

Village of Mamaroneck



Village Hall at the Regatta

P.O Box 369

123 Mamaroneck Avenue

Mamaroneck, NY 10543

<http://www.villageofmamaroneck.org>

OFFICE OF
ROBERT A. SPOLZINO
VILLAGE ATTORNEY

Tel (914) 777-7737

Fax (914) 777-7769

TO: Mayor Murphy and the Board of Trustees

FROM: Robert A. Spolzino, Esq.

RE: Brixmor License Agreement

DATE: September 10, 2020

CC: Jerry Barberio, Village Manager
Dan Sarnoff, Assistant Village Manager
Christy Mason, Deputy Village Attorney

Attached your consideration are my memo of July 7, 2020 with the original draft of the amended agreement, the proposed revised agreement that I prepared in response to the discussion at the most recent meeting of the Board of Trustees and Trustee Natchez' email to me requesting additional revisions.

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TO: Mayor Murphy and the Board of Trustees

FROM: Robert A. Spolzino, Esq.

RE: Brixmor

DATE: July 7, 2020

CC: Jerry Barberio, Village Manager
Dan Sarnoff, Assistant Village Manager

Attached for your consideration is an updated agreement regarding the property licensed to Brixmor at the end of Lester Avenue. The purpose of the update is to address the installation of two bollards to protect the transformer on Brixmor's property adjacent to the license area and to further define maintenance responsibility for the license area. The updated agreement was originally prepared in February, but was waylaid thereafter by the Coronavirus situation.

AMENDED LICENSE AGREEMENT

THIS AMENDED LICENSE AGREEMENT is entered into this ____ day of ~~November~~~~December 2019~~ July~~February~~ 2020 by and between the **Village of Mamaroneck**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 123 Mamaroneck Avenue, Mamaroneck, New York 10573, (hereinafter "the Village"), and **CW A&P Mamaroneck LLC**, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 450 Lexington Avenue, New York, NY 10170 (hereinafter "CW A&P"), owner of the property located at 805 and 817-819 Mamaroneck Avenue, Mamaroneck, New York 10543 ("CW A&P's Property"). This Amended License Agreement supersedes the prior license agreements dated February 12, 2019 and December 27, 2019.

For and in consideration of the mutual promises contained in this License Agreement, the Village and CW A&P agree as follows:

A. Landscape area license to CW A&P.

The Village grants to CW A&P, and CW A&P accepts from the Village, a revocable license to occupy and use a portion of the Village right-of-way at the end of Lester Avenue, designated as "Lester Avenue License Area" on the as-built survey annexed as Exhibit A (the "License Area"), to use only in accordance with Paragraph No. 1(m) of the resolution of the Village of Mamaroneck Planning Board Resolution dated May 24, 2017, ~~and~~ and for pedestrian access to CW A&P's Property as approved by the Village of Mamaroneck Building Inspector, whose approval shall not be unreasonably withheld, and for the placement of two (2) bollards to protect a transformer located on CW A&P's property at the westside of Lester Avenue. The license is subject to the following terms and conditions:

1. **Maintenance.** CW A&P will complete the improvements to the License Area in accordance with the site plan and as shown on Exhibit A, and has will also installed a railing along the concrete walk, and will thereafter maintain the License Area, including the ~~ramp~~concrete walk, handrail ~~sidewalk~~, plantings and other improvements, to the reasonable satisfaction of the Building Inspector at CW A&P's sole cost and expense, including removing debris and snow and ice from the License Area, salting and sanding when reasonably required and maintaining the plantings to the reasonable satisfaction of the Village Manager.

2. **Transferability.** CW A&P may not transfer the rights conferred on it by this License Agreement except to a grantee or transferee (by assignment, lease mortgage, etc.) of the entire interest in CW A&P's Property.

3. **Duration.** The term of the amended license for the License Area will commence on ~~December 1, 2019~~ March 1~~July 15, 2020~~ and will end on January 31, 2028, unless sooner terminated. Unless the license has already terminated, CW A&P may extend the term of the license for another of five years, until December 31, 2033, by giving written notice to Village not earlier than August 31, 2028, and not later than October 31, 2028.

