



PUBLIC MEETING NOTICE AND AGENDA  
COMMITTEE OF THE WHOLE MEETING

JUNE 25, 2019  
7:30 P.M.

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Audience Participation  
The public is invited to make an issue-oriented comment on any matter of public concern not otherwise on the agenda. The public comment may be no longer than 3 minutes in duration.
4. Staff Presentations
  - A. Administration
    1. Request for Raffle License from Lake in the Hills American Legion Post #1231
    2. Waiver of Sign Regulations Request from Lake in the Hills Youth Athletic Association
    3. Agreement with Cole and Mary Sandberg, removal of certain items at 9017 Haligus Road
  - B. Police
    1. Pro-Vision SecuraMax Service Contract, Software Agreement for Customer Private Server Solution, Remote Deployment Agreement, End User Terms and Conditions, and Uploader License Agreement
  - C. Public Works
    1. Waiver to the Minimum Aviation Fuel Price Ordinance
  - D. Community Services
    1. Ordinance approving a Variation to Section 15.13-1A, Front Yards – 1211 Crystal Lake Road
    2. Ordinance approving Text Amendments to Section 11, Permitted and Conditional Use Chart, of the Zoning Ordinance
    3. Ordinance granting a Conditional Use for a Kennel and Approval of a Development Plan, and an Agreement with PetSuites of America – 390 N. Randall Road
5. Board of Trustees
  - A. Trustee Harlfinger
  - B. Trustee Huckins
  - C. Trustee Bogdanowski
  - D. Trustee Dustin
    1. Planning and Zoning Commission Liaison Report
  - E. Trustee Bojarski
  - F. Trustee Murphy
    1. Parks and Recreation Board Liaison Report

- 6. Village President
  - A. Proclamation – Parks and Recreation Month (Village Board Meeting)
- 7. Audience Participation
- 8. Adjournment

MEETING LOCATION  
Lake in the Hills Village Hall  
600 Harvest Gate  
Lake in the Hills, IL 60156

The Village of Lake in the Hills is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations so that they can observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the Village’s facilities, should contact the Village’s ADA Coordinator at (847) 960-7410 [TDD (847) 658-4511] promptly to allow the Village to make reasonable accommodations for those persons.

Posted by: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Administration

**SUBJECT:** Raffle License Request for Lake in the Hills American Legion Post #1231

## EXECUTIVE SUMMARY

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The Lake in the Hills American Legion Post #1231 is requesting a Raffle License for Sunday, August 4, 2019 at 5pm. The raffle will consist of one Smith-Wesson MP Shield 9mm Pistol or the winner can choose cash. Section 31.02 of the Village Code regulates organizations that conduct raffles in the Village. Organizations desiring to conduct a raffle must apply to the Village for a raffle license. All provisions of Section 31.02 of the Village Code have been met.

## FINANCIAL IMPACT

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None.

## ATTACHMENTS

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1. Raffle License Application

## RECOMMENDED MOTION

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Motion to approve the raffle license request and waive the fidelity bond requirement for Lake in the Hills American Legion Post #1231.



Village of Lake in the Hills
Raffle Application Form

Date of Application June 13th

(The Village President, with the advice and consent of the Board of Trustees, shall have 30 days in which to approve or disapprove the license applied for.)

Application Information:

Name of Organization: L.I.H.H American Legion Post 1231

Date of incorporation or formation of Organization (minimum of 5 years in existence is required to qualify for license): 1955

Does this organization fulfill the requirement of operating without profit to its members: Yes [ ] No [X]

Purpose for which club/ organization was formed: To Support Veterans And Their Families in McHenry County

Presiding Officer's Name: Jack Repta

Presiding Officer's Address: 1015 Sutherland Dr Crystal Lake, IL 60014

Secretary's Name: Norman Schwartz

Secretary's Address: 174 Berkshire Dr Crystal Lake, IL 60014

Raffle Manager's Name: Rich Jung

Raffle Manager's Address: 176 Hilltop D. L.I.H.H. IL 60156

Raffle Manager's Phone #: 847-658-7488

Raffle Manager's Date of Birth: 6-29-43

Names & Addresses of any other individual directly involved with the administration of the raffle.

Raffle Information:

Dates raffle chances will be sold or issued: Starting June 25 2019

Date/Time raffle is to take place: When All Tickets Are Sold / Aug 4th 2019 5pm

Location or Description of Premises and Address of raffle: American Legion Post 1231 1100 W Algonquin Rd L.I.H.H, IL 60156

Location or areas within the Village where the raffle chances will be sold or issued:  
Method by which the winning chance will be determined:

Lake in The Hills American Legion

RANDOM DRAWING

Total number of chances to be sold:

125

Maximum price of each raffle chance:

\$10 EACH

Item(s) to be raffled:

PISTOL  
Smith & Wesson  
MP shield 9mm  
or can take cash

Maximum Retail Value of Each Prize:

\$ 480-

\$

\$

\$

\$

\$

Retail dollar value of all prizes:

\$ 480-

**Assertions:**

- Yes  No  Does the raffle manager reside in Lake in the Hills?
- Yes  No  Is the raffle manager a US Citizen?
- Yes  No  Has the raffle manager ever been convicted of a felony under any federal or state law?
- Yes  No  Has the raffle manager ever been convicted of pandering or other crimes or misdemeanor opposed to decency and morality?
- Yes  No  Has the organization ever had a raffle license previously revoked for cause?
- Yes  No  Is the presiding officer, secretary, raffle manager or other individuals directly involved in the administration of the raffle, a law enforcing public official, President, Trustee, or member of the Village Board or commission, or any president or member of a County Board?
- Yes  No  Is there interest in the raffle for any law enforcing public official, President, Trustee, or member of the Village Board or commission, or any president or member of a County Board?
- Yes  No  Has the organization or raffle manager ever been convicted of a gambling offense as proscribed by either local, state or federal law?
- Yes  No  Has the organization or raffle manager ever been issued a federal gambling device stamp or a federal wagering stamp for the current tax period?
- Yes  No  Has the premises of the raffle ever been issued a federal gambling device stamp or a federal wagering stamp for the current tax period?

**Bond and Fee Requirements:**

- Yes  No  Is a waiver of the fidelity bond provision being requested of the Board of Trustees?
- Yes  No  If yes, has the organization provided evidence of unanimous vote in favor of the fidelity bond waiver?
- Yes  No  If no, is the fidelity bond attached to this application?



### Village of Lake in the Hills Bond Waiver Request Page

The Village Code requires that the raffle manager shall give a fidelity bond in an amount not less than the anticipated gross receipts for each raffle. The bond shall be in favor of the organization and conditioned upon his/her honesty in the performance of his/her duties. The bond shall also provide that notice is given in writing to the Village of Lake in the Hills not less than thirty (30) days prior to its cancellation.

**The Village president and Board of Trustees is authorized to waive the requirement for a bond by including a waiver provision the license issued, provided that by a unanimous vote of the members of the licensed organization, such a waiver is requested.** Such a request does not guarantee that a waiver will be granted by the Village of Lake in the Hills; however, if your organization would like to request a waiver of the bonding requirement, please complete the following Bond Waiver Request. Please be sure to have both signatures notarized.

On the 14 day of June, 2019, the membership of American Legion Post 1231  
(Name of Organization)

by unanimous vote requested that the Village of Lake in the Hills waive the fidelity bonding requirement for its raffle to be conducted on the attached raffle application.

X Signed: [Signature]  
Presiding Officer

Signed: [Signature]  
Secretary

Subscribed and sworn to before me this  
14<sup>th</sup> day of June, 2019

[Signature]  
Notary Public



### NOT FOR PROFIT STATEMENT

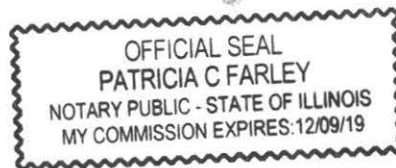
We, the undersigned Presiding Officer and secretary, do hereby attest that American Legion (name of organization) is a bona fide religious, charitable, labor, fraternal, educational, or veteran organization that operates without profit to their members and which have been in existence continuously for a period of five (5) years immediately before making application for a license, and which have been during that entire five (5) year period, a bona fide membership engaged in carrying out their objectives as described on the attached raffle application.

Signed: [Signature]  
Presiding Officer

Signed: [Signature]  
Secretary

Subscribed and sworn to before me this  
14<sup>th</sup> day of June, 2019

[Signature]  
Notary Public





### Village of Lake in the Hills Raffle Affirmation Page

I (we) swear (or affirm) that our organization/club is not-for-profit and that I (we) have never been convicted of any felony and are not disqualified to receive a license by reason of any matter or thing contained in this Section 31.02 of the Lake in the Hills Municipal Code or any other Ordinances of the Village, laws of the State of Illinois or of the United States of America. I also swear that no previous license issued by any state or subdivision of Federal Government has been revoked. I will not violate any of the laws of the State of Illinois or of the United States or any Ordinances of the Village of Lake in the Hills in the conduct of the raffle. I will not allow gambling devices or gambling on the premises where the drawing will be held.

I (we) understand that a fidelity bond in an amount not less than the anticipated gross receipts is needed from the manager unless notice is attached to the application that the club/organization voted, by unanimous vote, to waive such provision.

At the conclusion of the raffles, a report shall be made to the Village of Lake in the Hills as to the gross receipts, expenses and net proceeds from the raffles.

I swear that the statements contained in the application are true and correct to the best of my knowledge and belief.

[Signature]  
Presiding Officer

and/or

[Signature]  
Secretary

Sworn to before me this 14<sup>th</sup> day  
of JUNE, 20 19  
[Signature]  
Notary Public



### MUNICIPAL CODE SECTION 31.02 TO BE REVIEWED BY APPLICANT

I have read and will comply with Section 31.02 of the Village of Lake in the Hills Municipal Code.

[Signature]  
Signature

6-14-19  
Date



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Administration

**SUBJECT:** Request for Waiver of Sign Regulations and Enforcement from Lake in the Hills Youth Athletic Association

## EXECUTIVE SUMMARY

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Attached please find a letter from Lake in the Hills Youth Athletic Association requesting enforcement activities be suspended to allow the erection of temporary signage in the right-of-way at the intersections listed below, within the Village boundaries, from June 26, 2019 until July 31, 2019 to advertise tryouts for their travel baseball/ softball tryouts and from July 15, 2019 until August 15, 2019 for their fall ball registration.

Intersections:

Algonquin & Pyott  
Randall & Miller  
Within Sunset Park  
Within LeRoy Guy Park

## FINANCIAL IMPACT

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None.

## ATTACHMENTS

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1. Letter

## RECOMMENDED MOTION

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Motion to suspend enforcement activities from June 26, 2019 until July 31, 2019 and July 15, 2019 until August 15, 2019 to allow the installation of temporary signage at the intersections referenced above for the Lake in the Hills Youth Athletic Association travel baseball/softball tryouts and fall ball registration.



To: Lake in the Hills Village Board

From: LITH YAA Board of  
Directors

Re: Sign Regulation  
Waiver

June  
19,2019

Please accept this letter as a formal request from the LITH YAA for an exemption of the current sign regulations and fees in order for us to advertise our upcoming Fall Baseball/Softball registration and season as well as tryouts for our Travel program (Thunder & Hurricanes) with banners as follows.

## **Travel Tryouts**

### **Locations**

- Randall & Miller (in front of Ken Carpenter park)
- Pyott & Algonquin Rds (by Mobil station)
- Within the baseball parks (Sunset & Guy)

### **Duration**

The signs would be posted from June 26th through July 31st.

### **Content**

Travel Baseball & Softball Tryouts Visit  
[www.lithyaa.org](http://www.lithyaa.org) for Information & Registration  
(with our logos)

## **Fall Ball Registration**

### **Locations**

- Randall & Miller (in front of Ken Carpenter park)
- Pyott & Algonquin Rds (by Mobil station)
- Within the baseball parks (Sunset & Guy)

**Duration**

The signs would be posted from July 15th through August 15th..

**Content**

Fall Baseball & Softball Registration Now  
Open [www.lithyaa.org](http://www.lithyaa.org) (with our logo)

Sincerely,

Lisa Wolter VP,  
Marketing LITH YAA  
Board of Directors



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Administration

**SUBJECT:** Execution of an Agreement between the Village of Lake in the Hills and Cole and Mary Sandberg

## EXECUTIVE SUMMARY

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Attached please find an agreement with Cole and Mary Sandberg for the removal of certain items at the property of 9017 Haligus Road, Lake in the Hills, Illinois. Mr. and Mrs. Sandberg have provided notice to end their lease agreement early with the last day of occupation of the property to be July 7<sup>th</sup>, 2019. They have been the existing renters of the property since January, 2009, and the term of the current lease is through August 30, 2020.

Throughout the duration of their time as tenants at 9017 Haligus Road, Mr. and Mrs. Sandberg have purchased and installed fixtures at the property to modify the home and grounds to their preference. As a general rule, fixtures added to a leased property by a tenant may become the property of the lessor and would stay with the real estate at the end of a lease. Mr. and Mrs. Sandberg have requested to take certain fixtures with them when they depart. Staff has reviewed the items requested, which are listed in the attached agreement, and has found no need for the Village to retain any of the requested fixtures. Aside from the home's water heater which was added by the Village in January 2015, all items requested were purchased and added to the property by the tenant.

The summer of 2020 was previously identified as the appropriate time to cease leasing the residential property in order to pursue its future public use and was approved by the Village Board on March 28, 2019. As such, it is anticipated that the structure at 9017 Haligus will be demolished in the future. Allowing the tenants to remove certain items will benefit the Village by lessening the amount of material that the Village would need to remove from the property and additionally lessen Village costs in the long term.

## ATTACHMENTS

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1. Agreement

## RECOMMENDED MOTION

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Motion to authorize the Village President to execute the Agreement between the Village of Lake in the Hills and Cole and Mary Sandberg.

## **AGREEMENT**

THIS AGREEMENT is entered into on this 25<sup>th</sup> day of June, 2019, between the Village of Lake in the Hills (the “Village”) and COLE SANDBERG and MARY SANDBERG, (together the “Tenants”).

WHEREAS, the Village and the Tenants entered into a lease relative to the property commonly known as 9017 Haligus, Lake in the Hills, IL (the “Subject Property”) possession of which the Tenants are relinquishing and for which the Village anticipates demolishing the structure on the Subject Property;

WHEREAS, the Tenants and the Village wish to allow the Tenants to remove certain items from the Subject Property, which may be under the ownership of the Village, which would benefit the Village by lessening the amount of material that the Village would need to remove from the Subject Property and lessening Village costs relative to the Subject Property in the long term.

NOW THEREFORE, the parties agree as follows:

1. **Removal of Items from the Subject Property.** The Tenants agrees to remove, or cause to be removed, all of the following items (collectively the “Items”) situated on the Subject Property at Tenants’ sole cost:

- a. Basement ceiling fan;
- b. Heater in the tub in the basement;
- c. Hardware on the cabinet in the basement
- d. Water softener
- e. Shower heads
- f. Paver/landscape blocks (front back and side of house)
- g. Closet shelves/organizer
- h. Shelving units in family room and storage rooms in the basement
- i. All window treatments
- j. All light fixtures in the basement, bathroom, bar and ceiling
- k. Water heater

Such removal of Items and transportation from the Subject Property by the Tenants shall be completed no later than July 7, 2019. Time is of the essence.

Upon the removal of the Items and transportation of same from the Subject Property by the Tenants, within the above-referenced time frame, the Village shall not claim any interest in or title to such Items.

2. **Safety and Supervision of Removal of Items.** The Tenants agree that they shall be jointly and severally solely responsible for i) supervising the removal of all Items from the Subject Property, and transportation of all the Items from the Subject Property and, ii) ensuring that such removal and transportation of the Items from the Subject property is done in a careful, professional and safe manner.

3. **Assumption of Risk.** The Tenants agree, jointly and severally, to bear all risk and liability associated with the removal of the Items from the Subject Property and transportation of same from the Subject Property, whether the Tenants remove the Items or allow or cause third parties to remove all or any of the Items.

