

# Notice To Applicant

City of Atlanta - Bureau of Planning

APPLICATION NUMBER: **V-10-102**

City Council District: Neighborhood Planning Unit (NPU): **N**

Address of Property: **977 Ponce de Leon**

Board of Zoning Adjustment (BZA) Hearing Date:

**Thursday, August 12, 2010 at 12:00 p.m.**

Council Chambers, 2nd Floor, City Hall  
55 Trinity Avenue, S.W.

The contact person for NPU N is:

**Jonathan Miller**  
**404-790-9398**  
**millernkelly2@mindspring.com**

Contact info for adjacent NPUs is provided below if necessary:

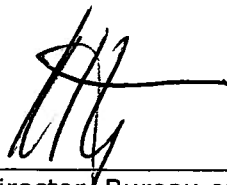
The contact person for NPU F is:

**Charlie Nalbone**  
**404-626-1354**  
**atlanta.npuf.zoning@gmail.com**

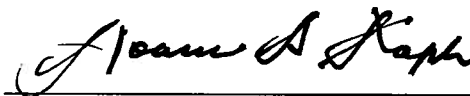
Please contact the person(s) listed above within two days to find out which meetings you will be required to attend before the next NPU meeting. If you are unable to reach the contact person, please call the city's NPU Coordinator at 404-330-6145.

**Sign Posting** - The property owner is required to post a sign or signs in a conspicuous place on the property at least 15 days before the hearing date shown above. One sign shall be placed every 600 feet along each street the property abuts. A sign posting affidavit must be returned to the Bureau of Planning to confirm posting.

Signed,



\_\_\_\_\_  
CMO, for Director, Bureau of Planning



\_\_\_\_\_  
Norman A Koplou, Applicant

APPLICATION FOR SPECIAL EXCEPTION  
City of Atlanta

RECEIVED  
JUN 23 2010  
Bureau of  
Planning

Date Filed \_\_\_\_\_ Application Number V-10-102  
Name of Applicant Norman A. Koplon Daytime Phone 404-885-3000  
Company Name Troutman Sanders email Norman.Koplon@troutmansanders.com  
Address 600 Peachtree Street, NE Suite 5200 Atlanta, GA 30308-2216  
street city state zip code

Name of Property Owner Clare Jaye, LLC c/o Simon H. Bloom Phone 404-577-7710  
Address 977 Ponce De Leon Avenue; Atlanta, GA 30306  
street city state zip code

Description of Property

Address of Property 977 Ponce De Leon Avenue OR  
The subject property fronts \_\_\_\_\_ feet on the \_\_\_\_\_ side of  
\_\_\_\_\_ beginning \_\_\_\_\_ feet from the  
\_\_\_\_\_ corner of \_\_\_\_\_  
Depth: \_\_\_\_ Area: \_\_\_\_ Land Lot: 16 District: 14, FULTON County, GA.  
Property is zoned: CF, Council District: 2, Neighborhood Planning Unit: N (7)

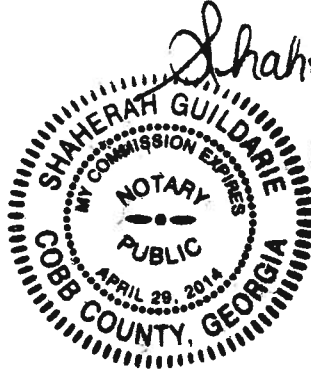
TO THE BOARD OF ADJUSTMENT: Applicant, having received an adverse order or requirement from the administrative officer in seeking a building permit or certificate of occupancy, hereby requests that the Board of Zoning Adjustment grant a Special Exception.

I hereby authorize the staff of the Bureau of Planning to inspect the premises of the above-described property. I understand that it is my responsibility to post a public notice sign on the property according to the instructions given to me by the Bureau of Planning upon filing this application. I swear that all statements herein and attached hereto are true and correct to the best of my knowledge and belief.

Sworn To And Subscribed Before Me This 23<sup>rd</sup> Day Of July 20010

Norman A. Koplon  
Owner or Agent for Owner (Applicant)  
Norman A. Koplon  
NAME OF APPLICANT IN PRINTED LETTERS

Shaherah Guildarie  
Shaherah Guildarie  
NOTARY PUBLIC





CITY OF ATLANTA

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
55 TRINITY AVENUE, S.W. SUITE 3900 - ATLANTA, GEORGIA 30335
404-330-6175 - FAX: 404-658-6979
Internet Home Page: www.atlantaga.gov

KASIM REED
MAYOR

James E. Shelby
Commissioner
Dept. of Planning &
Community Development

Anthony Carter
Acting Director
Office of Building

REFERRAL CERTIFICATE

COUNCIL DISTRICT \_\_\_\_\_ APPLICATION NUMBER V-10-102

Zoning Enforcement Division

NPU \_\_\_\_\_ DATE FILED \_\_\_\_\_

1. Norman Koplan / Simon Bloom
Name of Applicant

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Planning

BUILDING PERMIT AUTHORIZING
Expand existing mixed-use building

at 977 Ponce de Leon Ave., (pending lot subdivision approval) N.E. 14th / 16
Street Address Quadrant District & Land Lot

to be used for Commercial purposes

The property is zoned C-1 District

2. The Building Permit Was Denied For The Following Reasons:

Applicant seeks a special exception from zoning regulations to reduce the off-street parking requirement from 39 parking spaces (required) to 17 spaces on-site and 23 shared parking spaces off-site, to expand an existing mixed-use building, all contingent on a lot subdivision approval from the Office of Planning. Applicant seeks no other special exceptions at this time.

