

STATE OF ILLINOIS

COUNTY OF KANE

**ORDINANCE APPROVING THE CONSENT DECREE AND SETTLEMENT AGREEMENT  
WITH MAXXAM PARTNERS, LLC AND GLENWOOD ACADEMY AND GRANTING A  
SPECIAL USE AS DESCRIBED IN PETITION NO. \_\_\_\_\_**

WHEREAS, on August 28, 2015, Maxxam Partners, LLC (hereinafter "Maxxam"), filed an application for a special use permit to operate an alcoholism and substance abuse treatment facility on property located at 41 W 400 Silver Glen Road, St. Charles, Illinois 60175 (hereinafter the "Property"), and owned by co-applicant Glenwood Academy (hereinafter "Glenwood");

WHEREAS, the Property is identified under parcel numbers 08-03-100-109; 05-34-300-032; 05-34-400-025, and the legal description of the property is attached hereto as Exhibit 1, which is expressly incorporated herein by this reference;

WHEREAS, the County Zoning Officer designated the application submitted by Maxxam as Petition 4364 (hereinafter "Petition 4364") and properly scheduled public hearings before the Kane County Zoning Board of Appeals pursuant to the Kane County Zoning Ordinance and Illinois law, a record of which can be found on the County website or otherwise made available for public inspection;

WHEREAS, on May 9, 2017, the Kane County Board denied Petition 4364;

WHEREAS, on August 4, 2017, Maxxam and Glenwood filed a lawsuit in federal court against the County, County Board and Zoning Board, challenging the County Board's denial of the special use permit under federal and state law and seeking monetary, declaratory and injunctive relief (hereinafter the "Lawsuit");

WHEREAS, the County Defendants denied and still deny liability and damages as claimed by Maxxam and Glenwood;

WHEREAS, to avoid the uncertainty, delay and expense of complicated litigation, the parties to the Lawsuit have agreed that: (i) Maxxam should re-file, and the County should again consider, Maxxam's application for a special use permit to operate an alcoholism and substance abuse treatment facility (the "Facility") on the Property; and (ii) the dispute between them should be resolved upon the terms and conditions set forth in the proposed Settlement Agreement and Consent Decree attached hereto as Exhibits 2 and 3, respectively.

WHEREAS, in settling the Lawsuit, the parties recognize and acknowledge that the County Defendants do not admit liability and dispute that they are liable to Maxxam and Glenwood for any of the claims and allegations in the Lawsuit;

WHEREAS, Maxxam re-filed its application for a special use permit to operate the Facility on the Property, and incorporated therein its application and all supporting materials filed previously as Petition 4364;

WHEREAS, the County Zoning Officer designated the re-filed application submitted by Maxxam as Petition \_\_\_\_ (hereinafter "Petition \_\_\_\_") and properly scheduled a public hearing before the Kane County Zoning Board of Appeals;

WHEREAS, the Kane County Zoning Board of Appeals properly conducted a public hearing pursuant to the Kane County Zoning Ordinance and Illinois law during which it incorporated the complete public record from Petition 4364 and heard additional testimony and comments; a record of which public hearing can be found on the County website or otherwise made available for public inspection;

WHEREAS, the County Board has considered the public record and the findings and recommendations of the Kane County Zoning Board of Appeals concerning Petition \_\_\_\_;

WHEREAS, as set forth in Paragraph 2 of this Ordinance, the County Board has determined that Petition \_\_\_\_, as modified by the terms and conditions set forth in the proposed Settlement Agreement and Consent Decree, including but not limited to the conditions as set forth in the attached Exhibit 4 to this Ordinance: (i) satisfies all of the standards set forth in Sections 4.8-2(a) through 4.8-2(f) of the Kane County Zoning Ordinance for the approval of a special use permit to operate the Facility on the Property; and (ii) complies with all applicable provisions of the Zoning Ordinance;

WHEREAS, as part of the settlement, and pursuant to the requirements of Section 4.8 of the Kane County Zoning Ordinance, including Section 4.8-2(a) – (f), the County has agreed to grant Petition \_\_\_\_ subject to the terms and conditions set forth in the proposed Settlement Agreement and Consent Decree and in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the County Board of Kane County, Illinois, as follows:

