



Doc#: 0408345018  
Eugene "Gene" Moore Fee: \$86.50  
Cook County Recorder of Deeds  
Date: 03/23/2004 10:57 AM Pg: 1 of 12

This instrument prepared by:  
Linsey N. Cohen  
Schain, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601

After recording, please  
return to:  
Linsey N. Cohen  
Schain, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601



**ACCESS EASEMENT AGREEMENT**

This **ACCESS EASEMENT AGREEMENT** ("Agreement") is made in the City of Chicago, County of Cook, State of Illinois, on October \_\_, 2003 by and between **HARRIS TRUST AND SAVINGS BANK AS TRUSTEE UNDER THAT CERTAIN TRUST AGREEMENT DATED FEBRUARY 4, 2003 AND KNOWN AS TRUST #HTB 1276** (hereinafter "Grantee") and **CENTERPOINT PROPERTIES TRUST, a Maryland real estate investment trust** (hereinafter "Grantor"). Grantor is the owner of certain land legally described on Exhibit "A" attached hereto and incorporated herein by reference ("Servient Parcel"). Grantee is the owner of a tract of land legally described and depicted on Exhibit "B" attached hereto and incorporated herein by this reference ("Dominant Parcel").

Grantor wishes to herein grant an access easement for ingress, egress and regress over and across a specifically defined portion of the Servient Parcel to Grantee, its guests, invitees, employees, licensees, and contractors, as legally described and depicted on Exhibit "C" attached hereto and incorporated herein by this reference (the "Easement Parcel"); and Grantee desires to obtain such an easement upon the terms, covenants and conditions herein set forth.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. **GRANT OF ACCESS EASEMENT.** Grantor hereby grants to Grantee, its heirs, successors and assigns, as a non-exclusive easement (the "Easement") appurtenant to the Dominant Parcel, and to Grantee's guests, invitees, employees, licensees, and

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contractors, for vehicular and pedestrian ingress and egress over, across and upon the Easement Parcel. The Easement shall be limited to use by vehicles and pedestrians for access to and from the Dominant Parcel, and no other lands. The Easement shall be perpetual, subject however to termination as provided in Sections 2 and 16 hereof.

2. TERM. Other than by mutual written agreement of the owners of the Dominant Parcel and the Servient Parcel, the term of the Easement shall commence July 1, 2004 ("Commencement Date") and shall continue on a perpetual basis, unless and until such time as a court of lawful jurisdiction enters a final and non-appealable judgment declaring that an Event of Default has occurred hereunder.

3. USE OF EASEMENT PARCEL. Use of the Easement Parcel may be made by the owner or owners of all or a portion of the Dominant Parcel, together with the guests, agents, employees, licensees, contractors and invitees of said owner for the purpose of providing access to the Dominant Parcel. The use of the Easement Parcel shall be limited to vehicular and pedestrian ingress and egress over, across and upon the Easement Parcel, and such use by any of the aforesaid parties shall be all in compliance with applicable laws, rules, regulations, permits and all other governmental and lawful requirements now or hereafter in effect and pertaining thereto and any and all record easements, covenants or conditions affecting either the Easement Parcel (collectively, "All Lawful Requirements").

The Grantor reserves and retains, for itself and its tenants, subtenants, mortgagees, licensees, and all of their respective guests, agents, employees, contractors and invitees, the unrestricted right, title and privilege to use the Easement Parcel for any lawful purpose, so long as such concurrent use does not unreasonably interfere with the Easement.

4. FEE/MAINTENANCE COSTS. From and after the Commencement Date, and so long as the Easement has not been terminated as hereinafter provided, Grantee shall pay to Grantor an amount equal to Twelve Thousand and 00/100 Dollars (\$12,000.00) per year in equal monthly installments of One Thousand and 00/100 Dollars (\$1,000.00) per month for the use of the Easement Parcel ("Easement Fee"), due on the first day of each calendar month. Notwithstanding the above, in the event (i) Grantor conveys fee simple title to the Servient Parcel at anytime to an unrelated third party, and (ii) Grantee pays Grantor the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), then Grantee's obligation to pay the Easement Fee shall terminate, with the remaining terms and conditions of this Agreement remaining in full force and effect.

