

Prepared by and return to:
Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, Illinois 60005
Attention: Village Clerk

THIS SPACE FOR RECORDERS USE ONLY

VILLAGE OF ARLINGTON HEIGHTS

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING
A PLANNED UNIT DEVELOPMENT AND GRANTING A VARIATION
FOR THE PROPERTY AT 11 S. HIGHLAND AVENUE

ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF ARLINGTON HEIGHTS
THIS ____ DAY OF _____, 2023.

AN ORDINANCE AMENDING
A PLANNED UNIT DEVELOPMENT AND GRANTING A VARIATION
FOR THE PROPERTY AT 11 S. HIGHLAND AVENUE

WHEREAS, _____ (“**Owner**”) is the owner of record of that certain property located in the Village’s B-5 Downtown District (“**B-5 District**”), commonly known as 11 S. Highland Avenue, and legally described in Exhibit A attached to and, by this reference, made a part of this Ordinance (“**Property**”); and

WHEREAS, on October 19, 1998, the Village Board of Trustees adopted Ordinance No. 98-061, approving both a planned unit development for the Metropolis PUD that includes the Property and a preliminary plat of subdivision for the Property, subject to certain conditions (“**PUD Ordinance**”); and

WHEREAS, the PUD Ordinance, as subsequently amended pursuant to Ordinance No. 99-028, permits the development of the Property as a mixed-use development comprised of theater, retail, office, and apartment components, including the Metropolis Theater building located along Campbell Street, the Hagenbring multi-tenant commercial building located along Vail Avenue and the Metropolis Condominium building located along Highland Avenue (collectively, the “**Approved Planned Development**”); and

WHEREAS, Section 4 of the PUD Ordinance prohibits the use of the Property for a medical office; and

WHEREAS, Lauren Mika Zattera and Walter G. Zattera (collectively, the “**Applicant**”), prospective tenant of the Property, desire to use the Property for a dental office (“**Proposed Dental Office**”); and

WHEREAS, pursuant to Section 6.12-1.3 of “The 2002 Comprehensive Amendment of the Zoning Ordinance of the Village of Arlington Heights,” as amended (“**Zoning Code**”), the request for the Proposed Dental Office requires a traffic and parking study by a certified traffic engineer; and

WHEREAS, pursuant to Section 9 of the Zoning Code, the Applicant, with the consent of the Owner, has filed an application for approval of: (i) an amendment to the PUD Ordinance to allow a dental office within the Property; (ii) and a variation from Section 6.12-1.3 to waive the requirement for a traffic and parking study by a qualified professional engineer (collectively, the “**Requested Relief**”); and

WHEREAS, a public hearing of Plan Commission of the Village to consider the Requested Relief was duly advertised in the *Daily Herald* on April 11, 2023, and held on April 26, 2023; and

WHEREAS, on April 26, 2023, the Plan Commission recommended that the Board of Trustees approve the Requested Relief, subject to certain conditions; and

WHEREAS, the Board of Trustees has determined that the Requested Relief complies with the required standards for planned unit developments as set forth in Section 9 of the Zoning Code; and

WHEREAS, consistent with the Plan Commission recommendation, the Board of Trustees has determined that it will serve and be in the best interests of the Village and its residents to approve the Requested Relief for the Property, in accordance with, and subject to, the conditions, restrictions, and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION 1. RECITALS. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. APPROVAL OF AMENDMENT TO PUD ORDINANCE. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 4 of this Ordinance, and in accordance with, and pursuant to, Section 9 of the Zoning Code and the home rule powers of the Village, the Village amends the PUD Ordinance to allow the Proposed Dental Office, by permitting a dental office at the Property.

SECTION 3. GRANT OF VARIATION. Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 4 of this Ordinance, and in accordance with, and pursuant to, Section 9 of the Zoning Code and the home rule powers of the Village, the Village hereby grants a variation from Section 6.12-1.3 of the Zoning Code to waive the requirement for a traffic and parking study by a qualified professional engineer.

SECTION 4. CONDITIONS. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Zoning Code, the approvals granted pursuant to Sections 2 and 3 of this Ordinance are hereby expressly subject to, and contingent upon, the development, use, and maintenance of the Property in compliance with each and all of the following conditions:

- A. Compliance with Regulations. Except to the extent specifically provided otherwise in this Ordinance, the development, use, operation, and maintenance of the Proposed Dental Office and the Property must comply at all times with all applicable Federal, State, and Village statutes, codes, ordinances, and regulations, as the same have been or may be amended from time to time.
- B. Compliance with Plans. Except for minor changes and site work approved by the Village Director of Building & Life Safety (for matters within their permitting authority) in accordance with all applicable Village standards, the development, use, operation, and maintenance of the Proposed Dental Office and the Property must comply with those certain floor plans prepared by Architectural Consulting Services, with a latest revision date of March 22, 2023 and consisting of one sheet, a copy of which is attached to and, by this reference, made a part of this Ordinance as Exhibit B ("*Plans*").
- C. Employee Parking. The Applicant must purchase from the Village, and keep in effect, an employee parking permit that permits vehicular parking within the Village-owned garage system for each employee of the Proposed Dental Office.
- D. Medical Use Limited. No medical use may be operated on the Property, except within the Proposed Dental Office in the Property.

