

A G E N D A

SPECIAL MEETING OF THE PLAN COMMISSION OF THE VILLAGE OF WILLOWBROOK TO BE HELD ON WEDNESDAY, DECEMBER 4, 2013 AT 7:00 P.M. AT THE VILLAGE HALL, 7760 QUINCY STREET, IN THE VILLAGE OF WILLOWBROOK, DUPAGE COUNTY, ILLINOIS

1. CALL TO ORDER
2. ROLL CALL
3. OMNIBUS VOTE AGENDA
  - A. Waive Reading of Minutes (APPROVE)
  - B. Minutes - Regular Meeting October 2, 2013 (APPROVE)
  - C. Minutes - Village Board Meeting October 14 and October 28, 2013
4. PLAN COMMISSION CONSIDERATION: Waiver of certain requirements of 9-10-5(B) and acceptance of an easement to satisfy off-street parking requirements for the Willow Commons Shopping Center.
5. PLAN COMMISSION CONSIDERATION: Zoning Hearing Case 13-06: Special Use/Beyond the Stars Performing Arts Academy; Willow Commons Shopping Center, 305-341 75<sup>th</sup> Street
  - A. PUBLIC HEARING
  - B. DISCUSSION
6. VISITOR'S BUSINESS: (Comments are Limited to Three Minutes Per Person)
7. COMMUNICATIONS
8. ADJOURNMENT

**VILLAGE OF WILLOWBROOK**  
**STAFF REPORT TO THE PLAN COMMISSION**

**Meeting Date:** December 4, 2013

**Prepared By:** Jo Ellen Charlton, Planning Consultant

**Request:** Waiver of certain requirements of 9-10-5(B) and acceptance of an easement to satisfy off-street parking requirements for the Willow Commons Shopping Center.

This request is being made at this time because the shopping center wishes to execute a lease with a tenant that requires a special use. Technically, since the off-site parking has never been authorized pursuant to the current Zoning Ordinance, the shopping center does not have adequate on-site parking to meet the requirements, which would be grounds for denial of the special use. This request is being made in conjunction with PC 13-06, a special use for a commercial school, so that site accommodating the special use can be considered as meeting the parking requirements of the Zoning Ordinance.

**Request By:** Thomas G. Jaros, Legal Counsel for 305-341 75<sup>th</sup> Street (Willowbrook), L.L.C

**Location:** 305-341 75<sup>th</sup> (Southwest corner of 75<sup>th</sup> and Clarendon Hills Road, excluding the former Kentucky Fried Chicken site)

**PINs:** 09-27-402-008

**Existing Zoning:** B-2

**Existing Land Use:** Mixed Use Retail

**Property Size:** 5.4 acres

<b>Surrounding Land Use:</b>	<i>Use</i>	<i>Zoning</i>
<i>North</i>	Hinsdale South Football Stadium.	Darien
<i>South</i>	Multiple Family	R-5
<i>East</i>	Single-Family Residential	R-2
<i>West</i>	Parking and Vacant Land	B-2

**Documents Attached:** Parking Easement Agreement between 305-341 75<sup>th</sup> Street (Willowbrook), L.L.C and The Chicago Title Land Trust Company, Successor Trustee, as Trustee and Trust Agreement Dated August 2, 1988 and Known As Trust Number 362.

**Necessary Action By Plan Commission:** Make a recommendation to the Mayor and Village Board. Sample motion provided on Page 5.



to give the new banquet facility owner assurances that adequate parking would continue to be available for the business. It was also intended to precede a plat of subdivision which the two parties had been working on together. Although the pending subdivision is referenced in the easement agreement, the execution of the subdivision has been delayed by cost and coordination issues by and between the parties. When another request for special use within the shopping center recently came up, however, and it was clear that finalizing a subdivision was still months away, staff advised the shopping center that the reliance on the adjoining property to the west via the easement needed to be acknowledged as required by Section 9-10-5(B) of the Zoning Ordinance. This section of the ordinance reads in its entirety as follows:

- (B) Location: After the effective date of this chapter, required accessory off street parking spaces shall be located on the same lot as the principal use or structure, except when the plan commission recommends and the board of trustees authorizes a specific use, for which the location of all or a part of the required off street parking spaces may be located on a lot that does not contain the principal use or structure. In cases where parking facilities are permitted on a lot other than the lot on which the structure or use served is located, a covenant running with the land must be recorded in the office of the recorder of deeds of DuPage County, Illinois, on the lot upon which the accessory off street parking is located which prohibits any other use on that lot, and a copy of the recorded covenant certified by the recorder of deeds of DuPage County, Illinois, must be deposited with the director of municipal services. The covenant shall not be released until such time as either one of the following occurs: (Ord. 97-O-05, 1-27-1997; amd. Ord. 05-O-32, 11-14-2005)
1. The structure on the lot containing the principal use is removed and the principal use is terminated.
  2. Another lot of the required size is properly developed and used for the required accessory off-street parking in lieu of the initial lot used for accessory off-street parking with the same requirements, covenants and conditions attaching to such substitute accessory use lot as approved by the same authority as required for approval of such initial lot.

In short, this section of the ordinance requires the Plan Commission to recommend and the Village Board approve a covenant for off-site parking. By ordinance, this covenant must indicate that nothing else will be allowed to be constructed on the lot until the covenant is released by the Village if and only when the parking is not required, or if an alternative location is developed and the required covenant is recorded against that property. When the parties began negotiating the attached lease and anticipated a quick turn around on the subdivision process, this required covenant was not going to be a problem. Both parties understood that the subdivision they were discussing would create two lots. One lot would be for the continued use as parking for the shopping center that could be encumbered by the covenant required by the Zoning Ordinance; the second lot would be vacant and marketed as a buildable lot, and would not be subject to any restrictive covenants. Now that the subdivision is being delayed, the owner of the parking does not want to encumber the whole property as required by the Zoning Ordinance which says he can't build anything else on the lot. Legal counsel has therefore advised staff that the shopping center owner needed to request a waiver of the covenant requirements of 9-10-5(B) and accept all or part of the easement as satisfying the requirements for off-site parking.

The easement is very complex. It references both the "Existing Parking" Lot, consisting of the 129 parking spaces that exist today; and the "Modified Lot", which would result based on defined "trigger" points in the future. The "modified lot" would be located at the south end of the existing lot and would consist of 38 parking spaces. This was done in order to afford the shopping center the right to use the existing parking until a buyer/user of the balance of the property was identified. At that time, the existing parking lot would be modified so that only 38 parking spaces would be available for the shopping center, and the balance of the property would be utilized for development. This reduced number of parking spaces in the Modified Lot relies on the shopping center owner securing the Village's approval of "shared parking" as required by the Zoning Ordinance at some point in the future, which would allow for a 10 percent reduction in required parking based on the differing peak times tenants use parking. However, because many of those details are

yet to be worked out as part of the subdivision, staff is recommending that the current approval be granted only to acknowledge the currently existing 129 parking spaces. In other words, the shopping center will have to come back and ask for the shared parking approval if/when one of the defined "triggers" occurs, so that the Village will have more information about what is happening and be able to approve a modified parking lot design

Parking

As stated earlier, this process is necessary because the existing shopping center property does not contain sufficient parking, which is calculated as follows:

Tenant	Space	Sqft	Parking Mult	Required Parking
Dr. Schubert	305	2202		7
Famous Nails	311	1560	250	6.24
Top Driver	313	1640		11
Sunny Side Up Tan Spa	317	1640	250	6.56
Malahini Restaurant	321	3895	100	38.95
PROPOSED (Dance School)	327	4024		17
Accelerated Rehab Centers	329	3953	250	15.812
Get Fast	337	8580	250	34.32
Ashton Place	341	26873	100	268.73
Quick Mart	7518	970	200	4.85
Center Cleaners	7520/7524	2068	250	8.272
Dairy Queen	7528	1092	100	10.92
		58497		
Required Parking Total				430
Parking Provided on Lot				371
Parking Provided on Adjoining Lot to West				129
Total Parking for Shopping Center				500
Surplus/(Deficit) on Lot				(59)
Surplus/(Deficit) on Both Lots				70

The table shows that the shopping center is short 59 on-site parking spaces. The existing 129 parking spaces on the lot to the west would fulfill the parking requirement. The 38 parking spaces defined in the easement as the "modified lot", however, would not meet the requirement, and should not be approved at this time. Instead, it will be necessary for the shopping center to make this "shared parking" request at a later time when the subdivision or other "trigger" actually occurs.

Condition of Parking:

Staff evaluated the condition of the parking that is provided on the western property. A picture is provided on the next page. Although it is certainly starting to show signs of wear and tear, staff is only recommending that it be striped at this time as a condition of approval to allow it to be used as off-site parking for the shopping center. Within a few years, one of the triggers identified in the easement will occur and the lot will be more fully restored and/or reconstructed at that time. In the alternative, if something happens that none of the triggers occur, parking lot repairs can be addressed via code enforcement.