Grantor shall be responsible for performing normal repair and maintenance of the pavement on the Easement Parcel, with the costs for repairing and maintaining the Easement Parcel shared equally between the parties. Grantee, its successors, assigns, tenants, and invitees shall, within thirty (30) days of receipt of an invoice, all reasonable documentation evidencing the costs and expenses, reimburse Grantor for its share of the costs of repairing and maintaining the Easement Parcel.

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If Grantee desires to pave additional portions of the Easement area which are not now paved, Grantee may do so at its sole cost and expense. If the event any governmental authority shall require or agree to install any traffic control device(s) or signals at the intersection of the Easement Parcel and Touhy Avenue, or shall require or agree to construct any intersection improvements there at, same shall be paid for Grantee (if required to do so) and Grantor shall have no liability for the cost thereof.

5. AS-IS CONDITION. Grantee acknowledges and agrees that Grantor has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the nature, quality or condition of the Easement Parcel; and specifically that Grantor has not made, does not make and specifically disclaims any representations regarding the environmental conditions of the Easement Parcel. Grantee further acknowledges and agrees that, having been given the opportunity to inspect the Easement Parcel, Grantee is relying solely on its own investigation of the Easement Parcel and not on any information provided or to be provided by Grantor. **Grantee further acknowledges and agrees that, as a material inducement to the execution and delivery of this Agreement by Grantor, the conveyance of the Easement as provided for herein is made on an "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS."** Grantee acknowledges, represents and warrants that Grantee is not in a significantly disparate bargaining position with respect to Grantor in connection with the transaction contemplated by this Agreement; that Grantee freely and fairly agreed to this acknowledgment as part of the negotiations for the transaction contemplated by this Agreement; that Grantee is represented by legal counsel in connection with this transaction and Grantee has conferred with such legal counsel concerning this waiver. The terms and provisions of this Section 5 shall survive the execution and delivery of this Agreement and/or the termination of hereof.

6. INDEMNITY. Except to the extent of Grantor's own negligence or willful misconduct, and to the fullest extent permitted by law, Grantee hereby agrees to indemnify, hold harmless, protect and defend Grantor and Grantor's directors, officers, agents, employees, invitees, affiliates, representatives and contractors from and against any and all claims, causes of action, liabilities, losses, costs, damages, whether foreseeable or unforeseeable, arising out of or related to any act, omission or neglect of Grantee or Grantee's beneficiaries, and their tenants, subtenants, guests, invitees, agents, employees, representatives, contractors, subcontractors or affiliates (each, a "Grantee Related Party"), arising from or related to: (i) Grantee's or any Grantee Related Party's use or other activities on or about the Easement Parcel in every and any manner whatsoever, or (ii) Grantee's or any Grantee Related Party's violation or breach of this Agreement, or (iii) any liens, fees, taxes, charges, assessments or other governmental exactions arising from or related to use or other activities of Grantee or any Grantee Related Party on or about the Easement Parcel, or (iv) fines, penalties, judgments, liens or other charges or exactions which may be or are imposed upon the Grantor or the Easement Parcel arising from or related to the failure of Grantee or any Grantee Related Party to fully comply with All Lawful Requirements, or (v) substitute performance by

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Grantor of Grantee's obligations hereunder following an Event of Default, or (vi) mechanics' or materialmen's liens or claims to liens, and other statutory or common law charges related thereto, arising from or related to any work, labor, materials or improvements made, caused to be made or permitted to be made by Grantee or any Grantee Related Party affecting the Easement Parcel. The provisions of this Section 6 shall survive termination, cancellation or expiration of this Agreement.

7. RESTORATION. Grantee shall, at its sole cost and expense and within a reasonable period of time not to exceed sixty (60) days (or such longer period of time as is reasonably necessary so long as the Grantee is acting with diligence), restore any and all portions of the Easement Parcel disturbed or damaged by the use of the Easement Parcel by Grantee or any Grantee Related Party, to substantially the same condition that existed on the Commencement Date, reasonable wear and tear excepted. The provisions of this Section 7 shall survive termination, cancellation or expiration of this Agreement.

