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THIS DOCUMENT
PREPARED BY:

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HOLLAND & KNIGHT
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AFTER RECORDING
RETURN TO:

Recorder's Box 337



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Cook County Recorder of Deeds
Date: 07/08/2004 11:35 AM Pg: 1 of 14

LICENSE AGREEMENT

BETWEEN

THE VILLAGE OF NORTHBROOK

AND

GARY AND MARINA LEVITAS

FOR MAINTENANCE AND REMOVAL OF DECORATIVE PILLARS
ON PUBLIC RIGHT-OF-WAY

DATED AS OF June 4, 2004

BOX 337

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LICENSE AGREEMENT

BETWEEN THE VILLAGE OF NORTHBROOK AND GARY AND MARINA LEVITAS FOR MAINTENANCE AND REMOVAL OF DECORATIVE PILLARS ON PUBLIC RIGHT-OF-WAY

THIS LICENSE AGREEMENT ("**Agreement**") is dated as of this 4th day of June, 2004, by and between the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation ("**Village**"), and GARY and MARINA LEVITAS, ("**Owner**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule powers, the parties agree as follows:

SECTION 1. RECITALS.

A. Owner is the legal title owner of certain real estate commonly known as 3610 Maple Avenue, Northbrook, Illinois, and legally described in **Exhibit A** attached to this Agreement ("**Subject Property**").

B. Sections 22-2 and 22-5 of the Northbrook Municipal Code (1988), as amended, prohibit the construction or installation of any structure or obstruction of any kind in the public rights-of-way without the prior consent of the Village.

C. Owner has installed six decorative pillars located on various portions of the public rights-of-way adjacent to the Subject Property.

D. Owner desires to retain four of the existing decorative pillars located on the Arbor Lane right-of-way adjacent to the Subject Property.

E. Owner agrees to remove two of the existing decorative pillars located on the Maple Avenue right-of-way adjacent to the Subject Property.

F. The Village and Owner have determined it is in their respective best interests to enter into an agreement whereby the Village will grant Owner a license to retain the four existing decorative pillars located on the Arbor Lane portion of the Subject Property.

SECTION 2. GRANT OF LICENSE.

In consideration of the obligations and promises set forth in this Agreement, the Village shall, and does hereby, grant to Owner a non-exclusive license to maintain the four existing decorative pillars ("**Remaining Pillars**") located on the right-of-way of Arbor Lane adjacent to the Subject Property ("**Licensed Premises**"), all as depicted in the photographs in **Exhibit B** attached to this Agreement.

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SECTION 3. OWNER'S RESPONSIBILITIES.

A. Removal. Owner shall, at his sole cost and expense, remove the two existing pillars located on the Maple Avenue right-of-way adjacent to the Subject Property within 30 days after the date of this Agreement.

B. Maintenance. Owner shall, and is hereby authorized to, at his sole cost and expense, manage, maintain, and keep in good repair the Licensed Premises and the Remaining Pillars in a safe, clean and slightly condition in compliance with all applicable laws, statutes, ordinance, and regulations. The Owner shall not alter, change, or modify the Licensed Premises or the Remaining Pillars without the prior written consent of the Village.

C. Inspection. Owner acknowledges and agrees to permit the Village to inspect the Licensed Premises and the Remaining Pillars at any time, for any public purpose.

D. Costs. Owner acknowledges and agrees that the Licensed Premises and the Remaining Pillars shall be repaired and maintained solely by Owner at Owner's sole cost and expense, and shall be kept by Owner in a safe condition without hazards at all times. Owner understands, acknowledges, and agrees that the Village assumes absolutely no responsibility for, or liability arising from, the construction, installation, care, operation, maintenance, repair, or replacement of any portion of the Licensed Premises and the Remaining Pillars.

E. No Interference. Owners understands and agrees that the maintenance and existence of the Licensed Premises within the public right-of-way shall not, in any way, interfere with the right of the Village, its contractors, or public utilities to excavate therein for any maintenance activity, construction operation, repair, or installation of any public facilities, public utilities, public improvements, or for any other necessary public purpose.

F. Future Work. Owner understands and agrees that the Village will not, under any circumstance, repair or replace any portion of Remaining Pillars that might be subsequently damaged or removed by any work, maintenance activity, construction operation, repair or installation of any public facility, public utility, public improvement, or for any other necessary public purpose.

SECTION 4. TERM AND TERMINATION.

