased capacity, not merely to compensate for slope differential

G10 3 Upon installation and acceptance by the CITY of said oversized lines, for residential lines, the CITY shall reimburse the DEVELOPER for the difference between the cost to construct an eight (8) inch line and the cost to construct the oversized line For non-residential lines, the CITY shall reimburse the DEVELOPER for the difference between the cost to construct a twelve (12) inch line and the cost to construct the oversized line

G10 4 All such oversized lines shall be constructed and installed in strict accordance with the provisions of Section 7-3-6 of the Naperville Municipal Code (Cost Sharing Policy), as amended

**G11.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.**

G11 1 OWNER and DEVELOPER shall pay any and all existing Utility Rebates, Special Connection Fees, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified in Section S3 0

G11 2 OWNER and DEVELOPER shall further pay any and all future Utility Rebates, Special Connection Fees, Special Assessments, Recapture Fees, or Special Service Area Taxes, which may be properly and legally approved, established, or levied in the future Notwithstanding the foregoing, this provision does not abrogate the right of any property owner to contest any Special Assessment or Special Service Area Tax

**G12.0 ELECTRICAL UTILITY SERVICE.**

G12 1 The CITY shall connect the structures reasonably contemplated to be built on the SUBJECT PROPERTY to the CITY'S electrical utility system, and shall supply electrical

service to those structures to the same extent service is provided on a regular basis to CITY'S other electric customers

G12 2 The OWNER and DEVELOPER shall accept all electrical power and energy required for the SUBJECT PROPERTY from the CITY'S electrical utility system at the time such service is available

G12 3 The OWNER and DEVELOPER shall pay all applicable infrastructure availability charges, connection fees, and costs related to on-site electrical distribution facilities and customary user fees in accordance with Title 8 of the Naperville Municipal Code

**G13.0 REFUSE AND WEED CONTROL.**

G13 1 During all phases of construction, OWNER and DEVELOPER shall provide a sufficient number of construction-sized dumpsters to contain all trash and debris generated throughout the entire area of the project

G13 2 OWNER and DEVELOPER shall prevent such containers from overflowing and shall prevent debris from blowing from the site by having the containers emptied as soon as reasonably possible once they are filled

G13 3 During all phases of construction, OWNER and DEVELOPER shall regularly cut all weeds and grass in excess of eight (8") inches high on the site and on the right-of-way adjacent to the site

**G14.0 CHANGES TO ORDINANCES AND REGULATIONS.**

G14 1 If during the first five (5) years of the term of this Agreement, the provisions of the existing Naperville Zoning Code as it relates to the SUBJECT PROPERTY are amended to impose more stringent requirements in the subdivision, development, or construction on the SUBJECT PROPERTY, then such more stringent requirements shall not be effective as applied to the SUBJECT PROPERTY unless such change is agreed to by the parties hereto. This provision shall not apply to amendments to the Naperville Municipal Code related to conditional uses other than those conditional uses already approved by the Naperville Plan Commission for the SUBJECT PROPERTY

G14 2 Except as provided in Subsections G14 2 1 and G14 2 2 of this Section, if, during the first (2) years of the term of this Agreement, the provisions of then-current CITY ordinances or regulations are amended or modified to impose more stringent requirements for the

subdivision, or construction of the site development improvements for the SUBJECT PROPERTY, which improvements are specified in the submitted and approved Final Engineering Plans, such amendments or modifications shall not be effective as applied to the SUBJECT PROPERTY, unless such amendments are agreed to by the parties or such amendments are adopted to protect the health or safety of the CITY's residents

G14 2 1 Any ordinances, standards, or regulations which are the subject of the CITY's Flood Plain or Stormwater Ordinances for either DuPage or Will County shall be exempt from the provisions of subsection G14 2

G14 2 2 Any CITY ordinances establishing the payment of subdivision, or development fees, or any taxes, dedication requirements, or reimbursement for costs which may be applicable to the SUBJECT PROPERTY shall be exempt from the provisions of subsection G14 2

G14 3 If, during the term of this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of any improvements, buildings, appurtenances, or any other development of any kind or character upon the SUBJECT PROPERTY, other than those upon which site plan approval may be based, are amended or modified to impose less restrictive requirements on development or construction upon properties situated within the CITY'S boundaries, then the benefit of such less restrictive requirements shall inure to the benefit of the OWNER and DEVELOPER, and anything to the contrary contained herein notwithstanding, the OWNER and DEVELOPER may proceed with development or construction upon the SUBJECT PROPERTY pursuant to the less restrictive amendment or modification applicable generally to all properties within the CITY

#### **G15.0 EXISTING STRUCTURES.**

G 15 1 At the time this Agreement is fully executed by the parties hereto, where there are any structures on the SUBJECT PROPERTY

G15 1 1 City of Naperville street addresses shall be assigned to the SUBJECT PROPERTY in accordance with Section 9-2-2 of the Naperville Municipal Code, as amended from time to time within thirty (30) days after this Agreement is fully executed by the parties hereto

G15 1 2 Any existing structures on the SUBJECT PROPERTY shall be fully accessible for emergency vehicles, including two (2) points of access, and any special conditions specified in Section S5 0 of this Agreement

G15 2 At the time this Agreement is fully executed by the parties hereto, any existing structures on the SUBJECT PROPERTY which fail to conform to the requirements of the CITY's duly adopted Building and Fire Prevention Codes, as amended from time to time, shall be brought into conformity with such requirements pursuant to any special conditions specified in Section S5 0 of this Agreement

**G16.0 EFFECT OF THIS AGREEMENT.**

G16 1 Except as provided in Section G14 0 of this Agreement, if any relevant existing CITY resolution, ordinance, regulations, or interpretation thereof, is inconsistent with or conflicts with any provision of this Agreement, then the provisions of this Agreement shall supersede the terms of said inconsistent resolutions, ordinances, or regulations as they may be applicable to the SUBJECT PROPERTY

**G17.0 NO DISCONNECTION OR DEANNEXATION.**

G17 1 Neither the OWNER nor the DEVELOPER nor any of their successors in interest shall file, cause to be filed, or take any action that would result in the disconnection or deannexation of the SUBJECT PROPERTY from the CITY during the term of this Agreement

**G18.0 MODIFICATIONS TO THIS AGREEMENT.**

G18 1 If the OWNER and DEVELOPER wish to modify this Agreement, the CITY shall hold the necessary public hearings

G18 2 Such hearings shall be held and an approval granted or denial given without unreasonable delay after the request of the OWNER and DEVELOPER

G18 3 This Section shall not be construed to require the CITY to modify this Agreement

G18 4 Any such amendment or modification may be made only as to a portion of the SUBJECT PROPERTY, or as to the provisions applying exclusively thereto, and may be without the consent of the owners of other portions of the SUBJECT PROPERTY not affected by the amendment or modification

**G19.0 BINDING EFFECT AND TERM.**

G19 1 The parties intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall be recorded against the title of the SUBJECT PROPERTY and shall be binding upon and inure to the benefit of the parties hereto, grantees, successors in interest, assignees, heirs, executors, or lessees, and upon any successor CITY officials and successor municipalities for a period of twenty (20) years from the date of execution of this Agreement

G19 2 The zoning classification for the SUBJECT PROPERTY established by this Agreement shall survive the expiration of this Agreement, unless changed in accordance with applicable law

G19 3 If the SUBJECT PROPERTY is not annexed to the CITY within 365 days after this Agreement is executed by the parties, this Agreement shall become null and void without any further action by the CITY

**G20.0 CONTINUING RESPONSIBILITY.**

G20 1 If the OWNER or DEVELOPER sells or conveys all or any portion of the SUBJECT PROPERTY during the term of this Agreement, all of the OWNER's or DEVELOPER's obligations specified in this Agreement shall devolve upon and be assumed by such purchaser, grantee, or successor in interest, and the OWNER or DEVELOPER shall be released from such obligations, provided the conditions of subsection G20 2 of this Agreement have been met

G20 2 No sale or conveyance shall be effective to release either the OWNER or DEVELOPER from the obligations imposed by this Agreement until the purchaser or grantee has posted good and sufficient surety, as determined by the CITY, to secure the performance of all of the OWNER's and DEVELOPER's obligations contained in this Agreement as required by CITY ordinance, policy, or regulation

**G21.0 SEVERABILITY.**

G21 1 If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid



G21.2 The invalidity of any such provision shall not affect any zoning classification for the SUBJECT PROPERTY that has been approved by the CITY pursuant to the provisions of the CITY'S ordinances and regulations. Any change to such zoning classification shall take place only in accordance with applicable statutes and ordinances.

