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August 15, 2005

By Hand Delivery

Carol J. Mitten
Chair, District of Columbia Zoning Commission
441 4th Street, N.W., Suite 210
Washington, DC 20001

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ZONING

**Re: Case No. 04-18: Proposed Mount Vernon Triangle ("MVT") Subarea
of the Downtown Development ("DD") District – Impact on
Development of the Former Wax Museum Site**

Dear Ms. Mitten:

We are writing on behalf of L5K, LLC ("L5K"), the developer selected by the RLA Revitalization Corporation ("RLARC") to develop Square 515, Lot 158, at 5th and K Streets, N.W. (the "Property") with a mixed-use project, including residential, retail and parking (the "Project"). The Property is more commonly known as the "old Wax Museum site." At the Commission's June 30, 2005 hearing, representatives of the Project including an official for RLARC addressed the Project's specific issues with respect to the Office of Planning ("OP") proposal. Project representatives also indicated that the timing was critical since the construction start was imminent. The Zoning Commission (the "Commission") indicated that the record for Case No. 04-18 would be left open until August 15, 2005. Since the hearing, representatives of the Project and OP have met on several occasions and discussed the impact of the Mount Vernon Triangle ("MVT") Overlay on the Project. Although discussions with OP are ongoing and it is possible that OP may still recommend a use exemption, L5K would like to reiterate its strong opposition to the inclusion of the Project in the MVT Overlay, particularly the use restrictions.

In a meeting on July 6, 2005, OP and L5K worked to reach an agreement on the design issues for the Project. While there are some design aspects that are not in absolute compliance with the MVT Overlay, L5K redesigned aspects of the Project to comport with the MVT Overlay to OP's satisfaction as a result of that meeting. The text of the proposal must be revised, however, to reflect L5K's redesign.

As was discussed at the hearing and in written filings, the Project is already subject to carefully-conceived restrictions governing both design and use issues and has received a significant amount of District input and oversight. The Project is subject to an Exclusive

ZONING COMMISSION
District of Columbia
CASE NO. 04-18
EXHIBIT NO. 27

04-18
27

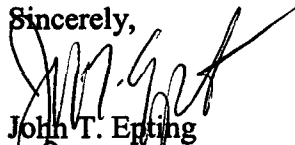
Carol J. Mitten
August 15, 2005
Page 2

Right Agreement ("ERA") and a Land Disposition and Development Agreement ("LDA") negotiated at great length with RLARC. During the course of the two years that L5K has been working to produce an acceptable project, there were numerous meetings with several members of OP and close review of the plans by an "Architectural Review Committee" (the "Committee"). The Committee included two representatives of OP and an outside consulting architect selected by OP. The Project design and use plan that was presented during the June 30, 2005 Commission hearing and at the July 6, 2005 OP meeting reflects the review and input of both RLARC and the Committee. However, as stated, L5K has actually gone beyond those approvals to accommodate the design aspects of the MVT Overlay since those submissions were approved by the Committee.

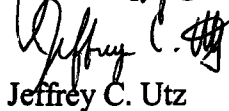
The primary remaining obstacles, however, are the use restrictions. Exhibit A details existing restrictions on the Project from both the LDA and the Safeway lease in the Project. These restrictions highlight the appropriateness of an exemption of the Project from the MVT Overlay, particularly from the MVT use restrictions. It should be noted both that the Safeway lease imposes substantial use restrictions on the Property and that Safeway will not be a profitable space for L5K (it basically serves as a project and/or neighborhood amenity), yet the supermarket will be a catalytic force for the entire MVT Overlay area. Therefore, the Property is already providing substantially more publicly-beneficial space than the MVT Overlay would ordinarily impose.

We respectfully request complete exemption of the Project from the MVT Overlay, or at the very least an exemption from the use restrictions of the MVT Overlay. If such an exemption is not granted, the MVT Overlay will have a material adverse impact on the Project, including at the very least jeopardizing the ability of L5K to start construction on schedule.

Sincerely,



John T. Epting



Jeffrey C. Utz

Enclosures

cc: Ellen McCarthy
Jennifer Steingasser
Steven Cochran
Patricia Zingsheim
Marc Dubick
Lisa Wiersma

EXHIBIT A

Restriction Overview

LDA Use Restrictions

- **Permitted Uses Plan** - Permitted uses for the Project are set forth in the “Permitted Uses Plan,” an exhibit to the LDA. The location of each use is identified on the Permitted Uses Plan and no other uses are allowed. A copy of the Permitted Uses Plan, which has been approved the RLARC, is attached hereto as Attachment 1.
 - Grocery Supermarket – A Safeway of at least twenty five thousand (25,000) square feet is required in the location shown on the Permitted Uses Plan.
 - First floor use – As Attachment 1 shows, under the present approved configuration and site design, the first floor design plan is entirely devoted to the Safeway, street-facing retail, lobbies for the residential units above, and common/back-house uses.
 - Location of the parking, condominiums, and apartments are also shown on the Permitted Uses Plan.
- **ADU Requirements** - The Project has a high level of ADU requirements and guidelines, including the placement of the ADUs on a floor by floor basis (attached as Attachment 2). This ADU placement plan has been negotiated with and approved by the RLARC. The ADU apartments are required to be maintained as ADUs for thirty (30) years following the issuance of the first certificate of completion (issued by RLARC). Each condominium ADUs are required to be maintained as an ADU for thirty (30) years beginning on the date of recording the deed of conveyance for such condominium unit to the first qualified purchaser.

LDA Design Restrictions

- **Design as a basis for RLARC’s selection of L5K** - In its recitals, the LDA states that the Project was competitively bid by RLARC pursuant to an RFP, and L5K was selected on the basis of the consideration offered by L5K for the site as encumbered by the affordable housing and other covenants set forth in the RFP. L5K’s response to the RFP, including its preliminary design and the consideration offered, assumed that the use and design restrictions articulated in the RFP, as now further defined in the ERA and LDA, were all of the use and design restrictions on the Project. Therefore, the design and use restrictions for the Project set forth in the RFP, ERA and LDA were and are the very basis of the bargain. It was not contemplated by either party – RLARC or L5K – that further restrictions would be imposed.

- **Submissions** – The ERA and LDA lay out a framework of a series of submissions in addition to those that were submitted as part of the RFP. These include a “First Submission,” a “Second Submission” and “Additional Submissions.” The following items have already been submitted to, and approved by, RLARC and demonstrate how far along the Project already is:
- **Preliminary Development and Construction Budget**
 - **First Submission**
 - Development Summary - a narrative description of the Project.
 - Schematic Drawings - a full and complete set of schematic drawings of the proposed development that describe how the property is to be developed, including: site plans; landscape plan; schematic building plans; typical floor plans; elevations and cross sections of improvements; a development chart; topographic survey; and site feasibility report.
 - **Second Submission**
 - Preliminary Drawings - A full and complete set in a level of detail generally consistent with ninety percent (90%) complete design development drawings and ten percent (10%) complete construction drawings, including: site plans; a development summary chart; lower level, first floor and typical floor plan; front, back and side elevations; typical sections of buildings; description and samples of final building materials; and all appropriate details, including the location and type of mechanical/electrical and plumbing systems.
 - Floor Plans - Unit floor plans for all units including the ADUs, showing the overall square footage for each type of unit and each room.
 - Permitted Uses Plan - Shows the location of each ADU in the Project.
 - **Additional Submissions**
 - Grocery Supermarket Lease
 - ADU Occupancy Plan
 - **Dates of Submissions to RLARC**
 - Conceptual Development Program Resubmission, May 27, 2004

- Financial Model Submission, July 22, 2004
- First Submission, October 20, 2004
- Second Submission, February 18, 2005

➤ **Changes to development**

- **Changes in submissions** – No significant changes to the development plans are allowed without RLARC's prior written approval.
- **Future alterations** – The LDA prohibits alterations to the improvements constructed on the site without RLARC approval if such alterations deviate from the approved plans in any way that affects the quality, character, or external appearance of the Project (unless they are under very small thresholds).

LDA - Other Considerations

- **Impact on Project Schedule if MVT Overlay Applies** - Hard deadline dates are written into the LDA that are unlikely to be achieved if L5K is required to revise the plans to comply with MVT Overlay requirements. Thus the MVT Overlay would cause delay. Moreover, in addition to increased construction costs that inevitably result from delays, if L5K does not commence construction within thirty (30) days of January 1, 2006, on the buildings east of the alley on Square 515, it is required under the LDA to pay a \$2,000.00 per day penalty for each day such failure continues.¹ A similar \$2,000.00 per day penalty exists if L5K has not substantially completed the buildings east of the alley by December 31, 2008. Likewise, the building west of the alley in Square 515 carries similar construction commencement and completion penalties.
- **Approval Rights of RLARC** - The LDA states that the RLARC's review and approval or disapproval of Submissions shall be final and conclusive.
- **Covenants of L5K**
 - The agreements and covenants of L5K in the LDA are covenants running with the property for ten (10) years (thirty (30) years as to the ADUs, as described above) after the recordation of the first certificate of completion for any residential portion of the Project.

¹ This date can be extended for force majeure, which includes local governmental acts or omissions.

- L5K is obligated to develop, use, and operate the Project in the manner set forth in the Development Plan, the Submissions, the LDA and the Ground Lease Agreement. L5K covenants to use the property only in accordance with the uses shown on the Permitted Uses Plan and described in the LDA.
- **Covenants regarding ADUs**
 - L5K covenants to reserve as ADUs at least five percent (5%) of the for-sale condominium units and of the apartments for qualified purchasers and renters whose income is at or below thirty percent (30%) of AMI, not less than an additional five percent (5%) of the for-sale condominium units and of the apartments for qualified purchasers and renters whose income is at or below fifty percent (50%) of AMI, and not less than an additional ten percent (10%) of the for-sale condominium units and of the apartments for qualified purchasers and renters whose income is at or below eighty percent (80%) of AMI.
 - The ADUs are required to be kept and maintained in the locations shown on the Permitted Uses Plan and are not permitted to be concentrated in one building structure or in one location within a building.

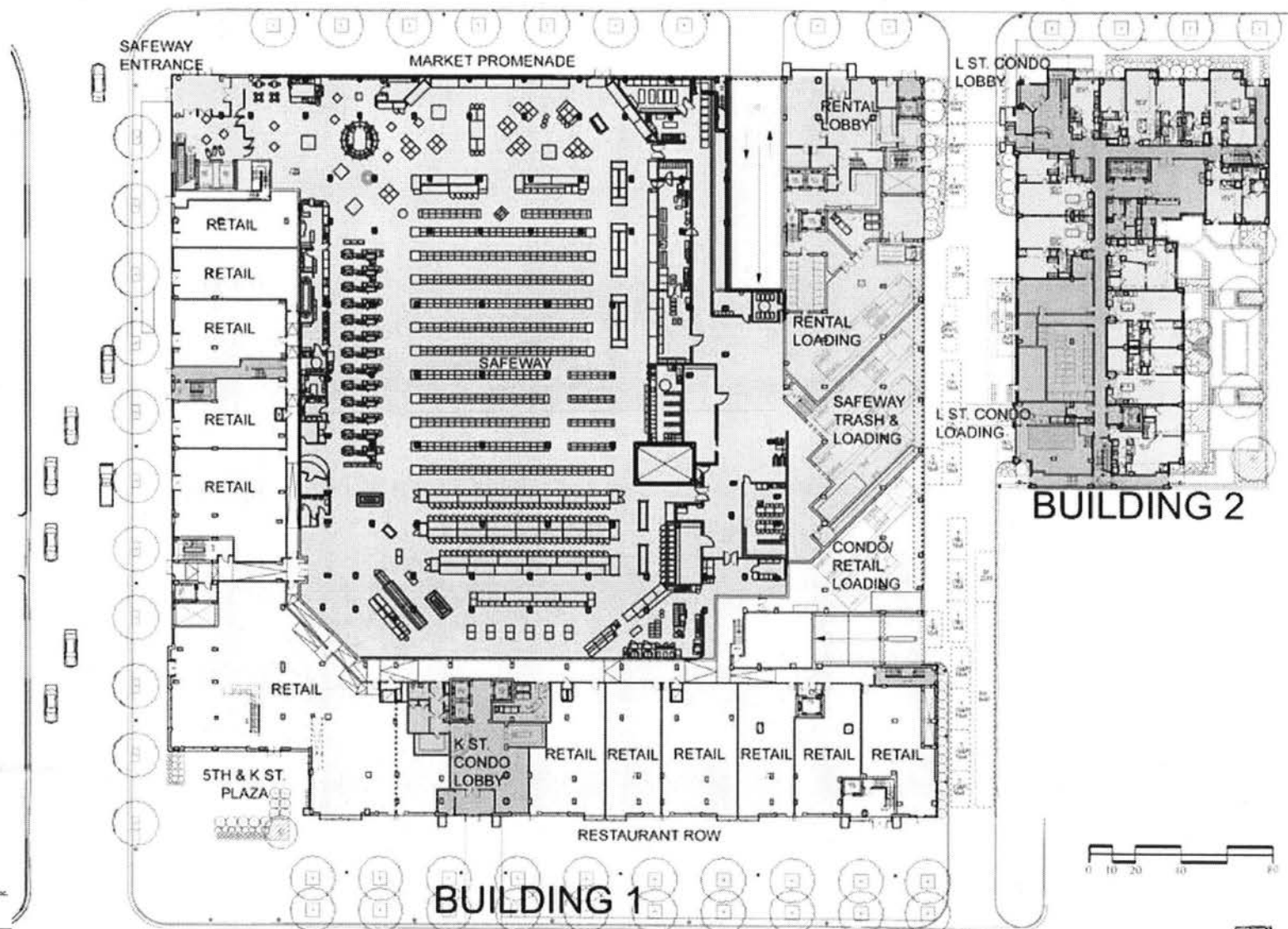
Safeway Lease – Use Restrictions

- **Restricted Uses** – L5K can not have the following uses in the Project as a result of the Safeway lease:
 - office (except on the first floor of the Project if not in excess of 5,000 square feet if used as service-oriented instead of “back office” operations)
 - tavern, cocktail lounge or other non-restaurant facility, the principal business of which is the serving of alcoholic beverages for on-premises consumption
 - dance hall or nightclub
 - pool or billiard hall
 - game rooms or other "entertainment or recreational facility"
 - any "training or educational facility," including a beauty school, barber college, place of instruction, pottery studio or any other operation catering primarily to students or trainees rather than to customers (excluding a dance studio)

- dry cleaner with an on-premises plant or any other use involving a Hazardous Substance
- full service restaurants within a certain area outlined in the Safeway lease, on the first floor
- child care facilities, on the first floor
- sports facilities, on the first floor
- aerobic studios or gymnasiums, on the first floor
- spas, on the first floor
- auditoriums or movie theaters, on the first floor.

