

8/20/2008

Effective date: September 23, 2008

**98-O-08**

**AN ORDINANCE**

**Amending the Conditions Imposed by  
Ordinances 43-O-99 and 143-O-99 on  
the Grant of a Special Use and Related Major Variations  
to Allow a Drive-Through Facility at 430 Asbury Avenue  
("Farmer's Best Market")**

WHEREAS, there is a property, improved with a vacant retail store, located at 430 Asbury Avenue, Evanston, Illinois (the "Subject Property"), legally described in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, on April 23, 1999, the City enacted Ordinance 43-O-99, attached hereto as Exhibit B and incorporated herein by reference, to allow, with conditions, a Special Use for a drive-through facility and related Major Variations from the Zoning Ordinance at the Subject Property; and

WHEREAS, on January 24, 2000, the City amended Ordinance 43-O-99 by enacting Ordinance 143-O-99, attached hereto as Exhibit C and incorporated herein by reference, to amend conditions placed on the grant of said Special Use and Variations; and

WHEREAS, Ordinances 43-O-99 and 143-O-99 required the operator of the retail store on the Subject Property to record the conditions on the grant of a Special Use and Variations imposed by said ordinances as a covenant running with the land; and

**WHEREAS**, Farmer's Best IV, Inc., an Illinois corporation ("the Applicant"), is the current sub-lessee of the Subject Property; and

**WHEREAS**, in order to allow for the economically-contributing renovation of, and operation of a commercial grocery within the currently-vacant retail store on the Subject Property, the Applicant, with the permission of Asbury Evanston CVS, LLC, lessee of the Subject Property, seeks relief from certain conditions imposed by the terms of Ordinances 43-O-99 and 143-O-99 as memorialized in the aforementioned covenant running with the land; and

**WHEREAS**, at its September 8, 2008, meeting, the Planning and Development Committee of the City Council considered the Applicant's request for relief and recommended City Council approval of the same; and

**WHEREAS**, at its September 8, 2008, meeting, the City Council considered and adopted the records and recommendations of the Planning and Development Committee,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** That the foregoing recitals are found as fact and made a part hereof.

**SECTION 2:** That the City Council hereby releases the Applicant from the following condition set forth in Section 2 (B) of Ordinance 43-O-99, re-numbered and incorporated as Subsection 2 (F)-1 of Ordinance 143-O-99:

As represented by the Applicant at the ZBA hearing, alcoholic liquor shall not be sold on the Subject Property, nor shall the retail use and drive-through be operated other than during the hours of 8:00 A.M. through 10:30 P.M.

**SECTION 3:** That the City Council hereby releases the Applicant from the following condition set forth in Section 2 (B) of Ordinance 143-O-99:

The Subject Property will receive no more than nine (9) semi-trailer trucks per week and no more than ten (10) trucks each day of lesser size. To the maximum extent possible the petitioner or the petitioner's successors in title to the Subject Property and any entity holding possessory interest in the Subject Property shall prohibit or otherwise not accept any truck delivery for the duration of two 1 hour periods. One said one-hour period shall commence one-half hour prior to the start of school at Chute Junior High School and end one-half hour after the start of school. The second one-hour period shall commence one-half hour prior to the close of school at Chute Junior High School and end one-half hour after the close of school. This prohibition on truck deliveries shall apply on any day in which Chute Junior High School is in session.

**SECTION 4:** That the City Council hereby releases the Applicant from the following condition set forth in Section 2 (D) of Ordinance 143-O-99: "The drive-through window shall be used primarily for dispensing prescription drugs."

**SECTION 5:** That, when necessary to effectuate the terms, conditions, and purposes of this ordinance, "Applicant" shall be read as "Applicant's agents, assigns, and successors in interest."

**SECTION 6:** That the Applicant, at its cost, shall record a certified copy of this ordinance, including all Exhibits attached hereto, with the Cook County Recorder of Deeds, before the City may issue any permits or licenses related to the renovation or operation of the retail store on the Subject Property.

**SECTION 7:** That, except as otherwise provided for in this ordinance, all applicable regulations of Ordinance 43-O-99, Ordinance 143-O-99, the Zoning Ordinance, and the entire Evanston City Code, 1979, as amended, shall apply to the Subject Property and remain in full force and effect with respect to the use and development of the same. To the extent that the terms and provisions of any of said documents conflict with the terms of this ordinance, this ordinance shall govern and control.