- 1 That the County Board of Kane County hereby ratifies and approves, and the Chairman or other authorized representative of the County of Kane has the authority to execute all necessary documents associated with, the proposed Settlement Agreement and Consent Decree in the form attached hereto as Exhibits 2 and 3, respectively, and incorporated herein by this reference.
- 2 That the County Board of Kane County hereby specifically finds, with respect to Petition \_\_\_\_, that all applicable procedures and requirements for the review and consideration of Petition \_\_\_\_ under the Kane County Zoning Ordinance and under Illinois law have been fully and properly satisfied.
- 3 That the County Board of Kane County hereby specifically finds, with respect to Petition \_\_\_\_, as modified by the terms and conditions set forth in the proposed Settlement Agreement and Consent Decree, including but not limited to the conditions as set forth in the attached Exhibit 4 to this Ordinance, that the establishment, maintenance and operation of the Facility on the Property (a) will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare; (b) will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood; and (c) will not impede the normal and

orderly development and improvement of surrounding property for uses permitted in the district; and the County Board of Kane County further specifically finds that (d) adequate utility, access roads, drainage and/or other necessary facilities have been or are being provided on the Property; (e) adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads; and (f) the Facility, in all other respects, conforms to the applicable regulations of the district in which it is located, except as such regulations are modified by the County Board pursuant to this Ordinance.

- 4 That a special use permit to operate the private-pay alcoholism and substance abuse treatment Facility on the Property is hereby granted to Maxxam, and is hereby approved under the provisions of Section 4.8 of the Kane County Zoning Ordinance, including Section 4.8-2(a) – (f), and subject to the terms and conditions set forth in the proposed Settlement Agreement and Consent Decree, including but not limited to the conditions as set forth in the Attached Exhibit 4 to this Ordinance.
- 5 That the zoning maps of Kane County, Illinois shall be, and are hereby amended to reflect the relief granted in this Ordinance.
- 6 This Ordinance shall be in full force and effect from and after its passage and approved as provided by law.

Passed by the Kane County Board on August 14, 2018.

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John A. Cunningham  
Clerk, County Board  
Kane County, Illinois

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Christopher J. Lauzen or Other Authorized  
Board Representative  
Chairman, County Board  
Kane County, Illinois

Vote:

## Exhibit 1

### To Ordinance Approving the Consent Decree and Settlement Agreement with Maxxam Partners, LLC and Glenwood Academy and Granting a Special Use as Described in Petition No. \_\_\_\_\_

THAT PART OF THE SOUTH HALF OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 7 EAST OF THE 3<sup>rd</sup> PRINCIPAL MERIDIAN AND PART OF THE NORTH HALF OF FRACTIONAL SECTION 3, TOWNSHIP 40 NORTH, RANGE 7 EAST OF THE 3<sup>rd</sup> PRINCIPAL MERIDIAN ALL DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 7 EAST OF THE 3<sup>rd</sup> PRINCIPAL MERIDIAN, THENCE EASTERLY ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER 339.90 FEET; THENCE SOUTHERLY TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER; THENCE NORTHERLY ALONG THE LAST DESCRIBED COURSE 980.77 FEET TO THE CENTER LINE OF MCDONALD DRIVE; THENCE NORTHWESTERLY AND WESTERLY ALONG SAID CENTER LINE 2884.59 FEET TO A POINT THAT IS 62.70 FEET WESTERLY OF THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34 (MEASURED ALONG SAID CENTER LINE) BEING THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO HENRY O. LARSON AND ELIZABETH V. LARSON BY DEED RECORDED AS DOCUMENT 648085; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LARSON TRACT 776.0 FEET TO A POINT THAT IS 10.0 FEET NORTHERLY OF THE SOUTHEAST CORNER OF SAID LARSON TRACT; THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID LARSON TRACT 24.85 FEET; THENCE SOUTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 68°59'52" WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 101.12 FEET; THENCE SOUTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 210.0 FEET, TANGENT TO THE LAST DESCRIBED COURSE 104.64 FEET; THENCE SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 390.0 FEET, TANGENT TO THE LAST DESCRIBED CURVE, 90.98 FEET; THENCE SOUTHWESTERLY TANGENT TO THE LAST DESCRIBED CURVE 104.0 FEET; THENCE SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 360.0 FEET TANGENT TO THE LAST DESCRIBED COURSE 94.87 FEET TO A LINE DRAWN PARALLEL WITH AND 59.25 FEET NORTHERLY OF THE SOUTH LINE (MEASURED AT RIGHT ANGLES THERETO) OF THE SOUTHWEST QUARTER OF SAID SECTION 34 FOR A POINT OF BEGINNING; THENCE EASTERLY ALONG SAID PARALLEL LINE 336.05 FEET; THENCE SOUTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 157°06'37" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 1418.0 FEET; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE OF 122°50'43" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 892.0 FEET; THENCE SOUTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 99°11'29" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 1863.0 FEET; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 142°54'33" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 1448.0 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 117°39'28" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 867.0 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 172°26'59" WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 741.0 FEET TO SAID PARALLEL LINE; THENCE EASTERLY ALONG SAID