**G22.0 NOTICES.**

G22.1 Any notice or demand hereunder from one party to another party or to an assignee or successor in interest of either party or from an assignee or successor in interest of either party to another party, or between assignees or successors in interest of either party shall be in writing and shall be deemed duly served if mailed by prepaid registered or certified mail addressed to the parties specified in Section S4.0 or any individual or entity substituted according to subsection G22.2 of this Agreement.

G22.2 The parties, or any assignee or successor in interest may substitute names and addresses for notices as appropriate.

**G23.0 GOVERNING LAW AND VENUE.**

G23.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance, and any legal proceeding of any kind arising from this Agreement shall be filed in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

**G24.0 FORCE MAJEURE.**

G24.1 Whenever a period of time is provided for in this Agreement for either the CITY or OWNER or DEVELOPER to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, strike or lockout by or against either party's own employees or suppliers, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God.

G24.2 Provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. Except as to a strike or lockout by or against either party's own employees or suppliers, an act or omission shall not be deemed to be "beyond OWNER's or DEVELOPER's control" if committed, omitted or caused by OWNER or DEVELOPER, OWNER's or DEVELOPER's employees, officers or agents or a subsidiary,

affiliate or parent of OWNER or DEVELOPER or by any corporation or other business entity that holds a controlling interest in OWNER or DEVELOPER, whether held directly or indirectly

**G25.0 ENFORCEABILITY.**

G25 1 This Agreement shall be enforceable by any of the parties hereto by any appropriate action at law or in equity to secure the performance of the covenants and terms of this Agreement

**G26.0 CUMULATIVE REMEDIES.**

G26 1 The parties' rights and remedies hereunder shall be cumulative, the exercise of any rights or remedies shall neither preclude enforcement of other rights and remedies nor waive other rights and remedies, and the failure of either party to exercise any rights or remedies shall neither preclude enforcement of any rights or remedies nor constitute a waiver of any rights or remedies

**SPECIAL CONDITIONS FOR THE ANNEXATION OF THE  
SUBJECT PROPERTY**

To the extent that there is any inconsistency between the terms or conditions of the following Special Conditions and the General Conditions, the terms and conditions set forth in the Special Conditions of this Agreement shall prevail. To the extent that provisions in the Special and General Conditions are not inconsistent, they shall be read together.

**S1.0 ANNEXATION AND ZONING.**

S1.1 The Zoning Classification for the SUBJECT PROPERTY determined in accordance with Title 6 of the Naperville Municipal Code shall be B2, with a conditional use for Physical Culture and Health Services, Gymnasiums and Reducing Salons.

S1.2 A plat of annexation prepared by Roake and Associates, dated April 29, 2005, last revised August 26, 2005, which conforms with the statutory requirements is attached hereto and incorporated herein by reference as **EXHIBIT "B"**.

**S2.0 ANNEXATION AND PERMIT FEES.**

S2.1 The Annexation Fee calculated in accordance with Section 1-9E-1 of the Naperville Municipal Code for the SUBJECT PROPERTY is \$500.00, which has been paid.

**S3.0 UTILITY REBATES, SPECIAL CONNECTION FEES, RECAPTURE FEES, SPECIAL ASSESSMENTS OR SPECIAL SERVICE AREAS TAXES.**

S3.1 OWNER and DEVELOPER shall pay any and all existing Utility Rebates, Recapture Fees, Special Assessments, or Special Service Area Taxes when due as specified as follows:

Recapture Fees: Recapture for 111<sup>th</sup> Street wastewater pump station and force main  
(\$566.13/acre x 5.864 acres) \$3,319.79

Due: Prior to recording Annexation Plat

**S4.0 ADDRESSES FOR NOTICES REQUIRED BY THIS AGREEMENT.**

**IF TO THE CITY:**

CITY Clerk. CITY of Naperville  
400 South Eagle Street  
Naperville, Illinois 60540

**IF TO THE OWNER:**

Saddlewood Naperville, LLC  
ATTN Mark Lambert  
c/o The Crown Group, Inc  
1564 West Algonquin Road  
Hoffman Estates, Illinois 60195

**WITH COPIES TO:**

Ms Kathleen West  
Dommermuth, Brestal, Cobine & West Ltd  
123 Water Street  
Naperville, Illinois 60540

Kim Lawson  
The Crown Group, Inc  
1564 West Algonquin Road  
Hoffman Estates, Illinois 60195

**S5.0 FIRES CODES AND REGULATIONS.**

S5 1 The provision of Section G15 0 this Agreement notwithstanding, any amendments to the CITY's Building, Fire, or Life Safety Codes or regulations approved and enacted after the date of this Agreement shall be applicable to the SUBJECT PROPERTY without exception

S5 2 On June 7, 2004 an inspection of the SUBJECT PROPERTY was performed by the City's Building and Fire Departments The results of the inspection are given in a memorandum from Marvin Brooks to Joe Hudetz dated March 16, 2005, which is attached as EXHIBIT "C"

S5 3 There are three existing buildings on the SUBJECT PROPERTY These buildings shall have sprinkler systems, approved by the Naperville Fire Department, installed in them no later than July 1, 2018 Prior to July 1, 2018, irrespective of provisions set forth in S5 2

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above, the existing buildings on the SUBJECT PROPERTY shall not be required to have fire sprinkler systems installed unless a building on the SUBJECT PROPERTY is demolished or replaced or damaged or expanded by more than fifty percent (50%) of the replacement cost of that building or structure at the time of such replacement, damage or expansion. In the event that it is necessary for the CITY to take any actions to enforce this provision, the OWNER shall be liable for all costs associated with said actions, including but not limited to court costs and attorneys' fees.

**S6.0 EMERGENCY ACCESS.**

S6 1 OWNER agrees to maintain the existing points of access to the SUBJECT PROPERTY

**S7.0 PLAT APPROVAL.**

S7 1 In lieu of the provisions of the CITY's ordinances and in order to accomplish the reclassification of the SUBJECT PROPERTY as shown on the Preliminary and Final Plat of Subdivision, marked as **EXHIBIT "D,"** the CITY approves such exhibit and the same shall constitute and satisfy all of the requirements for the Preliminary and Final Plat of Subdivision for the SUBJECT PROPERTY as defined in the ordinances of the CITY

**S8.0 ROADWAY IMPROVEMENTS, SIDEWALKS, AND UTILITIES.**

S8 1 OWNER agrees to improve Alice Lane and Helene Avenue as they abut the SUBJECT PROPERTY to CITY standards for local streets, in accordance with plans approved by the City Engineer. Roadway improvements shall include street lighting, drainage, pavement and sidewalk as required to meet CITY standards. Utility improvements include water main and sanitary sewer. Sidewalks shall be required only on the side of the street adjoining the SUBJECT PROPERTY. The roadway improvements shall be constructed by the OWNER no later than December 31, 2007.

S8 2 OWNER agrees to construct sidewalk along the 103<sup>rd</sup> Street frontage of the SUBJECT PROPERTY by December 31, 2007.

S8 3 OWNER agrees to construct the sidewalk along the Illinois Route 59 frontage of the SUBJECT PROPERTY on or before December 31, 2007. However, an extension of that requirement will be approved by the City Engineer for a fixed time period upon notification from the OWNER that IDOT has not given approval in time for said construction to

be completed by December 31, 2007. However, in the event that IDOT approves construction of the sidewalk along Route 59 under terms which the OWNER and the City Engineer agree are onerous, the CITY agrees that it will meet and discuss possible alternatives with the OWNER.

