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Cook County Recorder

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

P. ANDREW FLEMING,)
)
Plaintiff,)
)
v.) No. 96 CH 2008
)
KEVIN MICHAEL LUTHRINGSHAUSEN,)
JACQUELINE RENE LUTHRINGSHAUSEN,)
STUART KIPNES and UNKNOWN OWNERS,)
)
Defendants.)

NOTICE OF FILING OF MEMORANDUM OF JUDGMENT

Attached hereto is the December 3, 1997 Memorandum of Judgment ("Judgment") in the above-captioned case. The Judgment affects the following described property:

2603 N. Greenview, Chicago, IL 60614
Permanent Index Number: 14-29-302-166

2611-A N. Greenview, Chicago, IL 60614 ✓
Permanent Index Number: 14-29-302-247-0000 ✓

P. ANDREW FLEMING

By: P. Andrew Fleming
One Of His Attorneys

P. Andrew Fleming
NOVACK and MACEY
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Suite 1500
Chicago, Illinois 60606
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

P. ANDREW FLEMING,)

Plaintiff,)

v.)

No. 96 CH 2008

KEVIN MICHAEL LUTHRINGSHAUSEN,)

JACQUELINE RENE LUTHRINGSHAUSEN,)

STUART KIPNES and UNKNOWN OWNERS,)

Defendants.)

MEMORANDUM OF JUDGMENT

THIS CAUSE coming on to be heard on Plaintiff's Motion for Summary Judgment on Counts I and II of the First Amended Complaint, Plaintiff and counsel for Defendant Stuart Kipnes ("Kipnes") having appeared before the Court, the Court having considered the memoranda filed by Plaintiff, the Court having been advised that Kipnes has voluntarily withdrawn his opposition to the Motion for Summary Judgment, and the Court being otherwise duly advised in the premises, the Court hereby makes the following findings of fact and/or conclusions of law:

A. The Embassy Club is a housing development consisting of more than one hundred townhouses and single family homes. It is located in the DePaul neighborhood of Chicago and is bordered by the streets of Greenview Avenue, Wrightwood Avenue and Southport Avenue. The Embassy Club was beneficially owned and/or developed by VMS/MCL Venture ("MCL") which was the common owner of the properties located at 2611-A N. Greenview and 2603 N. Greenview prior to the severance of title. At all times material herein, Embassy Club Development Corporation was the authorized agent of the common owner of the Embassy Club prior to its

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development and severance of title through the sale of individual townhouses to various individuals.

B. On March 1, 1991, Kevin Michael Luthringshausen and Jacqueline Rene Luthringshausen, (collectively referred to herein as "the Luthringshausens") entered into a Real Estate Purchase Contract (the "Real Estate Contract") with Embassy Club Development to purchase the following described property:

the real estate located at 2611 N. Greenview A, Chicago, Illinois (the "Parcel") and improvements thereon (collectively, the "Property") legally described as: Lot 7 in the Embassy Club Resubdivision Unit 4 of part of the West Half of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

C. Pursuant to paragraph 12 of the Real Estate Contract, the Luthringshausens and Embassy Club Development agreed, among other things, that:

12. [o]n the Closing Date, Seller shall deliver to Buyer a copy of the survey of the Property.

* * *

Such survey shall delineate all utility easements and any encroachments, private streets, private easements or public rights of way.

D. In April 1991, a plat of survey (the "April 1991 Survey") was prepared for Lot 7 (the property at 2611-A N. Greenview) which disclosed that the two parking spaces described below ("Parking Space No. 1" and "Parking Space No. 2") had been created pursuant to easement by the owner of the Embassy Club. The foregoing parking spaces are legally described as follows:

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Parking Space No. 1:

The South 4.5 feet of the West 20.0 feet of Lot 7 in Embassy Club Resubdivision Unit Four of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian.

ALSO

That part of Lot 46 in Embassy Club Resubdivision Unit Two of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: beginning at the Southwest corner of Lot 7 in Embassy Club Resubdivision Unit Four aforesaid; Thence South along the Southerly extension of the West line of Lot 7 aforesaid 4.5 feet; Thence East parallel with the South line of lot 7 for a distance of 20.0 feet; Thence North parallel with the West line of Lot 7 for a distance of 4.5 feet to the South line of Lot 7; Thence West along said South line 20.0 feet to the point of beginning, in Cook County, Illinois.

