

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: William T. Lichter, Village Manager
DATE: November 10, 2004 (B of T) Date: November 18, 2004
TITLE: 1103-1177 S. Main Street and 150 E. Roosevelt Road
SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing signature of Village President and Deputy Village Clerk on a License Agreement for the use of portions of the Main Street right of way for landscape irrigation purposes. (DISTRICT #6)

Staff recommends approval of this request.

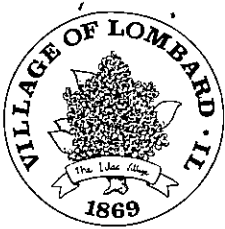
Please place this item on the November 18, 2004 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X W. M. T. Lichter Date 11/11/04

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *DAH*

DATE: November 18, 2004

SUBJECT: 1103-1177 South Main Street and 150 East Roosevelt Road (Lombard Pines Shopping Center Planned Development) – License Agreement

Attached please find a copy of a resolution and a draft license agreement between the Lombard Pines Limited Partnership and the Village that would allow the adjacent property owner to install and operate an irrigation line along their east property line and within the Main Street public right-of-way. The line will be used to water the new plantings that were required to be installed as part of the Culver's Restaurant project. It is hoped that the line will significantly improve the ability of the plant materials to thrive on the property and within the adjacent parkway area.

Staff notes that the most of the proposed irrigation line will be located east of the existing sidewalk and away from existing utility lines. This land was conveyed to the Village in 1985 for public right-of-way purposes as part of a previous zoning petition for the subject property. Other than having the right to run the irrigation line within the licensed premises, no additional improvements (other than landscaping) are proposed by the licensee.

Community Development staff reviewed this proposal with Public Works staff and they found the proposal to be acceptable. Building Inspection Services also reviewed the plans and found it acceptable provided that the system is tied into the Culver's building under construction, which the property owner intends to do. Lastly, this agreement was reviewed by Counsel and they find it acceptable.

ACTION REQUESTED:

Please place this item on the November 18, 2004 Village Board agenda. Staff recommends approval of the resolution and agreement.

RESOLUTION

R _____ 05

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON A LICENSE AGREEMENT
FOR 1103-1177 S. MAIN STREET AND 150 EAST ROOSEVELT ROAD
(LOMBARD PINES SHOPPING CENTER)**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a License Agreement for the use of portions of the Main Street right-of-way for landscape irrigation purposes, as attached hereto and marked as Exhibit "A": and,

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize these license agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said documents as attached hereto.

SECTION 2: That the Deputy Village Clerk be and hereby is authorized to attest said Agreements as attached hereto.

Adopted this ____ day of _____, 2004.

Ayes: _____

Nayes: _____

Absent: _____

Approved this ____ day of _____, 2004.

Resolution No. _____

Re: Lombard Pines Shopping Center License Agreement

Page 2

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk

h:\cdevapps\worduser\pccases\2004\PC 04-21\res license agmt.doc

THIS DOCUMENT WAS PREPARED
BY:

AFTER RECORDING RETURN TO:
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: _____

[Above space for Recorder's Office]

**PUBLIC RIGHT-OF-WAY LICENSE
FOR
LAWN IRRIGATION SYSTEM**

THIS PUBLIC RIGHT OF WAY LICENSE FOR LAWN IRRIGATION SYSTEM is dated as of the date set forth on the signature page hereof (the "**License Agreement**") and is entered into between the **LOMBARD PINES LIMITED PARTNERSHIP**, a limited partnership, (the "**Licensee**"), and the **VILLAGE OF LOMBARD, AN ILLINOIS MUNICIPAL CORPORATION** (the "**Licensor**"), on the date set forth below.

RECITALS:

A. Licensee is the owner of record of the shopping center commonly known as Lombard Pines Plaza located at the Southeast corner of Roosevelt Road and Main Street, Lombard, Illinois (hereinafter the "**Shopping Center**"), the legal description of which is attached hereto and incorporated herein as Exhibit A (the "**Shopping Center Property**"); and

B. The Licensor holds title to certain public right-of-way located adjacent to the boundaries of the Shopping Center Property; and

C. It is the policy of the Licensor to prohibit private lawn irrigation systems on the public rights-of-way of Licensor; and

D. Licensee has requested that the Licensor issue a building permit for an irrigation system in relation to which Licensee has submitted, among other things, plans for the installation of a private lawn irrigation system (the "**Irrigation System**"), which plans propose to install the Irrigation System on portions of the Shopping Center Property and on certain areas of the Licensor's adjacent public right-of-way; and

E. The Licensor recognizes a public benefit to the installation of the Irrigation System on certain areas of its public right-of-way adjacent to the Shopping Center Property and is willing to grant Licensee a license for the Licensee's installation of the Irrigation System on a

portion of the Licensor's Right-of-Way (as hereinafter defined), subject to the terms of this License Agreement.

