

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Stahl Cowen Crowley LLC  
55 West Monroe Street, Suite 500  
Chicago, Illinois 60603  
Attn: Richard M. Dubin, Esq.



Access Easement Agreement

THIS ACCESS EASEMENT AGREEMENT (the "Agreement") is made as of this 8<sup>th</sup> day of FEBRUARY, 2002 by and between Kathryn L. Harbison (hereinafter referred to as "Harbison"), and Richard A. Cowen and Lois C. Roewade ("collectively, Grantees").

The following recitals of fact are a material part of this Agreement:

A. Harbison is the holder of legal title to a certain parcel of land in the City of Des Plaines (the "City"), County of Cook and State of Illinois which is legally described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Harbison Parcel");

B. Richard A. Cowen and Lois C. Roewade are the holders of legal title to a certain parcel of land in the City of Des Plaines, County of Cook and State of Illinois, which lies west of and adjoins the Harbison Parcel and is legally described on Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "Grantee Parcel"; the Harbison Parcel and the Grantee Parcel are hereinafter individually sometimes referred to as a "Parcel" and are hereinafter together referred to as the "Parcels");

C. The Harbison Parcel is improved with three (3) multi-family apartment structures, and related improvements. The Grantee Parcel is improved with a multi-family apartment structure and related improvements;

D. Harbison wishes to grant and Richard A. Cowen and Lois C. Roewade wish to receive an easement for ingress and egress over, upon and across a certain portion of the Harbison Parcel for the benefit of the Grantee Parcel, all as more fully set forth below;

E. Richard A. Cowen and Lois C. Roewade wish to grant and Harbison wishes to receive an easement for ingress and egress over, upon and across a certain portion of the Grantee Parcel for the benefit of the Parcel, all as more fully set forth below; and

F. The parties wish to make certain agreements regarding such easements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of

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which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

## *Section 1. Ingress and Egress Easement over the Harbison Parcel.*

Harbison hereby grants, gives and conveys to Richard A. Cowen and Lois C. Roewade, and their tenants, invitees, agents, employees, successors and assigns, as an easement appurtenant to the Grantee Parcel, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across that portion of the Harbison Parcel which is identified on the site plan attached hereto as Exhibit C and made a part hereof (hereinafter referred to as the "Site Plan") as, and is hereinafter referred to as, the "Harbison Easement Parcel," to provide access for motor vehicle and pedestrian traffic, and for parking, to and from the Grantee Parcel from and to the public roadway commonly known as Oakton Street.

## *Section 2. Ingress and Egress Easement over the CR Parcel.*

Richard A. Cowen and Lois Roewade hereby grant, give and convey to Harbison and its tenants, invitees, agents, employees, successors and assigns, as an easement appurtenant to the Harbison Parcel, a non-exclusive, irrevocable and perpetual easement for ingress and egress over, upon and across that portion of the Grantee Parcel which is identified on the Site Plan as, and is hereinafter referred to as, the "Grantee Easement Parcel," to provide access for motor vehicle and pedestrian traffic, and for parking, to and from the Harbison Parcel from and to the public roadway commonly known as Oakton Street. The Harbison Easement Parcel and the Grantee Easement Parcel are hereinafter individually sometimes referred to as an "Easement Parcel" and are hereinafter together referred to as the "Easement Parcels."

## *Section 3. Maintenance.*

Each party hereto shall, at its own cost and expense, maintain and repair the Easement located on the Parcel to which it holds title and keep the same in a clean, sightly, safe, unobstructed, good and usable condition. With regard to the foregoing, each party shall comply with any and all applicable federal, state and local zoning and other ordinances, statutes, guidelines, requirements and regulations.

## *Section 4. Conduct and Coordination of Maintenance, Repair and Replacement.*

All maintenance and repair of the Easement Parcels shall be made so as to interfere as little as practicable with the rights granted to, or reserved by, the other party pursuant to this Agreement and with the operations on each Parcel of any of the owners thereof or their employees, agents, tenants, invitees or licensees. The parties shall use every effort to coordinate maintenance, repairs and replacement so that both Easement Parcels shall not be obstructed at the same time.

