003-77-0371

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CONDOMINIUM DECLARATION

FOR

THE BREAKERS OF GALVESTON CONDOMINIUMS

003-77-0372

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THE BREAKERS OF GALVESTON CONDOMINIUMS

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003-77-0375

CONDOMINIUM DECLARATION
FOR
THE BREAKERS OF GALVESTON CONDOMINIUMS

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GALVESTON §

THAT, WHEREAS Kassis Investment Company-Texas, Inc., a Texas corporation, having its principal office at 1234 H Street, Sacramento, California 95814, hereinafter called "Declarant", is the Owner of certain real property situated in the County of Galveston, State of Texas, being described more fully on Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a Condominium Regime under the Condominium Act of the State of Texas, Title 7, Chapter 81, Texas Property Code, herein called the "Act"; and

WHEREAS, Declarant has prepared plans for the construction of a fourteen (14) floor building (the "Building") and other improvements appurtenant thereto on the real property described in said Exhibit "A", attached hereto and incorporated herein by this reference (said real property, the Building, and all other improvements thereto being herein collectively called the "Property"); which when completed shall consist of one hundred fifty-five (155) separately designated Condominium Units and which will be known as THE BREAKERS OF GALVESTON CONDOMINIUMS; and

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the Units, herein called the "Condominium Regime", in the Building and the co-ownership by the individual and separate Unit Owners thereof, as Tenants In Common, of all the remaining property, which includes both Limited Common Elements and General Common Elements, as hereinafter defined in Paragraph 1.1 hereof.

NOW, THEREFORE, Declarant does hereby submit the real property described on the attached Exhibit "A", and all improvements thereon, to the provisions of the Act and this Condominium Regime, and does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and to any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

DEFINITIONS AND TERMS

1.1 DEFINITIONS AND TERMS. As used in this Agreement, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

a. "Board" or "Board of Directors" shall refer to the Board of Directors of the Association.

b. "Common Assessments" means the charge against each Unit Owner and his Unit, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Property, which are to be paid uniformly and equally by each Unit Owner of the Association, as provided in Article V hereof. This shall also include charges assessed against each Unit Owner

to maintain a reserve for replacement fund and to cover costs incurred by the Association to participate in any condemnation suit, as provided in Paragraph 6.3 hereof.

c. "Common Elements" means and includes all of the Property described in Exhibit "A", and all of the improvements thereto and thereon located, excepting all Units. Common Elements shall consist of the General Common Elements and the Limited Common Elements.

d. "Common Expenses" means and includes:

(1) All sums lawfully assessed against the Common Elements by the Managing Agent or Board;

(2) All expenses of administration and management, maintenance, operation, repair or replacement of and addition to the Common Elements (including unpaid special assessments);

(3) Expenses agreed upon as Common Expenses by the Unit Owners; and

(4) Expenses declared to be Common Expenses by this Declaration or by the Bylaws.

e. "Condominium Owners Association" or "Association" means THE BREAKERS OF GALVESTON OWNERS ASSOCIATION, INC., a Texas non-profit corporation, the Bylaws of which (the "Bylaws") shall govern the administration of the Property and the membership of which shall be composed of all the owners of the Units according to such Bylaws.

f. "Declarant" shall mean Kassis Investment Company-Texas, Inc, a Texas corporation, or its successors or assigns, who is developing the Property as a Condominium.

g. "Declarant Control Period" shall mean that period of time during which Declarant shall retain control of the Association and the authority to take all actions which may be taken by the Association as more particularly defined in Paragraph 4.2 below.

h. "Declaration" shall mean this Condominium Declaration instrument.

i. "First Mortgagee" shall mean the holder of a first mortgage lien or first lien deed of trust on any Unit in the Property.

j. "General Common Elements" means a part of the Common Elements and includes:

(1) The real property described in Exhibit "A" attached hereto;

(2) The foundation, bearing walls and columns, roof, halls, lobbies, stairways and entrances and exits or communicationways;

(3) The basement, roof, yards and gardens, except as otherwise herein provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the Building, except as otherwise herein provided or stipulated;

(5) All compartments or installations of central services, such as power, light, gas, cold and hot wa-

ter, refrigeration, central air conditioning and central heating reservoirs, water tanks and pumps, swimming pool, cabana, storage space, tennis court, office space, and the like;

(6) All elevators and shafts, garbage incinerators;

(7) Unassigned parking spaces; and

(8) All other elements of the Building and other devices, installations or equipment on the Property, desirably or rationally of common use or necessary to the existence, upkeep and safety of the Property and the Condominium Regime established by this Declaration.

k. "Limited Common Elements" means and includes those Common Elements which are reserved for the exclusive use of an individual Owner of a Unit or a certain number of individual Owners of Units, for the exclusive use of those Owners, which may include:

(1) "Air handlers", pipes, ducts, electrical wiring and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units, and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, entry ways, and all associated fixtures and structures therein, as lie outside the Unit boundaries;

(2) Balcony or terrace structures serving exclusively a single Unit or one (1) or more adjoining Units;

(3) Separate storage area designated as an appurtenance to a Unit; and

(4) Covered parking designated as an appurtenance to a Unit.

l. "Majority of Owners" means those Owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

m. "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

n. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns, of record, title to one (1) or more Units.

o. "Plat", means or includes the engineering survey of the land, locating thereon all of the improvements, the floor plans and any other drawing or diagrammatic plan depicting a part of, or all of, the improvements, same being herewith filed, consisting of 26 sheets, labeled Exhibit"B" and attached hereto and incorporated herein by this reference. It is expressly agreed and each and every purchaser of a Unit, his heirs, executors, administrators, assigns and grantees hereby agree that the square footage, size and dimensions of each Unit as set out or shown in this Declaration or in the Plat exhibited hereto are approximate and are shown for descriptive purposes only. The Developer does not warrant, guarantee or represent that any Unit actually contains the area, square footage or dimensions shown by the Plat thereof. Each purchaser and Owner of a Unit or interest therein agrees that the Unit has been or will be

purchased as actually and physically existing at the time such purchase is closed. Each purchaser of a Unit expressly waives any claim or demand which he may have against the Declarant or any person whomsoever on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the respective Plat thereof exhibited hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purposes whatsoever or in connection with any matter, the existing physical boundaries of the Unit shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movements of the Building.

p. "Property" means and includes the real property described on Exhibit "A" hereto, the Building and all improvements and structures thereon and all rights, easements and appurtenances belonging thereto.

q. "Special Assessments". In addition to the Common assessments described above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of deferring, in whole or in part:

(1) The cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; or

(2) The expense of any other contingencies or unbudgeted costs; provided that any such assessment shall have the assent of Owners representing an aggregate ownership interest of sixty-seven percent (67%) of the Common Elements at a meeting duly called for this purpose. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to the interest in the Common Elements owned by each. The Association, after due notice and hearing, shall also have the authority to establish and fix a special assessment upon any Unit to secure the liability of the Owner of such Unit to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall require an expenditure by the Association for repair or remedy. Special assessments may be billed or collected on a monthly basis. The above mentioned liability of any Owner is to be established as set forth in this Declaration.

r. "Unit" shall mean the space enclosed within the boundaries of a dwelling space designated on the plat by a unit number and Building letter which are not owned in common with the Owners of the other Units in the Property. The boundaries of each such Unit shall be and are the interior surfaces of the perimeter wall, floors, ceilings, window frames, doors, and door frames and trim, and the exterior surfaces of balconies and terraces; and the space includes both the portions of the Building so described and the air space so encompassed, excepting the Common Elements. In interpreting deeds, mortgages, deeds of trust and other instruments, the existing physical boundaries of the Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries, regardless of settling, rising or lateral movement of the Building and regardless of variances between boundaries shown on the Plat and those of the Building. The term "Unit" shall also include ownership of the undivided percentage interest in the Common Elements assigned to and appurtenant to such Unit as described in Article II below. The individual ownership of each Unit shall further include

the interior construction, partitions, appliances, fixtures and improvements which are intended to exclusively serve such Unit, such as interior room walls, floor coverings or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, plumbing and attached appliances, individual lighting and electrical fixtures and other separate items or chattels belonging exclusively to such Unit, any of which may be removed, replaced, disposed or or otherwise treated without affecting any other Unit space or ownership, use or enjoyment thereof. None of the land in the Property on which any Unit space is located shall be separately owned, as all land in this Property shall constitute part of the "Common Elements" of the Property as herein defined, and shall be owned in Common by the Owners of the Units in this Property. It is intended that the term "Unit", as used in this Declaration, shall have the same meaning as the term "Apartment" as used in the Act.

ARTICLE II

CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS

2.1 RECORDATION OF PLAT. The Plat shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Unit. Such Plat consists of and sets forth:

a. The legal description of the surface of the real property described on Exhibit "A" hereto;

b. The linear measurements and locations, with reference to the exterior boundaries of the real property described on Exhibit "A" hereto, of the Building and all other improvements constructed, or to be constructed, on said real property by Declarant;

c. The exterior boundaries and number of each Unit, expressing its square footage, and other data necessary for its identification, which information will be depicted by a plat of each floor of the Building showing the letter of the Building, the number of the floor and the number of the Unit; and

d. The location of the Limited Common Elements.

e. The location and number of each parking space which is subject to individual ownership.

