356463 Page 1 of 15 SAN MIGUEL COUNTY, CO 356463 DORIS RUFFE CLERK-RECORDER 04/10/2003 01:50 PM Recording Fee \$76.00

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR COMMERCIAL UNIT 1, HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR COMMERCIAL UNIT 1, HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS (referred to, as it may be amended or supplemented from time to time, as the "Declaration") (i) is effective as of March 28, 2003 (the "Effective Date"), (ii) is made by Wildair, LP, a Texas limited partnership ("Declarant"), and (iii) supersedes and replaces that certain Declaration of Restrictions for Commercial Unit 1, Heritage Crossing at the Gondola Condominiums filed under Reception No. 356285 of the Official Records (as hereinafter defined).

RECITALS

- A. Declarant is the fee simple owner of Commercial Unit 1, Heritage Crossing at the Gondola Condominiums, which property is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property").
- B. Declarant and TD Duddles (successor in interest by assignment to Dennis and Terri Duddles) ("<u>Duddles</u>") have entered into that certain Contract to Buy and Sell Real Estate (Commercial) (New Loan) dated as of January 29, 2003, as amended (the "<u>Contract</u>") pursuant to which Declarant has agreed to sell, and Duddles has agreed to purchase, the Property.
- C. As a condition of sale of the Property to Duddles pursuant to the Contract, Declarant requires Property use to be restricted.
- D. The purpose of this Declaration is to subject the Property to the covenants, conditions and restrictions set forth in this Declaration.

In consideration of the Contract and the foregoing, Declarant hereby declares as follows:

ARTICLE I IMPOSITION OF COVENANTS

- 1.1. Intention of Declarant. Declarant desires to (i) protect the value and desirability of Heritage Crossing at the Gondola Condominiums, a Colorado common interest ownership community more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Project"), of which the Property is a part, (ii) further a plan for the improvement, sale, ownership and use of the Property, and (iii) promote and safeguard the health, comfort, safety, convenience and welfare of the Owners.
- 1.2. Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby imposes upon the Property the covenants, conditions and restrictions set forth herein and declares that the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, improved and used subject to the provisions of this Declaration.
- 1.3. Covenants Running with the Land. All covenants, conditions, restrictions and other provisions of this Declaration shall be deemed to be covenants running with the Property or shall constitute equitable servitudes with respect to the Property, as the case may be. The obligations, benefits, burdens and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, each Owner, the Association and their respective heirs, devisees, executors, administrators, personal representatives, successors and assigns.

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ARTICLE II DEFINITIONS

2.1. Basic Definitions. Unless defined herein, capitalized terms used herein shall have the meanings ascribed in that certain Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums filed on March 26, 2002, under Reception No. 347962 of the Official Records, as amended (the "Project Declaration").

ARTICLE III USE RESTRICTIONS

and this Declaration, the Property may be used for a restaurant and associated bar. At no time shall the Property be used primarily or solely for the operation of a business which sells or serves alcoholic beverages, and bar seating shall be limited to an aggregate of fifteen (15) seats (determined on the basis of one seat per customer). Further: (i) the interior décor of the restaurant and bar shall be "mining era"; (ii) the restaurant may provide "self service" food amenities, including an automated espresso bar; (iii) all seating shall be at counter height; (iv) the facility shall have at least one (1) flat screen television; and (v) subject to receipt of (a) all required regulatory approvals, including, without limitation, approval of the Town of Mountain Village, (b) Declarant's written approval of the encumbered area, and (c) compliance with the restrictions set forth herein, Limited Common Area exterior of the Property may be used for outdoor seating of restaurant customers (such area herein the "Exterior LCA").

3.2. Hours of Operation.

- 3.2.1. Business may be conducted at the Property only between the hours of 7:00 a.m. and 10:00 p.m.; provided, the playing of recorded, ambient music and live musical performances shall be limited as set forth in Section 3.3 below.
- 3.2.2. Business shall not be conducted at the Property after 10:00 p.m., at which time the Property shall be vacated by all patrons, all noise emanating from the Property shall cease and all exterior lights shall be turned off.
- 3.2.3. Restaurant and beverage service at the Property, inclusive of the Exterior LCA, shall be discontinued a reasonable time prior to closing of the business, and in all events at least thirty (30) minutes prior to closing.

