Village of Wonder Lake, Illinois

Ordinance No. 577

AN ORDINANCE PROVIDING FOR THE APPROVAL OF AN ANNEXATION AGREEMENT BETWEEN THE VILLAGE OF WONDER LAKE, MCHENRY COUNTY, ILLINOIS, AND LUCIFER'S CATHOUSE AND CANTINA TRUST, THOMAS HENELY TRUSTEE

Passed by the President and Board of Trustees

and

Approved by the President

This 20th day of March, 2024

Published in pamphlet form by the authority of the President and Village Board of Trustees of the Village of Wonder Lake, Illinois.

ATTEST:

VILLAGE CLERK

VILLAGE OF WONDER LAKE

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WHEREAS, LUCIFER'S CATHOUSE AND CANTINA TRUST, THOMAS HENELY as TRUSTEE, is the record owner ("Owner") of a certain parcel of real estate legally described on Exhibit "A" attached hereto and;

WHEREAS, notice of public hearing was published in the Northwest Herald, a newspaper of general circulation within the Village, within the time provided by law, notifying the public of a hearing on said proposed Annexation Agreement to be held before the corporate authorities of the Village of Wonder Lake, Mc Henry County, Illinois; and

WHEREAS, the corporate authorities of the Village of Wonder Lake have held the hearing as required by law and have found the entry into said Agreement is in the best interests of, and will not be detrimental to, the public health, welfare or safety of the inhabitants of the Village of Wonder Lake, Mc Henry County, Illinois; and

WHEREAS, Owners are ready, willing and able to enter into said Agreement and to perform the obligations as required thereunder; and

WHEREAS, the statutory procedures provided in 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, for the execution of said Annexation Agreement have been fully complied with.

NOW THEREFORE be it ordained by the President and Board of Trustees of the Village of Wonder Lake, Mc Henry County, Illinois, as follows:

SECTION 1: The Annexation Agreement bearing the date of February 15, 2024 by and between the VILLAGE OF WONDER LAKE, a municipal corporation in the State of Illinois, and LUCIFER'S CATHOUSE AND CANTINA TRUST, THOMAS HENELY TRUSTEE be and the same is hereby approved. A complete and accurate copy of said Annexation Agreement is attached to this Ordinance and incorporated herein by reference as Exhibit "B".

SECTION 2: The President and Village Clerk of the Village of Wonder Lake, Illinois are authorized ~~and directed~~ to affix their signatures as President and Village Clerk to said agreement for the uses and purposes therein set forth.

SECTION 3: OF VALIDITY. If any section, subsection, sentence, clause or phrase of this ordinance is adjudged to be invalid or unenforceable under any circumstance or in any respect, the remainder of this ordinance and the application of such term or provision to circumstances or in respects other than those to which it has been determined to be invalid or unenforceable shall not be affected thereby, and such invalid or unenforceable provision shall be modified to the minimum extent necessary to render such term or provision valid and enforceable and to effect the intent of this ordinance.

SECTION 4: OF REPEAL. All articles, sections, subsections or parts thereof, in conflict with the provisions of this ordinance, be and the same, are hereby repealed to the extent of such conflict.

SECTION 5: This ordinance shall be published in pamphlet form by and under the authority of the Board of Trustees of the Village of Wonder Lake, McHenry County, Illinois.

SECTION 6: This Ordinance shall be in full force and effect upon its passage, approval and publication as provided by law.

DATED this 20th day of March, 2024.

AYES: Hilton, Houston, Palys, Reinhard, Tollini

NAYS: None

ABSTAIN: None

ABSENT: None

PASSED this 20th day of March, 2024.

APPROVED by me this 20th day of March, 2024.

PRESIDENT

ATTEST:

Jo Ellen McIntosh

VILLAGE CLERK

VILLAGE OF WONDER LAKE

CERTIFICATION

I, SUSAN M. WEIR, certify that I am the Village Clerk of the VILLAGE OF WONDER LAKE, Mc Henry County, Illinois.

