

**DECLARATION OF RESTRICTIONS**  
**(Avalon Terrace Commercial Properties)**

THIS DECLARATION OF RESTRICTIONS ("Declaration"), is executed the <sup>9<sup>th</sup></sup> 13<sup>th</sup> day of September, 2017 ("Effective Date"), by MHI PARTNERSHIP, LTD., a Texas limited partnership ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain 13.7447 acre parcel of land and that certain 3.2822 parcel of land located in Brazoria County, Texas, more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Declarant intends to sell the Property for commercial development and desires to impose certain restrictions on the Property for the purpose of promoting the orderly development and use of the Property in a manner compatible with the adjacent Avalon Terrace residential community being developed by Declarant (the "Residential Community").

NOW, THEREFORE, Declarant hereby imposes the following restrictions on the Property:

1. **Use Restrictions.** Unless otherwise approved by Declarant, the Property may be used solely for commercial and/or retail purposes (including office and medical uses) but may not be used for residential purposes, including multi-family residential uses. In addition, the use of any portion of the Property for the activities listed on Exhibit B is prohibited.

2. **Construction and Development.** The development, construction or reconstruction of any building or other improvements or structures (including without limitation, utility lines, driveways, signs, parking areas, lights, curb-cuts, access ways, and landscaping) on the Property or on a separately owned portion of the Property (a "Tract"), and site preparation and site development work erected or performed on the Tract from time to time (including without limitation, any expansion of a building) are subject to, and shall be performed in accordance with (and the rights and limitations shall be controlled by) the following:

(a) **Plans.** A complete set of plans and specifications for any proposed building or other improvements, which have been stamped/sealed by an architect or engineer, including a photometric plan and building and civil plans (based on accepted design systems in the industry) shall be submitted by the owner of fee title (a "Property Owner") to the applicable Tract to Declarant via electronic mail or on a computer disk for comment and approval prior to the commencement of any work on the applicable Tract, which approval will not be unreasonably withheld, conditioned or delayed. Such plans and specifications, once approved by Declarant and any governmental authorities with jurisdiction, are hereinafter referred to as the "Property Owner's Approved Plans". All construction shall be performed in accordance with the Property Owner's Approved Plans.

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(b) Parking. The parking of automotive vehicles on a Tract shall be totally self-contained within the boundaries of the Tract to meet the requirements of all Laws (hereinafter defined) which are applicable. Each Property Owner shall park and shall use reasonable efforts to cause its occupants and their respective customers, invitees, licensees, contractors, agents or employees to park only within the parking areas on the applicable Tract designated by such Property Owner. Keeping stored or inoperable vehicles anywhere within the Property is prohibited.

(c) Utilities and Site Work. Each Property Owner, at its sole cost and expense, shall be responsible for the installation of utility lines and meters on the Tract it owns in accordance with applicable utility company and governmental requirements.

(d) Signs. All signs on a Tract shall (i) be approved by Declarant, which approval shall not be unreasonably withheld, conditioned or delayed (including such sign's colors and final design), (ii) comply with all applicable Laws, (iii) identify the name of the business or organization being operated in the building on the Tract, and (iv) be professionally designed, constructed and installed.

(e) Compliance with Laws. All construction on the Property shall be performed in compliance with all laws, rules, orders, zoning ordinances, regulations, statutes, resolutions, approvals and requirements of all governmental or quasi governmental authorities and the Board of Fire Underwriters or of any similarly constituted body (collectively "Laws"). Declarant may, at its option and after thirty (30) days' written notice to Property Owner of its intention to do so, comply with the same for the account of a Property Owner if such Property Owner fails to do so within such 30-day period, and such Property Owner shall upon demand pay to Declarant the cost of such compliance including reasonable expenses, interest, attorneys' fees and costs incurred in connection therewith.

(f) Roof Top Equipment. Any mechanical equipment that is located on the roof of any building or improvement shall be (i) screened and enclosed in a manner that is architecturally and aesthetically harmonious with the Residential Community and (ii) subject to the approval of the Declarant, which will not be unreasonably withheld, conditioned or delayed.