Western parking lot looking east toward Ashton Place

**Staff Recommendation:**

The Zoning Ordinance allows off-site parking only when covenants recorded in DuPage County stipulate that the lot upon which the parking sits can only be used for parking. Clearly, it is not the intent of the property owner to the west to restrict the entire property for parking since even the existing lot still leaves room for development at the front of the lot. The easement that is presented for acceptance by the Village was agreed to between the adjoining property owners as a means to assure the new banquet facility business owner that there would adequate parking to serve the business. It was further intended to preclude additional actions to divide the property so that the covenant requirements could be met once the property was subdivided. This division of the lot is not happening at this time due to timing and financial matters between the property owners. In order to memorialize required parking, Village legal counsel recommended the Village waive the certain covenant restrictions that limit actions on the balance of the property and accept the submitted easement as meeting the required parking. It is important to note that the Village is not approving or acknowledging all of the terms of the easement; rather, the Village is accepting only those terms of the easement that provide for and authorize the "Existing Parking", which consists of 129 parking spaces.

If the Plan Commission agrees with this recommendation, staff recommends approval of the attached sample motion:

Based on the request from the property, the Plan Commission recommends that the Village Board waive certain covenant requirements of Section 9-10-5(B) that require no further development on the lot, and accept provisions in the attached easement that define the use of the 129 parking "Existing Parking" spaces to meet the full parking requirements for the shopping center until such time as either party to the agreement exercises one of the "triggers".

November 7, 2013

**VIA ELECTRONIC MAIL AND**  
**VIA FEDERAL EXPRESS**

Jo Ellen Charlton  
Planning Consultant  
Village of Willowbrook  
7780 Quincy Street  
Willowbrook, IL 60527

**Re: Willow Commons Shopping Center, 305-341 75<sup>th</sup> Street, Willowbrook, IL (the "Property")**

Dear Jo Ellen:

I represent 305-341 75<sup>th</sup> Street (Willowbrook), L.L.C., an Illinois limited liability company (the "Property Owner") which is the owner of the Property identified above. I am writing this letter as the authorized agent of the Property Owner in support of a pending application for a special use permit required for a proposed lease between the Property Owner and a dance studio tenant (the "Pending Application").

For many years the Property has utilized off-site parking to satisfy Village requirements relating to parking. Particularly, the 129 space parking lot immediately adjacent to and west of the Property (the "Adjacent Lot") has served the Property on an exclusive basis. Enclosed please find a copy of the recorded easement agreement which explicitly grants the Property Owner the continuing right to use the Adjacent Lot for off-site parking (the "Easement Agreement").

In order to obtain an approval of the Pending Application, you have advised that the Village is required to waive certain requirements of Village Code Section 9-10-5(B) in order to accept the Easement Agreement in order to satisfy off-site parking requirements for the Property. Therefore, please accept this letter on behalf of the Property Owner as a formal request that the Village waive the requirements of Code Section 9-10-5(B) and approve the Easement Agreement as satisfying all off-site parking requirements in connection with the Pending Application.

Sincerely,



Thomas G. Jaros

Enclosure

cc: Nick Peppers (Via E-mail – w/enc.)  
Leonard Blackman (Via E-mail – w/enc.)

**RECEIVED**

NOV 11 2013

**VILLAGE OF WILLOWBROOK  
PLANNING DIVISION**

*(Stewart Int'l Guaranty 10 S Riverside P.B. Ste 1450 Chicago, Ill. 60606)*

This Document Prepared by and  
After Recording Return to:

Thomas Jaros  
Levenfeld Pearlstein, LLC  
2 North LaSalle Street  
Suite 1300  
Chicago, Illinois 60602

RECEIVED

NOV 11 2012

VILLAGE OF WILLOWBROOK  
PLANNING DIVISION



FRED BUCHOLZ  
DUPAGE COUNTY RECORDER  
JUL 18, 2012 RHSP 3:44 PM  
OTHER 09-27-402-002  
023 PAGES R2012-093101

*(vac - 75th Willowbrook IL 60527)*

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (the "Agreement") is made and entered into as of this 11<sup>th</sup> day of July, 2012, by and between 305-341 75TH STREET (WILLOWBROOK), L.L.C., a Delaware limited liability company (the "Shopping Center Owner") and THE CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TRUSTEE, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 2, 1988 AND KNOWN AS TRUST NUMBER 362 (each individually and all collectively referred to as the "Western Parcel Owner").

RECITALS

A. Shopping Center Owner is the owner of that certain real property situated in the Village of Willowbrook, County of DuPage, State of Illinois (hereinafter the "Village"), more particularly described on EXHIBIT A attached hereto and incorporated herein by this reference (the "Shopping Center Parcel") upon which there is constructed a multi-unit commercial shopping center and related parking and other facilities.

B. Western Parcel Owner is the owner of that certain real property situated in the Village and more particularly described on EXHIBIT B attached hereto and incorporated herein by this reference which is directly west of and contiguous to the Shopping Center Parcel (the "Western Parcel") upon which is constructed the Parking Lot (defined herein).

C. The parties hereto desire to impose certain easements upon the Western Parcel, and to establish certain rights, obligations, covenants, conditions and restrictions with respect to the Shopping Center Parcel and the Parking Lot, for the mutual and reciprocal benefit and complement of the Parcels (as defined herein) and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Shopping Center Owner and Western Parcel Owner hereby covenant and agree that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance

with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

### AGREEMENTS

1. Definitions. For purposes hereof, the following terms shall be defined as follows:

(a) "Access Openings" shall mean the presently existing curb cut and driveway openings from Shopping Center Parcel to and from the Parking Lot and labeled "Opening A" and "Opening B" on the Existing Parking Plan.

(b) "Driveways" shall mean all driveways, roadways, walkways and related driveway improvements, paving, curbing, entrances and exits now or hereafter located in the Parking Lot.

(c) "Existing Parking Plan" shall mean that site plan of the Western Parcel existing as of the date of this Agreement a copy of which is attached hereto as EXHIBIT C.

(d) "Governing Documents" shall collectively mean this Agreement and all agreements or other documents which are recorded against the Parcels as of the date hereof, including any easements, covenants, ordinances, reciprocal easements, operating agreements or declarations, including all amendments, renewals, replacements, supplements and modifications thereto.

(e) "Laws and Rules" or "Law or Rule" shall mean laws, rules, regulations, orders and ordinances of any village, county, state and federal government having jurisdiction over the Parcels, or any department or agency thereof.

(f) "Owner" shall mean each and "Owners" shall mean collectively all of Shopping Center Owner (as to Shopping Center Parcel) and Western Parcel Owner (as to Western Parcel) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, foreclosure, or otherwise (but not including the holder of any lien or encumbrance on such real property until such time as the holder shall become a fee title Owner of a Parcel).

(g) "Parcel" shall mean each and "Parcels" shall mean collectively all of each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on EXHIBIT A and EXHIBIT B and any future subdivisions thereof.

(h) "Parking Lot" shall mean: (i) as of the date hereof, that certain existing 129 space surface parking lot as shown on the Existing Parking Plan, including the parking areas, parking area improvements, paving, curbing, Access Opening, exits and other similar improvements comprising said parking lot as of the date of this Agreement (herein referred to as the "Existing Lot"); and (ii) after completion of the Parking Modifications and the giving of the Parking Modification Notice by the Western Parcel Owner, only that certain 38 space surface

parking lot as shown on EXHIBIT D, including the parking areas, parking area improvements, paving, curbing, Access Openings, exits and other similar improvements comprising said parking lot (herein referred to as the "Modified Lot"), including the Parking Modifications. For purposes of clarity, the Modified Lot is not being added to the Existing Lot to create a larger area, but rather the Existing Lot is being contracted into a smaller area which will become the Modified Lot.

(i) "Parking Modifications" shall mean the curbing and related asphalt work to be installed by Shopping Center Owner along: (a) the northerly boundary of the Modified Lot in order to construct the Modified Lot in substantial accordance with the Revised Parking Plan; and (b) along the lot line between the Shopping Center Parcel and the Western Parcel in order to close Opening B; provided, however, the Parking Modifications shall not include any asphalt removal, landscaping or other improvements upon the Western Parcel which may be necessary or desirable in connection with the contraction of the Existing Lot to the Modified Lot.

(j) "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of: (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(k) "Revised Parking Plan" shall mean that site plan of the Western Parcel attached hereto as EXHIBIT D which depicts the Parking Lot after completion of the intended Parking Modifications.

## 2. Easements.

(a) Subject to any express conditions, limitations or reservations contained herein, the Western Parcel Owner hereby grants, establishes, covenants and agrees that the Shopping Center Parcel, and all Owners and Permittees of the Shopping Center Parcel, shall be benefited by and the Western Parcel shall be burdened by the following non-exclusive easements which are hereby imposed upon the Parking Lot:

- (i) An easement for reasonable access, ingress and egress over all Driveways located within the Parking Lot for the purpose of providing passage of motor vehicles and pedestrians between the Shopping Center Parcel and the Parking Lot;
- (ii) An easement for the parking of vehicles in the Parking Lot for the purpose of providing customer parking in connection only with the businesses operated from time to time at the Shopping Center Parcel;
- (iii) An easement under and across the Parking Lot for the installation, maintenance, repair and replacement of any utility facilities necessary for the orderly development and operation of the Parking Lot; and
- (iv) An easement for reasonable access upon the Parking Lot for purposes of maintaining the Parking Lot; and

- (v) An easement upon the 10 feet north of and immediately adjacent to the Modified Lot (as shown on EXHIBIT E and labeled the "Maintenance Easement Area") for the purposes of constructing and maintaining, repairing and replacing the Parking Modifications.