NOW THEREFORE, in consideration of the mutual covenants expressed herein, Licensor and Licensee agree as follows:

1. **Recitals**: The Recitals to this License Agreement are incorporated herein as if fully set forth.

2. **Right-of-way**: Licensor hereby grants a license to Licensee, its officers, agents and employees to install, operate, repair and maintain the Irrigation System in the Main Street public right-of-way, which lie adjacent to the Shopping Center Property, which right-of-way and the Irrigation System being depicted on the plans submitted by Greenway Group, Inc., with a submittal date of October 18, 2004 (the "**Plans**"). The location of the Irrigation System shall be located in Licensor's Right-of-Way shown as the cross-hatched area (the "**Right-of-Way**") on the reduced copy of the Plans which are attached hereto as Exhibit B.

3. **Term**: The term of this License Agreement (the "**Term**") shall commence upon the latter of (i) the execution of this License Agreement, or (ii) Licensor's approval of a building permit to construct, among other things, the Irrigation System, and shall terminate five years (5) thereafter, as may be extended as provided herein. After the expiration of the Term, the Term shall automatically renew in five (5) year increments ("Renewal Term") unless either party has given the other party at least ninety (90) days prior written notice of its intent not to renew at the expiration of the original Term or an Renewal Term.

Notwithstanding the foregoing, this License Agreement is subject to Licensor's right to revoke without cause upon ninety (90) days written notice to Licensee, and Licensor's right to revoke upon Licensee's breach of any of its covenants, conditions, duties and responsibilities under this License Agreement upon ten (10) days written notice to Licensee.

4. **Ownership of the Irrigation System**: Licensee acknowledges that it is the owner of the Irrigation System and in the event this License Agreement is terminated as provided herein, Licensee shall remove the Irrigation System from the Right-of-Way and shall restore the Right-of-Way to its condition prior to such removal.

5. **Notices**: All notices required to be delivered hereunder shall be in writing and shall be deemed sufficient if (a) personally delivered, (b) sent by facsimile, (c) sent by a nationally recognized overnight courier, or (d) sent by certified mail, return receipt requested, postage prepaid and addressed to the parties to this License Agreement at the addresses set forth below or at such other addresses as may be designated in writing. Notices personally delivered or sent by overnight courier shall be deemed delivered on the date of receipt. Notices mailed by certified mail shall be deemed received on the date of receipt or refusal to accept delivery as evidenced by the return receipt. Notices served by facsimile machine shall also require that copies of the notice and proof of transmission be sent by regular mail on the date of transmission, and notice shall be deemed received on the actual date of receipt of the facsimile. Either party may change its address for notice purposes by giving notice to that effect in the manner set forth

herein, provided such change of address shall not be deemed received until actual receipt thereof by the addressee. Notices sent by or to Licensor's attorney or Licensee's attorney shall constitute effective notice hereunder. Either party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other party hereto in the same manner, as all other notices are required to be delivered hereunder. Notices shall be sent to:

IF TO LICENSEE: The Sackar Company
 945 W. George Street
 Suite 207
 Chicago, Illinois 60657
 Tel: (773) 348-7777
 Fax: (773) 348-7774

IF TO LICENSOR: Village of Lombard
 Attn: William Lichter, Village Manager
 255 East Wilson Avenue
 Lombard, Illinois 60148
 Tel: (630) 620-5700
 Fax: (630) 620-8222

with a copy to: Klein, Thorpe and Jenkins, Ltd.
 Attention: George A. Wagner
 20 North Wacker Drive
 Suite 1660
 Chicago, Illinois 60606-2903
 Tel: (312) 984-6468
 Fax: (312) 984-6444

5. Intended Use of Right-of Way: Licensee will only use the Right-of-Way for the purpose of installation, maintenance and operation of the Irrigation System and for no other use or purpose, all in accordance with the Plans and all applicable state and local laws and regulations.

6. Indemnity/Hold Harmless: Licensee agrees to indemnify and hold Licensor, its officers, employees or agents harmless against any and all claims, losses, lawsuits, damages, liability or expenses that are in any way related to the use of the Right-of-Way or its Irrigation System by Licensee, its officers, agents and employees, under this License Agreement, unless those claims, losses, lawsuits, damages, liability or expenses are the result of the acts or omissions of Licensor, its officers, employees or agents.