A. Term. This Agreement shall be for an indefinite term ("**Term**") commencing as of the date of this Agreement until the occurrence of a terminating event as described in Section 4.B of this Agreement. At the conclusion of the Term, the Village may require any such alterations, improvements, or additions made Owner, if not removed prior to the end of the license term, to be removed by Owner at its sole cost and expense.

B. Termination. This Agreement shall automatically terminate and expire after Owner has (i) received notice of the its failure to comply, and (ii) had reasonable time in which to come into compliance, with the terms and conditions of this Agreement. The Village reserves the right to terminate this Agreement in the event that the Village ever performs, or causes to be performed, reconstruction of the Arbor Lane right-of-way adjacent to the Subject Property.

C. Perpetual Nature. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or

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some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rule imposing time limits, then such provisions shall continue only until 21 years after the death of the survivor of the now living lawful descendants of the current Governor of the State of Illinois as of the date of this Agreement.

SECTION 6. RESERVED RIGHTS.

The Village shall have the right to grant other licenses over, along, upon, under or across the Licensed Premises. The Village is not required to exercise the rights granted herein except as it shall determine to be in its best interest. Failure by the Village to exercise any right herein granted shall not be construed as a waiver of that right or any other right. Nothing herein shall be deemed or construed to constitute a dedication of any real property to the Village.

SECTION 7. NO EASEMENT OR PRESCRIPTIVE RIGHTS.

Owner does hereby acknowledge and agree that its use of the Licensed Premises is pursuant to this revocable license and shall not be deemed to give rise to any form of easement. Owner does hereby further acknowledge, and agree, that no prescriptive rights have arisen prior to the date of this Agreement nor shall any prescriptive rights be deemed to arise out of this Agreement.

SECTION 8. FURTHER ASSURANCES.

Owner hereby represents and warrants that it shall take all necessary action so that the Licensed Premises shall remain free and clear of any and all liens, including, without limitation, those arising out of work performed, materials furnished, or obligations secured by, Owner, and shall execute all such documents as may be reasonably necessary to protect the Village's right, title, and interest in the Licensed Premises.

SECTION 9. INDEMNIFICATION.

Owner shall, and does hereby, hold harmless and indemnify the Village, its corporate authorities, and all of the Village's elected or appointed officials, officers, employees, boards, commissions, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with the development, construction, maintenance, or use of the Licensed Premises or the Remaining Pillars. Owner shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced above.

SECTION 10. ENFORCEMENT.

Owner recognizes and agrees that the Village has a valid interest in ensuring that this Agreement is properly adhered to and therefore does hereby grant the Village the right to enforce this Agreement by any proceeding at law or in equity against any person or persons attempting to violate any provision contained herein, either to restrain violations, to compel affirmative action, or to recover damages.

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SECTION 11. RECORDATION.

This Agreement shall be recorded with the Recorder of Deeds of Cook County, Illinois, and all contracts and deeds of conveyance relating to the Subject Property, or any part thereof, shall be subject to the provisions of this Agreement. In addition to the fees provided for in Section 12 below, the Owner agrees to pay the fee for the recordation of this Agreement.

SECTION 12. PAYMENT OF VILLAGE FEES AND COSTS.

In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, Owner shall pay to the Village, immediately upon presentation of a written demand therefor, all legal, engineering and other consulting or administrative fees, costs and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement, in an amount not to exceed \$1,000.

SECTION 13. GENERAL PROVISIONS.

A. Notice. All notices and other communications in connection with this Agreement shall be in writing, shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, and shall be sent certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

Notices and communications to Village shall be addressed to, and delivered at, the following address:

Village of Northbrook
1225 Cedar Lane
Northbrook, IL 60062
ATTN: John M. Novinson, Village Manager

With a copy to:

Steven M. Elrod, Esq.
Holland & Knight
131 South Dearborn, 30th Floor
Chicago, IL 60603

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

Gary and Marina Levitas
3610 Maple Avenue
Northbrook, Illinois 60062

B. Non-Waiver. Neither the Village nor Owner shall be under any obligation to exercise any of the rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or Owner to exercise at any time any

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such rights shall not be deemed or construed as a waiver thereof, nor shall such failure void or affect the Village's or Owner's right to enforce such rights or any other rights.

C. Non-Severability. It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property be held invalid by a court of competent jurisdiction, then the entire Agreement shall be invalid and of no further force and effect.