Parking Space No. 2:

The South 4.5 feet of the East 20.0 feet of the West 40.0 feet of Lot 7 in Embassy Club Resubdivision Unit Four of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian,

ALSO

That part of Lot 46 in Embassy Club Resubdivision Unit Two of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: commencing at the Southwest corner of Lot 7 in Embassy Club Resubdivision Unit Four aforesaid; Thence South along the Southerly extension of the West line of Lot 7 aforesaid 4.5 feet; Thence East parallel with the South line of Lot 7 for a distance of 20.0 feet to the point of beginning; Thence North parallel with the West line of Lot 7 for a distance of 4.5 feet to the South line of Lot 7; Thence East along said South line 20.0 feet; Thence South parallel with the West line of Lot 7 for a distance of 4.5 feet; Thence West 20.0 feet to the point of beginning, in Cook County, Illinois.

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E. On May 5, 1991, the owner of the Embassy Club executed a Declaration of Easements (the "Declaration of Easements") granting to the owners of 2603 N. Greenview (their heirs, legal representatives, successors and assigns) an express easement to Parking Space No. 1 for the purpose of parking one automobile. On December 18, 1991, the Declaration of Easements was recorded as Document No. 91663879.

F. On May 15, 1991, the Luthringshausens purchased the property located at 2611-A North Greenview. Prior to the closing and pursuant to Paragraph 12 of the Real Estate Contract, the Luthringshausens were provided with the April 1991 Survey which delineated the easements which existed with respect to Parking Space No. 1.

G. At the time of closing, the Luthringshausens were provided with a deed (the "2611-A N. Greenview Deed") which was subsequently recorded as Document No. 91258683. Pursuant to the 2611-A N. Greenview Deed, the legal description of 2611-A N. Greenview is described as follows:

PARCEL 1: LOT 7. IN EMBASSY CLUB RESUBDIVISION UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2: EASEMENT APPURTENANT TO AND FOR BENEFIT OF PARCEL 1 AS SET FORTH IN DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDED OCTOBER 11, 1988 AS DOCUMENT 88465484 AND AS CREATED IN THE DEED FROM LASALLE NATIONAL BANK, A NATIONAL BANK ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 22, 1987 AND KNOWN AS TRUST NUMBER 112654

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H. On December 30, 1991, plaintiff purchased a townhouse at the Embassy Club located at 2603 North Greenview ("2603 N. Greenview") from MCL. At the time of closing, Plaintiff was provided with a deed (the "2603 N. Greenview Deed") which was subsequently recorded as Document No. 91696533.

I. Pursuant to the 2603 N. Greenview Deed, the legal description of 2603 N. Greenview is described, in part, as follows:

PARCEL 1: LOT 6 IN EMBASSY CLUB RESUBDIVISION UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE WEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Real Estate Index Number : 14-29-302-166 ✓

J. At the time that the properties in the Embassy Club were being developed, each townhouse at the Embassy Club was built on the basis that it would have at least two parking spaces (at least one interior parking space and where necessary, one exterior parking space). With respect to the interior parking space, each townhouse in the Embassy Club was constructed with an indoor parking garage able to accommodate at least one car. With respect to the exterior parking space, each townhouse having only one indoor parking space was constructed with a driveway which provided an exterior parking space, with the exception of the following four properties:

- 2611-A North Greenview;
- 2603 North Greenview;
- 2611-H North Greenview; and
- 2633 North Greenview.

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K. With respect to these four properties, the driveways that were constructed were, and are, insufficient to accommodate an exterior parking space. Thus, the driveway to 2611-A N. Greenview is insufficient and not large enough to permit the parking of an automobile. Accordingly, to allow the owners of the four properties identified in Paragraph J above the right to an exterior parking space, as of January 1991, the internal streets in the Embassy Club were designed and constructed by MCL to allow for two exterior parking spaces adjacent to each of the properties located at 2611-A and 2611-H North Greenview.

L. Parking Space No. 1 was designed and constructed for the use and beneficial enjoyment of the owner of 2603 N. Greenview. Parking Space No. 2 was designed and constructed for the use and beneficial enjoyment of the owner of 2611-A N. Greenview.

M. In addition to the foregoing, prior to the severance of title by the common owner of the land upon which the Embassy Club was developed, the design, construction and use by MCL of the exterior parking spaces adjacent to 2611-A N. Greenview in the manner described in Paragraphs K and L above, which design, construction and use has given rise to the Implied Easement identified in Paragraph 4 below, was continuous, obvious and manifestly permanent. Moreover, in designing and constructing the internal streets in the Embassy Club in the manner described in Paragraphs K and L above, MCL arranged it so that the owner of 2603 N. Greenview would benefit from the use of Parking Space No. 1, which benefit is, and has been, of an apparent, open and visible character and is, and has been, reasonably necessary to the fair enjoyment of 2603 N. Greenview.