7. Insurance: Licensee shall procure and maintain in full force and effect throughout the Term of this License Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage in any way related to Licensee's use of the Right-of-Way under this License Agreement in the amount of

\$1,000,000.00 (one million dollars). Licensor shall be named as an additional insured on said insurance policy. Licensee shall provide or cause to be provided to Licensor annually, certificates of such insurance evidencing that such insurance is in full force and effect and cannot be canceled without thirty (30) days written notice to Licensor.

8. **Maintenance of the Right-of-Way:** Licensee hereby accepts the Right-of-Way in its "AS IS" condition as of the date hereof. Licensee acknowledges that prior to Licensee's installation of the Irrigation System, the Right-of-Way was in good order, condition and repair. Licensee shall, at its sole cost and expense, be responsible for any and all repairs or damage to the Right-of-Way arising from its use or damage to the Right-of-Way by Licensee, its officers, agents, employees, successors, and assigns. Licensee further agrees to maintain the Right-of-Way in a safe condition at all times.

9. **Maintenance of the Irrigation System:** Licensee shall, during the Term, keep the Irrigation System in good order, condition and repair, all at Licensee's sole cost and expense. Licensee shall maintain the Irrigation System to avoid any damage or repair to the Right-of-Way from its use or damage to the Irrigation System by Licensee, its officers, agents, employees, successors, and assigns.

In the event that the Licensee ceases to use the Irrigation system, and notifies the Village of same, this License Agreement shall terminate, except that Licensee's removal obligation, as set forth in Section 4 above, shall survive said termination.

10. **Licensee's Failure to Maintain:** In the event that Licensee fails to repair the Right-of-Way as provided in Section 8 above or the Irrigation System as provided in Section 9 above, Licensor has the right, but not the obligation, to repair the Right-of-Way or Irrigation System upon fifteen (15) days prior written notice to Licensee, or without notice in the event that an emergency exists in the sole discretion of the Licensor. Licensee shall immediately upon demand reimburse Licensor for all reasonable expenses incurred by the Licensor in regard to any such repair, and if such expenses are not paid promptly, Licensor shall have the right to record a lien for any such unpaid expenses against the Shopping Center Property and to foreclose on any such lien in accordance with applicable state law.

11. **Breach:** In addition to any other provision in this License Agreement, Licensor and Licensee shall have all remedies, at law or in equity, in order to enforce the terms of this License Agreement.

12. **Assignment or Transfer:** Licensee shall not assign or transfer this License Agreement without the express prior written consent of Licensor. In the event Licensor shall consent to an assignment or transfer, any and all rights, benefits and responsibilities of Licensor and Licensee shall inure to their respective successors and assigns.

13. **Licensor's Activity on the Right-of-Way:** Licensee acknowledges and agrees that the Licensor may perform any public services on the Right-of-Way and Licensee hereby releases Licensor from any and all damage or liability that may result from such public service,

including, but not limited to, damage to any or all of the Irrigation System, or damage related to water flow or water interruption.

14. **State Law:** Interpretation of the terms of this Agreement is subject to the laws of the State of Illinois.

15. **Recordation:** This License Agreement shall be recorded against the Shopping Center Property at Licensee's cost and expense.

[TEXT CONTINUED ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on this __, day of _____, 20__.

LICENSOR:

**VILLAGE OF LOMBARD,
AN ILLINOIS MUNICIPAL
CORPORATION**

By: _____
Name: William J. Mueller, Village President

LICENSEE:

**LOMBARD PINES LIMITED
PARTNERSHIP**

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Barbara A. Johnson, Deputy Village
Clerk

[Place Village Seal Here]

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that WILLIAM J. MUELLER AND BARBARA A. JOHNSON are personally known to me to be the VILLAGE PRESIDENT AND DEPUTY VILLAGE CLERK, respectively, of the VILLAGE OF LOMBARD, AN ILLINOIS MUNICIPAL CORPORATION (the "Village") and also known to me to be the same persons whose names are subscribed to the foregoing instrument and as such Village President and Deputy Village Clerk, appeared before me this day in person and severally acknowledged that as such Village President and Deputy Village Clerk, they signed and delivered the said instrument pursuant to the authority given by the Village's Board of Trustees, and as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth, and that Deputy Village Clerk, as custodian of the corporate seal of the Village, has caused the seal to be affixed thereto.

GIVEN UNDER my hand and Notarial Seal this _____ day of _____, 20__.

Notary Public

STATE OF ILLINOIS)
) ss.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____ and _____, are personally known to me be the _____ and _____ of _____, a _____ corporation (the "Corporation"), and are the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ and _____, respectively of the Corporation, they signed and delivered the said instrument and caused the seal of the Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of the Corporation, and as their free and voluntary act, and as the free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 200__.

