

## MODIFICATION OF DECLARATION OF COVENANTS



THIS MODIFICATION OF DECLARATION OF COVENANTS ("Modification") made this 17 day of February, 2005, by THE W.C. AND A.N. MILLER DEVELOPMENT COMPANY, a Delaware corporation ("Declarant"), which Modification shall constitute a covenant to run with the land, as provided by law, and shall be binding on all parties and persons claiming under it, and for the benefit and limitations upon all present and future owners of the property described below and for each of the abutting property owners, and for the benefit of the SPRING VALLEY-WESLEY HEIGHTS CITIZENS' ASSOCIATION ("Association"), Advisory Neighborhood Commission 3D, and the District of Columbia.

### WITNESSETH:

WHEREAS, the Declarant and the Association entered into a Declaration of Covenants ("1983 Covenants") dated October 26, 1983 and recorded among the land records of the District of Columbia on October 27, 1983 as Instrument No. 35099 encumbering the property more particularly described in Exhibit A. The 1983 Covenants provided for the future development of 164 single family house; five (5) additional commercial buildings and an optional parking deck ("Project");

WHEREAS, the Declarant and Association entered into an Agreement dated February 12, 1990 ("1990 Agreement") which established additional requirements for the residential development and created the Liaison Committee;

WHEREAS, pursuant to the 1983 Covenants and 1990 Agreement, the Declarant has completed the residential phase of development;

W/C

WHEREAS, pursuant to the 1983 Covenants and 1990 Agreement, Declarant has completed Building A (4910 Massachusetts Avenue), Building B (4315 50<sup>th</sup> Street), and Building C (4301 50<sup>th</sup> Street) in the commercial area of the Project ("Commercial Section"). Declarant has not constructed Building D (fronting on Warren Street) and Building E (fronting on 49<sup>th</sup> Street) both with an authorized maximum gross floor area each of 12,000 square feet and the optional parking deck;

WHEREAS, Declarant wishes to complete the final phase of the Commercial Section pursuant to a revised plan ("2004 Plan") which is generally consistent with, but requires this Modification of the 1983 Covenants;

WHEREAS, the Declarant and the Association have reconstituted the Liaison Committee to review the 2004 Plan;

WHEREAS, the Liaison Committee has recommended approval of the 2004 Plan subject to the terms and conditions of this Modification; and

WHEREAS, the Association, at a duly noticed public meeting of its membership on January 27, 2005, approved the 2004 Plan and authorized its President to execute this Modification on behalf of the Association. At the meeting, the membership voted 62 to 26 in favor of the Resolution to approve the 2004 Plan.

NOW, THEREFORE, for and in consideration of this Modification and other good and valuable consideration the receipt of which is hereby acknowledged, Declarant does hereby declare that the subject property is, and shall be, held, transferred, sold and conveyed subject to the 1983 Covenants as modified herein:

1. Except as specifically set forth herein, the 1983 Covenants will remain unchanged and in full force and affect as if this Modification did not exist.

2. Buildings D and E are deleted from the Project and the 2004 Plan is substituted, including Building F and the Surface Parking, Parking Deck and Underground Parking Garage (collectively, "Parking Facilities"). As amended, the 1983 Covenants will not authorize the construction of Building D on Warren Street or Building E on 49<sup>th</sup> Street.

3. Building F: Building F shall be constructed as an addition to the existing building at 4900 Massachusetts Avenue, N.W. with a gross floor area not to exceed 24,000 square feet, as well as an above grade connection between the existing buildings at 4900 and 4910 Massachusetts Avenue, as shown on the attached Site Plan ("Site Plan"), Exhibit B. Building F shall be no more than three (3) stories in height as measured at the grade on 49<sup>th</sup> Street and designed generally in accordance with the elevations set forth in Exhibit C.

4. Surface Parking Lot: A surface parking lot, as illustrated on the attached Site Plan ("Site Plan"), Exhibit B, shall be created and maintained with at grade access only to and from 50<sup>th</sup> Street.

