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**DECLARATION OF CONDOMINIUM  
2400 MCCUE CONDOMINIUMS**

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2400 McCue  
Houston, Texas 77056

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BEVERLY S. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK

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2400 MCCUE CONDOMINIUMS -  
DECLARATION OF CONDOMINIUMS

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2400 MCCUE CONDOMINIUMS -  
 DECLARATION OF CONDOMINIUMS

THIS IS PAGE 2 OF 37 PAGES  
 REDUCTION BY CAMERA INDUSTRY METHOD

**DECLARATION OF CONDOMINIUM  
2400 MCCUE CONDOMINIUMS**

This Declaration ("Declaration") made and entered into this 29<sup>th</sup> day of JUNE, 2005, by 2400 McCue Residential, LP, a Georgia limited partnership, whose address is 6640 Powers Ferry Road, Suite 100, Atlanta, Georgia 30339 (the "Declarant"):

WITNESSETH .

WHEREAS, the Declarant is the owner in fee simple of certain real estate in Houston, Harris County, Texas, legally described on Exhibit "A" attached hereto and made a part hereof, and the improvements thereon (hereinafter referred to as the "Property") being more particularly described on the plat (hereinafter defined and referred to as the "Plat"), attached hereto as Exhibit "B" and made a part hereof for all purposes;

WHEREAS, the above described real estate is, on the date this Declaration is recorded, subject to covenants, restrictions, agreements and easements of record.

WHEREAS, the Declarant intends to, and does hereby submit such real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Uniform Condominium Act (hereinafter the "Act"), Chapter 82 of the Texas Property Code, as amended from time to time; and

WHEREAS, the name of the Condominium shall be 2400 McCue Condominiums; and

WHEREAS, the Declarant desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and all future owners of any part of said real estate, and any unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the real estate and all units; and

WHEREAS, the Declarant desires and intends that the several unit owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property, hereinafter defined, shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW THEREFORE, Declarant hereby declares that the land described in Exhibit "A" attached hereto, together with all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, is hereby submitted to a condominium regime pursuant to the Act, and that said Property is and shall be held, conveyed, hypothecated, encumbered, pledged, leased, rented, used, occupied and improved subject to the following limitations, easements, restrictions, covenants, conditions, charges and liens, all of which are declared to be established for the purpose of enhancing the value, desirability and attractiveness of said Property and every part thereof. All of said limitations, easements, covenants, restrictions, conditions, charges and liens shall run with the said Property and shall be binding upon all

parties having or acquiring any right, title or interest therein or any part thereof and shall be for the benefit of each owner of any portion of said Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

## **1. DEFINITIONS**

Certain words and terms used in this Declaration are defined as follows:

### **1.(a) Act**

The Uniform Condominium Act, Chapter 82 of the Texas Property Code, as amended from time to time.

### **1.(b) Association**

The association of all the Unit Owners acting pursuant to the Bylaws, as amended, from time to time, through its duly elected Board known as 2400 McCue Owners Association, Inc.

### **1.(c) Balcony or Patio**

A space located outside a Unit's boundaries, but designed to serve a Single Unit as an inseparable appurtenance thereto. A balcony or patio shall be a Limited Common Element allocated exclusively to that Unit. Unless otherwise provided by law, the "interior surfaces of balconies or patios," as used in this Declaration, shall mean the area enclosed by (i) those horizontal planes being the top of the concrete floor surface of the balcony or patio in question and the plane of the ceiling of the Residential Unit of which such balcony or patio is a part; and by (ii) those vertical planes being the vertical exterior surfaces of the Building and those planes adjacent to the vertical exterior edges of the balcony or patio; and "exterior surfaces of balconies or patios" shall mean all other parts of balconies and patios.

### **1.(d) Board**

The Board of Directors of the incorporated Association.

### **1.(e) Building**

All structures located on the Property, attached or unattached, containing one or more Units.

### **1.(f) Bylaws**

The Bylaws of the Association.

### **1.(g) Common Elements**

As defined in Section 5(a) hereof.

### **1.(h) Common Expense Liability**

The liability for Common Expenses allocated to each Unit.

1.(i) Common Expenses

The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board.

1.(j) Condominium

The condominium established by this Declaration to be known as "2400 McCue Condominiums."

1.(k) Condominium Instruments

All documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration and Plat.

1.(l) Declaration

This instrument by which the Property is submitted to the Act.

1.(m) Declarant

2400 McCue Residential, LP, a Georgia limited partnership, and its successors and assigns.

1.(n) First Mortgagee

The holder of a note secured by a bona fide first deed of trust or mortgage covering any portion of the Property. A reference to a given percentage of the First Mortgagees (e.g. "51% of the First Mortgagees") shall mean First Mortgagees holding Mortgages on Units representing such percentage of the votes in the Association.

1.(o) Limited Common Elements

As defined in Section 5(b) hereof.

1.(p) Maintenance Fund

All monies collected or received by the Association pursuant to the provisions of the Condominium Instruments.

1.(q) Manager

Initially Declarant and after it ceases to be the Manager, the person or firm selected by the Declarant or the Board pursuant to the provisions of this Declaration.

1.(r) Model

A Unit or Units used by the Declarant to assist in the sale of Units to prospective purchasers.



1.(s) Mortgage

A deed of trust or mortgage covering a Unit and the undivided interest in the Common Elements appurtenant thereto.

1.(t) Mortgagee

A beneficiary under a Mortgage and any servicing agent of such beneficiary.

1.(u) Occupant

A person or persons, other than a Unit Owner, in possession of a Unit.

1.(v) Parking Area

The portions of the Property under the Building structure which are designated for parking for the Unit Owners pursuant to the Plat, this Declaration, the rules and regulations of the Association, or any resolution of the Board. The Parking Area includes any access areas or driveways related to the Parking Area, and Parking Spaces.

1.(w) Parking Spaces

Those portions of the Parking Area designated for the parking of automobiles, motorcycles, and bicycles, which shall be Common Elements.

1.(x) Person

A natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

1.(y) Plat

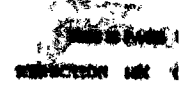
A plat or plats of survey of the Property and all of the Units in the Property submitted to the provisions of the Act, along with any plan or plans, said plat being attached hereto as Exhibit "B" and hereby made a part hereof and recorded with the recording of this Declaration and as amended from time to time in accordance herewith, which shall consist of such data as required by the Act.

1.(z) Property

All land, property and space submitted to the provisions of the Act pursuant to this Declaration, all improvements and structures erected, constructed or contained therein or thereon, including the Building and all easements, rights and appurtenances belonging thereto, and all fixtures.

1.(aa) Reserves

Those sums paid by Unit Owners which are separately maintained by the Board in the Maintenance Fund for the purposes specified by the Board or the Condominium Instruments.



1.(bb) Sales Office

One or more offices in Units or on Common Elements to be used in connection with sales, management and leasing of the Condominium.

1.(cc) Unit

Any part of the Property within the Building, including one or more rooms occupying one or more floors, or a part or parts thereof, designed and intended for any type of independent use and which is designated on the Plat as a Unit.

1.(dd) Unit Owner

The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

1.(ee) Unit Ownership

A part of the Property consisting of one Unit and its undivided interest in the Common Elements appurtenant thereto.

**2. LEGAL DESCRIPTION OF PROPERTY**

The Property hereby submitted to the provisions of the Act is legally described on Exhibit "A" hereto.

**3. UNITS**

3.(a) Legal Description.

All Units are delineated on the Plat attached hereto as Exhibit "B" and made a part of this Declaration. The boundaries of each Unit are the interior surfaces of floors, ceilings, perimeter walls, doors, and windows of such Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on Exhibit "B" and every such description shall be deemed good and sufficient for all purposes. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and his or her corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the Unit Ownership thereof so long as subject to a condominium regime, and, in any event, all Mortgages must be paid in full prior to bringing an action for partition or the consent of all First Mortgagees must be obtained.

### 3.(b) Subdivision.

Except as provided by the Act or as provided elsewhere herein, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his or her Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit "B". Unit Owners may, at their expense, subdivide or combine Units and locate or relocate Common Elements affected or required thereby, subject to the following: the Unit Owner must make a written application to the Board which (i) requests an amendment to the Condominium Instruments; (ii) sets forth the proposed reallocation, if any, to the new units of the percentage interest in the Common Elements; and (iii) sets forth whether the Limited Common Elements, if any, previously assigned to the affected Unit(s) shall be reassigned. The subdivision or combination must be approved by a majority of the Board and will be effective only upon recording of an appropriate amendment to the Condominium Instruments and execution of appropriate documentation by the Unit Owner(s) involved. The requesting Unit Owner(s) shall pay, whether or not the subdivision or combination is approved, all costs of the Association and Board in connection therewith, including but not limited to, attorneys' fees, survey costs and recording charges.

Notwithstanding the foregoing, until such time as the Declarant no longer owns any Units, the Declarant may subdivide and combine Units and alter, expand, reconfigure or close Common Elements (collectively the "Declarant Modifications") without further consent of any other party and shall thereupon record an amendment to the Declaration reflecting any such Declarant Modifications. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors, or its designee, and its agents, and each of them singly, as attorney-in-fact, to amend the Declaration, as described above, without notice to any Unit Owner. The delivery of each deed, mortgage or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgment of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Declaration, as described above.

### 3.(c) Measurements

To the extent such data is available to the Declarant at the time this Declaration is recorded, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (i) the Property and its exterior boundaries; (ii) the Building and each floor thereof; and (iii) each Unit in the Building and said Unit's horizontal and vertical dimensions. Declarant shall not be liable to any Unit Owner as a result of any discrepancies in actual Unit measurements from those set forth on the Plat, and each Unit Owner, by accepting a deed to a Unit, waives any such claim or cause of action against Declarant.

However, the Declarant hereby reserves unto itself the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations and other data required by the Act, with respect to the Building and the Units now or hereafter constructed on the Property. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors, or its designee, and its agents, and each of them singly, as attorney-in-fact, to amend the Plat, as described above, without notice to any Unit Owner. The delivery of each deed, mortgage or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgment of and consent to

such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

3.(d) Structural Components

Except as constructed or altered by or with the permission of the Declarant or the Association, nothing shall be done in any Unit or in, on or to the Common Elements or Limited Common Elements which would impair the structural integrity, safety or soundness of the Building or which would structurally change the Building.

3.(c) Ownership Interest

The ownership interest of each Unit Owner shall consist of fee simple title to the Unit owned by such Unit Owner, an undivided interest in the Common Elements, and the right to use the Limited Common Elements allocated to that Unit.

3.(f) Transfer of a Unit

Any Unit Owner may, without restriction under this Declaration, except for the restrictions on leasing in subsection 3.(g) below, sell, give, devise, lease or otherwise transfer his or her Unit, or any interest therein. Written notice of any transfer under this subsection must be given to the Association within ten (10) days following consummation of such transfer.

3.(g) Leasing

3.(g)(i) Unit Owners

Any Unit Owner shall have the right to lease, or permit a subsequent sublease or assignment of all (but not less than all) of his or her Unit upon such terms and conditions as the Unit Owner may deem acceptable subject to this Declaration and any rules and regulations adopted by the Board, provided, however, that the Board shall not adopt any rules or regulations that would prohibit Declarant or any other Unit Owner who acquired their Unit from the Declarant from leasing their Unit on any lawful terms for any legal residential use. Notwithstanding any other provision of this Section 3.(g), no Unit Owner shall lease his or her Unit if such lease shall cause the Condominium to fail to comply with the requirements of the Federal National Mortgage Association (FNMA).

Any lease, sublease or assignment of a Unit shall be in writing, a copy of which must be delivered to the Association within ten (10) days after execution, and shall provide that the lease, sublease or assignment set forth above shall be subject to the terms of this Declaration. The lease shall provide that any failure of the lessee, sublessee or assignee to comply with the terms of this Declaration shall be a default under the lease, sublease or assignment. Every such lease shall also expressly provide that the Association may exercise against the lessee thereunder any and all remedies available to the Association under this Declaration, including, but not limited to, the right to take possession of the Unit, or of the interest therein, or lease thereunder and to likewise take against the lessee any action permitted by this Declaration to be taken against a Unit Owner for payment of Assessments due to the Association, which accrue against the leased Unit during the lease term. In furtherance of the foregoing, each deed, lease, mortgage or other conveyance instrument with respect to a Unit, and the delivery and acceptance thereof, shall be deemed to assign, transfer and set over to the Association and the Board, or either one of

them ("Assignees") all interest of the lessor Unit Owner or any other lessor of said Unit, or interest therein, in any lease of such Unit, or any interest therein, or any extensions or renewals thereof, together with all rents payable under same and all benefits and advantages to be derived therefrom, to hold and receive same unto Assignees (together with all rights against any guarantors of the lessee's obligations under such lease) as security for the payment of any lien which may exist against such Unit, or any interest therein, for such Unit Owner's unpaid proportionate share of the Common Expenses, pursuant to this Declaration, in the performance by said Unit Owner of each and all of said Unit Owner's obligations under this Declaration. Any such lease of a Unit, or interest therein, shall contain and include such provisions in furtherance of said assignment as the Board may approve and deem prudent, from time to time, in order to effect such collateral assignment; provided, however, that such assignment shall not be construed as constituting the Assignee thereunder as a trustee or mortgagee in possession.

In the event of a default by such Unit Owner under the terms and provisions of this Declaration, the Association and the Board, or either of them, may elect to exercise each and all of the rights and powers conferred upon them as Assignee by such assignment and to directly collect all rents and other amounts then due under such lease from the lessee thereunder; provided, however, that such amounts so collected, after deducting therefrom the expenses of operating such Unit and the expenses of such collection and enforcement, shall be applied on account of any such lien for unpaid Common Expenses. Any costs or expenses incurred in connection with the operation of such Unit or in connection with such collection and enforcement (including, without limitation, reasonable attorneys' fees) shall be a Common Expense and secured as set forth in this Declaration, and the defaulting Unit Owner shall reimburse the Association therefor immediately upon demand.

Notwithstanding anything hereinabove to the contrary, any such assignment of the lease of a Unit, or any interest herein, by a Unit Owner, as hereinabove described, shall be subordinate to any assignment of such lease which is recorded and attaches prior to the date of such lien for unpaid Common Expenses and which is owned or held by any First Mortgagee, except for the amount of said proportionate share of such Common Expenses which becomes due and payable from and after the date on which such First Mortgagee either takes possession of the lessor's interest encumbered by such assignment, accepts a conveyance of any interest therein (other than as a security) or causes a receiver to be appointed in a suit to enforce such assignment. This provision shall not be amended or rescinded without the prior written consent of all such First Mortgagees who are the holders or owners of any such collateral assignments recorded prior to the date of such amendment or rescission.

The Unit Owners making any such lease, or permitting such sublease or assignment shall not be relieved thereby from any obligations under the Declaration.

3.(g)(ii) Declarant

Notwithstanding anything to the contrary in subsection 3.(g)(1) above, the Declarant may lease, sublease or assign any Units owned or controlled by it under such terms and conditions as it may deem acceptable.

3.(h) Use and Occupancy

3.(h)(i) General

Notwithstanding anything contained herein to the contrary, each Unit shall be allowed to be used (i) for residential purposes; (ii) as premises which are used by a professional or quasi-professional Occupant thereof as both a residence and a home office for professional pursuits which shall not be disruptive or violate the use, enjoyment and rights of other Owners. Except for those activities conducted in connection with a home office as set forth above or as part of the marketing and development program of the Declarant, no non-residential industry, business, trade or commercial activities, nonresidential storage, or other use of a Unit shall be conducted, maintained or permitted in any part of a Unit. No improper, offensive or unlawful use may be made of the Property. Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and the State of Texas and all ordinances, rules and regulations of the City of Houston, Texas. Any violating Unit Owner shall hold harmless the Declarant, the Association and other Unit Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance. Additionally, unless specifically provided otherwise herein, Declarant shall be deemed an owner of a Unit so long as it is the legal title holder of any Unit.

3.(h)(ii) Insurance

Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Property, or contents thereof, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of any insurance maintained by the Association, or which is in violation of any law. No waste shall be committed on the Common Elements.

3.(h)(iii) Appurtenances

Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the exterior walls of the Building, any balcony or patio, the Common Elements, or Limited Common Elements and no sign, awning, canopy or shutter (except as installed by Declarant or the Association or approved by Declarant or the Association) shall be affixed to or placed upon the exterior walls, balcony or patio or roof or any part thereof or on the Common Elements, or Limited Common Elements, without the prior written consent of the Association. No air conditioning unit of any type may be installed by a Unit Owner without the prior notification and consent of the Association. The installation of all radio or television antennas or receiving dishes shall be subject to the rules and regulations of the Association.

3.(h)(iv) Pets

No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that household pets, including dogs, cats and birds, may be kept in Units, subject to the provisions of Section 13(a) hereof and rules and regulations adopted by the Association, which rules or regulations may exclude any kind of pet other than dogs, cats or birds, by type or category, provided that no pets are kept, bred, or maintained for any commercial purpose; and provided further that any such authorized pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Association. Each Unit Owner and each Occupant shall be responsible for picking up after any animal kept in his or her Unit, including without limitation, removing any waste deposited by such animal anywhere on the Common Elements.

The Board shall have the right to fine any Unit Owner who violates the provisions of this paragraph.

3.(h)(v) Nuisance

No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants. Fireworks are prohibited in any Unit and in the Common Elements, and except as permitted by state law, firearms are prohibited in the Common Elements.

3.(i) Real Estate Taxes

If there is a Unit Owner other than the Declarant real estate taxes are to be separately taxed to each Unit Owner for his or her Unit and its corresponding percentage of ownership of the Common Elements, as provided in the Act and each Unit Owner shall be solely responsible for all matters relating to valuation of their Unit including but not limited to protests of proposed valuations and establishment and maintenance of all exemptions to which the Unit Owner may be entitled. In the event that for any year such taxes are not separately taxed to each Unit Owner, then the Association shall collect from each Unit Owner of a Unit not separately taxed, other than the Declarant, the proportionate share of the tax bill attributable to each Unit based on the relative percentage of ownership of the Common Elements of each such Unit not separately taxed in proportion to the total percentage of ownership of the Common Elements of all of the Units located on property affected by such tax bill. Such taxes shall be considered a Common Expense of each such Unit.

4. **DECLARANT RIGHTS**

Pursuant to the Act, the Declarant reserves the following rights:

4.(a) Special Declarant Rights. The Declarant reserves the following rights, referred to as "Special Declarant Rights" under the Act:

4.(a)(i) To exercise any development right set forth in subsection 4.(b) below;

4.(a)(ii) To maintain Sales Offices and Models for Declarant's exclusive use, subject to the following limitations:

(i) no more than ten (10) Units owned by the Declarant may be used at any one time as Sales Offices and Models;

(ii) Sales Offices and Models may be located on any floor of the Condominium and may consist of multiple Units with the same floor plan or any combination of floor plans; and

(iii) Sales Offices and Models may be relocated at any time provided Declarant takes reasonable steps to

minimize any disruption to the Unit Owners caused by such relocation.

- 4.(a)(iii) To maintain signs advertising the Condominium;
- 4.(a)(iv) To appoint or remove any officer of the Association or Board member, during the period of Declarant control described in Section 7(d) of this Declaration.

4.(b) Development Rights. The Declarant reserves the following development rights:

- 4.(b)(i) To add real property or interests in real property to the Condominium, whether by purchase, lease, easement or otherwise; provided, that no such alterations will change the percentage interests in the Common Elements of any Units without the consent of the Unit Owners of such other Units and any additions of real property for purposes of creating additional Units shall comply with the Act and any requirements of the Federal National Mortgage Association (FNMA). The maximum number of Units that the Declarant reserves the right to create is two hundred (200);
- 4.(b)(ii) To alter, subdivide, combine and convert any Units owned by Declarant, including by converting such Declarant-owned Units into Common Elements, and to make any amendments to this Declaration that results therefrom; and
- 4.(b)(iii) To make changes or additional improvements to the Common Elements during any time when the Declarant owns a Unit.

4.(c) Time Limitations and Applicable Property

Unless sooner terminated by a recorded instrument signed by Declarant, any of the above Special Declarant Rights and development rights may be exercised by Declarant for the maximum period of time permitted by the Act and the applicable provisions of this Declaration. All such Special Declarant Rights and development rights apply to the Property as a whole, as described on Exhibit "A" attached hereto, unless limited to specific portions of the Property by the applicable provisions of this Declaration. Unless limited by this Declaration, any of the Special Declarant Rights and development rights may be exercised with respect to different portions of the Property at different times, and in any order. Declarant makes no assurances as to the timing or order of its exercise of any such rights, the boundaries of any portions of the Property affected, or whether its exercise of such rights with respect to one portion will require the exercise of such rights as to other portions or the Property as a whole.

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## 5. THE COMMON ELEMENTS

### 5.(a) Description of Common Elements

The Common Elements shall consist of all portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly specified herein. The Common Elements include, without limitation and if applicable, any of the following items located on the Property: the walls, roof, hallways, breezeways, stairways, exterior windows, entrances and exits, security system for entry and exit (not including private security systems contained entirely within individual Units), mechanical equipment areas, storage areas, trash compaction system, grounds, walkways, mail boxes, master television antenna systems (whether leased or owned), if any, fire escapes, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), central heating and ventilating systems servicing the Common Elements, public utility lines, structural parts of the Building, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any references to "Common Elements" appearing on the Plat (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way. The use of the Common Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the Condominium Instruments and the rules and regulations of the Association.

### 5.(b) Description of Limited Common Elements

The Limited Common Elements are parts of the Common Elements which serve exclusively a single Unit or less than all of the Units as an inseparable appurtenance thereto, as designated as such in this Declaration or the Plat, or which by the nature or location thereof, or by the terms of this Declaration, are clearly intended to be reserved exclusively for or for the use of one or more Units and not others. The Limited Common Elements appertaining to, or designated or reserved for or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit. The Limited Common Elements shall include, but shall not be limited to, the interior surface of the perimeter walls, ceilings and floors which define the boundary planes of a Unit.

### 5.(c) Structural Components

Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Building, including structural columns or pipes, ducts, flues, shafts, electrical wiring, conduits, or public utility lines running through his or her Unit and forming a part of any system serving more than his or her Unit, or any cable components of communication systems, if any, located in his or her Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit. All pipes, ducts, flues, shafts, electrical wiring, conduits, utility lines (to the outlets), chutes, and structural components located in or running through a Unit and serving more than one Unit or serving, or extending into, the Common Elements shall not be deemed to be Limited Common Elements. No Unit Owner may take any action which would interfere with the ability of the Association to repair, replace or maintain said Common Elements as provided herein.

5.(d) Percentage of Ownership

Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit "C" attached hereto. The percentages of ownership interests set forth in Exhibit "C" have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act or the Declaration, without unanimous written consent of all Unit Owners and all Mortgagees having bona fide liens of record against any of the Unit Ownerships. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The formula for determining the undivided interests in the Common Elements and each Unit Owner' share of the Common Expenses is a proportional allocation based on the relative square footage of each Unit divided by the total square footage of all the Units. The ownership of each Unit shall not be conveyed separately from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

5.(e) Parking Spaces

The Parking Spaces are Common Elements which may be assigned and reassigned from time to time for the use of the Unit Owners to whom they are assigned by the Association or any Manager appointed by the Board.

Declarant shall have the right to sell and assign to a Unit or Units the right to use one or more Parking Spaces for such consideration as Declarant shall determine from time to time. Parking Spaces shall be Limited Common Elements for the exclusive use of the Unit Owner or Occupant of the Unit to which they are assigned of record by the Declarant. Such assignment shall not be recorded in the Public Records of the county but rather shall be made by way of instrument placed of record in the official records of the Association.

Once the right to use such Parking Space has been assigned by the Declarant, such Parking Space, being Limited Common Elements, shall be perpetually appurtenant to the Unit to which they are assigned, except as provided herein for transfers among Unit Owners. Any conveyance of any Unit shall be deemed to convey also the right to use such Parking Space even though made without specifically or particularly referring to the same. A Unit Owner may lease or assign and transfer his or her exclusive right to use a Parking Space which is appurtenant to his or her Unit but only to another Unit Owner, and such lease, transfer or assignment may be made for a term or perpetually as such Unit Owners may agree between them. In the event of any such assignment or transfer, the Unit Owners involved shall cause an appropriate instrument of transfer to be prepared and executed by such Unit Owners, which instrument shall be joined in by an officer of the Association and shall be prepared at the expense of the reallocating Unit Owners. Such instrument of transfer shall recite the term of any assignment or transfer between the Unit Owners and shall designate the Parking Space, the exclusive use of which was assigned or transferred.

No Parking Space shall be used for any purpose other than the parking of automobiles, motorcycles, and bicycles, although automobiles, motorcycles, and bicycles in good working order may be stored in the Parking Space. No Unit Owner or Occupant shall interfere in any manner with ready access to and from any Parking Space and no vehicle may be parked, even temporarily, in front of any Parking Space. The Manager or Association may cause any improperly parked vehicle to be towed or otherwise removed from the Property at the expense of the vehicle's Unit Owner and shall not be liable for any damage to the vehicle resulting from such action.

5.(f) Balconies, HVAC Units and Hot Water Heaters

Any balcony structure contiguous to and serving exclusively a single Unit or adjoining Units shall be a Limited Common Element serving said Unit or Units, subject to such rules and regulations as the Board may prescribe. The balconies serving Units shall not be used for the storage of personalty or equipment of any kind. Carpeting or other covering for balcony surfaces may be installed or modified only if expressly permitted by rules adopted by the Board, and shall thereafter be maintained as required by the Board at the sole expense of the Unit Owner making such installation. The cost of maintenance, repair and replacement of the balcony structure shall be a Common Expense.

All heating and air conditioning systems (including without limitation, air conditioning compressors) and all mechanical elements related thereto and all hot water heaters which serve exclusively a single Unit shall be personal property of the Unit Owner of said Unit, subject to such rules and regulations as the Board may prescribe. The cost of use, maintenance, repair and replacement of said heating and air conditioning systems and hot water heaters shall be paid by the Unit Owner. The Unit Owner shall be responsible for any and all damages to the Common Elements or other Units caused by any component of his or her heating and air conditioning systems and hot water heaters.

5.(g) Use and Occupancy of Common Elements and Limited Common Elements

Each Unit Owner and Occupant shall have the right to (i) the exclusive use and possession of the Limited Common Elements exclusively serving the Unit(s) of such Unit Owner(s), which right shall be appurtenant to and shall run with title to such Unit(s), and shall not be separated from such Unit(s), and (ii) the use and possession of the Limited Common Elements serving the Unit(s) of such Unit Owner(s) in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owner of any such other Unit to which such Limited Common Elements shall respectively appertain. Each Unit Owner shall be obligated to maintain his or her own Unit and the Limited Common Elements appurtenant thereto in good, clean order and repair. No Unit Owner shall overload the electric wiring or plumbing systems in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Association, an unreasonable disturbance to others. No Unit Owner shall overload the floors of any Unit, the Common Elements or the Limited Common Elements. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Association except as herein expressly provided.

**5.(h) Cleanliness of Common Elements**

No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

**5.(i) Storage in Common Elements**

No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Common Elements without the prior consent of, and subject to any regulations of, the Association.

**5.(j) Modification of Common Elements and Limited Common Elements**

Nothing shall be altered or constructed in or removed from the Common Elements or Limited Common Elements except as (i) constructed, altered or removed by or with the permission of the Declarant at any time prior to the first annual meeting of the Unit Owners, or (ii) with the written consent of the Association thereafter.

**5.(k) Unit Security Systems**

If a Unit contains a security system, that system is the personal property of the Unit Owner. Each Unit Owner must provide the managing agent for the Condominium and the Association with the security code therefor. The managing agent for the Condominium and the Association shall not be responsible for any charges incurred in connection with the use or operation of the security systems. Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to make the Condominium less attractive to intruders than it otherwise might be. Declarant, the Association, and their respective directors, officers, committees, members, agents and employees, shall not in any way be considered an insurer or guarantor of security within the Condominium, and shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Unit Owner, Occupant, guest, and invitee within the Condominium assumes all risk for loss or damage to his or her person, to his or her Unit, to the contents of his or her Unit, if any, and to any other of his or her property within the Condominium. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment or measures recommended, installed or undertaken within the Condominium.

**6. EASEMENTS AND ENFORCEMENTS**

**6.(a) Recorded Easements**

Recorded easements and licenses to which the Condominium is currently subject are set forth on Exhibit "D" attached hereto. The Condominium is also subject to the easements described in subsections (b), (c), (d), (e), (f) and (j) of this Section 6.

6.(b) Encroachments

If any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or any portion of any Unit encroaches upon any part of any other Unit as a result of the renovation, repair, reconstruction, settlement or shifting of the Building, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit or Common Elements so encroaching so long as all or any part of the Building containing such Unit or Common Element so encroaching shall remain standing; provided, however, that after the date this Declaration is recorded, a valid easement for any encroachment shall in no event be created in favor of any owner of a Unit other than the Declarant or in favor of the owners of the Common Elements if such encroachment occurred due to the intentional or willful conduct of said owner(s) or their agent(s).

6.(c) Utility Easements

Easements are hereby declared and granted for utility purposes, including the right to install, lay, construct, maintain, operate, renew, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires, cable television and satellite television networks, internet networks, receiving dishes and equipment, and electrical conduits, wires and equipment over, under, along and on any part of the Common Elements for the purpose of providing the Property with such services, as may exist on the date any Property is submitted to the Act.

6.(d) Cable Easements

Easements are hereby declared and granted to the Declarant and the Association on the roofs and alongside the perimeter of the Units for purposes of installing receiving dishes for cable reception and the like.

6.(e) Easement of Enjoyment

A non-exclusive easement of enjoyment is hereby declared and granted to each Unit Owner in and to the Common Elements.

6.(f) Easement of Access.

Each Unit shall have, and each Unit shall be subject to, a perpetual easement for the use and maintenance of all rights of ingress and egress along driveways, walkways, stairways, lobbies, hallways, and corridors providing access to such Unit and to the Parking Area.

6.(g) Streets and Utilities

Upon approval by at least 66-2/3% of the Unit Owners, portions of the Common Elements (excluding any Limited Common Elements) may be dedicated to a public body for purposes of streets or utilities. Where such a dedication is made, nothing in the Act or any other law shall be construed to require that real property taxes of every Unit must be paid prior to recordation of the dedication. Any action pursuant to this subsection (f) of Section 6 must be taken at a meeting of Unit Owners duly called for that purpose.

6.(h) Easements Appurtenant

All easements and rights described herein are easements appurtenant, running with the Property, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Unit Owner, purchaser, Mortgagee and other person having an interest in said Property, or any part or portion thereof.