(b) The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Existing Parking (with respect to Opening A); provided, however, it is acknowledged and agreed that Opening B shall be closed and removed by the Western Parcel Owner upon the Shopping Center Owner's construction of the Parking Modifications. The Access Openings shall be maintained as a smooth and level grade transition to allow the use of the Driveways for pedestrian and vehicular ingress and egress. Except with respect to the Access Openings, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel, subject to Laws and Rules.

(c) If utility lines, systems and equipment are installed on or under the Parking Lot pursuant to the easements granted in Section 2(a)(iii), no permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in parking lots) shall be placed over or permitted to encroach upon such utility installations. As part of the subdivision of the Western Parcel certain utilities may need to be relocated on or under the Parking Lot to allow for the development of the Other Western Lot(s). The Shopping Center Owner consents to the reasonable relocation of such utility installations on or under the Parking Lot as may be reasonably requested by the Western Parcel Owner, provided that: (i) Western Parcel Owner provides Shopping Center Owner with at least 10 days' prior written notice of the intention to enter onto the Parking Lot for such purposes; (ii) the construction activities in connection therewith upon the Parking Lot shall be conducted such that they do not unreasonably interfere with the use of the Parking Lot (and in no event shall use of the Parking Lot be prevented or materially impaired for periods in excess of 6 hours or at any time during the period of Friday at Noon through 7AM on Monday); (iii) utility services to the Parking Lot are not unreasonably interrupted; and (iv) any damage to the Parking Lot (or any of the improvements thereon) shall be repaired by the Western Parcel Owner to substantially the same condition as such existed prior to the conduct of the utility work authorized hereby.

(d) Subject to any express conditions, limitations or reservations contained herein, the Western Parcel Owner hereby grants the Shopping Center Parcel, and all Owners and Permittees of the Shopping Center Parcel, a temporary construction easement upon the Western Parcel for the purposes of constructing, maintaining, repairing and replacing the Parking Modifications. The temporary construction easement hereby granted shall terminate automatically upon completion of the Parking Modifications, but in no event later than one hundred twenty (120) days after Shopping Center Owner is granted a permit to construct the Parking Modifications by the City of Willowbrook. Nothing in this section shall negate or void the easement granted in section 2(a)(v) above which shall continue even after the Parking Modifications are completed.

(e) Notwithstanding anything to the contrary contained herein, Western Parcel Owner hereby reserves the right to use up to ten (10) parking spaces anywhere within the Parking Lot

(the "Reserved Spaces") subject to the following terms and conditions: (i) the Reserved Spaces shall only be used by automobiles designated by Western Parcel Owner; (ii) the Western Parcel Owner shall be responsible for all activities of the users of the Reserved Spaces and shall indemnify the Shopping Center Owner (and its Permittees) from any damage to persons or property caused by such users of the Reserved Spaces; (iii) the rights granted to the Reserved Spaces shall only inure to the Western Parcel Owner originally named in this document at the time of its recording; and (iv) Western Parcel Owner's rights to use the Reserved Spaces shall cease immediately upon the date on which none of the Western Parcel Owners originally named in this document at the time of its recording own an interest in the Western Parcel. Upon the giving of the Parking Modification Notice (as hereinafter defined) the Western Parcel Owner shall have no rights to the use of any spaces within the Modified Lot. Upon termination of the rights granted pursuant to this subsection (e), Western Parcel Owner shall (if requested by Shopping Center Owner) execute an amendment to this Agreement removing this subsection from the Agreement.

3. Use and Maintenance.

(a) Until such time as improvements are constructed on the Western Parcel, the Owner thereof shall maintain the same (to the extent outside the Parking Lot) in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris. Except as specifically provided for in this Agreement, the Western Parcel Owner shall not be required to incur any expense or have any obligation or duty to maintain or repair the Parking Lot.

(b) Shopping Center Owner agrees, at all times during the term hereof, to operate and maintain or cause to be maintained at its expense, the Parking Lot in good order, condition and repair (ordinary wear and excepted). Maintenance of the Parking Lot shall include, without limitation, maintaining and repairing all sidewalks, Driveways and roadway areas, removing all papers, debris and other refuse from and periodically sweeping and plowing the Parking Lot to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair, and performing any and all such other duties as are reasonably necessary to maintain such Parking Lot in a clean, safe and orderly condition. Shopping Center Owner may (in its discretion) delegate to any tenant of the Shopping Center Parcel the obligation to perform the Shopping Center Owner's obligations under this Section 3, however, such delegation shall not relieve the Shopping Center Owner of its obligations under this Section 3. Unless caused by Shopping Center Owner's use of the Parking Lot for activities other than parking by automobiles in the ordinary course, Shopping Center Owner shall not be obligated to repair or replace any damage that occurs to the Parking Lot during the term of this Agreement.

(c) Western Parcel Owner agrees not to alter, modify, reconfigure, relocate and/or remove the Parking Lot until such time as Western Parcel Owner serves the Parking Modification Notice (and then in such case, Western Parcel Owner shall not remove any portion of the Parking Lot that shall be within the Parking Subdivided Lot, defined below).

4. Construction of Parking Modifications.

(a) It is contemplated that the Western Parcel Owner will subdivide the Western Parcel into two or more separate lots. One of the subdivided lots will contain the Modified Lot as depicted on EXHIBIT D, and Western Parcel Owner agrees to complete the subdivision of the Western Parcel only in a manner consistent with the creation of a separately subdivided lot containing the Modified Lot as depicted on EXHIBIT D. The subdivided lot underlying the Modified Lot shall be referred to as the "Parking Subdivided Lot". The balance of the Western Parcel (other than the Parking Subdivided Lots) shall be referred to as the "Other Western Lot(s)". The date on which a plat is recorded in order to divide the Western Parcel into the Parking Subdivided Lot and the Other Western Lot(s) shall be referred to as the "Subdivision Date".

(b) At any time after the first to occur of:

- (i) the second anniversary of the Subdivision Date;
- (ii) the Subdivision Date and the sale of the Other Western Lot(s) to a third party not affiliated with the Western Parcel Owner named herein;
- (ii) the Subdivision Date and the commencement of construction of improvements on the Other Western Lot(s) as evidenced by: (A) the issuance of a building permit for a structure on the Other Western Lot(s) and (B) the delivery of a written certification to the Shopping Center Owner by the Western Parcel Owner that it shall commence physical construction activities on the Other Western Lot(s) within 30 days; or
- (iv) the commencement of construction of improvements on that portion of the Western Parcel that would have formed the Other Western Lot(s) (if the Subdivision Date had actually occurred) as evidenced by: (A) the issuance of a building permit for a structure on such Other Western Lot(s) and (B) delivery of a written certification to the Shopping Center Owner that the Western Parcel Owner shall commence physical construction activities on such Other Western Lot(s) within 30 days;

then in such an event the Western Parcel Owner may deliver a written notice to the Shopping Center Owner (the "Parking Modification Notice") and thereafter Shopping Center Owner shall construct the Parking Modifications upon the Parking Subdivided Lot consistent with EXHIBIT D. It is acknowledged that Opening B will be removed in connection with the Parking Modifications. Western Parcel Owner shall have the sole right and responsibility (including the expense associated therewith) for removing any parking improvements located on the Other Western Lot(s) at the time of the construction of the Parking Modifications and the Shopping Center Owner's obligations shall be solely to construct the Parking Modifications. In that regard, it is acknowledged that: (x) the installation of the curbing along the northern boundary of the Modified Lot will require the Modified Lot to be separated by a curb constructed by Shopping Center Owner; (y) except as set forth in (z) below, Shopping Center Owner shall have no obligation to repair or improve any portion of the Western Parcel lying north of the northern

boundary of the Modified Lot; and (z) after completion of the Parking Modifications, Shopping Center Owner shall cut the asphalt approximately 10 feet north of and approximately parallel to the northern boundary of the Modified Lot (as shown on EXHIBIT E) and shall grade (but not landscape) the space between the Modified Lot and such cut asphalt. Nothing herein shall limit or restrict an Owner from constructing (or modifying the construction of) any type of improvements or structures upon its respective Parcel, except that Western Parcel Owner shall not construct any improvements on the Parking Subdivided Lot after the giving of the Parking Modification Notice but in no event may such construction result in less than 38 parking spaces being usable by Shopping Center Owner in the Parking Lot. Further, no construction activities on the Other Western Lot(s) shall in any way interfere with the Shopping Center Owner's use and enjoyment of the Parking Lot thereafter situated on the Parking Subdivided Lot. No use of the Other Western Lot(s) shall be dependent upon (or ever be granted) the use of the Parking Lot. Except as provided herein to the contrary, each Owner hereby acknowledges that an Owner may construct any buildings, structures, parking areas, landscaping or other improvements as such Owner may deem appropriate (without the consent of the other Owners) so long as such comply with all Laws and Rules, but in no event may such construction result in less than 38 parking spaces being usable by Shopping Center Owner in the Parking Lot.