I further certify that on this 20th day of March, 2024., the Corporate Authorities of such municipality passed and approved Ordinance No. 577, entitled, **AN ORDINANCE PROVIDING FOR THE APPROVAL OF AN ANNEXATION AGREEMENT BETWEEN THE VILLAGE OF WONDER LAKE, MC HENRY COUNTY, ILLINOIS, AND LUCIFER'S CATHOUSE AND CANTINA TRUST, THOMAS HENELY AS TRUSTEE** , a true and correct copy of which Ordinance is attached hereto.

Ordinance No. 577, including the Ordinance and a cover sheet thereof, was published in pamphlet form, and a copy of such Ordinance was posted in the Village Hall, commencing on this 20th day of March, 2024., and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Clerk.

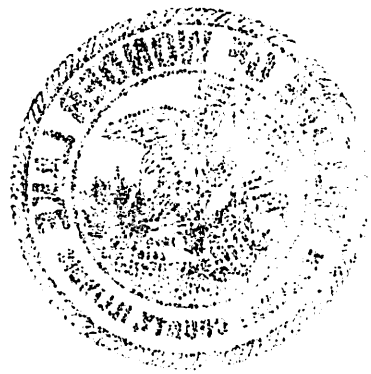
I further certify that I recorded the attached Ordinance in a book used exclusively for such purposes in accordance with Illinois Compiled Statutes, 65 ILCS 5/1-2-5, on this 20th day of March, 2024..

Dated at Wonder Lake, Illinois this 20th day of March, 2024.

Jo-Ellen McDonald

VILLAGE CLERK

(SEAL)



ANNEXATION AGREEMENT BETWEEN
THE VILLAGE OF WONDER LAKE AND THOMAS HENELY

This Annexation Agreement ("Agreement") is entered into as of the 15th day of Feb, 2024, by and between the Village of Wonder Lake, an Illinois municipal corporation ("Village") and Lucifers Cathouse Cantina Trust, 7620 Hancock Rd., Wonder Lake, McHenry County, Illinois.

W I T N E S S E T H:

WHEREAS, Lucifers Cathouse and Cantina Trust dated August 23, 1997, Thomas L. Henely, Trustee ("Henely"), is the owner of real estate located in McHenry County, Illinois, identified as 7620 Hancock Rd, Wonder Lake, IL 60097, and legally described and depicted on Exhibit A attached hereto and made a part hereof (hereinafter the Property); and hereinafter to be known as "Horizontals".

WHEREAS, after due and careful consideration, the Village and Horizontals have concluded that the annexation of Horizontals to the Village on the terms and conditions hereinafter set forth is in the best interests of the Village and Horizontals; and

WHEREAS, the Village is authorized to enter into this agreement pursuant to Section 11-15.1-1 of the *Municipal Code* (65 ILCS 5/11-15.1-1); and

WHEREAS, the Village has considered the proposed annexation of Horizontals, has fixed a time for and held a public hearing on March 20, 2024 concerning this Annexation Agreement and all notices and procedures are in conformance with the ordinances of the Village and the Laws of the State of Illinois.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Annexation Agreement, and other good and valuable consideration the parties agree as follows:

1. **Preambles.** The preambles are incorporated herein and made a part of this Annexation Agreement.

2. **Annexation.** Upon execution of this Annexation Agreement, the Village, by adoption of a proper ordinance (hereinafter the "Ordinance"), shall annex Horizontals to the Village in accordance with the terms and conditions set forth in this Annexation Agreement.

3. **Zoning.** Immediately after passage of the Ordinance annexing Horizontals, the Village agrees to take all necessary action so that the Property will be classified pursuant to the Village Center Business District (B-4) with conditional uses for a restaurant and a tavern consistent with its preexisting operation, including but not limited to serving alcoholic beverages, offering video gaming, and entertainment such as dancing, and outside sports and games. Horizontals and the Village agree that such restaurant and tavern may be operating during its permitted hours of operation at the time immediately preceding the annexation. Except and above during the term of this Annexation Agreement the zoning

Exhibit "B"

of the Property shall not be modified except upon an Amendment to this Annexation Agreement approved in writing by Horizontals and the Village.

