

# UNOFFICIAL COPY



THIS DOCUMENT PREPARED  
BY AND AFTER RECORDING  
RETURN TO:

Holland & Knight LLP  
131 South Dearborn, 30th Floor  
Chicago, IL 60603  
Attn.: Mark Burkland  
312-263-3600

Doc#: 1229922114 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/25/2012 02:58 PM Pg: 1 of 14

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

## DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

This Declaration of Easements, Covenants, and Restrictions (this "Declaration") is entered into as of ~~September~~ <sup>October</sup> 12, 2012, (the "Effective Date") between the PARK DISTRICT OF OAK PARK (the "Park District") and WAYNE A. DECKERT, individually (the "Car Wash Owner") (together the "Parties").

### RECITALS:

A. The Car Wash Owner owns the parcel of improved real property commonly known as 5-7 Lake Street, Oak Park, Illinois, and legally described on Exhibit A attached hereto and incorporated herein ("Parcel A").

B. Parcel A is improved with a one-story building currently used as a car wash and related services (the "Car Wash Building").

C. The Park District owns the parcel of unimproved real property commonly known as 25 Lake Street, Oak Park, Illinois, and legally described on Exhibit B attached hereto and incorporated herein ("Parcel B"). Parcel B abuts Parcel A to the west.

D. A portion of the Car Wash Building's existing west wall (the "Car Wash West Wall") encroaches onto Parcel B (the "Encroachment") as depicted on the schematic diagram attached hereto and incorporated herein as Exhibit C, located within the area legally described on Exhibit C (the "Encroachment Area").

E. The Car Wash Owner has requested that the Park District grant a temporary easement to the Car Wash Owner and Parcel A permitting the Encroachment onto Parcel B.

RECORDING FEE

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DATE 10/24/2012 COPIES 6

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F. The Park District is building a gymnastics facility (the “*New Facility*”) on Parcel B. The east wall of the New Facility (the “*New Facility East Wall*”) will be directly adjacent to the Car Wash West Wall. When the New Facility is built, there will be a gap of several inches between the New Facility East Wall and the Car Wash West Wall (the “*Wall Gap*”).

G. The Car Wash Owner and the Park District agree that it is in their mutual best interests to install a protective rainwater cap (the “*Protective Cap*”) over the Wall Gap to prevent rainwater from seeping into the Wall Gap and instead causing rainwater to flow onto the roof of the Car Wash Building. A description of the work to install the Protective Cap (the “*Protective Cap Work*”) and the plans (the “*Protective Cap Plans*”) for the Protective Work are described on Exhibit D attached hereto and incorporated herein.

H. The Car Wash Owner has agreed to grant the Park District, for the benefit of Parcel B, an easement permitting the completion of the Protective Cap Work, allowing for maintenance of the Protective Cap, and permitting the flow of water from the Protective Cap onto the roof of the Car Wash Building.

I. The Car Wash Owner and the Park District wish to memorialize the terms of their agreement and understanding regarding the Encroachment, the Protective Cap Work, and the Protective Cap as set forth in this Declaration.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Car Wash Owner and the Park District agree as follows:

## Section 1. Temporary Encroachment Easement.

A. Park District Grant of Temporary Encroachment Easement. Subject to any express conditions, limitations, or reservations contained in this Declaration, the Park District hereby declares that Parcel B and the owner of Parcel B shall be burdened by, and Parcel A and the owner of Parcel A, shall be benefited by a nonexclusive, temporary easement permitting the Encroachment within the Encroachment Area (the “*Temporary Encroachment Easement*”).

B. Termination of Encroachment Easement. The Temporary Encroachment Easement granted under this Section 1 benefiting Parcel A and the owner of Parcel A will terminate, expire, and be forfeited immediately on the demolition or removal of the Encroachment from the Encroachment Area.