(c) Notwithstanding anything to the contrary contained herein, at any time after the third anniversary of the recordation of this Agreement and if the Subdivision Date has not yet occurred: (i) Shopping Center Owner may complete the Parking Modification even if no Parking Modification Notice shall have been given provided that Shopping Center Owner shall give Western Parcel Owner 30 days prior written notice of its intention to do so; and (ii) Western Parcel Owner may deliver a Parking Modification Notice, in which event Shopping Center Parcel Owner shall complete the Parking Modifications in accordance with this Agreement. Prior to such third anniversary, Shopping Center Owner shall only construct the Parking Modifications once a Parking Modification Notice is given by Western Parcel Owner.

(d) Shopping Center Owner shall complete the construction of the Parking Modifications within one hundred eighty (180) days of receipt of the Parking Modification Notice unless extended by agreement of the parties or delayed as a result of weather conditions or other acts of God. In the event construction of the Parking Modifications will be delayed beyond said 180 days, Shopping Center Owner shall provide a written notice to that effect to Western Parcel Owner specifying the reason for the delay and the anticipated completion date of the Parking Modifications. In the absence of such notice no extensions will be granted.

5. Restrictions. Each Parcel shall be used for lawful purposes in conformance with all Laws and Rules and in conformance, and subject to, all Governing Documents, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal.

6. Insurance.

(a) Throughout the term of this Agreement, each Owner (and any Tenant to whom the Shopping Center Owner has delegated its obligations under Section 3 of this Agreement) shall procure and maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with combined single limit of liability of not less than \$1,000,000.00 for a

bodily or personal injury or death and consequential damages therefrom, and for property damage, arising out of any one occurrence, the other Owners and any mortgagees of the Owners shall be additional "named insureds" under such policy (provided the Owner obtaining such insurance has been supplied with the name of such other Owner and the mortgagees thereof, in the event of a change thereof).

(b) Each Owner (in this capacity, "Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("Indemnified Owner"), from and against all claims, arising from or as a result of the acts or omissions of the Indemnitor, its Permittees, employees, servants, agents, licensees, concessionaires, contractors and subcontractors related to the use, maintenance or repair of the Parking Lot or in connection with any breach of this Agreement by the Indemnitor, except to the extent any claims are caused by the negligence or willful act or omission of the Indemnified Owner.

(c) Shopping Center Owner shall indemnify, defend and hold Western Parcel Owner harmless from any and all claims, liabilities, costs and expenses, including, without limitation, reasonable attorneys fees and court costs, incurred by or brought against Western Parcel Owner as a result of Shopping Center Owner's, its Permittees, agents or its contractor's or subcontractors', entry upon or use of the Parking Lot and/or the construction of the Parking Modifications. Shopping Center Owner shall at all times during the construction of the Parking Modifications carry comprehensive general liability insurance with minimum coverages as provided in this Section 6, with Western Parcel Owner identified as an additional insured thereunder. Shopping Center Owner shall cause a certificate of insurance to be delivered to Western Parcel Owner prior to commencement of construction of the Parking Modifications verifying such coverage is in place and that same will not be modified or terminated without at least thirty (30) days prior written notice to Western Parcel Owner.

(d) Each Owner waives any claim it might have against the other for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured against under any insurance policy maintained by a party hereunder, regardless of whether the negligence of the other party caused such Loss. Each Owner shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other Owner.

(e) All insurance required by this Section 6 shall be procured from companies licensed in the State of Illinois. Each Owner shall furnish to any Owner requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect.

7. Taxes and Assessments. Until the creation of the Parking Subdivided Lot and the issuance of a separate tax bill therefor, the Western Parcel Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency ("Taxes") with respect to the entire Western Parcel. Upon the creation of the Parking Subdivided Parcel and the issuance of a separate tax bill therefor: (a) the Shopping Center Owner shall thereafter be responsible to reimburse the Owner of the Parking Subdivided Lot for all Taxes with respect to the Parking Subdivided Lot; and (b) the Owner of the Other Western Lot(s)

shall pay all Taxes with respect to the Other Western Lot(s). The Owner of the Shopping Center Parcel shall pay all Taxes with respect to the Shopping Center Parcel.

8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels. No easements, except those expressly set forth in Section 2 shall be implied by this Agreement; in that regard, and without limiting the foregoing, no other easements for parking, signage, drainage or utilities are granted or implied.

9. Remedies and Enforcement.

(a) In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

(b) In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by JP Morgan Chase (or its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of: (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on the Parcels, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

(c) Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of DuPage County, State of Illinois; provided, however, that any such Assessment Lien shall be subject and subordinate to: (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the County Recorder of DuPage County, State of Illinois prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

(d) The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

(e) Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

(f) In the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 5 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 5 of this Agreement, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the DuPage County Recorder and shall remain in full force and effect thereafter until terminated in accordance with the terms of this Agreement. This Agreement shall be recorded within 10 business days of its execution by the parties and, upon recordation, a copy shall be provided to the Village of Willowbrook at the address noticed provided in Section 11(m) below. This Agreement may be modified, amended, canceled or terminated only by the written consent of all then record Owners of the Parcels; provided, however, the Shopping Center Parcel Owner shall not terminate this Agreement prior to the completion of the Parking Modifications unless the Parking Lot is no longer necessary to meet Village of Willowbrook parking requirements. At any time after the Parking Modifications are completed, upon request from Western Parcel Owner, Shopping Center Owner agrees to execute a release of the Other Western Lots from the easements created by this Agreement, other than the easement created by Section 2(a)(v) hereof.

11. Miscellaneous.

(a) In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(b) The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of DuPage County, State of Illinois.

(c) Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

(d) Whenever a transfer of ownership of either or any portion of a Parcel of real estate described herein takes place, the transferor's liability hereunder for a breach of covenant herein, occurring after such transfer, shall automatically terminate and cease and the injured party shall look only to the transferee for remedy thereof.

(e) No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

(f) Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

(g) It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

(h) The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

(i) Each provision of this Agreement and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of the Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

(j) Neither Owner shall encumber, or allow to be encumbered, by any lien, mechanics or materialmen's lien, mortgage, trust deed, or other encumbrance, the Parcel of the other Owner at any time during the term of this Agreement.

(k) Time is of the essence of this Agreement.

(l) This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

(m) Notices or other communication hereunder shall be in writing and shall be sent by nationally recognized overnight courier company or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the Parcel Owners as of the date hereof are as follows:

Shopping Center Owner: c/o Leklen Realty  
One Northfield Plaza  
Ste. 300  
Northfield, IL 60093

Western Parcel Owner: Mr. Steven Hynek  
2001 Black Swan Court  
Darien, IL 60561

With a courtesy copy of all notices to: Village of Willowbrook  
Mr. Tim Halik, Village Administrator  
7760 Quincy Street  
Willowbrook, IL 60527

In the event any mortgagee of a fee interest in a Parcel wishes to receive notices from the other Owners that is served upon the Owner of the Parcel so encumbered by its mortgage, the mortgagee may serve a written request for copies of such notices and such other Owners shall use their best efforts to deliver copies of such notices to said mortgagee.

(n) Upon the sale, transfer, conveyance or assignment by any Owner of fee title in such Owner's Parcel, the transferring Owner shall give written notice of the sale, transfer, conveyance or assignment to the last known address of all of the other Owners concurrently with (or as soon as practicable after) the recording the instrument effecting same. Notwithstanding the foregoing, the failure to deliver any such written statement shall not affect the running of any easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens and charges contained herein, nor shall any such failure negate, modify or otherwise affect the liability of any Owner or its transferee pursuant to this Agreement. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

(o) Each Owner, within twenty (20) day of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (i) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; (ii) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate; and (iii) such other factual matters relating to this Agreement or any Parcel as may be true and reasonably requested.

