

June 6, 2006

TO: John M. Lamerato, Acting City Manager

FROM: Brian P. Murphy, Assistant City Manager/Services *BPM*

SUBJECT: AGENDA ITEM – Request for Acceptance of Private Road Agreement and Permanent Easement for Emergency Ingress/Egress, Mondrian Properties Weston Downs, L.L.C. Sidwell #88-20-21-102-020 - Project No. 01.912.3

In connection with the Weston Downs development the Real Estate and Development Department has acquired a Private Road Agreement and an Emergency Ingress/Egress Easement from Mondrian Properties Weston Downs, L.L.C. This development is located at the southeast corner of Finch and Wattles in Section 21. The consideration amount on each document is \$1.00.

In order for the developer to proceed with this project, staff recommends that City Council accept the attached Private Road Agreement and Permanent Easement for Ingress/Egress from Mondrian Properties Weston Downs, L.L.C. and authorize the Mayor and City Clerk to sign the Private Road Agreement on behalf of the City of Troy.

PRIVATE ROAD AGREEMENT

(Sidwell No. 20-21-102-020)

THIS PRIVATE ROAD AGREEMENT ("Agreement") made this _____ day of _____, _____, between Mondrian Properties Weston Downs, L.L.C., a Michigan Limited Liability Company, formerly known as Cherry Creek Building, L.L.C., a Michigan limited liability company ("Developer") whose address is 1111 West Long Lake Road, Suite #103, Troy, MI 48098, and the City of Troy, a Michigan municipal corporation ("City") whose address is 500 West Big Beaver Road, Troy, Michigan 48084.

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in the City of Troy, Oakland County, Michigan, more particularly described on *Exhibit A* (the "Land") which is attached to this Agreement and made a part hereof; and

WHEREAS, Developer intends to develop a residential condominium project within the R-1T Zoning District, with private streets located within the portion of the Land described on *Exhibit B* (the "Road Easement Area"), which is attached to this Agreement and made a part hereof, and seeks the approval of the City Council of the street system; and

WHEREAS, the Road Easement Area is shown on the drawing attached hereto as *Exhibit C* and by this reference made a part hereof; and

WHEREAS, it is recognized that the development of a private street system will result in less street area being available for public uses, and the placement of residential buildings closer to the street pavement than would occur in the case of a public street system; and

WHEREAS, it is recognized that the private street may include some non-standard improvements, street furniture, etc., which are not available or present in conjunction with public street systems; and

WHEREAS, the City is willing to approve the private street system, provided that Developer will agree that the streets will never be dedicated to the public and the City will never be required to maintain them; and

WHEREAS, in conjunction with approval of the subject private street system, the City must be assured, that the residents of Developer's condominium project will have street facilities which will be similar in quality to public streets.

NOW THEREFORE, in consideration of One Dollar (\$1.00) paid by the City, Developer and City agree as follows:

1. City approves the use of a private street system to serve the proposed residential condominium development on the Land.
2. Developer agrees, on its behalf and on behalf of all future owners of the Land, that the condominium association created to administer the condominium established on the Land shall always have the obligation to maintain the streets on the Land as private roads in accordance with the final approved site plan prepared by SDA Associates, Inc., dated June 4, 2001, as amended through July 26, 2001, being drawing DV0012SP.DWG, and shall never request that the City accept a dedication of the streets for public use and maintenance.
3. Developer and City agree that the private street pavement shall be constructed to public street standards, or to an alternative pavement standard acceptable to the City Engineer in relation to the pavement life, durability and serviceability. The pavement construction shall be inspected by the City's Engineering staff.
4. Developer agrees to grant to the City easements for emergency access, for police and fire protection, and for the maintenance, repair or replacement of the storm water drainage system in the event the owner(s) of the Land fail to maintain the system. The cost of any such repair, replacement, or maintenance by the City shall be charged to and reimbursed by the condominium association.
5. No modification, amendment or supplement to the terms and conditions stated in this Agreement shall be effective unless in writing and signed by each of the parties.
6. This Agreement shall be governed by and interpreted in accordance with the ordinances for the City of Troy and the laws of the State of Michigan.
7. This Agreement shall be binding upon and inure to the benefit of the respective heirs, representatives, successors and permitted assigns of the parties.
8. This Agreement shall be recorded in the office of the Oakland County Register of Deeds.
9. Developer agrees to reference this Agreement in the individual deeds to subsequent purchasers and in the master deed that establishes the condominium on the Land.

