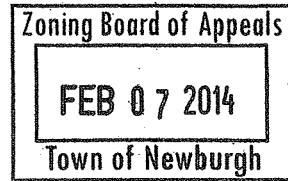


TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550



APPLICATION

OFFICE OF ZONING BOARD
(845) 566-4901

DATED: 11/20/13

TO: **THE ZONING BOARD OF APPEALS**
THE TOWN OF NEWBURGH, NEW YORK 12550

Lake Creek Properties, LLC and Lingo Associates, LLC
I (WE) Roderick H. Cushman PRESENTLY

RESIDING AT NUMBER 3690 Lake Creek Drive, Teton, WY

TELEPHONE NUMBER 732-623-8516

HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

- A USE VARIANCE
- AN AREA VARIANCE
- INTERPRETATION OF THE ORDINANCE
- SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

76-1-1.1 (TAX MAP DESIGNATION)

65 North Plank Road (STREET ADDRESS)

B (ZONING DISTRICT)

2. PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUBSECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

185 Attachment 11 - Schedule 11 - Use Interpretation

3. IF VARIANCE TO THE ZONING LAW IS REQUESTED:

- a) APPEAL IS MADE FROM DISAPPROVAL BY THE TOWN BUILDING INSPECTOR OR BUILDING PERMIT APPLICATION. SEE ACCOMPANYING NOTICE DATED: N/A
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: October 21, 2013

4. DESCRIPTION OF VARIANCE SOUGHT: Interpretation of
permitted use.

5. IF A USE VARIANCE IS REQUESTED: STRICT APPLICATION OF THE ZONING LAW WOULD PRODUCE UNNECESSARY HARDSHIP IN THAT:

- a) UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT IS DEPRIVED OF ALL ECONOMIC USE OR BENEFIT FROM THE PROPERTY IN QUESTION BECAUSE:
Interpretation that the existing McDonald's can remain after rebuilding a new facility in a slightly different location on-site and operating similar to existing conditions.
(ATTACH WITH THIS APPLICATION COMPETENT FINANCIAL EVIDENCE ESTABLISHING SUCH DEPRIVATION)
- b) THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:
Interpretation that the existing McDonald's can remain after rebuilding a new facility in a slightly different location on-site and operating similar to existing conditions.
- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:
Interpretation that the existing McDonald's can remain after rebuilding a new facility in a slightly different location on-site and operating similar to existing conditions.

- d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:
Interpretation that the existing McDonald's can remain after
rebuilding a new facility in a slightly different location on-site
and operating similar to existing conditions.

6. IF AN AREA VARIANCE IS REQUESTED:

- a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE:

- b) THE BENEFIT SOUGHT BY THE APPLICANT CAN NOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, BECAUSE:

- c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

- d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE:

- e) THE HARDSHIP HAS NOT BEEN SELF CREATED BECAUSE:

7. ADDITIONAL REASONS (IF PERTINENT):

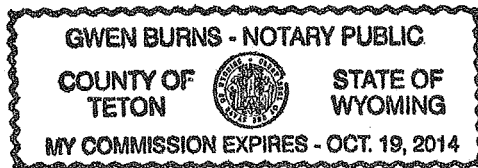
[Handwritten Signature]

PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 28 DAY OF JANUARY 2014

[Handwritten Signature]
NOTARY PUBLIC



NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.


617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
McDonald's USA LLC			
Name of Action or Project: McDonald's - Interpretation of the Ordinance			
Project Location (describe, and attach a location map): 65 North Plank Road, Town of Newburgh, Orange County, New York			
Brief Description of Proposed Action: Demolition of the existing 5,657 SF McDonald's restaurant and the reconstruction of a proposed 5,206 SF McDonald's restaurant with drive-thru, associated parking, circulation aisles, lighting, landscaping and utilities.			
Name of Applicant or Sponsor: Bohler Engineering / Bradford A. Bohler		Telephone: 908-668-8300	
		E-Mail: bbohler@bohlereng.com	
Address: 35 Technology Drive			
City/PO: Warren		State: New Jersey	Zip Code: 07059
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		_____ 2.8 acres	
b. Total acreage to be physically disturbed?		_____ 2.8 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 2.8 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>Bradford A. Bohler c/o Bohler Engineering</u>		Date: <u>2/5/2014</u>
Signature: 		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

