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THIS DOCUMENT
PREPARED BY:

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AFTER RECORDING
RETURN TO:

Recorder's Box 327



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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE VILLAGE OF NORTHBROOK

SUNSET FOOD MART, INC

**DOWN YORK ENTERPRISES, LTD. &
EARL GREY ENTERPRISES, LTD.**

DATED AS OF JUNE 12, 2001

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DEVELOPMENT AGREEMENT

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BY AND BETWEEN
NORTHBROOK/SUNSET FOOD MART/
DOWN YORK ENTERPRISES & EARL GREY ENTERPRISES

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is dated as of this 12th day of June, 2001, and is by and between the **VILLAGE OF NORTHBROOK**, an Illinois home rule municipal corporation (the "**Village**"); **SUNSET FOOD MART, INC.**, an Illinois corporation ("**Sunset**"); and **DOWN YORK ENTERPRISES, LTD.**, an Ontario corporation and **EARL GREY ENTERPRISES LTD.**, an Ontario corporation (collectively the "**Shopping Plaza Owner**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers, the parties agree as follows:

SECTION 1. RECITALS:

A. The Village is an Illinois home rule municipal corporation duly organized and existing under the laws of the State of Illinois.

B. The Shopping Plaza Owner is the record title owner of the Shopping Center Property.

C. The Shopping Plaza Owner and Sunset have entered into a lease agreement providing for the use and operation by Sunset of a retail food store on a portion of the Shopping Center Property. The Shopping Plaza Owner desires to demolish the Existing Building including subsurface improvements on the Sunset Parcel, and Sunset desires to construct a new building to be leased from the Shopping Plaza Owner for use and occupancy as a retail food store on a portion of the Shopping Center Property.

D. The Village desires to construct, maintain, and use a public access road between Shermer Road and the Shopping Center Property to accommodate the proposed new Sunset Foods retail food store in the Northbrook Shopping Plaza. The north leg of the access road is proposed to be located on the Shopping Center Property and the south leg of the access road is proposed to be located on the Lane Property. The Village will enter into separate agreements with the Shopping Plaza Owner and Lane to acquire easements that, when combined, are sufficient to construct and use the proposed access road.

E. A public hearing was held by the Corporate Authorities on February 27, 2001 to consider Sunset's request for a variation to the transitional setback requirement in §5-110 E-4 of the Zoning Code.

F. A public meeting was held by the Architectural Control Commission on April 12, 2001 to consider an application for a Level III Design Review Permit for the Sunset Building and the Shopping Center Property, after which hearing the Architectural Control

* All capitalized words and phrases throughout this Agreement shall have the meanings set forth in the preamble above and in Section 2 of this Agreement.

Commission, in accordance with §2-493 of the Municipal Code, submitted to the Corporate Authorities a recommendation to approve the application.

G. The Shopping Center Property is zoned within the C-2 Commercial District of the Village and is located within the Village Green Overlay District.

H. The Village, Sunset, and the Shopping Plaza Owner desire to enter into this Agreement to provide for the conveyance, development, and construction actions necessary to allow for and ensure the proper use and development of the Shopping Center Property in accordance with this Agreement.

SECTION 2. DEFINITIONS.

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

"Building Code": Chapter 6, entitled "Building and Construction Regulations," of The Northbrook Municipal Code (1988), as the same has been, and may, from time to time, be amended, including, without limitation, all national building codes referenced therein.

"Corporate Authorities": The President and Board of Trustees of the Village.

"Design Review Permit Ordinance": The proposed Ordinance granting a design review permit for the Sunset Building to be adopted by the Corporate Authorities in the form attached to this Agreement as **Exhibit A**.

"Design Review Plans": The complete plans reviewed and recommended for approval by the Architectural Control Commission and to be approved by Corporate Authorities by adoption of the Design Review Permit Ordinance, in accordance with the standards and procedures set forth in the Zoning Code, including the Elevation Plan and Landscape Plan for the proposed Sunset Building on the Sunset Parcel and the Site Plan for the Shopping Center Property.

"Developers": Sunset and the Shopping Plaza Owner either separately or collectively.

"Effective Date": The date referenced in the first paragraph of page 1 of this Agreement.

"Elevation Plan": That certain elevation plan for the Sunset Building and the Shopping Center Property prepared by Camburas & Theodore, Ltd., consisting of 1 sheet, with latest revision date of June 8, 2001 attached to this Agreement as **Exhibit B**.

"Existing Building": That certain vacant building located on the Shopping Center Property as of the Effective Date of this Agreement within which a Jewel retail food store had been located.

"Final Engineering Plan": The engineering plan that receives the approval of the Village Engineer pursuant to Subsection 6.C of this Agreement and in accordance with the requirements of law.

"Final Landscape Plan": The landscaping plan that receives the approval of the Village Engineer pursuant to Subsection 6.C of this Agreement and in accordance with the requirements of law.

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"Fire Lane Easement": That certain interest in land on, over, and in the Shopping Center Property as depicted on the Site Plan, upon which emergency vehicles shall have access to the buildings at the Northbrook Shopping Plaza from time to time.

"Fire Lane Easement Agreement": That certain non-exclusive easement agreement between the Shopping Plaza Owner and the Village in the form attached to this Agreement as **Exhibit C**.

"Improvements": The proposed improvements to the Shopping Center Property including, without limitation, the improvements listed in Section 9 of this Agreement, as described and depicted on the Design Review Plans.

"Katz Property": That certain parcel of real property consisting of approximately .6 acres commonly known as 1290 Shermer Road, Northbrook, Illinois, PIN # 04-10-300-032.

"Lane": Lane Development, LLC, a Delaware limited liability company, owner of the Lane Property.

"Lane Property": That certain parcel of real property consisting of approximately 6.1 acres commonly known as 1200 Shermer Road, Northbrook, Illinois.

"Municipal Code": The Northbrook Municipal Code (1988), as the same has been, and may, from time to time, be amended.

"Preliminary Engineering Plan": That certain engineering plan for the Sunset Building and the Shopping Center Property prepared by Gewalt Hamilton Associates, Inc., consisting of one sheet, with latest revision date of June 6, 2001, attached to this Agreement as **Exhibit D**.

"Preliminary Landscape Plan": That certain landscape plan for the Sunset Parcel and the Shopping Center Property prepared by Camburas & Theodore Ltd., consisting of one sheet, with latest revision date of June 8, 2001 attached to this Agreement as **Exhibit E**.

"Rights-of-Way": Those certain portions of the Church Avenue, Lincoln Avenue, Keystone Avenue, and Shermer Road rights-of-way, as depicted in that certain Traffic Operations Plan prepared by Gewalt Hamilton Associates, Inc. with latest revision date of June 6, 2001, a copy of which plan is attached to this Agreement as **Exhibit F**.

"Rights-of-Way License Agreement": That certain agreement between the Shopping Plaza Owner and the Village in which the Village agrees to allow the Rights-of-Way to be used by the Shopping Plaza Owner for the construction and maintenance of additional parking spaces in the form attached to this Agreement as **Exhibit G**.

"Shermer Easement": That certain interest in land on, over, and in a portion of the Lane Property and a portion of the Shopping Center Property upon which the access road connecting Shermer Road and the Northbrook Shopping Plaza will be constructed by the Village, as depicted on the plat of easement prepared by Gewalt Hamilton Associates, Inc. with

latest revision date of July 13, 2001 (the "*Shermer Easement Plat*") a copy of which plat is attached to this Agreement as *Exhibit H*.

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"*Shermer North Leg Easement*": That certain portion of the Shermer Easement that is on, over, and in the Shopping Center Property as depicted on the Shermer Easement Plat.

"*Shermer North Leg Easement Agreement*": That certain non-exclusive easement agreement conveying the Shermer North Leg Easement to the Village, in the form attached to this Agreement as *Exhibit I*.

"*Shermer South Leg Easement*": That certain portion of the Shermer Easement that is on, over, and in the Lane Property, as depicted on the Shermer Easement Plat.

"*Shopping Center Property*": That certain parcel of real property consisting of approximately 6.1 acres commonly known as the Northbrook Shopping Plaza, Northbrook, Illinois, and legally described in *Exhibit J* to this Agreement.

"*Site Plan*": That certain site plan for the development of the Sunset Building and the redevelopment of the Shopping Center Property prepared by Gewalt Hamilton Associates, Inc., consisting of 1 sheet with latest revision date of June 6, 2001 a copy of which is attached to this Agreement as *Exhibit K*.

"*Sunset Building*": That certain approximately 45,500 square foot retail food store building proposed to be constructed and operated by Sunset on the Sunset Parcel as provided in the Sunset Lease.

"*Sunset Lease*": That certain lease dated as of March 14, 2001 by and between Sunset and the Shopping Plaza Owner.

"*Sunset Parcel*": That certain portion of the Shopping Center Property depicted on the Site Plan on which the Sunset Building is to be constructed.

"*Transitional Setback Variation Ordinance*": The proposed ordinance granting a variation from the transitional setback requirement in the Village Green Overlay District for the Sunset Building, to be adopted by the Corporate Authorities in the form attached to this Agreement as *Exhibit L*.

"*Zoning Code*": The Northbrook Zoning Code (1988), as the same has been, and may from time to time be, amended.

SECTION 3. CONVEYANCE OF EASEMENTS.

A. Grant. Concurrent with the execution of this Agreement, the Shopping Plaza Owner shall, and does hereby agree to, execute and deliver to the Village Clerk the following easement agreements in recordable form: (i) the Shermer North Leg Easement Agreement conveying to the Village the Shermer North Leg Easement and (ii) the Fire Lane Easement Agreement conveying to the Village the Fire Lane Easement.

B. Consideration. As provided in the Shermer North Leg Easement Agreement and the Fire Lane Easement Agreement, the total monetary consideration that the Village shall pay (i) for the Shermer North Leg Easement is \$10.00 and (ii) for the Fire Lane Easement is \$10.00.

SECTION 4. RELOCATION OF SHERMER EASEMENT.

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If at any time after the Execution Date of this Agreement, the Katz Property is acquired by the Village, Lane, Sunset or the Shopping Plaza Owner, the Shopping Center Owner shall not object to the relocation, at Lane's sole cost and expense, of a portion of the Shermer Easement onto a location on the Katz Property acceptable to the Village, the Shopping Plaza Owner, and Sunset. The site planning, engineering, construction, landscaping, and legal documentation of the new, relocated easement shall all be acceptable to the Village Manager, in his reasonable discretion. Upon the completion of construction of any access road and related improvements, the parties shall execute an easement grant in recordable form granting the new, relocated easement to the Village, whereupon the change in location of the Shermer South Leg Easement shall become effective, and appropriate releases of the prior location shall be executed in recordable form and exchanged between the parties hereto, their successors, and assigns.

SECTION 5. LICENSES.

Following the execution of this Agreement, the Corporate Authorities shall adopt a resolution granting to the Shopping Plaza Owner a non-exclusive license for the use of the Rights-of-Way for additional parking spaces as provided in the Rights-of-Way License Agreement. The resolution shall be effective only upon receipt by the Village Clerk of the Rights-of-Way License Agreement executed by the Shopping Plaza Owner.

SECTION 6. DESIGN AND ZONING APPROVALS.

A. Design Review Permit. Following the execution of this Agreement, the Corporate Authorities shall adopt the Design Review Permit Ordinance granting a Level III Design Review Permit and approving the Site Plan for the Shopping Center Property, in accordance with Section 11-605 D.5 of the Zoning Code.

B. Transitional Setback Variation. Following the adoption of the Design Review Permit Ordinance, the Corporate Authorities shall adopt the Transitional Setback Variation Ordinance granting a variation from the applicable requirement in Section 5-110E-4 of the Village Green Overlay District of the Zoning Code for the Sunset Building, in accordance with Section 8-111 of the Zoning Code.

C. Final Engineering and Landscaping Plan. The Developers agree to cooperate with the Village Engineer to produce (i) a Final Engineering Plan for the Sunset Building and Shopping Center Property that is in substantial conformance with the Preliminary Engineering Plan and (ii) a Final Landscaping Plan for the Sunset Parcel and Shopping Center Property that is in substantial conformance with the Preliminary Landscaping Plan, and that are satisfactory to the Village Engineer, in his sole and absolute discretion.

SECTION 7. DEMOLITION PERMIT.

Within 30 days following the execution of this Agreement, the Shopping Plaza Owner shall submit to the Village an application for a permit to demolish the Existing Building. The Village agrees to promptly process, and not to unreasonably withhold approval of, the demolition permit. Within 60 days after receipt of the demolition permit from the Village, the Shopping Plaza Owner shall, at its sole expense, cause the complete demolition of the Existing Building in accordance with all applicable codes and ordinances of the Village.

SECTION 8. DEVELOPMENT.

The Sunset Parcel and the Shopping Center Property shall be used and developed pursuant to and in accordance with the terms and provisions of this Agreement, and the exhibits hereto, including, without limitation, the following development restrictions:

A. Sunset Building Size. The Sunset Building shall consist of not more than 45,500 square feet of gross floor area. The floor area ratio of the Sunset Building to the Shopping Center Property shall not exceed 0.35.

B. Sunset Building Height. The Sunset Building shall consist of one floor and not more than one mezzanine level and shall not exceed 35 feet in height.

C. Parking. The Shopping Plaza Owner shall maintain surface parking on the Shopping Center Property with no less than 379 individual parking spaces, which number shall be, and is hereby, deemed to be in accordance with applicable Village codes and ordinances.

D. General Restrictions. Development of the Sunset Parcel, except for minor alterations due to final engineering and site work approved by the Village Engineer or the Village Director of Public Works, as appropriate, shall be pursuant to and in accordance with the following:

1. This Agreement;
2. The Design Review Plans;
3. The Final Engineering Plan;
4. The Zoning Code; and
5. The Building Code.

Unless otherwise provided in this Agreement either specifically or in context, in the event of a conflict between or among any of the above plans or documents, the plan or document that provides the greatest control and protection for the Village, as determined by the Village Manager, shall control. All of the above plans and documents shall be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement either specifically or in context.

SECTION 9. IMPROVEMENTS.

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A. **Sunset Improvements.** Sunset shall, at its sole cost and expense, construct and install the Sunset Building.

B. **The Shopping Plaza Owner Improvements.** The Shopping Plaza Owner shall, at its sole cost and expense, construct and install the following:

1. All landscaping depicted on the Landscape Plan;
2. Repaving and restriping of the parking lot on the Shopping Center Property in the manner depicted on the Site Plan.
3. The fire lane, as required and depicted in the Fire Lane Easement Agreement.
4. The landscaped setbacks along the Lincoln Avenue and Keystone Avenue frontages of the Shopping Center Property.
5. Extension and connection of all electric and utility services from the Sunset Building to the location of such electric and utility services which work shall be performed only after the Developers complete performance of the obligations described in Section 8.

C. **Landscape Enhancements.** The Village reserves the right to review the landscaping improvements made on the Shopping Center Property pursuant to the Final Landscape Plan upon the one-year anniversary date of the date of the installation of the landscape material. Based upon such review, the Village Manager may require the Shopping Center Owner to install additional landscaping improvements on the Shopping Center Property if the Village Manager, in his reasonable discretion, determines such landscaping improvements to be appropriate to enhance the aesthetics of the Shopping Center Property and the surrounding neighborhood.

D. **Design, Construction, and Completion of Improvements.**

1. **General.** The Improvements shall be designed and constructed pursuant to and in accordance with the Design Review Plans and the Final Engineering Plan and to the satisfaction of the Village Engineer. All work performed on the Improvements shall be conducted in a good and workmanlike manner and with due dispatch. All materials used for construction of the Improvements shall be new and of first quality.

2. **Contract Terms; Prosecution of the Work.** The Developers shall include in every contract for work on the Improvements terms requiring the contractor to prosecute the work diligently and continuously, in full compliance with, and as required by or pursuant to, this Agreement, the Design Review Plans and the Final Engineering Plan, until such work is properly completed, and providing that the Developers may take over and prosecute the work if the contractor fails to do so in a timely and proper manner. The Developers shall insure that their respective contractors, subcontractors and materialmen coordinate their respective construction and delivery schedules with one another

and those of the Village necessary to complete the obligations of the Village as set forth in Section 10 of this Agreement to insure minimal disruptions and to facilitate the diligent and continuous construction of the Improvements.

