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**DECLARATION OF CONDOMINIUM  
OF  
MOON CAYE CONDOMINIUM  
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**EXHIBITS**

A--Property Description

B--Plans and Maps

C--Ownership Interests

**DECLARATION OF CONDOMINIUM**  
**OF**  
**MOON CAYE CONDOMINIUM**

Sky Tower, Ltd , (the "Declarant"), acting through its General Partner, Van Norton, LLC, on behalf of itself, its successors and assigns, make this Declaration of Condominium ("the Declaration")

1. SUBMISSION STATEMENT

Declarant is the owner of certain real property situated in Galveston County, Texas, more particularly described on the attached Exhibit A, and submits the improvements and appurtenances constructed on the real property to a Condominium Regime pursuant to the Condominium Act of the State of Texas (the "Act")

All terms, conditions and encumbrances contained in this Declaration shall constitute covenants and shall be binding upon the Declarant, its successors and assigns, and upon any person owning a legal or equitable interest in the improvements and appurtenances, and their heirs, personal representatives, successors and assigns.

2. NAME.

The name by which this condominium is to identified is Moon Caye Condominium, (the "Condominium")

3. DEFINITIONS

Unless otherwise provided, the terms used in this Declaration shall have the meanings as stated in the Act in existence at the time of the filing of this Declaration, and as follows

A Assessment or Common Assessment - Means the charge against each Owner and the Owner's Unit for an Owner's portion of the Common Expenses

B Association - Means Moon Caye Owners Association, Inc , a Texas non-profit corporation, which shall be the organization of the Owners to function as and constitute the "Council of Owners "



C. Board or Board of Directors - the Board of Directors of the Association

D. Building - Means any one of the buildings identified on the Maps

E. Common Elements - Means that portion of the Buildings, improvements and appurtenances situated on the Land, which is described on the attached Exhibit B, excepting all Units. The Common Elements shall consist of the General Common Elements and the Limited Common Elements, if any

F. Common Expenses -

(1) expenses incurred by the Association for the ownership, operation, maintenance or replacement of the Common Elements (including amounts assessed to maintain a replacement fund);

(2) expenses of obtaining insurance coverage, establishment and maintenance of a general operating reserve, taxes on personal property of the Association, and to make up any deficit for Common Expenses for a prior period;

(3) expenses agreed by the Owners to be Common Expenses, and

(4) expenses declared to be Common Expenses by provisions of this Declaration, the By-Laws or Rules and Regulations of the Association

G. Common Surplus - Means the excess of all receipts of the Association over the amount of the Common Expenses

H. Condominium Unit or Unit - Means an individual Unit, together with the undivided interest in the Common Elements (General or Limited or both) appurtenant to the Unit, as specified in the attached Exhibits B and C

I. Covenants - Means the stipulations concerning the utilization of the Condominium.

J. Declarant - Means Sky Tower, Ltd, and its successors or assigns, the developer of the Project as a condominium under the Act

K. Declarant Conversion Period - Means the period of time during which the Declarant implements the complete conversion of the Property to a Condominium Project, which includes the time necessary to effect change orders in construction of any Units, so as to implement the marketing, development, and eventual sale of all Units

L. Declarant Control Period - Means a period of time after the recording of this Declaration which will terminate on the 120th day after conveyance to Unit Owners of 75% of the units created by the Declarant (excluding conveyances to a Declarant)

M. Declarant Voting Period - The end of the Declarant Control Period terminates the Class B membership, Class B voting rights, and other entitlements vested in the Declarant solely during this Period (other than those rights, powers and duties vested in the Declarant for the Declarant Conversion Period)

N. Declaration - Means this Declaration and all amendments to it.

O. General Common Elements - Means that part of the Common Elements described as follows:

(1) the foundations, columns, girders, beams, supports, main walls, roofs, dividing walls between Units, halls, lobbies, walkways, stairs, entrances and exits of the Buildings and other improvements;

(2) the elevators, elevator shafts, equipment rooms, storage facilities, boiler rooms, and mechanical rooms, other than those which may be specifically designated in the attached Exhibit B or elsewhere in this Declaration as a Limited Common Element,

(3) the location and the equipment and materials making up central services (such as power, light, gas, water, and the like) which are constructed to serve more than one Unit, including pumps, motors, fans, compressors and ducts, as well as all appurtenances existing for the common use and enjoyment of the Project,

(4) all other elements of the Building utilized for the existence and maintenance of the Condominium Regime established by this Declaration, and which are not specifically designated as a Limited Common Element or as appurtenant to as constituting a part of a particular Unit

P. Land - Means the real estate on which the Building and other improvements are situated, legally described on Exhibit A

Q Lienholder and First Mortgagee - Means the holder of a mortgage, deed of trust, mechanic's lien, or other voluntarily granted lien on any Unit; a lienholder which has a first priority over all other voluntary liens encumbering the Unit

R Limited Common Elements - Means those Common Elements which are reserved for the exclusive use of either an individual Owner of a Unit or a certain number of individual Owners, which consist of the following

(1) pipes, ducts, electrical, telephonic and electronic wiring and conduits located either (i) entirely within a Unit, or within adjoining Units and serving more than one Unit, or (ii) within the perimeter walls, floors and ceilings, doors, windows, entryways and exits, and all associated fixtures and structures that lie outside the boundaries of a Unit but which serve one or more, but less than all the Units,

(2) balcony or patio structures and sidewalks and walkways adjoining or serving one or more Units but less than all adjoining Units;

(3) any separate storage area designated either in this Declaration or on the attached Exhibits as being a Limited Common Element with respect to particular Units,

(4) Common Elements which become designated Limited Common Elements pursuant to this Declaration, and

(5) all boat docks constituting slips for respective Unit Owners

S Majority of Unit Owners - Means those Owners who at the relevant time own 51% or more of the votes entitled to be cast by all Owners (including the Declarant)

T. Occupant - Means a person, or collectively, the persons in possession of a Unit at the relevant time, regardless of whether the person is a Unit Owner, lessee, guest, invitee or otherwise.

U Person - Means a person or a firm, corporation, partnership, association, trust, or other legal entity capable of holding title to real property

V. Plans and Maps - Means the survey locating the improvements on the Land, the floor and elevation plans, and any other diagrammatic plan depicting the improvements, Common Elements and Limited Common Elements, which are attached as Exhibit B

W. Premises, Project, or Property - Means, in the aggregate, the Building(s), and all improvements and appurtenances, including the Common Elements; as well as the Land

X. Unit or Condominium Unit - Means one of the enclosed spaces that consists of one or more rooms in a Building and that has a direct exit to a public right-of-way or to a Common Element that leads to a public right-of-way as shown on the Maps. The boundaries of each Unit are the interior surfaces of the perimeter walls, floors, ceiling, window frames, doors, and door frames and trim, and the portions of the Building on the boundaries of the enclosed space and the airspace within those boundaries, except for the Common Elements. The individual ownership of each Unit includes the built-in appliances, plumbing and lighting and electrical fixtures; and separate items of personal property belonging exclusively to the Unit. The Owners of each Unit also own an undivided interest in the Common Elements, with the percentage attributable to each Unit as shown on the attached Exhibit C

In interpreting instruments relating to a Unit, the physical boundaries of the Unit shall be conclusively presumed to be its proper boundaries, regardless of settling, rising or lateral movement of the Building in which the Unit is located, and regardless of variances between boundaries shown on the Maps and the actual boundaries of the Building or Unit. The term "Unit," as used in this Declaration, has the same meaning as the term "Apartments," as used in the Act, unless otherwise provided

Y. Unit Owner, Condominium Owner, or Owner - Means a person, who owns title to a Unit(s)

#### 4 RECORDATION OF MAPS

The Maps shall be filed for record simultaneously with the recording of the Declaration and prior to the first conveyance of any Condominium Unit. The Plans and Maps shall set out:

A. The legal description of the surface of the real estate on which the Condominium is situated;

B. The linear measurements and location, with reference to the boundaries of real estate, of the Building(s) and all other improvements constructed, or to be constructed by Declarant,

C Floor plans of the Building(s) constructed, or to be constructed by the Declarant, showing the exterior boundaries and number of the Units, and any other data necessary for their identification, which information is depicted by plats of each floor of each Building showing the respective designations of the Building(s), the numbers of the floors, and the number of the Units; and

D. A description of General Common Elements, and the location of Limited Common Elements and the identification of the Units to which they relate, or are allocated and assigned

Declarant reserves the right to amend the Maps, from time to time, to ensure that they conform with the actual location of any of the improvements.

5. DESIGNATION OF UNITS.

The Project is divided into designated Units contained within the Building(s) of the Project. Each Unit is identified by a number on the Maps. The remaining portion of the Project is the Common Elements, which shall be owned in common by the Owners

6. CHARACTERISTICS OF COMMON ELEMENTS

The Common Elements are intended for the purposes of affording pedestrian movement within the Project, providing access to the Units and for beautifying the Project. Nothing shall be done on the Common Elements in any manner which shall increase the rate for hazard and liability insurance covering the area or improvements

7. REGULATION OF COMMON ELEMENTS.

Following termination of the Declarant Control Period, reasonable regulations governing the use of the Common Elements by Owners and by their guests and invitees may, from time to time, be promulgated by the Board of Directors of the Association. The regulations shall be permanently posted at the office of the Association, and all Owners shall be furnished with a copy of them

8. INSEPARABLE UNITS.

Each Unit and its corresponding pro-rata undivided interest in the complementary Common Elements shall be inseparable and may not be conveyed, exchanged, partitioned, encumbered or disposed of separately by its Owner

9 DESCRIPTIONS.

Every instrument regarding title to a Unit shall legally describe a Unit by its identifying Building designation and Unit number as shown on referenced Plats, followed by the words Moon Caye Condominium, and a reference to this recorded Declaration. All descriptions or references to any Unit shall be deemed to include the undivided percentage of ownership interest in the Common Elements belonging to the Unit, whether expressly mentioned or not.

10 GOVERNMENTAL ASSESSMENT.

Declarant shall give written notice to the Galveston County Appraisal District of the establishment of the Condominium Regime, so that each Unit and its percentage of undivided interest in the Common Elements shall be deemed a separate parcel, and subject to separate assessment and taxation.

11 RESERVATION OF VARIANCE.

Despite any provision otherwise, the Declarant reserves to itself the right to amend the Maps and to vary the configuration and location of any unsold Unit(s), and to correspondingly adjust the percentages of ownership of the Common Elements of the Units remaining unsold. Adjustments of the Common Elements will only affect those Units owned by the Declarant and will not affect the percentage of ownership of any other Units.

12 OWNERSHIP

A Unit shall be a fee simple estate, and may be owned by any person, singularly, or as a joint tenant, or as a tenant in common, or in any real property relationship recognized under the laws of Texas.

13. POSSESSION.

Subject to the provisions of this Declaration, the Owner of each Unit is entitled to the exclusive possession of his Unit and to use the Common Elements for the purposes for which they are intended.

14. MECHANIC'S AND MATERIALMAN'S LIENS

Subsequent to the completion of the improvements described on the Maps, no labor performed or materials furnished to a Unit shall be the basis for filing of a lien against

an interest in the Common Elements owned by other Owners. Each Owner shall indemnify and hold harmless all of the other Owners from any liability arising from any lien claim against the other Owners' Unit or against their interest in the Common Elements, for labor or materials furnished or installed in the subject Owner's Unit.

#### 15 CONDOMINIUM RESTRICTIONS

The Units and Common Elements are declared to be subject to the encumbrances and covenants established in this Declaration, as well as those established by the Association's Articles, Bylaws, and the Rules and Regulations now or later promulgated, subject to the predominant rights of the Declarant. Each Owner and the Association shall comply with the provision of this Declaration, the Articles and By-laws of the Association, the Association's Rules and Regulations, and the resolutions of the Association. Failure to comply shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, by an aggrieved Owner against another Owner or against the Association, or by the Declarant against the Owner(s) or Association.

#### 16 EASEMENTS

A. Easements for Ingress and Egress. There is created for the benefit of each Unit and the Owners of each Unit, and all occupants, a non-exclusive easement over driveways, walks, parking areas, and other areas serving the Units as part of the Common Elements, necessary to provide reasonable access to public right-of-ways, and to and from the Units.

B. Easements for Repair, Maintenance and Emergency. The Declarant, during the Declarant Conversion Period, and subsequently the Owners (to be exercised by the Association as their agent), shall have the right of access to each Unit and to all Common Elements during reasonable hours as necessary for the maintenance of any Common Elements accessible from any Unit for the purpose of making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. The Association shall also have that right independent of any agency relationship. Damage to the interior of any Unit resulting from maintenance of any Common Elements within another Unit, when done at the instance of other Owners or of the Association, shall be a Common Expense, and shall be paid by the Association out of Assessments on hand or assessed for that purpose. If the damages are the result of negligence or an intentional act of the Owner of a Unit, then that Owner shall be responsible for the cost of repair.

C. Easements Deemed Created. All conveyances of Units shall be construed to grant and reserve the reciprocal easements as provided for and referenced in this Declaration, even though no specific reference to the easements are incorporated in the instrument of conveyance.

D. Additional Utility Easements. All companies offering utility services to the Condominium Project are granted the right to construct, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment throughout the Units and Common Elements for the purpose of providing utility services to the Project. The Declarant, during the Declarant Conversion Period, and subsequently the Association may grant additional utility easements for the benefit of the Condominium Project throughout any portion of the Common Elements, and each Owner grants to the Declarant and Association an irrevocable power of attorney to execute, acknowledge and record any instrument necessary for the easements.

E. Easement for Unintentional Encroachments. If (a) any part of the Common Elements encroaches on a Unit or (b) if any part of a Unit encroaches on any part of the Common Elements or upon another Unit, resulting from settlement or movement of the building or by immaterial inaccuracies in building or rebuilding not caused by the purposeful act of the Unit Owner or Declarant, an easement for the encroachment is declared to exist; and no encroachment shall be considered to be an encumbrance either on the Common Elements or the Units. In the event of dispute as to the materiality of the encroachment, it shall be resolved by the Declarant during the Declarant Conversion Period, or subsequently by the Board of Directors, whose determination shall be conclusive.

## 17 DECLARANT'S ENTITLEMENTS

A. Declarant Conversion Period. Despite any provision otherwise, during the Declarant Conversion Period, the Declarant shall have the right to implement complete conversion of the Project; and to market, develop and consummate the sale or lease of Units. More specifically, but without limitation, the Declarant has the right to:

(1) maintain Units as models or as a sales office, to keep salesmen and employees in the sales office and to permit prospective purchasers of Units to use the Common Elements.

(2) maintain on the Condominium Property without charge of separate assessment (a) a general office for the purpose of exercising the development and management rights reserved to it, and (b) a general construction office for the Declarant's contractors.



(3) engage services of a Manager for the benefit of the Association. Any management contract can not provide for a term longer than 12 months after the Conversion Period is over. The Manager may be affiliated with the Declarant.

(4) reserve a non-exclusive easement throughout the Common Elements and each Unit for the purpose of exercising its rights pursuant to this Declaration, and for the purpose of implementing the development of the Project. All rights and easements created by this Declaration are subject and subordinate to the conversion rights of the Declarant, whether or not inconvenience to any Owner results.

(5) reserve or grant easements throughout the Project for access, and for installation and maintenance of any utilities; and to place, install, and keep any signage available to public view throughout the Project.

(6) advance on behalf of the Association, money or services to perform the duties of the Association, or pay any sums payable by the Association pursuant to this Declaration. In that event, the Association shall reimburse the Declarant any funds so advanced and the reasonable cost of any services provided to the Association, and shall levy any necessary Assessments to make the reimbursement.

(7) if necessary or advisable, prohibit access to portions of the Common Elements to any occupants, and to utilize various portions of the Common Elements in connection with conversion and development. However, the prohibition of access to the Common Elements shall not preclude any Owner or his guests or invitees from access to his particular Unit. No Unit Owner, or his guests or invitees, shall in any way interfere with the Declarant, its employees, successors, or assigns, in connection with any conversion. By acceptance of a Unit, each Owner acknowledges that the activities of the Declarant in completing conversion may constitute an inconvenience or nuisance to the Unit Owners, to which each Owner consents.

B Declarant Control Period. Additionally, during the Declarant Control Period, it may execute all documents and do all other acts affecting the Project which, in the Declarant's opinion, are required to implement its reserved rights, provided any document or act is not inconsistent with the then existing property rights of any Owner.

18 USE BY DECLARANT.

Despite any provision otherwise, there shall be no restriction as to use or leasing of Units owned by the Declarant, or owned by the Declarant in conjunction with another Party, or any wholly owned subsidiary of the Declarant.

