

**DEED OF RESTRICTION AND AGREEMENT**

**THIS DEED OF RESTRICTION AND AGREEMENT** (this "Agreement") is made and entered into this 26 day of May, 2015, by (i) **M and T, LLC**, a Kentucky limited liability company, with an address of Hamburg Place, P.O. Box 12128, Lexington, Kentucky 40580 ("Tract 2 Owner"), (ii) **M and T – Tract 3, LLC**, a Kentucky limited liability company, with an address of Hamburg Place, P.O. Box 12128, Lexington, Kentucky 40580 ("Tract 3 Owner"), and (iii) **Indian Springs Green Space, LLC**, a Kentucky limited liability company, with an address in care of Brent Nash, President, of 9462 Brownsboro Road, P.O. Box 181, Louisville, Kentucky 40241 ("Seller").

**RECITALS:**

- A. Tract 2 Owner is the owner of that certain property located at 3501 Indian Lake Drive, being described as Tract 2 on that certain Minor Subdivision Plat dated February 3, 2015, of record in Deed Book 10410, Page 153, in the Office of the Clerk of Jefferson County, Kentucky (the "Minor Plat"), upon which Tract 2 Owner intends to build a hotel and restaurant (the "Tract 2").
- B. Seller is the owner of that certain property located at 11021 Fairway Pointe Drive, Louisville, Kentucky (Tax Parcel # 265604050000) pursuant to that certain Deed dated April 8, 2014, of record in Deed Book 9025, Page 339 (the "Seller Overall Parcel"), as well as certain other open space property being all of the property described in that certain Deed dated April 8, 2014, of record in Deed Book 9025, Page 339, each in the Office of the Clerk of Jefferson County, Kentucky (collectively, the "ISCA Open Space").
- C. Seller and Tract 2 Owner have entered into that certain Purchase and Sale Contract dated December 14, 2014 (the "Contract"), pursuant to which Contract Tract 2 Owner agreed to purchase a certain portion of the Seller Overall Parcel, defined therein as the "Property" and the "Option Property", all as more particularly described in the Contract.
- D. Tract 2 Owner has assigned its purchase rights under the Contract to Tract 3 Owner.
- E. Tract 3 Owner is now purchasing both the Property and the Option Property together as one tract (instead of as two separate tracts), being described as Tract 3 on the Minor Plat ("Tract 3").
- F. Tract 2 Owner, Tract 3 Owner, and Seller desire to enter into this Agreement to evidence certain rights and obligations of the parties, as well as certain covenants, conditions, and restrictions as respects Tract 3 and Tract 2, all as more particularly set forth herein.

**NOW, THEREFORE**, in consideration of the mutual obligations of the parties set forth in the recitals and herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Restriction on Use of Tract 3.** The exclusive use of Tract 3 shall be for a hotel substantially similar in quality, style, and design as that set forth on the photographs

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attached hereto as Exhibit A, such definition of same not to be unreasonably objected to by Seller, and related conference center, restaurant (which shall not include any restaurant or food facility with a drive through or any "fast food" restaurant), and/or related parking, and/or an elderly housing/assisted living facility.