3.3. Acoustical Evaluation and Noise Restrictions.

- **3.3.1.** The Sound Transmission Class ("<u>STC</u>") study of the Property attached hereto as <u>Exhibit C</u> and incorporated herein by reference (the "<u>Study</u>") includes certain recommendations relating to construction of improvements to the Property, and interior construction shall be undertuken in compliance with the minimum standards set forth in the Study.
- 3.3.2. Notwithstanding any other provision of this Declaration, irrespective of the existence or non-existence of the Study, use or operation of the Property which results in sound emanating from or at the Property in excess of Acceptable Levels is prohibited and, if at any time sound emanating from or at the Property exceeds Acceptable Levels, Declarant, each Owner and the Association, as applicable, shall have the rights and remedies set forth in Article XXVI of the Project Declaration and this Declaration.
- 3.3.3. As used herein, "Acceptable Levels" means (i) initially, a STC rating of STC-50, and (ii) in the event the Study or any study hereafter commissioned by Declarant, an Owner or the Association indicates that sound emanating from or at the Property, including, without limitation, bass levels, adversely affects the use and enjoyment of the Unit(s) located above the Property, the STC rating which will insure that sound emanating from or at the Property,

including, without limitation, bass levels, does not adversely affect the use and enjoyment of the Unit(s) located above the Property. Further, in connection with any such future study, noise emanating from the Property may be regulated via hours of operation, "noise form" and decibel level as recommended therein.

- 3.3.4. Notwithstanding any other provision of this Declaration, there shall be no live music performances interior of the Property, and only recorded ambient music will be permitted therein. Speakers which play such music may be installed or located in areas within the Exterior LCA approved by the Association and the Town of Mountain Village pursuant to Subsection 3.1(v) above; however, the playing of ambient music in such areas is limited to the times and restrictions set forth herein. Stereo and other equipment located or installed in the Property, inclusive of the Exterior LCA, shall be installed in accordance with applicable provisions of the Study or any related approvals, and at no time shall the playing of recorded music at the Property exceed Acceptable Levels.
- 3.3.5. Except for the Winter Period (as hereinafter defined), ambient music may be played in the Exterior LCA between the hours of 12:00 p.m. and 9:00 p.m. During the Winter Period, recorded, ambient music may be played in the Exterior LCA between the hours of 12:00 p.m. and 6:00 p.m. Live music performances are permitted in the Exterior LCA on Fridays, Saturdays and Sundays between the hours of (i) 12:00 p.m. and 6:00 p.m. during the Winter Period; and (ii) 12:00 p.m. and 8:00 p.m. during the Summer Period (as hereinafter defined); provided, live music is limited to a maximum of twelve (12) weekends per calendar year. Notwithstanding the foregoing, live music may be permitted in the Exterior LCA for special events and in addition to the foregoing twelve (12) weekends per calendar year upon written approval of the Association. For the purposes of this Subsection: (a) "Winter Period" means and refers to the period through the last day that the Telluride Ski Area is open, and (b) "Summer Period" means and refers to the period from May 21 to September 15.

3.4. Odor Mitigation.

- 3.4.1. The only cooking permitted within the Property will be Par (as hereinafter defined) and, in the event Declarant, the Association or any regulatory authority with jurisdiction over the Property hereafter reasonably determines that food preparation adversely impacts the use and enjoyment of other property within the Project or of occupants of or visitors to the Project (including, without limitation, by the seepage of food odors into adjacent or nearby properties or areas), then food preparation at the Property may be prohibited until such time as appropriate mitigation has been undertaken and approved by Declarant, the Association and, if applicable, regulatory authorities with jurisdiction over the Property. As used herein, "mitigation" includes, by way of example and not limitation, the installation of Class II venting or charcoal filtering systems designed to filter/capture food smells and prevent the same from being emitted from the Property. For the purposes of this Agreement, "Par Baking" means and refers to the final baking of preprepared, partially cooked or partially baked breads and pastries.
- **3.4.2.** In the event mitigation is required pursuant to Subsection 3.4.1 above and such mitigation requires construction at the Property, the Property owner shall first obtain the approval of Declarant, the Association and all regulatory authorities with jurisdiction over the Property.
- 3.5. Signage. Prior to the commencement of construction or installation of any signage and/or lighting at the Property, the Property owner shall submit plans therefor and receive all required approvals, including, without limitation, approval of the Association and the Town of Mountain Village.

ARTICLE IV MISCELLANEOUS

4.1. Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

- Applicable Law. This Declaration is filed in the Official Records, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of San Miguel County, Colorado.
- Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the creation of a uniform plan for the development of the Units and to promote and effectuate the fundamental concepts set forth in the Recitals of this Declaration. This Declaration shall be construed and governed under the Laws of the State of Colorado.
- Captions. All captions and titles used in this Declaration are intended solely for convenience of reference 4.5. and shall not enlarge, limit or otherwise affect the meaning of the text set forth in any paragraph, section or article hereof.
- Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any 4.6. successors or assignees of Declarant's rights and powers.
- 4.7. Exhibits. All exhibits attached to this Declaration are a part of, and are hereby incorporated into, this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration.

