



At the Heart of Community

COMMUNITY DEVELOPMENT DEPARTMENT

505 Telser Road  
Lake Zurich, Illinois 60047

Phone (847) 540-1696  
Fax (847) 726-2182  
LakeZurich.org

AGENDA ITEM

6 C

## MEMORANDUM

Date: August 3, 2020

To: Ray Keller, Village Manager *PK*

From: Sarosh Saher, Community Development Director

CC: Tim Verbeke, Planner  
Mary Meyer, Building Services Supervisor

Re: **Zoning Application for a Special Use Permit – 499 South Rand Road  
Luxury Auto Hand Car Washing and Detailing, Inc.**

**Issue:** JAS Development II LLC, (the “*Applicant*”), has filed a zoning application for the property at 499 South Rand Road (the “*Subject Property*”). Specifically, the applicant is seeking:

- Special Use Permit approval for the establishment and operation of a Car Wash (7542) providing hand car washes and auto detailing on the Subject Property within the B-3 Regional Shopping District

**Village Strategic Plan:** This item is consistent with the following objectives under Goal #2

- Expand the Village’s role as a major regional economic hub in Lake County
- Continue Route 12 Corridor Development
- Become more business friendly and customer oriented

**Analysis:** The Subject Property is located within the Village’s B-3 Regional Shopping District. The building and its tenant spaces is operated as an auto service center within the Village Square Shopping Center and currently houses businesses such as “Lube Right Oil Change,” “Remington Automotive,” “Avis,” “Napa AutoCare Center,” “Sparks Care Center,” and “MasterCare Car Services by Firestone.” The proposed car wash will occupy the corner/middle tenant space formerly occupied by “MMI Service,” an auto repair and service center.

The hand car wash and detailing center is proposed to operate within an approximately 2,200 square-foot retail tenant space within the 23,175 square-foot building constructed as an auto centric development at Village Square Shopping Center. The unit is located at the westerly section of the building. The clinic is proposed to accommodate one office/waiting room and a drive-in

washing and detailing center. The facility is already outfitted with a triple basin; therefore allowing the proposed use of car washing to be conducted within the tenant space.

The Planning and Zoning Commission (PZC) held public hearing on July 15, 2020, to consider the application and did not receive any comment or objection to the application. Following the close of the hearing, the PZC voted 6-0 in favor of recommending approval of the Special Use Permit to allow for the proposed hand car wash and auto detailing center. No additional conditions were added by the PZC other than those initially recommended by staff. The video stream from the PZC meetings can be accessed via the following links:

<https://view.earthchannel.com/PlayerController.aspx?&PGD=lakezurichil&eID=455>

A detailed evaluation and summary of the project can be found in the Staff Report that was provided to the Planning and Zoning Commission, which is made a part of the attached Ordinance.

**Recommendation:** At their meeting on July 15, 2020, the Planning and Zoning Commission recommended approval of the Special Use Permit incorporating the conditions for approval provided by staff in its report.

Staff therefore recommends approval of the attached ordinance, with its specific attachments based on the following conditions for approval that are contained within said ordinance:

1. Substantial conformance with the following documentation prepared by JAS Development II LLC and submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
  - a. Zoning Application and Cover Letter dated June 30, 2020
  - b. Exhibit A: Legal Description of the Subject Property
  - c. Floor Plan, dated June 30, 2020
  - d. Elevations, dated June 30, 2020
  - e. Site Plan, dated June 30, 2020
  - f. Plat of Survey, dated June 30, 2020
  - g. Proof of Ownership, dated June 30, 2020
2. The Applicant shall submit any proposals for onsite signage or branding to the village prior to permit and occupancy approval. The final proposed signage plan shall be approved by village staff.
3. All activities related to the hand car wash and detailing business shall be conducted wholly within the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center.
4. The special use constituting the car wash known as “Luxury Auto Hand Car Washing and Detailing, Inc.” shall be located within and associated with the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center and shall be allowed to continue under successive ownership, or be allowed to relocate to any of the

remaining tenant spaces within the 6-tenant building located in the shopping center, so long as the general location within such building, design and operation is in substantial conformance with the approvals granted by this ordinance. Such Special Use shall expire if this car wash use ceases operating at the property for a period of more than 365 days.

5. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.
- Approval Ordinance including the following exhibits
    - Exhibit A – Legal description of the subject property
    - Exhibit B – July 15, 2020 staff reports and planning and zoning commission recommendation/conditions and accompanying documentation

VILLAGE OF LAKE ZURICH



ORDINANCE NO. 2020-\_\_\_\_-\_\_\_\_

**AN ORDINANCE APPROVING A SPECIAL USE PERMIT**

*Luxury Auto Hand Car Washing and Detailing, Inc., 499 South Rand Road*

WHEREAS, JAS Development II LLC, is the applicant ("Applicant") for a special use permit, and the owner ("Owner") of the property at 499 South Rand Road ("Subject Property"), for that rental space approximately 2,200 square feet within the existing multi-tenant building on the Subject Property, legally described in **Exhibit A** hereto; and

WHEREAS, Guadalupe Cruz, as owner and operator of Luxury Auto Hand Car Washing and Detailing, Inc., wishes to lease a tenant space from Applicant to establish a hand car wash and detailing center at the Subject Property as described in the preceding paragraph, such uses being classified as special uses in the B-3 Regional Shopping District; and

WHEREAS, Applicant seeks a special use permit to establish such hand car wash and detailing center on the Subject Property; and

WHEREAS, the Applicant has filed zoning application PZC 2020-06, dated June 30, 2020 (the "Application") seeking the approval of the following:

- Special Use Permit approval for the establishment and operation of a Car Wash (7542) providing hand car washes and auto detailing on the Subject Property within the B-3 Regional Shopping District;

and

WHEREAS, in compliance with the law, and the requirements of the Village of Lake Zurich Zoning Code, notice was published on July 1, 2020, in The Daily Herald, and the Village posted a public hearing sign on the Subject Property on July 1, 2020, both the newspaper and sign notices informing the public of a public hearing to be held before the Lake Zurich Planning and Zoning Commission (PZC) on July 15, 2020, to consider the Application for this requested zoning authority and approval; and

WHEREAS, the PZC received and considered the STAFF REPORT dated July 15, 2020, which was provided to the PZC for the meeting, addressing the request for approval of said Special Use Permit to allow for the establishment and operation of this hand car wash and detailing center on the Subject Property in the B-3 Regional Shopping District; and

WHEREAS, the PZC considered all information presented by the Applicant, and the petition for a special use permit in the B-3 Regional Shopping District zoning applicable to the

Subject Property, said special use authorized under subsection E.,12 of Section 9-4-3 of Chapter 4 of the Lake Zurich Zoning Code, and the applicable factors required under Section 9-19-3 of Chapter 19 of the Lake Zurich Zoning Code for the grant of a special use permit; and, after the conclusion of the public hearing, the PZC recommended that the Board of Trustees of the Village of Lake Zurich approve the zoning approval requested in this Application, subject to those conditions of approval recommended by Village staff; and

WHEREAS, the President and Board of Trustees of the Village of Lake Zurich met on August 3, 2020, and considered the findings and recommendations of the PZC, including the STAFF REPORT dated July 15, 2020, all consisting of 9 pages, said required zoning standards, findings and recommendations attached hereto as **Exhibit B** and having considered all of the facts and circumstances affecting the Application and these recommended approvals, the President and Board of Trustees have determined that the applicable standards related to this special use approval has been met.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Lake Zurich, Lake County, Illinois, as follows:

**SECTION 1: ADOPTION AND INCORPORATION OF RECITALS.** The foregoing recitals, findings, recommendations, exhibits and plans are incorporated herein as findings and requirements of the President and Board of Trustees, and Exhibits referenced herein are made a part of and incorporated into this Ordinance and related approval, except as otherwise provided below.

**SECTION 2: GRANT OF SPECIAL USE PERMIT.** The Mayor and Board of Trustees, pursuant to the authority vested in them under the laws of the State of Illinois and Chapter 4 (Section 9-4-3) and Chapter 19 of the Lake Zurich Zoning Code, hereby grant the following approval, as shown and provided in the STAFF REPORT dated July 15, 2020, and final findings and recommendations of the PZC dated, all consisting of 9 pages, attached hereto as **Exhibit B**, and submitted as part of the zoning application:

- Special Use Permit approval, said special use authorized at Subsection 9-4-3, E, 12 of Section 4 of the Lake Zurich Zoning Code for the establishment and operation of a Car Wash (7542) providing hand car washes and auto detailing on the Subject Property within the B-3 Regional Shopping District.

And subject to the following conditions for approval:

1. Substantial conformance with the following documentation prepared by JAS Development II LLC and submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
  - a. Zoning Application and Cover Letter dated June 30, 2020
  - b. Exhibit A: Legal Description of the Subject Property
  - c. Floor Plan, dated June 30, 2020
  - d. Elevations, dated June 30, 2020
  - e. Site Plan, dated June 30, 2020
  - f. Plat of Survey, dated June 30, 2020
  - g. Proof of Ownership, dated June 30, 2020

2. The Applicant shall submit any proposals for onsite signage or branding to the Village prior to permit and occupancy approval. The final proposed signage plan shall be approved by village staff.
3. All activities related to the hand car wash and detailing business shall be conducted wholly within the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center.
4. The special use constituting the car wash known as "Luxury Auto Hand Car Washing and Detailing, Inc." shall be located within and associated with the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center and shall be allowed to continue under successive ownership, or be allowed to relocate to any of the remaining tenant spaces within the 6-tenant building located in the shopping center, so long as the general location within such building, design and operation is in substantial conformance with the approvals granted by this ordinance. Such Special Use shall expire if this car wash use ceases operating at the Subject Property for a period of more than 365 days.
5. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.

**SECTION 3: FINDINGS IN SUPPORT OF APPROVAL OF GRANT OF SPECIAL USE PERMITS.** The findings, conditions and recommendations as set forth in the STAFF REPORT dated July 15, 2020, and the PZC recommendations, all consisting of 9 pages, along with the filings provided to the PZC under Chapter 4 (Subsection 9-4-3) and Section 9-19-3 of Chapter 19 of the Lake Zurich Zoning Code, are hereby accepted as the Board's own, are incorporated herein by this reference and shall be made a part of the official record for the Application.

**SECTION 4: SEVERABILITY.** 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 remain and continue in full force and effect.