10. Any notice required or permitted to be given to either party by the other pursuant to this Agreement shall be deemed to be sufficient if in writing and either personally delivered, sent by facsimile, telecopier or telegram, or sent by certified or registered mail, postage prepaid to the following addresses:

To Developer:
Mondrian Properties Weston Downs, L.L.C.
1111 West Long Lake, Suite #103
Troy, MI 48098

To City:
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084

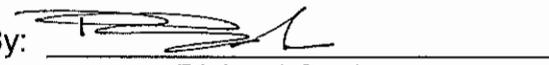
or at such other address as either party shall designate by written notice to the other. Such notice shall be deemed given on the date when personally served or, if by facsimile, telecopier or telegram, on the day it is sent or, if by mail, on the day it is posted.

11. In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incident to such litigation (through all appeals).
12. 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 successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MONDRIAN PROPERTIES WESTON
DOWNS, L.L.C., a Michigan Limited Liability
Company formerly known as Cherry Creek
Building, L.L.C., a Michigan Limited Liability
Company

By: 
Joseph Maniaci
Its: Manager

By: 
Richard Spehar
Its: Manager

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Subscribed and sworn to before me this 15 day of MARCH, 2005
by Joseph Maniaci, Manager and Richard Spehar, Manager _____ of Mondrian
Properties Weston Downs, L.L.C., a Michigan Limited Liability Company formerly known
as Cherry Creek Building, L.L.C., a Michigan Limited Liability Company, on behalf of
the company.

ELAINE M. SIMPSON
Notary Public, Oakland County, MI
My Commission Expires Dec. 25, 2007


[Notary]

CITY OF TROY,
A Michigan Municipal Corporation
By: _____

Its: Mayor

and

By: _____

Its: City Clerk

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____
by _____,
_____, who are the Mayor and City Clerk,
respectively, of the CITY OF TROY, a Michigan municipal corporation, on behalf of the
City.

[Notary]

DRAFTED BY:
Patricia A. Petitto
City of Troy
500 West Big Beaver Road
Troy, MI 48084

WHEN RECORDED RETURN TO:
City Clerk
City of Troy
500 West Big Beaver Road
Troy, MI 48084

SEND SUBSEQUENT TAX BILLS TO: Grantee

G:\Templates\Agreements\Private Road Agreement.doc

EXHIBIT "A"

**COMBINED PARCEL LEGAL DESCRIPTION AS FIELD SURVEYED BY
SPALDING DeDECKER ASSOCIATES, INC. JUNE 2001**

PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, T.2N., R.11E., CITY OF TROY, OAKLAND COUNTY, MICHIGAN, IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 21, THENCE ALONG THE NORTH SECTION LINE (ALSO BEING THE CENTERLINE OF WATTLES ROAD, VARIABLE WIDTH), S88°58'33"E 1109.00 FEET; THENCE ALONG THE CENTERLINE OF FINCH ROAD (WIDTH VARIES), S01°09'56"W 60.00 FEET; THENCE S88°58'33"E 30.00 FEET TO THE POINT OF BEGINNING; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF WATTLES ROAD (SOUTH 1/2 BEING 60 FEET WIDE), S88°58'33"E 545.35 FEET; THENCE S01°15'32"W (RECORDED AS S00°02'45"E) 699.00 FEET ALONG THE WESTERLY LINE (AND AN EXTENSION THEREOF) OF "WATTLES CREEK CONDOMINIUM" (OAKLAND COUNTY CONDOMINIUM SUBDIVISION PLAN NO. 239); THENCE N88°58'33"W 287.21 FEET (RECORDED AS 287.00 FEET); THENCE N01°09'56"E 455.40 FEET; THENCE N88°58'33"W 257.00 FEET; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF FINCH ROAD (EAST 1/2 BEING 30 FEET WIDE), N01°09'56"E 243.60 FEET TO THE POINT OF BEGINNING. CONTAINING 6.0552 ACRES SUBJECT TO THE RIGHTS OF THE PUBLIC IN WATTLES ROAD AND SUBJECT TO AND TOGETHER WITH ALL EASEMENTS, EXCEPTIONS, RESTRICTIONS, RESERVATIONS AND CONDITIONS CONTAINED IN PRIOR CONVEYANCES OF RECORD OR OTHERWISE.