N. In March 1996, Kipnes purchased 2611-A N. Greenview with actual knowledge of the Declaration of Easements, this lawsuit and the express easement described in Paragraph 2

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below and the Implied Easement described in Paragraph 4 below. Since March 1996, Kipnes has regularly parked an automobile in Parking Space No. 1 and has encouraged and permitted the residents of 2601-C N. Greenview to regularly park an automobile in Parking Space No. 2.

In consideration of the foregoing findings of fact and conclusion of law, Now Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Summary judgment is hereby granted in favor of Plaintiff P. Andrew Fleming and against Defendant Stuart Kipnes on Count I of the First Amended Complaint.

2. The Court hereby declares that the Declaration of Easements (identified in Paragraph E above) is valid and enforceable and since May 5, 1991 has been continuously in full force and effect. Pursuant thereto, among other things, an express easement with respect to Parking Space No. 1 exists, such easement being for the benefit of the owners, their heirs, legal representatives, successors and assigns, of the property commonly known as 2603 N. Greenview, Chicago, Illinois and legally described, in part, as follows:

PARCEL 1: LOT 6 IN EMBASSY CLUB RESUBDIVISION
UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE
WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29,
TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

for the purpose of parking one (1) automobile. Pursuant to the Declaration of Easements, among other things, an express easement with respect to Parking Space No. 2 exists, such easement being for the benefit of the owners, their heirs, legal representatives, successors and assigns, of the property commonly known as 2611-A N. Greenview, Chicago, Illinois and legally described, in part, as follows:

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PARCEL 1: LOT 7, IN EMBASSY CLUB RESUBDIVISION UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE WEST ½ OF THE SOUTH WEST ¼ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

for the purpose of parking one (1) automobile. Further, pursuant to the Declaration of Easements, express easements exist with respect to Parking Space Nos. 3 and 4, as more particularly described in the Declaration of Easements.

3. Summary judgment is hereby granted in favor of Plaintiff P. Andrew Fleming and against Defendant Stuart Kipnes on Count II of the First Amended Complaint.

4. The Court hereby declares that an implied easement (the "Implied Easement") exists granting a perpetual, exclusive easement with respect to Parking Space No. 1, such easement being for the benefit of the owners, their heirs, legal representatives, successors and assigns, of the property commonly known as 2603 N. Greenview, Chicago, Illinois and legally described, in part, as follows:

PARCEL 1: LOT 6 IN EMBASSY CLUB RESUBDIVISION UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

for the purpose of parking one (1) automobile. The Implied Easement identified in this paragraph is valid and enforceable and since January 1991 has been continuously in full force and effect. Plaintiff shall have the right to record this Memorandum of Judgment finding the existence of the Implied Easement.

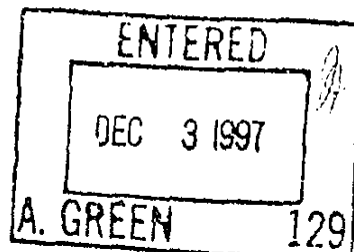
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5. The Court hereby declares that the plat of survey for Lot 7 (the property at 2611-A N. Greenview) has indicated that the land described therein includes the express easement (identified in Paragraph 2 above) and shall hereafter indicate that the land described therein includes the express easement (identified in Paragraph 2 above) and the Implied Easement (identified in Paragraph 4 above). A copy of the plat of survey for Lot 7 is attached hereto as Exhibit A. The Court further declares that the plat of survey for Lot 6 (the property at 2603 N. Greenview) has indicated that the land described therein includes the express easement (identified in Paragraph 2 above) and shall hereafter indicate that the land described therein includes the express easement (identified in Paragraph 2 above) and the Implied Easement (identified in Paragraph 4 above). A copy of the plat of survey for Lot 6 is attached hereto as Exhibit B. The surveys for Lots 6 and 7 shall be amended pursuant to the terms of this Memorandum of Judgment.

6. By reason of the foregoing, Kipnes and his heirs, legal representatives, successors, assigns and agents are hereby permanently enjoined and restrained from interfering with Plaintiff's use and enjoyment of Parking Space No. 1.

7. Pursuant to Rule 304(a) of the Rules of the Supreme Court of Illinois, there is no just reason for delaying enforcement or appeal of this judgment; Kipnes waives any right to appeal from this judgment.