**SECTION 8:** That if any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 9:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

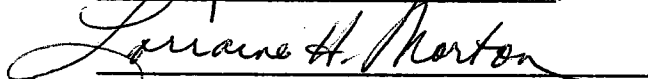
**SECTION 10:** That this ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Introduced: September 8, 2008


Approved:

Adopted: September 8, 2008

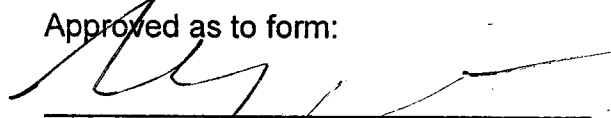
September 9, 2008

  
Lorraine H. Morton, Mayor

Attest:

  
Rodney Greene, City Clerk

Approved as to form:

  
Elke Tober-Purze, Interim  
First Assistant Corporation Counsel

**EXHIBIT A****LEGAL DESCRIPTION****PARCEL 1:**

LOTS 1 AND 2 (EXCEPT THAT PART OF SAID LOTS LYING EAST OF A LINE 40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 25) IN BLOCK 3 IN KELLY AND O'BRIEN'S SOUTH EVANSTON SUBDIVISION OF THE SOUTH  $\frac{1}{2}$  OF THE NORTH  $\frac{1}{2}$  OF THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

THAT PART OF THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 25, TOWNSHIP 41, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION WITH A LINE 40.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT ON THE SOUTH LINE OF LOT 2 IN BLOCK 3 IN KELLY & O'BRIENS SOUTH EVANSTON SUBDIVISION OF THE SOUTH  $\frac{1}{2}$  OF THE NORTH  $\frac{1}{2}$  OF THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION THENCE WEST ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID LOT 2 THENCE NORTH ALONG THE WEST LINE OF LOTS 1 AND 2 AND BLOCK 3 IN SAID SUBDIVISION TO THE NORTHWEST CORNER OF LOT 1 IN SAID SUBDIVISION THENCE WEST TO THE NORTHEAST CORNER OF LOT 15 BLOCK 3 IN SAID SUBDIVISION THENCE SOUTH ALONG THE EAST LINE OF LOTS 14 AND 15 IN BLOCK 3 IN SAID SUBDIVISION TO THE SOUTH LINE OF THE NORTH 6  $\frac{2}{3}$  FEET OF SAID LOT 14; THENCE WEST ALONG SAID SOUTH LINE TO A POINT IN THE WEST LINE THEREOF THENCE NORTH ALONG THE WEST LINE OF LOTS 14 AND 15 IN BLOCK 3 AND SAID WEST LINE EXTENDED NORTH TO A POINT ON A LINE 16.0 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 15 THENCE EAST ALONG SAID PARALLEL LINE TO A POINT ON A LINE 201.018 FEET (AS MEASURED ALONG SAID PARALLEL LINE) WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION; THENCE NORTH ALONG SAID PARALLEL LINE TO A POINT ON A LINE 185.014 FEET (AS MEASURED ALONG SAID PARALLEL LINE) SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION THENCE LAST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 30.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 65.20 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 1.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION TO A POINT

ON A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION THENCE EAST ALONG SAID PARALLEL LINE TO THE POINT OF BEGINNING, EXCLUDING THAT PART LYING WEST OF THE WEST LINE OF LOTS 1 AND 2 IN BLOCK 3 DESCRIBED ABOVE AS EXTENDED NORTH ALL IN COOK COUNTY, ILLINOIS.

EXCEPTING ALSO THAT PART OF THE ABOVE DESCRIBED PARCEL 2 FALLING WITHIN PARCEL 1.

**PIN:** 10-25-203-011-0000  
10-25-206-007-0000  
10-25-206-008-0000

**COMMONLY KNOWN AS:** 430 Asbury Avenue, Evanston, Illinois

**EXHIBIT B**

**ORDINANCE 43-O-99**

4/13/99, 03/26/99

43-O-99

**AN ORDINANCE**

**Granting a Special Use and  
Certain Variations to Allow a Retail Sales  
Use and Drive-Through at 430 Asbury Avenue**

WHEREAS, the Zoning Board of Appeals ("ZBA") held a public hearing on April 16, 1999, in case number 99-10-SU & V(R), pursuant to proper notice, on the application of Mid-Northern Commercial Services, Ltd., contract purchaser, as agent for Michael Leider Real Estate Corporation, property owner, for a special use pursuant to Section 6-9-3-3 of the Zoning Ordinance, to allow use of 430 Asbury Avenue for a drive-through facility, for variations from Section 6-9-3-7 that buildings be built to lot lines and that parking in the subject yards be prohibited; and a variation from the off-street loading requirements of Section 6-16-5 to reduce the number of required loading berths from two to one, on property located in a C1 Commercial District; and

WHEREAS, the ZBA, after hearing testimony and receiving other evidence, made written findings pursuant to Section 6-3-5-10 and Section 6-3-8-12 of the Zoning Ordinance that the application met the standards for special uses and major variations, respectively, and recommended that the City Council grant the application; and

WHEREAS, the Planning and Development Committee of the City Council considered and adopted the ZBA's findings and recommendation; and



NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** The City Council hereby adopts the findings and recommendation of the Planning and Development Committee in the aforescribed case number 99-10-SU & V(R) and grants said special use and major variations on the property legally described in Attachment 1, attached hereto and made a part hereof.

