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Doc# 1705929112 Fee \$52.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 02/28/2017 04:04 PM PG: 1 OF 8

## Ordinance 2016-73

BE IT ORDAINED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois THAT:

### **An Ordinance Granting a Special Permit for a Physical Fitness Facility in the C-2 Neighborhood Commercial District (3101 Dundee Road – Goldfish Swim School) (Plan Commission Docket No. FCD-16-14)**

shall be, and is hereby, adopted as follows:

#### Section 1. BACKGROUND.

Northbrook Swim School, LLC, d/b/a Goldfish Swim School, ("Applicant") as contractual lessee of a tenant space located at 3101 Dundee Road ("Property"). The Property is improved with a multi-tenant single story shopping center and is owned by White Plains Shopping Center, LLC ("Owner") which has consented to the relief requested by the Applicant.

The Applicant has requested amongst other relief, a special permit pursuant to Northbrook's Zoning Code (1988), as amended ("Zoning Code") to allow the operation of a Physical Fitness facility (SIC No. 7991.00) with a floor area greater than 2,500 square feet ("Facility") on the Subject Property ("Requested Relief").

The President and the Board of Trustees have determined that it is in the best interest of the Village and its residents to grant the Applicant the Requested Relief in accordance with the terms and conditions of this Ordinance.

RECORDING FEE 52.00

DATE 2/28/2017 COPIES 6x

OK BY [Signature]

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## Section 2. DESCRIPTION OF PROPERTY.

The Property is commonly known as 3101 Dundee Road, which is legally described in *Exhibit A* attached to and, by this reference, made a part of this Ordinance. The Property is located within the C-2 Neighborhood Commercial District.

## Section 3. PUBLIC MEETINGS & HEARINGS.

A public hearing to consider the Applicant's request for a special permit was duly advertised on September 29, 2016 in the *Northbrook Star* and was held at the Plan Commission's regular meeting on October 18, 2016. On October 18, 2016, the Plan Commission formally adopted Resolution No. 16-PC-16 recommending approval of the application.

## Section 4. SPECIAL PERMIT.

Subject to and contingent upon the conditions, restrictions, and provisions set forth in Section 5 of this Ordinance, a special permit to allow the operation of a Physical Fitness Facility (Northbrook SIC Code No. 7991.00) on the Property is hereby granted to the Applicant in accordance with and pursuant to Section 11.602 of the Code and the home rule powers of the Village of Northbrook.

## Section 5. SPECIAL PERMIT CONDITIONS.

The special permit granted in Section 4 above shall be, and is hereby, expressly subject to and contingent upon each of the following conditions, restrictions and provisions:

- A. Site Plan. The Facility shall be constructed, maintained and operated in the portion of the Property depicted in the Property Site Plan attached to, and by this reference made a part of, this Ordinance as *Exhibit B*.
- B. Floor Area and Occupancy. The Facility shall consist of no more than 8,500 square feet of gross floor area and no more than 96 persons may occupy the Facility at one time.
- C. Term. The special permit shall have a term of no more than twenty years and in no event shall exceed the term of the Applicant's lease for the Property.
- D. Hours of Operation. The Facility may only be open to the public during the following hours of operation:
  - 1) Monday thru Friday 8:00 a.m. to 9:00 p.m., and
  - 2) Saturday and Sunday 8:00 a.m. to 10:00 p.m.

## Section 6. FAILURE TO COMPLY WITH CONDITIONS.

Upon failure or refusal of the Applicant to comply with any or all of the conditions, restrictions or provisions of this Ordinance, the special permit granted in Section 4 of this Ordinance

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shall, at the sole discretion of the Village Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Board of Trustees may not so revoke the special permit unless it shall first provide the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees. In the event of revocation, the development and use of the Property shall be governed solely by the regulations of the C-2 Neighborhood Commercial District, as the same may, from time to time, be amended. Further, in the event of such revocation of the special permit, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Applicant acknowledges that public notices and hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to the Applicant or its successor required by this Section is given.

## Section 7. AMENDMENT TO SPECIAL PERMIT.

Any amendment to the special permit granted by this Ordinance that may be requested by the Applicant after the effective date of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Code.

## Section 8. BINDING EFFECT; TRANSFERABILITY.

The privileges, obligations and provisions of each and every Section of this Ordinance, are for the sole benefit of, and shall be binding on, the Applicant, except as otherwise expressly provided in this Ordinance. Nothing in this Ordinance shall be deemed to allow this Ordinance to be transferred to any person or entity unless and until (a) such person or entity ("**Transferee**") executes and files with the Village Clerk an unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance in a form acceptable to the Village Manager and (b) the Board of Trustees has approved such transfer by resolution duly adopted.