19 RESTRICTIONS ON USE, OCCUPANCY AND MODIFICATIONS BY OWNER

No Owner or Occupant of the Project shall:

(1) make any structural alterations, except the erection or removal of non-support interior partitions wholly within the Unit. Any alterations shall be performed by a contractor in accordance with applicable building codes, laws, and ordinances, and in accordance with plans and specifications. Conversion shall not be commenced until a schedule of commencement and completion has been previously approved in writing by the Declarant during the Declarant's Conversion Period, or subsequently by the Board of Directors (which may be granted or denied in their sole discretion);

(2) make any use of a Unit which violates any laws, ordinances, or regulations of any governmental body,

(3) fail to abide by the Bylaws and Rules and Regulations in regard to the use of the Units and the Common Elements which are existent or may be adopted by the Board of Directors; or fail to allow the Declarant or Board, as the case may be, to enter the Unit at any reasonable time to determine compliance with the Act, this Declaration, or the Articles of Incorporation, Bylaws, or Rules and Regulations of the Association,

(4) permit anything to be done or kept in a Unit or in the Common Elements which will increase insurance rates on any Unit or on the Common Elements,

(5) commit or permit any nuisance, waste, noxious or offensive activity, loud noises, noxious odors, or illegal act in his or her Unit or throughout the Common Elements;

(6) make use of the Common Elements in a manner as to compromise or diminish the rights of the other Unit Owners in the use and enjoyment of the Common Elements or their Units, and

(7) deposit garbage outside the disposal areas provided for those purposes

20. OBLIGATIONS CONCERNING UNPAID ASSESSMENT AND RESERVES UPON SALE

In a voluntary transfer of a Unit, the transferees of the Unit shall be jointly and severally liable with the transferor for all unpaid Assessments against the Unit up to the time

of transfer Any transferee shall be entitled to a statement from the Board of Directors, the President of the Association, or the Manager, setting out the amount of unpaid Assessments against the transferor due the Association Neither the transferor or the transferee shall be liable for, nor shall the Unit conveyed be subject to, a lien for any Assessments which become due and payable prior to the date of the statement, which are in excess of the amount set out Upon transfer of fee title to a Unit, unless there is an agreement to the contrary approved by the Board of Directors, any reserves or other funds of the transferor held by or subject to the control of the Association, shall be transferred on the books of the Association to the credit of the transferee.

## 21 MORTGAGES.

A. Right to Mortgage Any Owner shall have the right from time to time to mortgage or encumber his Unit by deed of trust, mortgage or other security instrument

B. Notice to Association. An Owner who mortgages his Unit shall notify the Association, giving the name and address of the mortgagee Whenever a mortgagee notifies the Association of the fact that the mortgagee holds a deed of trust or mortgage on a Unit, the Board shall maintain that information in its records

C Notice of Default, Lapse in Insurance. The Association shall notify the mortgagee of a Unit in writing, upon specific written request of the mortgagee, identifying the Unit on which the mortgagee holds its lien, of any default by the Owner in performing Owner's obligations set out in the Declaration If the Owner has not cured the default within 30 days after the Owner's receipt of written notice, the Association may take curative action The Association, upon written request, shall notify a mortgagee of any lapse, cancellation, or material modification of any insurance policy maintained by the Association

D Examination of Books. Upon request, the Association shall permit Unit Owners and their mortgagees to examine, during normal business hours, current copies of the Declaration, By-laws and Rules and Regulations, as well as the books and records of the Association.

## 22 MANAGEMENT AGREEMENTS

Any agreement for professional management of the Project or any other contract providing for services of the Declarant, will be terminable by the Association after the expiration of the Declarant Control Period, without cause and without payment of a termination fee - except for any employment agreement with a manager In the event of the termination of a prior management agreement, the Association shall enter into a new

management agreement prior to the effective date of the termination of the old one, it being understood that the Association shall have the right and obligation to contract for professional, third-party management of the Project. The Association may enter into a management agreement upon the terms and conditions approved by the Board and consistent with this Declaration. Any decision to establish self-management by the Association shall require the prior consent of Owners holding at least 67% of all votes.

23 ALTERATION AND DESTRUCTION OF UNITS.

The Association may not alter or destroy a Unit or a Limited Common Element or change the allocated interests of Units in the Common Elements, without the consent of all Owners affected and the First Mortgagees of all affected Owners.

24 THE ASSOCIATION.

A. Authority to Manage. Except as otherwise provided, the affairs of the Project shall be administered by the Association, which shall be vested with all rights, powers, and duties necessary to manage the Project. The Association shall provide for the operation and maintenance of the Project in the manner provided in this Declaration and in the By-laws and Rules and Regulations adopted by the Association.

B. Board of Directors

(8) The affairs of the Association shall be implemented by the Board of Directors. The initial Board shall be appointed by Declarant and consist of 3 persons - none of whom must meet the requirements for subsequent Directors. After the end of the Declarant Control Period, the Board must consist of persons who are members of the Association. The Board shall then consist of 5 persons who are members of the Association. In the event that a Unit is owned by a corporation or other business entity, that entity's officer, director, or member who occupies a Unit may be a Board member. The first election of Directors shall be held at the first meeting of the members and thereafter at each annual meeting of members. At the 1st meeting of the Members to elect a 5 person Board, 3 Directors shall be elected for a term of 2 years and 2 Directors shall be elected for a term of 1 year.

Subsequently, at the annual meeting of the members, the members shall elect either 3 or 2 Directors, as the case may be, each to serve for a term of 2 years, in order to fill the positions of the Directors whose terms have expired at the time of the annual meeting.

(9) The number of Directors to be elected in any particular election shall be called the "Vacancies " Each member shall be entitled to cast his total number of votes, as calculated in the manner provided in this instrument, once for each Vacancy The candidates receiving the highest number of votes for a Vacancy shall be deemed elected All votes shall be cast by written ballot. Members shall not vote cumulatively for the election of Directors

The presence of a majority of Directors at a meeting of Directors shall constitute a quorum for the transaction of business. The action of a majority of the Directors present at a meeting at which there is a quorum, shall be the Act of the Board The annual meeting of the Board shall be held each year immediately following the annual meeting of the members, at the place of the annual meeting of members Regular meetings of the Board shall be held at times and places as the Board determines.

The members of the Board (other than members of the initial Board and first elected Board) shall serve for a term of 2 years commencing at the time of their election, or until their death, resignation, removal, or until they are no longer members of the Association, whichever is earlier. Any member of the Board (other than the initial Board appointed by the Declarant) may be removed from membership on the Board, with or without cause, by the affirmative vote of those members holding 67% of the votes at a meeting of the Members called to consider that action.

## 25 RIGHTS AND DUTIES OF THE ASSOCIATION

A Assessments. The Association shall assess against each Condominium Unit, and the Unit's Owner, to meet Common Expenses; and shall apply and enforce Assessments as provided for in this Declaration.

B. Maintenance. The Association shall maintain and repair portions of the Project as the Association is required to do, pursuant to the provisions of this Declaration

C Insurance The Association shall provide and maintain insurance as the Association is required to do pursuant to the provisions of this Declaration, and shall collect, hold, and apply the proceeds of insurance as provided.

## 26 MEMBERS OF THE ASSOCIATION.

Membership The Association shall have members, who are divided into 2 classes The Class A membership shall be composed of the fee title Owners as evidenced by recorded instruments of conveyance (other than Declarant or any successor developer of the Project)

The Class B membership shall be composed of Declarant or any successor developer of the Project, so long as either is a fee title Owner or co-Owner of one or more of the Units

The term "successor developer" means any persons who succeed Declarant as the developer of the Project.

27 VOTING RIGHTS IN THE ASSOCIATION.

Ownership of each Condominium Unit by a Class A member entitles the Owner to the number of votes in the affairs and management of the corporation which is equal to the product of the percentage of ownership in the Common Elements attributable to the Unit as stated in the attached Exhibit C, multiplied by 1 Any ownership of a Condominium Unit by a Class B member shall entitle the Owner to that number of votes which is equal to the product of the percentage of ownership in the Common Elements attributable to the Unit as stated in the attached Exhibit C, multiplied by 9

28 DECLARANT AUTHORITY.

Despite any provisions otherwise, for the benefit and protection of the Owners and all Lienholders, and for the purpose of insuring an orderly development of the Units, the Board shall take no action without the express written consent of the Declarant until the termination of the Declarant Control Period. The Declarant shall give the Board of Directors 30 days prior written notice of the date on which the Declarant Control Period shall terminate

29. TEMPORARY MANAGING AGENT

During the period of administration of this Condominium Regime by Declarant, the Declarant may employ or designate a temporary "Manager," who shall possess all of the rights, powers and duties as delegated by Declarant The Declarant may pay the temporary Manager compensation as it deems reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Condominium Regime and shall be paid out of the Common Assessments

30 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT.

Every Owner shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following restrictions.

A. The right of the Declarant during the Declarant Control Period, or subsequently the Association, to publish rules and regulations governing use of the Common Elements and any improvements and appurtenances and to establish and enforce penalties for infractions,

B The right and duty of the Declarant or Association, as the case may be, to suspend the voting rights of an Owner for any period during which any assessment against the Owner's Unit remains unpaid.

C. The right of Declarant during the Declarant Control and Conversion Periods, or subsequently the Association, to dedicate or transfer all or any part of the Common Elements suitable for utility easements to any public authority or utility No dedication or transfer of a Limited Common Element shall be effective unless approved by all affected Owners and all First Mortgagees of affected Owners, and the Owners holding at least 67% of the votes of the Association at a meeting of the Association specifically called for the purpose of approving any dedication or transfer An instrument must be signed by the Board of Directors reflecting the vote of the Owners and the First Mortgagees agreeing to the dedication or transfer and be recorded in the Condominium Records of Galveston County, Texas,

A. The right of the Declarant or Association to implement and maintain a private security system for the Project,

B The right of the Declarant or Association to establish the regulations governing traffic within the Common Elements, and to establish sanctions for any violation of regulations;

C The right of the Declarant or Association to regulate noise within the Project, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise, and

D The right of the Declarant or Association to control the visual attractiveness of the Project, including, without limitation, the right to require Owners to eliminate objects which are visible from the Common Elements and which, in the Association's judgment, detract from the visual attractiveness of the Project.

### 31 MAINTENANCE

A Association's Obligations for Maintenance. The Declarant, during the Declarant Control Period, or the Association subsequently, shall maintain all parts of the

Condominium Property Improvements and Common Elements, excepting those parts of the Units which are required to be maintained by the Owners. Specifically, without limitation, the Declarant's or Association's obligations for maintenance shall include the following

- (1) all landscaping and other matters and services required to be completed by virtue of the Covenants,
- (2) maintenance of exterior surfaces of the Improvements, and repair of roofs,
- (3) maintenance of portions of Units constituting Common Elements contributing to support of the building;
- (4) all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services and constituting a Common Element,
- (5) all other parts of the Common Elements including, but not limited to, hallways, stairways, and lobbies.

The Association shall keep all portions of the Condominiums for which it is responsible in clean condition, in good order and repair, and in conformity with all applicable laws, ordinances and regulations. If, in order to perform its maintenance obligations, the Association shall be required to enter any Owner's Unit, the Association shall do so with as little inconvenience to the Owner as possible. The Association shall restore and repair any damage done to the Unit and its contents resulting from acts of the Association and its agents, including damage to interior walls, floors and ceilings.

**B Owner's Maintenance.** Each Owner shall be responsible, at his own expense, to maintain his Unit in good order and repair and in compliance with all applicable laws, ordinances and regulations and the provisions of this Declaration and the Rules and Regulations adopted by the Association. Without limiting the generality of the above, each Owner shall at his own expense

- (1) repair all water leaks within the Unit,
- (2) repair all plumbing fixtures, all space heaters, all water heaters, and all related equipment in the Unit;
- (3) repair all electrical and/or gas defects within the Unit;



- (4) repair all heating defects within the Unit,
- (5) repair and replace all broken glass in the Unit's windows;
- (6) paint and decorate the interior of the Unit,
- (7) maintain in good order and repair and in accordance with standards established by the Association the Owner's Limited Common Elements, the whole of which can be utilized solely in conjunction with the Owner's Unit;
- (8) report to the Association, promptly in writing, all needed maintenance or replacements which are the responsibility of the Association

The repair of Common Partitions separating 2 Units shall be the joint responsibility of the 2 adjoining Owners, and those Owners shall pay the cost of the repair of any damaged Common Partitions between their Units, unless the Board chooses to have the Association pay for repairs.

C Restrictions on Owners. Without the prior written consent of the Declarant during the Declarant Conversion Period, or later the Association, no Owner shall

- (1) make any alterations in any of the Common Elements or other part of the Project Building or Improvements which the Association is required to maintain (except this provision shall not apply to Declarant with respect to unsold Units),
- (2) perform any work in an Owner's Unit which would impair the conversion of the Project, or which would affect the structure of a building, or which would jeopardize the safety of a building or any person, or which would interfere with any easement or utility lines

D Liability for Negligent Acts.

If the need for repair to any portion of the Project is caused through the willful or negligent act of an Owner, his guests, tenants or invitees, and is not covered by insurance either on the Owner's Unit or the Common Elements, the cost of the repairs shall be added to and become a part of the assessment to which the Unit is subject

### 32. ASSESSMENTS.

A. For Common Elements All Owners shall be obligated to pay the estimated Common Assessments imposed by the Declarant or the Association's Board to meet the

Common Expenses The Common Assessments shall be imposed by the Declarant until termination of the Declarant Control Period. Common Assessments shall be due in advance, on or before the 1st day of each calendar month. By decision of the Declarant or subsequent resolution of the Board, the frequency of collection of Common Assessments may be altered. If an Owner fails to pay the Common Assessment by the 10th day after the assessment is due, the Declarant or Board shall have the right to impose and assess a late charge in the amount not to exceed any applicable usury limit.

B. Purpose of Assessments. The Common Assessments levied by the Association shall be used exclusively for the operation, improvement, maintenance, administration, and preservation of the Project.

C. Determination of Assessments. The assessments to be paid by all of the Owners, including Declarant, shall be determined by the Declarant during the Declarant Control Period, and thereafter by the Association's Board, based upon the cash requirements necessary to provide for the payment of all Common Expenses. Examples of expenses that will be taken into account are the taxes, governmental assessments, common area lighting, repairs and renovation, garbage collections, water charges, legal and accounting fees, insurance, management costs and fees, expenses and liabilities incurred by the Association or Manager by reason of this Declaration, expenses incurred in the operation and maintenance of administrative facilities, payment of any deficit remaining from a previous period, acquisition of Units pursuant to any options granted to the Association, and the creation of a reserve contingency fund. Additionally, all taxes assessed against personal property owned by the Declarant or Association shall be paid by the Association and shall be a Common Expense included in Common Assessments.

Owners having Limited Common Elements, the whole of which can be utilized solely in conjunction with their Unit, shall not be subject to any special assessments for the Limited Element's maintenance, unless the Owners have not implemented the maintenance necessary to keep them in good order and repair.

D. Owner Obligations For Assessments and Adjustment of Assessments.

(1) The Declarant or Board shall fix the amount of the regular Common Assessments applicable to the Units at least 30 days prior to January 1st of each year. Each Owner shall be personally obligated to pay the Common Assessments imposed by the Declarant or Association. The Common Assessments shall be imposed based upon each Owner's percentage interest in the Common Elements listed in the attached Exhibit C.

(2) Whenever the Declarant determines, during the Declarant Control Period, that an adjustment in the amount of the Common Assessment is necessary, then the Declarant shall send written notification to each Owner of the new Assessment. The new Common Assessment shall remain in effect until a new amount is established pursuant to the provisions of this Declaration.

E. Special Assessments for Improvements In addition to the regular Common Assessments authorized by this Declaration, the Declarant or the Board of Directors may levy in any calendar year a Special Common Assessment applicable to that calendar year only, for the purpose of defraying, in whole or in part, the cost of any conversion or unexpected major repair of a capital improvement constituting a part of the Common Elements, including necessary fixtures and personal property related to the Common Elements - or for such other purposes as the Declarant or the Board may consider appropriate and for the common benefit of all Owners. The Special Common Assessment shall be imposed upon the Owners in proportion to the respective ownership interests in the Common Elements; however, no Special Common Assessment shall become effective until it has received the affirmative vote of the Owners holding at least 67% of the total votes cast at a special meeting of the members of the Association called for that purpose. The pro-rata share of each Owner for any special Common Assessment shall be due and payable as provided in the resolution adopting that Assessment

F. Commencement of Assessments. The regular Common Assessments shall commence upon the conveyance of the first Unit to an Owner other than Declarant. The Assessments shall be prorated if the ownership of a Unit commences on a day other than the 1st day of a month

G. No Exemption. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements, or by abandonment of his Unit.

#### H. Lien for Assessments

(1) All sums assessed as either regular or Special Common Assessments against a Unit Owner for his share of Common Expenses (including interest), is secured by an express contractual lien (which is now created, granted and reserved) on the Unit. The lien shall be superior to all other liens except for:

1. Assessments, liens, and charges in favor of the State of Texas or political subdivision of it for taxes on the Unit, and

ii All liens securing sums due under any mortgage, vendor's lien, deed of trust or voluntarily granted mechanic's lien

(2) To evidence the amounts secured by the contractual lien for Expenses, the Declarant if during the Declarant Control Period or subsequently the Board of Directors, may, at their option, prepare written notice setting forth the amount of the unpaid debt, the name of the Owner of the Unit and a description of the Unit. The notice shall be signed by any member of the Board of Directors or by the Declarant and may be recorded in the Office of the County Clerk of Galveston County, Texas.

The contractual lien may be enforced by the Declarant or Association through foreclosure on the defaulting Owner's Unit. Any foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in deeds of trust, as set out in Section 51.002 of the Texas Property Code, or in any other manner permitted by law. Each Owner, by accepting a deed to his Unit, shall be deemed to have granted to the Declarant during the Declarant Control Period, and subsequently the Association, a power of sale upon his Unit to secure payment of regular and Special Common Assessments imposed upon him. In any foreclosure, the Owner shall be required to pay the costs of proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Declarant or Association shall have the right to bid on the Unit at foreclosure sale and to acquire and convey same, if it is the highest bidder at foreclosure sale. Without other formality than executing and recording an instrument in writing, the Association shall have the right to appoint a substitute trustee to exercise the power of sale.

(3) The amount of the Common Assessment imposed with respect to each Unit shall also be a personal debt of the Owner at the time the assessment is made. Any suit to recover a money judgment for unpaid regular or Special Common Assessments may be brought without foreclosing or waiving the lien.

(4) Any encumbrancer holding a lien on a Unit may pay any delinquent Common Assessments imposed on the Unit, and upon payment, the encumbrancer shall be conveyed the lien on the Unit for the amount paid, with the same priority as his lien.

