SEVEN SAINT PAUL STREET HALTIMORE, MARYLAND 21202-1626 TELEPHONE 410 347-8700 FAX 410 752-7092

MI COLLIMBIA CORPORATE CENTER 10140 LITTLE PATUXENT PARKWAY COLLIMBIA, MARYLAND 21044 TELEPHONE 410 884-0700 FAX 410 884-0719

> JOSEPH D. DOUGLASS INRECT NUMBER 202 659-6779 klouglass(//wtplaw.com

# WHITEFORD, TAYLOR & PRESTON L.L.P.

1025 CONNECTICUT AVENUE, NW WASHINGTON, D.C. 20036-5405

202 659-6800 Fax 202 331-0573 www.wtplaw.com

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210 WEST PENNSYLVANIA AVENUE TOWSON, MARYLANI) 21204-4515 TELEPHONE 410 852-2000 FAX 410 852-2015

1317 KING STREET ALEXANDRIA, YIRGINIA 22414-2928 TELEPHONE, 703 836-5742 FAX 703 836-0265

#### March 28, 2001

### RECEIVED MAR 3 0 2001

Ms. Ruchita Patel The Management Group Associates, Inc. One Bank Street, Suite 301 Gaithersburg, Maryland 20878-1504

#### Re: Decoverly IV - Key West Condominium File #00006

Dear Ruchita:

Enclosed, as you requested, is a copy of the Addendum to Mutual Ingress, Egress, Maintenance and Parking Easement Agreement, as recorded in the Montgomery County land records on October 12, 2000. Please let me know if you have any questions.

Since ely, Joseph D. Douglass

Enclosure

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### ADDENDUM TO MUTUAL INGRESS, EGRESS, MAINTENANCE AND PARKING EASEMENT AGREEMENT

THIS ADDENDUM TO MUTUAL INGRESS, EGRESS, MAINTENANCE AND PARKING EASEMENT AGREEMENT (the "Addendum"), is made this <u>//</u>day of <u>OCTOBER</u>, 2000, by and between Key West Condominium, Inc., ("Key West") and Decoverly IV Condominium, Inc.

#### WITNESSETH:

WHEREAS, on August 19, 1992, a Mutual Ingress, Egress, Maintenance and Parking Easement Agreement (hereinafter referred to as "Agreement") was entered into by and between Key West Limited Partnership (the developer of the Key West Condominium) and Pulte Home Corporation (the developer of Decoverly IV Condominium) and such Agreement was recorded among the Land Records for Montgomery County, Maryland in Liber 10540 at Folio 425; and

WHEREAS, Exhibit A to the Agreement identifies the property which encompasses the Key West Condominium and Exhibit B to the Agreement identifies the property which encompasses the part of the Decoverly IV Condominium which is affected by the Agreement, and Exhibits A and B to the Agreement together encompass

DMIGL 1D# 9-72-7859598

ip street

the property governed by the Agreement (hereinafter referred to as the "Property"); and

WHEREAS, the purpose of the Agreement was to provide mutual and reciprocal easements over and to the general common elements of Key West Condominium and the general common elements of Decoverly IV Condominium located within the Property, to each Condominium and the individual owners and residents of units within the Property for ingress, egress, maintenance and parking as the Condominiums were to be developed in close proximity requiring the need for access to and through each Condominium's common elements; and

WHEREAS, in addition to providing reciprocal easements, another purpose of the Agreement was to provide for the sharing of costs of maintenance and other services related to the Property between Key West Condominium and Decoverly IV Condominium; and

WHEREAS, while the Agreement identifies in detail the property encompassing Key West Condominium and the affected part of Decoverly IV Condominium, the general common elements of the Condominiums over which the easements are created are not specifically delineated in the Agreement; and

WHEREAS, since the completion of the development and construction of the Condominiums and the implementation of the Agreement, several issues have arisen

between Key West Condominium and Decoverly IV Condominium regarding the interpretation and operation of the Agreement; and

WHEREAS, Key West Condominium and Decoverly IV Condominium have resolved all issues regarding the interpretation and operation of the Agreement and have determined that this Addendum is necessary to clarify the agreements and obligations of the parties relative to the easements and maintenance requirements; and

WHEREAS, pursuant to Article V, Section 2 (i) and (l) of the Bylaws of Key West Condominium, Inc., Key West Condominium Board of Directors is given the authority to grant easements and other rights of use in all or any part of the common elements and to perform such other duties as may be necessary or advisable for the operation of the Condominium and as may be consistent with the Declaration, the Bylaws and applicable law and is further authorized to grant easements as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation of the health, safety, convenience and/or welfare of the owners of the condominium units; and

WHEREAS, pursuant to Article V, Section 2 (i) of the Bylaws of Decoverly IV Condominium, Inc., Decoverly IV Condominium Board of Directors is given the authority to provide for the care, upkeep and surveillance of the common elements of the condominium and pursuant to Article V, Section 2 (i) of the Bylaws is given the

-3-

authority to grant easements in all or part of the common elements of the condominium; and

NOW THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Key West Condominium and Decoverly IV Condominium hereby covenant and agree as follows:

The August 19, 1992 Mutual Ingress, Egress, Maintenance and Parking
Easement Agreement made by and between Key West Limited Partnership and Pulte
Home Corporation is specifically incorporated by reference and adopted into this
Addendum, except to the extent that it is modified herein.