Document # 1494363 v 1

ATTACHMENT 1



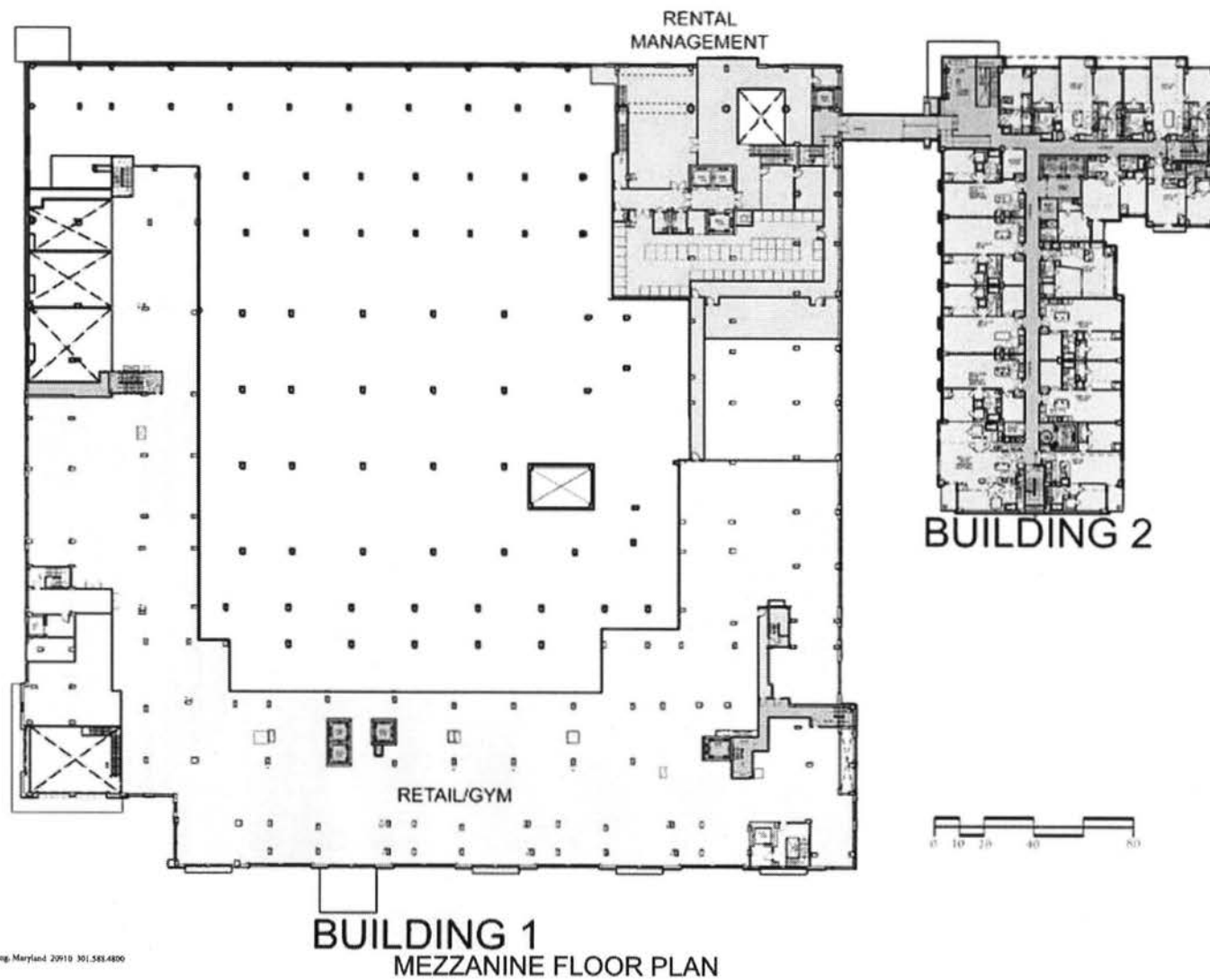
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THE LOWE TEAM
TORTI GALLAS AND PARTNERS, INC.

FIRST FLOOR PLAN

February 7, 2005

5TH & K ST., NW

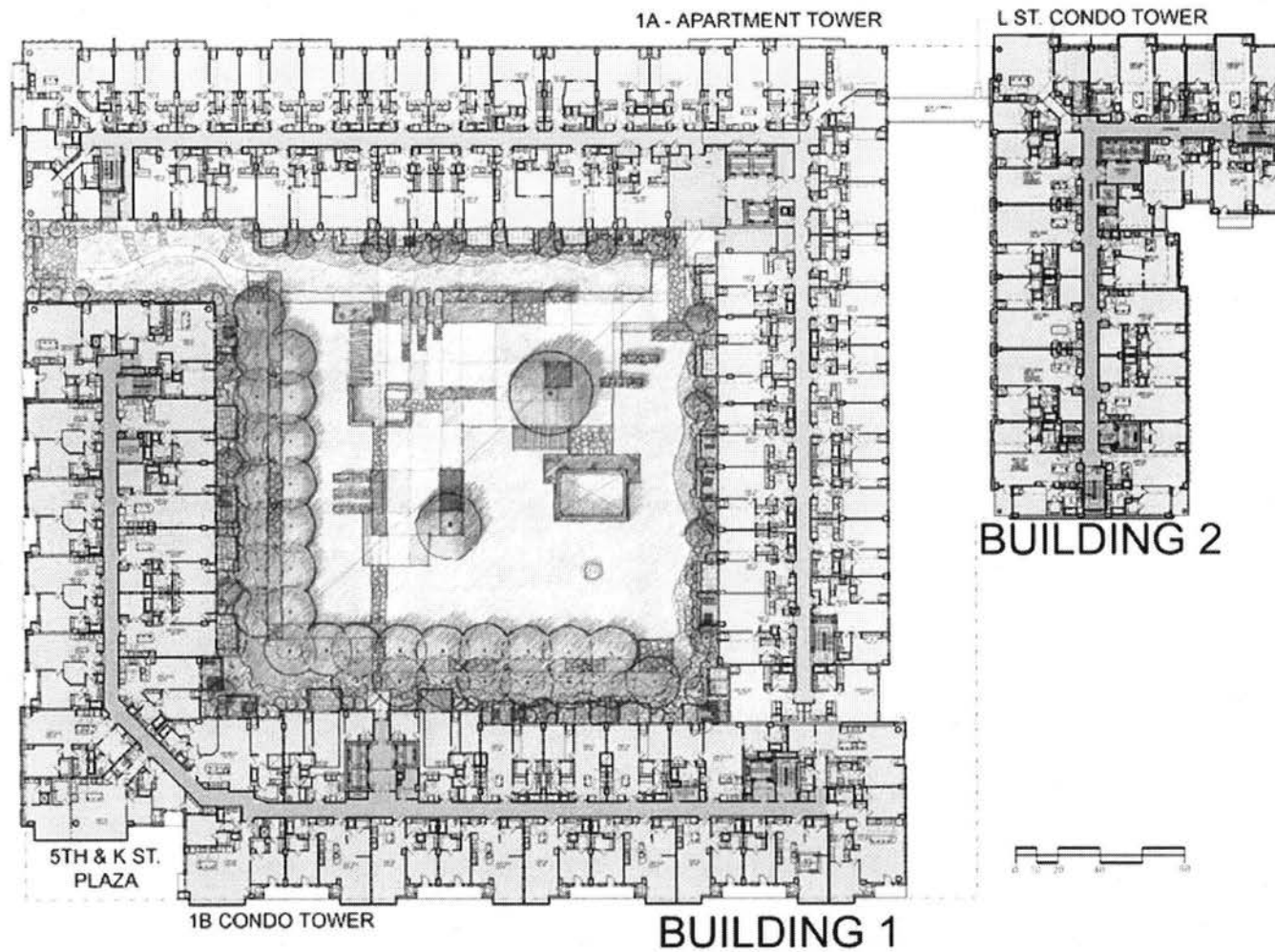


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February 7, 2005

THE LOWE TEAM
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5TH & K ST., NW



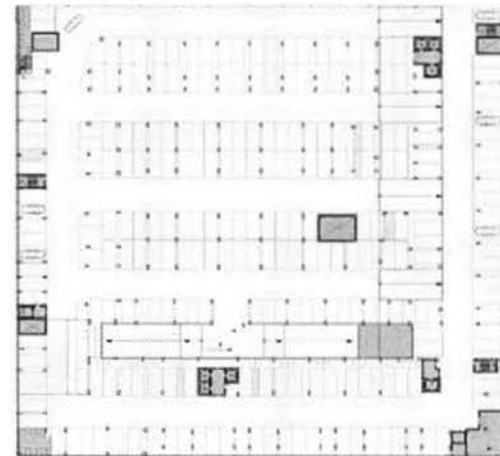
TYPICAL FLOOR PLAN

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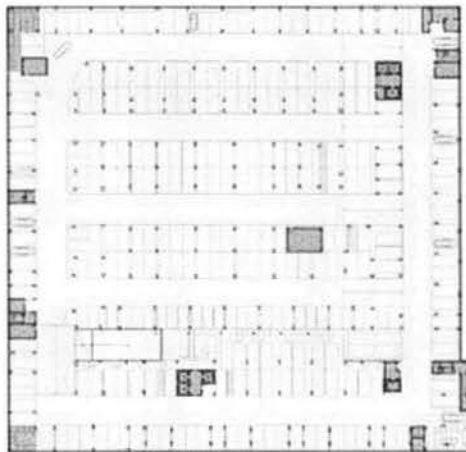
February 7, 2005



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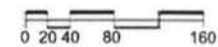


G2 PARKING PLAN



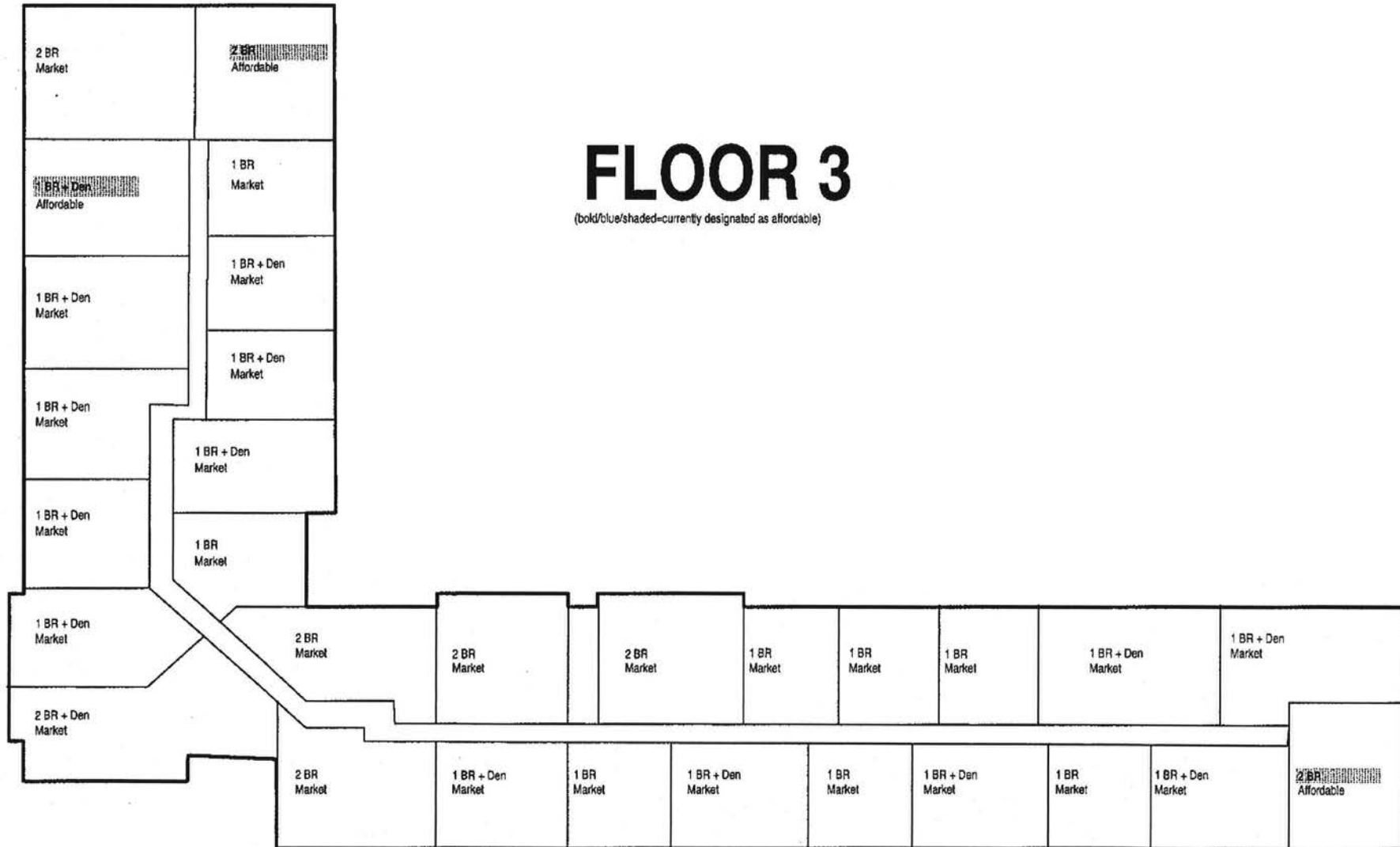
G3 PARKING PLAN

G1	234
G2	275
G3	287
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TOTAL	796