5. Parking Deck: A one-level parking deck may be constructed as illustrated in the attached Site Plan, Exhibit B, with access only for visitors (hourly parkers) from 49<sup>th</sup> Street and access to and from the Surface Parking Lot below. No cardholders (monthly parkers) shall be allowed to enter from 49<sup>th</sup> Street. These access restrictions on the Parking Facilities are commonly referred to as "Option Three". The maximum height of the parking deck shall approximate or be lower than the grade of 49<sup>th</sup> Street between Fordham Road and Massachusetts Avenue.

6. Underground Parking: An underground parking garage may be constructed as illustrated in the Site Plan, Exhibit B.

7. At all times, Declarant shall maintain on the Commercial Section at least one (1) parking space for each 600 square foot of gross floor area, except during the construction phase of Building F, the Surface Parking, Parking Deck, and/or Parking Garage.

8. That Building F shall be used only for office purposes.

9. The landscaping, screening and buffering of the Commercial Section, shall be built in accordance with a Landscaping Plan and Schedule to be established between Declarant and a Landscaping Committee appointed by the Spring Valley West Homes Corporation.

10. Declarant shall use its best efforts (but cannot guarantee) to obtain District of Columbia approval and implementation of the following Traffic and Parking Improvements:

A. Installation by the District of Columbia of a left turn signal from west-bound Massachusetts Avenue onto south-bound 49<sup>th</sup> Street;

B. Installation by the District of Columbia of a "Stop" line on 49<sup>th</sup> Street south of the entrance to the Massachusetts Avenue access road;

C. Elimination of on-street parking on the west-bound side of Massachusetts Avenue west of Yuma Street;

D. Elimination of on-street metered parking on the east-side of 50<sup>th</sup> Street between Yuma Street and Warren Street and on the south side of Yuma Street between 50<sup>th</sup> Street and Massachusetts Avenue;

E. Expansion of pickup/drop off zone on Yuma Street adjacent to the entrance to 4910 Massachusetts Avenue; and


F. Synchronization of the traffic signals on Massachusetts Avenue at the intersections of Fordham Road/48<sup>th</sup> Street, 49<sup>th</sup> Street and 50<sup>th</sup> Street to achieve improved efficiency and safety.

The District of Columbia's failure to approve and/or implement any of the Traffic and Parking Improvements in this paragraph shall not constitute a breach of this Modification. The Association shall support in writing and by other means any and all approvals required to implement the Traffic and Parking Improvements or any element of this Modification. The Declarant shall be authorized to make minor modifications to any of the elements of this Modification, in order to comply with applicable code or other regulatory requirements or to facilitate construction.

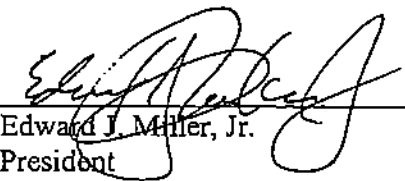
11. The Declarant shall at its own expense implement the following Traffic Improvements.
  - A. Install "No Left Turn" signs at the 50<sup>th</sup> Street exit from the Parking Facilities;
  - B. Install improved signage identifying the 50<sup>th</sup> Street entrance to the Parking Facilities; and
  - C. Install additional signage and other reasonable steps to publicize that visitors may enter the Parking Facilities to pick up or drop off visitors without charge.
12. That the 1983 Covenants as herein amended shall run with the land and remain binding on the Commercial Section until October 27, 2033, as originally provided in the 1983 Covenants, except that the Declarant shall covenant in perpetuity not to construct a commercial building facing or fronting on Warren Street.
13. Any signage on Building F shall comply with the applicable sign regulations set forth in the D.C. Construction Codes, 12 DCMR (2004).
14. That this Modification may only be modified in the future by the written agreement of the parties.

IN WITNESS WHEREOF, THE W.C. AND A.N. MILLER COMPANY has caused its name to be signed by Edward J. Miller, Jr. its President and its corporate seal to be hereunto affixed, attested by Anita R. Brown, its Assistant Secretary, and has appointed and does hereby appoint said Edward J. Miller, Jr. its attorney-in-fact to execute, acknowledge and deliver these presents in its behalf, all done the 17 day of February, 2005.

