



July 18, 2005.
APPROVED FOR REGISTRATION
BY THE COURT.

AGR
2 Cert's

OPEN SPACE COVENANT AND RESTRICTION

John R. McCaff

CPY DC SN
1188030
1282419

KNOW ALL MEN BY THESE PRESENTS

WHEREAS, the PLANNING BOARD OF THE CITY OF SOMERVILLE issued a Decision dated September 6, 2001 (the "Master Plan Approval") and a Decision dated November 1, 2001 (the "Special Permit Approval"), both upon application of GRAND PANJANDRUM REALTY CO., INC., a Massachusetts corporation ("Owner"), with a mailing address of 1385 Hancock Street, Quincy, MA 02169, approving the development of that certain property located at 777 and 779 McGrath Highway, 250 Mystic Avenue and 48 Cross Street East in Somerville, Massachusetts, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Site");

BOTH WAYS

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WHEREAS, the provisions of the Somerville Zoning Ordinance, as in effect as of the date on which the Master Plan Approval and the Special Permit Approval were approved, including Sections 16.6.1 and 17.3 thereof, and the Master Plan Approval and the Special Permit Approval, require that the Open Space (as hereinafter defined) on the Site be made subject to a covenant as more particularly set forth herein (the "Covenant Requirement"); and

WHEREAS, Owner desires to subject the portions of the Site noted as "open space" on Exhibit B attached hereto and incorporated herein (the "Open Space") to the covenant more particularly described herein, in order to meet the Covenant Requirements;

NOW THEREFORE for good and valuable consideration, Owner hereby COVENANTS with the City of Somerville as follows:

1. Owner is the owner of record of the Site.
2. For so long as the Site is being used for supermarket or office purposes, Owner will not change the use of the Open Space to any use not permitted under the Master Plan Approval and Special Permit Approval without the approval of the City of Somerville acting through the City board(s) having jurisdiction over such change or, if none, through the Director or Planning of the City of Somerville (the "Applicable Authority").
3. Provided that all necessary approvals from the Applicable Authorities are obtained, the Open Space, or portions thereof, may be released from this Covenant by the recording of an instrument executed by the owner of the portion of the Open Space so to be released.
4. Owner agrees to pay all necessary recording fees for the recordation and/or filing of this Covenant with the Middlesex County Registry of Deeds and/or Middlesex County Registry District of the Land Court.

777 & 779 McGrath Highway, Somerville
250 Mystic Ave, Somerville
48 Cross Street East, Somerville

211261 - Lot B
10353 - Lots A-1-2-3-4

Hing Chen
Sherin & Lodgen LLP
101 Federal Street
Boston, MA 02110

5. This Covenant shall be and is binding upon Owner's successors and assigns, it being the express intention and understanding and agreement that this Covenant shall run with the land.
6. Subject to the provisions of Sections 2 and 3 above, the Open Space shall be open to the public during daylight hours for purposes of access to the Site; provided, however, that nothing herein shall limit the right of the Fire Department or the Police Department from accessing the Open Space as necessary for emergency or public safety reasons.
7. Notwithstanding the foregoing, Owner reserves the right to close the Open Space to the public for such limited times as may be necessary to prevent any claim of adverse possession or similar rights accruing to the Open Space and/or to conduct maintenance of the Open Space.
8. The City of Somerville (the "City") shall not be liable for any property damage or personal injury on the Open Space, except to the extent that the extent such liability arises from the negligence or misconduct of the City, its employees, agents, or contractors. Owner shall maintain the same amounts of liability insurance on the Open Space as it does for the remainder of the Site.
9. Owner shall be solely responsible for the maintenance of the Open Space.
10. This Covenant is not intended to constitute a conservation restriction under G.L. c. 184, §§31 and 32.
11. This Covenant has been approved by the Somerville City Solicitor as meeting the requirements with respect to the recording of a covenant under the Master Plan Approval (including Section IV(7) thereof), the Special Permit Approval (including Section V(7) thereof) and the applicable provisions of the Somerville Zoning Ordinance (including Sections 16.6.1 and 17.3(e) thereof).