## ~~*Section 5. Performance of Other Party's Obligations.*~~

~~In the event of an emergency requiring maintenance or repair of either Easement Parcel,~~

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~~if the party who is responsible for such maintenance or repair does not undertake the same within a period of time which is reasonable under the circumstances or it does not appear that such party who is responsible will, or will be able to, undertake such maintenance or repair, the other party may, at its option, perform such maintenance or repair and pay any and all costs and charges associated therewith.~~

Subject to the provisions of Section 6 hereof, in the event a failure by either party hereto (the "Defaulting Party") to maintain and repair, as required under this Agreement, the Easement Parcel on the Parcel to which it holds title results in a material interference with the rights granted to the other party by this Agreement or with the use or operation of the other party's Parcel or the improvements located thereon from time to time, but does not result in an emergency, the other party may notify the Defaulting Party in writing of such failure. In the event the Defaulting Party fails to remedy such default within ten (10) days after receipt of such notice or, if such default cannot be cured within ten (10) days, in the event the Defaulting Party fails to commence the cure of such default within such ten (10) day period and diligently pursue such cure to completion, the other party may, at its option, perform the obligation which the Defaulting Party has failed to properly perform hereunder and pay any and all costs and charges associated therewith.

Upon the occurrence of any event described in this Section 5, the performing party shall be entitled to recover from the other party the charges, fees, costs and expenses incurred by the performing party (including, if the other party is in default, reasonable attorneys' fees) in connection therewith, together with interest thereon at the Default Rate of Interest (as hereinafter defined) from the date of payment. Such charges, fees, costs, expenses and interest shall be paid by the other party within ten (10) days after receipt of a statement thereof from the performing party. For the purposes hereof, the term "Default Rate of Interest" shall be the rate of interest from time to time announced by LaSalle Bank as its prime rate.

Each party which performs any maintenance or repair on the Parcel to which the other party holds title shall restore the area affected by such maintenance or repair to the condition existing prior thereto or prior to any damage or disrepair necessitating such maintenance or repair, and any failure to do so shall give the party which holds title to such area the rights of a non-defaulting party pursuant to this Section 5.

## Section 6. *Force Majeure; Interruption of Services.*

If either party hereto fails to perform in a timely manner any of the obligations to be performed by such party under this Agreement, and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or such other party's employees, agents, licensees, invitees or contractors) or any other cause beyond the reasonable control of the non-performing party, then the non-performing party shall not be deemed in default hereunder as a result of such failure. The foregoing shall not excuse any failure to make any ~~payment of money in a timely manner.~~

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~~Neither party shall be liable in damages for any interruption of utility services to the Parcel to which the other party holds title which may arise out of or be occasioned by maintenance or repair of either Easement Parcel unless such interruption of service results from the wanton or willful misconduct of such party.~~

## Section 7. *Other Commercial Trust Property.*

The easements herein granted to Richard A. Cowen and Lois C. Roewade are also appurtenant to any land that may hereafter come into common ownership with the Grantee Parcel which is contiguous to the Grantee Parcel. An area physically separated from the Grantee Parcel but having access thereto by means of public ways or private easements, rights or licenses shall be deemed to be contiguous to the Grantee Parcel.

## Section 8. *Covenants Running with the Land.*

All provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

## Section 9. *Transfer of Ownership.*

Whenever a transfer of ownership of either Parcel occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations hereunder running with the land to the owner of the Parcel or portion thereof being transferred.

## Section 10. *Interpretation.*

The rule of strict construction does not apply to the grants herein. The grants herein shall be given a reasonable construction to carry out the intention of the parties hereto to confer a commercially usable right of enjoyment on each grantee.

## Section 11. *Indemnity and Insurance.*

Harbison shall indemnify and hold harmless Richard A. Cowen and Lois C. Roewade and their agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from Harbison's negligent use of the Grantee Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of Richard A. Cowen or Lois C. Roewade or their agents or the acts of other parties who have been granted any easement upon, over and across the CR Parcel.

