



Steven M. Neuhaus
County Executive

Orange County Department of Planning Submittal Form for Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l, m, & n

Referral ID#
(County use only)

This form is to be completed by the local board having jurisdiction. Submittals from applicants will not be accepted unless coordinated with both the local board having jurisdiction and the County Department of Planning.

Please include all materials that are part of a "full statement" as defined by NYS GML §239-m (i.e. "all materials required by and submitted to the referring body as an application on a proposed action").

| | | | |
|---------------------------|--|--|----------------|
| Municipality: | Town of Newburgh | Tax Map #: | 76-1-1.1 |
| Local Referring Board: | Zoning Board of Appeals | Tax Map #: | |
| Applicant: | Lake Creek Properties LLC / Lingo Associates LLC | Tax Map #: | |
| Project Name: | McDonald's Restaurant | Local File No.: | Planning Ref 1 |
| Location of Project Site: | 65 North Plank Road (NYS Rte 32) | Size of Parcel*: | 2.1 Acres |
| Reason for County Review: | On NYS Route 32 | *If more than one parcel, please include sum of all parcels. | |
| | | Current Zoning District (include any overlays): | B |

Type of Review:

Comprehensive Plan Update/Adoption

Zoning Amendment

Zoning District Change from _____ to _____

Ordinance Modification (cite section): _____

Local Law

Site Plan

Sq. feet proposed (non-residential only): _____

Which approval is the applicant currently seeking? SKETCH / PRELIM / FINAL (circle one)

Subdivision

Number of lots proposed: _____

Which approval is the applicant currently seeking? SKETCH / PRELIM / FINAL (circle one)

Special Use Permit

Lot Line Change

Variance

(AREA) / USE (circle one) MAX. Allowed Signage, Front Yard Setback, Minimum parking lot separate into intersections, minimum off-street loading spaces & allowing drive thru to be on NYS Rte 32

Other

Is this an update to a previously submitted referral? YES / NO (circle one)

Local board comments or elaboration:

Signature of local official: *[Signature]* Date: 12/18/17

Chairperson: _____ Title: Chairperson Zoning Board of Appeals

Municipal Contact Phone Number: 845-566-4901

If you would like the applicant to be cc'd on this letter, please provide the applicant's address:

Please return, along with full statement, to: Orange County Dept. of Planning 124 Main St. Goshen, NY 10924
Question or comments, call: 845-615-3840 or email: planning@orangecountygov.com



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

November 21, 2017

DATED: _____

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

I (WE) McDonald's USA, LLC / Lake Creek Properties, LLC
Lingo Associates, LLC PRESENTLY

RESIDING AT NUMBER 111 Wood Avenue South, Suite 400, Islelin, NJ 08830

TELEPHONE NUMBER (914) 683-1212 (by Harris Beach, PLLC - Darius Chafizadeh, Esq.)

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:

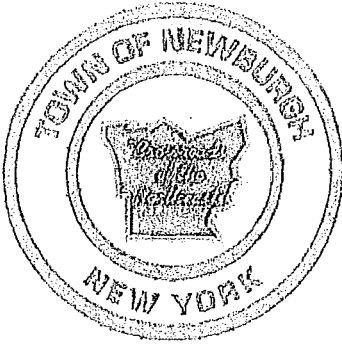
Section 76, Block 1, Lot 1.1 (TAX MAP DESIGNATION)

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).

Please refer to attached letter addendum.



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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: _____
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: November 8, 2017

4. DESCRIPTION OF VARIANCE SOUGHT: Please refer to attached addendum.

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:

Not applicable. No use variance sought.

(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:

Not applicable.

- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:

Not applicable.



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

Not Applicable.

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:

Please refer to attached letter addendum.

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:

Please refer to attached letter addendum.

c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

Please refer to attached letter addendum.

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

Please refer to attached letter addendum.

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

Please refer to attached letter addendum.



TOWN OF NEWBURGH

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OFFICE OF ZONING BOARD
(845) 566-4901

7. ADDITIONAL REASONS (IF PERTINENT):

Please refer to attached letter addendum.