6.(i) Incorporation of Easements

Reference in the respective deeds of conveyance, or in any Mortgage or deed of trust or other evidence of obligation, to this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

6.(j) Declarant Easements

The right of the Unit Owners to use and possess the Common Elements as set forth herein shall be subject to a blanket easement over the Common Elements in favor of the Declarant, and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Common Elements or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Property or any part thereof, (iii) the installation and maintenance of signs advertising the Units on the Property, or any part thereof, and signs directing potential purchasers to the Sales Office and Models erected in connection with such Units, (iv) using and showing the Models and Sales Office or for such other purposes deemed necessary or desirable in connection with such construction, leasing, marketing, sales, or brokerage, (v) setting up, staffing and maintaining marketing materials and tables in the Common Elements and using the Common Elements for special events, (vi) posting and maintaining such signs and lighting on the Property as are deemed necessary or desirable in connection with (iv) and (v) above, and (vii) using the office of the Building for management of the Building, construction activities at the Building and sales or leasing activity concerning the Building. Until all the Units are sold and conveyed, the Declarant shall be entitled to such access, ingress and egress to the Property as it shall deem necessary in connection with the sale of, or work in, the Building or any Unit. Declarant shall have a blanket easement over the Common Elements for its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns for purposes of access and ingress to and egress from said Common Elements, and for purposes of marketing, sales, brokerage, construction, installation, repair, replacement and restoration of utilities, driveways, buildings, landscaping and any other improvements on said Common Elements until Declarant is no longer a Unit Owner. The foregoing easement shall be deemed and taken to be a covenant running with the land.

7. **THE ASSOCIATION**

7.(a) Incorporation

The Declarant has caused the formation of a Texas not-for-profit corporation for the purposes of facilitating the administration and operation of the Property and to act as the Association.

7.(b) Miscellaneous

- 7.(b)(i) Association Membership and Allocation of Votes. All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, excluding Persons holding such interest under a Mortgage, are members of the 2400 McCue Owners Association, Inc., and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Instruments, the Owner or collective Owners of a Unit shall be entitled to one (1) equally weighted vote for such Unit;
- 7.(b)(ii) Bylaws. The initial Bylaws of the Association shall be adopted by the initial Board and may be amended thereafter as provided in the Act;
- 7.(b)(iii) Name. The name of such Association shall be 2400 McCue Owners Association, Inc.
- 7.(b)(iv) Management. Any decision by the Board to terminate the services of a duly appointed Manager cannot become effective until such decision is ratified by a vote of the Unit Owners at a Special Meeting called pursuant to the Bylaws.

7.(c) Board's Determination Binding

In the event of any dispute or disagreement between any Unit Owners relating to the Property or any question of interpretation or application of the provisions of the Declaration or Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7.(d) Period of Declarant Control

Notwithstanding anything herein to the contrary, until one hundred twenty (120) days after the sale of seventy-five percent (75%) of the Units to persons other than the Declarant the Declarant shall appoint and remove the Manager, all officers of the Association and all members of the Board. If the Declarant voluntarily surrenders such appointment and removal power before termination of the 120-day period described above, the Declarant may require, for the duration of such one hundred twenty (120) day period, that specified actions of the Association or the Board be approved by the Declarant before they become effective. Notwithstanding the foregoing, within one hundred twenty (120) days after the sale of fifty percent (50%) of the Units to persons other than the Declarant, one-third of the members of the Board shall be elected by Unit Owners other than the Declarant, at a regular or special meeting of the Association. In no event shall the period of Declarant control described in this paragraph extend beyond three (3) years after the first conveyance of a Unit to a person other than the Declarant, at which time such period of control shall automatically expire. After the expiration of the Declarant's appointment and removal power pursuant to this paragraph, the first annual meeting of the Association shall

be held at which time the then officers and Board shall resign and a new Board shall be elected. The new Board shall elect new officers of the Association within thirty (30) days after the expiration of the period of Declarant control.

## 8. MAINTENANCE, ALTERATION AND IMPROVEMENTS

Responsibility for the maintenance of the Property and restrictions upon the alteration and improvement thereof shall be as follows:

### 8.(a) Maintenance of Units and Common Elements Adjacent or Contiguous To, or Between, Units.

8.(a)(i) By the Association. The Association shall maintain, repair and replace, as a Common Expense of the Association:

8.(a)(i)(1) All portions of the Common Elements and Limited Common Elements adjacent or contiguous to a Unit, or between or within Units, contributing to the support of the Building, which portions shall include but not be limited to the outside walls of the Building and all fixtures on the exterior thereof, boundary walls of Units, floor and ceiling slabs, load-bearing columns, interior wall studs, and load-bearing walls.

8.(a)(i)(2) All conduits, vents, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions described in Subsection 8.(a)(i)(1) above; and all of such facilities contained within a Unit which service part or parts of the Condominium, other than the Unit within which contained.

8.(a)(i)(3) All exterior windows and exterior Unit doors.

8.(a)(i)(4) The Parking Area.

8.(a)(i)(5) Right of Access. A Unit Owner shall grant a right of access to the Unit and any Limited Common Elements such as the balcony of a Unit to the Association's officers and agents, the Board, the Manager and/or any other person authorized by the Board or the Manager and shall provide the Association a copy of the keys to the Unit, for the purpose of making inspections, including inspections for structural damage, or for the purpose of removing violations noted or issued by any governmental authority against the Common Elements, the Limited Common Elements or any other part of the Property, or for the purpose of correcting any conditions originating in such Unit and threatening another Unit or all or any part of the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or



electrical services or other portions of the Common Elements within such Unit or elsewhere in any Building, or for the purpose of reading, maintaining or replacing utility meters or sub-meters relating to the Common Elements, such Unit or any other Unit in the Building or to correct any condition which violates the provisions of any Mortgage covering another Unit, provided that requests for such entry are made not less than one day in advance and that any such right shall be exercised in such a manner as will not unreasonably interfere with the use of the Unit. Any damage caused by such entry shall be repaired by the Association and charged as a Common Expense. In case of an emergency, such right of entry shall be immediate, without advance notice, whether or not the Unit Owner is present.

A Unit Owner shall grant a right of access to the Unit Owner's Unit, and the Board shall grant a right of access to the Common Elements, to the Declarant and its contractors, subcontractors, agents and employees, for the purposes of completing construction of improvements to the Building in accordance with the plans and specifications thereof; provided that access thereto shall be exercised in such a manner as will not unreasonably interfere with the use of Units.

8. (a)(i)(6) Inspections. In addition to the general maintenance obligations of the Association as set forth in this Declaration, the Association shall, at all times, contract or otherwise retain the services of independent, qualified, licensed individuals or entities (the "Inspectors") to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Condominium.

The Inspectors shall inspect component parts of the Condominium Building, including but not limited to those items described on Exhibit E attached hereto and incorporated herein. The items listed on Exhibit E are not intended to provide an exhaustive list of all items that should be inspected and the Inspectors may inspect such other items as the Association deems appropriate in accordance with prudent business practices and the recommendations of the Inspectors.

The inspections shall take place at least as frequently as specified on Exhibit E or more frequently if recommended by the Inspectors. The Inspectors shall provide written reports of their inspections to the Board promptly following completion thereof. The written reports shall identify any

items of maintenance or repair, which either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the members of the Association at the next meeting of the members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the Inspectors.

For a period of ten (10) years after the conveyance of the last Unit in the Condominium by Declarant to an Unit Owner, the Association shall maintain records of such inspections and of corrective or remedial work done to address concerns raised by the Inspectors, and if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspections, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

The provisions of this Paragraph 8 (a)(i)(6) shall not apply during the period Declarant appoints any members of the Board in accordance with the Bylaws of the Association and the Act.

8.(a)(i)(7) Declarant and the Association shall not liable for any special, consequential or indirect damages in connection with maintenance of the Common Elements.

8.(a)(ii) By Each Unit Owner. The responsibilities and obligations of a Unit Owner shall be as follows:

8.(a)(ii)(1) Each Unit Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceiling, floor and doors bounding such Unit Owner's Unit at the Unit Owner's expense. Decorative wall items such as lights, shelves and art work may be affixed to or installed on the interior walls, floor, doors and ceiling of any Unit which are Limited Common Elements without prior approval of the Association provided such affixation or installation is done in a good and workmanlike manner. Except for such affixation or installation of decorative wall items, no Unit Owner shall make any alterations to, or that affect, any of the Common Elements (including windows and doors which are Limited Common Elements) nor install any

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article therein without the prior approval of the Association. The exterior of all draperies, window shades, curtains, or other window coverings shall be neutral in color and subject to the rules and regulations of the Association.

8.(a)(ii)(2) A Unit Owner shall repair, replace and maintain in good, clean repair and condition at his or her sole expense (i) the Fixtures (as hereinafter defined) within the Unit Owner's Unit; (ii) the finished interior surfaces of perimeter walls, interior walls, ceiling and floor of the Unit, including, but not limited to, such materials as lath, furring, drywall, wallboard, plasterboard, plaster, paneling, wallpaper, paint, wall and floor tile and flooring (but not including the subflooring); (iii) any Solar-X material on the interior surface of all exterior windows, and any glass in doors or interior windows facing the hallway; (iv) the space, enclosed by the balcony or patio, including the floor or carpeting or other floor coverings, as the case may be (with the structure enclosing the balcony or patio to be maintained by the Association as a Limited Common Element); and (v) the air handler mechanical unit and air conditioning compressor for the Unit. The interior surfaces of all exterior windows and the exterior surfaces of windows and doors on balconies which are Limited Common Elements shall be cleaned or washed by the Unit Owner thereof. The repair, replacement and maintenance required by this paragraph of these areas or surfaces which are exposed to public view shall be done in a manner consistent with the decor of the Condominium and shall be subject to the control and direction of the Association. No Unit Owner shall disturb or relocate any Utilities (as hereinafter defined) running through a Unit.

8.(a)(ii)(2)(a) "Utilities," as used herein, means all lines, pipes, wires, conduits or systems located within the walls, floors or ceilings of a Unit which are a part of the Common Elements.

8.(a)(ii)(2)(b) "Fixtures," as used herein, means the personal property, appliances, machinery and equipment installed in, on or within, or affixed to, a wall, ceiling or floor of, a Unit commencing at the point where such items connect with the Utilities, including, but not limited to, all light fixtures, plumbing appliances (such as but not limited to faucets, water valves, shower heads, tubs, sinks and drain taps within a Unit), electrical wall switches or outlets, common TV

antenna outlet, air conditioning vents, range, oven, dishwasher, disposal, vented hood over kitchen sink, if any, refrigerator and the like.

- 8.(a)(ii)(3) No Unit Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of their Unit, or any balcony or patio to their Unit, except as provided in Subsection 5(f), or of the Building, including windows and exterior doors of the Unit.
- 8.(a)(ii)(4) All Unit Owners shall promptly report to the Board any defect or need for repairs that are the responsibility of the Association under this Section 8.
- 8.(a)(ii)(5) Construction work on the interior of any Unit must be in compliance with such Construction Rules as the Board may approve from time to time. Any replacement of carpet with hardwood floors must be done in such a manner as to ensure proper sound buffering is achieved.

8.(a)(iii) Required Maintenance of Individual Units – Special Assessments.

Maintenance and repair of any Units, if such maintenance or repair is reasonably necessary, in the discretion of the Board, to protect the Common Elements or Limited Common Elements or preserve the appearance and value of the Property, when the Unit Owner or Unit Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board, shall be performed by the Board for which it shall levy a special assessment against the Unit of such Unit Owner or Unit Owners for the cost of said maintenance or repair, the payment of which shall also be secured by the lien for assessments hereinafter provided as in the case of assessments for Common Expenses.

8.(a)(iv) Costs Expended for Individual Units

The costs of any materials, supplies, furniture, labor, services, maintenance, repairs, approved interior structural alterations or taxes provided or paid for particular Units shall be specially assessed against the Unit and Unit Owners of the Unit benefited.

8.(a)(v) Special Services for Individual Units Prohibited

Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit or convenience of any Unit Owner or Unit Owners, or any Occupant or Occupants, of any Unit other than services which may be customarily available, with or without charges therefor, to all Units.

8.(b) Common Elements, General.

8.(b)(i) By the Association. The maintenance and operation of the Common Elements and Limited Common Elements shall be the responsibility and the Common Expense of the Association, except where maintenance and repairs of Limited Common Elements are specifically assigned to a Unit Owner or Unit by this Declaration or the rules and regulations governing the Condominium.

8.(b)(ii) By Declarant. The Declarant shall have the right to alter the Common Elements to the extent described in Section 4.

9. ASSESSMENTS

9.(a) Definition

For purposes of this Declaration, "assessments" means any regular or special assessment (including annual assessments, defined below), dues, fees, charges, interest, late fees, fines, collection costs, attorneys' fees, and any other amount due to the Association by a Unit Owner or levied against a Unit by the Association, all of which are enforceable as assessments under this Declaration and the Act.

9.(b) Obligation to Pay and Allocation of Liability for Common Expenses

- (i) Except as provided below, or elsewhere in the Act or Condominium Instruments the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as set forth in Exhibit "C" attached hereto and incorporated herein by this reference.
- (ii) The Board shall have the power to levy special assessments against Units as in its discretion it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.
- (iii) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units that are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements that may be specially assessed, expenses incurred for the maintenance, repair or replacement of Common Elements shall not be specially assessed.
- (iv) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or

invitees of any such Unit or Units may be specially assessed against such Unit or Units.

9.(c) Determination of Common Expenses and Common Expense Liability

The Declarant, initially, and thereafter the Board, shall from time to time, and at least annually, prepare an annual budget for the Condominium, fixing and determining the amount of assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such Common Expenses among the Unit Owners in proportion to their percentage ownership interest in the Common Elements, as set out on Exhibit "C".

9.(c)(i) Common Expenses shall include, but not be limited to:

9.(c)(i)(1) Expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, including the fees and expenses of the Manager;

9.(c)(i)(2) Cost of carrying out the powers and duties of the Association;

9.(c)(i)(3) All insurance premiums and expenses relating thereto, including fire insurance and any other expenses designated as Common Expenses from time to time by the Board;

9.(c)(i)(4) Utility expenses for the Common Elements, and utility expenses for Limited Common Elements that are not separately metered; and

9.(c)(i)(5) Any costs to use, lease, operate, maintain or repair the Parking Area.

9.(c)(ii) The Board may also include, as Common Expenses, an amount for working capital for the Association, amounts necessary to make up any deficit in the Common Expenses for a prior year, and such amounts as may be necessary to effect any other purpose or requirement of this Declaration, including the purchase of additional equipment or services. The Board shall establish an initial working capital fund from funds collected from each Unit Owner at the time of closing of the sale of a Unit by the Declarant in an amount equal to two (2) full months of assessments against the Unit for Common Expenses based on the annual budget adopted by the Association. Amounts in the initial working capital fund shall not be considered advance payments for regular assessments. The Declarant may pay any budget deficit during the period of Declarant control in lieu of paying assessments on the Units that it owns, in accordance with the Act.

9.(c)(iii) The Board may establish an adequate reserve fund for replacement of Common Element components and Limited Common Elements

that the Association is obligated to maintain (including amounts for deductibles in property insurance policies), to be a part of the Common Expenses and paid as part of the assessments. Without the prior approval by majority vote of the Unit Owners (or such greater vote as may be required by law), no part of such reserve fund may be spent for normal operating expenses.

- 9.(c)(iv) The Board shall promptly advise all Unit Owners in writing of the amount of the assessment payable by each of them, respectively, as determined by the Board, or Declarant, as aforesaid and shall furnish copies of the budget on which such assessment is based to all Unit Owners.

If the allocation and assessment of Common Expenses to the Unit Owner or Unit Owners of each respective Unit (hereinafter referred to as the "annual assessment") proves inadequate for any reason, including nonpayment of any Unit Owner's annual assessment, or in the event of casualty losses, condemnation losses or other events which require additional funds to be supplied for preservation, repair, replacement, rebuilding or restoration of the Condominium, the Board shall have the authority at any time and from time to time to levy a special assessment as it shall deem necessary for such purposes against each of the Unit Owners in accordance with their percentage interest in the Common Elements, except as otherwise expressly provided herein.

9.(d) Payment of Assessments

The aggregate of the annual assessment made by the Board and allocated and assessed to the Unit Owner or Unit Owners of each Unit shall be payable in twelve (12) equal monthly installments following the date of the last determination or amendment of assessments by the Board, prorated to the date of conveyance of a Unit. Assessments against all Units shall begin on a date determined by the initial Board, and no later than sixty (60) days after the first conveyance of a Unit to a person other than the Declarant; but in lieu of such assessments during the period of Declarant control Declarant shall have the option of paying any deficit between operational expenses of the Association and assessments paid by Unit Owners other than Declarant, in accordance with the Act. Such payments shall be due and payable in advance on the first day of each month. If, at any time, a Unit Owner is in arrears more than fifteen (15) days with respect to the payment of two (2) monthly installments, the Board may, at its option, accelerate the due date of the remaining unpaid monthly installments and declare said sums immediately due and payable and give notice of such action to such Unit Owner. From and after the date of such notice, the Board may enforce the payment of any such sums determined to be due as in the case of any other assessment. Special assessments shall be payable on or before ten (10) days after Unit Owners are invoiced therefor.

The failure or delay of the Declarant or Board to prepare any annual budget or to deliver copies of such budgets to each Unit Owner shall not constitute a waiver or release in any manner of any Unit Owner's obligation to pay Common Expenses as assessed and, in the event of any delay or failure to establish any annual budget, each Unit Owner shall continue to pay the Common Expenses, monthly, at the rate established for the previous period.

9.(c) Interest on Unpaid Assessments

Assessments that are unpaid for over sixty (60) days after due date shall bear interest at the rate of ten percent (10%) per annum from due date until paid.

9.(f) Unpaid Assessments; Liens, Penalties and Methods of Collection

9.(f)(i) All assessments are a personal obligation of the Unit Owner charged, and shall not pass to successors in title unless expressly assumed. The Association shall have a lien on a Unit for any unpaid assessments against the Unit Owners of such Unit, together with interest thereon and reasonable attorneys' fees incurred in collection of same and the enforcement of said lien. Such lien shall include all rents and insurance proceeds received by such Unit Owners and relating to such Unit. All such liens shall be subordinate and inferior to the purchase money lien (vendor's or deed of trust or both) of a first mortgage or to the lien of a Mortgagee for improvements to a Unit if such first mortgage lien or lien for improvements was recorded before the date on which the unpaid assessment becomes delinquent. The Board shall take such action as it deems necessary to collect assessments and may settle and compromise the same if it is in the best interest of the Association. Said liens shall be effective as and in the manner provided for by the Act and shall have the priorities established by said Act.

9.(f)(ii) The Board may bring an action at law against the Unit Owner personally obligated to pay an assessment or foreclose the lien against the Unit, or both, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each Unit Owner, by his or her acceptance of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Unit Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to the Texas Property Code, and such Unit Owner hereby expressly grants to the Board a power of sale in connection with said lien. The Board may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing signed by the President or a Vice-President of the Association and filed for record in the Official Public Records of Real Property of the County in which the Condominium is located. The lien provided for in this section shall be in favor of the Association for the common benefit of all Unit Owners. In the event that the Board has decided to foreclose the lien provided herein for the

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nonpayment of assessments by any Unit Owner in addition to any other statutory requirement for such foreclosure, the Board shall mail to such Unit Owner or Unit Owners and the Mortgagee of the Unit for which the assessment has not been paid a copy of the Notice of Trustee's Sale no less than twenty-one (21) days or longer if required by the statutory requirements then in effect prior to the date on which said sale is scheduled by posting same through the U.S. Postal Service, postage prepaid, certified or registered, return receipt requested, properly addressed to such Unit Owner or Unit Owners at their last known address according to the records of the Board.

- 9.(f)(iii) At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of its lien, together with interest, costs and attorneys' fees, and to apply as a cash credit against its bid all sums due the Association covered by the lien foreclosed. Any amount bid by the Association shall be a Common Expense of the Association. From and after any such foreclosure the occupants of such Unit shall be required to pay a reasonable rent for the use of the Unit and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect same, and, further, shall be entitled to sue for recovery of possession of the Unit premises at forcible detainer without the necessity of giving any notice to the former Unit Owner or Unit Owners or any occupants of the Unit sold at foreclosure unless such notices are required by the statutory requirements then in effect
- 9.(f)(iv) The Association may also, at its option, accept a deed in lieu of foreclosure, or sue to recover a money judgment for unpaid assessments, without thereby waiving the lien securing the same.
- 9.(f)(v) A foreclosure of the Association's lien for unpaid assessments shall not affect, in any way, a valid lien of any First Mortgagee on any Unit sold at such foreclosure, whether the instruments creating such lien were recorded before or after the time at which the lien for assessments became fixed.
- 9.(f)(vi) In addition to, and cumulative with, any other remedy provided herein, in the case of failure of any Unit Owner to pay any assessment due or comply with the terms and provisions of the Declaration, the Bylaws or any rules and regulations of the Association, the Board may suspend the voting rights of any Unit Owner (i) for any period after such Unit Owner has been delinquent in the payment of assessments due the Association for more than thirty (30) days, (ii) for any period during which such Unit Owner shall remain in default of any other obligation herein provided, and (iii) for any period not to exceed thirty (30) days for a single infraction of the Bylaws or any rules and regulations of the Association, or both; provided, however, except for failure to pay

assessments, no such suspension shall be effected until the Unit Owner shall have been given the opportunity to present evidence on the Unit Owner's behalf at a hearing before the Board or a committee designated by the Board, and no such hearing shall be held until the Unit Owner shall have received at least ten (10) days' written notice specifying the nature of the alleged default and the exact time and place of the hearing.

- 9.(f)(vii) While a Unit Owner's voting rights are suspended as set forth in subparagraph 9(f)(vi) if the Unit Owner is a Member of the Board of Directors of the Association, that Unit Owner's voting rights as a Member of the Board of Directors of the Association shall also be automatically suspended until the suspension of voting rights under subparagraph 9(f)(vi) is lifted.
- 9.(f)(viii) Assessments involving a charge for property damage or a fine for violation of this Declaration, the Bylaws or any rules and regulations of the Association shall involve the following notice procedure:
- 9.(f)(viii)(1) The Association shall give the Unit Owner of the affected Unit a written notice that:
- 9.(f)(viii)(1)(a) describes the violation or property damage and states the amount of the proposed fine or damage charge;
- 9.(f)(viii)(1)(b) states that not later than the thirtieth (30<sup>th</sup>) day after the date of the notice, the Unit Owner may request a hearing before the Board to contest the fine or damage charge; and
- 9.(f)(viii)(1)(c) allows the Unit Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Unit Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months.
- 9.(f)(viii)(2) After levying the fine or damage charge, the Association shall give notice of the fine or damage charge to the Unit Owner not later than the thirtieth (30<sup>th</sup>) day after the date of levy.
- 9.(f)(viii)(3) The Association may give a copy of the notices required by this Section 9(f) to any Occupant of the affected Unit.
- 9.(f)(ix) Notwithstanding anything herein to the contrary, the Association may not foreclose a lien for assessments consisting solely of fines for violation of this Declaration, the Bylaws or any rules and regulations of the Association, unless such foreclosure is permitted by applicable law. Foreclosure shall be permitted for any

assessments that include fines in addition to other types of assessments.

9.(g) Liability of Purchaser for Unpaid Assessments.

9.(g)(i) Where a First Mortgagee of record or other purchaser of a Unit obtains title thereto as a result of foreclosure of said First Mortgage, or where said First Mortgagee accepts a deed or assignment to said Unit in lieu of foreclosure, such acquirer of the title and its heirs, successors, legal representatives and assigns, shall not be liable for the assessments pertaining to such Unit or chargeable to the former Unit Owner of such Unit which became due prior to acquisition of title thereto in the manner set out above. Such foreclosure shall cut off and extinguish the lien of the Association securing assessments which became due and payable prior to acquisition of title by such First Mortgagee. However, no such foreclosure shall free such Unit from the lien securing assessments thereafter becoming due and payable; nor shall the personal obligation of the former Unit Owner of such Unit for unpaid assessments be extinguished by any foreclosure.

9.(g)(ii) Upon the sale or conveyance of a Unit, except through foreclosure of a first or second Mortgage of record or the giving of a deed in lieu of foreclosure, as specifically provided in the immediately preceding paragraph, all unpaid assessments against a Unit Owner shall first be paid out of the sale price, as provided in the Act; provided, however, that if such unpaid assessments are not paid or collected at the time of a sale or conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the selling Unit Owner the amounts paid by the grantee therefor. Any grantee of a Unit shall be entitled, upon written request therefor, to a statement from the Board setting forth the amount of the unpaid assessments against the selling Unit Owner due the Board and such grantee shall not be liable for, nor shall the Unit conveyed be subject to, a lien for any unpaid assessments made by the Board against the selling Unit Owner in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any assessments becoming due after the date of any such conveyance; and, further, such grantee shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments due and owing by the former Unit Owner have been paid.

9.(g)(iii) The provisions of this part of the Declaration shall be cumulative with the rights of the Association set out in the Act.

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**9.(h) Assessment for Utility Service**

The Association shall arrange for utility services for the Condominium, including Common Elements and all Units. The service centrally metered shall be a part of the Common Expense payable as in the case of other expenses; except that any such service individually sub-metered to each Unit shall be paid by the Unit Owner of such Unit based upon the amount of usage reflected by such sub-meter as a pro rata amount of the charges based on the central master meter (if such usage is measured by a sub-meter), plus any reasonable billing charge from a third party billing company.

**9.(i) Assessments in Case of Claims Against Common Elements**

The Board shall also pay any amount necessary to discharge any lien or encumbrance claimed or levied against the Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Elements, rather than merely against the interests therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the amount required to discharge it; and any costs incurred by the Board by reason of any such lien shall be specially assessed to said Unit Owners and the payment of any such sums assessed shall be secured by the lien provided above and may be enforced as in the case of assessments for Common Expenses.

**9. (j) Information To and From Mortgagees.** At the request of the Mortgagee of a Unit Owner or the insurer or guarantor of a Mortgage, the Council may furnish such Mortgagee, insurer or guarantor with information about the Project and such Unit Owner's obligations to the Council (as further described in Article XVI hereof). If a Unit Owner is delinquent in payment of assessments to the Council, at the request of the Council a Mortgagee or the insurer or guarantor of a Mortgage may provide the Council with information about such Unit Owner's debt secured by the Mortgagee's lien and other relevant information. By agreeing to be bound by this Declaration, each Unit Owner expressly consents to the Council providing such information to a Mortgagee, insurer or guarantor, and to a Mortgagee, insurer or guarantor providing such information to the Council.

**9.(k) Ownership Records.** Not later than the 30<sup>th</sup> day after the date of acquiring an interest in a Unit, a Unit Owner shall provide the Council with:

1. The Unit Owner's mailing address, telephone number, and driver's license number, if any.
2. The name and address of the holder of any lien against the Unit, and any loan number.
3. The name and telephone number of any person occupying the Unit other than the Unit Owner; and
4. The name, address and telephone number of any person managing the Unit as agent of the Unit Owner.

**9.(l) Updating Ownership Records.** A Unit Owner shall notify the Council not later than the 30<sup>th</sup> day after the date the Unit Owner has notice of a change in any information

required under paragraph 9.(k) above, and shall provide the information on request by the Council from time to time.

## **10. INSURANCE AND CONDEMNATION**

Insurance, other than such title insurance as may be issued to a Unit Owner upon purchase of his or her respective Units and appurtenant interests in the general Common Elements, shall be governed by the following to the extent policies containing such provisions and affording such coverages are reasonably available and the premiums therefore are not found by the Board to be an unnecessary economic burden.

### **10.(a) General.**

- 10.(a)(i) All insurance policies on the Property purchased by the Board shall be for the benefit of the Unit Owners and their respective Mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates of Mortgagee endorsement to the Mortgagees of Unit Owners. Any proceeds of such policies shall be payable to the Board as trustee for the Unit Owners and Mortgagees, as their interests may appear, and such policies and endorsements thereon shall be deposited with the Board.
- 10.(a)(ii) Any hazard policy acquired by the Board shall provide that if, at the time of loss, there is other insurance in the name of a Unit Owner covering the same property covered by the policy acquired by the Board, the insurance coverage afforded by the policy acquired by the Board shall be primary and not contributing with such other insurance. In no event shall the insurance coverage obtained and maintained by the Board pursuant thereto be brought into contribution with insurance purchased by the Unit Owners of the condominium Units or their Mortgagees.
- 10.(a)(iii) All policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Occupants or Unit Owners when such act or neglect is not within the control of the Association or Unit Owners (collectively); or (ii) by failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association or Unit Owners (collectively) have no control.
- 10.(a)(iv) All policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to any and all insured named thereon and to all First Mortgagees and Mortgage share loans.
- 10.(a)(v) All such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Unit Owner of any Unit and/or his or her respective agents, employees or tenants, and waivers of any defenses based upon co-insurance or

other insurance or upon invalidity arising from the acts of the insured and of pro rata reduction of liability.

10.(a)(vi) If available, all policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making the cash settlement, such option shall not be exercisable without the prior written approval of the Association.

10.(a)(vii) Notwithstanding any other provision of this Section 10, all insurance policies shall comply with the requirements, if any, for such policies prescribed by FNMA.

10.(b) Coverage.

10.(b)(i) Casualty. The Condominium (including the Building, the Parking Area, and all easements owned by the Condominium, and all of the Common Elements, Limited Common Elements and Units therein and the improvements, including fixtures, installations or additions, of each Unit initially installed therein or sold by the Declarant, but not including improvements, fixtures, furniture, furnishings or other personal property supplied by Unit Owners or tenants of Unit Owners) and all other improvements upon the Property and all personal property owned by the Condominium and included in the Common Elements shall be insured under a "master" or "blanket" type of policy, in an amount equal to not less than one hundred percent (100%) of the insurable "replacement cost," exclusive of land, foundations, excavation and other items normally excluded from coverage. The Board is authorized, but not required, to include in the master casualty policy, as a Common Expense, insurance covering damage to or loss of fixtures, installations or additions within Units, as initially installed by or at the expense of the Unit Owner, or replacements thereof, and other personal property within Units; provided that such additional coverage shall be required for full replacement cost of all such items if any Units are financed by Mortgages that are purchased or securitized by FNMA. Such coverage shall afford protection against: (1) loss or damage by fire and other hazards covered by standard extended coverage policies, and debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage (excluding flood waters); and (2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Building on the Property, including those covered by the standard "all risk" endorsement or "broad form" covered causes of loss.