4. **Termination.** The license for the License Area will automatically terminate if CW A&P's certificate of occupancy for CW A&P's Property is revoked. The Village may terminate the license granted to CW A&P by this License Agreement (a) upon 30 days' written notice to CW A&P if CW A&P fails to satisfy the terms and conditions of this License Agreement and does not cure its failure within 30 days of written notice of the failure, except that if CW A&P is unable to cure such a failure within 30 days due to laws, rules, regulations or other governmental mandates arising from public health or other emergency, CW A&P will not be in default if it commences to cure as soon as legally permissible and reasonably possible and proceeds to complete the cure expeditiously; and (b) upon 60 days' written notice to CW A&P if the Village determines, in its sole discretion, that it requires the use of the License Area for any purpose. If the Village exercise this right of termination, CW A&P will vacate the property within 30 days of receipt of written notice from the Village. The Village's decision to terminate this License Agreement is the equivalent of the Village's refusal to grant approval. As provided in Paragraph No. 1(m) of the resolution of the Village of Mamaroneck Planning Board Resolution dated May 24, 2017, CW A&P will, upon termination of the License Agreement by the Village, be required and allowed to file a revised site plan and landscaping plan with the Building Department showing the elimination of the landscaping strip. Termination of this License Agreement by the Village because the Village requires the use of the License Area will not affect Licensee's right to use Licensee's Property as permitted by the Village of Mamaroneck Planning Board Resolution dated May 24, 2017 will not be affected by the Village's termination of the license. If the Village terminates this License Agreement, the Village will maintain, at its sole cost and expense, the concrete walk, the railing and the two bollards, including salting and sanding the concrete walk when reasonably required.

5. **Access.** The Village may access any portion of the License Area for any governmental purpose upon one day's written notice to CW A&P, except that the Village will have the right to access the License Area, or any portion of it, immediately in the event of an emergency. The Village will make any and all reasonable repairs and/or restoration to any portion of the License Area damaged by the Village during access granted by the CW A&P or required by the Village in the event of an emergency.

6. **No warranty.** The Village does not warrant title to the License Area nor does the Village make any representation that License Area is satisfactory for the use permitted by this License Agreement.

7. **Accommodation.** The permission granted to CW A&P under this License Agreement is given by the Village to CW A&P as an accommodation. CW A&P acknowledges the Village's ownership of the License Area and the Village's rights associated with that ownership. CW A&P agrees that, except as otherwise provided in this License Agreement, it will never assail, resist, or deny the Village's ownership rights on the basis of CW A&P's occupancy or use of the License Area under this License Agreement.

8. **Insurance coverage.** CW A&P will add the License Area to the areas covered by its liability and property damage insurance policy. The policy must name the Village of Mamaroneck as an additional named insured with the same policy limits as are otherwise applicable to CW A&P's Property and must include a provision requiring 30 days' notice to the Village before the insurance policy may be cancelled. CW A&P will file a certificate of insurance with the Village Manager prior to undertaking any work on the License Area.

B. Drainage license to the Village.

CW A&P grants to the Village, and the Village accepts from CW A&P, an irrevocable license to discharge storm water from a catch basin on Lester Avenue into the stormwater management system constructed on CW A&P's property, as set forth in diagram attached as Exhibit "B," subject to the following terms and conditions:

1. **Construction.** CW A&P will construct the connection from the catch basin on Lester Avenue to the stormwater management system on its property at its sole cost and expense in accordance with plans and specifications approved by the Village Engineer. CW A&P will complete construction of the connection before applying for a final certificate of occupancy for CW A&P's property and acknowledges that it will not receive a final certificate of occupancy for the "new mixed commercial use units" presently under construction on CW A&P's Property located perpendicular to the existing retail box, formerly occupied by A&P, as identified in the Site Plan Approval Resolution, dated May 24, 2017, until the Village Engineer has determined that the connection is completed in accordance with the approved plans and specifications.

2. **Maintenance and repair by the Village.** The Village will maintain and repair the catch basin on Lester Avenue at its sole cost and expense.

3. **Maintenance and repair by CW A&P.** CW A&P will maintain the connection between the catch basin on Lester Avenue and CW A&P's storm water management system, at its sole cost and expense, in the same manner as it is required by the Declaration of Construction, Maintenance and Inspection of Stormwater Management Facilities made by CW A&P on August 8, 2017 to maintain the stormwater management system on its property, but the Village will reimburse CW A&P for the reasonable cost of any repairs to and/or replacements of the connection necessitated by the negligence, reckless or willful misconduct of the Village as reasonably determined by the Village Engineer.

