

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY:

Steven M. Elrod
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603

AFTER RECORDING
RETURN TO:

Recorder's Box 337



Doc#: 1127144052 Fee: \$64.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 09/28/2011 12:38 PM Pg: 1 of 15

This space for Recorder's use only

SUPPLEMENTAL HIGHWAY AUTHORITY AGREEMENT

This Supplemental Highway Authority Agreement ("Supplemental Agreement") is entered into as of this 15th day of September, 2011 by and between **TEF SHERMER LLC**, 350 West Hubbard, Suite 222, Chicago, Illinois ("Owner") and the **VILLAGE OF NORTHBROOK**, 1225 Cedar Lane, Northbrook, Illinois ("Village").

RECITALS

WHEREAS, Owner is the owner of a parcel on which an automotive repair facility was located at 1347 Shermer Road, Northbrook, Illinois, and legally described in Exhibit A attached to and made a part of this Supplemental Agreement by this reference ("Site"); and

WHEREAS, Owner discovered and reported the presence of Benzene, Toluene, Ethylbenzene and Total Xylene (collectively commonly known as, and referred to in this Supplemental Agreement as, either "BTEX" or "Petroleum Constituents") in the soils and groundwater at the Site and in the adjacent rights-of-way known as Meadow Road and Walters Avenue (collectively, "Right-of-Way"), which report was made to the Illinois Emergency Management Agency ("IEMA"), and for which the IEMA assigned incident number 20091442 ("Incident"); and

WHEREAS, the Village has jurisdiction over the Right-of-Way and exercises sole control over access to the soil beneath the surface of the Right-of-Way subject to any requirements of law; and

WHEREAS, Owner has submitted a Corrective Action Plan ("CAP") to the Illinois Environmental Protection Agency ("IEPA") to allow closure of the Incident and in order to obtain a no further remediation letter ("NFR") for the Site under the State of Illinois Leaking Underground Storage Tank Site Remediation Programs and Tiered Approach to Corrective Action Objectives ("TACO") regulations, 35 Ill. Admin. Code Parts 734, 740 and 742; and

UNOFFICIAL COPY

WHEREAS, Owner's studies indicate that there is contamination in soil located within the Right-of-Way, which soil is contaminated above Tier 1 soil remediation objectives under 35 Ill. Admin. Code Part 742. The area of such soil is depicted on Exhibit B attached to and made a part of this Supplemental Agreement by this reference ("HAA Area"); and

WHEREAS, in order to approve the CAP and the NFR, the IEPA requires that Owner enter into an agreement with the Village establishing restrictions on the use of groundwater and access to the soil within the HAA Area in a form required by the IEPA ("Highway Authority Agreement"); and

WHEREAS, the Village is willing to enter into the Highway Authority Agreement but has expressed concern about the presence of Petroleum Constituents in the vicinity of a Village water main ("Adjacent Water Main") and a valve manhole ("Manhole") located adjacent to and southerly of the Site, as shown on Exhibit C attached to and made a part of this Supplemental Agreement by this reference; and

WHEREAS, Owner and the Village wish to supplement the terms, conditions, restrictions and requirements of the Highway Authority Agreement with additional obligations regarding the protection of the Adjacent Water Main; and

WHEREAS, the Village is a home rule municipal corporation and enters into this Supplemental Agreement pursuant to all powers and authority that it has as a home rule unit under the Illinois Constitution of 1970 and other applicable law; and

WHEREAS, Owner has agreed to address the Village concerns noted above.

NOW, THEREFORE, in exchange for joint and mutual undertakings and other consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Supplemental Agreement by this reference as though fully set forth herein.

2. Corrective Action. Owner agrees to undertake at its sole cost and expense, except as provided herein, the following corrective action as soon as said action has been approved by the IEPA pursuant to plans approved by the Village:

A. Removal and Replacement of Adjacent Water Main

i. Owner shall remove the existing valve located in the Manhole and replace the valve with a joint fitted with a Viton gasket that conforms to the Village's Engineering Standards ("Replacement Joint"); and

ii. Owner shall remove and replace the portion of the Adjacent Water Main extending westerly from the Replacement Joint to the first joint located at or farther than 20 feet from the Replacement Joint ("First Joint"), with a ten inch ductile water main wrapped in a 8 mil Polyethylene Encasement and fitted with Viton gaskets that conform to the Village's Engineering Standards (collectively, "New Water Main"); and

iii. Owner shall conduct all soil sampling and testing necessary to determine the level of Petroleum Constituents present at the location which is 40