4. **Indemnification by Tenants of Village.** The Tenants, jointly and severally, hereby agree to indemnify and hold harmless the Village from and against any and all claims, actions, suits and judgments against the Village arising in connection with, directly or indirectly, the removal of the items from the Subject Property and transportation of the Items from the Subject Property, as well as the Village's attorneys fees incurred in defending against such claim, action or suits.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

**TENANTSs:**

  
\_\_\_\_\_  
Cole Sandberg

  
\_\_\_\_\_  
Mary Sandberg

**VILLAGE:**

Village of Lake in the Hills, Illinois

By: \_\_\_\_\_  
Russ Ruzanski, President



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Police

**SUBJECT:** **Pro-Vision SecuraMax Service Contract, Software Agreement for Customer Private Server Solution, Remote Deployment Agreement, End User Terms and Conditions, and Uploader License Agreement**

## EXECUTIVE SUMMARY

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In 2018, the department initiated a three-year transition plan to replace thirteen in-squad camera systems that are at the end of their service life. To date, 4 cameras have been replaced. This year 5 additional cameras will be added to continue the transition. The implementation of the new cameras and hardware requires entering into the following contract, agreements and terms and conditions with Pro-Vision.

- SecuraMax Service Contract, this contract identifies services to be provided by Pro-Vision including terms and conditions for the department's deployment of SecuraMax software
- Software Agreement for Customer Private Server Solution, this Software Agreement supplements the terms set forth in the Service Contract
- Remote Deployment Agreement, this agreement allows Pro-Vision to install and activate Uploader Software and Remote Access Software on the department's computers used to host SecuraMax software
- End User Terms and Conditions, this is a Software Service License setting terms and conditions for the department's access to the SecuraMax.com website
- Uploader License Agreement, this is a software license agreement to install and use the SecuraMax Uploader Software for security updates, bug fixes, and feature enhancements

The terms of all documents start upon activation of the SecuraMax software and run for a period of 5 years.

## FINANCIAL IMPACT

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The total purchase price, including all hardware, is \$16,195.50 with \$16,824 available in the 2019 budget for the purchase.

## ATTACHMENTS

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1. Pro-Vision SecuraMax Service Contract, Software Agreement for Customer Private Server Solution, Remote Deployment Agreement, End User Terms and Conditions, and Uploader License Agreement

## **RECOMMENDED MOTION**

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Motion to approve and authorize the Chief of Police to execute the Pro-Vision SecuraMax Service Contract, Software Agreement for Customer Private Server Solution, Remote Deployment Agreement, End User Terms and Conditions, and Uploader License Agreement between the Lake in the Hills Police Department and Pro-Vision, Inc.



# SecuraMax™ SERVICE CONTRACT

This is a Service Contract (the "Service Contract") between \_\_\_\_\_  
("LICENSEE") at \_\_\_\_\_  
and Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION"). This Service Contract provides a start date and term of agreement, the initial fee structure, identification of the services to be provided, and identification of the devices ("PRO-VISION Devices") for which the services are associated, wherein the identified services are to be provided under the terms and conditions specified herein and in a Self-Hosted Software Service Agreement to which the LICENSEE will agree to in order to use the Software Service as specified therein. This Service Contract is voidable at the sole option of PRO-VISION unless and until LICENSEE executes the Self-Hosted Software Service Agreement.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this Service Contract on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

LICENSEE will accept and be bound by the terms and conditions offered by PRO-VISION, which are set forth in the Self-Hosted Software Service Agreement. Each end user of LICENSEE will be required to agree to End User Terms and Conditions. Further, LICENSEE will need to agree to separate Uploader Licenses for the uploader software. The terms of deployment will be established in a separate Remote Deployment Agreement.

Various details referenced in the Self-Hosted Software Service Agreement are set forth below.

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**LICENSEE INFORMATION:**

COMPANY / ORGANIZATION NAME:	BUSINESS TAX ID (TIN/EIN/FEIN):	
CONTACT NAME:	CONTACT TITLE:	
BILLING ADDRESS:		
CITY:	STATE:	ZIP:

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Contract No. 201906191102

**PRO-VISION DEVICE(S):**

MODEL: <b>PV-DVR</b>	QUANTITY: <b>5</b>
MODEL:	QUANTITY:

**RECURRING ITEMS:**

Items listed in this section are billed on a recurring monthly basis.

PART NUMBER	PART DESCRIPTION	QUANTITY	MONTHLY UNIT PRICE	SUB TOTAL	SEE NOTE
			0		
			0		
<b>TOTAL</b>					

**FIXED COST ITEMS:**

Items listed in this section have a one-time unit cost, monthly billing will not occur.

PART NUMBER	PART DESCRIPTION	QUANTITY	UNIT PRICE	SUB TOTAL	SEE NOTE
SMX-SLLE5	SecuraMax Server License-5 Year	5	300	1,500	
			0		
			0		
<b>TOTAL</b>				1,500	

By applying our signatures below, we hereby accept the terms and conditions set forth above.

**PRO-VISION:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
DATE

**LICENSEE:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
DATE

## SOFTWARE AGREEMENT FOR CUSTOMER PRIVATE SERVER SOLUTION

This is a Software Agreement (the “Agreement”) under which LICENSEE may use the Software. This Agreement supplements the terms set forth in a previously-agreed upon Service Contract, Number 201906191102 between LICENSEE and PRO-VISION (“the Service Contract”).

By clicking ACCEPT, you represent that you are authorized to enter into this Agreement on behalf of the Licensee “LICENSEE” listed in the Licensee field of the Service Contract and hereby agree to the following terms and conditions of use of this software (“Software”) of behalf of the LICENSEE. The licensor of this Software is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, (“PRO-VISION”).

PRO-VISION and LICENSEE agree as follows:

### 1. DEFINITIONS

**1.1 “Documentation”** means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software, as updated from time-to-time by PRO-VISION.

**1.2 “Intellectual Property”** shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. “Moral Rights” means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty .

**1.3 “LICENSEE’S Data”** is data originating from LICENSEE that is stored using the Software on behalf of LICENSEE, and includes media files such as text, videos, photos, and audio .

**1.4 “PRO-VISION Device”** means any device provided by PRO-VISION and listed in the Service Contract, from which the Software transfers LICENSEE’S Data to LICENSEE’S storage media, and any replacement of such device that is provided by PRO-VISION under PRO-VISION’s Limited Warranty.

**1.5 “Software”** means PRO-VISION’s computer software that interfaces with and transfers LICENSEE’s data from a PRO-VISION Device to LICENSEE’s computer storage media, and facilitates

the use and management of LICENSEE's data (known as SecuraMax™), and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to LICENSEE by PRO-VISION under this Agreement.

**1.6 "Start Date"** shall mean the Start Date listed in Start Date field of the Service Contract.

**1.7 "Subscription Term"** shall mean the period of time beginning on the Start Date and ending after the period of time set forth in the Subscription Term field of the Service Contract, unless renewed as provided in this Agreement. Subscription Term includes any Renewal Term.

**1.8 "Trial Term"** shall mean the length of the trial period and begins on the Start Date and ends after the period of time set forth in the Trial Term field (if any) of the Service Contract.

## **2. SOFTWARE LICENSE**

**2.1 Grant of Software License.** Subject to the terms and conditions of this Agreement and payment of the Software Fees, PRO-VISION grants and LICENSEE accepts a non-transferable, non-assignable, non-exclusive license to use the Software solely for its own purposes for the Term as set forth herein. LICENSEE shall be responsible for maintaining its computer equipment needed so as to enjoy the Software.

### **2.2 License Restrictions.**

- (a) LICENSEE will not lend, lease, sublicense, transfer, or otherwise distribute the Software to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, LICENSEE will not use the Software in any manner to provide computer services to third parties;
- (c) LICENSEE will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, LICENSEE will not reverse engineer the Software; and
- (e) LICENSEE will keep the Software free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software.

### **2.3 Ownership.**

**2.3.1 The Software.** PRO-VISION owns all right, title, and interest in and to the Software including all Intellectual Property rights therein. LICENSEE does not acquire any rights, express or implied, in the Software, other than those specified in this Agreement.

**2.3.2 LICENSEE'S Data.** LICENSEE shall own all right, title, and interest in and to LICENSEE'S Data. PRO-VISION does not acquire any rights, express or implied, in LICENSEE'S Data. LICENSEE is solely responsible for controlling access to LICENSEE'S Data and is solely responsible for deletion, modification, downloading, uploading, sharing, copying, moving, and management of LICENSEE'S Data. PRO-VISION does not view the content of LICENSEE'S Data

**2.4 Backup, Disaster Recovery, Bandwidth and Data Security.** Backup, disaster recovery, bandwidth and data security are not provided by PRO-VISION. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

### **3. FEES AND TAXES**

**3.1 Software Fee.** LICENSEE shall pay PRO-VISION a Software Fee in effect at the time of payment. Such Software Fees are due and payable in advance.

**3.2 Suspension of Use of Software.** In addition to any other rights and remedies, PRO-VISION reserves the right to suspend LICENSEE's right to use the Software provided to the LICENSEE, under any one or more of the following conditions:

- (a) if Licensee is in breach of this Agreement, including if LICENSEE's account is five (5) days or more overdue (except with respect to charges then under reasonable and good faith dispute);
- (b) if any security risk is created by LICENSEE's use of the Software;
- (c) if LICENSEE's use of the Software creates or threatens to create any adverse effect on the Software or any use or data of any other licensee of the Software;
- (d) if PRO-VISION may be exposed to liability through LICENSEE's use of the Software; or
- (e) if LICENSEE becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

In the event that the Software is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that all delinquent amounts are paid in full, LICENSEE'S breach is cured or the Software is otherwise terminated. LICENSEE will remain liable for payment of the Software Fees throughout the duration of the suspension of services. LICENSEE'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this Agreement.

**3.3 Taxes and Other Charges.** LICENSEE will be responsible for the amount of any and all sales, use, ad valorem, personal property, excise, other taxes or governmental charges associated

with this Agreement (excluding taxes in respect of PRO-VISION's income) and/or any other taxes due for LICENSEE's use or receipt of the Software or support, consulting and training services provided by PRO-VISION. Such amounts, and any other charges which LICENSEE has agreed to pay and are not otherwise specifically provided for herein shall be due to the appropriate governmental authority upon payment or receipt of PRO-VISION's invoice. LICENSEE agrees that should any tax liability on the Software or other items included under this Agreement be established by any taxing unit, the LICENSEE agrees to pay such taxes arising out of this Agreement.

**3.4 Late Payments.** All amounts to be paid by LICENSEE hereunder shall be due and payable within the times prescribed. All payments not made by LICENSEE when due shall be subject to late charges of the lesser of (i) one and a half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. In addition, LICENSEE shall pay all of PRO-VISION's reasonable costs and attorneys' fees in any legal action to collect overdue amounts and/or enforce PRO-VISION's rights under this Agreement.

#### **4. TERM AND TERMINATION**

**4.1 Term.** The Term of this Agreement will be determined based upon the Start Date and will remain in effect throughout the Subscription Term (or the Trial Term, if applicable), unless earlier terminated as provided herein. Upon completion of the initial Subscription Term, this Agreement will automatically renew for successive 1 year terms (each a "Renewal Term") at the annual Software Fee then in effect unless LICENSEE provides written notice of termination at least sixty (60) days in advance of the end of the then existing Subscription Term or Renewal Term.

#### **4.2 Termination**

- (a) Termination with Cause.** Either party may terminate this Agreement for cause: (i) Upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A "material breach" by LICENSEE includes, without limitation, a violation by LICENSEE of any term of the End User Terms and Conditions.
- (b) Termination upon Sale of PRO-VISION Device.** PRO-VISION will have the right to terminate this Agreement if LICENSEE sells any PRO-VISION Device that uses the Software.
- (c) Early Termination.** In the event LICENSEE terminates this agreement without cause prior to the completion of the Subscription Term or any Renewal Term, LICENSEE must immediately pay PRO-VISION all unpaid invoices and interest and an amount equal to 100% the Software Services Fees in effect multiplied times the number of months remaining in the Subscription Term immediately prior to such termination.

**4.3 Effect of Termination.** Termination of this Agreement or any Software license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve LICENSEE of its obligation to pay all fees and charges that have accrued or are otherwise owed by LICENSEE under this Agreement. Termination of this Agreement will terminate any Support Services and will immediately terminate LICENSEE'S right to use the Software.

**4.4 Outstanding Fees.** Termination shall not relieve LICENSEE of the obligation to pay any fees accrued or payable to PRO-VISION prior to the effective date of termination.

**4.6 Survival.** The rights and obligations of the parties contained in Sections 2.2 (License Restrictions), 2.3 (Ownership), 3 (Fees and Taxes), 4.3 (Effect of Termination), 7 (Confidential Information and Operational Data), 8.3 (Support Services Exclusions), 8.4 (Intellectual Property Ownership in Software), 8.5, 8.6, 10.1 (Warranty of Authority), 11 (Disclaimer), 12 (Indemnities), 13 (Limitation of Liability), and 15 (General Terms), together with all other provisions of this Agreement which by their nature are necessary or useful to effectuate their enforcement, will survive the termination of this Agreement or any other license for the Software.

## **5. DEPLOYMENT**

### **5.1 Remote Deployment**

Unless otherwise provided in the Service Contract or per Section 5.2 below, all deployment of the Software will be performed by remote assistance at no additional charge according to the terms and conditions set forth in a separate Remote Deployment Agreement. Provided the applicable Software Fee has been paid in advance by LICENSEE for the current month and provided that payment has been made for all PRO-VISION Devices, PRO-VISION will provide access to the Software to LICENSEE on or after the Start Date and will provide assistance setting up an account and helping LICENSEE to assign users as provided in the Remote Deployment Agreement

### **5.2 On-Site Deployment**

PRO-VISION will not provide on-site deployment services unless requested by LICENSEE and agreed to in advance and upon LICENSEE'S payment of the agreed upon fees.

## **6. TRAINING SERVICES**

PRO-VISION will provide reasonable training in the use of the Software for the Training Fees in effect at the time of LICENSEE'S request for such training services. Each party will be solely responsible for any expenses incurred by its personnel in connection with such training, except that LICENSEE will reimburse PRO-VISION for any travel and other reasonable expenses incurred by PRO-VISION'S personnel in providing training at LICENSEE'S site. All training will be scheduled at a mutually agreeable time, subject to the availability of PRO-VISION'S personnel and facilities.

## 7. CONFIDENTIAL INFORMATION AND OPERATIONAL DATA

**7.1 Definition.** For the purposes of the Agreement, “Confidential Information” means: (a) the Software, Work Product, and other related technical information disclosed by PRO-VISION to LICENSEE; (b) LICENSEE’S Data; (c) any non-public business or technical information of PRO-VISION or LICENSEE, including but not limited to any information relating to PRO-VISION’s or LICENSEE’s product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as “confidential” or “proprietary” at the time of disclosure, and, if orally disclosed, is reduced to writing by the disclosing party within thirty (30) days of such disclosure; or that ought reasonably be understood to be confidential by virtue of its nature or the circumstances of its disclosure and (c) terms of this Agreement (including, without limitation, the amount of fees or other charges specified under this Agreement).

**7.2 Obligations.** Each party will not use the other party’s Confidential Information and will not disclose such Confidential Information to any third party except to employees and consultants as are reasonably required in connection with the exercise of its rights and performance of its obligations under this Agreement, provided that such disclosure to employees or consultants is subject to binding use and disclosure restrictions at least as protective as those set forth herein. Each party will take all reasonable measures to maintain the confidentiality of all such Confidential Information in its possession or control, which will in no event, be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Each party shall promptly notify the other party of any suspected or actual unauthorized disclosure of the other party’s Confidential Information.

**7.3 Compelled Disclosures.** To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over a party, the party may disclose Confidential Information of the other party in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information, the party will so notify the other party in writing and, if reasonable, provide the other party notice not less than five (5) business days prior to the required disclosure. The party that is the subject of the order or requirement will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the other party to contest, otherwise oppose or seek to limit such disclosure. Notwithstanding any such compelled disclosure, the disclosure will not otherwise affect the party’s obligations hereunder with respect to Confidential Information so disclosed.

