



DECLAR 2007033634

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STATE OF TEXAS

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COUNTY OF LUBBOCK

**CONDOMINIUM DECLARATION  
MAIN STREET CONDOMINIUMS PHASE 2**

This Declaration is executed by McDougal Construction, L.C., a Texas Limited Liability Company, under the provisions of the Uniform Condominium Act, TEXAS PROPERTY CODE §§82.001 et seq. ("Act"), and constitutes the entire Condominium Declaration affecting the described property.

**1. DEFINITIONS AND DESCRIPTIONS**

A. The property is located on the North side of the 2100 block of Main Street, Lubbock, Lubbock County, Texas 79401.

B. Declarant, by recording this Declaration, submits the property to the provisions of the Act.

C. The covenants, conditions and restrictions contained in this Declaration and in the exhibits and appendices to the Declaration will be enforceable legal and equitable covenants and will run with the land.

D. Attached to this Declaration as Exhibits "A", "B", and "C" and made a part of this Declaration are plats of the property and tables, as required by the Act.

E. The administration of the property will be governed by Bylaws which are embodied in a separate instrument, a true copy of which is appended to and recorded with this Declaration as Appendix A.

F. All terms used in this Declaration and the Bylaws will have the same definition as the terms defined in the Act, unless the Act allows for a variation of the terms and that variation is stated in this Declaration,

G. The property will be known as MAIN STREET CONDOMINIUMS PHASE 2.

**2. DESCRIPTION OF THE LAND**

The land on which the buildings and improvements are located, is described as follows:

Tract 12, Overton Park Addition to the City of Lubbock as found in Instrument No. 2007013369 of the Official Public Records of Lubbock County, Texas.

**3. DESCRIPTION OF THE BUILDINGS**

The buildings, as shown on Exhibit "A", located on the land are described as Building 1 (2102 Main Street), Building 2 (2104 Main Street), Building 3 (2106 Main Street), Building 4 (2108 Main Street), Building 5 (2110 Main Street), and Building 6 (2112 Main Street) as shown on the plat are of brick- and/or masonry-veneer construction on concrete slab foundations and contain residential condominiums as shown on the plat.

**4. DESCRIPTION OF CONDOMINIUM UNITS**

A. Each condominium unit ("Unit") has immediate access to the exterior, attached to this Declaration as Exhibit "C", is a table setting forth the building and number of each Unit, indicating the location of the Unit, a general description of the Unit, the approximate square footage in the Unit and the approximate percentage of undivided interest in the Common Elements appertaining to the Unit. The Units are more particularly described in the plats attached as Exhibit "B".

B. The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its: (i) perimeter or bearing walls, (ii) windows and doors, (iii) its lowermost floor and (iii) uppermost ceiling. Each Unit will include both the portions of the building in which it is located that are not Common Elements within those boundary lines and the space encompassed within those boundary lines, excepting Common Elements. A Unit includes any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and ceilings; non-supporting interior walls; and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding anything else herein, the air conditioning unit servicing each Unit is a part of that Unit, no

matter where located, and is not a common element.

## 5. DESCRIPTION OF COMMON ELEMENTS

The term "Common Elements" means and includes the land on which the buildings are located and all portions of the property not contained within any Unit, including, but not by way of limitation, the foundations, columns, girders, beams, supports, main walls, fire walls, roofs, and entrances and exits of the buildings; the grounds and green belts; installations of all services not serving an individual Unit (including power, light, gas, and water equipment); any driveways; utility pipes, lines, or systems servicing more than a single Unit; all Limited Common Elements as described below; all General Common Elements as described below; and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Elements in the plat and all repairs, alterations, and replacements of any of these items.

## 6. DESCRIPTION OF LIMITED COMMON ELEMENTS/GENERAL COMMON ELEMENTS

The term "Limited Common Elements" means and includes those portions of the Common Elements reserved for the use of certain Units to the exclusion of other Units. The Limited Common Elements will be the entrances and exits of each Unit, the windows of each Unit, the patios, balconies that are immediately adjacent and contiguous to certain Units as well as the parking spaces immediately adjacent to the buildings. The use and occupancy of designated Limited Common Elements will be reserved to its associated Unit. Each Unit owner is granted an irrevocable license to use and occupy their respective Limited Common Elements, and will have the responsibility to maintain their respective Limited Common Elements as provided below.

The term "General Common Elements" means those portions of the Common Elements that are expressly not Limited Common Elements.

## 7. UNIT OWNERSHIP

A. The percentage of undivided interest in the Common Elements appertaining to each Unit and its owner for all purposes, including voting, is 1/45<sup>th</sup>. These percentages have been computed by taking as a basis the individual Units in relation to the total number of all Units in the property.

B. A Unit owner will have the exclusive ownership and use of the owner's Unit, subject to the provisions of this Declaration and the Bylaws, and will have a common right to share with other owners in the Common Elements of the property.

## 8. PURPOSE OF THE PROPERTY/RESTRICTIONS & COVENANTS

A. The purpose of the property is to provide residential housing, parking and recreational facilities for Unit owners, their respective families, tenants and guests.

B. The following restrictions and covenants are placed on each of the affected Units as a general plan or scheme of restrictions, for the benefit of each Unit and for the whole:

1. All of the Units in this Condominium will be known and described as residential Units and will be used for residential purposes only during the existence and continuance of the condominium established by this Declaration. The area embraced by the General Common Elements will be used for parking, social recreation, utility access or other purposes directly related to family residential use.

2. Each Unit will be used and occupied as a private, single-family dwelling unit only. No Unit will be altered, remodeled, subdivided or converted into more than one single-family dwelling unit, except as provided for herein.

3. No Unit will be used or occupied for any professional office, business or commercial purpose, or any other non-residential purpose.

4. The Owners of the respective Units will have the right to rent or lease their respective Units, furnished or unfurnished, for residential purposes only, provided that the tenancy or lease will be subject to the provisions of this Declaration, the Bylaws and the rules and regulations adopted by the Board of Directors of the Association of Unit Owners (the "Board of Directors" or the "Board").

5. No parking space will be used for any other purpose except to park an operable motor vehicle,

motorcycle or other wheeled conveyance. No other storage will be allowed in the parking spaces.

6. A Unit owner will not obstruct the Common Elements. A Unit owner will not place or store anything within the Common Elements without the prior written consent of the Board of Directors.

7. No trash, rubbish, garbage or debris will be kept or placed in any of the patios or similar areas or be permitted to accumulate on any other Common Elements so as to render those area unsightly, offensive or detrimental to other property. All garbage and trash will be placed or kept in designated containers as approved by the Board of Directors.

8. Without the prior written consent of the Board of Directors, a Unit owner will not permit anything to be done or kept in the owner's Unit or in the Limited Common Elements appurtenant to the Unit that would result in an increase in the cost of insurance on the property, or that would result in the cancellation of insurance with respect to all or any part of the property, or that would be in violation of any governmental law, ordinance, regulation, or requirement.

9. Without the prior written consent of the Board of Directors, a Unit owner will not permit any signs, pictures, banners, posters or other objects of any kind to be displayed to the public view from the owner's Unit or from the Limited Common Elements appurtenant to the Unit. Notwithstanding the above, the Developer may maintain a sign on the property to advertise or attract attention to the project for as long as the Developer owns any Unit which is for sale.