4. **Water Connection and Sanitary Sewer System.**

A. Upon request of Horizontals or Henely, the Village agrees to connect Horizontals to the Village's sanitary sewer system and Village's water supply. The Village agrees to waive 50% of the connection fees to the sewer and water systems and 50% of the costs for abandonment of existing well and septic. This waiver could increase to 80% of the connection fees and 80% of the costs of the abandonment of the well and septic systems. depending on grants obtained by the Village. The Village will provide Horizontal's written notice at least thirty (30) days in advance of the approximate date that water and sewer will be accessible to the Property. If Horizontal's agrees within said thirty (30) days to connect to the Village's water and sewer systems, the waiver of connection and abandonment fees shall apply irrespective of the working condition of Horizontal's well and septic. Horizontals shall not be responsible for paying any fees associated with water or sanitary sewer service prior to connection. The Village agrees that it shall not require Horizontals to connect to any water or sewer service of the Village. The parties agree that if Horizontals does not have access to hook into public water and sanitary sewer, Horizontals within 5 years at Horizontals request, the Village shall disconnect the respective Property from its corporate boundaries and agrees not to re-annex the Property for the term of the Agreement. The Village will agree to finance 50% (or up to 80%, as described above) of the costs of connection to the sewer and water system with a maximum term of 10 years.

B. The parties further agree that, due to what was the Horizontals' and/or Henely's contributions, at their own expense, for the annexation to proceed which is for the greater financial benefit of the Village, that Henely may direct that one or more of the connection fees, as described herein, regardless of amount of waiver, described above, shall be reduced additionally by a total of $10,000.00. As consideration, Thomas L. Henely agrees to withdraw any claims in McHenry County Court Case No. 2023GC000004, on condition that no party continues or reinitiates similar litigation or promotes others to do so. Henely shall receive: (1) the sum of $10,000.00 if he does not direct the reduction of any connection fees; or (2) the balance of $10,000 less the total of all additional unwaived connection fees so directed.

5. **Refuse Collection.** Notwithstanding any Village ordinances or contracts with third parties, Horizontals shall not be obligated to contract with the Village's current refuse collection provider until Horizontals' current contract for refuse collection expires. Horizontals may negotiate a refuse collection contract with the Village's current refuse collection provider at any time but is not obligated to enter into any such contract. Notwithstanding the foregoing, Horizontals is obligated to have continuous refuse collection service.

6. **Public Services.** The Village will provide police and all other public services to the property that Village's residents enjoy.

7. **Future Zoning Approvals and Ordinances**. The Village recognizes that the Property will be a benefit to the community. Therefore, if Horizontals applies for any zoning approvals during the term of this Annexation Agreement, the Village shall, to the extent

possible, cooperate with Horizontals and expedite all approvals and processes, and waive any requirements that interfere with or impact Horizontals use of the Property, unless such requirements are mandated by federal or state law. Further, during the term of this Annexation Agreement, the Village will not enact any ordinance unless required by federal or state law that will interfere with or impact Horizontals preexisting use of the property as a restaurant or tavern to serve alcoholic beverages, video gaming, and entertainment such as live music, dancing, and outside sports and games, the parties agree such zoning ordinance will provide that such restaurant and tavern may operate during its permitted hours of operation at the time immediately preceding the annexation.

8. **Fees.** During the term of this Annexation Agreement and any extension thereof, Horizontals shall not be responsible any fees or charges in connection with the annexation of the Property including, but not limited to, annexation, design, plan review, inspection or permit fees, nor shall Horizontals be responsible for any general cost of the installation of water and sewer systems along the frontage of the Property, or any other costs of connecting water and sewer to the Property, other than what is described in this Agreement. If the Property is redeveloped with a different use, such fees shall be applicable in the same manner as similarly situated Property owners.