C. General provisions.

1. **Application.** These general provisions apply to each of the licenses provided for in this License Agreement.

2. **Indemnification by CW A&P.** CW A&P releases and will defend, indemnify and hold the Village of Mamaroneck, and its trustees, officials, officers, agents, employees and volunteers harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in connection with CW A&P's use of the Landscape Area and the connection from the storm drain on Lester Avenue to the stormwater management system on its property, resulting from any negligent, reckless, or intentional act or omission of CW A&P, except claims resulting from the negligent, reckless or willful misconduct of the Village. This indemnity will not be limited by reason of the requirement that CW A&P provide insurance coverage or the limits of that coverage.

3. **Indemnification by the Village.** The Village releases and will defend, indemnify and hold CW A&P and its officers, agents and employees harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in

connection with the Village's use of the storm drain on Lester Avenue, except claims resulting from the negligent, reckless or willful misconduct of the CW A&P.

4. **Entire understanding.** This License Agreement embodies the entire understanding between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter of this License Agreement, other than the documents which constitute the approvals by the Village, in its governmental capacity, of the development on CW A&P's property. Any amendment to this License Agreement must be in writing and executed by the parties.

5. **Notices.** Any notice to CW A&P under this License Agreement must be sent by overnight delivery addressed as follows:

CW A&P Mamaroneck LLC
450 Lexington Avenue
New York, NY 10170
Attn: David Vender
Executive Vice President for Brixmor Property Group

Any notice to the Village under this License Agreement must be sent by overnight delivery addressed as follows:

Village Manager
Village of Mamaroneck
Village Hall at the Regatta
123 Mamaroneck Avenue
Mamaroneck, New York 10543

or the new address for the Village Manager's Office should the current address change.

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed on the ____ day of ~~November~~December, 2019 ~~February~~July 2020.

For the Village:

Village of Mamaroneck, New York

For the CW A&P:

Jerry Barberio
Village Manager

David Vender
CW A&P MAMARONECK, LLC

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

| On the _____ day of _____ in the year ~~2020~~ 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Jerry Barberio personally known to me or proved to me on the basis of satisfactory evidence to be the Village Manager of the Village of Mamaroneck whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

| On the _____ day of _____ in the year ~~2019~~ 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared David Vender personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A"

Richard A. Solmet
 Richard A. Solmet
 650 Halsey Avenue
 Mamaroneck, N.Y. 10543
 (914) 381-2352
 N.Y.S. Lic. Land Surveyor
 No. 49240



Unauthorized additions to or alterations of this plan is a violation of Section 7207 of the N.Y.S. Education Law.