PROXY

Roderick H. Cushman, DEPOSES AND SAYS THAT

HE/SHE RESIDES AT 3960 Lake Creek Drive

IN THE COUNTY OF Teton AND STATE OF WY

AND THAT HE/SHE IS THE OWNER IN FEE OF 65 North Plank
Road, Newburgh, NY 12550

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT HE/SHE HAS AUTHORIZED McDonald's USA, LLC

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 1-28-14 Roderick H. Cushman

OWNER'S SIGNATURE

Verna F. Cushman

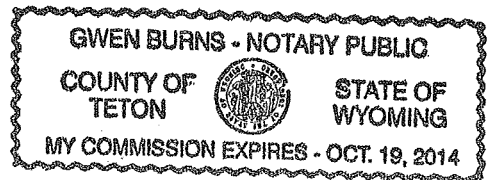
WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 28 DAY OF JANUARY 2014

Gwen Burns

NOTARY PUBLIC



January 24, 2014

Via Federal Express

Town of Newburgh
Zoning Board of Appeals
Old Town Hall
308 Gardnertown Road
Newburgh, New York 12550

Attention: Ms. Betty Gennarelli

**RE: McDonald's (031-0145)
65 North Plank Road (NYSH Route 32)
Block 1, Lot 1.1, Section 76
Town of Newburgh
Orange County, New York
BENJ# 110599**

Dear Ms. Gennarelli:

Per your request, this letter is to confirm that I am an officer of Lingo Associates, LLC at 3690 N. Lake Creek Drive, Wilson, WY 83014 and have the authority to sign on their behalf.

If you should have any questions or require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

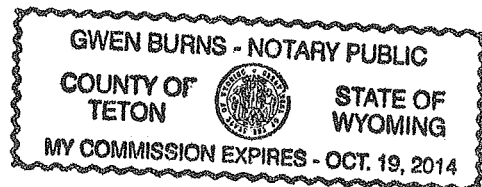


Roderick H. Cushman

Sworn to and subscribed before me

this 28 day of JANUARY 2014

Gwen Burns
Notary Public of the State of WYOMING



January 24, 2014

Via Federal Express

Town of Newburgh
Zoning Board of Appeals
Old Town Hall
308 Gardnertown Road
Newburgh, New York 12550

Attention: Ms. Betty Gennarelli

**RE: McDonald's (031-0145)
65 North Plank Road (NYSH Route 32)
Block 1, Lot 1.1, Section 76
Town of Newburgh
Orange County, New York
BENJ# 110599**

Dear Ms. Gennarelli:

Per your request, this letter is to confirm that I am an officer of Lake Creek Properties, LLC at 10614 Cypress Bend Drive, Boca Raton, FL 33498 and have the authority to sign on their behalf.

If you should have any questions or require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,

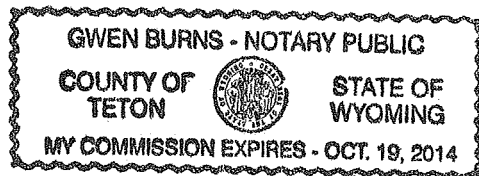


Roderick H. Cushman

Sworn to and subscribed before me

this 28 day of JANUARY 2014

Gwen Burns
Notary Public of the State of WYOMING



Dickover, Donnelly, Donovan & Biagi, LLP
Attorneys and Counselors at Law

James B. Biagi
David A. Donovan
Michael H. Donnelly
Robert J. Dickover

Successor Law Firm To:
Alexander Appelbaum, P.C., Florida, N.Y. (1915-1988)
Ludmerer & Vurno, Esqs., Warwick, N.Y.