WILDAIR, LP.

a Texas limited partnership

By: Wildair Management, LLC,

a Texas limited liability company, General Partner

Trish Kunz, Vice President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 6th day of April, 2003, by Trish Kunz, Vice President of Wildair Management, LLC, a Texas limited hability company, General Partner of Wildair, LP, a Texas limited partnership, known to me by her Texas drivers license, on behalf of said partnership.



Notary Public in and for the State of Texas

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JOINDER AND CONSENT

Heritage Crossing at the Gondola Condominium Owners Association, Inc., a Colorado nonprofit corporation, hereby joins in the foregoing Declaration of Restrictions for the purpose of evidencing its consent to the same.

WILDAIR, LP, a limited partnership By: Wildair Management, LLC, a Texas limited liability company, General Partner

By: Tuh Kunz, Vice President

EXHIBIT A Legal Description of the Property

Commercial Unit 1 and Parking Unit 38, Heritage Crossing at the Gondola Condominiums, according to the Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, at Reception No. 347962 of the records of the Office of the Clerk and Recorder of San Miguel County, State of Colorado (the "Official Records"), as amended by that certain First Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded April 19, 2002, at Reception No. 348542 of the Official Records, that certain Second Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded May 30, 2002, at Reception No. 349375 of the Official Records, that certain Third Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded July 3, 2002, at Reception No. 350115 of the Official Records. that certain Fourth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded October 29, 2002, at Reception No. 352669 of the Official Records, that certain Fifth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded November 22, 2002, at Reception No. 353289 of the Official Records, that certain Sixth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 6, 2002, at Reception No. 353563 of the Official Records, that certain Seventh Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 23, 2002, at Reception No. 353965 of the Official Records, that certain Eighth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded January 29, 2003, at Reception No. 354749 of the Official Records, and that certain Ninth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 17, 2003, at Reception No. 355846 of the Official Records, and the Condominium Map of Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, in Plat Book 1 at Page 2996 of the Official Records, as amended by First Amendment thereto recorded April 19, 2002, in Plat Book 1 at Page 3015 of the Official Records, Second Amendment thereto recorded May 30, 2002, in Plat Book 1 at Page 3021 of the Official Records, Third Amendment thereto recorded October 29, 2002, in Plat Book 1 at Pages 3069-3071 of the Official Records, and Fourth Amendment thereto recorded January 29, 2003, in Plat Book 1 at Page 3098 of the Official Records

EXHIBIT B Legal Description of the Project

Heritage Crossing at the Gondola Condominiums, according to the Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, at Reception No. 347962 of the records of the Office of the Clerk and Recorder of San Miguel County, State of Colorado (the "Official Records"), as amended by that certain First Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded April 19, 2002, at Reception No. 348542 of the Official Records, that certain Second Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded May 30, 2002, at Reception No. 349375 of the Official Records, that certain Third Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded July 3, 2002, at Reception No. 350115 of the Official Records, that certain Fourth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded October 29, 2002, at Reception No. 352669 of the Official Records, that certain Fifth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded November 22, 2002, at Reception No. 353289 of the Official Records, that certain Sixth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 6, 2002, at Reception No. 353563 of the Official Records, that certain Seventh Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded December 23, 2002, at Reception No. 353965 of the Official Records, that certain Eighth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded January 29, 2003, at Reception No. 354749 of the Official Records, and that certain Ninth Amendment to Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded March 17, 2003, at Reception No. 355846 of the Official Records, and the Condominium Map of Heritage Crossing at the Gondola Condominiums recorded March 26, 2002, in Plat Book 1 at Page 2996 of the Official Records, as amended by First Amendment thereto recorded April 19, 2002, in Plat Book 1 at Page 3015 of the Official Records, Second Amendment thereto recorded May 30, 2002, in Plat Book 1 at Page 3021 of the Official Records, Third Amendment thereto recorded October 29, 2002, in Plat Book 1 at Pages 3069-3071 of the Official Records, and Fourth Amendment thereto recorded January 29, 2003, in Plat Book 1 at Page 3098 of the Official Records.