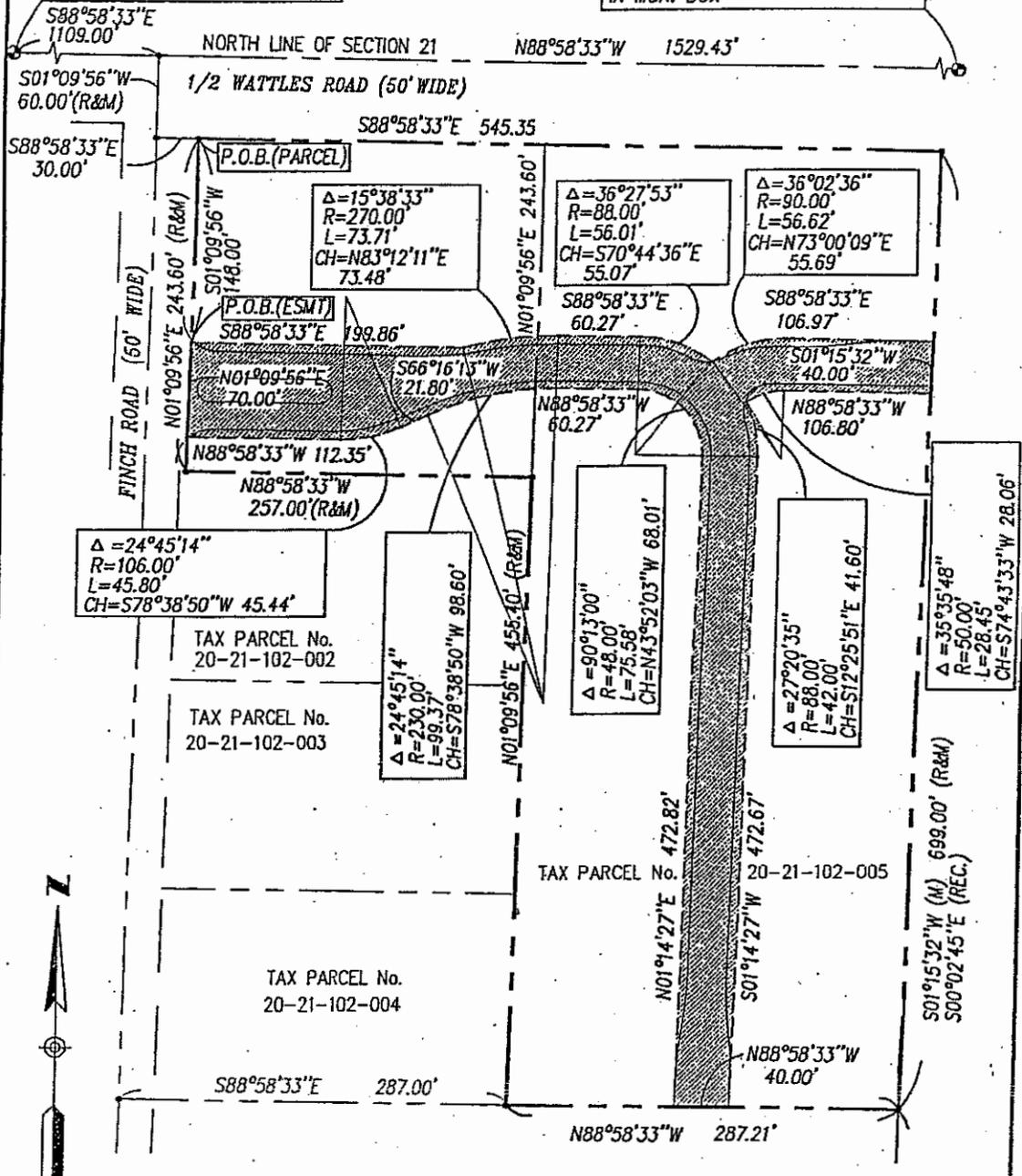
EXHIBIT "B"
"ROAD EASEMENT AREA"