UNOFFICIAL COPY

feet west of the Replacement Joint. If Petroleum Constituent levels at such location satisfy the Tier 1 residential remediation objective for BTEX, Owner shall not be required to remove or replace any additional portions of the Adjacent Water Main.

iv. If the sampling and testing conducted pursuant Subsection 2.A.iii above reveals the presence of Petroleum Constituents at the location which is 40 feet west of the Replacement Joint exceeding the Tier 1 residential remediation objective for BTEX, Owner shall be required to remove and replace the portion of the Adjacent Water Main extending westerly from the First Joint to the next joint located at or farther than 40 feet from the Replacement Joint ("Second Joint") with a New Water Main. If the Second Joint is located more than 40 feet west of the Replacement Joint, the Village shall reimburse Owner for all incremental costs of removing and replacing the Adjacent Water Main beyond the 40 feet measured from the Replacement Joint.

B. Protection of Manhole. Owner shall wrap the portion of the Adjacent Water Main located between the Replacement Joint and the eastern wall of the Manhole with a 8 mil Polyethylene Encasement and concurrently with such work shall take reasonable steps to prevent the infiltration of Petroleum Constituents from the HAA Area into the Manhole, including, but not limited to, plugging the existing fire suppression service line to the Property and the associated trench with clay or another impermeable substance acceptable to the Village Engineer.

C. "Work" Defined. The removal and replacement of the Adjacent Water Main with the New Water Main, the protection of the Manhole and the handling of soils pursuant to the terms of this Supplemental Agreement are collectively referred to in this Supplemental Agreement as the "Work."

D. Coordination with Other Village Work. If the Village decides to remove and replace additional portions of the Adjacent Water Main at the Village's sole cost and expense simultaneously with Owner's conduct of the Work, Owner shall cooperate with the Village and coordinate efforts with the Village's Public Works Department to ensure the protection of the Village's property, facilities and personnel.

E. Conformance of Work to IEPA Requirements and Approved Plans/Warranty. All Work shall be in conformance with requirements of the IEPA and in compliance with plans approved by the Village and all codes and ordinances of the Village. At the conclusion of the Work, and upon the inspection and approval thereof by the Village by resolution duly adopted, the Work shall be and become the property of the Village; however, Owner shall provide a two year warranty on the Work.

3. Permits Required. The Village agrees to expedite any permitting required by Owner in order to accomplish the testing required under this Supplemental Agreement and to reasonably cooperate with Owner in the testing and review of the results of such testing.

4. Continued Responsibility. Owner agrees that if Petroleum Constituents are discovered within the HAA Area there will be a rebuttable presumption that the Petroleum Constituents were released from the Incident and Owner will remain responsible for taking such action, if any, as may be required by the IEPA to mitigate impacts from such release.

UNOFFICIAL COPY

EXECUTION VERSION

5. Indemnity and Insurance.

A. Owner agrees to indemnify, hold harmless, and defend the Village and its agents, officials, contractors, and employees ("Village Indemnitees") for all claims, obligations and liabilities asserted against Village Indemnitees, and to reimburse the Village for all costs arising from such claims, obligations and liabilities including, without limitation, remediation costs and expenses, consultants' fees, attorneys' fees and court costs, associated with the Incident or the release of Petroleum Constituents from the Site.

B. Owner shall provide, or cause its contractors to provide, certificates of insurance demonstrating adequate insurance coverage for the Work. Such certificates shall name the Village and the owner of fee simple title to the Site, if different from the Owner, as additional insureds.

6. Use of the Right-of-Way.

A. Neither the Highway Authority Agreement nor this Supplemental Agreement limits the Village's ability to construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way or to allow others to use or possess the Right-of-Way by permit or vacation. The Village reserves the right and the right of those using the Right-of-Way under permit to remove contaminated soil or groundwater from its Right-of-Way and to dispose of them as is appropriate under applicable environmental laws.