3. Engineering Services. The Developers shall provide, at its sole cost and expense, all engineering services for the design and construction of the Improvements, including full inspection services of a professional resident engineer responsible for overseeing the construction of the Improvements. The Developers shall promptly provide the Village with the name of such resident engineer and a telephone number or numbers at which such resident engineer can be reached at all times.

4. Village Inspections and Approvals. All work on the Improvements shall be subject to inspection and approval by Village representatives at all times.

5. Other Approvals. Where the construction and installation of any Improvement requires the consent, permission or approval of any public agency or private party, the Developers shall promptly file all applications, enter into all agreements, post all security, pay all fees and costs, and otherwise take all steps that may be required to obtain such consent, permission or approval.

E. Construction Traffic. At all times during the construction of the Improvements, the Developers shall keep all streets, sidewalks, and other public property adjacent to the Shopping Center Property free and clear of mud, dirt, debris, obstructions and hazards, and shall repair in a timely manner any damage, caused by construction traffic.

F. Final Inspection of Improvements. The Developers shall notify the Village when it believes that any or all of the Improvements have been fully and properly completed and shall request final inspection and approval by the Village. The Village shall inspect the Improvements and prepare a punch list of major and minor items requiring repair or correction. The Developers shall promptly, subject to any weather-related delays, make all necessary repairs and corrections as specified on the punch list. The Village shall not be required to approve any portion of the Improvements until all of the Improvements, excluding minor punch list items, have been substantially completed.

G. Responsibility for Improvements. Nothing contained in this Agreement, the Design Review Plans, nor the Final Engineering Plans shall be inferred to create joint and several responsibility for construction and completion of the Improvements among the Developers.

SECTION 10. VILLAGE OBLIGATIONS.

A. Burial of Utilities. The Village shall, at its sole cost and expense, disconnect and bury any and all existing electric and utility lines that cross over and above the Shopping Center Property and reconnect and restore such electric and other utility service to the Shopping Center Property. The Village shall insure that its contractors, subcontractors, and materialmen coordinate their respective construction and delivery schedules with each other and the Developers to insure minimal disruptions and to facilitate the diligent and continuous construction of those improvements described in this Section 10.

B. Construction of Retaining Wall. The Village shall, to the extent required as a result of the construction of the Shermer North Leg Easement, construct, at its sole cost and expense, a retaining wall on the Shopping Center Property at the location depicted on the Site Plan. The Village shall insure that its contractors, subcontractors, and materialmen coordinate their respective construction and delivery schedules with each other and the Developers to insure minimal disruptions and to facilitate the diligent and continuous construction of those improvements described in this Section 10.

C. Certificate of Occupancy for Sunset Building. Failure to complete construction of the Shermer Easement or any other obligation of the Village described in this Section 10 shall not be cause for withholding a certificate of occupancy for the Sunset Building.

SECTION 11. LIABILITY AND INDEMNITY OF THE VILLAGE.

A. Village Review. The Developers acknowledge and agree that the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Shopping Center Property, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Sunset Parcel, and that the Village's review and approval of any such plans and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Developers, or any of their heirs, successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time.

B. Village Procedure. The Developers acknowledge and agree that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agree not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. The Developers shall, and do hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with (i) the Village's review and approval of any plans for the Shopping Center Property; (ii) the issuance of any approval, permit, certificate or acceptance for the Shopping Center Property; and (iii) the development, construction, maintenance or use of any portion of the Shopping Center Property. Such indemnity shall not apply to the Shermer Easement, nor any other developments, construction, maintenance or use undertaken by the Village on either the Lane Property or the Shopping Center Property.

D. Defense Expense. The Developers shall, and do hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by Village in defending itself with regard to any and all of the claims referenced in Subsection C of this Section.

SECTION 12. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

All obligations assumed by the Developers under this Agreement shall be binding upon the Developers, and upon any and all of the Developers' heirs, successors and permitted assigns. The Developers' rights and obligations in this Agreement shall not be assigned to any party without compliance with Section 12 of this Agreement. To assure that all such heirs, successors, assigns and successor owners have notice of this Agreement and the obligations created by it, the Developers shall each:

A. Deposit with the Village Clerk, concurrent with the Village's approval of this Agreement, any consents or other documents necessary to authorize the Village to record this Agreement with the Cook County Recorder of Deeds; and

B. Notify the Village in writing at least 30 days prior to any date upon which such party transfers a legal or beneficial interest in any portion of the Shopping Center Property to any party not a party to this Agreement; and

C. Require, prior to the transfer of all or any portion of the Shopping Center Property, or any legal or equitable interest therein, to any party not a party to this Agreement, the transferee of said portion of or interest in the Shopping Center Property to execute an enforceable written agreement, in substantially the form attached to this Agreement as *Exhibit M*, agreeing to be bound by the provisions of this Agreement (a "*Transferee Assumption Agreement*"). The Village agrees that upon a successor becoming bound to the personal obligation created in the manner provided in this Agreement, the personal liability of the party transferring said portion of or interest in the Shopping Center Property shall be released to the extent of the transferee's assumption of such liability. The failure of the party transferring said portion of or interest in the Shopping Center Property to provide the Village with a fully executed copy of a Transferee Assumption Agreement required above by the transferee to be bound by the provisions of this Agreement shall result in such party remaining fully liable for all of such party's obligations under this Agreement but shall not relieve the transferee of its liability for all such obligations as a successor to such party.

D. Notwithstanding any other provision hereof, neither Developer, nor any partners, shareholders, directors, officers, employees or agents of either of the Developers, nor any of the successors and assigns of either of the Developers, shall have any personal liability under this Agreement, any and all such liability hereby being waived by the Village for itself and for every party claiming by or through the Village or under this Agreement as third party beneficiary or otherwise. In the event of any breach or default by a Developer of or under any term or provision of this Agreement, the Village agrees to look solely to the interest, if any, of such breaching or defaulting Developer in and to the Shopping Center Property and the improvements thereon, and to no other assets of such Developer or of any of its partners, shareholders, directors, officers, employees, agents, successors or assigns.

SECTION 13. TERM.

This Agreement shall run with and bind the Shopping Center Property and continue in full force and effect until such time as all of the obligations set for herein have been completed in the manner required and described. The rights and obligations in this Agreement shall inure to the benefit of and be enforceable by the Developers and the Village, and any of their respective legal representatives, heirs, successors and permitted assigns. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any now living current or former President of the United States.

SECTION 14. ENFORCEMENT.

The parties hereto may, in law or in equity, by suit, action, mandamus or any other proceeding, including without limitation specific performance, enforce or compel the

performance of this Agreement; provided, however, that the Developers agree, individually and collectively, that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the Shopping Center Property at any time when the Developers have failed or refused to meet fully any of their obligations under this Agreement. In the event of a judicial proceeding brought by one party to this Agreement against another party to this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

SECTION 15. ENFORCEMENT OF SETTLEMENT AGREEMENT AND SHERMER SOUTH LEG EASEMENT AGREEMENT.

The Village agrees to enforce and comply with, to the fullest extent possible, and at no cost to the Developers, all provisions benefiting the Developers contained in that certain Settlement Agreement between the Village and Lane, dated June 12, 2001 and all provisions benefiting the Developers in that certain Shermer South Leg Easement Agreement between the Village and Lane, dated June 12, 2001.

SECTION 16. GENERAL PROVISIONS.

A. Notices. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications to the Village shall be addressed to, and delivered at the following address:

Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062
Attention: John M. Novinson

With a copy to:

Holland & Knight LLP
55 West Monroe Street, Suite 800
Chicago, Illinois 60603
Attention: Steven M. Elrod, Esq.

Notices and communications to Sunset shall be addressed to, and delivered at, the following address:

Sunset Food Mart, Inc.
777 Central Avenue
Highland, Illinois 60035
Attn: Richard Cortesi

With a copy to:

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229
Attn: Kathleen M. Gilligan, Esq.

Notices and communications to the Shopping Plaza Owner shall be addressed to, and delivered at, the following address:

6600 South Central Avenue
Chicago, Illinois 60638
Attn: Northbrook Shopping Plaza
Attn: Sarena Koschitzky

With a copy to:

D'Ancona & Filium LLC
111 E. Wacker Drive
Suite 2800
Chicago, Illinois 60601
Attention: Joel D. Rubin, Esq.

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Waiver. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect the Village's right to enforce such right or any other right.

E. Consents. Whenever the consent or approval of any party is required in this Agreement such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, all parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

F. Governing Law. This Agreement shall be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

G. Severability. It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supercedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement except as expressly provided for otherwise.

J. Headings. The heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

K. Exhibits. Exhibits A through M attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

L. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

M. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any statute, code, ordinance, or law shall be deemed to include any modifications thereof, or amendments thereto as may, from time to time, hereinafter occur.

N. Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

O. Authority to Execute.

1. **The Village.** The Village hereby warrants and represents to the Developers that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities.

2. **Sunset.** Sunset hereby warrants and represents to the Village (i) that it has the full and complete right, power and authority to enter into this Agreement and to agree to the terms, provisions and conditions set forth therein, (ii) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken, and (iii) that neither the

execution of this Agreement nor the performance of the obligations assumed by Sunset will (a) result in a breach or default under any agreement to which Sunset is a party or (b) violate any statute, law, restriction, court order or agreement to which Sunset is subject.

3. **The Shopping Plaza Owner.** The Shopping Plaza Owner hereby warrants and represents to the Village (i) that it is the owner of fee simple title to the Shopping Center Property, (ii) that no other person or entity has any legal, beneficial, contractual or security interest in the Shopping Center Property; (iii) that it has the full and complete right, power and authority to enter into this Agreement and to agree to the terms, provisions and conditions set forth in and to bind the Shopping Center Property as set forth in this Agreement, (iv) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken, and (v) that neither the execution of this Agreement nor the performance of the obligations assumed by the Shopping Plaza Owner will (a) result in a breach or default under any agreement to which the Shopping Plaza Owner is a party or to which it or the Shopping Center Property is bound or (b) violate any statute, law, restriction, court order or agreement to which the Shopping Plaza Owner or the Shopping Center Property are subject.

P. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

Q. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the Developers.

R. **Defense.** Each party shall take, and shall cooperate with each other in taking, all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

S. **Enforceability.** This Agreement shall be enforceable in the Circuit Court of Cook County by each of the Parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction, or otherwise, for a breach of this Agreement.

T. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

[End of text. Signature pages follow.]

ATTEST:

VILLAGE OF NORTHBROOK

By: Lona N. Lewis
Its: Village Clerk

By: Mark W. Donich
Its: Village President

ATTEST:

SUNSET FOOD MART, INC.

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

DOWN YORK ENTERPRISES, LTD.

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

EARL GREY ENTERPRISES, LTD.

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

VILLAGE OF NORTHBROOK

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

SUNSET FOOD MART, INC.

By: Ronald J. Bernardi

By: [Signature]

Its: Corporate Secretary

Its: President

ATTEST:

DOWN YORK ENTERPRISES, LTD.

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

EARL GREY ENTERPRISES, LTD.

By: _____

By: _____

Its: _____

Its: _____

CHI1 #91436 v10

UNOFFICIAL COPY

EXECUTION COPY - JUNE 12, 2001

20238505

ATTEST:

VILLAGE OF NORTHBROOK

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

SUNSET FOOD MART, INC.

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

DOWN YORK ENTERPRISES, LTD.

By: _____

By: A. K. Schlichter

Its: _____

Its: Vice President

ATTEST:

EARL GREY ENTERPRISES, LTD.

By: _____

By: A. K. Schlichter

Its: _____

Its: Vice President

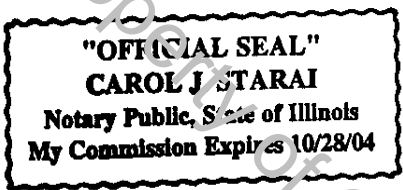
CHI1 #91436 v10

ACKNOWLEDGEMENTS

VILLAGE OF NORTHBROOK

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

The foregoing instrument was acknowledged before me on 12/11, 2001, by Mark W. Danesh, the Village President of the VILLAGE OF NORTHBROOK, an Illinois municipal corporation, and by Lona N. Louis, the Village Clerk of said municipal corporation.



SEAL

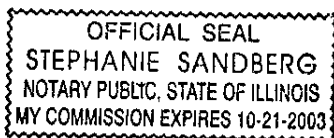
Carol J. Starai
Signature of Notary

My Commission expires: _____

SUNSET FOOD MART, INC.

STATE OF ILLINOIS)
)
COUNTY OF _____) SS

The foregoing instrument was acknowledged before me on July 27, 2001, by RICHARD CRITESI, President of SUNSET FOOD MART, INC. and _____, Secretary of said corporation, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the corporation for and on behalf of said corporation, and that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned.



SEAL

Stephanie Sandberg
Signature of Notary

My Commission expires: 10/21/2003

UNOFFICIAL COPY

Property of Cook County Clerk's Office

RECEIVED
CAROL J. E.
County Public State of Ill.
My Commission Expires 11/11/11

SUNSET FOOD MART, INC.

20228505

STATE OF ILLINOIS)
COUNTY OF Cook) SS

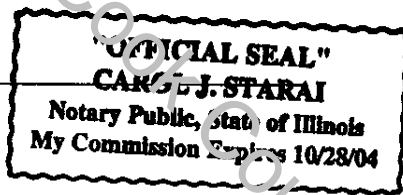
The foregoing instrument was acknowledged before me on 11-13, 2001, by _____, President of _____ and Ron Bernards Secretary of said corporation, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the corporation for and on behalf of said corporation, and that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned.

Casal J. Starai

Signature of Notary

SEAL

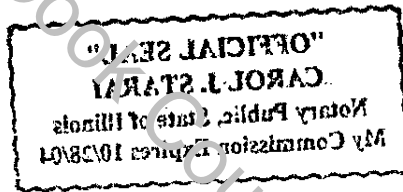
My Commission expires: _____



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXECUTION COPY - JUNE 12, 2001

DOWN YORK ENTERPRISES, LTD.

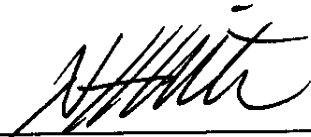
20238505

PROVINCE OF ONTARIO)
CITY OF TORONTO)

COUNTY OF _____)

The foregoing instrument was acknowledged before me on July 26, 2001, by Sarona Koschitzky, Vice President of _____ and _____ Secretary of said corporation, which individuals ~~are~~ ^{is} known to me to be the identical persons who signed the foregoing instrument as such officers of the corporation for and on behalf of said corporation, and that ~~they~~ ^{she} executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned.




Signature of Notary
Norman H. Winter LL.B.

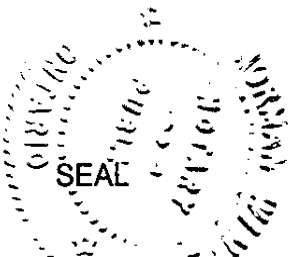
My Commission expires: Upon Retirement


EARL GREY ENTERPRISES, LTD.

PROVINCE OF ONTARIO)
CITY OF TORONTO)

COUNTY OF _____)

The foregoing instrument was acknowledged before me on July 26, 2001, by Sarona Koschitzky, Vice President of _____ and _____ Secretary of said corporation, which individuals ~~are~~ ^{is} known to me to be the identical persons who signed the foregoing instrument as such officers of the corporation for and on behalf of said corporation, and that ~~they~~ ^{she} executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned.

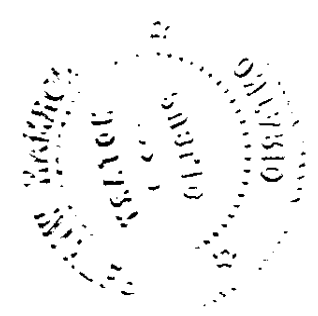



Signature of Notary
Norman H. Winter LL.B.