**SECTION 2:** That pursuant to Section 6-3-5-12 and Section 6-3-8-14 of the Zoning Ordinance which provide that the City Council may impose conditions upon the grant of special uses and variations, respectively, this condition is hereby imposed:

(A.) Construction, landscaping, operation, and maintenance of the development authorized by this grant of special use and variations shall be in substantial compliance with the testimony and representations of the applicant and documents placed on file in connection with this case, and with all applicable legislation.

(B.) As represented by the applicant at the ZBA hearing, alcoholic liquor shall not be sold on the subject property, nor shall the retail use and drive-through be operated other than during the hours of 8:00 AM through 10:30 PM.

(C.) The applicant shall submit a landscape plan, which shall provide for maintenance of landscaping, for review and approval by the City Superintendent of Parks and Forestry which shall guarantee that any plants planted pursuant to the landscaping plan which die or fail to thrive shall be replaced during the earliest available planting season thereafter, upon written notification by the City. Failure to replace plantings within the time specified by the City shall require payment of \$5,000.00 to the City within thirty (30) days after expiration of the time given by the City for such replacement.

(D.) The applicant shall submit a litter collection plan, acceptable to the City Manager, for the subject property and adjoining public rights-of-way. Said plan shall be applicable to the subject property beginning with the construction phase and continuing throughout the term of this grant. As a minimum, said plan shall require policing of the subject property and said adjoining public rights-of-way no less than twice daily and removal of shopping carts, trash and garbage, including, but not limited to, discarded construction materials, food, beverage containers, cigarette butts, plastic and paper bags, lottery tickets, and all other discarded waste materials, regardless of type, emanating from any source. Said plan shall be submitted and approved prior to the issuance of any building permits.

(E.) The applicant, developer, or operator of the retail use shall erect, place, or implement safety devices and procedures to direct and control vehicular and pedestrian traffic on the subject property as well as with regard to entrances and exits.

(F.) The applicant shall prepare in form and content satisfactory to the City's Law Department, a covenant running with the land containing the provisions of this Section 2A through 2E. The covenant shall provide that it shall be released only by the City Council. No building permits shall be issued until a copy of the recorded covenant has been filed with the Zoning Administrator.

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: April 5, 1999

Adopted: April 20, 1999

Approved: April 23, 1999

Carl Rowan  
Mayor pro tem

ATTEST:

Mary D. Harris  
City Clerk

Approved as to form:

[Signature]  
Corporation Counsel

**EXHIBIT "A"**  
**Legal Description**

**PARCEL 1:**

LOTS 1 AND 2 (EXCEPT THAT PART OF SAID LOTS LYING EAST OF A LINE 40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 25) IN BLOCK 3 IN KELLY AND OBRIEN'S SOUTH EVANSTON SUBDIVISION OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 2:**

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 41, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:: COMMENCING AT THE POINT OF INTERSECTION OF A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION WITH A LINE 40.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT ON THE SOUTH LINE OF LOT 2 IN BLOCK 3 IN KELLY & O'BRIENS SOUTH EVANSTON SUBDIVISION OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION THENCE WEST ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID LOT 2 THENCE NORTH ALONG THE WEST LINE OF LOTS 1 AND 2 AND BLOCK 3 IN SAID SUBDIVISION TO THE NORTHWEST CORNER OF LOT 1 IN SAID SUBDIVISION THENCE WEST TO THE NORTHEAST CORNER OF LOT 15 BLOCK 3 IN SAID SUBDIVISION THENCE SOUTH ALONG THE EAST LINE OF LOTS 14 AND 15 IN BLOCK 3 IN SAID SUBDIVISION TO THE SOUTH LINE OF THE NORTH 6 2/3 FEET OF SAID LOT 14; THENCE WEST ALONG SAID SOUTH LINE TO A POINT IN THE WEST LINE THEREOF THENCE NORTH ALONG THE WEST LINE OF LOTS 14 AND 15 IN BLOCK 3 AND SAID WEST LINE EXTENDED NORTH TO A POINT ON A LINE 16.0 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 15 THENCE EAST ALONG SAID PARALLEL LINE TO A POINT ON A LINE 201.018 FEET (AS MEASURED ALONG SAID PARALLEL LINE) WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION; THENCE NORTH ALONG SAID PARALLEL LINE TO A POINT ON A LINE 185.014 FEET (AS MEASURED ALONG SAID PARALLEL LINE) SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION THENCE EAST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 30.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 65.20 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 1.65 FEET THENCE NORTH PARALLEL WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION TO A POINT ON A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION THENCE EAST ALONG SAID PARALLEL LINE TO THE POINT OF BEGINNING, EXCLUDING THAT PART LYING WEST OF THE WEST LINE OF LOTS 1 AND 2 IN BLOCK 3 DESCRIBED ABOVE AS EXTENDED NORTH ALL IN COOK COUNTY, ILLINOIS.