28 Bruen Place
P.O. Box 610
Goshen, NY 10924
Phone (845) 294-9447
mail@dddblew.com
Fax (845) 294-6553
(Not for Service of Process)

October 21, 2013

Town of Newburgh
Zoning Board of Appeals
308 Gardnertown Road
Newburgh, New York 12550

RE: McDonalds, USA, LLC
76-1-1.1 (Zone B)
~~187~~ North Plank Road (13.20)

65

Members of the Board:

I write to you on behalf of and at the direction of the Town of Newburgh Planning Board. The above referenced applicant appeared before the planning board during its meeting of October 17, 2013. The applicant proposes to demolish and rebuild its existing drive-through McDonald's establishment. The property in question is located in the B zoning district of the town where fast food restaurants are not permitted.¹

It appears that this fast food establishment—in existence for quite some time—is a legally protected nonconforming use. In regard to such uses, Newburgh Code Section 185-19 provides, in pertinent part [*italics added*], as follows:

- A. Nonconforming uses. A nonconforming use may continue indefinitely, subject to the following provisions:

¹ In *Matter of O'Brien [Krishna Donuts, Inc]*, your board determined that the selling of "hamburgers, hot dogs, pizza, chicken and specialty cuisines" constitutes operation of a fast food establishment prohibited in the town's B zoning districts.

- (1) Alterations. A nonconforming use shall not be enlarged, extended, *reconstructed* or *restored*, except in accordance with Subsection B(2) herein, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever.

* * *

- B. Nonconforming buildings. A nonconforming building or a *building housing a nonconforming use* shall not be modified in any way described below, except as provided in Subsection C below:

* * *

- (2) Restoration after damage. A nonconforming building shall not be restored for other than a conforming use after *damage of more than 50% from any cause*, unless a prior nonconforming use is reinstated within one year of such damage; if the restoration of such building is not completed within said one-year period, any prior nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of the building. No enlargement of a nonconforming building shall be permitted as part of an allowed restoration.

* * *

- C. Nonconformity with bulk requirements.

- (1) Maintenance, repair, structural alteration, relocation, *reconstruction* or enlargement. Normal maintenance and repair, structural alteration, relocation, reconstruction or enlargement of a building *which does not house a nonconforming use*, but is nonconforming as to district regulations for lot area, lot width, lot depth, front, side or rear yards, building height, lot coverage, habitable floor area or other such dimensional regulation, is permitted if the same does not increase the degree

of or create any new nonconformity with such regulations in such buildings.

The applicant will be applying to your board for an interpretation and/or a use variance as well as area variances. The planning board refers this matter to you for consideration of the same. The interpretation in question requires addressing the following questions:

1. Does the applicant's proposal to demolish and reconstruct its building housing a nonconforming use constitute a prohibited *reconstruction* or *restoration* under subsection A(1) or does it constitute a permitted "[r]estoration after damage... from any cause" under subsection B(2)?
2. Does the restriction of authorized *reconstruction* contained within subsection C(1) only of buildings that do "not house a nonconforming use" prevent this applicant from carrying out the *restoration* authorized under subsection B(2) by virtue of the final phrase within subsection B authorizing subsection B(2) *restoration* only in accordance with subsection C?

Should you grant either a favorable interpretation or use variance relief to this applicant, you will need to address bulk table issues. Because the use in question is not permitted in the IB zoning district, there are no bulk table provision applicable here. Your board will have to grant variance relief in the nature of fixing bulk parameters for this use that has none provided.

The planning board also suggests that you conduct your SEQRA review of this application—to the extent that it does not constitute a Type II action—on an uncoordinated review basis.

Very truly yours,



MICHAEL H. DONNELLY

MHD/lrm

cc: Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

David A. Donovan, Esq.
Dickover, Donnelly, Donovan & Biagi, LLP
P.O. Box 610
Goshen, NY 10924

Bohler Engineering
35 Technology Drive
Warren, NJ 07059

O:\Irm\Land Use\Newburgh letters\ZBA referral - McDonalds.docx

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

TYPE IN BLACK INK:
NAME(S) OF PARTY(S) TO DOCUMENT

Roderick H. Cushman
TO
Lingo Associates, LLC

SECTION 76 BLOCK 1 LOT 1.1

RECORD AND RETURN TO:
(name and address)

Mark Leininger
Critchfield, Critchfield & Johnston, Ltd.
138 E. Jackson Street
Millersburg, OH 44654



THIS IS PAGE ONE OF THE RECORDING

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH
RECORDED INSTRUMENT ONLY

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED [checked] MORTGAGE SATISFACTION ASSIGNMENT OTHER