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

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

PASSED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Ayes:

Nays:

Absent:

Abstain:

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Mayor Tom Poynton

ATTEST:

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Village Clerk  
Kathleen Johnson

**EXHIBIT A**

Legal description of the Subject Property

LOTS 1, 2, 3 & 4

VILLAGE SQUARE SHOPPING CENTER

A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 43  
NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY  
ILLINOIS



**EXHIBIT B**

Exhibit B – July 15, 2020 staff reports and planning and zoning commission recommendation/conditions and accompanying documentation



*At the Heart of Community*

**COMMUNITY SERVICES DEPARTMENT**  
Building and Zoning Division

505 Telser Road  
Lake Zurich, Illinois 60047

(847) 540-1696  
Fax (847) 726-2182  
LakeZurich.org

**APPLICATION PZC 2020-06**  
**PZC Hearing Date: July 15, 2020**

**AGENDA ITEM 4.A**

**STAFF REPORT**

To: Chairperson Stratman and Members of the Planning & Zoning Commission

From: Sarosh Saher, Community Development Director

CC: Mary Meyer, Building Services Supervisor  
Tim Verbeke, Planner

Date: July 15, 2020

Re: 2020-06 – Special Use Permit  
499 South Rand – Luxury Auto Hand Car Washing and Detailing, Inc.

**SUBJECT**

JAS Development II LLC, (the “Applicant”) proposes to establish a car wash and detailing business with no automatic car washing at the property commonly known as 499 South Rand Road. The applicant requests a Special Use permit for the establishment of a car wash and its component uses within the B-3 Regional Shopping Business district.

**GENERAL INFORMATION**

Requested Action: Special Use Permit

Current Zoning: B-3 Regional Shopping District

Current Use: Vacant Tenant Space

Property Location: 499 South Rand Road

Applicant: JAS Development II LLC on behalf of Guadalupe Cruz d/b/a  
Luxury Auto Hand Car Washing and Detailing, Inc.

Owner: JAS Development II LLC

Staff Coordinator: Tim Verbeke, Planner

## LIST OF EXHIBITS

- A. Legal Description
- B. Public Hearing Sign
- C. Site Photos
- D. Aerial Map
- E. Zoning Map
- F. Parcel Map
- G. Development Application and Attachments
- H. Development Review Comments

## BACKGROUND

JAS Development II LLC d/b/a The Fidelity Group on behalf of Guadalupe Cruz d/b/a Luxury Auto Hand Car Washing and Detailing, Inc. (the “Applicant”), is the Applicant for the car wash that is proposed to be located at 499 South Rand Road. The tenant space is located within an existing commercial building within the Village Square Shopping Center, and legally described in Exhibit A attached hereto (the “Subject Property”). The Applicant filed an application with the Village of Lake Zurich received on June 30, 2020 (the “Application”) seeking:

- Special Use Permit approval for the establishment and operation of a Car Wash (7542) providing car washes and auto detailing on the Subject Property within the B-3 Regional Shopping District

The Subject Property is located within the Village’s B-3 Regional Shopping District. The building and its tenant spaces is operated as an auto service center within the Village Square Shopping Center currently houses tenant spaces occupied by “Lube Right Oil Change,” “Remington Automotive,” “Avis,” “Napa AutoCare Center,” “Sparks Care Center,” and “MasterCare Car Services by Firestone.” The proposed car wash will occupy the corner/middle tenant space formerly occupied by “MMI Service,” an auto repair and service center.

### *Existing Conditions*

The Subject Property is zoned within the B-3 Regional Shopping Business District, located along the Route 12 corridor. This parcel currently contains approximately 4-acres of developed land, an auto care facility, a gas station, a Dunkin Donuts, and associated parking lots. The parking lot is used for shared parking for the entire Village Square Shopping Center. There are approximately 37 parking spaces immediately adjacent to the auto service development that will continue to remain as currently configured. The much larger parking field that supports the Village Square Shopping Center will also continue supporting any additional parking capacity that the auto center or Subject Property needs.

The subject property is surrounded by commercial uses on two sides. The remaining areas on the south and west side of the development consist of stormwater detention ponds that serve the Village Square Shopping Center and wetland open spaces.

Access to the subject property is from the various common right-in, right-out access points to the shopping center from Rand Road and by means of internal circulation within the parking lots. Additional access is also provided by a shared driveway that connects the development to the rest of Village Square Shopping Center and Rt 22 to the west, and Target shopping center and Ela Road to the east.

The subdivision was developed with adequate stormwater management facilities to accommodate the development of the subject property.

*Proposal*

The car wash and detailing center is proposed to operate within an approximately 2,200 square-foot retail tenant space within the 23,175 square-foot building constructed as an auto centric development at Village Square Shopping Center. The unit is located at the westerly section of the building. The clinic is proposed to accommodate one office/waiting room and a drive-in detailing center. The facility is already outfitted with a triple basin; therefore allowing the proposed use of car washing to be conducted within the tenant space.

The facility is intended to operate between 9:00 a.m. and 8:00 p.m., 5 days a week, 8:00 a.m. to 5:00 p.m. on Saturdays and 8:00 a.m. to 4:00 p.m. on Sundays, employing 4 employees. This car wash and detailing service will be conducted completely within the unit, with the discharge water directed to the sanitary system through a previously installed triple basin.

Car Washes and Car Detailing are classified as “Car Washes (7542)” within the zoning code. This land use is allowed as Special Uses within the B-3 district.

Pursuant to public notice published on July 1, 2020, in the Daily Herald, a public hearing has been scheduled with the Lake Zurich Planning & Zoning Commission for July 15, 2020, to consider the Application. On July 1, 2020, the Village posted a public hearing sign on the Subject Property (Exhibit B).

Staff offers the following additional information:

- A. **Courtesy Review.** Due to the low impact of this project, its location within an established auto center and its smaller operational footprint with no overnight or outdoor activity, courtesy review was not recommended.
- B. **Zoning History.** The subject property is a tenant space within the Village Square Shopping Center which was built in 1989, and has been owned by the same owner for the life of the development. The property is zoned within the B-3 Regional Shopping district. Village Square Shopping Center has seen a number of retail and service land uses since its construction and continues to serve the larger demographic of the region that travels along the Route 12 corridor.

This will be the business’s first location in Lake Zurich. The business is looking to occupy the space with minimal interior alterations for the use of one drive-in hand car wash and detailing bay and an office/waiting room.

- C. Surrounding Land Use and Zoning.** The subject property is located on Route 12, which is a major commercial arterial road. The land immediately to the northwest of the Subject Property is zoned B-3 Regional Shopping district and improved with the remaining portion of Village Square and supports a variety of commercial uses. The land farther to the southeast is developed with the more recently completed Village Square Retail Center Phase II containing a Target Store. The properties to the south are zoned within B-3 Regional Shopping district and improved with several large storm water detention ponds that service the Village Square Retail Centers.
- D. Trend of Development.** The subject property is located along the thriving Route 12 commercial corridor that traverses the southern side of the Village. The accessibility and high visibility from a major north-south arterial such as Route 12 makes the Subject Property a desirable location for many retail- and service-oriented businesses.
- E. Zoning District.** Three (3) zoning districts are provided for business and commercial uses. When taken together, these districts are intended to permit development of property for the full range of business and commercial uses needed to serve the citizens of Lake Zurich and the surrounding suburban area. The B-3 regional shopping district is intended to provide locations for major retail centers. The regulations are designed to encourage a broad range of attractive retail and compatible service uses in those centers.

## GENERAL FINDINGS

As it relates to the proposed Special Use Permit, Chapter 19 of the Zoning Code entitled “Special Use Permits” provides for special uses that have some special impact or uniqueness that requires a careful review of their location, design, configuration, and special impact to determine, against fixed standards, the desirability of permitting their establishment on any given site. They are uses that may or may not be appropriate in a particular location depending on a weighing, in each case, of the public need and benefit against the local impact and effect. The standards for special uses examine the location, design and operational characteristics of a use. Staff offers the following findings on specific sections of the Code.

### Standards for Special Use Permits

- A. General Standards. No special use permit shall be recommended or granted pursuant to this Chapter unless the applicant shall establish that:
1. Code and Plan Purposes. The proposed use and development will be in harmony with the general and specific purposes for which this Code was enacted and for which the regulations of the district in question were established and with the general purpose and intent of the official Comprehensive Plan.

**Staff Response: Standard met. The development will continue to remain in substantial conformance with the purpose and intent of the B-3 Regional**

**Shopping District, and the land use designation of the adopted Comprehensive Plan.**

2. No Undue Adverse Impact. The proposed use and development will not have a substantial or undue adverse effect upon adjacent property, the character of the area, or the public health, safety, and general welfare.

**Staff Response: Standard met. The business is consistent with commercial-oriented development along the Route 12 corridor. The business is proposed to operate entirely within the tenant space and will not have any substantial or undue adverse effect upon any adjacent properties and will not adversely impact the public health, safety, and general welfare of the Village.**

3. No Interference with Surrounding Development. The proposed use and development will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the use and development of neighboring property in accordance with the applicable district regulations.

**Staff Response: Standard Met. The property on which the car wash and detailing shop is proposed is largely surrounded by similarly auto oriented uses. The proposed land use will therefore not have any detrimental impact on immediately surrounding commercial property. Additionally, the proposed use will not have any negative impact on residential buildings to the southwest which lie approximately 650 feet away.**

4. Adequate Public Facilities. The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools, or the applicant will provide adequately for such services.

**Staff Response: The property is currently served with adequate public utilities and services provided by the village. This unit is already serviced by a building-wide triple basin to assist in the treatment of any runoff caused by the existing and proposed auto oriented uses.**

5. No Traffic Congestion. The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through the surrounding streets.

**Staff Response: Standard met. The proposed use intends to utilize the existing access points, driveways and parking constructed as part of the subdivision. The parking lot is subject to a shared access, parking and maintenance agreement and was set up to accommodate the parking demand for a 6-tenant auto service building at full capacity plus the entire Village Square development.**

6. No Destruction of Significant Features. The proposed use and development will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of significant importance.

**Staff Response: Not applicable. The property on which the land use is proposed has been previously developed. There are therefore no features of natural, scenic, or historic importance that will be affected.**

7. Compliance with Standards. The proposed use and development complies with all additional standards imposed on it by the particular provision of this Code authorizing such use.

**Staff Response: Standard met. There are no additional standards imposed on the proposed land use by the code. The proposed location will not include any outdoor car washing.**

8. Positive Effect. The proposed special use creating a positive effect for the zoning district, its purpose, and adjacent properties shall be placed before the benefits of the petitioner.

**Staff Response: Standard met. The Applicants have presented that there is a desire and need for car washing and detailing services in the Village of Lake Zurich. The addition of a hand car wash and detailing center bring additional traffic to the Village. The land use will also fill a previously vacant tenant space.**

- B. Special Standards for Specified Special Uses. When the district regulations authorizing any special use in a particular district impose special standards to be met by such use in such district, a permit for such use in such district shall not be recommended or granted unless the applicant shall establish compliance with such special standards.

**Staff Response: Standard met. Staff has not identified any additional special standards required for the proposed Special Use Permit.**

- C. Considerations. In determining whether the applicant's evidence establishes that the foregoing standards have been met, the Plan Commission and the Board of Trustees shall consider:

1. Benefit. Whether and to what extent the proposed use and development at the particular location requested is necessary or desirable to provide a service or a facility that is in the interest of the public convenience or that will contribute to the general welfare of the neighborhood or community.