ATTEST:

  
Anita R. Brown  
Assistant Secretary

THE W.C. AND A.N. MILLER  
DEVELOPMENT COMPANY

By:   
Edward J. Miller, Jr.  
President

DISTRICT OF COLUMBIA ss:

I, Jennifer L. Coleman, a Notary Public in and for the District of Columbia, do hereby certify that Edward J. Miller, Jr., who is President of THE W.C. AND A.N. MILLER DEVELOPMENT COMPANY, a party to the foregoing Declaration bearing date of the 17 day of February, 2005, personally appeared before me in said District, the said Edward J. Miller, Jr. being personally well known to me as the person whose signature appears on this Declaration as attorney-in-fact for THE W.C. AND A.N. MILLER DEVELOPMENT COMPANY.

GIVEN under my hand and official seal this 17 day of February, 2005.

  
Notary Public

My commission expires: January 1, 2010

IN WITNESS WHEREOF, SPRING VALLEY-WESLEY HEIGHTS CITIZENS' ASSOCIATION has caused its name to be signed by Lucian Pugliaresi its President and its corporate seal to be hereunto affixed, attested by Mellie Nelson, its Secretary, and has appointed and does hereby appoint said President, its attorney-in-fact to execute, acknowledge and deliver these presents in its behalf, all done the 25<sup>th</sup> day of February, 2005.

ATTEST:

SPRING VALLEY-WESLEY HEIGHTS  
CITIZENS' ASSOCIATION

Mellie Nelson  
Mellie Nelson  
Secretary

By: Lucian Pugliaresi  
Lucian Pugliaresi  
President

DISTRICT OF COLUMBIA ss:

Songul Eren, a Notary Public in and for the District of Columbia, do hereby certify that Lucian Pugliaresi, who is President of SPRING VALLEY-WESLEY HEIGHTS CITIZENS' ASSOCIATION, a party to the foregoing Declaration bearing date of the 25 day of February, 2005, personally appeared before me in said District, the said Lucian Pugliaresi being personally well known to me as the person whose signature appears on this Declaration as attorney-in-fact for SPRING VALLEY-WESLEY HEIGHTS CITIZENS' ASSOCIATION.

GIVEN under my hand and official seal this 25 day of February, 2005.

Songul Eren  
Notary Public, District of Columbia  
My Commission Expires 11-14-2007