Richard A. Cowen and Lois C. Roewade shall indemnify and hold harmless Harbison and their agents from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or

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resulting from the Grantees' negligent use of the Harbison Parcel, except for any such liability, loss, damage, costs and expenses arising in whole or in part from the acts of Harbison or its agents or the acts of other parties who have been granted any easement by Harbison upon, over and across the Harbison Parcel.

~~Each party shall carry at all times, with respect to the Parcel owned by it, commercial general public liability insurance, including contractual liability insurance, in an amount not less than One Million Dollars (\$1,000,000.00). Such insurance shall name the other party and the respective agents and employees of each of them as additional insureds.~~

~~Each party shall, from time to time upon the request of the other party, furnish to the other party policies or certificates evidencing such coverage, which policies or certificates shall state that such insurance coverage may not be reduced, canceled or allowed to expire without at least thirty (30) days' prior written notice to each party hereto.~~

## Section 12. *Notices.*

All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or two (2) days after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to Harbison:

Kathryn L. Harbison  
8352 N. Milwaukee  
Niles, Illinois 60714

(b) If to Richard A. Cowen and Lois C. Roewade:

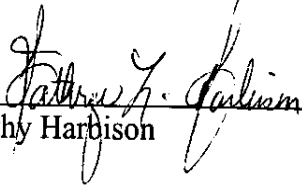
c/o Richard A. Cowen  
6834 North Jean Avenue  
Chicago, Illinois 60646

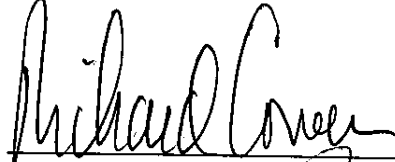
Either party may change the name of the person or address to which notices and other communications are to be given by so notifying the other party. Notices or demands from either Trustee may be given by the Trustee, its beneficiaries or any of their agents.

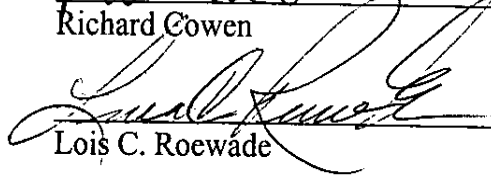
\* \* \*

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

  
Kathy Harbison

  
Richard Cowen

  
Lois C. Roewade

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THIS INSTRUMENT WAS  
PREPARED BY AND AFTER  
RECORDING SHOULD  
BE RETURNED TO:

Richard M. Dubin  
Stahl Cowen Crowley LLC  
55 West Monroe Street, Suite 500  
Chicago, Illinois 60603

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State of Illinois )  
 )ss.  
County of Cook )

I, the undersigned, being a notary public in and for the state and county aforesaid, do hereby certify that Kathryn F. Harbison, personally known to me to be the same persons whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

My Commission expires:

State of Illinois )  
 )ss.  
County of Cook )

I, the undersigned, a Notary Public in and for the said County and State aforesaid, do hereby certify that Richard A. Cowen and Lois C. Roewade, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act for the uses and purposes therein set forth

Given under my hand and notarial seal this 11 day of February, 2002.

Kristen L. Davis  
Notary Public

My Commission expires:

OFFICIAL SEAL  
KRISTEN L DAVIS  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. JULY 27, 2003

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## LIST OF EXHIBITS

Exhibit A: Legal Description of the Harbison Parcel

Exhibit B: Legal Description of the Grantee Parcel

Exhibit C: Site Plan

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE HARBISON PARCEL

LOTS 16, 17 AND 18 IN BLOCK 13 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS, BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTHEAST 1/4 OF SECTION 20 AND OF THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST 1/4 OF SECTION 21, (EXCEPT 4.9 ACRES IN THE NORTHEAST CORNER THEREOF), ALL IN TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT B

### LEGAL DESCRIPTION OF THE GRANTEE PARCEL

LOT 15 IN BLOCK 13 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS, BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTHEAST ¼ OF SECTION 20 AND OF THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 21, (EXCEPT 4.9 ACRES IN THE NORTHEAST CORNER THEREOF), ALL IN TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT C