My Commission expires: Upon Retirement

UNOFFICIAL COPY

Property of Cook County Clerk's Office



LIST OF EXHIBITS

20228505

- A. Design Review Permit Ordinance
- B. Elevation Plan
- C. Fire Lane Easement Agreement
- D. Preliminary Engineering Plan
- E. Preliminary Landscape Plan
- F. Plan Depicting Village Rights-of-Way
- G. Rights-of-Way License Agreement
- H. Shermer Plat of Easement
- I. Shermer North Leg Easement Agreement
- J. Shopping Center Property Legal Description
- K. Site Plan
- L. Transitional Setback Variation Ordinance
- M. Transferee Assumption Agreement

20238505

EXHIBIT A

DESIGN REVIEW ORDINANCE

ORDINANCE NO. 01-

(Sunset Food Mart - Northbrook Shopping Plaza)

BE IT ORDAINED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois THAT:

AN ORDINANCE GRANTING A
LEVEL III DESIGN REVIEW PERMIT
FOR THE CONSTRUCTION OF A BUILDING
AT THE NORTHBROOK SHOPPING PLAZA

shall be, and is hereby, adopted as follows:

Section 1. BACKGROUND.

Sunset Food Mart, Inc. ("Sunset") desires to relocate its store from its current location at Meadow Shopping Center to the property commonly known as the Northbrook Shopping Plaza and legally described in Exhibit A to this Ordinance (the "Shopping Center Property"). Sunset and the owners of the Northbrook Shopping Plaza, Down York Enterprises, Ltd. and Earl Grey Enterprises, Ltd. (the "Shopping Plaza Owner") have entered into a lease agreement providing for use and operation by Sunset of a retail food store on a portion of the Northbrook Shopping Plaza. The Shopping Plaza Owner desires to demolish an existing building including subsurface improvements at the Northbrook Shopping Plaza, and Sunset desires to construct a new building (the "Sunset Building") to be leased from the Shopping Plaza Owner. Sunset and the Shopping Plaza Owner have requested that the Village grant the necessary relief to allow for construction of the Building, and redevelopment of the Shopping Center Property in accordance with the site, elevation, and landscaping plans submitted to the Village for review and approval.

The Northbrook Shopping Plaza is located within the C-2 Commercial District and the Village Green Overlay District and the proposed construction of the Sunset Building and redevelopment of the Shopping Center Property were determined by the Village to require a Level III Design Review Permit, as established in Section 8-103 of the Village Zoning Code (the "Zoning Code") which requires review by the Village's Architectural Control Commission and approval by the Board of Trustees.

Section 2. PUBLIC HEARING.

In accordance with the requirements for a Level III Design Review Permit, a properly noticed public hearing was held by the Architectural Control Commission on April 12, 2001 to review the design review plans and related, screening, lighting, and other aesthetic features and after which hearing the Architectural Control Commission recommended to the Village Board of Trustees that a Level III Design Review Permit be granted.

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Section 3. DESIGN REVIEW PERMIT.

Subject to and contingent upon the conditions, restrictions, and provisions set forth in Section 4 of this Ordinance, a Level III Design Review Permit shall be, and is hereby, granted to Sunset and the Shopping Plaza Owner, and their respective successors and assigns, in accordance with and pursuant to Section 11-605 of the Zoning Code and the home rule powers of the Village.

Section 4. DESIGN REVIEW PERMIT CONDITIONS.

The Level III Design Review Permit granted in Section 3 shall be, and is hereby, expressly subject to and contingent upon construction of the Building and related improvements and redevelopment of the Shopping Center in substantial compliance with the following plans and documents, except for minor changes approved by the Village Director of Public Works or the Village Engineer, and in accordance with all applicable Village standards:

- (i) Site Plan for the Shopping Center Property prepared by _____, with latest revision date of _____, a copy of which is attached hereto as Exhibit B;
- (ii) Elevation Plan for the Sunset Building prepared by _____, with latest revision date of _____, a copy of which is attached hereto as Exhibit C;
- (iii) Landscaping Plan for the Sunset Building prepared by _____, with latest revision date of _____, a copy of which is attached hereto as Exhibit D; and
- (iv) Development Agreement between the Village, Sunset, and the Shopping Plaza Owner dated as of _____, 2001.

Section 5. FAILURE TO COMPLY WITH CONDITIONS.

Upon failure or refusal of either Sunset or the Shopping Plaza Owner to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, the Level III Design Review Permit granted in Section 3 of this Ordinance shall, at the sole discretion of the Village Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Board of Trustees may not so revoke the approval unless it shall first provide Sunset and the Shopping Plaza Owner with (i) at least two months advance written notice of the reasons for revocation, (ii) an opportunity to be heard at a regular meeting of the Board of Trustees, and (iii) a reasonable amount of time in which to comply with the conditions, restrictions, and provisions of this Ordinance. If Sunset or the Shopping Plaza Owner are diligently proceeding toward such compliance, the Village shall provide such additional time as is reasonably necessary to effect such compliance. Sunset or the Shopping Plaza Owner shall each have the right, but not the obligation, to comply with any or all of the conditions, restrictions, or provisions of this Ordinance on behalf of the noncomplying party; at such noncomplying party's expense, with reimbursement to be promptly made upon receipt of invoice from the complying party. In the event of revocation, the development and use of the Northbrook Shopping Plaza shall be governed solely by the regulations of the Village Green Overlay District, the C-2 Commercial Business District, as the same may, from time to time, be amended. Further, in the event of such revocation of the Permit, the Village Manager and

Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

Section 6. EFFECTIVE DATE

This Ordinance shall be effective only upon the occurrence of all of the following events:

1. Passage by the Board of Trustees of the Village of Northbrook by a majority vote in the manner required by law;
2. Publication in pamphlet form in the manner required by law;
3. Recordation of this Ordinance, together with such exhibits as the Village Clerk shall deem appropriate for recordation, with the Cook County Recorder of Deeds. Sunset shall bear the full cost of such recordation.

PASSED: This ____ day of _____, 2001

AYES:

NAYS:

ABSENT:

ABSTAIN:

President

ATTEST:

Village Clerk

UNOFFICIAL COPY

EXECUTION COPY - JUNE 12, 2001

EXHIBIT B

ELEVATION PLAN

20238505

Property of Cook County Clerk's Office

EXHIBIT C

FIRE LANE EASEMENT AGREEMENT

BETWEEN THE VILLAGE OF NORTHBROOK AND
DOWN YORK ENTERPRISES/EARL GREY ENTERPRISES

THIS NON-EXCLUSIVE EASEMENT AGREEMENT (the "**Agreement**"), is dated as of this ____ day of _____, 2001, by and between the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "**Village**"); and DOWN YORK ENTERPRISES, LTD. and EARL GREY ENTERPRISES, LTD. owners of the Northbrook Shopping Plaza (the "**Shopping Plaza Owner**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers, the parties agree as follows:

SECTION 1. RECITALS.

A. The Shopping Plaza Owner is the record title owner of certain real estate situated in the Village of Northbrook, County of Cook, State of Illinois, which real estate is commonly known as the Northbrook Shopping Plaza and is legally described in **Exhibit A** attached to this Agreement (the "**Shopping Plaza Property**").

B. The Shopping Plaza Property is comprised of buildings for commercial retail activity, including the proposed new Sunset Foods retail food store, which use is generally open to the public. The Village Fire Chief has determined under Section 12-8 of the Northbrook Municipal Code that the constant assurance of immediate ingress and egress to the Shopping Plaza Property and access to all buildings and other structures by emergency fire and police vehicles and equipment is desirable for the purpose of providing maximum protection to life and property.

C. The Village and the Shopping Plaza Owner have determined it is in their respective best interests to enter into an agreement whereby the Shopping Plaza Owner will convey to the Village a property interest sufficient to permit access to the Shopping Plaza Property by emergency fire and police vehicles in exchange for the conditions and promises set forth in this Agreement.

SECTION 2. GRANT OF EASEMENT.

In consideration of the obligations and promises set forth in this Agreement, and payment of Ten Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, the Shopping Plaza Owner shall, and does hereby, grant, convey, warrant, and dedicate to the Village a perpetual non-exclusive easement on, over, and in that portion of the Shopping Plaza Property (the "**Fire Lane Easement**") depicted on the site plan prepared by _____, with latest revision date of _____, a copy of which is attached to this Agreement as **Exhibit B** for the ingress and egress of emergency vehicles and equipment.

SECTION 3. USE OF EASEMENT.

Notwithstanding the creation of the Fire Lane Easement, it is not the purpose of the parties to limit or restrict the use of the Fire Lane Easement for ingress or egress by employees, customers, and other private and public drivers unless and until an emergency use of the Fire Lane Easement is required. In all other respects, the Fire Lane Easement shall be available for use by the general public, except for parking and extended loading and/or unloading purposes.

SECTION 4. VILLAGE RESPONSIBILITIES.

The Village agrees, at its sole cost and expense, to conduct the initial signing of the Fire Lane Easement and shall enforce the intent and purpose of the Fire Lane Easement established by this Agreement by citation of violators of the Northbrook Municipal Code and any applicable state law provisions regarding fire lanes.

SECTION 5. SHOPPING PLAZA OWNER RESPONSIBILITIES.

The Shopping Plaza Owner shall, at its sole cost and expense, supervise, manage, maintain, and keep in good repair the Fire Lane Easement and related signage, including maintenance of the Fire Lane Easement in a safe, clean and sightly condition clear and reasonably free of snow, ice, and other natural obstructions.

SECTION 6. FUTURE DEVELOPMENT OF THE SHOPPING PLAZA PROPERTY.

The Fire Lane Easement created by this Agreement shall not restrict structural expansion of the Shopping Plaza Property, provided such expansion is in full accord with applicable zoning and building controls of the Village and such protection as was originally afforded by the Fire Lane Easement is reinstated upon completion of such structural expansion. The Shopping Plaza Owner shall have the express right to relocate the Fire Lane Easement with the approval of the Village, which approval shall not to be unreasonably withheld.

SECTION 7. RESERVED RIGHTS.

The Shopping Plaza Owner, and its tenants at the Shopping Plaza Property as same shall exist from time to time, including without limitation, Sunset Food Mart, Inc. ("**Sunset**") as a tenant at the Shopping Plaza Property, hereby reserves the right to use the Fire Lane Easement in any manner that will not prevent or interfere in any way with the exercise by the Village of the rights granted hereunder; however, that the Shopping Plaza Owner, and its tenants at the Shopping Plaza Property as same shall exist from time to time, shall not permanently or temporarily improve, disturb, damage, destroy, injure or obstruct the Fire Lane Easement, nor permit the Fire Lane Easement to be permanently or temporarily improved, disturbed, damaged, destroyed, injured or obstructed, at any time and in any manner whatsoever, including without limitation the installation of landscape material, without the express prior written consent of the Village. The Shopping Plaza Owner shall have the right to grant other non-exclusive easements over, along, upon, under or across the Fire Lane Easement; provided, however, that any such other easements shall be subject to this Agreement and the rights granted hereby.

SECTION 8. FURTHER ASSURANCES.

The Shopping Plaza Owner hereby represents and warrants that it shall use commercially reasonable efforts to cause the Fire Lane Easement shall be released from all liens,

including, without limitation, the lien of all mortgages and assignments of rents and leases, and shall execute all such documents as may be reasonably necessary to perfect the Village's right, title and interest in the Fire Lane Easement.

SECTION 9. COVENANTS RUNNING WITH THE LAND.

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The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, agreements and covenants running with the land, shall be recorded against the Fire Lane Easement, and shall be binding upon and inure to the benefit of the Shopping Plaza Owner and the Village and their respective heirs, executors, administrators, grantees, successors, assigns, agents, licensees, invitees, tenants and representatives, including, without limitation, all subsequent owners of the Fire Lane Easement, or any portion thereof, and all persons claiming under them. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any now living current or former President of the United States.

SECTION 10. ENFORCEABILITY.

The Agreement shall be enforceable in any court of competent jurisdiction by each of the parties hereto by any appropriate action at law or equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction or otherwise, by any action to obtain money damages for a breach of this Agreement. The parties acknowledge that any failure by either of them to perform its representations, promises, covenants, agreements or obligations under this Agreement will cause immediate and irreparable harm for which no adequate legal remedy will be available; accordingly each party waives all defenses to requests for equitable relief based on the purported absence of immediate, irreparable harm or the availability of adequate legal remedies.

SECTION 11. DEFAULT BY THE PARTIES.

A. In the event the parties breach any of the terms of this Agreement, the nonbreaching party may terminate this Agreement. Notwithstanding anything in this Section to the contrary, the nonbreaching party shall not be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within 30 days after receipt of such notice or such shorter time as shall be reasonable in the event of an emergency; provided, however, that if such default is of such a nature that it cannot be cured within such 30-day period, but could reasonably be cured within 90 days, then the cure period shall be extended to 90 days after receipt of such notice (except in case of emergency as aforesaid) so long as the cure is commenced within such 30-day period and is thereafter diligently prosecuted to completion.

B. In the event that the either the Village or the Shopping Plaza Owner defaults on its obligations under this Agreement, the nonbreaching party may not exercise its rights under Subsection 11.A of this Agreement, unless and until it provides notice to Sunset of its intent to terminate this Agreement which notice shall provide to Sunset the right but not the

obligation to either cure such default or cause the Village to cure such default within 30 days after such notice. Notwithstanding anything in this Section to the contrary, the nonbreaching party shall not be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within 30 days after receipt of such notice or such shorter time as shall be reasonable in the event of an emergency; provided, however, that if such default is of such a nature that it cannot be cured within such 30-day period, but could reasonably be cured within 90 days, then the cure period shall be extended to 90 days after receipt of such notice (except in case of emergency as aforesaid) so long as the cure is commenced within such 30-day period and is thereafter diligently prosecuted to completion.

SECTION 12. RECORDATION.

This Agreement shall be recorded with the Recorder of Deeds of Cook County, Illinois.

SECTION 13. GENERAL PROVISIONS.

Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Village shall be addressed to, and delivered at, the following address:

Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062
Attention: John M. Novinson

With a copy to:

Holland & Knight LLP
55 West Monroe Street, Suite 800
Chicago, Illinois 60603
Attention: Steven M. Elrod

Notices and communications to the Shopping Plaza Owner shall be addressed to, and delivered at, the following address:

6600 South Central Avenue
Chicago, Illinois 60638
Attn: Northbrook Shopping Plaza
Attn: Sarena Koschitzky

With a copy to:

D'Ancona & Pflaum LLC
111 E. Wacker Drive
Suite 2800
Chicago, Illinois 60601
Attention: Joel D. Rubin

Notices and communications to Sunset shall be addressed to, and delivered at, the following address:

Sunset Food Mart, Inc.
777 Central Avenue
Highland, Illinois 60035
Attn: Richard Cortesi

With a copy to:

Wildman Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229
Attn: Kathleen M. Gilligan, Esq.

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. Neither the Village nor the Shopping Plaza Owner shall be under any obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Shopping Plaza Owner to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's or the Shopping Plaza Owner's right to enforce such rights or any other rights.

E. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

G. Entire Agreement. This Agreement shall constitute the entire agreement of the parties with respect to the Fire Lane Easement; all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

H. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

I. **Grammatical Usage and Construction.** In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. **Headings.** The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.

L. **Exhibits.** Exhibits A and B attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Amendments and Modifications.** No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective until such change is reduced to writing and executed and properly approved by the parties at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to existing law shall be deemed to include any modifications of, or amendments to existing law as may, from time to time, hereinafter occur.

O. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

P. **No Third Party Beneficiaries** Except as expressly provided for in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the Shopping Plaza Owner.

Q. **Defense.** Each party shall take, and shall cooperate with each other in taking, all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

R. **Enforceability.** This Agreement shall be enforceable in the Circuit Court of Cook County by each of the parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction, or otherwise, for a breach of this Agreement.

S. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

T. **Authority.** Each undersigned representative warrants that he or she is duly authorized to execute this Agreement, that all conditions precedent to the making of this Agreement have been fulfilled, and that it is the intention of the party upon whose behalf he or she is signing to be bound hereby.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this instrument to be executed by their proper officers duly authorized to execute the same.