Songul Eren  
Notary Public

My commission expires: 11-14-2007

PARCEL No. 1

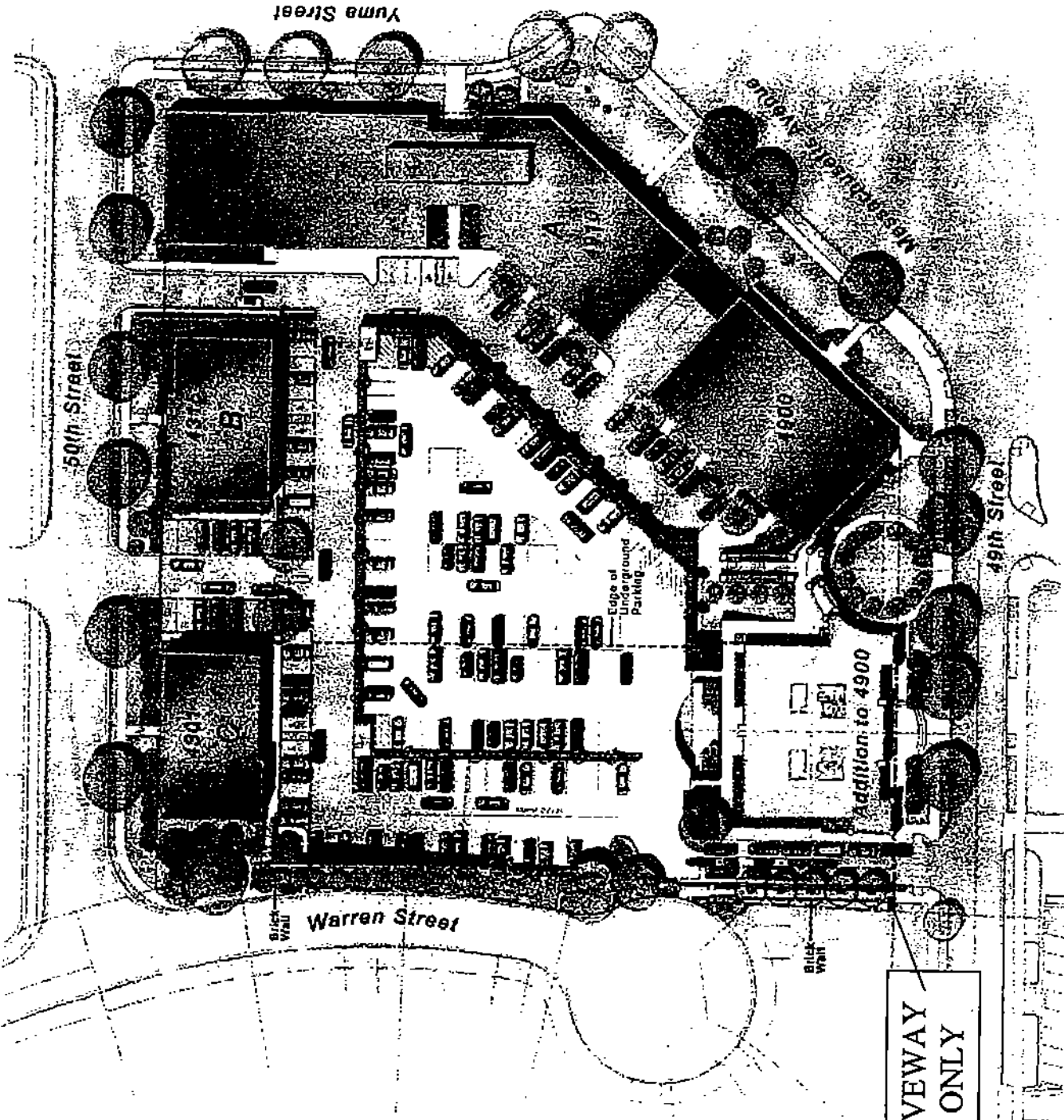
DESCRIPTION OF PART OF SQUARES 1464, 1467 and PARCELS 15/182  
and 15/183, WASHINGTON, D.C.

AS SHOWN ON PLAT OF COMPUTATION RECORDED IN THE OFFICE OF  
THE SURVEYORS OFFICE, D.C. IN SURVEY BOOK 177, PAGE 229 AND  
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning for the same at the southwest corner of Lot 824, Square 1467, said  
point being at the intersection of the easterly line of Dalecarlia Parkway and the  
northerly line of a drainage alley 20 feet wide, and running thence with the easterly  
line of Dalecarlia Parkway