8. REMEDIES. The parties hereto shall be entitled to specific performance of all rights granted hereby. In the event that either party fails to abide by the terms hereof, the other party shall be entitled to all applicable remedies at law or in equity, including, but not limited to, restraining orders, temporary and permanent injunctions and damages for destruction or injury to any person or property.

9. CONSTRUCTION. This instrument shall be construed in conformity with the laws of the State of Illinois and in accordance with the usage in said State of Illinois regarding easements. The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties is carried out.

10. NOTICE. For the purposes of giving notices under this Easement, Grantee's address is: 6701 North Minnehaha, Lincolnwood, Illinois 60712, Attention: Georgia Tountas with a copy to Gary L. Plotnick, Schain, Burney, Ross & Citron, Ltd., 222 North LaSalle Street, Suite 1910, Chicago, Illinois 60601 and Grantor's address is CenterPoint Properties Trust, 1808 Swift Drive, Oak Brook, Illinois 60523, Attention: Nick Sisto. Any party may lodge written notice of a change of address. All notices shall be sent by certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given when placed in the mail.

11. RUNNING OF BENEFITS. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the parties.

12. INSURANCE. Grantee shall keep and maintain liability insurance with such limits for personal injury and death and property damage as Grantor may require in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. All policies of insurance to be furnished hereunder shall be in forms and with insurance companies reasonably satisfactory to Grantor, naming Grantor as an additional insured, and

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with a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Grantor. Grantee shall deliver all policies, including additional and renewal policies, together with evidence of payment of premiums thereon, to Grantor, and in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days' prior to their respective dates of expiration.

13. SURVIVAL. If any term, provision, covenant or condition in this instrument shall be or be held to be invalid, whether in general or as to any particular situation or circumstance, the remainder of this instrument and the applicability to any other situation or circumstance, as the case may be, shall not be invalidated or terminated thereby, but shall remain in full force and effect for all intents and purposes as though such invalid term, provision, covenant or condition had never been. If any of the covenants or rights created by this instrument 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 only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent President of the United States of America.

14. NO WAIVER; COUNTER PART EXECUTION. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default. This Easement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

15. COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

16. EVENT OF DEFAULT. If Grantee is in default under this Agreement for a period of (a) ten (10) days following receipt of notice from the Grantor with respect to a default which may be cured solely by payment of money or with respect to a failure of Grantee to carry and maintain the insurance as required under Section 8 hereof, or (b) thirty (30) days following receipt of notice from Grantor with respect to a default other than as stated in the preceding clause (a) (or such longer period as is reasonably necessary to commence and complete such non-monetary cure, provided the Grantee is acting with reasonable diligence and in good faith), then, in either event, the an Event of Default shall be deemed to have occurred under this Agreement, and Grantor may pursue any and all remedies available to it against Grantee hereunder and under applicable law, including, but not limited to, the right to terminate this Agreement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]**

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IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands and seals.

GRANTOR:

**CENTERPOINT PROPERTIES TRUST**

By: 

Name: PAUL T. AHERN

Title: CHIEF INVESTMENT OFFICER

By: 

Name: Brian M. Sheehan

Title: Vice President Controller

GRANTEE:

**HARRIS TRUST AND SAVINGS BANK  
AS TRUSTEE UNDER THAT CERTAIN  
TRUST AGREEMENT DATED FEBRUARY 4, 2003  
AND KNOWN AS TRUST #HTB 1276 AND NOT PERSONALLY**

By: 

Name: Mary M. Gray, Trust Officer

Title: Mary M. Gray, Trust Officer

SEE EXHIBIT A AND B ORDER ATTACHED  
INDICATING THE SIGNATURE PARTS HEREOF

ATTEST: 

Secretary  
Secretary

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## EXCULPATORY RIDER

This instrument is executed by the Harris Trust and Savings Bank as Trustee under the provisions of a Trust Agreement dated 2/4/03, and known as Trust no. HTB 1276, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Trust and Savings Bank warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Trust and Savings Bank in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Trust and Savings Bank on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existent Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.