1982 ZONING ORDINANCE, AS AMENDED

Chapter 12 Section 16-12.009 Paragraph (19)

Chapter \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Chapter \_\_\_\_\_ Section \_\_\_\_\_ Paragraph \_\_\_\_\_

Department of Planning and Development
Office of Buildings
Anthony Carter, Acting Director
Ann Heard, Chief Zoning Division

Applicant: \_\_\_\_\_ Zoning Plan Reviewer: [Signature]

**NOTARIZED AUTHORIZATION BY PROPERTY OWNER**  
(Required only if applicant is not the owner of the property subject to the application)

TYPE OF APPLICATION Special Exception

I, Simon H. Bloom (OWNER(S) NAME)

SWEAR THAT I AM THE OWNER OF THE PROPERTY LOCATED AT 977 Ponce De Leon Avenue (PROPERTY ADDRESS).

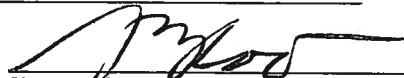
AS SHOWN IN THE RECORDS OF Fulton COUNTY, GEORGIA WHICH IS THE SUBJECT MATTER OF THE ATTACHED APPLICATION. I

AUTHORIZE THE PERSON NAMED BELOW TO ACT AS THE APPLICANT IN THE PURSUIT OF THIS APPLICATION.

NAME OF APPLICANT Norman A. Koplon  
600 Peachtree Street, NE  
ADDRESS Suite 5200  
Atlanta, GA 30308-2216  
TELEPHONE NUMBER 404-885-3000

RECEIVED  
JUN 23 2010  
Bureau of  
Planning

V-6-102

  
Signature of Owner

Personally Appeared  
Before Me  
Amy Bell

Who Swears That The  
Information Contained  
In This Authorization  
Is True and Correct To  
The Best of His or Her  
Knowledge and Belief.

Amy Bell  
Notary Public

6/23/2010  
Date

AMY BELL NOTARY PUBLIC Cobb County State of Georgia My Comm. Expires January 8, 2012
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**Summary of proposed construction changes to buildings or site.** (Examples:  
"Convert a 100' x 200' retail space into a restaurant." "Install a 6-foot high opaque wooden wall  
(‘privacy fence’ with 6-foot high opaque wall gates.)" \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Proposed Lot Coverage (After Construction)** Calculate total amount of lot coverage on  
entire property, after proposed construction would be finished, including existing and proposed  
buildings and other structures; sidewalks, driveways, parking pads, patios, gravel, etc.; everything  
except natural planted or undisturbed areas.

\_\_\_\_\_ covered square feet / \_\_\_\_\_ total lot square feet = \_\_\_\_\_% proposed lot coverage  
\_\_\_\_\_ % maximum allowed lot coverage

**(For Parking Special Exceptions Only)** List the maximum number of employees who will  
park on the site at any given time: 14 AND

List the maximum estimated number of customers, clients, visitors, or similar persons who will require  
automobile parking in connection with the facility on the site at any given time: 6

**If you propose to provide off-site parking, see the attached Standards for Off-site Parking  
Agreements (p. 8).**

### **Special Exception Procedures**

Special exception applications are heard and decided at a regularly-scheduled public hearing by the  
five-member City of Atlanta Board of Zoning Adjustment ("BZA"). The Bureau of Planning serves as  
staff to the BZA. Approximately one week after each closing date, a planner is assigned to review your  
application. All inquiries regarding your application should be directed to this office at (404) 330-6145.  
The rules of the BZA prevent BZA members from discussing the merits of any case except during the  
public hearing for that case.

**Schedule.** There are two closing dates and two public hearings per month. The schedule allows time  
for neighborhood and NPU meetings to occur throughout the City prior to each public hearing. The  
schedule of closing and public hearing dates is attached.

**Neighborhood and NPU Recommendations.** The City is divided into 24 Neighborhood Planning  
Units (NPUs), each of which has a volunteer citizen advisory committee that makes a recommendation  
to the BZA on special exceptions. When you file your application, you will be notified of the NPU  
contact person and that you must schedule a meeting with that NPU in order to explain what you wish  
to do. You may be requested to attend additional neighborhood meetings; inquire about the time and  
place of those meetings. The applicant is expected to contact the NPU as soon as possible after the  
application is filed. The Bureau of Planning will send a copy of your application to the appropriate  
NPU during the week after the closing date for your application.

**Public Notice.** When you file your application, it will be scheduled for a public hearing. The Bureau  
of Planning will initiate posting of public notice ("an advertisement", "a legal ad") for this public  
hearing so that the public is informed at least 15 days before the date of the public hearing:

- by sending written notice of your application to all property owners whose property is within 300  
feet of the subject property, and
- by causing public notice to be placed in the newspaper.

