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Cook County Recorder 99.50

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made as of the 21st day of March, 2000, by 3749 North Ashland, L.L.C., an Illinois limited liability company ("Declarant"), with its principal place of business at 2636 North Lincoln Avenue, 1st Floor, Chicago, Illinois.



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RECITALS

WHEREAS, Declarant is the contract purchaser of a certain parcel of real estate in Cook County, Chicago, Illinois, commonly known as 3749-59 N. Ashland, Chicago, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Declarant intends that the Premises be utilized for the construction of two (2) six-unit and one (1) three-unit residential buildings (the "Project"); and

WHEREAS, Declarant has engaged in discussions with the Southport Neighbors Association, an Illinois not-for-profit corporation ("SNA") regarding the architectural style and design of the Project in order to facilitate the consistency and compatibility of the Project with the surrounding neighborhood in general and the requests of the SNA; and

WHEREAS, Declarant agrees to construct the Project in accordance with the drawings approved at the meeting of the SNA held on November 7, 1999, which are attached hereto as Exhibit B;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant does hereby declare as follows:

ARTICLE I

RESTRICTIONS

- 1.1 **Recitals**. The recitals set forth above are incorporated herein by this reference.
- 1.2 **Purpose**. The Premises, and each portion thereof, shall be used solely for the purposes described in the second Whereas clause set forth above.
- 1.3 **Number of Units**. The Project shall contain a total of fifteen (15) dwelling units.
- 1.4 **Exterior**. The primary exterior finish materials shall be as shown on the drawings in Exhibit B attached hereto and made a part hereof and further described as follows:
 - Front (West) Elevations: Standard size face brick with stone trim.
 - South Side (3749) and North Side (3759): Utility brick with stone trim.

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- North Side (3751 and 3755) and South Side (3753 and 3759): Utility brick with stone trim on westernmost 14 feet; remainder may be split face concrete block with brick trim.
- Rear (East) Elevations: Utility brick on all 3 sides of stair enclosures; remainder may be split face concrete block with brick trim.
- North Garage Elevation: Utility brick.

All utility brick shall be similar in color to the standard size face brick. Any structural or physical alterations to the exterior of the Project after the original construction is expressly prohibited. This prohibition includes, but is not limited to, the masonry and wooden portions, as well as doors, windows and roof lines.

1.5 **Height.** The height of the Project from the curb level to the peak of the gable roof shall not exceed 51 feet 0 inches.

1.6 **Setbacks.** The setbacks of the buildings comprising the Project shall be as follows:

--3749-3751		
--3753-3755	:	
	Front Yard	6.5'
	North Side Yard	5.0'
	South Side Yard	5.0'
	Rear Yard	31.77'
--3759		
	Front Yard	6.5'
	North Side Yard	0.5'
	South Side Yard	3.2'
	Rear Yard	31.77'

1.7 **Landscaping.** The Declarant shall plant in accordance with the following schedule, all of which plantings shall be maintained by the owners of the Premises including any successor owners.

- Front yards: shrubs; groundcover or sod.
- Side yards: groundcover or sod.
- Rear yards: minimum of 4 deciduous trees of 2-1/2" caliper minimum size; groundcover or sod.
- Parkways: city required trees; shrubs; groundcover.

All landscaping is subject to the approval of the City of Chicago.

1.8 **Parking.** At all times, there shall be fifteen (15) enclosed parking spaces and 0 unenclosed parking spaces.

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1.9 **Decks.** Decks shall not extend more than 8.0 feet from the rear wall of each building in the Project. Declarant shall provide built in planter boxes on each deck, with a minimum length of 6.0 feet each.

1.10 **Parkways.** Declarant shall provide green parkways along Ashland Avenue and Grace Street. There shall be continuous raised curbs around the perimeter of the parkways. In addition to any trees required by the City of Chicago, the parkways shall be landscaped with shrubs and groundcover.