**7.4 Exclusions.** Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party’s possession is not



within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

**7.5 Non-Exclusive Equitable Remedy.** Each party acknowledges and agrees that due to the unique nature of the Software and Confidential Information as defined herein, there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

## **8. SUPPORT SERVICES**

**8.1** PRO-VISION will, in its sole discretion, provide Support Services for only the most current version of the Software. Support Services may consist of any one or more of the following:

**8.1.1 Enhancements and Updates.** Updates, corrections and enhancements to the Software that PRO-VISION generally provides without an additional charge to its current customers. If PRO-VISION provides any update, correction or enhancement as a new version of the Software for which it charges an additional fee, it will make such Software available to LICENSEE on the same terms as it offers other current customers for the Software.

**8.1.2 Online/Telephone Support.** Reasonable online, telephone, or email support to assist LICENSEE in the identification, verification and resolution of problems associated with the Software in exchange for payment of PRO-VISION's Support Service Fees that are then in effect. Such support will be provided during PRO-VISION's normal business hours, excluding PRO-VISION's regularly scheduled holidays. PRO-VISION reserves the right to charge LICENSEE for any telephone call or email which in PRO-VISION's judgment, constitutes end-user training.

**8.1.3 Program Corrections.** If the Software does not perform substantially as described in the Documentation when used in the manner specified in the Documentation and if LICENSEE notifies PRO-VISION of the issue through PRO-VISION's online, telephone, or email support service, PRO-VISION will use its commercially reasonable efforts to resolve the issue.

**8.2 Conditions to Support Services.** LICENSEE acknowledges that PRO-VISION may provide the Support Services specified in this Section 8 for PRO-VISION's then prevailing Support Service Fees. If LICENSEE requests Support Services, LICENSEE will: (a) perform such procedures as may be described in the Documentation for the identification and resolution of problems; and (b) provide PRO-VISION with sufficient information and assistance to enable PRO-VISION to duplicate problems reported by LICENSEE, to determine whether the problem results from an error or other issue in the Software, and to confirm that the problem has been corrected. LICENSEE shall be solely responsible for all costs and fees associated with maintaining and updating hardware and software provided by other vendors. All Support Services are contingent

on LICENSEE's payment of applicable Software Fees and PRO-VISION's then prevailing Support Service Fees.

**8.3 Exclusions.** Notwithstanding the foregoing, PRO-VISION shall have no obligations for Software problems caused by LICENSEE's negligence, abuse or misapplication, LICENSEE's use of Software other than as specified in the Documentation, or by other factors beyond the control of PRO-VISION. Services available under this Section do not include services set forth in Section 6 ("Training Services") or in Section 5 ("Deployment").

**8.4 Intellectual Property Ownership in Software.** LICENSEE and PRO-VISION agree that PRO-VISION shall be the exclusive owner of all right, title, and interest in and to all software, programming, tools, documentation, materials, and other Intellectual Property (collectively, the "Work Product") of any kind used, developed, or delivered by PRO-VISION to LICENSEE in connection with the Software, that such Work Product shall not constitute a work-made-for-hire under U.S. Copyright Law, and that PRO-VISION shall have the exclusive right to protect the Work Product by patent, copyright, or any other means. Such Work Product shall expressly exclude LICENSEE'S Data and LICENSEE Confidential Information. In the event, by operation of law or otherwise, LICENSEE is deemed to be the owner of all or any portion of the Intellectual Property rights in the Work Product, LICENSEE hereby assigns all such Intellectual Property rights to PRO-VISION and agrees to cooperate with PRO-VISION in confirming PRO-VISION's sole and exclusive ownership of the Work Product.

**8.5** In consideration of the performance of any Support Services hereunder, LICENSEE will pay PRO-VISION the Support Service Fees that are then in effect. PRO-VISION shall have the right to immediately cease all performance of Support Services if LICENSEE fails to timely pay PRO-VISION as required hereunder.

**8.6** LICENSEE will reimburse PRO-VISION for (i) travel and living expenses associated with on-site training and other Support Services, and (ii) any special or unusual expenses incurred at LICENSEE's specific request. Payment for all expenses to be reimbursed by LICENSEE under this Agreement will become due twenty (20) days after LICENSEE's receipt of PRO-VISION's itemized invoice, which PRO-VISION will prepare monthly, at PRO-VISION's option. LICENSEE should contact its PRO-VISION sales representative for details regarding any on-site support.

## **9. OTHER SUPPORT TERMS**

**9.1** In addition to the support and services described above, at LICENSEE's request and upon PRO-VISION's written agreement, PRO-VISION may also perform additional Support Services for LICENSEE to correct difficulties or defects caused by LICENSEE's errors, interactions with other software of LICENSEE, or any authorized changes or customizing made to the Software. Such additional Support Services may be provided in exchange for the Support Service Fees at PRO-VISION's then applicable rates.

## 10. LIMITED WARRANTIES

**10.1 Warranty of Authority.** Each party warrants to the other that it has sufficient rights to enter into this Agreement and to perform their respective obligations hereunder. LICENSEE further warrants:

- (a) that LICENSEE, as well as the agent accepting this Agreement, is legally authorized by the laws of its jurisdiction, or by any required resolution by its governing body, to enter into this Agreement and to perform all of LICENSEE'S obligations under this Agreement;
- (b) that LICENSEE has funds appropriated and available to pay for the Software Fees for the duration of the Term of this Agreement (the entire Trial Term and/or Subscription Term and any Renewal Terms agreed upon by not providing notice under Section 4.1);
- (c) that LICENSEE will only use the Software for proprietary purposes consistent with the scope of LICENSEE'S authority and that LICENSEE will not use the Software in a business or trade of any person or other entity, or for any personal use;
- (d) that LICENSEE shall be responsible for its end user's use of the Software including any and all activities performed under LICENSEE's account including all use by LICENSEE'S employees and agents;
- (e) that LICENSEE shall be responsible for any breach of this Agreement by its end users including any and all of LICENSEE'S employees and agents;
- (f) that LICENSEE shall be responsible for any claims that the content of LICENSEE'S Data infringes or misappropriates any third party's rights;
- (g) that LICENSEE shall be responsible for any dispute between LICENSEE and any third party with respect to LICENSEE'S collection or use of LICENSEE'S Data;
- (h) that LICENSEE shall be responsible for any dispute between LICENSEE and any end user including any and all of LICENSEE'S employees and agents; and
- (i) that LICENSEE will acquire and maintain insurance coverage up to the amount allowed by all applicable laws and regulations that would cover any claims, liabilities, damages, losses, expenses and costs arising out of or related to any third-party claim in this Section 10.1.

LICENSEE further agrees to adhere to this Agreement and all laws, rules, regulations, and policies applicable to the use of the Software and the content of LICENSEE'S Data, and that all of LICENSEE's end users agree to the same. If LICENSEE becomes aware of any violation by an end user, LICENSEE will immediately terminate that end user's access to LICENSEE'S Data and the Software.

**10.2 Support Services Warranty.** PRO-VISION warrants that any Support Services performed by PRO-VISION under this Agreement will be performed in a manner consistent with generally accepted industry standards. This warranty will be valid for thirty (30) days from performance of the Support Services. As LICENSEE's exclusive remedy and PRO-VISION's entire liability for any breach of the foregoing warranty, PRO-VISION will, at its expense, use its commercially reasonable efforts to re-perform the Support Services to correct any defects therein.

## 11. DISCLAIMER

**11.1 PRO-VISION Software and/or Services.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10, THE SOFTWARE, THE SUPPORT SERVICES AND ALL OTHER PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER ARE PROVIDED TO LICENSEE "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION AND QUIET ENJOYMENT. PRO-VISION DOES NOT WARRANT THAT THE SOFTWARE, THE SUPPORT SERVICES AND/OR ANY OTHER PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. PRO-VISION DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. LICENSEE ACKNOWLEDGES THAT IT WILL HAVE SOLE AND COMPLETE RESPONSIBILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN BY IT IN RELIANCE UPON THE SOFTWARE. No employee or agent of PRO-VISION is authorized to make any different or additional warranties to LICENSEE and PRO-VISION will not be bound by any such purported warranties. The warranties provided by PRO-VISION are personal to LICENSEE and may not be extended to any third party. There are NO third party beneficiaries of PRO-VISION's obligations under this Agreement.

**11.2 Third Party Products and/or Services.** PRO-VISION MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY SOFTWARE, COMPUTER HARDWARE, DEVICES, OR SERVICES OF ANY NATURE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. LICENSEE SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY PRO-VISION THAT WOULD EXPAND IN ANY WAY A VENDOR/MANUFACTURER'S STANDARD END-USER WARRANTY.

**11.3 LICENSEE Responsibilities.** LICENSEE ACKNOWLEDGES THAT IT HAS INSPECTED THE SOFTWARE AND CONFIRMS BY ENTERING INTO THIS AGREEMENT THAT THE SOFTWARE MEETS LICENSEE'S REQUIREMENTS. LICENSEE ACKNOWLEDGES AND ACCEPTS THAT PRO-VISION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL, IN FACT, MEET THE SPECIFIC NEEDS AND REQUIREMENTS OF LICENSEE. LICENSEE ASSUMES FULL RESPONSIBILITY FOR THE CHOICE AND ADEQUACY OF THE SOFTWARE AND ACKNOWLEDGES THAT LICENSEE WILL BE EXCLUSIVELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF ACCESS TO THE SOFTWARE INCLUDING, BUT NOT LIMITED TO: (I) ASSURING PROPER MACHINE CONFIGURATION, AUDIT CONTROLS AND OPERATION METHODS; (II) IMPLEMENTING SUFFICIENT PROCEDURES

AND CHECK POINTS TO SATISFY LICENSEE'S REQUIREMENTS FOR SECURITY AND ADEQUACY OF INPUT AND OUTPUT; (III) ASSURING LOGIN CREDENTIALS AND PASSWORDS ARE ESTABLISHED FOR EACH END USER AND THAT SUCH CREDENTIALS ARE NOT SHARED; AND (IV) ENSURING THAT LICENSEE'S USE OF THE SOFTWARE MEETS ANY REQUIREMENTS OF ALL APPLICABLE LAWS. PRO-VISION WILL NOT BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE BY LICENSEE THAT DOES NOT COMPLY WITH APPLICABLE LAWS AND DISCLAIMS ANY RESPONSIBILITY FOR DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA PRIOR TO UPLOAD AS WELL AS ANY DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA AFTER ANY UPLOAD OR DOWNLOAD.

## **12. INDEMNITIES**

**12.1 Infringement Indemnity.** PRO-VISION agrees to defend, indemnify and hold LICENSEE and its affiliates, subsidiaries, officers, directors, employees, and agents harmless from and against any and all claims, suits, proceedings, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees made against LICENSEE by third parties alleging that the Software infringes any patent or copyright or misappropriates a trade secret. LICENSEE shall provide PRO-VISION with prompt written notice of such claim and with information, reasonable assistance, and sole authority to defend or settle the claim. In the defense or settlement of the claim, PRO-VISION may obtain for LICENSEE the right to continue using the Software, replace or modify the Software so that it becomes non-infringing, without loss of substantial functionality, or, if such remedies are not reasonably available, terminate LICENSEE's right with respect to the infringing Software and refund to LICENSEE the Software Fees paid, prorated over the payment period in the event of an injunction. PRO-VISION will have no liability and shall not provide such indemnification if the alleged infringement is based on (a) the combination, use or operation of the Software with software, equipment or devices not provided by PRO-VISION, if such a claim would have been avoided but for such combination; (b) the use of the Software other than in accordance with the Documentation; (c) the use of the Software after notice of the alleged or actual infringement from PRO-VISION or any appropriate authority; or (d) a matter which is the subject of indemnification by LICENSEE under Section 12.2. THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, AND PRO-VISION'S ENTIRE LIABILITY, FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

**12.2 Indemnification by LICENSEE.** LICENSEE shall defend and indemnify PRO-VISION and hold it and its affiliates, subsidiaries, officers, directors, employees, agents, and suppliers (including any third party used to store licensee's data) harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by PRO-VISION as a result of any claim, judgment, or adjudication related to or arising from (i) LICENSEE's use of the Software including, but not limited to, management, deletion, or alteration of LICENSEE'S Data or LICENSEE's failure to store or maintain data (except to the extent indemnified by PRO-VISION under Section 12.1 or to the extent such claims are solely the result of PRO-VISION's gross negligence or willful misconduct), or (ii) LICENSEE's third party service providers and their

designees or any other third party to whom LICENSEE provides access to or use of the Software, or the data contained therein.

### **13. LIMITATION OF LIABILITY**

**13.1 Exclusion of Damages.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL PRO-VISION OR ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE ANY SOFTWARE OR ANY PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER FOR ANY PERIOD OF TIME (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PRO-VISION AND ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES ARISING FROM: (1) ANY UNAUTHORIZED ACCESS TO LICENSEE'S DATA; (2) ANY MODIFICATION, DELETION, DAMAGE, OR OTHER LOSS OF LICENSEE'S DATA; (3) FAILURE TO PROPERLY STORE LICENSEE'S DATA; (4) FAILURE TO PROPERLY IDENTIFY LICENSEE'S DATA; (5) SUSPENSION OR TERMINATION OF LICENSEE'S RIGHT TO USE, OR ACCESS TO, THE SOFTWARE; (6) LICENSEE'S USE OF THE SOFTWARE; (7) THIRD PARTY CLAIMS PERTAINING TO EXISTENCE, NON-EXISTENCE, DELETION, AND/OR MODIFICATION OF LICENSEE'S DATA; OR (8) DISCONTINUANCE OF ANY PORTION OF THE SOFTWARE'S FUNCTION OR UTILITY.

**13.2 Total Liability.** EXCEPT FOR PRO-VISION'S INFRINGEMENT OBLIGATIONS SET FORTH IN SECTION 12.1 AND CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7, THE TOTAL LIABILITY OF PRO-VISION AND ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, AGENTS AND SUPPLIERS TO LICENSEE OR ANY THIRD PARTIES (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) ARISING FROM THE SOFTWARE, PRODUCTS AND/OR SERVICES OR THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE), WILL IN NO EVENT EXCEED IN THE AGGREGATE THE AMOUNTS PAID BY LICENSEE FOR THE SOFTWARE OR PRODUCTS AND/OR SERVICES TO WHICH THE CLAIM RELATES PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

**13.3 Allocation of Risk.** The provisions of this Agreement allocate the risks between PRO-VISION and LICENSEE. PRO-VISION's pricing reflects this allocation of risk and the limitation of liability specified herein. The parties have agreed that the limitations specified in this Section 13 (Limitation of Liability) will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

### **14. LICENSEE USAGE STATISTICS**

To help enable PRO-VISION to provide and improve its Software, LICENSEE hereby agrees to allow PRO-VISION to acquire and use LICENSEE's usage statistics including storage space used,

frequency of data transfers, amount of data transferred, amount of storage consumed by any of LICENSEE'S Data that is not data transferred from PRO-VISION Devices, number of active users and/or PRO-VISION Devices, and any other information needed to enforce this Agreement, conduct any troubleshooting requested by LICENSEE, and to analyze and diagnose any systems on which the Software resides.

## 15. GENERAL TERMS

**15.1 Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**15.2 Modification and Waiver.** This Agreement may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this Agreement will not be construed as a waiver of PRO-VISION'S rights arising out of any subsequent default of that or any other provision.

**15.3 Assignment.** This Agreement and the rights hereunder will be assignable by PRO-VISION. LICENSEE will have no right to assign this Agreement or any of its rights hereunder without PRO-VISION'S prior written consent. Any attempt to assign this Agreement without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by LICENSEE will be effective without the express written consent of PRO-VISION. Provided that PRO-VISION has consented to such assignment, LICENSEE may not retain any copy of the Software or Documentation following the assignment.