The casualty policy must be written by an insurance carrier that has an acceptable rating from the A. M. Best Company, Demotech, Inc., or Standard and Poor's, Inc., or is covered by reinsurance with a company meeting the ratings specified by

FNMA. The maximum deductible amount on any casualty policy shall be the lesser of the deductible amount specified by FNMA or the usual and customary deductible on casualty policies covering projects similar in construction, location and use. The casualty policy shall include the following endorsements:

Replacement Cost Endorsement - either the "Guaranteed Replacement Cost Endorsement" (providing for replacement regardless of cost) or the "Replacement Cost Endorsement" (providing for payment of up to .00% of replacement cost); and if the policy includes a coinsurance clause, an "Agreed Amount Endorsement" (waiving the requirement for coinsurance).

Standard Mortgage Clause - naming as mortgagees all holders of Mortgages on Units. If FNMA has purchased or securitized a Mortgage, the named mortgagees shall include, as applicable, either FNMA or the servicers (and the servicers' successors and assigns) for the Mortgages or Mortgage share loans held by FNMA on Units.

Inflation Guard Endorsement - when it can be obtained.

Building Ordinance or Law Endorsement - if applicable, for continuing liability from operation of building, zoning or land-use laws, including loss or damage, increased costs of repair or reconstruction, or additional demolition and removal costs.

Steam Boiler and Machinery Coverage Endorsement - If the Condominium has central heating or cooling, either this endorsement or separate stand-alone coverage, with a minimum coverage per accident equal to the lesser of \$2,000,000 or the insurable value of the building housing the boiler or machinery.

Special Condominium Endorsement - providing that any Insurance Trust Agreement will be recognized, and including the provisions of Subsections (ii) (primary coverage), (iii) (coverage not prejudiced) and (v) (waiver of subrogation) of Subsection (a) of this Section 10.

- 10.(b)(ii) General Liability. The Association shall also obtain a policy or policies of commercial general liability insurance, including medical payments insurance, with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the company from denying the claim of a Unit Owner because of the negligent acts of the Association, Board or Unit Owners, with limits not less than \$1,000,000.00 per occurrence covering all claims for death, bodily injury and property damage arising out of

or in connection with the use, ownership or maintenance of the Common Elements (including all common areas, public ways and other areas under the supervision of the Association, and any commercial spaces owned by the Association, even if leased to others). Such coverage shall include protection against water damage liability (excluding flood waters), liability for non-owned and hired automobile, liability for property of others (excluding property damage to property in the care, custody or control of a named insured or as to which a named insured is for any purpose exercising physical control), and, if applicable: elevator malfunction, garage-keeper's liability, host liquor liability and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

10.(b)(iii) Common Provisions. In addition to the provisions in Subsection (b) of this Section 10, insurance policies carried under subsections 10.(b)(i) and (ii) above shall provide that:

10.(b)(iii)(1) Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's ownership of an undivided interest in the Common Elements or membership in the Association;

10.(b)(iii)(2) The insurer waives its right of subrogation under the policy against the Association and a Unit Owner;

10.(b)(iii)(3) No action or omission of a Unit Owner, unless within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

10.(b)(iii)(4) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

10.(b)(iv) Officers and Board Members. The Association shall also obtain a policy or policies of liability insurance insuring the Board members and officers of the Association against any claims, losses, liabilities, damages or causes of action arising out of, in connection with or resulting from, any act done or omission to act in their respective capacities. This insurance shall be purchased by the Association to the extent available and the cost thereof shall be a Common Expense.

10.(b)(v) Workers' Compensation. The Association shall also obtain a Workers' Compensation Policy to meet the requirements of law.



10.(b)(vi) Other Insurance. The Association may also obtain such other insurance as the Board shall determine from time to time to be desirable, including, but not limited to, income insurance covering the Common Expenses payable by the Unit Owners to the Board, machinery insurance, and plate glass insurance.

10.(b)(vii) Fidelity Bonds. The Board may obtain adequate fidelity bonds or fidelity insurance for all Board members, officers, agents and employees of the Association handling or responsible for Condominium or Association funds, whether or not they receive compensation for such services. Any professional manager hired by the Association shall obtain its own fidelity insurance providing for the same coverage as that obtained by the Association. Fidelity coverage for the Association shall be mandatory if required by the FNMA, and shall comply with any FNMA requirements for such coverage. The premiums on such bonds shall constitute a Common Expense, except when provided by a professional management company, as aforesaid. Such fidelity bonds shall meet the following requirements:

10.(b)(vii)(1) All such fidelity bonds shall name the Association as an obligee; and

10.(b)(vii)(2) Such fidelity bonds shall be written in an amount equal to at least 150 percent of the estimated annual operating expenses of the Condominium, including reserves, and in no event less than the maximum funds in custody of the Association and its professional manager; and

10.(b)(vii)(3) Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression; and

10.(b)(vii)(4) Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Association, any Mortgagee and each servicer that services a FNMA-owned or FNMA-secitized Mortgage.

The Board may enact financial controls to reduce the fidelity insurance requirements of any Mortgagee or the FNMA, including separate bank accounts for the Association's working account and reserve account, requiring checks on the reserve account to be signed by two Board members, prohibiting access to the reserve account by any professional manager, and requiring

any professional manager to maintain separate records and accounts for its clients.

10.(b)(viii) Flood Insurance. The Board may obtain flood insurance in such amounts and coverages as it determines appropriate. Such insurance shall be mandatory if any part of the Condominium is in a Special Flood Hazard Area designated as A, AE, AH, AO, AI-30, A-99, V, VE or V1-30 on a Flood Insurance Rate Map (FIRM), or if otherwise required by FNMA. If so required, the policy shall be a "master" or "blanket" policy, with coverage for the lesser of the maximum coverage available under the applicable National Flood Insurance Administration program, or one hundred percent (100%) of the insurable value of the Condominium as follows:

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10.(b)(viii)(1) Building Coverage - One hundred percent (100%) of the insurable value of the Condominium (including the Building, Parking Area, and all easements), including machinery and equipment that are part of the Building and easement areas; and

10.(b)(viii)(2) Contents Coverage - One hundred percent (100%) of the insurable value of all contents in the Condominium (including the Building, Parking Area, and all easements), including machinery and equipment that are not part of the Building or easement areas but owned in common by the Association.

The maximum deductible for any flood insurance policy shall be the lesser of the deductible amount specified by FNMA or the usual and customary deductible on flood insurance policies covering projects similar in construction, location and use.

10.(c) Premiums - Common Expense.

Premiums on insurance policies and fidelity bonds purchased by the Board shall be paid as a Common Expense.

10.(d) Board as Trustee of Insurance Proceeds.

All such policies shall provide that adjustment of loss shall be made by the Board as trustee for the Unit Owners and Mortgagees, as their interests may appear. The duty of the Board members and their successors from time to time who shall receive proceeds of any insurance policies shall be to receive such proceeds as are paid and to hold the same in trust in an FDIC insured bank account in the name of the Association for the purposes elsewhere stated herein and for the benefit of the Association, Unit Owners and their Mortgagees, in the following shares, but which shares need not be set forth on the records of the trustees:

- 10.(d)(i) Common Elements. Proceeds on account of damage to Common Elements—an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to such Unit.
- 10.(d)(ii) Units. Proceeds on account of damage to Units or Limited Common Elements specifically assigned to a Unit shall be held in the following undivided shares:
- 10.(d)(ii)(1) When damaged Units or Limited Common Elements are to be restored—an undivided share for the Unit Owner of each damaged Unit in proportion to the total cost of repairing the damage suffered by such Unit Owner, which cost shall be determined by the Board.
- 10.(d)(ii)(2) When any damaged Units are not to be restored but the Condominium is not terminated – an undivided share for the Unit Owner of each damaged Unit in proportion to the total cost of repairing the damage suffered by such Unit Owner, which cost shall be determined by the Board.
- 10.(d)(ii)(3) When the Building is not to be restored and the Condominium is terminated—an undivided share for each Unit Owner, such share of the total net proceeds being the same as the undivided share in the Common Elements appurtenant to such Unit.
- 10.(d)(iii) Mortgages. In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged Property shall be reconstructed or repaired.

10.(e) Distribution of Insurance Proceeds.

Proceeds of insurance policies received by the trustee shall be distributed to or for the benefit of the Unit Owners or their respective Mortgagees or both in the following manner:

- 10.(e)(i) Expenses of Trustees. All expenses of the trustees shall be first paid or provision made therefor, but in no event shall this provision take priority over payments to first Mortgagees of Units.
- 10.(e)(ii) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to the contractors making such repairs or reconstruction to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be

distributed to the Unit Owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

10.(e)(iii) Failure to Reconstruct or Repair. If it is determined, in the manner elsewhere provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Unit Owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

10.(e)(iv) Certification of Unit Owners, Mortgagees and Shares. In making distribution to Unit Owners and their Mortgagees, the trustees may rely upon a title search reflecting the ownership of the Unit and Mortgagees holding liens against the Unit and upon a certificate of the Secretary of the Association as to the names of the Unit Owners' Mortgagees and their respective shares of the distribution unless notified to the contrary by a Mortgagee who provides a copy of its Mortgage and evidence of the priority of its lien status.

10.(f) Board as Agent.

The Board is hereby irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each owner and holder of a Mortgage or other lien upon a Unit to adjust all claims and negotiate losses covered by insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims.

10.(g) Unit Owner's Insurance.

10.(g)(i) Unit Owners shall obtain insurance coverage at their own expense upon their own Units (including interior surface coverings such as paneling, wallpaper, paint, wall and floor tile and flooring installed at a Unit Owner's expense, Fixtures as defined herein or any other improvements made by a Unit Owner to a Unit), their own personal property and for their personal liability and cost and expenses incident thereto. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents of the interior of any Unit or covering the liability of any Unit Owner for occurrences not caused or connected with the Association's operation, maintenance, or use of the Condominium.

10.(g)(ii) Any insurance carried by a Unit Owner which separately insures such Unit Owner's Unit or any part thereof against any loss or damage which is also covered by insurance carried by the Association under this Section shall be in such form as to not cause any diminution in the insurance proceeds payable to the Board under policies carried pursuant to this Section; and if any such

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diminution is caused or results from the nature or type of any policy carried by a Unit Owner then such diminution shall be chargeable to the Unit Owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution. All personal liability insurance carried by a Unit Owner shall contain waiver of subrogation rights by the insurance carrier as to negligent Unit Owners.

**10.(h) Condemnation.**

In the event of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements on the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Act and the percentage of ownership interest in the Common Elements allocated to such Unit or a portion thereof (as determined by the Board on the basis of diminution in market value of the Unit) shall be reallocated among the remaining Units on the basis of the relative percentage of ownership interests in the Common Elements of the remaining Units. In such cases, this Declaration and the Plat shall be amended accordingly by an instrument executed by the President and the Secretary of the Association, which the Board shall record in the Real Property Records of the county in which the Condominium is located. The allocation of any condemnation award, or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interests of those entitled to their use, as determined by the Board. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

**10.(i) Destruction of Personalty**

Each Unit Owner and the Association hereby waive and release any and all claims which her or she or it may have against any other Unit Owner, the Association, members of the Board, the Declarant and their respective agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission referred to in Section 13, to the extent that such damage is covered by fire or other form of hazard insurance.

**11. RECONSTRUCTION AND REPAIR AFTER CASUALTY**

**11.(a) Duty to Repair**

Subject to Section 82.111 of the Act, any portion of the Condominium for which insurance is required by this Declaration or the Act shall be promptly repaired or replaced by the Association unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) at least eighty percent (80%) of the Unit Owners, including each Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, vote to not rebuild. The vote on whether to terminate

the Condominium or repair damaged portions shall be pursuant to the procedures set forth in Subsection (b) of this Section 11.

11.(b) Determination of Necessity of Reconstruction or Repair

If any part of the Condominium shall be damaged by casualty and estimates provided to the Board reflect that the cost of repair and reconstruction shall be in an amount in excess of \$25,000.00, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

- 11.(b)(i) Special Meeting. Within fifteen (15) days after the date of such casualty, the Board shall call and give notice of a special meeting of the Association, to be held not less than fifteen (15) days, nor more than forty (40) days, following the date of such notice. Such notice shall be in writing and personally delivered or mailed, certified mail, return receipt requested, to each Unit Owner and shall state the date, time and place of the meeting of the Association to be held, and the purpose of the meeting which shall be to determine, in accordance with the Act, whether the Condominium shall be reconstructed.
- 11.(b)(ii) Determination of Extent of Damage. At the meeting of the Association called for the purpose set out above, a vote shall be taken to determine: (i) whether the required construction comprises the whole or more than two-thirds (2/3) of the Building, and (ii) whether to undertake the reconstruction.
- 11.(b)(iii) Termination After Damage to More Than 2/3 of Condominium. If, as determined by the vote of at least fifty percent (50%) of the Unit Owners, reconstruction is required for the whole or more than two-thirds (2/3) of the Building, then a second vote shall be held on whether to terminate the Condominium. If at least eighty percent (80%) of the Unit Owners and fifty-one percent (51%) of the First Mortgagees vote to terminate, all insurance proceeds shall be paid by the trustees, in accordance with the provisions of paragraphs (d) and (e) of Section 10, and the condominium regime shall be terminated in accordance with Section 12. If less than eighty percent (80%) of the Unit Owners or less than fifty-one percent (51%) of the First Mortgagees vote to terminate, a third vote shall be held on whether to repair the damaged portions of the Condominium, in the same manner, and with the same consequences, as the second vote described in the succeeding subsection (b)(iv) of this Section 11.
- 11.(b)(iv) Effect of No Termination, or Damage to Less Than 2/3 of Condominium. If, by vote of at least fifty percent (50%) of the Unit Owners, it is determined that the required construction does not comprise more than two-thirds (2/3) of the Building, then a second vote shall be held on whether to repair or replace the damaged portions of the Condominium. Likewise, such a vote

shall be taken if the Unit Owners vote not to terminate the Condominium despite damage to more than two-thirds (2/3) of the Building. If at least eighty percent (80%) of the Unit Owners vote not to repair or replace the damaged portions, including the vote of each Unit Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, then:

- 11.(b)(iv)(1) Any insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;
- 11.(b)(iv)(2) Any insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements were assigned, and to their Mortgagees, as their interests may appear, pursuant to Section 10 (e) hereof;
- 11.(b)(iv)(3) The remainder of the proceeds shall be distributed to all Unit Owners based on their interests in the Common Elements; and
- 11.(b)(iv)(4) The percentage interests in the Common Elements of any Units that are not being rebuilt are deemed automatically reallocated as if the Unit had been condemned, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

If, in the foregoing vote, less than eighty percent (80%) of the Unit Owners vote not to repair or replace the damaged portions, or any Unit Owner of a Unit or assigned Limited Common Element that would not be rebuilt or repaired does not join in such vote, then all insurance proceeds shall be paid by the trustees to repair and reconstruct all damaged Common Elements and Units. In such event, Unit Owners and their Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Condominium has been completely repaired or restored. Any cost of repair or replacement in excess of the insurance proceeds and reserves is a Common Expense.

11.(b)(v)

Certification of Determination of Necessity of Reconstruction.  
The insurance trustees may rely upon a certificate of the Board made by the President and Secretary to determine whether or not the damaged Property is to be reconstructed or repaired.

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**11.(c) Plans and Specifications for Reconstruction**

All reconstruction and repair must be substantially in accordance with the plans and specifications for the original Building and facilities constituting the Condominium and Property, or, if the same are not available, then according to plans and specifications approved by the Board.

**11.(d) Board to Obtain Estimates**

Immediately after a determination to rebuild or repair damage to Property for which the Association has the responsibility of repair and reconstruction, the Board shall obtain reliable and detailed estimates of the cost to rebuild or repair.

**11.(e) Assessments for Construction in Case of Insufficient Insurance Proceeds**

To the extent permitted by the Act, if the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged Units and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the total cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in the same proportion as each Unit Owner's share in Common Expenses. All assessments made pursuant hereto may be enforced in accordance with any other provision hereof relating to regular assessments.

**11.(f) Distribution of Remaining Funds After Reconstruction**

If there is a balance of funds, including insurance proceeds and assessments, if any, after payment of all costs of reconstruction and repairs for which funds were collected, such balance shall be distributed to the Unit Owners thereof in the manner elsewhere stated; except, however, that part of the distribution to a Unit Owner which is not in excess of assessments paid by such Unit Owner for repair and reconstruction shall not be made payable to any Mortgagee.

**12. TERMINATION AFTER CASUALTY**

**12.(a) Condominium Not Reconstructed; Distribution of Insurance Proceeds; Sale of Condominium and Termination of Declaration**

If Unit Owners holding at least eighty percent (80%) of the votes in the Association and First Mortgagees of Units representing at least fifty-one percent (51%) of votes in the Association vote to terminate the Condominium after more than two-thirds (2/3) of the Building is destroyed or damaged by fire or other casualty, as provided in Section 11, then the insurance proceeds shall be delivered to the Unit Owners and their Mortgagees, as their interests may appear, in proportion to the percentage interest of each Unit Owner in the Common Elements as set forth on Exhibit "C". Thereafter, the Board, as soon as reasonably possible and as agent for the Unit Owners, and with the approval of remaining Mortgagees of Units representing at least fifty-one percent (51%) of votes in the Association, shall sell the entire Condominium, in its then condition, on terms satisfactory to the Board, free from the effect of this Declaration, which shall



terminate upon such sale, and the net proceeds of such sale, after the payment of all remaining debts and expenses of the Association, shall thereupon be distributed to the Unit Owners or their Mortgagees, as their interests may appear, in proportion to the percentage interest of each Unit Owner in the Common Elements as set forth on Exhibit "C".

12.(b) Partition in the Event of Board's Failure to Sell

If the Unit Owners should not rebuild, pursuant to the above provisions, and the Board fails to consummate a sale pursuant to Subsection 12.(a) above within twenty-four (24) months after the destruction or damage occurs, then the Board shall, or if they do not, any Unit Owner or Mortgagee may, with the approval of all remaining Mortgagees of Units, record a sworn statement in the Condominium Records and Deed Records describing the Property and setting forth such decision not to rebuild and reciting that under the provisions of this Declaration the condominium form of ownership had terminated and the prohibition against judicial partition contained in the Act and in this Declaration has terminated, and that judicial partition of the Condominium may be obtained pursuant to the laws of the State of Texas. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall be null and void and of no further force and effect. The provisions of this Subsection 12.(b) can be amended only by the unanimous written consent of the Unit Owners.

13. REMEDIES

13.(a) Damage to Other Units and Common Elements

If the act or omission of a Unit Owner, or of a member of his or her family, a household pet, guest, occupant or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the provisions of Section 10(i).

13.(b) No Waivers

No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

13.(c) Violation of Declaration

The violation of any rule or regulation adopted by the Association or the breach of any covenant or provision herein or contained in the Bylaws shall, in addition to any other rights provided for in this Declaration or the Bylaws, give the Association the right: (a) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and at the expense of the defaulting Unit Owner to summarily abate and/or remove, as applicable, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and neither the Association nor the officers or agents thereof shall thereby be deemed guilty of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (c) to take possession of

such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law; or (d) assess reasonable fines therefor.

Except in cases of emergency where damage to persons or property is threatened, the Association shall not take any such action unless it has (a) first given the Unit Owner a hearing on such alleged violation pursuant to rules and regulations adopted by the Association, (b) the Association shall have determined such allegations to be true and (c) the Unit Owner shall not have desisted from such violation or breach or shall not have taken such steps necessary to correct such violation or breach within such reasonable period of time as determined by the Association and communicated to the Unit Owner. Any and all costs and expenses incurred by the Association in the exercise of its authority as granted in this Section 13, including but not limited to court costs, reasonable attorneys' fees, and cost of labor and materials shall be paid by the Unit Owner in violation, and, until paid by such Unit Owner, shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided herein and under the Act with respect to liens for failure to pay a share of the Common Expenses. Any such lien shall be junior and subordinate to the lien of any then existing First Mortgagee with respect to such Unit.

Any Unit Owner in default hereunder or under the provisions of the Bylaws or any rule or regulation adopted by the Association shall pay to the Association, as a Common Expense with respect to his or her Unit, all interest, late charges, reasonable attorneys' fees, costs of collection and amount of any fine by the Association in enforcing the provisions of the Bylaws, this Declaration or the rules and regulations of the Association as to which the Unit Owner is in default. Until such amounts are paid by the Unit Owner, the total amount thereof shall constitute a lien on the interest of the Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided herein and under the Act with respect to liens for failure to pay a share of the Common Expenses. Any such liens shall be junior and subordinate to the lien of any then existing First Mortgagee with respect to such Unit.

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#### 13.(d) Right of Action.

All Unit Owners hereby acknowledge and agree that a Unit Owner shall not be entitled to institute any legal action against the Declarant which is based on any alleged defect in the Common Elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Association. Once the Declarant no longer has the right to appoint and remove directors and officers, as set forth in Section 7.(d) of the Declaration, the Association Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements on behalf of the Unit Owners and shall have the right and authority to settle and release on behalf of any and all of the Unit Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Unit Owners and their successors and assigns.

### 14. FIRST MORTGAGEES

#### 14.(a) Rights of First Mortgagees

Any deed of trust or mortgage owned or held by a First Mortgagee and recorded prior to the recording or mailing of a notice by the Association of the amount owing by a Unit Owner who has refused or failed to pay his or her share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in said notice and to all

assessments for Common Expenses which become due and are unpaid subsequent to the date of recording of such first Mortgage. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage or deed (or assignment thereof) in lieu of foreclosure shall not be liable for and shall take the Unit and its proportionate interest in the Common Elements free from claims for unpaid common or special assessments levied by the Association which accrue prior to the date of possession as aforesaid. A First Mortgagee, or an insurer or guarantor of the note held by a First Mortgagee, upon written request to the Association (such request to state the name and address of such First Mortgagee, insurer or guarantor and the Unit number), shall be entitled to timely written notice of or have the right to:

- 14.(a)(i) receive, without charge, notice of any proposed amendment of the Condominium Instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses, (iii) the number of votes in the Association appertaining to any Unit or (iv) the purposes to which any Unit or Common Elements are restricted;
- 14.(a)(ii) examine, without charge, current copies of this Declaration, the Bylaws, rules and regulations and the books and records of the Association during normal business hours;
- 14.(a)(iii) receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Unit Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, fifty-one percent (51%) or more of the First Mortgagees shall be entitled to have such an audited statement prepared at their expense;
- 14.(a)(iv) receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
- 14.(a)(v) receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, Bylaws or Articles of Incorporation of the Association;
- 14.(a)(vi) receive written notice of any action which would require the consent of a specified percentage of First Mortgagees;
- 14.(a)(vii) receive notice of any proposed termination of the condominium regime;
- 14.(a)(viii) receive notice of any condemnation loss or any casualty loss which affects a portion of the Common Elements, which loss exceeds \$10,000.00, or which affects any Unit, which loss exceeds

\$1,000.00, on which there is a first mortgage held, insured or guaranteed by such eligible holder;

- 14.(a)(ix) receive notice of any delinquency in the payment of assessments or charges owed by a Unit Owner subject to the mortgage of a requesting First Mortgagee, insurer or guarantor, where such delinquency has continued for a period of 60 days; and
- 14.(a)(x) receive notice of any lapse, cancellation or material modification of any insurance policy maintained by the Association.

No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the First Mortgagees pursuant to their Mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the First Mortgagees and insurers or guarantors thereof, of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

14.(b) Actions Requiring Consent of 100% of First Mortgagees

Unless the First Mortgagees of all of the Units of the Condominium have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

- 14.(b)(i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units and/or the Common Elements;
- 14.(b)(ii) change the pro rata interest or obligations of any Unit Owner for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and (2) determining the pro rata share of ownership of each Unit Owner in the Common Elements, except as set forth in Section 10 hereof; or
- 14.(b)(iii) use hazard insurance proceeds for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement, or construction of such improvements, except as provided by the Act in case of substantial loss to the Units and/or the Common Elements.

In the event a First Mortgagee fails to respond to a request for consent within thirty (30) days after the request for such consent is made, such First Mortgagee shall be deemed to have consented to the action for which such consent was requested.

14.(c) Actions Requiring Consent of at Least 51% of First Mortgagees

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Unless the First Mortgagees of the individual Units representing at least fifty-one percent (51%) of the votes in the Association have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

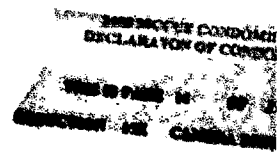
- 14.(c)(i) Adoption of an amendment to this Declaration which (A) changes any provision of this Declaration which specifically grants rights to First Mortgagees, (B) materially changes insurance and fidelity bond requirements, (C) imposes a right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit Ownership or changes the provisions concerning the leasing of Units, (D) reduces reserves for maintenance, repair and replacement of Common Elements, (E) changes voting rights, (F) increases assessments that raise the previously assessed amount by more than twenty-five percent (25%), (G) changes responsibility for maintenance and repairs, or (H) redefines any Unit boundaries;
- 14.(c)(ii) Abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Property and except for the encumbrance, sale or transfer of the percentage of ownership in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership);
- 14.(c)(iii) Sale of the Property;
- 14.(c)(iv) Removal of a portion of the Property from the provisions of the Act and this Declaration; and
- 14.(c)(v) Effectuation of a decision by the Association to terminate professional management and assume self-management of the Condominium.

In the event a First Mortgagee fails to respond to a request for consent within thirty (30) days after the request for such consent is made, such First Mortgagee shall be deemed to have consented to the action for which such consent was requested.

#### 14.(d) Condemnation

If any Unit or portion thereof or the Common Elements or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, or insurer or guarantor thereof, of said Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle the owner of a Unit or such other party to priority over such First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.





## 15. AMENDMENTS AND SPECIAL AMENDMENTS

- 15.(a) No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without the written consent of the Declarant.
- 15.(b) Except as otherwise expressly provided herein, this Declaration may be modified or rescinded only by the vote of seventy-five percent (75%) of the total votes of the Unit Owners or without a meeting and vote, by a written instrument setting forth such modification or rescission, signed by seventy-five percent (75%) of the total votes of the Unit Owners. Such modification or rescission shall be effective only if all lien holders of record have been notified by certified mail of such modification or rescission, and an affidavit by the secretary of the Association certifying such mailing is made a part of such instrument.
- 15.(c) If the Act, the Declaration or the Bylaws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all the Unit Owners or all lien holders or both, as required by the Act, the Declaration or the Bylaws.
- 15.(d) No consent of the Unit Owners or Mortgagees shall be required if the Declarant or Association shall amend this Declaration to comply with the legal requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity (any one of which is herein referred to as an "Agency"), provided such Agency is participating in purchasing or guarantying mortgages of Units in the Property and further provided the Board has notice of such participation by the Agency to be notified.
- 15.(e) No consent or agreement of any of the Unit Owners or Mortgagees other than those affected by the transfer, subdivision or combination shall be required if the Declarant or the Association desires to amend this Declaration in order to provide for the transfer of Limited Common Elements or the subdivision or combination of Units, provided the provisions of the Act governing such special amendments are satisfied.
- 15.(f) Any modification or rescission of this Declaration shall be effective upon recording of such instrument in the Official Records of Real Property of Harris County, Texas, provided, however, that no provisions in this Declaration may be modified or rescinded so as to conflict with the provisions of the Act.

## 16. MISCELLANEOUS

### 16.(a) Grantees

Each grantee of the Declarant, each purchaser of a Unit and each tenant, subtenant or assignee under a lease, sublease or assignment accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, the Bylaws, rules and

regulations of the Association, jurisdiction, rights and powers created or reserved by this Declaration, and the provisions of the Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of each grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

#### 16.(b) Notices

Whenever any notice is required to be given under the provisions of this Declaration, or the Bylaws, a waiver thereof in writing by the person or persons entitled to such notice, whether before or at the time stated herein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of giving same is not contrary to the provisions of the Act. Notices required to be given to any devisee or personal representative of a deceased Unit Owner shall be delivered by mail to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered. Other notices required or permitted to be given shall be in writing and shall be given in the manner set forth in the Condominium Instruments.

#### 16.(c) Violations of Certain Rules

If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rule imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of George W. Bush, the President of the United States of America and Richard Cheney, the Vice President of the United States of America.

#### 16.(d) Severability

The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, and all of the terms hereof are hereby declared to be severable.

#### 16.(e) Construction

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class condominium.

#### 16.(f) Changes or Modifications by the Declarant

Until the first annual meeting of Unit Owners, the Declarant, or its successors or assigns, shall have the right from time to time to change or modify the Condominium Instruments, which change or modification shall be effective upon the recording thereof; provided, however, that the provisions of Section 14 of this Declaration shall not be amended, modified or changed without the consent of any First Mortgagee affected thereby, and provided further that such right shall be exercised only (i) to bring the Declaration into compliance with the Act, or (ii) to correct clerical

or typographical errors in the Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make any change or modification as authorized hereunder on behalf of each Unit Owner as attorney-in-fact for such Unit Owners. Each deed, mortgage, deed of trust, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant as aforesaid.

**16.(g) Trustees**

In the event title to any Unit should be conveyed to a title holding land trust, under which all powers of management, operation and control of the premises remain vested in the trust beneficiary or beneficiaries, then the trust estate under such trust, and the beneficiaries thereunder from time to time shall be liable for payment of any claim, lien, or obligation hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount hereof shall continue to be a charge or lien upon the premises notwithstanding any transfer of beneficial interest or title of such real estate.

**16.(h) Assignments by Declarant**

All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**16.(i) Disclosures by Declarant**

Each Unit Owner acknowledges the following:

- (a) that he or she has received and read the Condominium Information Statement;
- (b) the Condominium Association budget provided to each Unit Owner is based on estimated expenses only and may increase or decrease significantly when the actual expenses of the Condominium Association become known;
- (c) the Condominium is located adjacent to thoroughfares which could be improved or widened in the future;
- (d) the views from an Unit Owner's Unit can change over time due to among other things, additional development and the removal or addition of landscaping;
- (e) no representations are made regarding the zoning of adjacent property;
- (f) no representations are being made regarding which schools may now or in the future serve the Unit;



(g) since in every neighborhood, there are conditions which different purchasers may find objectionable, Unit Owner acknowledges that there may be conditions outside of the Property which the Unit Owner finds objectionable and that it shall be the sole responsibility of the Unit Owner to become acquainted with neighborhood conditions which could affect the Unit, including periodic entertainment, arts, sports and other events;

(h) no representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another:

(i) the condominium floor plans and the dimensions and square footage calculations shown thereon are only approximations. Any Unit Owner who is concerned about any representations regarding the floor plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Unit;

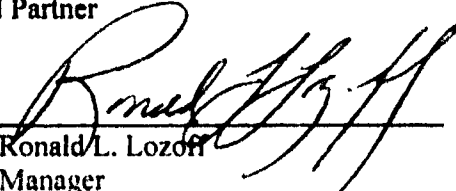
(j) Declarant reserves the right to alter, change, and/or discontinue its prices on any units in the Condominium, to the maximum extent permitted by law.

IN WITNESS WHEREOF, the undersigned has caused its name to be signed to these presents on the day and year first above written.