1.11 **Zoning Change/Exception.** Declarant shall seek, and SNA shall support (including execution of any documents reasonably required by Declarant or the City of Chicago in connection therewith): (a) a change in the zoning classification of the Premises from C1-2 to R5; and (b) an exception from the zoning regulations to reduce the depth of the front yard of the Premises to six and one-half (6 ½) feet.

ARTICLE II

LIEN RIGHTS

2.1 **Liquidated Damages.** In the event that Declarant fails to comply with the obligations under Article I hereof, Declarant and SNA acknowledge and agree that SNA's damages will be difficult, if not impossible, to ascertain, and that consequently the sum of Five Thousand Dollars (\$5,000.00) as liquidated damages represents a fair and equitable estimate of SNA's damages for each dwelling unit constructed by Declarant in violation of any of the provisions contained in Article I hereof (the "Damage Amount"). SNA shall have the right to recover the Damage Amount through the lien rights granted to SNA in Section 2.3 of this Declaration. However, nothing in this paragraph shall be deemed to waive, limit or otherwise affect SNA's right to injunctive or other equitable relief as described in Section 3.8 of this Declaration.

2.2 **Default Notices.** Declarant shall give written notice to SNA by certified mail, return receipt requested, not less than twenty (20) days prior to the closing for sale of the any dwelling unit within the Project. In the event that Declarant has not complied with the provisions of Article I hereof, SNA must deliver to Declarant written notice (the "Default Notice") by certified mail, return receipt requested, or by personal delivery during normal business hours, specifying all existing violations of Article I hereof within fifteen (15) days of SNA's receipt of Declarant's notice. Failure on the part of SNA to deliver a Default Notice within said 15-day period shall constitute SNA's waiver of all lien rights described in Section 2.3 and the other enforcement rights described in Section 3.8 with respect to said dwelling unit.

2.3 **Lien Rights.** To recover the Damage Amount, with respect to all units other than the final unit in the Project to close, SNA shall have a lien in the amount of Five Thousand Dollars (\$5,000.00) and with respect to the final unit in the Project to close only, SNA shall have a lien in the amount of Seventy-Five Thousand Dollars (\$75,000), in any case, plus all related court costs, reasonable attorneys' fees and expenses, including any interest owed under Section 2.5 hereof, and all other reasonable costs and expenses incurred by SNA in enforcing the terms of this Declarations, on the fee simple title of any dwelling unit against which SNA has recorded a Default Notice in accordance with the procedure set out in Section 2.2. SNA may enforce its

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rights under this section by filing an action to foreclose its lien in the manner provided under Illinois law for the foreclosure of mortgage liens.

2.4 **Lien Contest.** In the event of a dispute between SNA and Declarant as to the validity of any Default Notice; the parties hereto agree that such dispute shall be decided as provided hereinafter.

Either party may commence arbitration proceedings with the American Arbitration Association office having jurisdiction thereof by filing a demand for arbitration in writing with such American Arbitration Association, and by sending a copy of said demand to the other party, within a reasonable time after the dispute has arisen. The arbitration proceedings shall be governed by and decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, then in effect, unless the parties shall mutually agree otherwise, in writing.

Declarant and SNA shall use best efforts to agree on a single arbitrator, who shall be either an attorney, a contractor, an architect or a licensed engineer. If the arbitrator is an attorney, he or she shall be currently licensed to practice law in the state of Illinois, shall have actively engaged in the practice of law for at least 10 years, and in the immediately preceding five years, shall have devoted not less than 50% of his/her time to the practice of construction law and shall have demonstrated an expertise in the process of arbitration as an alternate dispute resolution method. If the arbitrator is a contractor, architect or engineer, he or she shall be currently licensed in the state of Illinois and shall have not less than 10 years of experience in their field. The arbitrator shall have the availability to allow the arbitration sessions to proceed on a continuous basis.

In the event Declarant and SNA cannot agree on a single arbitrator, then each shall select one arbitrator (each of whom meets the qualifications in the foregoing paragraph) and those two arbitrators shall select a third arbitrator (who meets the qualifications in the foregoing paragraph). The panel of arbitrators so selected shall then proceed with the arbitration process.