**Staff Response: Standard met. Improving a vacant tenant space with a thriving business will benefit the Village of Lake Zurich and its residents.**

2. Alternative Locations. Whether the purposes of the zoning code can be met by the location of the proposed use and development in some other area or zoning district that may be more appropriate than the proposed site.

**Staff Response: The proposed tenant space is well suited for the Applicant's needs and is compatible with adjacent auto oriented uses. The property is currently under contract by the Applicants.**

**The land use pertaining to auto uses specifically car washes is classified as a special use in the B-3 zoning district. In as much as a car wash may be located in other areas, the subject property offers the ability of the owner to establish a use that is appropriate for the property and in the area of the community in which it is proposed.**

3. Mitigation of Adverse Impacts. Whether all steps possible have been taken to minimize any substantial or undue adverse effects of the proposed use and development on the immediate vicinity through building design, site design, landscaping, and screening.

**Staff Response: Standard met. The retail center has been developed to prevent any undue adverse effect on itself or on surrounding property in relation to its location, design and operation.**

**The luxury car wash and detail shop is intended to be operated entirely within the tenant space of the building. No overnight or outdoor activity is proposed at this location. The land use will therefore minimal impact on the subject property or surrounding properties.**



## RECOMMENDATION

The recommendation of the Planning and Zoning Commission should be based on the standards included in the following Sections of the Lake Zurich Municipal Code:

- Section 9-19-3: Standards for Special Use Permits

Based on the review of staff, the standards for approval have been met and therefore staff recommends that the Planning and Zoning Commission make these standards a part of the official record of the Application.

Staff of the Community Development Department therefore recommends the approval of Application PZC 2020-06, subject to the following conditions:

1. Substantial conformance with the following documentation prepared by JAS Development II LLC and submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
  - a. Zoning Application and Cover Letter dated June 30, 2020
  - b. Exhibit A: Legal Description
  - c. Floor Plan, dated June 30, 2020
  - d. Elevations, dated June 30, 2020
  - e. Site Plan, dated June 30, 2020
  - f. Plat of Survey, dated June 30, 2020
  - g. Proof of Ownership, dated June 30, 2020
2. The Applicant shall submit any proposals for onsite signage or branding to the village prior to permit and occupancy approval. The final proposed signage plan shall be approved by village staff.
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4. The special use constituting the car wash known as “Luxury Auto Hand Car Washing and Detailing, Inc.” shall be located within and associated with the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center and shall be allowed to continue under successive ownership, or be allowed to relocate to any of the remaining tenant spaces within the 6-tenant building located in the shopping center, so long as the general location within such building, design and operation is in substantial conformance with the approvals granted by this ordinance. Such Special Use shall expire if this car wash use ceases operating at the property for a period of more than 365 days.
5. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.

Respectfully Submitted,

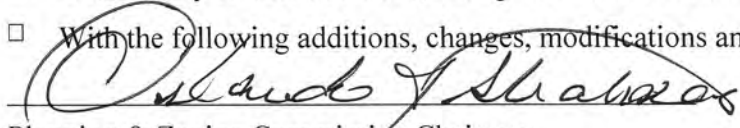
Tim Verbeke  
Planner

LAKE ZURICH PLANNING & ZONING COMMISSION  
FINAL FINDINGS & RECOMMENDATIONS

**FOR 499 S RAND RD – CAR WASH AND DETAILING  
JULY 15, 2020**

The Planning & Zoning Commission recommends approval of Application PZC 2020-06, and the Planning & Zoning Commission adopts the findings as contained within the Staff Report dated **July 15, 2020** for this Application and subject to any changes or approval conditions as listed below:

1. Substantial conformance with the following documentation prepared by JAS Development II LLC and submitted as part of the application subject to revisions required by Village Staff and applicable governmental agencies:
    - a. Zoning Application and Cover Letter dated June 30, 2020
    - b. Exhibit A: Legal Description
    - c. Floor Plan, dated June 30, 2020
    - d. Elevations, dated June 30, 2020
    - e. Site Plan, dated June 30, 2020
    - f. Plat of Survey, dated June 30, 2020
    - g. Proof of Ownership, dated June 30, 2020
  2. The Applicant shall submit any proposals for onsite signage or branding to the village prior to permit and occupancy approval. The final proposed signage plan shall be approved by village staff.
  3. All activities related to the car wash and detailing business shall be conducted wholly within the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center.
  4. The special use constituting the car wash known as “Luxury Auto Hand Car Washing and Detailing, Inc.” shall be located within and associated with the commercial tenant space addressed at 499 South Rand Road within Village Square Shopping Center and shall be allowed to continue under successive ownership, or be allowed to relocate to any of the remaining tenant spaces within the 6-tenant building located in the shopping center, so long as the general location within such building, design and operation is in substantial conformance with the approvals granted by this ordinance. Such Special Use shall expire if this car wash use ceases operating at the property for a period of more than 365 days.
  5. The development shall be in compliance with all other applicable codes and ordinances of the Village of Lake Zurich.
- Without any further additions, changes, modifications and/or approval conditions.
- With the following additions, changes, modifications and/or approval conditions:

  
Planning & Zoning Commission Chairman

**EXHIBIT A**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOTS 1, 2, 3 & 4  
VILLAGE SQUARE SHOPPING CENTER  
A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP  
43 NORTH, RANGE 10EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY  
ILLINOIS

P.I.N. - 14-19-402-080

**EXHIBIT B**  
PUBLIC HEARING SIGN AT SUBJECT PROPERTY



# Memo

To: Tim Verbeke, Planner  
From: Betty Harrison, EQC Supervisor  
Date: July 8, 2020  
Re: July Commission Meeting

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1. 499 S Rand Rd

- A triple basin will be required.
- Additional backflow devices may be required.

# 499 S Rand



Sources: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community  
Lake County, Illinois GIS Division






Lake County, Illinois



Map Printed on 7/9/2020



-  Tax Parcel Lines
-  Tax Parcel Information
-  Subject Property

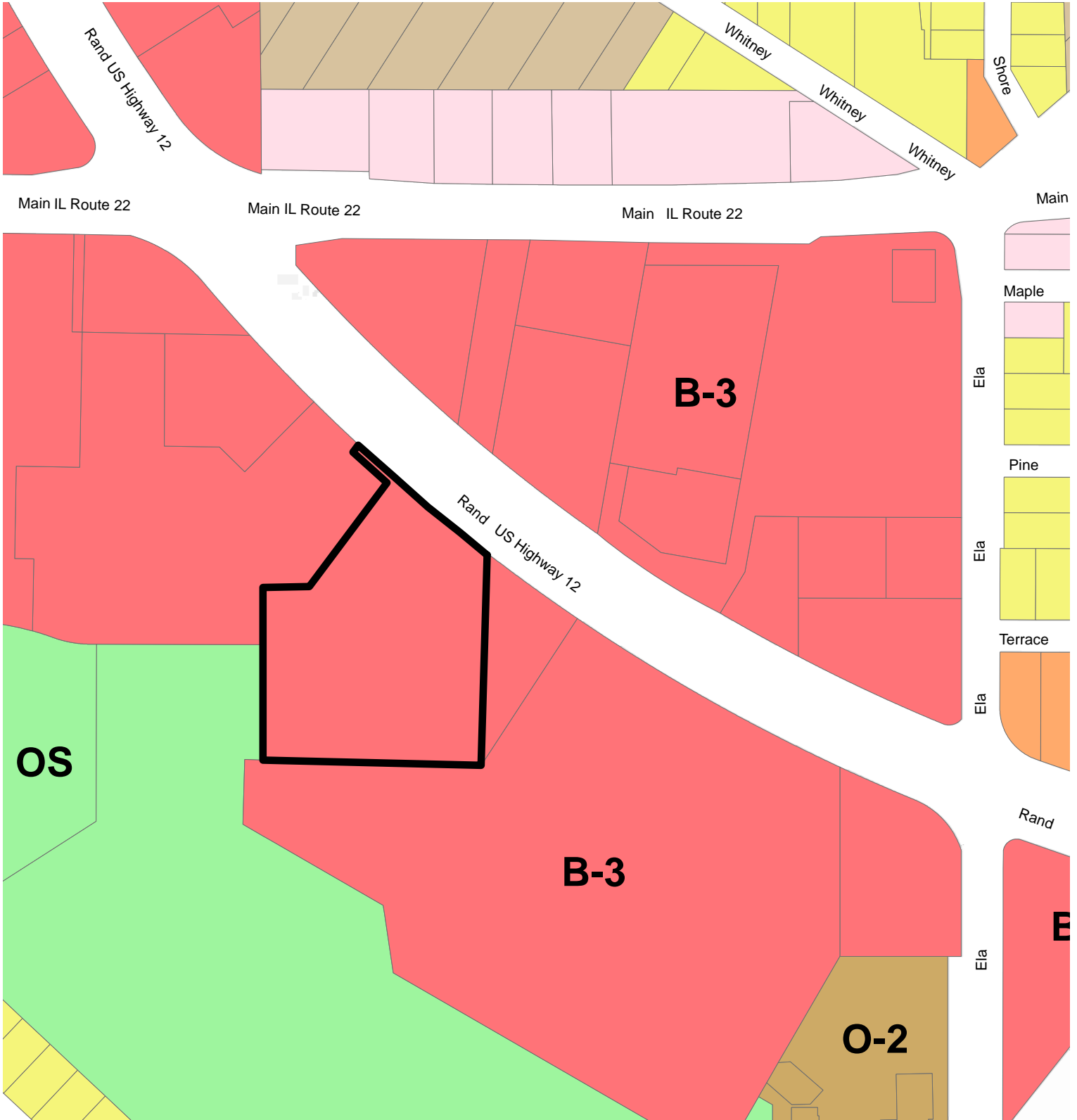
## Disclaimer:

The selected feature may not occur anywhere in the current map extent. A Registered Land Surveyor should be consulted to determine the precise location of property boundaries on the ground. This map does not constitute a regulatory determination and is not a base for engineering design. This map is intended to be viewed and printed in color.



