

RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

VOLUNTARY CLEANUP PROGRAM FINAL CERTIFICATE OF COMPLETION RELYING ON INSTITUTIONAL CONTROLS

As provided for Chapter 91, Subchapter 0, Texas Natural Resource Code.

I, WILLIAM B. MIERTSCHIN, ASSISTANT DIRECTOR OF THE SITE REMEDIATION SECTION, OIL AND GAS DIVISION, RAILROAD COMMISSION OF TEXAS, CERTIFY UNDER CHAPTER 91, SUBCHAPTER 0, TEXAS NATURAL RESOURCE CODE, THAT NECESSARY RESPONSE ACTIONS HAVE BEEN COMPLETED FOR VCP NO. 03-80001 AS OF 9 May 2008 FOR THE TRACT OF LAND DESCRIBED IN EXHIBIT "A" BASED ON THE AFFIDAVIT OF COMPLETION OF RESPONSE ACTION AND INSTITUTIONAL CONTROLS, EXHIBIT "B" AND WHICH ARE FURTHER DESCRIBED IN THE APPROVED FINAL REPORT FOR THE SITE. APPLICANTS WHO WERE NOT RESPONSIBLE PARTIES UNDER SECTION 91.113 ON THE DATE OF ISSUANCE OF THIS CERTIFICATE ARE QUALIFIED TO OBTAIN THE PROTECTION FROM LIABILITY PROVIDED BY CHAPTER 91, SUBCHAPTER 0, TEXAS NATURAL RESOURCE CODE.

EXECUTED this the 9 day of May 2008.

William B. Miertschin,
Assistant Director, Site Remediation

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, personally appeared William B. Miertschin, Assistant Director, Remediation Division, of the Railroad Commission of Texas, known to me to be the person and agent of said commission whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 9 day of May 2008.

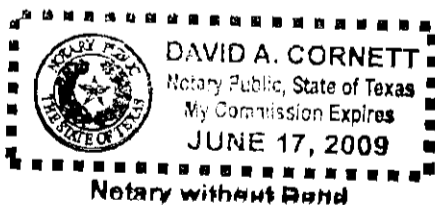

Notary Public in and for the State of Texas

EXHIBIT "A"
RAILROAD COMMISSION OF TEXAS
VOLUNTARY CLEANUP PROGRAM
LEGAL DESCRIPTION 20.5121 Acre Tract

VCP No. 03-80001

BaybrookCommonsCOC final
5/8/2008



3000 Wilcrest Drive, Suite 210 — Houston, Texas 77042 — (713) 993-0327 — Fax (713) 993-9231

**METES AND BOUNDS DESCRIPTION
20.5121 ACRES (893,507 SQUARE FEET)
COMMERCIAL RESERVE "A"
FINAL REPLAT OF BAYBROOK, SECTION TWO
ROBERT WILSON LEAGUE, ABSTRACT NUMBER 88
HARRIS COUNTY, TEXAS**

Being a tract or parcel containing 20.5121 acres (893,507 square feet) of land situated in the Robert Wilson Survey, Abstract Number 88, Harris County, Texas, being all of Commercial Reserve "A" in the Final Replat of Baybrook, Section Two, according to the plat thereof recorded under Film Code Number 486030 of the Harris County Map Records which is all of those certain tracts of land as described in the deeds to the Methodist Hospital recorded under Harris County Clerk's File Numbers S546275 and V229570; said 20.5121 acre tract being more particularly described by metes and bounds as follows (all bearings are based on the record bearings of said Final Replat of Baybrook, Section Two):

COMMENCING at a 1-1/4 inch iron pipe found in the southwest right-of-way line of Interstate Highway 45 (300 feet wide) marking the southeast corner of said Final Replat of Baybrook, Section Two;

THENCE, North 41°08'00" West, along said southwest right-of-way line, a distance of 690.91 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking the east corner of and POINT OF BEGINNING of the herein described tract common with the east corner of the aforesaid Commercial Reserve "A" and the north corner of Restricted Reserve "C" of the aforesaid Final Replat of Baybrook, Section Two;

THENCE, South 48°52'30" West, along the northwest line of said Restricted Reserve "C", a distance of 433.88 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set in the northeast line of Restricted Reserve "D" of said Final Replat of Baybrook, Section Two, marking the south corner of the herein described tract common with the south corner of said Commercial Reserve "A";