In the event of arbitration of any dispute arising under this Agreement, the prevailing party will be entitled to recover all attorneys' fees, filing fees, costs and related expenses from the non-prevailing party and such recovery shall be made part of any judgment or arbitration award.

The arbitrator(s) shall have no authority to award punitive damages nor make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The award rendered by the arbitrator(s) shall be final and binding upon the parties and judgment may be entered by any competent court having jurisdiction thereof. The award of the arbitrator(s) shall be accompanied by a reasoned opinion.

In the event such dispute is determined in favor of SNA, Declarant will pay the Damage Amount to SNA and any costs any expenses as provided by the arbitrator(s). In the event such dispute is determined in favor of Declarant, SNA will release the recorded Default notice and will pay the costs and expenses as provided by the arbitrator(s). Notwithstanding the foregoing, in the event the closing of the sale of any dwelling unit that is subject to a recorded Default Notice is scheduled to occur prior to the resolution of such dispute, then Declarant shall have the right (subject to approval by the title company) to procure title coverage over any lien recorded by

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SNA to allow the closing of the sale of such dwelling unit to occur pending resolution of such dispute.

2.5 **Default Interest.** All amounts owed to SNA hereunder shall bear interest at an annual rate equal to the greater of (i) five percent (5%) over the "prime rate" of interest published from time to time in The Wall Street Journal, or (ii) the maximum rate of interest provided by law, from the date on which SNA records its Default Notice until paid in full.

2.6 **Landscaping/Parking.** Notwithstanding anything to the contrary contained herein, until Declarant delivers notice of the closing of the final unit in the Project, the failure of Declarant to have completed the landscaping, parking and parkways required by Sections 1.7, 1.8 and 1.10 hereof, respectively, shall not be a basis for SNA to record a Default Notice so long as Declarant has complied with all other requirements of Article I hereof with respect to the dwelling unit for which Declarant has delivered written notice of closing. The parties hereto acknowledge and agree that the requirements in Sections 1.7, 1.8 and 1.10 hereof will be complied with by Declarant prior to closing of the final unit of the Project.

ARTICLE III

OTHER PROVISIONS

3.1 **Non-Waiver of Covenants.** No covenant, restriction, condition, obligation or other provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur, except waiver of SNA's rights as described in Section 2.2 above.

3.2 **Duration.** All of the Premises are and shall be held, sold and conveyed subject to the covenants, restrictions and conditions herein stated, all of which shall run with the land and be binding upon all parties now or hereafter having any right, title or interest in the Premises or in any part thereof, and upon those claiming under them. All covenants, restrictions and conditions contained in this Declaration shall continue for a period of fifty (50) years from the date hereof and upon the expiration of such period shall terminate.

3.3 **Survival and Severability.** If any term, provision, covenant, restriction, agreement or condition contained in this Declaration shall be or be held to be invalid, whether in general or as to any particular situation or circumstance, the remainder of this Declaration and the applicability to any other situation or circumstances, as the case may be, shall not be invalidated or terminated thereby, but shall remain in full force and effect to all intents and purposes as though such invalid term, provision, covenant, restriction, agreement or condition had never been.

Invalidation of all or any portion of any of the covenants, restrictions, agreements or conditions imposed by this Declaration, by legislation, judgement or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.

If any of the covenants, restrictions, agreements or conditions of this Declaration would otherwise violate (a) the rule against perpetuities or some analogous statutory provision, or (b) any other statutory or common law rules imposing time limits, then such provision shall continue

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only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the current incumbent and all currently living former Presidents of the United States.

3.4 **Gender of Terms; Numbers.** As used in this Declaration, the masculine shall mean the feminine or neuter and singular mean plural where the context requires to preserve the meaning of the appropriate provision.

3.5 **Laws of Illinois.** This Agreement shall be construed in conformity with the laws of the State of Illinois.

3.6 **Modifications.** No modifications, waivers, variations, or releases of the duties and obligations under this Declaration shall be effective unless agreed to in writing by SNA or its successor organization.