[SIGNATURE ON FOLLOWING PAGE]

WITNESS our hand(s) and seal(s) this 1st day of September, 2004.

*VOTE
1282418*

GRAND PANJANDRUM REALTY CO., INC.

By: *[Signature]*
Name: ANTHONY A. COLAVOLPE
Title: SENIOR VICE PRESIDENT
Hereunto duly authorized

[Signature]
CAF

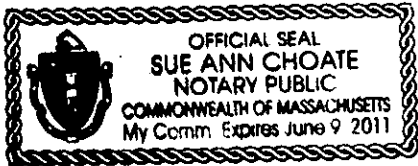
Approved as to form:

[Signature]
Somerville City Solicitor

COMMONWEALTH OF MASSACHUSETTS

On this 23rd day of ~~September~~ ^{December}, 2004, before me, the undersigned notary public, personally appeared Anthony Colavolpe proved to me through satisfactory evidence of identification which were personal knowledge the person whose name is signed on the preceding or attached document and acknowledged to me that hesigned it voluntarily for its stated purpose as sr. Vice Pres. for Grand Panjandrum Realty Co, Inc.

[Signature]
(official signature and seal of notary)
My commission expires:



WITNESS our hand(s) and seal(s) this _____ day of September, 2004.

GRAND PANJANDRUM REALTY CO., INC.

By: _____
Name:
Title:
Hereunto duly authorized

Approved as to form:


Somerville City Solicitor

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of September, 2004, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification which were _____ to be the person whose name is signed on the preceding or attached document and acknowledged to me that hesigned it voluntarily for its stated purpose as _____ for Grand Panjandrum Realty Co, Inc.

(official signature and seal of notary)
My commission expires:

EXHIBIT A

Legal Description of Site

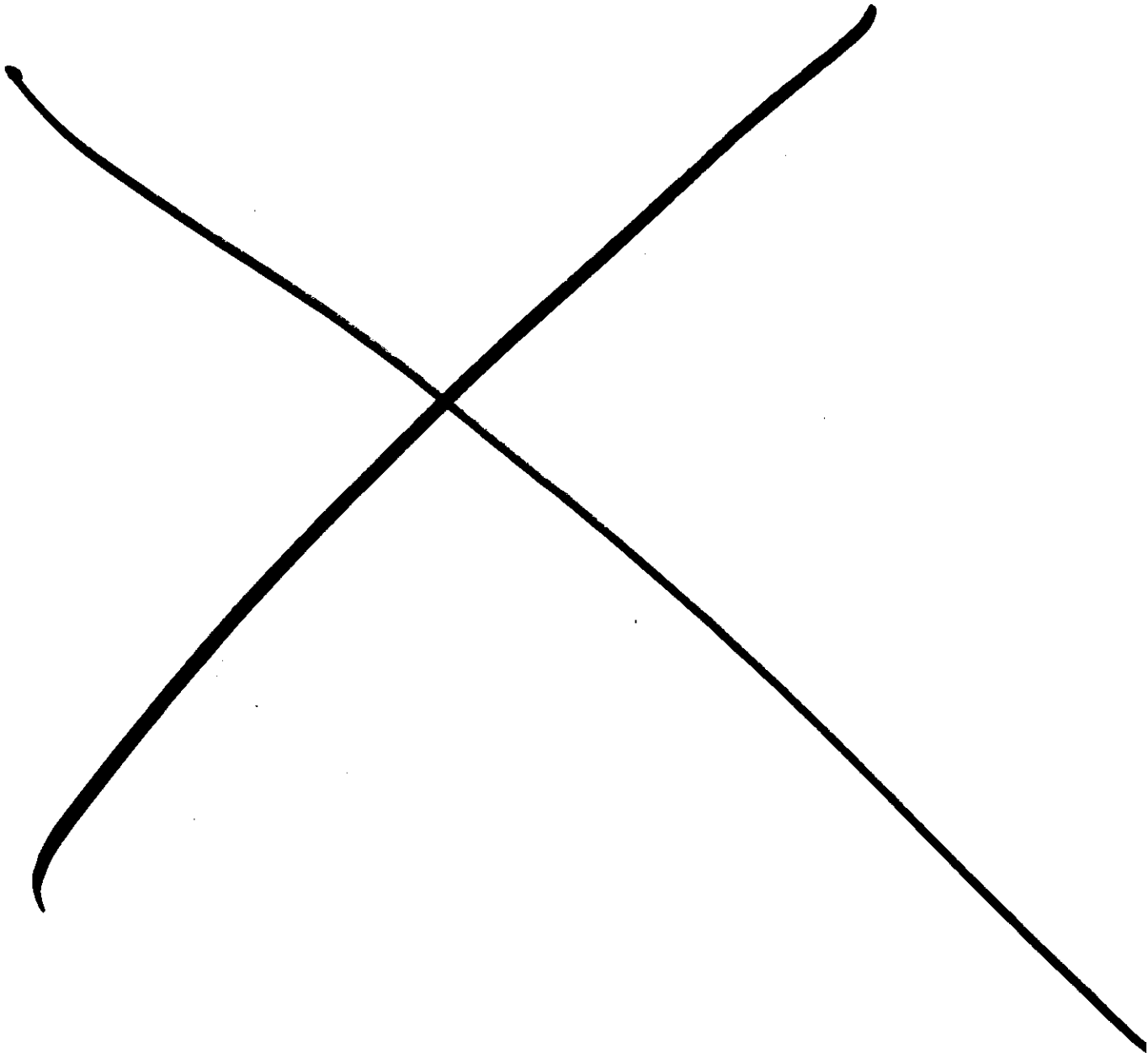


EXHIBIT A

TRACT I

A certain piece or parcel of land situated on the easterly side of McGrath Highway and the southwesterly side of Mystic Avenue and is known as #777 and #779 McGrath Highway and #250 Mystic Avenue on a plan entitled "ALTA/ACSM LAND TITLE SURVEY" Mystic Ave. and McGrath Highway, Somerville, Massachusetts. Prepared for: Grand Panjandrum Realty Co., Inc. Scale: 1" = 40', dated: 12/22/97, with a revision date of 12/23/97. Prepared by: Bostwick Engineering of Massachusetts.

PARCEL 1

Beginning at a point in the southwesterly corner of the herein described parcel of land on the southwesterly side of McGrath Highway and the northeasterly side of Blakeley Avenue (Private Road).

Thence, N 37 - 01' - 16" E, by and with the aforementioned McGrath Highway, a distance of 610.06', to a point.

Thence, on a curve to the right having a radius of 23.00' and an arc length of 29.81', to a point.

Thence, S 35 - 50' - 00" E, by and with Mystic Avenue, a distance of 55.16', to a point.

Thence, on a curve to the right having a radius of 1979.00' and an arc length of 132.41', to a point.

Thence, S 32 - 00' - 00" E, a distance of 203.23', to a point.

Thence, on a curve to the right having a radius of 1021.00' and an arc length of 1.41', to a point.

Thence, S 37 - 00' - 41" W, by and with Garfield Ave. (a Private Road) a distance of 486.63', to the intersection of the aforementioned Garfield Ave. and Blakeley Ave.

Thence, N 53 - 00' - 04" W, by and with the aforementioned Blakeley Ave. (Private Road), a distance of 395.09', to the point and place of beginning. Containing 221,241.64 SF +/- or 5.079 acres of land more or less.

Bounded northerly by Mystic Avenue, bounded southerly by Blakeley Avenue (Private), bounded easterly by Garfield Avenue (Private) and bounded westerly by McGrath Highway.

PARCEL 2

Beginning at a point in the southeasterly corner of the herein described parcel on the westerly side of Cross Street East.