[End of text, signature pages follow.]

Property of Cook County Clerk's Office

ATTEST:

VILLAGE OF NORTHBROOK

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

DOWN YORK ENTERPRISES, LTD

By: _____

By: _____

Title: _____

Its: _____

ATTEST:

EARL GREY ENTERPRISES, LTD

By: _____

By: _____

Title: _____

Its: _____

Property of Cook County Clerk's Office

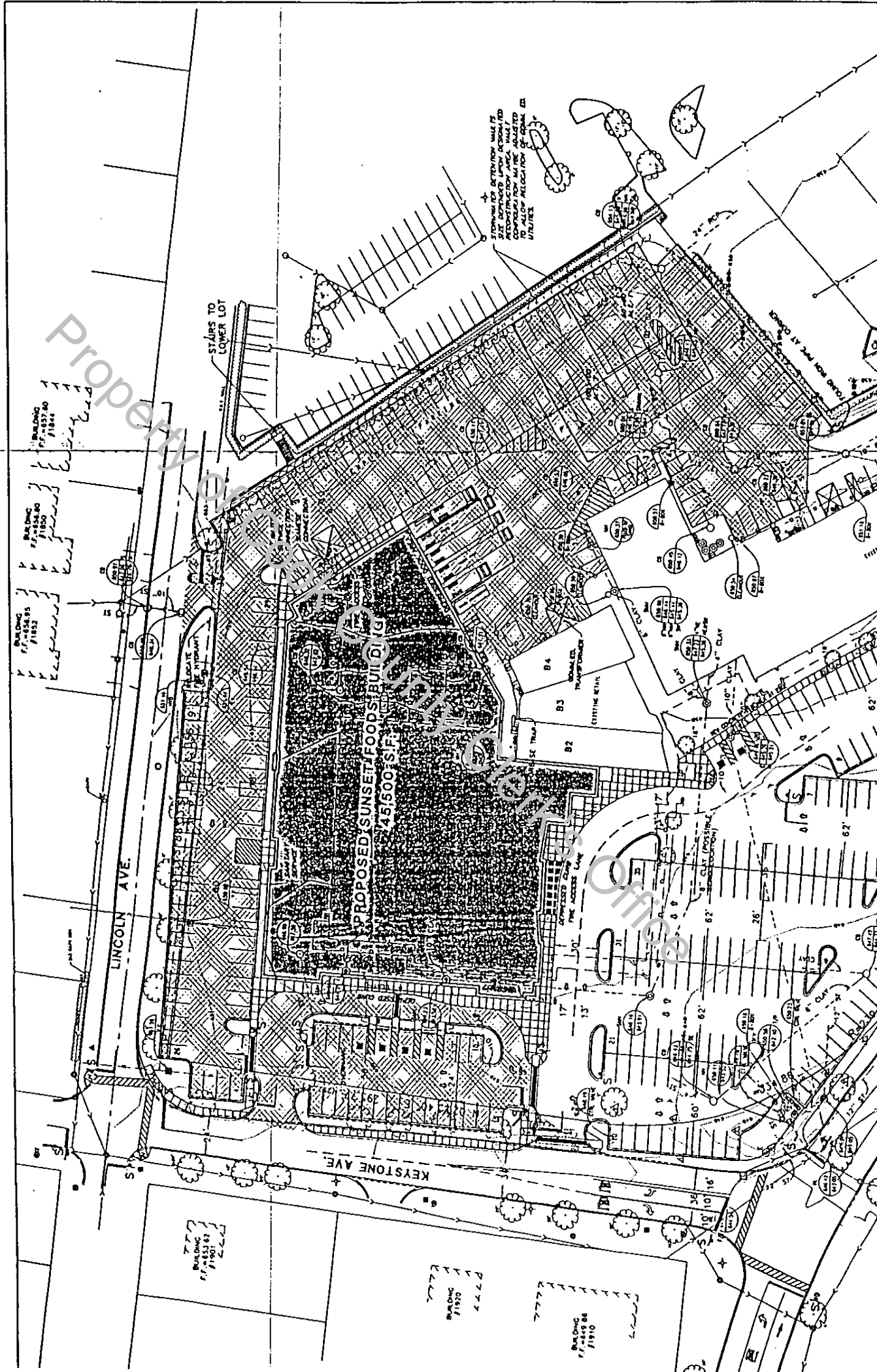
EXHIBIT D

PRELIMINARY ENGINEERING PLAN

20238505

Property of Cook County Clerk's Office

UNOFFICIAL COPY



Property

PROPOSED SUNSET FOODS BUILDING
45,600 SF

LINCOLN AVE.

KEYSTONE AVE.

BUILDING
P.F. 11837-40
11844

BUILDING
P.F. 11830-40
11830

BUILDING
P.F. 11825-35
11822

BUILDING
P.F. 11831-83
11831

BUILDING
P.F. 11900
11900

BUILDING
P.F. 11849-86
11910

STAIRS TO LOWER LOT SHALL BE SIX FOOTED LAMP DESIGNATED ACCENTUATION WALL TO BE PLACED IN THE MIDDLE OF THE STAIRS UTILITY

EXHIBIT E

PRELIMINARY LANDSCAPE PLAN

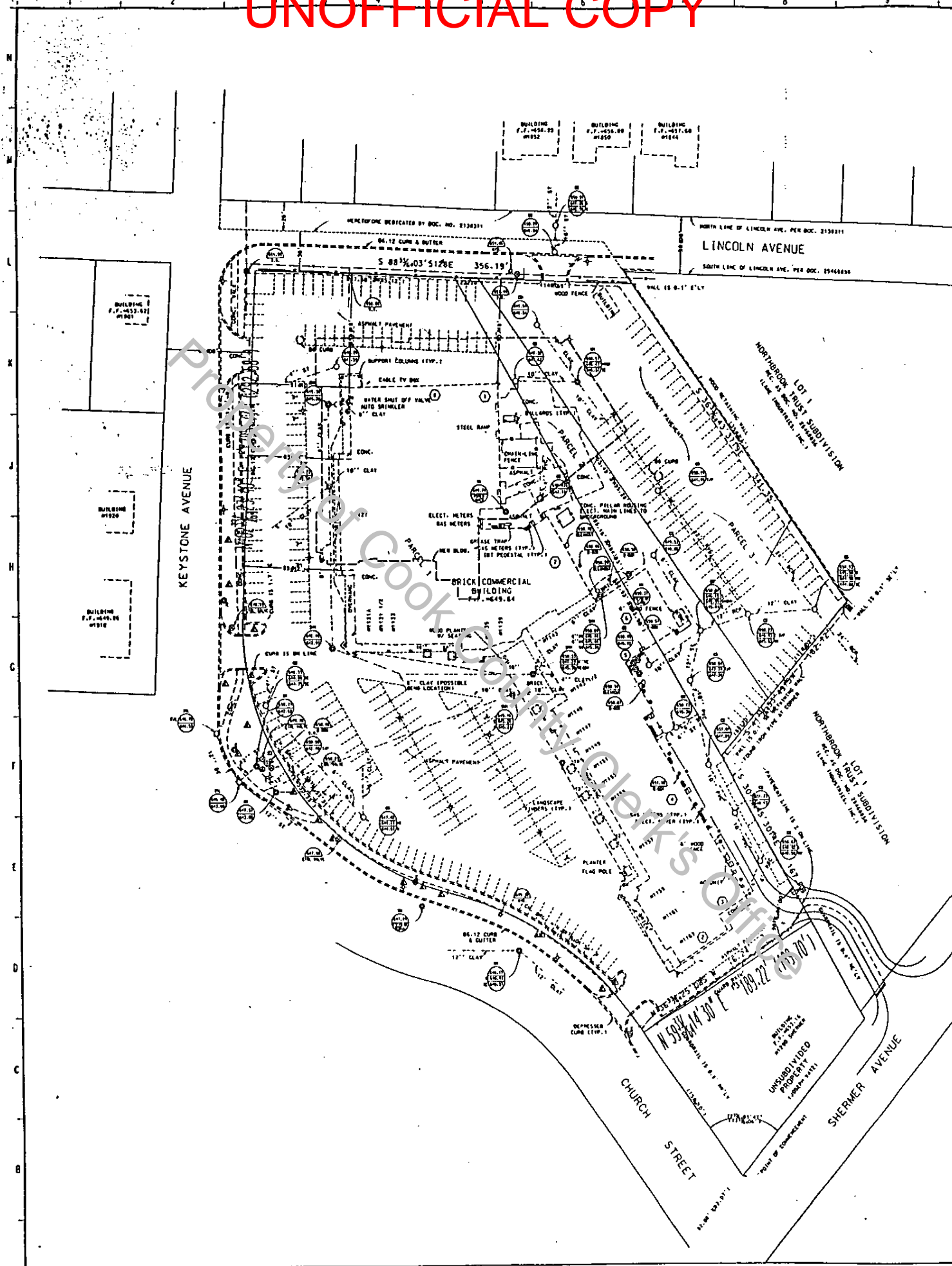
20238505

Property of Cook County Clerk's Office

EXHIBIT F

PLAN DEPICTING VILLAGE RIGHTS-OF-WAY

Property of Cook County Clerk's Office

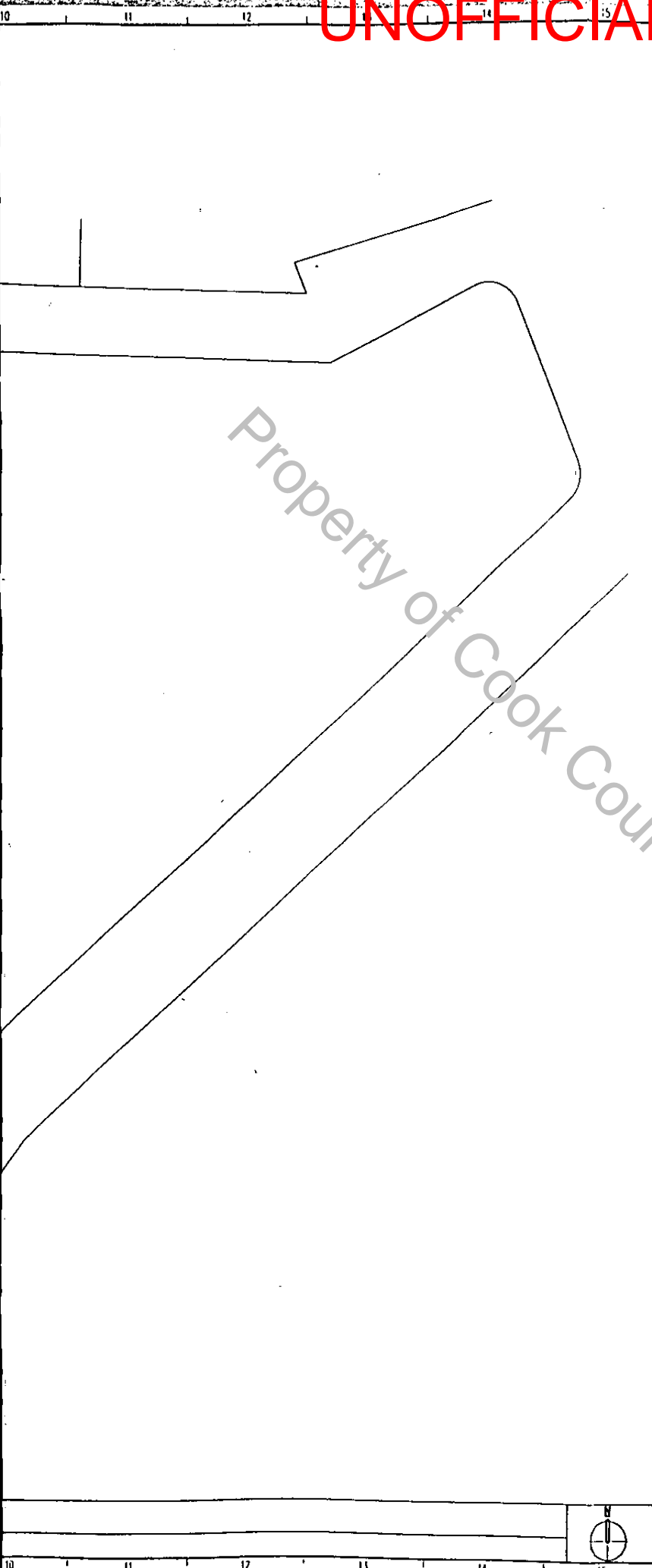


A-1 SURVEY
 SCALE: 1" = 50'-0"

ALL DIMENSIONS AND BOUNDARY BALANCE, APPEARING HEREIN CONSTITUTE THE ORIGINAL AND APPROVED WORK OF THE ARCHITECT, ENGINEER, SURVEYOR & THE ENGINEER, ETC.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



NO	REVISIONS/SUBMISSIONS	DATE
4	ISSUE FOR NORTHBROOK VILLAGE BOARD	3/30/01
3	ISSUE FOR VLL. OF NORTHBROOK ACC MEETING	4/22/01
2	ISSUE FOR VLL. OF NORTHBROOK ACC PRELIM REVIEW	4/22/01
1	ISSUE FOR VILLAGE OF NORTHBROOK VILLAGE BOARD	2/27/01

PROJECT NAME
SUNSET FOODS NORTHBROOK, IL

DRAWING TITLE
PLAT OF SURVEY

STORE: NEW REMODELING BUILDING NEW EXISTING

DRAWN/SPEC'D BY: LANDOWNER'S CONSULTANT

CONSTRUCTION BY: LANDOWNER'S CONTRACTOR

SEAL	DATE	PROJECT NO
	08/01/2000	400101
DRAWN BY:	STORE NO	
CT	NA	
I HEREBY CERTIFY THAT THESE DRAWINGS HAVE BEEN PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF ILLINOIS AS SET FORTH BY MY HAND AND BY MY SEAL.		DRAWING NO
		CS-1

EXHIBIT G

RIGHTS-OF-WAY LICENSE AGREEMENT

LICENSE AGREEMENT

BETWEEN THE VILLAGE OF NORTHBROOK AND
DOWN YORK ENTERPRISES/EARL GREY ENTERPRISES

THIS LICENSE AGREEMENT (the "Agreement"), is dated as of this ____ day of _____, 2001, between the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "Village"); and DOWN YORK ENTERPRISES, LTD., an Ontario corporation and EARL GREY ENTERPRISES LTD., an Ontario corporation (collectively the "Shopping Plaza Owner").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers, the parties agree as follows:

SECTION 1. RECITALS.

A. The Shopping Plaza Owner is the record title owner of certain real estate situated in the Village of Northbrook, County of Cook, State of Illinois, which real estate is commonly known as the Northbrook Shopping Plaza and is legally described in *Exhibit A* attached to this Agreement (the "Shopping Center Property").

B. The Shopping Plaza Owner desires to increase the number of parking spaces at the Northbrook Shopping Plaza to accommodate, among other uses, the proposed new Sunset Foods retail food store to be constructed by Sunset Food Mart, Inc. ("Sunset") at the Northbrook Shopping Plaza. In order to increase the number of parking spaces, the Shopping Plaza Owner desires to license a portion of Village rights-of-way.

C. The Village and the Shopping Plaza Owner have determined it is in their respective best interests to enter into an agreement whereby the Village will grant the Shopping Plaza Owner a license to use the Village rights-of-way for the purposes of reconfiguring and expanding the public parking areas on the Shopping Center Property.

SECTION 2. GRANT OF LICENSE.

In consideration of the obligations and promises set forth in this Agreement, and payment of the annual license fee in Section 3, the Village shall, and does hereby, grant, convey, warrant, and dedicate to the Shopping Plaza Owner a non-exclusive license to use a portion of that certain Village rights-of-way (the "Rights-of-Way") depicted in the plan prepared by Camburas Theodore, Inc. (the "Site Plan") attached to this Agreement as *Exhibit B* pursuant to, and in strict accordance with, the terms of this Agreement to construct, use, maintain, repair, or abandon a parking area (the "Licensed Premises") only in the location depicted in the Site Plan.

SECTION 3. LICENSE FEE.