THENCE, North 61°38'48" West, along said northeast line, a distance of 293.03 feet to a 5/8-inch iron rod found marking an angle corner in said northeast line common with an angle corner of the herein described tract;

THENCE, North 66°29'13" West, continuing along said northeast line, a distance of 92.23 feet to a 5/8-inch iron rod found marking a point on a curve to the left;

THENCE, continuing along said northeast line and then along the northerly line of Restricted Reserve "E" of the aforesaid Final Replat of Baybrook, Section Two, along said curve to the left having a central angle of 43°26'26", an arc distance of 250.20 feet, a radius of 330.00 feet, and a chord which bears North 88°13'12" West, 244.25 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking the end of said curve;

THENCE, South 70°15'29" West, continuing along said northerly line, a distance of 398.47 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking the southwest corner of the herein described tract common with the southwest corner of the aforesaid Commercial Reserve "A";

METES AND BOUNDS DESCRIPTION
20.5121 ACRES
PAGE 2 OF 2

THENCE, North 12°08'50" West, along the west line of said Commercial Reserve "A", a distance of 754.62 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set in the south line of the called 25.354 acre tract as described in the deed recorded under Harris County Clerk's File Number R707261, marking the northwest corner of the herein described tract common with the northwest corner of said Commercial Reserve "A", from which a found 5/8-inch iron rod bears South 77°51'10" West, 85.97 feet;

THENCE, North 77°51'10" East, along said south line, a distance of 650.79 feet to a 5/8-inch iron rod found marking the Point of Curvature of a curve to the left;

THENCE, continuing along said south line, along said curve to the left having a central angle of 28°58'40", an arc distance of 40.46 feet, a radius of 80.00 feet, and a chord which bears North 63°21'50" East, 40.03 feet to a 5/8-inch iron rod found marking the end of said curve;

THENCE, North 48°52'30" East, continuing along said south line, a distance of 127.25 feet to a 5/8-inch iron rod found marking an angle corner in said south line common with an angle corner of the herein described tract;

THENCE, South 86°07'30" East, a distance of 35.36 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set in the aforesaid west right-of-way line of Interstate Highway 45 marking the northeast corner of the herein described tract;

THENCE, South 41°08'00" East, along said west right-of-way line, a distance of 979.18 feet to the POINT OF BEGINNING and containing 20.5121 acres (893,507 square feet) of land. This description is based on the ALTA/ACSM Land Title Survey prepared by Terra Surveying Company, Inc., dated May 30, 2006, TSC Project Number 2526-0601-S.

Compiled by: Mark J. Piriano, RPLS
Terra Surveying Company, Inc.
Mb205121.doc



BOOK		PAGE	
ALTA/SUBDIVISION SURVEY			
TO 521 ACRES			
FINAL REPORT OF INVESTIGATION INC			
SHERIFF WILSON LEAGUE, A-88			
HARRIS COUNTY, TEXAS			
TARRANT			
2001 BLANCK DRIVE - SUITE 204			
DALLAS, TEXAS 75244			
DATE	10/11/01	BY	W. J. ZIMMER
SCALE	AS SHOWN	BY	W. J. ZIMMER
REVISIONS			



W. J. Zimmer
Surveyor
No. 10111
Harris County, Texas

ALL RIGHTS RESERVED
NO PART OF THIS SURVEY
MAY BE REPRODUCED OR
TRANSMITTED IN ANY FORM
OR BY ANY MEANS, ELECTRONIC
OR MECHANICAL, INCLUDING
PHOTOCOPYING, RECORDING,
OR BY ANY INFORMATION
STORAGE AND RETRIEVAL
SYSTEM, WITHOUT PERMISSION
IN WRITING FROM THE
SURVEYOR.

THIS SURVEY WAS MADE BY ME
OR UNDER MY CLOSE PERSONAL
SUPERVISION AND TO THE BEST
OF MY KNOWLEDGE AND BELIEF
IT ACCURATELY REPRESENTS
THE ACTUAL SITUATION ON THE
GROUND. I AM NOT PROVIDING
ANY WARRANTY, EXPRESS OR
IMPLIED, FOR THIS SURVEY.
I AM NOT RESPONSIBLE FOR
ANY ERRORS OR OMISSIONS
HEREIN.

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, erasures or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

THIS SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT ACCURATELY REPRESENTS THE ACTUAL SITUATION ON THE GROUND. I AM NOT PROVIDING ANY WARRANTY, EXPRESS OR IMPLIED, FOR THIS SURVEY. I AM NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN.