PETITIONER (S) SIGNATURE

Harris Beach, PLLC, as attorneys for McDonald's USA, LLC
By: Darius P. Chafizadeh

STATE OF NEW YORK: COUNTY OF WESTCHESTER:

SWORN TO THIS 8th DAY OF December 2017

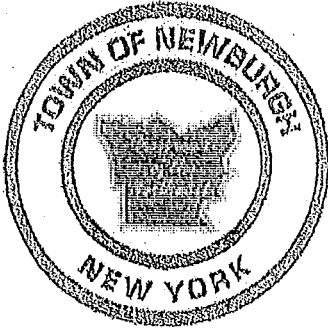
Dawn F. Nodarse
NOTARY PUBLIC

DAWN F. NODARSE
NOTARY PUBLIC STATE OF NEW YORK
LC. #01NO5069427
COMM. EXP. 11-25-2018
COMMISSION IN WESTCHESTER COUNTY

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.

(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).

(NOTE: BOARD MEMBERS MAKE SITE VISITS TO ALL THE PROPERTIES)



TOWN OF NEWBURGH

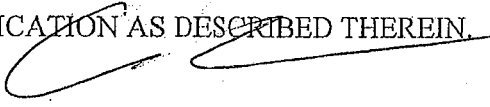
Crossroads of the Northeast

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

PROXY

~~Lingo Associates, LLC~~, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT 3690 Lake Creek Drive, Jackson
IN THE COUNTY OF Teton AND STATE OF Wyoming
AND THAT HE/SHE IS THE OWNER IN FEE OF 187-189 N.
Plank - Newburgh, New York

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED Harris Beach, PLLC
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 12/6/17 

OWNER'S SIGNATURE

 Antonio Stone

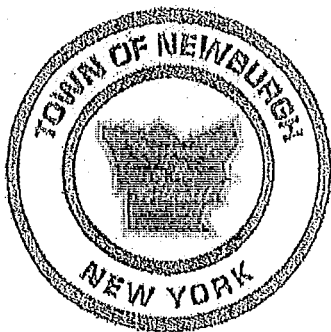
WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ~~ORANGE~~ ^{Nassau}

SWORN TO THIS 6th DAY OF December, 2017

Giuseppe Gallizzi
Notary Public, State of New York
No. 01GA6347397
Qualified in Nassau County
Commission Expires 09/06/20 20


NOTARY PUBLIC



TOWN OF NEWBURGH

Crossroads of the Northeast

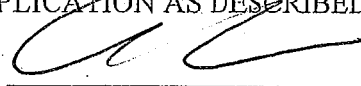
ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

PROXY


~~Lake Creek Properties, LLC~~, DEPOSES AND SAYS THAT
HE/SHE RESIDES AT ~~3690 Lake Creek Drive, Jackson~~
IN THE COUNTY OF Teton AND STATE OF Wyoming
AND THAT HE/SHE IS THE OWNER IN FEE OF 187-189 N.

Plank Newburgh, New York

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-
TION AND THAT HE/SHE HAS AUTHORIZED ~~Harris Beach PLLC~~
TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: 12/6/17 

OWNER'S SIGNATURE

 Antonio Stancio

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ^{Nassau} ~~ORANGE~~:

SWORN TO THIS 6th DAY OF December, 2017

Giuseppe Gallizzi
Notary Public, State of New York
No. 01GA6347397
Qualified in Nassau County
Commission Expires 09/08/2020