COMMENCING AT THE NORTHWEST CORNER OF SECTION 21, TOWN 2 NORTH, RANGE 11 EAST, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, THENCE ALONG THE NORTH SECTION LINE, S88°58'33"E 1109.00 FEET; THENCE S01°09'56"W 60.00 FEET ALONG THE CENTERLINE OF FINCH ROAD (50 FEET WIDE); THENCE S88°58'33"E 30.00 FEET; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF FINCH ROAD (50 FEET WIDE), S01°09'56"W 148.00 FEET TO THE POINT OF BEGINNING; THENCE S88°58'33"E 199.86 FEET; THENCE 73.71 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT (HAVING A CENTRAL ANGLE OF 15°38'33", A RADIUS OF 270.00 FEET AND A CHORD BEARING N83°12'11"E 73.48 FEET); THENCE S88°58'33"E 60.27 FEET; THENCE 56.01 FEET ALONG A TANGENT CURVE TO THE RIGHT (HAVING A CENTRAL ANGLE OF 36°27'53", A RADIUS OF 88.00 FEET AND A CHORD BEARING S70°44'36"E 55.07 FEET); THENCE 56.62 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT (HAVING A CENTRAL ANGLE OF 36°02'36", A RADIUS OF 90.00 FEET AND A CHORD BEARING N73°00'09"E 55.69 FEET); THENCE S88°58'33"E 106.97 FEET; THENCE S 01°15'32"W 40.00 FEET; THENCE N88°58'33"W 106.80 FEET; THENCE 28.45 FEET ALONG A TANGENT CURVE TO THE LEFT (HAVING A CENTRAL ANGLE OF 35°35'48", A RADIUS OF 50.00 FEET AND A CHORD BEARING S74°43'33"W 28.06 FEET); THENCE 42.00 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT (HAVING A CENTRAL ANGLE OF 27°20'35", A RADIUS OF 88.00 FEET AND A CHORD BEARING S12°25'51"E 41.60 FEET); THENCE S01°14'27"W 472.67 FEET; THENCE N88°58'33"W 40.00 FEET; THENCE N01°14'27"E 472.82 FEET; THENCE 75.58 FEET ALONG A TANGENT CURVE TO THE LEFT (HAVING A CENTRAL ANGLE OF 90°13'00", A RADIUS OF 48.00 FEET AND A CHORD BEARING N43°52'03"W 68.01 FEET); THENCE N88°58'33"W 60.27 FEET; THENCE 99.37 FEET ALONG A TANGENT CURVE TO THE LEFT (HAVING A CENTRAL ANGLE OF 24°45'14", A RADIUS OF 230.00 FEET AND A CHORD BEARING S78°38'50"W 98.60 FEET); THENCE S66°16'13"W 21.80 FEET; THENCE 45.80 FEET ALONG A TANGENT CURVE TO THE RIGHT (HAVING A CENTRAL ANGLE OF 24°45'14", A RADIUS OF 106.00 FEET AND A CHORD BEARING S78°38'50"W 45.44 FEET); THENCE N88°58'33"W 112.35 FEET; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF FINCH ROAD (50 FEET WIDE), N01°09'56"E 70.00 FEET TO THE POINT OF BEGINNING.