ALL RIGHTS RESERVED
NO PART OF THIS SURVEY
MAY BE REPRODUCED OR
TRANSMITTED IN ANY FORM
OR BY ANY MEANS, ELECTRONIC
OR MECHANICAL, INCLUDING
PHOTOCOPYING, RECORDING,
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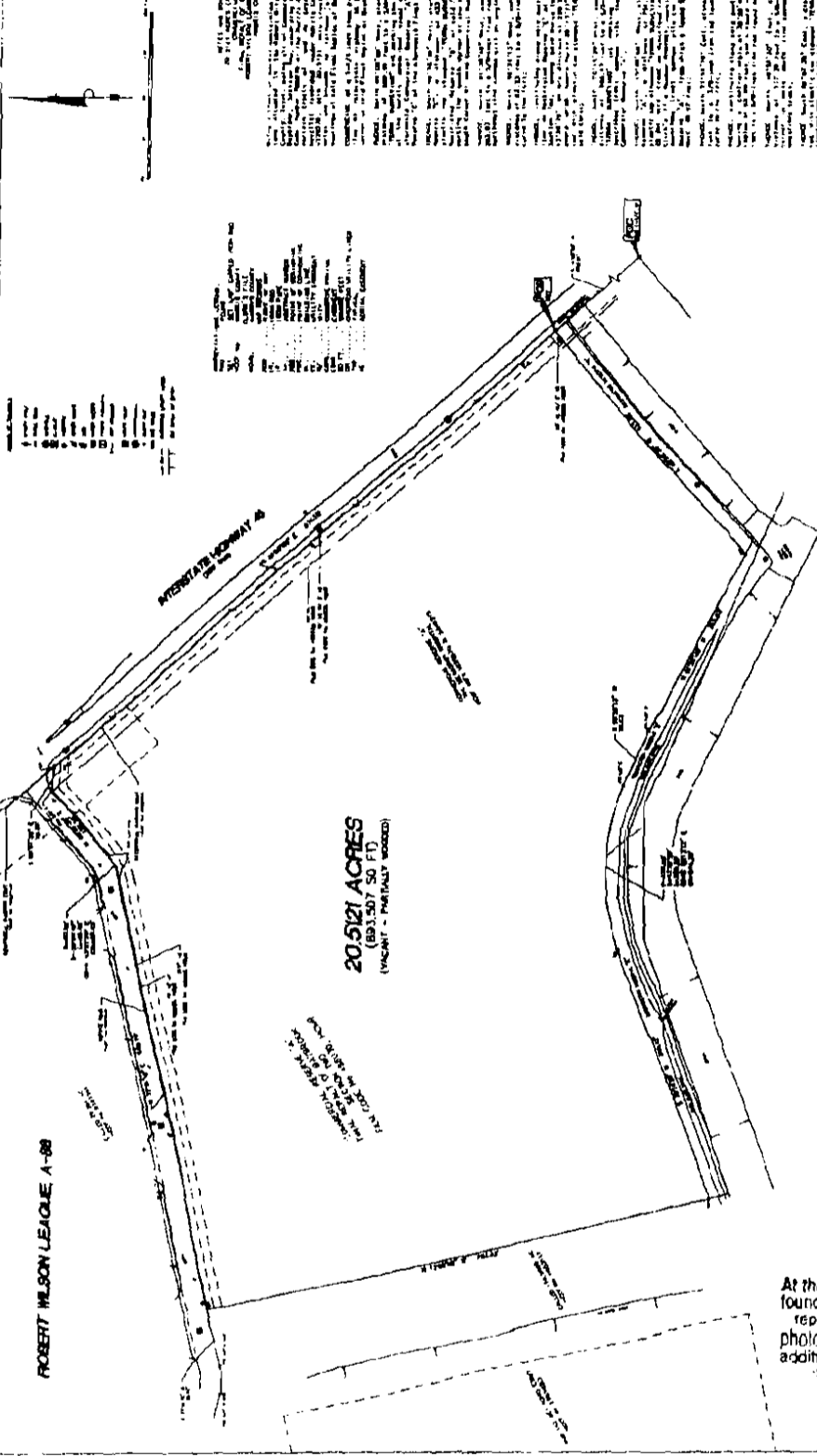