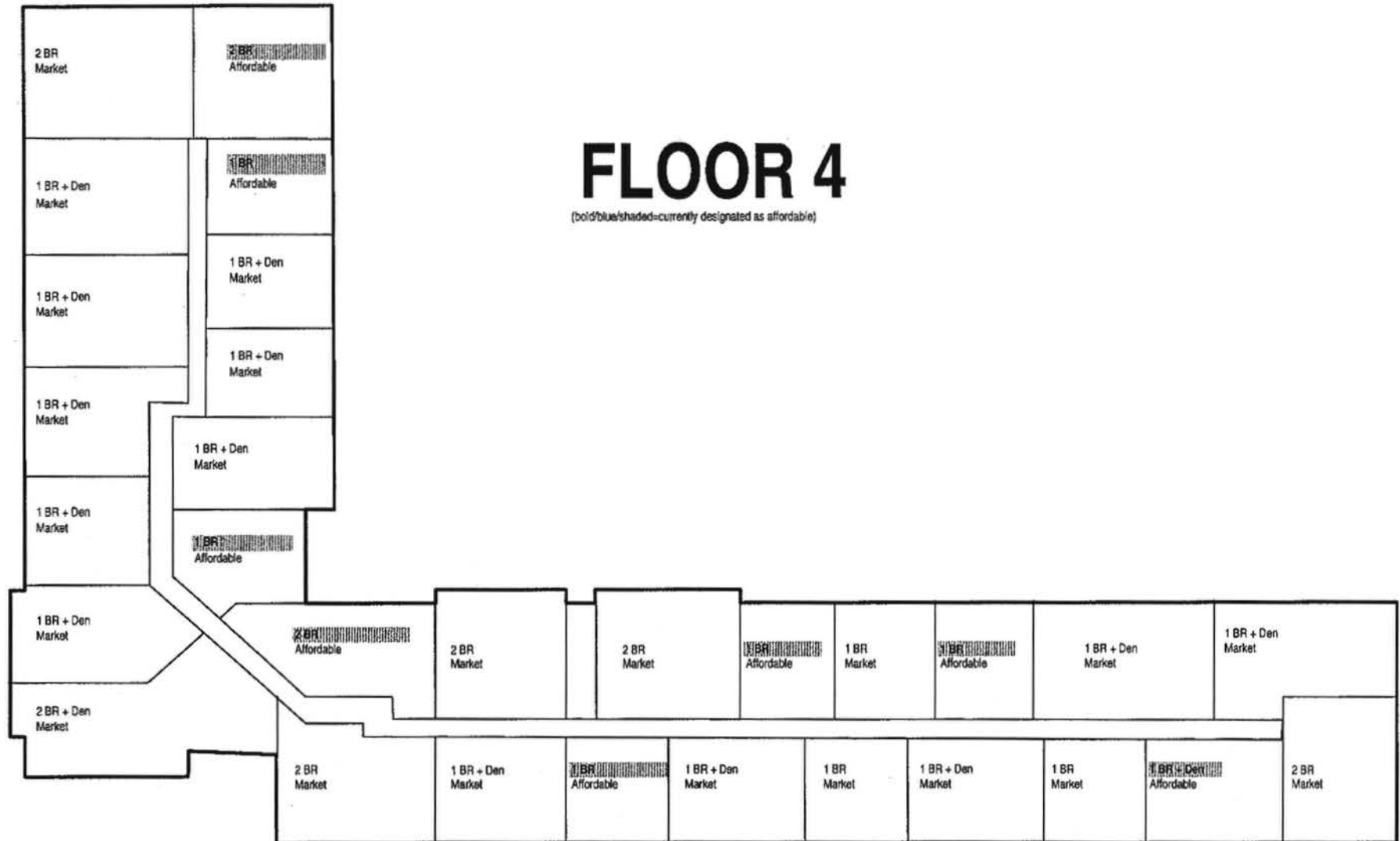


ATTACHMENT 2

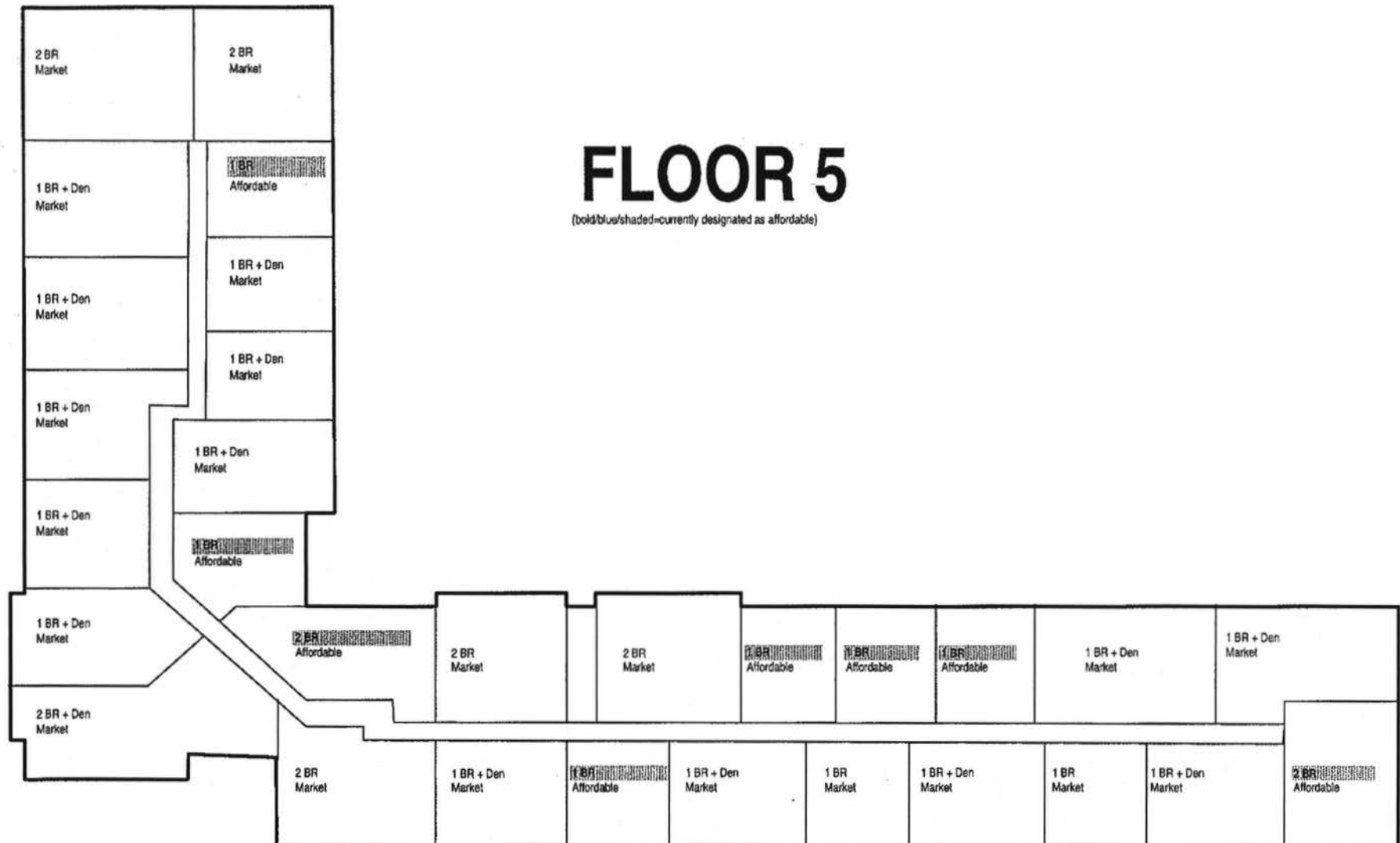
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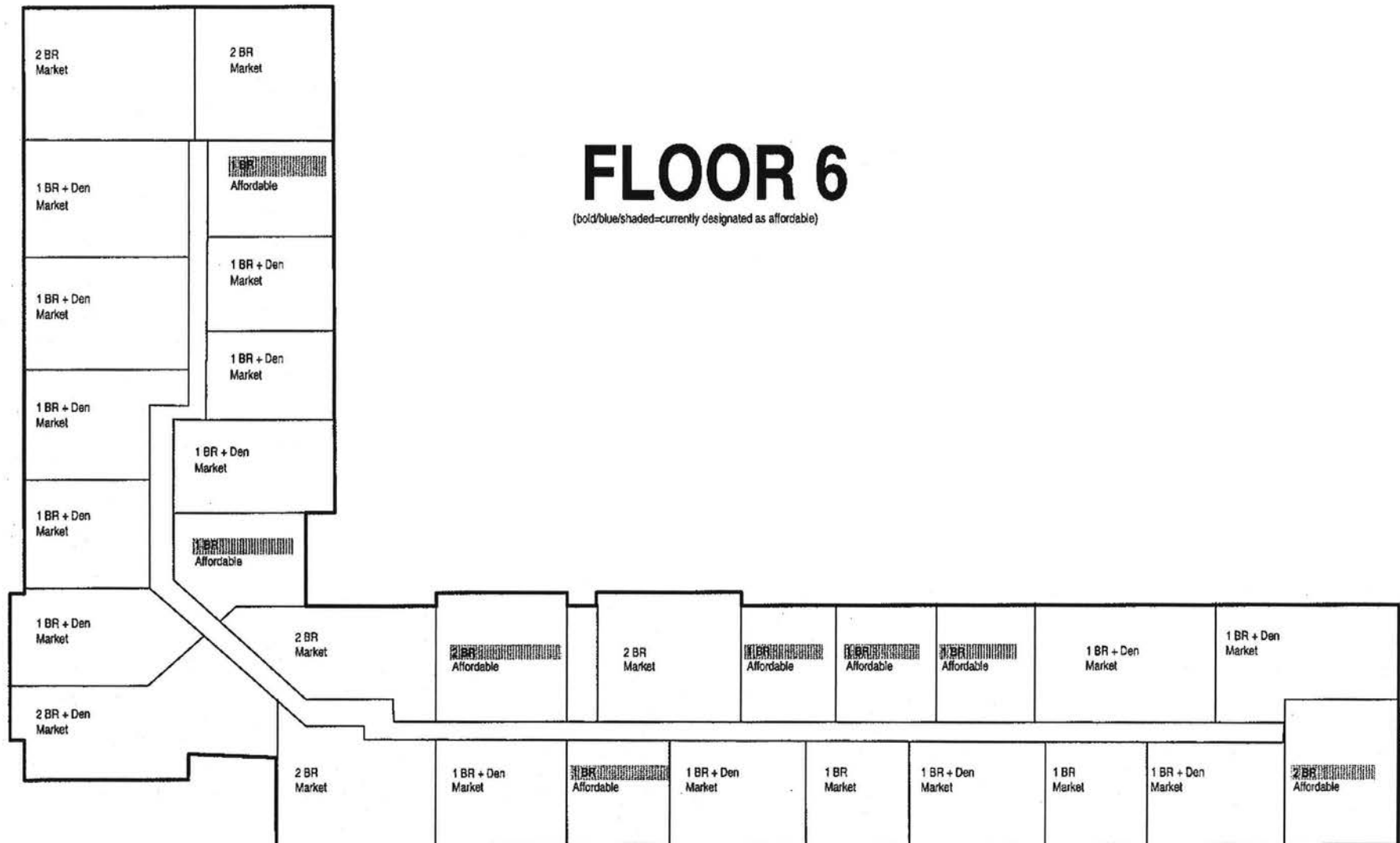
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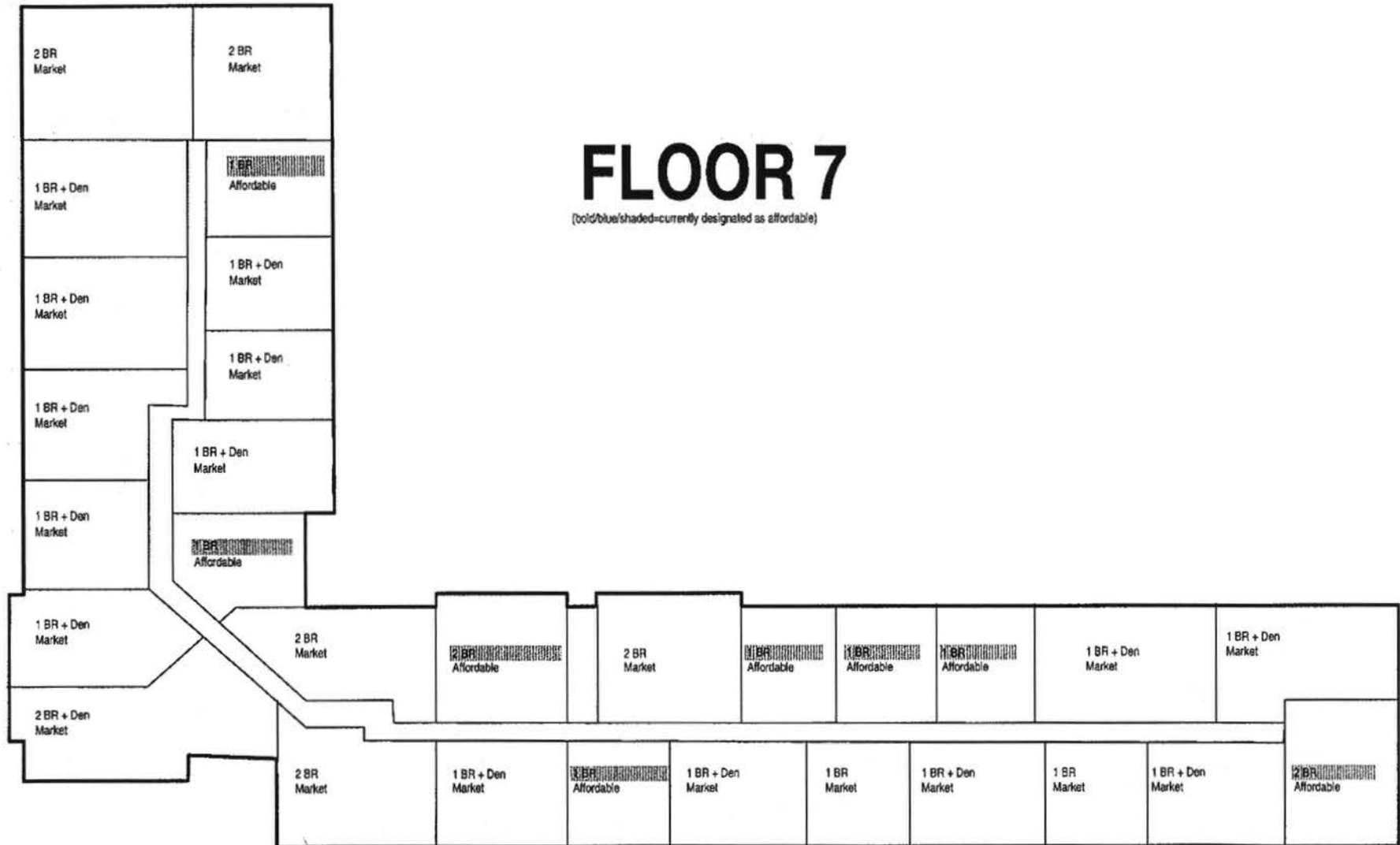
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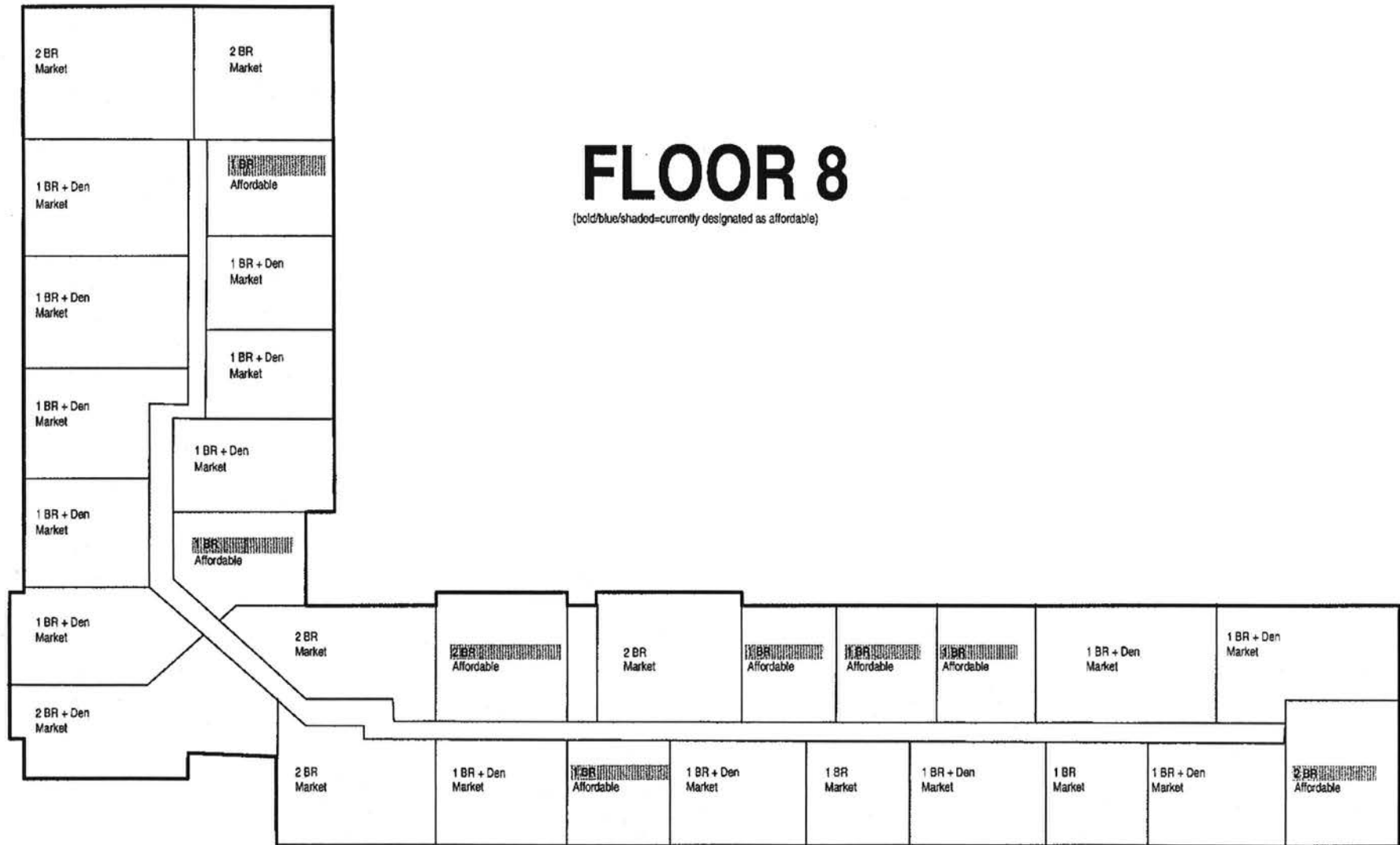