2. The mutual and reciprocal easements created by the Agreement encompass all of the general common elements of Key West Condominium and Decoverly IV Condominium located within the Property, with the exception of the building structures and foundations, the components of the electrical power, water, telephone, gas and sewer systems serving the buildings and the limited common elements. Such Easement Area is referred to in the Agreement as "Open Space" and is hereafter referred to as "Open Space Easement Area." Such Open Space Easement Area governed by the Agreement and this Addendum is depicted in Exhibit A hereto (composed of ten (10) pages) which Exhibit is specifically incorporated herein.

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3. Paragraph 3 of the Agreement provides that Key West Condominium and Decoverly IV Condominium shall share, in accordance with the pro-ration established in Paragraph 4 of the Agreement, in the following costs associated with the Open Space Easement Area (Exhibit A hereto), which costs may be referred to as "Shared Maintenance Expenses":

- a. Reasonable costs and expenses for maintenance, repair and capital improvements of the Open Space Easement Area;
- b Public liability insurance premiums covering the Open Space Easement Area;
- c. Electricity;
- d. Water;
- e. Cleaning;
- f. Snow removal;
- g. Lawn and tree maintenance;
- h. Repairs and maintenance to parking and driving areas;
- i. Resurfacing and restriping parking and driving areas;
- j. Maintenance and operation of lights and light standards;
- k. Landscaping, including annual plantings;
- I. Directional signs;
- m. Maintenance of storm drain facilities;
- n. Reasonable management fees regarding operation and management of Open Space Easement Area;
- o. Reasonable accounting fees regarding operation and management of Open

-5-

Space Easement Area;

P. Reasonable attorney's fees regarding operation and management of Open
Space Easement Areas and administration and enforcement of provisions of
the Agreement and this Addendum.

4. The parties hereto agree that the above-described enumeration of costs and expenses to be shared by Key West Condominium and Decoverly IV Condominium creates several issues that require clarification. The following is intended to clarify any and all issues associated with the shared costs and expenses:

a. The following specific expenses will not be shared between Key West Condominium and Decoverly IV Condominium:

1) Public Liability Insurance Premiums. Despite the inclusion as a shared cost in the Agreement, each Condominium will maintain and pay premiums for its own public liability insurance covering all of its common elements, including those that are included in the Open Space Easement Area. Therefore, the shared maintenance budget required by the Agreement and this Addendum will not include costs for any public liability insurance premiums and each party will bear its own public liability insurance costs.

2) Foundation Plantings. All landscaping, including annual plantings, with the specific exception of any trees, that is located or to be located in the Open Space Easement Area between the sidewalk and the front of individual buildings of each condominium<sup>®</sup> ("foundation plantings") shall be

-6-

performed at the expense of the Condominium within which the property is located, despite the fact that the areas in question are included in the Open Space Easement Area. Therefore, each party will make its own decision and bear the entire cost for its foundation plantings.

3) Cleaning. There are no cleaning expenses applicable to the Open Space Easement Area other than the regular maintenance issues contained in other categories.

b. The following specific expenses will be shared between Key West Condominium and Decoverly IV Condominium on the prorated basis provided in paragraph 4 of the Agreement:

1) With the exception of the foundation plantings described above in paragraph 4a.(2) and exterior lights not included in paragraphs 4b. (2) and (7) below, all costs and expenses for maintenance repairs and replacements, including capital improvements and reserves for the Open Space Easement Areas;

2) The electric costs for the exterior light posts (flood lights and one pole light located on the trash compactor island and three (3) street lights located on the island near building15313). Such amount shall be calculated annually based upon the kilowatt per year ("KW/year") used at the current Pepco, or other applicable electric service provider, kilowatt per year ("KW/year") rate unless and until the electricity for such exterior light posts is

-7-

submetered;

3) The electric costs for the trash compactor. Such amount shall be calculated annually based upon the KW/year used by the trash compactor at the current Pepco or other applicable electric service provider KW/year rate. The KW/year shall be determined by multiplying the difference between the annual KW/year used of building 15306 and that used by building 15308 by the KW/year rate, unless and until the electricity for the trash compactor is submetered;

4) The installation costs of submetering for the car wash water spigot estimated to be \$575.00. After the spigot has been submetered, the parties will pay their prorated share of the water used.