10. A Unit may not be renovated or remodeled in any manner that interferes with the aesthetic or structural integrity of the supporting structure. A Unit owner shall not alter, construct in, or remove anything from the Common Elements without the prior written consent of the Board of Directors.

11. No antenna, satellite dish, or other device for the transmission or reception of television signals, radio signals, or any form of electro-magnetic radiation will be erected, used, or maintained outdoors on any Unit if attached to a building or structure or otherwise. No such equipment shall be placed on or in, or protrude on or in, any General Common Element airspace. The Association of Unit Owners may erect a common television reception device or devices. No CB or shortwave radios shall be operated in any Unit.

12. Outside visible clotheslines or other outside facilities for drying or airing clothes will not be erected.

13. No tree, shrub or planting of any kind on any Unit or on Common Elements will be allowed to overhang or otherwise encroach on any sidewalk or other pedestrian way from ground level to a height of twenty five (25) feet without the prior approval of the Board of Governors.

14. No Unit or any part of the surface of the Common Elements will be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

15. No Owner will permit any condition to exist on any Unit which will induce, breed, or harbor plant diseases or noxious insects.

16. A Unit owner will not permit animals of any kind to be raised, bred or kept in the owner's Unit or in the Limited Common Elements appurtenant to the Unit, other than a dog, cat, or other common household pet, subject to reasonable rules and regulations as may be adopted by the Board of Directors. No animal or bird will be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird will be maintained so as to be visible from neighboring property. On the written request of any Owner, the Board of Directors will conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds in question is reasonable and in compliance with this paragraph.

17. The Units and Common Elements will not be used so as to disturb the neighborhood or occupants of adjoining Units, or to constitute a nuisance or to violate any applicable public law, ordinance or regulation, or to create or emit any objectionable, offensive or noxious odors, dust, gas, offensive fumes or similar material.

18. A Unit owner will not violate any of the rules and regulations for the use of Units, Common Elements (General or Limited) adopted by the Board of Directors and furnished in writing to the Unit owners.

19. No immoral, improper, offensive or unlawful use will be made of the project, and all valid laws, zoning ordinances and regulations of the governmental bodies having jurisdiction of the property will be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance, modification or repair of the project will be the responsibility of the Association of Unit Owners acting by and through the Board of Directors.

20. No nuisances will be allowed on the project, nor any use or practice that is the source of annoyance or offense to residents or that interferes with the peaceful possession and proper use of the property by its residents. All parts of the property will be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit owner will permit any use of his or her Unit or make any use of the general or Limited Common Elements that will constitute a nuisance or annoyance to the residents of other Units.

The Board of Directors of the Association of Unit Owners will determine whether an activity is offensive or constitutes a nuisance subject to the reasonable rules and regulations adopted.

## 9. ASSOCIATION OF UNIT OWNERS AND BOARD OF DIRECTORS

A. The persons or entities, including the Declarant, who are at the pertinent time the Unit owners constitute the Association of Unit Owners ("Association"), which will be incorporated as a Texas nonprofit corporation under the name Main Street Condominiums Phase 2 Unit Owners Association, Inc. This is the name in which contracts will be entered into, title to property will be acquired, held, dealt in and disposed of, bank accounts will be opened and suits will be brought and defended by the Board of Directors or officers of the Association on behalf of, or as agent for the Unit owners in the manner specified by the Act, this Declaration and the Bylaws.

The Association will not include those having an interest in a Unit merely as security for the performance of an obligation.

B. The management and maintenance of the property and the administration of the affairs of the Association will be conducted by a Board of Directors, consisting of seven (7) natural persons who must be Unit owners. The Board will be elected as provided in the Bylaws. The rights, duties and functions of the Board may be exercised by Declarant until thirty-six (36) Units are sold by the Declarant. Declarant may, at its sole option, turn over these rights, duties and functions to the Board at an earlier date.

C. The Board will have all the powers, duties and responsibilities as are now or may later be provided by the Act, this Declaration and Bylaws, including but not limited to the following:

1. To make and enforce all administrative rules and regulations covering the operation and maintenance of the property and the assignment of parking spaces.
2. To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to those persons a reasonable compensation for their services. In the event the Board determines that the management of the property should be conducted by a professional management company, any agreement relating to professional management will be for a contract term not to exceed three (3) years.
3. To operate, maintain and repair the Common Elements including landscaping and the exterior surfaces of the Units. However, furnaces, air conditioning equipment, plumbing, fixtures, household appliances and other interior mechanical equipment, used in and for the Units, and the interior surfaces of each Unit will be maintained and repaired by the respective owners of the Units, and all maintenance of this type will be at the sole cost and expense of the respective Unit owner.
4. To determine and pay the common expenses including water, sewer, garbage, gas, electricity and other necessary utility services for the Common Elements. Charges for utilities so used will be assessed and collected by the Board as provided herein.

5. To assess and collect the proportionate share of all common expenses from the Unit owners.
6. To enter into contracts, deeds, leases and other written instruments or documents and to authorize their execution and delivery by the appropriate officers.
7. To open bank accounts on behalf of the Association and to designate the authorized signatures for those accounts.
8. To purchase, hold, sell, convey, mortgage or lease Units in the name of the Association or its designee.
9. To bring, prosecute and settle litigation for itself, the Association and the property, provided that the Association make no settlement which results in a liability against the Board, the Association or the property in excess of \$45,000.00 without prior approval of the members of the Association.
10. To obtain insurance for the Association with respect to the Units and the Common Elements as provided below, as well as worker's compensation insurance, Directors and Officers liability insurance and general liability insurance.
11. To repair or restore the property following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the property from the provisions of the Act.
12. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Unit owners, items of personal property necessary to, or convenient to, the management of the business and affairs of the Association and the Board in the operation of the property, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.
13. To keep adequate books and records of the affairs and dealings of the Board and the Association relating to the management of the property.
14. To do all other acts necessary for the operation and maintenance of the property, including the maintenance and repair of any Unit or Limited Common Element if the same is necessary to protect or preserve the appearance and/or value of the property and the Unit owner has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair delivered by the Board. The Board will levy a special assessment against that Unit for the cost of the necessary maintenance or repair.

D. The Board may delegate to a manager or managing company all of the foregoing powers, duties and responsibilities referred to in Section 9C, above, except (i) the final determination of common expenses, budgets and assessments; (ii) the promulgation of administrative rules and regulations; (iii) the power to enter into any contract involving the expenditure of more than \$45,000.00 in any one fiscal year; (iv) the opening of bank accounts; (v) the power to purchase, hold, sell, convey, mortgage or lease any Units in the name of the Association or (vi) the authority to bring, prosecute and settle litigation.

E. Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) will not be liable to the Unit owners as a result of their activities for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) will have no personal liability in contract to a Unit owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in that capacity; (iii) will have no personal liability in tort to any Unit owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in that capacity, and (iv) will have no personal liability arising out of the use, misuse or condition of the property, which might in any way be assessed against or imputed to them as a result or by virtue of that capacity.