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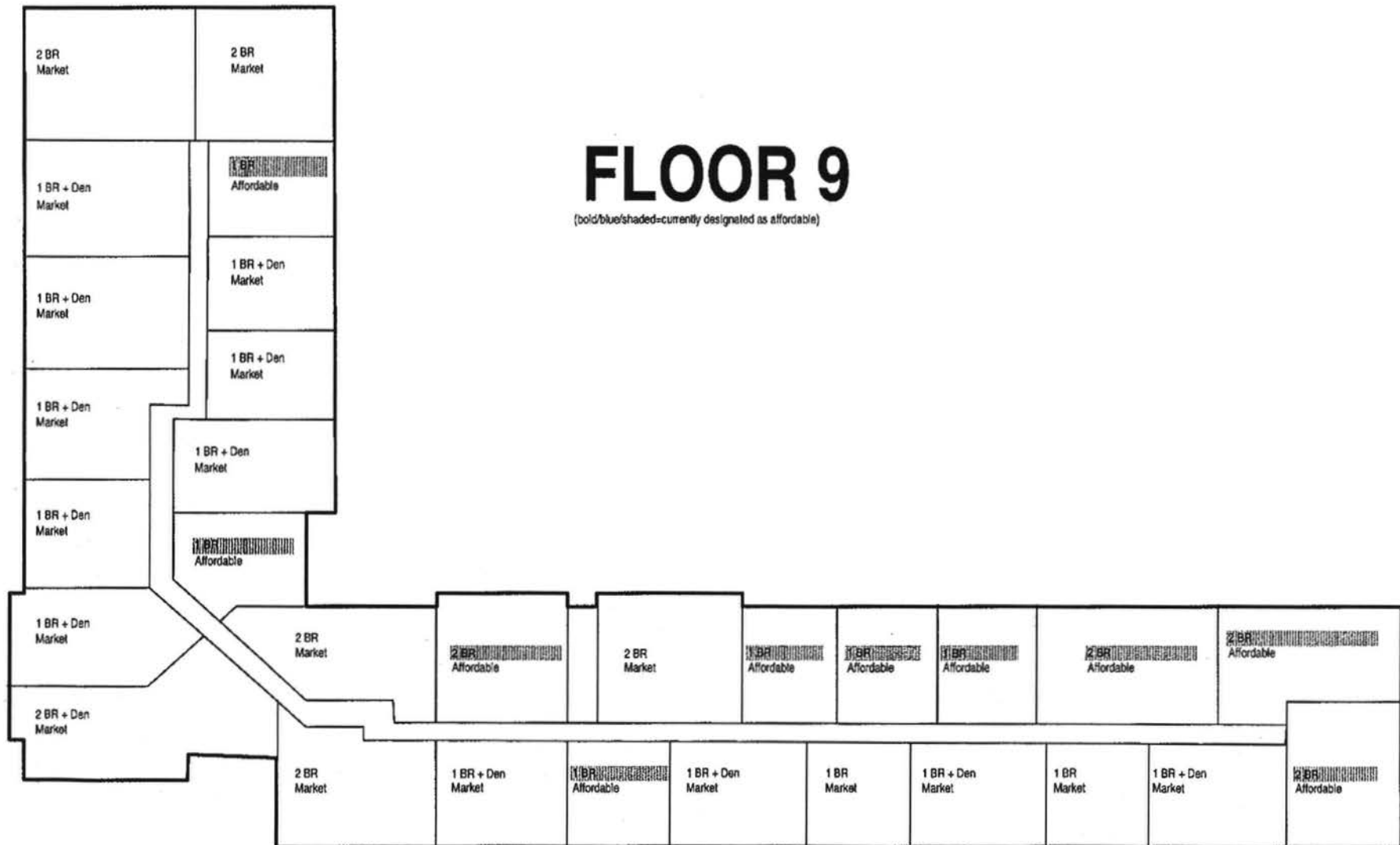
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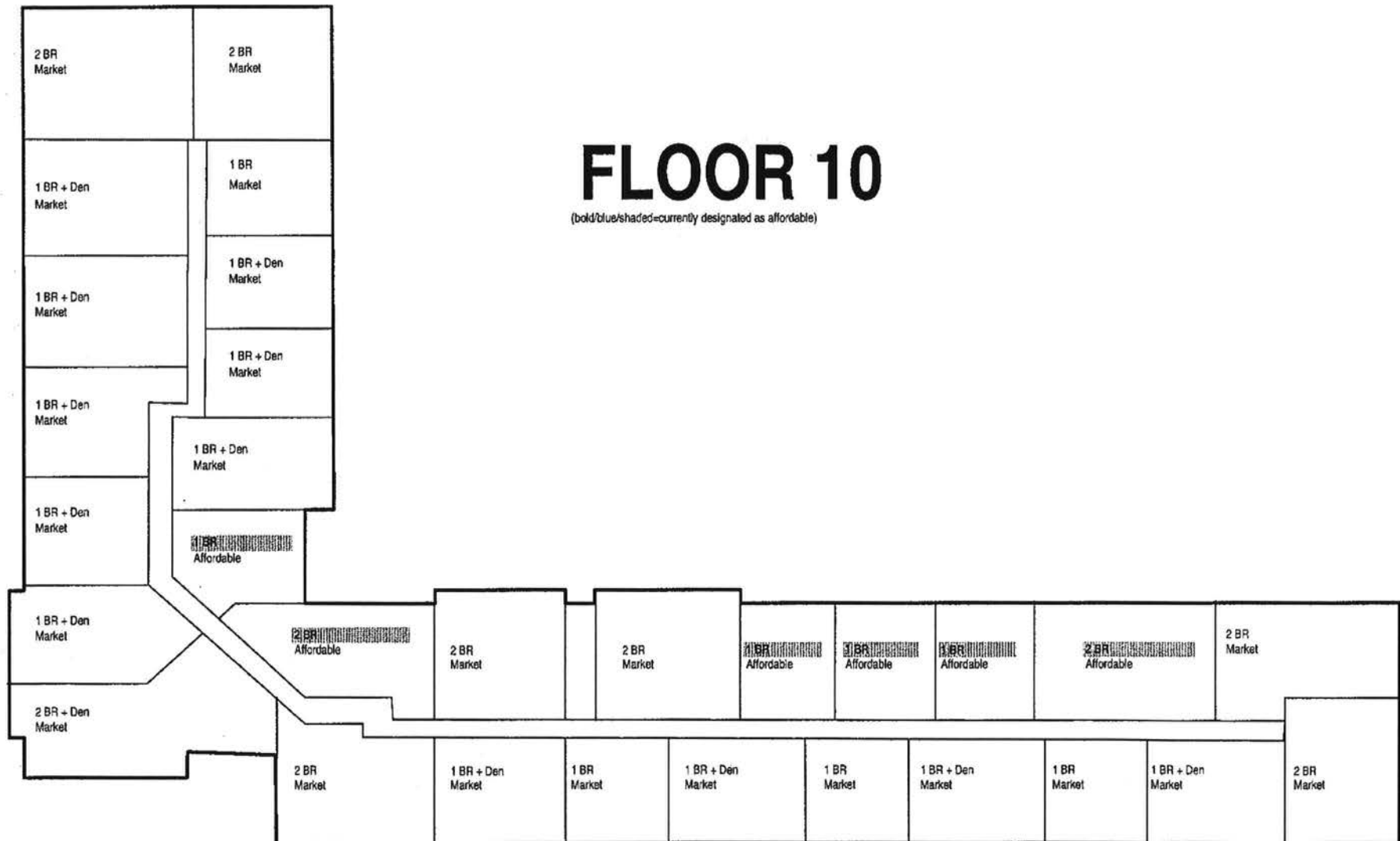
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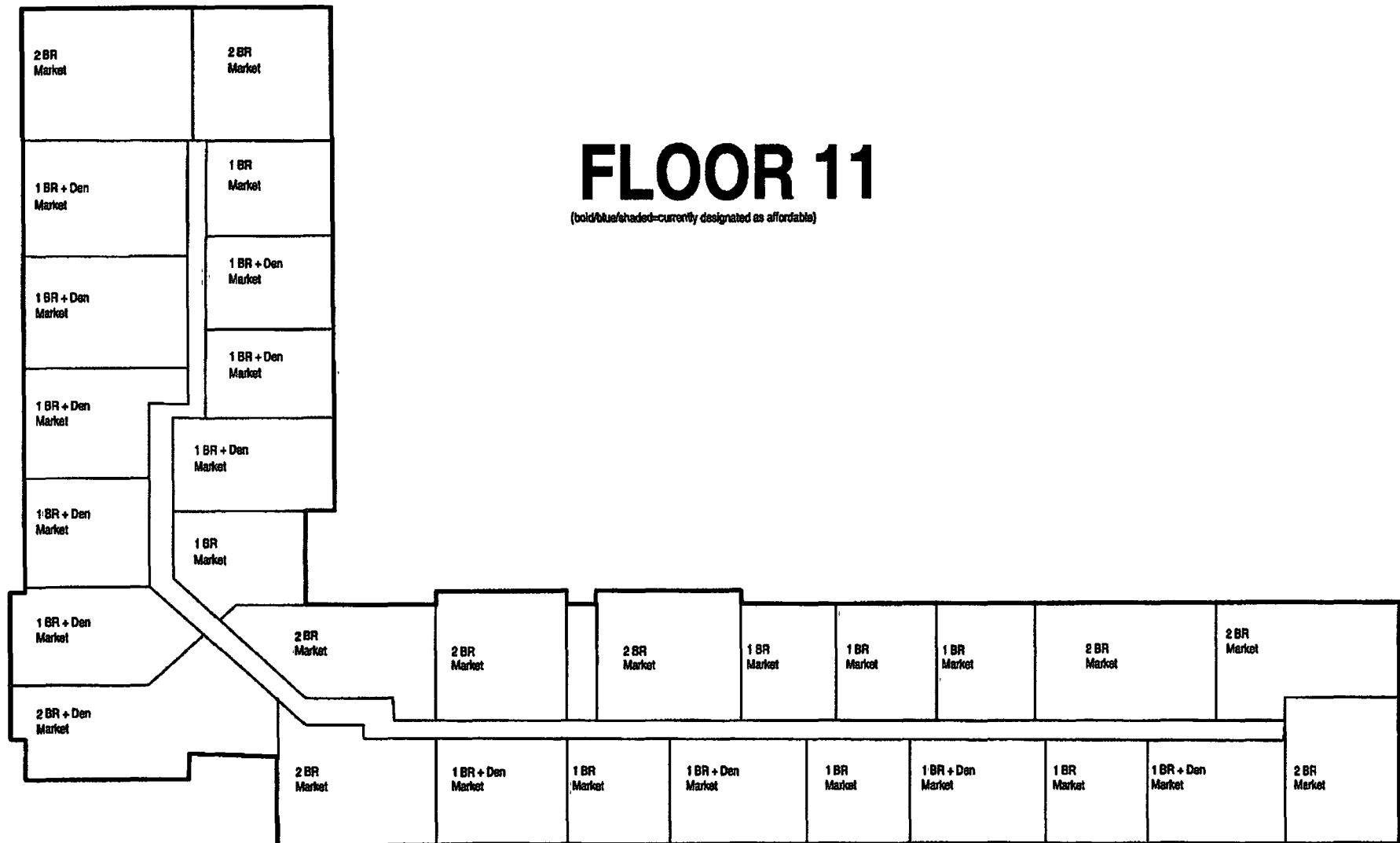
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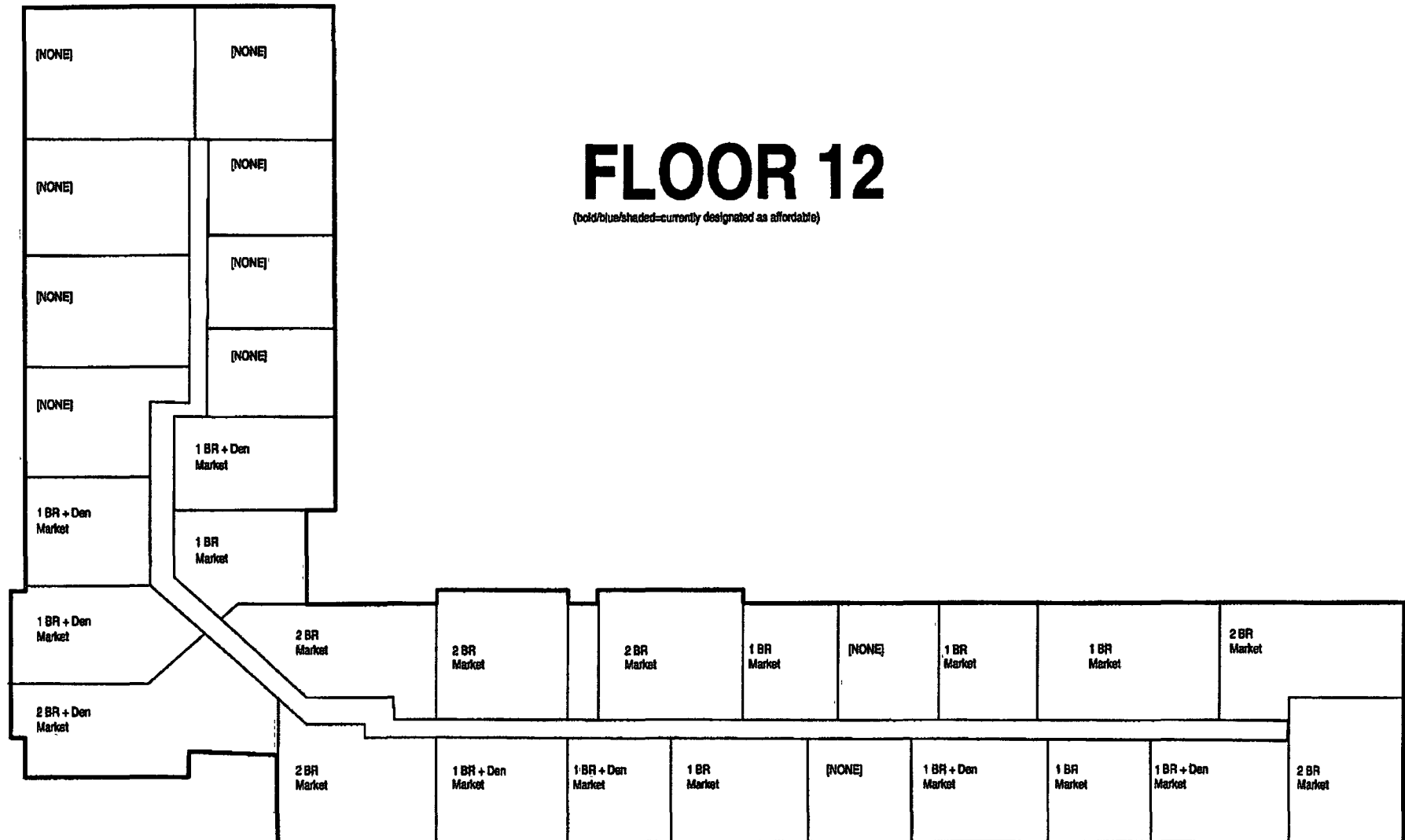
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5th K-K Street Condominiums