B. Prior to performing work in the HAA Area, the Village or other permitted user of the Right-of-Way will give Owner written notice that it intends to perform such work and that it intends to remove or dispose of contaminated soil or groundwater as necessary for its work; provided, however, that no prior written notice shall be required in the case of any necessary emergency work. If practicable, as determined by the Village, the Village or other permitted user of the Right-of-Way may request Owner to remove and dispose of, in whole or in part, contaminated soil/or groundwater necessary for the Village's work in advance of that work.

7. Permits for Work in Right-of-Way. The Village's sole responsibility under this Supplemental Agreement with respect to others using the Right-of-Way under permit from the Village is to include the following, or similar language, in the future permit provisions:

The Right-of-Way includes areas where access to contaminated soil or groundwater is governed by Tiered Approach to Corrective Action Objectives ("TACO") remediation objectives. The permittee shall take measures before, during and after any access to these areas to protect worker safety and human health and the environment. Excavated, contaminated soil should be properly disposed of off-site in conformance with applicable laws, ordinances, rules and regulations

The Village shall also notify current permit holders of the TACO remediation objectives associated with the HAA Area within the Right-of-Way.

8. Term. This Supplemental Agreement shall continue in effect from the date of this Supplemental Agreement until (i) the HAA Area is demonstrated, to the satisfaction of the IEPA and the Village, to be suitable for unrestricted use; and (ii) the IEPA issues a new NFR letter for the Site reflecting that there is no longer a need for a Highway Authority Agreement.

UNOFFICIAL COPY

9. **General.** This Supplemental Agreement is entered into by the Village and Owner in recognition of laws passed by the Illinois General Assembly and regulations adopted by the Illinois Pollution Control Board which encourage a tiered approach to remediation of environmental contamination. Violation of this Supplemental Agreement by Owner shall be grounds for such action as the IEPA and/or the Village may find to be reasonable and appropriate under the circumstances from time to time.

10. **Notices.** Except as otherwise explicitly provided in this Supplemental Agreement, all notices required or permitted to be given under this Supplemental Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

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: Village Manager

with a copy to:

Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603
Attention: Barbara A. Adams

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

TEF Shermer LLC
350 West Hubbard Street
Suite 222
Chicago, Illinois 60610
Attention: Jonathan Berger

With a copy to:

DLA Piper LLP (US)
203 N. LaSalle Street
Suite 1900
Chicago, IL 60601-1293
Attention: Harold W. Francke, Esq.

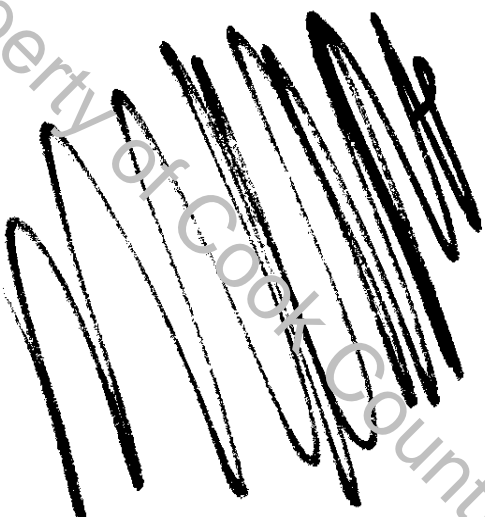
By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices to such party, but no notice of a change of address shall be effective until actually received.

UNOFFICIAL COPY

11. Counterparts. This Supplemental Agreement may be executed in counterparts.

[SIGNATURES ON FOLLOWING PAGES]


Property of Cook County Clerk's Office



UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be signed as of the date stated on page 1 of this Supplemental Agreement.

TEF SHERMER LLC, an Illinois limited liability company

By: 
Name: JONATHAN BERGER
Its: MANAGER

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

JONATHAN BERGER (the Manager of TEF SHERMER LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth herein.

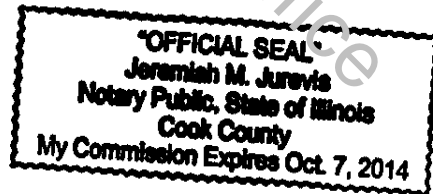
GIVEN under my hand and notarial seal, this 16 day of September, 2011.



Notary Public

My Commission Expires:

Oct 7, 2014

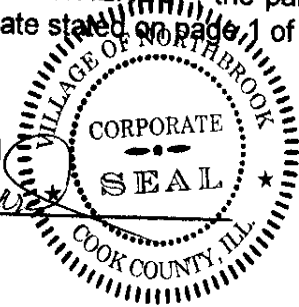


UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be signed as of the date stated on page 1 of this Supplemental Agreement.