I Subordination of the Lien to Mortgages Transfer of any Unit pursuant to a foreclosure shall not affect the contractual lien for assessments as to the amounts secured which became due and payable prior to the recording of the deed of trust, but the assessments shall be extinguished if they become due and payable after recording.

J. Statement of Assessments Upon the written request of any Owner or any encumbrancer or prospective purchaser or prospective encumbrancer of a Unit, the Declarant or the Association, by its Board of Directors, or the Manager, shall issue a written statement setting out the existent unpaid Common Assessments with respect to any Unit, the amount of the current Common Assessments, and the date the next Common Assessment becomes due and payable

33. UTILITIES.

Each Owner shall pay for his own utilities which are separately metered and billed to each Unit Owner by utility companies. Each Unit Owner shall pay his pro-rata share of utilities servicing the Project as in the case of other Common Expenses, which shall be included in the Monthly Common Assessments.

34. INSURANCE

A Fire and Extended Coverage The Association shall obtain and maintain at all times, insurance as required by this instrument, for risks that are covered with respect to condominium projects, similar in construction, design and use, and issued by responsible insurance companies authorized to do business in Texas. The coverage by insurance shall commence no later than at the time of the first conveyance of a Unit to a person other than the Declarant. The insurance shall be carried in blanket policy form naming the Association, the Owners, and all mortgagees of Units (of whose lien interest the Association receives written notice) as the insureds. In addition, each policy shall identify the interest of each Unit Owner and shall provide for a standard, noncontributory mortgage clause in favor of each First Mortgagee. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief and such hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements, and against other hazards and for amounts as the Board may deem advisable.

Each Owner designates the Declarant during the Declarant Control Period, and later the Association, as attorney-in-fact, to administer and distribute proceeds as elsewhere provided in this Declaration. The insurance policy shall also provide that it cannot be canceled (unless replaced by another policy with the same coverage) or substantially modified by either the insured or the insurance company until after 10 days prior written notice to each First Mortgagee. The Board of Directors shall, upon request of any First Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagor.

All policies of insurance shall provide that the insurance shall be invalidated or suspended only with respect to the interest of any particular Owner guilty of a breach of warranty, willful act, negligence or non-compliance of any provision of the policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions for the policy would otherwise invalidate or suspend the entire policy.

The policies of insurance shall also provide that no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy. The policies shall also state that as to the interests of all other insured Owners not guilty of any act or omission, it shall not be invalidated or suspended, but shall remain in effect. Any insurance obtained by the Association or a Unit Owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the Unit Owners, Association, and their respective agents or guests

B. Liability Insurance. A Unit Owner is only liable for tort claims arising from the Common Elements in proportion to his share in the Common Elements. The Association shall maintain a policy of comprehensive public liability insurance and property damage insurance against claims for personal injury or death, or property damage suffered by the public, or any Owner or Occupant, family, agent, employee, or invitee of any Owner or Occupant, occurring in, or about the Limited or General Common Elements; including, but not limited to, walkways, terraces, passageways, driveways, roadways, stairs, and other common facilities. The public liability and property damage insurance shall afford protection to the limits and extent as the Association deems desirable. Initially, the policy limit shall not be less than \$2,000,000.00 covering all claims for personal injury and/or property damage. Such liability and property damage insurance policy shall also contain a cross-liability endorsement where the rights of a named insured under the policy shall not prejudice his actions against another named insured. The insurance policy shall also provide that it cannot be canceled (unless replaced by a policy with the same coverage) or substantially modified by either the insured or the insurance company until after 10 days prior written notice to each First Mortgagee. This liability coverage does not insure the individual Unit Owner for liability or damages arising out of the use of his individual Unit as distinguished from the Common Elements of the Project.

C. Personal Property Insurance. The insurance required to be taken out by the Declarant or Association does not insure the personal property of the Unit Owners, and each Unit Owner may, at the Owner's option and expense, obtain other insurance as the Owner deems necessary to insure his personal property.

The Declarant during the Declarant Control Period, or subsequently the Association, is appointed agent for each Unit Owner and for each holder of a mortgage on a Unit and for each owner of any other interest in the Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

The Declarant or Association, as the case may be, shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear.

35 DESTRUCTION OR OBSOLESCENCE.

Repair of the Buildings or Common Elements, means restoring them to substantially the same condition as they existed prior to the damage. Unless specifically stated, restoration of those portions of the Buildings situated within unfinished perimeter walls, floors, and ceilings of a Unit are not included. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, (unless all of the Owners and all of the First Mortgagees agree not to rebuild) in accordance with the provisions set out below.

A. In the event of damage to or destruction of Buildings or Common Elements due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the damaged Buildings and Common Elements, shall be promptly applied by the Declarant or Association, as the case may be, to their repair. All proceeds from insurance must be disbursed first for repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium regime terminated.

B. If the insurance proceeds are insufficient to repair the damaged Building(s) and Common Elements, and if the damages are not more than 2/3rds of the habitable area of the Building(s), the damage or destruction shall be promptly repaired by the Declarant or Association using the proceeds of insurance and the proceeds of a Common Assessment to be made against all of the Owners and their Units. The Common Assessment may take the form of a Special Common Assessment made pro rata according to each Owner's proportionate interest in the Common Elements and shall be due and payable within 30 days after written notice is given to the Owners. The Declarant or Association shall have the authority to cause the repair of the damage despite the failure of an Owner to pay the Common Assessment. The Common Assessment provided for shall be a debt of each Owner and secured by the contractual lien on his Unit and may be enforced and collected as provided in this Declaration.

C. If more than 2/3rds of the habitable area of the Building(s) are destroyed or damaged, and if the Owners representing the aggregate ownership of 100% of the Common Elements do not within 90 days following, voluntarily make provision for repairs, the Declarant or Association, as the case may be, shall immediately record a notice setting out the fact, and, the entire remaining Project shall be sold by the Declarant or Association free and clear of the provisions contained in this Declaration, the Maps and the By-laws. The insurance settlement proceeds shall be collected by the Declarant or Association, and shall be divided according to each Unit Owner's interest in the Common Elements, and the divided proceeds shall be paid into separate accounts, with the consent of the Mortgagees (if required), one account attributable to each Unit. Each account shall be in the name of the Declarant or Association, and shall be further identified by the number of the Unit and the name of the Owner.

The Declarant or Association shall use and disburse the total amount in each account, without contribution from any one account to another, toward the full payment of (i) all taxes and special assessments, (ii) all recorded liens and (iii) all unpaid Common Assessments upon the Unit, and with the balance being payable to the Owner of the Unit. There shall be added to each account, the apportioned amount of the proceeds derived from the sale of the entire Project. The apportionment of all funds shall be based upon each Condominium Unit Owner's proportionate interest in the Common Elements.

D. If the Owners representing a total ownership interest of 100% of the Common Elements adopt a unique plan for repair, then all of the Owners shall be bound by the terms of the plan. Any assessment made in connection with the plan shall be a Common Assessment and made pro rata according to each Owner's proportionate interest in the Common Elements, and shall be due and payable as provided by the terms of the plan, but not sooner than 30 days after written notice of its acceptance. The Declarant or Association, as the case may be, shall have the authority to cause the repair of the damage using all of the insurance proceeds, despite the failure of an Owner to pay the Common Assessment. The Common Assessment shall be a debt of each Owner and a lien on his Unit, and may be enforced as provided in this instrument.

### 36 JUDICIAL PARTITION.

There shall be no judicial partition of the Common Elements, nor shall Declarant or any Owner seek any judicial partition, unless the Condominium Regime has been terminated. If any Unit is owned by 2 or more co-tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition between co-tenants, but the partition shall not affect any other Condominium Unit.



37. CONDEMNATION

If all or part of the Project is taken, or threatened to be taken, by eminent domain, the Association and each Owner shall be entitled to participate in these proceedings. The Declarant during the Declarant Control Period, or subsequently the Association shall give timely written notice of the existence of the proceedings to all Owners and to all First Mortgagees known to have an interest in any Unit. The expense of participation in the proceedings by the Declarant or Association, as the case may be, shall be a Common Expense. The Declarant or Association is authorized to obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as are deemed necessary or proper to aid or advise it in matters relating to the proceedings. All damages or awards for taking shall be applied as provided in this Declaration. If an action in eminent domain is brought to condemn a portion of the Common Elements, the Declarant or Association shall have the sole authority to determine whether to resist the proceeding, to make any settlement, or to convey the Property to be condemned to the condemning authority in lieu of condemnation proceedings. With respect to any taking of the Common Elements, all damages and awards shall be paid to the account of each Owner proportionately in accordance with the Owner's interest in the Common Elements.

Subsequent to the Declarant Control Period, the Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to repair the Common Elements so taken or damaged. If it is determined that the Common Elements should be repaired by obtaining other land or building additional structures, this Declaration and the Maps attached shall be amended by instrument executed by the Association on behalf of the Owners.

38. ACCOUNTING AND AUDIT.

The Board of Directors shall keep books of account with receipts for expenditures reflecting the maintenance expenses of the Common Elements, and any other expenses incurred by or on behalf of the Project or the Association. The books, and all supporting vouchers, shall be available for examination at the office of the Association by all Owners at convenient hours on working days. All books shall be kept in accordance with generally accepted accounting procedures, consistently applied, and shall be audited at least once a year by an outside auditor selected by the Board. The fiscal year of the Association shall be the calendar year unless another period is established by resolution of the Board.

39. APPORTIONMENT OF TAX IF AGAINST WHOLE CONDOMINIUM

If any taxing authority shall assess any tax or special assessment against the Condominium as a whole, as opposed to assessing a tax or special assessment against each Unit and its appurtenant undivided interest in Common Elements, then

A. The tax or special assessment so levied shall be paid as a Common Expense, and any taxes or special assessments which are to be levied shall be included, wherever possible, in the estimated annual budget of the Declarant or Association, or shall be separately levied and collected as an assessment against all of the Owners, if not included in the budget

B. The amount of any tax or special assessment paid shall be apportioned among the Owners so that the amount to be paid and attributable to the Owners, shall be that portion of the total tax or special assessment as the undivided interest in Common Elements appurtenant to each Unit bears to the total undivided interest in Common Elements appurtenant to all Units

C. This Assessment by the Declarant or Association shall separately identify the amount of assessment attributable to the tax or special assessment, and the amount so designated shall constitute a lien prior to all mortgages and encumbrances on any Unit and its appurtenant undivided interest in Common Elements, regardless of the date of the recording of the mortgage or encumbrance, as though the tax or special assessment had been separately levied by the taxing authority on each Unit and its appurtenant undivided interest

In the apportionment of any tax or special assessment, Limited Common Elements which are for the exclusive use of a Unit, shall be disregarded

40 AMENDMENTS TO DECLARATION, APPROVAL OF OWNERS AND MORTGAGEES.

A. Unless otherwise provided in this Section or elsewhere in this Declaration, any provision of this Declaration or a Resolution of the Board of Directors may be amended or rescinded only by the consent of Owners holding at least 67% of the votes in the Association; however, no amendment shall affect the rights given to the Declarant without the consent of the Declarant.

B Any amendment which would change the percentage of interest of an Owner in the Common Elements, except as otherwise provided in Section 11, will require the consent of Owners holding 100% of the votes in the Association, and all of the First Mortgagees of the affected Owners

C Any amendment which would increase the number of Units, change the boundaries of a Unit, alter or destroy a Unit, alter, destroy or transfer a Limited Common Element, change a Unit's allocated interest, or change the use restrictions on a Unit, will

require the consent of the Owners holding 100% of the votes in the Association, and all of the First Mortgagees of the affected Owners

D The termination of the Condominium Regime, except for a termination due to destruction or condemnation, requires the consent of Owners holding 100% of the votes of the Association, and the approval of all Mortgagees holding liens on the Units.

E. In order to validate any of the above actions, an instrument must be signed by the Board of Directors reflecting the vote of the Owners and the First Mortgagees agreeing to the action taken, and be recorded in the Condominium Records of Galveston County, Texas.

F In the event that a proposed amendment to this Declaration requires any or all First Mortgagee approval, notice of the meeting where the vote will occur, shall be sent simultaneously to all Owners and the subject Mortgagees

G. If a member of the Association wishes to confer his voting rights to another Unit Owner or Declarant, he must do so by a written proxy. The proxy must be submitted to the Secretary of the Association no later than 5 days prior to a meeting of the Association

#### 41 MISCELLANEOUS.

A No Waiver of Rights The failure of the Association, the Declarant, or any Owner to enforce any covenant, restriction, or other provision of the Act, this Declaration, the Articles of Incorporation, the Bylaws, or any Rules and Regulations, shall not constitute a waiver of the right of the Association, Declarant, or any Owner subsequently to enforce them

B. Captions. The article and section captions and headings are for convenience only and shall not form a part of this Declaration.

C. Correction of Error Declarant reserves, and shall have the continuing right until the end of the Declarant Control and Conversion Period, without the consent of the other Owners or any mortgagee, to amend this Declaration for the purpose of resolving or clarifying any ambiguities or conflicts, or to make this Declaration comply with mandatory provisions of law if it be deficient in any respect, or correcting any inadvertent misstatements, errors or omissions

D Dimensions It is expressly agreed, and Unit Owner, his heirs, personal representatives, assigns, and successors agree, that the square footage, size, and dimensions

of each Unit as set out and shown in this Declaration or on the Maps are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant that any Unit actually contains the area, square footage, or dimensions shown by the plat. No purchaser of a Unit shall have a claim against the Declarant or any other person, on account of any discrepancy between the Unit as physically existing and as it is shown on the Maps. It is agreed that in interpreting deeds, deeds of trust and other instruments, the existing physical boundaries of a Unit, or of any Unit repaired in substantial accordance with the original plans, shall be conclusively presumed to be within its boundaries, regardless of settling, rising, or lateral movement of the building, and regardless of variance between the boundaries shown on the Maps and those of the Buildings.

E. Ownership of Common Personal Property. Upon termination of the Declarant Control and Conversion Periods, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Project, furnished by Declarant, to the common use and enjoyment of the Unit Owners and Occupants. No Owner shall individually have any right to the personalty, the common ownership interest shall terminate upon the Owner's conveyance of his Unit, and be automatically vested in the Transferee.

F. Notice. All notices, demands or other communication required or permitted to be served upon an Owner may be sent by certified mail, postage prepaid, addressed in the name of the Owner in care of the Unit number and Building address of the Owner, or by personal delivery. All notices, demands or other communication intended to be served upon the Declarant or Board of Directors of the Association, may be sent certified mail, postage prepaid, or by personal delivery to 2714 Bee Cave Rd, Ste 100, Austin, Texas 78746, until the address is changed by a notice of address change duly recorded in the Condominium Records of Galveston County, Texas.

G. Conflict Between Declaration and Bylaws. Whenever the application of a provision of this Declaration conflicts with any provision of the Bylaws adopted by the Association, the provisions or application of this Declaration shall prevail.

H. Invalidation of Parts. If any of the provisions of this Declaration or any section, sentence, clause, phrase or word is invalidated or declared unenforceable, such invalidity or unenforceability shall not affect the remainder of this Declaration.

I. Omissions. In the event of the omissions from this Declaration of any word, sentence, clause, provision, or stipulation which shall be necessary for the accomplishment of the intent of this Declaration, then the omitted matter shall be supplied by inference and/or by reference to the Act.

J. Texas Condominium Act The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law


K. Gender. Unless the context shall otherwise provide, the singular number shall include the plural, the plural, the singular, and the use of any gender shall include all genders

L. No Warranty of Construction Efforts The Declarant, with the exception of any express written warranties which may be delivered by the Declarant to the Unit Owners, does not warrant to the Association or to the Owners the construction efforts of any part of the Project, and disclaims all implied warranties, including warranties of merchantability, fitness for use or a particular purpose, and substantial compliance with plans and specifications approved by governmental authorities, and responsibility for all latent and patent defects. Without limiting the generality of the foregoing, the Declarant shall not be responsible for conditions resulting from condensation on or expansion or contraction of materials; paint over walls, interior or exterior; loss or injury caused in any way by the elements; the water tightness of windows and doors; defects which are the result of characteristics common to the materials used; damage due to ordinary wear and tear or abusive use; collection of water with the Project; or anything which is eliminated in any written warranty of the Declarant.

Executed to be effective the 23 day of AUG, 2000

**DECLARANT -**

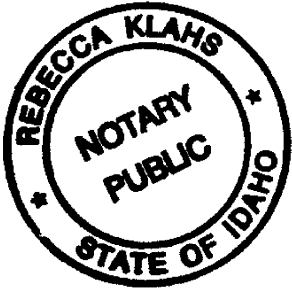
Sky Tower, Ltd.,  
by and through its General Partner,  
Van Norton, LLC

By:   
Fred G. Bringley, General Manager of  
Van Norton, LLC

014-86-0281

Bonner COUNTY, Idaho  
~~TEXAS~~

This instrument was acknowledged before me on this the 23<sup>rd</sup> day of August, 2000, by Fred G. Brigley as General Manager of Van Norton, LLC, on behalf of the company.