3.7 **Notice.** Except as otherwise provided herein, any notice required to be given under the provisions of this Declaration to Declarant or SNA or any successor or assign of Declarant or SNA shall be deemed to have been properly delivered when deposited in the U. S. Mail, certified mail, return receipt requested postage prepaid, addressed as follows:

If to Declarant:

3749 North Ashland, L.L.C.
2636 N. Lincoln Ave., 1st Floor
Chicago, Illinois 60614
Attn: Steven Golovan

with a copy to:

Bell, Poyd & Lloyd
70 West Madison St., Suite 3100
Chicago, Illinois 60602
Attn: Kathryn A. Finn

If to SNA:

Mr. Gary Bonikowski
3734 North Racine
Chicago, Illinois 60613

with a copy to:

Peter Manis, Esq.
c/o IRMCO
2300 Lincoln Park West
Chicago, Illinois 60614

Either party may change its address for notice purposes by providing notice to the other party pursuant to the provisions hereof.

3.8 **Enforcement.** Any violation on the part of any person of any of the restrictions, covenants, terms or conditions of this Declaration to be kept, observed or performed by him and which will or is likely to result in damages which are irreparable or impossible of ascertainment, then SNA and any other owner is hereby granted the right to prevent or remedy any such

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threatened or actual violation, as the case may be, by means of injunctive proceedings or other legal remedies. The various rights and remedies herein granted shall be in addition to all other rights and remedies which may be available. All said rights and remedies may be exercised either concurrently or consecutively or partly concurrently and partly consecutively, as the case may be. Enforcement by any person of the covenants and restrictions contained in this Declaration shall be had by any proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by any person to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter, except as specifically provided in Section 2.2 above. Enforcement of the provisions of this Declaration shall be by any proceeding at law or in equity, brought by the Declarant, its successors or assigns, or SNA, against any person or persons violating or attempting to violate any covenant, restriction or other provision hereof, either to restrain or prevent such violating or attempted violation or to recover damages, or both. Failure by Declarant, its successors or assigns, or SNA to promptly enforce any covenant, restriction or other provision of this Declaration shall in no event be a bar to enforcement thereafter and shall not waive any rights by the Declarant, its successors or assigns, or SNA, to so enforce any covenant, restriction or other provision of this Declaration, except as specifically provided in Section 2.2 above.

If Declarant, or its successors or assigns, violates the terms of this Declaration, SNA, or its successors or assigns, shall be entitled to reasonable attorney's fees and costs incurred in the successful enforcement of this Declaration.

3.9 **Captions.** The Article and Paragraph headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

3.10 **Recording.** Declarant agrees to notify SNA in writing no later than two (2) business days prior to the scheduled closing date for Declarant's acquisition of the Premises, which notice shall also specify the manner in which Declarant is taking title to the Premises. SNA shall have the right to record this Declaration with the Cook County Recorder of Deeds at any time, either before or after Declarant has acquired title to the Premises. In the event that this Declaration is recorded prior to the time when Declarant (or any successor in interest to Declarant) has acquired title to the Premises, either directly or indirectly, it is the intent of the parties that all of the terms and conditions set forth herein shall nevertheless be binding upon Declarant and the Premises in the same manner as if this Declaration had been recorded immediately after the deed transferring title to Declarant. SNA shall also have the right to re-record this Declaration at any time after Declarant has acquired title to the Premises.

3.11 **Additional Documents.** Upon SNA's request, Declarant agrees to execute and deliver any and all documents reasonably required by SNA in order to establish and/or perfect SNA's lien rights and other rights and remedies intended to be conferred under this Declaration.

3.12 **Successors and Assigns.** The terms of this Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including without limitation any assignee of Declarant's rights under Declarant's contract to purchase the Premises.

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IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 24 day of March, 2000.