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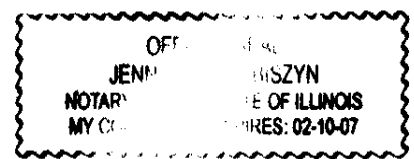
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF DUPAGE )  
 WILL

I HEREBY CERTIFY that on this 19 day of NOV, 2003, before me personally appeared Paul T. Ahrens, CIO and Brian Shelton VP CONTROLLER of CENTERPOINT PROPERTIES TRUST, and to me known to be the same person who signed the foregoing instrument as such persons' free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of such Trust.

Given under my hand and Notarial seal this \_\_\_ day of October 2003.

Notary Public: Jennifer M. Kubiszyn

My Commission expires: 2/10/07



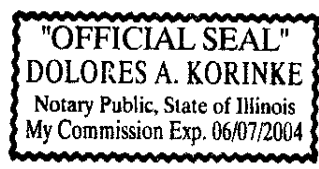
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I HEREBY CERTIFY that on this 10TH day of FEBRUARY, 2004, before me personally appeared Mary M. Bray, Trust Officer of FIRST UNION of HARRIS TRUST AND SAVINGS BANK and to me known to be the same person who signed the foregoing instrument as such persons' free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of such company.

Given under my hand and Notarial seal this 10TH day of FEBRUARY 2004 August 2003.

Notary Public: Dolores A. Korinke

My Commission expires: \_\_\_\_\_





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## EXHIBIT "A" DESCRIPTION OF SERVIENT PARCEL

LOT 12 (EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF LEHIGH AVENUE, BEING A LINE 60 FEET WESTERLY OF AND PARALLEL WITH THE WESTERLY RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD) AND LOT 13 (EXCEPT THAT PART THEREOF LYING SOUTH OF THE NORTH LINE OF THE SOUTH 340 FEET THEREOF AND EAST OF A LINE 35 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 13) ALL IN CHARLES MCDONNELL'S SUBDIVISION OF THE SOUTHEAST QUARTER OF A FRACTIONAL SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO EXCEPT THAT PART OF SAID LOTS 12 AND 13, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE EAST LINE OF SAID LOT 13 WHICH IS 340 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 13; THENCE RUNNING SOUTH 89 DEGREES 11 MINUTES 45 SECONDS WEST ON THE NORTH LINE OF SAID SOUTH 340 FEET OF LOT 13, A DISTANCE OF 254.65 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 13, A DISTANCE OF 499.37 FEET; THENCE SOUTH 90 DEGREES EAST 228.89 FEET TO A POINT OF INTERSECTION WITH THE WESTERLY LINE OF SAID LEHIGH AVENUE; THENCE SOUTH 22 DEGREES 07 MINUTES 30 SECONDS EAST ON SAID WESTERLY LINE 68.33 FEET TO ITS POINT OF INTERSECTION WITH THE EAST LINE OF SAID LOT 13; THENCE SOUTH ON SAID EAST LINE 432.50 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "B"  
DESCRIPTION OF DOMINANT PARCEL

LOT 32 IN VALENTI'S EDGEBROOK GARDENS, BEING A SUBDIVISION OF PART OF VICTORIA POTHIER'S RESERVATION & PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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## EXHIBIT "C" DESCRIPTION OF EASEMENT PARCEL

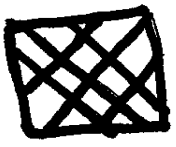
The westerly thirty-five (35) feet of the southerly three hundred (300) feet of the Servient Parcel, being a strip of land 35 feet in width (east to west) and 300 feet in length (north to south).