F. The Unit owners will indemnify and hold harmless any person, his or her heirs and personal representatives, from and against all personal liability and all expenses, including attorneys' and experts' fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Unit owners, or any other persons or entities, to which he or she will be or will be threatened to be made a party by reason of the fact that he or she is or was a member of the Board or an officer or assistant officer,

agent or employee of the Association, other than to the extent, if any, that the liability or expense is attributable to his or her willful misconduct or bad faith, provided that, in the case of any settlement, the Board will have approved the settlement, which approval is not to be unreasonably withheld. This indemnification by the Unit owners will be paid by the Board on behalf of the Unit owners and will constitute a common expense and will be assessed and collectible as a common expense. At the election of the Board, policies of insurance may be secured, as a common expense, insuring the members of the Board and officers, assistant officers, agents and employees of the Association against all liability envisioned by this paragraph.

#### 10. MAINTENANCE

A. The maintenance, replacement and repair of the Common Elements will be the responsibility of the Board, and those costs will be a common expense. The Board will also maintain, replace and repair all balconies and patios except for routine cleaning, and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of gas, light, power, water and sewer service contained in the portions of the Units that service part of the property other than the Unit in which they are contained. All incidental damages caused to a Unit by the maintenance, replacement and repair of the Common Elements or utility services will be repaired promptly as a common expense.

B. The Unit owners will have the responsibility to maintain and keep in a clean and sanitary condition, at the Unit owner's expense, all portions of the owners' Unit, except those portions to be maintained by the Board. The Unit owners will keep clean and in a sanitary condition their storage areas, balconies and patios.

#### 11. INSURANCE

A. The Board will maintain insurance on this property of the type and kind provided below, including insurance for risks that are customarily covered with respect to other properties similar in construction, design and use to this property. The Board will make every reasonable effort to obtain insurance with the following provisions or endorsements:

1. Exclusive authority to adjust losses will be vested in the Board as insurance trustee;
2. The insurance coverage will not be brought into contribution with insurance purchased by individual Unit owners or their respective mortgagees;
3. Each Unit owner may obtain additional insurance covering the owner's real property interest at the owner's expense;
4. The insurer waives its right of subrogation as to any claims against each Unit owner;
5. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual Unit owners or their respective tenants, employees, agents, contractors and guests;
6. The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of the Association or Board or their employees, agents or contractors, without prior demand in writing that the Board cause the defect to be cured. If the defect is not cured within thirty (30) days after receipt of demand by the Board the policy may then be cancelled, invalidated or suspended, at the option of the insurer and as provided by the policy.

B. The Board will obtain insurance insuring the Board, the Association, the Unit owners and their respective tenants, servants, agents or guests against any liability to the public or to the owners of Units, members of the households of Unit owners and their respective invitees or tenants arising out of and incident to the ownership or use of the Common Elements, including all personal liability exposure of the Unit owners incident to the ownership or use of the Common Elements. The limits of liability under this insurance will not be less than \$1,000,000.00 for any one person injured in any one occurrence, and will not be less than \$50,000.00 for property damage in each occurrence. The Board will also obtain an umbrella policy covering general liabilities with a minimum policy limit of \$1,000,000.00. The Board will obtain an Officers & Directors policy with a minimum policy limit of \$1,000,000.00. The limits of liability coverage will be reviewed at least annually by the Board and increased or decreased at its discretion, provided that these limits will not fall below the minimums specified in this paragraph. This liability

coverage will be issued on a comprehensive liability basis and, if possible, will provide cross-liability endorsements for possible claims of any one or more or group of insureds against any one or more or group of insureds without prejudice to the right of a named insured under the policies to maintain an action against another named insured.

C. The Board, for the benefit of the property and the Unit owners, will maintain a policy or policies of casualty and multi-risk insurance on the property, with the provisions and endorsements as stated in paragraph 11.A, if obtainable, and with extended coverage endorsements for the full insurable replacement value of the Common Elements payable to the Board as insurance trustee to be disbursed in accordance with the terms of this Declaration. The initial limits and coverage under this policy shall be \$3,500,000.00 of property insurance (with a \$10,000.00 deductible and a \$25,000.00 deductible for wind and hail losses). The limits and coverage of this insurance will be reviewed at least annually by the Board. This coverage will provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each Unit, provided however, any proceeds will be applied pursuant to the provisions of paragraph 12.

D. Each Unit owner will be required to notify the Board of all improvements made by the Unit owner to his or her apartment, the value of which is in excess of \$10,000.00, and will be liable for any increased insurance premium for insurance maintained by the Board occasioned by those improvements. Each Unit owner will bear the risk of loss for all improvements made to his or her apartment that were not the subject of prior notice to the Board.

E. Unit owners must provide the Board, at least annually, with a Certificate of Insurance evidencing coverage for the Unit and the Limited Common Elements. Minimum coverages for Unit policies shall be \$500,000.00 for personal liability, \$4,000.00 for medical coverage of others, and property coverage of at least \$50,000.00 for damage to the Unit's finish out elements. The Board may increase this minimum coverage at its discretion. Proceeds of claims paid under such policies for damage to the Unit property must be applied to the appropriate repair of the finish out elements. If they are not, the Board is authorized to make repairs and assessments for them as set forth in Paragraph 9.c.14, above.

F. No Unit owner will be entitled to exercise his or her right to maintain insurance coverage in a manner that decreases the amount that the Board, on behalf of all of the Unit owners, may realize under any insurance policy that the Board may have in force covering the property.

## 12. DAMAGE

A. If any of the buildings are damaged by fire or other casualty and that damage is limited to a single Unit, all insurance proceeds will be paid to the owner or owners or mortgagee or mortgagees, of that Unit, as their respective interests may appear. The Unit owner or owners or mortgagee or mortgagees, will use those insurance proceeds to promptly rebuild or repair that Unit in accordance with the original plans and specifications for the Unit. If the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding the Unit in accordance with the original plans and specifications, the Unit owner will be liable for any deficiency.

B. If the casualty damage extends to two or more Units, or extends to any part of the Common Elements, those insurance proceeds will be paid to the Board, as Trustee, to be held in trust for the benefit of the Unit owners and their mortgagees as their respective interests may appear. The Board will then contract to repair or rebuild the damaged portions of all Units, buildings, and the Common Elements in accordance with the original plans and specifications using the funds held in the insurance trust fund for this purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board will levy a special assessment on all Unit owners, in proportion to the percentage interest of each Unit owner in the Common Elements to make up any deficiency. If any Unit owner fails to pay the special assessment within sixty (60) days after the levy, the Board will make up the deficiency by payment from the maintenance fund; provided, however, that the Unit owner failing to pay the special assessment will remain liable for the assessment.

C. If two-thirds (2/3rds) or more of the buildings are destroyed or damaged by fire or other casualty, as determined by the Board, and unless otherwise unanimously agreed by the Unit owners at a special meeting to be held not later than fourteen (14) days after the casualty, the insurance proceeds will be delivered 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; and the Board will, as soon as reasonably possible, record

with the Clerk of Lubbock County a notice stating those facts, and on the recording of the notice (i) the property will be deemed to be owned in common by the Unit owners as tenants in common, each Unit owner owning an undivided interest in the property equal to his or her percentage ownership in the Common Elements as stated in the exhibits to this Declaration; (ii) any liens affecting any of the Units will be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit owner in the property and (iii) the property will be subject to an action for partition as the suit of any Unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, will be considered as one fund and will be divided among all Unit owners in a percentage equal to the percentage of undivided interest owned by each Unit owner in the property, after first paying out of the respective shares of each Unit owner, to the extent sufficient for these purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each Unit owner.