## Section 2. Protective Cap Work Approval and Easements.

A. Cash Wash Owner Approval Grant of Easements. Subject to any express conditions, limitations, or reservations contained in this Declaration, the Car

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Wash Owner hereby approves and consents to completion of the Protective Cap Work and the attachment of the Protective Cap to the Car Wash Building as further described on Exhibit E (the "*Cap Attachment*"). The Car Wash Owner further hereby declares that Parcel A and the owner of Parcel A shall be burdened by, and Parcel B and the owner of Parcel B shall be benefited by, the following nonexclusive, temporary easements (the following three easements being collectively referred to as the "*Car Wash Easements*"):

- (i) Easement to Complete the Protective Cap Work. A temporary easement upon, onto, over, above, and across Parcel A and the Car Wash Building as reasonably necessary (as determined by the Park District) for the completion of the Protective Cap Work, at the Park District's expense, including but not limited to installation of the Protective Cap, attachment of the Protective Cap to the Car Wash Building, and use of the roof of the Car Wash Building to complete the Protective Cap Work.
- (ii) Easement for Storm Water Drainage. A temporary easement onto, upon, and across the roof of the Car Wash Building for the drainage of storm water from the Protective Cap and to and through any roof drains, downspouts, or similar improvements, currently in existence or installed in the future, that which are part of or connected to the Car Wash Building and Parcel A, which improvements are used for the discharge and drainage of storm water.
- (iii) Easement to Maintain Protective Cap. A temporary easement upon and across those portions of Parcel A and the Car Wash Building as necessary for the Park District to maintain, repair, and replace the Protective Cap when necessary as determined by the Park District.

B. Termination of Car Wash Easements. The three Car Wash Easements granted under this Section 2 benefiting Parcel B and the owner of Parcel B will terminate, expire, and be forfeited immediately on the demolition or removal of the Encroachment from the Encroachment Area. At that time, the Protective Cap may be removed from the New Facility at the Park District's expense.

### Section 3. Covenants of Park District.

The Park District covenants and agrees as follows:

A. Performance of Work. To perform the Protective Cap Work in a safe and workmanlike manner and in compliance with all governmental laws and regulations and all usual and customary construction standards and practices.

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B. Damage. To complete the Protective Cap Work in accordance with the Protective Cap Plans and so as not to unreasonably interfere or otherwise materially impair or affect the operation of the Car Wash Owner's business on Parcel A.

C. Alteration of Cap. Not to materially alter or relocate the Protective Cap without the consent of the Car Wash Owner.

D. Maintenance of Cap. To maintain the Protective Cap in good condition and repair and to make repairs and replacements that may from time to time be required with respect thereto, as determined by the Park District in its sole discretion.

E. Indemnification. Except to any extent covered by the insurance required hereunder, to hold harmless and indemnify the Car Wash Owner from and against any and all liabilities or claims of liability, losses, costs, charges, expenses, and damages of any kind or character whatsoever (but only to the extent not caused by the act or omission of the Car Wash Owner or the Car Wash Owner's members, partners, agents and employees) as a result of any of the activities permitted by, or undertaken in connection with the completion of the Protective Cap Work.

F. Insurance. To maintain the property and general liability insurance coverage current provided to the Park District by its insurer the Park District Risk Management Agency from the date of commencement of the Protective Cap Work until the date that Work is completed.

## Section 4. Covenants of Car Wash Owner.

The Car Wash Owner covenants and agrees as follows:

A. Modification. Not to modify, alter, relocate, or otherwise change the Protective Cap or any improvements attaching the Protective Cap to the Car Wash Building without the prior written consent of the Park District.

B. Maintenance of West Wall. To maintain in good order, and to repair promptly when necessary, the Car Wash West Wall.

C. Condition, Repair of Car Wash West Wall. When maintaining, repairing, or demolishing the Car Wash West Wall, to perform the work on the maintenance, repair, or demolition in a safe and workmanlike manner, in compliance with all governmental laws and regulations, in compliance with all usual and customary construction standards and practices, and in a manner that does not damage or cause damage to the New Facility East Wall, and to pay all costs and expenses incurred by the Park District in repairing any damage to the New Facility East Wall or any other Park District property caused or created by any failure of the Car Wash West Wall, any failure to maintain or to repair the Car Wash West Wall, or any repair or demolition of the Car Wash West Wall.