Thence, N 53 - 00' - 09" W, a distance of 189.72', to a point on the easterly side of Garfield Avenue.

Thence, N 37 - 00' - 41" E, by and with Garfield Avenue a distance of 127.55', to a point.

Thence, on a curve to the right having a radius of 33.00' and an arc length of 61.08', to a point on the southeasterly side of Mystic Avenue.

Thence, on a curve to the right having a radius of 1021.00' and an arc length of 18.89', to a point.

Thence, S 38 - 00' - 00" E, by and with Mystic Avenue, a distance of 108.60', to a point.

Thence, on a curve to the right having a radius of 33.00' and an arc length of 43.20', to a point on the northwesterly side of Cross Street East.

Thence, S 36 - 59' - 51" W, by and with the aforementioned street for a distance of 94.21', to the point and place of beginning. Containing 26,962.4 SF +/- or 0.619 acres of land more or less.

Bounded northerly by Mystic Avenue, bounded southerly by Parcel A-2, bounded easterly by Cross Street East and bounded westerly by Garfield Avenue (Private).

The foregoing parcels of land contain the following parcels of registered land:

Parcel A

that certain parcel of land situate in Somerville in the County of Middlesex and said Commonwealth, described as follows:

- NORTHEASTERLY by Mystic Avenue, Fifty-six and 44/100 feet;
- SOUTHEASTERLY Twenty-five feet;
- SOUTHWESTERLY Six feet;
- SOUTHEASTERLY Seventy-five and 50/100 feet; and
- SOUTHWESTERLY Twenty-nine and 56/100 feet, all by land now or formerly of Hatta Titcomb et al.;
- NORTHWESTERLY Sixty-two feet; and
- SOUTHWESTERLY Twenty feet, by land now or formerly of Edward Burns; and
- NORTHWESTERLY Forty-eight and 3/10 feet, by land now or formerly of Charles F. Gillespie.

Said parcel is shown as Lot A on plan hereinafter mentioned, (Plan No. 9494A).

All of said boundaries are determined by the Court to be located as shown on a plan, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 127, Page 61, with Certificate 19052.

Parcel B

Also, another certain parcel of land situate in Somerville, described as follows:

- NORTHWESTERLY by Garfield Avenue, Two Hundred Forty-Three and 56/100 feet;

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NORTHEASTERLY by Mystic Avenue, Seventy-nine and 11/100 feet;

SOUTHEASTERLY by land now or formerly of Fred L. Harris and The C. & H. Co., One Hundred One and 36/100 feet;

NORTHEASTERLY by said lands of The C. & H. Co. and Fred L. Harris, Forty-nine and 56/100 feet;

NORTHWESTERLY Seventy-five and 50/100 feet,

NORTHEASTERLY Six feet, and

NORTHWESTERLY Twenty-five feet, by said Harris land;

NORTHEASTERLY by said Mystic Avenue, Fifty-six feet;

SOUTHEASTERLY by Cross Street East, Two Hundred Sixteen and 53/100 feet; and

SOUTHWESTERLY by Lot 1 as shown on plan hereinafter mentioned One Hundred Eighty-nine and 69/100 feet.

Said parcel is shown as Lot 2 on said plan, (Plan No. 18957B).

Parcel C

Also another certain parcel of land situate in said Somerville, described as follows:

NORTHWESTERLY by Garfield Avenue, One Hundred and ten feet;

NORTHEASTERLY by Lot 2, as shown on plan hereinafter mentioned, one hundred eighty-nine and 69/100 feet;

SOUTHEASTERLY by Cross Street East, One Hundred and ten feet; and

SOUTHWESTERLY by land now or formerly of The C. & H. Co., One hundred eighty-nine and 72/100 feet.

Said parcel is shown as Lot 1 on said plan, (Plan No. 18957B).

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 500, Page 241, with Certificate 74946.