2400 MCCUE RESIDENTIAL, LP  
A Georgia Limited Partnership

By: Choice Condominiums V, LP  
A Georgia Limited Partnership  
Its: General Partner

By: Choice Condominiums GP, LLC  
A Georgia Limited Liability Company  
Its: General Partner

By:   
Ronald L. Lozoff  
Its: Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

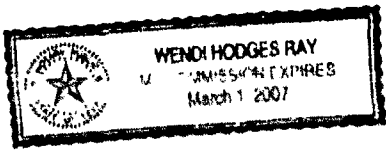
This instrument was acknowledged before me on the 29 day of June, 2005, by Ronald L. Lozoff, the Manager of Choice Condominiums, GP, LLC, a Georgia limited liability company and General Partner of Choice Condominiums V, LP, a Georgia limited partnership and General Partner of 2400 McCue Residential LP, a Georgia limited partnership, on behalf of said limited partnership.



Notary Public in and for the State of Texas

WENDI HODGES RAY  
Name of Notary Public

My Commission Expires: MAR. 1, 2007



OFFICE OF  
DAVID L. B. BASTON  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS DEPARTMENT  
192867  
FILM CODE \_\_\_\_\_  
2400 MCCUE CONDOMINIUMS -  
DECLARATION OF CONDOMINIUM  
THIS IS PAGE 15 OF 37 PAGES  
RECORDED FOR PUBLIC RECORDS

CONSENT OF MORTGAGEE

Corus Bank, N.A., as beneficiary of a Deed of Trust, Security Agreement and Assignment of Leases and Rents recorded in the Official Records of Real Property of Harris County, Texas, under Clerk's File Number X959138, and assignee under an Assignment of Leases and Rents recorded in the Official Records of Real Property of Harris County, Texas, under Clerk's File Number X959142 an Assignee of a Collateral Assignment of Developer's Rights and Agreement with respect to Condominium Documents recorded under Harris County Clerk's File No. X959145 and as assignee of a Collateral Assignment of Purchase Agreements with an Irrevocable Power of Attorney, recorded under Harris County Clerk's File No. X959146, hereby consents to the execution and recording of the above and foregoing Declaration of Condominium.

The undersigned hereby subordinates its mortgage lien and security interests and any and all other liens owned or held by it (in and to the Property of the condominium regime to be created) to the terms and provisions of the above and foregoing Declaration of Condominium for 2400 McCue Condominium (to which this Consent of Mortgagee is annexed) and to the condominium regime created thereby (or to be created thereby upon recordation) all with the same effect and intent as if said Declaration had been executed and recorded prior to the execution and recordation of the mortgage and other instruments creating said liens and security interests. This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the individual Units and all appurtenances thereto, and all of the undivided shares and interests in the Common Elements of the Property and of said condominium regime established by said Declaration, until said mortgage and liens are otherwise released by the undersigned.

IN WITNESS WHEREOF, the said Mortgagee has caused this instrument to be signed on behalf at B.ODAM, on this 29 day of JUNE, 2005.

Corus Bank, N.A.  
 By: John F. Markowicz  
 Name: JOHN R. MARKOWICZ  
 Title: SENIOR VICE PRESIDENT

THE STATE OF ILLINOIS §  
 COUNTY OF COOK §

This instrument was acknowledged before me on this 29 day of JUNE 2005, by JOHN R. MARKOWICZ, the SENIOR VICE PRESIDENT of Corus Bank, N.A., a national banking association.

Rose Odesch  
 Notary Public in and for \_\_\_\_\_

Name of Notary Public \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_



## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

All that certain 2.733 acres of land, which is the 2.733 acre tract of land described in the deed from 2400 McCue, Ltd. to Brownstones at McCue, Ltd., recorded under File No. T842796, in the Official Public Records of Real Property of Harris County, Texas, which is out of Lot 2, and a portion of Lot 3 of a Survey and Partition of Lot 2, Block B, of the R.B. Gaut Subdivision, recorded under Volume 725, Page 345 in the Deed Records of Harris County, Texas in the William Whit Survey, A-836, Harris County, Texas, and being more particularly described by metes and bounds as follows: (All bearings based on the record bearings of said 2.733 acre tract).

**BEGINNING** at a capped ½" iron rod (called ½" iron rod found) set for the Southeast corner of said 2.733 acre tract, common to the Southeast corner of said Lot 3 and the Northeast corner of the 1.82444 acre tract described in the Deed from Key West Partners the Extended Stay Texas L.L.C., recorded under File No. R099614, in the Official Public Records of Real Property of Harris County, Texas, in the West right-of-way line of McCue Street (60" R.O.W.);

**THENCE** S 89° 19'00" W a distance of 277.36' called (S 89° 17'00" W 277.60') along the South line of said 2.733 acre tract, common to the North line of said 1.82444 acre tract, to a capped ½" iron rod set (called ¾" iron rod found) for the Southwest corner of said 2.733 acre tract, common to the Northwest corner of said 1.82444 acre tract, in the East line of The Plantation Apartment Project, according to the plat thereof recorded under Volume 130, Page 5 in the Map Records of Harris County, Texas;

**THENCE** N 00° 09'00" W a distance of 428.90', along the West line of said 2.733 acre tract common to the east line of said The Plantation Apartment Project and the East line of the 4.995 acre tract described as Tract 2 in a deed from Paul F. Barnhart, Jr., et al to Sueba Investment No. 20, LTD as recorded under File No. M958305 in the Official Public Records of Real Property of Harris County, Texas, to a 5/8" iron rod found for the Northwest corner of the said 2.733 acre tract, common to the Southwest corner of the 0.9149 acre tract described in a deed from Joy Unlimited, Inc. to Texas Carriage Square, Inc., recorded under File No. S363003 in the Official Public Records of Real Property of Harris County, Texas;

**THENCE** S 89° 19'00" E a distance of 277.36', called (N 89° 17'00" E-277.60'), with the North line of said 2.733 acre tract, common to the South line of said 0.9149 acre tract, to a 5/8" iron rod found for the Northeast corner of said 2.733 acre tract, common to the Southeast corner of said 0.9149 acre tract, in the West right-of-way line of the aforesaid McCue Street;

**THENCE** N 00° 09'00" E a distance of 428.90', along the East line of said 2.733 acre tract common to the West right-of-way line of said McCue Street, to the POINT OF BEGINNING of the herein described tract and containing 2.733 acres of land.

**EXHIBIT B**

**PLAT**

OFFICE OF  
DEVERLY B. GARNHAM  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
CONDOMINIUM RECORDS OF COUNTY CLERK

192669

FILE CODE

100 ANCEL CONDOMINIUMS -  
DECLARATION OF CONDOMINIUM

FORM IS PAGE 11 OF 21 PAGES

REDUCTIONS ARE AVAILABLE UPON REQUEST

### KEY MAPS

**NOTE:**

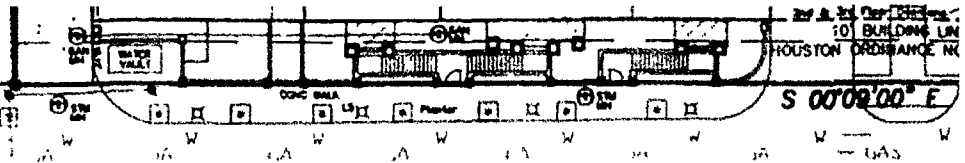
1. ALL PARKING LOCATED UNDER BUILDING STRUCTURE.
2. SURVEYOR RELIED ON A TITLE COMMITMENT FURNISHED BY AMERICAN TITLE INSURANCE COMPANY G.E. NO. 04R10085 CR5 ISSUED: JUNE 14, 2004.
3. THIS TRACT IS SUBJECT TO MEMORANDUM OF LEASE, EVIDENCED IN INSTRUMENT OF RECORD V904178 H.C.C.E.
4. THIS TRACT LIES WITHIN ZONE X OF THE FEDERAL FLOOD INSURANCE RATE MAP NO. 48201C085 K, DATED: APRIL 20, 2000.
5. TRACT IS SUBJECT TO THE CITY OF HOUSTON ORDINANCE NO. 85-1678 ESTABLISHING RULES, REGULATIONS, PROCEDURES AND DESIGN STANDARDS TO GOVERN DEVELOPMENT, REDEVELOPMENT, PLATTING AND REPLATTING.

**PARKING:**

294 PARKING SPACES  
9 HANDICAP PARKING SPACES

265.27'

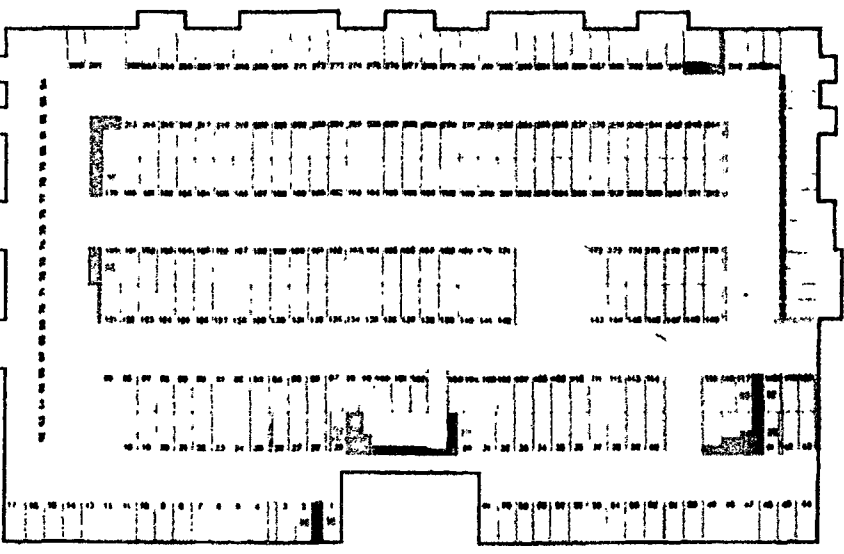
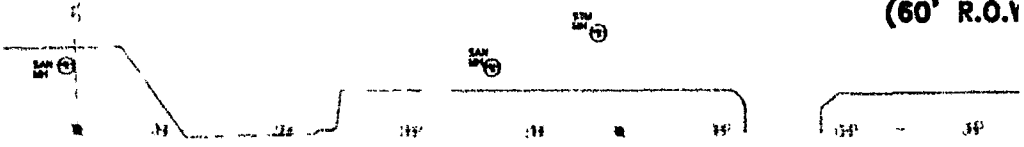
P.O.B.  
SET 1/2" IR



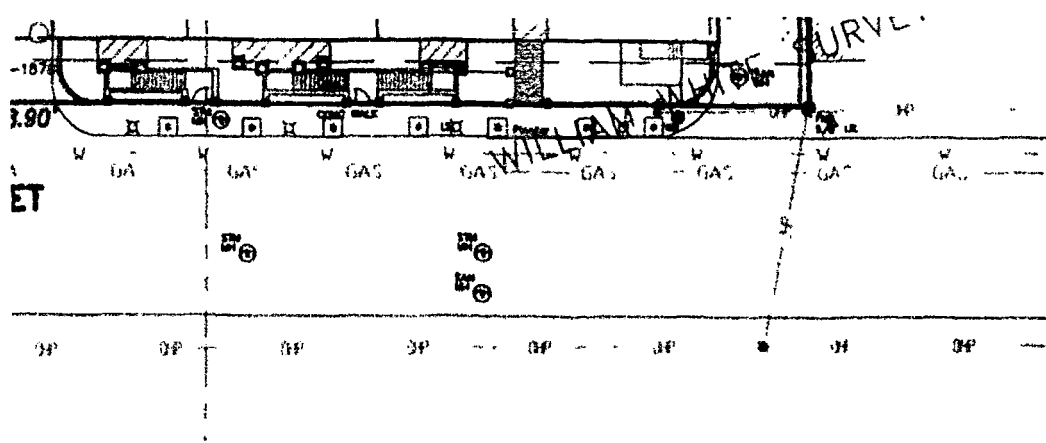
10' BUILDING LINE  
HOUSTON ORDINANCE NO.

S 00°08'00" E

MCCUE ST  
(60' R.O.V)



Underground Parking Garage



SURVEYOR'S CERTIFICATE

I, David L. Bowden, am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; and substantially complies with the provisions of section 82.059 of the Texas Uniform Condominium Act, was prepared from an actual survey of the property made under my supervision the ground, that all boundary corners, angle points, points of curvature and other points of reference have been marked with iron (or other suitable permanent metal) pipes or rods with a cap having an outside diameter of not less than three-quarter (3/4) inch and a length of not less than three (3) feet.



David L. Bowden,  
R.P.L.S. Texas Registration No. 4864



THENCE N 00° 09' 00" W a distance of 428.90', along the West line of said 2.733 acre tract, common to the east line of said The Plantation Apartment Project and the East line of the 4.9952 acre tract described as Tract 2 in a deed from Paul F. Harshbarger, Jr., et al to State Investments No. 20, LTD as recorded under File No. M990305 in the Official Public Records of Real Property of Harris County, Texas, to a 3/4" iron rod found for the Northwest corner of the said 2.733 acre tract, common to the Southwest corner of a 0.9149 acre tract described in a deed from Joy Unlimited, Inc. to Texas-Cummins Square, Inc., recorded under File No. S363003 in the Official Public Records of Real Property of Harris County, Texas;

THENCE N 89° 19' 00" E a distance of 277.36', called (N 89° 17' 00" E- 277.60'), with the North line of said 2.733 acre tract, common to the South line of said 0.9149 acre tract, to a 5/8" iron rod found for the Northeast corner of said 2.733 acre tract, common to the Southeast corner of said 0.9149 acre tract, in the West right-of-way line of the otherwise known as McCue Street;

THENCE S 00° 09' 00" E a distance of 428.90', along the East line of said 2.733 acre tract, common to the West right-of-way line of said McCue Street, to the POINT OF BEGINNING of the herein described tract and containing 2.733 acres of land

## 2400 McCUE CONDOMINIUMS

2.733 ACRES OF LAND  
McCUE RESIDENTIAL L.P.

SITUATED IN THE  
WILLIAM WHITE SURVEY, A-836  
CITY OF HOUSTON  
HARRIS COUNTY, TEXAS  
FILE NO. T842796 H.C.O.P.R.R.P.

JANUARY 2005



### Bowden Survey Co.

PROFESSIONAL SURVEYING SERVICES

18000 BARKERS POINT LANE, SUITE 120

HOUSTON, TEXAS 77079

PHONE: (281) 531-1800 FAX: (281) 531-4600

LEGEND	
SM SM	Sanitary Manhole
SM SM	Storm Manhole
LS	Light Standard
	Marker
FM FM	Fire Hydrant
	Electric Transformer Box
D	Drain-hole

SET 1/2" IR

2 STORY BRICK  
6-4-1917 BUILDING

ROAD  
v.)

1.82444 ACRES  
EXTENDED STAY TEXAS, L.L.C.  
FILE NO. R099614 O.P.R.R.P.

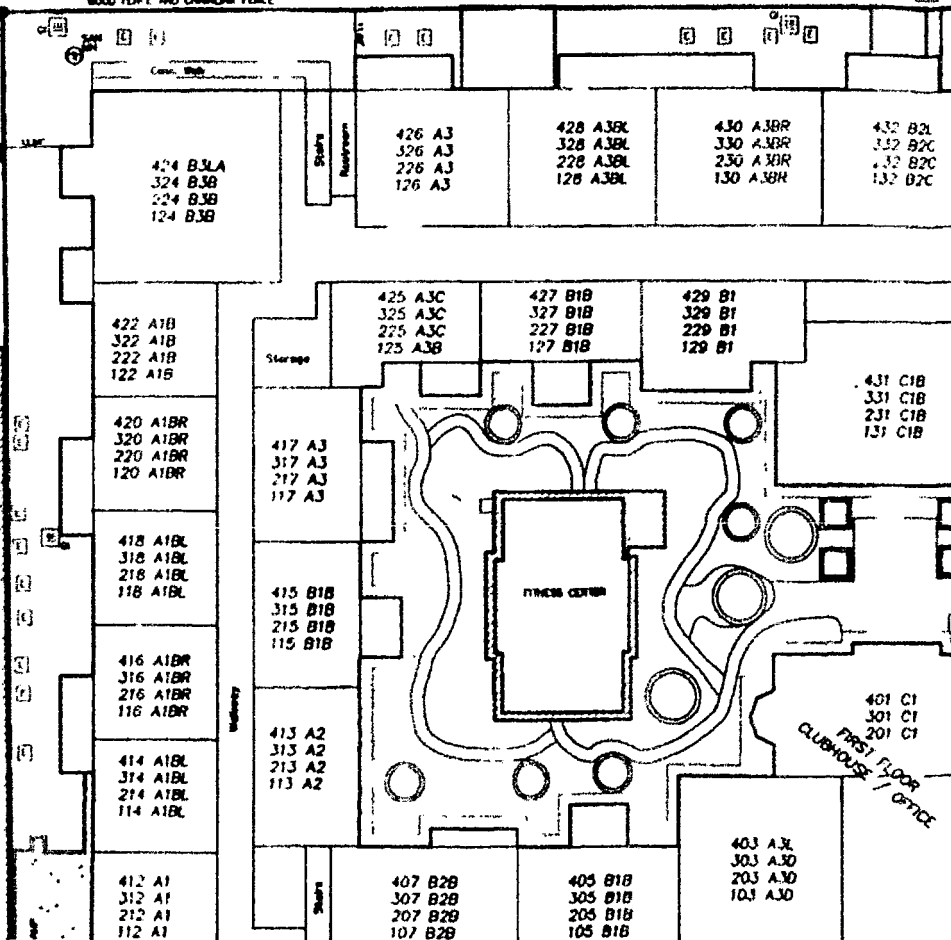
2 STORY BRICK  
6-4-1917 BUILDING  
S 89°19'00" W 277.36'

THE PLANTATION APARTMENT PROJECT  
VOL. 130, PG. 50 H.C.M.R.

N 00'09"0

2 STORY STUCCO APARTMENT BUILDINGS

WOOD FENCE AND CHARLEMAGNE FENCE

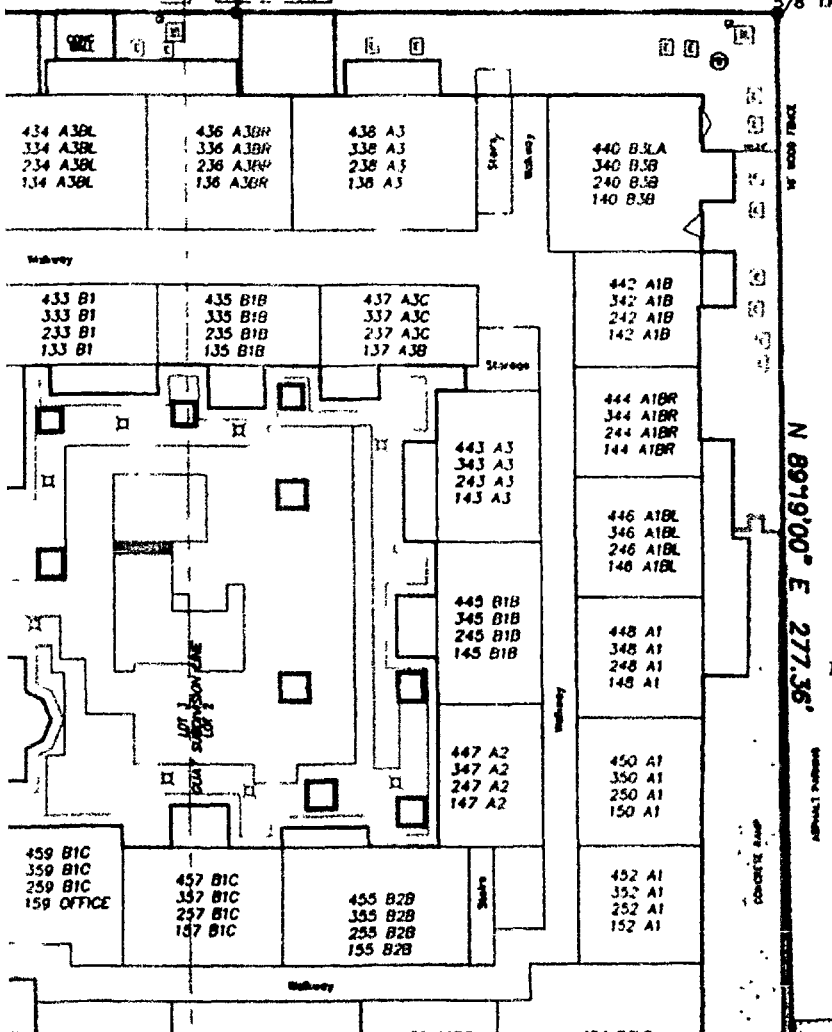




SCALE:  
1" = 30'

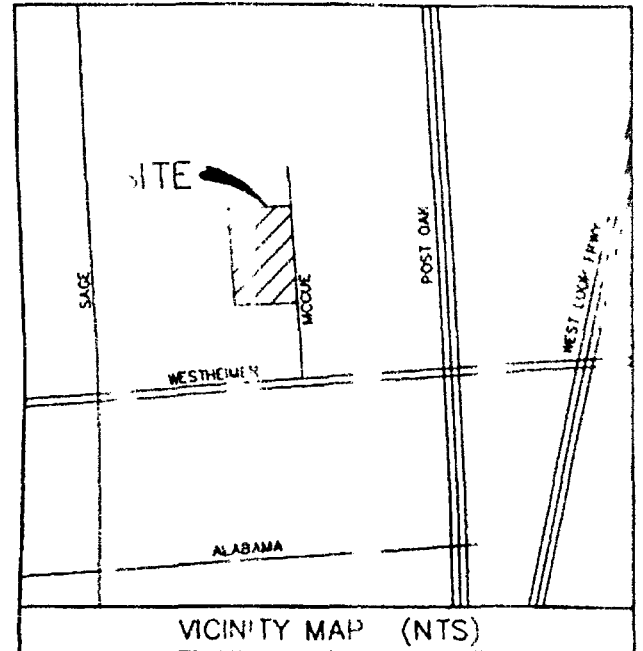
TRACT 2  
4.9952 ACRES  
SUEBA INVESTMENTS NO. 20 LTD.  
FILE NO. M958305 O.P.R.R.P.

V 428.90° -FND. 5/8" I.R. -FND. 5/8" I.R. w/ wood fence



N 89°19'00" E 277.36'

0.9149 ACRES  
TEXAS CARRIAGE SQUARE, IN  
FILE NO. S363003 O.P.R.R.F.



VICINITY MAP (NTS)

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

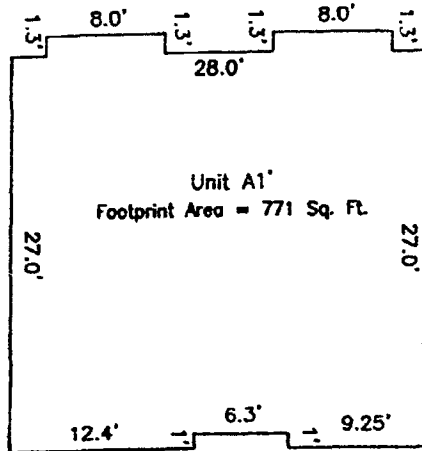
All that certain 2.733 acres of land, which is the 2.733 acre tract of land described in the deed from 2401 McCue, Ltd. to Hrowsstones at McCue, Ltd., recorded under File No. 7842796, in the Official Public Records of Real Property of Harris County, Texas, which is out of Lot 2, and all of Lot 3 of a Survey and Partisan of Lot 2, Block B, of the R.B. Grant Subdivision, recorded under Volume 725, Page 345 in the Deed Records of Harris County, Texas in the William White Survey, A-636 Harris County, Texas, and being more particularly described by notes and bounds as follows: (All bearings based on the record bearings of said 2.733 acre tract)

**BEGINNING** at a capped 1/2" iron rod (called 1/2" iron rod found) set for the Southeast corner of said 2.733 acre tract, common to the Southeast corner of said Lot 3 and the Northeast corner of the 1.82444 acre tract described in the Deed from Key West Partners the Extended Stay Towns, L.L.C. recorded under File No. R099614, in the Official Public Records of Real Property of Harris County, Texas, in the West right-of-way line of McCue Street (w/ R.O.W.)

**THENCE** S 89° 19'00" W a distance of 277.36' called (S 89° 17' 00" W 277.60') along the South line of said 2.733 acre tract, common to the North line of said 1.82444 acre tract, to a capped 1/2" iron rod set (called 1/2" iron rod found) for the Southwest corner of said 2.733 acre tract, common to the Northwest corner of said 1.82444 acre tract, in the

THIS SURVEY IS BEING PROVIDED SOLELY FOR THE USE OF THE CURRENT PARTIES AND THAT NO LICENSE HAS BEEN CREATED, EXPRESS OR IMPLIED, TO COPY THE SURVEY EXCEPT AS IS NECESSARY IN CONJUNCTION WITH THE ORIGINAL TRANSACTION.

NOT TO SCALE

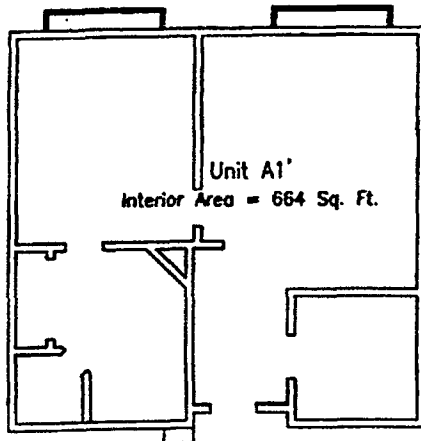


UNIT A1'

Interior Area = 693 Sq. Ft.  
Patio Area = 0 Sq. Ft.  
 Total Unit Area = 693 Sq. Ft.  
 Footprint Area = 771 Sq. Ft.

NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



**FLOOR PLAN EXHIBIT**

UNIT A1'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:	
Scale: NTS	Project No. C40034
Drawn by: JS	Calc. by: JS
Date: 12/01/04	



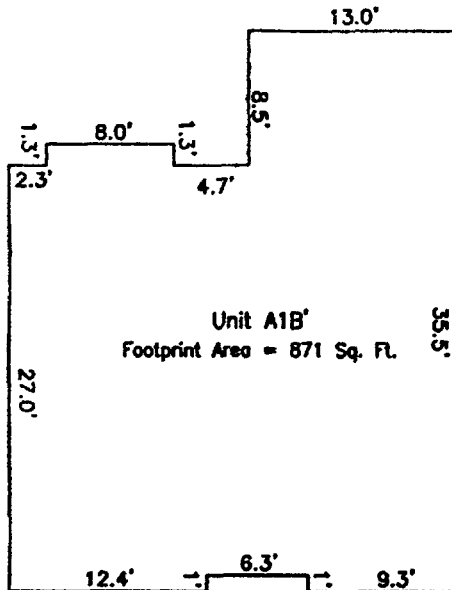
**Bowden Survey Co.**

Professional Surveying Services  
 16000 Barkers Point Ln., Suite 120  
 Houston, Texas 77079

Phone: (281) 531-1900 Fax: (281) 531-4900

THIS SURVEY IS BEING PROVIDED SOLELY FOR THE USE OF THE CURRENT PARTIES AND THAT NO LICENSE HAS BEEN CREATED, EXPRESS OR IMPLIED, TO COPY THE SURVEY EXCEPT AS IS NECESSARY IN CONJUNCTION WITH THE ORIGINAL TRANSACTION.

**NOT TO SCALE**

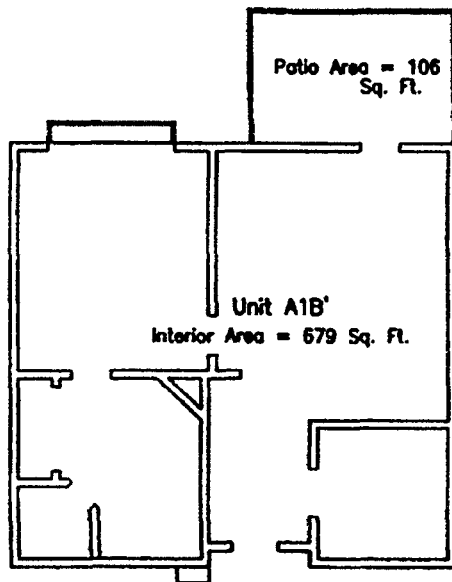


Unit A1B'  
Footprint Area = 871 Sq. Ft.

UNIT A1B'

Interior Area = 679 Sq. Ft.  
Patio Area = 106 Sq. Ft.  
Total Unit Area = 785 Sq. Ft.

Footprint Area = 871 Sq. Ft.



**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

UNIT A1B'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

Calc. by: JS

Date: 12/01/04

**Bowden Survey Co.**

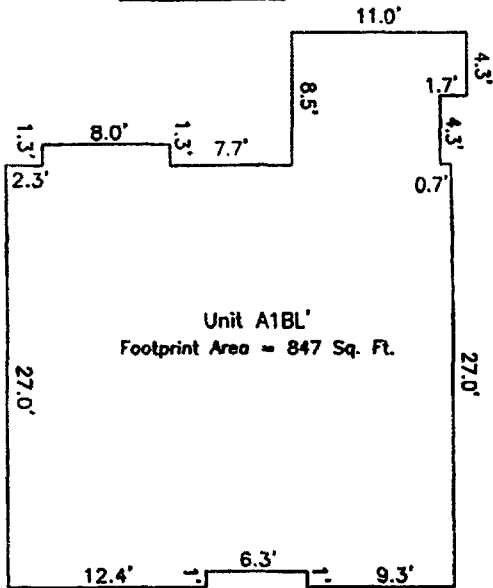


Professional Surveying Services  
16000 Barkers Point Ln., Suite 120  
Houston, Texas 77079

Phone: (281) 531-1900 Fax: (281) 531-4900

THIS SURVEY IS BEING PROVIDED SOLELY FOR THE USE OF THE CURRENT PARTIES AND THAT NO LICENSE HAS BEEN CREATED, EXPRESS OR IMPLIED, TO COPY THE SURVEY EXCEPT AS IS NECESSARY IN CONJUNCTION WITH THE ORIGINAL TRANSACTION.

NOT TO SCALE



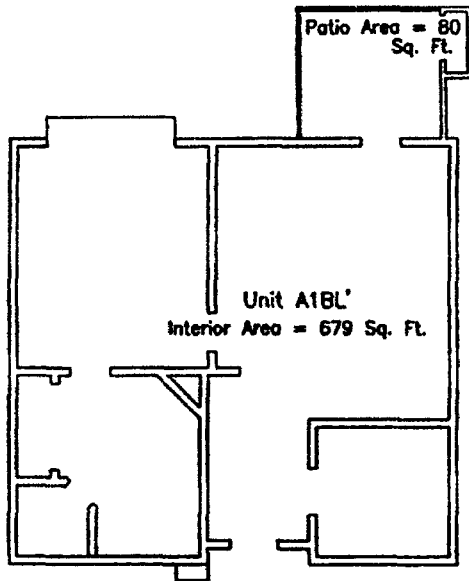
UNIT 'A1BL'

Interior Area = 679 Sq. Ft.