EXHIBIT "B"
RAILROAD COMMISSION OF TEXAS
VOLUNTARY CLEANUP PROGRAM
AFFIDAVIT OF COMPLETION OF RESPONSE ACTION
AND INSTITUTIONAL CONTROLS

I, Keith Schinnerer, representing Lincoln National Life Insurance Co., L.P. ("Applicant"), have completed response actions necessary, pursuant to Chapter 91, Subchapter O, Texas Natural Resource Code, at the tract of land described in Exhibit "A" (Site) of this certificate pertaining to VCP No. 03-80001. At the time of the application, Baybrook Commons, L.L.C. owned the 20.5130 acre parcel located in Harris County, Texas. The Applicant has submitted and received approval from the Railroad Commission of Texas Voluntary Cleanup Program on all plans and reports required by the Voluntary Cleanup Agreement. The plans and reports were prepared using a prudent degree of inquiry of the Site consistent with accepted industry standards to identify all contaminants, waste and contaminated media of regulatory concern. The response actions for the site have achieved response action levels as determined by the standards of the RRC and remain protective as long as the following institutional controls are maintained:

1. Use of the groundwater beneath the Property shall not be allowed except for monitoring purposes.
2. Penetration or excavation for a purpose of the impacted groundwater zones should only be conducted in such a manner as to prevent the migration or release of contaminants to any other zone or media and to prevent uncontrolled exposure to human and ecological receptors.
3. These restrictions shall be a covenant running with the land.
4. These restrictions were filed in the Harris County Clerk's office on 27 December 2007, Document 20070751417 (Attachment 1)

The response actions eliminate substantial present or future risk to public health and safety and to the environment from releases and threatened releases of contaminants at or from the Site. The Applicant has not acquired this certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information. Further information concerning the response actions at this Site may be found in the final report at the central office of the RRC under VCP No. 03-80001.

The preceding is true and correct to the best of my knowledge and belief

Applicant

By: Keith Schinnerer

Print Name: Keith Schinnerer, Second Vice President, Delaware Investment Advisers, a series of Delaware Management Business Trust, Attorney-In-Fact

STATE OF Indiana
COUNTY OF Allen

BEFORE ME, personally appeared Keith Schinnerer, known to me to be the person and agent of said commission whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7th day of February 2008.

Notary Public in and for the State of Indiana

Patricia L. Hooker
PATRICIA L. HOOKER, Notary Public
Resident of Allen County, Indiana
My Commission Expires August 24, 2008

**Railroad Commission of Texas
Environmental Restrictive Covenant**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Restrictive Covenant is filed pursuant to the authority of the Railroad Commission of Texas (Commission) to control and clean up pollution caused by activities over which the Commission exercises jurisdiction in accordance with Section 91.113 of the Texas Natural Resources Code, and affects the real property (Property) described as follows:

Baybrook Commons, L.L.C. is the current Owner of the Property and premises, and appurtenances thereto, located in Harris County, Texas, consisting of a 20.5130 acre tract identified as Commercial Reserve "A" on the Final Plat of Baybrook, Section Two, recorded on August 14, 2001, at V229140, Film Code No. 486030, in the Deed Records of the office of the County Clerk of Harris County, Texas. A survey is attached hereto as **Exhibit A**.

Ground water on a portion of the Property is affected by certain identified chemicals of concern. This restrictive covenant is required for the following reasons:

The Property is vacant land otherwise known as Commercial Reserve "A." An oil and/or gas well was operated on then undivided property to the north by D.R. Moreland and/or C.F. Ross from the 1950s or 1960s until it was plugged and abandoned in early 1980. From approximately 1969 to 1979, a drilling mud pit was also located on then undivided property, partially on what is now, as of the date of this Restrictive Covenant, the Property and partially on now adjacent property to the north, which was formerly owned by The Lincoln National Life Insurance Company, which is Applicant "A" on VCP 03-80001 for the Property as well as on VCP 03-40003 on the adjacent property to the north. The current owner of the Property, Baybrook Commons L.L.C., is Applicant "B" on VCP 03-80001. Chemicals of concern attributable to the historical oil and/or gas operations at the Property impacted soil and ground water. The conditions were discovered during an environmental investigation conducted during sale of adjacent property to the north. Arcadis-Geraghty & Miller and Brown and Caldwell, Inc. investigated the chemicals of concern in groundwater beneath the Property and adjacent property to the north. The following chemicals of concern attributable to the historical oil and/or gas operations at the Property were left in groundwater at the Property at the following maximum concentrations at the time of IC filing: Barium (12.4 milligrams per liter (mg/L)), Arsenic (0.0215 mg/L), Lead (0.0673 mg/L), and Chlorides (17,500 mg/L). The investigation, assessment, remediation and analytical data on the Property are contained in the following reports:

- Continued Investigation and Closure Strategy Report, October 14, 1999, Arcadis
- Summary of Findings Report, October 2000, Arcadis

Preliminary Phase II Environmental Assessment, October 14, 2000, Arcadis

Off-site Delineation Report, June 2000, Arcadis

Summary Report, May 9, 2003

Soil and Groundwater Investigation Report, March 2005, Brown and Caldwell

Soil and Groundwater Sampling and Analysis Report, March 1, 2006, Brown and Caldwell

Copies of the reports may be obtained from the Texas Railroad Commission, Site Remediation Division, P. O. Box 12967, 1701 N. Congress, Austin, Texas 78711-2967 (512-463-6765). Reference VCP Number 03-40003.

From and after the date of this Restrictive Covenant, groundwater beneath the Property will not be used for any purpose, except monitoring, as described in the Restrictive Covenant below. The Commission has determined based on information contained in the reports identified above that the chemicals of concern listed above in groundwater beneath the Property pose no significant present or future risk to humans or the environment so long as groundwater beneath the Property is not used for any purpose, except monitoring (the "Commission's Determination"). If any person desires to use groundwater beneath the Property other than in accordance with the Groundwater Use Restriction, the Commission must be notified at least 60 days in advance of such use. Any use of groundwater beneath the Property other than for monitoring may require additional response action.

Baybrook Commons, L.L.C. is the Owner of the Property. In consideration of the investigation of shallow groundwater conducted on the Property by The Lincoln National Life Insurance Company leading to the Commission's Determination as defined above, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following restrictive covenant in favor of the Commission and the State of Texas is placed on the Property (the "Restrictive Covenant"), to-wit:

1. Use of the ground water beneath the Property shall not be allowed except for monitoring purposes.
2. Penetration or excavation of the impacted groundwater zones for any purpose should only be conducted in such a manner as to prevent the migration or release of contaminants to any other zone or media and to prevent uncontrolled exposure to human and ecological receptors.
3. These restrictions shall be a covenant running with the land.

For additional information, contact:

Railroad Commission of Texas
Site Remediation
P. O. Box 12967
1701 N. Congress
Austin, Texas 78711-2967

FILED FOR RECORD
8:00 AM

DEC 27 2007

[Signature]
County Clerk, Harris County, Texas

Reference Railroad Commission of Texas Operator Cleanup Program No.: 03-40003.

As of the date of this Covenant, the record owner of fee title to the Property is Baybrook Commons, L.L.C. with an address at 6565 Fannin, Houston, Texas 77030.

This Restrictive Covenant may be rendered of no further force or effect only by a release executed by the Commission and filed in the same Real Property Records as those in which this Restrictive Covenant is filed.

[SIGNATURES ON FOLLOWING PAGES]

Executed this 5th day of December 2007 as owner of the Property.

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16 -

BAYBROOK COMMONS, L.L.C.
Signature: [Handwritten Signature]
Printed Name: Greg Toler
Title: Manager

STATE OF Colorado
Jefferson COUNTY

BEFORE ME, on this the 5th day of December personally appeared Greg Toler, known to me to be the person whose name is subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purposes and in the capacity herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5th day of December, 2007

TENA M LEVENS
Notary Public
State of Colorado
My Commission Expires September 26, 2010

Notary Public in and for the State of Colorado
County of Jefferson
My Commission Expires: Sept 26, 2010

Acknowledged this 10th day of December, 2007 by The Lincoln National Life Insurance Company, as Applicant "A" under VCP 03-40003.

**THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY**

By: Delaware Investment Advisers, a series of
Delaware Management Business Trust,
Attorney-In-Fact

Signature: Keith A. Schinnerer

Printed Name: Keith A. Schinnerer

Title: Senior Vice President

STATE OF INDIANA
ALLEN COUNTY

BEFORE ME, on this the 10th day of December, 2007, personally appeared Keith A. Schinnerer, known to me to be the person whose name is subscribed to the foregoing instrument, and ~~they~~ acknowledged to me that ~~they~~ executed the same for the purposes and in the capacity herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10th day of
December, 2007.