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D. Indemnification. To hold harmless and indemnify the Park District from and against any and all liabilities or claims of liability, losses, costs, charges, expenses, and damages of any kind or character whatsoever (but only to the extent not caused by the act or omission of the Park District) as a result of any of any act, action, failure to act of the Car Wash Owner in connection with the Encroachment or the Car Wash West Wall.

E. Insurance. To secure and maintain in full force and effect, from the Effective Date until the Car Wash West Wall is removed and the Encroachment is entirely gone from the Encroachment Area, commercial general liability insurance against claims for personal injury, including bodily injury or death, and property damage liability, with liability policy coverage in the amounts of not less than \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

Section 5. No Rights in Public; No Implied Easements.

Nothing contained in this Declaration may be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel B or Parcel A. No easements, except those expressly set forth in herein, may be implied by this Declaration.

Section 9. Notices.

All notices, demands, or requests ("Notice") required or permitted to be given pursuant to this Declaration must be in writing and must be sent (A) by messenger hand delivery, or (B) by certified mail, postage prepaid, return receipt requested, or (C) by nationally recognized overnight courier with confirmation of delivery, and all Notices will be deemed delivered when received. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been given will be deemed to constitute receipt of the Notice. Notices to either Party must be addressed to that Party at the address that Party may designate from time to time by notice given pursuant to this Section or, in the absence of such notice, to the addresses provided below:

If to Park District:  
Park District of Oak Park  
218 Madison Street  
Oak Park, Illinois 60302  
Attn.: Executive Director

with a copy to:  
Holland & Knight  
131 South Dearborn Street, 30th Floor  
Chicago, Illinois 60603  
Attn.: Mark Burkland

If to Car Wash Owner:  
Minit Car Wash  
7 West Lake Street  
Oak Park, IL 60302  
Attn.: Wayne A. Deckert

with a copy to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## 10. General Provisions.

A. Entire Agreement. This Declaration constitutes the entire agreement of the Parties with respect to the subject matters hereof, and there are no other agreements or understandings, written or oral, with respect to the subject matters hereof.

B. Amendments. This Declaration may not be amended or otherwise changed except by an instrument in writing signed by both Parties. The rights of a Party under this Declaration may not be waived or forfeited except by an instrument in writing executed by that Party.

C. Binding Effect. All terms of this Declaration apply to, are binding on, and inure to the benefit of the Parties and their successors, heirs, and assigns.

D. Relationship. Nothing in this Declaration may be deemed or construed to create a partnership or joint venture of or between, or to create any other relationship between, the Parties other than the contractual relationship.

E. Validity of Provisions. In case any one or more of the obligations in this Declaration is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity of the remaining obligations will not be affected, prejudiced, or disturbed in any way by that finding.

F. Governing Law. This Declaration is governed by and must be construed according to the laws of the State of Illinois without regard to conflicts of laws rules.

G. Enforcement. The Park District and the Car Wash Owner each will have the right to specific performance and other equitable enforcement of the obligations of the other Party. Notwithstanding anything to the contrary in this Declaration, if either the Car Wash Owner or the Park District brings a lawsuit against the other Party to enforce its rights under this Declaration, then the losing party in the lawsuit must pay the prevailing party's costs and expenses incurred in connection with that litigation, including without limitation reasonable attorneys' fees. The "prevailing party" will be determined by the court hearing the lawsuit.

H. Cooperation. The Car Wash Owner and the Park District agree to cooperate reasonably with each other and to cause their agents, servants, employees, and contractors to cooperate with the other Party in connection with carrying out the purposes and obligations of this Declaration and the recording of this Declaration.

I. Recording. The Park District will cause this Declaration to be recorded with the Recorder of Deeds for Cook County, Illinois.

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J. Recitals. The recitals at the beginning of this Declaration all are incorporated into this Declaration by this reference and are material, substantive provisions of this Declaration.

IN WITNESS WHEREOF, the Car Wash Owner and the Park District have caused this Declaration to be executed as of the Effective Date by their properly authorized representatives.