2.2 DESIGNATION OF UNITS. The Property is hereby divided into one hundred fifty-five (155) separately designated Units contained within the Building. Each Unit is identified by number and the Building is identified by the Letter "A" on the Plat. The remaining portion of the Property, referred to as the Common Elements, shall be owned in common by the Owners. The Owners of each Unit shall own an undivided percentage interest in said Common Elements, the percentage or fraction thereof for each Unit being as shown on Exhibit "C" attached hereto and incorporated herein by this reference.

2.3 LIMITED COMMON ELEMENTS. Portions of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the individual Owners are the balcony and terrace structures, assigned parking spaces and separate storage spaces, if any. Such spaces and structures are allocated and assigned by the Declarant to the respective Units, as indicated on the Plat. Such Limited Common Elements shall be used in connection with the

particular Unit, to the exclusion of the use thereof by the other Owners, except by invitation.

2.4 REGULATION OF COMMON ELEMENTS. Portions of the Common Elements are intended as recreation areas, and are improved with green areas, tennis court, swimming pool, cabana, office space, and other facilities. Other portions of the Common Elements are intended as parking areas. Reasonable regulations governing the use of such recreation areas, parking areas and the remainder of the Common Elements by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board. Such regulations shall be permanently posted at the office and/or elsewhere in said recreational areas, elsewhere in said recreational areas,and all Owners shall be furnished with a copy thereof. Each Owner shall be required to strictly comply with said Rules and Regulations, and shall be responsible to the Association for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

2.5 INSEPARABLE UNITS. Each Unit and its corresponding percentage interest in and to the Common Elements appurtenant thereto shall be inseparable and may not be conveyed, leased or encumbered separately, and shall at all times remain indivisible.

2.6 DESCRIPTION. Every deed, lease, mortgage, trust deed or other instrument may legally describe a Unit by its identifying Building letter and Unit number, as shown on the Plat, followed by the words THE BREAKERS OF GALVESTON CONDOMINIUMS and by reference to this recorded Declaration and Plat. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the Common Elements.

2.7 ENCROACHMENTS. If any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. A valid easement also exists to that portion of the Common Elements occupied by any part of an Owner's Unit not contained within the physical boundaries of such Unit, including, but not limited to, space occupied by heating and air conditioning equipment, utility lines and similar equipment which serves only one (1) Unit, if any. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the individual Units.

2.8 GOVERNMENTAL ASSESSMENT. Declarant shall give written notice to the Galveston County Tax Assessor's Office of the creation of condominium ownership of this Property, as is provided by law, so that each Unit and its percentage or fraction of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

2.9 USE AND OCCUPANCY RESTRICTIONS.

a. Subject to the provisions of this Declaration and the Bylaws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. Each Unit or any two (2) or more adjoining Units used together shall be used for residential purposes or such other uses permitted by this Declaration, and for no other purposes. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from:

(1) Maintaining his personal professional library;

(2) Keeping his personal business or professional records or accounts; or

(3) Handling his personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

(4) Holding his Unit out for rent as provided herein.

b. That part of the Common Elements separating and located between and exclusively serving two (2) or more adjacent Units used together (including, without limitation, portions of any hallway and any walls) may be altered with written consent of the Board, as provided in Paragraph 3.8 herein, to afford ingress to and egress from such Units and to afford privacy to the Occupants of such Units when using such Common Elements, and that part of the Common Elements so altered may be used by the Unit Owner or Owners of such Units as a licensee pursuant to a license agreement with the Association, provided:

(1) The expense of making such alterations shall be paid in full by the Unit Owner or Owners making such alterations;

(2) Such Unit Owner or Owners shall pay in full the expense of restoring such Common Elements to their condition prior to such alteration in the event such Units shall cease to be used together, as aforesaid; and

(3) Such alteration shall not interfere with use and enjoyment of the Common Elements (other than the aforesaid part of the Common Elements separating such adjacent Units), including, without limitation, reasonable access and ingress to and egress from the other Units in the hallway affected by such alteration.

c. The Common Elements shall be used only by the Unit Owners and their agents, servants, permitted tenants, family members, customers, invitees and licensees for access, ingress to and egress from the respective Units and for other purposes incidental to use of the Units; provided, however, receiving rooms, cabana, swimming pool, tennis court, office space, and any other areas designed for specific use shall be used for the purposes approved by the Board.

d. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner or Occupant, and may be subject to lease, concession or easement, presently in existence or entered into by the Board at some future time.

e. Without limiting the generality of the foregoing provisions of this Paragraph 2.9, use of the Property by the Unit Owners shall be subject to the following restrictions:

(1) Nothing shall be stored in the Common Elements without prior consent of the Board, except in storage areas or as otherwise herein expressly provided.

(2) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done or kept in his Unit or the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law.

(3) No waste shall be committed in or on the Common Elements.

(4) Subject to Declarant's rights under Paragraph 2.9e(14)(d) of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior written consent of the Board or the written consent of the Managing Agent (defined in Paragraph 4.3 below) acting in accord with the Board's direction.