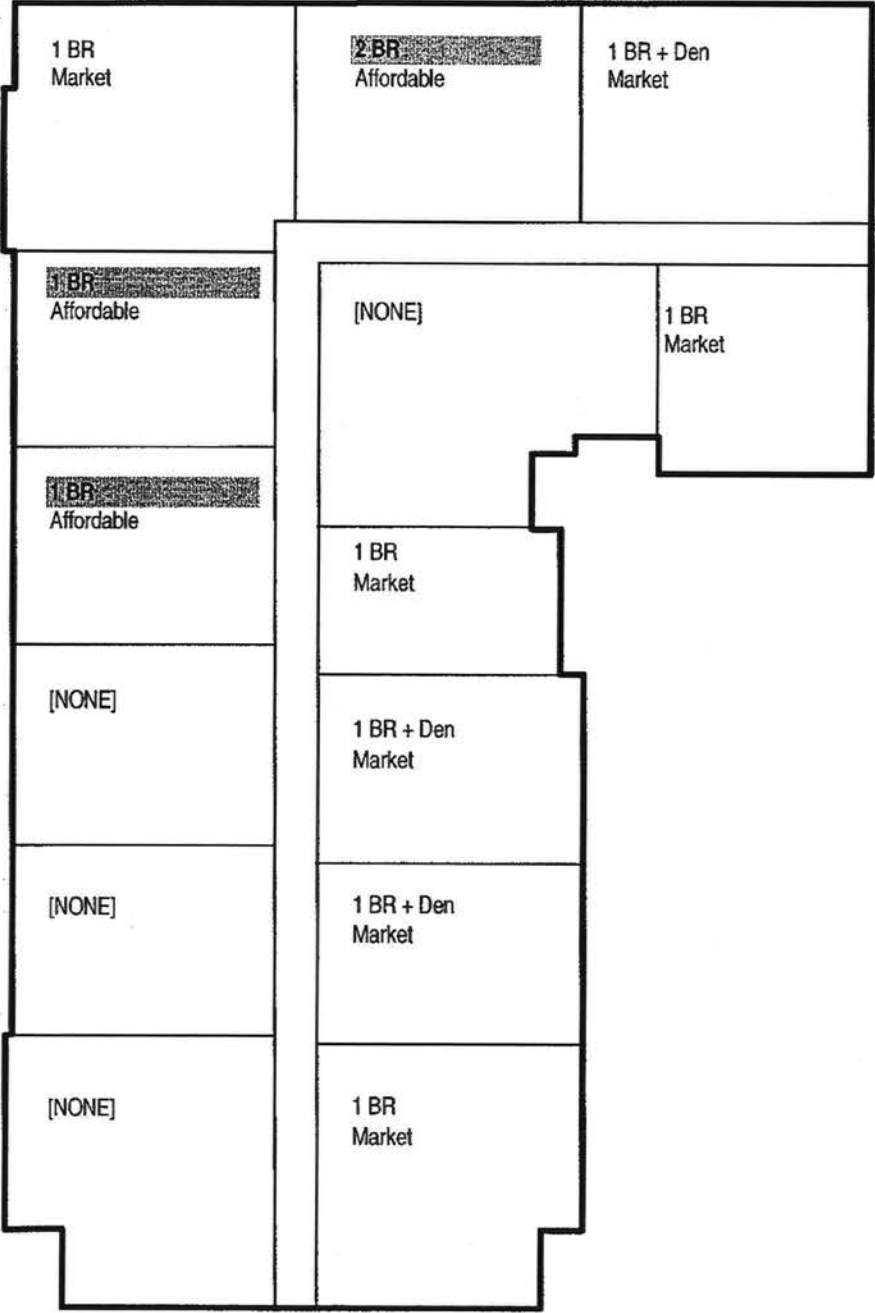
5th K-K Street Condominiums



5th K-L Street Condominiums

FLOOR 1

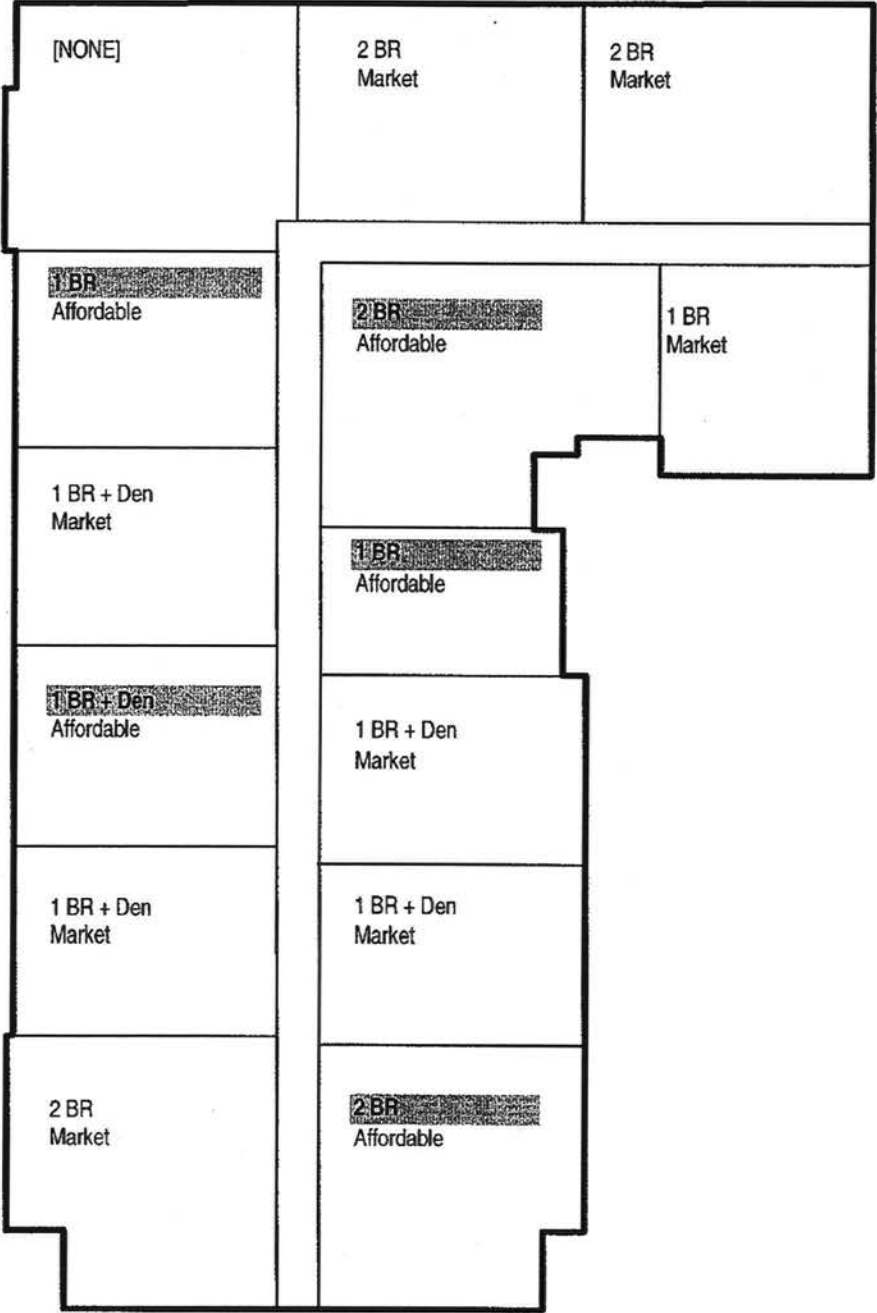
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5th K-L Street Condominiums

FLOOR 2

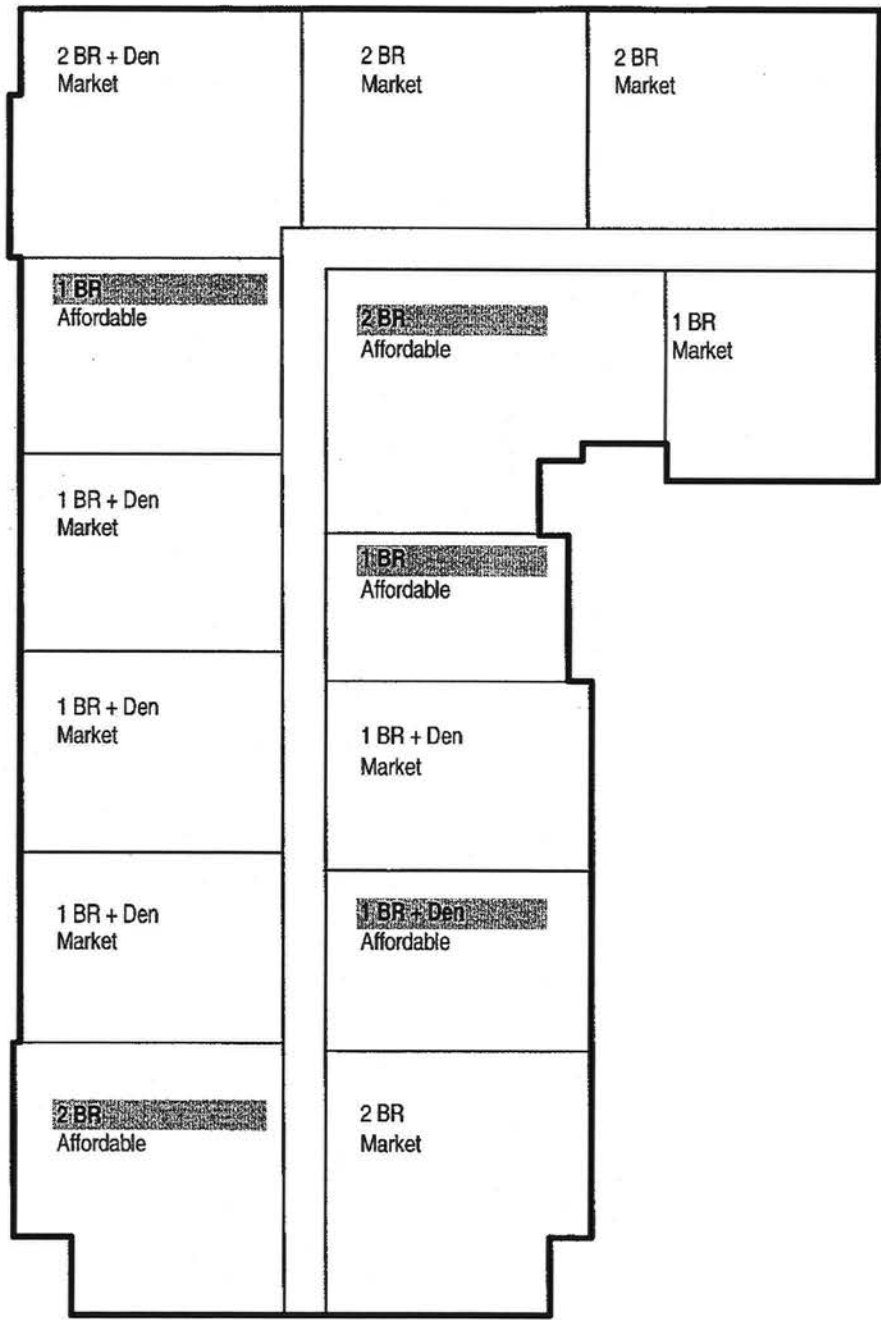
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5th K-L Street Condominiums

FLOOR 3

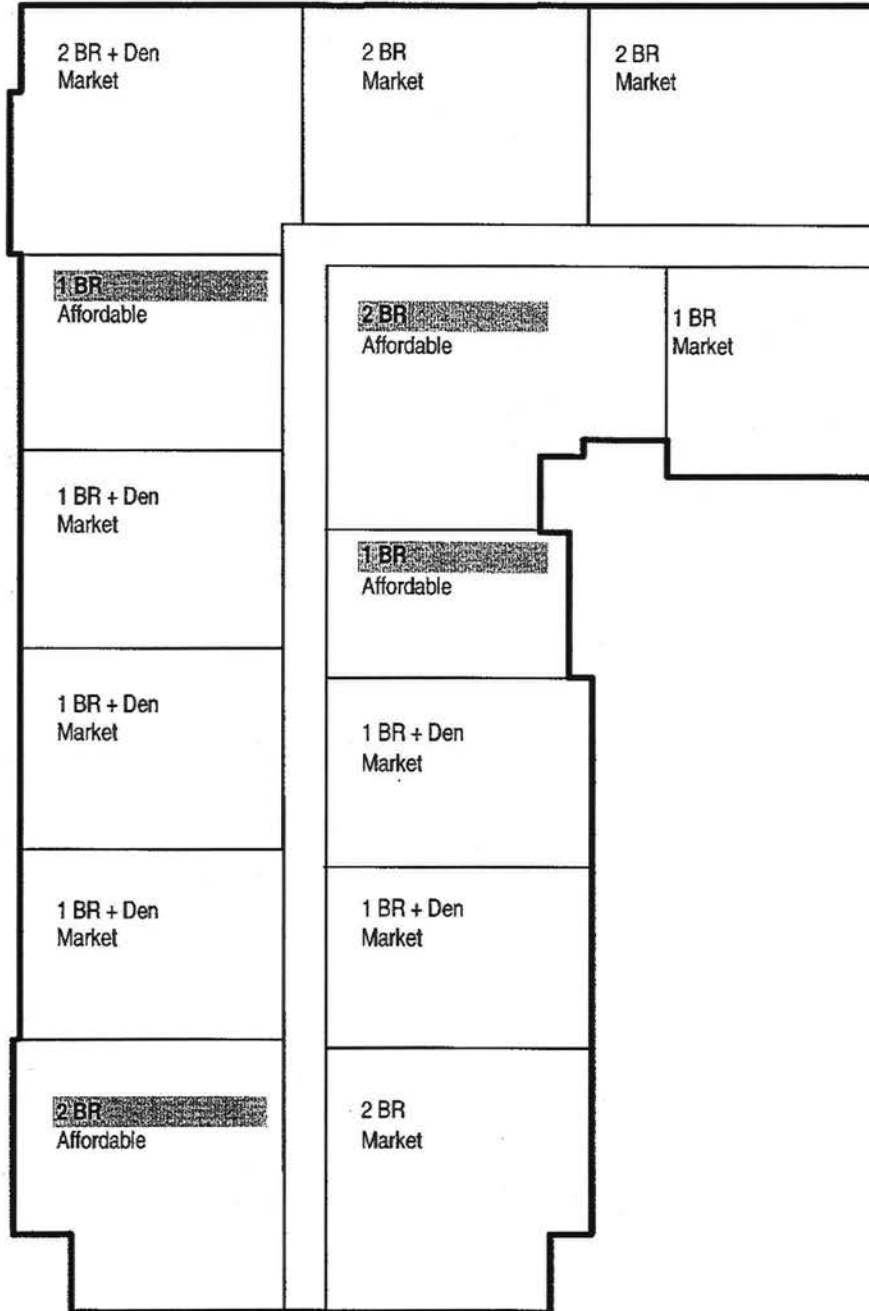
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5th K-L Street Condominiums