(p) In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

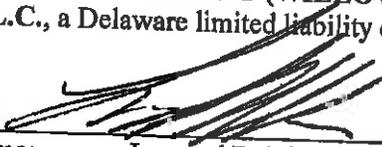
(q) If any Parcel shall at any time be owned by more than one person or entity, the obligations hereunder of such multiple owners shall be joint and several.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SHOPPING CENTER OWNER:**

**305-341 75TH STREET (WILLOWBROOK),  
L.L.C., a Delaware limited liability company**

By:   
Name: Leonard D. Blackman  
Title: Manager

**WESTERN PARCEL OWNER:**

**THE CHICAGO TITLE LAND TRUST  
COMPANY, SUCCESSOR TRUSTEE, AS  
TRUSTEE UNDER TRUST AGREEMENT  
DATED AUGUST 2, 1988 AND KNOWN AS  
TRUST NUMBER 362**

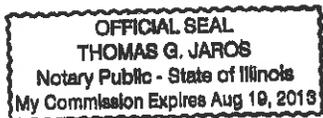
By:  7/9/12  
Name: MAUREEN PAIGE  
Title: Trust Officer

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and are not personally assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

STATE OF ILLINOIS )  
 )ss.  
COUNTY OF Delago )

On this the 11<sup>th</sup> day of July, 2012, before me, the undersigned Notary Public in and for said County and State, personally appeared Leonard D. Blackman, the Manager of 305-341 75TH STREET (WILLOWBROOK), L.L.C., a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity on behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

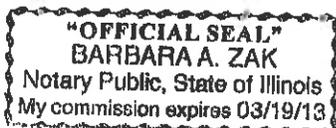


  
Notary Public

STATE OF ILLINOIS )  
 )ss.  
COUNTY OF DuPage )

On this the 9<sup>th</sup> day of July, 2012, before me, the undersigned Notary Public in and for said County and State, personally appeared MAUREEN PAIGE, the Trust Officer of THE CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TRUSTEE, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 2, 1988 AND KNOWN AS TRUST NUMBER 362, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in his authorized capacity, and that by his signature on the instrument the entity on behalf of which she acted, executed the instrument.

WITNESS my hand and official seal.



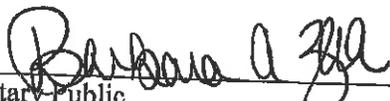
  
Notary Public

EXHIBIT A

Legal Description of Shopping Center Parcel

LOT 1 IN WILLOWBROOK COMMONS SUBDIVISION, BEING IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 23, 1974 AS DOCUMENT R74-54447 IN DUPAGE COUNTY, ILLINOIS

PIN: 09-27-402-008-000

**EXHIBIT C**

**Existing Parking Plan**

[See Attached]

**EXHIBIT C  
EXISTING PARKING PLAN**

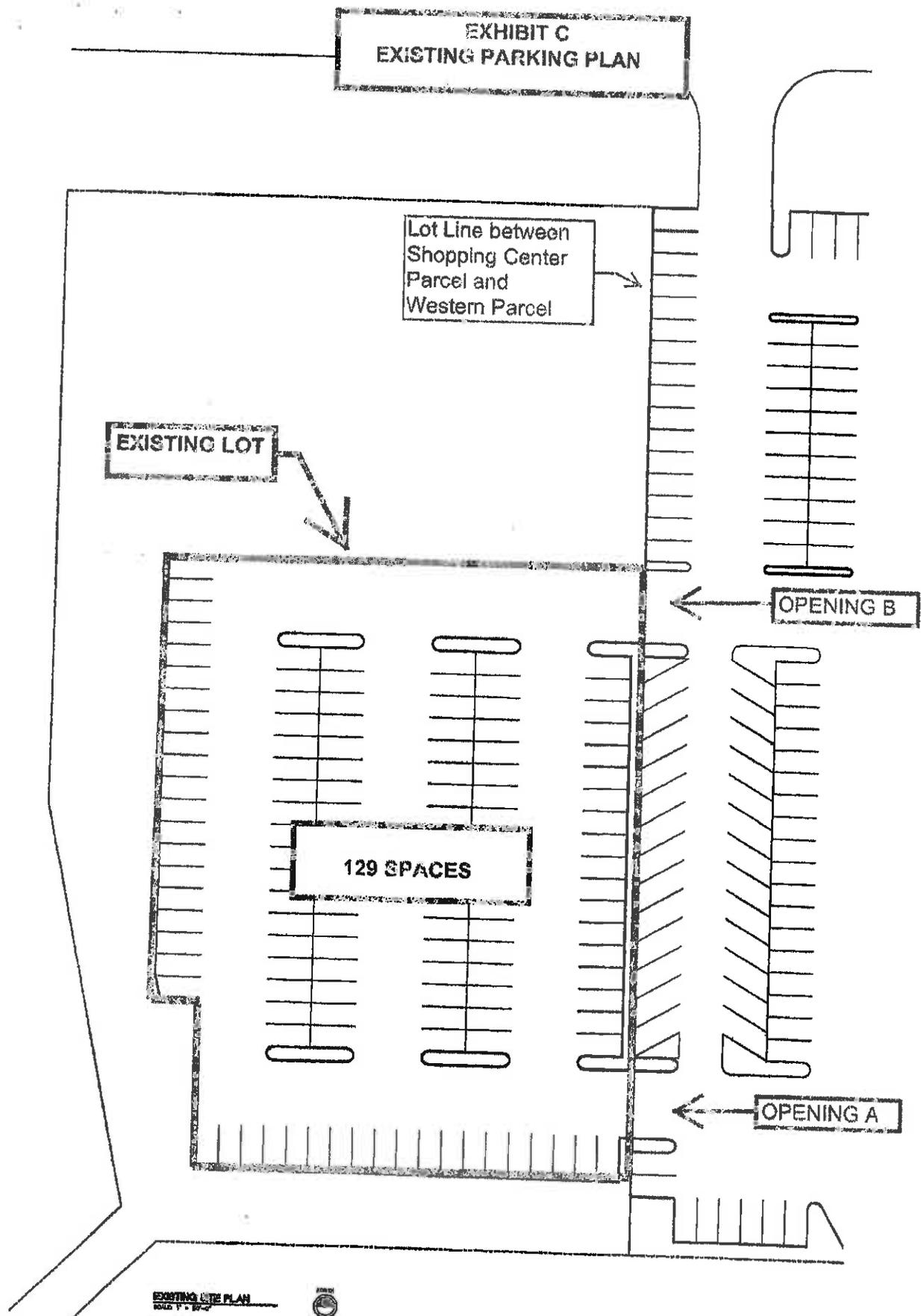
Lot Line between  
Shopping Center  
Parcel and  
Western Parcel

**EXISTING LOT**

**129 SPACES**

**OPENING B**

**OPENING A**



**EXHIBIT D**

**Revised Parking Plan**

[See Attached]

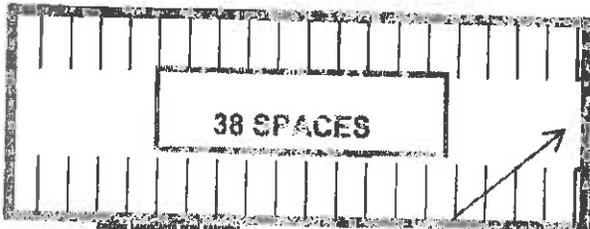
**EXHIBIT D  
REVISED PARKING PLAN**



Lot Line between  
Shopping Center  
Parcel and  
Western Parcel

Note: In connection  
with Parking  
Modifications,  
Opening B will be  
closed.