(g) Fence Requirement. Prior to occupancy of the building on a Tract which has a common boundary line with the Residential Community, the Property Owner of such Tract shall construct, at its expense, on the Tract along the common boundary line a seven-foot (7') tall concrete panel fence manufactured by Fencecrete America, Ltd. in accordance with the specifications attached hereto as Exhibit C or as otherwise approved by Declarant.

(h) Encroachments. If any building, structure or other improvement to the Property constructed thereon shall encroach upon any property, street or right-of-way adjoining or adjacent to the Property, or shall violate the agreements or conditions contained in any restrictive covenant affecting the Property or any part thereof, or shall hinder or obstruct any easement or right-of-way to which the Property is subject or shall impair the rights of others under any such easement or right-of-way, then, in the case of any encroachment, promptly after written request from any person affected by such encroachment or Declarant, the applicable Property Owner shall either (i) obtain valid and effective waivers or settlements of all claims, liabilities and

damages resulting from each such encroachment, violation, hindrance, obstruction or impairment, or (ii) make such changes in the improvements on the Property and take such other action as shall be necessary to remove such encroachments, hindrances or obstructions and to end such violations or impairments.

3. **Maintenance.** All exterior and outside areas of a Tract and the improvements thereon shall be maintained by the applicable Property Owner in a neat, clean and sanitary condition and appearance and in a state of repair consistent with that kept at the Residential Community, free of trash, garbage, litter, snow, ice, surface water and obstructions of any kind. Each Property Owner shall maintain storm drains and other utility facilities located on the Tract it owns in good condition. Each Property Owner shall prevent soil, silt and other materials from eroding from the Tract it owns onto contiguous properties, drives and rights-of-way and shall promptly clean-up all such soil, silt and other materials which leave the Tract. Any existing grass and landscaping on each Tract shall be properly cut and maintained by the applicable Property Owner. Following construction, the portions of a Tract not occupied by improvements shall be landscaped as shown on the applicable Property Owner's Approved Plans. Landscaping shall not, because of initial size or untrimmed growth, be allowed to obstruct the visibility of improvements and signs located on any adjacent property. If a Property Owner does not maintain its Tract in the aforesaid manner, after ten (10) business days' written notice to such Property Owner, Declarant shall have the right (but no obligation), as often as may be reasonably necessary, to enter upon the Property and restore the same to a neat, clean and sanitary condition. Such Property Owner covenants and agrees to reimburse Declarant, upon demand, for the reasonable expenses thus incurred, together with interest at the rate of twelve percent (12%) per annum until paid.

4. **Enforcement.** If a Property Owner or its successors or assigns or any party or parties claiming under them shall violate or attempt to violate any of the foregoing covenants, Declarant may prosecute any proceedings at law or in equity to enjoin such violation and to recover damages for such violation, including reasonable attorney's fees.

5. **Binding Effect.** The restrictions contained herein shall be effective as of the Effective Date, shall run with the land burdened thereby, shall be binding upon all owners and occupants thereof, or any part thereof and improvements thereon, and their respective successors and assigns, shall constitute an encumbrance on the Property, and shall inure to the benefit of Declarant, its successors and assigns, and shall terminate and expire on December 31, 2099.

6. **Amendment.** This Declaration may be amended by written instrument executed by the Declarant and the owner(s) of the Property. Any amendment to this Declaration shall be recorded in the Official Records of Real Property of Brazoria County, Texas (the "Official Records").

7. **Invalidity.** If any term, covenant or restriction herein shall be invalid or unenforceable, the remainder shall not be affected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

8. **Exhibits.** The exhibits attached hereto are a part of this Declaration and are incorporated herein by reference. Except as specifically provided herein, if any provision contained

in any exhibit hereto is inconsistent or in conflict with any provisions of this Declaration, the provisions of this Declaration shall supersede the provisions of such exhibit and shall be paramount and controlling.

9. **Declarant.** "Declarant" shall mean MHI Partnership, Ltd., a Texas limited partnership, its successors or an assignee designated in an instrument of assignment recorded in the Official Records. The rights of Declarant under this Declaration may be assigned to the Avalon Terrace Community Association, Inc. which administers the deed restrictions that are applicable to the Residential Community.