D. For purposes of this Section 12, the terms “disaster”, “destruction” or “substantial damage” also mean and include a temporary or permanent taking, injury or destruction of all or part of the Common Elements or one or more Units or parts of Units by the exercise of the power of, or power in the nature of, eminent domain or by an action or conveyance in lieu of condemnation. “Reconstruction of the building or Unit” means the restoring of the building or Unit to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Section 14 below will apply.

### 13. TERMINATION

A. In the event that the designated fraction or percentage of building is destroyed or substantially damaged so as to bring into effect the provisions of paragraph 12.C above, and the Unit owners do not unanimously vote to act otherwise, the property will be removed from the provisions of the Act without further agreement seventy-five (75) days after the destruction or damage.

B. All of the Unit owners may remove the property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens be transferred to the percentage of the undivided interest of the Unit owners in the property.

C. After removal of the property from the Act, the Unit owners will own the property as tenants in common and the respective mortgagees and lienors will have mortgages and liens on the respective undivided interests of the Unit owners. These undivided interests of the Unit owners will be the same as the percentage of undivided interest in the Common Elements appurtenant to the Unit owners’ Units prior to removal from the Act.

D. This Section 13 cannot be amended without the consent of all Unit owners and all record owners of mortgages on Units.

### 14. EMINENT DOMAIN

A. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Elements or one or more Units or parts of Units by the exercise of the power of, or power in the nature of, eminent domain or by an action or conveyance in lieu of condemnation, the Board and each Unit owner will be entitled to notice and the Board will, and the Unit owners at their respective expenses may, participate in the proceedings.

B. With respect to Common Elements, any damages or awards will be determined for the taking, injury or destruction as a whole and not for each Unit owner’s interest in the Common Elements. After that determination, each Unit owner will be entitled to a share of the damages in the same proportion as his or her percentage of undivided interest of the Common Elements. This provision does not prohibit the Board, pursuant to authorization by a majority of the Association, from restoring the Common Elements so taken on the remaining land or on other acquired land, provided that this Declaration and the plats are fully amended.

C. With respect to one or more Units or parts of Units, the damages or awards will be deposited with the Board as trustee even though the damages or awards may be payable to one or more Unit owners. In the event a Unit owner refuses to deposit his or her award with the Board, then at the option of the Board,



either a special assessment will be made against the defaulting Unit owner and his or her Unit in the amount of this award or the amount of the award will be set off against the sums made payable to that Unit owner by the provisions below.

D. In the event the property is removed from the provisions of the Act pursuant to Sections 12 and 13 above, the proceeds of the damages or awards will be distributed or used in accordance with, and the owners of the affected Units will have the rights provided in, Section 12.C, above.

E. If one or more Units are taken, in whole or in part, and the property is not removed from the provisions of the Act, the taking will have the following effect:

1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made habitable, the Unit will be made habitable. If the cost of this work exceeds the amount of the award, the additional funds required will be assessed against the Unit owner. The balance of the award, if any, will be distributed to the mortgagee to the extent of the unpaid balance of its mortgage and the excess, if any, will be distributed to the Unit owner. If there is a balance of the award distributed to the Unit owner or a mortgagee, the Unit owner's percentage of undivided interest in the Common Elements will be equitably reduced. This will be done by recomputing the percentages of undivided interests of all Unit owners in the Common Elements, taking into account the reduction in floor area occasioned by the taking.

2. If the taking destroys or so reduces the size of a Unit that it cannot be made habitable, the award will be distributed to the mortgagee of the Unit to the extent of the unpaid balance of its mortgage and the excess, if any, will be distributed to the Unit owner. The remaining portion of the Unit, if any, will become a part of the Common Elements and will be placed in condition for use by all Unit owners in the manner approved by the Board. The percentages of undivided interests in the Common Elements appurtenant to the Units that continue as part of the property will be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Unit owners, taking into account the reduction in floor area occasioned by the taking.

F. Changes in Units, in the Common Elements and in the ownership of the Common Elements that are affected by the taking referred to in this Section 14, will be evidenced by an amendment to this Declaration and the plats, which need not be approved by the Unit owners.

## 15. MORTGAGEE PROTECTION

A. The term "mortgage" as used here means any recorded mortgage having priority over other mortgages and includes a recorded deed of trust. The term "mortgagee" means the owner and the holder of a mortgage and includes a beneficiary under a deed of trust.

B. The Board will maintain a roster of Unit owners from the evidence of change of ownership furnished to the Board, which roster will include the mailing addresses of all Unit owners. The Board will also maintain a roster containing the name and address of each mortgagee of a Unit if the Board is provided notice of a mortgage by way of a certified copy of the recorded instrument evidencing the mortgage and containing the name and address of the mortgagee. The mortgagee will be stricken from the roster on request by the mortgagee or on receipt by the Board of a certified copy of a recorded release or satisfaction of the mortgage. Notice of removal will be given to the mortgagee unless the removal is requested by the mortgagee.

C. The Board will give to any mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of that mortgagor's obligations under the Declaration that is not cured within twenty (20) days.

D. A mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage or by way of deed or assignment in lieu of foreclosure will take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time that the mortgagee comes into the possession of the Unit, except for claims for a pro rata share of any assessments or charges resulting from a pro rata reallocation of assessment or charges to all Units, including the mortgaged Unit.

E. Any liens on any Unit created under the Act or pursuant to this Declaration or the Bylaws will be

subject and subordinate to, and will not affect the rights of any mortgagee under, a mortgage on that Unit made in good faith and for value, provided however, that any lien created after a foreclosure or sale will have the same effect and be enforced in the same manner as provided in the Act, the Declaration and the Bylaws.

F. No amendment to this paragraph will affect the rights of a mortgagee who has recorded a valid mortgage prior to the recordation of any amendment.

## 16. ENCROACHMENTS

A. None of the rights and obligations of any Unit owner created by this Declaration, the Bylaws, or by a deed conveying a Unit will be affected in any way by an encroachment (i) by any portion of the Common Elements on any Unit; (ii) by any Unit on any portion of the Common Elements or (iii) by any Unit on another Unit due to settling or shifting of any building including the rebuilding of a building after fire or other casualty or an eminent domain taking or delivery of a deed in lieu of condemnation, unless there occurs an encroachment that results from the willful or negligent act or omission of the owner of the encroaching Unit, or of the owners of the Units to which the use of encroaching Limited Common Elements are appurtenant, or of the Board in the event of an encroachment by any portion of the General Common Elements.

B. There are hereby created valid easements for the maintenance of any encroachments permitted by this Section 16 of this declaration so long as those encroachments exist.

## 17. SALE OR CONVEYANCE

On the sale or conveyance of a Unit, all unpaid assessments against a Unit owner will first be paid out of the sales price; provided, however, that if these unpaid assessments are not paid or collected at the time of a sale or conveyance of a Unit, the grantee of the Unit will be jointly and severally liable with the selling Unit owner for all unpaid assessments against the selling Unit owner 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. Any person who has entered into a written agreement to purchase a Unit will be entitled, on written request, to a statement from the Board setting forth the amount of the unpaid assessments against the selling Unit owner and that grantee will not be liable for, nor will 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, that the former Unit owner will remain liable and the grantee will be liable for any assessments becoming due after the date of the statement, including the reapportionment and reassessment of any uncollected common assessments.