## Section 9. EFFECTIVE DATE.

A. This Ordinance shall be effective only upon the occurrence of all of the following events:

- i. passage by the Board of Trustees of the Village of Northbrook by a majority vote in the manner required by law;
- ii. publication in pamphlet form in the manner required by law;
- iii. provision of a fully executed and effective lease, or evidence thereof, including a recordable memorandum of lease, between the Applicant and the Owner to the Village Clerk;
- iv. the filing by the Applicant and the Owner with the Village Clerk of an unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance. Said unconditional agreement and consent shall be in the form of **Exhibit C**, attached to and made a part of this Ordinance by this reference; and
- v. recordation of this Ordinance, together with such exhibits as the Village Clerk shall deem appropriate for recordation, with the Cook County Recorder of Deeds. The Applicant shall bear the full cost of such recordation.

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B. In the event that the Applicant does not file with the Village Clerk a fully executed copy of the unconditional agreement and consent referenced in Paragraph 9.A.iv of this Ordinance within 90 days after the date of passage of this Ordinance by the President and Board of Trustees, the corporate authorities shall have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

Adopted: 11/15/2016

<b>RESULT:</b>	<b>ADOPTED BY CONSENT VOTE [UNANIMOUS]</b>
<b>MOVER:</b>	Bob Israel, Trustee
<b>SECONDER:</b>	James Karagianis, Trustee
<b>AYES:</b>	Karagianis, Buehler, Scolaro, Heller, Israel, Frum
<b>ABSENT:</b>	Kathryn Ciesla

ATTEST:

/s/ Sandra E. Frum  
Village President

/s/ Debra J. Ford  
Village Clerk

I hereby certify this to be a true and exact copy of the original.

2-23-2017

Date



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## EXHIBIT A

### Legal Description of the Property

THE EAST 200 FEET OF THE WEST 350 FEET OF THE NORTH 150 FEET OF LOT "A" IN WHITE PLAINS UNIT 7;

THE NORTH 160 FEET OF THE EAST 200 FEET OF THE WEST 742 FEET OF LOT "A" IN WHITE PLAINS UNIT 7; AND

THE NORTH 320 FEET OF THE WEST 742 FEET (EXCEPT THE NORTH 150 FEET OF THE WEST 350 FEET THEREOF AND EXCEPT THE NORTH 160 FEET OF THE EAST 200 FEET THEREOF) OF LOT "A" IN WHITE PLAINS UNIT 7;

EACH OF THE ABOVE BEING IN A SUBDIVISION IN SECTION 8, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

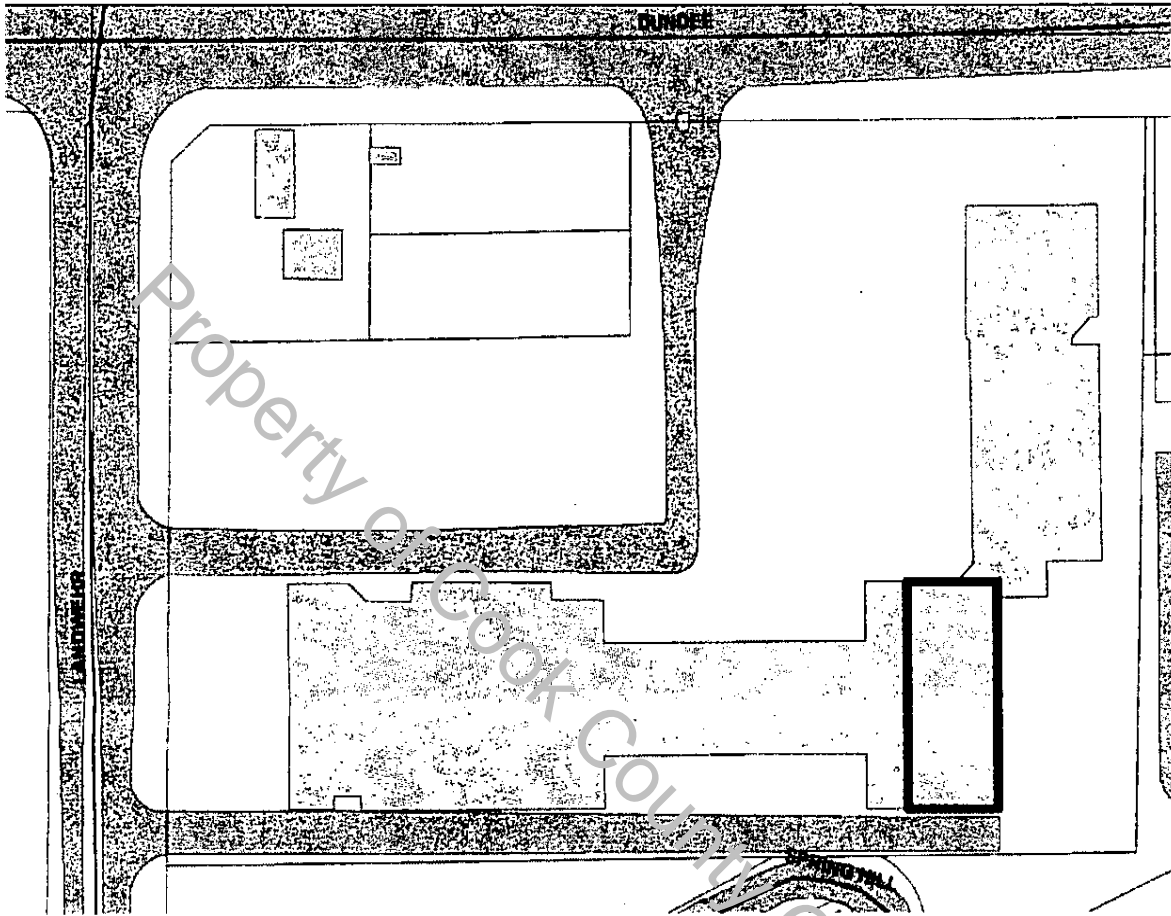
Commonly known as 3101 Dundee Road, Northbrook, Illinois 60062