Patio Area = 80 Sq. Ft.

Total Unit Area = 759 Sq. Ft.

Footprint Area = 847 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A1BL'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

Calc. by: JS

Date: 12/01/04



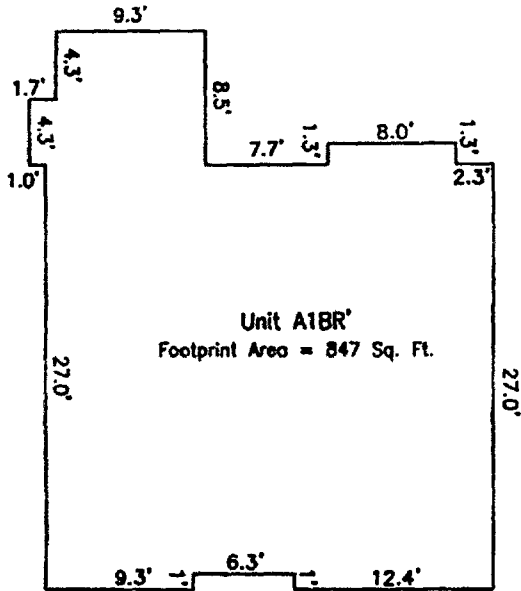
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Professional Surveying Services  
16000 Barkers Point Ln., Suite 120  
Houston, Texas 77079

Phone: (281) 531-1900 Fax: (281) 531-4900

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**NOT TO SCALE**



UNIT A1BR'

Interior Area = 679 Sq. Ft.  
Patio Area = 80 Sq. Ft.  
Total Unit Area = 759 Sq. Ft.

Footprint Area = 847 Sq. Ft.

OFFICE OF  
BEVERLY B. KAUFMAN  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
COMMISSIONER, BOARD OF COUNTY CLERK

192070

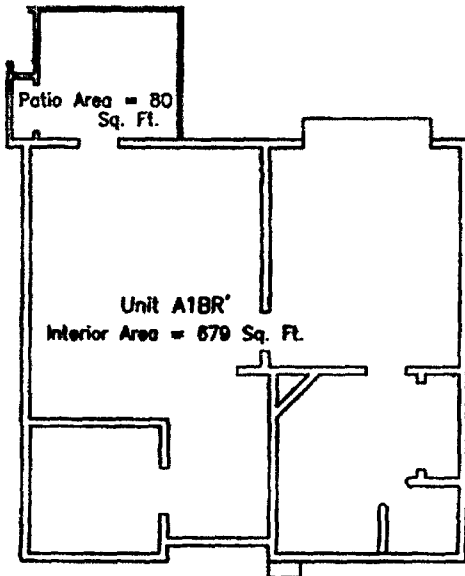
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2400 McCUE CONDOMINIUMS -  
DECLARATOR OF CONDOMINIUMS

UNIT A1BR' OF 2400 McCUE CONDOMINIUMS

**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



**FLOOR PLAN EXHIBIT**

UNIT A1BR'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:	
Scale: NTS	Project No. C40034
Drawn by: JS	Calc. by: JS
Date: 12/01/04	

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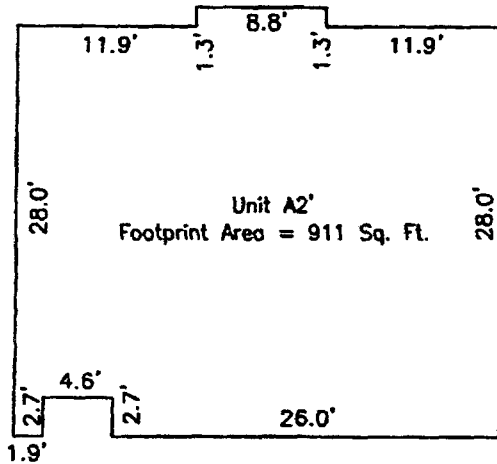
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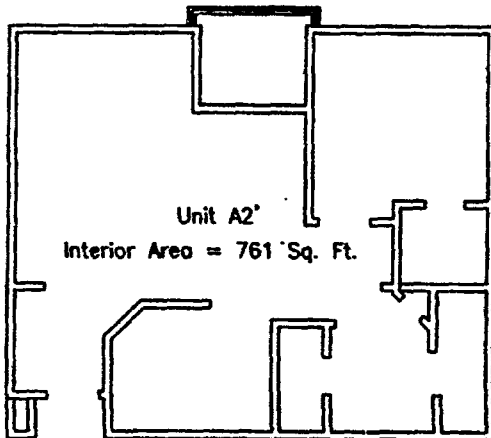


UNIT A2'

Interior Area = 761 Sq. Ft.  
Patio Area = 50 Sq. Ft.  
Total Unit Area = 811 Sq. Ft.

Footprint Area = 911 Sq. Ft.

Patio Area =  
50 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A2'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04



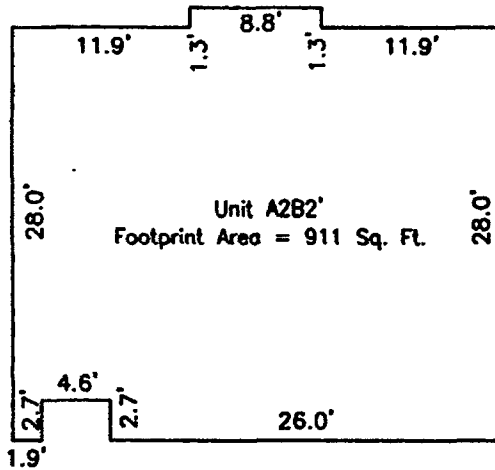
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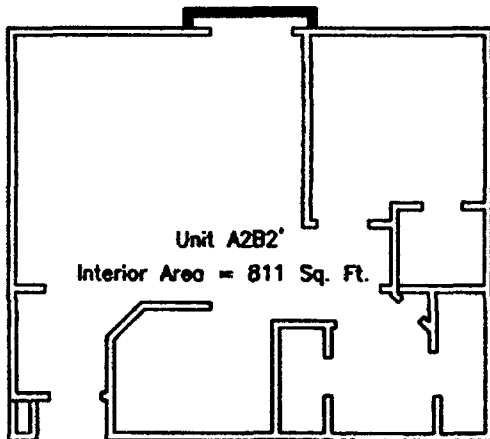
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NOT TO SCALE



UNIT A2B2'

Interior Area = 811 Sq. Ft.  
Patio Area = 0 Sq. Ft.  
 Total Unit Area = 811 Sq. Ft.  
 Footprint Area = 911 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A2B2'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04

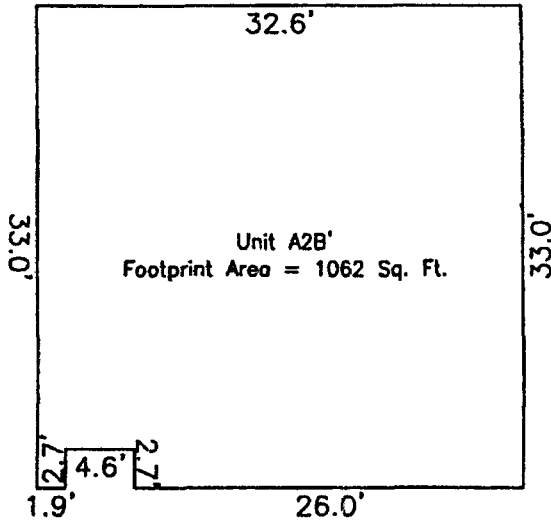


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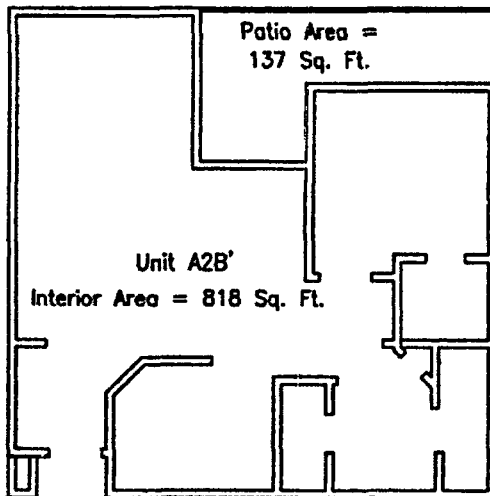
Phone: (281) 531-1900 Fax: (281) 531-4900

NOT TO SCALE



UNIT A2B'

Interior Area = 818 Sq. Ft.  
Patio Area = 137 Sq. Ft.  
 Total Unit Area = 955 Sq. Ft.  
 Footprint Area = 1062 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

UNIT A2B'  
 FLOOR PLAN DIMENSIONS OUT  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40

Drawn by: LE

Calc. by: JS

Date: 12/07/04



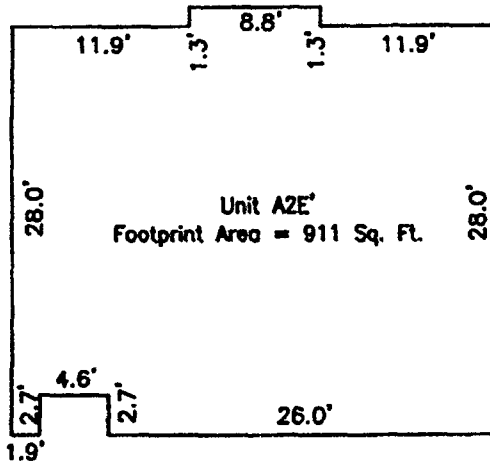
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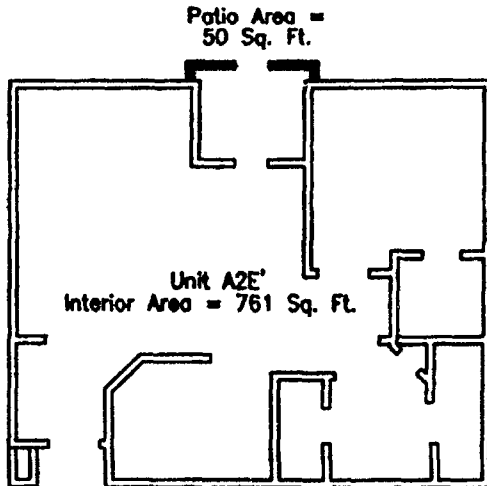
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NOT TO SCALE



UNIT A2E'

Interior Area = 761 Sq. Ft.  
Patio Area = 50 Sq. Ft.  
 Total Unit Area = 811 Sq. Ft.  
 Footprint Area = 911 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A2E'  
 FLOOR PLAN DIMENSIONS OUT  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TE

Client:

Scale: NTS

Project No. C4C

Drawn by: LE

Calc. by: JS

Date: 12/07/04



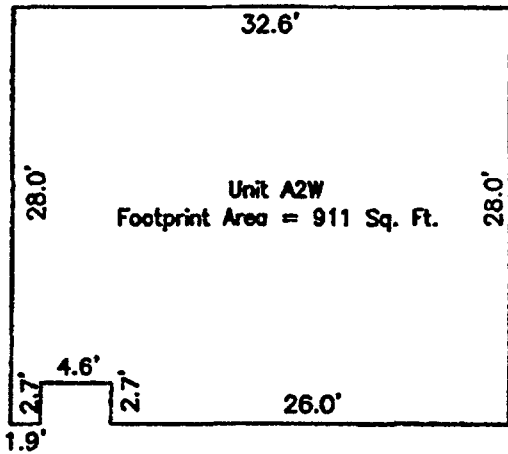
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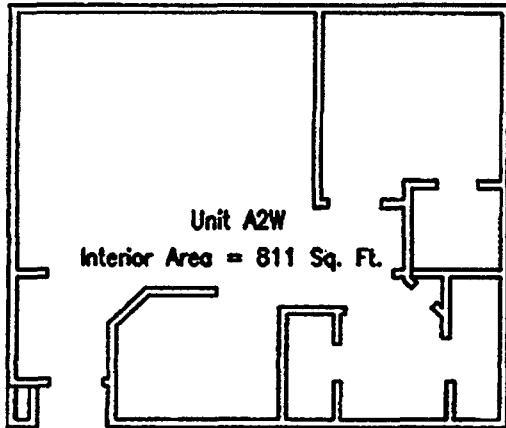
UNIT A2W

Interior Area = 811 Sq. Ft.  
Patio Area = 0 Sq. Ft.  
 Total Unit Area = 811 Sq. Ft.

Footprint Area = 911 Sq. Ft.

NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



FLOOR PLAN EXHIBIT

UNIT A2W  
 FLOOR PLAN DIMENSIONS OUT OF  
 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04

**Bowden Survey Co.**

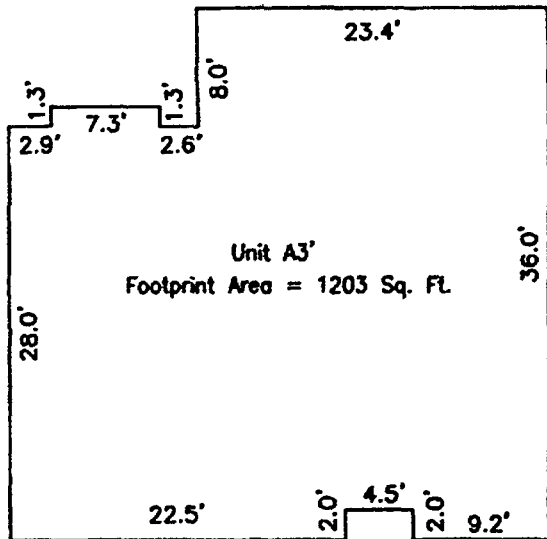
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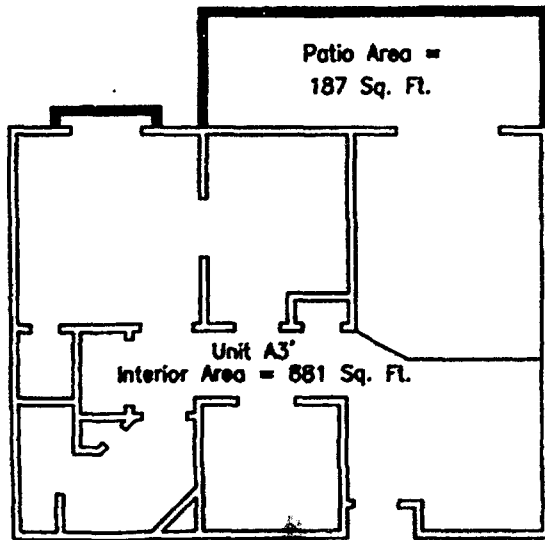
NOT TO SCALE



**UNIT A3'**

Interior Area = 881 Sq. Ft.  
Patio Area = 187 Sq. Ft.  
 Total Unit Area = 1068 Sq. Ft.

Footprint Area = 1203 Sq. Ft.



**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

UNIT A3'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04



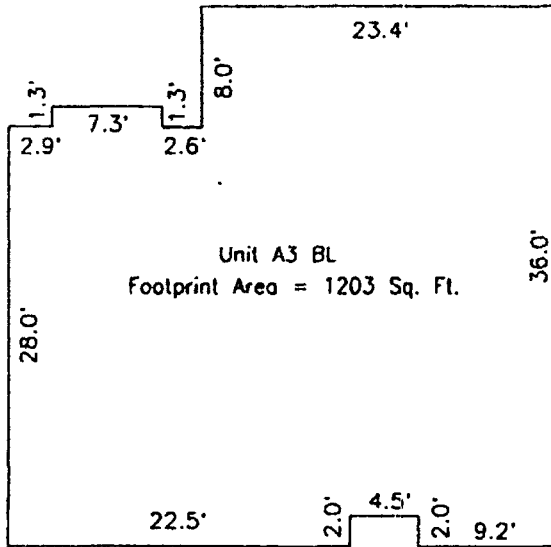
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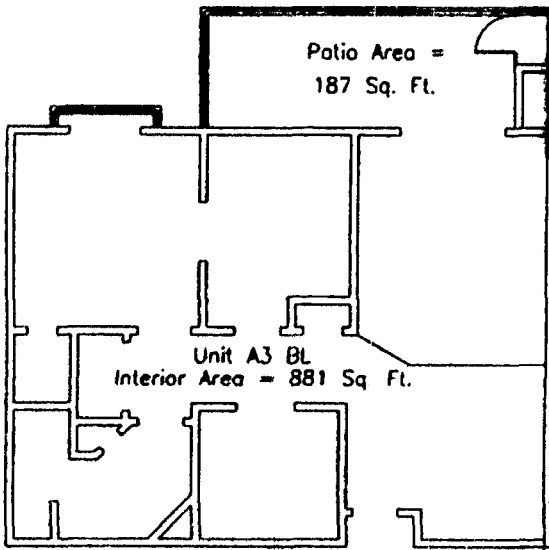


UNIT A3BL

Interior Area = 881 Sq. Ft.  
 Patio Area = 187 Sq. Ft.  
 Total Unit Area = 1068 Sq. Ft.  
 Footprint Area = 1203 Sq. Ft.

NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



CONDOMINIUM RECORDS OF COUNTY CLERK

192872

FILM CODE

2400 MCCUE CONDOMINIUMS -  
 DECLARATION OF CONDOMINIUMS

SEE PAGE 36 OF 37 PAGES

REVISION NO. CAMERA OBSERVATION

FLOOR PLAN EXHIBIT

UNIT A3BL'  
 FLOOR PLAN DIMENSIONS OUT ( )  
 2400 MCCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEX

Client:

Scale: NTS      Project No. C400

Drawn by: LE      Calc. by: JS

Date: 12/07/04

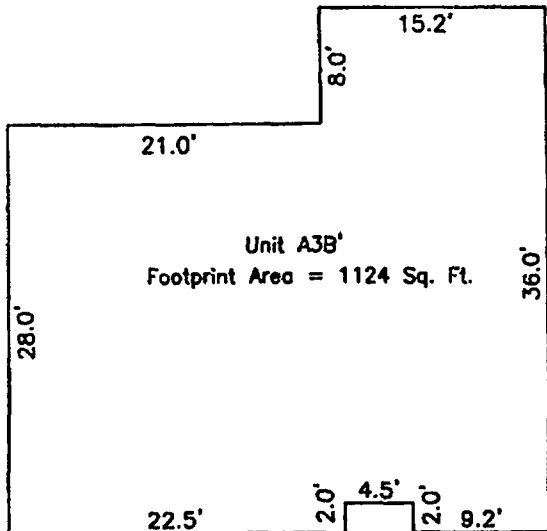


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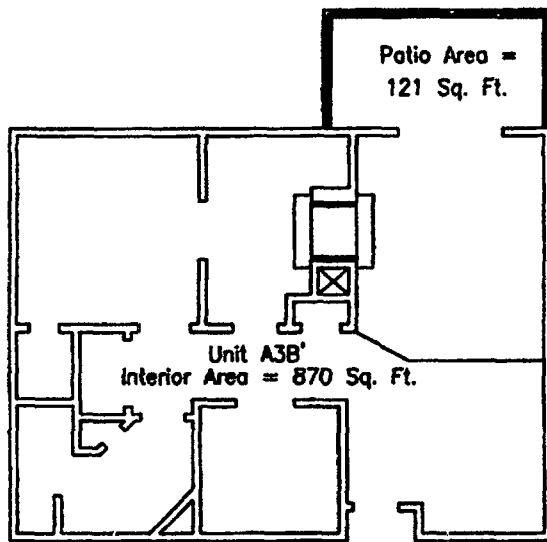
NOT TO SCALE



UNIT A3B'

Interior Area = 870 Sq. Ft.  
Patio Area = 121 Sq. Ft.  
 Total Unit Area = 991 Sq. Ft.

Footprint Area = 1124 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A3B'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXA

Client:

Scale: NTS

Project No. C4003

Drawn by: LE

Calc. by: JS

Date: 12/07/04



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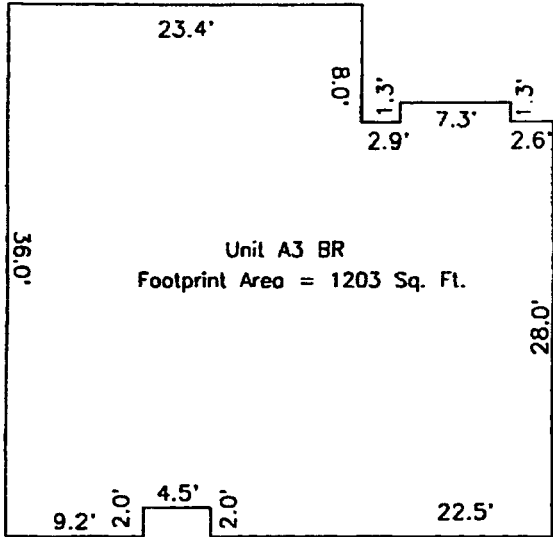
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NOT TO SCALE



**UNIT A3 BR**

Interior Area = 881 Sq. Ft.

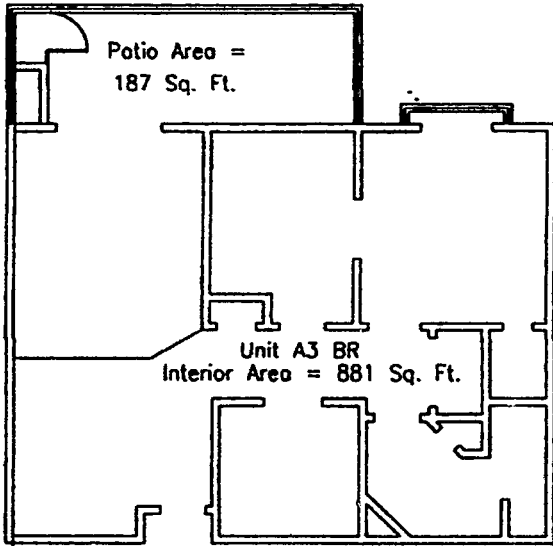
Patio Area = 187 Sq. Ft.

Total Unit Area = 1068 Sq. Ft.

Footprint Area = 1203 Sq. Ft.

**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



**FLOOR PLAN EXHIBIT**

**UNIT A3BR'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS**

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04



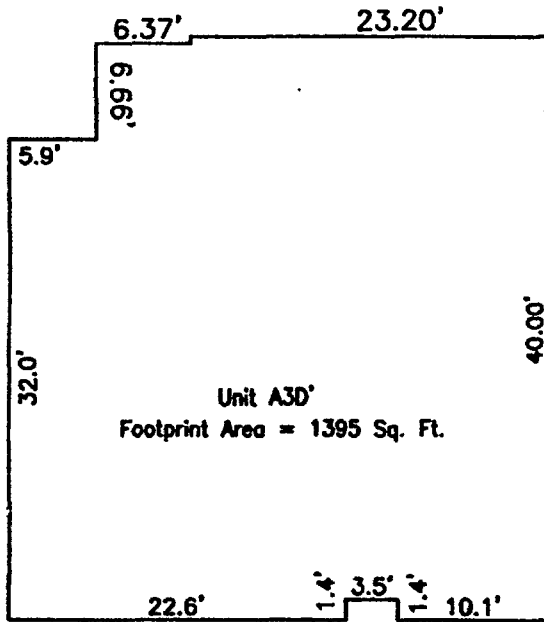
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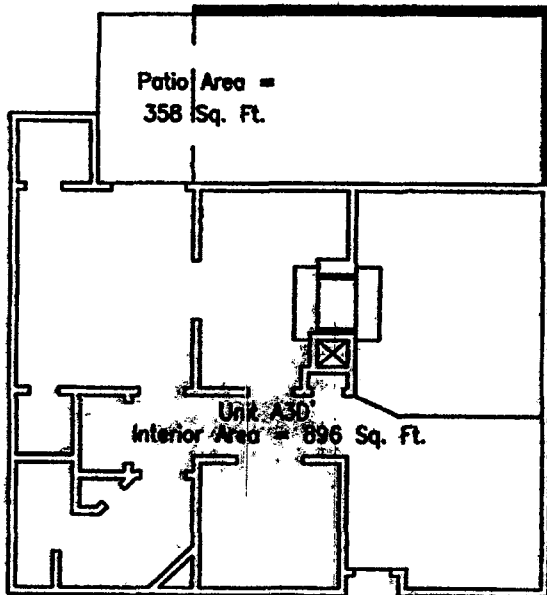
UNIT A3D'

Interior Area = 896 Sq. Ft.

Patio Area = 358 Sq. Ft.

Total Unit Area = 1254 Sq. Ft.

Footprint Area = 1395 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A3D  
FLOOR PLAN DIMENSIONS OUT OF  
2400 MCGUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:	
Scale: NTS	Project No. C40034
Drawn by: LE	Calc by: JS
Date: 12/07/04	



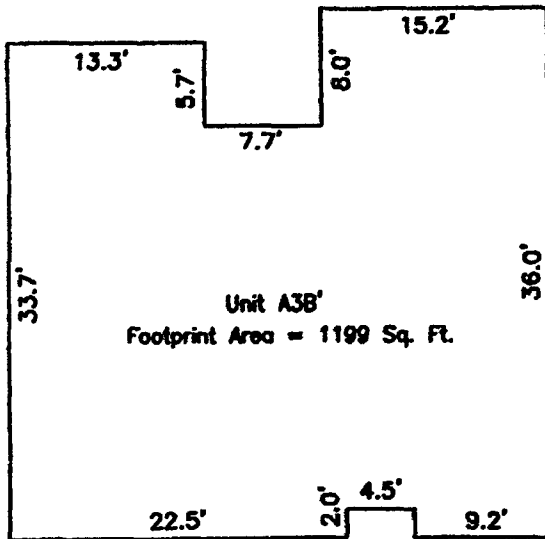
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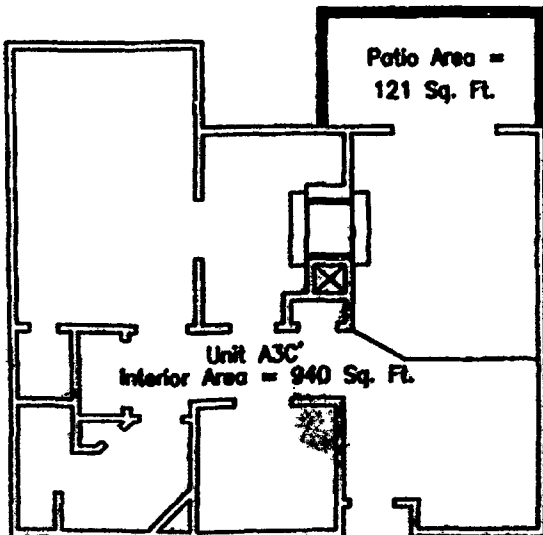


**UNIT A3C**

Interior Area = 940 Sq. Ft.  
Patio Area = 121 Sq. Ft.  
 Total Unit Area = 1061 Sq. Ft.  
 Footprint Area = 1199 Sq. Ft.

**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



**FLOOR PLAN EXHIBIT**

**UNIT A3C**  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 MCGUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04

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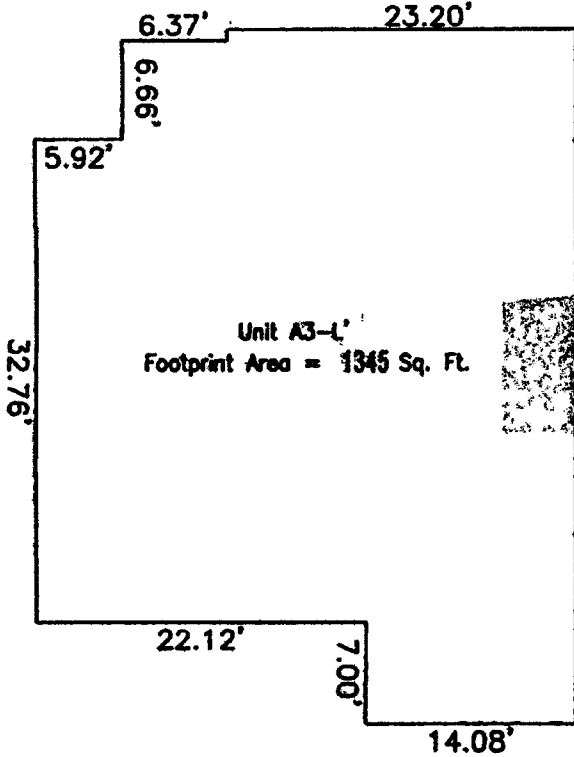
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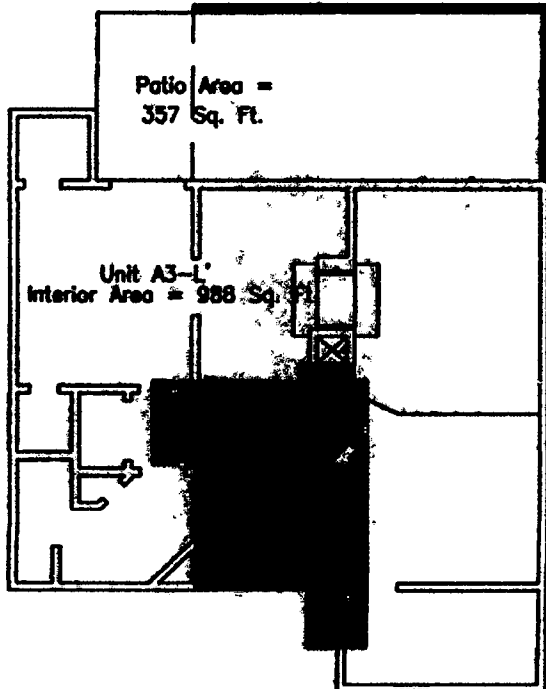
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UNIT A3-L'

Interior Area = 988 Sq. Ft.  
Loft Area = 198 Sq. Ft.  
Patio Area = 357 Sq. Ft.  
Total Unit Area = 1543 Sq. Ft.