10. **Miscellaneous.**

a. One or more waivers of any term, covenant, or condition of this Declaration by any party should not be construed as a waiver of any subsequent breach of the same or any other term, covenant, or condition; nor shall any delay or omission by any party in seeking a remedy for breach of this Declaration, or exercising any right accruing to such party or reason of any such breach, be deemed a waiver by such party of its rights or remedies with respect to such breach.

b. Except as otherwise expressly provided or unless the context otherwise requires, the defined terms of this Declaration shall include the plural as well as the singular, and the use of any gender herein shall be deemed to include any other gender.

c. The captions of the Sections of this Declaration are for convenience only and shall be considered not referred to in resolving any questions of interpretation and construction of this Declaration.

d. This Declaration shall be governed by and shall be construed and enforced in accordance with the laws of Texas, without regard to its principles of conflict of laws.

e. If any provision of this Declaration or the application thereof to any person or circumstance shall to any extent be held void or invalid or unenforceable, then the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held void or invalid or unenforceable shall not be affected thereby, and each and every other provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

**[SIGNATURE ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

**DECLARANT**

MHI PARTNERSHIP, LTD.,  
a Texas limited partnership

By: McGuyer Homebuilders, Inc.,  
general partner

By: *David Bruning*  
DAVID BRUNING  
Its: VICE PRESIDENT

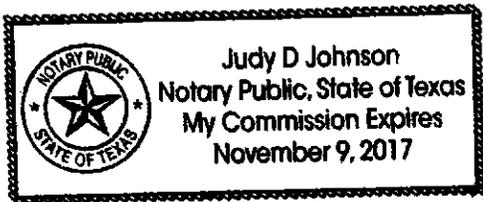
THE STATE OF TEXAS  
  
COUNTY OF HARRIS

§  
§  
§

This instrument was acknowledged before me on the 13<sup>th</sup> day of September, 2017 by David Bruning, Vice President of McGuyer Homebuilders, Inc., a corporation which is the general partner of MHI Partnership, Ltd., a Texas limited partnership, on behalf of said limited partnership.

(SEAL)

*Judy D Johnson*  
Notary Public in and for  
the State of Texas



**EXHIBIT A****Legal Description of the Property**

Avalon Terrace East Commercial Tract  
13.7447 Acres

H. T. & B. R. R. Co. Survey  
Abstract Number 505

STATE OF TEXAS           §

COUNTY OF BRAZORIA   §

A **METES & BOUNDS** description of a 13.7447 acre tract of land in the H. T. & B. R. R. Co. Survey, Abstract Number 505 in Brazoria County, Texas, being a portion of a called 238.414 acre tract of land described in Warranty Deed from Peyton Martin, Trustee to MHI Partnership, Ltd, executed July 29, 2003, as filed for record under Clerk's File Number 03-046549 of the Brazoria County Deed Records. Said 13.7447 acre tract is more particularly described as follows with all bearings based on the Texas Coordinate System, South Central Zone (4204), North American Datum of 1983 (NAD 83) as determined with Global Positioning Satellite Equipment;

**COMMENCING** at a 2 inch pinch top pipe found for the southwest corner of said 238.414 acre tract and being at the intersection of the north right-of-way line of F.M. 518 (Broadway) (called 100 feet wide) and the east right-of-way line of a called 40 foot wide road (not open), as shown on the Allison-Richey Gulf Coast Home Company subdivision plat recorded in Volume 2, Pages 23 and 24 of the Brazoria County Plat Records from which a 1/2 inch iron rod found for the northwest corner of said 238.414 acre tract bears North 02°52'26" West, 5,240.11 feet;

**THENCE**, North 02°52'26" West, 309.71 feet along the common west line of said 238.414 acre tract and the east right-of-way line of said 40 foot wide road to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the southwest corner of Lot 7, Block 1 of Avalon Terrace, Section 1, subdivision as recorded in Volume 24, Pages 288 and 289 of the Brazoria County Plat Records;