# 499 S Rand

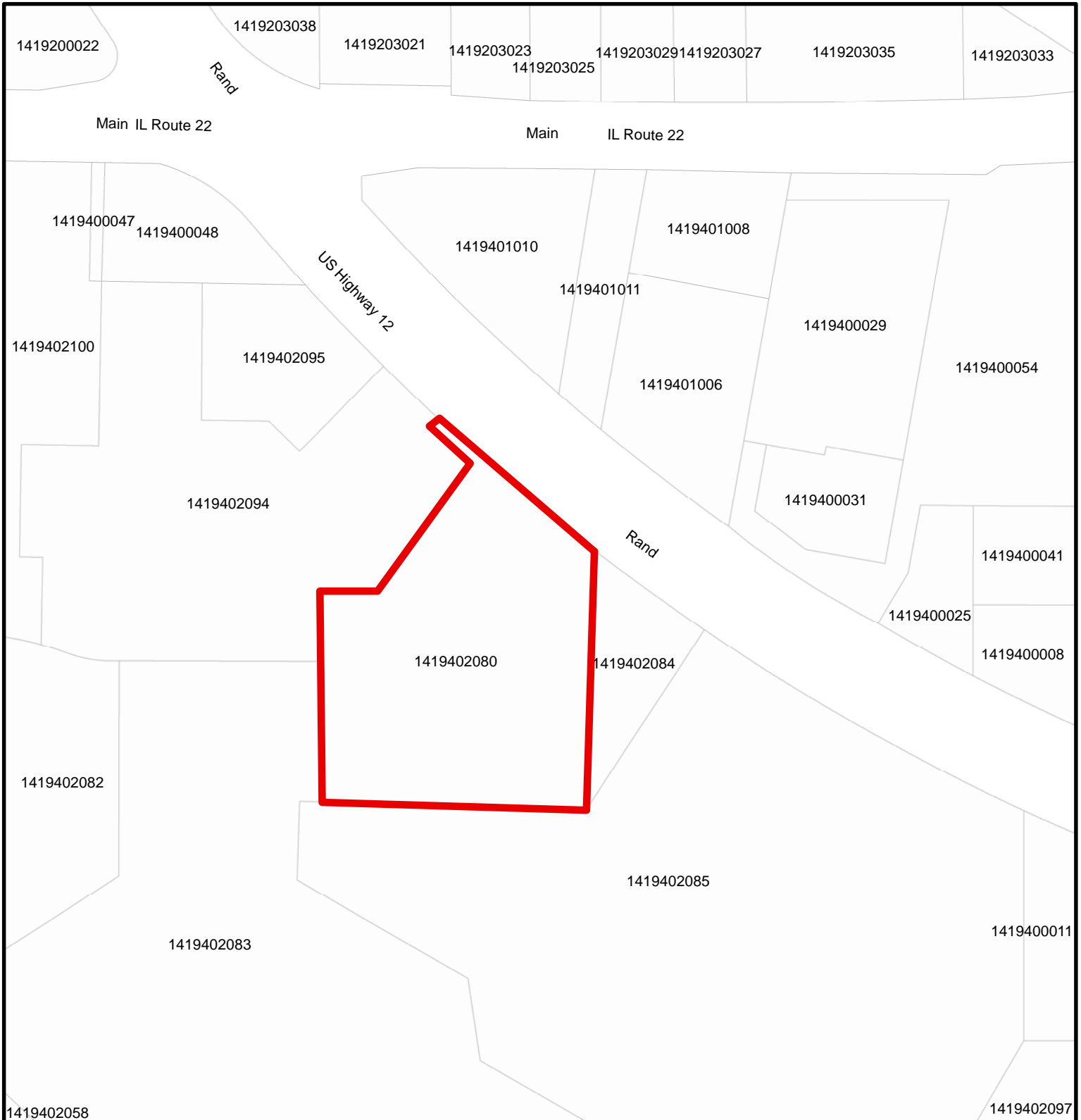
## Special Use Permit: Car Wash





# 499 S Rand

## Special Use Permit: Car Wash







# ZONING APPLICATION

Community Development Department  
505 Telser Rd.  
Lake Zurich, IL 60047  
Phone: (847) 540-1696  
Fax: (847) 540-1769

(Please Type or Print)

1. Address of Subject Property: 499 South Rand Road

2. Please attach complete legal description

3. Property Identification number(s): 14-19-402-080

4. Owner of record is: Village Square Retail Center, LLC Phone: 847-438-5000

E-Mail jason.sfire@fidelitygroup.com Address: 745 Ela Road Lake Zurich, IL 60047

5. Applicant is (if different from owner): LUXURY AUTO HAND CAR WASHING AND DETAILING / GUADALUPE CRUZ Phone: \_\_\_\_\_

E-Mail cruzguadalupe46@gmail.com Address: \_\_\_\_\_

6. Applicant's interest in the property (owner, agent, realtor, etc.): OWNER

7. All existing uses and improvements on the property are: B-3 RETAIL

8. The proposed uses on the property are: B-3 ZONING APPROVED SPECIAL USE TO HAND CAR WASH /DETAILING

9. List any covenants, conditions, or restrictions concerning the use, type of improvements, setbacks, area, or height requirements placed on the Subject Property and now of record and the date of expiration of said restrictions:  
NONE

10. Describe any contract or agreement of any nature relevant to the sale or disposal of the Subject Property:  
NONE

11. For applications requiring a public hearing, please attach a list which contains the PIN, owner, and owner's mailing address of all properties located within 250 feet (excluding all Public Right-of-Ways) of the Subject Property.

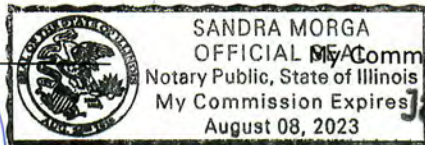
THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND CORRECT. THE APPLICANT ALSO ACKNOWLEDGES IF THE CONSULTANT EXPENSES EXCEED THE INITIAL ESCROW DEPOSIT, THE APPLICANT WILL REIMBURSE THE ACCOUNT IMMEDIATELY.

Guadalupe Cruz  
(Name of applicant)

Guadalupe Cruz  
(Signature of applicant)

Subscribed and sworn to before me this 30<sup>TH</sup> day of JUNE, 2020.

Sandra Morga  
(Notary Public)



My Commission Expires August 8, 2023

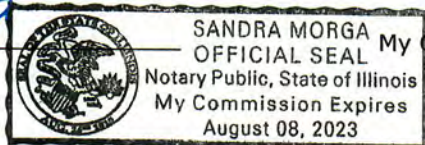
Jason Alan Sfire  
Manager

\_\_\_\_\_  
(Name of Owner, if different)

\_\_\_\_\_  
(Signature of Owner, if different)

Subscribed and sworn to before me this 30<sup>TH</sup> day of JUNE, 2020.

Sandra Morga  
(Notary Public)



My Commission Expires August 8, 2023

Please indicate what form of zoning relief your application requires. For assistance, please contact Staff:

Zoning Code **Map** Amendment to change zoning of Subject Property from \_\_\_\_ to \_\_\_\_

Zoning Code **Text** Amendment to amend the following section(s) of the Zoning Code \_\_\_\_\_

(See Section 18-103 of the Lake Zurich Zoning Code for specific standards. If a specific parcel is the subject of this amendment, then provide the additional information listed in Section 18-103C.)

Special Use Permit/Amendment for 499 South Rand Road

(See Section 19-103 of the Lake Zurich Zoning Code for specific standards.)

Planned Unit Development/Major Adjustment/Amendment

(Planned Unit Developments are a distinct category of special use and are intended to create a more desirable environment than through strict application of the zoning and subdivision regulations. See Section 22-105 of the Lake Zurich Zoning Code for specific standards. Please list all the 'modifications' requested in the cover letter.)

Variation for \_\_\_\_\_

(See Section 17-104 of the Lake Zurich Zoning Code for specific standards. Please indicate what your specific hardships are in the cover letter.)

Modification to the Land Development Code (includes retaining walls more than 2 feet in height)

(See Section 10-6-18 of the Land Development Code for specific standards.)

---

Preliminary Plat of Subdivision

Final Plat of Subdivision or Amendment to Plat of Subdivision

(See Sections 10-5-2 and 10-5-9 of the Land Development Code for specific standards.)

---

Site Plan Approval/Major Adjustment/Amendment

(See Section 20-103 of the Lake Zurich Zoning Code for specific standards.)

Exterior Appearance Approval or Amendment

(See Section 21-103 of the Lake Zurich Zoning Code for specific standards.)

---

#### **APPLICATION TO ANNEX CERTAIN TERRITORY**

All land annexed to the Village is classified automatically after such annexation in the R-1\2 Single Family Residential District. The owner must file an application for a Zoning Map amendment if he or she desires a different zoning classification for the Subject Property.

Petition to Annex Certain Territory (Please complete attached petition)

Application to Annex Certain Territory

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#### **COMPREHENSIVE PLAN APPLICATION**

Comprehensive Plan **Map** Amendment for \_\_\_\_\_

Comprehensive Plan **Text** Amendment for \_\_\_\_\_

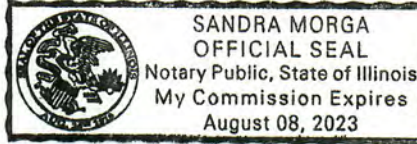
**\*Note: This is to be notarized and returned to Staff after notifications are mailed out.**

**VILLAGE OF LAKE ZURICH  
NOTIFICATION AFFIDAVIT**

I, JASON ALAN SFIRE hereby certify as follows:

- I. That on the 1ST day of JULY 2020, affiant caused to be mailed in the Post Office of LAKE ZURICH, Illinois, copies of the attached Notice of Public Hearing to all listed taxpayers of real estate within 250 feet, excluding all Public Right of Way, of the subject property and to the owners or representatives of property listed as exempt.
2. That the parties to whom said notice was mailed are set forth on Page 15, Item #13 of this application.

[Handwritten Signature]  
Signature



Subscribed and sworn to before me this 1st day of July, 2020, 2019.

Sandra Morga  
(Notary Public)

My Commission Expires August 08, 2023



**Village Square Retail Center, LLC.**

745 Ela Road  
Lake Zurich, Illinois 60047  
Phone: 847-438-5000  
www.fidelitygrouppltd.com

June 30, 2020

Mr. Orlando Stratman  
Chairperson of the Planning & Zoning Commission  
Village of Lake Zurich  
505 Telser Road  
Lake Zurich, IL 60047

RE: Special Use Permit- Hand Car Wash and Detailing  
499 South Rand Road

Dear Mr. Stratman,

We are requesting approval of Luxury Auto Hand Car Washing and Detailing, Inc. (Owner, Guadalupe Cruz) for a Special Use Permit to provide hand car washing and detailing at 499 South Old Rand Road in the Village Square Retail Center.

This is permitted Special Use within B-3 zoning.

We feel that this will be a good fit to our Village Square property. For the reason, there is a well-rounded tenant mix for village and residents.

Sincerely,

Village Square Retail Center, LLC.