NOTARY PUBLIC

Short Environmental Assessment Form

Part 1 - Project Information

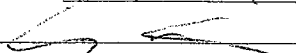
Instructions for Completing

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 | | | |
|--|--|--|---------------------------------|
| Name of Action or Project: McDonald's Restaurant | | | |
| Project Location (describe, and attach a location map): 65 North Plank Road, Section 76; Block 1; Lot 1.1, Town of Newburgh, Orange County, New York | | | |
| Brief Description of Proposed Action: Proposed rebuild and improvements to the existing McDonald's Restaurant on the subject site. Proposed improvements include the demolition of the existing building and construction of a new 5,206 SF building with 138 indoor seats. Related improvements will include a two (2) lane, side-by-side drive-thru system, modifications to the parking area to include seventy (70) parking spaces, repaving of the parking area, as well as upgrades to the site drainage, utilities, lighting, signage, and landscaping. The improvements will result in an overall decrease of approximately 0.11 acres in impervious surfaces for a total lot coverage of 1.60-acres or 57%. | | | |
| Name of Applicant or Sponsor: Bohler Engineering / Bradford A. Bohler, P.E. | | Telephone: (908) 668-8300 E-Mail: bbohler@bohlereng.com | |
| Address: 35 Technology Drive | | | |
| City/PO: Warren | | State: NJ | 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 type="checkbox"/> |
| 3.a. Total acreage of the site of the proposed action? | | _____ 2.8 acres | |
| b. Total acreage to be physically disturbed? | | _____ ±1.0 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 checked="" 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 | | | |

| | NO | YES | N/A |
|--|---|--|--------------------------|
| <p>5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?</p> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?</p> | NO <input type="checkbox"/> | YES <input checked="" type="checkbox"/> | |
| <p>7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| <p>8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input type="checkbox"/> | YES <input checked="" type="checkbox"/> | |
| <p>9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____</p> | NO <input type="checkbox"/> | YES <input checked="" type="checkbox"/> | |
| <p>10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____</p> | NO <input type="checkbox"/> | YES <input checked="" type="checkbox"/> | |
| <p>11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____</p> | NO <input type="checkbox"/> | YES <input checked="" type="checkbox"/> | |
| <p>12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| <p>13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| <p>14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban</p> | | | |
| <p>15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| <p>16. Is the project site located in the 100 year flood plain?</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| <p>17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____</p> | NO <input checked="" type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input type="checkbox"/> | YES <input type="checkbox"/> | |
| | NO <input type="checkbox"/> | YES <input type="checkbox"/> | |

| | | |
|--|--|--|
| <p>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: _____ _____ _____</p> | <p>NO</p> <p><input checked="" type="checkbox"/></p> | <p>YES</p> <p><input type="checkbox"/></p> |
| <p>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: _____ _____ _____</p> | <p>NO</p> <p><input checked="" type="checkbox"/></p> | <p>YES</p> <p><input type="checkbox"/></p> |
| <p>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: _____ _____ _____</p> | <p>NO</p> <p><input checked="" type="checkbox"/></p> | <p>YES</p> <p><input type="checkbox"/></p> |
| <p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>BARRONS ENTER</u> Date: <u>11/14/17</u></p> <p>Signature: <u></u></p> | | |

445 HAMILTON AVENUE, SUITE 1206
WHITE PLAINS, NY 10601
(914) 683-1200

DARIUS P. CHAFIZADEH
PARTNER
DIRECT: (914) 683-1212
FAX: (914) 683-1210
DCHAFIZADEH@HARRISBEACH.COM

December 8, 2017

VIA IN HAND DELIVERY

Hon. Chairman James E. Manley
& Members of the Zoning Board of Appeals of the Town of Newburgh
Town of Newburgh
308 Gardnertown Road
Newburgh, New York 12550

**Re: McDonald's Restaurant/31-0145/01712
65 North Plank Road (Route 32)
Section 76, Block 1, Lot 1.1.
Town of Newburgh
Orange County, New York (the "Property")**

Dear Chairman Manley:

This firm represents the applicant, McDonald's USA, LLC (the "Applicant"), in its application to rebuild the McDonald's restaurant located on the above-referenced Property, which requires site plan approval from the Planning Board (Project No. 2017-26) and the grant of five (5) area variances from the Zoning Board of Appeals (the "Project"). Please accept this letter as an addendum to the official application form submitted by the Applicant for the requested area variances.