## 18. CONVEYANCE REQUIREMENTS

A. Every deed, lease, mortgage or other instrument must describe a Unit by its identity number as set forth in Exhibits "B" and "C" and in the plat. A description by identity number will be deemed good and sufficient for all purposes and will be deemed to convey, transfer, encumber or otherwise affect the Unit owner's corresponding percentage of undivided ownership in the Common Elements as set forth in those exhibits even though that ownership interest is not exactly mentioned or described.

B. Every deed, lease, mortgage or other similar instrument will be deemed to:

1. Except and reserve, with respect to a Unit, (i) any portion of the Common Elements lying within that Unit; (ii) easements through that Unit appurtenant to the Common Elements and all other Units for support and repair of the Common Elements and all other Units; and (iii) easements appurtenant to the Common Elements for encroachments on the air space of that Unit by those portions of the Common Elements located within that Unit.
2. Include, with respect to a Unit, nonexclusive easements for ingress, egress and support of that Unit through the Common Elements, for the repair of that Unit through all other Units and through the Common Elements and for the use of the balcony and patio space as indicated in the Exhibits.
3. Except and reserve, with respect to the undivided percentage interest in the Common Elements, nonexclusive easements appurtenant to all Units for ingress, egress, support and repair and exclusive easements appurtenant to each Unit for the use of the balcony and patio spaces as set forth in the plats.

4. Include, with respect to the undivided percentage interest in the Common Elements, nonexclusive easements through each Unit for support and repair of the Common Elements and nonexclusive easements for encroachments on the air space of all of the Units by and for the portions of the Common Elements lying within the Units.

#### 19. COMBINATION OF UNITS

A. An owner of two or more adjoining Units will have the right, on approval of the Board, which shall not be unreasonably withheld, to combine those Units. No combination requiring the removal or partial removal of a load bearing wall will be approved by the Board. No combination of portions of Units shall be allowed. Any combination shall address the penetration of firebreaks between Units to maintain and maximize the integrity of the firebreak system.

B. An amendment to the Declaration, together with an amended plat or plats containing the same information with respect to the altered Units as required in the initial Declaration and plat with respect to the initial Units, will be prepared and recorded at the expense of the Unit owner making the combination.

C. An amendment to the Declaration or plat pursuant to this Section 19 will reflect the changes occasioned by the combination to include a change in the percentage of undivided interest in the Common Elements that are appurtenant to the Units involved. The remaining combined Unit, when two or more Units are totally combined, will acquire the total of the percentage of undivided interest in the Common Elements appurtenant to the Units that were combined as set forth in Exhibits "B" and "C". The percentage of undivided interest in the Common Elements appurtenant to all other Units will not be changed. These amendments must, in all instances, be consented to by the Board and also all other persons holding interests in the Units affected. The consent of other Unit owners need not be obtained to make these amendments or alterations valid, provided the percentages of undivided interest in the Common Elements of such other Unit owners remain unchanged.

D. The amendments to the Declaration and plats must be approved by attorneys employed by the Board to insure the continuing legality of the Declaration and the plats. The cost of this review by the attorneys will be borne by the person wishing to combine the Units.

#### 20. AMENDMENT

Except as otherwise provided in this Declaration and except as prohibited by the Act, the provisions of this Declaration may be Amended by an instrument in writing signed and acknowledged by Unit owners who own four-fifths (4/5<sup>ths</sup>) or more of the undivided interest in the Common Elements, which amendment will be effective on recording.

#### 21. ASSESSMENTS

A. The making and collection of assessments from Unit owners for their share of common expenses will be pursuant to the Bylaws and subject to the following provisions:

1. Each Unit owner will be liable for a proportionate share of the common expenses that share being the same as the percentage of undivided interest in the Common Elements appurtenant to the Unit owned by the Unit owner as set forth in the Exhibits.

2. Assessments and any installments of assessments that are not paid on or before ten (10) days after the date when due will bear a late fee of \$50.00 and an additional late fee of \$1.00 per day beginning on the eleventh (11<sup>th</sup>) day after the due date until paid. All payments on account will be first applied to late fees and then to the assessment payment first due.

3. There will be a lien on the applicable Unit for unpaid assessments that will also secure reasonable attorneys' fees and all costs and expenses, including taxes, if any, incurred by the Board incident to the collection of an assessment or the enforcement of a lien. The lien for assessments will be superior to all other liens and encumbrances except for (i) assessments, liens and charges in favor of the State and any political subdivision for taxes past due and unpaid on the Unit, and (ii) amounts due under duly recorded mortgages.

4. In any foreclosure of a lien for assessments, the Unit owner subject to the lien will be required to pay a reasonable rental for the Unit.

B. The Board may include in the regular assessments amounts to be used for the replacement of or additions to capital items or improvements in the property. Assessments for capital improvements or replacements may not exceed forty-five percent (45%) of the common assessment for the operation and maintenance of the property.

C. In assessing the Unit owners for capital improvements to the Common Elements, there will be no single improvement exceeding the sum of \$90,000.00 made by the Board without the improvement having been first voted on and approved by four-fifths (4/5<sup>ths</sup>) or more votes in percentage ownership interest of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing dollar limitation and the 45% of the common assessment limitation provided at paragraph 21, above, does not apply in connection with damage or destruction referred to in Section 12 above or to any structural alterations or capital additions to or capital improvements of the Common Elements that are necessary in the Board's reasonable judgment to preserve or maintain the integrity of the Common Elements of the property.

D. If the Unit owner leases his or her Unit and defaults for a period of ninety (90) days in the payment of assessments, the Board may, at its option, as long as default continues, demand and receive from any tenant of the Unit owner the rent due or becoming due and the payment of that rent to the Board will be payment and discharge of the tenant and the Unit owner for those assessments to the extent of the amount paid.

E. Utility services to the Common Elements and common areas are furnished through one or more master meters. The Board will include in their budget an assessment to cover the expected cost of these utilities and may adjust such assessment annually based on past and expected future utility use for the Common Elements. The Board may also specially assess Unit Owners for additional Common Element utility costs if necessary.

F. The Board will handle all assessments, whether for common expenses, capital contributions or utility usage, so as to comply with applicable provisions of the Internal Revenue Code and its regulations as well as applicable State and local tax laws and to avoid undue adverse tax consequences that might result to the Association or individual Unit owners.

G. The Board may (but is not required to) invoice, and accept payment from, Unit owner's lenders for payment of assessments related to taxes and insurance out of escrow funds held by such lenders.

## 22. VOTING

One Unit equals one vote; thus, at any meeting of the Association, each Unit owner, including Declarant, either in person or by proxy, will be entitled to a single vote for each Unit owned by that owner.