D. Entire Agreement. This Agreement shall constitute the entire agreement of the parties concerning the Licensed Premises; all prior agreements between the parties, whether written or oral, are merged in this Agreement and shall be of no force and effect.

E. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.

F. Exhibits. Exhibits A and B attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

G. Amendments and Modifications. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective until such change is reduced to writing and executed and properly approved by the parties at the time such modification is intended to be effective, pursuant to all applicable statutory procedures.

H. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

I. No Third Party Beneficiaries. Except as expressly provided for in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or Owner.

J. Governing Law and Enforceability. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Illinois. This Agreement shall be enforceable in the Circuit Court of Cook County by each of the parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, and obligations contained herein, by mandamus, specific performance, injunction, or otherwise, for a breach of this Agreement.

K. Authority. Each undersigned representative warrants that he or she is duly authorized to execute this Agreement, that all conditions precedent to the making of this Agreement have been fulfilled, and that it is the intention of the party upon whose behalf he or she is signing to be bound hereby.

L. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit or describe the scope or intent of this Agreement or the intent of any provision hereof.

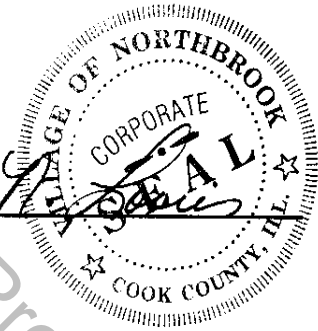
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IN WITNESS WHEREOF, the parties hereto have executed or have caused this instrument to be executed by their proper officers duly authorized to execute the same.

ATTEST:

VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation

Lona A. Lewis
 Village Clerk



By: *[Signature]*
 Its: Village Manager

WITNESS:

OWNER

By: *[Signature]*
 Gary Levitas

WITNESS:

By: *[Signature]*
 Marina Levitas

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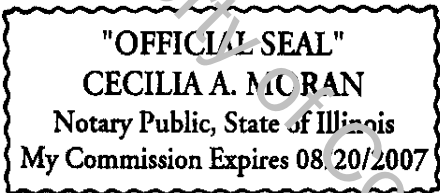
ACKNOWLEDGEMENTS

VILLAGE OF NORTHBROOK

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The foregoing instrument was acknowledged before me on July 2nd, 2004, by John M. Novinson, the Village Manager of the **VILLAGE OF NORTHBROOK**, an Illinois municipal corporation, and by Lona N. Louis, the Village Clerk of said municipal corporation.

SEAL



Cecilia A. Moran
Signature of Notary

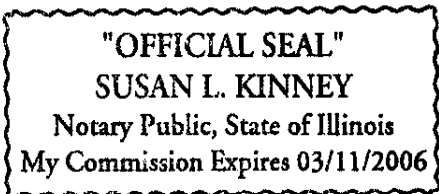
My Commission expires: _____

OWNER

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

The foregoing instrument was acknowledged before me on July 1st, 2004, by Gary Levitas and Marina Levitas, known to me to be the identical persons who signed the foregoing instrument, and that they executed the same as their free and voluntary acts, for the uses and purposes therein mentioned.

SEAL



Susan L. Kinney
Signature of Notary

My Commission expires: 3/11/2006

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EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

Lot 28 in Block 1 in Arthur T. McIntosh and Company's Mission Hill Estates, being a subdivision of the South 1/2 of the Southeast 1/4 and that part of the South 1/2 of the Southwest 1/4 which lies east of Sanders Road of Section 7, Township 42 North, Range 12 East of the third principal meridian, according to the plat thereof recorded as Document 1282197 in Cook County, Illinois.

Commonly known as 3610 Maple Avenue, Northbrook, IL 60062.