Patricia L. Hooker

Notary Public in and for the State of Indiana,
County of Allen

My Commission Expires:

PATRICIA L. HOOKER, Notary Public
Resident of Allen County, Indiana
My Commission Expires August 24, 2008

Accepted as Third Party Beneficiary this 4th day of December, 2007.

Railroad Commission of Texas

By: David W. Rooney, Jr.

Name: David W. Rooney, Jr.

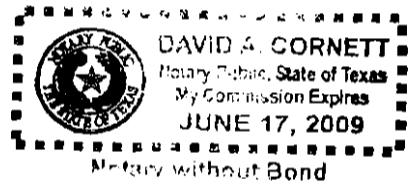
Title: Attorney, Special Counsel Section

STATE OF TEXAS
HARRIS COUNTY

BEFORE ME, on this the 4 day of December, 07, personally appeared David Rooney, known to me to be the person whose name is subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purposes and in the capacity herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 4th day of December, 07.

David A. Cornett
Notary Public in and for the State of Texas,
County of TRAVIS
My Commission Expires: 17 Jun 09





3000 Wilcrest Drive, Suite 210 — Houston, Texas 77042 — (713) 993-0327 — Fax (713) 993-9231

METES AND BOUNDS DESCRIPTION
 20.5121 ACRES (893,507 SQUARE FEET)
 COMMERCIAL RESERVE "A"
 FINAL REPLAT OF BAYBROOK, SECTION TWO
 ROBERT WILSON LEAGUE, ABSTRACT NUMBER 88
 HARRIS COUNTY, TEXAS

Being a tract or parcel containing 20.5121 acres (893,507 square feet) of land situated in the Robert Wilson Survey, Abstract Number 88, Harris County, Texas, being all of Commercial Reserve "A" in the Final Replat of Baybrook, Section Two, according to the plat thereof recorded under Film Code Number 486030 of the Harris County Map Records which is all of those certain tracts of land as described in the deeds to the Methodist Hospital recorded under Harris County Clerk's File Numbers S546275 and V229570; said 20.5121 acre tract being more particularly described by metes and bounds as follows (all bearings are based on the record bearings of said Final Replat of Baybrook, Section Two):

COMMENCING at a 1-1/4 inch iron pipe found in the southwest right-of-way line of Interstate Highway 45 (300 feet wide) marking the southeast corner of said Final Replat of Baybrook, Section Two;

THENCE, North 41°08'00" West, along said southwest right-of-way line, a distance of 690.91 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking the east corner of and POINT OF BEGINNING of the herein described tract common with the east corner of the aforesaid Commercial Reserve "A" and the north corner of Restricted Reserve "C" of the aforesaid Final Replat of Baybrook, Section Two;

THENCE, South 48°52'30" West, along the northwest line of said Restricted Reserve "C", a distance of 433.88 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set in the northeast line of Restricted Reserve "D" of said Final Replat of Baybrook, Section Two, marking the south corner of the herein described tract common with the south corner of said Commercial Reserve "A";

THENCE, North 61°38'48" West, along said northeast line, a distance of 293.03 feet to a 5/8-inch iron rod found marking an angle corner in said northeast line common with an angle corner of the herein described tract;

THENCE, North 66°29'13" West, continuing along said northeast line, a distance of 92.23 feet to a 5/8-inch iron rod found marking a point on a curve to the left;

THENCE, continuing along said northeast line and then along the northerly line of Restricted Reserve "E" of the aforesaid Final Replat of Baybrook, Section Two, along said curve to the left having a central angle of 43°26'26", an arc distance of 250.20 feet, a radius of 330.00 feet, and a chord which bears North 88°13'12" West, 244.25 feet to a 5/8-inch iron rod with plastic cap stamped "TERRA SURVEYING" set marking the end of said curve;

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THENCE, North 77°51'10" East, along said south line, a distance of 650.79 feet to a 5/8-inch iron rod found marking the Point of Curvature of a curve to the left;