**THENCE**, North 87°07'57" East, 598.60 feet along the south line of said Block 1 to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set at the intersection of the south line of Lot 1, Block 2 and the east line of Restricted Reserve "C" of said Avalon Terrace, Section 1, subdivision and being the **POINT OF BEGINNING** of the herein described tract;

**THENCE**, North 87°07'57" East, 901.82 feet along the south line of said Block 2 to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the southeast corner of Lot 14, of said Block 2;

**THENCE**, North 02°52'03" West, 270.00 feet along the east line of said Block 2 to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the northeast corner of Lot 16 of said Block 2 and being on the south line of Lot 18 of said Block 2;

**THENCE**, North 87°07'57" East, at 10.00 feet pass the common southeast corner of said Lot 18 and the southwest corner of Lot 1, Block 3 of Avalon Terrace, Section 3, subdivision as filed for record under Document Number 2007014412 of the Brazoria County Official Records and continuing along the south line of said Block 3 for a total distance of 567.30 feet to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the southeast corner of Lot 8, of said Block 3 and being on the common west right-of-way line of Max Road (County Road 108) (called 60 feet wide) and the east line of the aforesaid 238.414 acre tract;

Avalon Terrace East Commercial Tract  
13.7447 Acres

H. T. & B. R. R. Co. Survey  
Abstract Number 505

THENCE, South 02°52'03" East, 575.69 feet along said common line to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for corner on the north line of a 10 foot wide strip of land dedicated to the City of Pearland as shown on the aforesaid plat of Avalon Terrace, Section 1 from which a 2 inch pinch top pipe found for the southeast corner of said 238.414 acre tract bears South 02°52'03" East, 10.00 feet;

THENCE, South 87°17'54" West, 1,435.34 feet along said north line to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for a cut-back corner on the east line of the aforementioned Restricted Reserve "C";

THENCE, North 47°40'10" West, 49.47 feet along said east line with said cut-back to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for a cut-back corner;

THENCE, North 02°38'15" West, 266.44 feet continuing along said east line to the POINT OF BEGINNING, containing 13.7447 acres of land in Brazoria County, Texas.



10/10/08

Avalon Terrace West Commercial Tract  
3.2822 Acres

H. T. & B. R. R. Co. Survey  
Abstract Number 505

STATE OF TEXAS §

COUNTY OF BRAZORIA §

A **METES & BOUNDS** description of a 3.2822 acre tract of land in the H. T. & B. R. R. Co. Survey, Abstract Number 505 in Brazoria County, Texas, being a portion of a called 238.414 acre tract of land described in Warranty Deed from Peyton Martin, Trustee to MHI Partnership, Ltd, executed July 29, 2003, as filed for record under Clerk's File Number 03 048549 of the Brazoria County Deed Records. Said 3.2822 acre tract is more particularly described as follows with all bearings based on the Texas Coordinate System, South Central Zone (4204), North American Datum of 1983 (NAD 83) as determined with Global Positioning Satellite Equipment;

**COMMENCING** at a 2 inch pinch top pipe found for the southwest corner of said 238.414 acre tract and being at the intersection of the north right-of-way line of F.M. 518 (Broadway) (called 100 feet wide) and the east right-of-way line of a called 40 foot wide road (not open), as shown on the Allison-Richey Gulf Coast Home Company subdivision plat recorded in Volume 2, Pages 23 and 24 of the Brazoria County Plat Records from which a 1/2 inch iron rod found for the northwest corner of said 238.414 acre tract bears North 02°52'26" West, 5,240.11 feet;

**THENCE**, North 02°52'26" West, 10.00 feet along the common west line of said 238.414 acre tract and the east right-of-way line of said 40 foot wide road to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the **POINT OF BEGINNING** of the herein described tract;

**THENCE**, North 02°52'26" West, 299.71 feet continuing along said common line to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for the southwest corner of Lot 7, Block 1 of Avalon Terrace, Section 1, subdivision as recorded in Volume 24, Pages 288 and 289 of the Brazoria County Plat Records;

**THENCE**, North 87°07'57" East, 478.60 feet along the south line of said Block 1 to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for corner on the west line of Restricted Reserve "B" of said Avalon Terrace, Section 1, subdivision;

**THENCE**, South 02°38'15" East, 266.09 feet along the west line of said Restricted Reserve "B" to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for a cut-back corner;

**THENCE**, South 42°19'50" West, 49.53 feet continuing along the west line of said Restricted Reserve "B" with said cut-back to a 3/4 inch iron rod with cap stamped "Cotton Surveying" set for corner on the north line of a 10 foot wide strip of land dedicated to the City of Pearland as shown on said plat of Avalon Terrace, Section 1;

**THENCE**, South 87°17'54" West, 442.36 feet along said north line to the **POINT OF BEGINNING**, containing 3.2822 acres of land in Brazoria County, Texas.