FLOOR 4

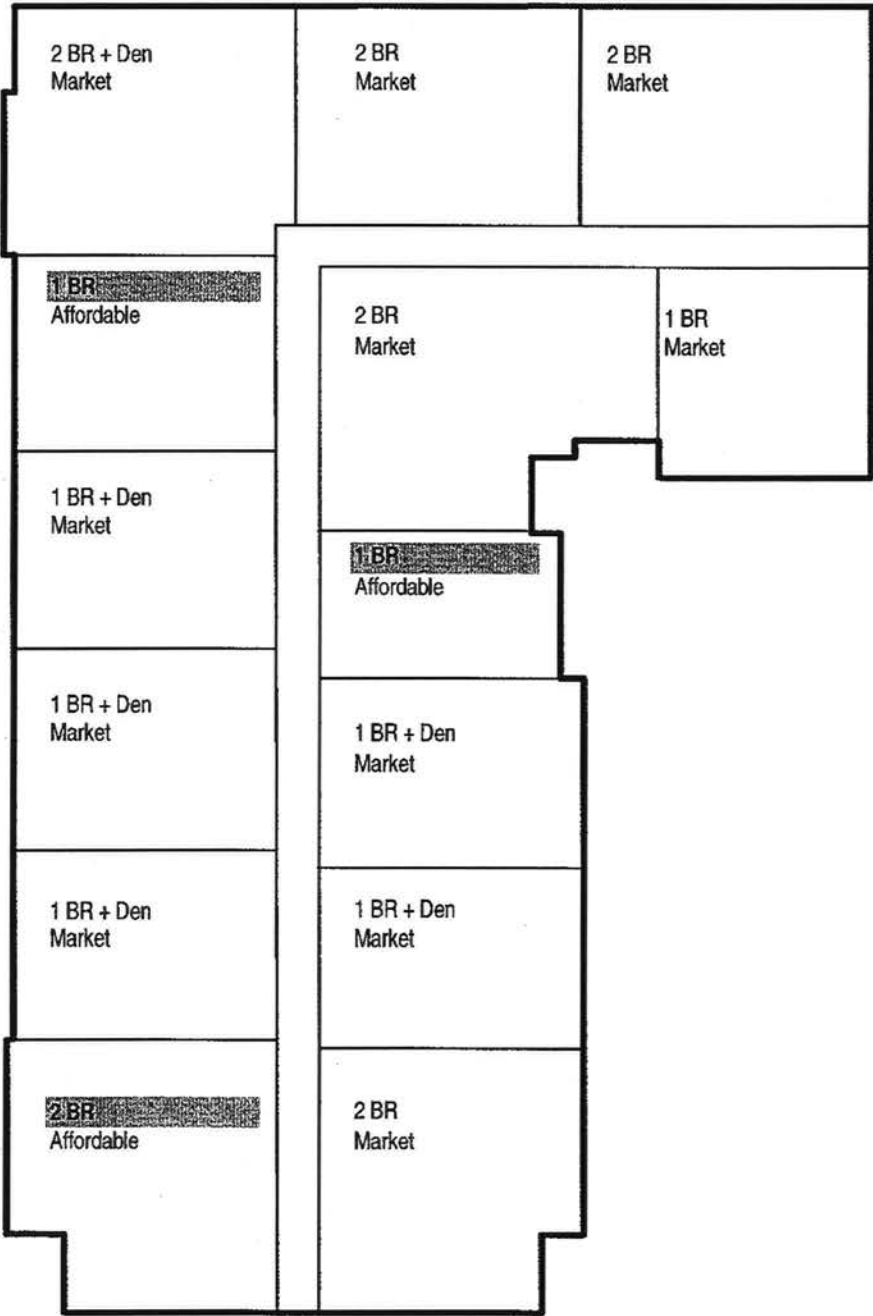
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5th K-L Street Condominiums

FLOOR 5

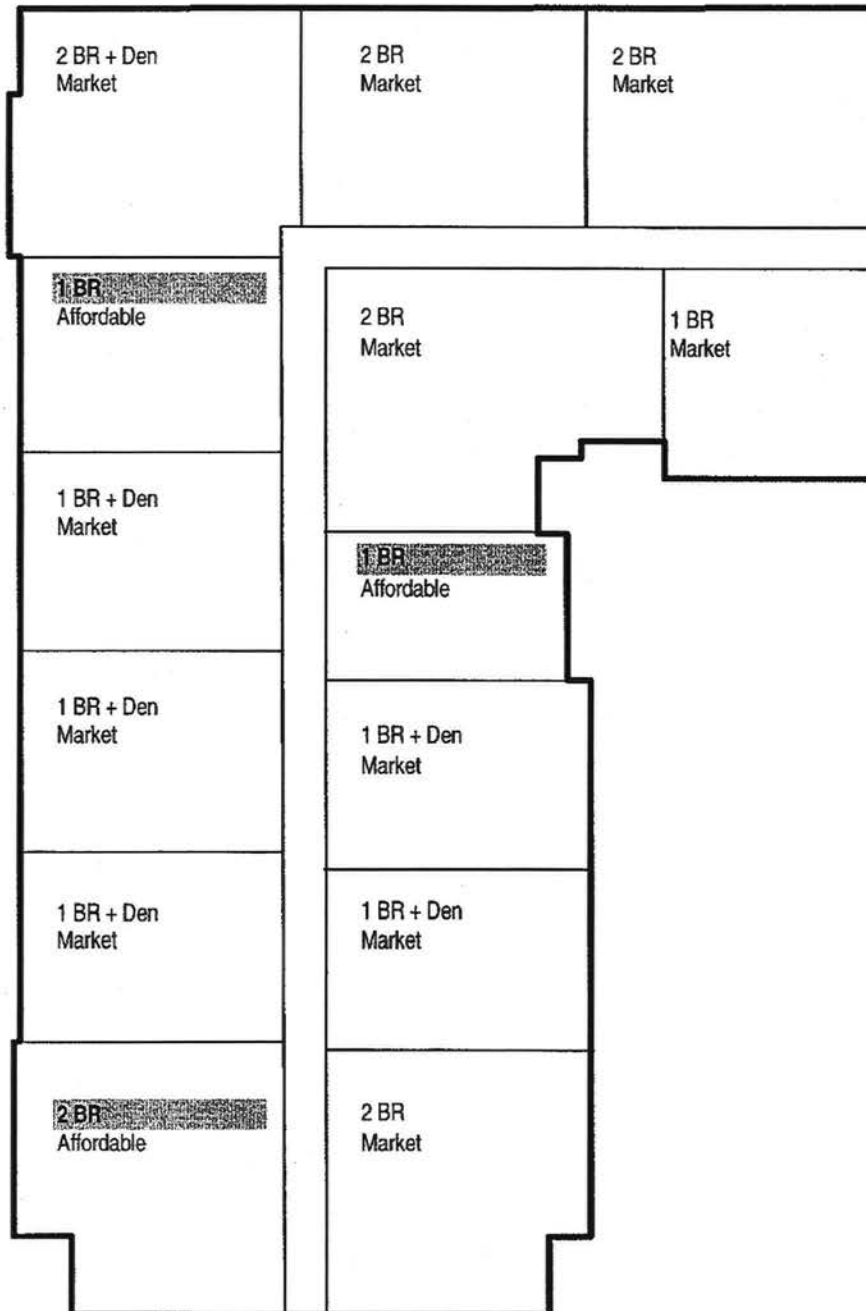
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FLOOR 6

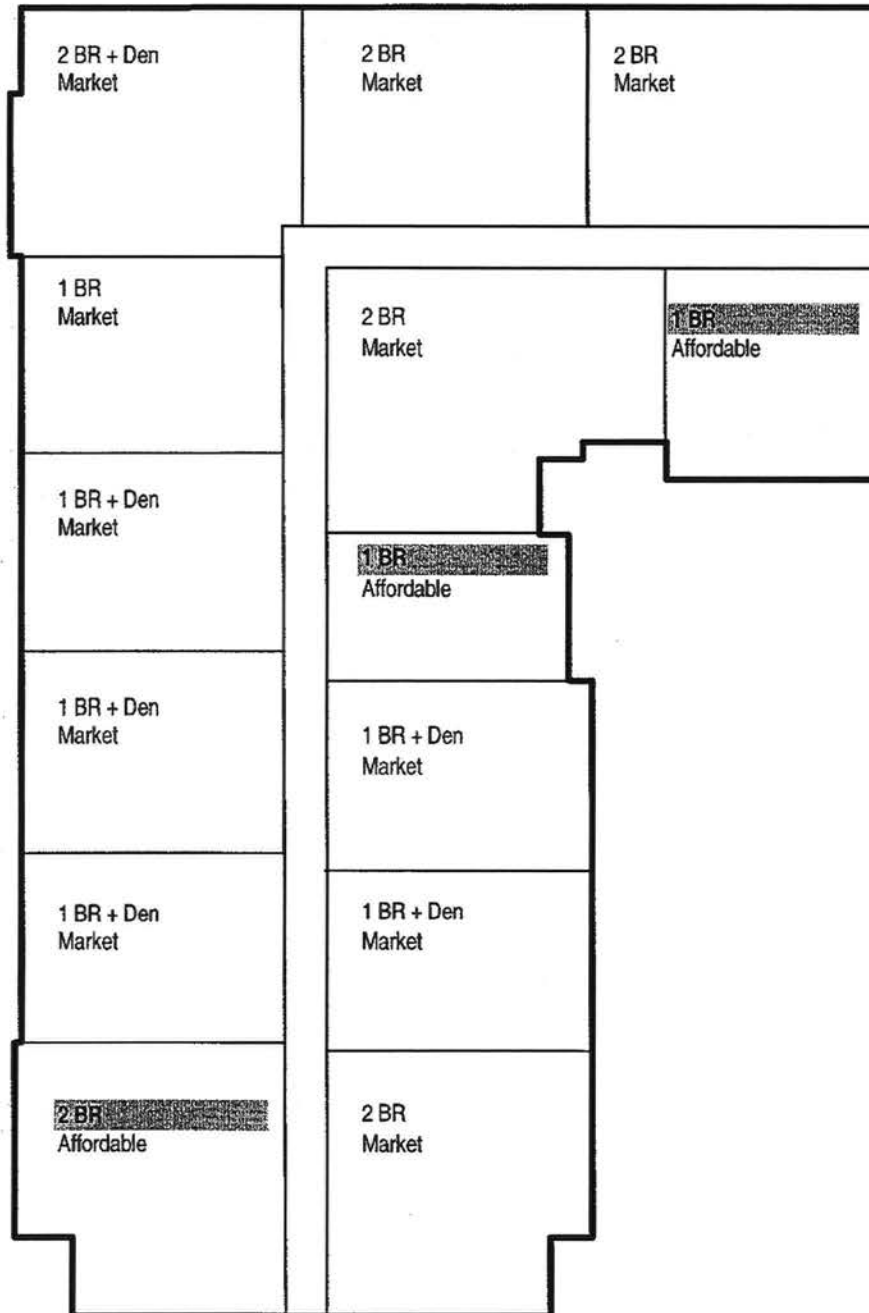
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FLOOR 7

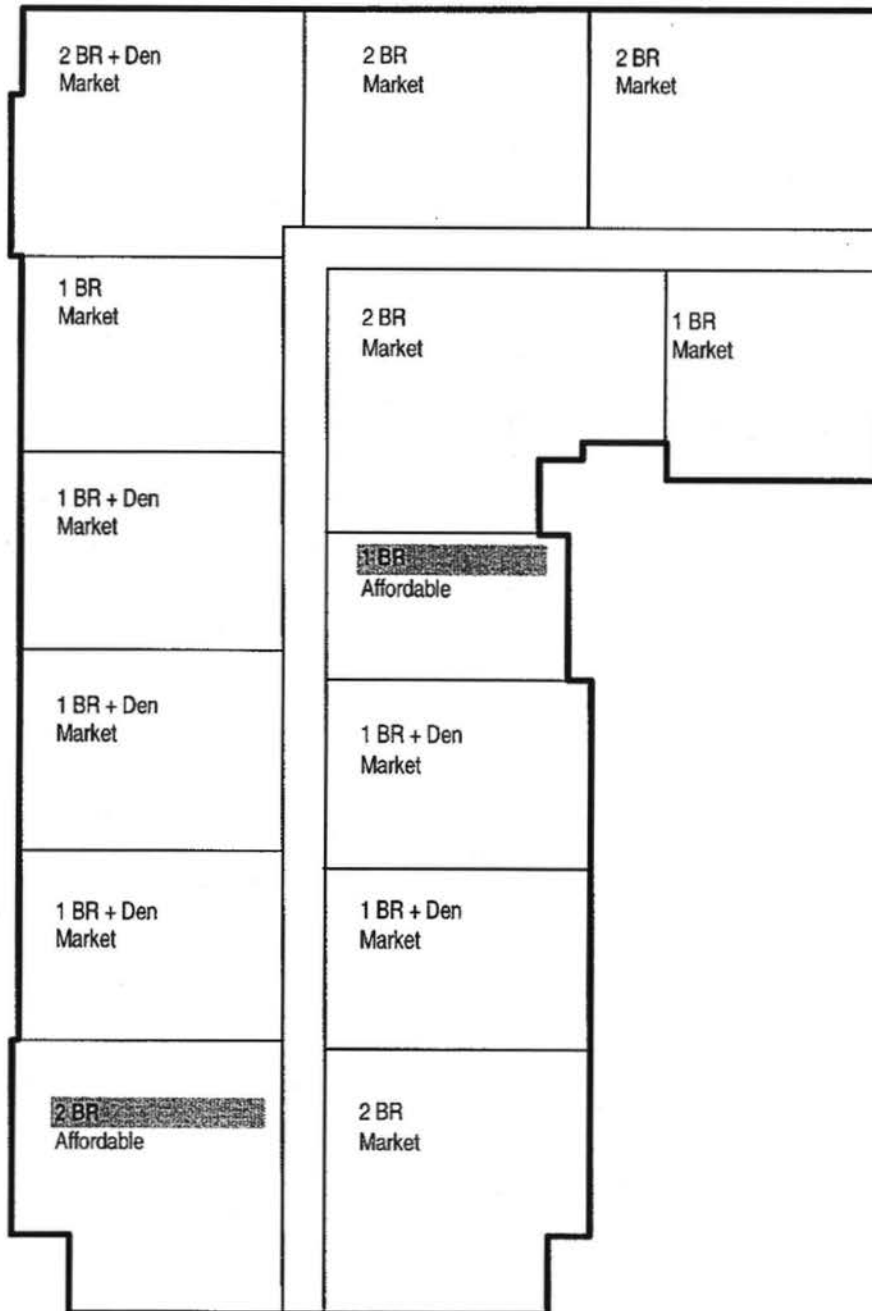
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FLOOR 8