S8.4 OWNER agrees to install water main and sanitary sewer along the Alice Lane frontage of the SUBJECT PROPERTY and to extend the water main and sanitary sewer lines from Alice Lane to the north property line of the SUBJECT PROPERTY by December 31, 2007, as shown on plans approved by the CITY ENGINEER.

**S9.0 RECAPTURE FOR ROADWAY IMPROVEMENTS AND UTILITIES.**

S9.1 The CITY and the OWNER and DEVELOPER agree to enter into a recapture agreement as approved by the City Engineer and the City Attorney whereby the OWNER and DEVELOPER may recover one half of the cost of constructing the water main and sanitary sewer improvements specified in Section S8.1 above. Prior to entering into said recapture agreement, the OWNER and DEVELOPER shall submit to the CITY all information and documentation requested by the City Engineer identifying the costs of said improvements. The City Engineer will have the final discretion regarding the appropriate amount of the recapture for the benefited properties identified on **EXHIBIT "E"**. This recapture agreement shall only apply as each of the benefited properties connects to said water main or sanitary sewer. The recapture agreement shall be in a form approved by the City Attorney.

S9.2 The CITY and the OWNER and DEVELOPER agree to enter into a recapture agreement as approved by the City Engineer and the City Attorney whereby the OWNER and DEVELOPER may recover one half of the cost of constructing the roadway improvements specified in Section S8.1 above. Prior to entering into said recapture agreement, the OWNER and DEVELOPER shall submit to the CITY all information and documentation requested by the City Engineer identifying the costs of said improvements. The City Engineer will have the final discretion regarding the appropriate amount of the recapture for the benefited properties identified on **EXHIBIT "E"**. This recapture agreement shall only apply as each of the benefited properties is redeveloped for other than single-family detached uses (i.e., developed for duplexes/townhomes/multi-family residential/office/commercial or other non-single family detached uses). The recapture agreement shall be in a form approved by the City Attorney.

**S10.0 ELECTRIC UTILITY SERVICE.**

S10 1 The parties understand and acknowledge that the buildings located on the SUBJECT PROPERTY presently receive electric utility service from Commonwealth Edison Company. The CITY agrees that all existing buildings on the SUBJECT PROPERTY will be allowed to continue such service, until such time as each building is demolished or replaced or expanded by more than fifty percent (50%) of the replacement cost of that building or structure at the time of such replacement, damage or expansion. Upon construction of a new building or repair, replacement or expansion of an existing building as set forth above on the SUBJECT PROPERTY, said building shall be connected to the CITY's electrical utility and the OWNER shall pay all connection fees and costs related to on-site electrical distribution facilities and customary user fees in accordance with Title 8 of the Naperville Municipal Code.

**S11.0 TRANSPORTATION IMPACT FEES.**

S11 1 The CITY agrees that no transportation impact fees shall be assessed against the existing uses located on the SUBJECT PROPERTY. Such fees may be assessed against any new buildings constructed on the SUBJECT PROPERTY, or any additions to existing buildings (said fees to be applicable only to the addition, not to the existing building).

**S12.0 DEVIATIONS FROM THE NAPERVILLE MUNICIPAL CODE.**

S12 1 The SUBJECT PROPERTY is presently improved with three commercial/office buildings, parking lots, accessory structures and signs.

S12 1 1 The CITY is annexing the SUBJECT PROPERTY and the improvements thereon in their "as is" condition as set forth in this Agreement.

S12 1 2 The CITY inspected the SUBJECT PROPERTY on June 7, 2004 and requested certain repairs and modifications to the commercial/office buildings on the SUBJECT PROPERTY. The parties agree that the OWNER and DEVELOPER shall not be required to make repairs or modifications to the commercial/office buildings other than as set forth on the Inspection Reports attached hereto as EXHIBIT "C". The OWNER and DEVELOPER agree to make said repairs and modifications set forth in the Inspection Reports on or before July 31, 2007. Notwithstanding the forgoing provision, any future improvements to the presently existing commercial/office buildings shall comply with the then existing City Code provisions.

S12 1 3 PARKING LOT SETBACK The parking lot on the SUBJECT PROPERTY located adjacent to Route 59 and 103<sup>rd</sup> Street currently has a setback of five (5) feet on Route 59 and zero (0) feet on 103<sup>rd</sup> Street Pursuant to the Naperville Municipal Code, the setback for the parking lot adjacent to Route 59 should be twenty (20) feet and the setback for the parking lot adjacent to 103<sup>rd</sup> Street should be five (5) feet If said parking lot is damaged by fire or other casualty during the first ten (10) years following the execution of this Agreement, the CITY shall permit the OWNER and DEVELOPER to rebuild or restore said parking lot to substantially the same site configuration, including size, location of parking spaces and aisles, and number of parking spaces, that existed immediately prior to the casualty All other Naperville Code requirements shall be complied with unless the site configuration prohibits compliance with those requirements

S12 1 4 GAZEBO SETBACK A gazebo is located on the east side of the SUBJECT PROPERTY adjacent to Route 59 approximately 146 feet north of the south property line Said gazebo does not comply with the Naperville Municipal Code in that it is setback six (6) feet from Route 59 and should be setback twenty (20) feet Additionally, the location of the gazebo is in violation of Section 6-2-10 1 of the Naperville Municipal Code which prohibits accessory structures to be located in the front or corner side yard setbacks If said gazebo is damaged by fire or other casualty during the first ten (10) years following the execution of this Agreement, the CITY shall permit the OWNER and DEVELOPER to rebuild or restore it to substantially the condition that existed immediately prior to the casualty All other Naperville Code requirements shall be complied with

S12 1 5 STORMWATER MANAGEMENT The SUBJECT PROPERTY does not provide on-site stormwater management as required by the Naperville Municipal Code If the OWNER and DEVELOPER constructs a building or other improvement on Lot 1 of Alice Helene Subdivision as depicted on the Preliminary/Final Plat of Subdivision, said Lot 1 shall comply with the CITY's stormwater management requirements in effect at that time The CITY will not require the OWNER and DEVELOPER to comply with the CITY's stormwater management requirements on Lot 2 of Alice Helene Subdivision or Lots 3 and 4 of Ohti Subdivision until such time as redevelopment occurs on such lot or lots, at which time the



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CITY's stormwater management requirements in effect at that time shall apply as to such redeveloped lot or lots

S12 1 6 LANDSCAPING AND SCREENING Certain aspects of the landscaping and screening on the SUBJECT PROPERTY do not conform to the requirements of the Naperville Municipal Code The CITY accepts the current landscaping "as-is" Notwithstanding the foregoing provision, any future improvements on the SUBJECT PROPERTY, except for tenant build-outs, shall comply with the then existing City Code provisions regarding landscaping and screening

S12 1 7 SIGNS Those signs located on the SUBJECT PROPERTY which do not conform with the CITY's Street Graphics Control Ordinance, as described and depicted on EXHIBIT "F" attached hereto and made part hereof, may be continued in accordance with Section 5-4-19, of the Street Graphics Control Ordinance pertaining to Nonconforming Signs If the Subject Property is sold, and full ownership is transferred by deed, the nonconforming signs depicted on Exhibit F shall be permitted to continue

S12 1 8 SUBDIVISION Lots 3 and 4 of Ohti Subdivision on the SUBJECT PROPERTY contain one principal building consisting of two buildings connected by a covered walkway, which does not conform with the provisions of Section 7-1-3 of the CITY's Subdivision Regulations This shall be permitted to continue so long as the liquor store operated by the Star 7 Corporation continues to exist on the SUBJECT PROPERTY in conformity with the provisions of S13 1

S12 1 9 FLOOR AREA RATIO That portion of the principal building which sits on Lot 3 of Ohti Subdivision on the SUBJECT PROPERTY has a floor area ratio of approximately 0 36 based on a calculation of the lot area for Lot 3 Pursuant to the Naperville Municipal Code, the maximum floor area ratio should be 0 325 If said building is damaged by fire or other casualty during the first ten (10) years following the execution of this Agreement or until Star 7 does not hold a liquor license in conformance with Section S13 0, the CITY shall permit the OWNER and DEVELOPER to rebuild or restore said building substantially the same configuration and condition that existed immediately prior to the casualty