(5) No noxious or offensive activity shall be carried on, in or upon the Common Elements, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Unit Occupant. No loud noises or noxious odors shall be permitted on the property, and the Board shall have the right to determine in accordance with the By-laws if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception or any Unit Occupant in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Unit Occupants without the prior written approval of the Board.

(6) Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

(7) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Building or any portion thereof.

(8) No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Unit or the Common Elements, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its Occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed in such a manner that no fire hazard is created. No clothing or household fabrics shall be hung, dried or aired in such a way in the Property as to be visible to other Unit Occupants and no lumber, grass,

shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property, except within an enclosed structure or if appropriately screened from view.

(9) No Unit Owner or Occupant shall park, store or keep any vehicle, except wholly within the parking space designated therefor, and any inoperable vehicle shall not be stored in a parking space or within the Common Elements in general. No Unit Owner or Occupant shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicle or equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board). No Unit Owner or Occupant shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Common Elements. Parking spaces shall be used for parking purposes only.

(10) Except within individual Units, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board.

(11) Motorcycles, motor bikes, motor scooters or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a parking space to a point outside the Property, or from a point outside the Property directly to a parking space.

(12) Unit Owners may maintain a pet in a Unit subject to the provisions of this Paragraph 2.9(e)(12), but in no event may a nonowner Occupant of the Unit be entitled to maintain a pet therein, and no animals, livestock, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or the Common Elements. Dogs and cats weighing less than twenty (20) pounds may be kept in Units subject to rules and regulations adopted by the Association, provided they are not kept, bred or maintained for commercial purposes. Other pets such as birds and fish shall be permitted only upon the prior written consent of the Board. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Unit Occupant. Animals belonging to Unit Owners must be kept either within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board. Should any animal belonging to a Unit Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by the Association or the Managing Agent (defined in Paragraph 4.3 below), to a pound under the jurisdiction of the local municipality in which the Property is situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining Unit Occupants, their families, guests,

tenants and invitees, for any unreasonable noise or damage to person or property caused by any animal brought or kept upon the Property; and it shall be the absolute duty and responsibility of each such Unit Owner to clean up after an animal which has used any portion of the Common Elements.

(13) (a) No Owner, including Developer and any Mortgagee who obtains ownership of a Unit pursuant to remedies provided in a Mortgage, or foreclosure thereof, or deed or assignment in lieu of foreclosure, shall lease or sublet such Owner's Unit other than in accordance with this section (a) of this Paragraph 2.9e(13). No Owner shall lease less than an entire Unit. Any and all leases shall be in writing and shall incorporate the provisions of this Declaration, the Bylaws and the Rules and Regulations. Any and all leases shall provide that the failure of any lessee to comply with the terms of the Declaration, Bylaws and/or Rules and Regulations shall be a default under such lease(s).

(b) No Owner shall have any right to lease or sublet such Owner's Unit, other than in accordance with the provisions of this subsection; provided however, the provisions of this section (b) of this Paragraph 2.9e(13) shall not apply to Declarant during the Declarant Control Period, nor shall they apply to any Mortgagee who obtains the ownership of a Unit pursuant to remedies provided in a Mortgage, or foreclosure thereof, or deed or assignment in lieu of foreclosure. If any Owner, other than those exempted from the operation of this section (b) of this Paragraph 2.9e(13) by the immediately preceding sentence, shall desire to lease or sublet such Owner's Unit, the Owner shall first give written notice thereof to the Board, which notice shall set forth the terms and provisions of the proposed lease agreement and shall include a copy of the written lease proposed to be entered into. Within fifteen (15) days of the receipt of such notice, the Association shall either approve or disapprove the proposed lease agreement, and in the event of such Board disapproval, such Owner shall have no right to lease or rent the Unit in question pursuant to such proposed lease agreement, and any such attempted lease shall be void and of no force and effect. Failure by the Board to approve or disapprove the proposed lease agreement within such fifteen (15) day period shall be deemed to be approval by the Board of such lease agreement. The Association may resort to any remedies available to it, including a proceeding in forceable entry and detainer to enforce provisions of this Paragraph. The Board, in no event, shall unreasonably withhold its approval of any proposed lease agreement; however, should the Board find that the proposed tenant has a poor credit rating, has received poor references from prior landlords, or if the Board determines that the term of the lease is not adequate or that the security deposit required thereunder is not adequate to protect the interests of the other Owners in maintaining the integrity of the Property, the Board may refuse to approve such lease agreement. The foregoing list is illustrative only, and is not an exclusive listing of possible grounds for the withholding of approval of a proposed lease agreement by the Board. In any event, no lease agreement shall be entered into unless and until the proposed tenant thereunder has deposited with the Association, if required by the Board, a good and sufficient security

deposit to cover the portion of the Assessment for Common Expenses attributable to such Unit. The amount of such security deposit shall be set by the Board in a reasonable amount to protect the Association and the other Owners, due regard being given to the credit worthiness of the proposed tenant, the length of the term of the proposed lease, and such other factors as the Board may determine. Nothing in this subsection shall be deemed to, construed as, or used in any way to discriminate against any proposed tenant on the account of national origin, race, color, creed, age, sex, or religion.