Notary Public

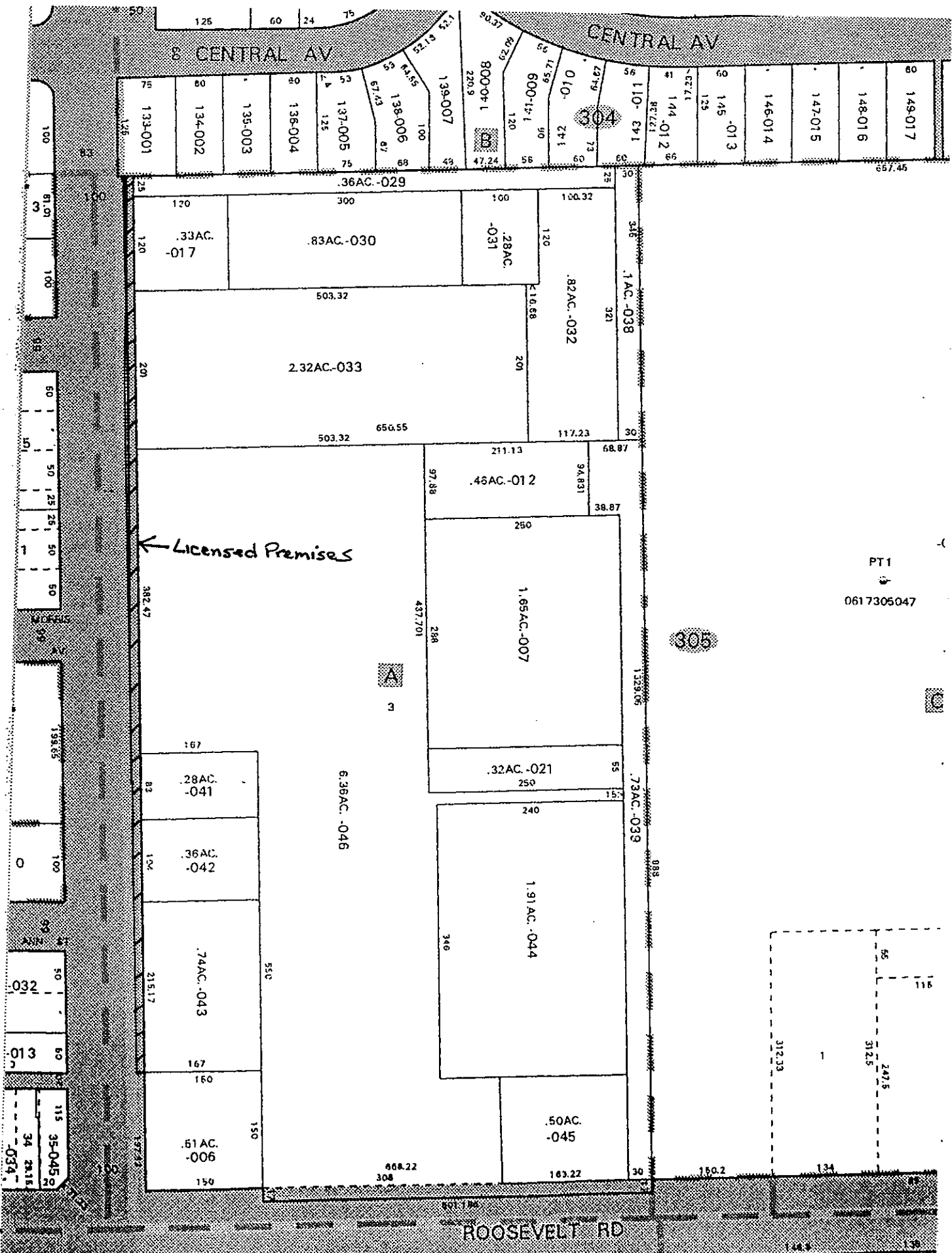
My Commission Expires:

EXHIBIT A
Legal Description of Shopping Center Property

LOT 3 OF OWNER'S ASSESSMENT PLAT OF PART OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 20, 1943, AS DOCUMENT 457027, EXCEPT THAT PART, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF A LINE DRAWN PARALLEL WITH AND 100 FEET EAST OF THE WEST LINE OF MAIN STREET AS DEDICATED BY THE PLAT OF ROOSEVELT CREST, WITH A LINE DRAWN PARALLEL WITH AND 50 FEET NORTH OF THE CENTER LINE OF ROOSEVELT ROAD AS NOW PAVED AND RUNNING HENCE NORTH PARALLEL WITH SAID WEST LINE OF MAIN STREET 150 FEET, HENCE EAST PARALLEL WITH SAID CENTER LINE OF ROOSEVELT ROAD 150 FEET HENCEFORTH PARALLEL WITH SAID WEST LINE OF MAIN STREET 150 FEET, HENCE WEST PARALLEL WITH SAID CENTER LINE OF ROOSEVELT ROAD 150 FEET TO THE POINT OF BEGINNING IN DUPAGE COUNTY, ILLINOIS, KNOWN AS NE CORNER OF ROOSEVELT ROAD AND MAIN STREET, LOMBARD, ILLINOIS.