October 10, 2008  
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168\WEST COMMERCIAL TRACT M&B.DOC



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**EXHIBIT B**

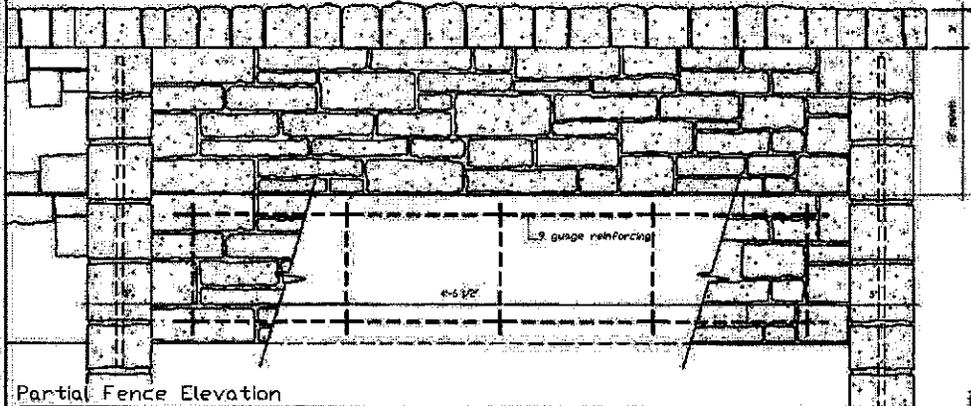
**RESTRICTED ACTIVITIES**

- A. Any activity including animals not complying with the following restrictions: (i) animals brought into the Property shall be kept on a leash or otherwise confined in a manner acceptable to the Declarant; (ii) any animal which is permitted to roam free, or, in the Declarant's sole discretion, makes objectionable noise, endangers the health or safety, of any individual or other animal, or constitutes an unreasonable annoyance or inert violence shall be removed upon the Declarant's request; and (iii) if the animal's owner fails to honor such request, the Declarant may remove or provide for the removal of the animal from the Property
- B. Any activity that emits foul or obnoxious odors or creates excessive noise or other conditions that tend to disturb the peace or threaten the safety of others, each as determined in the Declarant's reasonable discretion
- C. Any activity that violates local, state, or federal laws or regulations; however, the Declarant shall have no obligation to take enforcement action in the event of a violation
- D. Any activity that tends to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures
- E. Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers
- F. Discharging firearms; provided, the Declarant shall have no obligation to take action to prevent or stop such discharge
- G. Any noxious or offensive activity which in the Declarant's reasonable determination tends to cause embarrassment, discomfort, or annoyance to other persons within the Property or Residential Community
- H. Outside burning of trash, leaves, debris, or other materials
- I. Using or discharging firecrackers and other fireworks
- J. An adult book store, adult theater, adult amusement or entertainment facility, cabaret, men's club, selling or displaying pornographic materials, or any facilities requiring licensing or zoning as a sexually oriented business