(c) No Owner, other than the Declarant during the Declarant Control Period or a Mortgagee who obtains ownership of a Unit pursuant to remedies provided in a Mortgage, or foreclosure thereof, or deed or assignment in lieu of foreclosure, shall lease his unit for transient or hotel purposes.

(14) In order that Declarant may establish the Property as a fully occupied Condominium, no Unit Owner nor the Association shall do anything to interfere with, and nothing in the Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing in any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of any work thereon;

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on the Common Elements or any Unit owned or controlled by Declarant, its successors or assigns, or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing any work and establishing the Property as a Condominium and disposing of the same by sale, lease or otherwise;

(c) Prevent Declarant, its successors or assigns, or its or their representatives, from maintaining a sales office and maintaining and showing model Units to aid in the marketing of the Units; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs for marketing of Units in the Property.

2.10 RESERVATION OF VARIANCE. Notwithstanding any provision of this Declaration to the contrary, the Declarant reserves unto itself the exclusive right to amend the Plat and to vary the size, shape, physical lay-out or location of the unsold Units and to correspondingly adjust the sales price and the percentage or fraction of ownership of the Common Elements or the respective Units remaining unsold. Such adjustment in the percentage or fraction of ownership of the Common Elements will only affect those Units owned by the Declarant, and will not change or affect the percentage or fraction of ownership of any other Unit. This reservation shall not work to readjust or reallocate any vested interests in the Common Elements appurtenant to any sold Units.

ARTICLE III

RIGHTS AND OBLIGATIONS OF OWNERSHIP

3.1 OWNERSHIP. A Unit will be a fee simple estate and may be held and owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

3.2 PARTITION. The Common Elements (both General and Limited) shall be owned in Common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter in Paragraph 6.2, "Judicial Partition". Nothing contained herein shall be construed as a limitation of the right of partition of a Unit between the Owners thereof, but such partition shall not affect any other Unit.

3.3 EXCLUSIVENESS OF OWNERSHIP. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

3.4 ONE-FAMILY RESIDENTIAL DWELLING. Each Unit shall be occupied and used or leased or rented by the Owner only as and for a residential dwelling for the Owner, his family, his social guests or his tenants.

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

3.6 RIGHT OF ENTRY. The Declarant (during the Declarant Control Period as defined in Paragraph 4.2 below) and the Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

3.7 OWNER MAINTENANCE. An owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit, shall be maintained and kept in repair by the Owner thereof; and an Owner shall be obliged to promptly repair and replace any broken or cracked glass in windows and doors, except as caused by fire or hurricane.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness and integrity of the Building or impair any easement or hereditament. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Common Elements, Limited or General, without the prior written consent and approval in writing by the Board of Directors. Any such alteration or modification shall be in har-

mony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Association of complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work. The Board shall have the obligation to answer within thirty (30) days after receipt of written notice of the proposed alterations. Failure to so answer within the stipulated time shall mean that there is no objection to the proposed alteration or modification. During the Declarant Control Period, as defined in Paragraph 4.2 below, the Declarant shall have the sole right to approve or reject any plans and specifications submitted for consideration by an Owner.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth in Paragraph 1.1.r., "Unit", an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings and roofs surrounding his Unit, nor shall such Owner be deemed to own the utilities running through his Unit which are utilized for, or serve, more than one Unit, except as a tenant in common with the other Owners. An Owner shall be deemed to own and shall maintain the inner, finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper and other such finishing material.

3.10 LIABILITY FOR NEGLIGENT ACTS. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, or Occupant, his family, guests or invitees, or tenants and is not covered or paid for by insurance either on such Unit or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject, pursuant to Article IV hereof.

3.11 SUBJECT TO DECLARATION AND BYLAWS. Each Owner, each Occupant and the Association shall comply strictly with the provisions of this Declaration, the Bylaws and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunction relief, or both, maintainable by the Association on behalf of the Owners or, in proper case, by an aggrieved Owner or Occupant against another Owner, Occupant or the Association.

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 BYLAWS. The administration of this Condominium Property shall be governed by the BYLAWS OF THE BREAKERS OF GALVESTON OWNERS ASSOCIATION, attached hereto as Exhibit "D". An Owner of a Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his ownership. The Association shall be managed by a Board, duly appointed or elected, pursuant to the terms and conditions of the Bylaws. In addition, the Association may enter into a management agreement upon the terms and conditions established in the Bylaws, and said management agreement shall be consistent with this Declaration. The Declarant hereby designates JAMES E. KASSIS , JAMES GAUTIER , CHERRI J. KIRCHOFFas the Initial Board of Directors of the Association.