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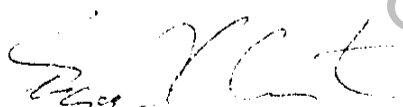
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ENTER:

Honorable Albert Green

P. Andrew Fleming
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(312) 419-6900
Attorney I.D. No. 91731
#38268

APPROVED AS TO FORM
AND SUBSTANCE:



Gregory J. Claricoates
Assistant Counsel Claims Dept.
Chicago Title Insurance Company
171 North Clark Street, Ste 0800
Chicago, Illinois 60601
Attorney I.D. No. 11252
Attorney for Stuart Kipnes

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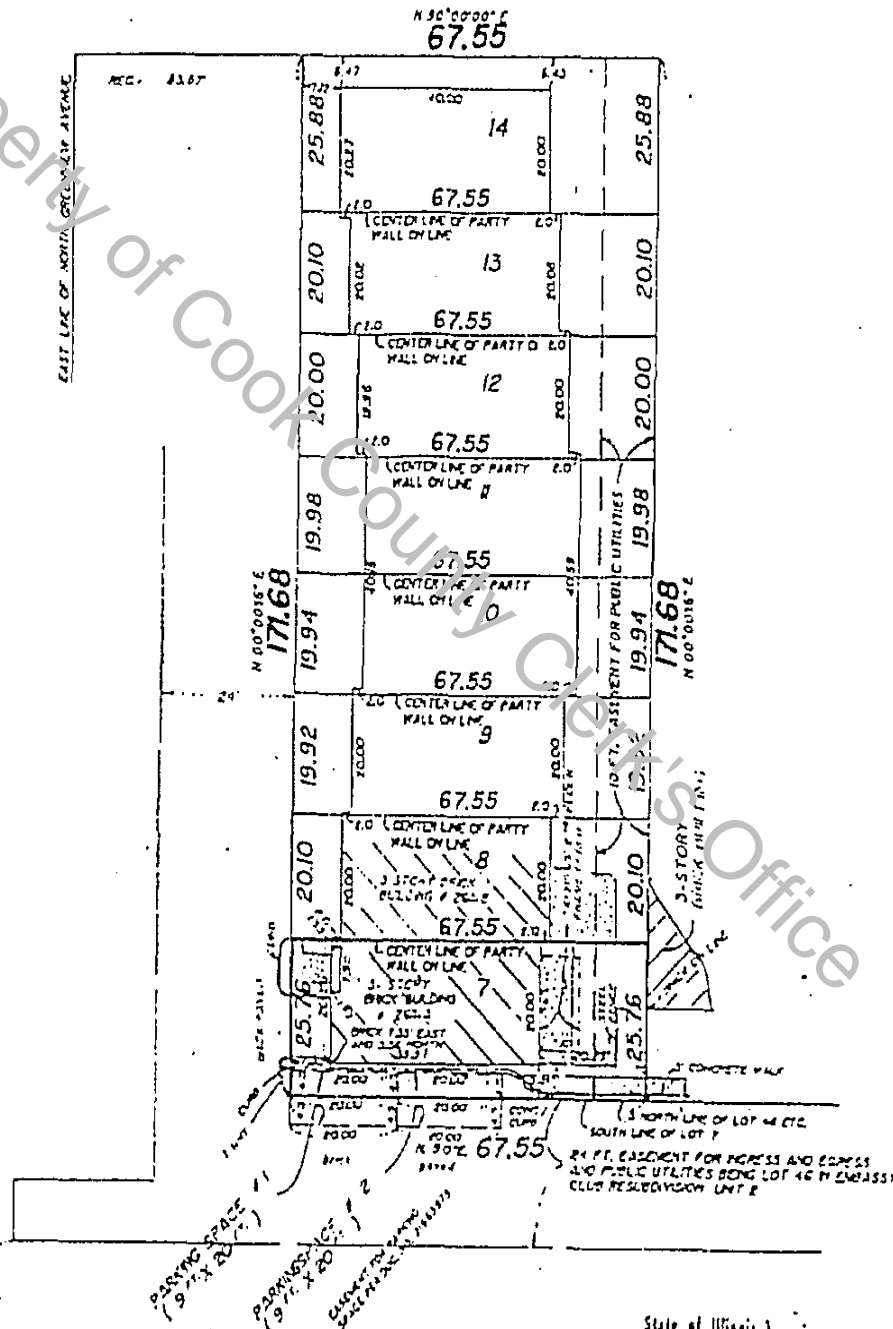
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PLAT OF SURVEY
GREMLEY & BIEDERMANN INC.