Rebecca Klahs  
Notary Public in and for the State of ~~Texas~~  
Idaho

Residing at Sandpoint  
My Commission Expires:  
11/12/2005

PLEASE RETURN TO:  
COMMONWEALTH LAND TITLE COMPANY  
1002 GEMINI, SUITE #100  
HOUSTON, TEXAS 77058

014-86-0282

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

April 29, 1997

## EXHIBIT "A"

MOON CAYE CONDOMINIUMTRACT DESCRIPTION

A TRACT OF LAND OUT OF THE WILLIAM DICK TRACT RECORDED IN VOLUME 317, PAGE 507, IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS, IN THE M. MULDOON SURVEY, GALVESTON COUNTY, TEXAS, IN THE M. MULDOON SURVEY, GALVESTON COUNTY, TEXAS, BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point on the North right of way line of F. M. 2094, said point being N84°07'W, a distance of 79.38 feet from the point of intersection of the North right of way line of F. M. 2094 and the West line of Clear Lake Shores Subdivision, according to the map or plat recorded in Volume 254, Page 93 in the Office of the County Clerk of Galveston County, Texas;

THENCE from said beginning point N84°07'W, along the said North right of way line of F. M. 2094, a distance of 147.9 feet to a point for corner;

THENCE N3°22'E, a distance of 410.70 feet to a point for corner on the shore line of Jarboe Bayou;

THENCE in an Easterly direction along the Mean High Tide Meanders of Jarboe Bayou (+0.80' M.S.L.) to a point for corner which reference line bears S62°17'42"E, 162.17 feet called S62°18'30"E, 162.26 feet as follows:

N7°50'58"E, 24.10, feet  
 N73°44'31"E, 8.66, feet  
 N89°58'17"E, 13.37, feet  
 S53°49'50"E, 31.26, feet  
 S32°32'01"E, 10.39, feet  
 S39°41'13"E, 22.32, feet  
 S89°33'46"E, 28.27, feet  
 S76°09'24"E, 34.84, feet  
 S62°52'37"E, 6.36, feet  
 S79°09'20"E, 7.32, feet and  
 S1°49'14"W, 44.52, feet to a point for corner;

THENCE S3°22'W, along a line parallel to and 79.3 feet perpendicular distant Westerly from the West line of said Clear Lake Shores Subdivision, a distance of 350.36 feet to the PLACE OF BEGINNING and containing 1.3999 acres of land, more or less, this tract abuts at the Mean High Tide Meanders of Jarboe Bayou (+0.80' M.S.L.) along it's Northerly side a State of Texas Easement on Coastal Public Lands (Easement No. CE84-057, dated February 22, 1985, which is for a 5 year time period.





014-86-0285

**EXHIBIT B**  
**PLANS AND MAPS**

014-86-0286

**EXHIBIT "B"**  
**CONDOMINIUM UNIT**  
**PARKING AND STORAGE**

April 29, 1986  
January 14, 1986

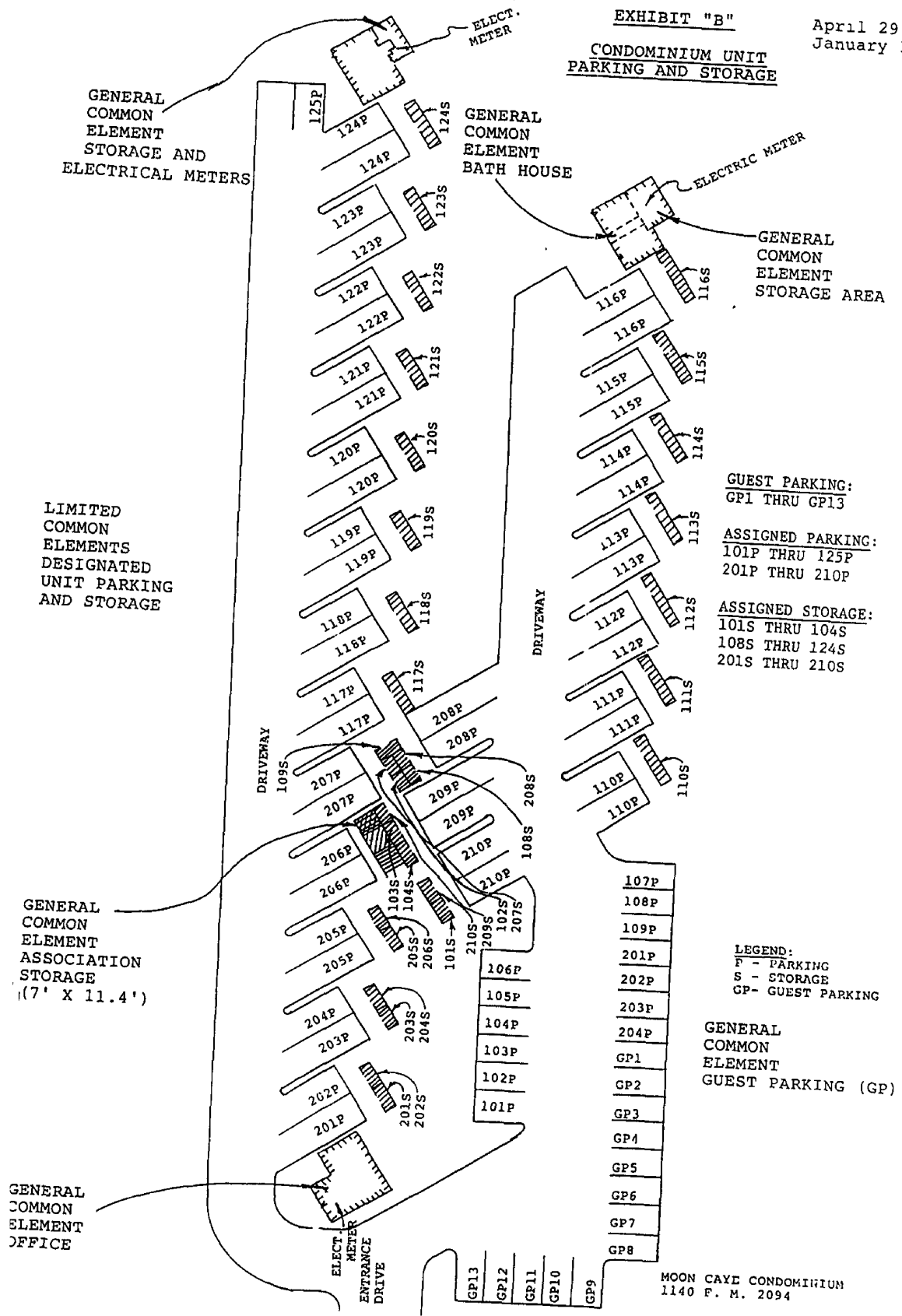


EXHIBIT "B"

April 29, 1997  
January 14, 19

MOON CAYE CONDOMINIUM  
BOAT DOCKS

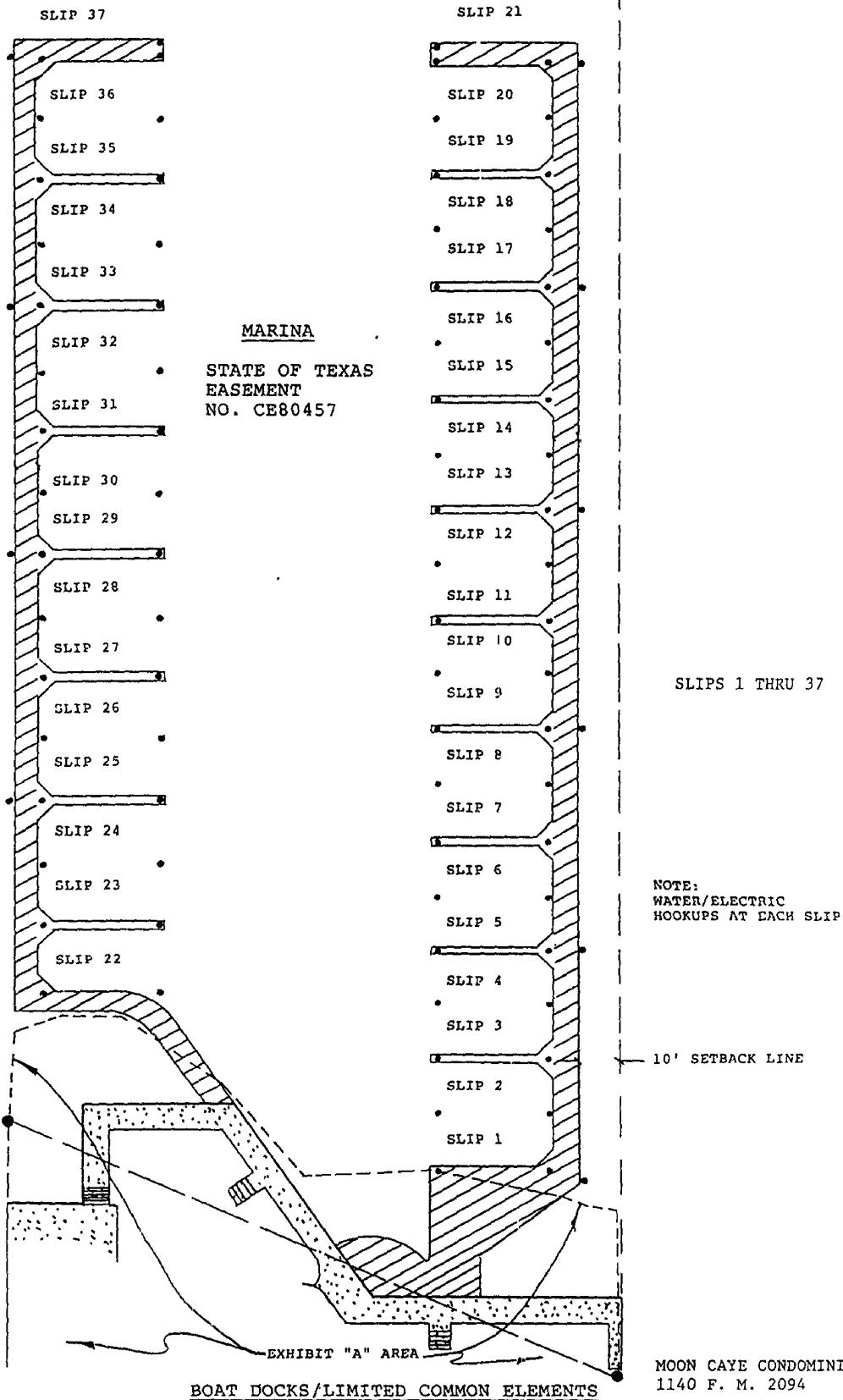
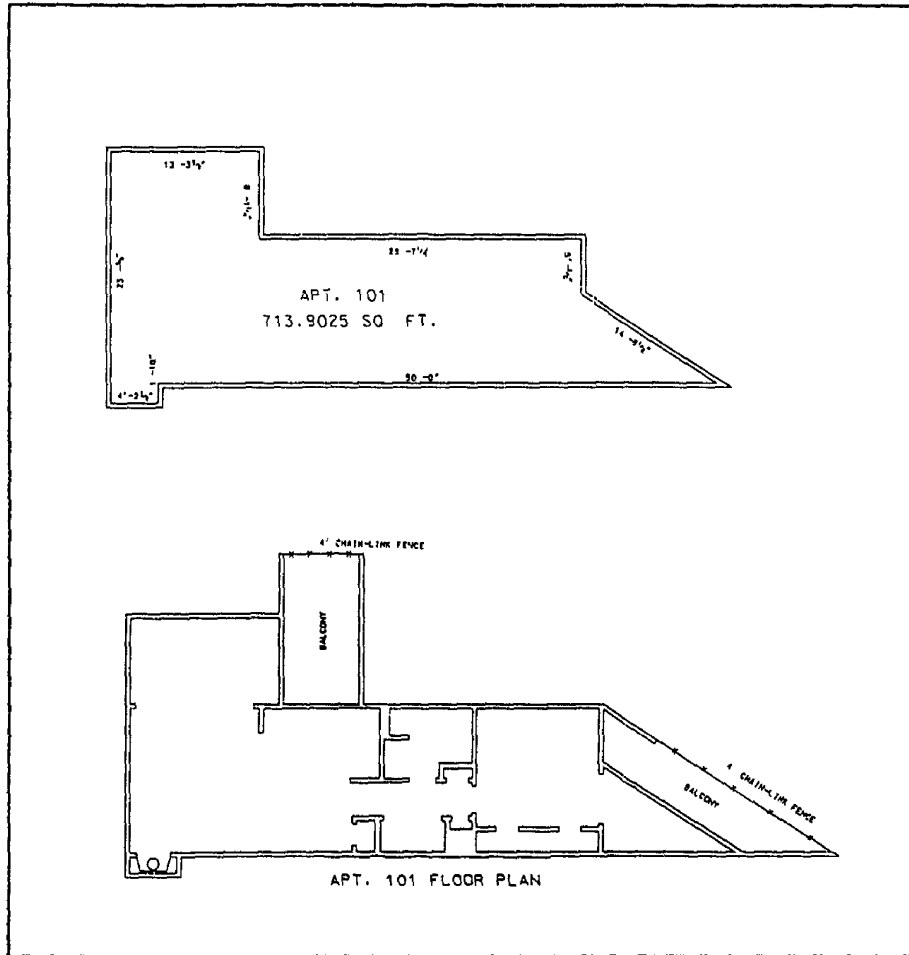