If there is more than one owner of a Unit, any or all of those Unit owners may attend any meeting of the Association, but it will be necessary for all of those owners present, in person or by proxy, to act unanimously in order to cast the votes appertaining to their Unit. In any case where there is more than one owner of a particular Unit, the Board will be notified by writing signed by all owners of that Unit at least seven (7) days in advance of any meeting of the Association of the identity of the party authorized to cast the votes appertaining to that Unit. Notification will be conclusive evidence of the designated party's authority to cast the votes appertaining to that Unit until the Board is notified otherwise in writing.

## 23. NOTICES

Any notice permitted or required to be delivered as provided in this Declaration may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to be delivered thirty-six (36) hours after a copy has been deposited in the U. S. postal service, postage prepaid, return receipt requested. Notice to Unit owners will be addressed to each Unit owner at the address given by that Unit owner to the Board for the purpose of service of notice or to the Unit of that owner if no other address has been given to the Board. The address may be changed from time to time by notice in writing to the Board. Notice to the Board must be addressed to: Main Street Condominiums Phase 2 Unit Owners Association, Inc., 7008 Salem Avenue, Lubbock, Texas 79424. This address may be changed from time to time by notice in writing to the Unit Owners.

## 24. NO WAIVER

The failure of the Board or its agents or designees to insist, in one or more instances, on the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option contained here or to serve any notice or to institute any action will not be construed as a waiver or a relinquishment for the future of that term, covenant, condition or restriction; that term, covenant, condition or restriction will remain in full force and effect. The receipt and acceptance by the Board or its agent or designee of the payment of any assessment from a Unit owner with knowledge of the breach of any covenant of this Declaration will not be deemed a waiver of the breach, and no waiver by the Board of any provision of this Declaration will be deemed to have been made unless expressed in writing and signed by the Board.

## 25. ENFORCEMENT

Each Unit owner will strictly comply with the provisions of the Declaration, the Bylaws, the administrative rules and regulations and decisions issued pursuant to those provisions. Failure to comply will be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board or its agent or designee on behalf of the Unit owners, or in an appropriate case, by an aggrieved Unit owner.

## 26. DECLARANT AND DECLARANT'S USE

A. The term "declarant" means and includes McDougal Construction, L.C., and any person or persons who might acquire title from McDougal Construction, L.C. through foreclosure or deed.

B. Declarant and persons it may select from time to time will have the right of ingress and egress over, on and across the Common Elements and Limited Common Elements and the right to store materials and to make other use of the Common Elements as may be necessary and incident to the development and sale of all of the Units as determined by the Declarant in its sole discretion.

## 27. SEVERABILITY

The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion of it will not affect the validity or enforceability of any other provision of it.

## 28. LAW CONTROLLING

This Declaration, the plats, Appendix and the Bylaws will be construed and controlled by and under the Uniform Condominium Act and other laws of the State of Texas.

## 30. EFFECTIVE DATE

This Declaration takes effect when recorded.

In witness whereof, the undersigned has executed this instrument this 15 day of August, 2007.

MCDUGAL CONSTRUCTION, L.C., A Texas Limited Liability Company

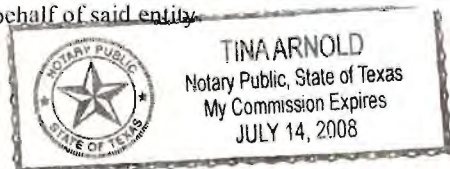
By: 

Michael McDougal, Manager

STATE OF TEXAS  
COUNTY OF LUBBOCK

§  
§

This instrument was acknowledged before me on the 1 day of August, 2007, by Michael McDougal, as Manager of MCDUGAL CONSTRUCTION, L.C., a Texas Limited Liability Company, on behalf of said entity.



  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF LUBBOCK

§  
§

That First Bank & Trust Co. duly organized and existing under the laws of the State of Texas, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid in cash, and for other good and valuable consideration, the receipt of which is hereby acknowledged and confessed, being the lienholder on the property described herein, does hereby consent and agree to the foregoing Declaration and does hereby subordinate its rights in the above described property to the above declaration, as shown on the attached exhibits.

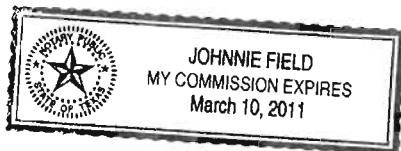
IN WITNESS WHEREOF, the said First Bank & Trust Co. has caused these presents to be signed by its duly authorized officers at Lubbock, Lubbock County, Texas, this 1st day of August, 2007.

First Bank & Trust Co.

By:

Printed Name: Drew C. Anderson  
Title: EVP/CLO

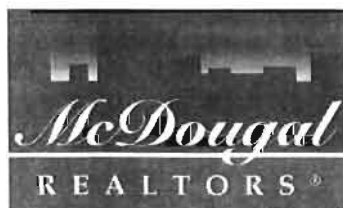
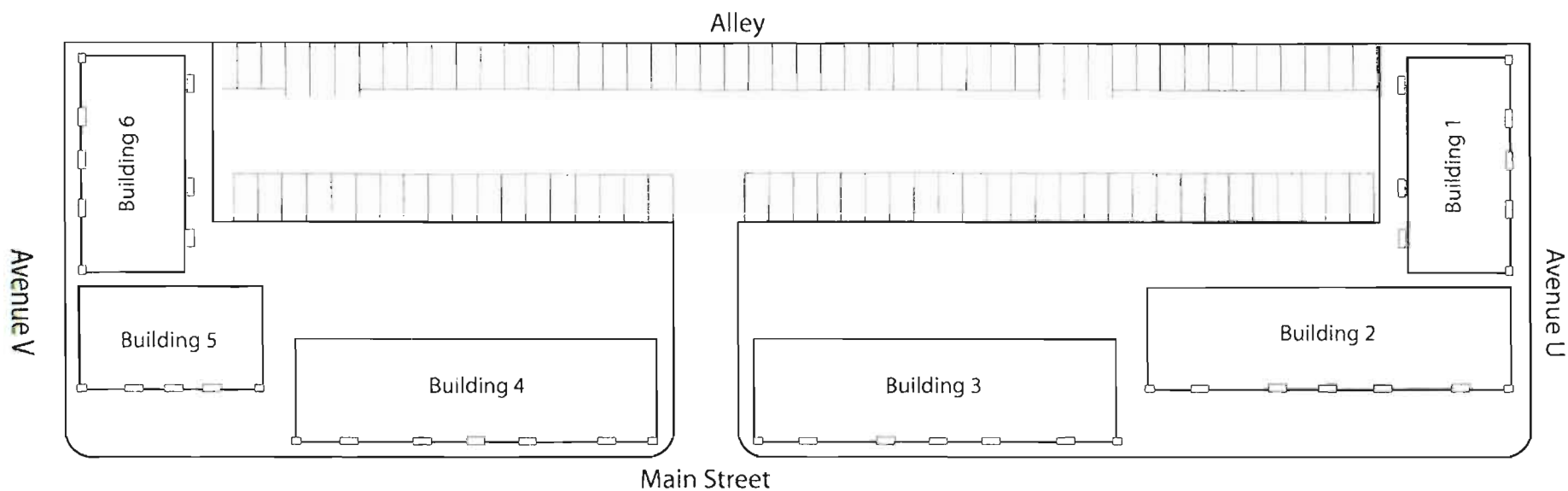
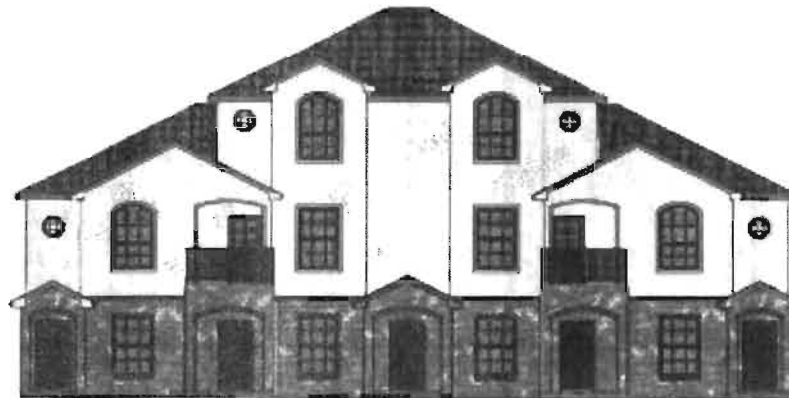
This instrument was acknowledged before me on the 1st day of August, 2007, by Drew Anderson, as EVP/CLO of First Bank & Trust Co., and in the capacity therein stated.