2. **Use of the ISCA Open Space.** The owner of Tract 2 shall pay \$5,000 per year to the Indian Springs Community Association, Inc. (the "ISCA") to help maintain the ISCA Open Space, which shall be made available to the owner of Tract 2 and Tract 3, as well as each's successors and assigns, plus tenants, invitees, and guests to use in a manner similar to an ISCA residents member's use of the ISCA Open Space (the "Use of ISCA Open Space"), with the payments treated as annual dues of the association, commencing the first ISCA annual dues assessment following the hotel and related restaurant opening on Tract 2, plus an escalator of 1% annually for each subsequent annual ISCA dues assessment (the "Annual ISCA Fee"). The owner of Tract 2 and Tract 3 shall not be considered a member of the ISCA. In connection with the Use of the ISCA Open Space, the Seller agrees to maintain a connection into Tract 3 approximately in the area of the existing walking path on the Seller Overall Parcel in the same manner and frequency it maintains its other walking paths. The parties hereto agree and acknowledge that the Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Indian Springs Community ("Declarations") do not apply to Tract 3 except those provisions as to use of the Recreational Property which may be applicable to guests of the Hotel using the Recreational Property.
3. **Future Support.** Seller and ISCA shall support (including writing a letter of support) and shall not oppose any potential future property owner's application on Tract 2 or Tract 3 for rezoning, detailed district development plan, and/or conditional use permit, provided same is for the development as described in Section 1 of this Agreement.
4. **Insurance.** The owner of Tract 2 and Tract 3 shall name Seller and ISCA as additional insureds in their policy of liability insurance as relates to the Use of ISCA Open Space and shall indemnify and hold the Seller and ISCA harmless for any injury, including reasonable attorney's fees in defending such claim, to any guest, contractor, employee, representative, agent, or other person who is connected with or using the hotel or its amenities arising from or connected to their use of the Seller's property. The Tract 2 Owner and the Tract 3 Owner shall both enter into an Indemnity and Hold Harmless with Seller to evidence the same. The Buyer and Seller have entered into an Agreement For Use of Real Property and Indemnity and Hold Harmless of even date herewith which is incorporated herein by reference.
5. **Enforcement; Remedies.** Upon either party's failure to comply with the provisions of this Agreement, after notice is given to the alleged non-complying party giving said party ten (10) days to correct such non-compliance or more time if necessary the consent to which shall not be unreasonably withheld by the other party, all remedies in law and equity will be available to the other party, who may take such action as necessary, including court action, to enforce compliance therewith, and the non-complying party shall immediately, upon demand, reimburse the enforcing party or other performing party for all expenses incurred in so doing, together with allowable statutory interest. In addition to all remedies in law and equity, each party shall also have the right to restrain by injunction any violation or threatened violation by the other party of any of the terms, covenants or conditions of this Agreement or to obtain a decree to compel specific






**SELLER:**

**Indian Springs Green Space, LLC**  
a Kentucky limited liability company

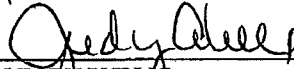
By: Indian Springs Community Association, Inc.  
a Kentucky non-profit corporation, its Member

  
\_\_\_\_\_  
Brent Nash, President

COMMONWEALTH OF KENTUCKY )  
 )SS  
COUNTY OF JEFFERSON )


Acknowledged before me this 26 day of May, 2015, by Brent Nash, as President of Indian Springs Community Association, Inc., a Kentucky non-profit corporation, as Member of Indian Springs Green Space, LLC, a Kentucky limited liability company, as his free and voluntary act and deed and as the free and voluntary act and deed of the company.

My Commission expires: March 15, 2019

  
\_\_\_\_\_  
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY

**AGREEMENT AS TO THE TERMS HEREOF:**

**Indian Springs Community Association, Inc.**  
a Kentucky non-profit corporation

  
\_\_\_\_\_  
Brent Nash, President

Date: 5/27/2015

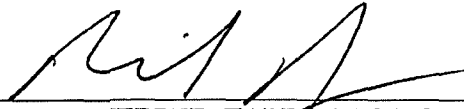
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\_\_\_\_\_  
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY

**THIS INSTRUMENT PREPARED BY:**



**BARDENWERPER, TALBOTT & ROBERTS, PLLC**  
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Louisville, Kentucky 40223  
(502) 426-6688