5) Any maintenance, repair and replacement of the parking and driving areas, including resurfacing and restriping, and any reserves related thereto. It is agreed that all capital replacement expenses for the parking and driving areas will be paid first out of the reserves;

6) Snow removal, including all sidewalks within the Open Space Easement Areas up to the building entrance, which is defined as the doorway to the structure;

7) Any maintenance, repair and replacement of the exterior light posts (flood lights and one (1) pole light located on the trash compactor island and three (3) lights located on the island near Building 15313), and any reserves related thereto. It is agreed that all capital replacement expenses for such

-8-

exterior lighting will be paid first out of the reserves;

8) All landscaping of the Open Space Easement Areas, including annual plantings, shrubbery, mulching and any other landscaping services, with the specific exception of the maintenance of foundation plantings described above in paragraph 4a. (2);

9) Maintenance, repair and replacement of storm drain facilities, and any reserves related thereto. It is agreed that all capital replacement expenses for such storm drain facilities will be paid first out of the reserves;

10) Maintenance, repair and replacement of directional signs and any reserves related thereto. It is agreed that all capital replacement expenses for such signage will be paid first out of the reserves;

11) Thirty percent (30%) of the annual management fee for professional management services for Key West Condominium. For the 1999 budget year, the total management fee is \$13,077.00. The amount each year will be thirty percent (30%) of the total annual management fee for professional management services retained by Key West Condominium as such amount may be modified by market conditions. The total annual management fee referred shall be for the entire Key West Condominium including its obligations associated with the Open Space Easement Areas pursuant to the Agreement and this Addendum;

12) Key West Condominium shall retain a qualified accounting firm to perform an annual audit. Thirty-eight and one-half percent (38.5%) of the fee

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for the annual audit will be charged as a shared maintenance expense to be paid by both Key West Condominium and Decoverly IV Condominium pursuant to the pro rata arrangement described above. For the 1999 budget year, the total cost of the annual audit is \$1,340.00. This amount may be modified from year to year by market conditions. The annual audit referred to herein shall be for Key West Condominium's entire finances, including its financial responsibilities associated with the Open Space Easement Areas pursuant to the Agreement and this Addendum;

13) Reasonable legal fees incurred regarding the operation and management of the Open Space Easement Areas and administration and enforcement of the Agreement and this Addendum.

5. The Open Space Easement Areas will be inspected quarterly for compliance with the Agreement and this Addendum. Such inspections will be performed by designated members of the Board of both Key West Condominium and Decoverly IV Condominium and/or the Condominium's management agents.

6. Paragraphs 5 and 6 of the Agreement address, to some extent, the budgeting, collection and accounting for the above-enumerated Shared Maintenance Expenses. The parties agree that the procedure outlined in the Agreement has limited detail and explanation and has created numerous issues between the parties. Therefore, Paragraphs 5 and 6 of the Agreement shall no longer be applicable and the procedures

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relating to budgeting, collection and accounting for the above-enumerated Shared Maintenance Expenses shall be as outlined in this Addendum.

7. Key West Condominium shall be responsible for performing the maintenance, repair and replacement of the Open Space Easement Areas in accordance with the specific details outlined in the Agreement and this Addendum. Key West Condominium shall annually prepare a proposed annual budget, including reserve analysis and reserve budget, for the Shared Maintenance Expenses associated with the Open Space Easement Areas. The budget process shall be in accordance with the following procedure:

a. Key West Condominium shall submit such proposed budget, reserve analysis and reserve budget to Decoverly IV Condominium annually on or before September 1.

b. The Key West Condominium Board of Directors will discuss this proposed budget, reserve analysis and reserve budget at the September Board meeting of the Key West Condominium as its first agenda item, unless otherwise agreed by the parties. Any member of the Decoverly IV Condominium Board of Directors and/or a representative of the Board may attend the September Board meeting of the Key West Condominium and may participate in the discussion regarding the proposed Shared Maintenance Expense budget, reserve analysis and reserve budget. Key West will provide the date of its September Board meeting to the Decoverly IV Condominium not later than the June 1<sup>st</sup> prior to that meeting. In the event that the Key West Condominium Board meeting date, for its September meeting, conflicts with that of the

-11-

Decoverly IV Condominium Board, it is agreed between the parties that Decoverly IV Condominium will change its September Board meeting date. In the event of unforeseen circumstances, such as those which will affect Key West's ability to obtain a quorum at the meeting, or circumstances which are out of Key West's control, the September Board meeting will be rescheduled after consultation with the Decoverly IV Condominium and using the best efforts to accommodate the schedules of the Decoverly IV Board members.

c. Decoverly IV Condominium shall be given until October 1 to provide Key West Condominium with formal comment on the budget, reserve analysis and reserve budget, and any suggested modifications. Key West will consider the comments and revisions to the budget made by the Decoverly IV Board of Directors and, upon such consideration will, in its discretion, determine if modifications are warranted. Key West shall provide a revised draft budget, reserve analysis and reserve budget to Decoverly IV by October 15<sup>th</sup>.

d. The final adopted budget, reserve analysis and reserve budget will be issued by Key West Condominium by October 31 and submitted to Decoverly IV Condominium.

e. If there is a dispute between the parties regarding the budget, reserve analysis and/or reserve budget, the presidents (or other designated representatives) of the Board of Directors of each party shall meet to make a good faith attempt to resolve such dispute before taking any further action. The president or other designated Board representative shall have authority from his or her Board to resolve the dispute, if

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possible. If after such meeting, the parties are unable to resolve the dispute, the dispute shall be resolved by arbitration in accordance with paragraph 9 of the Agreement.