**Park District of Oak Park**

By: Jan R. Arnold  
 Printed name: JAN R. Arnold  
 Title: Executive Director

**Wayne A. Deckert, individually**

By: Wayne A. Deckert  
 Wayne A. Deckert, individually

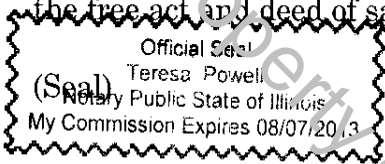
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## ACKNOWLEDGEMENTS

STATE OF ILLINOIS     )  
  )  
  )     ss.  
COUNTY OF COOK     )

On this 12<sup>th</sup> day of October 2012, before me appeared **Jan Arnold**, personally known to me, who, being by me duly sworn, did say that she is the duly authorized and empowered Executive Director of the Park District of Oak Park, and that said instrument was signed on behalf of said entity by authority granted by its Board of Commissioners and said Jan Arnold acknowledged said instrument to be the free act and deed of said entity.



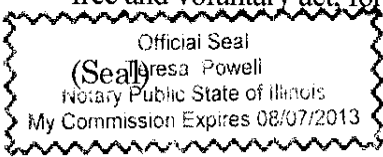
Teresa Powell

Notary Public

My term expires: 08/07/2013

STATE OF ILLINOIS     )  
  )  
  )     ss.  
COUNTY OF COOK     )

On this 12<sup>th</sup> day of October 2012, before me appeared **Wayne A. Deckert, individually**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and who, being by me duly sworn, acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.



Teresa Powell

Notary Public

My term expires: 08/07/2013



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## EXHIBIT A

### LEGAL DESCRIPTION OF PARCEL A

PARCEL 1: THE WEST 50 FEET OF THE EAST 141 FEET OF BLOCK 37 (EXCEPT THAT PART OF SAID EAST 141 FEET OF BLOCK 37 LYING WESTERLY OF THE EASTERLY FACE OF THE WALL OF THE 1 STORY BRICK BUILDING AS NOW LOCATED, OF THE WEST 138.88 FEET OF THE EAST 279.88 FEET OF SAID BLOCK 37), ALL IN THE VILLAGE OF RIDGELAND, BEING A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 7 AND THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 16-08-127-015-0000

PARCEL 2: THE WEST 20 FEET OF THE SOUTH 77.16 FEET OF THE EAST 91 FEET OF BLOCK 37 IN RIDGELAND, BEING A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 16-08-127-010-0000  
16-08-127-012-0000

Common Address: 7 Lake Street, Oak Park, Illinois

Clerk's Office

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## EXHIBIT B

### LEGAL DESCRIPTION OF PARCEL B

THAT PART OF BLOCK 37 LYING EAST OF THE EASTERLY LINE OF HUMPHREY AVENUE, AS SAID HUMPHREY AVENUE WAS CONVEYED TO THE VILLAGE OF OAK PARK BY QUIT CLAIM DEED RECORDED DECEMBER 29, 1903 AS DOCUMENT NUMBER 3484034 AND LYING WESTERLY OF THE PART OF THE EAST 141 FEET OF BLOCK 37 LYING WESTERLY OF THE EASTERLY FACE OF THE WALL OF THE ONE STORY BRICK BUILDING NOW LOCATED ON THE WEST 138.88 FEET OF THE EAST 279.88 FEET OF SAID BLOCK 37, ALL IN THE VILLAGE OF RIDGELAND, BEING A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 7, AND THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 16-08-127-014-0000

Common Address: 25 Lake Street, Oak Park, Illinois

Cook County Clerk's Office

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## EXHIBIT D

### DESCRIPTION OF THE PROTECTIVE CAP WORK

Between existing west wall and new wall at the 25 Lake Street property, a void separation of one foot (1') will be created. The existing clay coping will be removed. The cap will be comprised of cold-form metal framing, exterior grade plywood, roofing membrane that extends a minimum of twelve inches (12") vertically on the new wall to ensure a proper enclosure of the void separation. The separation is engineered to allow independent movement of each wall with expansion joints and compressible flashings.

Property of Cook County Clerk's Office

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# **OVERSIZE EXHIBIT**

1229922114

1 Double  
12 pages  
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**FORWARD ORIGINAL  
DOCUMENT TO PLAT  
COUNTER IMMEDIATELY  
AFTER RECORDING FOR  
SCANNING**