EXHIBIT C

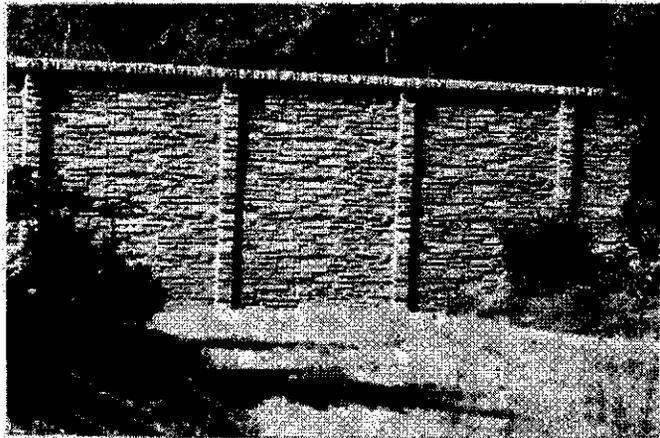


**FENCECRETE AMERICA, LTD.**  
 manufacturers of precast concrete fencing and masonry wall systems  
 15089 tradesmen drive san antonio, texas 78249 210-492-7911 800-229-7811 www.fencecrete.com



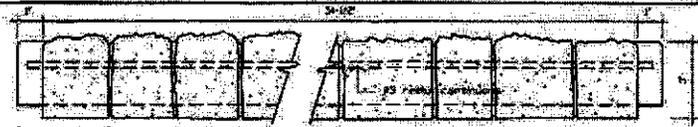
Partial Fence Elevation

scale 1-1/2" = 1'-0"



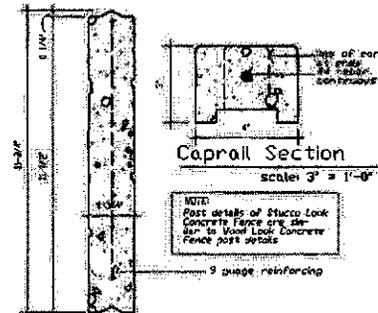
Rock Look Concrete Fence

Section 18' diameter, 2' deep  
 200 # gal. capacity, varies  
 according to size of container



Caprail Elevation

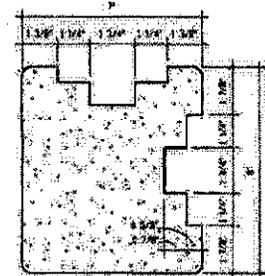
scale 3" = 1'-0"



Caprail Section

scale 3" = 1'-0"

NOTE  
 Post details of Stucco Look  
 Concrete Fence are differ-  
 ent to Rock Look Concrete  
 Fence post details

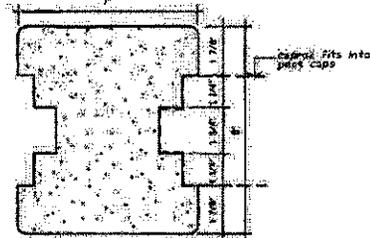


Corner Post Cap

scale 3" = 1'-0"

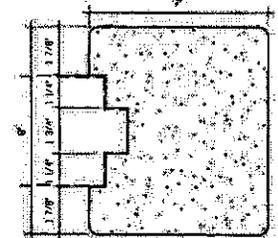
Typical Panel Section

scale 3" = 1'-0"



Running Post Cap

scale 3" = 1'-0"



Stop Post Cap

scale 3" = 1'-0"

- notes:
- The column height can be 3'-0" to 6' maximum of 12'-6" with 2'-0" above grade.
  - All concrete shall be 5000 psi.
  - All reinforcement shall be #2 (1/4") all grade 60. Special reinforcement is available upon special order.
  - Posting - 2 feet deep. Posting Spacers per column, 12" - 18" diameter. Depth and diameter can vary per local soil conditions.
  - Factory All exposed sides have rock-like texture.
  - Posts shall have additional steel supports adjacent to concrete column.
  - All steel reinforcement is provided with steel spacers as per table for minimum concrete coverage.
  - A special silicone sealant is used to lock the caprail and post caps in place. This sealant requires special tools for release.

We reserve the right to alter the design or specifications without incurring any obligation. All rights reserved.  
 Fencecrete America, Ltd.

# FILED and RECORDED

Instrument Number: 2017047421

Filing and Recording Date: 09/26/2017 03:07:39 PM Pages: 11 Recording Fee: \$62.00

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Brazoria County, Texas.



A handwritten signature in black ink, appearing to read "Joyce Hudman".

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Joyce Hudman, County Clerk  
Brazoria County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS UNENFORCEABLE.

***DO NOT DESTROY - Warning, this document is part of the Official Public Record.***

cclerk-tina