**S13.0 EXISTING LIQUOR STORE.**

S13.1 The CITY acknowledges that a portion of one of the three commercial buildings located on the SUBJECT PROPERTY is leased to the Star-7 Corporation, which operates a liquor store thereon, and that the size of the commercial development of which the liquor store is a part is smaller than that required for the issuance of a Class D liquor license. The CITY's Liquor Commissioner has reviewed a fully completed application for a liquor license from the Star-7 Corporation and has acknowledged that, aside from the size of the commercial development of which the liquor store is part, it is qualified to obtain a Class D liquor license under the CITY's requirements pending approval by the State of Illinois. The CITY's Liquor Commissioner has agreed that, upon annexation to the CITY, and upon compliance with all State and CITY requirements, Star-7 Corporation shall be allowed to continue to operate irrespective of the provisions of Section 3-3-13(3)(3.1) and Section 3-3-19-1(1) of the CITY's Liquor and Tobacco Control Ordinance only for the time period provided for below which will allow the issuance of a Class D liquor license to the Star-7 Corporation to permit the sale of packaged liquor on its premises. In addition, the CITY's Liquor Commissioner agrees that promptly upon annexation of the SUBJECT PROPERTY, the Liquor Commissioner shall issue the aforementioned liquor license to Star-7 Corporation provided that Star-7 Corporation has complied with all State and CITY requirements. The right to apply for and be granted a liquor license as set forth herein shall be effective for the entire term of said lease, including any extension periods as specifically set forth below and shall be effective as to any purchaser of the stock and assets of Star-7 Corporation and any subsequent purchasers of same during the entire term of said existing lease, including only those extension periods set forth herein, provided that all shareholders are eligible for said license under CITY and State requirements and that the licensee complies with all other CITY and State requirements.

The OWNER acknowledges that the initial lease term for Star-7 Corporation expires on April 30, 2009, and that Star-7 Corporation has the unilateral right to extend said lease for two five-year periods. The OWNER agrees that said lease will terminate no later than April 30, 2019 and that it will not renew the lease of Star-7 Corporation after the extension periods unless the CITY's Municipal Code is amended to allow the issuance of a liquor license for a commercial center of the size of the SUBJECT PROPERTY. A liquor store shall not be operated in any

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manner on the SUBJECT PROPERTY after April 30, 2019 unless the CITY's Municipal Code is amended to allow the issuance of a liquor license for a commercial center of the size of the SUBJECT PROPERTY

**S14.0 CITY OF NAPERVILLE STREET ADDRESSES.**

S14.1 The CITY agrees that the new street addresses issued for each of the existing buildings on the SUBJECT PROPERTY shall be on the same street on which they are currently addressed with Will County

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IN WITNESS WHEREOF, the parties set their hands and seals as of the date first written above

CITY OF NAPERVILLE



By A. George Pradel  
A George Pradel  
Mayor

Attest

By Suzanne L. Gagner  
Suzanne L. Gagner  
City Clerk

State of Illinois     )  
                                  )  
County of DuPage    )

The foregoing instrument was acknowledged before me by A George Pradel, Mayor, and Suzanne L Gagner, City Clerk, this 15TH day of DECEMBER, 2006, A D



-seal-

Bernadette Kolodziej  
Notary Public

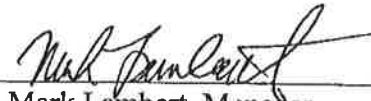


OFFICIAL SEAL  
BERNADETTE KOLODZIEL  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES 03/31/10


R2006-208014

OWNER

By



Mark Lambert, Manager  
Saddlewood Naperville LLC

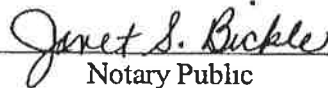


Craig Whitehead, Manager  
Saddlewood Naperville LLC

State of Illinois )

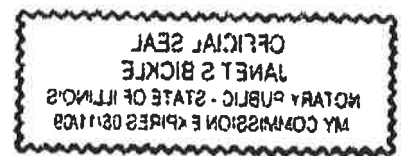
County of COOK )

The foregoing instrument was acknowledged before me by Mark Lambert,  
and Craig Whitehead, this  
2ND day of JUNE, 2006 A D

  
Notary Public



This instrument was prepared by The City of Naperville, 400 S Eagle Street, Naperville, Illinois,  
60540



R2006-208014

## SADDLEWOOD COMMERCIAL COMPLEX

### LEGAL DESCRIPTION

LOTS 3, 4 AND 5 IN OHTI SUBDIVISION, A RESUBDIVISION OF LOTS 132 AND 133, ANDERMANN ACRES UNIT NO FIVE, A SUBDIVISION OF PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1987 AS DOCUMENT NO R87-36381, EXCEPTING THEREFROM THAT PART THEREOF DEDICATED TO THE STATE OF ILLINOIS BY DOCUMENT R94-92869, (SAID EXCEPTED PARCEL ALSO BEING DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3, THENCE ON AN ASSUMED BEARING OF SOUTH 01 DEGREES 53 MINUTES 06 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 30 00 FEET, THENCE NORTH 46 DEGREES 39 MINUTES 35 SECONDS WEST 42.59 FEET TO THE NORTH LINE OF SAID LOT 3, THENCE NORTH 88 DEGREES 33 MINUTES 56 SECONDS EAST ALONG SAID NORTH LINE 30.00 FEET TO THE POINT OF BEGINNING,) ALL IN WILL COUNTY, ILLINOIS

AND

THAT PART OF LOT 132 DESCRIBED BY BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 132 AND RUNNING THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ON A CURVE HAVING A RADIUS OF 60 FEET AN ARC DISTANCE OF 118.15 FEET (THE LONG CHORD OF SAID CURVE BEING THE NORTH LINE OF ALICE LANE, AS DEDICATED IN SAID PLAT OF ANDERMANN ACRES, UNIT FIVE, SAID LONG CHORD MEASURING 99 97 FEET) THE CENTER OF THE ABOVE DESCRIBED CURVES BEING A POINT 0.19 FEET SOUTH OF THE CENTER LINE OF SAID ALICE LANE AND 50 11 FEET WEST OF THE POINT OF INTERSECTION OF SAID CENTER LINE WITH THE EXTENSION OF THE EAST LINES OF SAID LOTS 131 AND 132, ALL IN ANDERMANN ACRES, UNIT FIVE, A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 9, 1973 AS DOCUMENT R73-24098, IN WILL COUNTY, ILLINOIS.

Permanent Index Numbers: 01-16-205-005-0000, 01-16-205-006-0000, and 01-16-205-007-0000

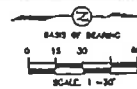
Common Street Address: 10300-10350 State Route 59 and 10331 Helene Avenue, Naperville, Illinois



R 2006-208014

# PLAT OF ANNEXATION

PART OF THE NORTHEAST QUARTER OF SECTION 16 TOWNSHIP 37 NORTH RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN WILL COUNTY, ILLINOIS



THIS PLAT HAS BEEN SUBMITTED FOR RECORDING BY AND RETURN TO NAME, HANCOCKVILLE CITY CLERK ADDRESS, P.O. BOX 3020 400 S. EAGLE STREET HANCOCKVILLE, IL 60544-7020

**NOTE SUMMARY**  
LOT 3 - 34480 S.F. (1.486 AC) MORE OR LESS  
LOT 4 - 44896 S.F. (1.029 AC) MORE OR LESS  
LOT 5 - 1885 S.F. (0.043 AC) MORE OR LESS  
LOT 6 - 14521 S.F. (1.708 AC) MORE OR LESS  
EXISTING ROW - 88777 S.F. (1.600 AC) MORE OR LESS  
TOTAL AREA TO BE ANNEXED - 235492 S.F. (5.464 AC) MORE OR LESS