9. **Business Licensing**. Horizontals and the Village agree that any existing licenses for this business may continue until they expire, and the Village will honor same. Upon expiration, new licenses will be required by the Village. The Village agrees that it will hold open liquor license for a bar, tavern and restaurant that allows beer, wine, and liquor to be served at each of tavern and restaurant for at least the term of this Agreement, and that if Horizontals meets the criteria for such license, it shall be issued to them by the Village for the Property.

10. **Video Gaming Rebate.** The Village agrees to rebate Horizontals or any subsequent business operating at the Property 100% of Video Gaming Tax Distribution that is received for this Property from the State of Illinois Gaming Commission, for 10 years, commencing upon annexation of Horizontal's. If any amounts are actively owed by Horizontals for the connection fees described in Paragraph 4, the rebate would first be paid towards Horizontals connection fees for sewer and water before any funds would be sent to Horizontals. Otherwise, the rebate shall be paid to Horizontals or any subsequent business operating at the Property within 30 days of receipt by the Village of the Video Gaming Tax Distribution.

11. **Contributions.** The Village agrees to waive any impact fee or donation requirements for land and/or money relative to Horizontals, pursuant to the terms of its ordinances, as a result of this annexation, for the term of this Agreement.

12. **Mutual Assistance.** The parties shall do all things reasonably necessary or appropriate to carry out and to expedite the terms and provisions of this Annexation Agreement and to aid and assist each other in carrying out the terms and objectives of this Annexation Agreement and the intentions of the parties as reflected by said terms including, without limitation, not objecting or supporting other objectors to the Annexation of Properties on Hancock Drive, and the giving of such notices, the holding of such public hearings, the enactment by the Village of such resolutions and ordinances and the taking of such other

actions as may be necessary to enable the parties' compliance with the terms and provisions of this Annexation Agreement and as may be necessary to give effect to the terms and objectives of this Annexation Agreement and the intentions of the parties as reflected by said terms.

13. **Effect of Existing Ordinances.** To the extent that Horizontals complies with this Annexation Agreement and to the extent there is any conflict between this Annexation Agreement and any ordinances of the Village, the parties agree that this Annexation Agreement will govern.

14. **Enforceability.** This Annexation Agreement shall be enforceable in any court of competent jurisdiction by any of the parties hereto by an appropriate action at law or in equity to secure the performance of the covenants herein contained. Payments and rebates to Horizontal's and/or Henely shall be irrespective of whether this annexation fails, if the Village receives grants or has the funds necessary to provide water and sewer connections contemplated herein, fails to provide to Horizontal's access to hook into public water and sanitary sewer within 5 years, or abandons the water and sewer project.

15. **Severability.** In any section, subsection, paragraph, sentence clause or provision of this Annexation Agreement is held unconstitutional, invalid, or ineffective by a court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Annexation Agreement.

Remedies. Upon a breach of this Annexation Agreement, any of the parties, in any court of competent jurisdiction, by an action or proceeding in equity, may secure a writ of mandamus, declaratory judgment or the specific performance of the covenants and agreements herein contained. Before any failure of any party to this Annexation Agreement to perform its obligations under this Annexation Agreement shall be deemed to be a breach of this Annexation Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform the alleged failure and shall demand performance. No breach of this Annexation Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the non-breaching party within thirty (30) days of receipt of such notice and is being continuously and diligently pursued. But for the reduction of unwaived connection fees by the Video Gaming Rebate described in Paragraph 10 above, the Village shall not set off any Village debt, bill or claim with a payment, rebate or waiver due Horizontal's, Henely and/or any other party identified in Paragraph 25 without their respective, expressed written consent.

16. **Notices.** All notices and other communications in connection with this Annexation Agreement shall be in writing, and any notice, communication or payment hereunder shall be deemed delivered to the addresses thereof two (2) days after deposit in any main or branch United States Post Office, certified or registered mail, postage prepaid, or one (1) day after deposit thereof with any nationally known and reputable overnight courier service, delivery charges prepaid, or on the date of delivery and email, if personally delivered, in any case, addressed to the parties respectively as follows:

IF TO HENELY: Thomas Henely
7620 Hancock Road

Wonder Lake, IL 60097

COPY TO: ZUKOWSKI, ROGERS, FLOOD, & MC ARDLE
Brad Stewart
50 Virgina St.
Crystal Lake, IL, 60014

IF TO VILLAGE: Village of Wonder Lake
4444 Thompson Rd
Wonder Lake, IL 60097
Attn: Village Administrator

COPY TO: Richard J. Curran, Jr.
Cowlin, Naughton & Curran
20 Grant Street
Crystal Lake, Illinois 60014

By notice complying with the requirement of this paragraph, each party shall have the right to change the address or addresses for all further notices, other communications and payment to such party; provided, however, that notice of a change of address, addressee or both shall not be effective until actually received.