EXCEPTING ALSO THAT PART OF THE ABOVE DESCRIBED PARCEL 2 FALLING WITHIN PARCEL 1.

**99578899**

**EXHIBIT C**

**ORDINANCE 143-O-99**

143-O-99

**AN ORDINANCE**

**Amending the Conditions Imposed by  
Ordinance 43-O-99 on the Grant of  
Special Use and Major Variations to Allow a  
Drive-Through Facility at 430 Asbury Avenue**

WHEREAS, the City Council by Ordinance 43-O-99, in case number 99-10-SU & V(R), on the application of Mid-Northern Commercial Services, Ltd., contract purchaser, as agent for Michael Leider Real Estate Corporation, the then property owner, granted a special use pursuant to Section 6-9-3-3 of the Zoning Ordinance, to allow use of 430 Asbury Avenue ("subject property") for a drive-through facility, for variations from Section 6-9-3-7 that buildings be built to lot lines and that parking in the subject yards be prohibited; and a variation from the off-street loading requirements of Section 6-16-5 to reduce the number of required loading berths from two to one, on property located in a C1 Commercial District; and

WHEREAS, subsequent to the passage of Ordinance 43-O-99, William Shiner, manager of Asbury Associates, Limited Liability Corporation, property owner, submitted an application, case no. ZBA 99-37-SU & V(R), to amend certain of the conditions to Ordinance 43-O-99 on the subject property pursuant to sections 6-3-5-12 and 6-3-8-14 of the Zoning Ordinance; and

WHEREAS, the ZBA conducted a public hearing on September 21, 1999 pursuant to proper notice in the aforesaid case no. ZBA 99-37-SU & V(R), and, after hearing testimony and receiving other evidence, made written findings pursuant to section 6-3-5-10 and 6-3-8-12 of the Zoning Ordinance that the application met the standards for

special uses and major variations, respectively, and recommended that the City Council grant the appreciation; and

WHEREAS, the Planning and Development Committee of the City Council considered and adopted the ZBA's findings and recommendation; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** The City Council hereby adopts the findings and recommendation of the Planning and Development Committee in the aforescribed case number ZBA 99-37-SU & V(R) and amends the grant of special use and major variation approved by Ordinance 43-O-99 by modifying the condition in Section 2A and 2C of Ordinance 43-O-99 and by adding additional conditions relating to delivery vehicles and prescription drug dispensing, more particularly described below, all on the subject property legally described in Attachment 1, attached hereto and made a part hereof.

**SECTION 2:** That pursuant to Section 6-3-5-12 and Section 6-3-8-14 of the Zoning Ordinance which provide that the City Council may impose conditions upon the grant of special uses and variations, respectively, these conditions are hereby imposed:

(A.) (1) Construction, landscaping, operation, and maintenance of the development authorized by this grant of special use and variations shall be in substantial compliance with the testimony and representations of the applicant and documents placed on file in connection with this case, and with all applicable legislation.

(2) This Ordinance 143-O-99 eliminates the requirement, which arose from representations to the Planning and Development Committee, by or on behalf of the applicant in case no. 99-10-SU & V(R), that the subject property contain

a "pork chop" or other concrete barrier at the southernmost exit from the subject property to create right-in/right-only traffic.

(B.) The subject property will receive no more than nine (9) semi-trailer trucks per week and no more than ten (10) trucks each day of lesser size. To the maximum extent possible the petitioner or the petitioner's successors in title to the subject property and any entity holding possessory interest in the subject property shall prohibit or otherwise not accept any truck delivery for the duration of two 1 hour periods. One said one-hour period shall commence one-half hour prior to the start of school at Chute Junior High School and end one-half hour after the start of school. The second one-hour period shall commence one-half hour prior to the close of school at Chute Junior High School and end one-half hour after the close of school. This prohibition on truck deliveries shall apply on any day in which Chute Junior High School is in session.