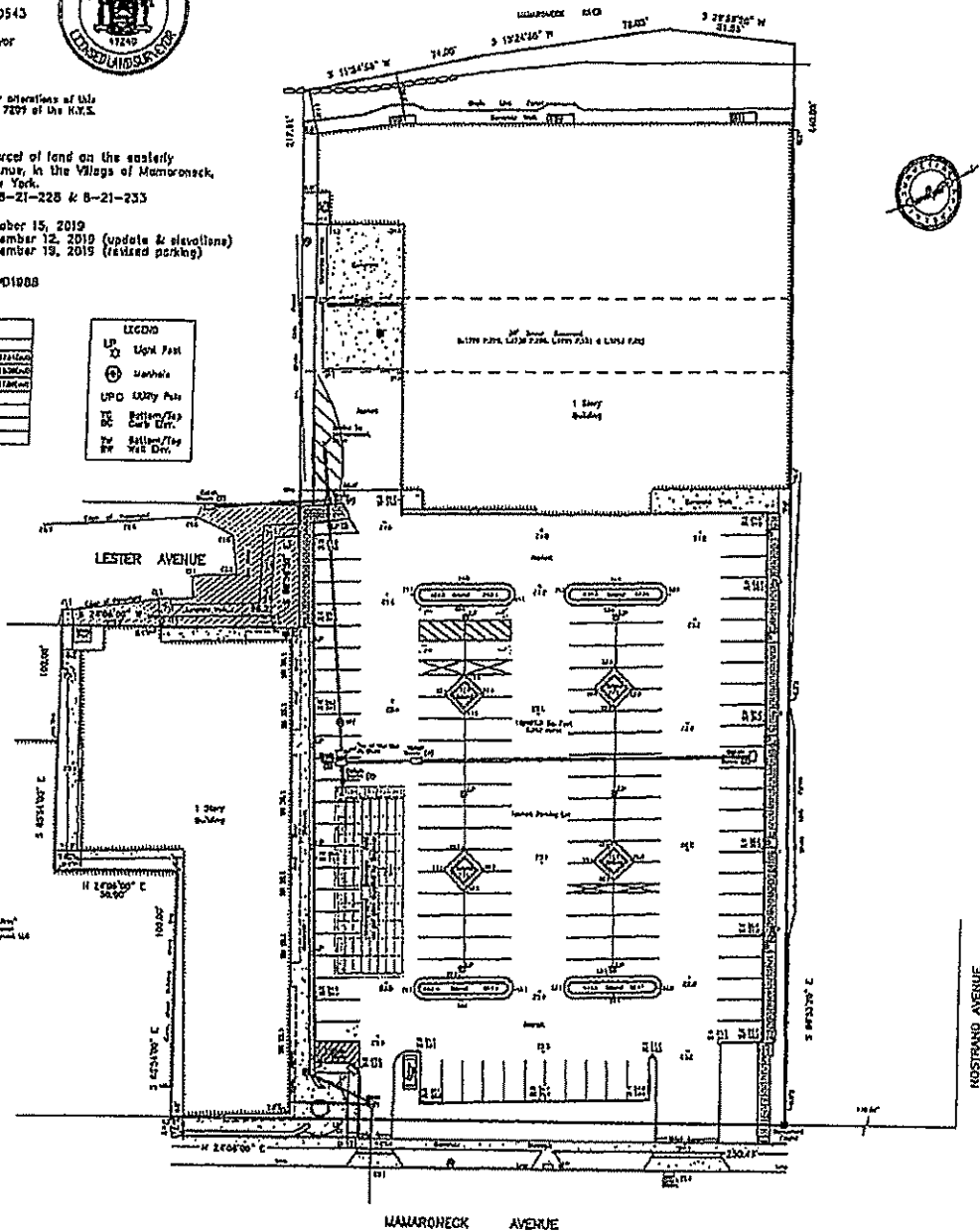
As-Built Survey of a parcel of land on the easterly side of Mamaroneck Avenue, in the Village of Mamaroneck, Westchester County, New York.
 Parcel known as SBLs: 8-21-228 & 8-21-233

Scale 1" = 30'
 October 15, 2019
 November 12, 2019 (update & elevations)
 November 19, 2019 (revised parking)