**15.4 Failure or Delay in Performance.** PRO-VISION will not be liable for or be deemed in default under this Agreement, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION'S reasonable control.

**15.5 Notices.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

**15.6 Applicable Law; Limitation of Actions.** This Agreement will be construed, interpreted, governed and enforced by and in accordance with the laws of Michigan, and the laws of the

## F.1 EULA for Private Server Solution revision 09.27.17

United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by LICENSEE more than one (1) year after such action accrued. Any dispute regarding this Agreement or arising out of any of the transactions under this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

**15.7 Entire Agreement.** This Agreement is binding on the parties and their permitted assignees. With the exception of any Service Contracts, Remote Deployment Agreements, Protection Plan Agreements, End User Terms and Conditions, additional Software Agreements, any policies and restrictions on the SecuraMax.com website, and the possible exception of a Beta Test Agreement, this Agreement is the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous agreements, representations or understandings, written or oral, with respect to such subject matter. In the case of a conflict between a Beta Test Agreement and the terms and conditions of this Agreement, the terms of this Agreement will control with the exception of any Confidentiality terms of such Beta Test Agreement, which will control until such time that the Beta Test Agreement is terminated. Purchase orders or other similar documents issued by LICENSEE will have no effect on this Agreement.

**15.8 Audit.** At its own expense, PRO-VISION may perform an audit of LICENSEE's usage of the Software to confirm use of the software in accordance with the terms of this Agreement. The audit may be conducted (i) once every calendar year and (ii) as required in the event PRO-VISION has reason to believe LICENSEE is utilizing the Software in an unauthorized manner.

**15.9 Force Majeure.** Except for LICENSEE's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

**15.10 Relationship of the Parties.** LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this Agreement shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.





## CUSTOMER SETUP

Questions about how to complete this form?  
Call: 1.800.576.1126 (8 a.m. to 5 p.m EST)

Email completed form to: smxadmin@provisionusa.com  
Or fax form to: 616.583.1522

**ORGANIZATION INFORMATION:**

COMPANY / ORGANIZATION NAME:

CITY:	STATE:	ZIP:
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**DEPLOYMENT CONTACT:****DEPLOYMENT CONTACT:**

This is the primary contact for scheduling and coordinating deployment. This person must be authorized to complete and sign any applicable paperwork on behalf of the organization.

FIRST NAME:	LAST NAME:	TITLE:
EMAIL:	PHONE:	FAX::

**YOU WILL BE CONTACTED TO SCHEDULE A DEPLOYMENT DATE ONCE ALL COMPLETED CONTRACTUAL DOCUMENTS AND FORMS HAVE BEEN RECEIVED.**

<b>DEPLOYMENT:</b> Remote deployment is standard On-site requires Sales Manager approval		<input checked="" type="checkbox"/> REMOTE <input type="checkbox"/> ON-SITE	<b>CONFIGURATION:</b> <input checked="" type="checkbox"/> LAW ENFORCEMENT Adjusts default SecuraMax™ settings to fit specific customer type		<input type="checkbox"/> NON-LAW ENFORCEMENT
<b>EQUIPMENT:</b> Purchasing new BC cameras / Have BC cameras	<input checked="" type="checkbox"/> NEW HARDWARE		EXISTING HARDWARE		
	QTY: 5	TYPE: PV-DVR	QTY: n/a	TYPE: n/a	

**NOTES:**

# Remote Deployment Agreement

This is a Remote Deployment Agreement ("RDA") between \_\_\_\_\_ ("LICENSEE") and Pro-Vision Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, United States of America ("PRO-VISION"). This RDA provides the terms upon which PRO-VISION may install and activate Uploader Software and Remote Access Software on LICENSEE'S computers. This RDA is being entered into by the parties solely in furtherance of and subject to all terms of a Software Service and Hosting Agreement ("SSHA") previously entered into by and between the parties; LICENSEE'S rights and PRO-VISION'S obligations under this RDA are conditioned upon LICENSEE previously entering into the SSHA. All capitalized terms not otherwise defined in this RDA shall have the meanings attributed to them in the SSHA.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this RDA on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

## 1. DEFINITIONS

- 1.1. "Input and Output" means all data that is received, captured, saved, recorded, transmitted, generated, emitted, and/or displayed on, by, or through LICENSEE'S local computer, including, without limitation, keyboard keypresses, mouse cursor motions, and mouse clicks made by the user of the local computer (including a user controlling the local computer via remote access software); text and images displayed on or transmitted to the video monitor of the local computer; and sounds generated by or transmitted to the local computer; regardless of whether the data is detectible by the human senses of an observer of the local computer.
- 1.2. "Remote Access Software" means software that enables access to, and control of, a computer by a user at a remote location through a network connection, including through the internet.
- 1.3. "Uploader Software" means the SECURAMAX™ Uploader Software which is the subject of a separate software license between LICENSEE and PRO-VISION.

## 2. GRANT OF ACCESS AND CONTROL

LICENSEE grants PRO-VISION access to, and control of, LICENSEE'S computers, using Remote Access Software selected by PRO-VISION, for the purpose of remotely installing and activating the Uploader Software. LICENSEE acknowledges and agrees that Remote Access Software must first be installed and activated on LICENSEE'S computers, by LICENSEE or by PRO-VISION. LICENSEE agrees to install and activate, or to permit PRO-VISION to install and activate, Remote Access Software selected by PRO-VISION, on each of LICENSEE'S computers upon which LICENSEE desires to have the Uploader Software remotely installed and activated. LICENSEE acknowledges and agrees that PRO-VISION'S obligations under this RDA are conditioned upon the proper installation, activation, and operation of Remote Access Software selected by PRO-VISION.

## 3. INSTALLATION AND ACTIVATION

- 3.1. Subject to the other terms and conditions of this RDA, PRO-VISION will remotely install and activate up to three licensed copies of the Uploader Software on LICENSEE'S computers, for a duration of up to two hours of installation and activation time, regardless of the number of Uploader Software licenses or the number of BODYCAM® units that LICENSEE owns. It will be LICENSEE'S obligation to install and activate any additional copies of the Uploader Software, subject to the number of licenses that LICENSEE holds for the Uploader Software.
- 3.2. LICENSEE will attend the computers on which the Uploader Software is being remotely installed and activated by PRO-VISION during the entire length of the installation and activation processes, and LICENSEE will observe and participate at LICENSEE'S computers, and reasonably assist PRO-VISION, during the installation and activation processes.
- 3.3. LICENSEE acknowledges and agrees that any part of the Input and Output of LICENSEE'S computers may be recorded by PRO-VISION during the remote installation and activation of the Uploader Software, and retained by PRO-VISION indefinitely. LICENSEE acknowledges and agrees that PRO-VISION has no obligation to record or retain any portion of the Input and Output, or to provide LICENSEE with a copy of any portion of the Input and Output.
- 3.4. After PRO-VISION completes the installation and activation of the Uploader Software on one of LICENSEE'S computers, LICENSEE or PRO-VISION will remove the Remote Access Software from that computer.

## 4. NO WARRANTY

THE REMOTE ACCESS SOFTWARE IS OFFERED ON AN "AS-IS" BASIS AND NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS GIVEN. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING,

BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSEE ASSUMES ALL RISK ASSOCIATED WITH THE QUALITY, PERFORMANCE, INSTALLATION AND USE OF THE REMOTE ACCESS SOFTWARE INCLUDING, BUT NOT LIMITED TO, THE RISKS OF PROGRAM ERRORS, DAMAGE TO EQUIPMENT, LOSS OF DATA OR SOFTWARE PROGRAMS, OR UNAVAILABILITY OR INTERRUPTION OF OPERATIONS. LICENSEE IS SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USE THE REMOTE ACCESS SOFTWARE AND ASSUMES ALL RISKS ASSOCIATED WITH ITS USE.

## 5. INDEMNIFICATION

- 5.1. By accepting this RDA, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from the remote access software or any other matter relating to the Remote Access Software.

## 6. LIMITATION OF LIABILITY

- 6.1. LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS RDA IN THE MOST RECENT TWELVE-MONTH PERIOD.

## 7. GENERAL TERMS

- 7.1. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this RDA invalid or unenforceable, that provision of this RDA will be enforced to the maximum extent permissible and the other provisions of this RDA will remain in full force and effect.
- 7.2. **Modification and Waiver.** This RDA may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this RDA will not be construed as a waiver of PRO-VISION'S rights arising out of any subsequent default of that or any other provision.
- 7.3. **Failure or Delay in Performance.** PRO-VISION will not be liable for or be deemed in default under this RDA, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION'S reasonable control.
- 7.4. **Applicable Law; Limitation of Actions.** This RDA will be construed, interpreted, governed and enforced by and in accordance with the laws of the State of Michigan in the United States of America, and the federal laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this RDA may be brought by LICENSEE more than one (1) year after the cause of action accrued. Any dispute regarding this RDA or arising out of any of the transactions under this RDA shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.
- 7.5. **Force Majeure.** Except for LICENSEE'S payment obligations, if any, neither party will be liable for any failure or delay in performance under this RDA which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.
- 7.6. **Relationship of the Parties.** LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this RDA as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this RDA shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this RDA, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.

7.7. **Conflicts Between Agreements.** In the event of a conflict between the terms of this RDA and the terms of the SSHA or an agreement mentioned in the SSHA (other than this RDA), the conflicting terms of the SSHA or of the agreement mentioned in the SSHA shall be given effect over the conflicting terms of this RDA.

By applying our signatures below, we hereby accept the terms and conditions set forth above.

**PRO-VISION:**

**LICENSEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# END USER TERMS AND CONDITIONS

This is a Software Service License (the "License") setting forth end user terms and conditions under which you, the "END USER," are licensed to access and use the SecuraMax.com website ("Software Service").

By clicking ACCEPT, you hereby agree to the following terms and conditions of use of the Software Service. The licensor of this Software Service is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION").

PRO-VISION and END USER agree as follows:

## 1. DEFINITIONS

**1.1 "Affiliated"** means employed by, contracted with, or otherwise expressly authorized by.

**1.2 "Documentation"** means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software Service, as updated from time-to-time by PRO-VISION.

**1.3 "END USER'S Data"** is data originating from END USER that is stored using the Software Service on behalf of the END USER or the AGENCY, and includes media files such as text, videos, photos, and audio.

**1.4 "Intellectual Property"** shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

**1.5 "PRO-VISION Device"** means any device provided by PRO-VISION and listed in the Service Contract from which the Software Service uploads END USER'S Data.

**1.6 "Software Service"** means the cloud-based computerized camera interface and media storage service (known as SecuraMax™) and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to END USER by PRO-VISION under this License.

**1.7 "Software Service and Hosting Agreement"** means the Software Service and Hosting Agreement, related to Service Contract Number 201906191102, made between PRO-VISION and the U.S. Government Entity as described herein ("AGENCY") with which the END USER is affiliated, where the Software Service and Hosting Agreement pertains to the Agency's use of the SecuraMax™ Software Service.

## 2. SOFTWARE SERVICE LICENSE

**2.1 Grant of Software Service License.** Subject to the terms and conditions of this License, the terms and conditions of the Software Service and Hosting Agreement, and payment of the Software Service Fees by the AGENCY, PRO-VISION grants, and END USER accepts, a non-transferable, non-assignable, non-exclusive license to use the Software Service solely for END USER's own purposes for the Term as set forth herein.

### 2.2 License Restrictions.

- (a) END USER will not lend, lease, sublicense, transfer, or otherwise distribute the Software Service to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, END USER will not use the Software Service in any manner to provide computer services to third parties;
- (c) END USER will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software Service without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, END USER will not reverse engineer the Software Service; and
- (e) END USER will keep the Software Service free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software Service.

## END USER TERMS AND CONDITIONS

### 2.3 END USER Log In Credentials

END USER will be prompted to create personal END USER log in credentials including a user identification and password. END USER will be responsible for maintaining secrecy of END USER's log in credentials. END USER hereby agrees not to share END USER's log in credentials.

### 2.4 Ownership.

**2.4.1 The Software Service.** PRO-VISION owns all right, title, and interest in and to the Software Service including all Intellectual Property rights therein. END USER does not acquire any rights, express or implied, in the Software Service, other than those specified in this License.

**2.4.2 END USER'S Data.** PRO-VISION does not acquire any rights, express or implied, in END USER'S Data. END USER is responsible for controlling access to END USER'S Data and is responsible for deletion, modification, downloading, uploading, sharing, copying, moving, and management of END USER'S Data. PRO-VISION does not view the content of END USER'S Data.

### 2.5 Storage and Access.

**2.5.1 Location.** PRO-VISION may store END USER'S Data at any location within the United States. END USER agrees to allow PRO-VISION to transfer END USER'S Data to third parties contracted by PRO-VISION for purposes of storage of END USER'S Data.

**2.5.2 Access Rights.** Subject to any Suspension of Services per Section 3.2, during the Term of this License, END USER will have access and use of the Software Service for the storage and management of END USER'S Data. Other than collecting usage statistics per Section 14, PRO-VISION will not access END USER'S Data or view the content of END USER'S Data. PRO-VISION will not disclose the content or existence of END USER'S Data or any information about END USER except as compelled by court order or otherwise required by law. PRO-VISION will attempt to provide advance notice of any compelled disclosure in an effort to permit END USER opportunity to object to the court or administrative body, except when prohibited by law.

**2.5.3 Data Security.** PRO-VISION will implement commercially reasonable and appropriate measures for securing and encrypting END USER'S Data against unauthorized access. END USER may not transfer or sublicense the log-in credentials to any other entity. Audit tracking is provided to track access to END USER'S Data originating from PRO-VISION Devices based on log-in credentials. END USER will contact PRO-VISION immediately if END USER believes any third party has used END USER'S account or accessed END USER'S Data without authorization.

**2.6 Software Service Availability.** PRO-VISION shall use commercially reasonable efforts to make the Software Service generally available to END USER. PRO-VISION's Software Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. PRO-VISION is not responsible for any delays, failures, or other damages resulting from such problems.

**2.7 Backup, Disaster Recovery, Bandwidth and Data Security.** Backup, disaster recovery, bandwidth and data security are provided by third parties referenced in Section 2.5 above. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

## 3. FEES AND SUSPENSION OF SERVICES

**3.1 Software Service Fee.** Per the Software Service and Hosting Agreement, the AGENCY shall pay PRO-VISION a monthly Software Service Fee in order to allow END USER access and use of the Software Service. No fees are separately owed by END USER in association with this License.

## END USER TERMS AND CONDITIONS

**3.2 Suspension of Service.** In addition to any other rights and remedies, PRO-VISION reserves the right to suspend the Software Service provided to the END USER, including the right to access END USER'S Data, under any one or more of the following conditions:

- (a) if END USER or the AGENCY is in breach of this License;
- (b) if any security risk is created by END USER's or AGENCY's use of the Software Service;
- (c) if END USER's or AGENCY's use of the Software Service creates or threatens to create any adverse effect on the Software Service or any use or data of any other end user or licensee of the Software Service;
- (d) if PRO-VISION may be exposed to liability through END USER's or AGENCY's use of the Software Service;
- (e) if AGENCY becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or
- (f) the Software Service licensed to AGENCY is otherwise suspended per the Software Service and Hosting Agreement.

In the event that the Software Service is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that END USER's or AGENCY's breach is cured or the Software Service is otherwise terminated. END USER'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this License, at which point END USER'S Data may be deleted 60 days following written notice of termination.

## 4. TERM AND TERMINATION

**4.1 Term.** This License commences on the date of acceptance and will remain in effect until termination of the Software Service and Hosting Agreement unless this License is otherwise terminated per Section 4.2 below.

### 4.2 Termination

- (a) Termination of the Software Service and Hosting Agreement.** This License will terminate if the Software Service and Hosting Agreement is terminated for any reason.
- (b) Termination for Breach.** PRO-VISION may terminate this License if END USER breaches any of the terms or conditions of this License or of the Software Service and Hosting Agreement.
- (c) Termination for Discontinuance of Affiliation with the AGENCY.** This License will be terminated if and when END USER is no longer affiliated with the AGENCY.
- (d) Termination by the AGENCY.** Pursuant to the Software Service and Hosting Agreement, if the Agency becomes aware of any violation by END USER of the terms and conditions of this License or of the Software Service and Hosting Agreement, the AGENCY will immediately terminate END USER's access to END USER's Data and the Software Service.