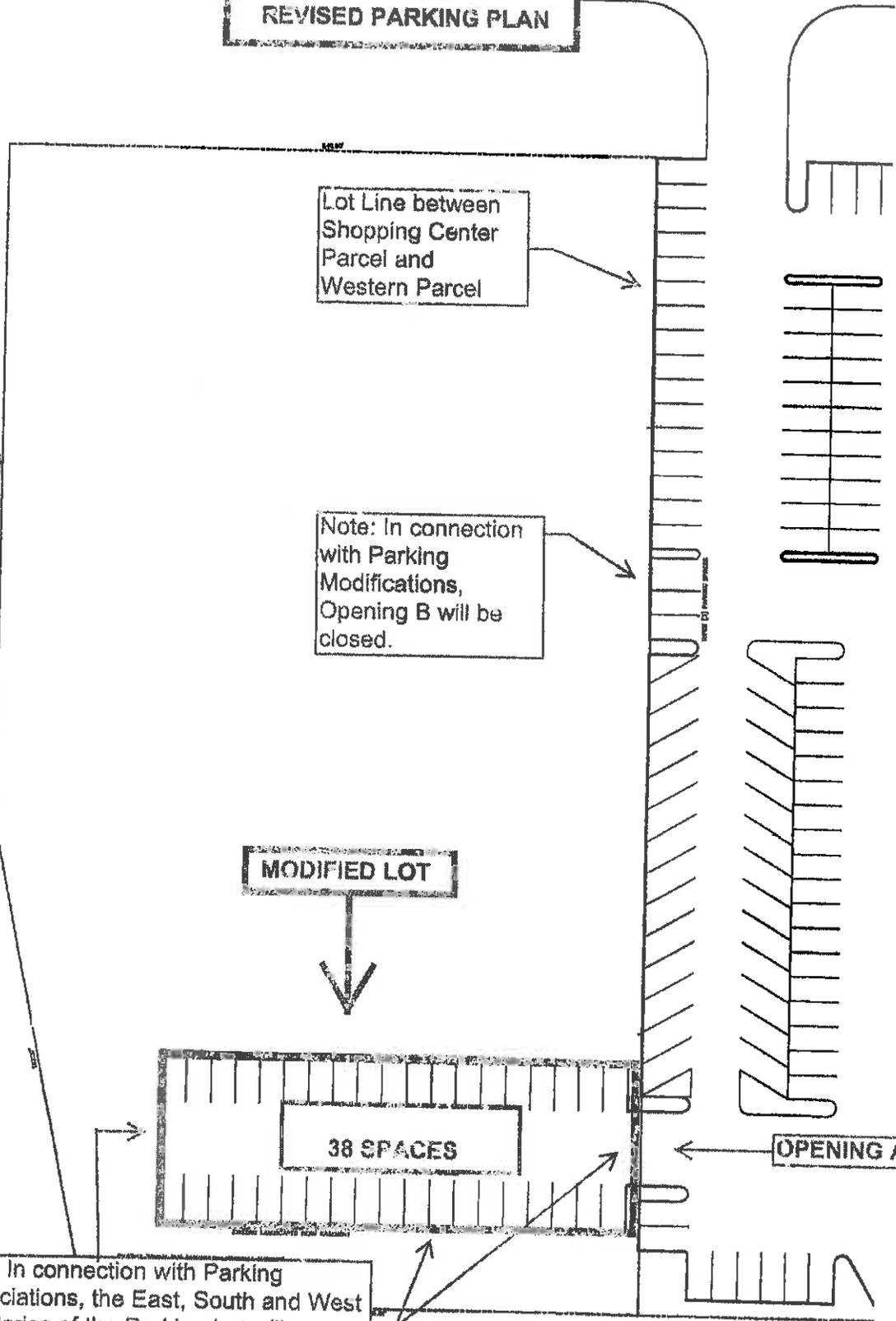
**MODIFIED LOT**



**38 SPACES**

**OPENING A**

Note: In connection with Parking  
Modifications, the East, South and West  
boundaries of the Parking Lot will not  
change



**EXHIBIT E**

**Maintenance Easement Area**

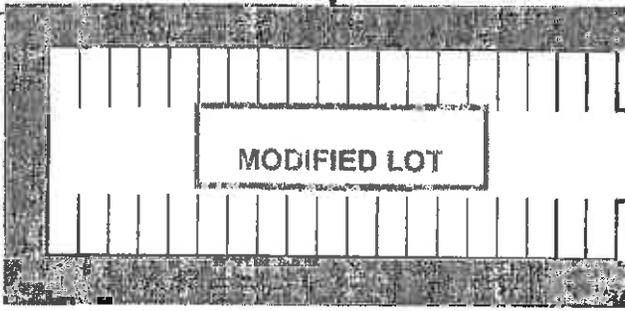
[See Attached]

**EXHIBIT E  
MAINTENANCE EASEMENT AREA**

Lot Line between  
Shopping Center  
Parcel and  
Western Parcel

Note: In connection with  
Parking Modifications, the  
Parking Lot remaining on the  
Western Parcel shall be cut  
parallel to the Modified Lot  
approximately 10 feet north  
of the northern boundary of  
the Modified Lot

10 foot Maintenance  
Easement Area



**OPENING A**



# VILLAGE OF WILLOWBROOK

## STAFF REPORT TO THE PLAN COMMISSION

**Meeting Date:** December 4, 2013

**Prepared By:** Jo Ellen Charlton, Planning Consultant

**Case Number and Title:** PC 13-06: Special Use/Beyond the Stars Performing Arts Academy;  
Willow Commons Shopping Center, 305-341 75<sup>th</sup> Street

**Petitioner:** Elizabeth Bender, Beyond the Stars Performing Arts Academy Inc., with permission from the property owner 305-341 75<sup>th</sup> Street (Willowbrook), L.L.C

**Action Requested:** Special use for a Commercial School pursuant to 9-6B-2.

This special use request is being made concurrently with a request by the owner of the shopping center to for waivers from 9-10-5(B) of the Zoning Ordinance and authorization of an easement for off-site parking, which will be considered by the Plan Commission and Village Board before taking action on this special use request. The Village's approval of the off-site parking easement is required prior to consideration of this special use, because without it, adequate parking does not exist.

**Location:** 305-341 75<sup>th</sup> (Southwest corner of 75<sup>th</sup> and Clarendon Hills Road, excluding the former Kentucky Fried Chicken site)

**PINs:** 09-27-402-008

**Existing Zoning:** B-2

**Existing Land Use:** Mixed Use Retail

**Property Size:** 5.4 acres

<b>Surrounding Land Use:</b>	<i>Use</i>	<i>Zoning</i>
<i>North</i>	Hinsdale South Football Stadium.	Darien
<i>South</i>	Multiple Family	R-5
<i>East</i>	Single-Family Residential	R-2
<i>West</i>	Parking and Vacant Land	B-2

**Documents Attached:**

1. Application
2. Willow Commons Tenant/Square Footage List and Layout

**Necessary Action by Plan Commission:** Make a recommendation to the Mayor and Village Board. A sample motion can be found on Pages 5 and 6 of this report.

**Site Description:** The Willow Commons shopping center is located on the southwest corner of 75<sup>th</sup> and Clarendon Hills road on property containing about 5.4 acres. It is shown in the picture below enclosed in a solid black line. The former Kentucky Fried Chicken site is NOT is not owned by the shopping center and is not part of the development. There is 58,497 square feet of gross leasable space within the shopping center building, and the site contains 371 parking spaces, which is not adequate to meet the requirements of the Zoning Ordinance. There are 129 parking spaces in an adjoining lot to the west on property that is not owned by the shopping center. This property is shown in dashed line in the illustration below.



**History and Proposal:**

The applicant, with the property owner's permission, is requesting approval of the following zoning item:

Approval of a special use to allow a 4,024 square foot commercial school business (Beyond the Stars Performing Arts Academy, Inc) to operate in tenant space 27 (approximate location marked with a ▼ in the picture above) in the Willow Commons Shopping Center.

Beyond the Stars Performing Arts Academy, Inc. is a new performing arts school that will be opening in the summer of 2013 in Willowbrook. The academy will be offering lessons in dance, theater and voice to individuals ranging in age from two through adult. The academy will hold classes and camps Monday through Saturday with extra rehearsals sometimes held on Sundays. There will be approximately 6 to 8 part-time staff members when the business opens in May. The first summer of operation, the number of students is expected to start between 40 and 60. They all will be attending classes at different times during the week so class size are expected to be around 5 to 10 students. With the size of the proposed space in the Willow Commons shopping center, there will be plenty of space for future growth. Website development is under way and more information will be available at [www.BeyondTheStarsAcademy.com](http://www.BeyondTheStarsAcademy.com)

**Staff Analysis**

Tenant Location:

The 4,024 square foot space number 327 is located between Malahini Restaurant and Accelerated Rehab fairly central within the shopping center. While the space has a considerable amount of square footage, it is relatively narrow with only 25' of width at the sidewalk entrance. A dance studio is a good fit for this location and the studio is being designed to take advantage of the depth provided in the space.

Parking

The facility will accommodate three "studios" and one voice room. Since parking for this use is based on the numbers of students and employees, staff compares numbers estimated by the applicant with the maximum design capacity based on building code requirements. The applicant estimated 37 students and 5 employees, while the studios will accommodate 43 students according to the building code design capacity. The higher student number was utilized which generates a parking requirement of 17 parking spaces, which is inserted into the parking table below.

Tenant	Space	Sqft	Parking Mult	Required Parking
Dr. Schuberth	305	2202		7
Famous Nails	311	1560	250	6.24
Top Driver	313	1640		11
Sunny Side Up Tan Spa	317	1640	250	6.56
Malahini Restaurant	321	3895	100	38.95
PROPOSED (Dance School)	327	4024		17
Accelerated Rehab Centers	329	3953	250	15.812
Get Fast	337	8580	250	34.32
Ashton Place	341	26873	100	268.73
Quick Mart	7518	970	200	4.85
Center Cleaners	7520/7524	2068	250	8.272
Dairy Queen	7528	1092	100	10.92
		58497		
Required Parking Total				429.654
Parking Provided on Lot				371
Parking Provided on Adjoining Lot to West				129
Total Parking for Shopping Center				500
Surplus/(Deficit) on Lot				(58.654)
Surplus/(Deficit) on Both Lots				70.346

Given that adequate parking is not available on the shopping center lot, staff recommends consideration of this special use only if the shopping center's request to waive certain covenant requirement and consider an existing easement as satisfying the parking requirement is approved. This request and the Plan Commission's consideration is scheduled just prior to consideration of this item.

The dropping off and picking up of children is always a concern with any commercial school in a retail shopping center. Given that very young children will be utilizing this facility, it will be important that parents or responsible adults parking before escorting young children into the school. Furthermore, because these uses sometimes create problems when students are picked up after class if parents decide to park or wait in their cars along the curb in front of the storefront, staff recommends that any special use approval for this use be conditioned up the required installation of "No Parking/No Waiting" signs along the drive aisle immediately in front of the storefront.

Appropriateness of Use:

The shopping center is zoned B-2, Community Shopping District. While this zoning district includes sixty-two (62) listed "Permitted Uses", only ten (10) of them are for non-retail types of uses. In other words, the B-2 District is intended primarily to provide retail shopping opportunities for the community. As seen from the list of tenants on the previous page, with the exception of the restaurants and convenience store, the shopping center has become a service oriented commercial center. While these uses do not help support the local sales tax which Willowbrook relies on, it is probably unrealistic at this point to assume any retailers would find the space suitable.