3749 NORTH ASHLAND, L.L.C., an Illinois limited liability company

By: Steve Folan
Its: Manager

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I, the undersigned, a Notary Public in and for the County of Cook, in the State of Illinois, DO HEREBY CERTIFY that STEVEN GOLDVAN, personally known to me to be the MANAGER of 3749 North Ashland, L.L.C., an Illinois limited liability company ("Company"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such MANAGER he signed and delivered the foregoing instrument on behalf of and pursuant to the authority given by the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes set forth herein.

Given under my hand and notarial seal this 21st day of March, 2000

Genevieve M Kurk
Notary Public

This Instrument Was Prepared By:

Kathryn A. Finn
Bell, Boyd & Lloyd
70 West Madison Street
Chicago, IL 60602



After recording, return to:

Peter E. Manis, Esq.
2300 North Lincoln Park West
2nd Floor
Chicago, IL 60614

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EXHIBIT A

PREMISES

Lots 89, 90, 91, 92 and 93 in Oscar Charles Addition to Lane Park, said Addition being a subdivision of Lot 15 in Block 4, Lot 15 in Block 5 and Lot 14 in Block 6 in Lake View High School Subdivision of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 40 North, Range 14, East of the Third Principal Meridian, also of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 20, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property Address: 3749-59 North Ashland, Chicago, IL 60613

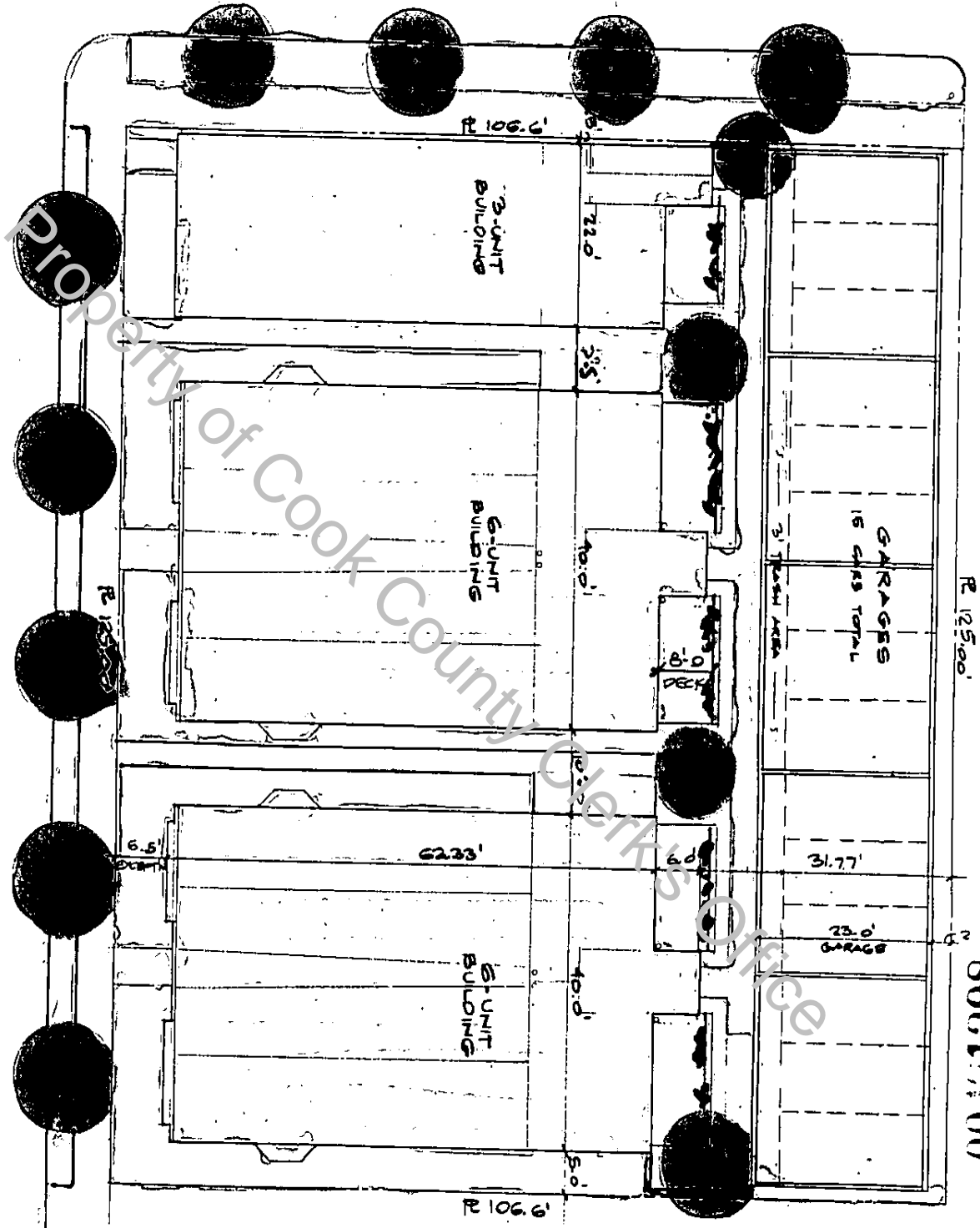
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W. GRACE ST.