Parcel D

Also, another certain parcel of land situate in said Somerville, described as follows:

SOUTHEASTERLY by Garfield Avenue, Three Hundred Nineteen and 90/100 feet;
 SOUTHWESTERLY by Blakeley Avenue, Sixty feet;
 NORTHWESTERLY three hundred nineteen and 90/100, and
 NORTHEASTERLY sixty feet, by lot 4 as shown on plan hereinafter mentioned.

Said parcel is shown as Lot 3 on said plan, (Plan No. 18957C).

Parcel E

Also, another certain parcel of land situate in said Somerville, described as follows:

SOUTHEASTERLY by Garfield Avenue, Ninety feet;
 SOUTHWESTERLY sixty feet, and
 SOUTHEASTERLY Three Hundred Nineteen and 90/100 feet, by Lot 3 as shown on plan hereinafter mentioned;
 SOUTHWESTERLY by Blakeley Avenue, One Hundred Thirty and 09/100 feet;
 NORTHWESTERLY by Kensington Avenue, Four Hundred Nine and 90/100 feet; and
 NORTHEASTERLY by land now or formerly of H. & M. Transportation Co., One Hundred Ninety and 02/100 feet.

Said parcel is shown as Lot 4 on said Plan, (Plan No. 18957C).

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the Land Registration, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 568, Page 178, with Certificate 87728.

For Owner's title, see deed from Payless Cashways, Inc., dated December 22, 1997, recorded with the Middlesex South District Registry of Deeds in Book 28016, Page 408 and filed with the Middlesex South Registry District of the Land Court as Document No. 1050375, noted on Certificate of Title No. 210353.

TRACT II

The land in Somerville in the County of Middlesex and Commonwealth of Massachusetts, bounded and described as follows:

Southeasterly by Cross Street, one hundred feet;

Southwesterly by land now or formerly of C. Hayden Whitney, ninety-five feet;

Northwesterly by land now or formerly of the Old Colony Trust Company, one hundred feet; and

Northeasterly by land now or formerly of Charles W. Hall et al, ninety-five feet.

Said parcel is shown as Lot B on plan hereinafter mentioned, (Plan No. 9494A).

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All of said boundaries are determined by the Court to be located as shown on a plan, modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 127, Page 61, with Certificate 19052.

For Owner's title, see deed from Raymond W. Rawlings, Trustee of Kimball Machine Co., Inc. Liquidating Trust, dated April 24, 1998 and filed with the Middlesex South Registry District of the Land Court as Document No. 1063218, noted on Certificate of Title No. 211261.