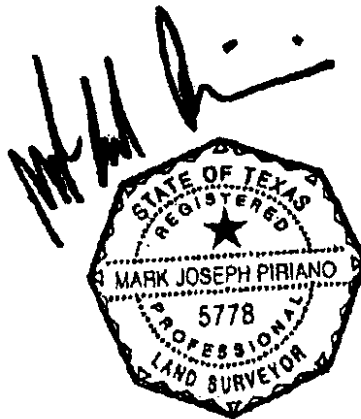
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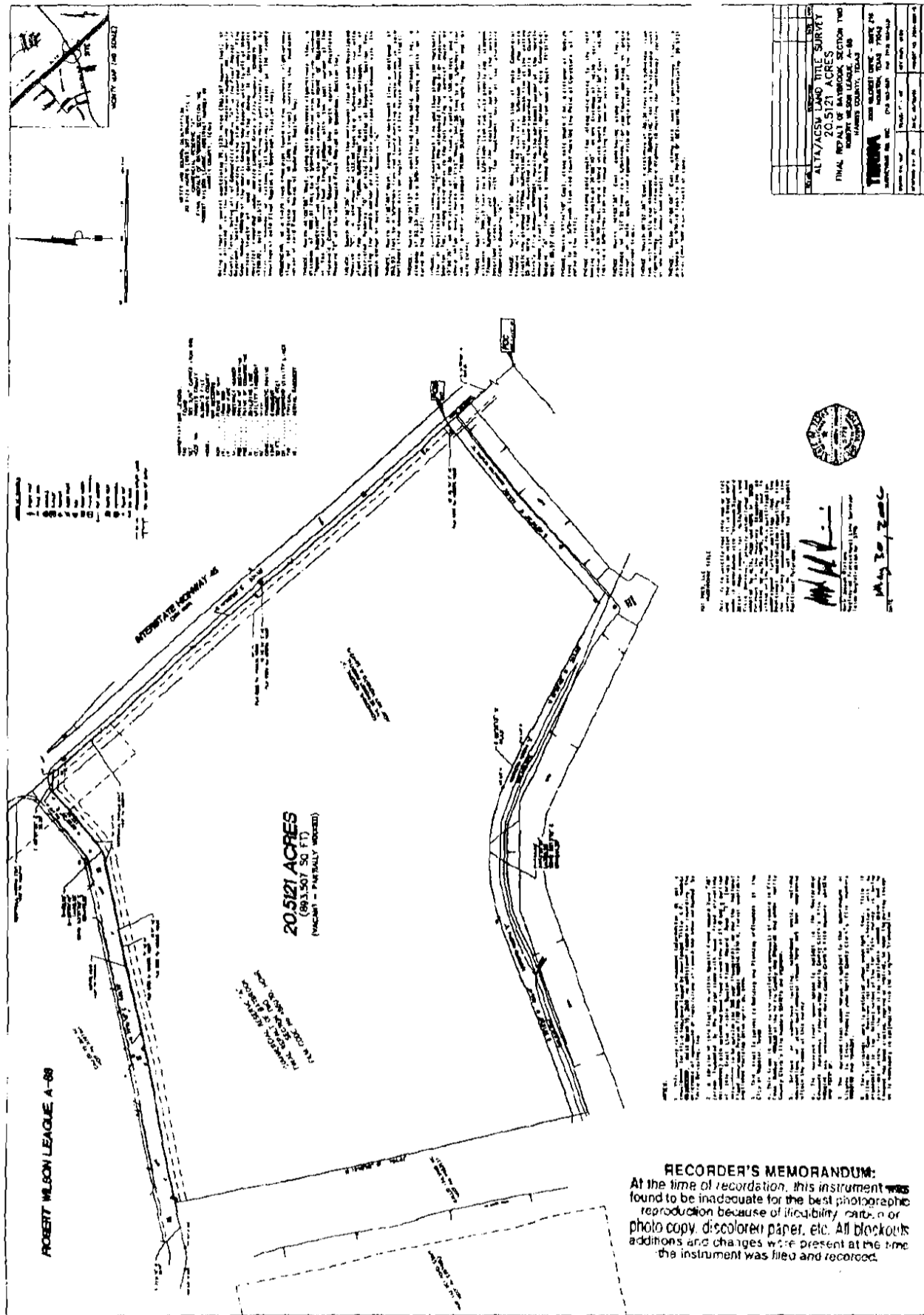
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Compiled by: Mark J. Piriano, RPLS
Terra Surveying Company, Inc.
Mb205121.doc





ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number hereon on the date and at the
place herein by me and was duly RECORDED in the Official Public Records of said Property of Harris
County Texas on

DEC 27 2007



Conroy L. Hayden
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Supersession on the date and at the
clerk's office by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris
County Texas on:

DEC 27 2007



Conroy L. Koptman
COUNTY CLERK
HARRIS COUNTY, TEXAS