**4.3 Effect of Termination.** Termination of this License or the Software Service and Hosting Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief. Termination of this License will immediately terminate END USER'S right to access END USER'S Data.

**4.4 Survival.** The rights and obligations of the parties contained in Sections 2.4 (Ownership), 4.3 (Effect on Termination), 5 (Confidential Information and Operational Data), 7 (Disclaimer), 8 (Indemnities), 9 (Limitation of Liability), and 11 (General Terms), together with any other provisions of this License which by their nature must survive in order to effectuate their enforcement, will survive the termination of this License or any other license for the Software Service.

## 5. CONFIDENTIAL INFORMATION AND OPERATIONAL DATA

## END USER TERMS AND CONDITIONS

**5.1 Definition.** For the purposes of the License, "Confidential Information" means: (a) the Software Service, Work Product, and other related technical information disclosed by PRO-VISION to END USER; (b) END USER'S Data; (c) any non-public business or technical information of PRO-VISION, including but not limited to any information relating to PRO-VISION's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as "confidential" or "proprietary" at the time of disclosure, and, if orally disclosed, is reduced to writing by the disclosing party within thirty (30) days of such disclosure; or that ought reasonably be understood to be confidential by virtue of its nature or the circumstances of its disclosure and (c) terms of this License (including, without limitation, the amount of fees or other charges specified under this License).

**5.2 Obligations.** Each party will not use the other party's Confidential Information and will not disclose such Confidential Information to any third party except to employees and consultants as reasonably required in connection with the exercise of the party's rights and performance of its obligations under this License, provided that such disclosure to employees or consultants is subject to binding use and disclosure restrictions at least as protective as those set forth herein. Each party will take all reasonable measures to maintain the confidentiality of all such Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Each party shall promptly notify the other party of any suspected or actual unauthorized disclosure of the other party's Confidential Information.

**5.3 Compelled Disclosures.** To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over a party, a party may disclose Confidential Information of the other party in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement, and prior to disclosing Confidential Information, the party will so notify the other party in writing and, if reasonable, provide the other party notice not less than five (5) business days prior to the required disclosure. The party that is the subject of the order or requirement will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the other party to contest, oppose, or otherwise limit such disclosure. Notwithstanding any such compelled disclosure, the disclosure will not otherwise affect the disclosing party's obligations hereunder with respect to Confidential Information so disclosed.

**5.4 Exclusions.** Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this License by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party's possession is not within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

**5.5 Non-Exclusive Equitable Remedy.** Each party acknowledges and agrees that due to the unique nature of the Software Service and Confidential Information as defined herein, there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

## 6. LIMITED WARRANTIES

**6.1 Warranty of Authority.** Each party warrants to the other that it has sufficient rights to enter into this License and to perform their respective obligations hereunder. END USER further warrants:

- (a) that END USER is legally authorized by the laws of its jurisdiction, or by any required resolution by its governing body, to enter into this License and to perform all of END USER'S obligations under this License;
- (b) that END USER is a U.S. person, as defined in 22 C.F.R. § 120.15;
- (c) that the AGENCY with which the END USER is affiliated is a U.S. Government Entity (including a Federal Agency, a State/Local Entity or a Tribal Entity acting in its governmental capacity, where: a "Federal Agency" is a bureau, office, agency, department or other entity of the United States Government; "State/Local Entity" is
  - i. any agency of a state or local government in the United States,
  - ii. any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries, or
  - iii. the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands; and a "Tribal Entity" is a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe, or, in Alaska, a Native village or Alaska Regional Native Corporation);
- (d) that END USER will only use the Software Service for essential governmental or proprietary purposes consistent with the scope of END USER'S authority and that END USER will not use the Software Service in a business or trade of any person or other entity, or for any personal use;
- (e) that END USER or the AGENCY shall be responsible for any claims that the content of END USER'S Data infringes or misappropriates any third party's rights; and
- (f) that END USER or the AGENCY shall be responsible for any dispute between END USER or the AGENCY and any third party with respect to END USER'S collection or use of END USER'S Data. END USER further agrees to adhere to this License and all laws, rules, regulations, and policies applicable to the use of the Software Service and the content of END USER'S Data.



## END USER TERMS AND CONDITIONS

### 7. DISCLAIMER

**7.1 PRO-VISION Services.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6, THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND ALL OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED TO END USER "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION AND QUIET ENJOYMENT. PRO-VISION DOES NOT WARRANT THAT THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND/OR ANY OTHER SERVICES PROVIDED HEREUNDER WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE SERVICE WILL BE CORRECTED. PRO-VISION DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE SERVICE IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. END USER ACKNOWLEDGES THAT IT WILL HAVE SOLE AND COMPLETE RESPONSIBILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN BY IT IN RELIANCE UPON THE SOFTWARE SERVICE. No employee or agent of PRO-VISION is authorized to make any different or additional warranties to END USER and PRO-VISION will not be bound by any such purported warranties. The warranties provided by PRO-VISION are personal to END USER or the AGENCY and may not be extended to any third party. There are NO third party beneficiaries of PRO-VISION's obligations under this License.

**7.2 Third Party Products and/or Services.** PRO-VISION MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY SOFTWARE, COMPUTER HARDWARE, DEVICES, OR SERVICES OF ANY NATURE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. END USER SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN THIS LICENSE SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY PRO-VISION THAT WOULD EXPAND IN ANY WAY A VENDOR/MANUFACTURER'S STANDARD END-USER WARRANTY.

**7.3 END USER Responsibilities.** END USER ACKNOWLEDGES AND ACCEPTS THAT PRO-VISION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SERVICE WILL, IN FACT, MEET THE SPECIFIC NEEDS AND REQUIREMENTS OF END USER. PRO-VISION WILL NOT BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE SERVICE BY END USER THAT DOES NOT COMPLY WITH APPLICABLE LAWS AND DISCLAIMS ANY RESPONSIBILITY FOR DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN END USER'S DATA PRIOR TO UPLOAD AS WELL AS ANY DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN END USER'S DATA AFTER ANY UPLOAD OR DOWNLOAD.

### 8. INDEMNITIES

END USER shall defend and indemnify PRO-VISION and hold it and its affiliates, subsidiaries, officers, directors, employees, agents, and suppliers (including any third party used to store END USER's data) harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by PRO-VISION

as a result of any claim, judgment, or adjudication related to or arising from END USER's use of the Software Service including, but not limited to, management, deletion, or alteration of END USER'S Data or END USER's failure to store or maintain data (except to the extent such claims are solely the result of PRO-VISION's gross negligence or willful misconduct.

### 9. LIMITATION OF LIABILITY

**9.1 Exclusion of Damages.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL PRO-VISION OR ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) BE LIABLE TO END USER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS LICENSE OR THE USE OR INABILITY TO USE ANY SOFTWARE SERVICE OR ANY SERVICES PROVIDED HEREUNDER FOR ANY PERIOD OF TIME (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PRO-VISION AND ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES ARISING FROM: (1) ANY UNAUTHORIZED ACCESS TO END USER'S DATA; (2) ANY MODIFICATION, DELETION, DAMAGE, OR OTHER LOSS OF END USER'S DATA; (3) FAILURE TO PROPERLY STORE END USER'S DATA; (4) FAILURE TO PROPERLY IDENTIFY END USER'S DATA; (5) SUSPENSION OR TERMINATION OF THE SOFTWARE SERVICE; (6) END USER'S USE OF THE SOFTWARE SERVICE; (7) THIRD PARTY CLAIMS PERTAINING TO EXISTENCE, NON-EXISTENCE, DELETION, AND/OR MODIFICATION OF END USER'S DATA; OR (8) DISCONTINUANCE OF ANY PORTION OF THE SOFTWARE SERVICE.

**9.2 Total Liability.** EXCEPT FOR PRO-VISION'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5, THE TOTAL LIABILITY OF PRO-VISION AND ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, AGENTS AND SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) TO END USER OR ANY THIRD PARTIES ARISING FROM THE SOFTWARE SERVICE, SERVICES OR THIS LICENSE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) WILL IN NO EVENT EXCEED IN THE AGGREGATE OF THE ALL AMOUNTS PAID FOR THE SOFTWARE SERVICE OR SERVICES TO WHICH THE CLAIM RELATES PURSUANT TO THIS LICENSE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

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To help enable PRO-VISION to provide and improve its Software Service, END USER hereby agrees to allow PRO-VISION to acquire and use END USER'S usage statistics including cloud storage space used, frequency of uploads, amount of data downloaded, amount of storage consumed by any of END USER'S Data that is not data uploaded from PRO-VISION Devices, and any other information needed to enforce this License, conduct any troubleshooting requested by END USER or the AGENCY, and to analyze and diagnose any systems on which the Software Service software resides.

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**11.2 Modification and Waiver.** This License may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this License will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

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**11.5 Notices.** All notices required or permitted under this License will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

**11.6 Applicable Law; Limitation of Actions.** This License will be construed, interpreted, governed and enforced by and in accordance with the laws of Michigan, and the laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this License may be brought by END USER more than one (1) year after such action accrued. Any dispute regarding this License or arising out of any of the transactions under this License shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

**11.7 Entire Agreement.** With the exception of any Uploader License and any policies and restrictions on the SecuraMax.com website, this License is the entire agreement between PRO-VISION and END USER relating to its subject matter, and supersedes all prior or contemporaneous agreements, representations or understandings between PRO-VISION and END USER, written or oral, with respect to such subject matter. However, this License does not supersede the Software Service and Hosting Agreement, or any other Agreements, between PRO-VISION and the AGENCY.

**11.8 Audit.** At its own expense, PRO-VISION may perform an audit of END USER's usage of the Software Service to confirm use of the software in accordance with the terms of this License. The audit may be conducted (i) once every calendar year and (ii) as required in the event PRO-VISION has reason to believe END USER is utilizing the Software Service in an unauthorized manner.

**11.9 Force Majeure.** Neither party will be liable for any failure or delay in performance under this License which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

**11.10 Relationship of the Parties.** END USER and PRO-VISION agree that PRO-VISION shall perform its duties under this License as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this License shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this License and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.

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Signature

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Name and Title

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Date

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PRO-VISION and LICENSEE agree as follows:

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## UPLOADER LICENSE

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This Agreement allows LICENSEE to receive free minor version updates. Minor version updates (e.g., version 4.0 to 4.1) may include security updates, bug fixes or feature enhancements. Major version upgrades (e.g., version 4.0 to 5.0) may be available for license for a fee.

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PRO-VISION may modify the Uploader Software with notice to LICENSEE, including but not limited to, changing the functionality or appearance of the Uploader Software, and such modification will become binding on LICENSEE unless LICENSEE terminates this Agreement.

### Indemnification

By accepting the Agreement, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from LICENSEE's use of the Uploader Software or any other matter relating to the Uploader Software.

### Limitation of Liability

LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS AGREEMENT IN THE MOST RECENT TWELVE-MONTH PERIOD.

### General Terms

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# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019  
**DEPARTMENT:** Public Works  
**SUBJECT:** Waiver to Minimum Aviation Fuel Price Ordinance

## EXECUTIVE SUMMARY

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The annual Experimental Aircraft Association (EAA) Airventure airshow in Oshkosh, Wisconsin, is among the largest airshows in the world and draws pilots from across the country. Many airports along the major flight routes into Oshkosh experience higher transient traffic in the days leading up to and during the event. The 2019 Airventure dates are July 22 through July 28.

In 2017, the airport explored a new incentive to try and attract additional traffic heading to or from the event by discounting the flowage fee for self-service fuel. There was a correlation between the decreased fuel price and increased fuel sales that month. July fuel sales for 100LL in 2017 and 2018 were the highest single month sales in the past five years. The airshow traffic brings not only additional fuel sales but also increased exposure to the LITH airport.

The Board first established minimum aviation fuel pricing in 2014. This ordinance is updated yearly as the cost of procuring, storing, and dispensing fuel changes. The most recent update to the ordinance occurred in April of 2018. The flowage fee for self service is presently set at \$.285 per gallon.

Airport staff would again like to offer this incentive to draw in transient aircraft. Starting on Saturday, July 20 and ending on Monday, July 29, the airport would like to discount the flowage rate for both JetA and 100LL fuel by 50%. During this time, the flowage fee for self-service JetA and 100LL fuel would be reduced to \$.1425.

## FINANCIAL IMPACT

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None.

## ATTACHMENTS

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None.

## RECOMMENDED MOTION

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Motion to approve a temporary waiver to the ordinance establishing minimum aviation fuel pricing to reduce the self-service JetA and 100LL fuel flowage fees from \$.285 per gallon to \$.1425 per gallon starting on July 20, 2019 and ending on July 29, 2019.



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Variation to Section 15.13-1A, Front Yards

## EXECUTIVE SUMMARY

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The applicants, Paul and Melanie Wall, request a variation to the Zoning Ordinance to allow installation of a six-foot, 30 percent open wooden fence along the rear lot line of their property to replace a four-foot fence. The current fence is covered by a variation approved by Ordinance 1999-00-15. The six-foot fence is requested primarily because Grant Avenue tees into Decatur Avenue directly behind this house. The applicant does not intend to replace the fences along the side yards but will construct a transition from the six-foot fence to the four-foot fence.

In a residential district, a six-foot fence on the back of a through lot would be required to be 25 feet from the rear lot line. There is currently one other lot with a four-foot fence along the rear lot line two houses away. Additionally, there another house with a garage that faces Decatur, which is within the 25-foot setback.

The Planning and Zoning Commission conducted a public hearing on June 17, 2019. There were no public comments and Commissioners voted 6-0 to recommend approval of the variation.

## FINANCIAL IMPACT

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None

## ATTACHMENTS

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1. Application
2. Staff Report
3. Photos
4. Site Plan
5. Ordinance

## RECOMMENDED MOTION

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Motion to approve a variation to Section 15.13-1A, Front Yards, to allow for installation of six-foot high, 30 percent open wooden in the front yard (rear) at 1211 Crystal Lake Road on Parcel 19-20-308-002.



2068215

8

MAY 30 2019



# Village of Lake in the Hills Development and Zoning Application

Date: 5/9/19

### Property Information

Common street address: 1211 CRYSTAL LAKE RD

PIN (Property Index Number): 19-20-308-002

Current Zoning: R2 Proposed Zoning: N/A (NOT CHANGING)

Current Use: Residential Proposed Use: N/A (NOT CHANGING)

Is the request consistent with the Comprehensive Plan? YES  
Number of Acres: \_\_\_\_\_ If greater than 4 acres, 2 acres for government property or 5 acres for manufacturing zoned land, application shall be processed as a Planned Development as a Conditional Use. See definition of Planned Development and PD Section of Zoning Ordinance.  
Legal description of the property (print or attach exhibit): \_\_\_\_\_

### Property Owner Information

Name(s): Paul Wall & Melanie Wall

Business/Firm Name (if applicable): \_\_\_\_\_

Address: 1211 Crystal Lake rd

City/State/Zip: Lake in the Hills, IL 60156

Phone Number: 224-595-3193

Email: Wallpaul2000@gmail.com

### Applicant Information

Name(s): Same as above

Business/Firm Name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Appendix L – Variance Requirements

1. Please indicate the variation that is being sought, include section(s) and paragraph(s) of the Zoning Ordinance and any dimension(s) and a brief description of the proposed use, construction or development that prompted the request:

~~My current property~~ ONLY A FIVE FOOT  
FENCE IS ALLOWED IN THE REAR FRONT  
YARD OF A THROUGH LOT. WE WOULD  
LIKE TO INSTALL A 6' FENCE AT  
1211 CRYSTAL LAKE RD, LAKE IN THE HILLS,  
IL 60156

**Standards and Findings of Facts for a Variance per Section 23.7 of the Zoning Ordinance.**

The Planning and Zoning Commission may recommend and the Board of Trustees shall permit a variation of the provisions of this Zoning Code, as authorized in this Section, only if the evidence, in the judgement of the Village sustains each of the following three conditions:

1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located. **Explain how this standard is met.**

Primary purpose is to keep my children and  
pets from running into the road, limit peoples abilities  
to look into my home from the backyard and minimize  
car headlights from shining into my home.