17. **Amendment.** The parties agree that this Annexation Agreement, the ordinances and resolutions adopted pursuant hereto and any exhibits attached hereto may be amended only by the mutual consent of the parties, and by adoption of an ordinance or resolution by the Village approving said amendment as provided by law, and the execution of said amendment by the parties or their successors in interest.

18. **Waiver.** Failure of any party to this Annexation Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

19. **Entire Agreement.** This Annexation Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the parties relating to the subject matter hereof. The parties shall have no obligations other than specifically stated in this Annexation Agreement except those of general applicability.

20. **Survival.** The provisions contained in this Annexation Agreement shall survive the annexation of the Property and shall not be merged or expunged by the annexation of the Property or any part thereof to the Village.

21. **Successor and Assigns.** This Annexation Agreement shall run with the land described on Exhibit A and inure to the benefit of, and be binding upon, Horizontals and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the Village and successor municipalities. Payment and rebates provided herein and/or payable

to Henely or Horizontals ("Annexation Funds") may be assigned or otherwise transferred by Henely, is his sole discretion. In the absence of any such assignment or the transfer thereof during the life of Henely, the balance of any Annexation Funds due Henely or Horizontal's shall, unless directed in writing to the contrary and delivered to the Village, be payable to his estate.

22. **Term of Agreement.** Unless terminated earlier in accordance with Paragraph 4 (A), this Annexation Agreement shall be binding upon the parties and their respective successors and assigns for the full statutory term of twenty (20) years, commencing as of the date hereof, and for such further term as may hereinafter be authorized by statute or by ordinance of the Village and mutually agreed upon by both parties. In the event that Henely so terminates, the Village's obligation for payments and rebates as provided in this Agreement due prior to or at the time of termination shall survive and remain due.

23. **Counterparts.** This Annexation Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

24. **Other Properties.** The parties acknowledge and agree that Thomas L. Henely, Individually, as Trustee of certain trusts, and as beneficiary with the power to direct certain other trusts, and jointly with Laurie V. Kennick or Sharon K. Sarros, are the owners of other currently unincorporated properties in close proximity to the area planned for the same annexation petition for which Horizontals would annex into the Village of Wonder Lake, and that if any of the identified properties annex into the Village of Wonder Lake during the term of this Agreement, that each/all such properties would receive the same water connection and sewer connection waiver and fee waivers and other benefits and options, as described in Paragraphs 4 & 8, with those properties being commonly known as:

- **7625 South Road, Wonder Lake, IL 60097**
- **South Drive, Wonder Lake, IL 60097 (PIN 09-07-379-006)**
- **4110 East Lake Shore Drive, Wonder Lake, IL 60097**
- **4117 East Lake Shore Drive, Wonder Lake, IL 60097**
- **7615 Hancock Road, Wonder Lake, IL 60097**

25. **Third-Party Beneficiaries.** Except as stated in Paragraph 24 above, this Annexation Agreement is entered into for the mutual benefit of the parties hereto and is not intended to confer any rights to any third party. No third party may bring any action to enforce any of the terms herein.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Village and Horizontals, by their authorized officials, have executed this Annexation Agreement as of the day and year first above written.

VILLAGE

VILLAGE OF WONDER LAKE

BY: _____
Its: President

ATTEST:

BY: _____
Its: Clerk

LUCIFERS CATHOUSE CANTINA TRUST

D/B/A HORIZONTALS

BY: _____
Thomas Henely Trustee/Owner Horizontals