4.2 DECLARANT CONTROL PERIOD. Paragraph 4.1 notwithstanding, and for the benefit and protection of the Unit Owners and any first mortgagees or beneficiaries under any first lien deed of trust of record, for the sole purpose of insuring a timely sellout of the Property, the Declarant will retain control of and over the Association for a maximum period not to exceed three (3)

years after the first Unit is conveyed, or four (4) months after seventy-five (75%) percent of the Units have been conveyed to purchasers, whichever comes first (herein called the "Declarant Control Period"), and shall be entitled to take any and all actions which the Association is empowered to take. It is expressly understood, the Declarant will not use said control for any advantage over the Unit Owners by way of retention of any residual rights or interests in the Association or through the creation of any management agreement with a term not to exceed three (3) years upon relinquishment of Declarant control. At the end of the Declarant Control Period, the Declarant, through the Board, shall call the first (1st) annual meeting of the Association. At anytime after the Declarant relinquishes control, the Association shall have the right to terminate any management agreement entered into by the Declarant upon ninety (90) days written notice and without payment of any penalty.

4.3 MANAGING AGENT. The Association may employ or designate a temporary manager or managing agent (the "Managing Agent"), who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by the Association to him. The Association may pay such Managing Agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Condominium and shall be paid out of the Association budget.

4.4 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT. Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

a. The right of the Association to publish rules and regulations governing use of the Common Elements and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;

b. The right of the Association to charge reasonable fees for the use of facilities within the Common Elements, if such facilities are not subject to use by all Owners or Occupants equally;

c. The right of the Association to borrow money and mortgage the Common Elements and improvements for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage said property; providing, however, that the rights of any such mortgagee in such property shall be subordinate to the rights of the owners hereunder, and in no event shall any such mortgagee have the right to terminate the Condominium Regime established by this Declaration;

d. The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner or Occupant for any period during which any assessment against the Owner's or Occupant's Unit remains unpaid;

e. The right of Declarant or the Association after the Declarant Control Period to dedicate or transfer all or any part of the Common Elements for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and two-thirds (2/3) vote of the quorum of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote of the

Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Condominium Records of Galveston County, Texas;

f. The right of the Association to adopt, implement and maintain a private security system for the Property consistent with applicable laws;

g. The right of the Association to establish rules and regulations governing traffic within the Common Elements, and to establish sanctions for any violation or violations of such rules and regulations;

h. The right of the Association to regulate noise within the Property, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise; and

i. The right of the Association to control the visual attractiveness of the Property, including, without limitation, the right to require Owners to eliminate objects which are visible from the Common Elements and which, in the Association's judgment, detract from the visual attractiveness of the Property.

4.5 MEMBERSHIP, VOTING, QUORUM, PROXIES.

a. Membership. Any person on becoming an Owner of a Unit shall automatically become a Member of the Association. The Declarant will be considered a Member for each unsold Unit. Such membership shall terminate without any formal Association action whenever such person ceases to own a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with THE BREAKERS OF GALVESTON CONDOMINIUMS during the period of such ownership and membership of the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but he Board of Directors may, if it so elects, issue one (1) membership card to the Owner(s) of a Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Unit designated thereon shall terminate.

b. Voting. Unit ownership shall entitle the Owner(s) to cast a vote per Unit in the affairs of the Association equal to the percentage interest of the Unit Owner in the Common Elements. Voting shall not be split among more than one Unit Owner. If there are multiple Owners of a Unit, such Owners must designate by written notice to the Association one person to act on behalf of all such Owners of the Unit. The combined votes calculated in accordance with Exhibit "C" shall equal one hundred percent (100%).

c. Quorum. The Majority of Unit Owners as defined in Article I shall constitute a quorum.

d. Proxies. Votes may be cast in person or by proxy. Proxies may be filed with the Association before the appointed time of each meeting.