8. Decoverly IV Condominium shall take into account its annual contribution toward the Shared Maintenance Expenses for the Open Space Easement Areas based upon the adopted annual budget and its pro ration, outlined in paragraph 4 of the Agreement, in preparing and adopting its annual budget. Decoverly IV Condominium shall be obligated to pay to Key West Condominium its annual contribution toward the Shared Maintenance Expenses for the Open Space Easement Areas in twelve (12) equal monthly installments. Such monthly installments shall be paid to Key West Condominium on or before the first day of each month. Such monthly installments shall be paid to Key West Condominium even if there is a pending dispute regarding the budget. If necessary and appropriate, an accounting shall be made at the resolution of such dispute.

9. If an extraordinary expense should arise regarding the Open Space Easement Areas, which was not included in the budget or in the reserve budget, that extraordinary expense may be assessed by Key West Condominium against both Key West Condominium and Decoverly IV Condominium in accordance with the applicable pro ration outlined in paragraph 4 of the Agreement so long as the following procedures are met:

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a. Notice of the extraordinary expense<sup>§</sup> is provided by Key West Condominium to Decoverly IV Condominium in writing or, in the event of an emergency, via telephone; and

b. The reason for the need for the extraordinary expense is provided by Key West Condominium to Decoverly IV Condominium in writing or, in the event of an emergency, via telephone; and

c. The parties agree to the extraordinary expense (such agreement shall be determined in accordance with each Condominium's Board of Directors' voting procedure).

d. If there is a dispute between the parties regarding the need for such extraordinary expense, the presidents (or other designated representatives) of the Board of Directors of each party shall meet to make a good faith attempt to resolve such dispute before taking any further action. The president or other designated Board representative shall have authority from his or her Board to resolve the dispute, if possible. If after such meeting, the parties are unable to resolve the dispute, the dispute shall be resolved by arbitration in accordance with paragraph 9 of the Agreement.

10. The annual shared maintenance budget shall not be increased from the prior year by more than ten percent (10%) without prior approval of both Condominium Associations obtained in accordance with each Condominium's board voting procedures. If there is a dispute between the parties regarding the need for an

-14-

increase of more than ten percent (10%) from the prior year's budget, the presidents (or other designated representatives) of the Board of Directors of each party shall meet to make a good faith attempt to resolve such dispute before taking any further action. The president or other designated Board representative shall have authority from his or her Board to resolves the dispute, if possible. If after such meeting, the parties are unable to resolve the dispute, the dispute shall be resolved by arbitration in accordance with paragraph 9 of the Agreement.

11. The following accounting procedure shall be used relative to the Shared Maintenance Expenses:

a. Key West Condominium shall provide an accounting of the previous year on a general line item basis on or before April 30<sup>th</sup> of the following year.

b. If there is a deficit from the previous year, Key West Condominium may specially assess against both Condominium Associations the additional amount necessary to cover such deficit in accordance with the special assessment procedure outlined in paragraph 9 of this Addendum, or may increase the current or next year's budgets subject to the cap limitations and procedure outlined in paragraph 10 of this Addendum, at Key West Condominium's option.

c. In the event of a surplus from the previous year, Key West Condominium may reimburse both Condominium Associations or may apply a credit to the current or next year's budget, at Key West Condominium's option. Key West shall apprise Decoverly IV of the option it chooses by April 30<sup>th</sup>, concurrently with its provision of an accounting

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#### referred to in Paragraph 11a.

12. Key West Condominium, Inc. and Decoverly IV Condominium, Inc. hereby reserve the right to amend this Addendum by agreement in writing, executed in the same manner as this Addendum and recorded among the Land Records of Montgomery County, Maryland in the same manner as this Addendum.

13. The terms, covenants and conditions herein shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

14. Any provisions of the original Agreement not specifically amended or stricken by this Addendum shall remain in full force and effect as if wholly restated and incorporated herein.

IN WITNESS WHEREOF Key West Condominium, Inc. and Decoverly IV Condominium, Inc. have executed and acknowledged this Addendum to Mutual Ingress, Egress, Maintenance and Parking Easement Agreement on the day and year first written above.