Jason Alan Sfire  
President/Owner

Enclosures

# ALTA/ACSM LAND TITLE SURVEY

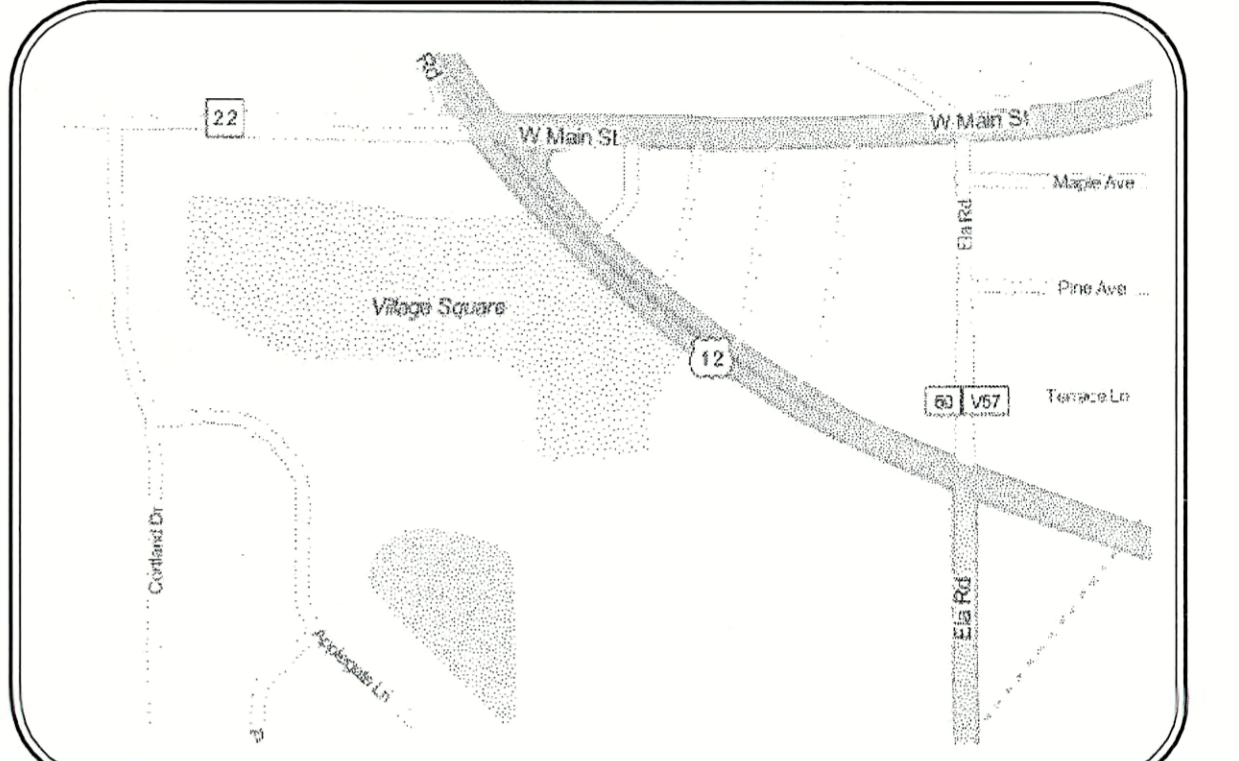
-OF-

### ZONING NOTES

THIS PROPERTY IS ZONED B-3 (REGIONAL SHOPPING) ACCORDING TO THE VILLAGE OF LAKE ZURICH. THE RESTRICTIONS FOR THIS ZONING ARE AS FOLLOWS:

- A. MAXIMUM HEIGHT
  - A. FEET (WHICHEVER) 35
  - B. STORES (IS LESS) 3
  - C. ACCESSORY STRUCTURES 25
- B. MINIMUM LOT AREA AND DIMENSIONS
  1. MINIMUM LOT AREA (SQUARE FEET) 43,560
  2. MINIMUM LOT WIDTH (FEET) 150
- C. MINIMUM YARDS
  1. FRONT AND CORNER SIDE (FEET) 50
  2. SIDE (FEET) 15
  3. REAR (FEET) 30
- D. MAXIMUM FLOOR AREA RATIO
  1. RETAIL USES
    - A. ONE STORY 0.22
    - B. MORE THAN ONE STORY 0.27
  2. OFFICE USES
    - A. ONE STORY 0.27
    - B. MORE THAN ONE STORY 0.34
  3. COMBINED RETAIL AND OFFICE USES
    - A. ONE STORY 0.24
    - B. MORE THAN ONE STORY 0.35
  4. ALL OTHER USES
    - A. ONE STORY 0.30
    - B. MORE THAN ONE STORY 0.38
- E. MINIMUM LANDSCAPED SURFACE AREA (PERCENT)
  1. RETAIL USES 30
  2. OFFICE USES 35
  3. COMBINED RETAIL AND OFFICE USES 40
  4. ALL OTHER USES 35

### VICINITY MAP



### MISCELLANEOUS NOTES

- 1) PROPERTY AREA = 824,356 SQ.FT. = 18,9246 ACRES
- 2) PNM 14-19-402-096-000 - LOT 1 PARCEL 7  
PNM 14-19-402-098-000 - LOT 4 PARCEL 7  
PNM 14-19-402-100-000 - LOT 4 PARCEL 7  
PNM 14-19-402-094-000 - LOT 3A PARCEL 7
- 3) ACCORDING TO F.E.M.A. MAP COMMUNITY PANEL NUMBER 1709720228K DATED 08/18/13, THIS PROPERTY LIES IN A "ZONE X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
- 4) THIS PROPERTY CONTAINS 661 STANDARD PARKING SPACES AND 22 HANDICAPPED PARKING SPACES.
- 5) THERE IS NO OBSERVED EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.
- 6) THERE IS NO RIGHT OF WAY TO CHANGES TO HIS KNOWLEDGE, AND NO OBSERVED EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS.
- 7) THERE IS NO OBSERVED EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SLUMP OR SANITARY LANDFILL.

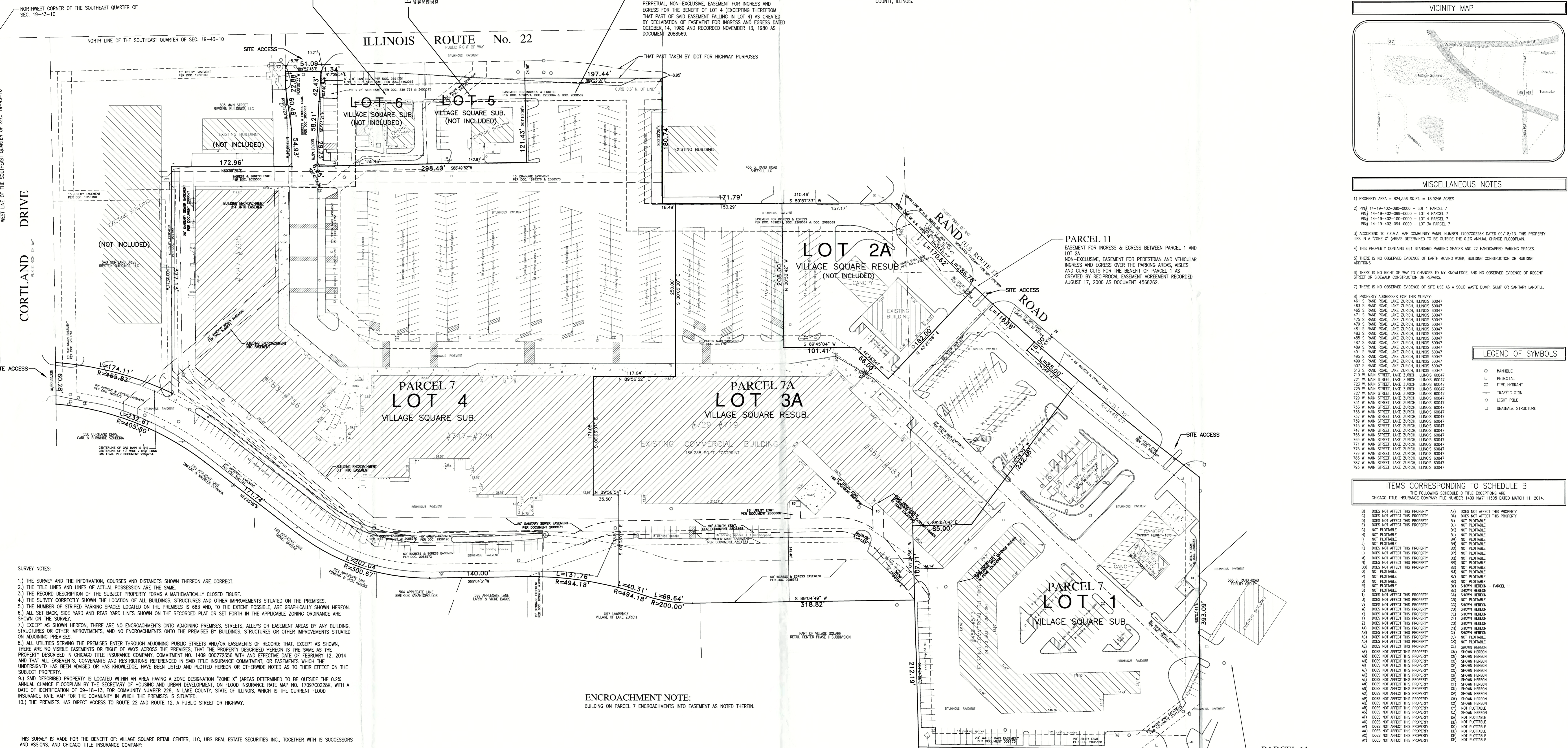
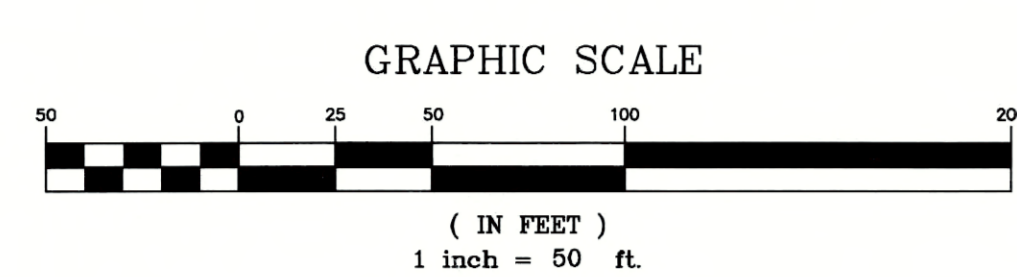
### LEGEND OF SYMBOLS

- MANTLE
- PEDESTAL
- FIVE INCHANT
- TRAFFIC SIGN
- LIGHT POLE
- DRAINAGE STRUCTURE

### ITEMS CORRESPONDING TO SCHEDULE B

THE FOLLOWING SCHEDULE B TITLE EXCEPTIONS ARE CHICAGO TITLE INSURANCE COMPANY FILE NUMBER 1408 NW11555 DATED MARCH 11, 2014.