PARALLEL LINE 1514.95 FEET TO THE POINT OF BEGINNING, IN KANE COUNTY, ILLINOIS. The property is located at 41W400 Silver Glen Road.

## Exhibit 4

### **To Ordinance Approving the Consent Decree and Settlement Agreement with Maxxam Partners, LLC and Glenwood Academy and Granting a Special Use as Described in Petition No. \_\_\_\_\_**

1. Maxxam and the Facility shall obtain all necessary licenses from the State of Illinois prior to start of operation and shall maintain such licenses in good standing during any period of operation. In connection therewith, Maxxam shall comply with the legal and administrative requirements of the Department of Human Services Division of Alcoholism and Substance Abuse Treatment and Intervention Licenses (“DHS”), found at 77 Illinois Administrative Code, Subchapter d, Part 2060 (“Code”), to the satisfaction of Department of Human Services. These requirements shall include, but are not limited to, all restrictions, obligations, undertakings, and requirements of Part 2060 (77 Ill. Admin. Code 2060) that govern any of the following:
  - a. Organization representative and ownership disclosure (see Section 2060.207, 209);
  - b. License application, period of licensure, renewal, change of ownership/management, and dissolution (see Sections 2060.211, 213, 215, 217, 219, 221, 223, 225, 227);
  - c. Facility requirements (see Section 2060.305), including those requiring proof of compliance with all local and State health, safety, sanitation, building and zoning codes (see Section 2060.305(a)(1)) and life safety codes (see Section 2060.305(a)(2)), and those pertaining to emergency and disaster planning and preparedness (see Section 2060.305(c));
  - d. Records retention (see Section 2060.307);
  - e. Staff qualifications, training, and personnel requirements and procedures (see Section 2060.309, 311, 313);
  - f. Quality improvement (see Section 2060.315);
  - g. Emergency patient care (see Section 2060.327);
  - h. Incident reporting (see Section 2060.331);
  - i. Inspections (see Section 2060.335);
  - j. Medical services (see Section 2060.413);
  - k. Infectious disease control (see Section 2060.415);
  - l. Patient assessment, screening and treatment planning (see Section 2060.417, 419, 421, 423); and
  - m. Continuing recovery planning and discharge (see Section 2060.427).
2. To the extent permitted by law, Maxxam shall provide Kane County or its designee with 150 doses of NARCAN (Naloxone) or similar mutually agreeable medication per year for a total of 1,500 doses for a 10-year period, starting on the date one month after the start of operation and thereafter on the annual anniversary of such date.
3. The Special Use Permit approved by this Ordinance specifically and solely applies to the use and operation of all existing buildings on the subject Property as depicted on the site plan labeled “Maxxam Partners, LLC – Site Plan” and as described in the Application and Rider (Exhibit 2 to the Consent Decree). A copy of “Maxxam Partners, LLC – Site Plan” is separately attached and incorporated into the Consent Decree as Exhibit 5.