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ATTEST:

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**DECOVERLY IV CONDOMINIUM, INC.** 

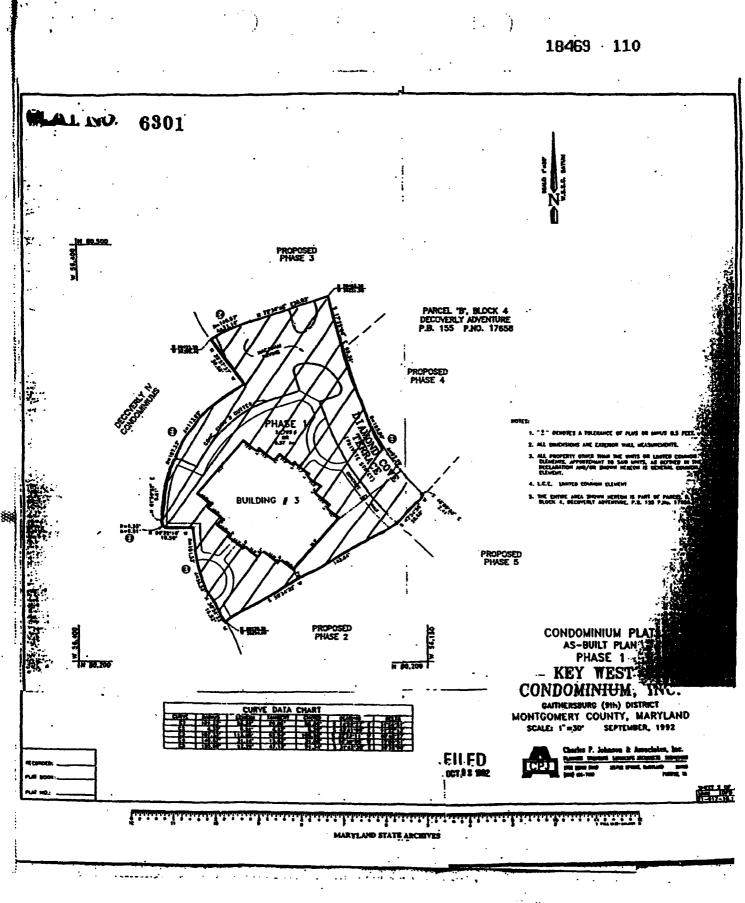
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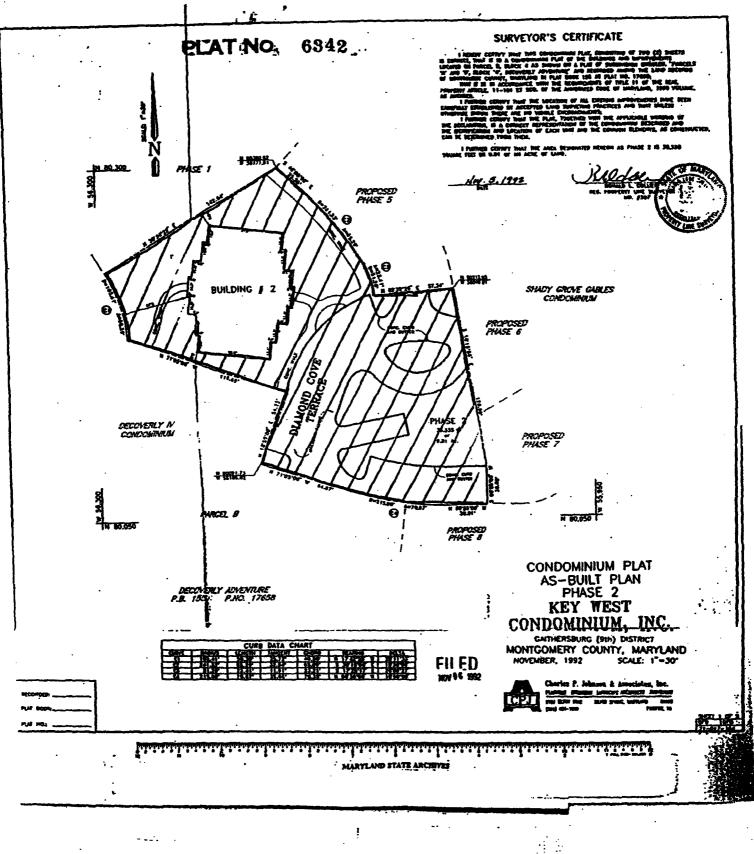
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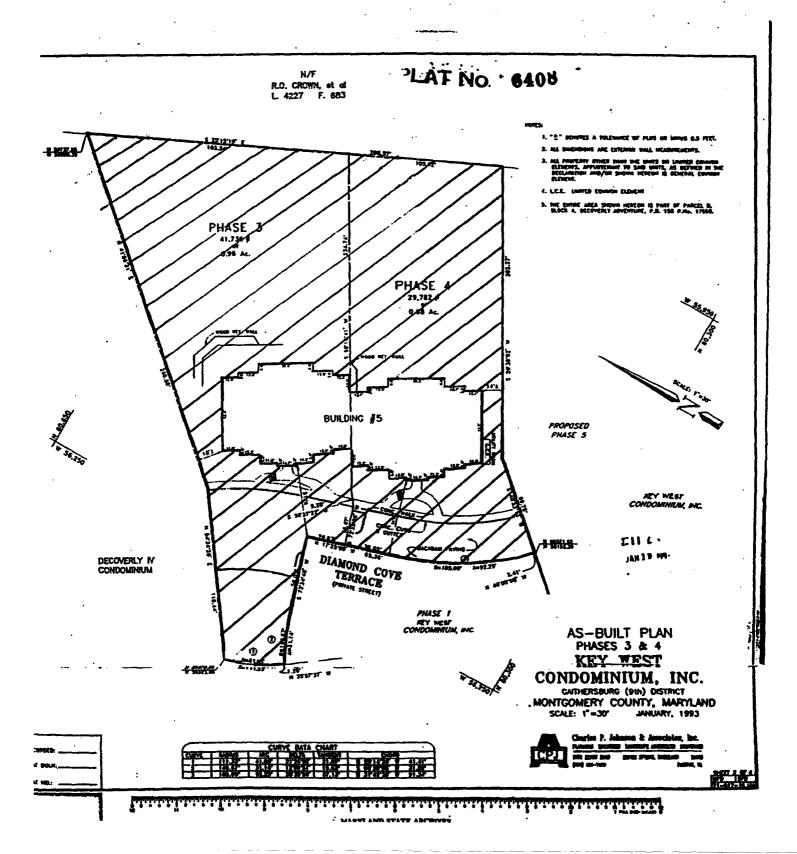
## EXHIBIT A (10 pages)