- |                                    |                                    |
|------------------------------------|------------------------------------|
| 8) DOES NOT AFFECT THIS PROPERTY   | A7) DOES NOT AFFECT THIS PROPERTY  |
| 9) DOES NOT AFFECT THIS PROPERTY   | B6) DOES NOT AFFECT THIS PROPERTY  |
| 10) DOES NOT AFFECT THIS PROPERTY  | B7) DOES NOT AFFECT THIS PROPERTY  |
| 11) DOES NOT AFFECT THIS PROPERTY  | B8) DOES NOT AFFECT THIS PROPERTY  |
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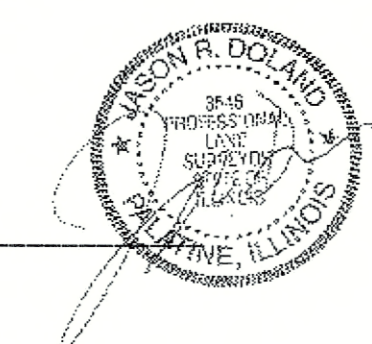
- SURVEY NOTES:**
- 1.) THE SURVEY AND THE INFORMATION, COURSES AND DISTANCES SHOWN THEREON ARE CORRECT.
  - 2.) THE TITLE LINES AND LINES OF ACTUAL POSSESSION ARE THE SAME.
  - 3.) THE RECORD DESCRIPTION OF THE SUBJECT PROPERTY FORMS A MATHEMATICALLY CLOSED FIGURE.
  - 4.) THE SURVEY CORRECTLY SHOWS THE LOCATION OF ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS SITUATED ON THE PREMISES.
  - 5.) THE NUMBER OF STRIPED PARKING SPACES LOCATED ON THE PREMISES IS 663 AND, TO THE EXTENT POSSIBLE, ARE GRAPHICALLY SHOWN HEREON.
  - 6.) ALL SET BACK, SIDE YARD AND REAR YARD LINES SHOWN ON THE RECORDED PLAT OR SET FORTH IN THE APPLICABLE ZONING ORDINANCE ARE SHOWN ON THE SURVEY.
  - 7.) EXCEPT AS SHOWN HEREON, THERE ARE NO ENCROACHMENTS ONTO ADJOINING PREMISES, STREETS, ALLEYS OR EASEMENT AREAS BY ANY BUILDING, STRUCTURES OR OTHER IMPROVEMENTS, AND NO ENCROACHMENTS ONTO THE PREMISES BY BUILDINGS, STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON ADJOINING PREMISES.
  - 8.) ALL UTILITIES SERVING THE PREMISES ENTER THROUGH ADJOINING PUBLIC STREETS AND/OR EASEMENTS OF RECORD, THAT, EXCEPT AS SHOWN, THERE ARE NO VISIBLE EASEMENTS OR RIGHT OF WAYS ACROSS THE PREMISES, THAT THE PROPERTY DESCRIBED HEREON IS THE SAME AS THE PROPERTY DESCRIBED IN CHICAGO TITLE INSURANCE COMPANY, COMMITMENT NO. 1409 000772356 WITH AN EFFECTIVE DATE OF FEBRUARY 12, 2014 AND THAT ALL EASEMENTS, COVENANTS AND RESTRICTIONS REFERENCED IN SAID TITLE INSURANCE COMMITMENT, OR EASEMENTS WHICH THE UNDERSIGNED HAS BEEN ADVISED OR HAS KNOWLEDGE, HAVE BEEN LISTED AND PLOTTED HEREON OR OTHERWISE NOTED AS TO THEIR EFFECT ON THE SUBJECT PROPERTY.
  - 9.) SAID DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION "ZONE X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ON FLOOD INSURANCE RATE MAP NO. 1709702228K, WITH A DATE OF IDENTIFICATION OF 09-18-13, FOR COMMUNITY NUMBER 228, IN LAKE COUNTY, STATE OF ILLINOIS, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH THE PREMISES IS SITUATED.
  - 10.) THE PREMISES HAS DIRECT ACCESS TO ROUTE 22 AND ROUTE 12, A PUBLIC STREET OR HIGHWAY.

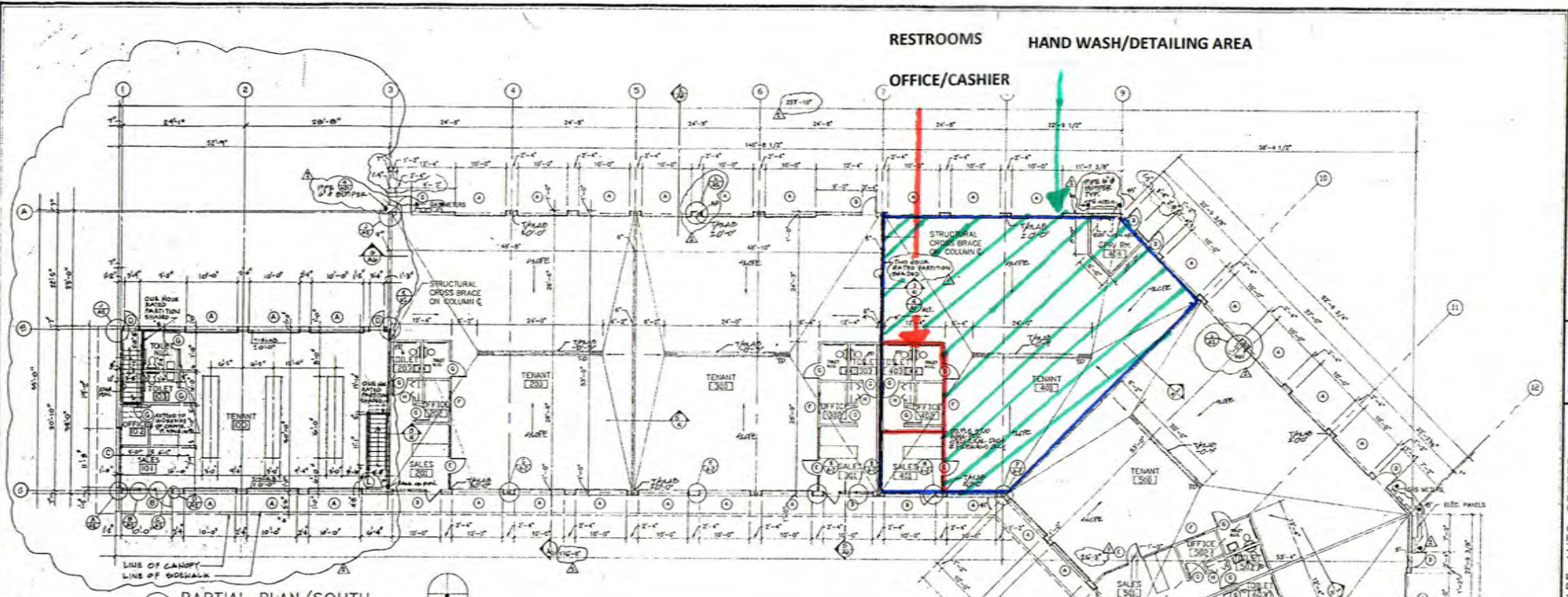
**ENCROACHMENT NOTE:**  
BUILDING ON PARCEL 7 ENCROACHMENTS INTO EASEMENT AS NOTED THEREON.

THIS SURVEY IS MADE FOR THE BENEFIT OF VILLAGE SQUARE RETAIL CENTER, LLC, UBS REAL ESTATE SECURITIES INC., TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, AND CHICAGO TITLE INSURANCE COMPANY.

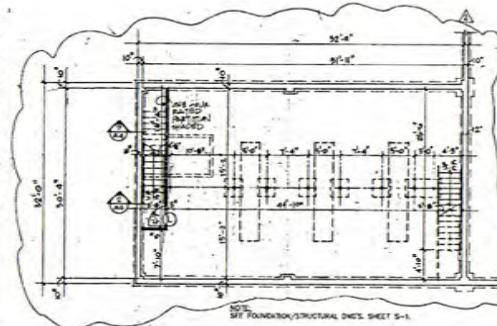
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS AND INCLUDES ITEMS 2, 3, 4, 6, 7(c), 7(d)(1), 7(c), 8, 9, 10, 11(c) (AS TO UTILITIES, SURFACE MATTERS ONLY), 13, 16, 17 AND 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON MARCH 17, 2014.

DATE OF PLAT OR MAP:  
MARCH 21, 2014  
REV. APRIL 7, 2014

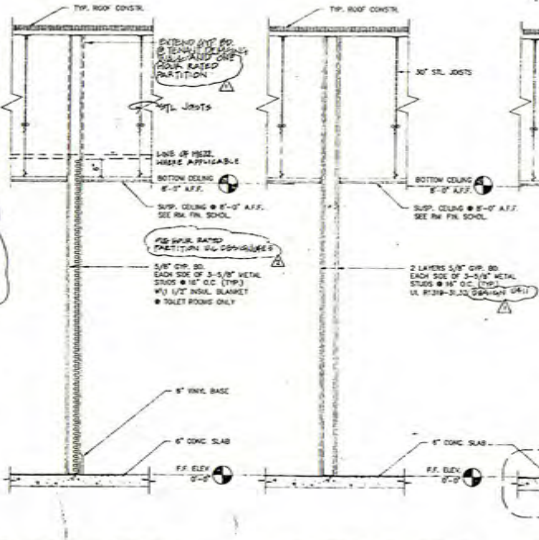




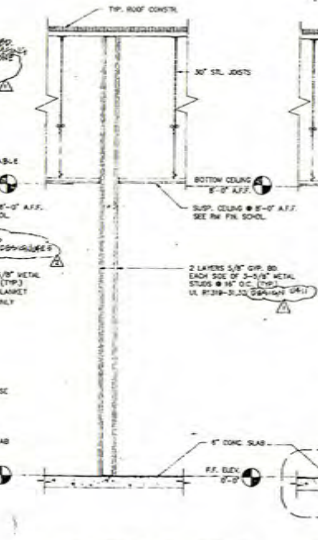
**1 PARTIAL PLAN/SOUTH**  
SCALE 1/8"=1'-0"



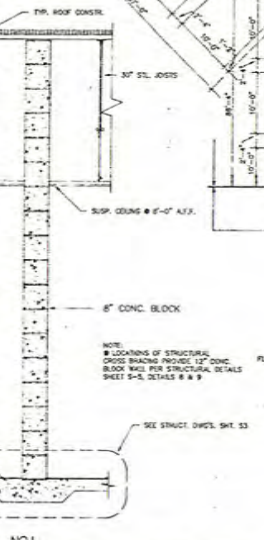
**2 BASEMENT PLAN**  
SCALE 1/8"=1'-0"



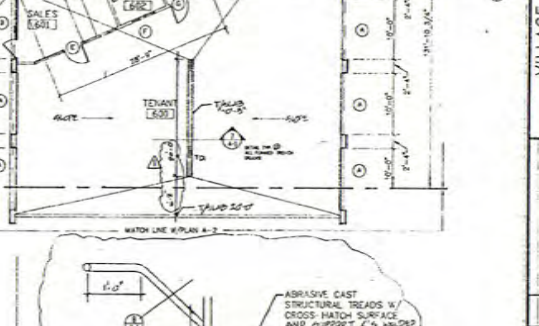
**3 TYP. INT. WALL SECTION**  
SCALE 3/16"=1'-0"



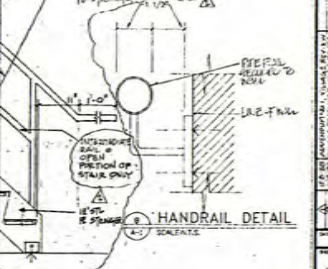
**4 2 HR. FIRE WALL SECTION**  
SCALE 3/16"=1'-0"



**5 ALTERNATE CONC. WALL SECT.**  
SCALE 3/16"=1'-0"



**6 GARAGE STAIR**  
SCALE 1/4"=1'-0"



**7 HANDRAIL DETAIL**  
SCALE 3/4"=1'-0"

**From:** [Sandra Morga](#)  
**To:** [Tim Verbeke](#); [Sarosh Saher](#)  
**Cc:** [Jason Sfire](#); [Cathy Babiez](#)  
**Subject:** RE: Special Use Permit Application for 499 S. Rand Road  
**Date:** Tuesday, June 30, 2020 6:10:52 PM

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Hi Tim,

Here are 3 out of the 4 responses to your questions. I will work on site plan/interior building plan and finding out what activities will be occurring where.