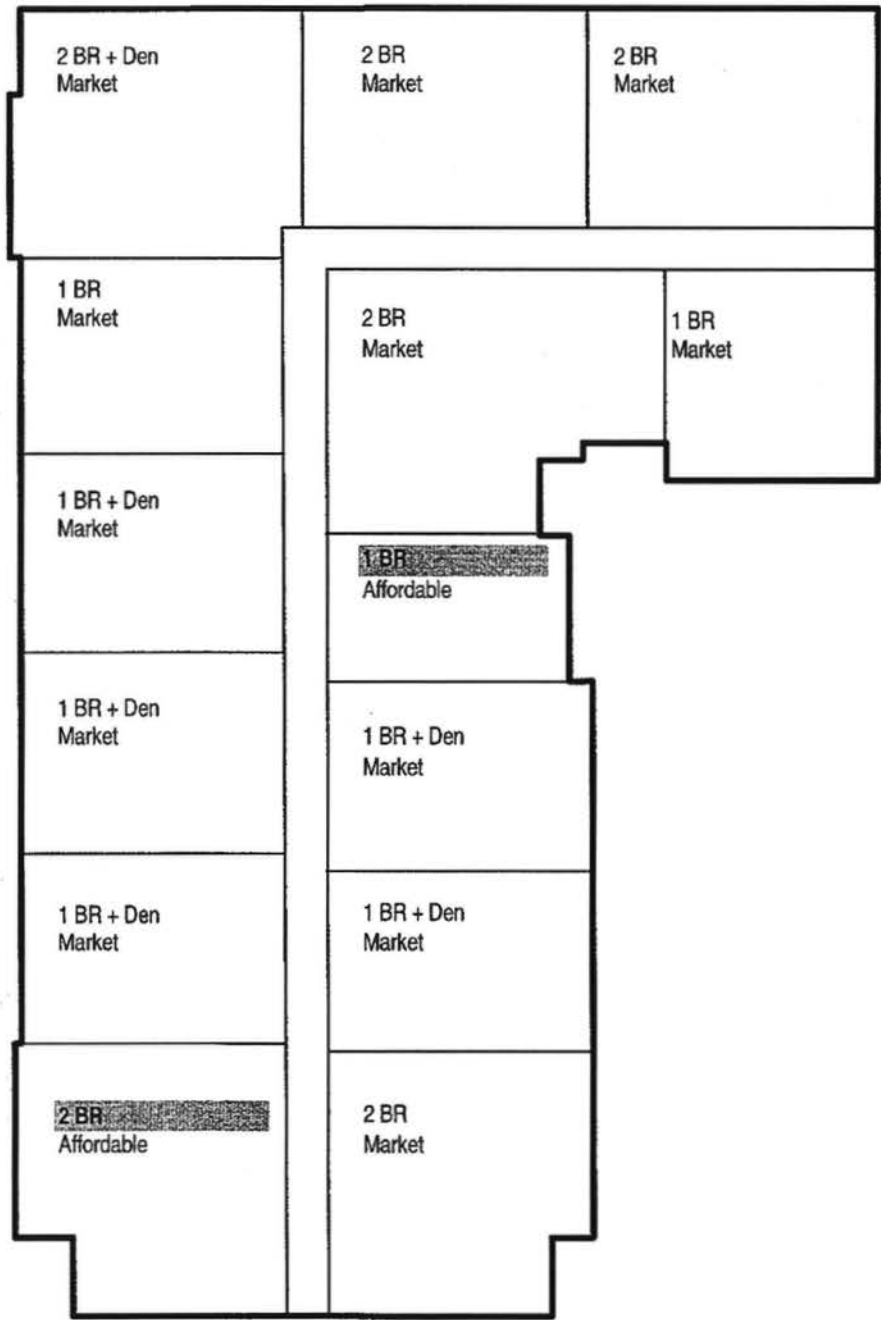
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FLOOR 9

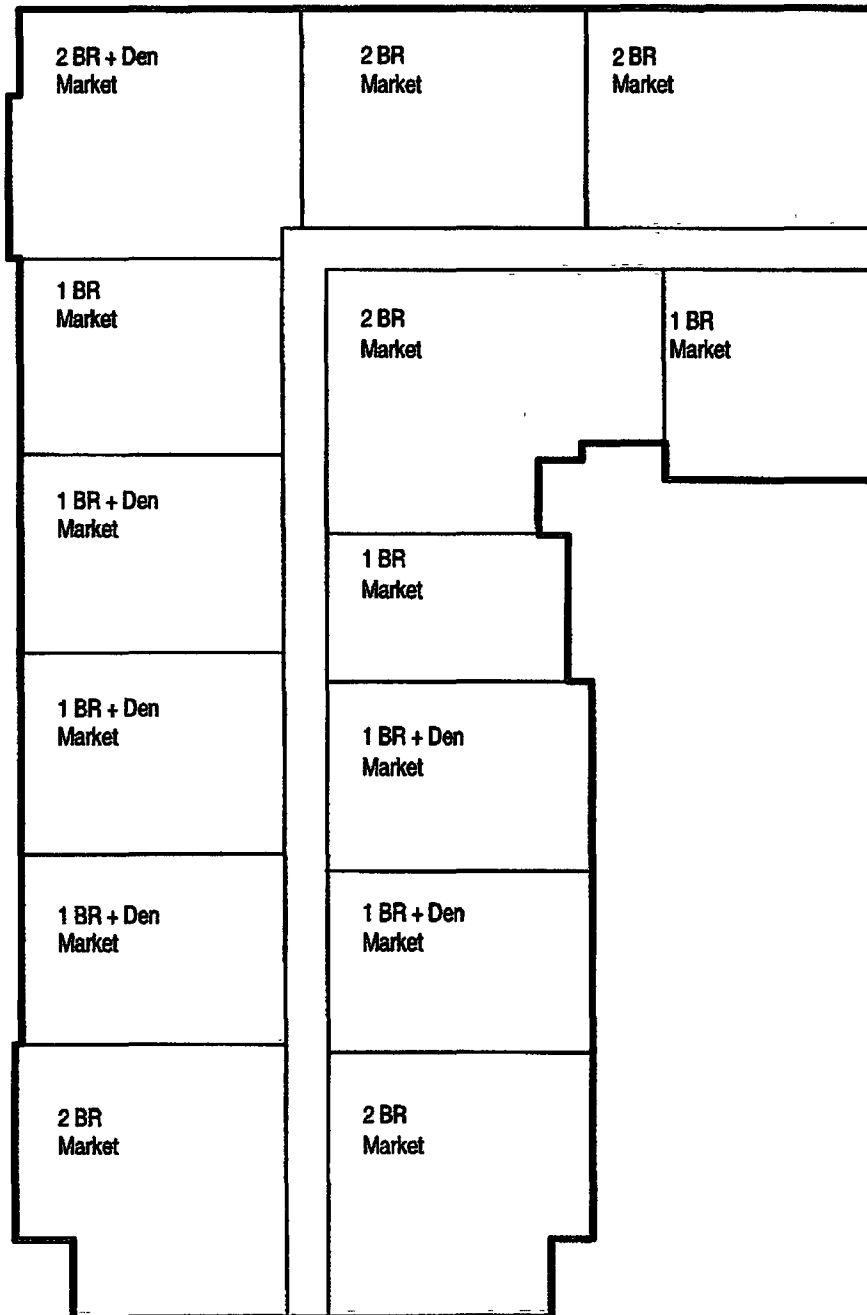
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5th K-L Street Condominiums

FLOOR 10

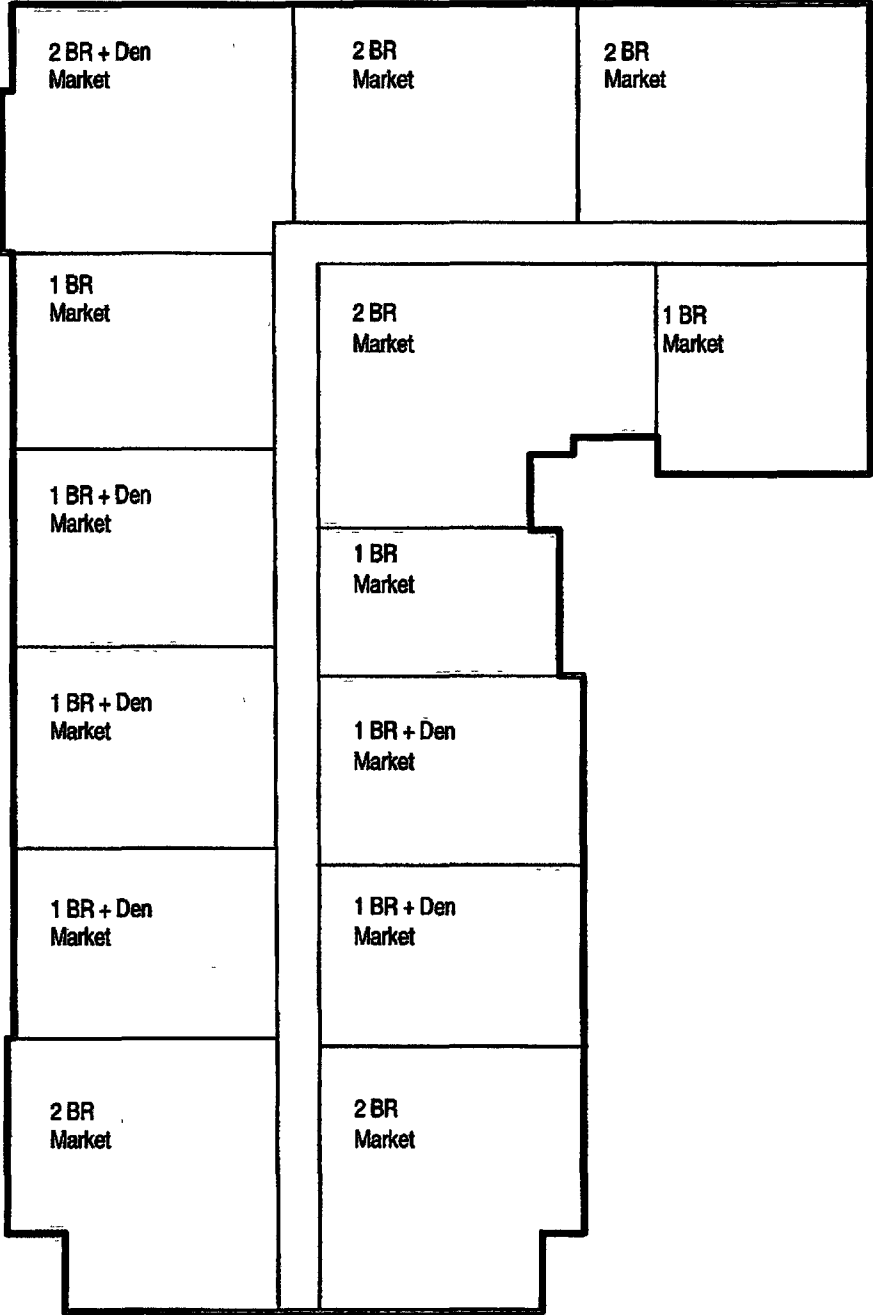
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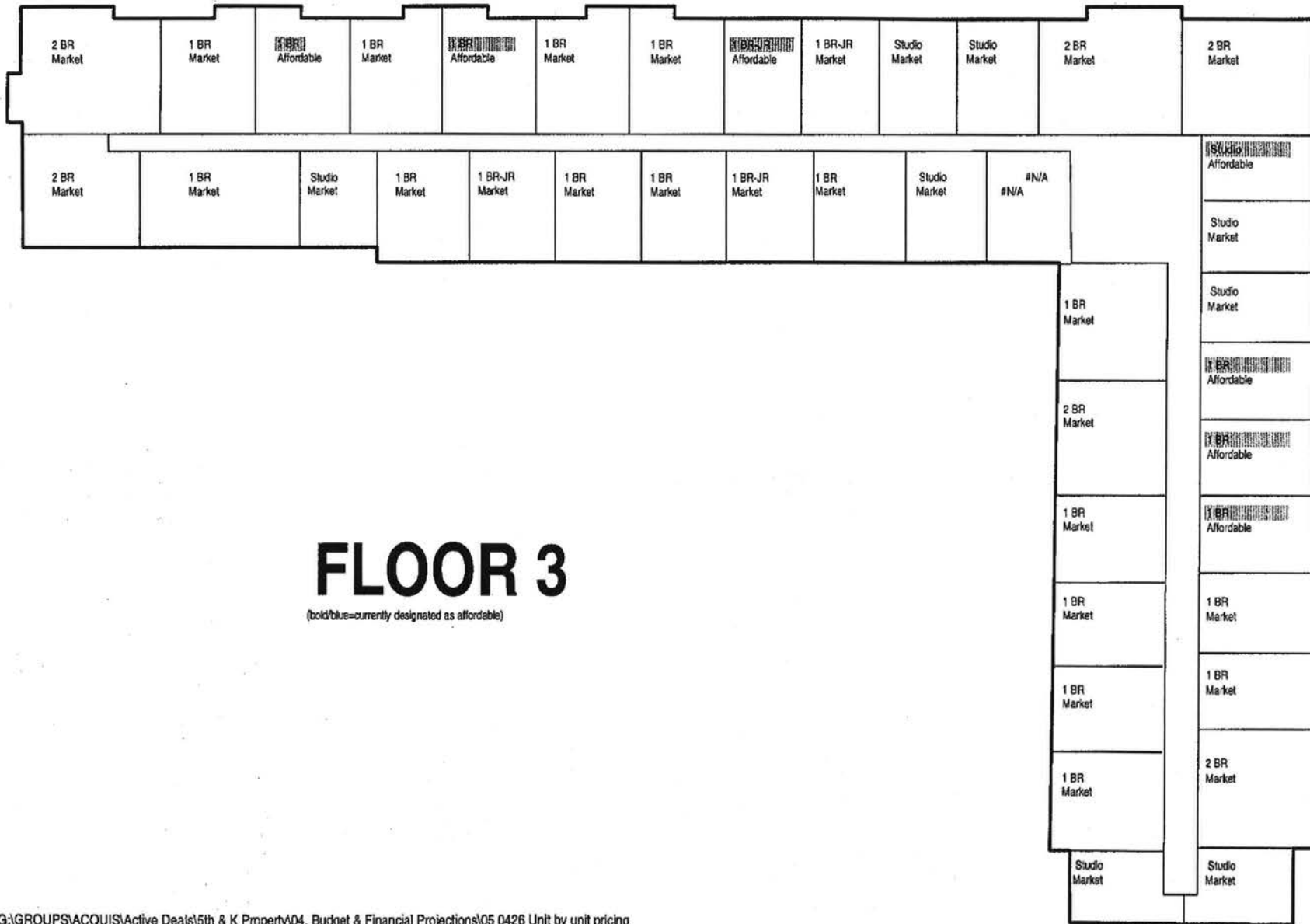
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FLOOR 11