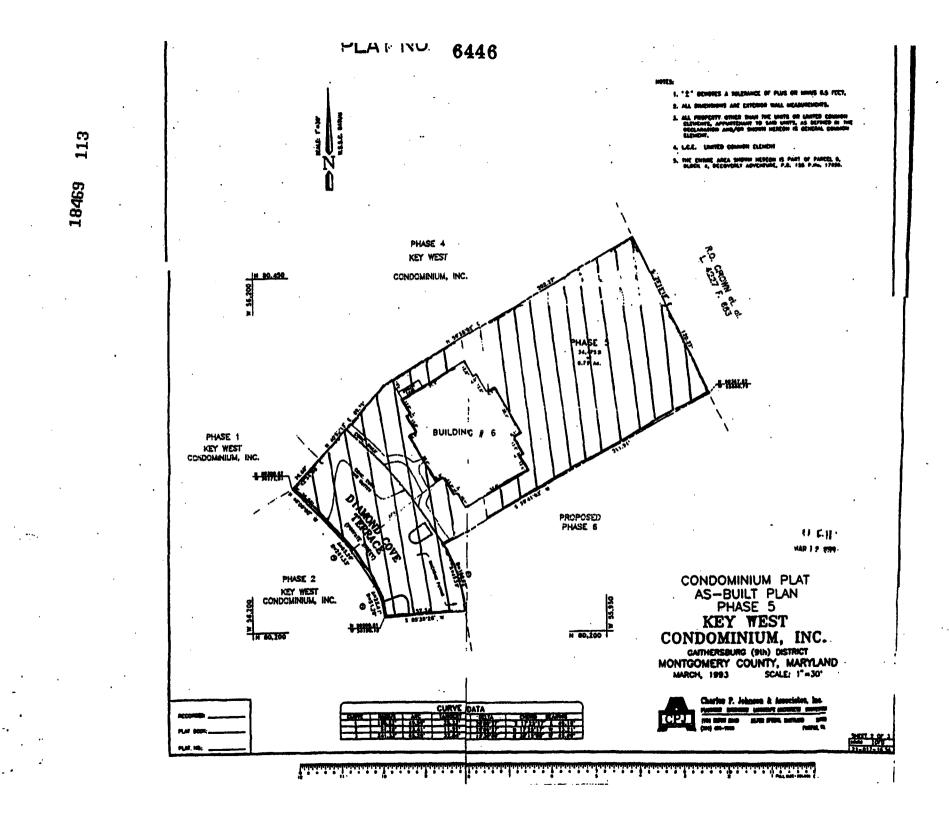
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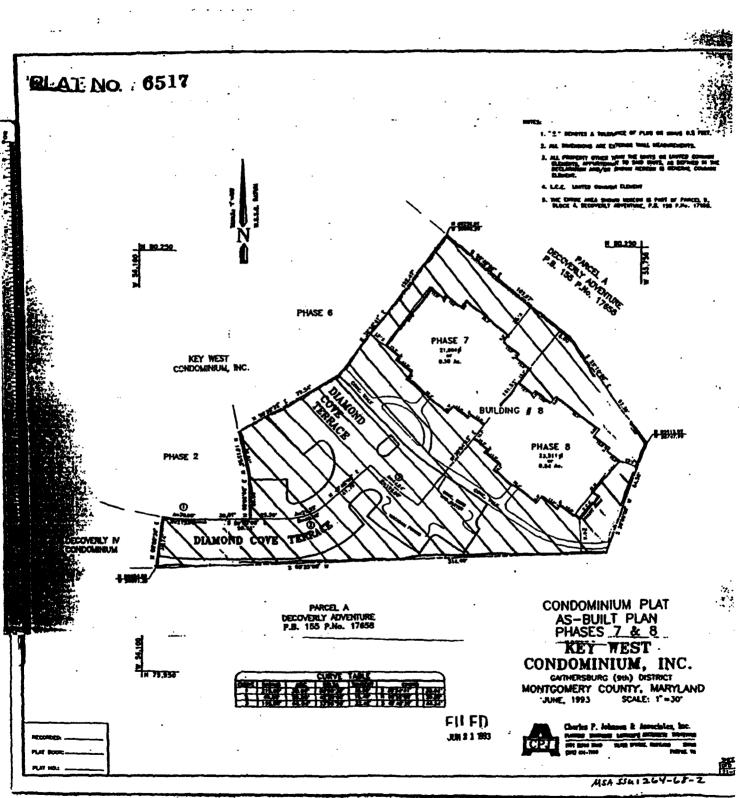