Utilities:

The proposed use will not alter the approved utility service plan.

Landscaping:

The proposed use will not alter the approved landscape plan

Wetland/Stormwater Management: The proposed use will not alter the approved stormwater management plan.

Standards:

Section 9-14-5.2 of the Willowbrook Zoning Ordinance establishes seven standards that must be evaluated by the Plan Commission and Village Board. Recommendations may include conditions of approval if appropriate to mitigate any negative impacts created by the special use. A list of the special use standards is provided below, along with the proposed findings to be incorporated in the Plan Commission's recommendation and the Village Board's ordinance if approved.

(A) That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

Finding: A 4,024 square foot commercial school in space number 327 will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare if approved with recommended conditions.

(B) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

Finding: While staff has always expressed concern about the loss of retail space to non-retail users, traditional retailers are not currently part of this center. Additionally, this relatively large space is very narrow, and likely not suited for traditional retail uses.

- (C) That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

Finding: While retail is preferred, certain non-retail uses are "permitted" in the zoning district. The proposed special uses will therefore not impede development of the surrounding area.

- (D) That adequate utilities, access roads, drainage and/or other necessary facilities have been or are being provided.

Finding: The shopping center is already provided with existing utilities, access roads, drainage and other facilities. Proper maintenance of these facilities will be handled through code enforcement when necessary.

- (E) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

Finding: A condition that patrons of this business not be allowed to park or wait in the drive aisle immediately in front of the store is being made to mitigate any possible circulation problems within the center.

- (F) That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the Village Board pursuant to the recommendation of the Plan Commission.

Finding: The proposed special use itself conforms to all other applicable regulations of the district in which it is located.

- (G) Conditions in the area have substantially changed, and at least one year has elapsed since any denial by the Village Board of any prior application for a special use permit that would have authorized substantially the same use of all or part of the site. (Ord. 97-O-05, 1-27-1997)

Finding: This applicant has not requested approval in the past to locate in this shopping center.

**Staff Recommendation:**

The requested special use cannot be considered unless the Village Board approves the easement that is being considered as a condition precedent to this action because without it, the shopping center does not have enough parking to satisfy the zoning ordinance requirements and no variation was requested. Therefore, this condition is added to the sample motion. A condition restricting parking and waiting in front of the school in the drive aisle is also included to minimize traffic circulation problems and provide for the improved safety of the children who will be utilizing the space.

If the Plan Commission wishes to support this use, staff has prepared the following sample motion:

**Based on the submitted petition and testimony presented, the special use for a 4,024 square foot commercial school in space 327 in the Willow Commons Shopping Center for Beyond the Stars Performing Arts Academy meets the standards for a special use as outlined in the staff report prepared for the December 4, 2013 Plan Commission**

meeting and deliberated by the Plan Commission; therefore I move that the Plan Commission recommend approval of PC 13-06 subject to the following conditions:

1. The special use granted herein only applies to the 4,024 square foot space in Space 327.
2. A "Fire Lane/No Waiting or Parking" sign shall be posted along the curb immediately in front of the Beyond the Stars school in a location recommended by the Village of Willowbrook.
3. The special use shall be null and void if construction of the proposed use is not commenced and a certificate of occupancy is not granted within eighteen (18) months of the date of any approval of the special use by the Village Board.



# Willowbrook

7760 Quincy Street  
Willowbrook, IL 60527-5594

Phone: (630) 323-8215 Fax: (630) 323-0787 www.willowbrookil.org

## APPLICATION FOR PLANNING REVIEW

**NAME OF PROJECT:** Performing Arts Studio: Beyond the Stars Performing Arts Academy, Inc.

**NAME OF APPLICANT(S):** Elizabeth Bender

**ADDRESS:** 511 W. Benton Ave.

**CITY, STATE, ZIP:** Naperville, IL 60540 **TELEPHONE:** 630-631-8201 **FAX:** 630-527-1892

**NAME OF PROPERTY OWNER(S):** 305-341 75th Street, Willowbrook, LLC

**ADDRESS:** One Northfield Plaza, Suite 300

**CITY, STATE, ZIP:** Northfield, IL 60093 **TELEPHONE:** 847-833-5707 **FAX:** 847-441-1885

**APPLICATION SUBMITTED FOR: (check all that apply)**

Site Plan Review   
Preliminary Plat of Subdivision   
Final Plat Subdivision   
Preliminary PUD   
Final PUD

Annexation   
Annexation Agreement   
Special Use Permit   
Map Amendment (Rezoning)   
Text Amendment   
Variation

**SITE INFORMATION:**

**COMMON ADDRESS OR DISTANCE IN FEET & DIRECTION OF SUBJECT PROPERTY FROM CLOSEST STREET INTERSECTION:**

327 75th Street, Willowbrook, IL 60527

**PERMANENT INDEX NUMBER(S) (PIN #) OF SUBJECT PROPERTY:** 09-27-402-008-000

**LEGAL DESCRIPTION: ATTACH** LEGAL DESCRIPTION TYPED ON SEPARATE 8.5 X 11" PAGE(S) AND SUBMIT A DIGITAL COPY.

**AREA OF SUBJECT PROPERTY IN ACRES:** 4024 Square Feet

**CURRENT ZONING CLASSIFICATION OF SUBJECT PROPERTY:** B2-Community Shopping District

**CURRENT USE OF SUBJECT PROPERTY:** Vacant, prior beauty salon and spa

**PROPOSED ZONING CLASSIFICATION OF SUBJECT PROPERTY:** B2- Community Shopping District

**PROPOSED USE OF SUBJECT PROPERTY:** Performing Arts Studio

**PROPOSED IMPROVEMENTS TO SUBJECT PROPERTY:** Interior partition walls, drop ceiling, interior doors, mirrors, lighting, painting and flooring.

**ADJACENT PROPERTIES**

	<b>CURRENT ZONING</b>	<b>LAND USE</b>
NORTH OF SITE	Hinsdale South High School	Athlete field and parking lot
SOUTH OF SITE	Condominiums	housing
EAST OF SITE	Single family homes	housing
WEST OF SITE	Condominiums	housing

**UTILITIES - PROVIDE INFORMATION ON LOCATION, SIZE AND OWNERSHIP OF UTILITIES**

**WATER**

LOCATION: N/A SIZE: \_\_\_\_\_  
OWNERSHIP: \_\_\_\_\_

**SANITARY SEWER**

LOCATION: N/A SIZE: \_\_\_\_\_  
OWNERSHIP: \_\_\_\_\_

**STORM SEWER**

LOCATION: N/A SIZE: \_\_\_\_\_

**SCHOOL DISTRICT - INDICATE WHICH SCHOOL DISTRICT SERVES THE SUBJECT REALTY**

ELEMENTARY SCHOOL DISTRICT: 62  
JUNIOR HIGH SCHOOL DISTRICT: 62  
HIGH SCHOOL DISTRICT: 88

**FIRE DISTRICT - INDICATE WHICH FIRE DISTRICT SERVES THE SUBJECT REALTY**

FIRE DISTRICT: Tri-state  
DISTANCE TO FIRE STATION: less than a mile

**CONSULTANTS**

**NAME OF ATTORNEY OR AGENT:** Mary Nicholson

ADDRESS: 2705 Midland Drive  
CITY, STATE, ZIP: Naperville, IL 60564 TELEPHONE: 630-848-0462 FAX: 630-544-6882

**NAME OF ENGINEER:** Martin Garcia

ADDRESS: 1730 Blackberry Road  
CITY, STATE, ZIP: Aurora, IL 60506 TELEPHONE: 630-546-2314 FAX: 630-340-5291

**NAME OF ARCHITECT:** Ben Mamma

ADDRESS: 80 Main Street  
CITY, STATE, ZIP: Lemont, IL 60439 TELEPHONE: 630-968-6680 FAX: \_\_\_\_\_

**NAME OF LANDSCAPE ARCHITECT:** N/A

ADDRESS: \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

With the submittal of this application, I hereby request that the President and Board of Trustees of the Village of Willowbrook grant approval of this application and/or development as described in the attached documents and specifications, and do hereby certify that all information contained in this application and accompanying documents is true and correct to the best of my knowledge. I also permit entrance on the Subject Property by Village officials for the purpose of inspections related to this request.