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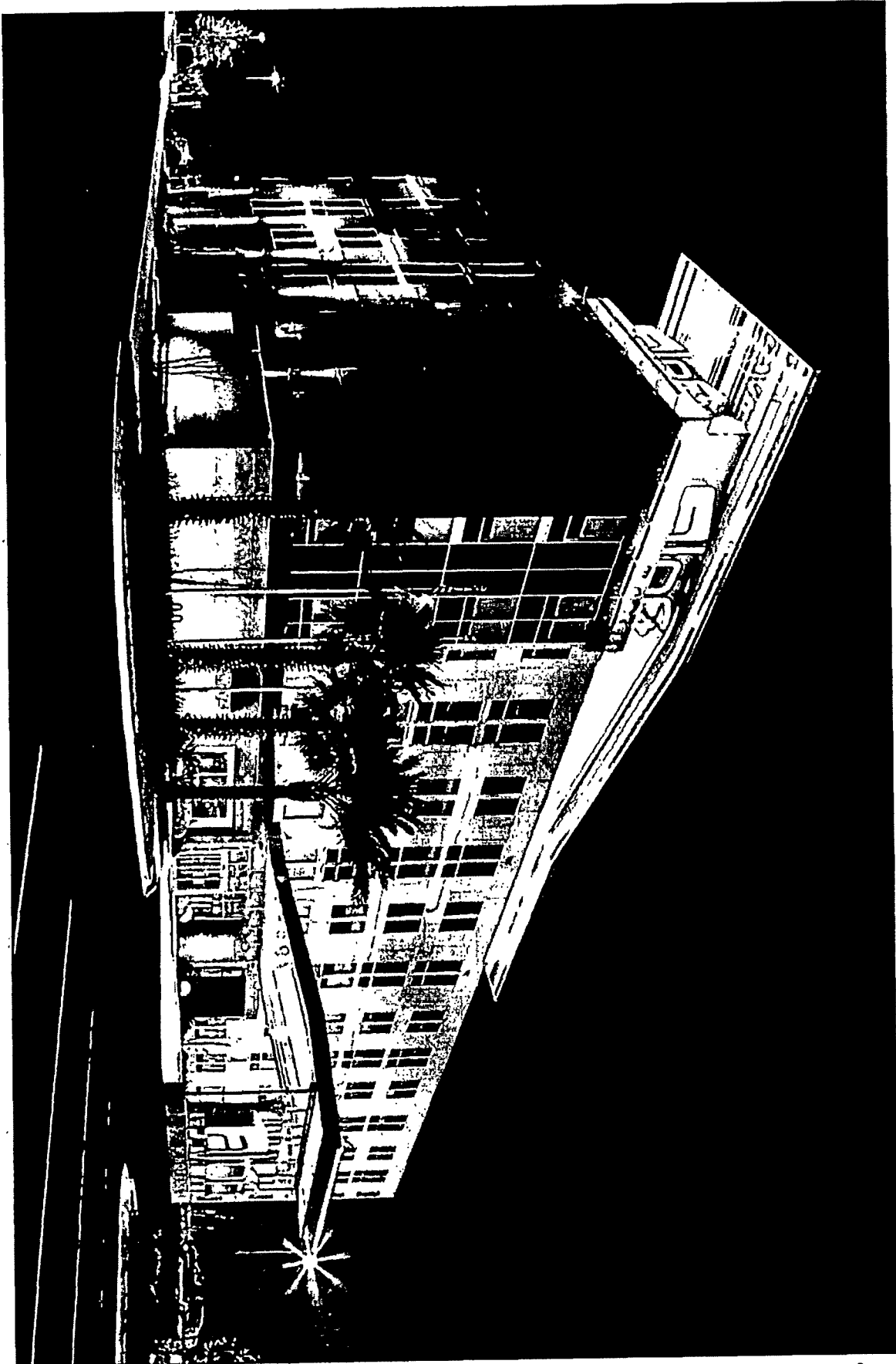
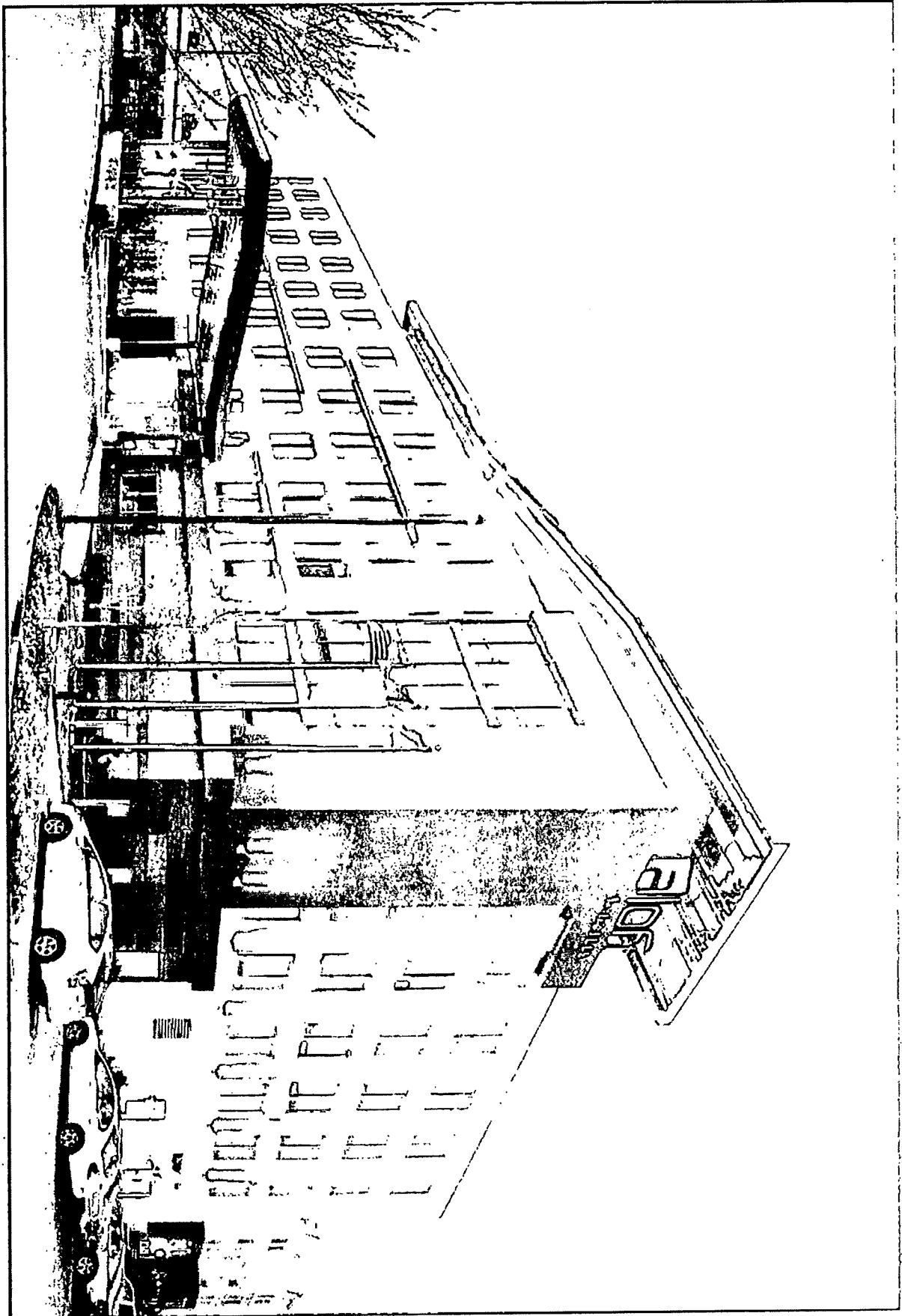