**LEGEND**  
ANNEXATION BOUNDARY  
BOUNDARY  
EXISTING LOT LINE  
CENTER LINE  
EXISTING EASEMENT LINE  
BUILDING SETBACK LINE  
EXISTING EASEMENT CITY OF HANCOCKVILLE CORPORATE LIMITS

PREPARED FOR:  
**SYSTEM 27 CORPORATION**  
10334 S. RT. 50  
HANCOCKVILLE, ILLINOIS 60544  
PH (630) 904-2727  
FX (630) 904-2755

OWNED BY:  
**SADDLEWOOD HANCOCKVILLE LLC**  
1954 WEST ALPHEUS ROAD  
HANNON ESTATES, ILLINOIS 60195

- REASON**
1. ALL NEIGHBORHOODS AND DISTANCES ARE SHOWN IN FEET AND DECIMAL FRACTIONS THEREOF.
  2. DIMENSIONS ALONG CURVED LINES ARE AND LENGTHS.
  3. SCALE OF BEARING: THE BEARING SHOWN ON THE PLAT MAP AND EASES ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 16 TOWNSHIP 37 NORTH RANGE 8 EAST WITHIN A BEARING OF 0°00'00".
  4. THERE ARE HABITABLE STRUCTURES ON THE PROPERTY BUT NO ELECTIONS.

**HANCOCKVILLE PARK DISTRICT RESOLUTION**  
STATE OF ILLINOIS } ss  
COUNTY OF DUFARE } ss  
THIS PLAT OF ANNEXATION IS SUBMITTED AS THAT REAL ESTATE INCORPORATED INTO AND MADE A PART OF THE HANCOCKVILLE PARK DISTRICT OF WILL AND DUFARE COUNTIES.

BY ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE BOARD OF PARK DISTRICT COUNCILMEMBERS  
AT A MEETING HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_  
BY \_\_\_\_\_ PRESIDENT ATTORNEY SECRETARY

**CITY COUNCIL RESOLUTION**  
STATE OF ILLINOIS } ss  
COUNTY OF DUFARE } ss  
THIS PLAT OF ANNEXATION IS SUBMITTED AS THAT REAL ESTATE INCORPORATED INTO AND MADE A PART OF THE CITY OF HANCOCKVILLE OF WILL AND DUFARE COUNTIES.

ADOPTED BY THE CITY COUNCIL AT A MEETING HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_  
BY \_\_\_\_\_ MAYOR ATTORNEY CITY CLERK

**COUNTY RESOLUTION**  
STATE OF ILLINOIS } ss  
COUNTY OF DUFARE } ss  
THIS RESOLUTION NUMBER \_\_\_\_\_ THIS PLAT FOR RECORDING IN THE RECORDS OF THE COUNTY OF DUFARE, ILLINOIS, ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ AT \_\_\_\_\_ O'CLOCK AND WAS RECORDED IN BOOK \_\_\_\_\_ OF PLATS ON PAGE \_\_\_\_\_

**RESOLUTION OF DUFARE**  
STATE OF ILLINOIS } ss  
COUNTY OF DUFARE } ss  
I, CHARLES A. HALL, AN ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE PREPARED THIS PLAT FROM THE PLAT BOOK RECORDS FOR THE PURPOSES OF ANNEXING LAND PROPERTY.

**SURVEYOR'S CERTIFICATE**  
STATE OF ILLINOIS } ss  
COUNTY OF DUFARE } ss  
I, CHARLES A. HALL, AN ILLINOIS LICENSED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE PREPARED THIS PLAT FROM THE PLAT BOOK RECORDS FOR THE PURPOSES OF ANNEXING LAND PROPERTY.

**TOGETHER WITH ALL THAT PART OF ALICE LANE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**

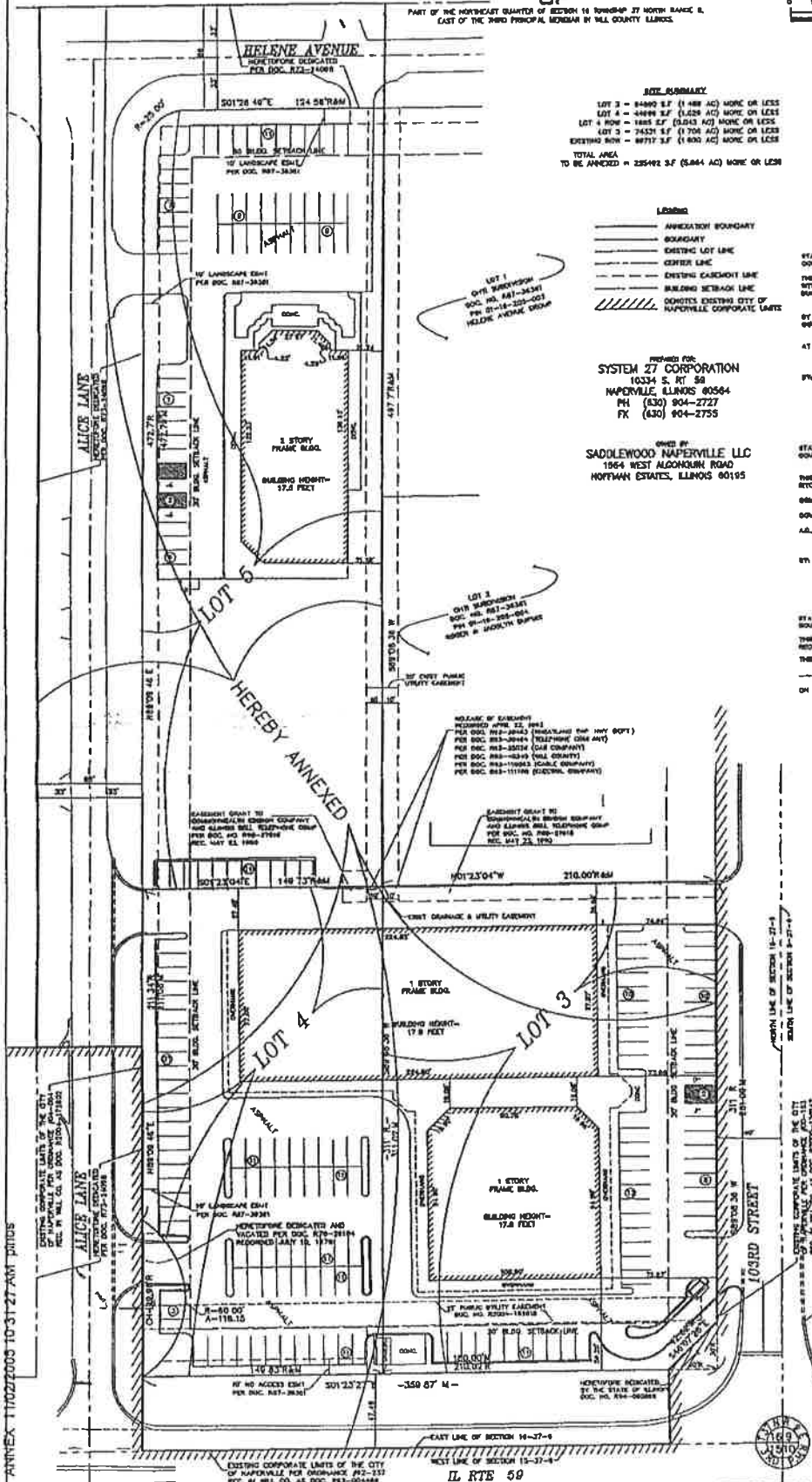
**TOGETHER WITH ALL THAT PART OF MELBIE AVENUE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**

**TOGETHER WITH ALL THAT PART OF ALICE LANE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**

**TOGETHER WITH ALL THAT PART OF ALICE LANE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**

**TOGETHER WITH ALL THAT PART OF ALICE LANE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**

**TOGETHER WITH ALL THAT PART OF ALICE LANE, LYING SOUTHWEST OF AND SUBSEQUENT WITH THE ABOVE DESCRIBED PARCEL, EXCEPTING THEREFROM ANY PART PREVIOUSLY ANNEXED INTO THE CITY OF HANCOCKVILLE.**