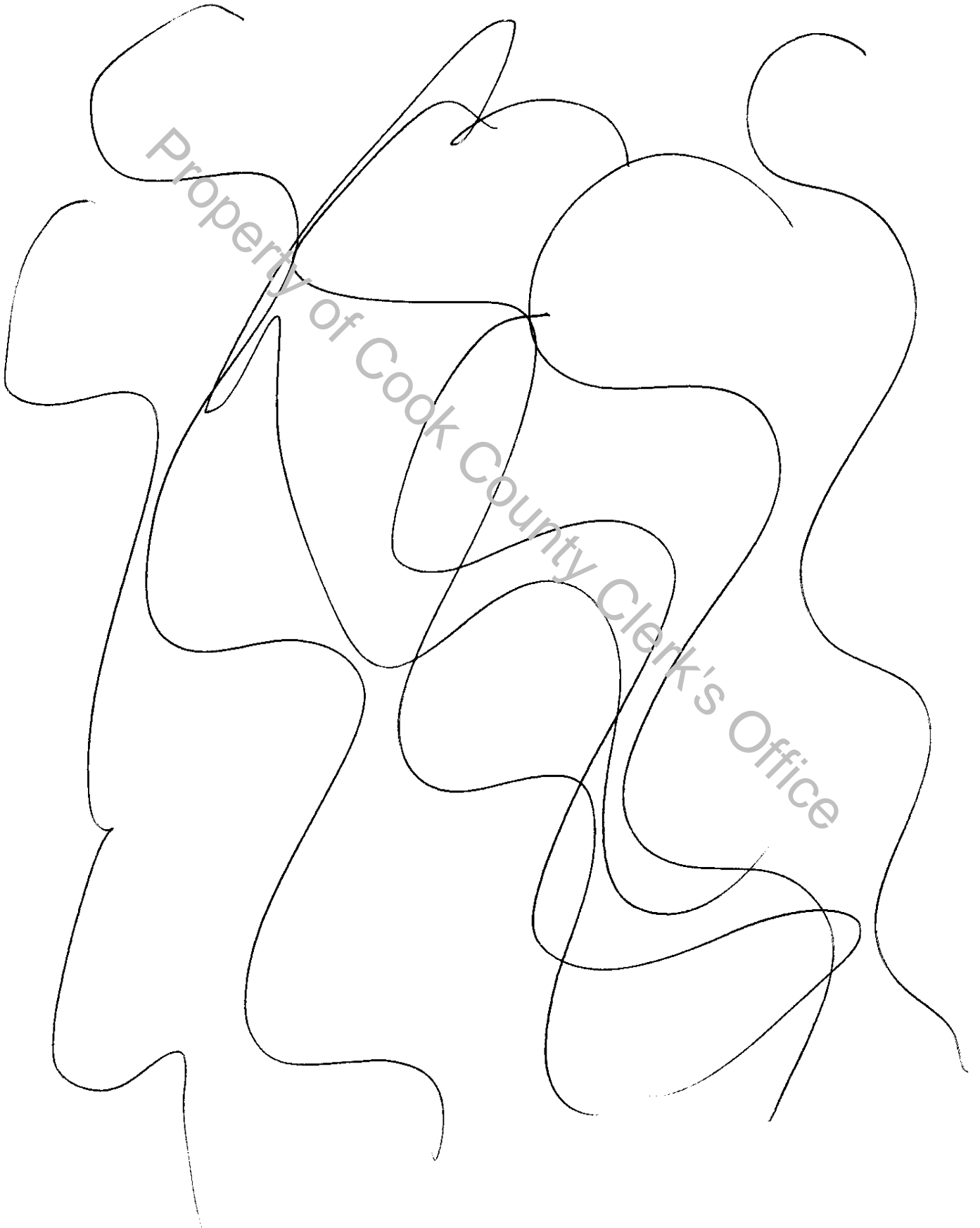
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Property of Cook County Clerk's Office