Elevations shown in NAVD1988

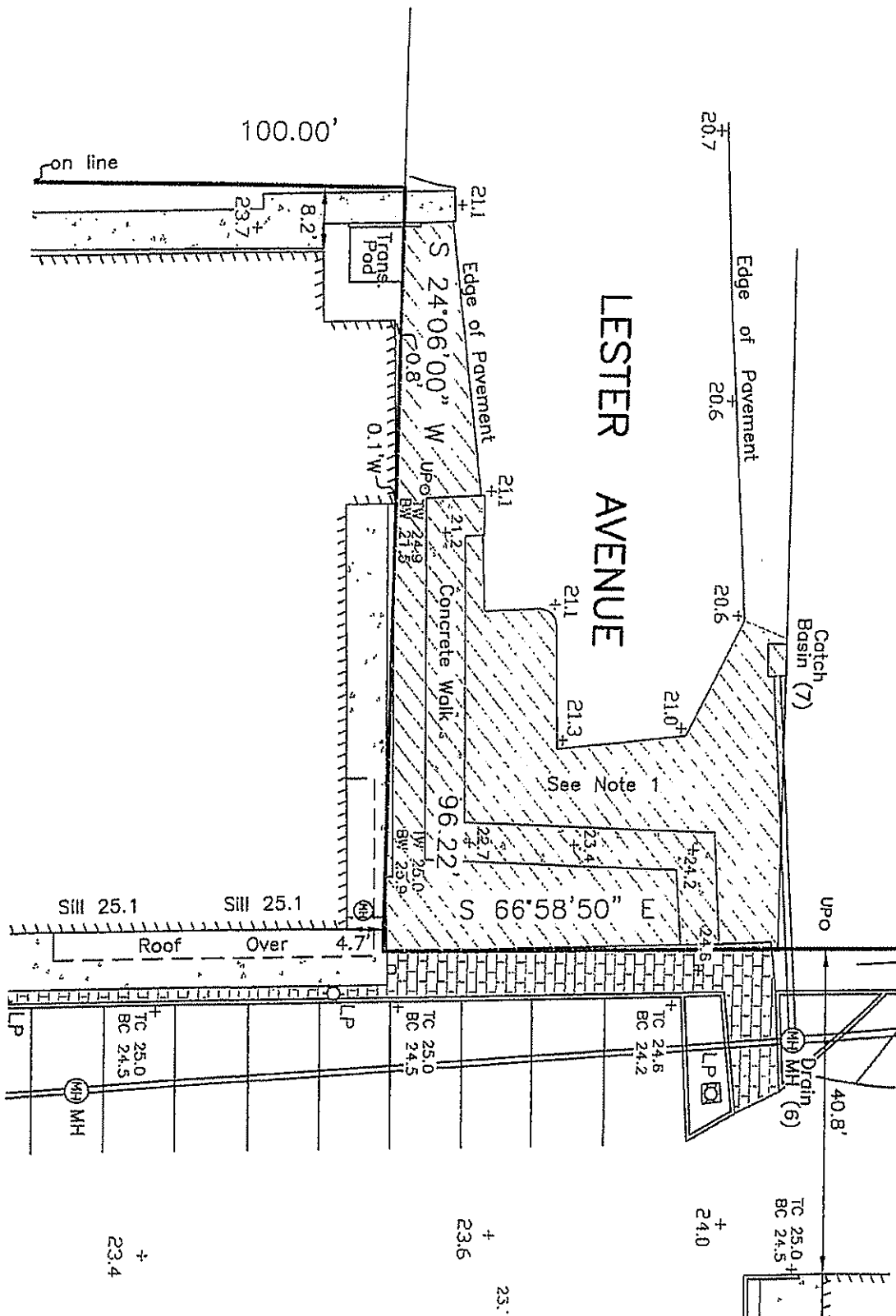
Station	Point	Elevation
1+00	1+00	112.15
1+10	1+10	112.15
1+20	1+20	112.15
1+30	1+30	112.15
1+40	1+40	112.15
1+50	1+50	112.15
1+60	1+60	112.15
1+70	1+70	112.15
1+80	1+80	112.15
1+90	1+90	112.15
2+00	2+00	112.15
2+10	2+10	112.15
2+20	2+20	112.15
2+30	2+30	112.15
2+40	2+40	112.15
2+50	2+50	112.15
2+60	2+60	112.15
2+70	2+70	112.15
2+80	2+80	112.15
2+90	2+90	112.15
3+00	3+00	112.15

Legend
UP Light Post
⊗ Manhole
UPC Utility Pole
⊕ Electric Pole
⊕ Gas Pole
⊕ Water Pole
⊕ Sewer Pole
⊕ Storm Drain



Notes:
 1. Symbolic depiction of "Lester Avenue Center Line" as per approved Departmental Survey, Volume 24, Page 1 of Supplement and the 2019 Supplement, L&L

EXHIBIT "B"



AMENDED LICENSE AGREEMENT

THIS AMENDED LICENSE AGREEMENT is entered into this ____ day of ~~November/December 2019~~ February/September 2020 by and between the **Village of Mamaroneck**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 123 Mamaroneck Avenue, Mamaroneck, New York 10573, (hereinafter "the Village"), and **CW A&P Mamaroneck LLC**, a limited liability company organized and existing under the laws of the State of New York, having its principal office at 450 Lexington Avenue, New York, NY 10170 (hereinafter "CW A&P"), owner of the property located at 805 and 817-819 Mamaroneck Avenue, Mamaroneck, New York 10543 ("CW A&P's Property"). This Amended License Agreement supersedes the prior license agreements dated February 12, 2019 and December 27, 2019.

For and in consideration of the mutual promises contained in this License Agreement, the Village and CW A&P agree as follows:

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1. **Maintenance.** CW A&P will complete the improvements to the License Area in accordance with the site plan and as shown on Exhibit A, ~~and has will also installed an ADA-compliant railing along the ADA-compliant concrete walk,~~ and will thereafter maintain the License Area, including the ~~ramp~~ concrete walk, handrail-sidewalk, plantings and other improvements, to the reasonable satisfaction of the Building Inspector at CW A&P's sole cost and expense, including removing debris and snow and ice from the License Area, salting and sanding when reasonably required and maintaining the plantings to the reasonable satisfaction of the Village Manager, weeding the landscaped area as needed, removing all debris from the concrete walk on a daily basis and otherwise keeping the License Area in good shape.