4.6 INSURANCE.

a. The Association shall obtain and maintain at all times insurance of the type and kind provided hereinafter, including such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to any condominium building, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. Further, the policy must cover fixtures, equipment and other personal property inside individual Units if they will be financed by a mortgage purchased by the Federal National Mortgage Association ("FNMA") whether or not the property is part of the Common Elements. The insurance shall be carried in blanket policy form naming the "Association of Owners of The Breakers of Galveston Condominiums, for the use and benefit of the Individual Owners" as the insured. The policy shall also contain the standard mortgagee clause, naming FNMA or the mortgagee who holds a mortgage on the Unit, its successors or assigns. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief or such other hazards as are covered under standard extended coverage provisions, including those covered by the standard "all risk" endorsement, for the full insurable replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. If obtainable, the hazard policy shall contain Agreed Amount and Inflation Guard Endorsements, Construction Code Endorsements, including Demolition Cost Endorsement, Contingent Liability from Operation of Building Laws Endorsement, and Increased Cost of Construction Endorsement. A Steam Boiler Endorsement shall be obtained providing at least $100,000.00 coverage for each accident at each location. Each Owner irrevocably designates the Association, as Attorney-In-Fact, to administer and distribute such proceeds as is elsewhere provided in this Declaration. Such insurance policy shall also provide that it cannot be cancelled or substantially changed by either the insured or the insurance company until after thirty (30) days prior written notice to each First Mortgagee. The Board shall, upon request of any First Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the mortgagor. The policy must provide that it is primary, notwithstanding the fact that individual Unit Owners have secured insurance covering the same loss. The policy must further provide that any act, or omission by any Unit Owner, whether that act is accidental or intentional in nature, that is not under the control of the Association shall not in anyway affect or prejudice the insurance coverage.

b. The Association shall keep a comprehensive policy or policies of public liability insurance covering the Common Elements of the Property, public ways and other property under the Association's control and such policy or policies shall include a "Severability of Interest Endorsement" or equivalent coverage which will preclude the insurer from denying the claim of a Unit Owner because of negligent acts by the Association, its Board or any other Unit Owner or Occupant. Such policy or policies shall be in amounts of not less than One Hundred Thousand Dollars ($100,000.00) per person, Three Hundred Thousand Dollars ($300,000.00) per accident and Fifty Thousand Dollars ($50,000.00) property damage, plus an umbrella policy for not less than One Million Dollars ($1,000,000.00) for all claims for personal injury, including death, and/or property damage arising out of a single occurrence; and the policy shall include water damage liability, liability for non-owned and hired auto-

mobiles, liability for property of others and such other coverage as is customarily deemed necessary with respect to projects similar in nature. The policy shall also cover any legal liability which may arise from lawsuits relating to employment contracts in which the Association is a party. The policy shall further provide that the insurer shall give at least thirty (30) days written notice to the Association and each First Mortgagee prior to cancellation or substantial modification of the policy.

c. The Association shall keep a policy or policies of (i) liability insurance insuring the Board of Directors, officers and employees of the Association against any claims, losses, liabilities, damages or causes of action arising out of, or in connection with, or resulting from any act done or omission to act by any such person or entities, (ii) workmen's compensation as required under the laws of the State of Texas, and (iii) such other insurance as deemed reasonable and necessary in order to protect the Property, the Unit Owners and the Association.

d. The Association shall be responsible for obtaining insurance upon the Units, including all fixtures, installations or additions thereto contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of such Unit, as initially installed or replacements thereof. The Association shall not be responsible for procurement or maintenance of any insurance covering the liability of any Unit Owner not caused by or connected with the Association's operation or maintenance of the Property. Each Unit Owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and casualty and public liability insurance coverage within each Unit are specifically made the responsibility of each Unit Owner, and each Unit Owner must furnish a copy of his insurance policy to the Association.

e. Any insurance obtained by the Association or a Unit Owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the other Unit Owners or Occupants, the Association or their respective servants, agents or guests.

f. In the event that the Property is in a special flood hazard area, as defined by the Federal Emergency Management Agency, the Association must maintain a master or blanket policy of flood insurance. The amount of insurance shall be the lesser of (i) 100% of the current replacement costs of all buildings and other insurable property located in flood hazard areas; or (ii) the maximum coverage available for the Property under the National Flood Insurance Program. The property insurable under this subsection shall be the same as that property insured under the Hazard Insurance Policy defined in subsection (a) of this Section 4.6.

g. The Association must provide a blanket fidelity bond for its employees, agents, directors, managers or volunteers responsible for funds held or administered by the Association, whether or not the employees or agents are compensated for their services. The fidelity bond shall indemnify the Association, the Board, and the Owners from loss of funds resulting from fraudulent or dishonest acts of any director, manager, management company, trustee, volunteer or employee of the Association or of any other person handling the funds of the Association. The bond shall list the Association as obligee and shall be in an amount sufficient to cover one and one-half (1-1/2) times the Associations estimated annual operating expense and reserves

assessments on all Units, plus any amounts designated as reserve funds. The bond shall include a provision that requires that thirty (30) days' written notice must be given to the Association before the bond can be cancelled or substantially modified. This notice must also be given to FNMA and First Mortgagee.

4.7 COMPLIANCE. Each Owner and Occupant shall comply strictly with the provisions of the Declaration, Bylaws, the Rules and Regulations, and the decisions and resolutions of the Board and the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or b[illegible], maintainable by the Board on behalf of the Owners, or, in pr[illegible]er cases, by an aggrieved Owner.