CROSS ACCESS EASEMENT

NORTHWEST CORNER
SECTION 21, T.2N., R.11E.
L.C.R.C. #3974A L17038, P.716
FOUND IRON W/REMON. CAP
IN MON. BOX

NORTH 1/4 CORNER
SECTION 21, T.2N., R.11E.
L.C.R.C. #3976A L17038, P.720
FOUND IRON W/REMON. CAP
IN MON. BOX



BASIS OF BEARINGS:
THE NORTH LINE OF SECTION 21 AS RECORDED IN "SAPPHIRE ESTATES SUBDIVISION" (LIBER 221 OF PLATS, PAGES 5 THRU 8, INCL., OAKLAND COUNTY RECORDS)

SCALE 1" = 100'
0 100 200



SPALDING DeDECKER ASSOCIATES, INC.
ENGINEERS SURVEYORS
905 SOUTH BLVD. EAST
ROCHESTER HILLS, MI 48307
PH: (248) 844-5400 FAX: (248) 844-5404
www.spaldingdedecker.com

DRAWN: P.O'ROURKE	DATE: 05-25-01
CHECKED: P.O'ROURKE	DATE: 05-29-01
MANAGER: P.O'ROURKE	SCALE: 1" = 100'
JOB No. DV00012AC	SHEET: 1 OF 2
SECTION 21 TOWN 2 NORTH RANGE 11 EAST	
CITY OF TROY	OAKLAND COUNTY, MI

PERMANENT EASEMENT

Sidwell #88-20-21-102-020

Mondrian Properties Weston Downs, L.L.C., a Michigan Limited Liability Company, formerly known as Cherry Creek Building, L.L.C., a Michigan Limited Liability Company, Grantors, whose address is 1111 West Long Lake Road, Suite #103, Troy, MI 48098 for and in consideration of the sum of: One and no/100 Dollar (\$1.00) paid by the CITY OF TROY, a Michigan Municipal Corporation, Grantee, whose address is 500 West Big Beaver Road, Troy, Michigan, grants to the Grantee the right to traverse or use for emergency ingress/egress for police/fire protection and for maintenance, repair or replacement of storm water drainage system (in the event the owner(s) of the Land fail to maintain the system) of the real property, said easement for land situated in the City of Troy, Oakland County, Michigan described as:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION OF PARENT PARCEL, EXHIBIT "B" FOR LEGAL DESCRIPTION OF EASEMENT AREA & EXHIBIT "C" FOR SKETCH

and to enter upon sufficient land adjacent to said improvement(s) for the purpose of the construction, operation, maintenance, repair and/or replacement thereof.

The cost of any such repair, replacement, or maintenance by the City shall be charged to and reimbursed by the condominium association.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns and the covenants contained herein shall run with the land.

IN WITNESS WHEREOF, the undersigned hereunto affixed THEIR signature(s) this 2ND day of JUNE A.D. 2006

In presence of:
WITNESS (not required)

MONDRIAN PROPERTIES WESTON DOWNS, L.L.C
a Michigan Limited Liability Company formerly known as
Cherry Creek Building, L.L.C., a Michigan Limited Liability
Company

By [Signature] (L.S.)
Joseph Maniaci

Its: [Signature] (L.S.)

*Richard Spehar

Its: Manager

STATE OF MICHIGAN)
COUNTY OF DAKLAND)

The foregoing instrument was acknowledged before me this 2ND day of JUNE, by Joseph Maniaci, Manager and Richard Spehar, Manager on behalf of Mondrian Properties Weston Downs, L.L.C., a Michigan Limited Liability Company, formerly known as Cherry Creek Building, L.L.C., a Michigan Limited Liability Company.