Footprint Area = 1345 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT A3-L'  
FLOOR PLAN DIMENSIONS OUT OF  
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HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/01/04



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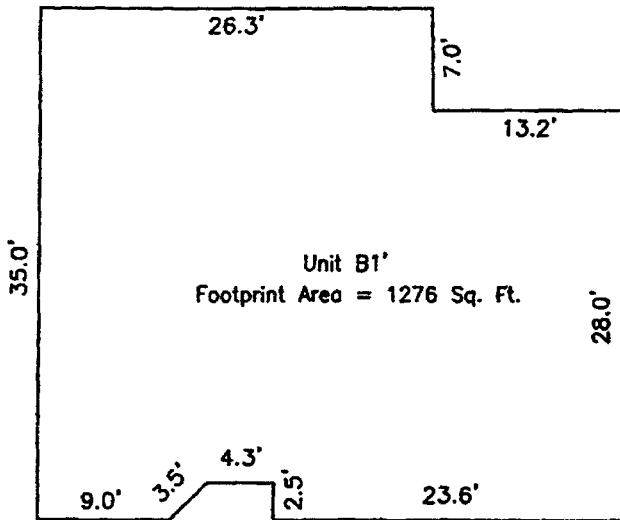
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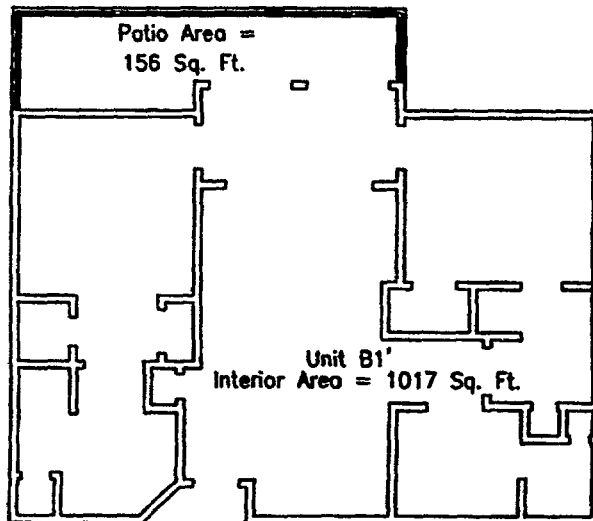
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NOT TO SCALE



UNIT B1'

Interior Area = 1017 Sq. Ft.  
 Patio Area = 156 Sq. Ft.  
 Total Unit Area = 1173 Sq. Ft.  
 Footprint Area = 1276 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B1'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/01/04



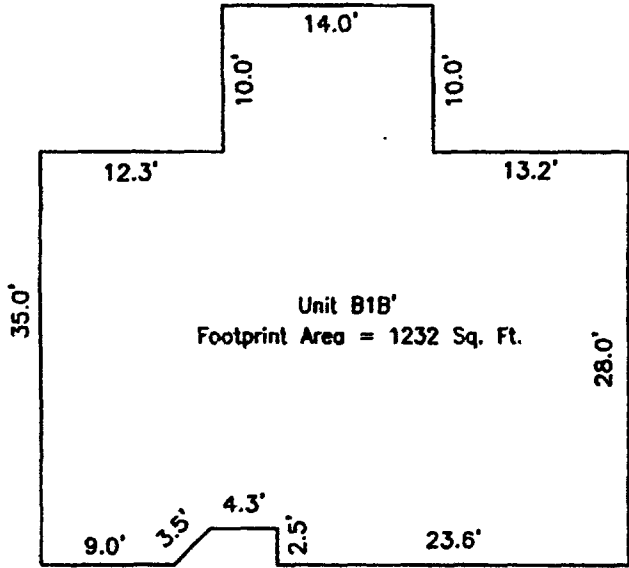
**Bowden Survey Co.**

Professional Surveying Services  
 16000 Barkers Point Ln., Suite 120  
 Houston, Texas 77079

Phone: (281) 531-1900 Fax: (281) 531-4900

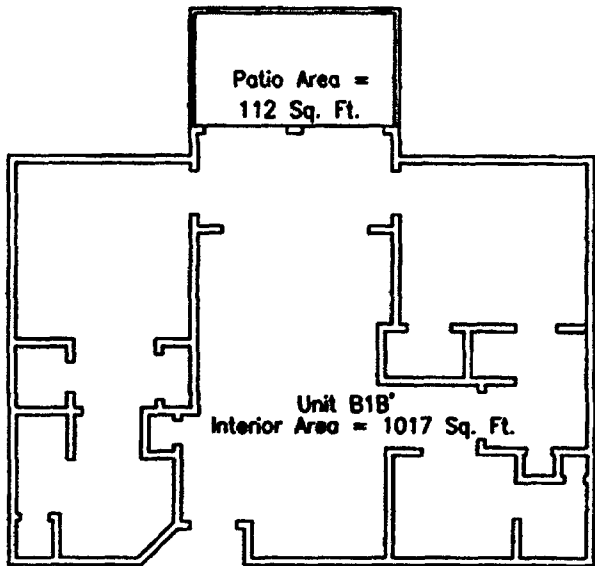
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NOT TO SCALE



**UNIT 'B1'**

Interior Area = 1017 Sq. Ft.  
Patio Area = 112 Sq. Ft.  
 Total Unit Area = 1129 Sq. Ft.  
 Footprint Area = 1232 Sq. Ft.



**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

**UNIT B1B'**  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/01/04

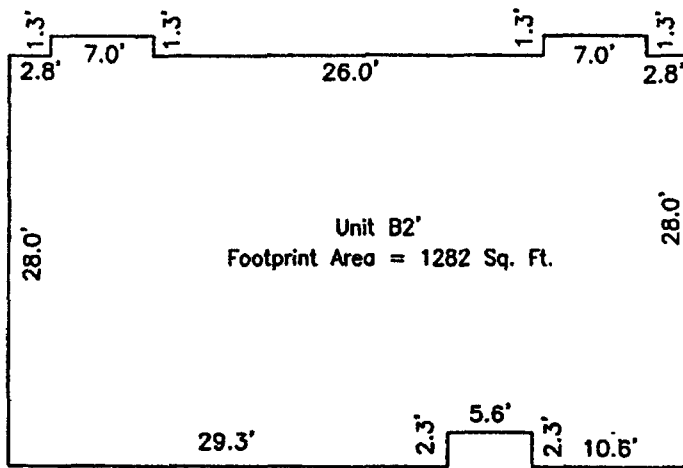


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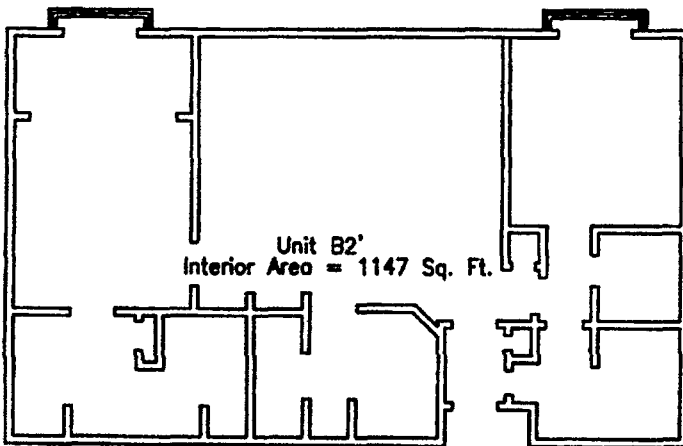
UNIT B2'

Interior Area = 1147 Sq. Ft.

Patio Area = 0 Sq. Ft.

Total Unit Area = 1147 Sq. Ft.

Footprint Area = 1282 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B2'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXA

Client:

Scale: NTS

Project No. C4003

Drawn by: LE

Calc. by: JS

Date: 12/01/04

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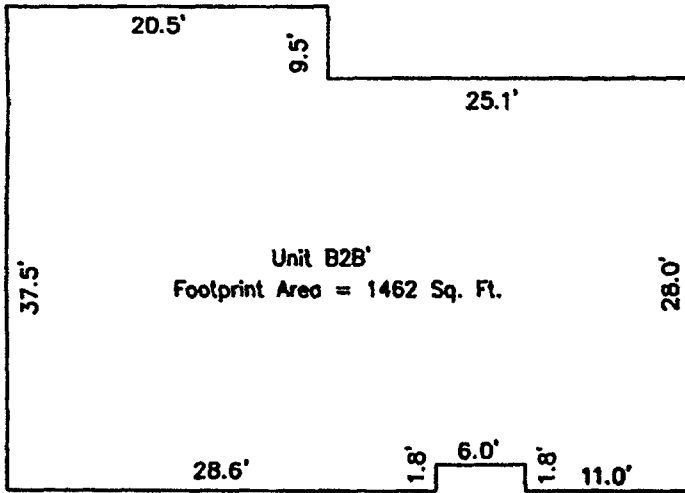
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NOT TO SCALE



**UNIT B2B'**

Interior Area = 1044 Sq. Ft.  
Patio Area = 195 Sq. Ft.  
Total Unit Area = 1239 Sq. Ft.

Footprint Area = 1462 Sq. Ft.

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HARRIS COUNTY, TEXAS  
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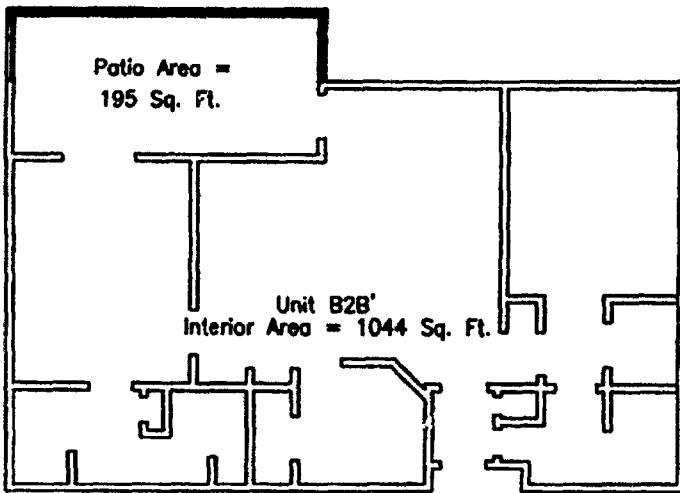
2400 MCCUE CONDOMINIUMS -  
DECLARATION OF CONDOMINIUMS

THIS IS PAGE 23 OF 27 PAGES

SECTION 56.01, CHAPTER 208, SUBCHAPTER A, TITLE 56, H.O.C.

**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



**FLOOR PLAN EXHIBIT**

UNIT B2B'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 MCCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04

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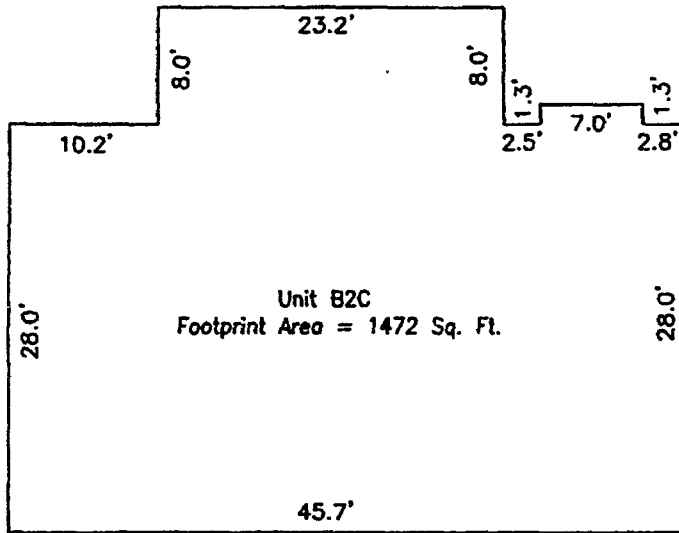
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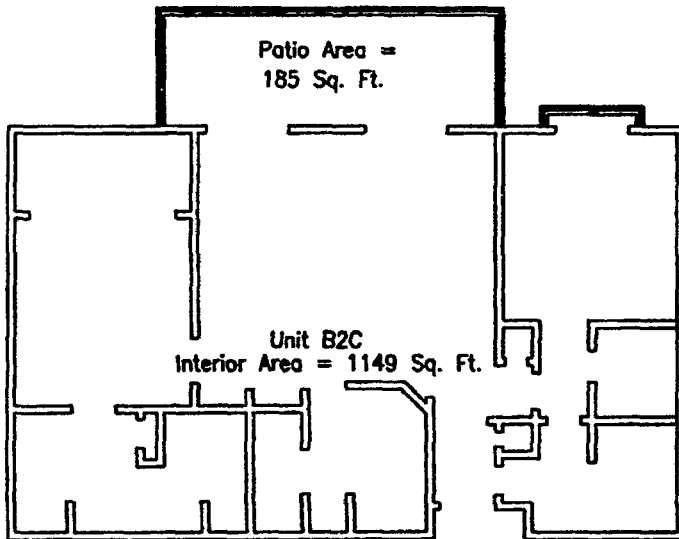
NOT TO SCALE



UNIT B2C'

Interior Area = 1149 Sq. Ft.  
Patio Area = 185 Sq. Ft.  
Total Interior Area = 1334 Sq. Ft.

Footprint Area = 1472 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B2C'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

Calc. by: JS

Date: 12/01/04

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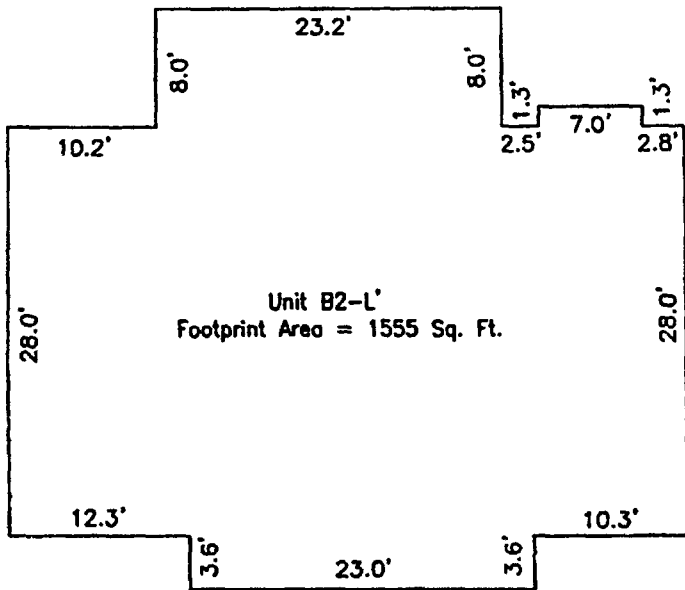


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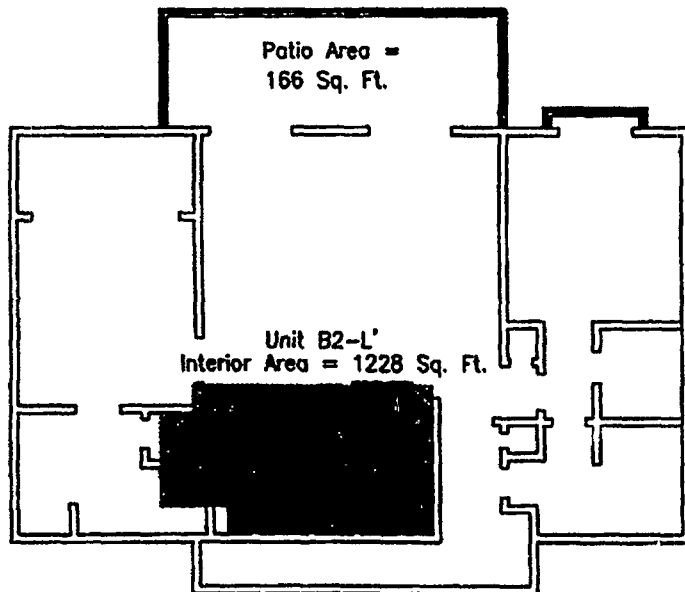
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NOT TO SCALE



UNIT B2-L'

Interior Area = 1228 Sq. Ft.  
Loft Area = 208 Sq. Ft.  
Patio Area = 166 Sq. Ft.  
Total Interior Area=1602 Sq. Ft.  
  
Footprint Area = 1555 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B2-L'  
FLOOR PLAN DIMENSIONS OUT  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TE

Client:

Scale: NTS

Project No. C4

Drawn by: LE

Calc. by: JS

Date: 12/01/04

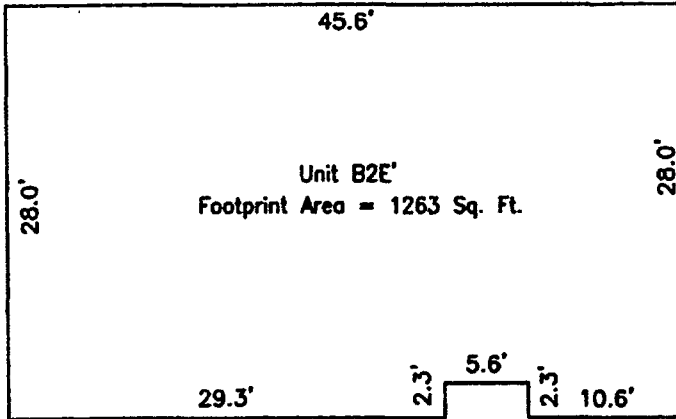


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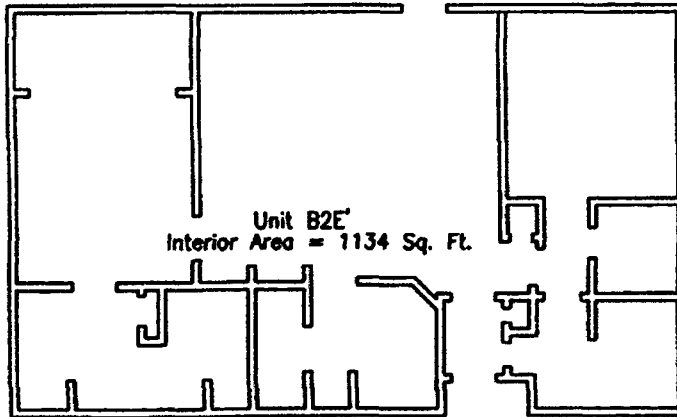
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UNIT B2E'

Interior Area = 1134 Sq. Ft.  
Patio Area = 0 Sq. Ft.  
Total Unit Area = 1134 Sq. Ft.

Footprint Area = 1263 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B2E'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

Calc. by: JS

Date: 12/01/04



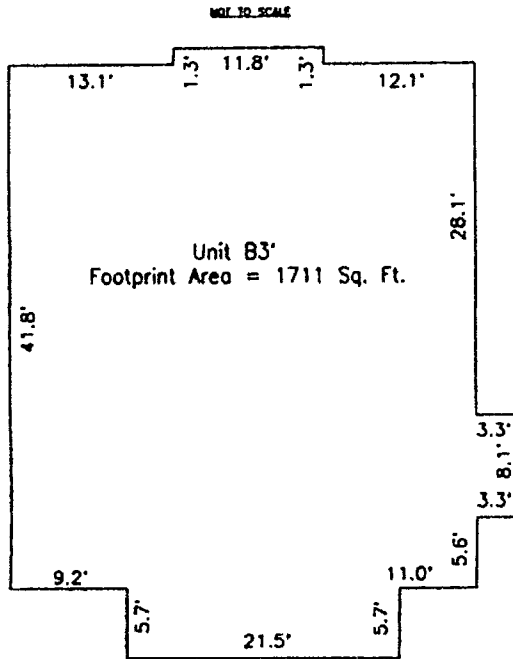
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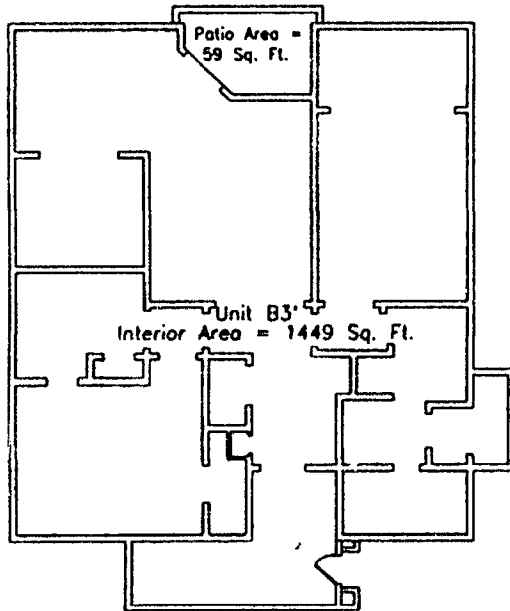
UNIT B3'

Interior Area = 1449 Sq. Ft.  
Patio Area = 59 Sq. Ft.  
 Total Unit Area = 1508 Sq. Ft.

Footprint Area = 1711 Sq. Ft.

NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



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2400 MCCUE CONDOMINIUMS -  
 DECLARATION OF CONDOMINIUMS

THIS IS PAGE 28 OF 37 PAGES

REPRODUCTION BY CAMERA REPRODUCTION METHOD

FLOOR PLAN EXHIBIT

UNIT B3'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 MCCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/07/04



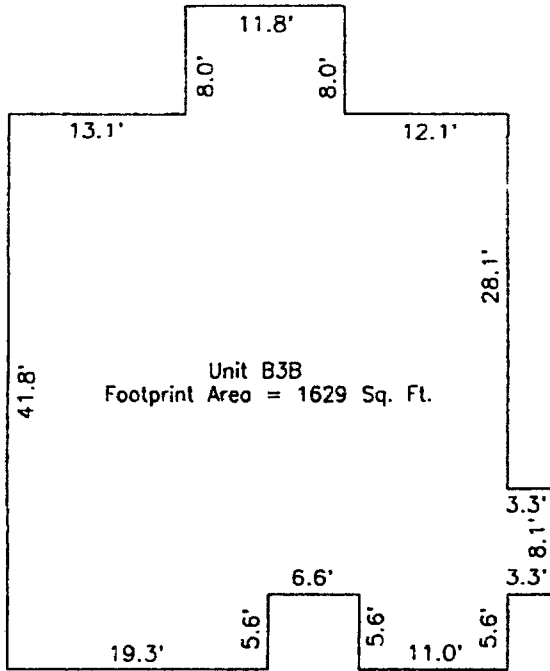
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**UNIT B3B**

Interior Area = 1371 Sq. Ft.

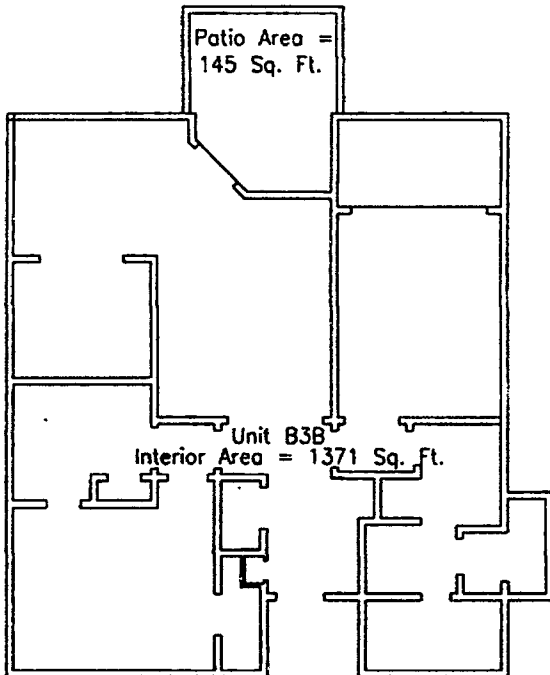
Patio Area = 145 Sq. Ft.

Total Unit Area = 1516 Sq. Ft.

Footprint Area = 1629 Sq. Ft.

**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.



<b>FLOOR PLAN EXHIBIT</b>	
<b>UNIT B3'</b>	
<b>FLOOR PLAN DIMENSIONS OUT OF 2400 McCUE CONDOMINIUMS HOUSTON, HARRIS COUNTY, TEXAS</b>	
Client:	
Scale: NTS	Project No. C40034
Drawn by: LE	Calc. by: JS
Date: 12/07/04	

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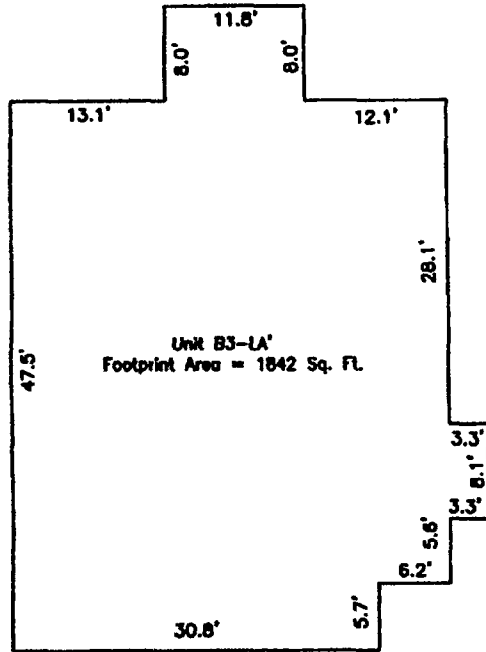
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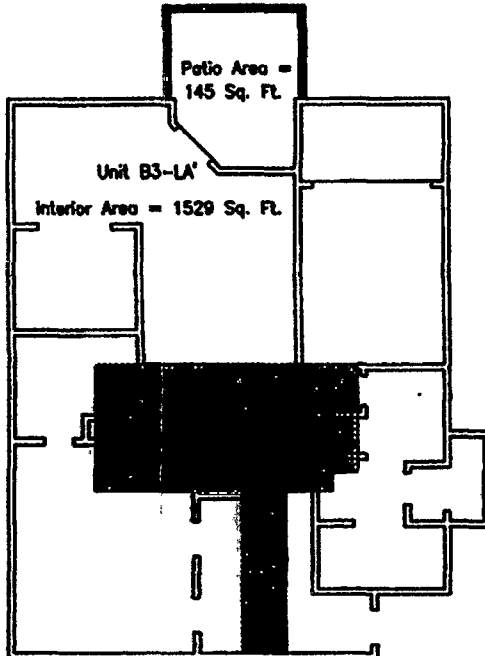
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NOT TO SCALE



**UNIT B3-LA'**

Interior Area = 1529 Sq. Ft.  
 Loft Area = 278 Sq. Ft.  
Patio Area = 145 Sq. Ft.  
 Total Unit Area = 1952 Sq. Ft.  
 Footprint Area = 1842 Sq. Ft.



**NOTES:**

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

**UNIT B3-LA'**  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:	
Scale: NTS	Project No. C40034
Drawn by: JS	Calc. by: JS
Date: 12/01/04	



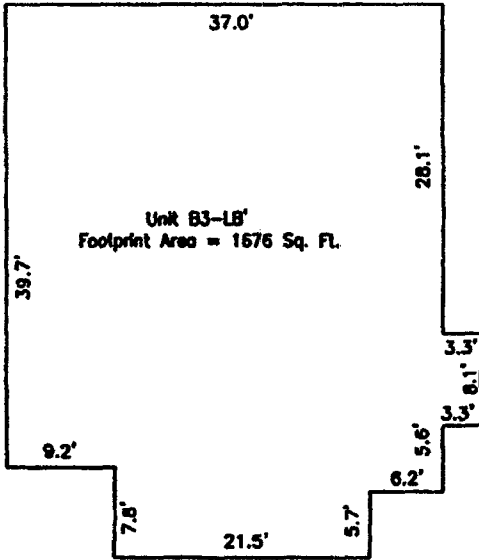
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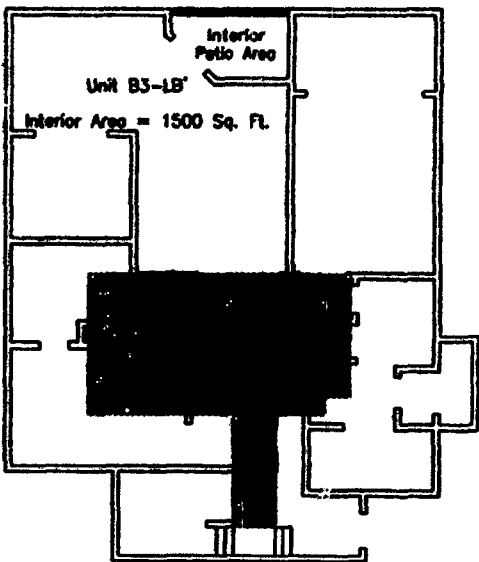
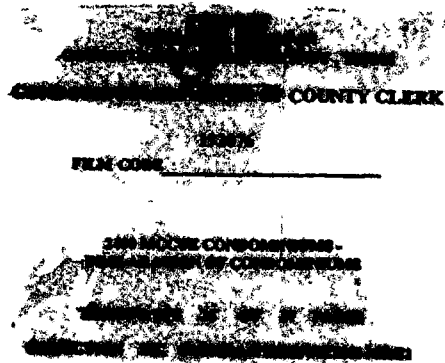
NOT TO SCALE



UNIT B3-LB'

Interior Area = 1500 Sq. Ft.  
 Loft Area = 269 Sq. Ft.  
Exterior Patio Area = 0 Sq. Ft.  
 Total Unit Area = 1769 Sq. Ft.

Footprint Area = 1676 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B3-LB'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

Calc. by: JS

Date: 12/01/04

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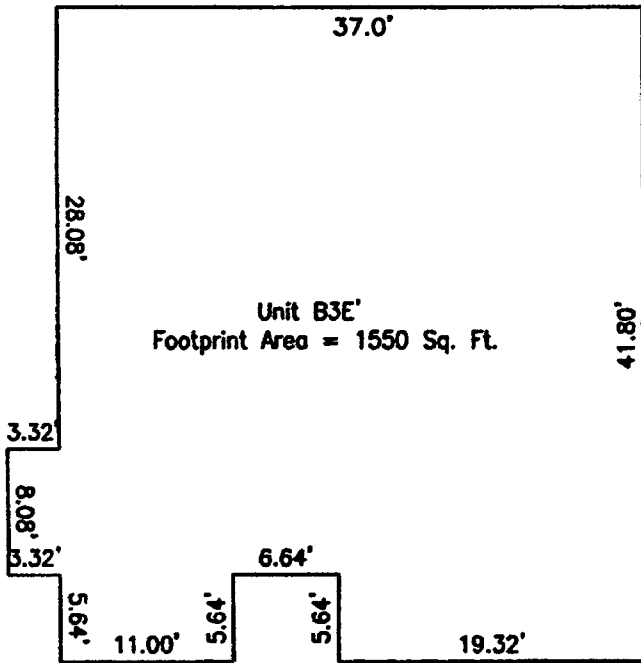


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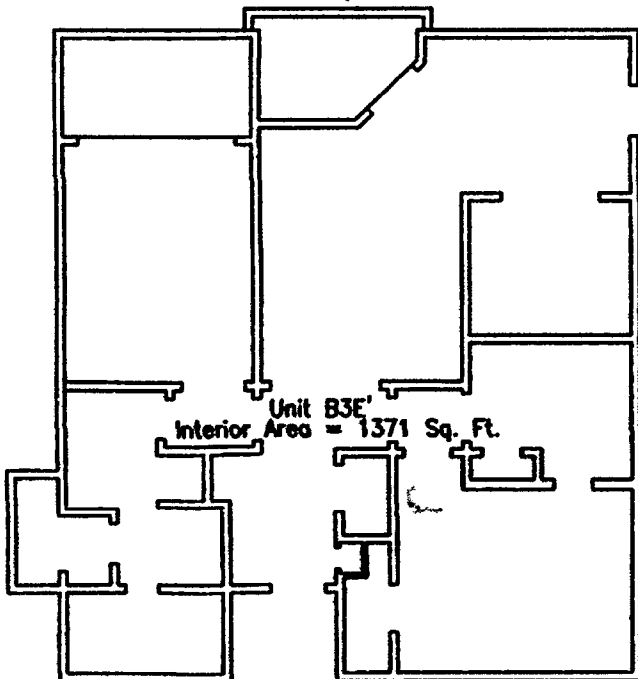


UNIT B3E'

Interior Area = 1371 Sq. Ft.  
Patio Area = 59 Sq. Ft.  
Total Unit Area = 1430 Sq. Ft.