**ROAKE AND ASSOCIATES, INC.**  
CONSULTING ENGINEERS LAND SURVEYORS PLANNERS  
10077 HIGHWAY 141 HANCOCKVILLE, IL 60540  
PH (630) 904-2727  
FX (630) 904-2755

PREPARED FOR:  
**SYSTEM 27 CORPORATION**  
10334 S. RT. 50  
HANCOCKVILLE, ILLINOIS 60544  
PH (630) 904-2727  
FX (630) 904-2755

NO.	DATE	REVISION
1	02/01/06	REV. FOR FINAL REVIEW
2	02/01/06	REV. FOR FINAL REVIEW

LOTS 3 4 AND 5 - OHTI SUBDIVISION			
PLAT OF ANNEXATION			
PREPARED BY: SADDLEWOOD	FILE: 6-728	FILE NO.: 172/27	SHEET NO. 1 OF 1
SCALE: 1" = 30'	DATE: 4/29/05	FILE NO.: 647 001	

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**CITY OF NAPERVILLE  
MEMORANDUM**

**DATE** March 16, 2005

**TO** Mr Joe Hudetz  
System 27 Corporation  
4103 South Route 59  
Naperville, IL 60564

**FROM.** Marvin Brooks  
Chief Building Official

**SUBJECT:** The Saddlewood Retail

Mr Joe Hudetz, owner of the property located at the southwest corner of 103<sup>rd</sup> & Route 59 (24 West 017 103<sup>rd</sup> Street) wishes to annex three nonsprinklered mixed-use retail/office buildings into the City of Naperville. The development consists of Building-A (21616 sf), Building-B (11468 sf), and an Annex Building (9384 sf)

**Item 1: Space Separation/Use Group**

Per 2000 International Building Code (IBC) and the City of Naperville code revisions as adopted through Title 5 of the Municipal Code both mercantile and business offices are required to be sprinklered whenever the building's gross square footage exceeds 7,500 sf. Therefore; all future alterations in occupancy or modifications to the existing tenant space, where such modifications trigger requirements for a permit will also necessitate compliance with Article 302.3.3 (IBC). Specifically, each portion of the building shall be individually classified as to use and shall be completely separated from adjacent areas by fire barrier walls or horizontal assemblies or both having a fire-resistance rating determined in accordance with Table 302.3.3 for the uses being separated.

**Item 2: Roof Top Equipment Screening**

All new roof top units, and equipment must be screened in accordance with Title 5

**Item 3: Fire Sprinkler System**

A fire sprinkler system may need to be provided for any existing tenant space, which is remodeled and requiring a building permit. Please contact John Meyers at the City of Naperville fire department (630) 305-3768 regarding fire sprinkler applications, permits and approval.

Sincerely,

Marvin Brooks, SE, Lic Arch  
Chief Building Official

document2

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Naperville Fire  
Prevention Bureau

## Inspection Type

- ☐ Fire Alarm  
☐ Sprinkler  
☐ Cooking  
☐ Tank

- ☐ Wire  
☐ Hydro  
☐ Wet  
☐ Propane

- ☐ FM200  
☐ Flush  
☐ Dry

- ☐ Final  
☐ Final

☒ Walk Thru/OccupancyADDRESS 10334 S Rt 59

NFD PERMIT NUMBER \_\_\_\_\_

DST PERMIT NUMBER \_\_\_\_\_

OCCUPANCY: Saddle wood

PHONE: \_\_\_\_\_

Inspector	Date	Start Time	End Time	Pass/Fail	Billing
JHM	7 June 04	10:00	10:45	—	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
_____	_____	_____	_____	_____	<input type="checkbox"/> Y <input type="checkbox"/> N
_____	_____	_____	_____	_____	<input type="checkbox"/> Y <input type="checkbox"/> N
_____	_____	_____	_____	_____	<input type="checkbox"/> Y <input type="checkbox"/> N
_____	_____	_____	_____	_____	<input type="checkbox"/> Y <input type="checkbox"/> N

ITEM	CODE VIOLATION/COMMENTS	DATE/AP
#1	Identify use Grays, Rm, Mercantile, Retail, etc	
#2	Identify Tenant sq ft	
#3	Identify Building total sq ft	
#4	Verify sprinklers and fire alarm issues	
#5		
#6		
#7		
#8		

Any questions regarding inspection, Please contact the Fire Prevention Supervisor 630/305-3768.

Fire Inspector

Date

PRINT / Received By

Telephone

\*\*\*A COPY OF THIS FORM MUST BE LEFT ON SITE FOR THE ADDITIONAL  
 INSPECTION (S).  
 FINAL INSPECT

WHT/NFD YEL/DST INSPECTOR PINK/GENERAL CONTRACTOR GOLD/INSTALLER



## CITY OF NAPERVILLE

Transportation, Engineering, &amp; Development (T.E.D.) Business Group

R2006-208014

## Pre-Occupancy Inspection Checklist

Inspector PAUL FELSTRUP NEXTEL 918 1153 Date 7 JUN 04Business Name: ENTIRE SADDLEWOOD SHOPPING CTR AND ANNEXSite Address: 10330 S RT 59 / 10331 S HELENE Suite # VARIOUS

\*C=Compliant

N=Non-compliant

N/A=Not Applicable\*\*

\*C N N/A\*\*

## Structural

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Street Numbers (Front / Rear)

Structural Members

Foundation Walls

Exterior Walls

Roofs / Drainage

Overhang Extensions

Stairs / Walk Surfaces / Railings

Decks / Porches / Balconies

Chimney & Towers ANNEX HAS MECHANICAL (5000'?)

Handrails / Guards

Windows / Skylights

Doors / Frames / Closures

Basement Hatchway

## Mechanical

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Process Ventilation

Exhaust Vents

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Heat Supply / Furnace / Safety Controls

Combustion Air

Clearances to Combustibles

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Means of Egress

Aisles

Stair Enclosures

Number of Exits

Corridor Enclosure

Dead-End Travel Distance

\*C N N/A\*\*

## Plumbing

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Hazards / Contamination (E)

Supply

Water Heater

Grease Traps

Washroom

Electrical CURRENTLYReceptacles / Switches COMM EDLighting Fixtures (C)Service Panel (A)Electrical System Hazards (F)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Accessibility

Route (B)

Grab Bars

Washroom

Duct Work

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Restaurants (D)

Hood System

Cooking / Heating Equipment

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Elevator / Escalator

Current Certificate

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	-------------------------------------

## Miscellaneous

Trash Enclosure (G)Health Department Approval (PER SPACE)  
CLOSE SCREEN DOOR @ PIZZA

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional Comments: (A) NEED ADDRESSES AT METERING(B) PARKING SPACES, ACCESS TO WALK WAYS(C) EXTERIOR SIGNAGE NOT COMPLIANT(D) VERIFY SEPARATE USE GROUPS AND BUILDING DIMENSIONS / SPACE SEPARATION ASSY.  
ALSO CONSTRUCTION TYPE (HEAVY TIMBER EXTERIOR, BARJOIST & BLOCK INTERIOR)(E) BOLLARDS @ GAS METERS(F) BOLLARDS @ ELECTRIC METERS(G) NEED TRASH ENCLOSURES→ NEED ADDITIONAL DATA ←

I understand that the items detailed on this Pre-Occupancy Inspection Checklist must be completed prior to occupancy of this area/building, and that reinspection must be scheduled by the Fire Department and the Building Department

Signature: DREW GLASSFORDDate: 7 JUN 04PreOccInspChklist 726-0001  
Rev 3/14/02Original - Building File  
Canary - Applicant  
Pink - Inspector



[illegible]

R2006-208014

**BENEFITED PROPERTIES FOR RECAPTURE**

ADDRESS	P.I.N. NUMBER	RECAPTURE
30 W 045 Alice Lane	01-16-206-012	water, sanitary sewer, roadway improvements
30 W 029 Alice Lane	01-16-206-011	water, sanitary sewer, roadway improvements
30 W 069 Alice Lane	01-16-206-010	water, sanitary sewer, roadway improvements
30 W 089 Alice Lane	01-16-206-009	water, sanitary sewer, roadway improvements
12 S 087 Helene Avenue	01-16-206-001	water, sanitary sewer, roadway improvements
12 S 066 Helene Avenue	01-16-204-023	sanitary sewer, roadway improvements
12 S 044 Helene Avenue	01-16-204-022	sanitary sewer, roadway improvements

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Signage Non-conformance at Saddlewood Retail and Professional Center

May 18, 2006

Ground Signs:

The following ground signs do not meet the requirements in 5-4-4, sections 2, 3 and 4 as follows

Signs 1, 2 and 3 – Shopping Center Signs

These three lighted signs are located from 0' to 8' from the front and interior property lines and from the edge of right of way of a major arterial. Sign 3 exceeds 45 square feet in size, signs 1 and 2 exceed 90 square feet in size.