ATTEST:

Debra J. Ford
Village Clerk



VILLAGE OF NORTHBROOK

By: Richard A. Nahrstadt
Village Manager

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

This document was acknowledged before me on September 23, 2011, by Richard A. Nahrstadt and Debra J. Ford as Village Manager and Village Clerk, respectively, of the **VILLAGE OF NORTHBROOK**, an Illinois home rule municipal corporation.

GIVEN under my hand and notarial seal, this 23rd day of September, 2011.

Janet Palmer
Notary Public

My Commission Expires:

2-24-2013



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF SITE

LOT 1 (EXCEPT THAT PART THEREOF CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY DEED RECORDED MARCH 9, 1995 AS DOCUMENT 95158158) AND ALL OF LOT 2 IN LORENZ SUBDIVISION, A SUBDIVISION OF PART OF THE NORTHWEST % OF THE SOUTHWEST % OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PI NS: 04-10-302-026-0000, 04-10-302-027-0000

COMMON ADDRESS: 1347 SHERMER ROAD, NORTHBROOK, IL 60062

Property of Cook County Clerk's Office

UNOFFICIAL COPY

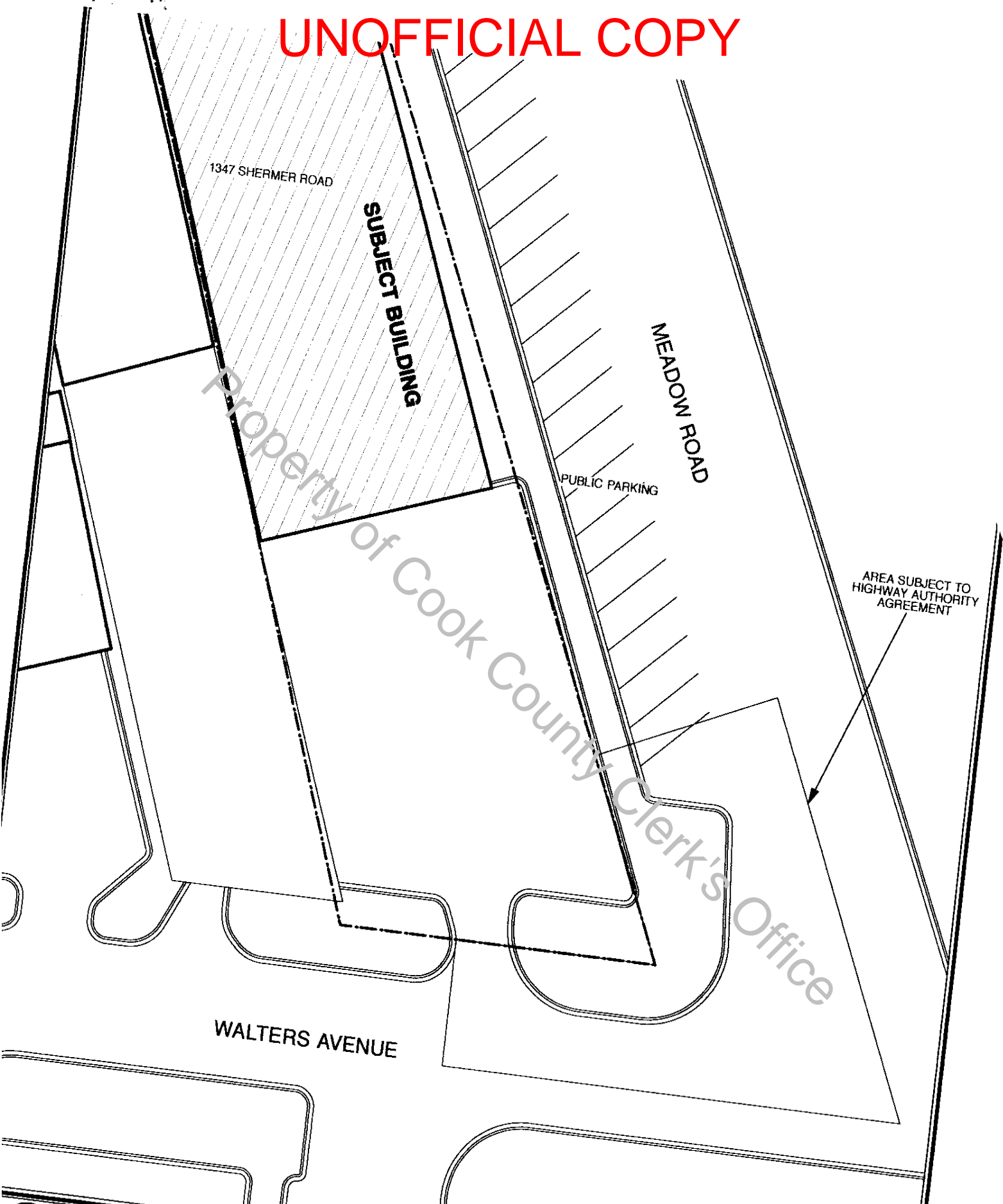
EXHIBIT B

DEPICTION OF AREA SUBJECT TO HIGHWAY AUTHORITY AGREEMENT ("HAA AREA")

Property of Cook County Clerk's Office



UNOFFICIAL COPY



Legend:

Approximate Subject Property Boundary

Scale: 1" = 30'
 0' ————— 30'

Drawn by:
 Jackson Toomey

Date:
 September 2011

Checked by:
 Jeff McClelland

EXHIBIT B
Highway Authority Agreement
Diagram

UNOFFICIAL COPY

EXHIBIT C

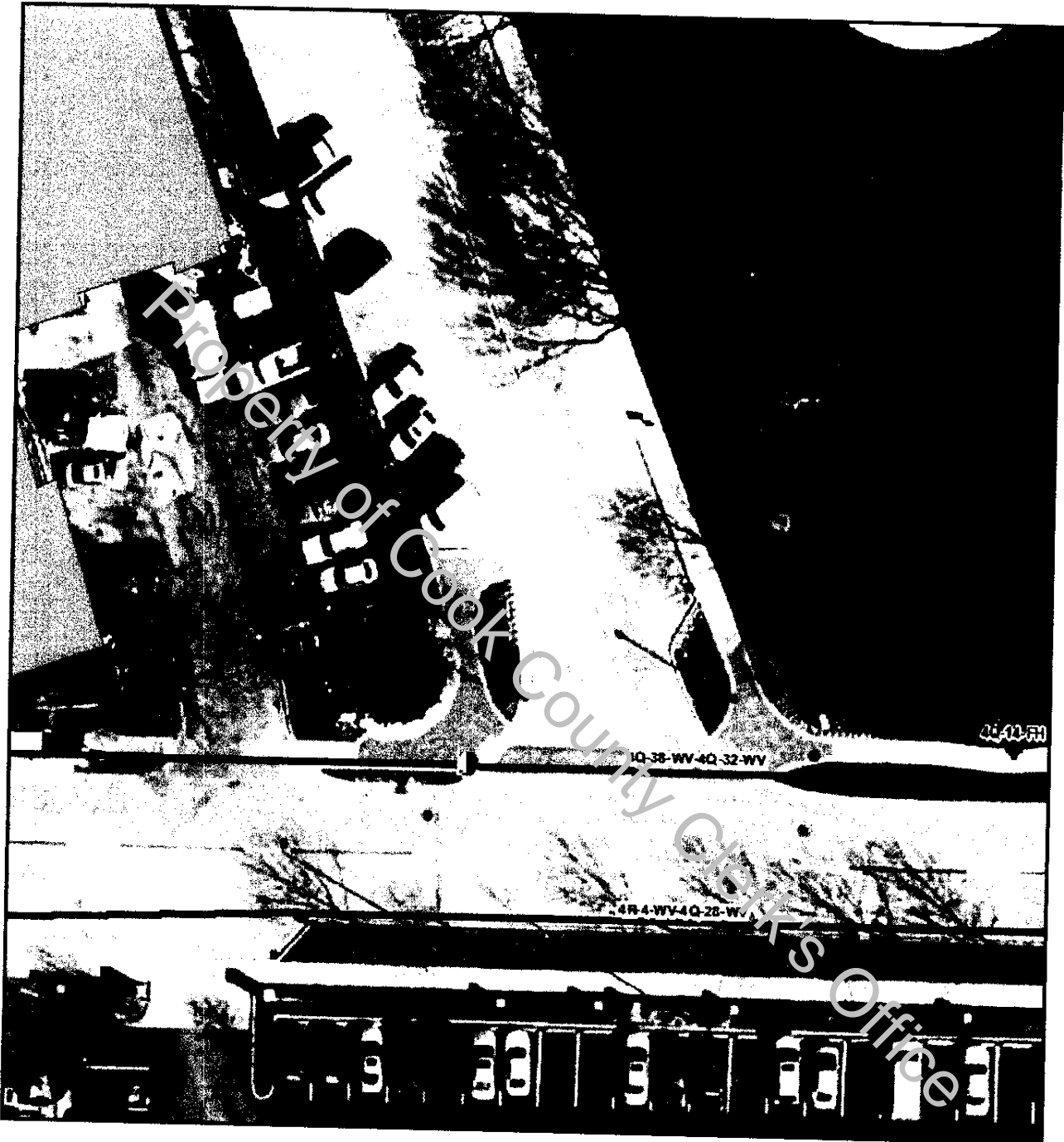
LOCATION OF ADJACENT WATER MAIN AND VALVE MANHOLE