*You are responsible for obtaining a public notice sign when you file your application with the Bureau  
of Planning, and for posting it in a visible location on your property, at least 15 days prior to your  
public hearing. Failure to properly post the sign will make it necessary for the BZA to defer your  
case to another public hearing. The BZA may defer the case to a hearing that has been scheduled 30  
or more days after the original hearing.*



PO Box 5715 - Atlanta, GA 30307  
Office: 404-434-0900 Fax: 404-474-2107

June 23, 2010

**RE:** Justification for Special Exception

**Client:** Clare Jaye, LLC

**Property:** 977 Ponce De Leon Ave. (Pending Lot Subdivision Approval)

**Location:** Atlanta, GA 30306

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Bureau of  
Planning

V-10-102

**Justification Standards:**

1. See Attached Recorded Easement Agreement
2. Lessee: Simon H. Bloom  
Clare Jaye, LLC  
404-577-7710  
Lessor: John-Paul Clarke  
Providence On Ponce Condominium Association, Inc.  
404-385-7206
3. See Attached Cadastral and Referenced Site Parking Plan
4. See Attached Recorded Easement Agreement
5. See Attached Recorded Easement Agreement
6. 8:00 A.M. to 6:00 P.M.; See Attached Recorded Easement Agreement
7. Annual; Expiration: January 31, 2011; See Attached Recorded Easement Agreement
8. See Attached Recorded Easement Agreement

**Executed Agreements for Off Site Parking:**

1. Reciprocal Easement Agreement Between Clare Jaye, LLC and Providence On Ponce Condominium Association, Inc Recorded Deed Book 48952, Page 504, Filed and Recorded April 19, 2010; Annual Term; 23 Parking Spaces; 8:00 A.M. to 6:00 P.M.

V-10-102

After recording, please return to:  
Simon H. Bloom, III  
The Bloom Law Firm  
100 Peachtree Street, Suite 2140  
Atlanta, Georgia 30303

CROSS REFERENCE: Deed Book 32756, Page 675  
Deed Book, 30165, Page 252

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### **RECIPROCAL EASEMENT AGREEMENT**

**THIS RECIPROCAL EASEMENT AGREEMENT** (the "Agreement") is made and entered into as of the 11<sup>th</sup> day of March, 2010, by and among Clare Jaye, LLC, a Georgia limited liability company ("Clare Jaye"), and Providence on Ponce Condominium Association, Inc., a Georgia nonprofit corporation (the "Association").

#### **Background**

Clare Jaye intends to purchase fee simple title to that certain tract and parcel of land and improvements commonly known as 977 Ponce de Leon Avenue, Atlanta, Fulton County, Georgia 30306 (the "977 Ponce Lot"), as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

The Association is comprised of all unit owners in Providence on Ponce, a Condominium (the "Development"), as established by that certain Declaration of Condominium for Providence on Ponce, A Condominium, which is recorded in the Fulton County Real Estate Records in Deed Book 38065 at Page 73 (the "Declaration").

The Association is responsible for the enforcement of the Declaration as well as the other Governing Documents of the Condominium, and for the management, maintenance, operation and control of the Area of Common Responsibility, which includes the various Common Elements and community improvements located on the certain tract and parcel of land commonly known as 985 Ponce de Leon Avenue, Atlanta, Fulton County, Georgia 30306 (the "985 Ponce Lot"), as more particularly described in **Exhibit "B"** attached hereto and incorporated herein by reference. The 977 Ponce Lot and the 985 Ponce Lot are sometimes referred to herein as the "Lots," or as a "Lot" when referring to one of them singularly.

The Association is authorized by the Declaration to dispose of tangible and intangible personal property and real property.

The 977 Ponce Lot and the 985 Ponce Lot are adjacent to each other and front on the south side of Ponce de Leon Avenue a/k/a U.S. Route 29, a major arterial road running east and west in Fulton County, Georgia. The 985 Ponce Lot is located to the east of the 977 Ponce Lot, with the common property line for said Lots running perpendicular to Ponce de Leon Avenue as shown on that certain Site Plan attached to this Agreement as **Exhibit "C"** (the "Site Plan"). The common property line is referred to herein as the "Adjoining Property Line".

As shown on the Site Plan, the 977 Ponce Lot and the 985 Ponce Lot presently share a common driveway which originates from a single curb cut at Ponce de Leon Avenue and runs along the Adjoining Property Line terminating at the rear parking lot of both Lots and is identified as the "Common Driveway" (as it is referred to herein) on the Site Plan.

While on June 30, 2004, the previous owners of the 977 Ponce Lot and the 985 Ponce Lot, as well as the owner of that certain tract and parcel of land known as 971 Ponce de Leon Avenue, Atlanta, Fulton County, Georgia 30306 (the "971 Ponce Lot"), entered into a Reciprocal Easement Agreement which was recorded in the Fulton County Real Estate Records in Deed Book 38065 at Page 58 (the "2004 Easement"), Clare Jaye and the Association desire to enter into a new reciprocal easement agreement to establish a permanent easement over the Common Driveway and to provide additional easement rights to Clare Jaye for egress and parking within the parking areas located in the front and the rear of the 985 Ponce Lot.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals which are incorporated herein, the benefits accruing to Clare Jaye and the Association from the easements, covenants and restrictions set forth in this Agreement, the payment of Ten and No/100 Dollars (\$10.00) in hand paid by Clare Jaye to the Association, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Clare Jaye and the Association agree to the following terms:

1. In order to promote a safe traffic pattern from and to Ponce de Leon from the Lots, the Association and Clare Jaye grant to the owners of the respective Lots and for the benefit of each Lot a permanent reciprocal non-exclusive easement for vehicular traffic in, on, over and across the Common Driveway for the exclusive benefit of Association and Clare Jaye and their respective affiliates, members, tenants, assigns, employees and guests. ("Common Driveway Easement"). This reciprocal easement in, on, over and across the Common Driveway shall encumber and run with the title to the Lots and shall be binding upon all persons having any right, title or interest in the Lots, their respective heirs, legal representatives, successors, successors-in-title and assigns.
2. The Association grants to Clare Jaye for the benefit of the affiliates, members, tenants, assigns, employees and guests of Clare Jaye and for the benefit of the 977 Ponce Lot a non-exclusive easement for vehicular ingress and egress over and across the front parking lot and driveway located on the 985 Ponce Lot and running parallel to Ponce de Leon Avenue and identified on the Site Plan as the "985 Ponce Front Driveway". ("Limited Front Driveway Easement"). This non-exclusive easement for vehicular

egress and ingress over and across the 985 Ponce Front Driveway shall not encumber or run with the title to the Lots, but is instead unique to the parties to this Agreement, is not transferable, and is limited to the terms set forth herein. Clare Jaye and its affiliates and/or members shall be entitled to cancel and terminate the easement set forth within this paragraph upon sixty (60) days written notice to the Association.

3. The Association grants to Clare Jaye for the benefit of the affiliates, members, tenants, assigns, employees and guests of Clare Jaye and for the benefit of the 977 Ponce Lot an exclusive easement between the hours of 8:00 a.m. to 6:00 p.m. on each weekday for vehicular parking, egress, ingress, signage as describe in paragraph 4 below, and standing privileges to each and every parking space located in the front parking lot located on the 985 Ponce Lot and identified on the Site Plan as the "985 Ponce Front Parking Lot". ("Limited Front Parking Easement"). This exclusive easement for vehicular parking, egress, ingress, signage as describe in paragraph 4 below and standing privileges within the 985 Ponce Front Parking Lot shall not encumber or run with the title to the Lots, but is instead unique to the parties to this Agreement, is not transferable, and is limited to the terms set forth herein. Clare Jaye and its affiliates and/or members shall be entitled to cancel and terminate the easement set forth within this paragraph upon sixty (60) days written notice to the Association.

4. Subject to the architectural controls established by the Declaration, Clare Jaye shall be entitled to install and maintain a monument sign identifying 977 Ponce Lot, the building thereon and/or its owners and occupants at or near the location marked and identified as "Signage Point A" on the Site Plan and shall further be entitled to paint identifying demarcations in letters concerning use allowances and restrictions on each and every parking space located in the 985 Ponce Front Parking Lot. Clare Jaye shall be solely responsible for the costs and maintenance of any such signage and demarcations.

5. The Association grants to Clare Jaye for the benefit of the affiliates, members, tenants, assigns, employees and guests of Clare Jaye and for the benefit of the 977 Ponce Lot a non-exclusive easement for vehicular egress over and across the rear driveway located on 985 Ponce Lot and running perpendicular to Ponce de Leon Avenue and identified on the Site Plan as the "985 Ponce Rear Driveway". ("Limited Rear Driveway Easement"). This non-exclusive easement for vehicular egress and ingress over and across the 985 Ponce Rear Driveway shall not encumber or run with the title to the Lots, but is instead unique to the parties to this Agreement, is not transferable, and is limited to the terms set forth herein. Clare Jaye and its affiliates and/or members shall be entitled to cancel and terminate the easement set forth within this paragraph upon sixty (60) days written notice to the Association.

6. The Association grants to Clare Jaye for the exclusive benefit of Clare Jaye an option to an exclusive easement to use for vehicular parking, egress, ingress and standing privileges up to an additional fifteen (15) parking spaces located in the rear parking lot located on the 985 Ponce Lot and identified on the Site Plan as the "985 Ponce Rear Parking Lot" between the hours of 8:00 a.m. to 6:00 p.m. on each weekday. ("Limited Parking Easement Option"). Clare Jaye shall pay to the Association an annual payment of \$1,000.00 for the right of this option. In the event Clare Jaye exercises this

option, Clare Jaye shall be entitled to use at no additional cost up to five (5) parking spaces located in the 985 Ponce Rear Parking Lot. In the event Clare Jaye exercises this option, Clare Jaye shall be entitled to use six (6) to fifteen (15) parking spaces located in the 985 Ponce Rear Parking Lot for an additional payment of \$1,000.00 per year to the Association. The payment for the option and/or for the use of any parking space under this option shall be due and payable on or before the last day of January. Such payment for the first year of this Agreement shall be prorated according to the effective date of this Agreement. Clare Jaye and its affiliates and/or members shall be entitled to cancel and terminate the option, easement or any part thereof set forth within this paragraph upon sixty (60) days written notice to the Association. In the event of a termination of the option, easement or any part thereof in this paragraph, the Association shall refund to Clare Jaye a prorated portion of any such payment made pursuant to this paragraph related to any calendar year or portion thereof after the termination or terminating event. The option described in this paragraph is unique to the parties to this Agreement and is not transferable by Clare Jaye in any manner.