In consideration of the Village granting this license, the Shopping Plaza Owner shall pay to the Village an annual license fee of \$10.00 on or before the first day of May of each year during the term of this Agreement.

20228505

SECTION 4. SHOPPING PLAZA OWNER RESPONSIBILITIES

A. Improvements. The Shopping Plaza Owner shall have, and is hereby granted, the right and obligation to improve, at the Shopping Plaza Owner's sole cost and expense, the Licensed Premises as follows:

1. The Shopping Plaza Owner shall design and construct a public parking area on the Licensed Premises in accordance with applicable Village codes and ordinances including surveying, engineering, grading, paving, drainage, curb cuts, striping, landscaping, and related improvements so as to permit vehicular parking on the Licensed Premises.

2. The Village shall grant the Shopping Plaza Owner reasonable temporary access to those portions of the Village property contiguous to the Licensed Premises for the purpose of surveying, designing, and constructing the public parking area.

B. Maintenance. The Shopping Plaza Owner shall, and is hereby authorized to, at its sole cost and expense, supervise, manage, maintain and keep in good repair the public parking area and related improvements constructed and installed within the Licensed Premises including maintenance of the parking spaces in a safe, clean and sightly condition clear and reasonably free of snow, ice, and other natural obstructions.

SECTION 5. TERM.

This Agreement shall be for an indefinite term (the "**Term**") commencing as of the date of this Agreement until the occurrence of a terminating event as described in Section 6 of this Agreement. At the conclusion of the Term, the Village may require any such alterations, improvements, or additions made by the Shopping Plaza Owner, if not removed prior to the end of the license term, to be removed by the Shopping Plaza Owner at the Shopping Plaza Owner's sole cost and expense; provided, however, that if this Agreement is terminated as a result of the adoption of an ordinance vacating the Rights-of-Way for public purposes, any such alterations, improvements or additions made by the Shopping Plaza Owner shall remain the property of the Shopping Plaza Owner.

SECTION 6. TERMINATION.

This Agreement shall automatically terminate and expire as follows:

A. Vacation. On the effective date of any ordinance passed by the Corporate Authorities of the Village that vacates the Right-of-Way for public purposes; or

B. Failure to Comply. After the Shopping Plaza Owner and Sunset have (i) received notice of the Shopping Plaza Owner's failure to comply, and (ii) had reasonable time in which to bring the Shopping Plaza Owner into compliance, with the terms and conditions of this Agreement. Notwithstanding the provisions of this Subsection 6.B, upon seven days written notice to the Shopping Plaza Owner, Sunset shall have the right, but not the obligation, to cure any breach or default by the Shopping Plaza Owner at the Shopping Plaza Owner's sole cost and expense. All such costs and expenses will then be reimbursed to Sunset upon receipt of invoice by Shopping Plaza Owner.

SECTION 7. RESERVED RIGHTS.

The Village hereby reserves the right to use the Licensed Premises in any manner that will not prevent or interfere in any way with the exercise by the Shopping Plaza Owner of the rights granted hereunder; however, that the Village shall not permanently or temporarily improve, disturb, damage, destroy, injure or obstruct the Licensed Premises, nor permit the Licensed Premises to be permanently or temporarily improved, disturbed, damaged, destroyed, injured or obstructed, at any time and in any manner whatsoever, including without limitation the installation of landscape material, without the express prior written consent of the Shopping Plaza Owner. The Village shall have the right to grant other licenses over, along, upon, under or across the Licensed Premises; provided, however, that any such other licenses shall be subject to this Agreement and the rights granted hereby; and provided further, however, that the Shopping Plaza Owner shall have first consented in writing to the terms, nature, and location of any such other licenses.

SECTION 8. NO EASEMENT OR PRESCRIPTIVE RIGHTS.

The Shopping Plaza Owner does hereby acknowledge and agree that its use of the Licensed Premises is pursuant to this revocable license and shall not be deemed to give rise to any form of easement. The Shopping Plaza Owner does hereby further acknowledge, and agree, that no prescriptive rights have arisen prior to the date of this Agreement nor shall any prescriptive rights be deemed to arise out of this Agreement.

SECTION 9. FURTHER ASSURANCES.

The Shopping Plaza Owner hereby represents and warrants that it shall take all necessary action so that the Licensed Premises shall remain free and clear of any and all liens, including, without limitation, those arising out of work performed, materials furnished, or obligations secured by, the Shopping Plaza Owner, and shall execute all such documents as may be reasonably necessary to protect the Village's right, title, and interest in the Licensed Premises.

SECTION 10. INSURANCE.

The Shopping Plaza Owner shall, at all times during the term of this Agreement, (i) procure, pay for and keep in full force and effect an occurrence form commercial general liability policy with respect to the Licensed Premises, insuring the Shopping Plaza Owner, its agents, employees, contractors and consultants, which the limits with respect to personal injury or death and property damage shall not be less than \$1,000,000 per occurrence naming the Village and its elected and appointed officials and employees as additional insureds, and (ii) provide the Village with certificates of insurance, with a 30 day notice of cancellation provision, evidencing such insurance.

SECTION 11. INDEMNIFICATION.

The Shopping Plaza Owner shall, and does hereby, hold harmless and indemnify the Village, its corporate authorities, and all of the Village's elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with the development, construction, maintenance or use of the Licensed Premises. The Shopping Plaza Owner shall, and does hereby agree to, pay all expenses, including legal fees and

administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced above.

SECTION 12. ENFORCEABILITY.

The Agreement shall be enforceable in any court of competent jurisdiction by each of the parties hereto by any appropriate action at law or equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction or otherwise, by any action to obtain money damages for a breach of this Agreement. The parties acknowledge that any failure by either of them to perform its representations, promises, covenants, agreements or obligations under this Agreement will cause immediate and irreparable harm for which no adequate legal remedy will be available; accordingly each party waives all defenses to requests for equitable relief based on the purported absence of immediate, irreparable harm or the availability of adequate legal remedies.

SECTION 13. GENERAL PROVISIONS.

A. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Village shall be addressed to, and delivered at, the following address:

Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062
Attention: John M. Novinson, Village Manager

With a copy to:

Holland & Knight LLP
55 West Monroe Street, Suite 800
Chicago, Illinois 60603
Attention: Steven M. Elrod, Esq.

Notices and communications to the Shopping Plaza Owner shall be addressed to, and delivered at, the following address:

6600 South Central Avenue
Chicago, Illinois 60638
Attn: Northbrook Shopping Plaza
Attn: Sarena Koschitzky

With a copy to:

D'Ancona & Pflaum LLC
111 E. Wacker Drive
Suite 2800
Chicago, Illinois 60601
Attention: Joel D. Rubin, Esq.

Notices and communications to Sunset shall be addressed to, and delivered at, the following address:

Sunset Food Mart, Inc.
777 Central Avenue
Highland, Illinois 60035
Attn: Richard Cortesi

With a copy to:

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229
Attn: Kathleen M. Gilligan, Esq.

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. Neither the Village nor the Shopping Plaza Owner shall be under any obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Shopping Plaza Owner to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's or the Shopping Plaza Owner's right to enforce such rights or any other rights.

E. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. **Severability.** If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

G. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties concerning the licenses of the Rights-of-Way; all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

H. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.

I. **Grammatical Usage and Construction.** In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. **Headings.** The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.

L. **Exhibits.** Exhibits A and B attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Amendments and Modifications.** No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective until such change is reduced to writing and executed and properly approved by the parties at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to existing law shall be deemed to include any modifications of, or amendments to existing law as may, from time to time, hereinafter occur.

O. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

P. **No Third Party Beneficiaries** Except or as expressly provided for in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or the Shopping Plaza Owner.

Q. **Defense.** Each party shall take, and shall cooperate with each other in taking, all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

R. **Enforceability.** This Agreement shall be enforceable in the Circuit Court of Cook County by each of the parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction, or otherwise, for a breach of this Agreement.

S. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

T. **Authority.** Each undersigned representative warrants that he or she is duly authorized to execute this Agreement, that all conditions precedent to the making of this Agreement have been fulfilled, and that it is the intention of the party upon whose behalf he or she is signing to be bound hereby.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this instrument to be executed by their proper officers duly authorized to execute the same.

[End of text signature pages follow.]

UNOFFICIAL COPY

EXECUTION COPY - JUNE 12, 2001

20238505

ATTEST:

VILLAGE OF NORTHBROOK

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

DOWN YORK ENTERPRISES, LTD

By: _____

By: _____

Title: _____

Its: _____

ATTEST:

EARL GREY ENTERPRISES, LTD

By: _____

By: _____

Title: _____

Its: _____

Property of Cook County Clerk's Office

EXHIBIT H

SHERMER PLAT OF EASEMENT

20238505

Property of Cook County Clerk's Office

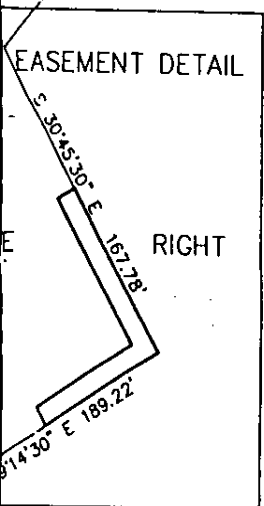
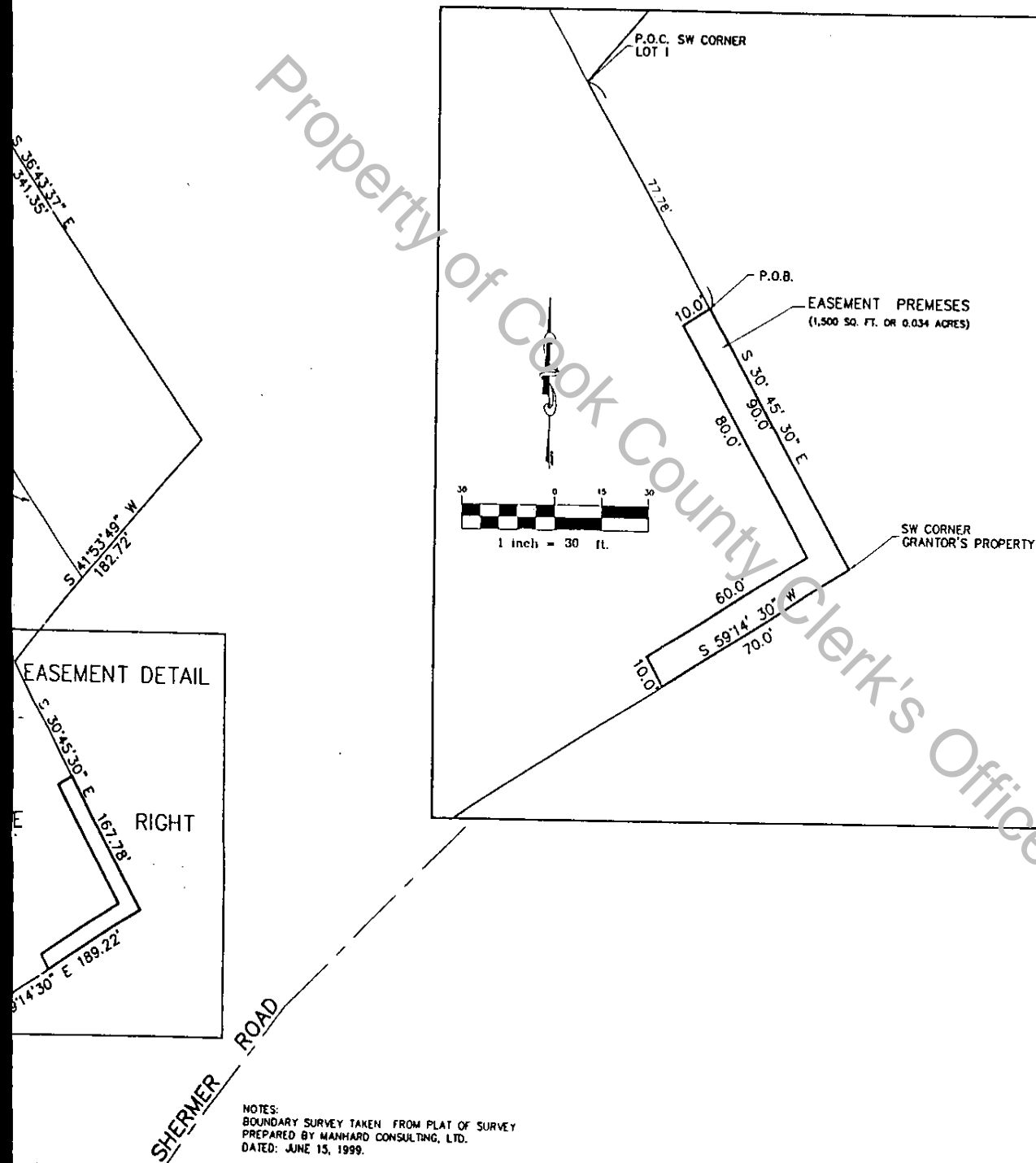
EXHIBIT UNOFFICIAL COPY WITH LEG EASEMENT

20228505

PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF LOT 1 IN CENTRAL
 ORDERING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS
 S EAST ALONG THE WEST LINE OF SAID LOT 1 EXTENDED 77.78 FEET TO THE POINT OF BEGINNING; THENCE
 PROPERTY; THENCE SOUTH 59 DEGREES 14 MINUTES 30 SECONDS WEST ALONG THE SOUTH LINE OF GRANTOR'S
 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE SOUTH LINE OF GRANTOR'S PROPERTY 60.0 FEET TO A POINT
 SAID EXTENSION OF THE WEST LINE OF LOT 1 IN CENTRAL SUBDIVISION UNIT NO. 1; THENCE NORTHWEST ALONG
 E NORTHEAST 10.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PINS: portion of 04-10-111-022
 portion of 04-10-300-029.

EASEMENT DETAIL



NOTES:
 BOUNDARY SURVEY TAKEN FROM PLAT OF SURVEY
 PREPARED BY MANHARD CONSULTING, LTD.
 DATED: JUNE 15, 1999.

HAMILTON
 ES, INC.
 & SURVEYORS
 Tel 847.478.9700 Fax 847.478.9701

NO.	BY	DATE	REVISION

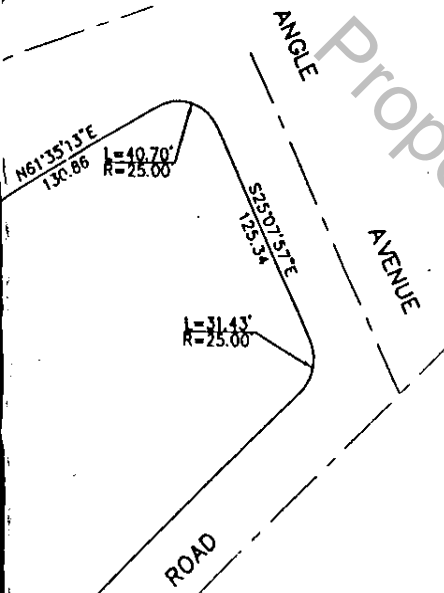
FILE: J195PLE2.DWG	PROJ. # 3195.100
DRAWN BY: P.J.G.	SCALE
DATE: 1/02/02	1" = 60'
CHECKED BY:	
DATE:	

SHEET NUMBER:
1
 OF 1 SHEETS

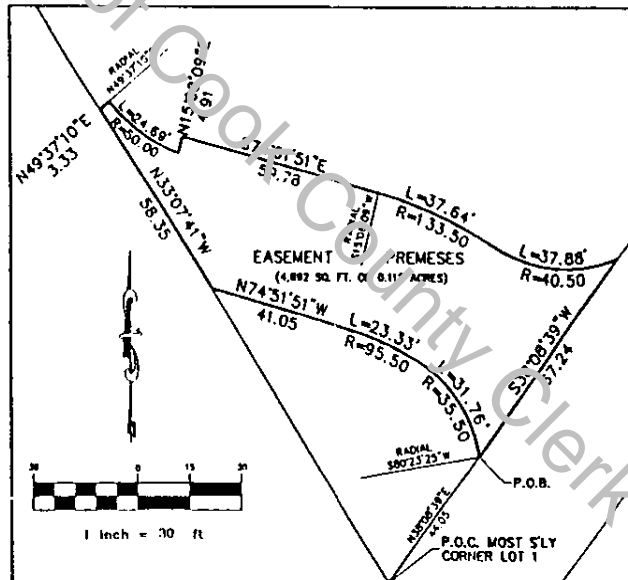
EASEMENT H LEG EASEMENT

Section 10, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof

East along an east line of said Lot 1, a distance of 44.05 feet to the point of beginning and also the West, a radial distance of 35.50 feet; Thence Northwesterly along the arc of said curve, through a central angle left having a radius of 95.50 feet and a central angle of 13 degrees 59 minutes 49 seconds; Thence Northwest 51 seconds West, a distance of 41.05 feet to a west line of Lot 1 aforesaid; Thence North 33 degrees 10 minutes 10 seconds East, a distance of 3.33 feet to the point of curve of a non tangent curve to the left, 125.54 feet; Thence southeasterly along said curve, through a central angle of 28 degrees 17 minutes 42 seconds, a distance of 59.78 feet to a point of curve to the right; Thence South 74 degrees 51 minutes 51 seconds East, a distance of 59.78 feet to a point of curve to the right; Thence southeasterly along the arc of said curve a distance of 37.64 feet to a point of reverse curve to the left; Thence along the arc of said reverse curve, a distance of 37.88 feet to an east line of Lot 1 aforesaid; Thence East to beginning.