PARCEL IDENTIFICATION NUMBERS: 06-17-305-012, 017, 021, 029, 030, 031, 032, 033, 038, 039, 041, 042, 043, 044, 045, AND 046

EXHIBIT B
Copies of Plans showing the Right-of-Way

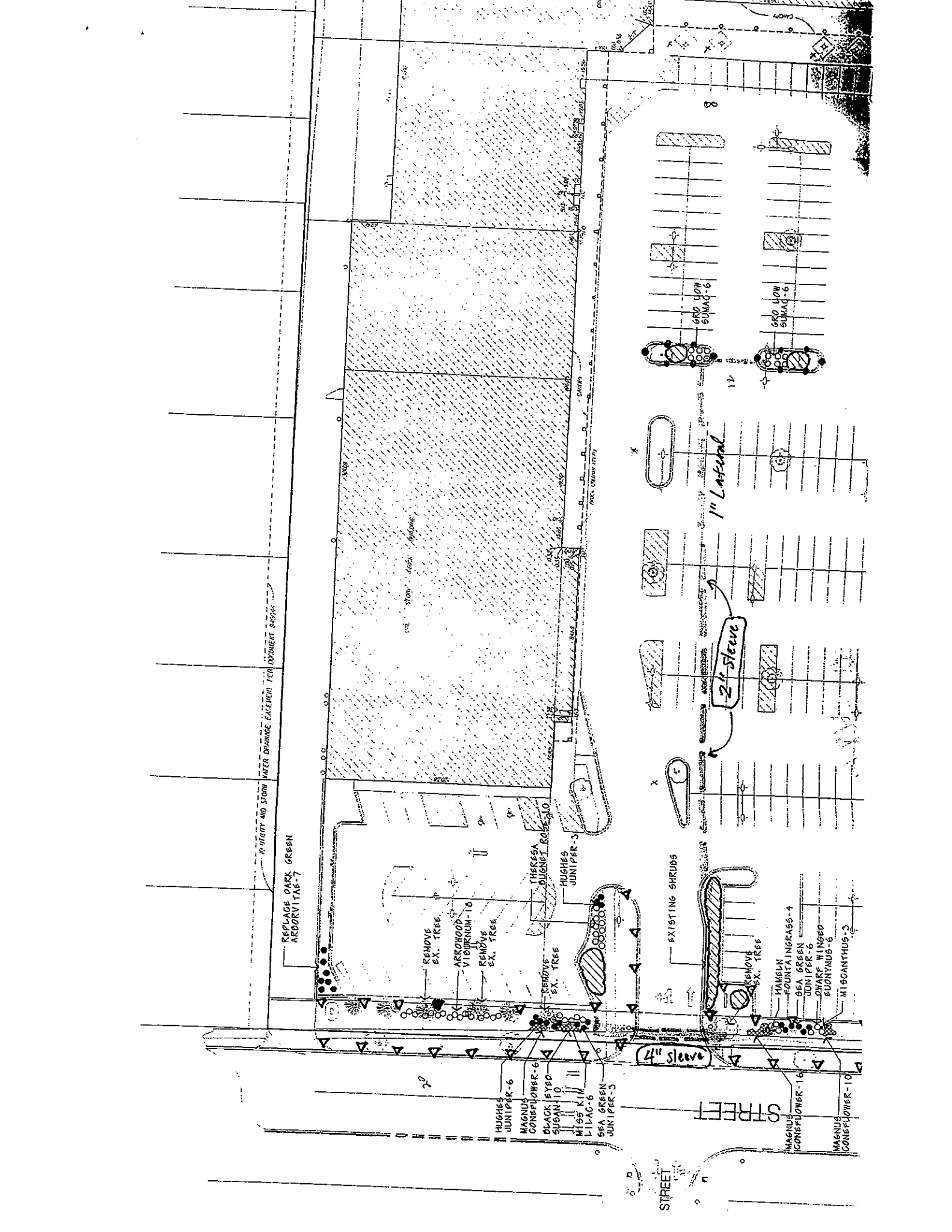


← Licensed Premises

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0617306047

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ROOSEVELT RD



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MAGNUS CONEFLOWER-6