PUBLIC ALLEY

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SITE PLAN

N. ASHLAND AVE.

EXHIBIT I

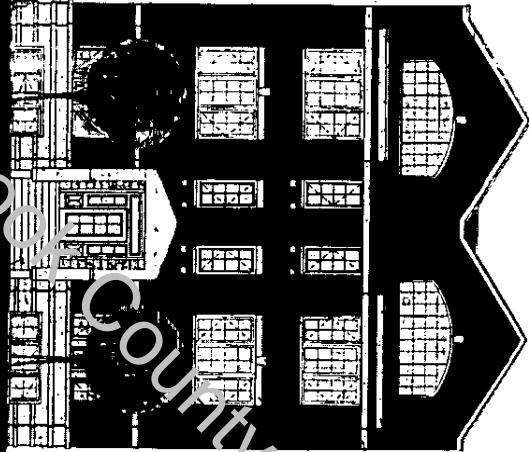
ALL LANDSCAPING SHOWN SUBJECT TO APPROVAL FROM THE CITY OF CHICAGO.

IURO and associates
architects • engineers • consultants

550 W. Jackson Blvd. Chicago, Illinois 60606 Phone: (312) 559-0772

W/C

ASHLAND AVENUE ELEVATIONS



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EXHIBIT II

56

PROJECT
Ashland Ave. and Grace St.
Chicago, Illinois

DATE
SCALE
SHEET NO.

OWNER
ARCHITECT
ENGINEER
DATE



IURO and associates

architects • engineers • consultants

120 W. Madison St. Suite #310 Chicago, Illinois 60602
Phone (312) 795-0772 Fax (312) 795-0775

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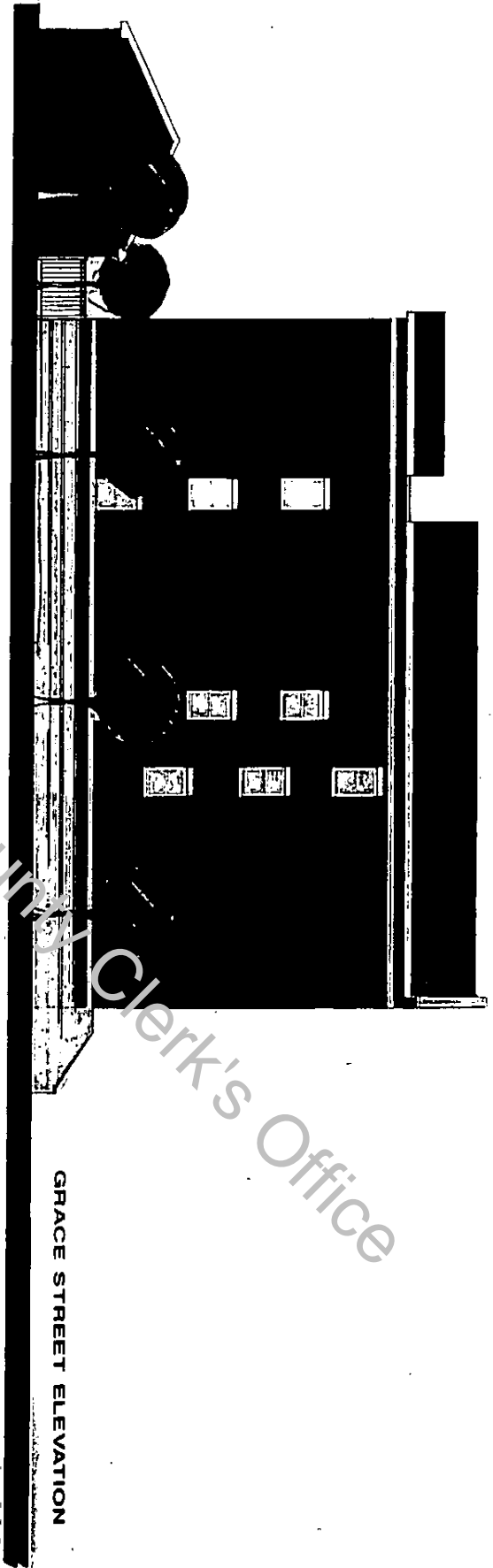
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11/13/2011