EASEMENT DETAIL



STATE OF ILLINOIS
COUNTY OF LAKE) S.S.

GEWALT HAMILTON ASSOCIATES, INC. HEREBY CERTIFIES THAT WE HAVE PREPARED THIS PLAT OF EASEMENT FROM EXISTING PLATS AND RECORDS FOR THE PURPOSE OF DEPICTING AN EASEMENT FOR ROADWAY PURPOSES AS SHOWN HEREON

DATED AT VERNON HILLS, ILLINOIS THIS 26TH DAY OF JULY, 2001.

NOTES:
BOUNDARY SURVEY TAKEN FROM PLAT OF SURVEY PREPARED BY NATIONAL SURVEY SERVICE, INC. DATED SEPTEMBER 14, 2000

DONALD W. BIIG
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3098

MILTON
INC.

SURVEYORS
847.478.9700 Fax 847.478.9701

						FILE J195PLE1.DWG	PROJ # J195.100	SHEET NUMBER
						DRAWN BY: P.J.G.	SCALE	1
						DATE 7/26/01	1"=60'	
						CHECKED BY: D.W.B.		OF 1 SHEETS
						DATE 7/26/01		
NO.	BY	DATE	REVISION					

EXHIBIT I

SHERMER NORTH LEG EASEMENT AGREEMENT

BETWEEN THE VILLAGE OF NORTHBROOK AND
DOWN YORK ENTERPRISES/EARL GREY ENTERPRISES

THIS NON-EXCLUSIVE EASEMENT AGREEMENT (the "**Agreement**"), is dated as of this ____ day of _____, 2001, between the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "**Village**"); and DOWN YORK ENTERPRISES, LTD., an Ontario corporation and EARL GREY ENTERPRISES LTD., an Ontario corporation (collectively the "**Shopping Plaza Owner**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers, the parties agree as follows:

SECTION 1. RECITALS

A. The Shopping Plaza Owner is the record title owner of certain real estate situated in the Village of Northbrook, County of Cook, State of Illinois, which real estate is commonly known as the Northbrook Shopping Plaza and is legally described in **Exhibit A** attached to this Agreement (the "**Shopping Center Property**").

B. The Village desires to construct, maintain, and use a public access road between Shermer Road and the property commonly known as Northbrook Shopping Plaza to accommodate the proposed new Sunset Foods retail food store in the Northbrook Shopping Plaza as depicted and described in **Exhibit B** attached to this Agreement (the "**Sunset Building**"). The north leg of the access road is proposed to be located on property owned by the Shopping Plaza Owner and the south leg of the access road is proposed to be located on property owned by Lane Development, LLC ("**Lane**"). The property owned by Lane is described and depicted on **Exhibit C** attached to this Agreement (the "**Lane Property**"). The Village will enter into separate agreements with the Shopping Plaza Owner and Lane to acquire easements that, when combined, are sufficient to construct and use the proposed access road.

C. The Village and the Shopping Plaza Owner have determined it is in their respective best interests to enter into an agreement whereby the Shopping Plaza Owner will convey to the Village a property interest sufficient to construct and use the north portion of the access road in exchange for the conditions and promises set forth in this Agreement.

SECTION 2. GRANT OF EASEMENT.

In consideration of the obligations and promises set forth in this Agreement, and payment of Ten Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, the Shopping Plaza Owner shall, and does hereby, grant, convey, warrant, and dedicate to the Village a perpetual non-exclusive easement on, over, and in that portion of the Shopping Center Property (the "**Shermer North Leg Easement**") depicted on the plat of easement prepared by Gewalt Hamilton Associates, Inc. attached to this Agreement as **Exhibit D**, to construct, use, maintain, own, repair, or abandon a public access road and related improvements to serve as a Village right-of-way.

SECTION 3. VILLAGE RESPONSIBILITIES.

20238505

A. **Improvements.** The Village shall have, and is hereby granted, the right and obligation to improve, at the Village's sole cost and expense, the Shermer North Leg Easement as follows:

1. The Village shall prepare plans and specifications, subject to the reasonable approval of the Shopping Plaza Owner, and construct a two-lane, 24-foot wide access road on the Shermer North Leg Easement in accordance applicable Village codes and ordinances, including surveying, engineering, grading, paving, drainage, curb cuts, striping, landscaping and related improvements so as to permit vehicular [and pedestrian] ingress and egress between Shermer Road and the Northbrook Shopping Plaza.

2. Prior to beginning construction, the Village shall deliver plans and specifications for the access road to the Shopping Plaza Owner and the Shopping Plaza Owner shall have 20 days in which to review the plans and specifications and provide the Village written notice of its (i) approval of the plans and specifications, which approval shall not unreasonably be withheld or delayed, or (ii) rejection of the plans and specifications specifying the basis or bases thereof. If no such notice is received by the Village within such 20 day period, the plans and specifications will be deemed to have been approved by the Shopping Plaza Owner. If the Shopping Plaza Owner rejects the plans and specifications, the Village shall take all reasonable steps to incorporate such changes necessary to resolve the Shopping Plaza Owner's objections to the plans and specifications.

3. The Village shall provide the Shopping Plaza Owner with a proposed schedule of construction and shall notify the Shopping Plaza Owner prior to undertaking construction. The Village represents that it shall take all reasonable steps to prevent construction activities from interfering with the conduct of day-to-day business on the Shopping Center Property.

4. The Shopping Plaza Owner shall grant the Village reasonable temporary access to those portions of the Shopping Center Property contiguous to the Shermer North Leg Easement for the purposes of surveying, designing, and constructing the access road and related improvements.

5. To the extent that the construction of the access road and related improvements provided for in Section 3.A.1. necessitates the construction of a retaining wall on the Shopping Center Property, the Village shall have the obligation, at the Village's sole cost and expense and within a reasonable amount of time, to construct a new retaining wall at a location on the Shopping Center Property reasonably acceptable to the Shopping Plaza Owners and the Village.

6. The Village covenants and agrees to undertake the construction and maintenance of the access road and related improvements described in this Section 3 in a good and workmanlike fashion and shall diligently prosecute such work to completion using good faith and commercially reasonable efforts.

7. The Village covenants and agrees to ensure that its respective contractors, subcontractors and materialmen coordinate their respective delivery

schedules with Sunset and the Shopping Plaza Owner to insure minimal disruptions and to facilitate the diligent and continuous construction, maintenance and repair of the improvements described in Section 3 of this Agreement.

B. Maintenance. The Village shall, and is hereby authorized to, at its sole cost and expense, supervise, manage, maintain, and keep in good repair the access road and related improvements constructed and installed within the Shermer North Leg Easement, including maintenance, repair, and restoration of the access road in a safe, clean and slightly condition clear and reasonably free of snow, ice, and other natural obstructions.

C. Insurance. At all times, the Village (or its contractor) shall procure and maintain, at the Village's sole cost and expense, commercial general liability insurance, with companies and in amounts that are commercially reasonable, with a broad form endorsement providing insurance against claims for bodily injury (including death) and property damage occurring on the Shopping Center Property in connection with the Village's exercise of its rights under this Agreement and contractual liability (including an endorsement specifically acknowledging that this Agreement is an "insured contract" under such policy). As to liability arising from the Village's negligence or the negligence of anyone for whom the Village is responsible, the foregoing policies of insurance shall be primary with respect to the Shopping Plaza Owner and its members, managers, partners, officers, directors, employees, trustees, tenants and tenant employees (collectively, "**Shopping Plaza Owner's Protected Persons**"). All policies of insurance required to be maintained pursuant to this Subsection shall name the Shopping Plaza Owner and the Shopping Plaza Owner's Protected Persons as additional insureds as their interests may appear. All policies of insurance required to be maintained pursuant to this Subsection shall contain an agreement by the insurers that neither the policies nor any particular coverage thereof shall be canceled or not renewed without at least 30 days' prior written notice to the Shopping Plaza Owner. Prior to the Village or its contractors, agents, or employees entering onto the Shopping Center Property pursuant to the Agreement, the Village shall deliver to the Shopping Plaza Owner binders or certificates in form and substance reasonably satisfactory to the Shopping Plaza Owner, evidencing the insurance required to be carried pursuant to this Subsection.

D. Mechanics' Lien. The Village shall have no right, authority or power to bind the Shopping Plaza Owner for the payment of any claim for labor or material or for engineering or architect's fees, or for any charge or expense incurred in connection with the design or construction of the access road and related improvements, nor to render all or any part of the Shopping Center Property liable for any lien or right of lien for any labor, material, or services (including management services) or for any other charges for expenses incurred in connection therewith. In addition, the Village shall not under any circumstances be considered an agent of the Shopping Plaza Owner in conducting any work undertaken in connection with the improvements. The Village, at all times, shall keep the Shopping Center Property free and clear of mechanics', materialmen's, and other liens, and all charges, claims, and encumbrances caused or created by the Village's performance or construction of the improvements. If any mechanics' or other lien, charge or order for the payment of money or other encumbrance caused or created by the Village's performance or construction of the improvements, shall be filed against the Shopping Plaza Owner or any portion of the Shopping Center Property, the Village shall promptly, at its own cost and expense, either (a) cause same to be discharged of record, (b) cause same to be bonded over, (c) cause same to be insured over, or (d) provide the Shopping Plaza Owner with such security as may be reasonably acceptable to the Shopping Plaza Owner, and in the case of an election under clause (b), (c) or (d) above, to otherwise diligently contest the same; and the Village shall defend, indemnify, and hold harmless the Shopping Plaza Owner against and from all

costs, liabilities, suits, penalties, claims, and demands, including reasonable attorneys' fees, resulting therefrom. If the Village fails to comply with the foregoing provisions, the Shopping Plaza Owner shall have the option, but not the obligation, of discharging or bonding any such lien, charge, order, or encumbrance, and the Village agrees to reimburse the Shopping Plaza Owner for all costs, expenses, and other sums of money (including, but not limited to, reasonable attorneys' fees) in connection therewith with interest at the Interest Rate (as defined in this Subsection) from the date such costs, expenses, or other sums of money are incurred. For purposes hereof "Interest Rate" shall mean four percent plus (i) the rate announced from time to time by Bank One or its successor in Chicago, Illinois as its "corporate base rate," "prime rate," "reference rate" or other similar rate and in effect on the date interest first begins to accrue with respect to any sum that becomes payable pursuant to any provision of this Agreement, or (ii) in the event such bank has ceased announcing any such rate, then such rate as may be published in The Wall Street Journal as the "prime rate" or other similar rate, unless prohibited by law, in which case, the "Interest Rate" shall mean the maximum contract rate permitted by law at such time.

SECTION 4. RESERVED RIGHTS.

The Shopping Plaza Owner, Sunset, and the other tenants at the Shopping Center Property, as same shall exist from time to time, hereby reserve the right to use the Shermer North Leg Easement in any manner that will not prevent or interfere in any way with the exercise by the Village of the rights granted hereunder, however, that the Shopping Plaza Owner, Sunset, and the other tenants at the Shopping Center Property, as same shall exist from time to time, shall not permanently or temporarily improve, disturb, damage, destroy, injure or obstruct the Shermer North Leg Easement, nor permit the Shermer North Leg Easement to be permanently or temporarily improved, disturbed, damaged, destroyed, injured or obstructed, at any time and in any manner whatsoever, including without limitation the installation of landscape material, without the express prior written consent of the Village. The Shopping Plaza Owner shall have the right to grant other non-exclusive easements over, along, upon, under or across the Shermer North Leg Easement; provided, however, that any such other easements shall be subject to this Agreement and the rights granted hereby and shall not prevent or interfere in any way with the exercise by the Village of the rights granted hereunder.

SECTION 5. FURTHER ASSURANCES.

The Shopping Plaza Owner hereby represents and warrants that it shall use commercially reasonable efforts to cause the Shermer North Leg Easement to be released from all liens, including, without limitation, the lien of all mortgages and assignments of rents and leases, and shall execute all such documents as may be reasonably necessary to perfect the Village's right, title and interest in the Shermer North Leg Easement.

SECTION 6. CHANGE OF USE; NOTICE REQUIREMENTS.

In the event that the Shopping Center Owner desires to lease, convey, or otherwise permit or enable the use of all or any portion of the Sunset Building for any use other than a retail food store, then the Shopping Plaza Owner shall notify the Village, Lane, and if Lane is no longer the fee simple title owner of the Lane Property, the then current legal title owner of the Lane Property, not less than [15 days] prior to execution of any such agreement or consent.

SECTION 7. COVENANTS RUNNING WITH THE LAND.

The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, agreements and covenants running with the land, shall be recorded against the Shermer North Leg Easement, and shall be binding upon and inure to the benefit of the Shopping Plaza Owner and the Village and their respective heirs, executors, administrators, grantees, successors, assigns, agents, licensees, invitees and representatives, including, without limitation, all subsequent owners of the Shermer North Leg Easement, or any portion thereof, and all persons claiming under them. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any now living current or former President of the United States.

SECTION 8. ENFORCEABILITY.

The Agreement shall be enforceable in any court of competent jurisdiction by each of the parties hereto by any appropriate action at law or equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction or otherwise, by any action to obtain money damages for a breach of this Agreement. The parties acknowledge that any failure by either of them to perform its representations, promises, covenants, agreements or obligations under this Agreement will cause immediate and irreparable harm for which no adequate legal remedy will be available; accordingly each party waives all defenses to requests for equitable relief based on the purported absence of immediate, irreparable harm or the availability of adequate legal remedies.

SECTION 9. EFFECTIVE DATE.

This Agreement shall not become effective unless and until the Village delivers to the Shopping Plaza Owner evidence of a properly executed easement agreement for the south leg of the proposed access road as depicted on *Exhibit D*.

SECTION 10. INDEMNIFICATION, RELEASE OF CLAIMS, WAIVER.

The Village hereby releases the Shopping Plaza Owner, its officers, directors, partners, employees, agents, mortgagees, licensees, contractors, tenants, guests, and invitees (and their respective officers, directors, partners, employees, agents, mortgagees, licensees, contractors, guests, and invitees, subsidiaries, affiliates, successors, grantees, and assigns) (collectively, the "*Shopping Plaza Indemnitees*") from any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs, and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Shopping Plaza Indemnitees in connection therewith) and for damage, destruction or theft of property, that may arise from, or in connection with, the Village's construction of the access road and related improvements on the Shopping Center Property (including, without limitation, any such liability, loss, claims, demands, liens, demands, penalty, fines, interest, costs, and expenses that may arise as a result of the construction, maintenance, restoration, operation, replacement, or repair of such improvements). The Village hereby agrees to indemnify, defend, and hold harmless the Shopping Plaza Indemnitees from and against any and all liabilities, losses, claims, demands, liens, damages, penalties, fines, interest, costs, and expenses (including, without limitation,

reasonable attorneys' fees and litigation costs that the Shopping Plaza Indemnitees may suffer, sustain or incur in connection therewith), and for any and all loss of life, injury to persons, or damage to property which is directly or indirectly due to or arising out of the Village's construction, maintenance, restoration, operation, replacement, or repair of the access road and related improvements on the Shopping Center Property.