Signature of Property Owner(s):

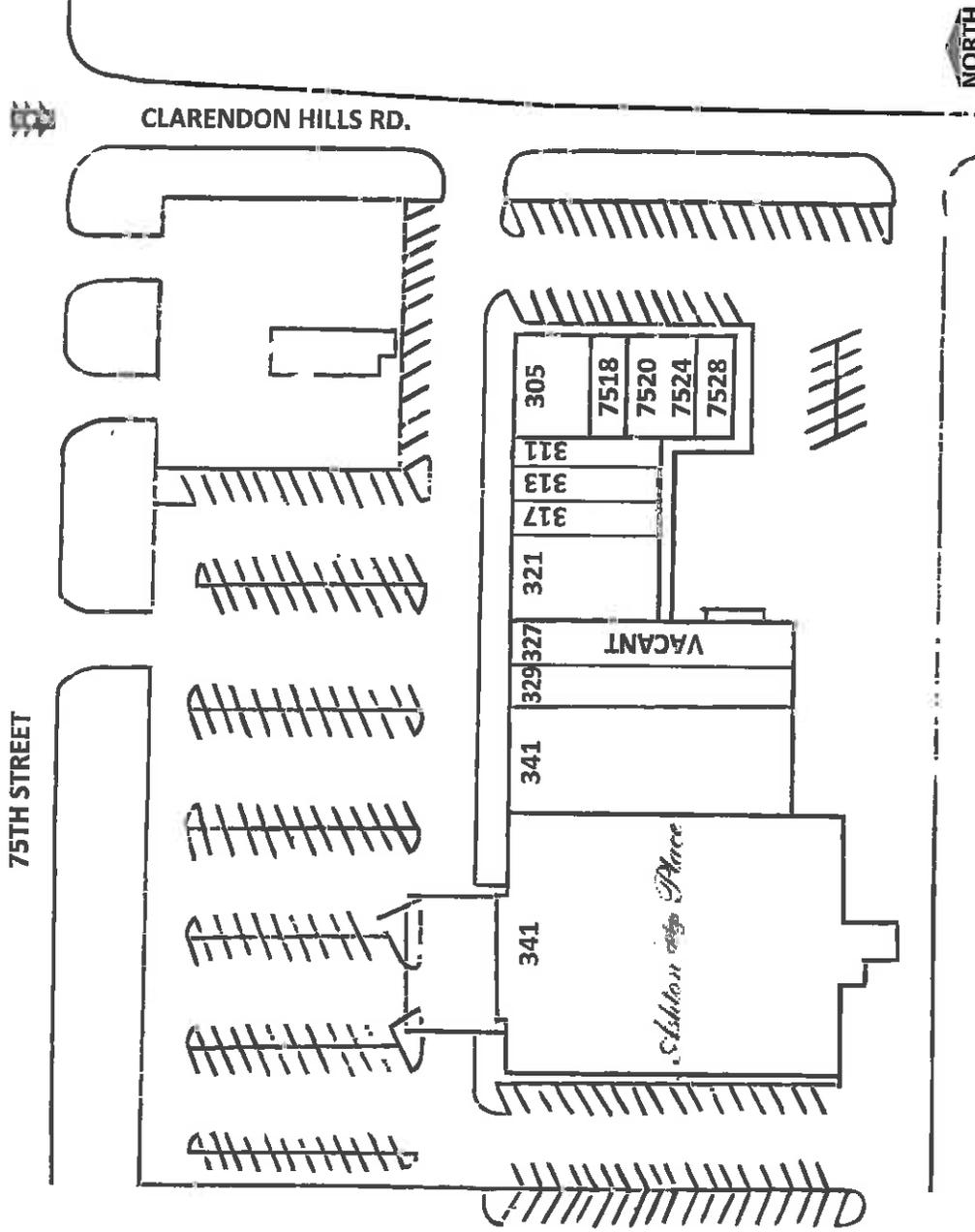
  
305.341 75th St  
Willowbrook, IL

Date:

9/24/13

# WILLOW COMMONS

75TH STREET & CLARENDON HILLS ROAD - WILLOWBROOK, IL



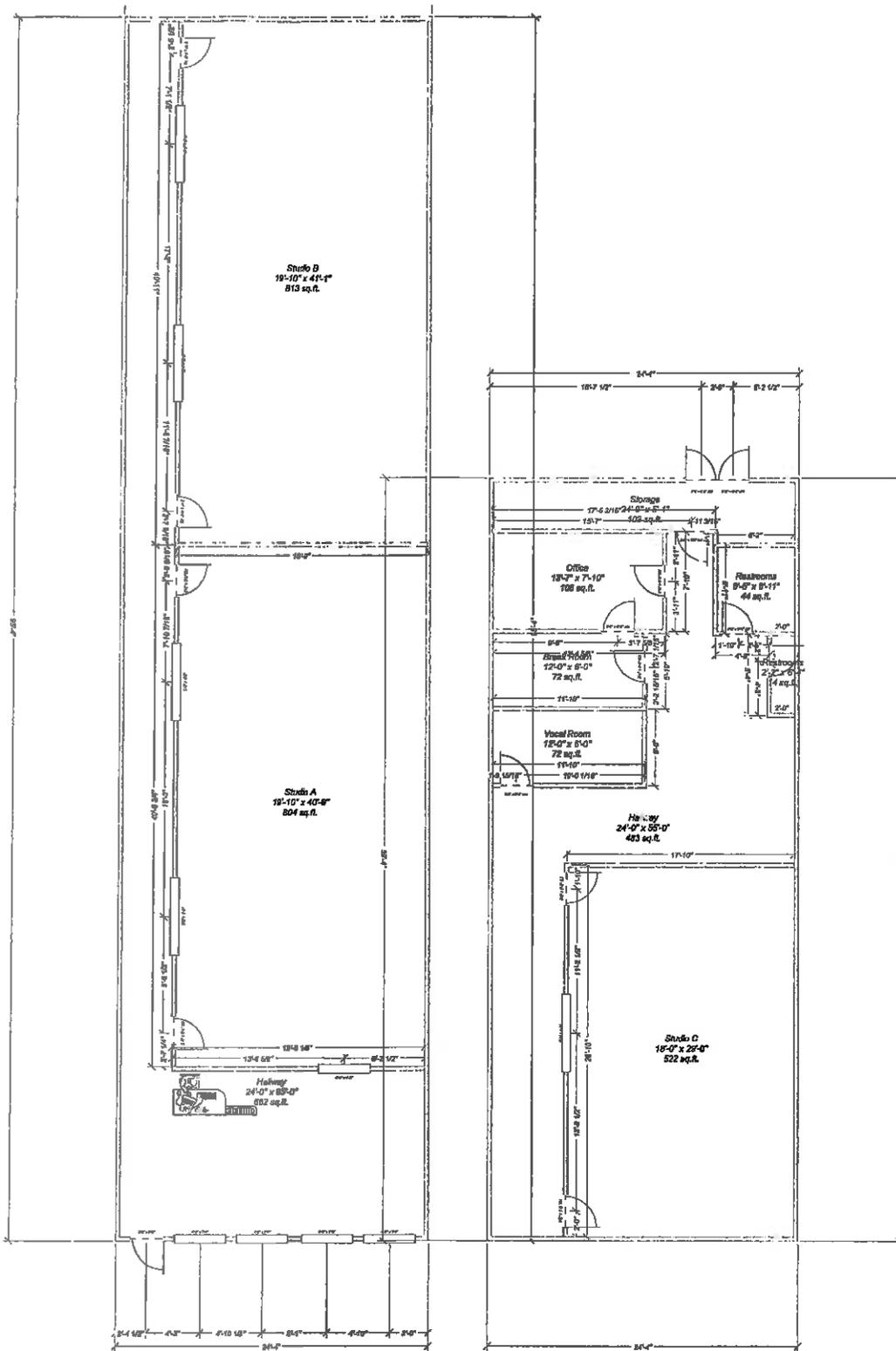
Tenant	#	Area
Dr. Schubert	305	2,202
Famous Nails	311	1,560
Top Driver	313	1,640
Sunny Side Up Tan Spa	317	1,640
Malahini Restaurant	321	3,895
Vacant	327	4,024
Accelerated Rehab Centers	329	3,953
Get Fast	337	8,580
Ashton Place	341	26,873
Quick Mart	7518	970
Center Cleaners	7520 & 7524	2,068
Dairy Queen	7528	1,092
<b>Total Leased</b>		<b>54,473</b>
<b>Total Vacant</b>		<b>4,024</b>
<b>Total GLA</b>		<b>58,497</b>

The information contained herein has either been given to us by the owner of the property or obtained from sources that we deem reliable. We have no reason to doubt its accuracy but we do not guarantee it.

**MID-AMERICA**  
**ASSET MANAGEMENT, INC.**  
 1 PARKVIEW PLAZA, 9th FLOOR, OAKBROOK TERRACE, IL 60181  
[www.midamericagrp.com](http://www.midamericagrp.com)

Your retail future  
 is our business

**CONTACT INFORMATION**  
 Ken Smallwood T: 630-954-7371 F: 630-954-7306  
[ksmallwood@midamericagrp.com](mailto:ksmallwood@midamericagrp.com)



STUDIO "A" 12 STUDENTS  
 STUDIO "B" 12 STUDENTS  
 STUDIO "C" 12 STUDENTS  
 VOICE ROOM 1 STUDENT

37 STUDENTS

4 TEACHERS & 1 RECEPTIONIST WILL BE PARKING IN THE REAR LOT.



To whom it may concern,

MAG Finishing Inc. will be starting interior construction for Beyond the Stars Performing Arts Academy Inc. located at 327 75<sup>th</sup> Street, Willowbrook, IL 60527. In January 2014 with completion expected April 30<sup>th</sup> 2014.

Sincerely,

Martin Garcia  
Owner

630-546-2314  
mgarcia6241@yahoo.com