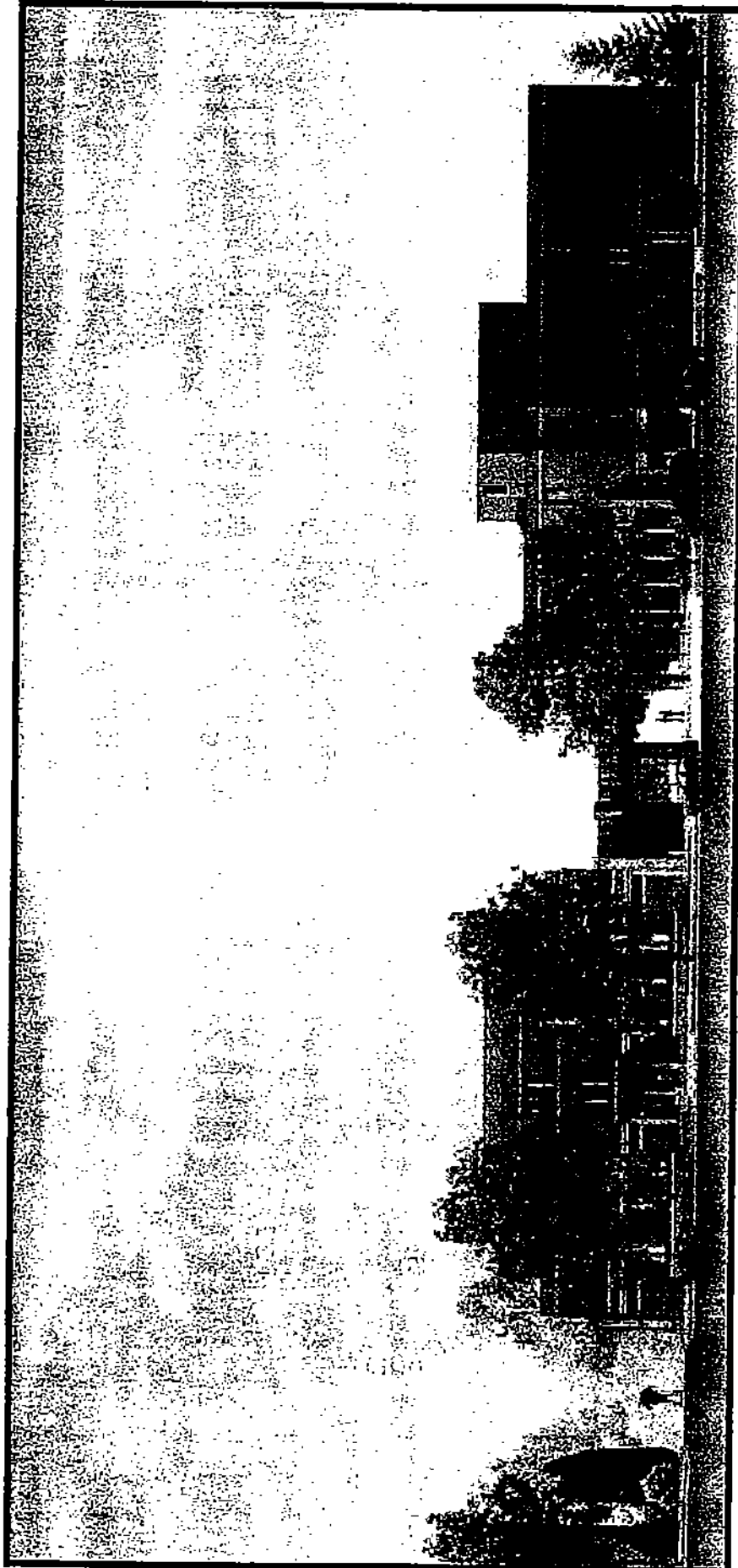
1. N  $0^{\circ} 01' 30''$  W 421.45 feet
2. N  $15^{\circ} 34' 14''$  E 772.30 feet
3. N  $38^{\circ} 21' 30''$  E 525.82 feet, thence leaving Dalecarlia Parkway and running  
along the westerly line of Square 1464
4. S  $51^{\circ} 19' 01''$  E 76.67 feet to the southerly line of a public alley 16 feet wide,  
thence with said line
5. EAST 308.81 feet, thence along the westerly lines of said alley
6. S  $46^{\circ} 57' 00''$  E 381.69 feet
7. SOUTH 98.27 feet to the northline of Yuma Street, thence with said line
8. WEST 139.59 feet to the westerly line of Square 1464, thence along said line
9. S  $51^{\circ} 19' 00''$  E 120.39 feet to the southerly line of Yuma Street as now exists,  
thence
10. SOUTH 1.01 feet to the proposed southerly line of Yuma Street (75 feet wide),  
thence with said line
11. 42.64 feet along the arc of a curve to the right having a radius of 726.00 feet,  
chord = N  $88^{\circ} 19' 02''$  E 42.64 feet, thence
12. EAST 144.00 feet
13. S  $45^{\circ} 00' 00''$  E 21.21 feet to the westerly line of 50th Street as proposed 75 feet  
wide, thence with said line
14. SOUTH 458.90 feet to the northerly line of Warren Street a proposed private  
street, thence along said line
15. 219.27 feet along the arc of a curve to the right having a radius of 547.25 feet,  
chord = N  $80^{\circ} 31' 16''$  E 217.81 feet, thence