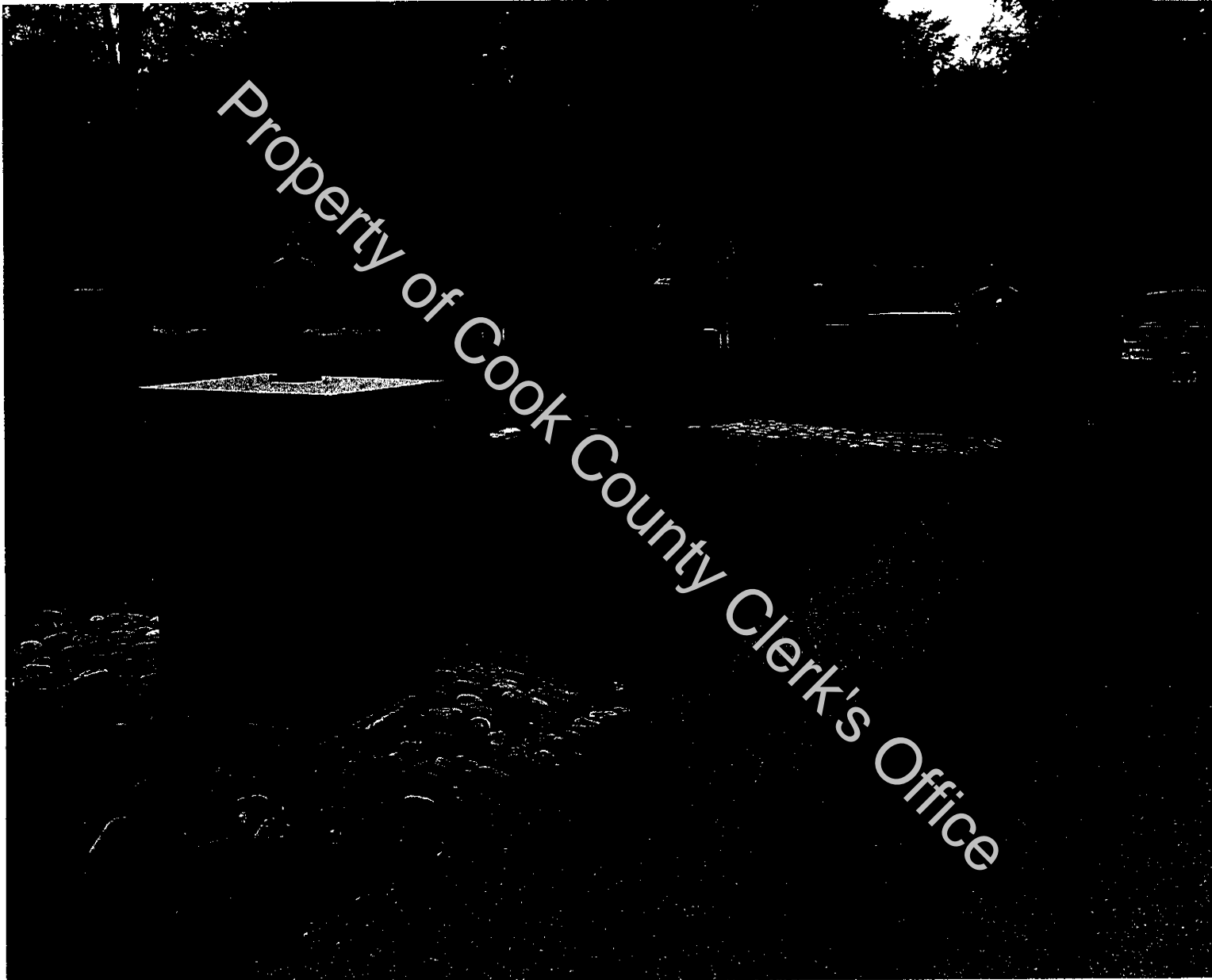
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EXHIBIT B