Property of Cook County Clerk's Office

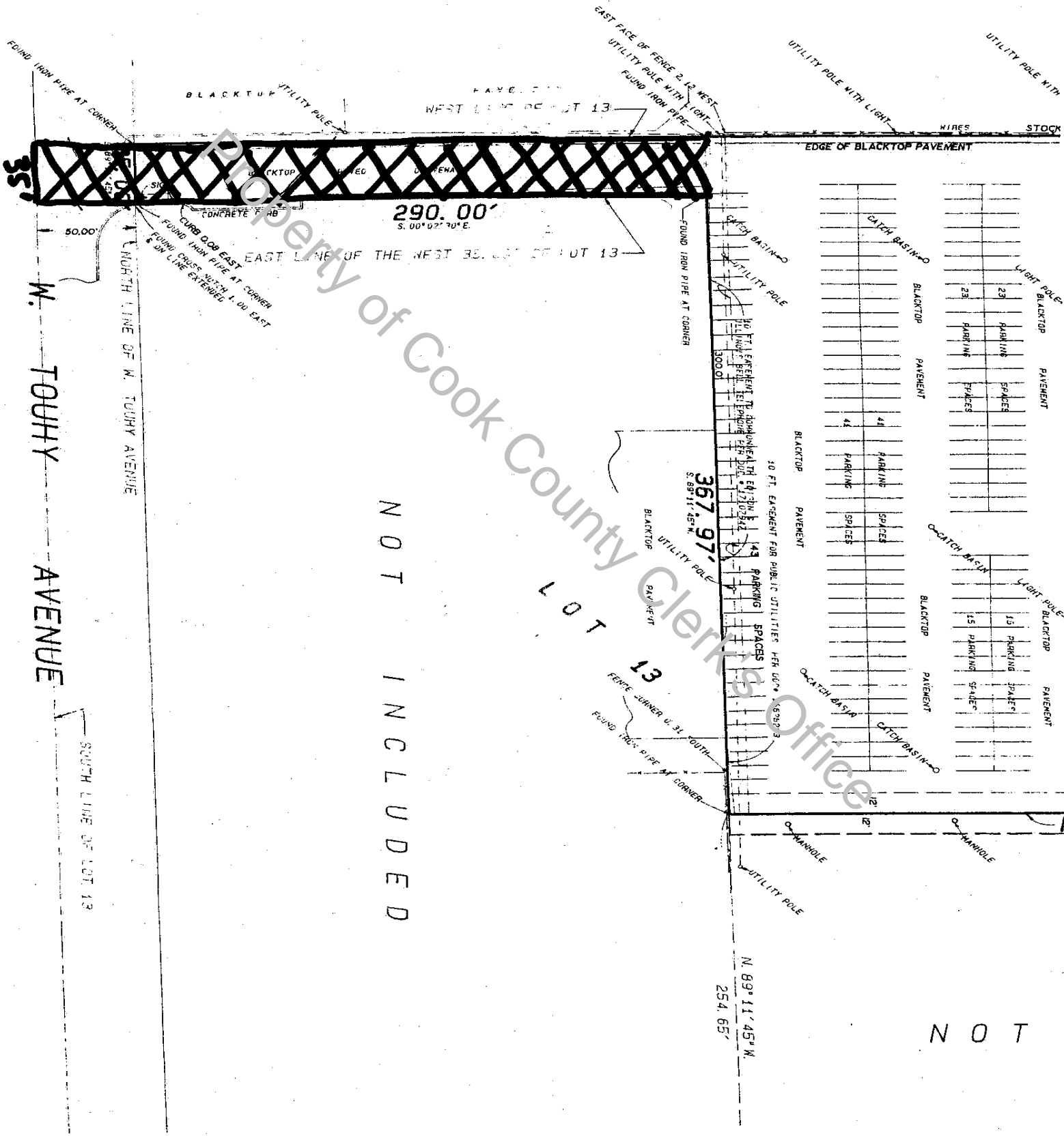
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## Exhibit "C" Page 2

**KEY:**



**Easement = Parcel**



W. TOUHY AVENUE

NORTH LINE OF W. TOUHY AVENUE

SOUTH LINE OF LOT 13

NOT INCLUDED

NOT

Property of Cook County Clerk's Office