Johnnie Field  
Notary Public, State of Texas

# Main Street Condominiums

## Phase II



**796-HOME** • 4601 South Loop 289 • [mcdougal.com](http://mcdougal.com)

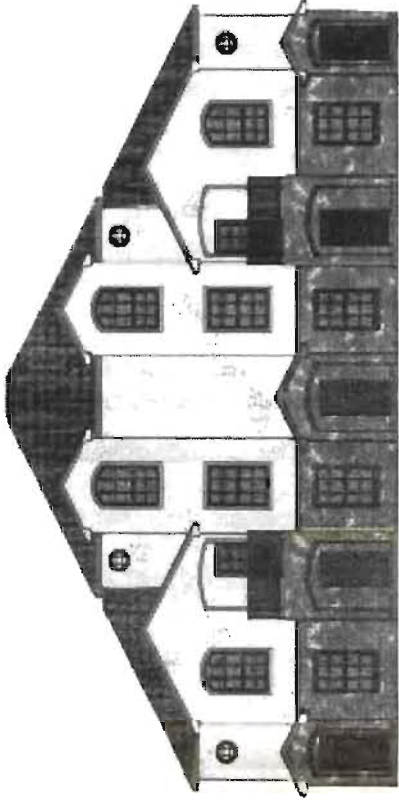
Exhibit A



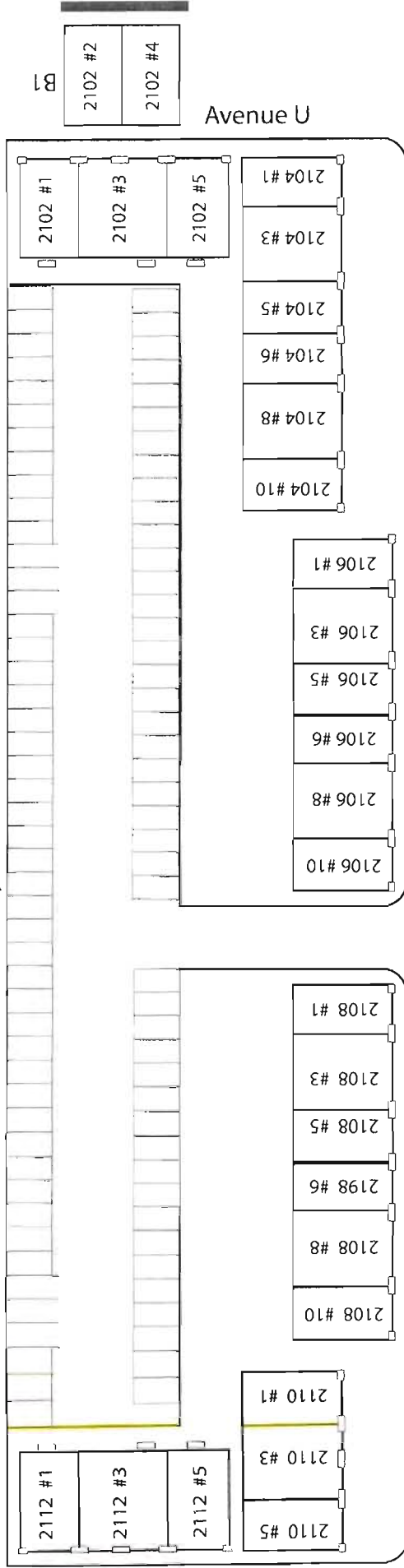


# Main Street Condominiums

## Phase II



Alley



Main Street

B2

B3

B4

B5

2104 #2  
2104 #4

2104 #7  
2104 #9

2106 #2  
2106 #4

2106 #7  
2106 #9

2108 #2  
2108 #4

2108 #7  
2108 #9

2110 #2  
2110 #4

2102 #2  
2102 #4

B1

Avenue U

Avenue V

Exhibit B, Pg 1

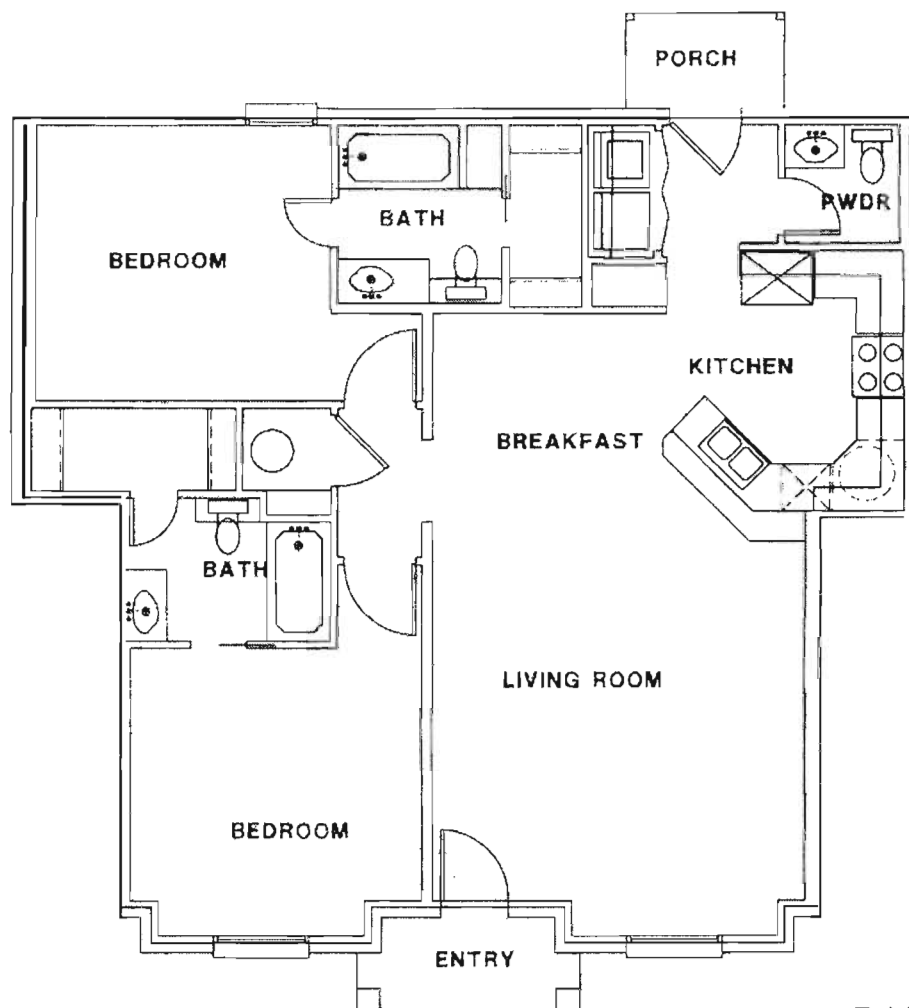