P.I.N.: 04-08-200-041-0000, 04-08-200-043-0000, 04-08-200-044-0000

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## EXHIBIT B

### Shopping Center Site Plan



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## EXHIBIT C

### Unconditional Agreement and Consent of Applicant and Owner

TO: The Village of Northbrook, Illinois ("**Village**");

WHEREAS, Northbrook Swim School, LLC d/b/a Goldfish Swim School ("**Applicant**") as contractual lessee of the property commonly known as 3101 Dundee Road, which is a tenant space in the White Plains Shopping Center ("**Property**"); and

WHEREAS, White Plains Shopping Center LLC ("**Owner**") is the owner of the Property; and

WHEREAS, the Applicant plans to operate a physical fitness training facility on the Property and has requested that the Village grant a special permit to allow the operation of a Physical Fitness Facility on the Property; and

WHEREAS, the Property is located within the C-2 Neighborhood Commercial Services District, in which Physical Fitness Facilities are allowed only as a special permit use; and

WHEREAS, the Applicant has applied for a special permit to allow the operation of a Physical Fitness Facility on the Property and the Owner has consented to the application; and

WHEREAS, Ordinance No. 16-73, adopted by the President and Board of Trustees of the Village of Northbrook on November 15, 2016 ("**Ordinance**"), grants approval of such special permit, subject to certain conditions, for the benefit of Applicant; and

WHEREAS, Applicant desires to evidence to the Village its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in said Ordinance, and the Owner desires to evidence its consent to recording the Ordinance against the Property;

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

1. Applicant shall, and does hereby unconditionally agree to, accept, consent to and abide by all of the terms, conditions, restrictions, and provisions of that certain Ordinance No. 16-73, adopted by the Village Board of Trustees on November 15, 2016.
2. Applicant acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's review and approval of any plans for the Property, or the issuance of any permits for the use and development of the Property, and that the Village's review and approval of any such plans and issuance of any such permits does not, and shall not, in any way, be deemed to insure Applicant against damage or injury of any kind and at any time.
3. Applicant acknowledges that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to Applicant required by Section 6 of the Ordinance is given.



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4. Applicant agrees to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (a) the Village's review and approval of any plans and issuance of any permits, (b) the procedures followed in connection with the adoption of the Ordinance, (c) the development, construction, maintenance, and use of the Property, and (d) the performance by Applicant of their obligations under this Unconditional Consent and Agreement.
5. Applicant shall, and does hereby agree to, pay all expenses incurred by the Village in defending itself with regard to any and all of the claims mentioned in this Unconditional Consent and Agreement. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the Village.
6. Owner warrants and represents to the Village that it owns fee simple title to the Property and consents to the recording of the Ordinance against the Property.

**ATTEST:**

By: [Signature]  
Signature

By: Beth Chansler  
Print Name

Its: Assistant

SUBSCRIBED and SWORN to  
before me this 6<sup>th</sup> day of  
February, 2017.

Molly Vanassche  
Notary Public

**ATTEST:**

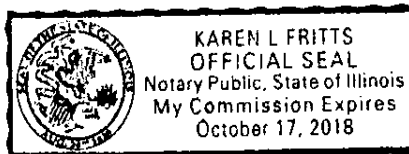
By: [Signature]  
Signature

By: DAVID B. BERKSON  
Print Name

Its: Managing Agent  
SUBSCRIBED and SWORN to  
before me this 14<sup>th</sup> day of  
FEBRUARY, 2017

Karen L. Fritts  
Notary Public

MOLLY VANASSCHE  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires Mar. 29, 2017  
Acting in the County of Oakland



**NORTHBROOK SWIM SCHOOL LLC**, an  
Illinois limited liability company

By: [Signature]  
Signature

By: Richard I Simton  
Print Name

Its: Manager

**WHITE PLAINS SHOPPING CENTER  
LLC**, an Illinois limited liability company

By: [Signature]  
Signature

By: Staunton O Flanders  
Print Name

Its: Managing Member