Sorzym Acoustics Consulting & Engineering

Ent X. Berryon, M. MCS 133,541.0020 1... 303.541.0021 cicustratedumbine.net 2721 Columbine Arenue, Soulder CO 80302

10 March 2003

Dennis Duddles Dennis and Terri Duddies LLC P.O. Box 1465 Telluride, CO 81435-1465

via fax: 970-369-4438

Restaurant Noise Attenuation Recommendations Heritage Crossing Space C-1 Telluride, Colorado

Dennis,

You have requested recommendations to reasonably control noise transmission from a restaurant to a luxury residential space above.

The proposed restaurant is roughly 1,500 square feet. Serving and food preparation areas are located directly below bedrooms of the residential space above. Restaurant noise can be expected to include music playback, television audio playback, patron voices, kitchen staff voices, noise from kitchen equipment, cleaning sorvices and others. These noises are intermittent and are of a kind that can be considered strongly annoying it not adequately attenuated.

You state that music will be electronic and limited to low playback loudness levels. Recommendations made in this report will not be apequate if the actual conditions include live music or high-level electronic music playback. Such conditions might conceivably exist in the luture.

it is reported that the floor system is steel beams supporting ribbed steel deck with concrete infill of four-inch topping depth.

We have made no evaluation of HVAC system noise including the kitchen exhaust fan or vibration isolation of HVAC equipment.

We have not visually observed existing conditions.



ABSOLUTE MM 356463 04/10/2003 Page 9 of 15

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FROM : Elizava Acoustiss

FRX NO. : 383-541-8821

Mar. 18 2853 11:44PM F2

Restaurant Noise Attenuation Recommendations
Heritage Crossing Space C-1
Yelluride, Colorado

10 March 2003 Page 2 of 4

Sound Paths

Noise will transmit by two principle paths. The airborne path is directly through the ceiling and floor stab assembly. This path can be controlled by an isolated ceiling.

Noise will also transmit via structurehome paths. In this mechanism, noise makes an "end nin" around the ceiling. Noise in the restaurant will impinge upon and enter the structure — such as wells, columns, windows, and doors — and travel up then reradiate in the residential unit. Structurehome paths are more difficult to control than the direct path.

It is our opinion that both paths must be addressed in order to create reasonable attenuation to the residential space. The ceiling alone will not suffice.

Standards :

There are no standards that give guidance regarding levels of intermittent noise that are generally acceptable in residential living spaces. To be acceptable, noises that are intermittent and easily identifiable must be significantly quieter in the receiving space than continuous, neutral noises.

Rosponse to noise varies greatly among individuals. In general, residents of luxury; spaces have higher expectations of freedom from injustive noise. We recommend that if the following noise control measures are put in place, that no representation be made regarding the expected resulting noise condition. Simply state that noise aftenuation measures have been included in the tenant finish construction.

Noise Attenuation Through Ceiling/Floor Assembly

The acoustical tile cailing initially proposed will not adequately isolate restaurant noise.

We recommend a coiling having the following characteristics:

Ceiling membrane of gypsumboard or other heavy panel material. Weight not less than two pounds per square foot (equivalent to one layer of 5/8-inch thick type X gypsumboard). For superior results, use two layers of 5/8-inch gypsumboard.

Celling framing to be accountically isolated from direct contact with the structure. Due to the irregular nature of the underside of the floor system, vibration isolation hangers are the most suitable method of isolation. Hangers would support a system of stringers, and the ceiling membrane would attach to these stringers. See attached cut sheets for two types of suitable hangers, neapware cylinder and fiberglass block. Hanger sizes must be solacted to match the actual whight of the ceiling and the specing of hangers.

Berzym Acoustics

303-541-0020

2221 Columbina Avenue, Boulder, CO 80302

ABSOLUTE MM³⁵⁶⁴⁶³ 04/10/2003 Page 10 of 15

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T-183 P.004/008 F-371

FROM ! E -- ACOUSTICS

FAX NO. : 383-541-8821

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Restaurant Noise Attenuation Recommondations
Heritage Crossing Space C-1
Telluride, Colorado

10 March 2003 Page 3 of 4

No recessed celling fixtures such as lighting-

No air openings such as non-ducted return-eir openings. HVAC system should be evaluated to ensure no unintended sound paths are created.

Perimeter of ceiling to have a 1/4-inch nominal gap between ceiling and adjacent structure. Seal gap with acoustical (permanently non-hardening) sealant.

All service penetrations through ceiling (pipe, duct, conduit, cable, etc.) to be sealed sirtight with acoustical sealant.

Ceiling cavity to contain approximately six to nine inch thick layer of insulation, such as fiberglass, mineral wool or culton batts.