EXHIBIT "B"  
CONDOMINIUM UNITS

April 29, 1997  
January 14, 1998

014-86-0288

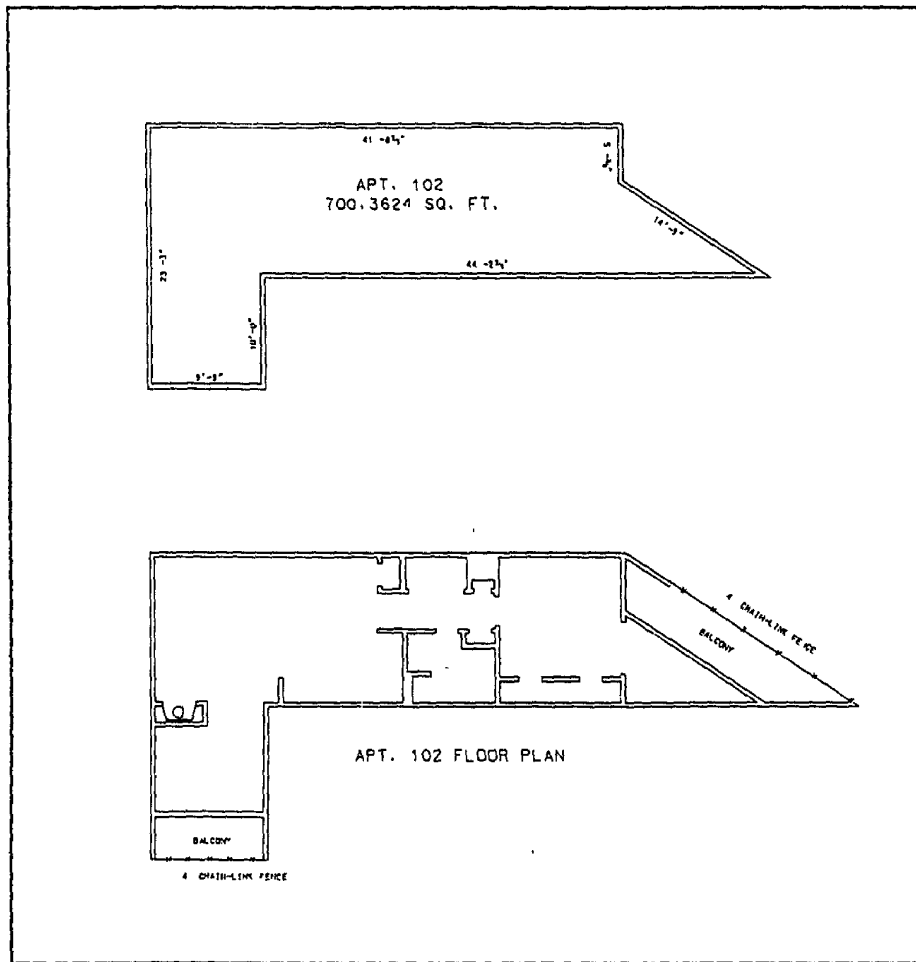


UNIT 101  
BUILDING "A"  
TYPE: A-1

EXHIBIT "B"  
CONDOMINIUM UNITS

April 29, 1997  
January 14, 1998

014-86-0287



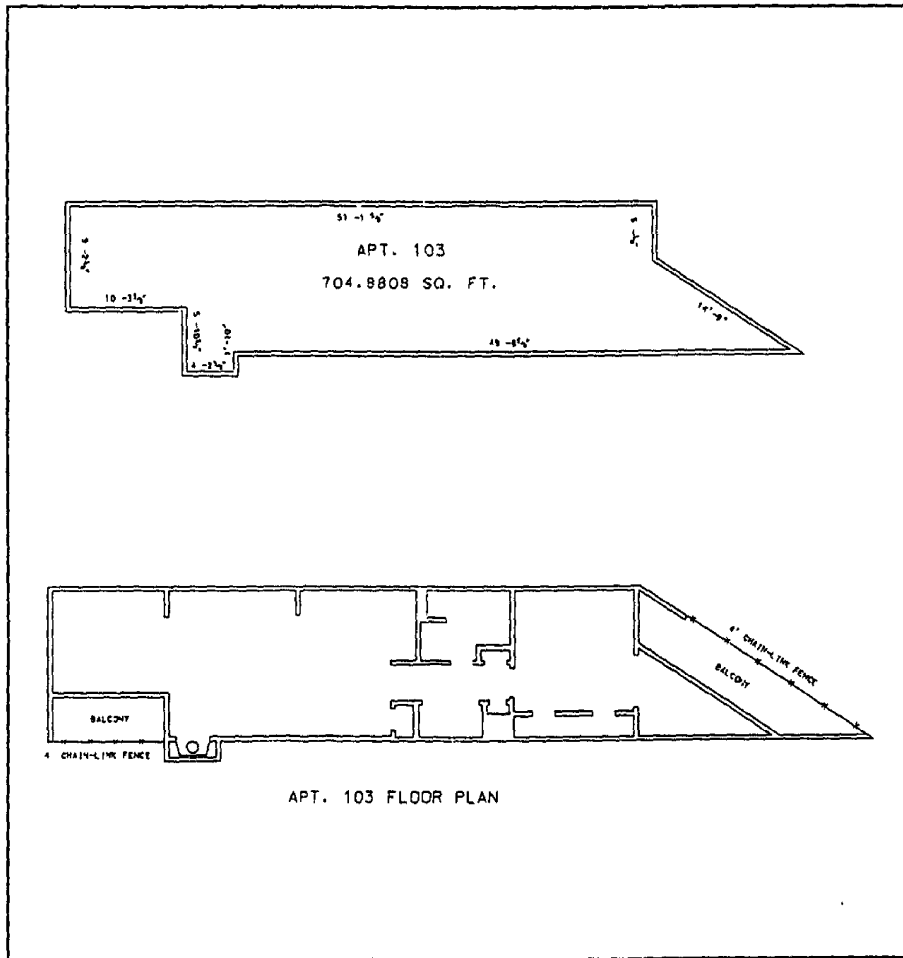
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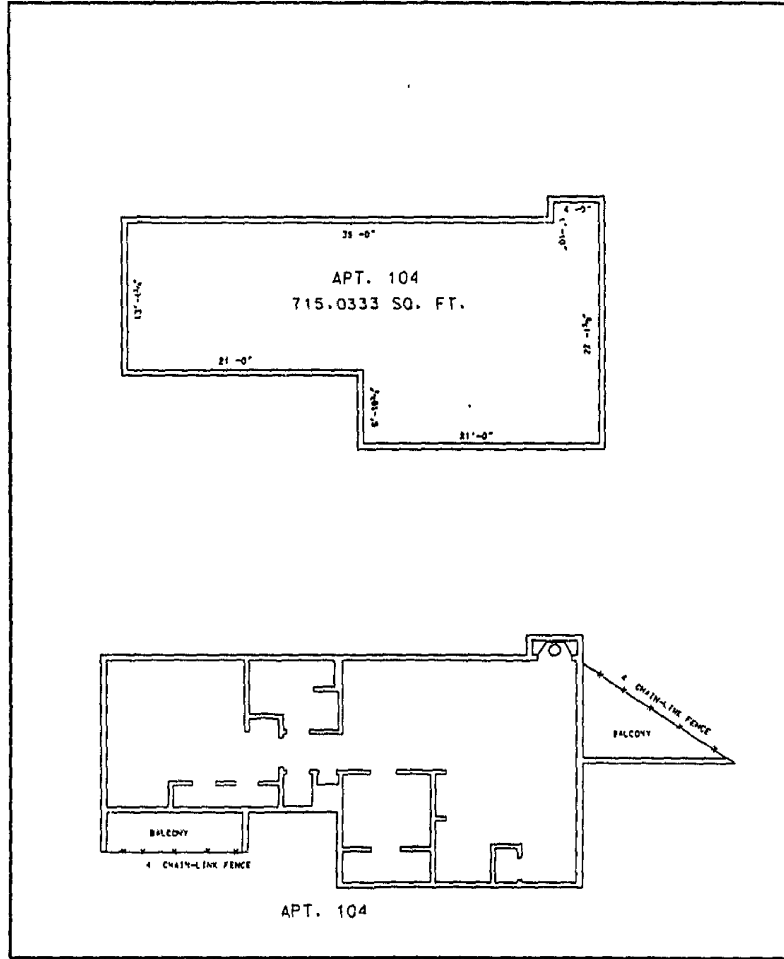
April 29, 1997

CONDOMINIUM UNITS

January 14, 199

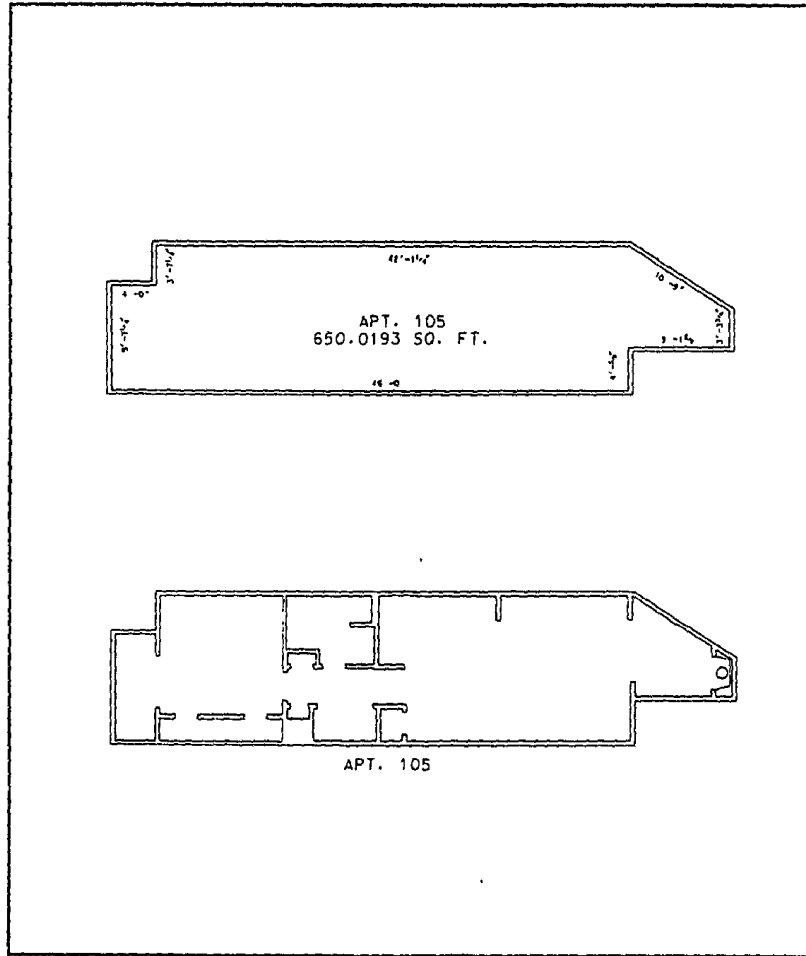


CONDOMINIUM UNITS





CONDOMINIUM UNITS

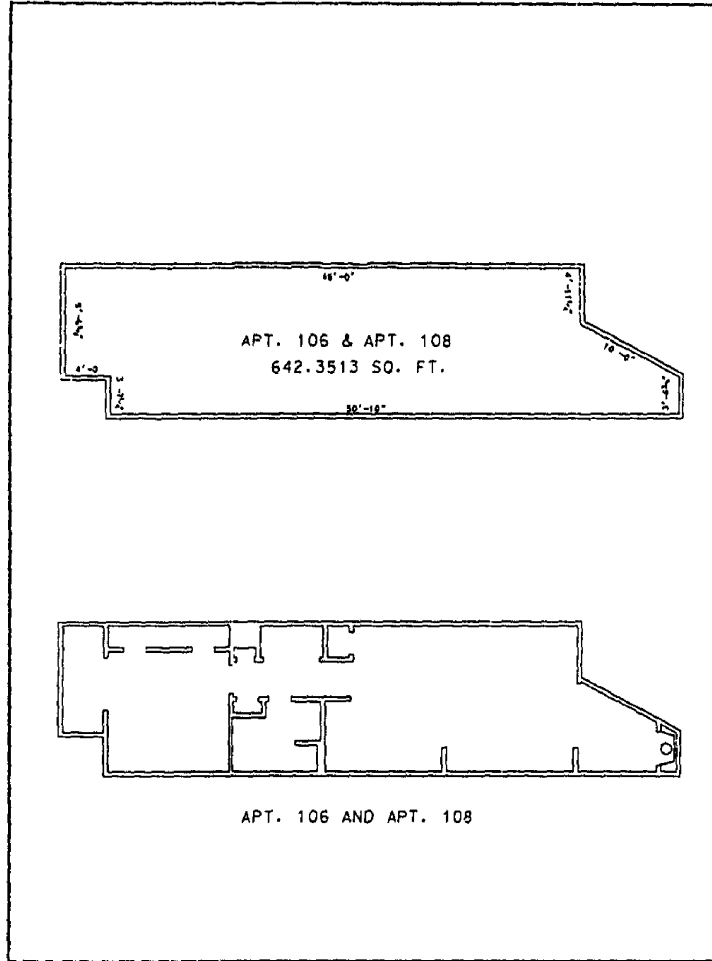


014-86-0293

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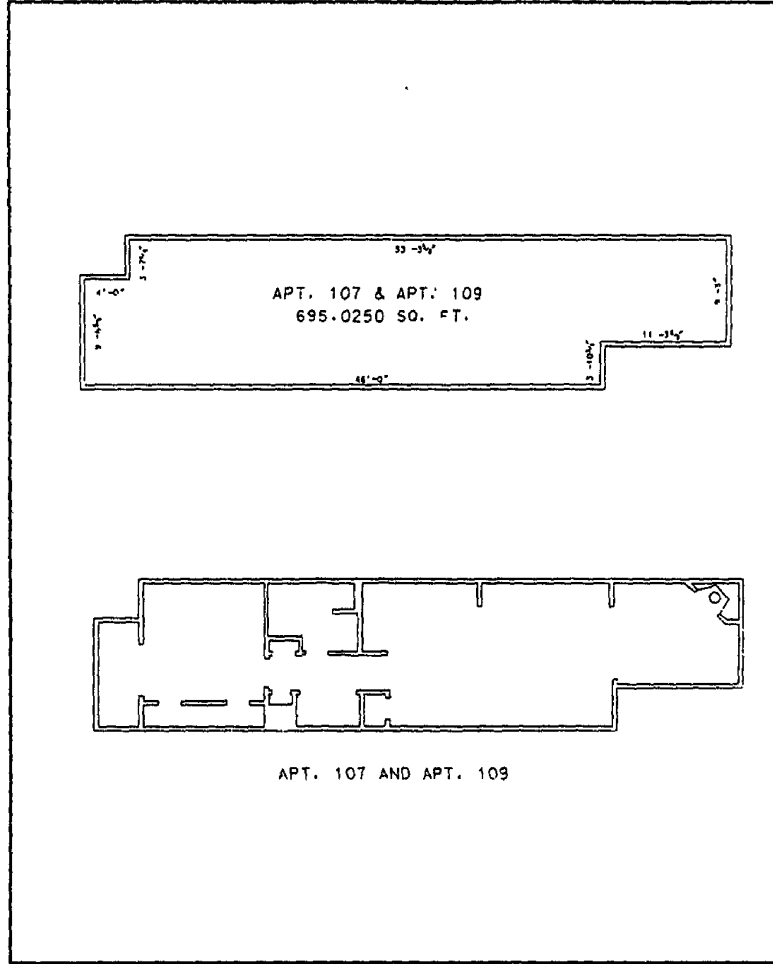
April 29, 1997  
January 14, 1998