16. S  $88^{\circ} 00' 00''$  E 269.65 feet, to the westerly line of 49th Street, thence with said line
17. SOUTH 242.12 feet to the northerly line of Fordham Road, thence with said line
18. 28.46 feet along the arc of a curve to the right having a radius of 60.00 feet, chord = S  $54^{\circ} 57' 27''$  W 28.19 feet, thence
19. 98.46 feet along the arc of a curve to the left having a radius of 661.26 feet, chord = S  $64^{\circ} 16' 43''$  W 98.37 feet, thence leaving Fordham Road and running with a part of the westerly line of Square 1467
20. N  $6^{\circ} 48' 00''$  W 97.04 feet, thence with the southerly lines of Square 1467
21. 449.81 feet along the arc of a curve to the left having a radius of 365.00 feet, chord = S  $86^{\circ} 07' 03''$  W 421.88 feet, thence
22. S  $44^{\circ} 58' 10''$  W 108.22 feet, thence
23. 171.81 feet along the arc of a curve to the left having a radius of 1011.26 feet, chord = S  $28^{\circ} 57' 16''$  W 171.60 feet, thence
24. S  $57^{\circ} 00' 10''$  W 184.54 feet
25. N  $80^{\circ} 14' 50''$  W 351.60 feet
26. S  $82^{\circ} 00' 00''$  W 220.76 feet, thence
27. S  $8^{\circ} 00' 00''$  E 15.00 feet
28. S  $82^{\circ} 00' 00''$  W 75.00 feet
29. S  $68^{\circ} 03' 39''$  W 91.05 feet
30. S  $20^{\circ} 15' 00''$  E 85.00 feet to the northerly end of 52nd Street, thence crossing 52nd Street
31. S  $82^{\circ} 00' 00''$  W 92.10 feet, thence along the westerly line of 52nd Street
32. S  $20^{\circ} 15' 00''$  W 22.03 feet to the northerly line of a drainage alley, thence with said line
32. N  $73^{\circ} 26' 45''$  W 195.09 feet to the place of beginning containing 1,652,523 of square feet of land or 37.9367 acres



**DRIVEWAY  
IN ONLY**

**EXHIBIT B**




Doc# 2005032038 Fees: \$89.50  
03/08/2005 9:01AM Pages 11  
Filed & Recorded in Official Records of  
WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING SURCHARGE \$ 83.00  
\$ 6.50

EXHIBIT C

Return to:

John Patrick Brown Jr.  
c/o Regional Title, INC  
1620 L ST, NW #900  
WASH, DC 20036



THIS IS TO CERTIFY THAT THIS IS A TRUE COPY  
OF THE ORIGINAL RECORD  
RECORDED IN THE OFFICE OF THE  
RECORDAR OF DEEDS, D.C.  
MAR-08 2005

Receipt# 513298

LARRY TODD  
RECORDER OF DEEDS  
WASH DC RECORDER OF DEEDS  
515 D STREET NW  
SUITE 202  
WASHINGTON, DC  
20001-  
(202) 727-5374

Doc# 2005032038 Pgs: 11  
Doc Type: COVENANT  
RECORDING \$ 83.00  
SURCHARGE \$ 6.50

Total \$ 89.50  
Check Amt. Tendered \$ 116.50  
Charge Payment \$ 27.00  
Change Due \$ 0.00  
Balance \$ 0.00

Check Number Amount  
52420 \$ 116.50

Total Documents: 1  
Total Fees: 2

Client Name REGIONAL TITLE  
03/08/2005 09:01:14 AM

Cashier: CASHIER7