4. Should Maxxam or its successors or assigns desire to add new buildings the parties shall comply with all applicable review and approval procedures in the Kane County Zoning Ordinance, as well as all applicable Kane County Ordinances, Illinois law, and federal and state anti-discrimination laws.
5. The Facility shall not provide outpatient treatment of methadone patients or any other outpatient program or service unless it is related to a patient's inpatient continuum of care.
6. Maxxam agrees to provide a level of security that, in the opinion of Maxxam's retained security vendor, is sufficient to protect the facility's residents and the surrounding community.
7. Maxxam shall comply with Change of Ownership/Management requirements in Section 2060.221 of the Code. Section 2060.221 provides, among other things, that each license issued by the Department of Human Services is not transferable and becomes null and void when there is a change of ownership involving more than 25% of the aggregate ownership interest within a one-year period or a significant change in management. Maxxam agrees to contemporaneously provide the County Zoning Officer with a copy of any notifications sent to the Department of Human Services under Section 2060.221(b). Maxxam agrees to provide to any successor owner(s) a copy of this Ordinance.
8. Maxxam shall use reasonable efforts to pursue accreditation for the Facility by the Joint Commission on Accreditation of Health Care Organizations ("JCAHO") and the Commission on Accreditation of Rehabilitation Facilities ("CARF").
9. Maxxam and the Facility shall comply, as applicable, with all requirements of the Illinois Controlled Substances Act, 720 ILCS 520, and any other applicable federal, state or local law, regulation or code pertaining to the storage, distribution, disposal, and dispensation of any controlled substance.
10. Maxxam shall comply with the Professional Staff Qualifications requirement provided in Section 2060.309 of the Code. Such compliance includes, in any medically managed or monitored detoxification service that at least one staff member, 24 hours a day, shall be a registered nurse, or a licensed practical nurse or certified emergency medical technician who has completed at least 40 hours of formal training in the field of alcoholism or other substance abuse. Notwithstanding Section 2060.309's staffing requirements, Maxxam agrees to provide a Medical Director as referenced in Section 2060.413(a)(1) on premises at least 30 hours per week.
11. Within one year of the start of operation, Maxxam shall establish a foundation through the Community Foundation for the Fox River Valley for outreach to the Kane County community in connection with issues pertaining to substance abuse and addiction. Maxxam will fund the foundation at a minimum level of \$15,000 per year for a minimum of 10 years.
12. Maxxam shall comply with all applicable federal, state and local laws, regulations and codes pertaining to wastewater at its facility, including but not limited to the Wastewater Land Treatment Site Regulation Act, 415 ILCS 50/1, all related legal requirements of Kane County, and all related requirements of the Illinois and federal Environmental Protection Agency. Maxxam shall provide to

the County any well monitoring/testing reports it receives from the Illinois or federal Environmental Protection Agency and/or any reports it receives from third-party vendors within 30 days of receipt.

13. Maxxam shall comply with Section 2060.305 (g) (1)-(24) of the Code's spacing requirements including that (a) a minimum of 80 square feet is provided in a single bedroom; (b) 60 square feet is provided per bed in a multi-bedroom with no more than four beds per room; and (c) no bunk beds will be used for any detoxification patient.
14. Maxxam shall install a fence substantially in compliance with Exhibit 6 to the Consent Decree. The fence shall be located and installed around the Property 5-yards inside the survey line except for designated floodplain areas, as indicated in Exhibit 6 to the Consent Decree, and across the private road/access drive. The fence shall be a minimum of 4 feet in height and shall be similar to the fence depicted in the photograph in Exhibit 7 to the Consent Decree.
15. Exterior lighting fixtures upon replacement of existing fixtures or upon installation of new fixtures shall be full cut-off and have a color temperature of less than 3,000 Kelvin, provided that such fixtures do not compromise security as determined by the security system provider.
16. All signage related to the Facility shall be restricted to the Property. Further, such signage or advertising shall not be placed on the water tower located on the Property.
17. Maxxam shall pay the Fox River & Countryside Fire/Rescue District or any entity providing emergency medical services (EMS) to the Subject Property, including through any mutual aid agreements (hereinafter collectively the "EMS Entity"), directly for all emergency transport fees for transports to or from the Property, according to the EMS Entity's regular cost recovery and fee schedule in effect at the time of the transport. Maxxam agrees that the EMS Entity can bill Maxxam directly for all such transport fees and that Maxxam shall pay such fees on behalf of its patients and residents directly to the EMS Entity.