1. Hours of Operation –
2. Monday thru Friday 9 AM – 8 PM  
Saturday 8 AM – 5 PM  
Sunday 8 AM – 4 PM
3. Four (4) total employees
4. Car wash and Car detailing

Thank you!

**Sandra Morga**  
**Executive Assistant to Jason Sfire**  
The Fidelity Group, Ltd.  
745 Ela Road  
Lake Zurich, Il. 60047  
Direct Number: 847-719-7781  
Cell Phone: 224-795-1573  
Email: [sandra.morga@fidelitygrouppltd.com](mailto:sandra.morga@fidelitygrouppltd.com)

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**From:** Sandra Morga  
**Sent:** Tuesday, June 30, 2020 4:13 PM  
**To:** Tim Verbeke <[Tim.Verbeke@lakezurich.org](mailto:Tim.Verbeke@lakezurich.org)>; Sarosh Saher <[Sarosh.Saher@lakezurich.org](mailto:Sarosh.Saher@lakezurich.org)>  
**Cc:** Jason Sfire <[jason.sfire@fidelitygrouppltd.com](mailto:jason.sfire@fidelitygrouppltd.com)>; Cathy Babiez <[cathy.babiez@fidelitygrouppltd.com](mailto:cathy.babiez@fidelitygrouppltd.com)>  
**Subject:** RE: Special Use Permit Application for 499 S. Rand Road

Thank you Tim!

We will follow up with the Tenant to get responses to your questions.

Thank you!

**LEGAL DESCRIPTION OF SHOPPING CENTER**

LOTS 1, 2, 3 & 4

**VILLAGE SQUARE SHOPPING CENTER**

**A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY ILLINOIS**



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**DEERPATH COURT RETAIL CENTER LLC,**  
a Delaware limited liability company and  
**VILLAGE SQUARE RETAIL CENTER LLC,**  
a Delaware limited liability company, as mortgagor  
(collectively, Borrower)

to

**UBS REAL ESTATE SECURITIES INC.,** as mortgagee  
(Lender)

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**MORTGAGE AND SECURITY AGREEMENT**

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Dated: As of April 9, 2014

Location: Lake Zurich, Illinois

County: Lake

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Katten Muchin Rosenman LLP  
550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202  
Attention: Daniel S. Huffenus, Esq.

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## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (this “**Security Instrument**”) is made as of this 9th day of April, 2014, by **DEERPATH COURT RETAIL CENTER LLC**, a Delaware limited liability company (“**Deerpath Borrower**”), and **VILLAGE SQUARE RETAIL CENTER LLC**, a Delaware limited liability company (“**Village Square Borrower**”); together with Deerpath Borrower and their respective permitted successors and assigns, collectively, “**Borrower**”) having its principal place of business at 745 Ela Road, Lake Zurich, Illinois 60047, as mortgagor for the benefit of **UBS REAL ESTATE SECURITIES INC.**, a Delaware corporation, having an address at 1285 Avenue of the Americas, New York, New York 10019, as mortgagee (“**Lender**”).

### WITNESSETH:

**WHEREAS**, this Security Instrument is given to secure a loan (the “**Loan**”) in the principal sum of THIRTY ONE MILLION AND NO/100 DOLLARS (\$31,000,000.00) pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the “**Note**”);

**WHEREAS**, Borrower desires to secure the payment of the Debt and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents; and

**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

### ARTICLE 1 - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** To secure Borrower’s obligations, Borrower does hereby irrevocably MORTGAGE, GIVE, GRANT, BARGAIN, SELL, ALIEN, PLEDGE, ASSIGN, WARRANT, TRANSFER, CONFIRM HYPOTHECATE and CONVEY a security interest into Lender and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the “**Property**”):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land or for any other use and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument regardless of ownership thereof (the “**Additional Land**”);

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land or the Additional Land (collectively, the “**Improvements**”);

(d) Easements and Other Beneficial Interests. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land, the Additional Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land or the Additional Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “**equipment**,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or the Additional Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land or the Additional Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or the Additional Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary

sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "**Fixtures**" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any lease guaranties, letters of credit, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, letters of credit, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

**Section 1.2 Assignment of Rents**. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, and Section 7.1(h) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

**Section 1.3 Security Agreement.** This Security Instrument is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5 Pledges of Monies Held.** Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any Reserve Funds, any sums deposited in the Clearing Account or the Cash Management Account and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

## CONDITIONS TO GRANT

**TO HAVE AND TO HOLD** the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

**PROVIDED, HOWEVER,** these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

**Section 2.2 Other Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.3 Debt and Other Obligations.** Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations.**"

## ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement , (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Insurance.** Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.5 Waste.** Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.6 Payment for Labor and Materials.**

(a) Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) Borrower shall have furnished the security as may be required in the proceeding, or as may be



reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

**Section 3.7 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8 Change of Name, Identity or Structure.** Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender and (c) in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

#### **ARTICLE 4 - OBLIGATIONS AND RELIANCES**

**Section 4.1 Relationship of Borrower and Lender.** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lender.** The general partners, officers, shareholders, members, principals and/or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.**

(a) Notwithstanding the provisions of Subsections 1.1(h) and (m) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

**Section 4.4 Reliance.** Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

## ARTICLE 5 - FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, Etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, Etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or

recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Splitting of Mortgage.** This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not

more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

**Section 5.5 Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6 - DUE ON SALE/ENCUMBRANCE

**Section 6.1 Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

**Section 6.2 No Transfer** . Borrower shall not permit or suffer any Transfer to occur, unless specifically permitted by Article 8 of the Loan Agreement or unless Lender shall consent thereto in writing.

**Section 6.3 Transfer Defined.** As used in this Article 6 "**Transfer**" shall mean any voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of: (a) all or any part of the Property or any estate or interest therein including, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments, (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder and its affiliates or (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; or (b) any ownership interest in (i) Borrower or (ii) any indemnitor or guarantor of any Obligations or (iii) any corporation, partnership, limited liability company, trust or other entity owning, directly or indirectly, any interest in Borrower or any indemnitor or guarantor of any Obligations.

**Section 6.4 Lender's Rights.** Without obligating Lender to grant any consent under Section 6.2 hereof which Lender may grant or withhold in its sole discretion, Lender reserves the right to condition the consent required hereunder upon (a) a modification of the terms hereof and of the Loan Agreement, the Note or the other Loan Documents; (b) an assumption of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 11.22 of the Loan Agreement; (c)

payment of all of Lender's expenses incurred in connection with such transfer; (d) the confirmation in writing by the applicable Rating Agencies that the proposed transfer will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned in connection with any Securitization; (e) the delivery of a nonconsolidation opinion reflecting the proposed transfer satisfactory in form and substance to Lender; (f) the proposed transferee's continued compliance with the representations and covenants set forth in Section 3.1.24 and 4.2.11 of the Loan Agreement; (g) the delivery of evidence satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the standards of the Rating Agencies; (h) the proposed transferee's ability to satisfy Lender's then-current underwriting standards; or (i) such other conditions as Lender shall determine in its reasonable discretion to be in the interest of Lender, including, without limitation, the creditworthiness, reputation and qualifications of the transferee with respect to the Loan and the Property. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer, other than any Transfer permitted pursuant to the Loan Agreement, regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

## ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions

hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Lender may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the

Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

**Section 7.4 Actions and Proceedings.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 7.5 Recovery of Sums Required to be Paid.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7 Other Rights, Etc.**

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief,



if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9 Violation of Laws.** If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Section 11.22 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Sections 9.2 and 9.3 herein and Section 9.2 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Sections 9.2 and 9.3 herein and Section 9.2 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Security Instrument or the other Loan Documents, and Borrower and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 9.2 and 9.3 herein and Section 9.2 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Sections 9.2 and 9.3 herein and Section 9.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A

separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.2 and 9.3 herein and Section 9.2 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

**Section 7.11 Right of Entry.** Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE 8 - INTENTIONALLY OMITTED

## ARTICLE 9 - INDEMNIFICATION

**Section 9.1 General Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, the Loan Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any

commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article 9, the term “**Indemnified Parties**” means Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business). Notwithstanding the foregoing, Borrower shall not be required to indemnify any of the Indemnified Parties for their wilful misconduct or gross negligence.

**Section 9.2 Mortgage and/or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

**Section 9.3 ERISA Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys’ fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 3.1.8 or 4.2.11 of the Loan Agreement.

**Section 9.4 Intentionally Omitted**

**Section 9.5 Duty to Defend; Attorneys’ Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional

to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE 10 - WAIVERS

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Survival.** The indemnifications made pursuant to Section 9.3 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any

exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

**ARTICLE 11 - EXCULPATION**

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

**ARTICLE 12 - NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

**ARTICLE 13 - APPLICABLE LAW**

**Section 13.1 GOVERNING LAW.**

(a) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, AND THIS SECURITY

INSTRUMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT

Corporation Service Company  
80 State Street  
Albany, New York 12207

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

**Section 13.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE 14 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word “**Borrower**” shall mean “each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein,” the word “**Lender**” shall mean “Lender and any subsequent holder of the Note,” the word “**Note**” shall mean “the Note and any other evidence of indebtedness secured by this Security Instrument,” the word “**Property**” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees”, “legal fees” and “counsel fees” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE 15 - MISCELLANEOUS PROVISIONS

**Section 15.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 15.2 Successors and Assigns.** This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

**Section 15.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 15.4 Headings, Etc.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 15.5 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 15.6 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower’s obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 15.8 Limitation on Lender’s Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a “mortgagee in possession.”

**ARTICLE 16 - STATE-SPECIFIC PROVISIONS**

**Section 16.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

[PROVISIONS TO BE INSERTED FOR STATE IN WHICH PROPERTY IS LOCATED]

[NO FURTHER TEXT ON THIS PAGE]



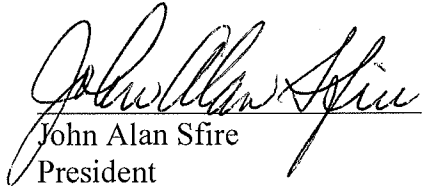
**IN WITNESS WHEREOF, THIS MORTGAGE** has been executed by Borrower as of the day and year first above written.