Appendix L – Variance Requirements

2. The plight of the owner is due to unique circumstances. **Explain how this standard is met.**

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3. The variation, if granted, will not alter the essential character of the locality. **Explain how this standard is met.**

There is already a fence on the property, the variance would allow a taller one. This fence would not interrupt site from neighbors in their property or their backyards. It would limit site into my backyard and my windows.

For the purpose of supplementing the above standards, the Village, in making this determination whenever there are practical difficulties or particular hardship, also shall take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:

4. That the particular physical surroundings, shape or topographical conditions of the specific property involved would bring a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulation were to be carried out. **Explain how this standard is met.**

I would not be able to gain the privacy I feel is appropriate for me and my children. I back up to a road and feel this is ~~intruding~~ <sup>intruding</sup> on my/our privacy.

5. That the conditions upon which the petition for variation is based would not be applicable generally to other property within the same zoning classification. **Explain how this standard is met.**

Grant St dead ends into our backyard and Decatur runs parallel. Traffic speeds by or sits facing their cars <sup>lights</sup> into our windows while eating dinner. Cars have sat watching my kids play in the backyard.

Appendix L – Variance Requirements

6. That the purpose of the variation is not based exclusively upon a desire to make more money out of the property. **Explain how this standard is met.**

there is a fence on the property, Im just increasing the height

7. That the alleged difficulty or hardship has not been created by any person presently having interest in the property. **Explain how this standard is met.**

Im trying to add my privacy for my family

8. That the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. **Explain how this standard is met.**

if approved, this will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood where property is located

9. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood. **Explain how this standard is met.**

if approved fence will not impair supply of light and air to adjacent property (no property faces our backyard) or increase fire or endanger public safety. It would increase how safe my family feels.

Melanie Will 5/2/19

Property Owner Signature

Date



Melanie Will 5/2/19

Applicant Signature

Date

**Lake in the Hills Development and Zoning Application**  
**Page 2**

1	2	3	4	5	6
Request	Select Request with X	Required Fee ac = Acre	For Requirements See Appendix	Public Hearing Required See Appendix A2	Total Fee (enter Amount per Column 3)
Annexation		\$1,000/ac payable upon annexation	D	Yes	
Sketch Plan		\$0	E	No	
Tentative Plan		\$500 + \$10/ac	F	No	
Final Plat		\$500 + \$10/ac	G	No	
Plat of Vacation and/or Resubdivision Plat		\$500 + \$10/ac	H	No	
Conditional Use		\$500 + \$10/ac over 2 ac	I	Yes	
Rezoning		\$500 + \$10/ac over 2 ac	J	Yes	
Text Amendment		\$500	K	Yes	
Variance - Residential	X	\$100	L	Yes	\$100.00
Variance - Non-Residential		0-2 ac = \$250 Over 2 ac = \$500	L	Yes	
Development Plan Review		\$500 + \$10/ac	M	No	
<b>Total Fees</b>					\$100.00
<b>Additional Fees</b>					
Stormwater Permit Application Fee to be paid at time of permit issuance Minor = \$250 Intermediate or Major = \$1,000					\$0.00
Reimbursement of Fees Required ( <b>Attach Appendix B</b> ) = \$2,000 + \$100/acre for every acre over 5 acres					\$0.00

 Melanee Waeo 5/9/19  
 Property Owner Signature Date  
 Melanee Waeo 5/9/19  
 Applicant Signature Date

*If Owner/Applicant is a School District please, complete and submit Appendix N*

*All required appendices and documentation shall be submitted with this application. Incomplete applications will not be processed.*



## Village of Lake in the Hills Planning and Zoning Commission

### Hearing Acknowledgement Form for Single Family Residential Variations per Section 21.6-4 of the Zoning Ordinance

The undersigned acknowledges receipt of the public notice for a residential variation filed by

Paul Waal + Melanie Waal (Applicant)

regarding the property at 1211 Crystal Lake rd Lake in the Hills, IL 600156

I understand a hearing will be held on the 17<sup>th</sup> day of June 2019, at 7:30pm at the Lake in the Hills Village Hall, 600 Harvest Gate, Lake in the Hills, IL 60156.

Property Owner Signature Melanie Waal Date 5/9/19

Address 1211 Crystal Lake rd Lake in the Hills PIN# \_\_\_\_\_

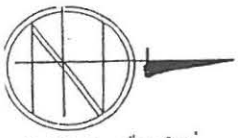
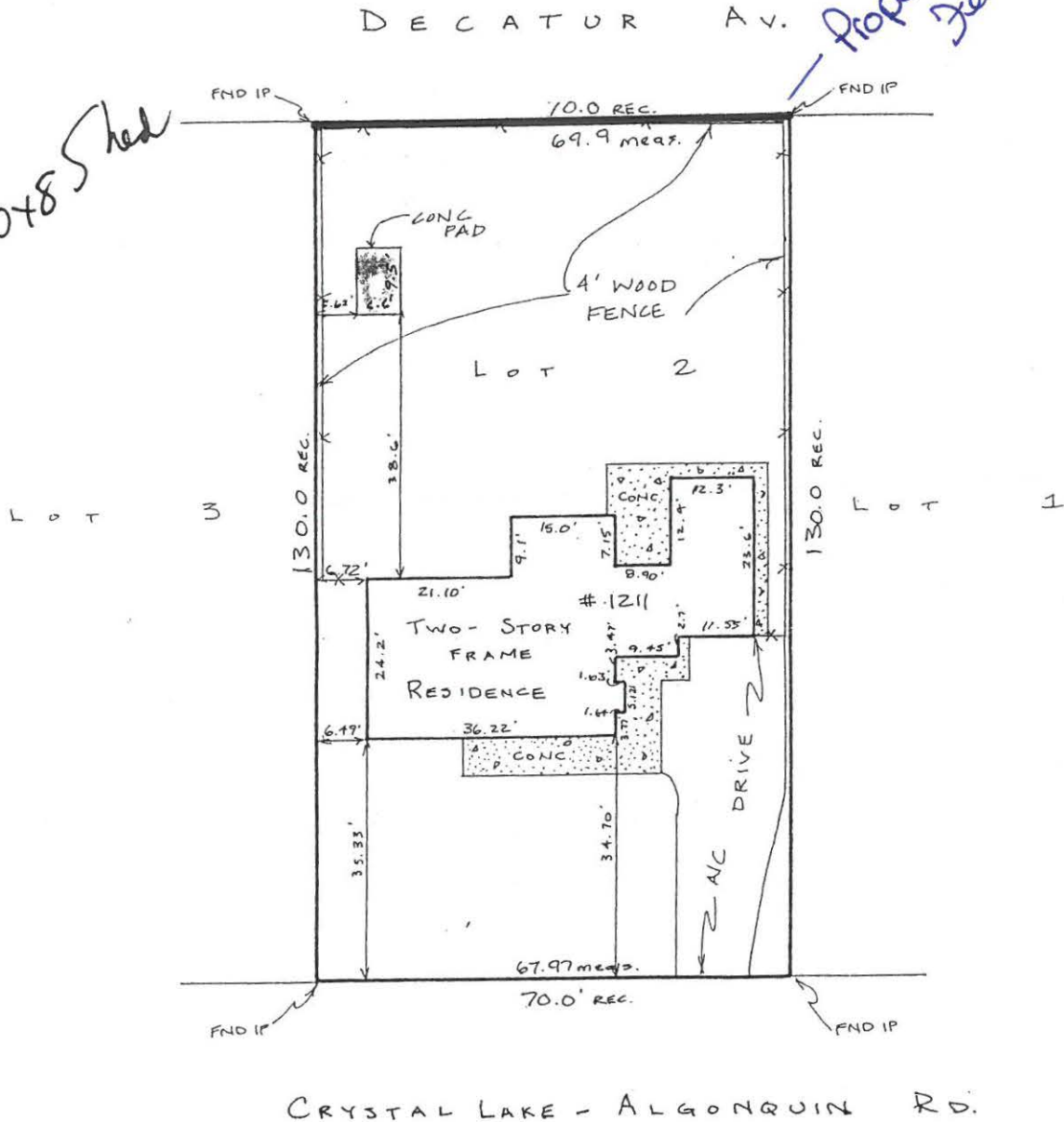
# PLAT OF SURVEY

LEGAL DESCRIPTION: Lot 2 in Block 6 in Lake in the Hills Estates Unit No. 11, a Subdivision of part of the Southwest Quarter of Section 20, Township 43 North, Range 8 East of the Third Principal Meridian, according to the Plat thereof recorded September 2, 1952, as Document No. 256808, in Book 11 of Plats, page 61, in McHenry County, Illinois.

FILE COPY

10x8 Shed

Proposed 6 foot Fence



SCALE 1" = 20'

State of Illinois)  
County of McHenry)

11-14-02

State of Illinois)  
County of McHenry)

11-14-02

I hereby certify that the above improvements...

# REQUEST FOR PUBLIC HEARING AND COMMISION ACTION

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## PLANNING AND ZONING COMMISION

**MEETING DATE:** June 17, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Variation to Sections 15.3-1A & E, Front Yards

## EXECUTIVE SUMMARY

---

### General Information

*Requested Action:* Variation to Section 15.3-1A of the Zoning Ordinance to allow six-foot tall fence in the front yard (rear) of the home. Also, variation to Section 15.3-1E of the Zoning Ordinance to allow for no transition from the six-foot fence along the rear lot line and the four-foot fence along the side lot lines.

*Owner:* Paul and Melanie Wall

*Applicant:* Paul and Melanie Wall

*Purpose:* Allow a six-foot high 30 percent open wooden fence in the front yard (rear).

*Location and Size:* 1211 Crystal Lake Road / 0.2 acres

*Zoning and Land Use:*

Site:	R-2 One Family Dwelling District
North:	R-2 One Family Dwelling District
East:	R-2 One Family Dwelling District
South:	R-2 One Family Dwelling District
West:	R-2 One Family Dwelling District

### Background

The applicants request variations to the Zoning Ordinance to allow construction of a six-foot, 30 percent open wooden fence along the rear lot line of the property to replace a four-foot fence at the same location. The current fence is covered by a variation approved by Ordinance 1999-00-15. The six-foot high fence is requested primarily because Grant Avenue tees into Decatur Avenue directly behind this house. The applicant does not intend to replace the fences along the side yards, so no transition is



planned between the four-foot and six-foot fence sections which would be required under Section 15.3-1E.

The property was reviewed for approval under Section 15.3-1G by the Community Services Director, but the conditions did not meet the standard. Only one of six other properties within the 1000-foot buffer had a similar condition.

One other property in the area (1207 Crystal Lake Road) has a four-foot fence along the rear lot line on Decatur Avenue. Four other properties with front yards (rear) or front yards (side) along Decatur Avenue have accessory structures within similar space to the front yard (rear) of this property. One is almost on the property line (2 Lee Street).

The standard would allow a six-foot fence to be located at the edge of the front yard (rear) or 25 feet from the rear property line or 55 feet from the center of the ROW. The current fence and property line are approximately 20 feet from the edge of pavement or about 30 feet from the center of the ROW.

### **Standards and Findings of Fact for a Variation**

The Planning and Zoning Commission may recommend and the Board of Trustees shall permit a variation of the provisions of this Zoning Code, as authorized in this Section, only if the evidence, in the judgement of the Village sustains each of the following three conditions:

- A. **The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located;**

The applicants indicate the height of the fence is needed to protect their privacy and to prevent the headlights of vehicles east bound on Grant Avenue from shining into the windows on the rear of their home.

- B. **The plight of the owner is due to unique circumstances; and**

The applicants did not respond to this question; however, staff notes that the T-intersection behind the home is a unique situation.

- C. **The variation, if granted, will not alter the essential character of the locality.**

The applicants indicate this will not alter the essential character of the locality.

For the purpose of supplementing the above standards, the Village, in making this determination whenever there are practical difficulties or particular hardship, also shall take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:

- D. **That the particular physical surroundings, shape or topographical conditions of the specific property involved would bring a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulation were to be carried out;**

The applicants indicate the presence of the T-intersection creates the hardship.

- E. That the conditions upon which the petition for variation is based would not be applicable generally to other property within the same zoning classification;

The applicants indicate the presence of the T-intersection limit the number of other properties this might apply to.

- F. That the purpose of the variation is not based exclusively upon a desire to make more money out of the property;

The applicants indicate the variation is not to make money from the property.

- G. That the alleged difficulty or hardship has not been created by any person presently having interest in the property;

The applicants indicate the presence of the T-intersection was not created by them.

- H. That the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; or

The applicants indicate it will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

- I. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood.

The applicants indicate this condition will be met.

## **ATTACHMENTS**

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1. Application
2. Site Plan
3. Photos
4. Ordinance 1999-00-15

## **RECOMMENDED ACTION**

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Commission recommend approval to the Village Board for variation to Sections 15.3-1A of the Zoning Ordinance at 1211 Crystal Lake Road on parcel 19-20-308-002 allowing construction of a six-foot, 30 percent open wooden fence on the rear lot line without transition to the four foot fences on the side lot lines.





(VILLAGE OF LAKE IN THE HILLS

ORDINANCE 2019 - \_\_\_\_

**An Ordinance Granting a Variance  
To Section 15.3-1A, of the Zoning Ordinance  
to allow for installation of a six-foot high,  
30 percent open wooden fence in the front yard (rear) at  
1211 Crystal Lake Road on Parcel 19-20-308-002**

WHEREAS, the Village of Lake in the Hills, McHenry County, Illinois (the "Village"), is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, Paul and Melanie Wall, owner and applicant, of the Subject Property located at 1211 Crystal Lake Road, Lake in the Hills, IL 60156 with a PIN of 19-20-308-002, petitioned the Village of Lake in the Hills for a variance to Section 15.3-1A of the Zoning Ordinance to allow installation of a six-foot high, 30 percent open wooden fence in the front yard (rear); and

WHEREAS, a public hearing was held by the Village of Lake in the Hills Planning and Zoning Commission, after due notice in the manner provided by law; and

WHEREAS, the Planning and Zoning Commission, after deliberation, has made a report and its recommendation relative to the variation for the Subject Property; and

WHEREAS, the President and Board of Trustees of the Village of Lake in the Hills have considered the report of the Planning and Zoning Commission and all of the evidence presented by the petitioner at the public hearing before the Commission; and

NOW, THEREFORE, Be It Ordained by the President and Board of Trustees of the Village of Lake in the Hills, McHenry County, Illinois that:

SECTION 1: The Corporate Authorities find that the statements in the foregoing preamble are true.

SECTION 2: The findings and recommendations of the Planning and Zoning Commission on the question of granting a variance to Section 15.3-1A of the Zoning Ordinance to allow six-foot high, 30 percent open wooden fence in the front yard (rear) on the Subject Property are hereby accepted.

SECTION 3: Approval of the variance to Section 15.3-1A of the Zoning Ordinance to allow six-foot high, 30 percent open wooden fence in the front yard (rear), as shown on Exhibit A, is hereby granted on the Subject.

SECTION 4: All other requirements set forth in the Zoning Ordinance of the Village of Lake in the Hills, as would be required by the Village as to any owner of property zoned in the same manner as the Subject Property shall be complied with.