2. **Transferability.** CW A&P may not transfer the rights conferred on it by this License Agreement except to a grantee or transferee (by assignment, lease mortgage, etc.) of the entire interest in CW A&P's Property.

3. **Duration.** The term of the amended license for the License Area will commence on ~~December 1, 2019~~ March 1/July 15/September 15, 2020 and will end on January 31, 2028, unless sooner terminated. Unless the license has already terminated, CW A&P may extend the term of the license for another of five years, until December 31, 2033, by giving written notice to Village not earlier than August 31, 2028, and not later than October 31, 2028.

4. **Termination.** The license for the License Area will automatically terminate if CW A&P's certificate of occupancy for CW A&P's Property is revoked. The Village may terminate the license granted to CW A&P by this License Agreement (a) upon 30 days' written notice to CW A&P if CW A&P fails to satisfy the terms and conditions of this License Agreement and does not cure its failure within 30 days of written notice of the failure, except that if CW A&P is unable to cure such a failure within 30 days due to laws, rules, regulations or other governmental mandates arising from public health or other emergency, CW A&P will not be in default if it commences to cure as soon as legally permissible and reasonably possible and proceeds to complete the cure expeditiously; and (b) upon 60 days' written notice to CW A&P if the Village determines, in its sole discretion, that it requires the use of the License Area for any purpose. If the Village exercises this right of termination, CW A&P will vacate the property within 30 days of receipt of written notice from the Village. The Village's decision to terminate this License Agreement is the equivalent of the Village's refusal to grant approval. As provided in Paragraph No. 1(m) of the resolution of the Village of Mamaroneck Planning Board Resolution dated May 24, 2017, CW A&P will, upon termination of the License Agreement by the Village, be required and allowed to file a revised site plan and landscaping plan with the Building Department showing the elimination of the landscaping strip. Termination of this License Agreement by the Village because the Village requires the use of the License Area will not affect Licensee's right to use Licensee's Property as permitted by the Village of Mamaroneck Planning Board Resolution dated May 24, 2017 will not be affected by the Village's termination of the license. If the Village terminates this License Agreement, the Village will maintain, at its sole cost and expense, the concrete walk, the railing and the two bollards, including salting and sanding the concrete walk when reasonably required.

5. **Access.** The Village may access any portion of the License Area for any governmental purpose upon one day's written notice to CW A&P, except that the Village will have the right to access the License Area, or any portion of it, immediately in the event of an emergency. The Village will make any and all reasonable repairs and/or restoration to any portion of the License Area damaged by the Village during access granted by the CW A&P or required by the Village in the event of an emergency.

6. **No warranty.** The Village does not warrant title to the License Area nor does the Village make any representation that License Area is satisfactory for the use permitted by this License Agreement.

7. **Accommodation.** The permission granted to CW A&P under this License Agreement is given by the Village to CW A&P as an accommodation. CW A&P acknowledges the Village's ownership of the License Area and the Village's rights associated with that ownership. CW A&P agrees that, except as otherwise provided in this License Agreement, it will never assail, resist, or deny the Village's ownership rights on the basis of CW A&P's occupancy or use of the License Area under this License Agreement.

8. **Insurance coverage.** CW A&P will add the License Area to the areas covered by its liability and property damage insurance policy. The policy must name the Village of Mamaroneck as an additional named insured with the same policy limits as are otherwise applicable to CW A&P's Property and must include a provision requiring 30 days' notice to the Village before the insurance policy may be cancelled. CW A&P will file a certificate of insurance with the Village Manager prior to undertaking any work on the License Area.

B. Drainage license to the Village.

CW A&P grants to the Village, and the Village accepts from CW A&P, an irrevocable license to discharge storm water from a catch basin on Lester Avenue into the stormwater management system constructed on CW A&P's property, as set forth in diagram attached as Exhibit "B," subject to the following terms and conditions:

1. **Construction.** CW A&P will construct the connection from the catch basin on Lester Avenue to the stormwater management system on its property at its sole cost and expense in accordance with plans and specifications approved by the Village Engineer. CW A&P will complete construction of the connection before applying for a final certificate of occupancy for CW A&P's property and acknowledges that it will not receive a final certificate of occupancy for the "new mixed commercial use units" presently under construction on CW A&P's Property located perpendicular to the existing retail box, formerly occupied by A&P, as identified in the Site Plan Approval Resolution, dated May 24, 2017, until the Village Engineer has determined that the connection is completed in accordance with the approved plans and specifications.