**BORROWER:**

**DEERPATH COURT RETAIL CENTER LLC,**  
a Delaware limited liability company

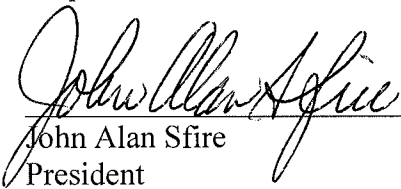
By: The Fidelity Group, LP, an Illinois limited partnership, its Sole Member

By: SBD Corp., an Illinois corporation,  
its General Partner

By:   
John Alan Sfire  
President

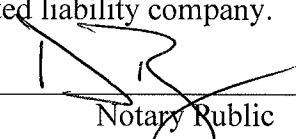
**VILLAGE SQUARE RETAIL CENTER LLC,** a  
Delaware limited liability company

By: Fidelity Development Group, Inc., an  
Illinois corporation, its Sole Member

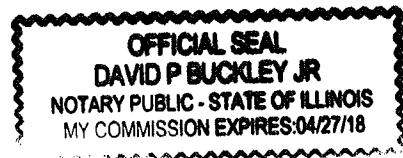
By:   
John Alan Sfire  
President

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF LAKE )

This instrument was acknowledged before me on April 9, 2014, by John Alan Sfire, as President of SBD Corp., an Illinois corporation, the General Partner of The Fidelity Group, LP, an Illinois limited partnership, the Sole Member of Deerpath Court Retail Center LLC, a Delaware limited liability company, on behalf of said limited liability company.

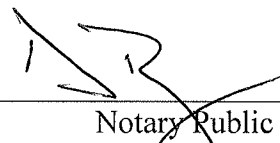
  
\_\_\_\_\_  
Notary Public  
DAVID P BUCKLEY JR  
\_\_\_\_\_  
Printed Name of Notary

My commission expires:

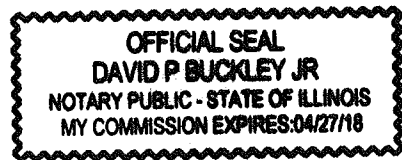


STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF LAKE )

This instrument was acknowledged before me on April 9, 2014, by John Alan Sfire, as President of Fidelity Development Group, Inc., an Illinois corporation, the Sole Member of Village Square Retail Center LLC, a Delaware limited liability company, on behalf of said limited liability company.

  
\_\_\_\_\_  
Notary Public  
DAVID P BUCKLEY JR  
\_\_\_\_\_  
Printed Name of Notary

My commission expires:



**EXHIBIT A**  
**LEGAL DESCRIPTION**

## **EXHIBIT A**

### **Legal Description**

NOTE: PARCELS 1 TO 6 - DEERPATH COURT RETAIL CENTER LLC

PARCEL 1:

LOTS 4 AND 5 IN DEERPATH COURT RETAIL CENTER, BEING A SUBDIVISION AND RESUBDIVISION OF PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE SECOND AMENDED AND RESTATED PLAT THEREOF RECORDED OCTOBER 10, 1990 AS DOCUMENT 2952457, IN LAKE COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 AND 3 IN DEERPATH COURT RETAIL CENTER THIRD RESUBDIVISION, BEING A RESUBDIVISION OF LOT 1 IN DEERPATH COURT RETAIL CENTER OF PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 15, 2001 AS DOCUMENT 4781048, IN LAKE COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE, PERPETUAL EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 AND 2, OVER THAT PART OF LOT 16 IN TOWER HILL SUBDIVISION, RECORDED AS DOCUMENT 761804, DESCRIBED ON EXHIBIT "C" ATTACHED TO GRANT OF EASEMENT FROM COLE TAYLOR BANK, AS SUCCESSOR BY MERGER TO WHEELING TRUST AND SAVINGS BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 27, 1973 AND KNOWN AS TRUST NUMBER 73-417, DATED MAY 24, 1989 AND RECORDED JUNE 1, 1989 AS DOCUMENT 2797351 AND AMENDED BY INSTRUMENT DATED JULY 26, 1990 AND RECORDED JULY 30, 1990 AS DOCUMENT 2929424, IN LAKE COUNTY, ILLINOIS.

PARCEL 4:

NON-EXCLUSIVE ACCESS, UTILITIES, DRAINAGE AND PARKING EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CONTAINED IN AMENDED AND RESTATED JOINT DECLARATION OF RESTRICTIONS AND EASEMENTS CONCERNING OUTPARCELS MADE BY AND BETWEEN WAL-MART PROPERTIES, INC., A DELAWARE CORPORATION, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 14, 1988 AND KNOWN AS TRUST NUMBER 106953-02 AND DEERPATH LIMITED PARTNERSHIP, AND STATE BANK OF LAKE ZURICH, DATED JULY 26, 1990 AND RECORDED JULY 30, 1990 AS DOCUMENT 2929427, IN LAKE COUNTY, ILLINOIS.

PARCEL 5:

NON-EXCLUSIVE ACCESS, UTILITIES, DRAINAGE AND PARKING EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CONTAINED IN AMENDED AND RESTATED JOINT DECLARATION OF RESTRICTIONS AND EASEMENTS CONCERNING LAND RECORDED JULY 30, 1990 AS DOCUMENT 2929426, IN LAKE COUNTY, ILLINOIS.

PARCEL 6:

NON-EXCLUSIVE STORMWATER DETENTION AND ACCESS EASEMENTS OVER LOTS 2, 3, 6 AND 7 OF DEERPATH COURT RETAIL CENTER RECORDED AS DOCUMENT 2952457 AND OVER LOT 2 OF DEERPATH COURT RETAIL CENTER THIRD RESUBDIVISION RECORDED AS DOCUMENT 4781048 FOR THE BENEFIT OF PARCELS 1 AND 2, IN LAKE COUNTY, ILLINOIS.

NOTE: PARCELS 7 TO 13 - VILLAGE SQUARE RETAIL CENTER LLC

PARCEL 7:

LOTS 1 AND 4 IN VILLAGE SQUARE, A SUBDIVISION IN PART OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1993 AS DOCUMENT 3391751,

AND CORRECTED BY TWO CERTIFICATE OF CORRECTION DOCUMENTS, FIRST RECORDED SEPTEMBER 24, 1993 AS DOCUMENT 3404223 AND SECOND RECORDED SEPTEMBER 27, 1993 AS DOCUMENT 3404370, ALL IN LAKE COUNTY, ILLINOIS.

PARCEL 7A:

LOT 3A IN VILLAGE SQUARE RESUBDIVISION OF LOTS 2 AND 3 IN VILLAGE SQUARE SUBDIVISION, A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 17, 2000 AS DOCUMENT NO. 4568260, IN LAKE COUNTY, ILLINOIS

PARCEL 8:

PERPETUAL, NON-EXCLUSIVE, EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF LOTS 3A AND 4 (EXCEPTING THEREFROM THAT PART OF SAID EASEMENT FALLING IN LOT 3A AND LOT 4) AS CREATED BY DECLARATION OF EASEMENT FOR INGRESS AND EGRESS DATED OCTOBER 14, 1980 AND RECORDED NOVEMBER 13, 1980 AS DOCUMENT 2088569.

PARCEL 9:

NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS FOR THE BENEFIT OF LOT 4 AS CREATED BY RECIPROCAL EASEMENT

AGREEMENT DATED SEPTEMBER 30, 1993 AND RECORDED OCTOBER 7, 1993 AS DOCUMENT 3411283.

PARCEL 10:

NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AND PARCEL 1A UPON, OVER AND ACROSS THE PARKING AREAS, DRIVEWAYS, AISLES AND CURB CUTS AS GRANTED BY RECIPROCAL EASEMENT AGREEMENT DATED SEPTEMBER 8, 1993 AND RECORDED SEPTEMBER 21, 1993 AS DOCUMENT 3402013.

PARCEL 11:

NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS, ETC. FOR THE BENEFIT OF PARCEL 1 AND PARCEL 1A AS CREATED BY OPERATION AND EASEMENT AGREEMENT RECORDED JUNE 18, 1996 AS DOCUMENT 3839154.

PARCEL 12:

NON-EXCLUSIVE, EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 1A AS CREATED BY RECIPROCAL EASEMENT AGREEMENT RECORDED AUGUST 17, 2000 AS DOCUMENT 4568262 MADE BY AND AMONG LARCON LLC, A MICHIGAN LIMITED LIABILITY COMPANY (THE BANK TRACT) AND FIDELITY DEVELOPMENT GROUP, INC., F/K/A SFIRE BROS.DEVELOPMENT, AN ILLINOIS CORPORATION, (DEVELOPER) FOR THE FOLLOWING PURPOSES:

PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS UPON OVER, AND ACROSS THE PARKING AREAS, DRIVEWAYS, AISLES AND CURB CUTS SITUATED FROM TIME TO TIME ON THE BANK TRACT (THE BANK TRACT EASEMENT AREA); UTILITY PURPOSES IN, OVER ACROSS AND UNDER THE BANK TRACT (EXCEPT THOSE EASEMENTS UNDER THE BUILDING CURRENTLY LOCATED ON THE BANK TRACT) TO OBTAIN WATER, SPRINKLER, SEWER, GAS, ELECTRIC AND TELEPHONE SERVICE, INCLUDING THE RIGHT TO LOCATE THE MAINS, CONDUITS, PIPES, LINES AND OTHER FACILITIES IN, OVER, ACROSS AND UNDER THE BANK TRACT NECESSARY TO PROVIDE SUCH UTILITY SERVICES; FOR INGRESS AND EGRESS TO THE SIGNS TO KEEP, CHANGE, CONSTRUCT, REPAIR, MAINTAIN, RECONSTRUCT, REMOVE AND REPLACE THE SIGNS, AT DEVELOPER'S EXPENSE, ON THE BANK TRACT SIGN EASEMENT, ALL LOCATED ON THE FOLLOWING DESCRIBED PROPERTY:

LOT 2A IN VILLAGE SQUARE RESUBDIVISION OF LOTS 2 AND 3 IN VILLAGE SQUARE SUBDIVISION, A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 17, 2000 AS DOCUMENT NO. 4568260, IN LAKE COUNTY, ILLINOIS

PARCEL 13:

NON EXCLUSIVE SIGN EASEMENT IN FAVOR OF PARCEL 1 AND PARCEL 1A AS CREATED BY AGREEMENT REGARDING SIGN EASEMENTS MADE BY AND BETWEEN TACO BELL CORP. AND SFIRE BROS. DEVELOPMENT CORP. DATED SEPTEMBER 14, 1993 AND RECORDED SEPTEMBER 21, 1993 AS DOCUMENT 3402015, FOR THE PURPOSE OF RIGHT OF INGRESS AND EGRESS TO THE AREAS DESIGNATED AS SIGN EASEMENT TO CONSTRUCT, REPAIR, MAINTAIN, RECONSTRUCT AND REMOVE THE EXISTING SIGNS LOCATED ON SIGN EASEMENT NO. 1 AND SIGN EASEMENT NO.2

LOCATED ON THE FOLLOWING DESCRIBED PROPERTY.

LOT 6 IN VILLAGE SQUARE SUBDIVISION, BEING A SUBDIVISION IN PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1993 AS DOCUMENT NO. 3391751, IN LAKE COUNTY, ILLINOIS.