7. The parties acknowledge and agree that Clare Jaye intends to remove the current fence presently dissecting the Common Driveway. The parties acknowledge and agree that for the duration of the limited easements and limited easement option identified in paragraphs 2 through 6 above (collectively referred to "Limited Easements and Easement Option"), no fencing shall be maintained along the adjoining property line of the Lots. The parties acknowledge and agree that Clare Jaye shall install, expand and/or retrofit a remote-controlled security access gate for ingress and egress purposes at the entrance of the Common Driveway expanding the width of the Common Driveway and identified as the "Gate" on the Site Plan. The parties acknowledge and agree that for the duration of the Limited Easements and Easement Option, the Association and Clare Jaye and its affiliates, members, tenants, assigns, employees and guests shall be entitled to such security information, codes and/or cards necessary to access the Common Driveway with each being responsible for their own costs to acquire such security information, codes and/or cards. The parties agree to reasonably cooperate with each other in order to efficiently and timely maintain the Gate set forth within this paragraph.

8. The parties acknowledge and agree that for the duration of the Limited Easements and Easement Option, Clare Jaye shall install and/or maintain such fencing, enclosures, natural boundaries or topographic conditions, or such other limiting condition(s) or structure(s) to restrict access to the 985 Ponce Lot, including, but not limited to fencing along the western boundary of the rear parking lot located on the 985 Ponce Lot.

9. The parties acknowledge and agree that Clare Jaye shall undertake at its own cost and expense efforts to eliminate the spacing gap between the pavement and the remote-controlled access gate presently located at the exit or egress point of the 985 Ponce Rear Driveway to the 985 Ponce Front Parking Lot as marked and identified as "Exit Gate" on the Site Plan, including, but not limited to reversal of the Exit Gate.

10. Each party grants to the owner or owners of the Lots and for the benefit of their respective Lots, a temporary, non-exclusive construction and maintenance easement and right of entry and access over, across, under and upon the Lots which may occur and be required as a result of the initial construction and subsequent maintenance, repair and restoration (the "Maintenance Work") of the improvements located or to be located pursuant to the terms of this Agreement, and as performed by any owner pursuant to the terms hereof; provided, however, the scope of such easement shall be limited to the reasonable requirement of the Maintenance Work, which is being expeditiously pursued and such access shall be maintained only for so long as customary insurance is maintained protecting the other owner from all liability arising out of such Maintenance Work. The easement granted by this paragraph includes, but is not limited to, the right of construction workers, vehicles and equipment to access the Lots as reasonably necessary to complete such Maintenance Work. All proposed Maintenance Work shall be approved by each Lot owner, which approval shall not be unreasonably withheld. The cost of all Maintenance Work shall be timely paid for by the owner performing such work. All Maintenance Work shall be performed in such a manner so as not to unreasonably interfere with the use or operation of the Lots upon which such work is being performed. Upon the completion of any Maintenance Work, the Lot upon which such work was performed shall be restored to the condition with existed prior to such work. All necessary and required licenses and permits shall be obtained prior to the commencement of such Maintenance Work, and all Maintenance Work shall be done and all improvements constructed in a good and workmanlike manner. All Maintenance Work shall be completed free and clear of all liens of contractors, subcontractors, laborers and materialmen and all other lien.

11. For the duration of the Limited Easements and Easement Option, Clare Jaye agrees to indemnify, reimburse, defend and hold harmless the Association and its employees, agents, officers, directors, shareholders, members, representatives, heirs, predecessors, successors and assigns (collectively the "Association Indemnified Parties") from and against any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind or nature whatsoever, except that which is caused by gross negligence, willful misconduct, or intentional acts on the part of one or more of the Association Indemnified Parties, including without limitation, reasonable attorney fees and other legal costs and expenses (collectively "Association Losses"), which any one or more of the Association Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with the use of the Limited Easements and Easement Option by Clare Jaye, or any of its respective affiliates, members, employees, assigns, representatives, guests, invitees, tenants, tenant's affiliates, tenant's members, tenant's employees, tenant's representatives, tenant's guests or tenant's invitees.

12. The parties agree that from time to time moving trucks, delivery vehicles and periodic maintenance to the Lots may cause the 985 Front Parking Lot and/or 985 Rear Parking Lot to be impeded and impassable, and such temporary occurrences shall be permissible and shall not be deemed in violation of the rights granted pursuant to this Agreement.

13. The parties agree to reasonably cooperate with each other to enforce parking rules and to inform their respective tenants, occupants, guests and invitees as to the terms of this Agreement.

14. The easements, covenants, restrictions, benefits and obligations created by this Agreement will not have an adverse effect on the Association or any owner within Providence on Ponce. The Association accepts the easement granted herein as nominee on behalf of the "Owners" (as defined in the Declaration), and all property rights so received shall henceforth be considered a portion of the Common Elements as defined in the Declaration.