We enclose, together with one original and notarized Zoning Board application form, the following required application materials:

- The original receipt(s) issued by the Town Clerk for the required application fee and public hearing fee, in the amounts of \$500.00 and \$50.00, respectively;
- One (1) copy of the Planning Board's attorney's referral letter to the Zoning Board, dated November 8, 2017;
- Eleven (11) signed and sealed sets of the site plan documents for the Project prepared by Bohler Engineering, dated August 15, 2017;
- Eleven (11) signed and sealed copies of the ALTA/ACSM Land Title Survey prepared by Control Point Associates, Inc., dated October 26, 2011, revised October 2, 2013 (rev #3);

- One (1) certified copy of each of the two deeds for the property (Lake Creek Properties, LLC [75% fee ownership] and Lingo Associates, LLC [25% fee ownership]).
- One (1) original copy of the Town Assessor's list of all property owners within five hundred feet (500') from the exterior boundaries of the Property;
- One (1) copy each of four (4) photographs of the Property, taken from four (4) different angles;
- One (1) fully executed original copy of the Short Environmental Assessment Form – Part 1, for the Project;
- One (1) original and notarized proxy for each of the two (2) fee owners of the Property, Lake Creek Properties, LLC and Lingo Associates, LLC, authorizing Harris Beach, PLLC, to represent the Applicant for the instant application.

Addendum to Application Form¹

1. Location of the Property:

Section 76, Block 1, Lot 1.1
65 North Plank Road
B Zoning District

2. Provisions of the Town's Zoning Law applicable to the instant application:

§ 185-18C.4B
§ 185-13(D)(6)(b)
§ 185-13(B)(6)
§ 185-42(1)
§ 185-14(B)(1)(c)

3. Referral Notice

The Planning Board referred the application to the Zoning Board for the instant area variance application by letter dated November 8, 2017.

¹ The numbered and lettered headings and subheadings within this letter correspond to the numbered sections and subsections within the Zoning Board's official application form.

4. Description of Variances Sought:

The Applicant is seeking the Zoning Board's grant of the following five (5) area variances:

1. A variance from § 185-18C.4B of the Zoning Law to allow the proposed 57.1' front-yard setback from the location of the roof canopy of the proposed restaurant to North Plank Road, where the permitted minimum front yard setback is 60'.
 2. A variance from § 185-13(D)(6)(b) of the Zoning Law to allow (a) an ingress to the parking lot of the Property within 135' of the intersection of North Plank Road and Gidney Avenue/Noel Drive, and (b) an egress from the parking lot of the Property within 120.8' of the intersection of North Plank Road (Route 32) and Gardnertown Road, where 150' is required from both the southerly egress and northerly ingress to the respective intersections.
 3. A variance from § 185-13(B)(6) of the Zoning Law to allow for no off-street loading spaces where at least one is required.
 4. A variance from § 185-42(1) of the Zoning Law to allow for a drive-through aisle exit onto Route 32, where the existence of such a lane is prohibited.
 5. A variance from § 185-14(B)(1)(c) of the Zoning Law to allow a total sign area of 833.1 square feet where 768.49 square feet is the maximum sign area permitted.
5. Not applicable. No use variance is sought.
6. Considerations for the grant of area variances:

- a) The requested area variances will not produce an undesirable change in the character of the neighborhood.

The proposed reconstruction of the Property will not produce an undesirable change in the character of the neighborhood since the restaurant already exists on the Property, and the immediate neighborhood includes other fast food restaurants, such as Dunkin' Donuts and a Subway restaurant. The Applicant proposes to demolish the existing McDonald's restaurant on the Property, which has become dated over time, and rebuild a new and improved restaurant, which will include more modern design features and a more efficient drive-through configuration with two ordering stations, and which will generally improve the circulation of traffic through the restaurant's parking lot. The improvements to the Property will include landscaping features which will be cohesive with the surrounding neighboring properties and generally enhance the aesthetic appeal of

the Property. Thus, the proposed Project will produce a desirable change in the character of the neighborhood.