Signs 4, 5 and 6 – Shopping Center Sign and Changeable Copy Sign

These three lighted signs are mounted on the trash enclosure/gazebo and are located from 6' from the front property line and from the edge of right of way of a major arterial. The changeable copy sign exceeds 50% of the surface area of the sign.

Sign 7 – Sign at Perimeter of ATM Kiosk

There is lighted signage at the perimeter of the ATM Kiosk, which is located 20' from the front property line and from the edge of right of way of a major arterial and 5' from the side property line and from the edge of right of way of a major arterial.

Signs 8, 9, 10, 11 and 12 ATM Directional Signage

These five lighted signs are directional signs for the ATM kiosk. Signs 8 and 11 are located outside of the property lines in the road right-of-way, Sign 12 is located 20' from the front property line and from the edge of right of way of a major arterial.

Sign 13 – Professional Building Sign

This sign is located 0' from the front property line.

Wall Signs:

The following tenants have wall signs that exceed allowable area per 5-4-4 Paragraph 1.1

Maxivision

Store Frontage	16 lf
Allowable Sign Area	24 sf
Actual Sign Area	26 sf

OK Cleaners

Store Frontage	16 lf
Allowable Sign Area	24 sf
Actual Sign Area	26 sf

Star 7 Liquors

Store Frontage	24 lf
Allowable Sign Area	36 sf
Actual Sign Area	40 sf

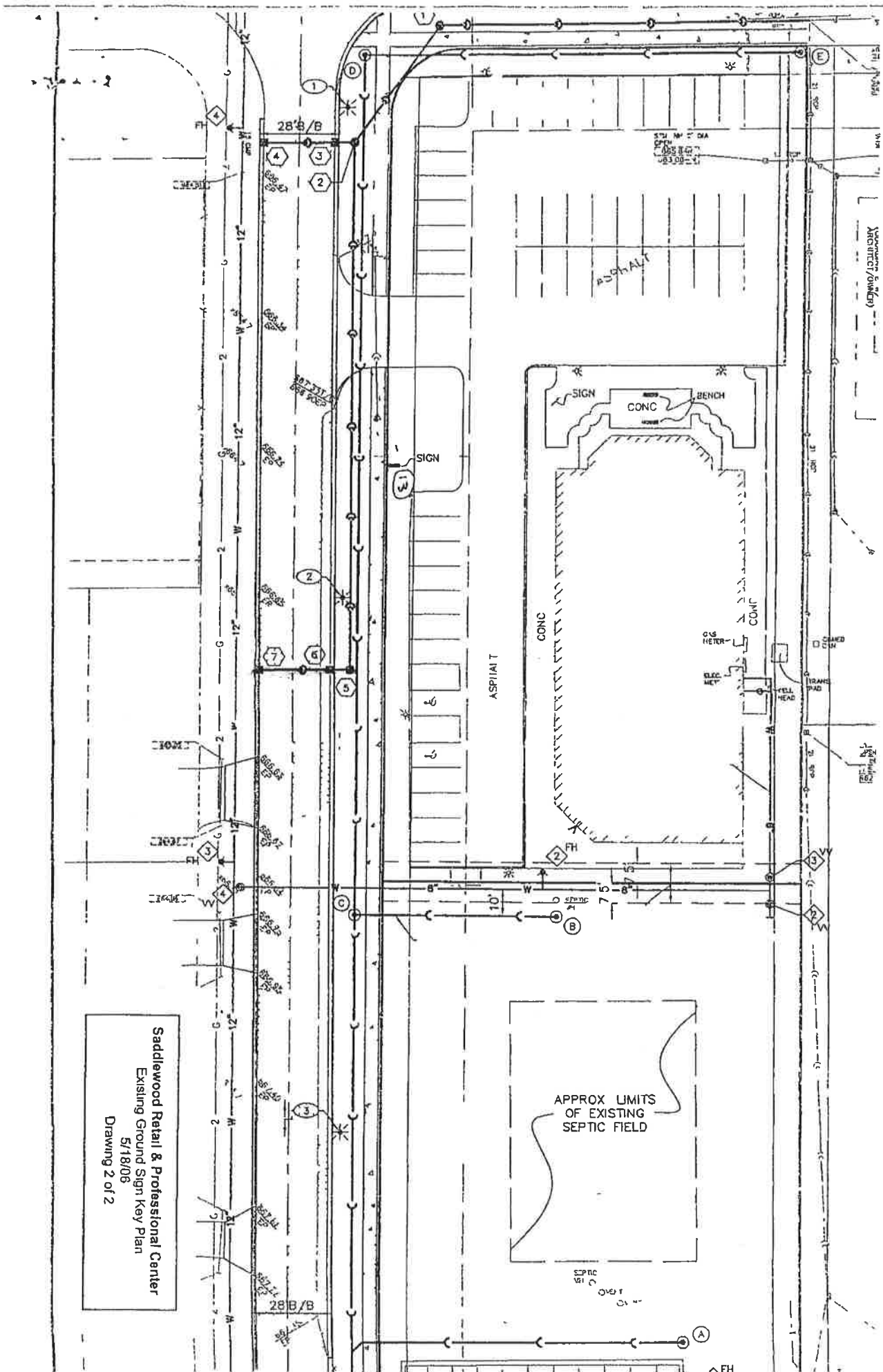
Window Signs:

The following businesses have window signs that exceed allowable area per 5-4-4 Section 6. Little Italian, Maxivision, OK Cleaners, Star 7, Curves, Edward Jones, Country Insurance, Pittsburgh Paints.



Saddlewood Retail & Professional Center  
Existing Ground Sign Key Plan  
5/18/06  
Drawing 1 of 2

**Saddlewood Retail & Professional Center**  
Existing Ground Sign Key Plan  
5/18/06  
Drawing 2 of 2



R2006-208014

## SADDLEWOOD COMMERCIAL COMPLEX

### LEGAL DESCRIPTION

LOTS 3, 4, AND 5 IN OHTI SUBDIVISION, A RESUBDIVISION OF LOTS 132 AND 133, ANDERMANN ACRES UNIT NO FIVE, A SUBDIVISION OF PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1987 AS DOCUMENT NO R87-36381, EXCEPTING THEREFROM THAT PART THEREOF DEDICATED TO THE STATE OF ILLINOIS BY DOCUMENT R94-92869, (SAID EXCEPTED PARCEL ALSO BEING DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3, THENCE ON AN ASSUMED BEARING OF SOUTH 01 DEGREES 53 MINUTES 06 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 30 00 FEET, THENCE NORTH 46 DEGREES 39 MINUTES 35 SECONDS WEST 42 59 FEET TO THE NORTH LINE OF SAID LOT 3, THENCE NORTH 88 DEGREES 33 MINUTES 56 SECONDS EAST ALONG SAID NORTH LINE 30 00 FEET TO THE POINT OF BEGINNING,) ALL IN WILL COUNTY, ILLINOIS