SECTION 5. CONTINUED EFFECT; CONFLICTS. Except as provided otherwise in this Ordinance, all terms, provisions, and requirements of the PUD Ordinance remain unchanged and in full force and effect. In the event of a conflict between this Ordinance and the attached Plans, on one hand, and the PUD Ordinance and its attached plans, on the other hand, the terms of this Ordinance and attached Plans will prevail.

SECTION 6. RECORDATION; BINDING EFFECT. A copy of this Ordinance will be recorded on title to the Property with the Cook County Clerk's Recording Division. This Ordinance and the privileges, obligations, and provisions contained herein inure solely to the benefit of, and are binding upon the Owner, the Applicant, and each of their respective heirs, representatives, successors, and assigns.

SECTION 7. FAILURE TO COMPLY WITH CONDITIONS. Upon the failure or refusal of the Owner or the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, as applicable, the approvals granted in Sections 2 and 3 of this Ordinance may, at the sole discretion of the Village President and Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village President and Board of Trustees may not so revoke the approvals granted in Sections 2 and 3 of this Ordinance unless they first provide the Owner and the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Village President and Board of Trustees. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the B-5 District, the PUD Ordinance, and the applicable provisions of the Village Code, as the same may, from time to time, be amended. Further, in the event of such revocation, the Village Manager and Village Attorney are hereby authorized and directed to bring such enforcement action as may be appropriate under the circumstances.

SECTION 8. AMENDMENTS. Any amendment to any provision of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Zoning Code for the granting of planned unit developments.

SECTION 9. SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance are to remain in full force and effect, and will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 10. EFFECTIVE DATE.

- a. This Ordinance will be effective only upon the occurrence of all of the following events:
 - i. Passage by the Village President and Board of Trustees in the manner required by law; and
 - ii. The filing by the Owner and the Applicant with the Village Clerk of an Unconditional Agreement and Consent, in the form of Exhibit C attached to and, by this reference, made a part of this Ordinance, to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance and to indemnify the Village for any claims that may arise in connection with the approval of this Ordinance.
- b. In the event the Owner and the Applicant do not file fully executed copies of the Unconditional Agreement and Consent, as required by Section 10.A.ii of this Ordinance, within 30 days after the date of final passage of this Ordinance, the Village President and Board of Trustees will have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

AYES:

NAYS:

PASSED AND APPROVED THIS ___ day of _____, 2023

Village President

ATTEST:

Village Clerk

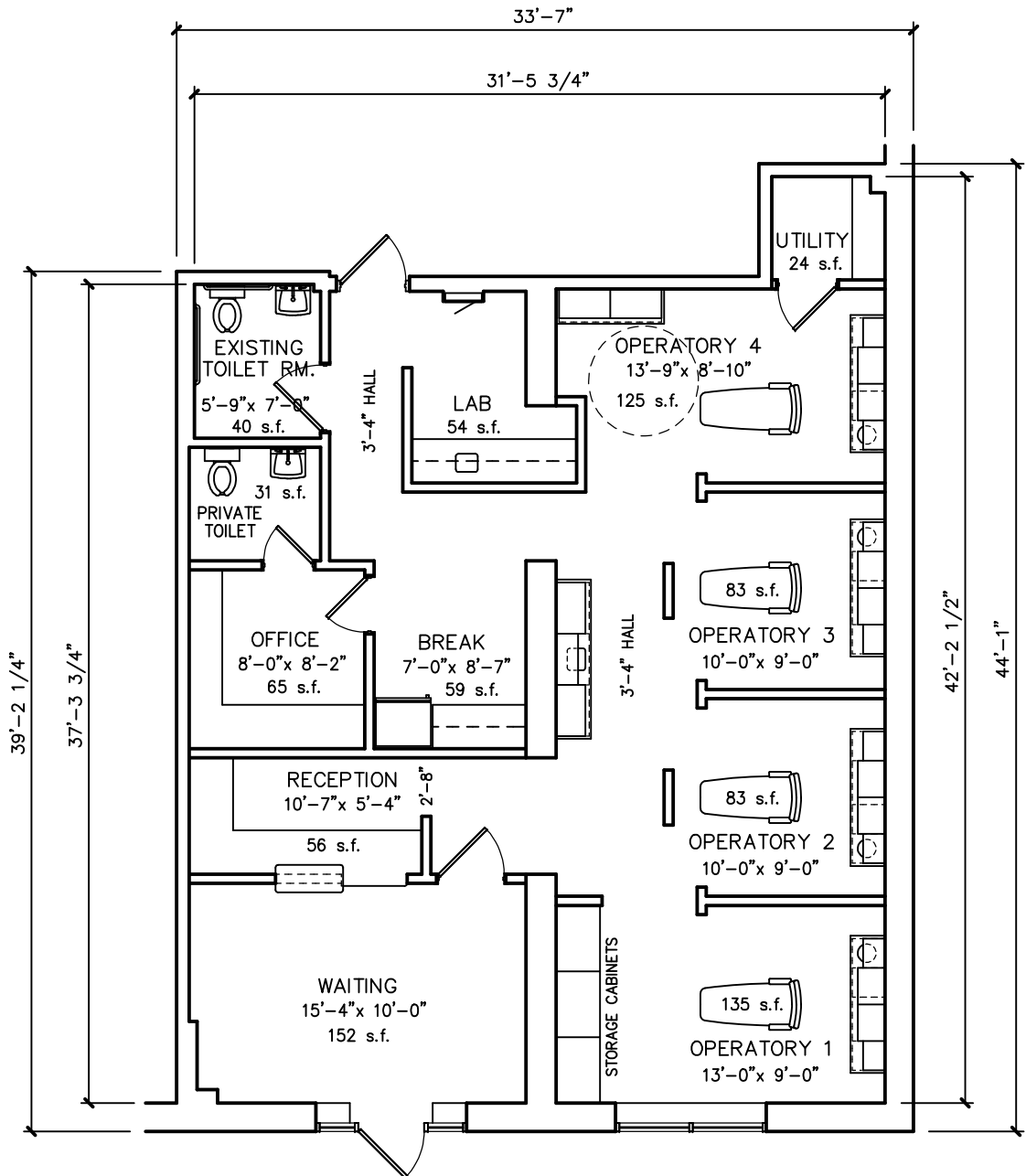
EXHIBIT A

Legal Description of the Property

LOTS 1, 2, 3, 4 & 17 IN SIEBURG'S SUBDIVISION OF BLOCK 25 (EXCEPT THE EAST ½ LOTS 1 AND 2) ALSO OF THE NORTH ½ OF BLOCK 32 AND SO MUCH OF ROBINSON STREET AS LIES BETWEEN SAID BLOCKS 25 AND 32 IN THE TOWN OF DUNTON, AND THE VACATED 16' PUBLIC ALLEY LYING WEST OF SAID LOTS 1 & 17 AND EAST OF SAID LOTS 2 & 4 IN SIEBURG'S SUBDIVISION AS VACATED PER DOCUMENT NO. 08156416 AND RECORDED DECEMBER 21, 1998 AND THE EAST HALF OF LOTS 1 AND 2 IN BLOCK 25 IN THE TOWN OF DUNTON, A SUBDIVISION OF THE WEST HALF OF THE SOUTHEWEST ¼ OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT B

Plans



TENANT AREA = 1200 SQ. FT.

**ARCHITECTURAL
CONSULTING
SERVICES**
870 WEST HILLSIDE
PALATINE, IL 60067
(224) 725-8563

DRAWING NAME:
PROPOSED NEW PLAN
SCALE: 1/8" = 1'-0"

**PROPOSED NEW SPACE PLAN
FOR:**
Dr. Zattera Dental
11 S. Highland Avenue
Arlington Heights, IL

DATE:
MARCH 22, 2023
SHEET NUMBER:
SK-10

EXHIBIT C

Unconditional Agreement and Consent

TO: The Village of Arlington Heights, Illinois (“*Village*”):

WHEREAS, _____ (“*Owner*”) is the owner of record of that certain property located in the Village’s B-5 downtown District (“*B-5 District*”), commonly known as 11 S. Highland Avenue, and legally described in Exhibit A attached to and, by this reference, made a part of this Ordinance (“*Property*”); and

WHEREAS, Lauren Mika Zattera and Walter G. Zattera (collectively, the “*Applicant*”) is a tenant at the Property; and

WHEREAS, Ordinance No. 2023-_____, adopted by the Village President and Board of Trustees on _____, 2023 (“*Ordinance*”), grants certain Requested Relief to the Approved Planned Development for the Property as described in the Ordinance; and

WHEREAS, Section 10 of the Ordinance provides, among other things, that the Ordinance will be of no force or effect unless and until the Owner and the Applicant file, within 30 days following the passage of the Ordinance, their unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in the Ordinance;

NOW, THEREFORE, the Owner and the Applicant do hereby agree and covenant as follows:

1. The Owner and the Applicant hereby unconditionally agree to, accept, consent to, and will abide by, each and all of the terms, conditions, limitations, restrictions, and provisions of the Ordinance.
2. The Owner and the Applicant acknowledge that public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any such revocation on the grounds of any procedural infirmity or a denial of any procedural right.
3. The Owner and the Applicant acknowledge and agree that the Village is not and will not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village’s granting of the Proposed Amendments for the Property or its adoption of the Ordinance, and that the Village’s approvals do not, and will not, in any way, be deemed to insure the Owner or the Applicant against damage or injury of any kind and at any time.
4. The Owner and the Applicant hereby agree to hold harmless and indemnify the Village, the Village’s corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with the Village’s adoption of the Ordinance granting the Requested Relief for the Property as described in the Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

Dated: _____, 2023

ATTEST: _____

By: _____

By: _____

Its: _____

Its: _____

ATTEST: LAUREN MIKA ZATTERA

By: _____

By: _____

Its: _____

Its: _____

ATTEST: WALTER G. ZATTERA

By: _____

By: _____

Its: _____

Its: _____