Footprint Area = 1550 Sq. Ft.

Patio Area =  
59 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

FLOOR PLAN EXHIBIT

UNIT B3E'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: JS

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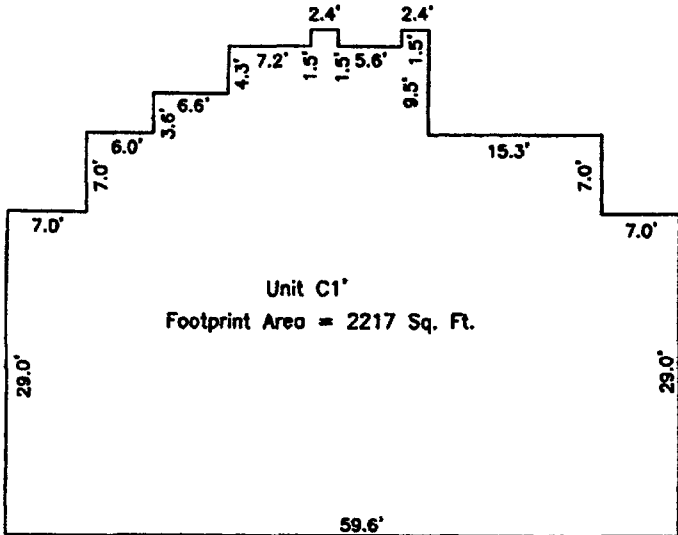
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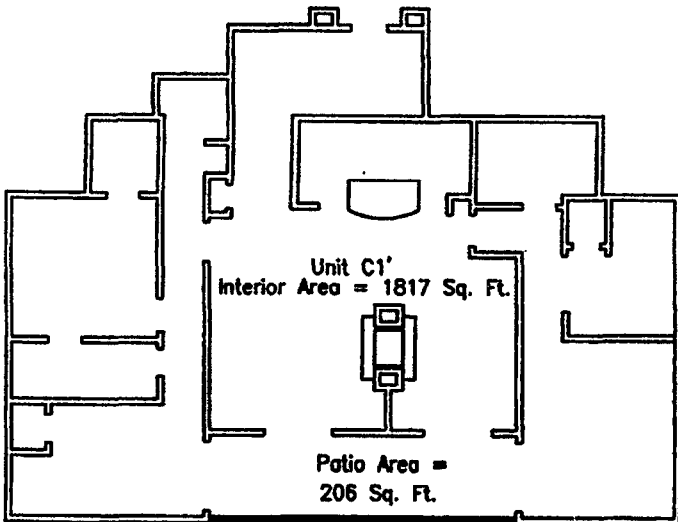
NOT TO SCALE



UNIT C1'

Interior Area = 1817 Sq. Ft.  
Patio Area = 206 Sq. Ft.  
Total Unit Area = 2023 Sq. Ft.

Footprint Area = 2217 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

**FLOOR PLAN EXHIBIT**

UNIT C1'  
FLOOR PLAN DIMENSIONS OUT OF  
2400 McCUE CONDOMINIUMS  
HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

Project No. C40034

Drawn by: LE

Calc. by: JS

Date: 12/01/04



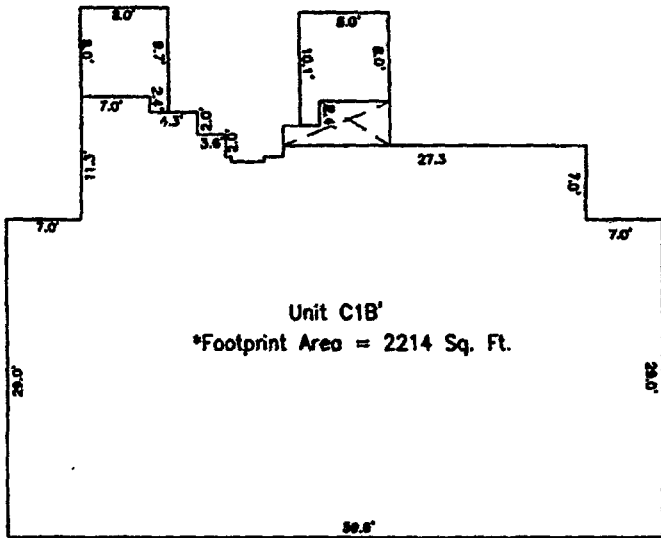
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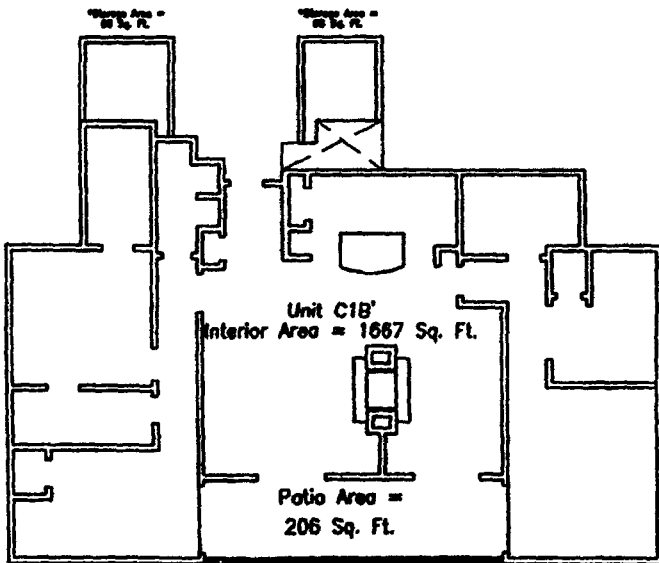
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UNIT C1B'  
 Interior Area = 1667 Sq. Ft.  
 Interior Storage Area = 134Sq. Ft.  
 Patio Area = 206 Sq. Ft.  
 Total Unit Area = 2007Sq. Ft.  
 Footprint Area = 2214 Sq. Ft.



NOTES:

1. The boundaries of each unit are the interior surfaces of floors, ceilings, perimeter walls, doors and windows thereof, and there are 200 total units on the subject property.
2. The maximum vertical height of units with a rectangular ceiling is 10'-0" for first and second floor 9'-0" for the third and fourth floor.
3. The units are numbered with a three (3) digit number. The first digit is the floor number (1-4). The last two numbers are the unit number.

\* Includes 134 Sq. Ft. Detached Storage Area

FLOOR PLAN EXHIBIT

UNIT C1B'  
 FLOOR PLAN DIMENSIONS OUT OF  
 2400 McCUE CONDOMINIUMS  
 HOUSTON, HARRIS COUNTY, TEXAS

Client:

Scale: NTS

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**EXHIBIT C**

**PERCENTAGE OF OWNERSHIP  
INTEREST IN THE COMMON ELEMENTS**

103	A3D	1BR/1BA/Stu	1,034	0.49%
104	A2E	1BR/1BA	897	0.44%
105	B1B	2BR/2BA/Sol	1,120	0.52%
106	B2E	2BR/2BA	1,267	0.57%
107	B2B	2BR/2BA	1,154	0.52%
108	A2E	1BR/1BA	897	0.44%
110	B3E	2BR/2BA	1,484	0.64%
112	A1	1BR/1BA	759	0.40%
113	A2	1BR/1BA	759	0.40%
114	A1BL	1BR/1BA	759	0.40%
115	B1B	2BR/2BA/Sol	1,120	0.52%
116	A1BR	1BR/1BA	759	0.40%
117	A3	1BR/1BA/Stu	1,010	0.48%
118	A1BL	1BR/1BA	759	0.40%
120	A1BR	1BR/1BA	759	0.40%
122	A1B	1BR/1BA	759	0.40%
124	B3B	2BR/2BA	1,484	0.64%
125	A3B	1BR/1BA/Stu	1,010	0.48%
126	A3	1BR/1BA/Stu	1,010	0.48%
127	B1B	2BR/2BA/Sol	1,120	0.52%
128	A3BL	1BR/1BA/Stu	1,010	0.48%
129	B1C	2BR/2BA	1,120	0.52%
130	A3BR	1BR/1BA/Stu	1,010	0.48%
131	C1B	3BR/2BA	2,164	0.86%
132	B2C	2BR/2BA/Loft	1,267	0.57%
133	B1C	2BR/2BA	1,120	0.52%
134	A3BL	1BR/1BA/Stu	1,010	0.48%
135	B1B	2BR/2BA/Sol	1,120	0.52%
136	A3BR	1BR/1BA/Stu	1,010	0.48%
137	A3B	1BR/1BA/Stu	1,085	0.51%
138	A3	1BR/1BA/Stu	1,010	0.48%
140	B3B	2BR/2BA/Loft	1,484	0.64%
142	A1B	1BR/1BA	759	0.40%
143	A3	1BR/1BA/Stu	1,010	0.48%
144	A1BR	1BR/1BA	759	0.40%
145	B1B	2BR/2BA/Sol	1,120	0.52%
146	A1BL	1BR/1BA	759	0.40%
147	A2	1BR/1BA	850	0.43%

148	A1	1BR/1BA	759	0.40%
150	A1	1BR/1BA	759	0.40%
152	A1	1BR/1BA	759	0.40%
154	B3E	2BR/2BA	1,484	0.64%
155	B2B	2BR/2BA	1,154	0.52%
156	A2E	1BR/1BA	897	0.44%
157	B1B	2BR/2BA/Sol	1,120	0.52%
158	B2E	2BR/2BA	1,267	0.57%
160	A2E	1BR/1BA	897	0.44%
201	C1	3BR/2BA	2,164	0.86%
202	A2B	1BR/1BA	913	0.44%
203	A3D	1BR/1BA/Stu	1,034	0.49%
204	A2W	1BR/1BA	897	0.44%
205	B1B	2BR/2BA/Sol	1,120	0.52%
206	B2	2BR/2BA/Sol	1,267	0.57%
207	B2B	2BR/2BA	1,154	0.52%
208	A2W	1BR/1BA	897	0.44%
210	B3F	2BR/2BA	1,672	0.70%
212	A1	1BR/1BA	759	0.40%
213	A2	1BR/1BA	850	0.43%
214	A1BL	1BR/1BA	759	0.40%
215	B1B	2BR/2BA/Sol	1,120	0.52%
216	A1BR	1BR/1BA	759	0.40%
217	A3	1BR/1BA/Stu	1,010	0.48%
218	A1BL	1BR/1BA	759	0.40%
220	A1BR	1BR/1BA	759	0.40%
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243	A3	1BR/1BA/Stu	1,010	0.48%
244	A1BR	1BR/1BA	759	0.40%
245	B1B	2BR/2BA/Sol	1,120	0.52%

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THIS IS PAGE 28 OF 30 PAGES

REPRODUCTION BY CAMERA PHOTOGRAPHY

246	A1BL	1BR/1BA	759	0.40%
247	A2	1BR/1BA	850	0.43%
248	A1	1BR/1BA	759	0.40%
250	A1	1BR/1BA	759	0.40%
252	A1	1BR/1BA	759	0.40%
254	B3F	2BR/2BA	1,672	0.70%
255	B2B	2BR/2BA	1,154	0.52%
256	A2W	1BR/1BA	897	0.44%
257	B1B	2BR/2BA/Sol	1,120	0.52%
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302	A2B	1BR/1BA	913	0.44%
303	A3D	1BR/1BA/Stu	1,034	0.49%
304	A2B2	1BR/1BA	897	0.44%
305	B1B	2BR/2BA/Sol	1,120	0.52%
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318	A1BL	1BR/1BA	759	0.40%
320	A1BR	1BR/1BA	759	0.40%
322	A1B	1BR/1BA	759	0.40%
324	B3B	2BR/2BA/Loft	1,484	0.64%
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334	A3BL	1BR/1BA/Stu	1,010	0.48%
335	B1B	2BR/2BA/Sol	1,120	0.52%
336	A3BR	1BR/1BA/Stu	1,010	0.48%
337	A3C	1BR/1BA/Stu	1,085	0.51%
338	A3	1BR/1BA/Stu	1,010	0.48%
340	B3B	2BR/2BA	1,484	0.64%

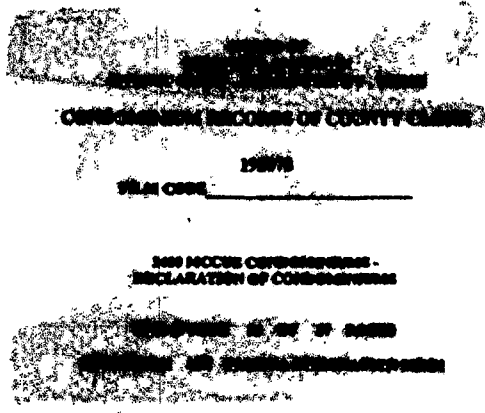
342	A1B	1BR/1BA	759	0.40%
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344	A1BR	1BR/1BA	759	0.40%
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420	A1BR	1BR/1BA	759	0.40%
422	A1B	1BR/1BA	759	0.40%
424	B3LA	2BR/2BA/Loft	1,940	0.79%
425	A3C	1BR/1BA/Stu	1,065	0.51%
426	A3	1BR/1BA/Stu	1,010	0.48%
427	B1B	2BR/2BA/Sol	1,120	0.52%
428	A3BL	1BR/1BA/Stu	1,010	0.48%
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460	A2B2	1BR/1BA	897	0.44%
462	A2B	1BR/1BA	913	0.44%

**EXHIBIT D**

**RECORDED EASEMENTS AND LICENSES**

1. Easement rights, if any, relative to the underground wastewater line, underground storm lines and gate inlets, electrical conduits, electrical meters, electrical boxes, telephone pedestals and cable boxes as shown on survey of David L. Bowden, R.P.L.S. #4864, dated 09/24/2004.





**EXHIBIT E**

**INSPECTIONS**

The Best Practices Preventative Maintenance Plan is on file in the Property Sales Office and is attached hereto. A copy of the Plan will be furnished on request.

**BEST PRACTICES PREVENTATIVE  
MAINTENANCE PLAN**

**2400 McCUE**

**2400 McCUE  
HOUSTON, TEXAS**

*Prepared for:*

**CHOICE CONDOMINIUMS**

*Prepared by:*

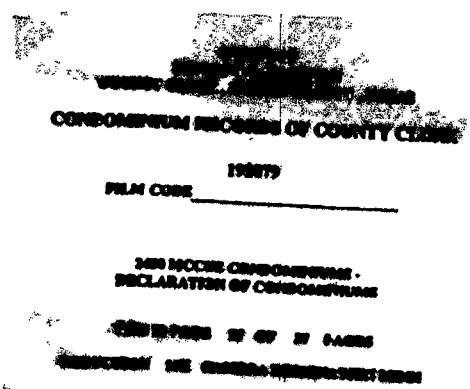
**CRITERIUM ENGINEERS  
13810 CHAMPION FOREST DRIVE, STE. 202  
HOUSTON, TEXAS 77069  
(281)444-9580**

**March 8, 2005**

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## **INTRODUCTION**

This best practice Maintenance Manual has been prepared because there are so many building maintenance and repair items that are important; it can be confusing trying to establish which are the most critical. To simplify things, we have compiled a list of items that we have deemed to be important to maintain. These are by no means all-inclusive, nor do they replace any of the information provided by a manufacturer regarding a specific material or piece of equipment. Every effort should be made to procure necessary information from the manufacturer regarding the proper maintenance of materials and equipment located on this property.

*Maintenance is the preservation and upkeep of structures, appurtenances and facilities as nearly as possible in the condition in which they have been constructed. For these facilities to function as designed and constructed, they must be properly maintained. All structures require periodic maintenance inspections and repairs. Maintenance functions vary from routine repairs to extensive emergency repairs resulting from major storm damage or other events. It also includes performing miscellaneous preventive maintenance acts that will forestall deterioration of the building.*

### **Maintenance Program**

A comprehensive maintenance program should be established for this property as quickly as possible. Elements of a maintenance program include establishing maintenance goals, assigning responsibilities, producing a task list and schedule and keeping records.

The maintenance program should include property maintenance inspections that are conducted on a regularly scheduled basis. The results are to be recorded and made part of the property's records. Maintenance and repair work orders should be issued to initiate any repairs found necessary as the result of these inspections.

Preventative maintenance can avoid repairs, extend the life expectancy of many components and in some cases, reduce energy consumption. A systematic maintenance approach also allows one to monitor certain conditions and components. Regular inspections will give one enough advance warning to allow for several quotes in order to make an educated

and cost effective purchase. If on the other hand, no maintenance is done, there is very little time to do comparative shopping.

In addition to monitoring systems which wear out, structural monitoring should also be performed. It is not uncommon for people who have been living in a building for some time to suddenly realize that a door frame is out of square and the door does not close properly. With regular maintenance, the cracks which occur in the wall surfaces adjacent to the door frame can be monitored. Knowing whether these cracks have appeared suddenly or have been increasing at a specific rate, is valuable information when diagnosing the problem and designing a repair.

At times, these inspections may yield insight for inexpensive retrofit opportunities. No design is perfect. Over time issues could arise, especially regarding waterproofing, where an inexpensive retrofit could avert future potentially costly damage. These preventive retrofit opportunities should be taken advantage of as part of a pro-active maintenance program.

### **Records**

Accurate, written records should be kept of all inspections conducted or work performed to the property. Records should also include contracts for work performed, an equipment inventory list and any warranty information available. These records should be maintained for at least ten years and stored in an organized filing system.

### **Regarding Manufacturer's Suggested Maintenance**

The following is a list of various building components that can be found on the property along with suggested maintenance practices. This list is not meant to replace the manufacturers suggested maintenance for warranty purposes of any material or equipment. If information regarding maintenance is obtained from a particular manufacture on a particular item, and it differs from the suggestions here, the manufacturer's instructions should be followed.

# STRUCTURE

Many structural problems can be avoided if proper maintenance is performed on a building. Others can be minimized if the problem is spotted and corrected early. Water intrusion issues such as inadequate site drainage or a malfunctioning roof drainage system, among others can have a dramatic affect on structural systems. It is critical that the structure be routinely inspected so that any potential sign of structural problems can monitored. Minor movement due to normal settling and shrinkage should be anticipated. However components showing significant movement over a six month period can be indications of more serious problems.

## Superstructure

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect wall and ceiling surfaces cracks, bulges or other anomalies. Wall and ceiling surface anomalies discovered should be monitored over time for evidence of significant movement.
  
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Inspect attics for water stains on the underside of the roof sheathing. This should be accomplished at the same time as the roof covering materials inspection.
  - One should also look for rot, mildew, and fungus indicating high humidity levels in the attic. Check to make sure the insulation is not wet.
  - Door frames should be checked and monitored for any change in square-ness.
  - Attic vents should be checked to ensure that they are not obstructed. Often, birds build nests in these vents. Vents at the eaves are often plugged with insulation. Watch for evidence of pests (squirrels, raccoons, etc.).
  - Insulation is prone to being blown around during periods of high wind. Check for bare spots and ensure that insulation is not covering lights, vents, etc.

- Appropriate action should be taken to monitor any problems noted during inspections. Necessary repairs should be completed immediately.
- On an annual basis, M&O staff (or qualified technician) should:
  - Check the condition of structural framing components, floors, roof framing, and walls. These items should be inspected for deterioration and movement.
- Every 5 years (or following an observed change), M&O staff should:
  - Have a structural inspection performed by a professional engineer.

## **Substructure**

### **Foundation**

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Conduct cleaning and general housekeeping.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Foundation walls, where visible should be checked for evidence of deterioration and movement.
  - Visible leaks should be repaired and monitored. Limited dampness from time to time can be anticipated with below grade foundation walls and is generally not a serious problem. Flowing water or chronically damp areas should be inspected by a qualified waterproofing technician or professional engineer.
  - Cracking should also be noted and monitored. Cracks and voids should be filled. Filling cracks allows for easy monitoring of movement between inspections.
  - Appropriate action should be taken to monitor any problems noted during inspections. Necessary repairs should be completed immediately.
- On an annual basis, M&O staff (or qualified technician) should:
  - Identify and repair spalls, cracks and other deterioration to the concrete.



- Every 5 years (or following an observed change), M&O staff should:
  - Have a structural inspection performed by a professional engineer.

### **Underground Parking Lot**

Many building managers mistakenly believe that parking garages don't require maintenance since they're just steel and concrete. However, it is the parking garage that often suffers most the effects of weather and poor maintenance and often becomes the area of greatest deferred maintenance and cost. The underground parking structure is made of CIP concrete walls with poured concrete floors. It is common for garages to experience limited moisture problems. However, when mass moisture (flowing water) is allowed to penetrate the concrete over time it can be detrimental to the structure. Corrosion due to water infiltration is a major problem with all types of parking structures.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Provide cleaning and general housekeeping.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - All decks should be washed to remove contaminants, locate potential areas of water infiltration in and around drains and expansion and control joints.
  - Make necessary repairs.
- On an annual basis, M&O staff (or qualified technician) should:
  - Spalls and other deteriorated concrete should be identified and repaired.
- Every 5 years (or following an observed change), M&O staff should:
  - Have a structural inspection performed by a professional engineer.
- Every 10 years (or following an observed change), M&O staff should:
  - All caulked joints should be completely re-caulked.

## Related Issues

### Site Drainage:

- The grading immediately adjacent to the building should be monitored to ensure an effective drainage is maintained. (see drainage)
- Catch basins should be cleaned and tested semi-annually. (see drainage)

### Building Envelope:

- All elements of the building envelope should be monitored closely for water intrusion problems as they can greatly affect the long term performance of the structure. (see building envelope)

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# **BUILDING ENVELOPE**

A building's maintenance program should cover all components of the building envelope including roofing, exterior walls, doors and windows. Effective care of the building skin requires regular inspections, cleaning, and detection of problems such as water penetration, drainage and structural damage.

## **ROOFING**

Keeping a roof in top shape is necessary to prevent large repairs or early replacement. There are three types of roof covering material on this property, asphalt shingle, roll roofing and a metal roof over the cupola. All roofing materials should be inspected at least twice annually; fall and spring. Also roofing should be checked after major storms.

Common methods of roof inspection are examination by directly going on the roof, from the ground using binoculars and from below the roof inside the structure. Generally a combination of these methods is used for a thorough inspection. There are safety issues involved with roof inspection and it is advisable to hire a roofing professional to perform the task.

Repair roof leaks as soon as possible to prevent deterioration of the building and damage to the contents. If leaks occur, damaged materials such as drywall, ceiling tiles, insulation, and carpet shall be cleaned, repaired, and/or replaced to prevent the possibility of mold and other indoor air problems.

### **Asphalt shingles**

- Following storms, M&O staff (or qualified technician) should:
  - Roofing should be inspected for damaged, loose or missing shingles.
  - Supports for satellite dishes should be checked. Electric cables (eave protection) should be well secured and properly powered.
  - Any problems noted during these inspections should be corrected immediately.
  
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Shingles should be inspected for wear and tear as well as deterioration. The inspector should look for curling, cupping,

blistering and bald spots missing their protective granular coverings. Special attention should be paid to high wear areas such as where downspouts from upper roofs discharge onto lower roofs.

- Flashings at dormers, plumbing stacks, valleys, et cetera, should be carefully inspected.
  - Inspect the following items on the roof for gaps, cracks and poor condition:
    - Edge metal
    - Ridge vents
    - Base flashings
  - Tree branches should be kept cut back to avoid damaging the roof surface.
  - Any problems noted during these inspections should be corrected immediately.
- Approximately every 12 to 15 years:
    - Total replacement should be expected.

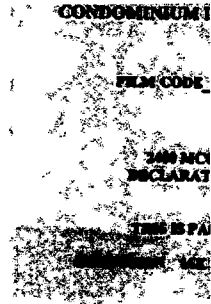
### **Asphalt Roll Roofing**

- Following storms, M&O staff (or qualified technician) should:
  - Inspect for damage particularly at air conditioning supports.
  - Any problems noted during these inspections should be corrected immediately.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Inspect seams at roofing overlap for separation, tears and cracks.
  - Inspect roof adhesives at overlap seams and flashings.
  - Inspect for blisters, bubbles, and buckling of decking materials. Special attention should be paid to high wear areas such as areas where there is significant foot traffic.
  - Penetrations including but not limited to flue stacks, chimneys, HVAC roof curbs and duct work, gas lines, and electrical conduit shall be checked for watertight seal.
  - Flashings at vertical / horizontal intersections should be carefully inspected. Inspect flashing sealants for splitting, edge separation and other signs of deterioration.
  - Supports for air conditioning units should be checked.

- Ponding water on flat roof areas should be addressed to prevent future deterioration of roof surfaces.
  - Any problems noted during these inspections should be corrected immediately.
- Every 10 to 12 years:
    - Total replacement should be expected:

### **Metal Roof**

- Following storms, M&O staff (or qualified technician) should:
  - Inspect for any damage to roofing materials, sealants and flashings.
  - Any problems noted during these inspections should be corrected immediately.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Check metal roofs for fasteners and panels that may have worked loose due to the expansion and contraction of the roof.
  - Inspect seam and flashing sealants for any openings or failed materials.
  - Inspect the welded joints in sheet metal flashing at base of cupola.
  - Any problems noted during these inspections should be corrected immediately
- Approximately every 5 years:
  - Total re-seal of seams and flashings should be expected. Only sealant recommended by the manufacturer shall be used on metal surfaces.



## ROOF DRAINAGE

Roof drainage is accomplished by a gutter drainage system. Gutters and downspouts are designed to collect runoff from the roof and divert it away from the building. Most of the downspouts discharge into the municipal storm drainage system. Proper functioning gutters keep water off of the exterior walls of the building and keep the surrounding soil from being eroded. The gutter drainage system also helps prevent the foundation from being inundated with excess water. Gutters and downspouts are vital accoutrements. If not maintained properly however, severe damage can result. Any leaks in gutters should be repaired promptly. The best time to inspect gutters is during a moderate to heavy rain event.

- On a semi-annual basis (or following an observed change) M&O staff should:
  - Check for breaks, open joints and sags
  - Gutters and downspouts should be checked for blockage, leakage (from rust holes or leaking joints) and areas requiring re-securing or re-sloping.
  - Paint deterioration should be noted.
  - Downspout seams should be checked for splitting (the seam is usually against the wall).
  - Check that the downspouts are correctly positioned and are discharging into the drainage pipes or splash blocks. If there are signs of erosion present, a structural inspection could be necessary.
  - Maintenance and repairs of roof drainage system should be completed as soon as possible after problems have been observed.
    - Clean leaves, seeds and other debris from gutters and downspouts.
    - Pay special attention to clearing elbows and bends. A clogged downspout can generally be opened with a plumbers snake.
    - Keep hangers securely fastened.
    - Plug holes, splits and cracks.

## **EXTERIOR WALLS:**

Preventive maintenance of the building exterior will have health and repair benefits, in that problems with costly water damage can be lessened or prevented. A building that has not been carefully maintained on the outside will begin to deteriorate on the inside as well. If seemingly small problems that arise are not taken care of in a routine systematic way large problems will be the result. The exterior walls of the subject property are clad with mostly brick veneer and stucco. There is also wood trim in many locations.

### **Masonry Walls**

Many building managers mistakenly believe that masonry buildings don't require maintenance. While brick buildings require less attention than most exterior cladding options, routine maintenance is very important. Through the aging process, mortar joints begin to deteriorate, caused by a multitude of weathering factors. This includes swelling of masonry when wetted and thermal expansion/contraction as the temperature fluctuates, which places pressure on mortar joints from all sides. As the mortar deteriorates, significant amounts of water and moisture may begin to enter the wall. Eventually, the water infiltration may exceed the capabilities of the existing weep system. Masonry walls also have sealants (exterior caulk) that act as a waterproofing barrier between expansion joints and junctions of dissimilar materials. If these joints fail excessive water will be allowed to enter the masonry wall. Masonry walls also need to be cleaned. There can be chemical deterioration from atmospheric pollutants. Dirty surfaces could inhibit visual inspection for other problems. Pollutants can also slow or halt the natural breathing process that allows entrapped moisture to escape.

- On an annual basis (or following an observed change) M&O staff should:
  - Masonry walls should be inspected for accumulations of dirt and airborne pollutants.
  - Surfaces shall be washed to remove accumulated dirt, mildew, and stains from surface.
    - Exterior masonry cleaning can be accomplished by one or a combination of the following methods: (Water, abrasive, chemical or poultice cleaning).

- Bricks and mortar joints should be checked for cracking, spalling, friable mortar and excessive porosity.
  - Cracked bricks need to be sealed or replaced and deteriorated mortar should be re-pointed. Re-pointing is the replacement of damaged or weakened mortar with new mortar.
  - Masonry walls should be checked for open expansion joints and deteriorated sealants. Inspect sealants for splitting, separation and other signs of deterioration.
  - Remove and replace deteriorated materials as needed.
- Every 5 years (or following an observed change), M&O staff should:
    - Have a condition assessment performed by a by a qualified building envelope expert or professional engineer.
  - Every 10 years (or following an observed change), M&O staff should:
    - All exterior caulked joints (sealants) should be completely removed and replaced. Remove and replace joint sealants in accordance with recommendations by the Sealants, Waterproofing and Restoration Institute (SWRI).

### **Stucco Walls**

The exterior walls of the building in facing the courtyard consist of stucco coating over sheathing panels. These panels may have a tendency to develop cracks at the seams. Cracks in the exterior stucco can permit moisture entry and should be properly sealed.

- On a semi-annual basis (or following an observed change) M&O staff should:
  - Stucco coated walls should be inspected for cracking, separating and failed coating/paint, with close attention to the sheathing seams.
  - Repairs of stucco coating should be completed as soon as possible after problems have been observed.
- On an annual basis (or following an observed change) M&O staff should:
  - Surfaces shall be washed to remove accumulated dirt, mildew, and stains from surface.



- Cracks in the stucco should be caulked and painted for waterproofing purposes.
- Every 5 years (or following an observed change), M&O staff should:
  - Total re-paint should be expected every 5 years.
  - Have a condition assessment performed by a by a qualified building envelope expert or professional engineer.