15. This Agreement constitutes the entire agreement between the parties with limited respect to the subject matter set forth herein. This Agreement shall not be modified or amended in any respect except by a written instrument executed and recorded by the Lot owners; provided, however, during such time as the Association is empowered to manage and maintain the 985 Ponce Lot, the Association shall be deemed to be the "owner" of the 985 Ponce Lot for all purposes of this Agreement, and the Association shall be authorized to unilaterally perform all duties incident to the obligations, responsibilities and rights granted to an owner pursuant to this Agreement, including, without limitation, the right to amend this Agreement in the future and to enforce the terms of this Agreement against the owner of the 977 Ponce Lot. And in the event the 977 Ponce Lot is subjected to a property owners or condominium covenant scheme, the "association" empowered to manage the common elements on said Lot shall likewise be deemed to be the "owner" of the 977 Ponce Lot. This Agreement shall be construed in accordance with the laws of the State of Georgia.

16. In the event of a breach by any party to the Agreement of any obligation required herein, the non-breaching party shall be entitled to seek any legal remedy or relief at law or in equity to which they may be entitled. With respect to any such breach, no delay or omission by the non-breaching party to exercise any right or remedy provided herein or allowable under applicable law shall constitute a waiver of such right or remedy, and every such right or remedy may be exercised at any time during the continuance of such breach.

17. This Agreement shall become effective with full force of law and equity upon the conveyance of fee simple title of the 977 Ponce Lot to Clare Jaye.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal of the day and year first written above.

CLARE JAYE, LLC

By: [Signature]

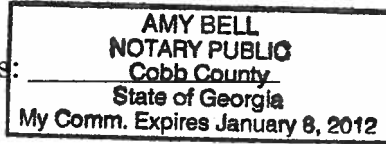
Its: Manager

Signed, sealed and delivered  
in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

My commission expires: \_\_\_\_\_



PROVIDENCE ON PONCE  
CONDOMINIUM ASSOCIATION, INC.,  
as Attorney-in-Fact for the Owners of  
Providence on Ponce, A Condominium

By: \_\_\_\_\_

Its: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

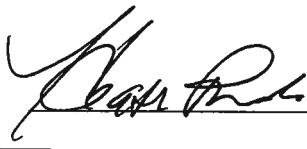
\_\_\_\_\_  
Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

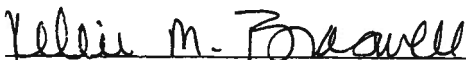
Providence on Ponce Condominium  
Association, Inc.,  
as Attorney-in-Fact for the Owners of  
Providence on Ponce, A Condominium

By:  \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
Unofficial Witness

  
\_\_\_\_\_  
Notary Public

My commission expires: July 27, 2010

PROVIDENCE ON PONCE  
CONDOMINIUM ASSOCIATION, INC.,  
as Attorney-in-Fact for the Owners of  
Providence on Ponce, A Condominium

By: John-Paul Clark  
Its: BOARD MEMBER

Signed, sealed and delivered  
in the presence of:

Margaret Ojala  
Unofficial Witness

Susan Jackson  
Notary Public

Susan Jackson  
Notary Public, DeKalb County, Georgia  
My Commission Expires September 20, 2011

My commission expires: \_\_\_\_\_

Deed Book 48952 Pg 496  
Filed and Recorded Apr-19-2010 07:37am  
2010-0187332  
Real Estate Transfer Tax \$1,843.00  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia

RECEIVED  
JUN 23 2010  
Bureau of  
Planning

V-10-102

Space Above Line for Recorder's Use

STATE OF NORTH CAROLINA  
COUNTY OF MECHLENBURG

PLEASE RETURN TO:  
McCULLOUGH PAYNE & HAAN, LLC  
171 17<sup>TH</sup> Street, NW, Suite 975  
Atlanta, Georgia 30363-1032

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made and entered into as of the 9<sup>TH</sup> day of April, 2010, by and between BLX CAPITAL REAL ESTATE, LLC, a Delaware limited liability company ("Grantor") and CLARE JAYE, LLC, a Georgia limited liability company ("Grantee").

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby **GRANT, BARGAIN, SELL and CONVEY** to Grantee the real estate located in the County of Fulton, State of Georgia, as more particularly described on **EXHIBIT A** attached hereto and incorporated herein by reference, together with (i) all and singular the benefits, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, (ii) all improvements of whatever kind, character or description located on such real property, and (iii) all right, title, interest and benefit of Grantor in and to adjacent streets, roads, alleys, and sewer (the "Property"), subject to the Permitted Exceptions set forth in **EXHIBIT B** attached hereto and incorporated herein by reference and those "as is" representations set forth below.

Grantee acknowledges that Grantor acquired the Property through statutory or judicial foreclosure and that Grantor has not occupied the Property and has no personal knowledge of its condition or whether or not any defects exist thereon. **GRANTOR DOES NOT WARRANT, EITHER EXPRESSLY OR IMPLIEDLY, THE CONDITION OR FITNESS OF THE PROPERTY CONVEYED HEREUNDER (ANY SUCH WARRANTY BEING HEREBY EXPRESSLY NEGATED) AND GRANTEE ACCEPTS SAID PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS" INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY.**

Grantor, for itself and its successors and assigns, shall and will **WARRANT and DEFEND** the title to the Property unto the Grantee and the Grantee's successors and assigns **FOREVER** against the lawful claims of all persons claiming by, through or under Grantor but none other, excepting, however, the general taxes for the calendar year 2010 and thereafter, and any other matters occurring after the date of this Special Warranty Deed.