6 UNIT SIDE ELEVATION



GRACE STREET ELEVATION

EXHIBIT III

JOE MITCHELL
Ashland/Avr. and Grace St.
Chicago, Illinois, USA

DATE	
PROJECT NO.	
SCALE	
DESIGNED BY	
CHECKED BY	
APPROVED BY	
DATE	



IURO and associates.
architects • engineers • consultants
120 W. Madison St. Suite 4210 • Chicago, Illinois 60602
Phone: (312) 795-0772 • Fax: (312) 795-0775



REVISIONS	
NO.	
DATE	
DESCRIPTION	

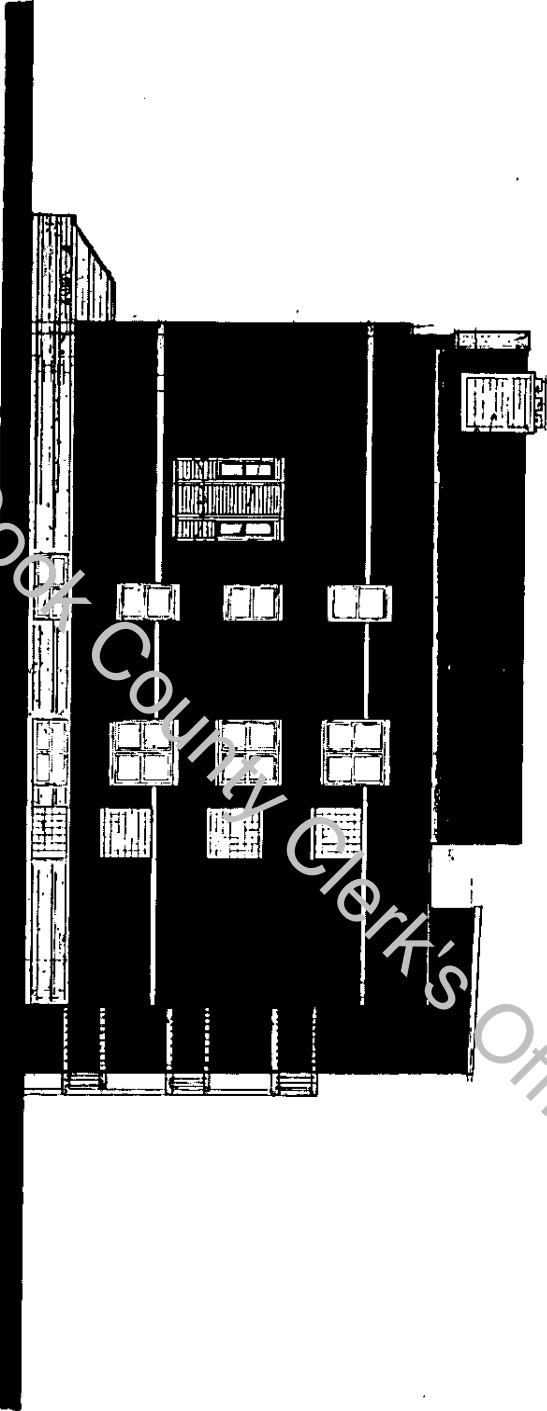
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6 UNIT SIDE ELEVATION