### **Wood Siding and Trim**

Exterior wood trim is vulnerable to deterioration. Water can penetrate through and around the trim and settle into the materials behind it. Caulking and paint act as a waterproofing barrier for wood materials. These exterior surfaces need to be kept in adequate water-tight condition in order to protect the wood materials. When woods moisture content reaches 20 to 30 percent, fungi deep within the fibers begin to grow and flourish causing wood rot. Once this process begins, often the only alternative is to replace the wood. All joints and edges should be kept well-caulked to minimize moisture penetration. Any splits or gaps that develop in the wood trim should be well-caulked and painted also. Any board that warps or splits and develops a gap larger than 3/8" should be replaced. Aggressive maintenance and regular monitoring of exterior areas with wood trim are recommended. Inspect annually and repair as needed.

- On an annual basis (or following an observed change) M&O staff should:
  - Exterior wooden components should be checked for rot, loose or damaged boards, splits and cracks, failed caulking, insect infestation and wood/ soil contact.
  - Painting of facilities exterior shall be performed by trained and experienced contractors only. The contract should include a scope of work that ensures proper preparation and the correct type of paint is used.
  - If paint deterioration is the result of blistering or bubbling, the cause should be determined and necessary repairs made before re-painting.

- Every 3 to 5 years (or following an observed change), M&O staff should:
  - Paint or stain all wooden exterior components.
  - Have a condition assessment that includes an examination of all exterior claddings performed by a by a qualified building envelope expert or professional engineer.

## **GENERAL EXTERIOR**

- Inspect and make repairs to Porches and Decks:
  - Railings should be kept secure.
  - Railings should be treated for rust and re-painted every five years.
- Cut back overgrown vegetation and branches near exterior walls.
  - Vines should be kept cut back from wood trim (windows, doors, eaves, etc) and from gutters.
- Eaves, soffits and vents should be inspected for mechanical damage and loose or missing components.

## **RELATED ISSUES:**

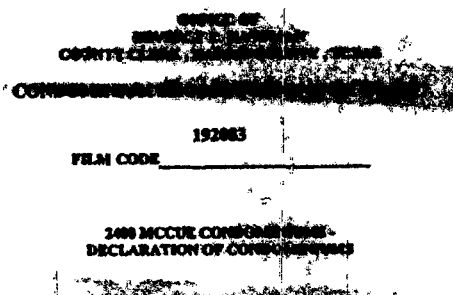
- Keep rain gutters and downspouts cleaned out and leak free so that water is effectively carried away from the exterior surfaces of the building. (see Roof Drainage).

## WINDOWS AND DOORS

- On an annual basis, M&O staff (or qualified technician) should:
  - Inspect exterior windows and doors for physical damage and improper seals.
  - Inspection to include but not be limited to jambs, frames, hinges, thresholds, closing devices, lock sets, latches, glazing, push plates, kick plates, pull handles, screens, and weather stripping.
  - Doors and windows shall be kept functional and in good repair.
  - Touch-up caulk all window and door frame perimeters to prevent water, draft and pest penetration.
- Every 5 years (or after a system change), M&O staff should:
  - Caulking in exposed locations should be touched-up or replaced each time the building is painted.
  - Weather-stripping should be replaced every 5-10 years.

### Doors and Windows: General Notes

- Keep sill and track areas free of dirt and other debris.
- Keep window weep holes clear.
- Repair damaged caulk around frames to prevent water penetration.
- Never use a high-pressure spray nozzle to rinse windows.



## **Pest Management - Indoor**

A pest control program shall be maintained for all common areas within the building. This includes but is not limited to insects, spiders, and rodents. The Association shall maintain all existing termite protection contracts along with any new contracts that may be a result of new termite infestation, new construction and/or renovation.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect for signs of termite damage.
    - Consult with a professional pest control company if termite damage is found.
  - Clear any leaves and debris that rests at the base of the building foundation.
  - Check that water from the sprinklers does not hit the building exteriors.
- On an annual basis, M&O staff (or qualified technician) should:
  - To prevent a pest infestation, decayed wood should be removed from around the building.

### **Pest Management: General Notes**

- Chemical control of pests should be undertaken by a qualified pest control company.
- Every 3 to 5 years have a moisture content assessment conducted of the building envelope.
- If possible, repair any damp areas in the building.

# HVAC

The objective of an HVAC system is to provide comfort and good indoor air quality. The goal of an HVAC maintenance program is to meet those needs while also ensuring reliability, energy efficiency, and minimum system life cycle cost. Maintenance reduces life cycle cost by extending equipment life and avoiding premature replacement. Maintenance also improves reliability and helps reduce frustrating disruptions.

## **General Notes:**

- The manufacturer's instructions should be followed carefully.
- Follow any codes and regulations related to HVAC system maintenance and operation.
- A qualified technician should be engaged to inspect the system and recharge it if necessary annually.
- The outdoor equipment should be level. If the outdoor component settles or needs to be moved, adjustments should be made by a specialist.
- A noisy fan should be inspected as it may mean a bearing problem or misalignment.
- Debris and vegetation should be kept away from the outdoor component of the system.
- Most manufacturers prefer to have the outdoor component left uncovered during the winter to prevent rust.
- Condensate drains on rooftop units should discharge to roof drains or gutters in an effort to reduce water from ponding around units.
- The circuit breakers related to the HVAC equipment should be checked monthly for proper operation.

## **Packaged Air Conditioners/Fan Coils**

- **On a quarterly basis, M&O staff (or qualified technician) should:**
  - **Replace air filters**
  - **Inspect and test dampers**
  - **Check and clean evaporator and condensing coils to remove dirt and possible mildew growth.**
    - **Care should be taken to ensure the interior components are installed in the correct orientation after cleaning.**
  - **Check and clean catch pans and condensate drains.**
  - **Check control settings**
  - **Inspect acoustic isolators**
  - **Inspect refrigerant system fittings**
  - **Check furnace operation**
    - **Electric furnaces should be inspected by a qualified technician every year to ensure that all the components are operating properly and no connections are loose or burned.**
  - **Check cabinet for air leaks**
  
- **On a semi-annual basis, M&O staff (or qualified technician) should:**
  - **Check electrical connections semi-annually.**
  - **Check valve operation, before the start of the heating and cooling seasons.**
  
- **On an annual basis, M&O staff (or qualified technician) should:**
  - **Inspect piping insulation annually.**
  - **Check condition of interior belts annually – replace if not in good condition or every two years.**
  - **Ensure blower motors and condenser fan motors receive proper lubrication as recommended by the manufacturer.**
  
- **Every 5 years (or after a system change), M&O staff should:**
  - **Measure supply air flow**
  - **Check refrigerant charge**
  - **Check cooling efficiency**

## **Split system air conditioning units**

Split systems shall be inspected annually by a qualified technician.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Replace air filters
  - Inspect and test dampers
  - Check and clean evaporator and condensing coils to remove dirt and possible mildew growth.
    - Care should be taken to ensure the interior components are installed in the correct orientation after cleaning.
  - Check and clean catch pans and condensate drains.
  - Check control settings
  - Inspect refrigerant system fittings
  - Check cabinet for air leaks
  
  - Check electrical connections.
    - Inspect contactors, capacitors, and wiring.
  - Check valve operation, before the start of the heating and cooling seasons.
  
- On an annual basis, M&O staff (or qualified technician) should:
  - Inspect the refrigerant lines for damaged, missing or loose insulation.
  - Inspect and lubricate fan and blower motors where applicable.
  
- Every 5 years (or after a system change), M&O staff should:
  - Measure supply air flow
  - Check refrigerant charge
  - Check cooling efficiency

## **Air Filters**

- Inspect and replace filters regularly four times per year.
- Select filters that provide the best filtration possible without compromising system performance.
- Turn off the fan while replacing filters to keep debris out of the ducts.

- Don't block off portions of the filter bank unless excess airflow is a problem.
- Clean filter area while fans are off.
- Make sure that filters are properly fitted to prevent air from bypassing the filter.
- Check filter seals.

## Ducts

- Inspect ducts every two years
- Check for and repair any leaks. Leakage from ducts has a big impact on system efficiency and capacity.
- Check for cleanliness, obstructions, water damage, visible microbial growth and hazardous materials.
- If contamination is found in the ducts, clean ducts using HEPA vacuuming equipment.
- If biocides must be used, choose products that are registered by the EPA and follow manufacturer's instructions.
- Maintain negative pressure in the duct cleaning area.
- Clean coils and drip pans at the same time.

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# Electrical Systems and Lighting

The electrical maintenance personnel needs to know the location of transformers, panel boards, branch circuits and all electrical equipment such as motors. If the construction documents are unavailable and the whereabouts of these items is not presently documented, resources should be allocated for obtaining such documentation. The information should be compiled in the form of a drawing such as a line diagram.

- **Immediate Action Issues**
  - A panel which is warm to the touch or smells of burned insulation should be brought to the attention of an electrician.
  - Burned wires indicating loose or poor connections should be repaired by qualified personnel.
  - Loose outlets and switches should be tightened.
  - Frayed or damaged wire, including extension cords, appliance cords and plugs, should be replaced.
  - Poor or loose connections observed should be corrected immediately by a qualified electrician.
- **On a monthly basis, M&O staff (or qualified technician) should:**
  - All breakers should be turned off and on to ensure none have seized.
  - Ground fault circuit interrupter electrical outlets should be tested monthly.
  - Exterior lighting shall be maintained for security of persons and property around buildings and in parking areas.
  - Automatic control devices for exterior lighting shall be checked monthly.
  - Test exit and emergency lighting for proper operation; monitor battery life for emergency lighting systems and replace batteries promptly.
- **On an annual basis, M&O staff (or qualified technician) should:**
  - The main electrical panel should be checked annually for rust or water marks indicating moisture penetration.
  - Check for loose wiring and bolts, scratches and/or other damage to the panels.

- Aluminum wire connections inside the distribution panel should be tightened annually. This should be done by a qualified electrician.

## **Electrical Systems: General Notes**

- The area around the panel for roughly three feet in all directions should be kept clear of storage. Make sure items are not obstructing access.
- All circuits should be labeled.
- Exterior outlets should have proper covers.
- Exterior outlets should be replaced with ground fault circuit interrupter type outlets.
- Panel rooms shall be locked to prevent unauthorized persons from having access to equipment.
- Flammable materials must be stored away from all equipment.
- Main transformers, switchgear, and breaker panels shall be accessible and kept clear of materials and supplies at all times. Covers shall be in place.

## **Electric Motors**

- Inspected, cleaned and oiled (if needed) at least twice a year.
- Follow manufacturer's maintenance suggestions.

## **Controls**

- Test controls regularly for proper operation.
- Perform periodic adjustments – or “tune-ups”- to maintain proper control function.
- Respond promptly to any control complaints to avoid user tampering.
- Keep a copy of the manufacturer's brief control instructions with the control (e.g., inside the cover).
- If a control is accessible to room occupants, place a contact number near the control for individuals to call for assistance if they have difficulty with the control.

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# Plumbing

The plumbing maintenance personnel should know the location of all types of pipes, pumps, fixtures, fittings, valves, and other related items to be maintained. If the construction documents are unavailable and the whereabouts of these items is not presently documented, resources should be allocated for obtaining such documentation. The information should be compiled in the form of a drawing such as a line diagram.

## Plumbing Systems: General Notes

- Licensed personnel must inspect back flow prevention devices annually.
- Locate and eliminate leaks in water piping as quickly as possible to prevent serious damage to the building structure and finished materials.
- Precautions should be taken to ensure that plumbing in outside areas and garage will not freeze during winter months.
- Inspect insulation on pipes prone to condensation. Pay close attention to air conditioning lines
- Establish a record keeping procedure and work order process for routine maintenance of plumbing system.

## Domestic Water Systems

- Immediate Action Issues
  - Locate and eliminate leaks in water tank as quickly as possible to prevent serious damage to the building structure.
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Test pressure relief valves.
  - Check for trapped air.
  - Check pumps and motors for pressure, leaks, noise and vibration.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Test bleeder devices for operability.
- On an annual basis, M&O staff (or qualified technician) should:

- Monitor the pH in the water system to prevent mineral build-up and scaling in pipes.
- Check for corrosion on tank, pipes and pump housings. Treat corrosion and coat if observed.

## **Fire Suppression System**

The property is equipped with an automatic sprinkler system with a back-up pressure system. There are sprinkler heads located throughout the building including the underground parking structure.

- On a monthly basis, M&O staff (or qualified technician) should:
  - Check fire pump control panel and wiring for loose connections; tighten connections as required.
  - Ensure all valves relating to water system are in correct position.
  - Perform a 10 minute pump test run; check for proper operation and adjust if required.
  - Check the fire pump for leaks on suction and discharge piping, seals, packing, glands, etc.
  - Check fire pump operation for excessive vibration, noise, overheating, etc.
  - Check fire pump for alignment, clearances and rotation of shaft and coupler.
  - Tighten or replace loose, missing or damaged nuts, bolts and screws related to fire pump.
  - Lubricate pump and motor as required.
  - Check pump's suction or discharge pressure gauge readings and flow rate.
  - Clean fire pump related equipment and surrounding area.
  - Develop and fill out a maintenance checklist for the fire pump system.
  - Fire extinguishers systems shall be inspected monthly by trained personnel
  
- On an annual basis, M&O staff (or qualified technician) should:
  - Entire Fire sprinkler systems shall be inspected annually and serviced only by a licensed contractor.
  - Fire alarms shall be inspected by a licensed contractor.

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- Equipment such as pull stations and alarm bells or buzzers shall be checked as well as strobe light indicators where applicable.
- Inspect and clean smoke and heat detectors within the building and duct work to prevent false alarms from occurring.
- Any problems noted during these inspections should be corrected immediately.
- Fire extinguishers systems shall be checked annually by a certified inspector.

### **Fire Control: General Notes**

- Control panels shall be accessible and clear of materials and supplies but restricted to authorized personnel only.
- Verify proper operation of sprinkler systems for fire control according to local and/or district regulations.
- Extinguishers must have a current year inspection tag fastened to it and must be inspected and recharged or pressure tested, if needed, at least annually.
- Emergency lighting and exit light fixtures shall be inspected and tested each month while performing fire extinguisher inspections.
  - Inspect wiring and batteries for corrosion and leakage

### **Supply Plumbing Pipes**

- Immediate Action Issues
  - Locate and eliminate leaks in water piping as quickly as possible to prevent serious damage to the building structure and finished materials.
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect supply plumbing for leaks.
    - Check piping, seals, valves and joints and repair problems immediately
- On an annual basis, M&O staff (or qualified technician) should:
  - Operate the main shut-off valve and critical isolating valves to ensure proper operation in the event of an emergency.

- Verify that backflow prevention devices are functioning properly.
  - Test and calibrate check valve operation of backflow prevention device with test set. Test frequency may vary depending of local regulations and application.
  - Bleed air from backflow preventer.
  - Inspect for leaks under pressure.
  - Clean backflow preventer and surrounding area.
  - Fill out maintenance checklist and report deficiencies.

## **Water Heaters**

- Immediate Action Issues
  - Take immediate action to remedy any problem observed that could be a safety issue.
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Check pressure gauges and relief valves for proper operation. Modern water heaters have a test lever on the pressure relief valve. If the relief valve does not discharge near a drain, a bucket will be required.
  - Test for deposits on the tank, by draining some water from the bottom of the tank. If there is sludge present drain off a couple of gallons. Be sure to shut off the power or fuel supply prior to draining any water from the tank.
- 
- On a annual basis, M&O staff (or qualified technician) should:
  - Flush tanks annually. Be sure to shut off the power or fuel supply prior to draining any water from the tank.
  - Check the condition of thermal insulation.
  - Check for corrosion. Treat if observed.

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## **Water Waste Management**

### **Storm Water Systems**

- Immediate Action Issues
  - Remove any items obstructing storm drainage system.

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- If sump pumps inoperable, make repairs immediately.
- On a monthly basis (or after an observed problem), M&O staff (or qualified technician) should:
  - Clean sump pump strainer screens.
  - Check operation of float operated switches for sump pumps.
  - Remove debris from sumps when the debris has reached a depth of half of the distance between the bottom of the drain pipe and the bottom of the sump.
- On an annual basis (or after an observed change), M&O staff (or qualified technician) should:
  - Fill garage floor drain traps with water to ensure that they are not broken. If cracked, or if the water has evaporated, sewer odors will enter the building.
  - Inspect storm sewage lines for debris or other blockages.
  - Verify proper roof drainage and drainage away from building and foundation (see Roof Drainage).
  - Test sump pumps for proper operation.
    - Inspect and replace if necessary sump pump strainer screens.
    - Check operation of float operated switches.
  - Basement floor drains, exterior drains, and subsurface drains located in the courtyard should be checked and cleaned as necessary. Slow drains within the building should be cleared.

### **Sanitary Waste Disposal**

- Immediate Action Issues
  - Visible waste plumbing should be frequently monitored for leaks.
- Every 5 years (or following a noted change), M&O staff should:
  - Have a condition assessment that includes an examination of all sanitary waste plumbing performed by a by a qualified plumbing expert or professional engineer.

# Passenger Elevator

## Hydraulic Elevator: General Notes

- A service maintenance agreement shall be held with a licensed contractor that provides for routine examination, lubrication, cleaning, adjustment, replacement of parts, and performance of applicable code-required safety tests.
- Equipment rooms and pits shall be kept clean at all times.
  
- On a monthly basis, M&O staff (or qualified technician) should:
  - Ride cars, checking for any unusual noise or operation.
  - Inside car
    - Inspect and clean fixtures and signal in operating panel and direction indicator.
    - Check operation of emergency indicator and bell.
    - Check handrails and interior panels for tightness.
    - Check for tripping hazards.
  - Inspect and lubricate rails of hoistway.
  - Hallway corridor
    - Inspect hall buttons, signal lamps, lanterns and hall position indicator.
    - Inspect starter station, key operation and lamps.
  - Motor room
    - Inspect machine room equipment.
    - Inspect tank oil level.
  
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect and adjust controller contacts; main operating contactors and switches.
  - Inspect door operator and clean parts, adjust safety edge, light ray and cables.
  - Clean and adjust proximity devices on door.
  - Clean all equipment and surrounding area.
  - Fill out and record maintenance checklist.
  
- On an annual basis, M&O staff should:
  - Have the equipment inspected by a certified inspector;

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- File an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with local ordinances
- When an inspection report is filed, the owner shall maintain verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into.
- Display the certificate of compliance in a publicly visible area of the building.
- A certified inspector shall conduct a relief pressure test and any other service, repair, and maintenance sufficient to ensure the safe operation of the elevator.

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# **INTERIOR FINISHES (Common Areas)**

## **Floors**

- Floor coverings which include ceramic tile, finished wood flooring, stained concrete and carpeting, shall be maintained as recommended by the product manufacturer.
- Transitions from surfaces shall be maintained level and smooth to prevent trips and falls.

## **Walls and Ceilings**

- Walls and ceilings should be inspected for cracks in interior finishes. The amount of movement should be noted so that it can be monitored in the future.
- Bulges in wall and ceiling surfaces should be carefully monitored. Separated plaster, particularly on ceilings, can fall and cause injury.
- Walls, particularly in corners and areas of dead air (behind drapes for example), should be checked for evidence of condensation and mildew indicating high humidity levels within the building.
- Water stains on interior finishes should be noted. If the source cannot be detected, they should be monitored.
- Door frames should be inspected.
- Door frames which become out of square during a relatively short period (six months) may indicate structural problems.
- Condensation on windows indicates high humidity levels during winter months. This can sometimes lead to rot.

## **Paint – Wall and Ceiling**

- Only experienced contractors should be used for interior paint application.
- All precautions to prevent health hazards to the residents and staff must be taken.
- Proper ventilation is always required.
  - Paints and solvents shall be stored away from all residents' areas and disposed of properly. Proper ventilation shall be utilized during painting operation.

# Landscaping / Grounds

Grounds maintenance is very crucial to the public perception of a facility. Daily inspections and trash pick up with scheduled mowing is the first step in maintaining the appearance of the facility. Plants allowed to grow too close to a building can create mold and mildew problems on exterior wall surfaces. This could lead to indoor air quality problems within the building. Proper drainage shall be provided to prevent water from ponding and erosion from occurring around the buildings. Fencing and gates shall be maintained in good condition at all times to discourage unauthorized access and prevent injuries.

## Landscaping

### Ground Cover/Grass

- Monitor grass condition and moisture levels when mowing to determine if aerating, nutrients or other measures are needed.
- Conduct spot treatments when applying chemicals. Apply fertilizer only to areas that need it to prevent weeds.
- Use proper, working equipment and safety gear for protection.

### Trees

- Do not use excess chemicals such as fertilizers to prevent pollution caused by seeping into the soil. Apply fertilizer and other chemicals only to areas that need it.
- Schedule fertilizer applications according to climate, location and plant species.
- Properly irrigate trees by following tree watering guidelines.
- Schedule frequent pruning to maximize plant health.
- Keep leaves, grass clippings and other ornamental wastes cleared off the sidewalks and streets so they don't wash into the storm drains and ultimately into streams and ponds. Power blowers should be used to blow clippings onto grass, not into the gutter.
- ➔ Physically pull weeds out by hand, digging or cultivations, before resorting to chemical use.
- Never top trees.

- Tree limbs overhanging the building should be cut back. Dead limbs should be removed. Vines should be trimmed back from all exterior building surfaces.

## **Ornamentals**

- Do not use excess chemicals, such as fertilizers to prevent pollution caused by seeping into the soil. Apply fertilizer and other chemicals only to areas that need it.
- Maintain a buffer zone along waterways where chemicals are not applied in accordance with product labels, local ordinances and state and federal regulations to keep chemicals out of surface water bodies.
- Frequent pruning of ornamentals is key to maximizing plant health. It is important to establish a regular ornamental care schedule to promote healthy and lush plants, shrubs, trees and flowers. Prune as needed according to specific design and species of landscape.
- Keep leaves, grass clippings and other ornamental wastes cleared off the sidewalks and streets so they don't wash into storm drains and ultimately into streams and ponds. Power blowers should be used to blow clippings onto grass, not into the gutter.

## **Hardscape**

- Sidewalks, driveways, parking areas and other paved areas shall be inspected monthly.
- Clean and fill cracks and expansion joints in concrete with a rubber asphalt sealant to prevent moisture from entering.
- Recommended fillers and sealant shall be used to prevent moisture from entering surface. This will help prevent moisture from entering, extend the life of the concrete, and reduce costly repair and/or replacement.
- Surface areas shall be level, free of holes and depressions and provide smooth transitions to all areas to prevent trip and fall hazards.
- Parking lots, handicap parking spaces, driveways, fire and emergency vehicle zones, and car loading/unloading areas shall be marked with lettering, symbols, and striping as needed to provide information identifying these areas as such.
- Paint marking shall be repainted as needed to maintain a good appearance and visibility.

- Sidewalks and other flatwork should be checked for cracks and deterioration. Settling which will result in surface water run off towards the building should be corrected as should uneven sections which pose a safety hazard to pedestrians.
- Inspect courtyard and hardscape once every day for hazardous materials, condition of equipment, all the while picking up litter that is found.
- Conduct daily inspections of hardscape for hazardous materials and waste.
- Conduct daily inspections for graffiti and immediately submit request for removal.
- Hose areas where liquid materials have been spilled.
- Inspect landscape irrigation systems frequently to reduce water runoff and prevent hardscape damage.

## **Irrigation Systems**

- Perform equipment checkup and maintenance on a weekly basis, which includes checking equipment for damage, such as leaks or adjustments and then performing the adjustment or repair necessary.
- Perform in-depth inspections of irrigation systems after annual activation in the spring, and bring systems up to specified operating conditions.
- Prioritize future irrigation system improvements by maintaining a record of repairs that are needed, especially for large irrigation systems.
- Hire a certified landscape irrigation auditor at least once every five years to conduct a thorough and comprehensive efficiency check for properties that are one acre or larger.
- Look for signs of leakage, such as overgrown or particularly green turf areas, soggy areas around spray heads and aboveground hoses, jammed spray heads and torn hoses.
- If irrigation water runs onto hardscape, such as sidewalks, streets or driveways, immediately shut off irrigation systems and adjust.
- Perform regular and annual inspections of system components to confirm that equipment and equipment components meet the original criteria for efficient operation and uniform distribution of water.

## **Pest Management - Outdoor**

- Regularly monitor pest populations and relevant factors that contribute to pests.
- Accurately identify pests that have been discovered.
- Implement spot treatments of low risk chemicals as needed to minimize human exposure and costs.
- Evaluate effectiveness of treatments to improve future actions.
- Educate all people involved with the pest problem.
- Focus on preventive pest management methodologies such as exclusion, sanitation and habitat modification.
- Use pesticides only as a last resort. Select products that are low risk to human health, as children are particularly vulnerable to pesticides.
- Choose chemicals that do not disrupt the settings of your landscape by killing non-target organisms and natural enemies that aid in pest control.

## **Drainage**

### **Waterproofing and drainage system – beneath courtyard.**

There is a landscaped courtyard located directly above the parking garage. The courtyard contains a swimming pool, fountains, raised planter boxes and a brick paver deck and walkways. Beneath all of these features is a waterproofing drainage system. The system appears to consist of a layer of bituminous waterproof membrane covered by a protection board and drainage mat. Water is prevented from entering the concrete deck by the membrane and is transported through the drainage mat to subsurface drains located in various locations throughout the courtyard. Many subsurface drains were observed in the trench that follows the perimeter of the courtyard. It is critical that these drains do not become blocked, as the water will back up and could rise above the waterproofing membrane.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Quarterly, the drainage system should be checked for proper operation.
  - Drainage problems should be corrected.
- Every 5 years (or following an observed change), M&O staff should:
  - Have a condition assessment performed by a by a qualified waterproofing technician or professional engineer.

## **Swimming Pool, Fountains and Whirlpool: General Notes**

- As with any special equipment, whirlpool baths and spas need to be operated properly and safely.
- You should try to secure a copy of the manufacturer's operating instructions in order to understand fully the way this equipment functions and the safety precautions one should follow.
  
- On a weekly basis, M&O staff (or qualified technician) should:
  - Clean strainer basket.
  - Backwash pool water filter.
  - Check and adjust chemical levels for swimmer safety and prolonged life of liner.
  - Check circulating pump for leaks and unusual noises.
  - Fill out maintenance report.
  
- On an annual basis, M&O staff (or qualified technician) should:
  - Check pool deck for, cracks, spalls, and deteriorated sealant. Make repairs as necessary.
  - Check liner for, cracks, spalls, pin-holing plaster and other deterioration. Make repairs as necessary.
  
- Every 6 years, M&O staff should:
  - Replacement of mechanical equipment (pumps, filters, heaters, etc.) should be expected.

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# **Cold Weather Issues**

## **Parking Areas/Driveways**

- When ice accumulation occurs on pavement and flatwork, M&O staff (or qualified technician) should:
  - Schedule removal to accommodate staff and residents.
  - Make sure sufficient lighting is available for removal crews. Equipment lighting should be used in combination with parking lot lighting.
  - Signs should be posted indicating any dangerous slopes or other icy conditions.
  - Use sand, salt and other de-icers as needed in parking lots, paying attention to temperature, moisture and time of day, which can all impact effectiveness.

## **Walkways/Doorways**

- When ice accumulation occurs on pavement and flatwork, M&O staff (or qualified technician) should:
  - Schedule removal to accommodate staff and residents.
  - Clear doors and thresholds often.
  - Mark paths and walkways for sensitive areas and potential hazardous conditions.
  - Sand and deice walkways and doorways to prevent any injury to staff and residents entering and exiting the building.
  - Consider melt mats to keep heavily trafficked areas free of ice.

## **Roofs**

- Train staff on equipment and safety procedures for roof snow removal.
- Use shovels with plastic blades as a first resort to clear space along the roof perimeter for additional staff and equipment.
- Protect windows, landscaping and staff on the ground from falling snow due to roof removal operations.



- Be sure to mark roof jacks, vent pies, exhausts and intakes, antennas, weather vanes and satellites that may become buried by snow.
- Investigate all roof edges from the ground each morning for cornices and remove them if needed.
- Consider heat tapes and melt mats to keep roof eaves, overhangs, gutters and downspouts free of ice.

## **Winterizing Building**

- When temperatures are predicted to drop below the freezing level, M&O staff (or qualified technician) should:
  - Valves and exterior faucets should be winterized by whatever means appropriate for the situation.
  - Markers should be installed where necessary.
  - Deicers should be procured and stored in appropriate locations.
  - Heating systems should be inspected, adjusted and tested to assure optimal operation when needed.

## **Winterizing Fields and Grounds**

- When temperatures are predicted to drop below the freezing level, M&O staff (or qualified technician) should:
- Sprinkler system, pump station equipment, and plumbing should be prepared for freezing temperatures.
- Swimming pool should be prepared for freezing temperatures.
- Landscaping items that cannot withstand severe temperatures should be covered or stored until conditions improve.

**Sample Item Checklist**

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<b>Components</b>		<b>M</b>	<b>Q</b>	<b>SA</b>	<b>A</b>

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## Typical Lives of Replaceable Components

<b>Component</b>	<b>Estimated Useful Life</b>
Carpet	5 to 7 years
Paver system (@ Courtyard)	30 to 34 years
Ceramic Tile	30 to 34 years
Wood Flooring	25 to 30 years
Mail boxes, built in wall	15 to 20 years
Paint, interior	5 to 8 years
Wallpaper	10 to 13 years
Wood doors	20 to 22 years
Elevator cab interior	15 years
Elevator mechanical	20 years
Controllers	6 to 8 years
Package heating and cooling	13 years
Plumbing fixtures	20 to 25 years
Water Heaters	10 years
Pumps, motors, controls – plumbing	4 to 7 years
Light fixtures	10 to 14 years
Sprinkler and fire protection systems	23 to 26 years
Security Access systems	10 to 15 years
Emergency and Exit Lighting	8 to 12 years
Composition shingle roofing	12 years
Meat roofing	20 to 30 years
Masonry façade, minor repair	8 to 11 years
Masonry façade, major repair	25 to 30 years
Caulking, replacement	8 to 10 years
Window Systems, metal	16 to 23 years
Concrete sidewalks	16 to 20 years
Irrigation system	18 to 22 years
Irrigation controllers	9 to 11 years
Swimming Pool, refinish	7 years
Swimming pool, mech. Equipment	5 to 6 years
Underground sewer & water lines	25 to 28 years

**REFERENCE SECTION**

1. Sealant replacement (Reference "Construction Waterproofing Handbook")

2. Means Facilities Maintenance Standards

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~~PROPERTY RECORDS - PUBLIC RECORDS~~

COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number [redacted] on the date and at the time stamped herein by me; and was duly recorded in the Official Public Records of Real Property of Harris County, Texas on

June 29, 2005



*Benjamin B. Hoffman*  
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HARRIS COUNTY TEXAS

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