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Map



Valves & Hydrants

- AR
- BO
- ◆ H
- ▣ MP

Valves & Hydrants (continued)

- ◐ V
- r
- ◑ v

Watermain



Building



NBK_2006_Aerial

- Red: Band_1
- Green: Band_2
- Blue: Band_3

NBK_2009_Aerial

- Red: Band_1
- Green: Band_2
- Blue: Band_3

UNOFFICIAL COPY

Resolution 2011-69

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

A Resolution Approving the IEPA Form Highway Authority Agreement for the Property at 1347 Shermer Road

is hereby adopted, as follows:

Section 1. RECITALS.

TEF Shermer LLC ("**Owner**") is the owner of a parcel on which an automotive repair facility was previously located at 1347 Shermer Road ("**Property**"). Under the requirements of state law, as administered by the Illinois Environmental Protection Agency ("**IEPA**"), the Owner is responsible for taking corrective action to remedy any transmission of contaminants from the Property during the course of operation of the automotive repair facility. Pursuant to those requirements, the Owner has agreed to take certain actions to protect Village rights of way in the vicinity of the Property from contamination, as described in the proposed Highway Authority Agreement ("**IEPA Form HAA**"). The Public Works Department has reviewed the IEPA Form HAA and recommends its approval.

Section 2. APPROVAL OF HIGHWAY AUTHORITY AGREEMENT.

Subject to and contingent upon the conditions, restrictions, and provisions set forth in Section 4 of this Resolution, the IEPA Form HAA by and between the Village and the Owner is hereby approved in substantially the form presented to the Village.

Section 3. AUTHORIZATION TO EXECUTE AGREEMENTS.

A. The Village Manager and the Village Clerk shall be, and are hereby, authorized and directed to execute and seal, on behalf of the Village, the IEPA Form HAA.

B. The Village Manager and the Village Clerk shall be, and are hereby, authorized and directed to execute and seal, on behalf of the Village, a supplemental agreement defining the Owner's remediation obligations with regard to Village owned property and facilities in a form satisfactory to the Village Manager and the Village Attorney ("**Supplemental HAA**").

Section 4. EFFECTIVE DATE.

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

A. The submission to the Village Clerk of at least two fully executed copies of the IEPA Form HAA and the Supplemental HAA by the Owner.

B. In the event that the Owner does not file with the Village Clerk fully executed copies of the IEPA Form HAA and the Supplemental HAA within 90 days after the date of passage of this Resolution by the corporate authorities, the corporate authorities shall have the right, in their sole discretion, to declare this Resolution null and void and of no force or effect.

UNOFFICIAL COPY

Adopted: 9/13/2011

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Scolaro, Trustee
SECONDER:	Todd Heller, Trustee
AYES:	Karagianis, Buehler, Scolaro, Heller, Ciesla, Israel, Frum

ATTEST:

/s/ Debra J. Ford
Village Clerk

/s/ Sandra E. Frum
Village President

Property of Cook County Clerk's Office

I hereby certify this to be a true and exact copy of the
Original

9-23-11
Date

Sandra E. Frum
Village Clerk