PROPERTY LOCATION

- 2089 BLOOMING GROVE (TN)
2001 WASHINGTONVILLE (VLG)
2289 CHESTER (TN)
2201 CHESTER (VLG)
2489 CORNWALL (TN)
2401 CORNWALL (VLG)
2600 CRAWFORD (TN)
2800 DEERPARK (TN)
3089 GOSHEN (TN)
3001 GOSHEN (VLG)
3003 FLORIDA (VLG)
3005 CHESTER (VLG)
3200 GREENVILLE (TN)
3489 HAMPTONBURGH (TN)
3401 MAYBROOK (VLG)
3689 HIGHLANDS (TN)
3601 HIGHLAND FALLS (VLG)
3889 MINISINK (TN)
3801 UNIONVILLE (VLG)
4089 MONROE (TN)
4001 MONROE (VLG)
4003 HARRIMAN (VLG)
4005 KIRYAS JOEL (VLG)

- 4289 MONTGOMERY (TN)
4201 MAYBROOK (VLG)
4203 MONTGOMERY (VLG)
4205 WALDEN (VLG)
4489 MOUNT HOPE (TN)
4401 OTISVILLE (VLG)
4600 NEWBURGH (TN)
4800 NEW WINDSOR (TN)
5089 TUXEDO (TN)
5001 TUXEDO PARK (VLG)
5200 WALLKILL (TN)
5489 WARWICK (TN)
5401 FLORIDA (VLG)
5403 GREENWOOD LAKE (VLG)
5405 WARWICK (VLG)
5600 WAWAYANDA (TN)
5889 WOODBURY (TN)
5801 HARRIMAN (VLG)

CITIES

- 0900 MIDDLETOWN
1100 NEWBURGH
1300 PORT JERVIS
9999 HOLD

NO PAGES 6 CROSS REF.
CERT. COPY ADD'L X-REF.
MAP# PGS.

PAYMENT TYPE: CHECK [checked]
CASH
CHARGE
NO FEE

Taxable CONSIDERATION \$
TAX EXEMPT
Taxable MORTGAGE AMT. \$

MORTGAGE TAX TYPE:

- (A) COMMERCIAL/FULL 1%
(B) 1 OR 2 FAMILY
(C) UNDER \$10,000
(E) EXEMPT
(F) 3 TO 6 UNITS
(I) NAT.PERSON/CR. UNION
(J) NAT.PER-CR.UN/1 OR 2
(K) CONDO

Donna L. Benson

DONNA L. BENSON
ORANGE COUNTY CLERK

RECEIVED FROM: [Signature]

RECORDED/FILED
01/28/2011/ 14:46:40
DONNA L. BENSON
County Clerk
ORANGE COUNTY, NY
FILE#20110009783
DEED C / BK 13121PG 1242
RECORDING FEES 325.00
TTX# 003268 T TAX 0.00
Receipt#1271812 jul5

STATE OF NEW YORK (COUNTY OF ORANGE) SS:
I, DONNA L. BENSON, COUNTY CLERK AND CLERK OF THE
SUPREME AND COUNTY COURTS, ORANGE COUNTY, DO
HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH
THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE
ON 01/28/11 AND THE SAME IS A CORRECT
TRANSCRIPT THEREOF. IN WITNESS WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

Donna L. Benson

COUNTY CLERK & CLERK OF THE SUPREME COUNTY COURTS.
ORANGE COUNTY NOVEMBER 15, 2013



CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 31st day of December, in the year 2010

BETWEEN
RODERICK H. CUSHMAN, AS TO A 25% INTEREST, WITH OFFICES AT
3690 N. Lake Creek Drive, Wilson, WY 83014

party of the first part, and

Lingo Associates, LLC, a Florida limited liability company, WITH OFFICES AT
3690 N. Lake Creek Drive, Wilson, WY 83014

TT
\$0.00

party of the second part,

WITNESSETH, that the party of the first part, in consideration of-----
-----ten-----dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, situate, lying and being at in the Town of Newburgh, County of Orange and State of New York, bounded and described as follows:

S-76

SEE SCHEDULE A ATTACHED HERETO AND INCORPORATED HEREIN

B-1

Premises are also known as
187 North Plank, Newburgh, NY

L-1.1

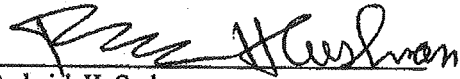
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

[signature on separate page]

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:


Roderick H. Cushman

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Nassau, ss:

On the 21st day of December in the year 2009
before me, the undersigned, personally appeared **Roderick H. Cushman**