SOUTH SIDE OF 3749-SI ASHLAND

EXHIBIT IV



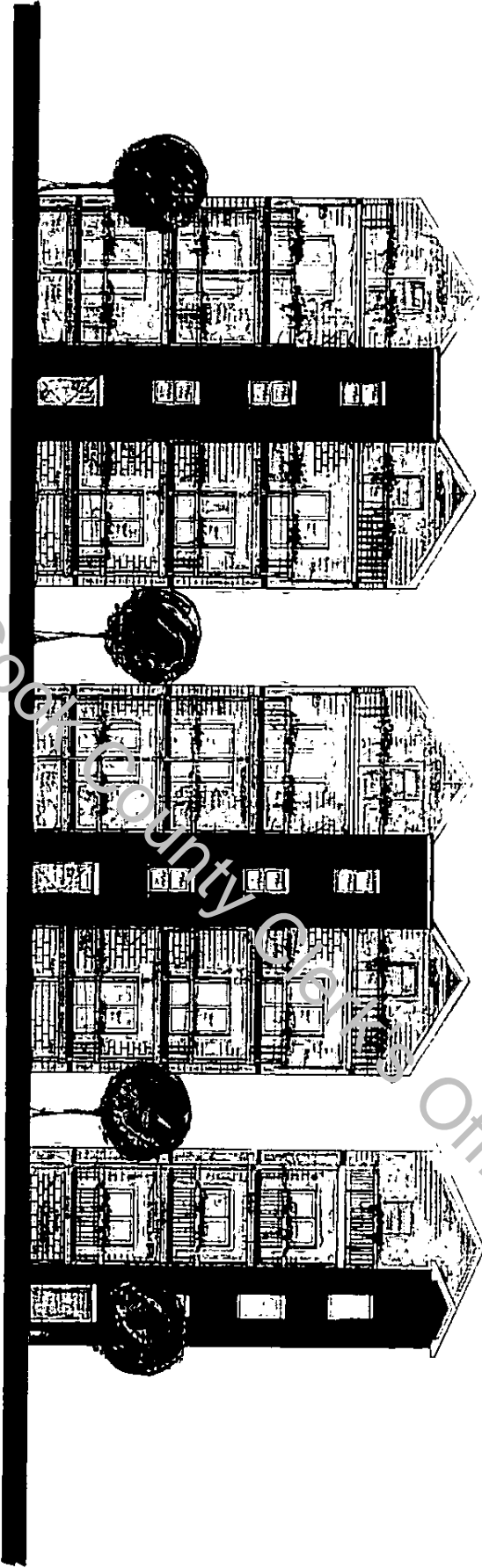
JOB TITLE Ashland Ave. and Grace St. Chicago, Illinois	DATE 11/11/00	SHEET 5/6
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IURO and associates
 architects • engineers • consultants
 120 W. Madison St. Suite #310 Chicago Illinois 60602
 Phone: (312) 795-0772 Fax: (312) 795-0775

86217700

REAR BUILDING ELEVATIONS



Property of Cook County Office

EXHIBIT V

DATE: 11/11/11	PROJECT: Ashland Ave. and Grace St.
DRAWN BY: [blank]	CHECKED BY: [blank]
DATE: 11/11/11	PROJECT: Ashland Ave. and Grace St.
DRAWN BY: [blank]	CHECKED BY: [blank]
DATE: 11/11/11	PROJECT: Ashland Ave. and Grace St.
DRAWN BY: [blank]	CHECKED BY: [blank]

59

86212700



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