CONDOMINIUM UNITS

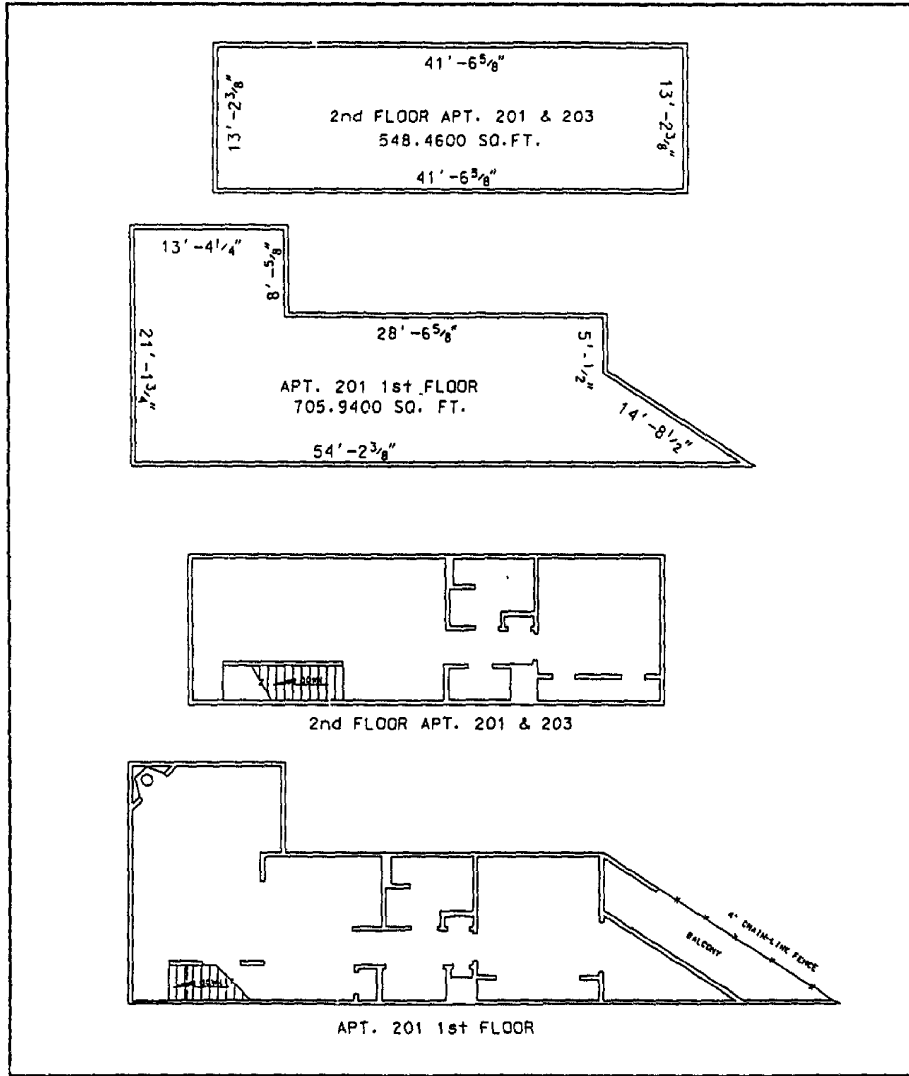


CONDOMINIUM UNITS

014-86-0294



CONDOMINIUM UNITS



CONDOMINIUM UNITS

014-86-0296

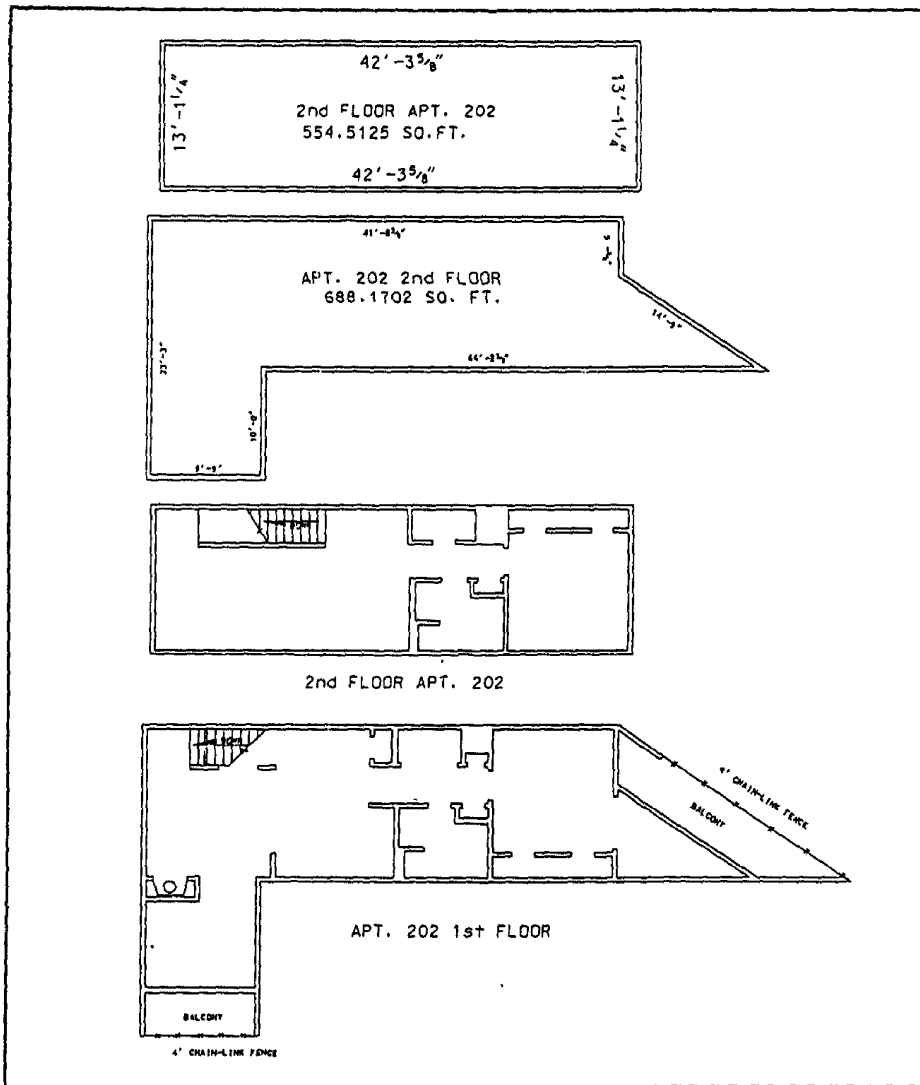


EXHIBIT "B"  
CONDOMINIUM UNITS

April 29, 1997  
January 14, 1998

014-86-0297

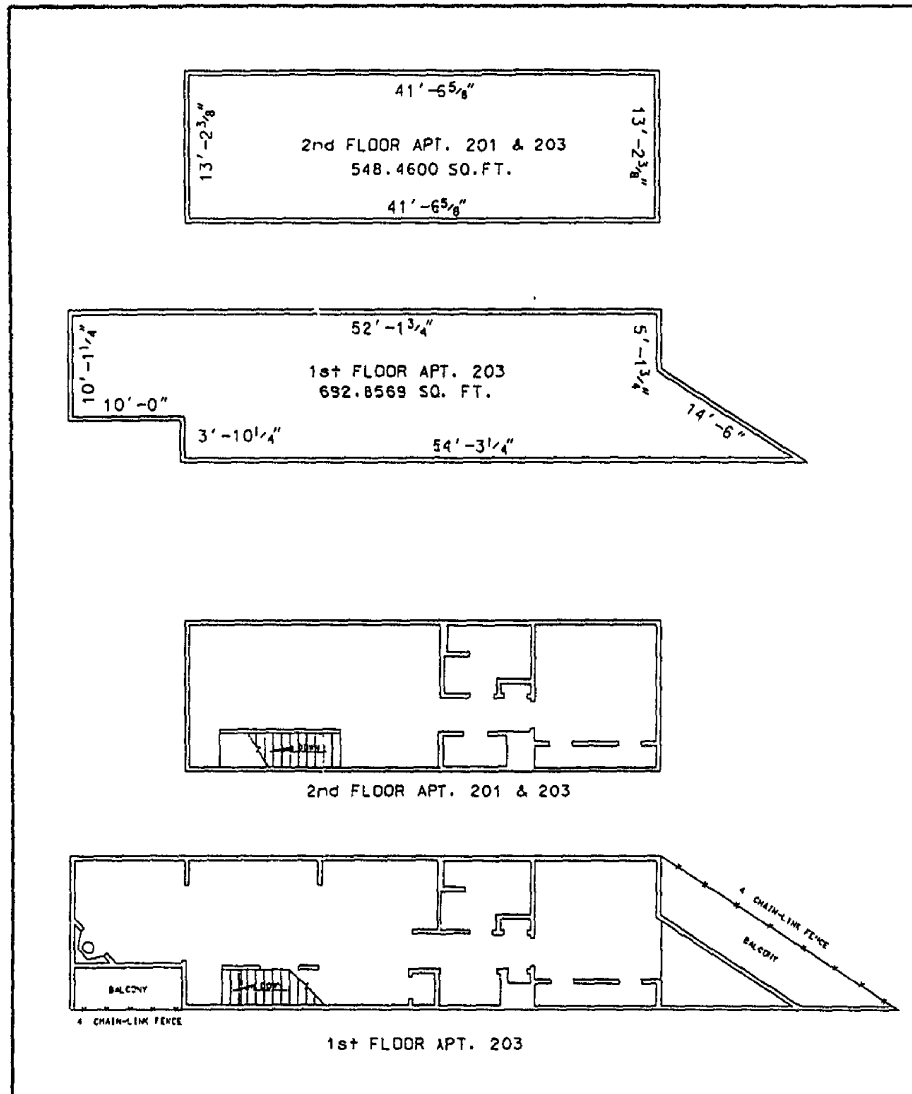


EXHIBIT "B"  
CONDOMINIUM UNITS

April 29, 1997  
January 14, 1998

014-86-0298

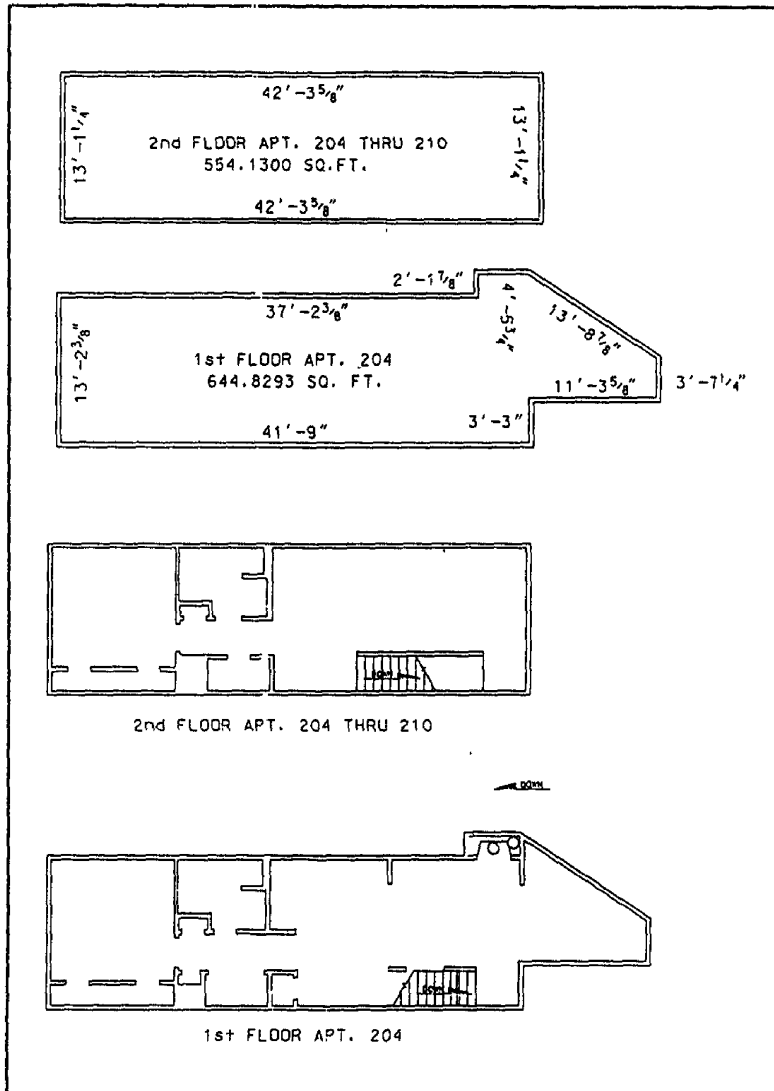
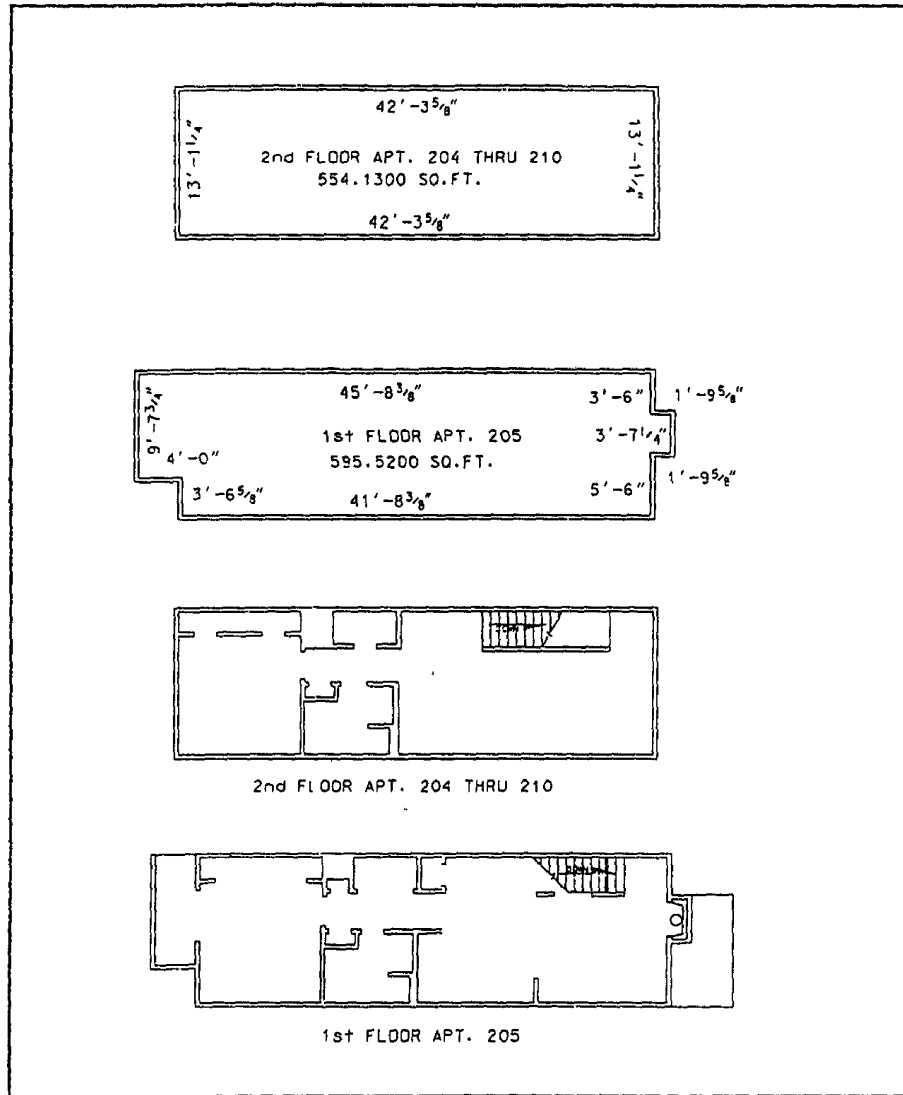


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April 29, 1997  
January 14, 1998

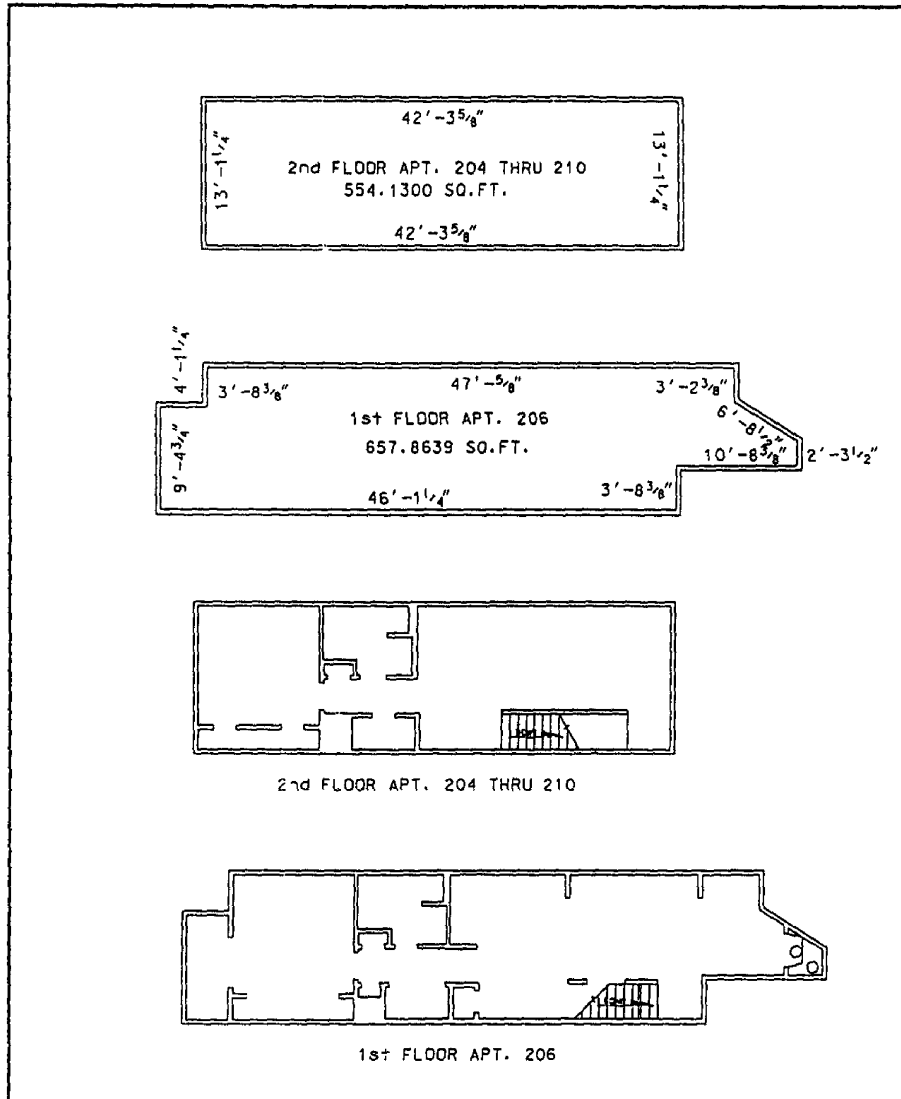
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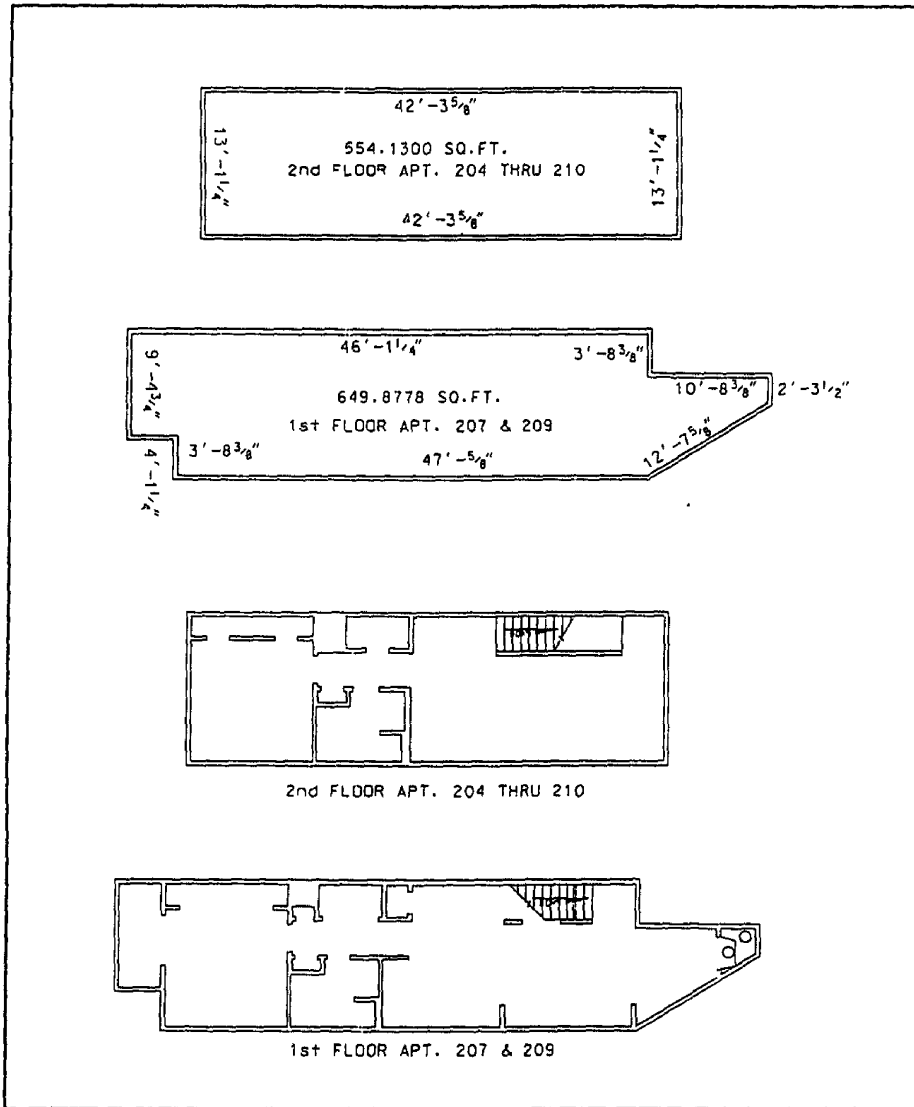
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014-86-0300