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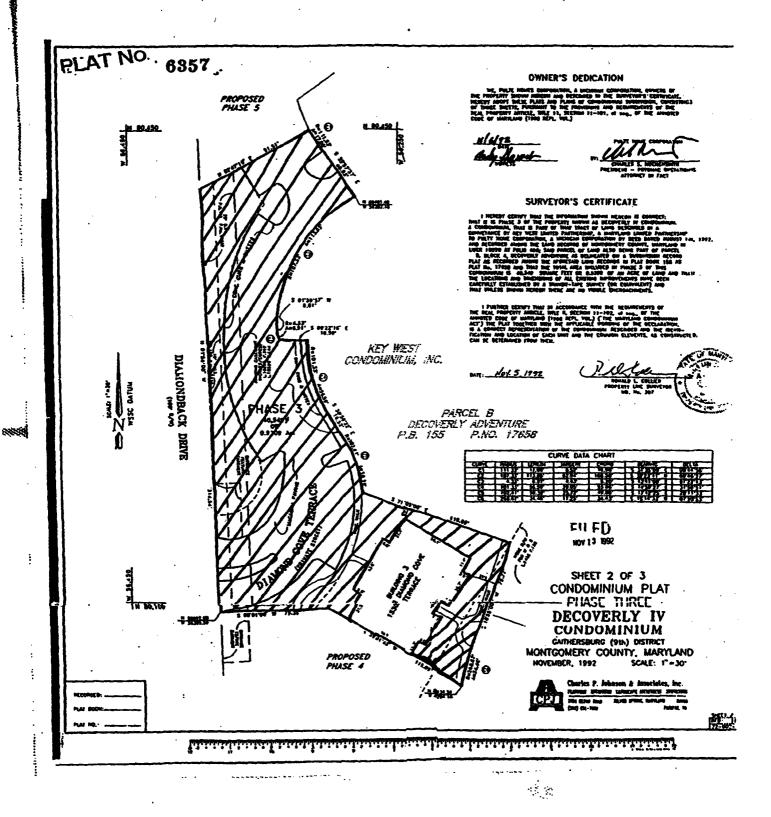
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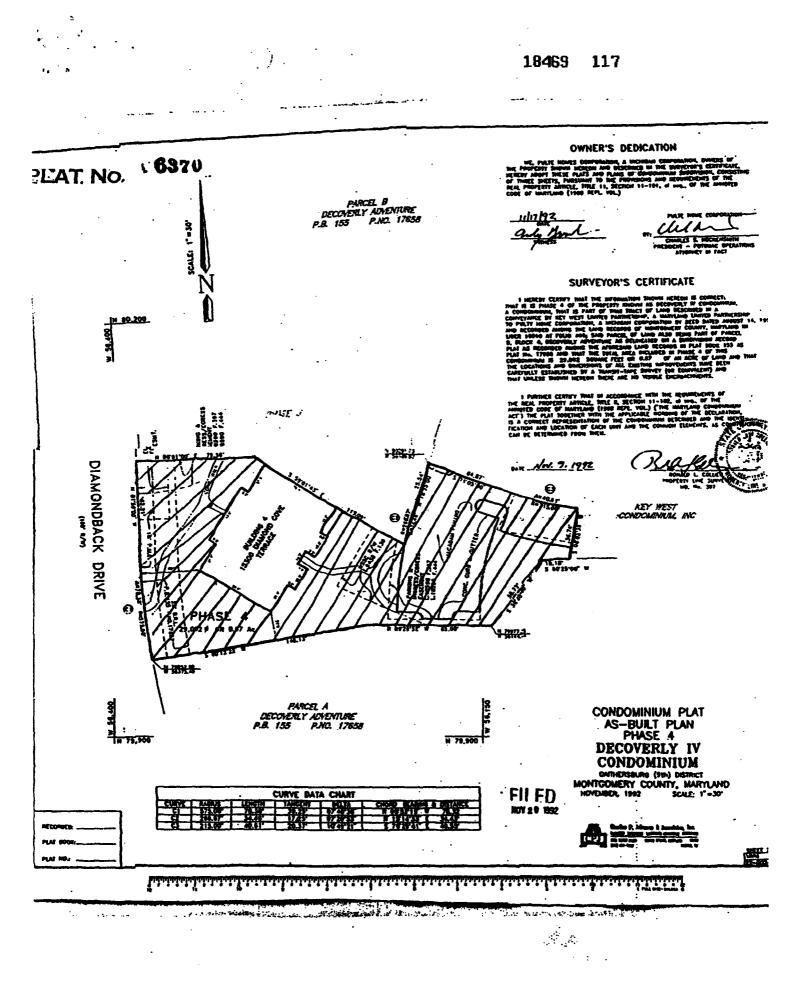
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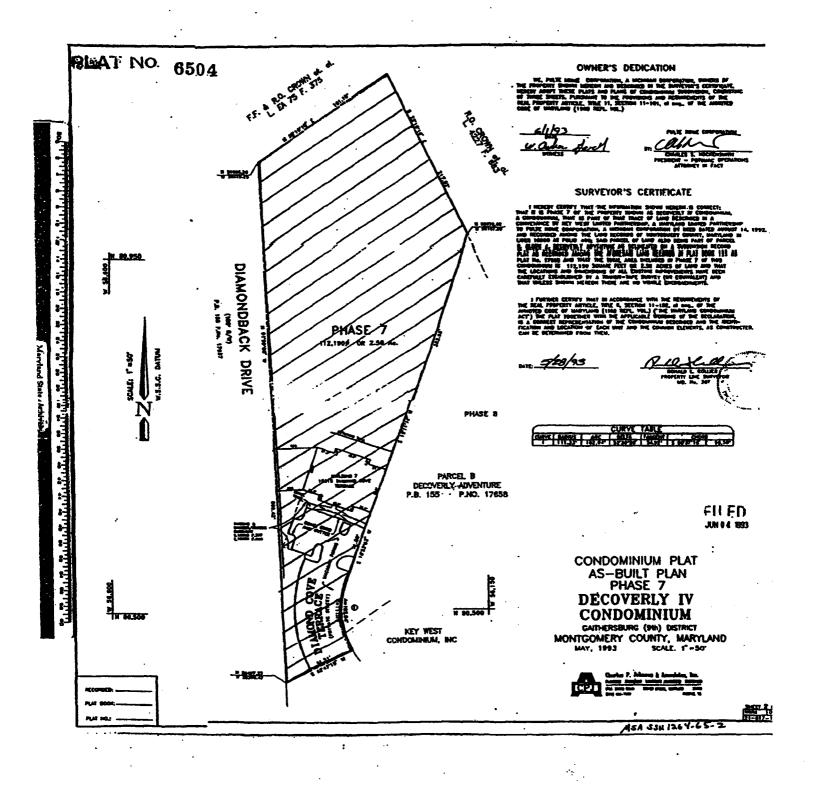