ELAINE M. SIMPSON
Notary Public, Oakland County, MI
My Commission Expires Dec. 25, 2007

[Signature]
*

Notary Public, DAKLAND County, Michigan
My Commission Expires DEC 25, 2007

Prepared by: Patricia A. Petitto
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Return to: City Clerk
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

PLEASE SIGN IN BLUE INK AND PRINT OR TYPE NAMES IN BLACK INK UNDER SIGNATURES

EXHIBIT "A"

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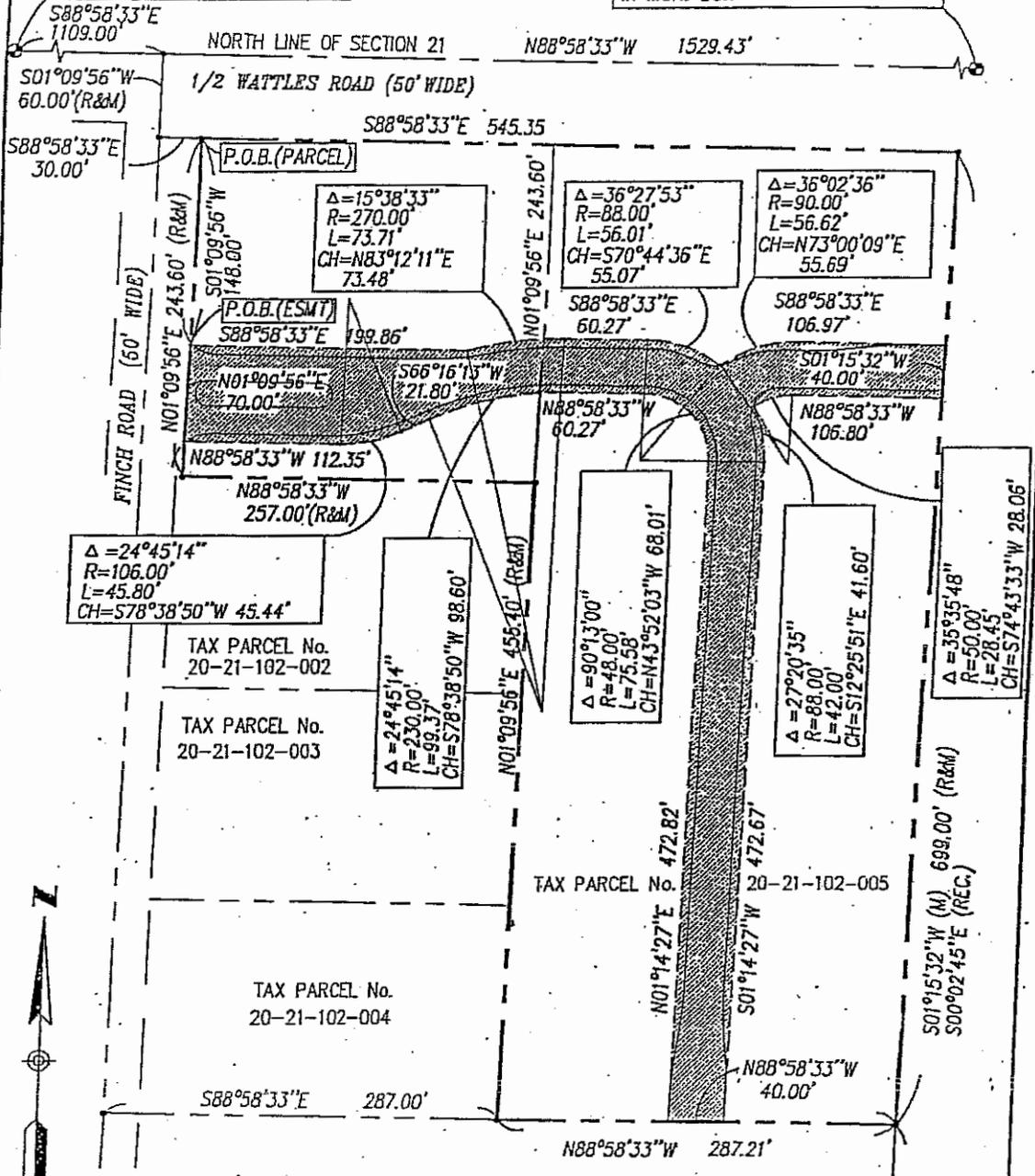
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ENGINEERS SURVEYORS
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DRAWN: P.O'ROURKE	DATE: 05-25-01
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