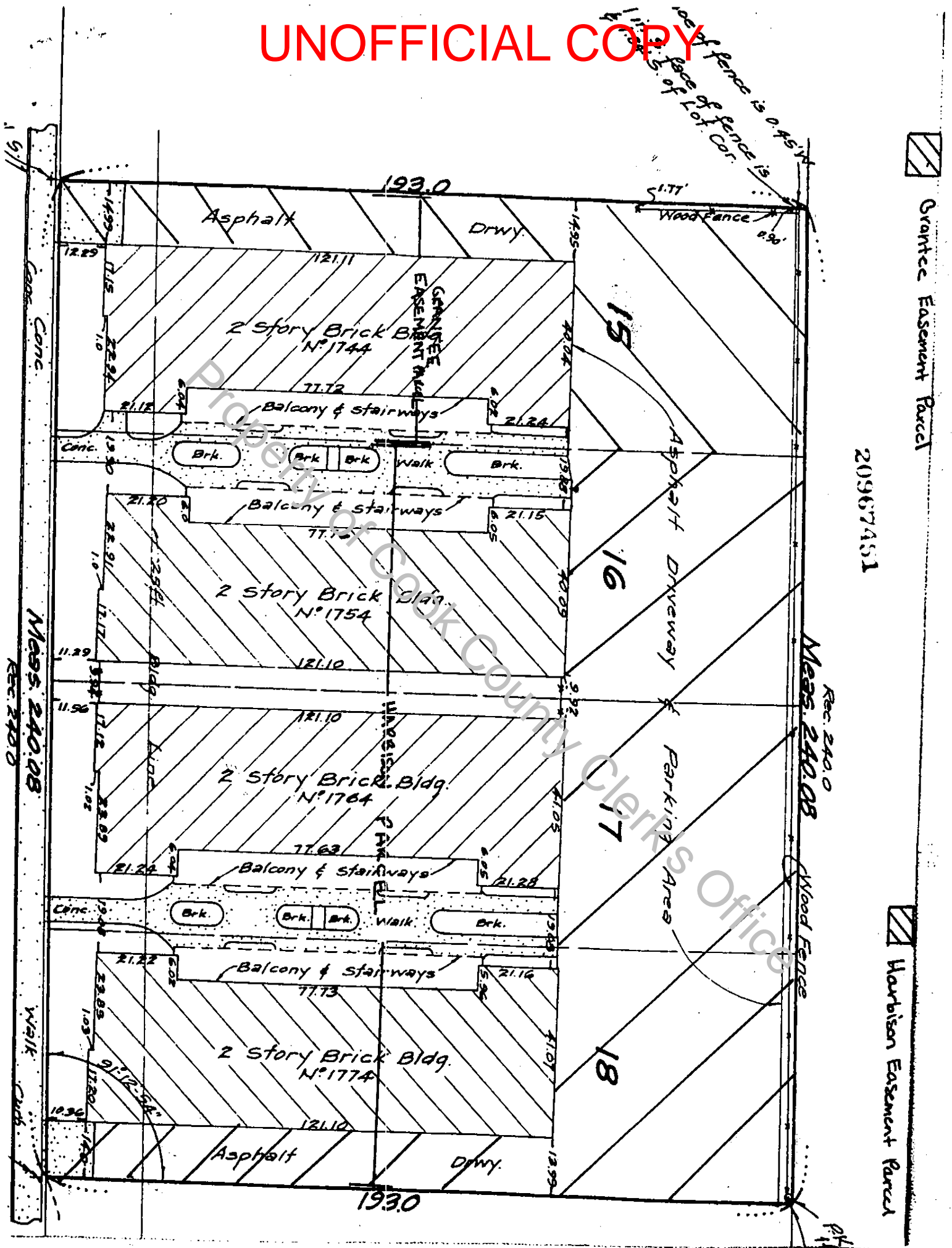
SITE PLAN

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Use of fence is 0.45' N of face of fence is 3.5' of Lot Cor.



Grantee Easement Parcel

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Harbison Easement Parcel

Mass. 240.08  
Rec. 240.0

Mass. 240.08  
Rec. 240.0

1.5' Conc. Conc.

Wood Fence

Wood Fence

Asphalt Driveway & Parking Area

GRANTEE EASEMENT PARCEL

HARBISON EASEMENT PARCEL

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