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Robert N. Tabor

Signature of Notary Public

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____,

the _____ subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s) **Roderick H. Cushman**

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Signature and office of individual taking proof

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared _____,

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of _____, County of _____, ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the _____ day of _____ in the year _____, before me the undersigned personally appeared _____,

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the _____

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

Robert N. Tabor
Notary Public, State Of New York
Notary No. 017A4738380
Qualified in Nassau County
Commission Expires March 30, 2011

**Bargain and Sale Deed with
covenant against Grantors Acts**

SECTION 76

BLOCK 1

LOT 1.1

COUNTY OR TOWN Newburgh
TOWN OF Orange

Roderick H. Cushman

TO Lingo Associates, LLC, a Florida limited
liability company

RETURN BY MAIL TO:

MARK LEININGER
CRITCHFIELD, CRITCHFIELD & JOHNSTON,
LTD
138 E. JACKSON ST.
MILLERSBURG, OH 44654

SCHEDULE A

NEWBURGH, NEW YORK
187 North Plank
L/C: 031-0145

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND SITUATE IN THE TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK, BOUNDED AND DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT, MARKED BY AN IRON ROD, AT THE INTERSECTION OF THE WESTERLY LINE OF ROUTE #32 AND THE APPROXIMATE CENTER OF THE PAVEMENT IN GARDNERTOWN ROAD;
THENCE NORTH 32° 44' 37" WEST 235.69 FEET ALONG THE WESTERLY LINE OF ROUTE #32 AND ALONG THE REMAINS OF A STONE WALL, TO AN ANGLE POINT, MARKED BY AN IRON PIPE;
THENCE NORTH 30° 25' 45" WEST 56.18 FEET ALONG THE WESTERLY LINE OF ROUTE #32 AND ALONG THE REMAINS OF A STONE WALL TO A POINT, MARKED BY AN IRON PIPE, AT LEASED LANDS OF THE AMERICAN OIL CO.;
THENCE SOUTH 59° 34' 15" WEST 90.00 FEET ALONG SAID LANDS OF THE AMERICAN OIL CO. TO A POINT, MARKED BY AN IRON PIPE;
THENCE NORTH 38° 32' 25" WEST 110.02 FEET ALONG SAID LANDS OF THE AMERICAN OIL CO. TO A POINT, MARKED BY AN IRON ROD, IN THE NORTHERLY SIDE OF THE PAVEMENT IN GIDNEY AVENUE;
THENCE THE FOLLOWING FIVE COURSES AND DISTANCES ALONG THE PAVEMENT IN GIDNEY AVENUE;
(1) SOUTH 35° 22' 21" WEST 32.68 FEET TO A POINT MARKED BY AN IRON ROD; THENCE
(2) SOUTH 17° 24' 30" WEST 228.59 FEET TO A POINT MARKED BY AN IRON ROD; THENCE
(3) SOUTH 23° 34' 30" WEST 174.30 FEET TO A POINT MARKED BY AN IRON ROD; THENCE
(4) SOUTH 30° 02' 39" WEST 105.90 FEET TO A POINT MARKED BY AN IRON PIPE; THENCE
(5) SOUTH 37° 16' 26" WEST 80.00 FEET TO A POINT MARKED BY AN IRON ROD, AT THE INTERSECTION OF GARDNERTOWN ROAD;
THENCE NORTH 62° 14' 54" EAST 173.40 FEET ALONG THE SOUTHERLY SIDE OF THE PAVEMENT IN GARDNERTOWN ROAD TO A POINT, MARKED BY AN IRON ROD;
THENCE NORTH 66° 16' 42" EAST 192.84 FEET ALONG THE PAVEMENT IN GARDNERTOWN ROAD TO A POINT, MARKED BY AN IRON ROD;
THENCE NORTH 63° 36' 55" EAST 257.38 FEET ALONG THE PAVEMENT IN GARDNERTOWN ROAD TO THE POINT OR PLACE OF BEGINNING.

TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

Together with all the right, title, and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

Being the same premises conveyed to Roderick H. Cushman by deed recorded on February 3, 1992, in Liber 3554 CP 72 and on January 15, 2009 as Liber 12772 CP 18, 215, Liber 12772, CP 22, Liber 12772 CP 26, Liber 12772 CP 30, and Liber 12772 CP 34.