BLACK BAYED SUGAR-10

MISS KIM LILAC-6

SEA GREEN JUNIPER-5

HAMELN FOUNTAINGRASS-4

SEA GREEN JUNIPER-6

DWARF WINGED BUONYNUS-6

MISANTHUS-3

24" Sleeve

STREET

MAGNUS CONEFLOWER-16

MAGNUS CONEFLOWER-10

STREET

STREET

1" Lateral

24" Sleeve

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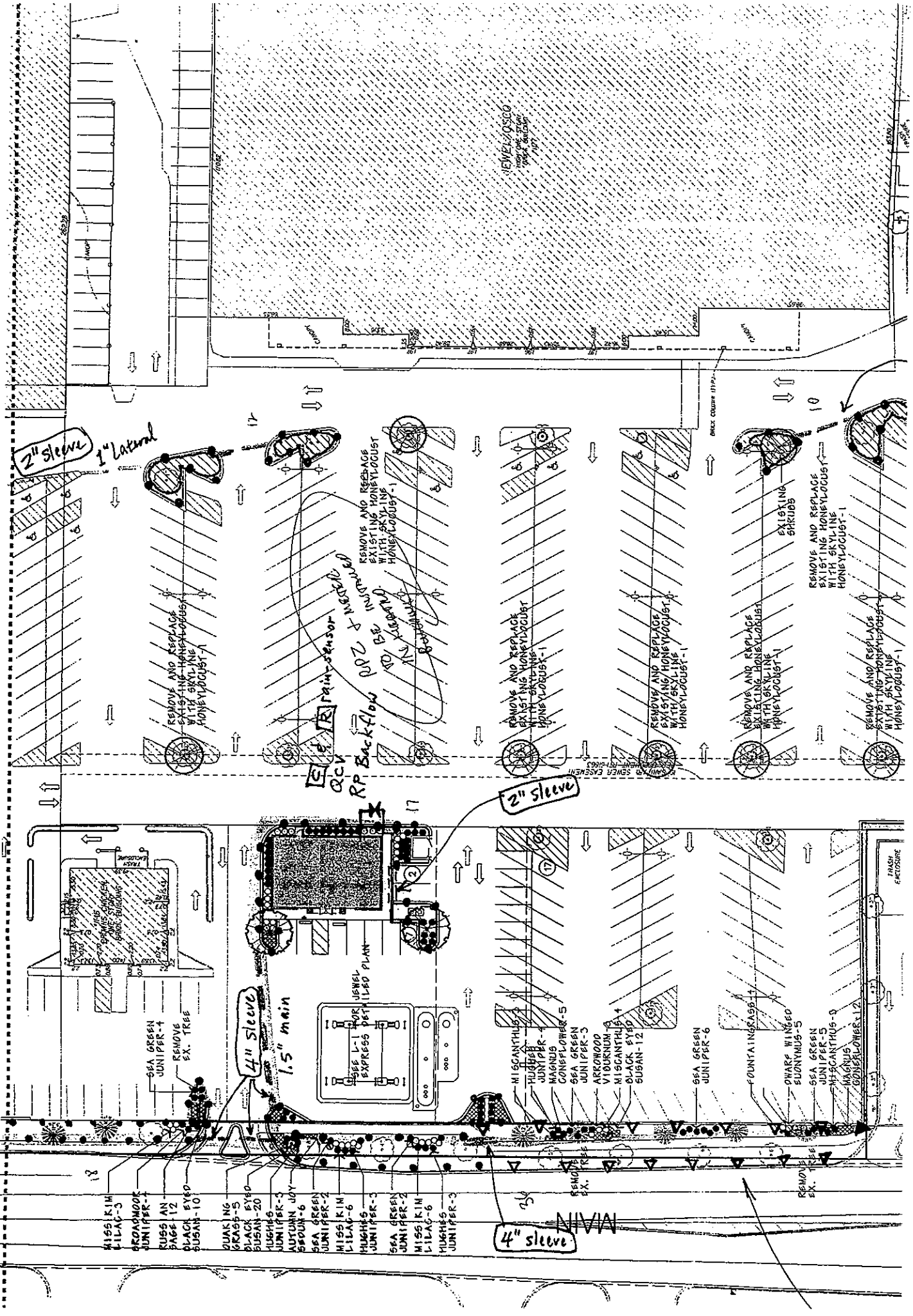
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2" sleeve
1" lateral