EXECUTED under the hand and seal of the Grantor by its duly authorized officer or representative as of the date first above written.

Signed, sealed and delivered  
in the presence of:

GRANTOR:

BLX CAPITAL REAL ESTATE, LLC  
a Delaware limited liability company

Audith Ann Sherer  
Unofficial Witness

By:  (SEAL)  
Tom Danehey, Senior Vice-President

Erin Steiner Pavlich  
Notary Public

My Commission Expires: 2/17/2015

Exact Date of Execution  
by the Notary Public:

April 6, 2010



# EXHIBIT "A"

All that lot, tract or parcel of land situate, lying and being in the City of Atlanta, in Land Lot 16 of the 14<sup>th</sup> District, Fulton County, Georgia, and being part of Lot 3 and part of Lot 4, Subdivision of Atlanta Banking and Savings Company Property, and being more particularly described as follows:

BEGINNING at a nail found on the southerly right-of-way line of Ponce de Leon Avenue (an 80 foot right-of-way), 490.00 feet easterly, as measured along the southerly right-of-way line of Ponce de Leon Avenue, from the corner formed by the intersection of the southerly right-of-way line of Ponce de Leon Avenue with the easterly right-of-way line of Linwood Avenue (formerly Panola Avenue); running thence south 89 degrees 30 minutes 00 seconds east along the southerly right-of-way line of Ponce de Leon Avenue, 80.00 feet to a nail found; thence leaving said right-of-way line and running south 01 degree 07 minutes 21 seconds west 219.09 feet to an iron pin set on the northerly side of a 20 foot alley (not open); running thence north 89 degrees 48 minutes 18 seconds west along the northerly side of said alley, 80.00 feet to a crimp top pipe found; running thence north 01 degree 07 minutes 16 seconds east 219.51 feet to the nail found on the southerly right-of-way line of Ponce de Leon Avenue which marks the POINT OF BEGINNING; being improved property known as **977 Ponce de Leon Avenue, Atlanta, Georgia 30306**, according to the present system of numbering buildings in the City of Atlanta, Fulton County, Georgia, and being more particularly shown on and described in accordance with a plat of survey prepared for 977 Ponce de Leon, LLC, Lawyer's Title Insurance Corporation and Regions Bank, by McClung Surveying, Inc., bearing the seal and certification of Perry E. McClung, Georgia Registered Land Surveyor No. 1541, dated February 23, 2001, last revised March 15, 2001.

Together with all right, title, claim, interest or demand of Grantor in and to the following:

1. Reciprocal Easement Agreement by and between 985 Ponce Ventures, LLC a Georgia limited liability company, 977 Ponce de Leon, LLC, a Georgia limited liability company and 971 Ponce de Leon, LLC, a Georgia limited liability company, dated as of June 30, 2004, filed for record July 21, 2004 at 1:51 P.M., recorded in Deed Book 38065, Page 58, Fulton County Records.
2. Twenty foot alleyway running parallel and contiguous to the southerly (rear)

**EXHIBIT**  
**"A"**

line of the above property.

**EXHIBIT "B"**  
**Permitted Exceptions**  
**(BLX Capital Real Estate, LLC/Clare Jayce, LLC)**

1. Ad valorem taxes assessed against the subject property for the calendar year 2010 and all subsequent years, not yet due and payable.
2. Restrictions establishing a 40-foot building restriction line along Ponce de Leon Avenue as contained in instrument recorded in Deed Book 289, Page 496, Fulton County Deed Records.
3. Plat recorded at Plat Book 3, Page 148 shows a front building line of 40 feet and a 20 foot alley adjacent to rear of property.
4. Indemnity Agreement between Inman Park Properties, Inc. and The City of Atlanta, dated February 7, 2001, recorded in Deed Book 29977, Page 451, Fulton County Records.
5. Easement between Inman Park Properties and Georgia Power Company dated February 12, 2002, recorded in Deed Book 32625, Page 584, Fulton County Records.
6. Indemnity Agreement between Inman Park Properties, Inc. and the City of Atlanta, dated December 11, 2003, recorded in Deed Book 36691, Page 476, Fulton County Records.
7. Right of any and all tenants, including but not limited to, Inman Park Properties, Inc. and/or Ginger Darnell.
8. Reciprocal Easement Agreement by and between 985 Ponce Ventures, LLC, a Georgia limited liability company, 977 Ponce de Leon, LLC, a Georgia limited liability company and 971 Ponce de Leon, LLC, a Georgia limited liability company, dated as of June 30, 2004, filed for record July 21, 2004 at 1:51 P.M., recorded in Deed Book 38065, Page 58, Fulton County Records.
9. Matters shown upon an Asbuilt Survey for Clare Jayce, LLC, SunTrust Bank, and U.S. Small Business Administration, c/o Florida Business Development Corporation, and Chicago Title Insurance Company, dated March 16, 2010, last revised March \_\_, 2010, made by McClung Surveying Services, Inc., certified by Michael R. Noles, Georgia Registered Land Surveyor No. 2646.