2. **Maintenance and repair by the Village.** The Village will maintain and repair the catch basin on Lester Avenue at its sole cost and expense.

3. **Maintenance and repair by CW A&P.** CW A&P will maintain the connection between the catch basin on Lester Avenue and CW A&P's storm water management system, at its sole cost and expense, in the same manner as it is required by the Declaration of Construction, Maintenance and Inspection of Stormwater Management Facilities made by CW A&P on August 8, 2017 to maintain the stormwater management system on its property, but the Village will reimburse CW A&P for the reasonable cost of any repairs to and/or replacements of the connection necessitated by the negligence, reckless or willful misconduct of the Village as reasonably determined by the Village Engineer.

C. General provisions.

1. **Application.** These general provisions apply to each of the licenses provided for in this License Agreement.

2. **Indemnification by CW A&P.** CW A&P releases and will defend, indemnify and hold the Village of Mamaroneck, and its trustees, officials, officers, agents, employees and volunteers harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in connection with CW A&P's use of the Landscape Area and the connection from the storm drain on Lester Avenue to the stormwater management system on its property, resulting from any negligent, reckless, or intentional act or omission of CW A&P, except claims resulting from the negligent, reckless or willful misconduct of the Village. This indemnity will not be limited by reason of the requirement that CW A&P provide insurance coverage or the limits of that coverage.

3. **Indemnification by the Village.** The Village releases and will defend, indemnify and hold CW A&P and its officers, agents and employees harmless from and against all claims of any nature whatsoever, including losses, claims, actions, damages, hospital and medical expenses, attorneys' fees and other legal defense costs, settlements, judgments, fines and penalties, arising out of or in connection with the Village's use of the storm drain on Lester Avenue, except claims resulting from the negligent, reckless or willful misconduct of the CW A&P.

4. **Entire understanding.** This License Agreement embodies the entire understanding between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter of this License Agreement, other than the documents which constitute the approvals by the Village, in its governmental capacity, of the development on CW A&P's property. Any amendment to this License Agreement must be in writing and executed by the parties.

5. **Notices.** Any notice to CW A&P under this License Agreement must be sent by overnight delivery addressed as follows:

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450 Lexington Avenue
New York, NY 10170
Attn: David Vender
Executive Vice President for Brixmor Property Group

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Village Manager
Village of Mamaroneck
Village Hall at the Regatta
123 Mamaroneck Avenue
Mamaroneck, New York 10543

or the new address for the Village Manager's Office should the current address change.

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed on the ____ day of ~~November~~~~December, 2019~~ February~~July~~September 2020.

For the Village:

Village of Mamaroneck, New York

For the CW A&P:

Jerry Barberio
Village Manager

David Vender
CW A&P MAMARONECK, LLC

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year ~~2020~~ 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Jerry Barberio personally known to me or proved to me on the basis of satisfactory evidence to be the Village Manager of the Village of Mamaroneck whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year ~~2019~~ 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared David Vender personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Robert Spolzino

From: Daniel S. Natchez <dannatchez@vomny.org>
Sent: Monday, August 31, 2020 1:10 PM
To: Robert Spolzino; Mayor and Board
Cc: Jerry Barberio; Frank Tavalacci; Daniel Sarnoff; Sally Roberts; Agostino Fusco
Subject: Brixmore license agreement

Bob:

was down looking at the area for the license agreement and following should be noted and covered in the agreement. It appears that:

- A) the rear building access ramp/walkway and handrails extend onto village property
- B) the transformer or generator - not sure what it is in at the edge or on Village property. The survey is very unclear and should be updated. The bollards are NOT installed and will have to be on Village Property
- C) the excess concrete slop is still in place and should not be there
- D) I would hope we could get a clearer as built condition survey that labels properties lines

and FYI there were a fair amount of debris - papers etc with the shrubs and walkway area that have not been cleaned up

Dan Natchez
Mamaroneck Village Trustee
914-806-0365