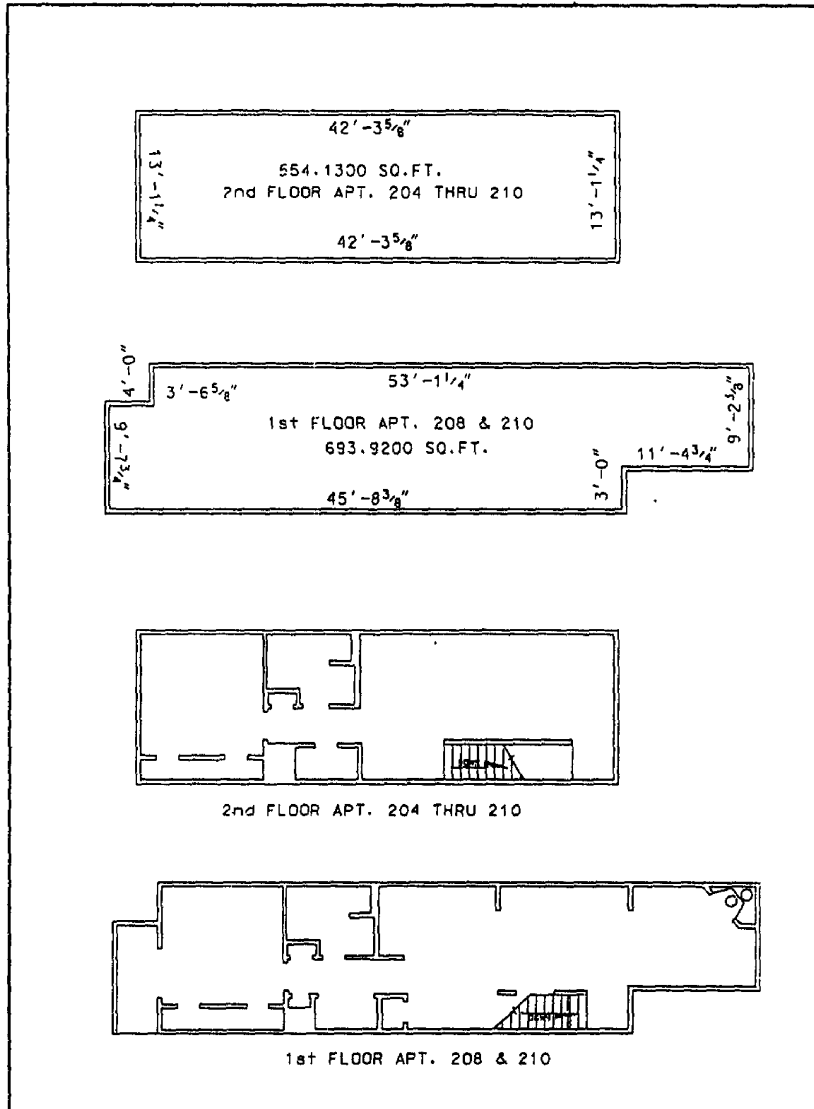
CONDOMINIUM UNITS

014-86-0301



CONDOMINIUM UNITS

014-86-0302

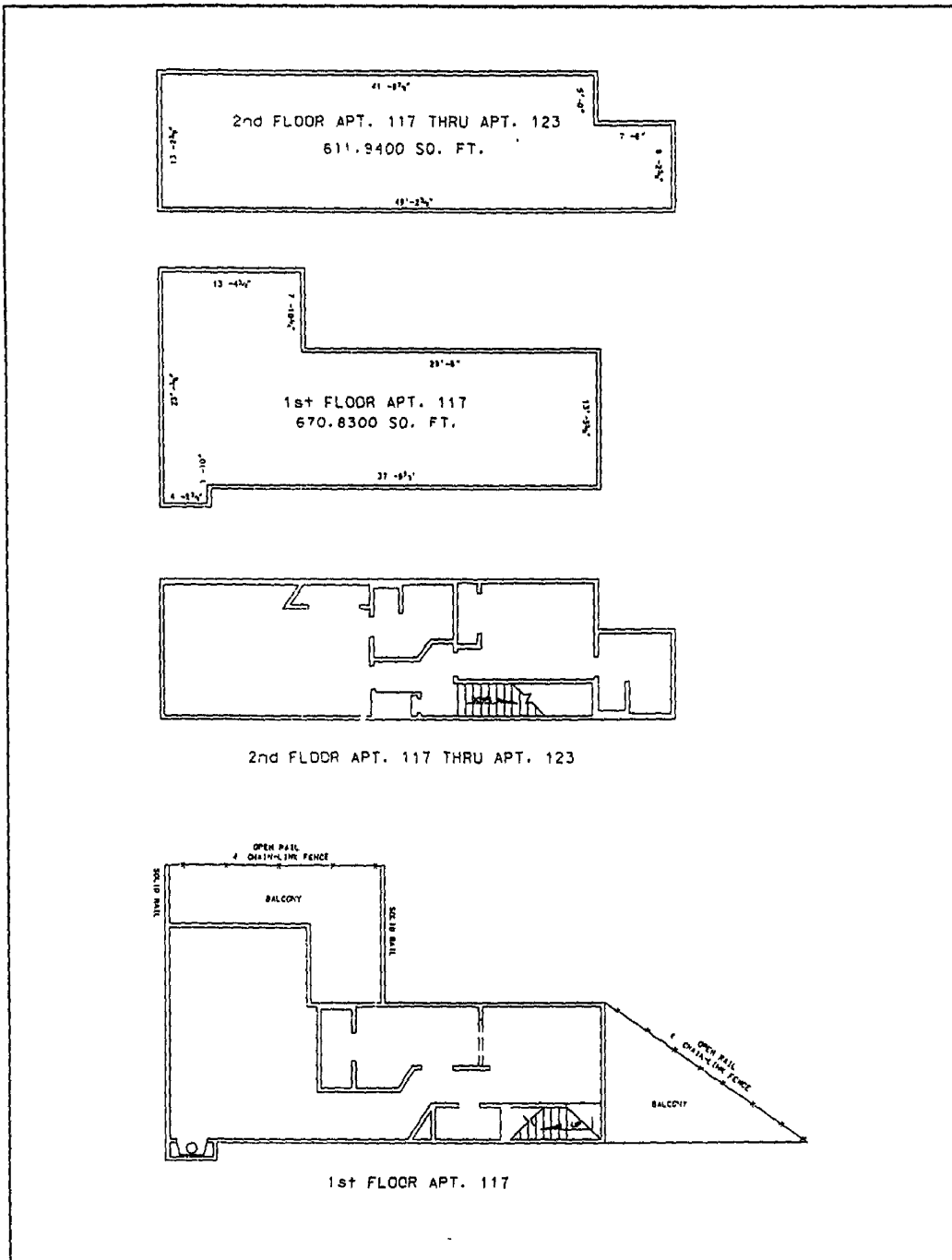


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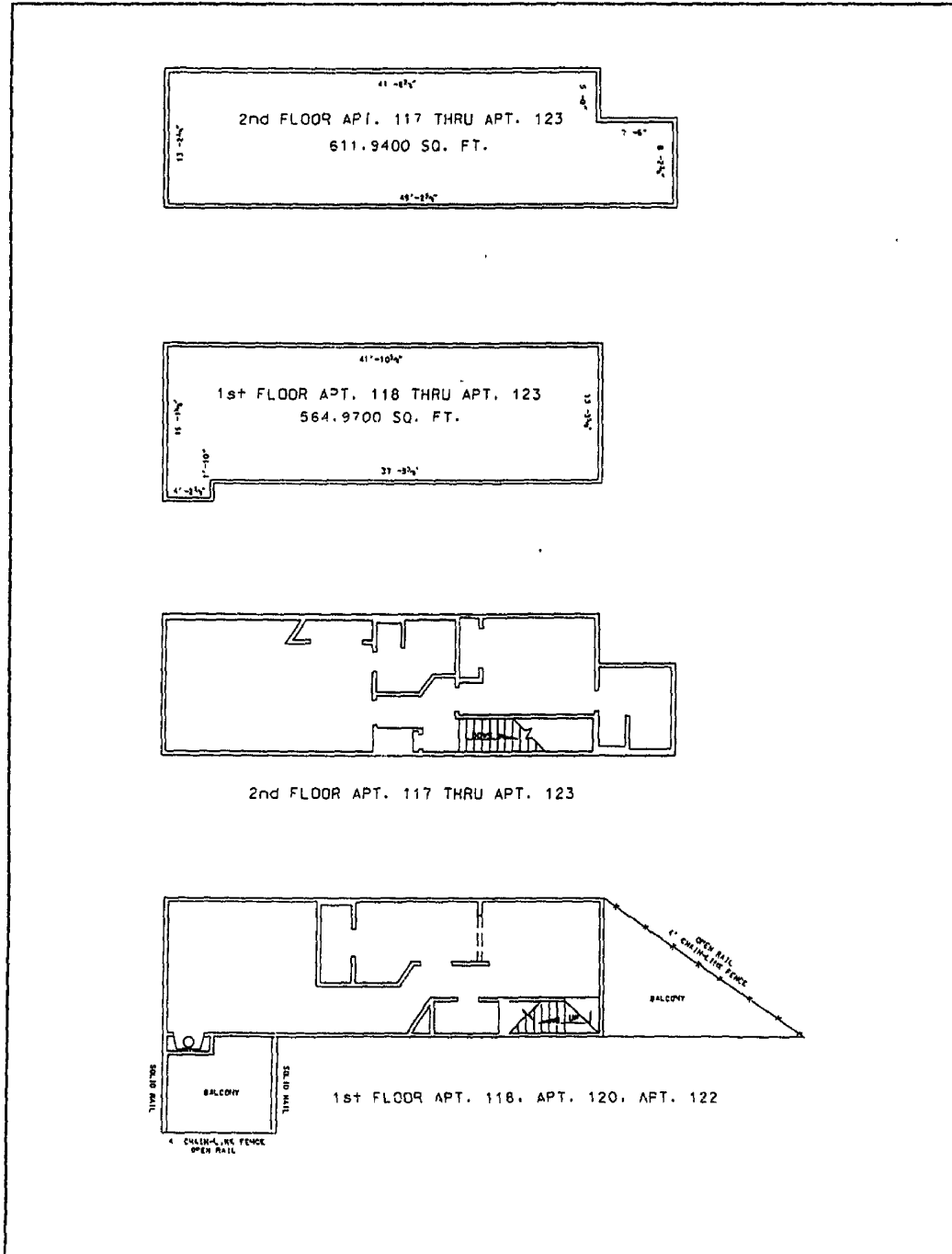
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April 29, 1997  
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CONDOMINIUM UNITS



CONDOMINIUM UNITS

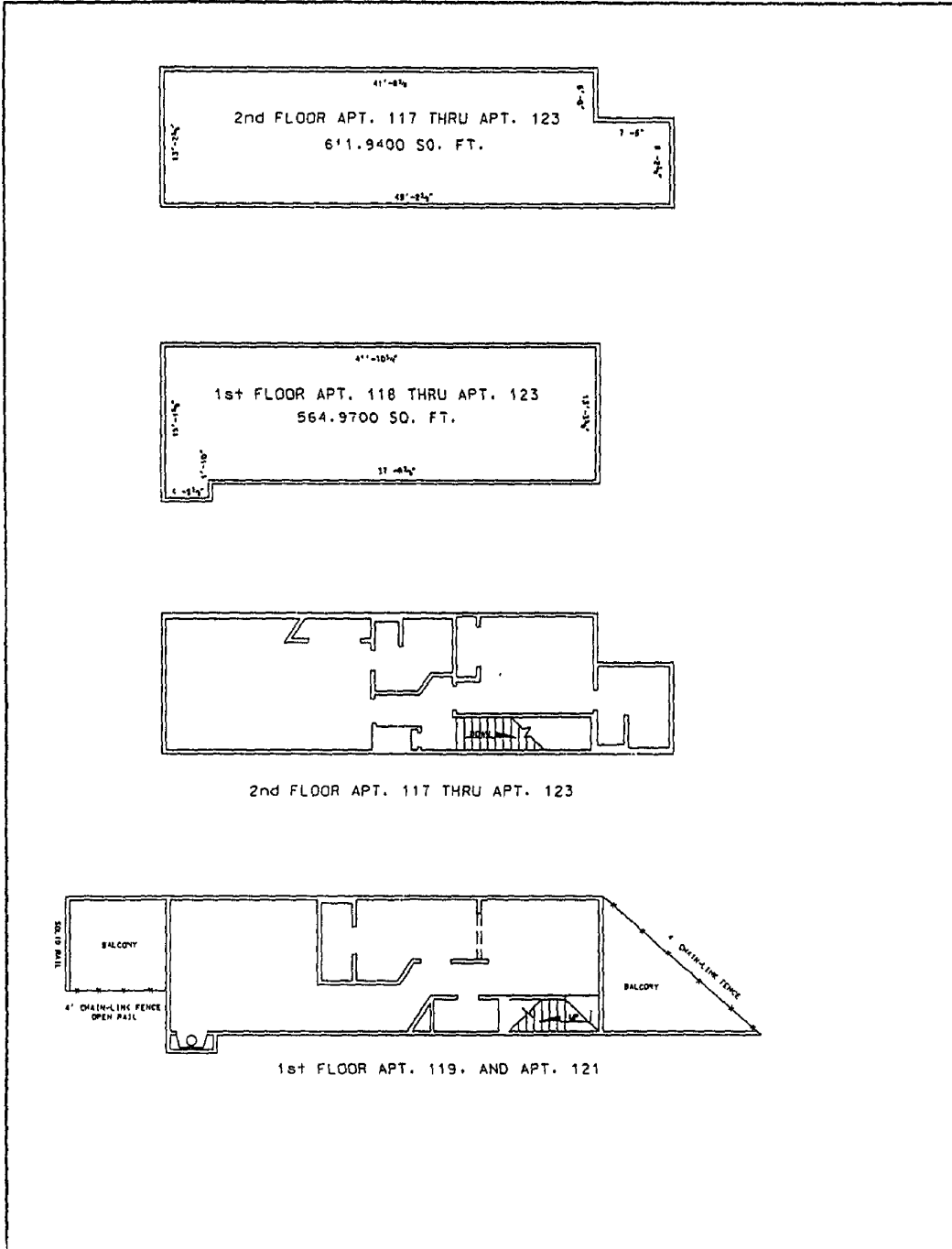


014-86-0305

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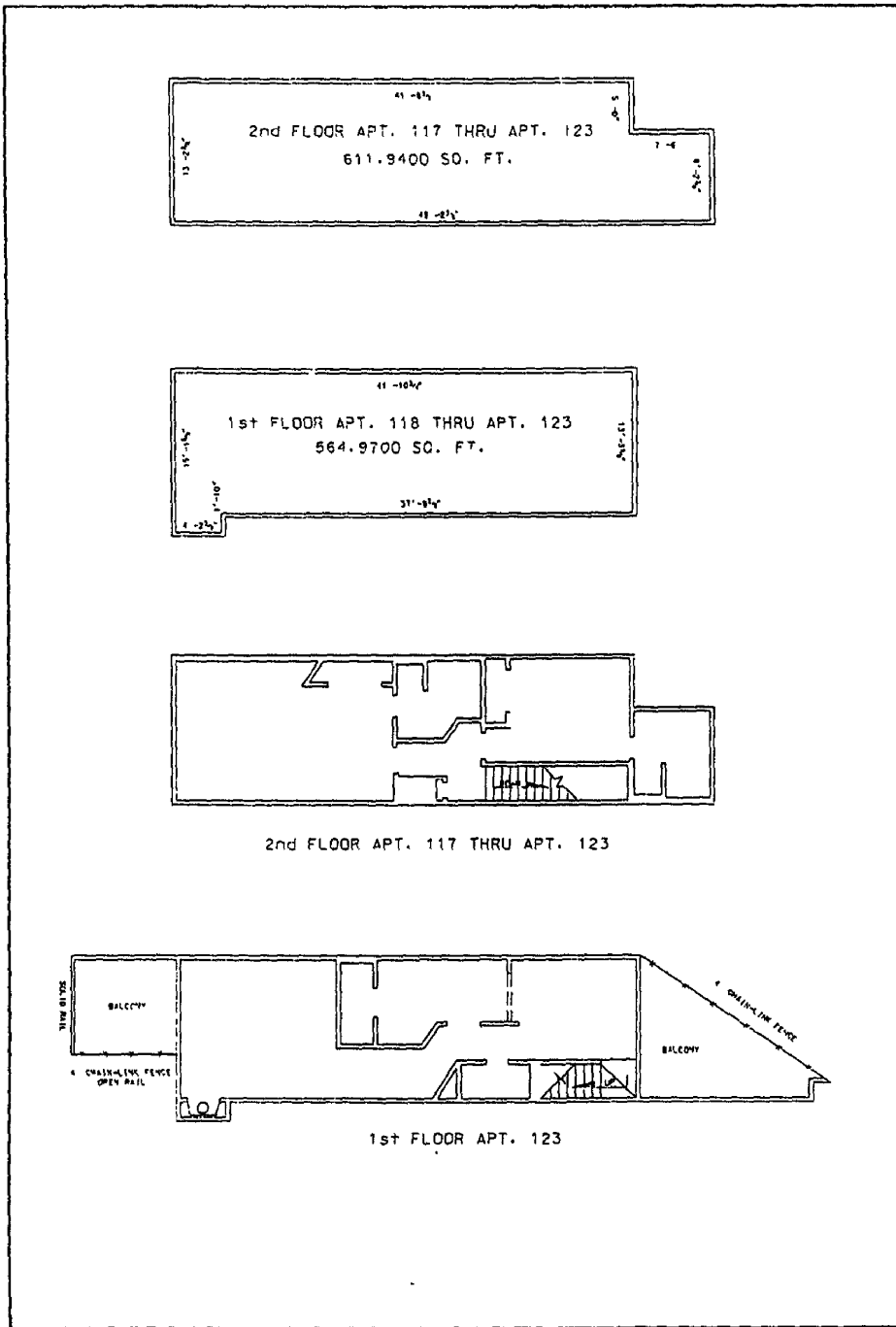


014-86-0306

April 29, 1997  
January 14, 1998

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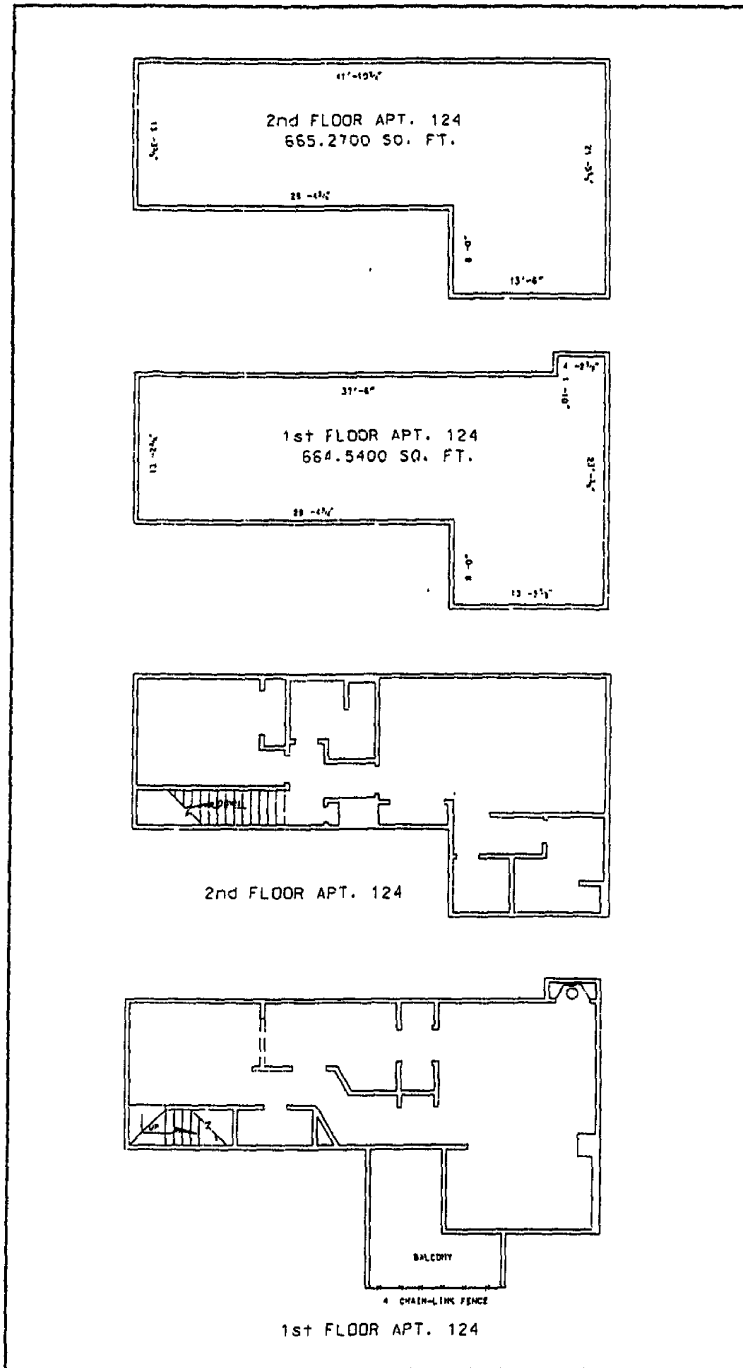