- i. The variance requested for the proposed front-yard setback, 2.9', is de minimus (57.1' proposed versus 60' required), especially considering that the front-yard setback of the current restaurant is only 36.3'.
 - ii. The variances for (a) the ingress for off street parking approximately 135' from an intersection and egress approximately 120.8' from an intersection, (b) no off-street loading space on the Property, and (c) a drive-through aisle exiting onto Route 32, will not change the character of the neighborhood because those three conditions are existing nonconformities with respect to the Property. Further, delivery trucks are able to make deliveries to the Property without a dedicated loading space since there is room for those trucks to park near the rear entrance of the restaurant, close to where the walk-in refrigerator is located. The entrance to the drive-through from Route 32 will not cause any traffic back-up onto Route 32 since there is a long distance between the proposed ordering stations and the state highway. Further, the additional ordering station proposed by the Applicant will create two queues for placing orders, and thus reduce the length of any line of cars waiting to place orders.
 - iii. The requested variance for the overall square footage of the signage will also not negatively impact the character of the neighborhood. The current Property has 733 square feet of signage. The majority of the increased signage for the proposed Project is a result of the addition of a second ordering station and menu board for the drive-through (approximately 65.25 additional square feet of drive-thru signage). There is also approximately 30.85 additional square feet in wall-mounted signage than that which currently exists on the Property. That increased signage will not create any discernable difference in the character of the restaurant, and resultantly, will not produce an undesirable change in the character of the surrounding neighborhood.
- b) The benefit sought by the Applicant cannot be achieved by some method, feasible for the Applicant to pursue, other than the requested area variances.

Under the current site plan for the proposed Project there are no other alternatives or methods to be considered other than the area variances requested.

- c) The requested area variances are not substantial.

As noted above, the requested variance for the proposed front-yard setback, a 57.1' setback as opposed to the 60' required setback, is de minimus, especially since the front-yard setback for the current restaurant is approximately 36.5'. Further, the only portion the proposed building which will be within the 60'

setback is the roof canopy and the overhang above the front entrance of the restaurant.

The requested variances for (a) the entrance/exit for off-street parking distance from an intersection, (b) no off-street loading space on the Property, and (c) a drive-through aisle exiting onto Route 32, are not substantial because they are nonconformities that currently exist on the Property.

The requested area variance for overall square footage of signage on the Property, although not insubstantial on a pure percentage-based analysis, will not have a discernible impact on the character of the neighborhood or any adverse environmental impacts. Thus, the variance should not be denied based on its numerical substantiality alone. *See Baker v. Brownlie*, 248 A.D.2d 527; 529-530 (2d Dep't 1998).

- d) The proposed area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or B District.

The proposed area variances will have only a beneficial impact on the physical and environmental conditions in the neighborhood. As explained above, the Applicant proposes an updated and aesthetically pleasing design for the restaurant, and landscape elements that will enhance the attractiveness of the Property. Three of the requested area variances coincide with pre-existing non-conformities on the property. Much of the new additional signage is necessary for the operation of the drive-through and is visible only when entering the Property as a patron of the drive-through or dine-in restaurant. Additionally, there is not a dramatic increase in signage from what currently exists on the Property. Further, the proposed restaurant will include new appliances and a more efficient exhaust system than that which the current restaurant uses. Thus, the proposed variances, and Project in general, will not have an adverse effect on the physical or environmental conditions in the neighborhood or the Town's B District.

- e) That the hardship may be self-created, alone, does not require denial of the requests area variances.

Although one of the factors which must be considered is whether an applicant's difficulty which requires an area variance is self-created, that factor alone is not determinative in a zoning board's decision whether to grant or deny the application. *See Peccoraro v. Humenik*, 258 A.D.2d 465, 465 (2d Dep't 1999). Here, although the Applicant's need for the requested area variances may be self-created, the application should not be denied for that reason.

Conclusion

Based on the foregoing, the instant application presents an appropriate request for relief from the strict application of the relevant sections of the Town's Zoning Law. Thank you for your consideration and attention to this matter. Should you have any questions or comments please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Darius P. Chafizadeh', with a large, stylized initial 'D'.