DEPICTION OF EXISTING PILLARS LOCATED ON ARBOR LANE



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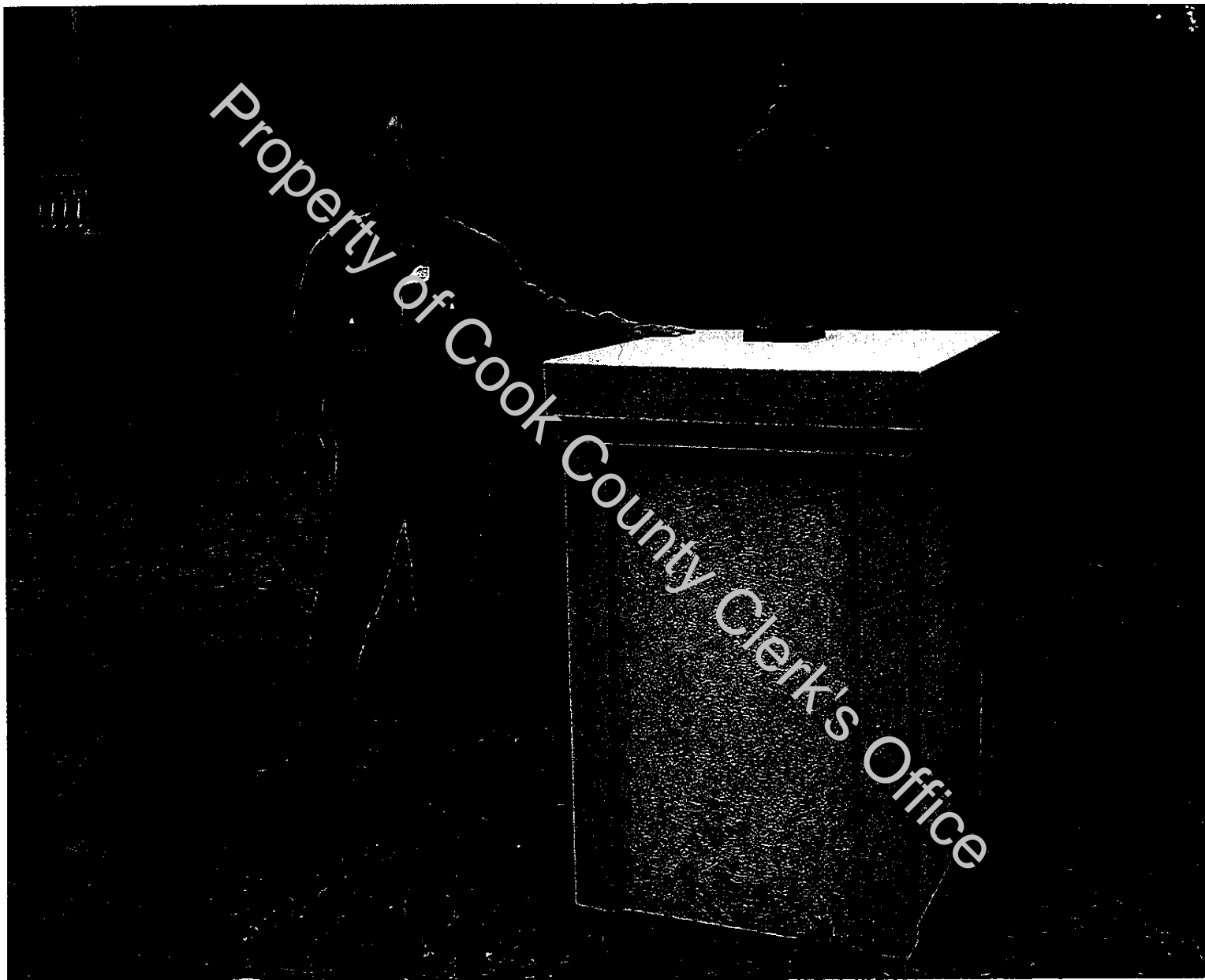


EXHIBIT B

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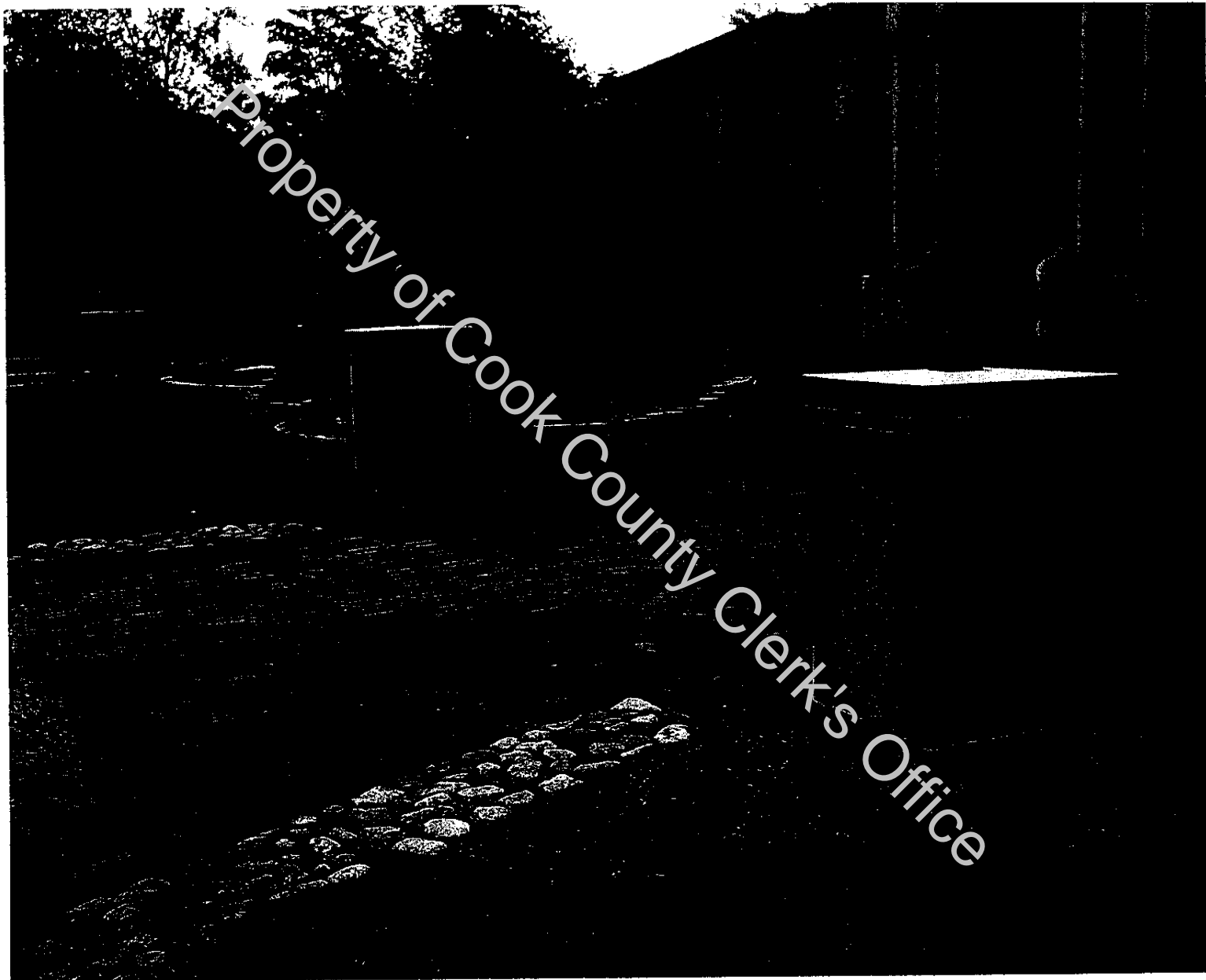