LOT 7 IN EMBASSY CLUB RESUBDIVISION UNIT FOUR OF PART OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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REVISED 2/12/97 NO. 97493
RECERTIFIED FOR RCO JACGBS
3/12/96 NO. 96372
RECERTIFIED NOVEMBER 22, 1994 BY R. W. L. W.

PAGE 1 OF 2

ADDED 2 PARKING SPACES APRIL 10, 1991 BY R. W. L. W.
ACC. NO. 4448, 3.00' X 20.00' X 20.00'

PARKING SPACE #1
(9 FT. X 20 FT.)
PARKING SPACE #2
(9 FT. X 20 FT.)
UNIMPROVED PAVED DRIVEWAY
UNIMPROVED PAVED DRIVEWAY



State of Illinois)
County of Cook)

We, GREMLEY & BIEDERMANN, INC. hereby certify that we have surveyed the above described property and that the plat herein shown is a correct representation of said survey as recited to a WILLIAM J. BIEDERMANN of Cook County, Illinois.

Order No. 901464

Scale 1 inch = 20 feet

Date MARCH 5, 1990

Owner _____

Ordered by M. C. L.

DISTANCES ARE MARKED IN FEET AND DECIMAL PARTS THEREOF. COMPARE ALL POINTS BEFORE BUILDING BY SAME AND AT ONCE REPORT ANY DIFFERENCES BEFORE DAMAGE IS DONE.
FOR EASEMENTS, BUILDING LINES AND OTHER RESTRICTIONS NOT SHOWN ON SURVEY PLAT REFER TO YOUR ABSTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL BUILDING LINE REGULATIONS.
NO DIMENSIONS SHALL BE ASSUMED BY SCALE MEASUREMENT UPON THIS PLAT.
© GREMLEY & BIEDERMANN, INC. 1988 ALL RIGHTS RESERVED

RECERTIFIED NOV. 22, 1994
RECERTIFIED 3/12/96
REG. ILL. Land Surveyors

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PLAT OF SURVEY
GREMLEY & BIEDERMAN INC.



Parking Space 1: The South 4.5 feet of the East 20.0 feet of Lot 7 in Embassy Club Resubdivision Unit 4 of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian.

ALSO:

That part of Lot 46 in Embassy Club Resubdivision Unit 2 of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: beginning at the Southwest corner of Lot 7 in Embassy Club Resubdivision Unit 4 aforesaid; Thence South along the southerly extension of the West line of Lot 7 aforesaid 4.5 feet; Thence East parallel with the South line of Lot 7 for a distance of 20.0 feet; Thence North parallel with the West line of Lot 7 for a distance of 4.5 feet to the South line of Lot 7; Thence West along said South line 20.0 feet to the point of beginning, in Cook County, Illinois.

Parking Space 2: The South 4.5 feet of the East 20.0 feet of the West 40.0 feet of Lot 7 in Embassy Club Resubdivision Unit 4 of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian.

ALSO:

That part of Lot 46 in Embassy Club Resubdivision Unit 2 of part of the Southwest Quarter of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: commencing at the Southwest corner of Lot 7 in Embassy Club Resubdivision Unit 4 aforesaid; Thence South along the southerly extension of the West line of Lot 7 aforesaid 4.5 feet; Thence East parallel with the South line of Lot 7 for a distance of 20.0 feet to the point of beginning; Thence North parallel with the West line of Lot 7 for a distance of 4.5 feet to the South line of Lot 7; Thence East along said South line 20.0 feet; Thence South parallel with the West line of Lot 7 for a distance of 4.5 feet; Thence West 20.0 feet to the point of beginning, in Cook County Illinois.

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PAGE 2 OF 2

Order No. 901464

DATE	ENCLOSURE
------	-----------

Scale 1 inch = _____ feet

Date APRIL 18 1979

Owner _____

Ordered by HCL

DISTANCES ARE MARKED IN FEET AND DECIMAL PARTS THEREOF. COMPARE ALL POINTS BEFORE BUILDING BY SAME AND AT ONCE REPORT ANY DIFFERENCES BEFORE DAMAGE IS DONE. FOR EASEMENTS, BUILDING LINES AND OTHER RESTRICTIONS NOT SHOWN ON SURVEY PLAT REFER TO YOUR ABSTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL BUILDING LINE REGULATIONS. NO DIMENSIONS SHALL BE ASSUMED BY SCALE MEASUREMENT UPON THIS PLAT.