SECTION 11. DEFAULT BY THE PARTIES.

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A. In the event the parties breach any of the terms of this Agreement, the nonbreaching party may terminate this Agreement; provided, however, in the event of a breach by the Village, the Village shall remain obligated to restore the Shopping Center Property to its original condition and for any other liabilities that may then exist or which may thereafter arise as a result of the exercise by the Village of its rights under this Agreement. Notwithstanding anything in this Section to the contrary, the nonbreaching party shall not be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within 30 days after receipt of such notice or such shorter time as shall be reasonable in the event of an emergency; provided, however, that if such default is of such a nature that it cannot be cured within such 30-day period, but could reasonably be cured within 90 days, then the cure period shall be extended to 90 days after receipt of such notice (except in case of emergency as aforesaid) so long as the cure is commenced within such 30-day period and is thereafter diligently prosecuted to completion.

B. In the event that the Village defaults on its obligations Under Section 3 of this Agreement, the Shopping Center Owner may not exercise its rights under Subsection 11.A of this Agreement, unless and until it provides notice to Sunset of its intent to terminate this Agreement which notice shall provide to Sunset with a period of 30 days within which to either cure such default or cause the Village to cure such default. Notwithstanding anything in this Section to the contrary, the nonbreaching party shall not be deemed to be in default under this Agreement until it has received written notice of such default and has failed to cure the same within 30 days after receipt of such notice or such shorter time as shall be reasonable in the event of an emergency; provided, however, that if such default is of such a nature that it cannot be cured within such 30-day period, but could reasonably be cured within 90 days, then the cure period shall be extended to 90 days after receipt of such notice (except in case of emergency as aforesaid) so long as the cure is commenced within such 30-day period and is thereafter diligently prosecuted to completion.

SECTION 12. RECORDATION.

This Agreement shall be recorded with the Recorder of Deeds of Cook County, Illinois.

SECTION 13. GENERAL PROVISIONS.

A. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change

the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Village shall be addressed to, and delivered at, the following address:

Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062
Attention: John M. Novinson

With a copy to:

Holland & Knight LLP
55 West Monroe Street, Suite 800
Chicago, Illinois 60603
Attention: Steven M. Elrod, Esq.

Notices and communications to the Shopping Plaza Owner shall be addressed to, and delivered at, the following address:

6600 South Central Avenue
Chicago, Illinois 60638
Attn: Northbrook Shopping Plaza
Attn: Sarena Koschitzky

With a copy to:

D'Ancona & Pflaum LLC
111 E. Wacker Drive
Suite 2800
Chicago, Illinois 60601
Attention: Joel D. Rubin, Esq.

Notices and communications to Sunset shall be addressed to, and delivered at, the following address:

Sunset Food Mart, Inc.
777 Central Avenue
Highland, Illinois 60035
Attn: Richard Cortesi

With a copy to:

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229
Attn: Kathleen M. Gilligan, Esq.

Notices and communications to Lane shall be addressed to, and delivered at, the following address:

Lane Development, LLC
1200 Shermer Road
Northbrook, Illinois 60062
Attention: William M. Keating

With a copy to:

Piper, Marbury, Rudnick & Wolfe
203 North LaSalle Street
Chicago, Illinois 60601-1293
Attention: Harold W. Francke, Esq.

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. Neither the Village nor the Shopping Plaza Owner shall be under any obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Shopping Plaza Owner to exercise at any time any such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's or the Shopping Plaza Owner's right to enforce such rights or any other rights.

E. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

G. Entire Agreement. This Agreement shall constitute the entire agreement of the parties with respect to the Shermer North Leg Easement; all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

H. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

I. Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. **Headings.** The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.

L. **Exhibits.** Exhibits A through D attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

M. **Amendments and Modifications.** In no event shall any portion of this Agreement be modified, added to, deleted, revised, altered or otherwise changed in any way without at least 15 days prior written notice to Sunset and the Shopping Plaza Owner. In addition, no such modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective until such change is reduced to writing and executed and properly approved by the parties at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to existing law shall be deemed to include any modifications of, or amendments to existing law as may, from time to time, hereinafter occur.

O. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

P. **No Third Party Beneficiaries.** Except or as expressly provided for in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or the Shopping Plaza Owner.

Q. **Defense.** Each party shall take, and shall cooperate with each other in taking, all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

R. **Enforceability.** This Agreement shall be enforceable in the Circuit Court of Cook County by each of the parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction, or otherwise, for a breach of this Agreement.

S. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

T. **Authority.** Each undersigned representative warrants that he or she is duly authorized to execute this Agreement, that all conditions precedent to the making of this

Agreement have been fulfilled, and that it is the intention of the party upon whose behalf he or she is signing to be bound hereby.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this instrument to be executed by their proper officers duly authorized to execute the same.

ATTEST: **VILLAGE OF NORTHBROOK**

By: _____ By: _____

Its: _____ Its: _____

ATTEST: **DOWN YORK ENTERPRISES, LTD**

By: _____ By: _____

Title: _____ Its: _____

ATTEST: **EARL GREY ENTERPRISES, LTD**

By: _____ By: _____

Title: _____ Its: _____

Property of Cook County Clerk's Office

EXHIBIT J

SHOPPING PLAZA PROPERTY LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF THE WEST HALF OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE NORTH WESTERLY LINE OF SHERMER AVENUE 82.07 FEET NORTHEASTERLY OF THE WESTERLY LINE OF CHURCH STREET, EXTENDED NORTHERLY; THENCE NORTHWESTERLY ON A LINE FORMING AN ANGLE OF 77 DEGREES 06 MINUTES (MEASURED FROM NORTH TO EAST) WITH THE NORTH WESTERLY LINE OF SHERMER AVENUE, A DISTANCE OF 158.10 FEET, FOR A POINT OF BEGINNING); THENCE CONTINUING NORTHWESTERLY ON SAID LAST COURSE, A DISTANCE OF 6.24 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ON A CURVE CONVEX TO THE NORTH EAST, RADIUS 307.65 FEET, A DISTANCE OF 215.76 FEET TO A POINT OF RESERVE CURVE; THENCE NORTHWESTERLY ON A CURVE CONVEX TO THE SOUTH WEST, RADIUS 239.71 FEET, A DISTANCE OF 330.33 FEET TO A POINT OF TANGENT; THENCE NORTH ON A LINE 658.40 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SECTION 10, AFORESAID, A DISTANCE OF 292.58 FEET TO A LINE 35 FEET SOUTH OF THE SOUTH LINE OF LINCOLN AVENUE, AS THE SAME WAS DEDICATED IN GEORGE A. KEST'S SUBDIVISION OF LANDS IN THE NORTH WEST QUARTER OF SECTION 10, AFORESAID; THENCE EAST ON A LINE 35 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF LINCOLN AVENUE, AFORESAID, A DISTANCE OF 185.12 FEET TO THE WEST LINE OF THE WOOD PROPERTY, AS OCCUPIED; THENCE SOUTHEASTERLY ON THE WESTERLY LINE OF THE WOOD PROPERTY, AS OCCUPIED, BEING A LINE FORMING AN ANGLE OF 122 DEGREES 46 MINUTES 20 SECONDS WITH THE LAST COURSE (WHEN MEASURED FROM WEST TO SOUTH TO EAST) A DISTANCE OF 653.90 FEET; THENCE SOUTHWESTERLY ON A LINE AT RIGHT ANGLES TO SAID LAST COURSE, A DISTANCE OF 189.70 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS

ALSO

PARCEL 2:

LOT 1 IN CENTRAL SUBDIVISION UNIT NO. 1, A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON MAY 23, 1957 AS DOCUMENT NO. 16912340;

ALSO

PARCEL 3:

LOT 1 IN CENTRAL SUBDIVISION UNIT NUMBER 2, A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON MAY 23, 1957 AS DOCUMENT NO. 1739621 ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT K

SITE PLAN

20238565

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT L

TRANSITIONAL SETBACK VARIATION ORDINANCE

ORDINANCE NO. 01-

BE IT ORDAINED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois THAT:

**AN ORDINANCE GRANTING A
VARIATION TO THE TRANSITIONAL SETBACK
REQUIREMENT OF THE ZONING CODE
FOR THE NORTHBROOK SHOPPING PLAZA**

shall be, and is hereby, adopted as follows:

Section 1. BACKGROUND

Sunset Food Mart, Inc. ("Sunset") desires to relocate its store from its current location at Meadow Shopping Center to the property commonly known as the Northbrook Shopping Plaza and legally described in Exhibit A to this Ordinance (the "Shopping Center Property"). Sunset and the owners of the Northbrook Shopping Plaza, Down York Enterprises, Ltd. and Earl Grey Enterprises, Ltd. (the "Shopping Plaza Owner") have entered into a lease agreement providing for use and operation by Sunset of a retail food store on a portion of the Northbrook Shopping Plaza. The Shopping Plaza Owner desires to demolish an existing building including subsurface improvements at the Northbrook Shopping Plaza, and Sunset desires to construct a new building (the "Building") to be leased from the Shopping Plaza Owner. Sunset has requested that the Village grant the necessary relief to allow for the construction of the Building as depicted in the site plan (the "Site Plan") prepared by Camburas Theodore, Inc. attached to this Ordinance as Exhibit B.

The Northbrook Shopping Plaza is located within a C-2 Commercial District and the Village Green Overlay District, north of Shermer Road, south of Lincoln Avenue, east of Meadow Road and west of Angle Avenue. The Building is subject to the Bulk, Setback and Yard Standards of Section 5-110 of the Zoning Code as modified by Section 5-110E-4 for transitional setbacks (the "Transitional Setback Requirements"), and is located within the required transitional setback. Sunset has requested a variation to allow construction of the Building. Section 8-111 of the Zoning Code requires the Board of Trustees to review and approve any variation concerning property within the Village Green Overlay District.

Section 2. PUBLIC MEETING

In accordance with the requirements of Section 8-111 of the Zoning Code for variation applications in the Village Green Overlay District, the Village Board conducted a properly noticed public meeting to consider Sunset's requested variation on February 27, 2001.

Section 3. VARIATION TO TRANSITIONAL SETBACKS

Subject to and contingent upon the conditions, restrictions, and provisions set forth in Section 4 of this Ordinance, a variation to the Transitional Setback Requirement for the construction of the Building shall be, and is hereby, granted to the Shopping Center Property for

the benefit of Sunset and the Shopping Plaza Owner in accordance with and pursuant to Section 11-503 of the Zoning Code and the home rule powers of the Village.

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Section 4. CONDITIONS OF APPROVAL OF VARIATION

The variation to the Transitional Setback Requirements granted in Section 3, shall be, and is hereby, expressly subject to and contingent upon construction of the Building and related improvements in substantial compliance with the Site Plan, except for minor changes, approved by the Village Director of Public Works or the Village Engineer, and in accordance with all applicable Village standards.

Section 5. FAILURE TO COMPLY WITH CONDITIONS

Upon failure or refusal of Sunset to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, the variation granted in Section 3 of this Ordinance shall, at the sole discretion of the Village Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Board of Trustees may not so revoke the approval unless it shall first provide Sunset with (i) at least two months advance written notice of the reasons for revocation, (ii) an opportunity to be heard at a regular meeting of the Board of Trustees, and (iii) a reasonable amount of time in which to comply with the conditions, restrictions, and provisions of this Ordinance. If Sunset is diligently proceeding towards such compliance, the Village shall provide such additional time as is reasonably necessary to effect such compliance. In the event of revocation, the development and use of the Northbrook Shopping Plaza shall be governed solely by the regulations of the Village Green Overlay District, the C-2 Commercial Business District and the Transitional Setback Requirements thereto, as the same may, from time to time, be amended. Further, in the event of such revocation of approval, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

Section 6. EFFECTIVE DATE

This Ordinance shall be effective only upon the occurrence of all of the following events:

1. Passage by the Board of Trustees of the Village of Northbrook by a majority vote in the manner required by law;
2. Publication in pamphlet form in the manner required by law;
3. Recordation of this Ordinance, together with such exhibits as the Village Clerk shall deem appropriate for recordation, with the Cook County Recorder of Deeds. Sunset shall bear the full cost of such recordation.

PASSED: This ___ day of _____, 2001

AYES: ()

UNOFFICIAL COPY

EXECUTION COPY - JUNE 12, 2001

NAYS:

ABSENT:

ABSTAIN:

20238505

President

ATTEST:

Village Clerk

Property of Cook County Clerk's Office

EXHIBIT M

20238505

TRANSFeree ASSUMPTION AGREEMENT

THIS AGREEMENT (the "Agreement") is dated as of the ___ day of _____, 2001, and is by and between the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "Village"); _____ (collectively the "Shopping Plaza Owner"), AND (the "Transferee").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, and pursuant to the Village's home rule powers, the parties agree hereto as follows:

SECTION 1. RECITALS.

A. The Village is a home rule unit by virtue of the provisions of the 1970 Constitution of the State of Illinois.

B. Pursuant to that certain real estate sale contract dated _____, 20___, the Transferee agreed to purchase from the Shopping Plaza Owner certain real property situated in Cook County, Illinois and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof (the "Subject Property").

C. Following the conveyance of the Subject Property by the Shopping Plaza Owner, the Transferee will be the legal owner of the Subject Property.

D. As a condition to the conveyance of the Subject Property by the Shopping Plaza Owner, the Village requires that the Transferee agree to comply with all the terms, requirements and obligations set forth in that certain Development Agreement, dated as of _____, 2001, and recorded in the Office of the Cook County Recorder of Deeds on _____, 2001, as Document No. _____, by the Village (the "Development Agreement");

E. In consideration of the agreement of the Shopping Plaza Owner to convey the Subject Property to the Transferee and of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between and among the Village, the Shopping Plaza Owner, and the Transferee as follows:

SECTION 2. ASSUMPTION OF OBLIGATIONS. The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors and administrators, hereby agrees, at its sole cost and expense, to comply with all of those terms, requirements and obligations of the Development Agreement, including all exhibits and attachments thereto, that are to be performed and provided by, or are imposed upon, the Shopping Plaza Owner.

SECTION 3. PAYMENT OF VILLAGE FEES AND COSTS. In addition to any other costs, payments, fees, charges, contributions or dedications required by this Agreement, the Development Agreement or by applicable Village codes, ordinances, resolutions, rules or regulations, the Transferee shall pay to the Village, immediately upon presentation of a written demand or demands therefor, all legal, engineering and other consulting or administrative fees,

costs and expenses incurred in connection with the negotiation, preparation, consideration and review of this Agreement.