(C.) All vehicles making deliveries on the subject property shall have their engines shut off at all times while said vehicle is standing on the property except when directly involved in entering on to or exiting from the subject property.

(D.) The drive-through window shall be used primarily for dispensing prescription drugs.

(E.) The condition imposed by Section 2.C. of Ordinance 43-O-99 is deleted and the following substituted therefor:

The applicant has submitted a landscape plan that has been approved by the City and has agreed that any plant planted pursuant to said plan that dies or fails to thrive (each a "Failed Plant") shall be replaced during the earliest available planting season thereafter. If applicant shall not so replace the Failed Plants, applicant shall pay a fine of \$5,000 to the City. The procedure in connection with the Failed Plants shall be as follows:

- 1) The City shall notify applicant in writing of its obligation to replace a Failed Plant or Plants (the "Landscape Notice");



- 2) Within 30 days after the date of receipt of the Landscape Notice (the "Replanting Period"), applicant shall either (i) replace each Failed Plant, or (ii) if a replacement therefor is not available or if the weather does not permit planting within the replanting period, notify the City in writing (the "Extension Notice") of the circumstances preventing it from planting a Failed Plant and its reasonable estimate of the time period in which a replacement plant will be available and/or the weather will permit planting, which in no event shall be longer than 270 days from the date of receipt of the Landscape Notice (the "Extended Replanting Period"). If the City disagrees with the applicant's estimate, the City and applicant shall work together to arrive at a reasonable time period, which time period shall then be referred to as the Extended Replanting Period. If applicant shall fail to replant a Failed Plant within the Replanting Period, or the Extended Replanting Period if applicant shall have delivered an Extension Notice, then applicant shall pay a fine to the City of \$5,000 within 30 days after expiration of the Planting Period or Extended Planting Period, as the case may be.

Applicant shall from time to time notify the City of its notice address for purposes of this provision. At this time said address is as follows:

c/o Mid-Northern Equities Management, Ltd.  
3100 West Dundee  
Suite 304  
Northbrook, Illinois 60062

(F.) The following conditions, expressed in Ordinance 43-O-99 in Sections 2B, 2D, 2E, and 2F, are renumbered and incorporated otherwise unchanged in this Ordinance 143-O-99,

Section 2A of Ordinance 43-O-99 having been modified above by the addition of subparagraph 2 (A)(2):

- (1) As represented by the applicant at the ZBA hearing, alcoholic liquor shall not be sold on the subject property, nor shall the retail use and drive-through be operated other than during the hours of 8:00 AM through 10:30 PM.
- (2) The applicant shall submit a landscape plan, which shall provide for maintenance of landscaping, for review and approval by the City Superintendent of Parks and Forestry which shall guarantee that any plants planted pursuant to the landscaping plan which die or fail to thrive shall be replaced during the earliest available planting season thereafter, upon written notification by the City. Failure to replace plantings within the time specified by the City shall require payment of \$5,000.00 to the City within 30 days after expiration of the time given by the City for such replacement.
- (3) The applicant shall submit a litter collection plan, acceptable to the City Manager, for the subject property and adjoining public rights-of-way. Said plan shall be applicable to the subject property beginning with the construction phase and continuing throughout the term of this grant. As a minimum, said plan shall require policing of the subject property and said adjoining public rights-of-way no less than twice daily and removal of shopping carts, trash and garbage, including, but not limited to, discarded construction materials, food, beverage containers, cigarette butts, plastic and paper bags, lottery tickets, and all other discarded waste materials, regardless of type, emanating from any source. Said plan shall be submitted and approved prior to the issuance of any building permits.
- (4) The applicant, developer, or operator of the retail use shall erect, place, or implement safety

devices and procedures to direct and control vehicular and pedestrian traffic on the subject property as well as with regard to entrances and exits.

- (5) The applicant shall prepare in form and content satisfactory to the City's Law Department, a covenant running with the land containing the provisions of this Section 2 (E.)(1) through 2 (E.)(4) The covenant shall provide that it shall be released only by the City Council. No building permits shall be issued until a copy of the recorded covenant has been filed with the Zoning Administrator.

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: January 10, 2000

Adopted: January 24, 2000

Approved: January 28, 2000  
Lorraine H. Norton  
Mayor

ATTEST:

Mary P. Morris  
City Clerk

Approved as to form:

[Signature]  
Corporation Counsel

11-11-11