TRACT III

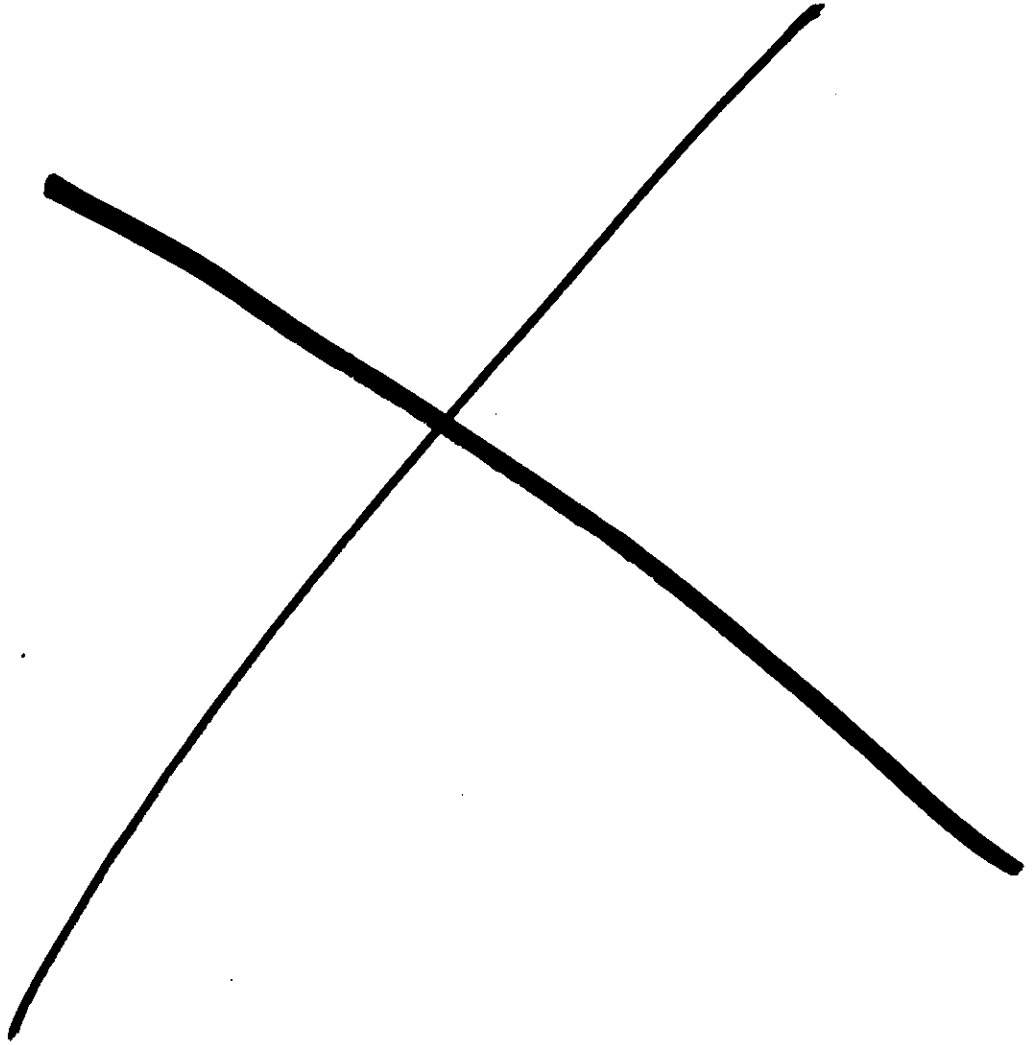
The land with the buildings thereon situated in Somerville being lots lettered A and B in Block 6 on a plan of land in Somerville, Mass., belonging to the Mt. Benedict Land Co. made by E. W. Bowditch, Engineer, dated December 2, 1914; recorded with Middlesex South District Deeds in Book of Plans 229, Plan 5 and the Northerly half of lot lettered C in Block 6 on E. W. Bowditch's plan, dated December 2, 1914, recorded with said Deeds in Book of Plans 229, Plan 23, altogether being bounded and described as follows:

- SOUTHEASTERLY** by Cross Street, one hundred thirty (130) feet, more or less;
- SOUTHWESTERLY** by lot lettered C in said Block, ninety-five (95) feet;
- SOUTHEASTERLY** again by the remaining portion of said lot lettered C being land conveyed to Old Colony Trust Company, Trustees to Fred L. Harris, by deed recorded with said Deeds in Book 4066, Page 37, one hundred (100) feet;
- SOUTHWESTERLY** again by lot lettered E on said plan, recorded in Plan Book 229, ninety-five (95) feet;
- NORTHWESTERLY** by Garfield Avenue, two hundred thirty (230) feet, more or less; and
- NORTHEASTERLY** by the former line of Edmonton Avenue, but now by registered parcel in Land Court Case No. 18957 described as the second parcel in the copy of Land Court decree dated September 28, 1949, and issued to the C. & H. Co., from the Middlesex South District as Certificate of Title No. 68062 in Registration Book 443, Page 281, one hundred eighty-nine and 72/100 (189.72) feet.

For Owner's title, see deed from Guber & Sherman, Inc., dated March 22, 2002 and recorded with the Middlesex South District Registry of Deeds in Book 35160, Page 437. ✓

EXHIBIT B

Open Space Plan



CERTIFICATION

The undersigned hereby certifies that the foregoing document has been approved by a two-thirds vote of the Somerville Board of Aldermen.

John J Long
Somerville City Clerk

Edna C. Brown
Attch. Middlesex S. Register