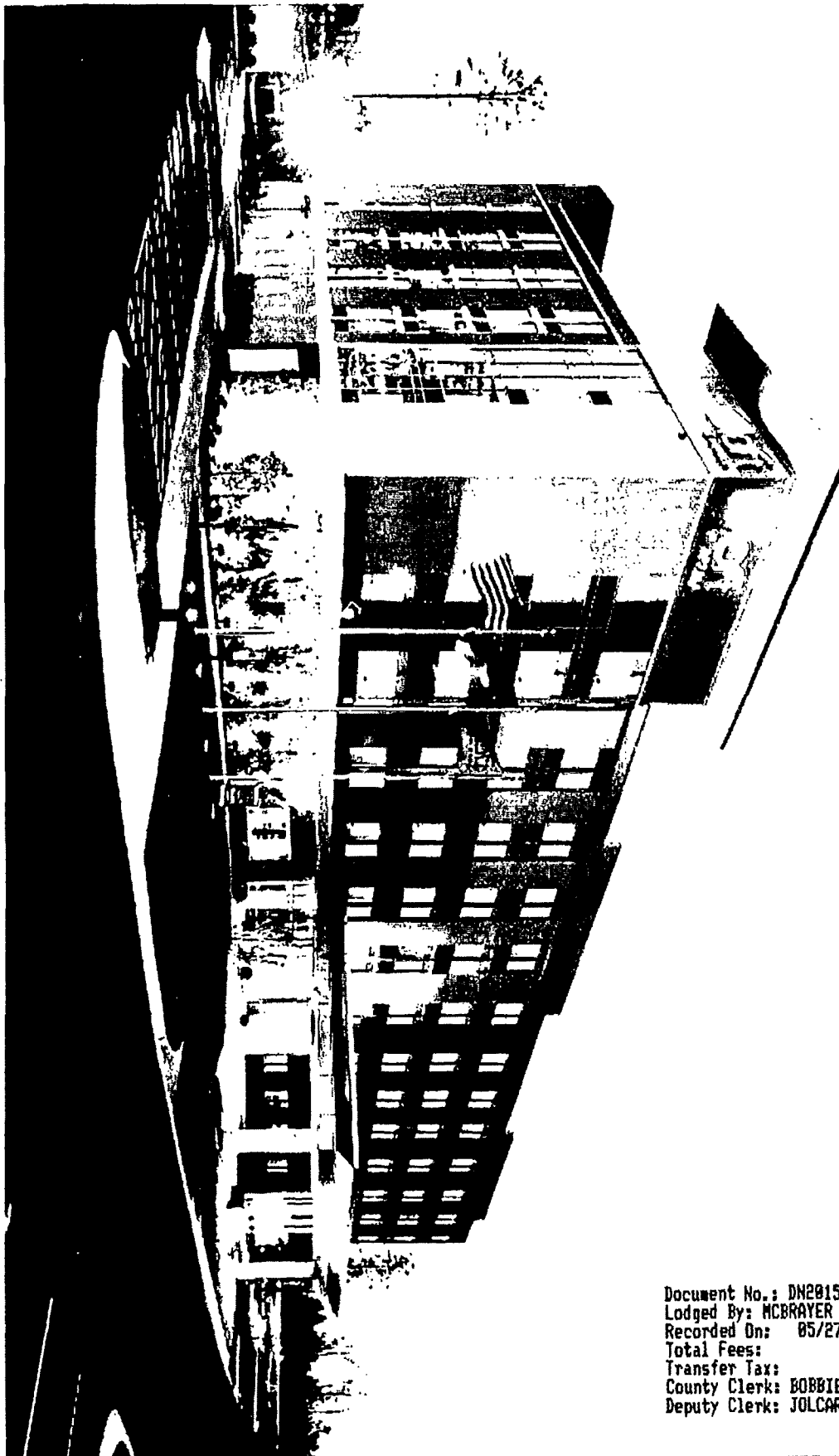


EXHIBIT A - 3 pages







Document No.: DN2015064529  
Lodged By: MCBRAYER  
Recorded On: 05/27/2015 11:51:16  
Total Fees: 31.00  
Transfer Tax: .00  
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY  
Deputy Clerk: JOLCAR

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