EXHIBIT "C" - SITE PLAN

ADJOINING  
PROPERTY  
LINE

PONCE DE LEON  
SIGNAGE POINT A

985 PONCE  
FRONT  
PARKING  
LOT

985 PONCE FRONT DRIVEWAY

GATE

EXIT  
GATE

977  
PONCE  
BLDG

COMMON DRIVEWAY

985  
PONCE  
BLDG

985 PONCE REAR DRIVEWAY

985  
PONCE  
REAR  
PARKING  
LOT

ADJOINING  
PROPERTY  
LINE



1 SITE PLAN

Not to Scale

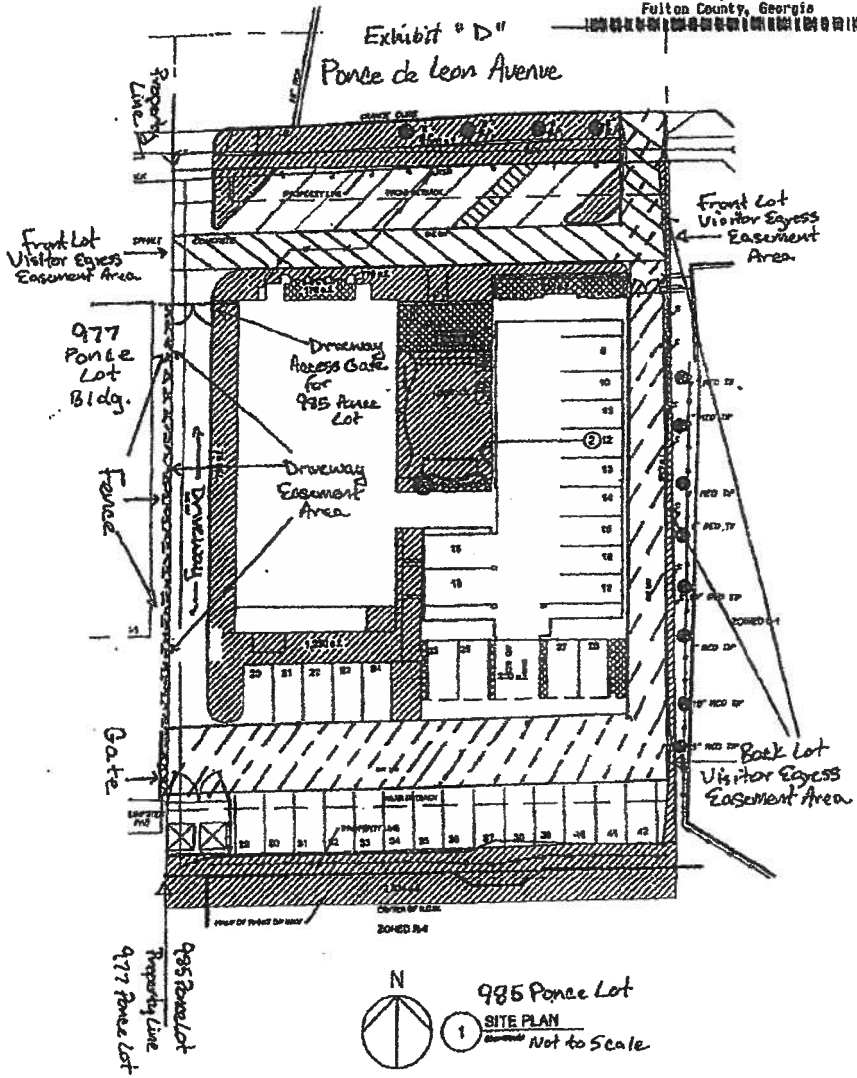
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977 PONCE  
LOT

985 PONCE LOT

10-10-102

Deed Book 38065 pg 72  
 Juanita Hicks  
 Clerk of Superior Court  
 Fulton County, Georgia



RECEIVED  
 JUN 23 2010  
 Bureau of  
 Planning

V-10-102





**RECEIPT**

CITY OF ATLANTA  
 ATLANTATEST  
 55 TRINITY AVE SW

**Application:** V-10-102  
**Application Type:** Planning/BZA/Special Exception/NA  
**Address:** 977 PONCE DE LEON AVE , ATLANTA, GA 30306  
**Owner Name:** NINE SEVENTY ONE PONCE DE LEON AVE LLC  
**Owner Address:**  
**Application Name:**

Receipt No.	Ref Number	Amount Paid	Payment Date	Cashier ID	Received	Comments
234748	1015	\$625.00	06/23/2010	CGOODE		

**Owner Info.:** NINE SEVENTY ONE PONCE DE LEON AVE LLC

**Work Description:** Special exception to reduce off-street parking requirements from 39 spaces (required) to 17 spaces on-site and 23 shared spaces off-site, to expand an existing MU building, all contingent on a lot subdivision approval from Office of Planning. Applicant advised that the boundary survey needs to be revised to include the portion of the land west of the subject lot ( to reflect the 150' frontage lot as the COA cadastral).

**PAID**  
 CITY OF ATLANTA  
 JUN 23 2010  
 EX OFFICIO MUNICIPAL  
 REVENUE COLLECTOR  
 C.G.