AND

THAT PART OF LOT 132 DESCRIBED BY BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 132 AND RUNNING THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ON A CURVE HAVING A RADIUS OF 60 FEET AN ARC DISTANCE OF 118 15 FEET (THE LONG CHORD OF SAID CURVE BEING THE NORTH LINE OF ALICE LANE, AS DEDICATED IN SAID PLAT OF ANDERMANN ACRES; UNIT FIVE, SAID LONG CHORD MEASURING 99 97 FEET) THE CENTER OF THE ABOVE DESCRIBED CURVES BEING A POINT 0 19 FEET SOUTH OF THE CENTER LINE OF SAID ALICE LANE AND 50 11 FEET WEST OF THE POINT OF INTERSECTION OF SAID CENTER LINE WITH THE EXTENSION OF THE EAST LINES OF SAID LOTS 131 AND 132, ALL IN ANDERMANN ACRES, UNIT FIVE, A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 9, 1973 AS DOCUMENT R73-24098, IN WILL COUNTY, ILLINOIS

Permanent Index Numbers 01-16-205-005-0000, 01-16-205-006-0000, and 01-16-205-007-0000  
Common Street Address 10300-10350 State Route 59 and 10331 Helen Avenue, Naperville,  
Illinois 60564

EXHIBIT A



# **CITY OF NAPERVILLE MEMORANDUM**

**DATE:** November 15, 2005

**TO:** Mayor A. George Pradel, Liquor Commissioner

**FROM:** Pat Lord, Senior Assistant City Attorney

**SUBJECT:** Annexation of Property Including an Operating Liquor Store Known as Star 7  
The Saddlewood Annexation Agreement

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**PURPOSE:**

The purpose of this memo is to provide background regarding the annexation of property located at Route 59 and 103<sup>rd</sup> Street in unincorporated Will County, which contains an operating liquor store known as Star 7. The owners of the property to be annexed have a lease with Star 7 and are unwilling to annex to the City unless they are sure that by doing so they will not be putting their lessee in a position where it will be illegal for them to continue operating as a liquor store. Star 7 will need a Class D liquor license in order to be able to continue to sell liquor once the property is annexed to the City.

This memo is intended to provide background information regarding Star 7's request for review of their application for a Class D liquor license from the City of Naperville in advance of annexation of the property they are located on to the City.

**BACKGROUND:**

1. State and City Requirement for 100 Feet Between Lot Lines of a Liquor Store and a School:

A liquor store has operated on the property, which is seeking annexation since 1983. Star 7 is the current lessee of the property and has a lease with options to extend that could extend to the year 2019.

Initially there was a question as to whether Star 7 ran afoul of the State and City requirements that a liquor establishment not be located within 100 feet (lot line to lot line) of a school (235 ILCS 5/6-12 of the State statute and section 3-3-19-1:1 of the Naperville Liquor Code).

Star 7 is located *more than* 100 feet from a school which is situated north of them on 103<sup>rd</sup> Street in their current location in Will County. However, during negotiations for annexation to the City, the City was considering requiring subdivision of the property that Star 7 is situated on which would have altered the lot lines such that Star 7 would have ended up having a lot line closer than 100 feet to the lot line of the school once the property was annexed. Since City staff has determined that is not necessary to require that subdivision, Star 7 will remain its current distance from the lot line of the school to the south. Therefore, if annexed, the lot on which Star 7 is located will not be closer than 100 feet to the lot line of the school.

## 2. City's 60,000 Square Foot Requirement:

Section 3-3-19-1:5.5.1 of the City's Liquor Code provides that certain licenses, including a Class D license, may not be located in a shopping center complex of less than 60,000 square feet of gross building floor area. The shopping center complex that Star 7 is located within has 34,000 square feet of gross building floor area (unless the adjacent office space is included in the calculation which would bring it up to 44,000 square feet of gross building floor area). Using either calculation, Star 7 does not meet the 60,000 square feet requirement of the City's Liquor Code. Section 5.2 of the same section of our Code allows for exceptions to this requirement as follows:

5.2 "The prohibitions set forth in this subsection shall not apply to renewal of existing liquor licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.

While the City would not be renewing Star 7's liquor license since it is currently licensed in Will County, it is clear that the intent of Section 5.2 is to permit the continuance of established liquor stores if the Liquor Commissioner, in his discretion and upon review of the information provided by the applicant and a background check, determines that it is appropriate to do so.

### **DISCUSSION:**

If, upon review of the application information and background check of Star 7, and subject to payment of all fees by Star 7, the Liquor Commissioner determines that upon annexation of the property in question he would issue a Class D liquor license to Star 7, a provision allowing operation of a liquor establishment in a shopping center comprised of less than the required 60,000 square feet of gross building area on the annexed property would be included in the Annexation Agreement for the property on which Star 7 is located.

If approved by the Liquor Commissioner, Star 7 would be "grandfathered" on the lesser square footage for the period of time deemed acceptable to the Liquor Commissioner. The Annexation Agreement would provide that the issuance of the Class D license would be for one year after which Star 7 would be required to continue to apply annually as required of all liquor licensees and would, of course, be required to continue to comply with State and City regulations in order to continue to be eligible for a liquor license.

The grandfathering provision for the time period specified by the Liquor Commissioner would mean only that the Liquor Commissioner agrees that a liquor establishment may be located at Star 7's current location irrespective of the fact that it is located in a shopping center comprised of less than 60,000 square feet of gross building area. When that time period has expired, the Liquor Commissioner may at that time, if requested, consider an extension of the grandfathering period.

### **CONCLUSION:**

The Liquor Commissioner may, in his discretion, and upon review of the application and background check, agree to allow the Star 7 premises to be "grandfathered" so that a liquor

establishment may continue to operate there even though it is located on less than 60,000 square feet of gross floor area as provided in 3-3-19-1:5.5.1 of the Naperville Liquor Code.

C: Margo Ely  
Jill Pelka-Wilger  
Suzanne Gagner  
Nancy Bright

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2. Off-Premises Consumption Liquor Licenses:

	Class D—Package Store	Class G—Beer and Wine Package Sale	Class G1—Grocery Store	Class P—Brewery/Retailer
<b>Requirements of Premises</b>	Must be located in a center containing not less than 60,000 sq. ft., max. 1 per center, or in a shopping center containing not less than 40,000 sq. ft. max, 1 per center, which has been annexed into the City of Naperville, prior to 2007, from Unincorporated Will County, and which center at the time of annexation held a valid Will County liquor license	Must be located in a center containing not less than 60,000 sq. ft., or a B1 zoned property containing at least 45,000 sq. ft.	Must meet "grocery" definition; 85% of store revenues must be from the sale of groceries; must be at least 15,000 sq. ft. in size. No more than 3% of floor area for liquor display.	Manufacturing portion must be separate from retail sale portion. Not more than 25% of the total sq. ft. are of the premises shall be designated to the retail sale of craft beer and wine.
<b>Consumption</b>	Off-premises only	Off-premises only	Off-premises only	Off-premises, except consumption in the retail portion of premises, no more than 3 craft beers or wine per person/day, by the glass not more than 16 oz., by the bottle not more than 12 oz., by flight of 4 glasses not more than 4 oz. each.
<b>Container Requirements</b>	Sale in original package.	Sale in original package.	Sale in original package; wine shall not be sold in containers less than 325 mL.	Retail sale of craft beer and wine brewed on premises in its original package.



<b>Liquor Tasting</b>	1/month for no greater than 3 consecutive days (\$100/yr.) or weekly for no greater than 2 consecutive days (\$200/yr.)	1/month for no greater than 3 consecutive days (\$100/yr.) or weekly for no greater than 2 consecutive days (\$200/yr.)	Prohibited.	Limited tastings during events.
<b>Annual Fee</b>	\$2,500.00	\$1,700.00	\$4,500.00	\$2,400.00

<b>Other</b>	Capped at 14 for establishments between 60,000 - 100,000 sq. ft. and capped at 1 for shopping centers between 40,000 and 59,999 sq. ft.	Capped at 6.	None.	Manufacture of up to 3,700,000 gallons of craft beer and wine per year. Must maintain records of total gallonage manufactured.
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