Darius P. Chafizadeh

DPC:mtd
Enclosures

cc: Brian Sheedy, Esq., McDonald's USA, LLC
Bill Weisgerber, McDonald's USA, LLC
Bohler Engineering

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

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@dddllp.com
Fax (845) 294-6553
(Not for Service of Process)

November 8, 2017

Town of Newburgh Zoning Board of Appeals
308 Gardnertown Road
Newburgh, NY 12550

RE: McDonalds Route 32 (17.26)
65 North Plank Road (Zone B)
Section 76, Block 1, Lot 1.1

Members of the Board:

I write to you as the attorney for the Town of Newburgh Planning Board. The above referenced applicant appeared before the planning board during its meeting of November 2, 2017 seeking site plan approval to demolish and rebuild a McDonald's Restaurant. In order to accomplish this objectives, variances will be required. Therefore, the planning board has asked me to refer this matter to you for consideration of granting the following variances:

- An area variance allowing a front yard setback from Route 32 of 57.1 feet where 60 feet is required;
- An area variance allowing a parking lot entrance separation from the intersection of 120.8 feet where 150 feet is required;
- A variance allowing zero off-street loading spaces where at least one is required;
- A variance allowing a drive-through isle to Route 32 where the existence of such a lane is prohibited to a State Highway; and

- An area variance allowing a total sign area of 833.1 feet where 766.49 is the maximum area permitted.

The planning board has no particular matters to bring to your attention. If your review of this matter is not a Type II action under the New York State Environmental Quality Review Act the planning board sees no reason why your review of this project cannot be conducted on an uncoordinated review basis.

Very truly yours,

A handwritten signature in black ink, appearing to read "MHD", written in a cursive style.

MICHAEL H. DONNELLY

MHD/lrm

cc: Town of Newburgh Planning Board
Darius P. Chafizadeh, Esq.

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 MORTGAGE SATISFACTION ASSIGNMENT OTHER

PROPERTY LOCATION

- 2089 BLOOMING GROVE (TN) 4289 MONTGOMERY (TN)
2001 WASHINGTONVILLE (VLG) 4201 MAYBROOK (VLG)
2289 CHESTER (TN) 4203 MONTGOMERY (VLG)
2201 CHESTER (VLG) 4205 WALDEN (VLG)
2489 CORNWALL (TN) 4489 MOUNT HOPE (TN)
2401 CORNWALL (VLG) 4401 OTISVILLE (VLG)
2600 CRAWFORD (TN) 4600 NEWBURGH (TN)
2800 DEERPARK (TN) 4800 NEW WINDSOR (TN)
3089 GOSHEN (TN) 5089 TUXEDO (TN)
3001 GOSHEN (VLG) 5001 TUXEDO PARK (VLG)
3003 FLORIDA (VLG) 5200 WALLKILL (TN)
3005 CHESTER (VLG) 5489 WARWICK (TN)
3200 GREENVILLE (TN) 5401 FLORIDA (VLG)
3489 HAMPTONBURGH (TN) 5403 GREENWOOD LAKE (VLG)
3401 MAYBROOK (VLG) 5405 WARWICK (VLG)
3689 HIGHLANDS (TN) 5600 WAWAYANDA (TN)
3601 HIGHLAND FALLS (VLG) 5889 WOODBURY (TN)
3889 MINISINK (TN) 5801 HARRIMAN (VLG)
3801 UNIONVILLE (VLG)
4089 MONROE (TN)
4001 MONROE (VLG) 0900 MIDDLETOWN
4003 HARRIMAN (VLG) 1100 NEWBURGH
4005 KIRYAS JOEL (VLG) 1300 PORT JERVIS
9999 HOLD

NO PAGES 6 CROSS REF.
CERT. COPY ADD'L X-REF.
MAP# PGS.
PAYMENT TYPE: CHECK 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: 1st American

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, ANN G. RABBITT, 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 (IT) RECORDED IN MY OFFICE ON 1/28/11 AND THE SAME IS A CORRECT TRANSCRIPT THEREOF IN WITNESS WHEREOF I HAVE HEREBY SET MY HAND AND AFFIXED MY OFFICIAL SEAL. 11/15/17 County Clerk & Clerk of the Supreme County Courts, ORANGE COUNTY



— Bargain and Sale Deed, with Covenant against Grantor's Acts — Individual or Corporation (Single Sheet)

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:

5-76

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.