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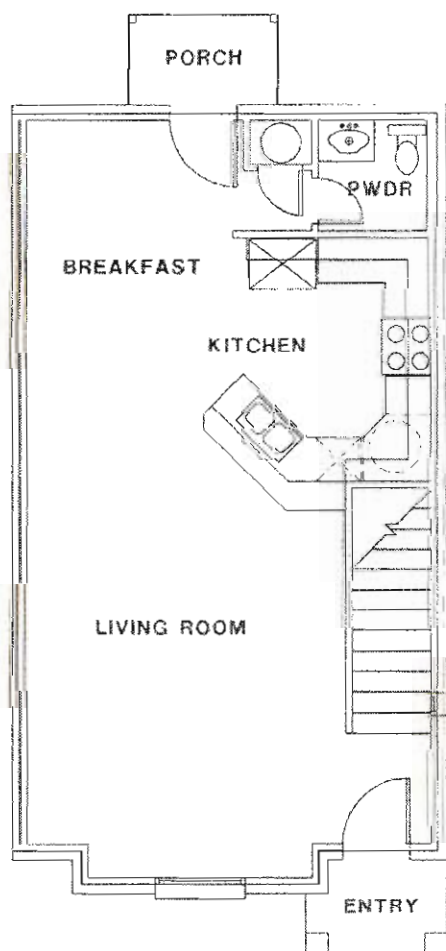
# UNIT A • 1,132 SQ.FT.



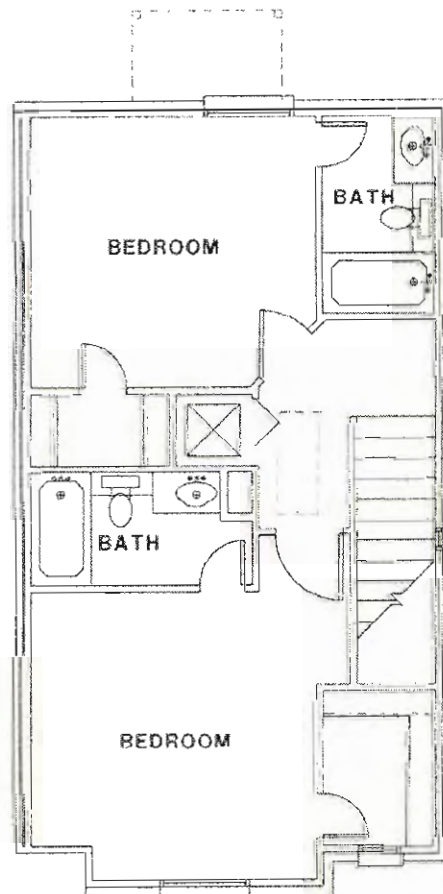
# UNIT B • 1,260 SQ.FT.



## DOWNSTAIRS



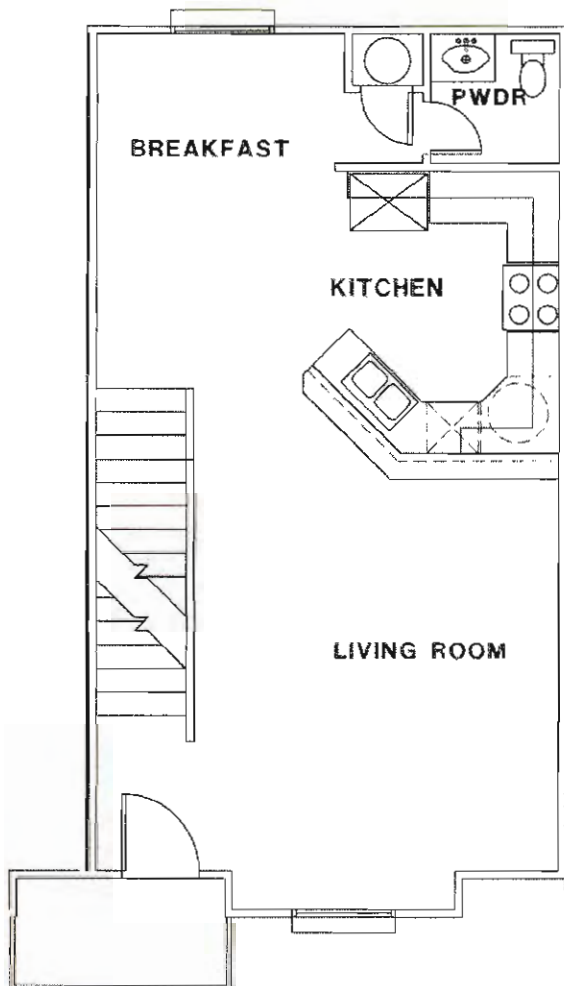
## UPSTAIRS



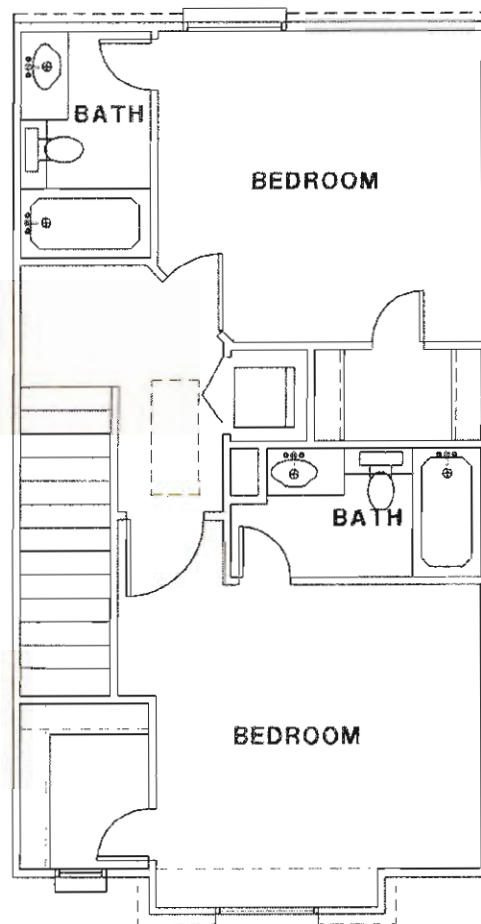
# UNIT C • 1,260 SQ.FT.



## DOWNSTAIRS



## UPSTAIRS



[illegible]

# FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

*Kelly Pinion*

Kelly Pinion, County Clerk

Lubbock County TEXAS

August 16, 2007 10:09:29 AM

FEE: \$87.00

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