EXHIBIT B

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RESOLUTION NO. 04-R-69

For a variety of valid reasons, the Village has not permitted masonry type mailboxes or decorative pillar/monument type structures to be constructed or maintained within public right-of-way since 1979. From time to time this matter has been revisited and reaffirmed by the Village Board. It is estimated that 20-30 illegal structures have been removed in the past 25-years. The Village's right to aggressively control it's rights-of-way from encroachments and to prohibit the construction and maintenance of such monuments has been upheld in the Circuit Court.

During September, 2002, Development and Public Works staff became aware of the existence of six illegal pillar-like monument structures, all with electric lights and one with an integral mailbox, situated within public right-of-way of a corner lot with a newer home at 3610 Maple. Four of the structures are located on Arbor and two on Maple. The right-of-way on Arbor is unusual in that it is 100-feet, compared to the normal 60 or 66-feet found in most residential areas. The pillar structures within the Arbor right-of-way are actually located about 10-feet off of the edge of pavement, while the two pillars on Maple, are adjacent to the edge of pavement and constitute a potential hazard.

The owner, Gary Levitas, was put on notice that the illegal structures would have to be promptly relocated or removed. The matter lingered and additional correspondence ensued during May, 2003. The owner appealed the demand to remove to the Village Manager in June, 2003. After extensive internal discussion on this matter, Director of Public Works Reynolds worked patiently with Village Attorney Elrod and Steven M. Harris, the owner's attorney, to structure a draft License Agreement permitting the four pillars on Arbor Lane to remain with the understanding that the two pillars along the Maple frontage must be removed. Further, the owner agreed to pay legal fees for drafting of the documents. After further delays in finalizing the matter, a mutually acceptable compromise agreement, with a check for reimbursement for the negotiated legal fees, was received on or about June 8, 2004. Staff recommends approval and recordation of the License Agreement.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois, THAT:

Section 1.

The "License Agreement between The Village of Northbrook and Gary and Marina Levitas for Maintenance and Removal of Decorative Pillars on Public Right-of-Way", signed and dated June 4th, 2004, by Gary and Marina Levitas, is hereby approved.

<u>PASSED:</u>	This 22nd day of June, 2004.
<u>AYES:</u>	(6) Trustees Jaeger, Frum, Karagianis, Donewald, Meek, and President Damisch
<u>NAYS:</u>	(0)
<u>ABSENT</u>	(1) Trustee Buehler
<u>ABSTAIN</u>	(0)

/s/ Mark W. Damisch
Village President

ATTEST:

/s/ Lona N. Louis
Village Clerk

I hereby certify this to be a true and correct copy of the original
7/6/04
Date Lona N. Louis
Village Clerk