SECTION 4. ACKNOWLEDGMENT AND RELEASE OF TRANSFEROR. The Village hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements and obligations of the Development Agreement, including all exhibits and attachments thereto, and the Village hereby releases the Shopping Plaza Owner from any personal liability for failure to comply with the terms, requirements and obligations of the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

ATTEST:

VILLAGE OF NORTHBROOK

Lona Louis, Village Clerk

By: _____
John M. Novinson, Village Manager

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

SHOPPING PLAZA OWNER

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

TRANSFEREE

By: _____

By: _____

Its: _____

Its: _____

ACKNOWLEDGMENTS

20238505

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, the Village President of the VILLAGE OF NORTHBROOK, an Illinois municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Signature of Notary

SEAL

My Commission expires: _____

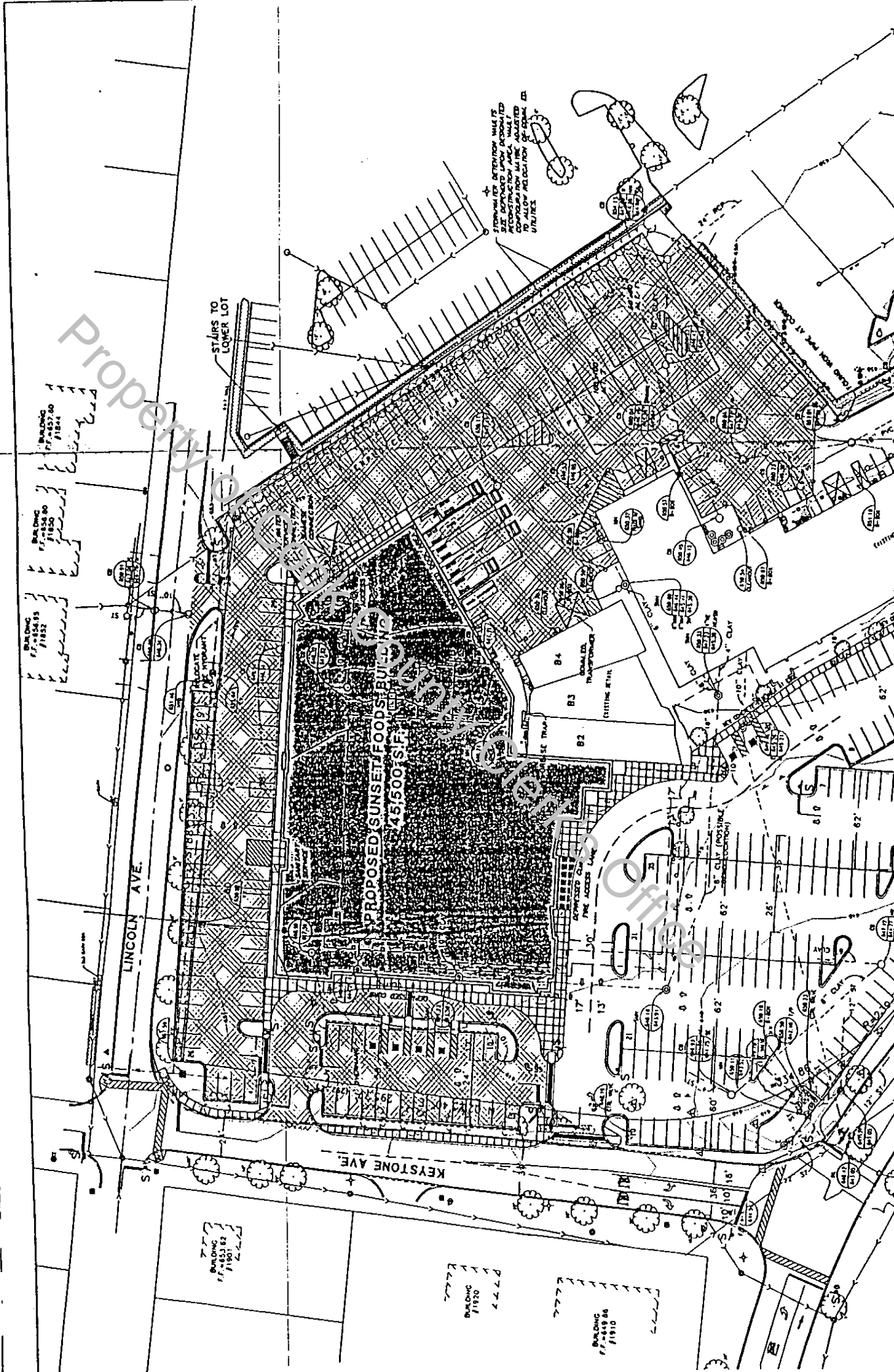
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, President of [TRANSFEREE], and _____, Secretary of said _____.

Signature of Notary

SEAL

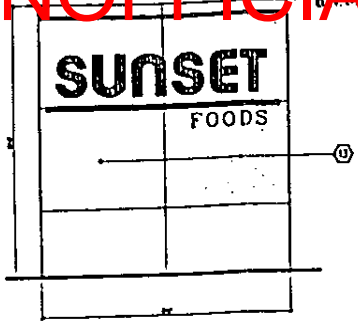
My Commission expires: _____



UNOFFICIAL COPY

KEYED NOTES

- ① FACILITY PROVIDED FOR BRUSHED ALUMINUM FLAGPOLE WALL SIGN HEIGHT NOT TO EXCEED 20' ABOVE GRADE OR 175' FOOTCANDLES. WALL SIGN HEIGHT EXCEED 100 SF OR 36" OF WALL TOTAL.
- ② PRE-CAST COPPER PANEL CANOPES WITH 8" WIDE V-GROOVE WOOD SOFFIT
- ③ 1" THICK INSULATING GLAZING IN CLEAR ANODIZED STOREFRONT
- ④ SMOOTH AND BRUSH HAMMERED PRECAST CONCRETE PANELS AT BASE OF BUILDING
- ⑤ RUNNING BOND UTILITY BRICK
- ⑥ 2'-6" WIDE PRECAST CONCRETE ACCENT BAND
- ⑦ 8" WIDE PRECAST CONCRETE ACCENT BAND
- ⑧ ADJACENT EXISTING SHOPPING CENTER
- ⑨ 2'-6" DEEP PLANTER BEDS IN 8" DEEP BRICK MOULD
- ⑩ ARCHITECTURAL AND STRUCTURAL PRECAST CONCRETE DRIVE THRU CANOPY WITH SKYLIGHTS
- ⑪ TRUCK LOADING AREA WITH 6'-0" HIGH MASONRY SCREEN WALLS
- ⑫ PVC TRELLIS WITH STAINLESS STEEL HARDWARE TIES. PERENNIAL VINES TO CRAWL OVER THEM.
- ⑬ SMOOTH AND BRUSH HAMMERED FINISH PRECAST CONCRETE GROUND SIGN WITH BACKLIT INSET SIGNAGE
- ⑭ BRUSHED ALUMINUM FLAGPOLE HEIGHT NOT TO EXCEED IF ABOVE HIGHEST PART OF BUILDING.
- ⑮ SHEET METAL COPING AT TOP OF PARAPET TO MATCH COLOR OF STONE.



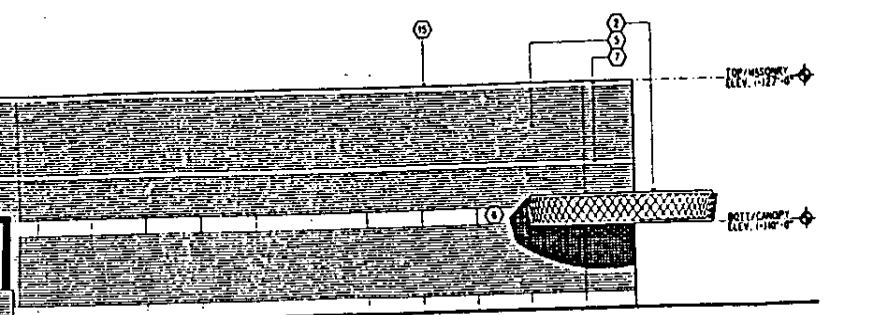
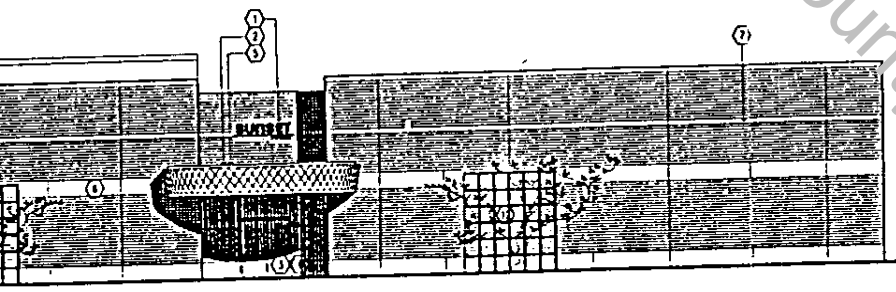
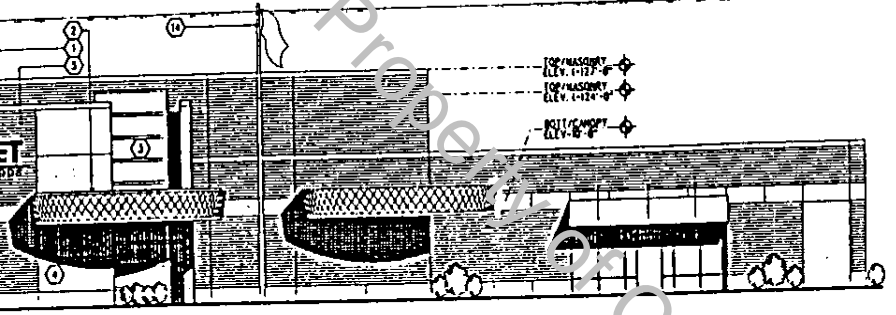
L-14 MONUMENT SIGN

SCALE: 3/4" = 1'-0"

TOP/MASONRY
ELEV. 1-127'-0"

TOP/PARTIAL PAL
ELEV. 0'-0"

ROOF/CANOPY
ELEV. 0'-0"



6	ISSUE FOR NORTHBROOK VILLAGE BOARD MEETING	6/8/01
5	ISSUE FOR NORTHBROOK VILLAGE BOARD MEETING	5/8/01
4	ISSUE FOR NORTHBROOK VILLAGE BOARD	4/25/01
3	ISSUE FOR VIL. OF NORTHBROOK ACC. MEETING	4/18/01
2	ISSUE FOR VIL. OF NORTHBROOK ACC. PRELIM REVIEW	4/17/01
1	ISSUE FOR VILLAGE OF NORTHBROOK VILLAGE BOARD	2/27/01
NO.	REVISIONS/DESCRIPTIONS	DATE

CT Camburas & Theodore, Ltd.
 Architects - Interiors
 2454 E. Dempster St. Des Plaines, IL
 Tel 847 298 1525 Fax 847 298 0228

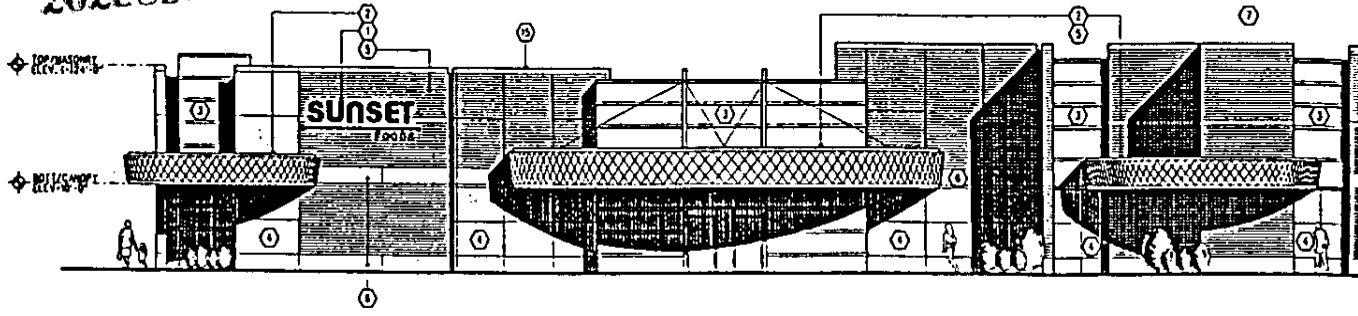
PROJECT NAME: SUNSET FOODS NORTHBROOK, IL

DRAWING TITLE: ELEVATIONS
 SCALE: 1/4" = 1'-0"
 DATE: 09/02/00
 PROJECT NO: 408101

DATE	09/02/00	PROJECT NO	408101
DRAWN BY	CT	SCALE	1/4" = 1'-0"
CHECKED BY		DATE	
THESE DRAWINGS HAVE BEEN PREPARED UNDER THE CLOSE SUPERVISION AND CONTROL OF ME AND I AM A duly Licensed Architect in the State of Illinois. AS SUCH I AM NOT PROVIDING CONTRACT ADMINISTRATION SERVICES.		DRAWING NO: A2.1	

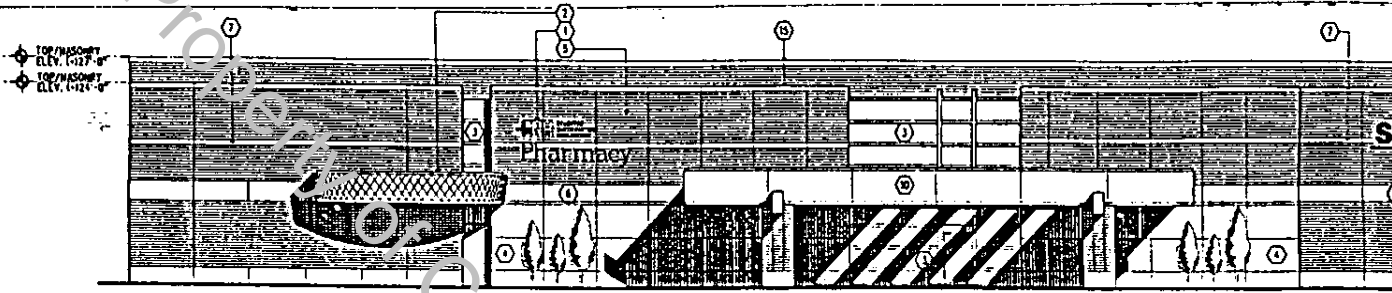
20228505

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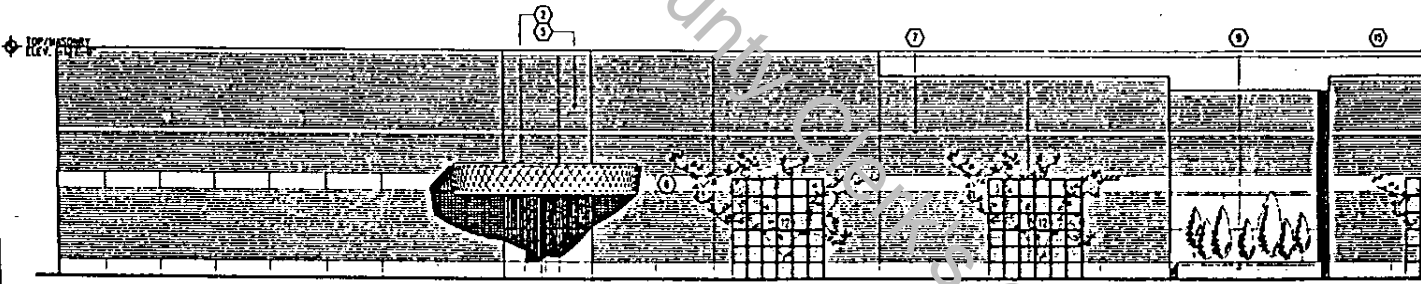
L-1 SOUTH ELEVATION

SCALE: 3/8" = 1'-0"



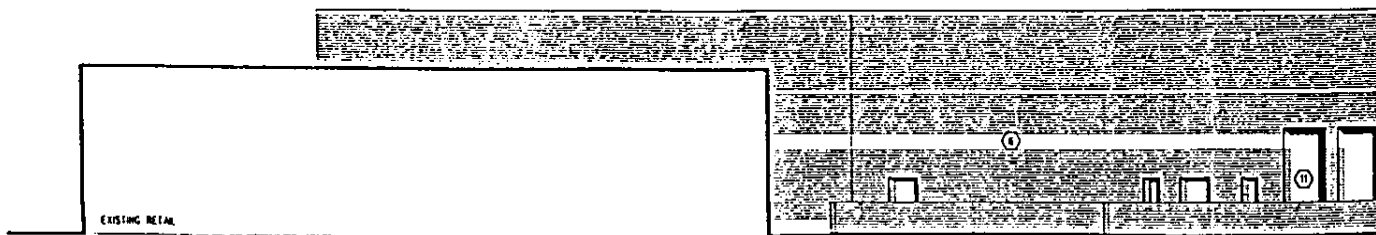
G-1 WEST ELEVATION

SCALE: 3/8" = 1'-0"



D-1 NORTH ELEVATION

SCALE: 3/8" = 1'-0"



A-1 EAST ELEVATION

SCALE: 3/8" = 1'-0"