SECTION 5: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgement shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall continue in full force and effect.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Passed this 25th day of June, 2019 by roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Stephen Harlfinger	_____	_____	_____	_____
Trustee Ray Bogdanowski	_____	_____	_____	_____
Trustee Bob Huckins	_____	_____	_____	_____
Trustee Bill Dustin	_____	_____	_____	_____
Trustee Suzette Bojarski	_____	_____	_____	_____
Trustee Diane Murphy	_____	_____	_____	_____
President Russ Ruzanski	_____	_____	_____	_____

APPROVED THIS 25TH DAY OF JUNE, 2019

\_\_\_\_\_  
Village President, Russ Ruzanski

(SEAL)

ATTEST: \_\_\_\_\_  
Village Clerk, Cecilia Carman

Published: \_\_\_\_\_

EXHIBIT A

Proposed new fence placement in front yard (rear) at 1211 Crystal Lake in Road





# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Text Amendment to Section 11, Permitted and Conditional Use Chart

## EXECUTIVE SUMMARY

---

Staff presented a change to the Permitted and Conditional Use Chart to allow Kennels in a B-3 (General Business) zoning district. Kennels allow for overnight boarding of three or more animals. They are currently a conditional use in Agricultural, Estate Residential (over 5 acres), Limited Manufacturing, and Commercial Business districts. General business Districts are currently located along the Randall Road corridor, Algonquin & Lakewood Roads, Algonquin & Pyott Roads, and Oak Street & Pyott Roads.

The conditional use designation will allow consideration of these kinds of businesses in areas closer to the customer base, but will still allow the Village put restrictions on the business and for the public to provide input on possible impacts the business may have on neighboring properties.

A public hearing on this text amendment was held on June 17. There were no public comments and Commissioners voted 6-0 to recommend approval of the proposed changes.

## FINANCIAL IMPACT

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None

## ATTACHMENTS

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1. Staff Report to Planning & Zoning Commission
2. Ordinance

## RECOMMENDED MOTION

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Motion to approve an ordinance to amend Section 11, Permitted and Conditional Use Chart, of the Zoning Ordinance to make Kennels a conditional use in the B-3 zoning district.





# REQUEST FOR PUBLIC HEARING AND COMMISSION ACTION

---

## PLANNING AND ZONING COMMISSION

**MEETING DATE:** June 17, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Zoning Text Amendments to Section 11, Permitted and Conditional Use Chart

## EXECUTIVE SUMMARY

---

Staff proposes adding an additional conditional use of “Kennel” in the General Business (B-3) District. The B-3 District is established to provide for a more intense amount of business than found in the B-2 District. This district will provide a large variety of facilities, stores and services.

The Zoning Ordinance defines a kennel as “Any premises where three or more dogs, at any one time, over three months of age, are accepted for boarding, breeding, training or sale, including overnight boarding, provided that the operator is properly licensed by the State of Illinois. If located outside of a Business (zoning) District, 600 square feet or 25 percent of the floor area (as outlined in Section 18.2-6B) occupied by the facility, whichever is less, may be used for retail sales related to dog care.”

The current Permitted and Conditional Use Chart allows “Kennels” as a conditional use in

- Agricultural (A-1) The A-1 Agricultural District is designed to maintain an environment where agricultural purposes may be served. Agricultural purposes consist of the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use. In the broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, horse husbandry, etc. An agricultural purpose does not include the extraction of sand, gravel or limestone, even when such an activity is related to an agricultural purpose.
- Residential Estate 5 acres and larger (RE-5) The Residential Districts set forth herein are established in order to protect public health and promote public safety, convenience, comfort, morals, prosperity and welfare.
- Commercial Business (B-4) The B-4 District is established to provide locations for major commercial centers that would facilitate large volumes of traffic. This District is intended to provide for a broad base of commercial users and services.
- Limited Manufacturing (M-1) The M-1 District allows adequate space for high quality, nuisance free, light manufacturing, wholesale, research, administrative and related uses of such nature that they do not create significant problems of compatibility with other types of land uses.

The Village has the following areas within these currently allowed zoning districts.

- A-1 None
- RE-5 None
- B-4 Approximately 64 acres along Route 31, Virginia Road, and Trinity Drive, plus 230 acres along Route 47 Additional small areas totaling 10 acres along Pyott Road and Pingree Road
- M-1 Approximately 5700 acres on the east side of the Village that is primarily mined lands.

The addition of B-3 zoning to the conditional uses for “Kennels” would add approximately 133 acres at Randall and Algonquin Roads, 36 acres at Algonquin and Lakewood Roads and another 14 acres along Pyott Road near Algonquin Road and Oak Street. These additional areas are closer and more convenient access to more of the customer base for this type of use.

The conditional use will allow consideration of these kinds of businesses in areas closer to the customer base, but will still allow the Village review and put restrictions on the business and for the public to provide input on possible impacts the business may have on neighboring properties. The Pet Suites company desires to build a dog care and boarding facility in the B-3 District on Randall Road.

For your consideration, attached are the proposed changes to Section 11.

## **ATTACHMENTS**

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1. Proposed Changes to Section 11

## **RECOMMENDED ACTION**

---

Commission recommend approval to the Village Board to amend Section 11, Permitted and Conditional Use Chart, of the Zoning Ordinance.

VILLAGE OF LAKE IN THE HILLS

ORDINANCE NO. 2019-\_\_\_\_\_

**An Ordinance Granting a Text Amendment to  
The Zoning Ordinance of the Village of Lake in the Hills**

WHEREAS, the Village of Lake in the Hills, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, a representative of the Village of Lake in the Hills petitioned the Village to consider a text amendment to Section 11 "Permitted and Conditional Use Chart"; and

WHEREAS, a public hearing was held by the Village of Lake in the Hills Planning and Zoning Commission, after due notice in the manner provided by law; and

WHEREAS, the Planning and Zoning Commission, after deliberation has made a report and made its recommendation relative to the text amendment; and

WHEREAS, the President and Board of Trustees have considered the report and recommendation of the Planning and Zoning Commission and all of the evidence presented by the petitioner at the public hearing before the Planning and Zoning Commission;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lake in the Hills, McHenry County, Illinois, that:

SECTION 1: The Corporate Authorities find that the statements in the foregoing preamble are true.

SECTION 2: The recommendation of the Planning and Zoning Commission on the question of approving the text amendment to the Zoning Ordinance is hereby accepted.

SECTION 3: That Section 11 "Permitted and Conditional Use Chart", Section 11, shall be amended to read as follows:

SECTION 11

PERMITTED AND CONDITIONAL USE CHART

P - Permitted Use  
 C - Conditional Use

A 1	RE 5	RE 2	RE 1	R 1 A & B	R 2	R 3	R 4	USE	B 1	B 2	B 3	B 4	B 5	M 1	M 2	O S	I B	A D 1	A D 2
C	C							Kenel			C	C		C					

SECTION 4: If any section, paragraph, subdivision, clause, sentence, or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder thereof, which remainder shall continue in full force and effect.

SECTION 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Passed this 25th day of June, 2019 by roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Stephen Harlfinger	_____	_____	_____	_____
Trustee Ray Bogdanowski	_____	_____	_____	_____
Trustee Bob Huckins	_____	_____	_____	_____
Trustee Bill Dustin	_____	_____	_____	_____
Trustee Suzette Bojarski	_____	_____	_____	_____
Trustee Diane Murphy	_____	_____	_____	_____
President Russ Ruzanski	_____	_____	_____	_____

APPROVED THIS 25TH DAY OF JUNE, 2019

\_\_\_\_\_  
 Village President, Russ Ruzanski

(SEAL)

ATTEST: \_\_\_\_\_

Village Clerk, Cecilia Carman

Published:



# REQUEST FOR BOARD ACTION

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**MEETING DATE:** June 25, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Conditional Use for a Kennel and Development Plan Approval for PetSuites of America, Inc. at 390 North Randall Road

## EXECUTIVE SUMMARY

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The applicants request a conditional use for a Kennel and approval of a development plan. Conditional use is required for a Kennel in the B-3 district as proposed in a pending text amendment. The Kennel designation is being used due to the overnight boarding of animals. The facility will primarily provide day care services for dogs and cats but will also provide boarding, grooming, and retail sales. The proposed site is surrounded by commercial operations and is almost 300 feet from the nearest residential building.

The proposed facility is a single-story building with an outside activity between the facility and the adjacent Bear Paddle Swim Club. The facility is capable of handling up to 132 animals. Staff reviewed the proposed development plans and found them in compliance and reasonable. Traffic generated by this development would be minimal and not create problems for the local road network.

The Planning and Zoning Commission conducted a public hearing on June 17. There were no public comments. The commissioners discussed the impact of noise and smell on adjacent properties. No additional conditions were proposed. Commissioners voted 6-0 to recommend approval of the conditional use and the development plan.

The attached Development Agreement closely matches the Development Agreement approved for Bear Paddle Swim Club on the adjacent lot. The agreement describes payment of the applicable development fees and includes agreement to pay a 2 percent activity fee quarterly on services provided which are not subject to sales tax.

## FINANCIAL IMPACT

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None

## ATTACHMENTS

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1. Application
2. Staff Report
3. Site Plan
4. Development Agreement
5. Ordinance

**RECOMMENDED MOTION**

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Motion to approve an ordinance granting a Conditional Use for a Kennel and approval of the Development Plan and Agreement for Pet Suites at 390 N Randall Road on Parcel 19-29-151-027, contingent upon approval of the Development Plan Agreement by PetSuites of America, Inc.



## Village of Lake in the Hills Development and Zoning Application

Date: \_\_\_\_\_

### Property Information

Common street address: To Be Determined - 390 W. Randall Road

PIN (Property Index Number): 19-29-151-027

Current Zoning: B-3, Business - General Proposed Zoning: B-3, Business - General

Current Use: Vacant Proposed Use: Pet boarding, daycare, grooming

Is the request consistent with the Comprehensive Plan? Yes  
 Number of Acres: 1.80 If greater than 4 acres, 2 acres for government property or 5 acres for manufacturing zoned land, application shall be processed as a Planned Development as a Conditional Use. See definition of Planned Development and PD Section of Zoning Ordinance.  
 Legal description of the property (print or attach exhibit): See Attached Exhibit

### Property Owner Information

Name(s): Joseph Billitteri

Business/Firm Name (if applicable): Premier Commercial Realty

Address: 9225 South Route 31

City/State/Zip: Lake in the Hills, IL 60156

Phone Number: 847-854-2300 ext:21

Email: JoeB@profit-success.net

### Applicant Information

Name(s): Shannon Netherton

Business/Firm Name (if applicable): Beta Equity Investments, LLC

Address: 501 Pennsylvania Parkway, Suite 160



City/State/Zip: Indianapolis, IN 46280

Phone Number: 317-819-0116

Email: cforgey@tmcrowley.com

**Lake in the Hills Development and Zoning Application**  
**Page 2**

1	2	3	4	5	6
Request	Select Request with X	Required Fee ac = Acre	For Requirements See Appendix	Public Hearing Required See Appendix A2	Total Fee (enter Amount per Column 3)
Annexation		\$1,000/ac payable upon annexation	D	Yes	
Sketch Plan		\$0	E	No	
Tentative Plan		\$500 + \$10/ac	F	No	
Final Plat		\$500 + \$10/ac	G	No	
Plat of Vacation and/or Resubdivision Plat		\$500 + \$10/ac	H	No	
Conditional Use	X	\$500 + \$10/ac over 2 ac	I	Yes	
Rezoning		\$500 + \$10/ac over 2 ac	J	Yes	
Text Amendment		\$500	K	Yes	
Variance - Residential		\$100	L	Yes	
Variance - Non-Residential		0-2 ac = \$250 Over 2 ac = \$500	L	Yes	
Development Plan Review		\$500 + \$10/ac	M	No	
<b>Total Fees</b>					
<b>Additional Fees</b>					
Stormwater Permit Application Fee to be paid at time of permit issuance					
Minor = \$250					
Intermediate or Major = \$1,000					
Reimbursement of Fees Required ( <b>Attach Appendix B</b> ) = \$2,000 + \$100/acre for every acre over 5 acres					

  
 Property Owner Signature  
  
 Applicant Signature

4/17/19  
 Date  
 4/17/19  
 Date

*If Owner/Applicant is a School District please, complete and submit Appendix N*

*All required appendices and documentation shall be submitted with this application. Incomplete applications will not be processed.*



EXHIBIT A

VILLAGE OF LAKE IN THE HILLS  
REIMBURSEMENT OF FEES AGREEMENT

Project Name: PetSuites

Owner Name: Beta Equity Investments, LLC

Address: 501 Pennsylvania Parkway, Suite 160, Indianapolis, IN 46280

Telephone number: 317-819-0116

Petitioner Name: Beta Equity Investments, LLC

Address: 501 Pennsylvania Parkway, Suite 160, Indianapolis, IN 46280

Telephone Number: 317-819-0116

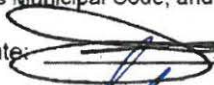

Address and General Parcel Location: NE Corner of Randall Road and Algonquin Road

Parcel Identification Number: 19-29-151-027

Total Acreage: 1.80 acres

Invoices should be mailed to: Beta Equity Investments, LLC, Pennsylvania Parkway, Suite 160, Indianapolis, IN 46280

By signing this Agreement the petitioner and/or owner acknowledge that each of them has read Chapter 44 of the Lake in the Hills Municipal Code and each of them fully understands and agrees to comply with the terms set forth therein. Further, by signing below, each signatory warrants that he or she possesses full authority to so sign. The owner and/or petitioner agree that owner and petitioner shall be jointly and severally liable for payment of fees referred to in applicable sections of Chapter 44 of the Lake in the Hills Municipal Code, and as referred to hereinabove.

Property Owner Signature & Date:  *MANAGING MEMBER*  
Petitioner Signature & Date:  *4/18/19*

FOR OFFICE USE ONLY

Initial Escrow Amount Received \$ \_\_\_\_\_ On    /    /   

- Copies of Agreement forwarded to:
- Village Administrator
  - Village Engineer
  - Village Attorney
  - Planning Consultant
  - Director of Community Services
  - Director of Public Works
  - Village Collector
  - Other \_\_\_\_\_

Village of Lake in the Hills Account Number \_\_\_\_\_



# REQUEST FOR PUBLIC HEARING AND COMMISSION ACTION

---

## PLANNING AND ZONING COMMISSION

**MEETING DATE:** June 17, 2019

**DEPARTMENT:** Community Services

**SUBJECT:** Conditional Use for a Kennel and Development Plan Approval for Pet Suites

## EXECUTIVE SUMMARY

---

### General Information

*Requested Action:* The applicant requests the following actions to allow construction of Pet Suites on Randall Road.

- Conditional Use for Senior Housing (subject to approval of text amendment for Kennels)
- Development Plan approval

*Owner:* Joseph Billitteri of Premier Commercial Realty

*Applicant:* Shannon Netherton of Beta Equity Investments, LLC

*Purpose:* Allow construction of a Pet Suites dog care facility

*Location and Size:* Parcel 19-29-151-027 at 390 N. Randall Road / 1.8 acres

*Zoning and Land Use:* Site: B-3 General Business District

North: B-3 General Business District

East: B-3 General Business District

South: B-3 General Business District

West: B-3 General Business District

*Comprehensive Plan Land Use:* Commercial

## Background

The applicants request a conditional use for a kennel and approval of a development plan. Conditional use is required for a Kennel in the R-3 district as proposed in a pending text amendment. The Kennel designation is being used due to the overnight boarding of animals. In addition to boarding, the facility will also offer pet day care, grooming, and retail sales. The proposed site is surrounded by commercial operations and is almost 300 feet from the nearest residential building.

Staff reviewed the proposed development plans and found them in compliance and reasonable. Traffic generated by this development would be minimal and not create problems for the local road network.

## Standards and Findings of Fact for a Conditional Use

Before recommending any Conditional Use, the Planning and Zoning Commission and the Board of Trustees shall consider the following factors and how they are relevant to the specific conditional use being requested.

- 1. That the proposed use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community; and**

The applicant believes the proposal will offer an additional option for pet day care for the community.

- 2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity, or injurious to property values or improvements in the vicinity; and**

The applicant believes this standard has been met due to its location in a commercial center, away.

- 3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and**

The applicant believes this standard has been met.

- 4. The extent to which the conditional use is harmonious and compatible with the goals and objectives of the Village's comprehensive planning documents; and**

The applicant believes this standard has been met.