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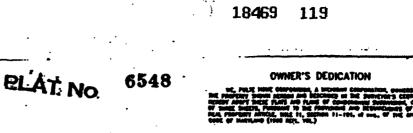
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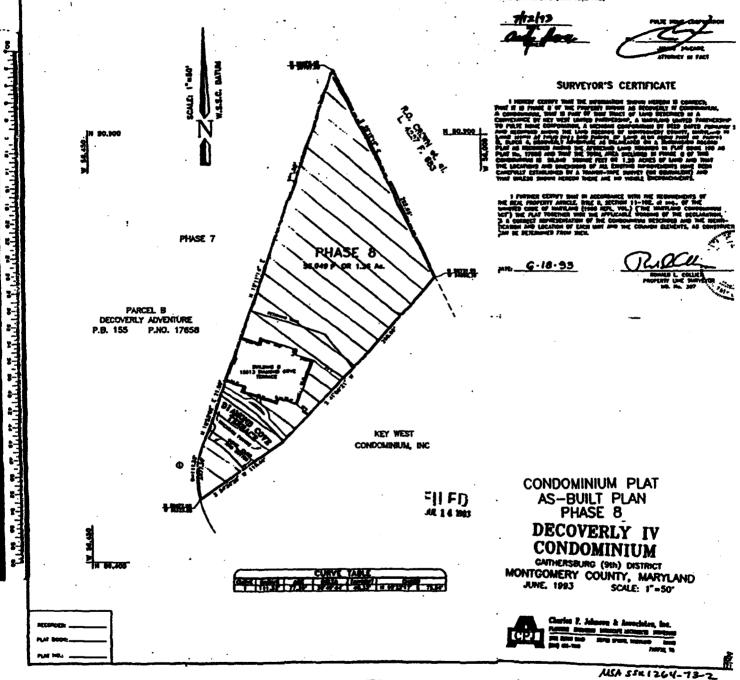




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