014-86-0307

April 29, 1997  
January 14, 1998

EXHIBIT "B"

CONDOMINIUM UNITS





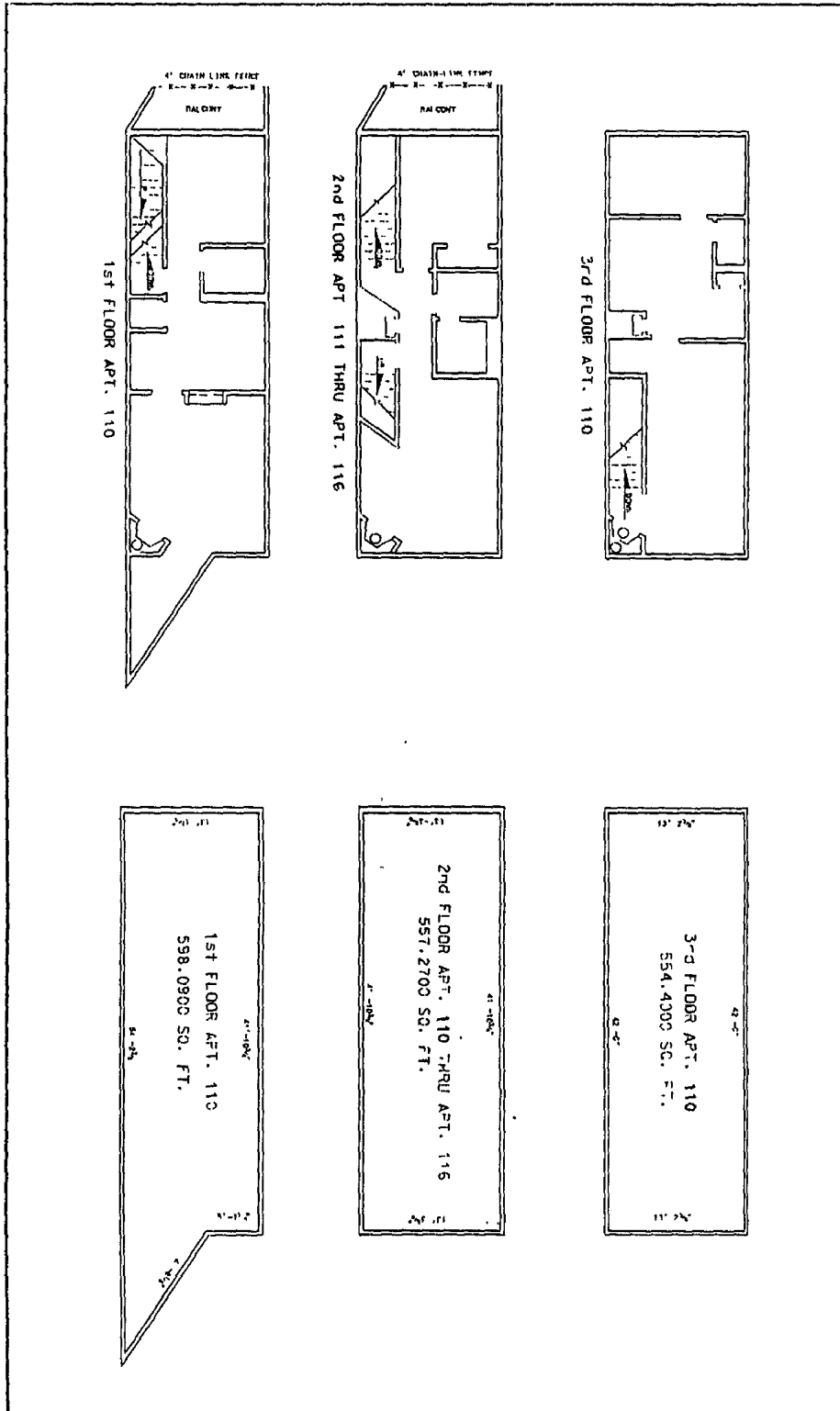
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EXHIBIT "B"

April 29, 1997

January 14, 1995

CONDOMINIUM UNITS

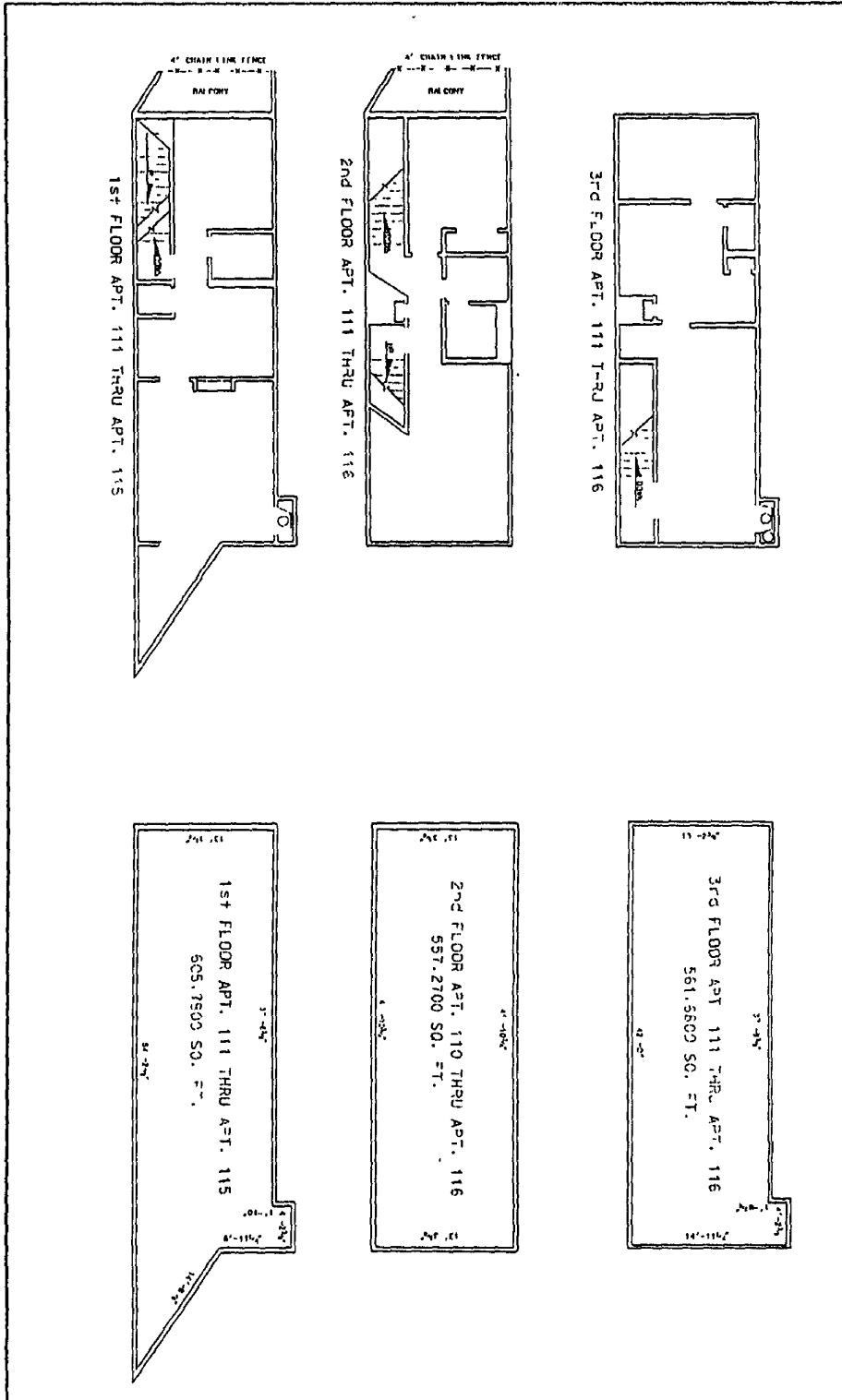


014-86-0309

EXHIBIT "B"

April 29, 1997  
January 14, 1998

CONDOMINIUM UNITS

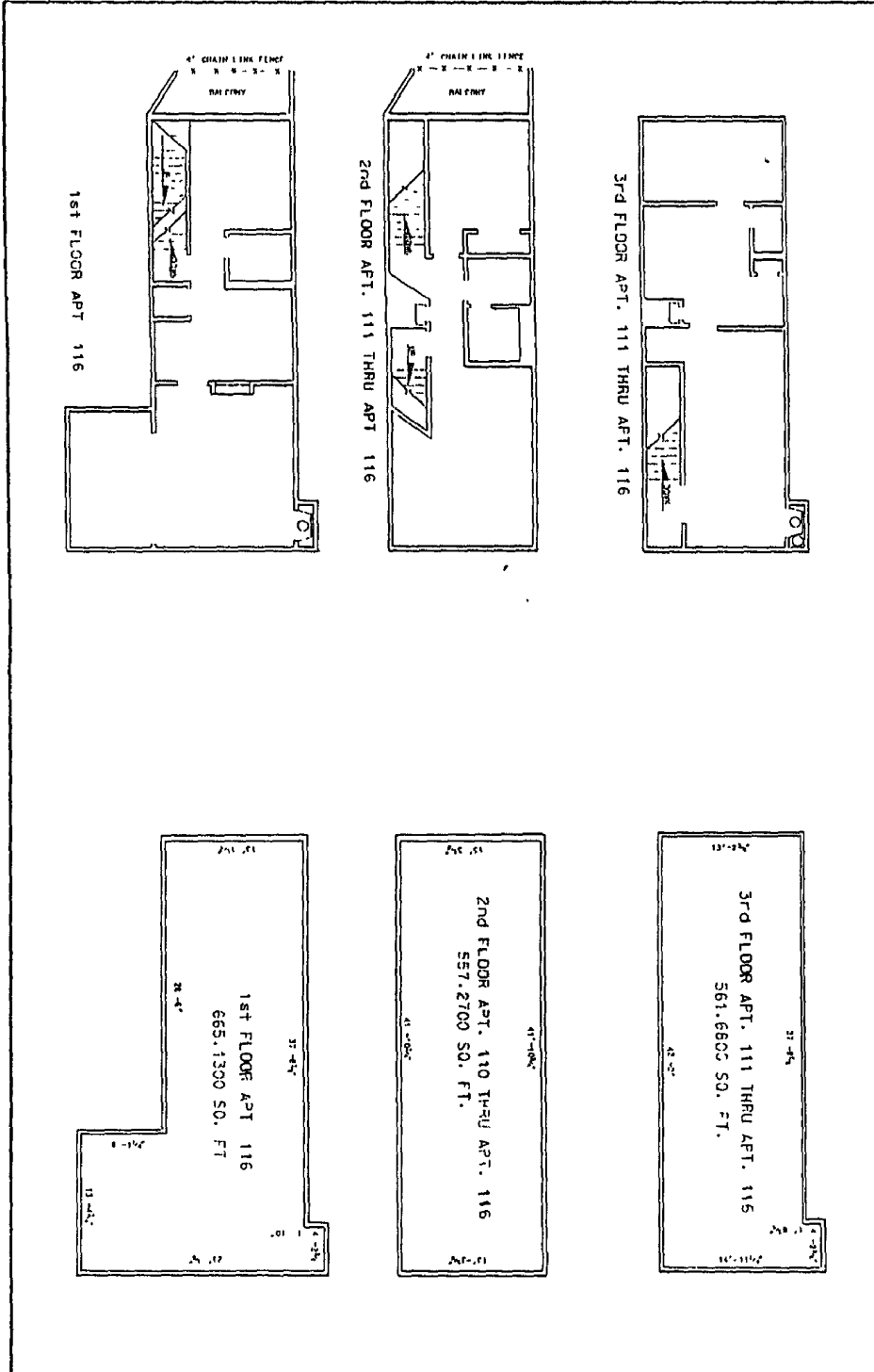


014-86-0310

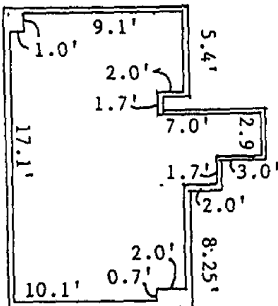
EXHIBIT "B"

April 29, 1997  
January 14, 1998

CONDOMINIUM UNITS



CONDOMINIUM UNITS

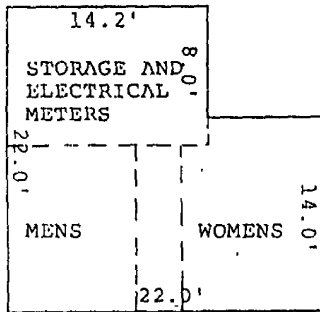


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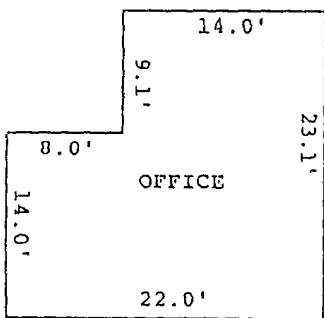
GROUND LEVEL  
APT. 125

UNIT 125  
BUILDING "B"

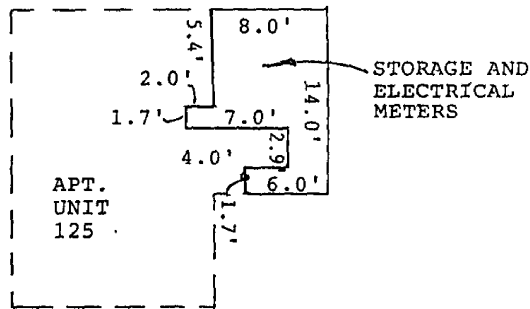
EXHIBIT "B"  
GENERAL COMMON ELEMENTS



GROUND LEVEL  
BATH HOUSE/STORAGE AND ELECTRICAL METERS



GROUND LEVEL  
OFFICE



GROUND LEVEL  
STORAGE AND ELECTRICAL METERS

**EXHIBIT C**  
**Ownership of Undivided Interest**  
**in Common Elements**

014-86-0312

The percentage of ownership interests in the Common Elements allocated to the respective Units are based on relative values assigned by the Declarant to each Unit at Declarant's discretion, and those Fractional Interests do not necessarily represent the square footage of a Unit or the selling price or actual value of any Unit. Subject to reallocation of interests within Units held by the Declarant, the Common Elements ownership interest allocated to each Unit shall remain fixed and constant and cannot be changed except by the written consent of all Owners and all mortgagees of a subject Unit(s).

PERCENTAGE OF INTEREST  
AND  
APPROXIMATE SQUARE FOOTAGE  
IN  
MOON CAYE CONDOMINIUM

<u>UNIT NUMBER</u>	<u>UNIT TYPE</u>	<u>LIVING AREA SQUARE FOOT</u>	<u>PERCENTAGE OF INTEREST</u>
<u>BUILDING "A":</u>			
101	A1	713.9025	1.7667
102	A2	700.3624	1.7332
103	A3	704.8808	1.7444
104	A4	715.0333	1.7695
105	A5	650.0193	1.6086
106	A6	642.3513	1.5896
107	A7	695.0250	1.7200
108	A8	642.3513	1.5896
109	A9	695.0250	1.7200
110	D1	1709.7600	4.2311
111	D2	1724.7400	4.2681
112	D3	1724.7400	4.2681
113	D4	1724.7400	4.2681
114	D5	1724.7400	4.2681
115	D6	1724.7400	4.2681
116	D7	1784.0800	4.4150
201	B1	1254.4000	3.1042
202	B2	1242.6827	3.0752
203	B3	1241.3163	3.0719
204	B4	1198.9593	2.9670
205	B5	1149.6500	2.8450
206	B6	1211.9939	2.9993
207	B7	1204.0078	2.9795
208	B8	1248.0500	3.0885
209	B9	1204.0078	2.9795
210	B10	1248.0500	3.0885
 <u>BUILDING "B":</u>			
117	C1	1282.7700	3.1744
118	C2	1176.9100	2.9124
119	C3	1176.9100	2.9124
120	C4	1176.9100	2.9124
121	C5	1176.9100	2.9124
122	C6	1176.9100	2.9124
123	C7	1176.9100	2.9124
124	C8	1329.8100	3.2908
125		255.6300	0.6336
35 UNITS		40409.2800	100.00%

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

014-86-0313



2000 AUG 31 09:27 AM 2000044050  
LONG\_D \$145.00  
Patricia Ritchie, COUNTY CLERK  
GALVESTON, TEXAS