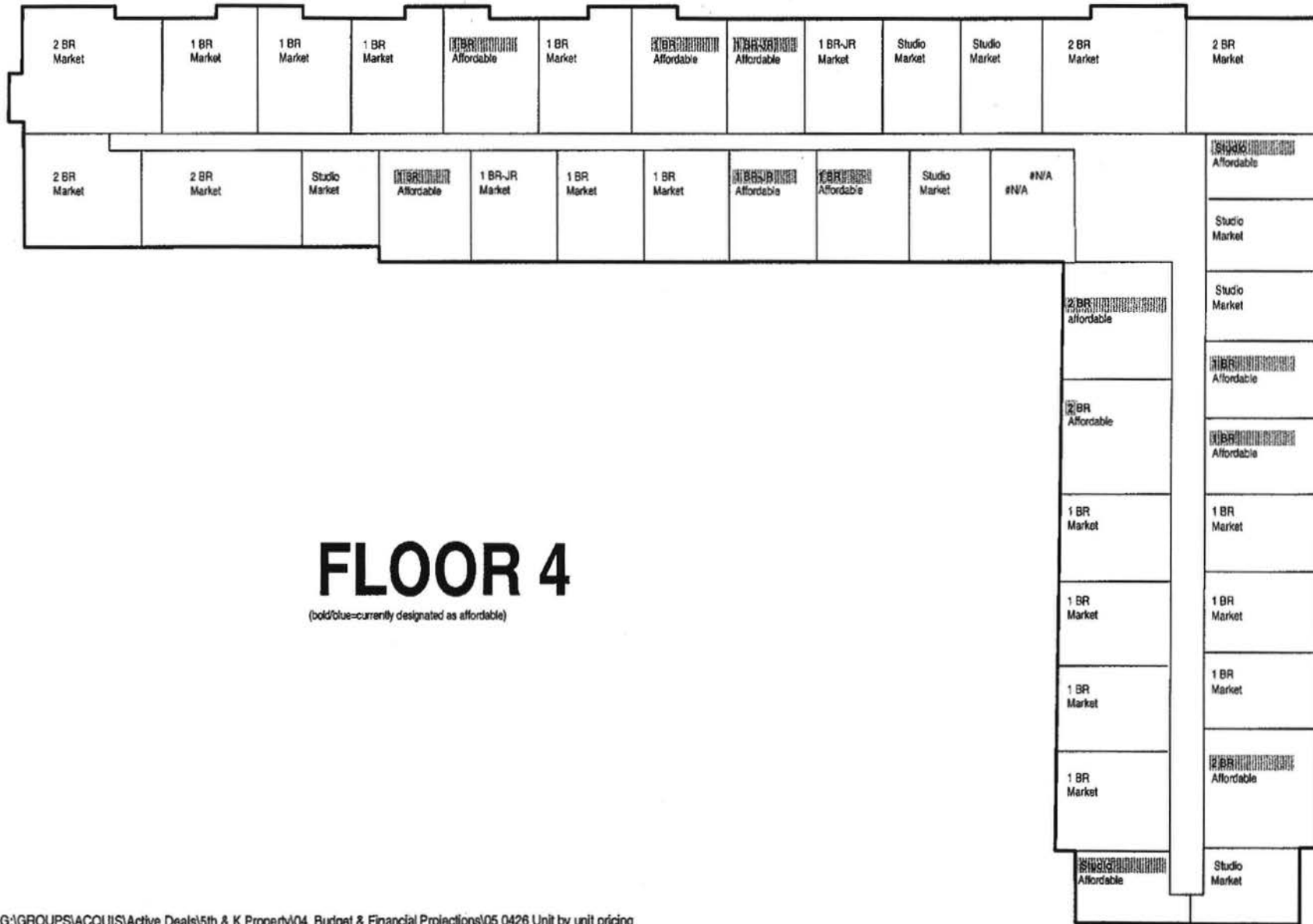
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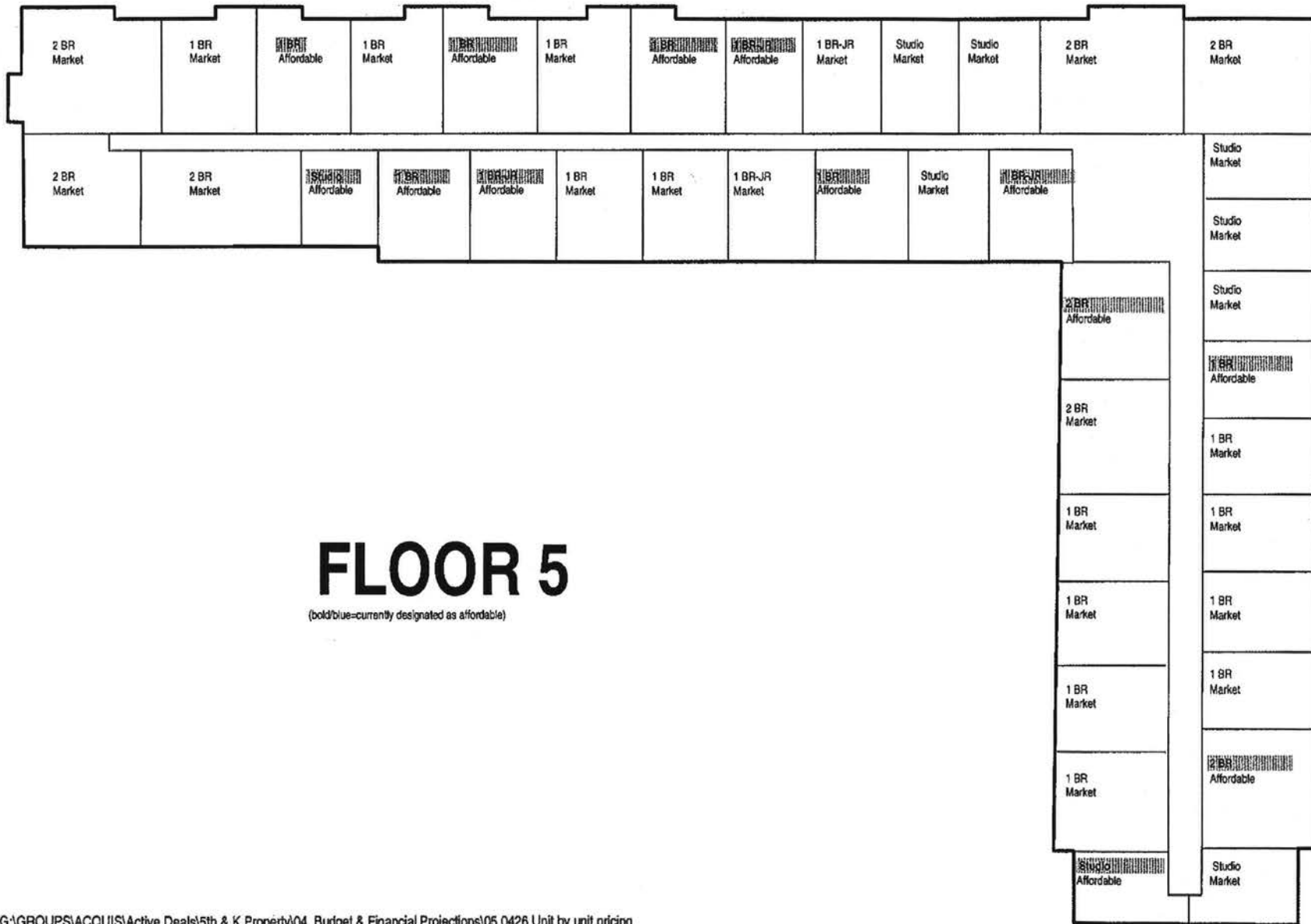
5th K-Apartments



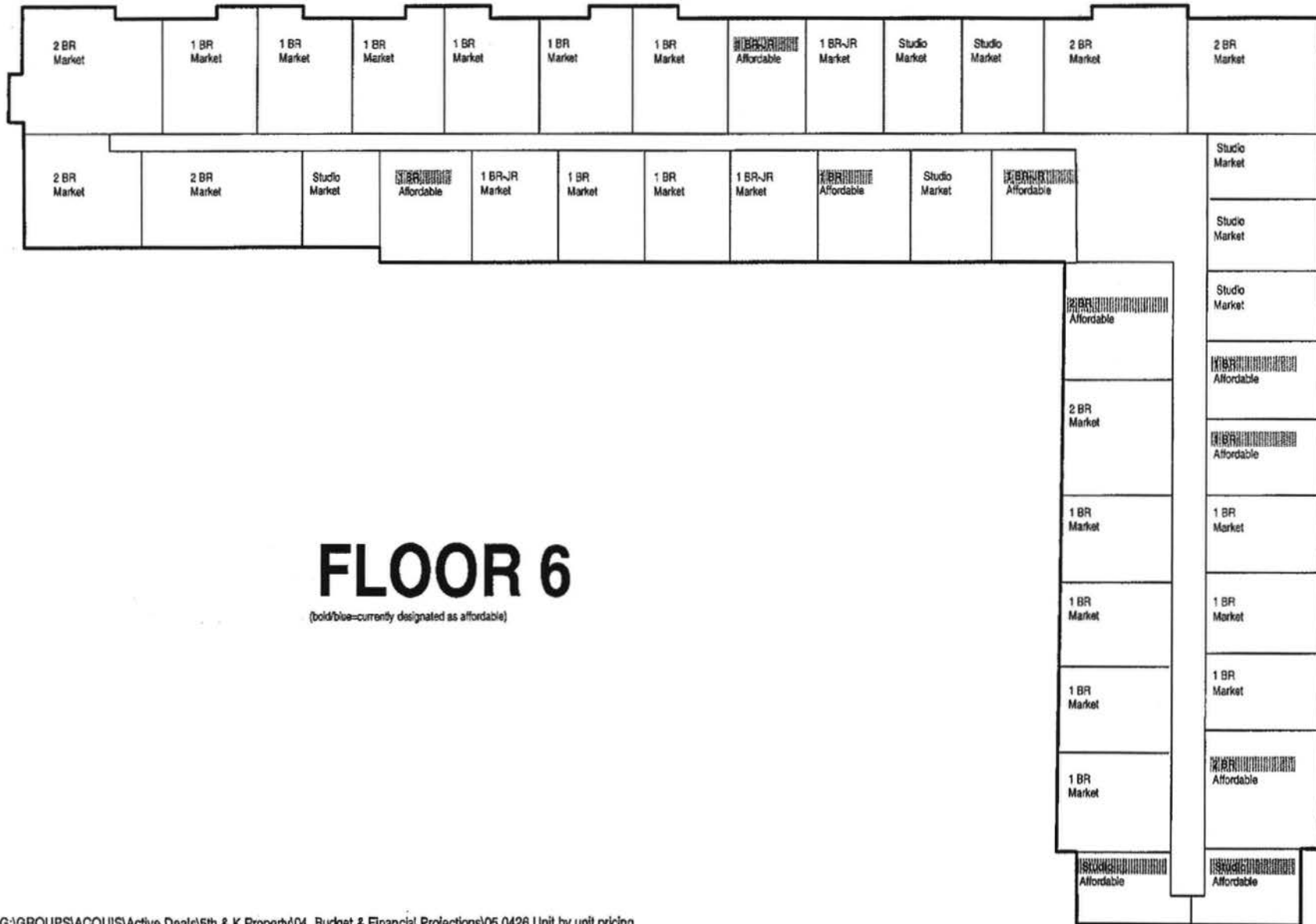
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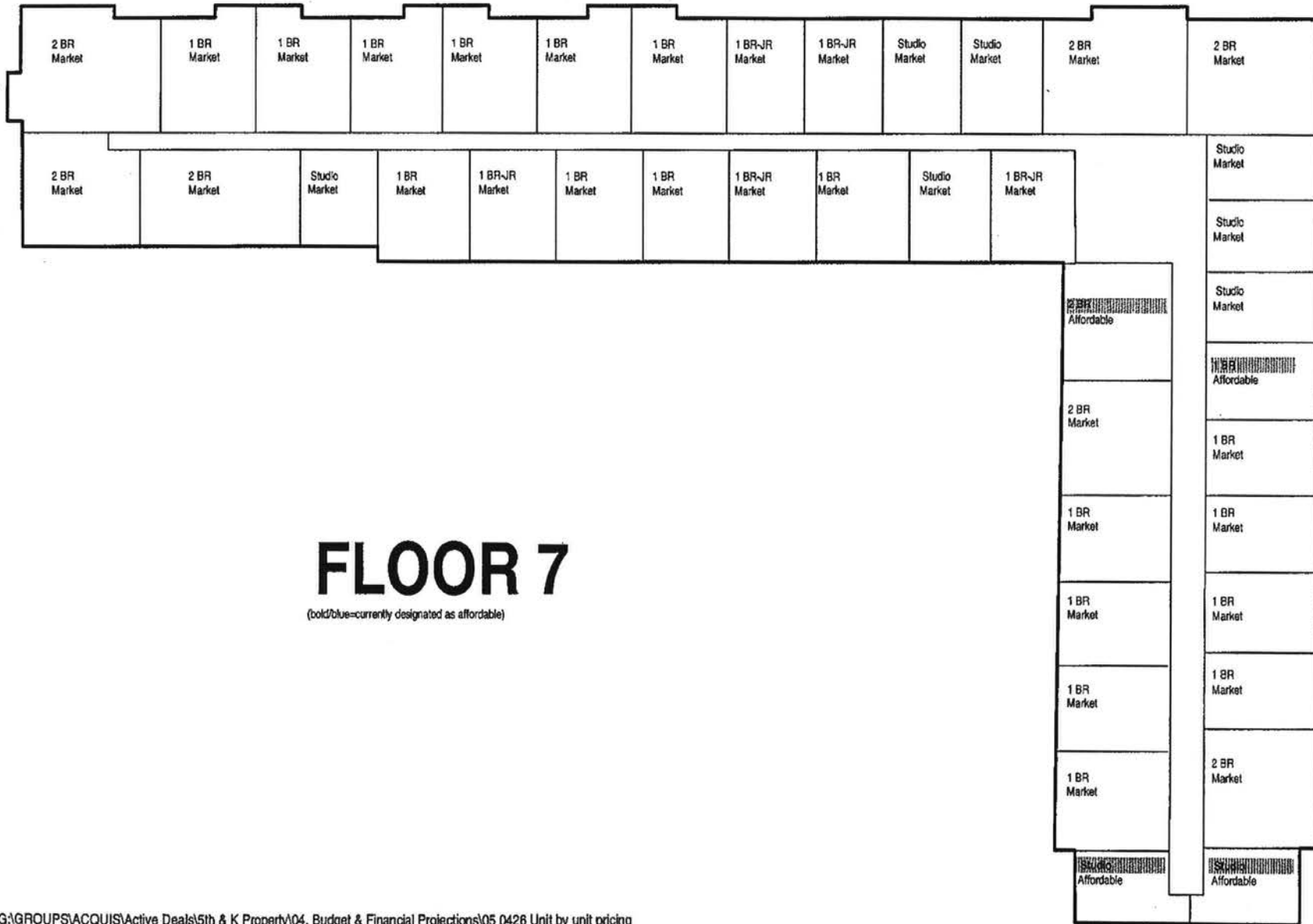
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5th K-Apartments



5th K-Apartments



5th K-Apartments