- 5. The amount of traffic congestion or hazards, if any, that may occur as a result of the conditional use, as well as the extent and adequacy of pedestrian and vehicular access and circulation; and**

This facility will generate minimal additional traffic on the area roads and uses existing parking, road, and sidewalk networks.

6. **The extent that the conditional use can be adequately served by essential public facilities and services, and by private utilities; and**

Adequate utilities are available.

7. **That the proposed use will comply with the regulations and conditions specified in this Zoning Code for such use, and with the stipulations and conditions made a part of the authorization granted by the Board of Trustees; and**

This site will comply with all regulations and conditions as stated in the Zoning Ordinance unless otherwise stated.

8. **Any other criteria as identified in this Zoning Code.**

## **ATTACHMENTS**

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1. Application
2. Site Location Map
3. Site Exhibit
4. Exterior Elevations
5. Signage Plan
6. Floor Plan
7. Site Improvements Plan
8. Drainage Memo
9. ALTA Survey
10. Trip Generation Memo

## **RECOMMENDED ACTION**

---

Commission recommend approval to the Village Board for Conditional Use for a Kennel and approval of a Development Plan for Pet Suites on Parcel 19-29-151-027 at 390 N. Randall Road.



ACORN LANE

N  
NOT TO SCALE

RANDALL ROAD

SITE

VILLAGE CREEK DRIVE

CRYSTAL LAKE ROAD

ALGONQUIN ROAD

EXHIBIT 1  
SITE LOCATION MAP

**AGREEMENT**  
**by and between**

**THE VILLAGE OF LAKE IN THE HILLS**  
**and**  
**PETSUITES OF AMERICA, INC.**

This Development Agreement (the “Agreement”) by and between the Village of Lake in the Hills, an Illinois municipal corporation (the “Village”), and PetSuites of America, Inc. (the “Developer”) is entered into this 25th day of June, 2019.

WHEREAS, the Developer represents to the Village that it is or shall be the sole owner of record of the real property legally described as follows:

Lot 1 of Lot 1 in Restart Lake in the Hills subdivision, being part of the West half of the Northwest Quarter of Section 29, Township 43 North, Range 8 East of the Third Principal Meridian, according to the plat thereof recorded December 1, 2015 as document 2015R0044740, in the Village of Lake in the Hills, Algonquin Township, McHenry County, Illinois (the “Property”).

WHEREAS, the parties wish to enter into an agreement by which the Developer would contribute revenue to the Village to help pay for Village services to the Property and surrounding area from which the Developer wishes to draw customers.

**1. Incorporation of Recitals.** The above described recitals, representations and warranties are hereby incorporated into this Agreement by this reference as if fully set forth herein.

**2. Zoning and Development of the Property.** The Village shall grant the Property a conditional use permit for a “Kennel” and approves a development plan for the Property consisting of the following:

- a. Site Improvement Plans prepared by Kimley-Horn and Associates, Inc. with a date of May 24, 2019
- b. Exterior Elevations (A6.0) with no date
- c. Floor Plan (a2.0) with no date
- d. Signage Exhibit prepared by persona Signs with a date of May 23, 2019 (collectively, the “Development Plan”).

Construction on the Property shall be in strict accordance with the Development Plan. No building permit will be issued for the Property until a final engineering plan is submitted that meets the minimum standards provided for in the Village’s Municipal Code and which is approved by the Village Engineer.

**3. Potable Water Service Tap-On.** The Village shall allow the Developer to tap-on to the public water service if sufficient capacity is available. The Developer agrees to pay the tap-

on fee as a condition precedent to the issuance of the first building permit associated with the Property. The Developer agrees to tap on to the Village water system at points that are identified on the Village-approved final engineering plan subject to securing any permits required from other governmental agencies having jurisdiction.

4. **Subsurface Utilities.** All electric, gas, telephone and cable television services which are to be newly installed by the Developer on the Property shall be at the Developer's cost, installed underground, except necessary above-ground appurtenances, without further consideration to be paid by the Village.

5. **Fees.** The Developer agrees to pay the following fees at the following times:

- A. **Payment of Activity Fee to the Village from the Developer.** The Developer agrees to pay to the Village two percent (2%) of all revenues that the Developer receives from all programs, services and activities including, but not limited to, animal daycare, boarding and grooming, that the Developer provides from the Property, excluding only those revenues upon which sales tax is generated for the benefit of the Village (the "Activity Fee"). If all or any portion of the Property is leased or licensed or otherwise made available for occupancy or use by any third party, the Developer shall include a provision in an such agreement with such party by which the Activity Fee and this Activity Fee provision shall apply to services, programs, and activities including, ut not limited to animal daycare, boarding and grooming that such lessee, licensee, occupant provide The Activity Fee generated by such lessee, licensee, occupant, or other user shall be paid to the Developer and shall be remitted to the Vilage. Such Activity Fee shall be paid to the Village on a quarterly basis, 45 days after the end of each quarter of each calendar year, for the term of this Agreement. Such Activity Fee shall be accompanied by a statement setting forth all such revenues, certified by the President of the Developer, to the Village containing an itemized breakdown of such revenues received by the Developer for the preceding quarter. If requested by the Village, the Developer shall share its books and records with the Village for a period of time going back two years from the date of such request. The parties agree that the Village, along with its designated consultants, shall have the right to examine and audit such books and records from time to time for the duration of this Agreement. Such books and records shall be made available also at the Property and provided to the Village in electronic form if the Village requests at no cost to the Village. In the event that it is determined that there is an error associated with the calculations of the Activity Fee by which it was understated by 15% or more, the Developer shall pay the Village for any out of pocket costs for such examination or audit. The Activity Fee is in addition to any and all applicable taxes and fees of any kind.
- B. **Building permit fees.** The Developer agrees to pay those building permit fees provided by the Village in its ordinances at the time that such building permits are applied for.

- C. **Fire impact fees.** The parties recognize that the Algonquin/Lake in the Hills Fire Protection District has imposed upon the Village, as a condition of continued fire service, a fire developmental impact fee per new structure. The Developer agrees that it will pay the fire developmental impact fee as determined by the Algonquin/Lake in the Hills Fire Protection District at the time of the issuance of a building permit. In addition, a \$100.00 plan review fee shall be paid for each structure prior to the issuance of a building permit. Such fees shall be paid by the Developer at the time of building permit application.
- D. **Professionals' fees.** If the Developer fails to fulfill any of its responsibilities under the terms of this Agreement, the Village shall have the right to bring an action at law to collect any damages caused by the failure to comply. The Developer shall reimburse the Village for any reasonable legal fees and costs associated with any legal action necessary to enforce compliance with the terms of this Agreement, collect fees, or to interpret any provision in this Agreement provided that the Village prevails in such action.

The Developer agrees to reimburse the Village for reasonable attorneys' fees, planning consultants, engineering consultant's costs and any other professional costs incurred by the Village in connection with the zoning and development of the Property. In addition to these fees a five percent (5%) administrative fee for review of all matters relevant to the Property shall be paid by the Developer to the Village.

The Village herewith acknowledges the receipt and initial sufficiency of deposits paid by the Developer to begin defraying the costs of engineering, planning and legal services for the Village as reasonably incurred. The Village shall notify the Developer in writing should deposits become depleted. If depleted deposits are not restored within 30 days of notice from the Village, no new building permits shall be reviewed or approved until said deposits are restored.

The parties agree that such fees are contractual in nature and the Developer therefore agrees to waive any defenses with respect to these fees and further agrees not to challenge these fees at a later date.

The Developer shall not be obligated to pay the Village's lakes/stream maintenance fee or the administration/platting fee.

**6. Venue.** Any proceeding pursuant to or in connection with this Agreement or amendment thereto shall be brought in the 22nd Judicial Circuit, McHenry County, Illinois, and the Village and the Developer hereby consent to jurisdiction and venue in that Court. This Agreement has been negotiated, executed and delivered at and shall be deemed to have been made in the Village of Lake in the Hills, McHenry County, Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of any present or future domicile or principal place of business by the Developer. Each of the Developer and the Village hereby consents and agrees that the Circuit Court of McHenry



County, Illinois, shall have exclusive jurisdiction to hear and determine any claims or disputes between the Village and the Developer pertaining to this Agreement or to any matter arising out of or related to this Agreement. Each of the Developer and the Village expressly submits and consents in advance to such jurisdiction in any action or suit commenced in such court, and each of the Developer and the Village hereby waives any objection which each of the Developer and the Village may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens*.

**7. Liberal Construction.** This Agreement shall be liberally construed to effectuate the intent of the parties hereto.

**8. Covenant and recording.** This Agreement shall be recorded in the Office of the Recorder of Deeds of the County of McHenry, Illinois, and the terms and provisions hereof shall be deemed for all legal intents and purposes to constitute covenants affecting the Property, which shall run with such Property and be binding upon the Developer and all successor owners and assignees and lessees thereof.

**9. Drafting of this Agreement.** No provision or terms of this Agreement shall be construed against a party to this Agreement on the basis that such party drafted such provision or term. Each party acknowledges and agrees that each has contributed toward the drafting of each of the terms and provisions in this Agreement.

**10. Compliance with applicable ordinances.**

A. **More restrictive requirements:** If during the term of this Agreement, the provisions of the existing ordinances and regulations of the Village which may relate to the use of the Property are amended or modified in any manner so as to impose more stringent requirements regarding such use, such increased requirements shall be effective as to the Property.

B. **Less restrictive requirements:** If during the term of this Agreement, the provisions of the existing ordinances and regulations of the Village, which may relate to the use of the Property are amended or modified in any manner so as to impose less stringent requirements regarding such use, then the benefit of such less restrictive requirements shall inure to the benefit of the Property.

C. **Governing provisions:** To the extent of any conflict, ambiguity or inconsistency between the terms, provisions, or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, of the Village code, the zoning ordinance, the subdivision control ordinance, as hereinafter identified, or any other Village code, ordinance or regulation, including the Village's building code, the terms, provisions, and standards of this Agreement shall govern and control.

**11. Binding Effect and Term.** The terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective grantees,

successors and assigns, and lessees thereof, for a period of fifty (50) years commencing upon the date of this Agreement.

**12. Severability.** If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements and portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable.

**13. Notices.** All notices required by this Agreement shall be in writing. The mailing of a notice by certified mail, return receipt requested shall be sufficient service and shall be deemed received three business days after it is deposited in the U.S. Mail with postage prepaid.

Notice given to the Village shall be addressed as follows:

Village of Lake in the Hills  
Attn: Village Administrator  
600 Harvest Gate  
Lake in the Hills, Illinois 60156

Notices given to the Developer shall be addressed as follows:

PetSuites of America, Inc.

**14. Captions and designations.** Throughout this Agreement, the singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Paragraph numbers and caption headings are purely descriptive and, except where noted, shall be disregarded in construing this Agreement.

**15. Integration.** This Agreement sets forth all promises, inducements, agreements, conditions and understandings between the Developer and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth or otherwise referred to in this Agreement. All exhibits and the recitals to this Agreement are expressly incorporated herein by this reference thereto.

**16. Time is of the essence.** Time is of the essence of this Agreement.

**17. Preparation and construction of Agreement.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning. This Agreement has been drafted for the benefit of the parties hereto. It does not create any third party beneficiaries or create or establish any rights in or for third parties except as otherwise expressly provided herein. The parties have consulted with their respective attorneys regarding

this Agreement and no portion of this Agreement shall be construed against a party by virtue of that party or its attorneys drafting all or part of this Agreement.

**18. Consent of lender.** The Developer shall provide the Village with written approval satisfactory to the Village of any mortgagee, lien holder or holder of any security interest, affecting title to the Property or any part thereof so that this Agreement shall be superior to any such mortgage, lien or other security interest and Developer shall provide same to the Village prior to execution and recording of this Agreement.

**19. Authorized execution.** The persons executing this Agreement represent and warrant to the other party hereto that they have been duly authorized to execute this Agreement as the act and deed of such entity on whose behalf they are signing.

**20. Amendments.** The parties agree that this Agreement and any exhibits attached hereto may be amended only by the mutual written consent of the Parties, by adoption of an ordinance by the Village approving said amendment as provided by law, and the appropriate corporate action of the Developer and the execution of said amendment by the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed the day and year first above written.

**VILLAGE OF LAKE IN THE HILLS,**  
an Illinois municipal corporation

**PETSUITES OF AMERICA, INC,**

By: \_\_\_\_\_  
Russ Ruzanski, Village President

By: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS  
County of McHenry        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT RUSS RUZANSKI, Village President of the Village of Lake in the Hills, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

STATE OF ILLINOIS        )  
  ) SS  
County of McHenry        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT \_\_\_\_\_, \_\_\_\_\_ of PetSuites of America, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that she signed and delivered the said instrument, as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

Prepared by:  
Michael J. Smoron  
ZUKOWSKI, ROGERS, FLOOD & McARDLE  
50 N. Virginia Street  
Crystal Lake, IL 60014

After recording, mail to:  
Nancy Sujet  
VILLAGE OF LAKE IN THE HILLS  
600 Harvest Gate  
Lake in the Hills, IL 60156

VILLAGE OF LAKE IN THE HILLS

ORDINANCE 2019 - \_\_\_\_

**An Ordinance Granting a Conditional Use for a kennel  
in the B-3 Zoning District and approval of the  
Development Plan for PetSuites of America, Inc.  
at 390 North Randall Road on Parcel 19-29-151-027**

WHEREAS, the Village of Lake in the Hills, McHenry County, Illinois (the "Village"), is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, Joseph Bilitteri, property owner, and Shannon Netherton of Beta Equity Investments, LLC, Inc. applicants, of the Subject Property located at 390 North Randall Road, Lake in the Hills, IL 60156 legally described with a PIN of 19-29-151-027, petitioned the Village of Lake in the Hills for a Conditional Use for a kennel in the B-3 Zoning District and approval of a Development Plan for PetSuites of America, Inc. on that parcel at 390 North Randall Road.

WHEREAS, a public hearing was held by the Village of Lake in the Hills Planning and Zoning Commission, after due notice in the manner provided by law; and

WHEREAS, the Planning and Zoning Commission, after deliberation, has made a report and its recommendation relative to the variation for the Subject Property; and

WHEREAS, the President and Board of Trustees of the Village of Lake in the Hills have considered the report of the Planning and Zoning Commission and all of the evidence presented by the petitioner at the public hearing before the Commission; and

NOW, THEREFORE, Be It Ordained by the President and Board of Trustees of the Village of Lake in the Hills, McHenry County, Illinois that:

SECTION 1: The Corporate Authorities find that the statements in the foregoing preamble are true.

SECTION 2: The findings and recommendations of the Planning and Zoning Commission on Granting a Conditional Use in the B-3 Zoning District for a kennel and approval of a Development Plan for PetSuites of America, Inc. at the Subject Property are hereby accepted.

SECTION 3: Approval of the Conditional Use for a kennel in the B-3 Zoning District and approval of a Development Plan for PetSuites of America, Inc., is hereby granted on the Subject Property.

SECTION 4: All other requirements set forth in the Zoning Ordinance of the Village of Lake in the Hills, as would be required by the Village as to any owner of property zoned in the same manner as the Subject Property shall be complied with.

SECTION 5: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgement shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall continue in full force and effect.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

SECTION 8: In the event PetSuites of America, Inc. or a designated representative fail to execute and sign the Development Agreement by September 1, 2019, this ordinance shall be null and void.

Passed this 25th day of June, 2019 by roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Stephen Harlfinger	_____	_____	_____	_____
Trustee Ray Bogdanowski	_____	_____	_____	_____
Trustee Bob Huckins	_____	_____	_____	_____
Trustee Bill Dustin	_____	_____	_____	_____
Trustee Suzette Bojarski	_____	_____	_____	_____
Trustee Diana Murphy	_____	_____	_____	_____
President Russ Ruzanski	_____	_____	_____	_____

APPROVED THIS 25TH DAY OF JUNE, 2019

\_\_\_\_\_  
Village President, Russ Ruzanski

(SEAL)

ATTEST: \_\_\_\_\_  
Village Clerk, Cecilia Carman

Published: \_\_\_\_\_