REMOVE AND REPLACE EXISTING HONEYLOCUST WITH SKYLINE HONEYLOCUST-1

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rain-sensor
RP Backflow
RQV

2" sleeve

4" sleeve

1.5" main

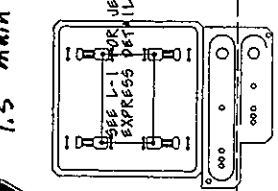
4" sleeve

- MISS KIM LILAC-3
- BROADMOOR JUNIPER-4
- RUSSIAN PAGE 12
- BLACK EYED SUSAN-10
- QUAKING GRASS
- BLACK EYED SUSAN-20
- HUGHES JUNIPER-5
- AUTUMN JOY SPOON-6
- SEA GREEN JUNIPER-2
- MISS KIM LILAC-6
- HUGHES JUNIPER-3
- SEA GREEN JUNIPER-2
- MISS KIM LILAC-6
- HUGHES JUNIPER-3

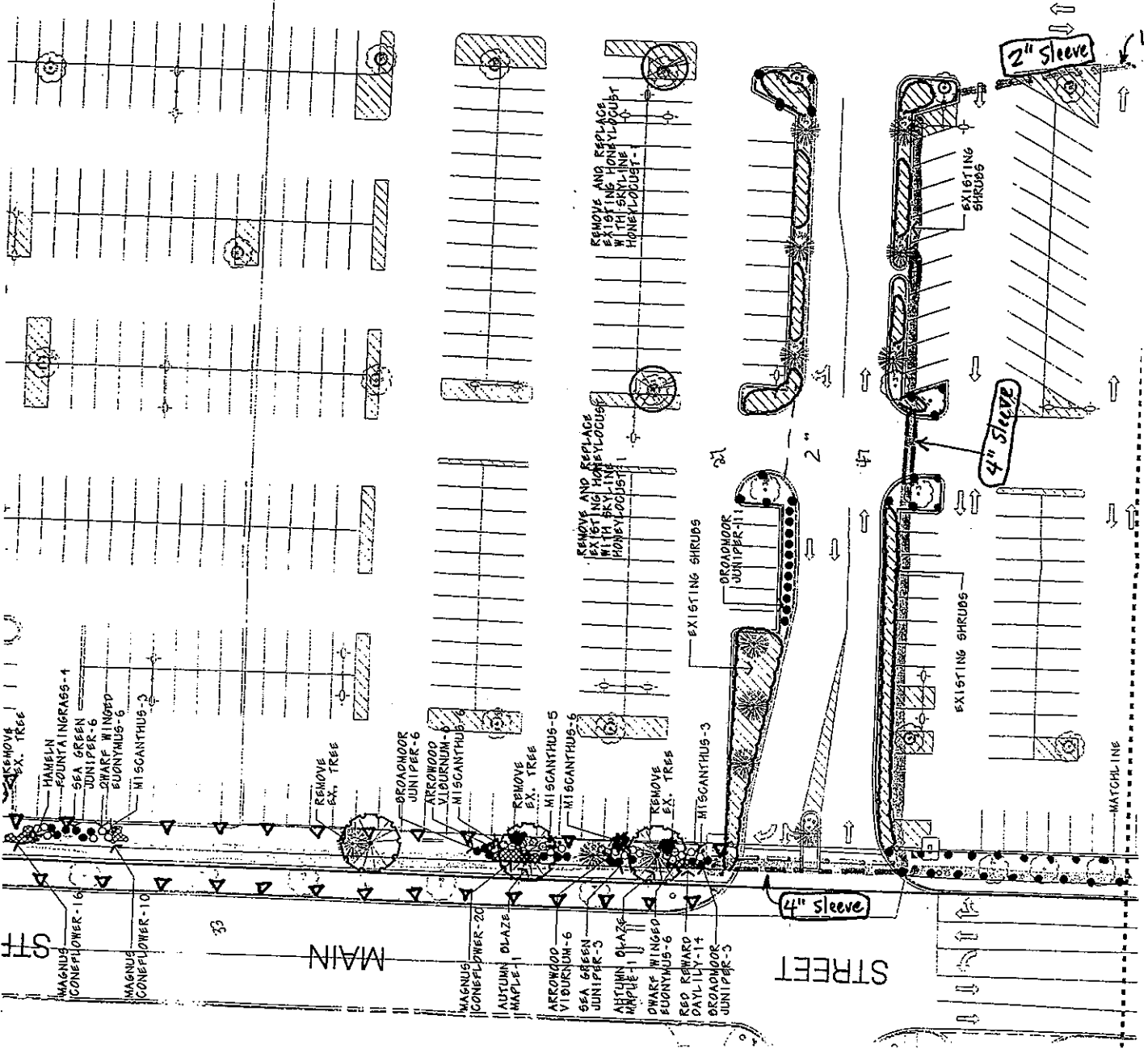
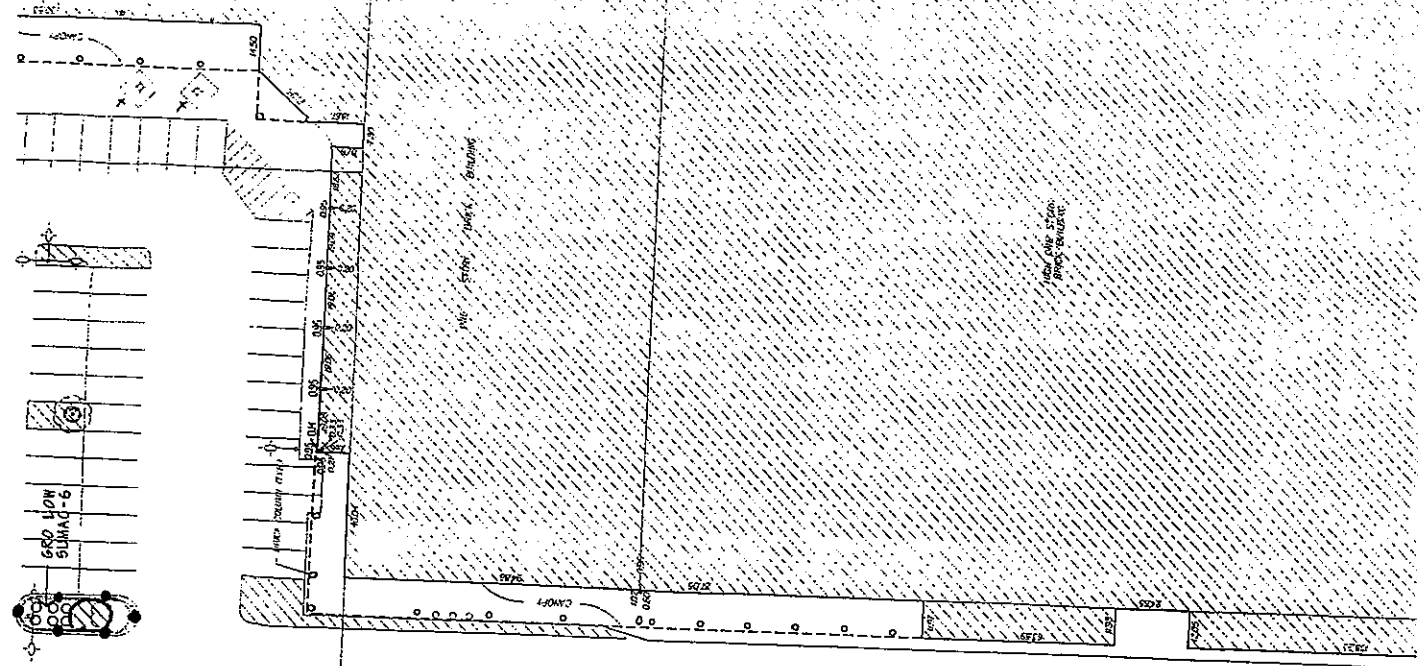
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- HUGHES JUNIPER-4
- MAGNUS CONIFLOER-5
- SEA GREEN JUNIPER-3
- ARROWOOD VIBURNUM
- MILICANTHUS-4
- BLACK EYED SUSAN-12
- SEA GREEN JUNIPER-6
- FOUNTAIN GRASS-1
- DWARF WINGED EUONYMUS-5
- SEA GREEN JUNIPER-3
- MILICANTHUS-9
- MAGNUS CONIFLOER-12

TRASH ENCLOSURE

VIEWE/DSC00
may one view
the building



NINA



- REMOVE EX. TREE
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- SEA GREEN JUNIPER-6
- DWARF WINGED BUONANTHUS-6
- MISCANTHUS-2
- BROADLEAF JUNIPER-6
- ARROWWOOD VIBURNUM-6
- MISCANTHUS-2
- REMOVE EX. TREE
- BROADLEAF JUNIPER-6
- MISCANTHUS-5
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- MISCANTHUS-3
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- MAGNOLIA CONIFLORUM-10
- MAGNOLIA CONIFLORUM-20
- LANTANA GLAZED MAPLE-1
- ARROWWOOD VIBURNUM-6
- SEA GREEN JUNIPER-3
- AQUICUM WHITE-1
- DWARF WINGED BUONANTHUS-6
- RED BOWARD DAY-LILY-14
- BROADLEAF JUNIPER-3

REMOVE AND REPLACE EXISTING HONEYLOCUST WITH PART-LINE HONEYLOCUST

REMOVE AND REPLACE EXISTING HONEYLOCUST WITH PART-LINE HONEYLOCUST

2" Sleeve

4" Sleeve

STREET

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ST