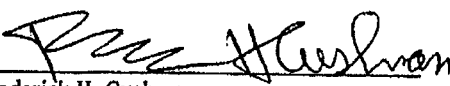
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

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

Robert N. Tabor
Notary Public, State Of New York
No. 01744/38980
Qualified in Nassau County
Commission Expires March 30, 2011

**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).

**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.

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

RHC Associates

TO

Lake Creek Properties, LLC

SECTION 76 BLOCK 1 LOT 11

RECORD AND RETURN TO:
(name and address)



Jill Alliosn Weiner
Huber Lawrence & Abell
605 Third Avenue
New York, NY 10158

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 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)
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- 5489 WARWICK (TN)
- 5401 FLORIDA (VLG)
- 5403 GREENWOOD LAKE (VLG)
- 5405 WARWICK (VLG)
- 5600 WAWAYANDA (TN)
- 5889 WOODBURY (TN)
- 5801 HARRIMAN (VLG)

NO PAGES 5 CROSS REF. _____
 CERT. COPY _____ ADD'L X-REF. _____
 MAP# _____ PGS. _____

PAYMENT TYPE: CHECK
 CASH _____
 CHARGE _____
 NO FEE _____

Taxable
 CONSIDERATION \$ _____
 TAX EXEMPT _____

Taxable
 MORTGAGE AMT. \$ _____
 DATE _____

CITIES

- 0900 MIDDLETOWN
- X 1100 NEWBURGH
- 1300 PORT JERVIS
- 9999 HOLD

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: Huber

LIBER 5575 PAGE 250

STATE OF NEW YORK (COUNTY OF ORANGE) SS:
I, ANN G. RABBITT, 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 July 16, 2001 AND THE SAME IS A CORRECT
TRANSCRIPT THEREOF. IN WITNESS WHEREOF, I HAVE
HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.

Ann G. Rabbitt

COUNTY CLERK & CLERK OF THE SUPREME COUNTY COURTS,
ORANGE COUNTY
November 15, 2017

LIBER 5575 PAGE 250
ORANGE COUNTY CLERKS OFFICE 41392 DAB
RECORDED/FILED 07/16/2001 11:58:51 AM
FEES 50.00 EDUCATION FUND 5.00
SERIAL NUMBER: 011258
DEED CNTL NO 59592 RE TAX .00

BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S
ACTS (INDIVIDUAL OR CORPORATION)

THIS INDENTURE, made the 11th day of March, two thousand and one,
between RHC Associates, 3690 Lake Creek Drive, Jackson, WY 83001,
party of the first part, and
Lake Creek Properties, LLC, c/o Swickle, 10614 Cypress Bend Drive, Boca Raton, FL 33498,
party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars, lawful money of the
United States, 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 of the party of the first part's 75% undivided interest in that certain plot, piece or parcel of land,
with the buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County
of Orange and State of New York and described in Schedule A attached hereto and made a part hereof,

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 interest in 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, 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 costs 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.

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

IN PRESENCE OF:

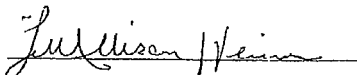
RHC Associates

Verena F. Cushman

Roderick H. Cushman
By: Roderick H. Cushman, *pres*

STATE OF NEW YORK)
)
COUNTY OF New York) ss.:

On March 14th, 2001 before me, the undersigned, personally appeared
Roderick W. 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 signatures(s) on the
instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

JILL ALLISON WEINER
NOTARY PUBLIC, State of New York
No. 0144660512716
Qualified in New York County
Commission Expires August 31

NEWBURGH, NEW YORK

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.

Lake Creek Properties, LLC.
 Lingo Associates, LLC
 6 S North Plank Road
 (76-1-1.1)

SECTION 75