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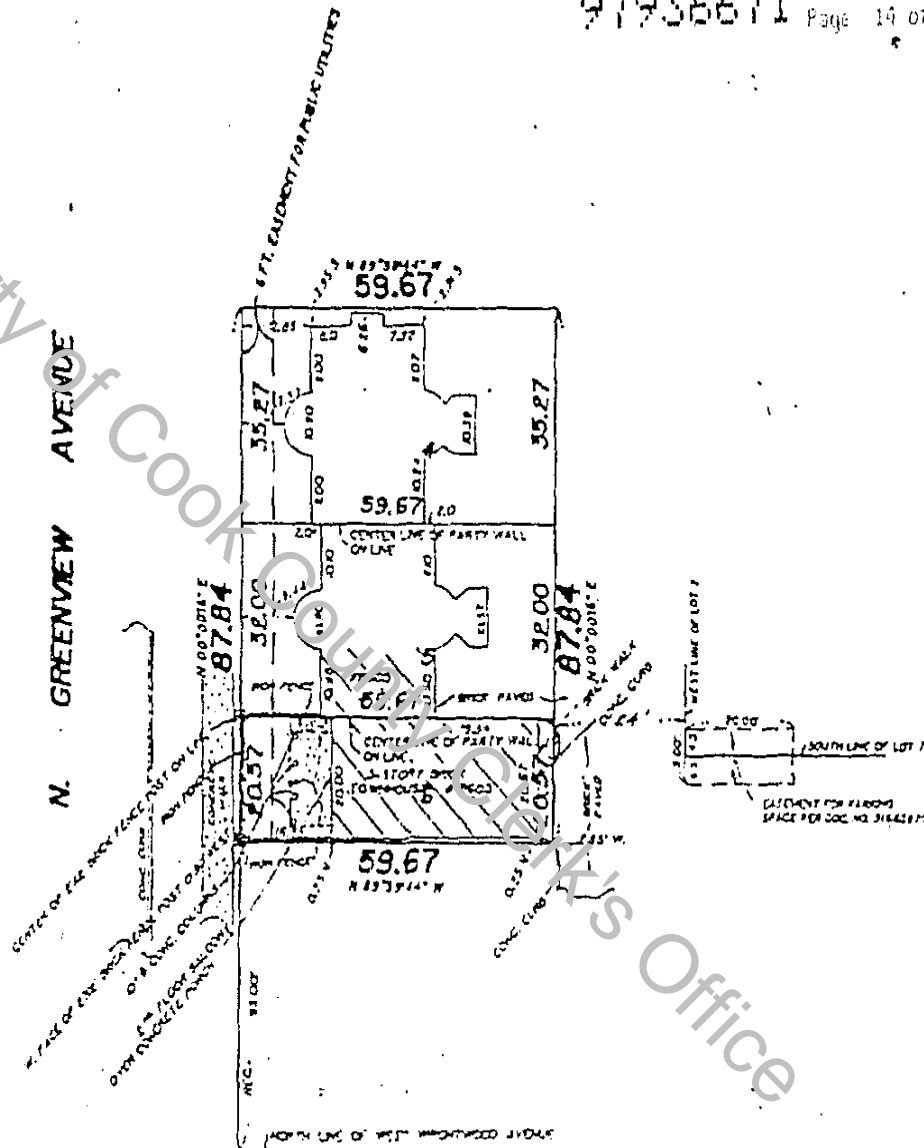
FLAT OF SURVEY UNOFFICIAL COPY GREMLEY & BIEDERMANN INC.

LOT 6 IN EMBASSY CLUB RESUBDIVISION: UNIT FOUR OF PART OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



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REVISED 2/12/97 NO. 97495

REGISTERED FOR SURVEY & PLANNING DEC. 9, 1997 NO. 17

Order No. 90463

Scale 1 inch = 20 feet

Date MARCH 5, 1990

Owner _____

Ordered by M.C.L.

Distances are marked in feet and decimal parts thereof. Compare all points before building by same and at once report any differences before damages done. For easements, building lines and other restrictions not shown on survey plat refer to your abstract, deed, contract, title policy and local building line regulations. No dimensions shall be assumed by scale measurement upon this plat.

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State of Illinois
 County of Cook

We, GREMLEY & BIEDERMANN, INC. hereby certify that we have surveyed the above described property and that the plat herein drawn is a correct representation of said survey corrected to a true meridian.

Gregory E. Biedermann
 REGISTERED DEC. 9, 1997 REG. ILL. Land Surveyor

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