Structureborne Noise Attenuetion

We recommend that all wall surfaces in the dining and food preparation areas be acoustically isolated from the structure. Isolation can be achieved by metal resilient channels or neoprene isolation clips supporting gypsumboard wall surfaces. (Resilient channels are a standard drywall installation material. See attachment for isolation clip.) The gypsumboard must be mounted not loss than three linches away from any parallel adjacent surface and the resultant cavity filled with insulation. In other words, if walls are already finished with drywall (i.e. adjacent Locker Room), the new scoustical wall must be furned out three Inches. Alternately, the existing drywall layer can be removed then replaced using the recommended isolation material. Wall finish material (wood panels) can be applied normally to the isolated gypsumboard walls so long as no anchors penetrate through the Isolated layer and into structural elements.

Columns should be similarly clad with gypsumboard on resilient channels or isolation clips. For columns, the space between the inner side of the gypboard cladding and the surface of the column can be two inches minimum and the cavity filled with insulation.

Windows and doors would ideally be isolated, but in practice we have seen that commercial-grade windows often include soft perimeter glazing seals that appear to reduce structureborne transmission to acceptable levels.

Additional Details

Speakers should be mounted using rubbor grommets around any anchors, or using rubber shock hangers if they are suspended.

No air shafts or other openings should be created between the rastaurant and the residential space above.

Borzym Acquatics

303-541-0020

2221 Columbins Avenue, Boulder, CO 80302

ABSOLUTE MM 356463 04/10/2003 Page 11 of 15

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FROM 1 1 100 Redubblica

FRX NO. : 383-541-8821

Mar. 18 2005 11 45HM P4

Restaurant Noise Attenuation Recommunications Heritage Crossing Space C-1 Telluride, Colorado

> 10 March 2003 Page 4 of 4

Ambient Noise Control

We suggest you consider installing approximately 500 square feet of acoustically absorptive material distributed in various areas on the ceiling and upper side walls of the patron dining area to reduce noise reverberation.

We trust that you will find this report useful. Please do not hesitate to call if you have questions regarding this information. Thank you.

Jm X. Berge

Jim X. Burzym, PE, INCE

anachments:

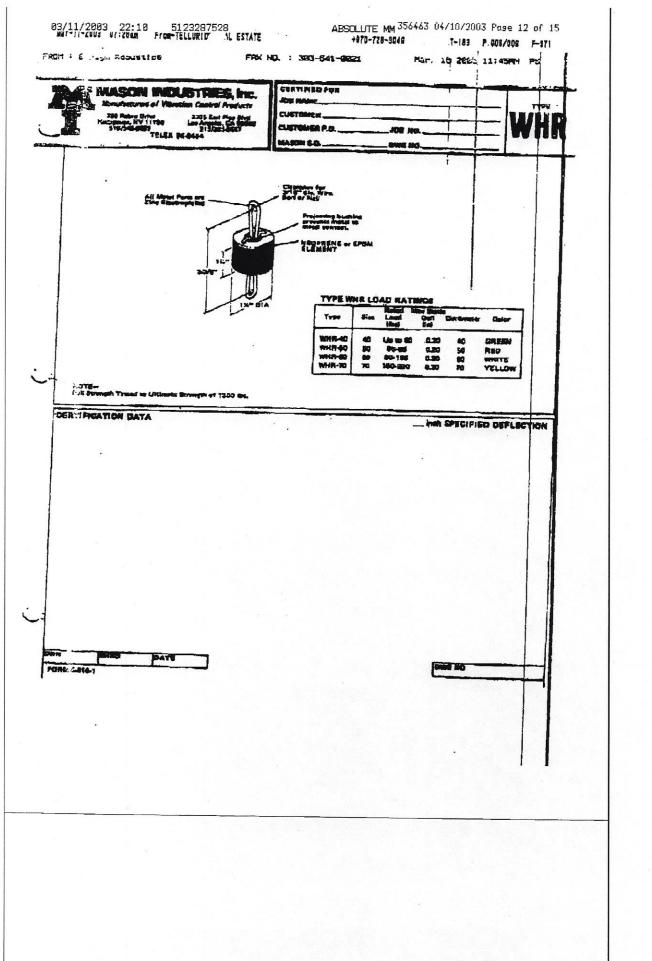
Mason Industries Model WHR neoprene isolation hanger Kinetics Model AF fiberglass isolation hanger

PAC International Model RSIC wall isolation clip

Borzym Acoustics

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2221 Columbine Avenue, Builder, CO 60302



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FRK ND. : 383-541-9821 FREM : E.May . Sacustids

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KINE ICS" Isolation Hangers Model AF