ARTICLE V

MAINTENANCE ASSESSMENTS

5.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the estimated assessments imposed by the Association to meet the Common Expenses. Assessments for the estimated Common Expenses shall be due monthly in advance on or before the first (1st) day of each month. Failure to pay by the fifth (5th) day of each month shall require the imposition and assessment of a late charge of ten percent (10%) of the assessment fee. Contribution for monthly assessments shall be prorated if the ownership of a Unit commences on a day other than the first (1st) day of a month.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents in the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of both the Common Elements and the Units situated upon the Property. Such uses may include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; fire, extended coverage, vandalism, malicious mischief and liability insurance for the Units; management costs, taxes, legal and accounting fees as may from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds and landscaping; caring for the tennis court, swimming pool and equipment, cabana, storage space, office space; roof and exterior surfaces of the Building; garbage pickup; pest control; street maintenance; outdoor lighting; security service for the Property; water and sewer service furnished to the Property by or through the Association; discharge of any liens on the Common elements; and other charges required by this Declaration, or other charges that the Association is authorized to incur. In addition, the Association shall establish a reserve for repair, maintenance and other charges as specified herein.

5.3 DETERMINATION OF ASSESSMENTS. The assessments shall be determined by the Board based upon the cash requirements necessary to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements. This determination may include, among other items, taxes, governmental assessments, landscaping and grounds care, Common Elements lighting, repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, management costs and fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, expenses

incurred in the operation and maintenance of recreation and administrative facilities, payment of any deficit remaining from a previous period and the creation of a reserve contingency fund. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

a. The monthly assessments shall be made according to each Owner's proportionate or percentage interest in and to the Common Elements provided in Exhibit "C" attached hereto.

b. During the Declarant Control Period, the Declarant shall establish the monthly assessments including the establishment of the initial monthly assessment prior to the sale of the first Unit to an Owner other than Declarant. As of January 1st of the year immediately following the conveyance of the first (1st) Unit to an Owner other than the Declarant, the Association (or the Declarant during the Declarant Control Period) may set the monthly assessment for the next succeeding twelve (12) month period at an amount which shall not exceed one hundred twenty (120%) percent of the monthly assessment allowed for January of the preceding year. If the Board determines at any time during the calendar year that a greater increase of the monthly assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, then the Board may call a special meeting of the Owners. By the assent of a two-thirds (2/3) vote of the quorum of Owners present at such meeting, the monthly assessment may be set at whatever level such Owners approve. The new assessment shall become the basis for future annual increases, using the one hundred twenty (120%) percent formula, as above outlined.

c. The Board shall have authority to lower the monthly assessment, if it deems feasible.

5.5 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. In addition to the annual assessments authorized above, at any time the Association may levy in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Elements, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be approved by a two-thirds (2/3) vote of the quorum of Owners voting in person or by proxy at a meeting duly called for this purpose. The Declarant will be treated as all other Unit Owners for purposes of special assessments.

5.6 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall be due on the first (1st) day of the month. The assessments shall be pro-rated if the ownership of a Unit commences on a day other than the first (1st) day of the month. On Units owned by the Declarant, the assessment shall commence on the first (1st) day of the month after the Declarant Control Period is terminated, or the first (1st) day of the month following the transfer to the Association of the responsibility for maintenance of the Building in which the Unit is located in accordance with Paragraph 5.11 herein. The Board shall fix the amount of the monthly assessments against such Unit for each calendar year at least thirty (30) days prior to January 1st of each year; provided, however, that the Board shall have a right to adjust the monthly assessments, as long as any such adjustment does not exceed the maximum permitted hereunder, with thirty (30) days' prior written notice given to each Owner. Written notice of the monthly assessment adjustment shall be sent to every Owner

subject thereto. The due date shall be established by the Board, and unless otherwise provided or unless otherwise agreed by the Association, the Board shall collect the assessments monthly in accordance with Paragraph 5.1 hereof.

5.7 NO EXEMPTION. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

5.8 LIEN FOR ASSESSMENTS.

a. All sums assessed but unpaid by a Unit Owner for its share of Common Expenses chargeable to its respective Unit, including interest thereon at the maximum allowed by law, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

(1) All taxes and special assessments levied by governmental and taxing authorities; and

(2) All liens securing sums due or to become due under any duly recorded first lien mortgage, first vendor's lien or first lien deed of trust.

b. To evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one (1) of the Board of Directors and may be recorded in the Office of the Clerk and Recorder of Galveston County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Texas Property Code, as amended, or in any manner permitted by law. Each Owner, by accepting a deed to his Unit, expressly grants to the Association a power of sale, as set forth in said Section 51.002, in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect same. The Association shall have the power to bid in the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

c. The amount of the Common Expenses assessed against each Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

d. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure payment of a common assessment or special assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith (including, but not limited to, interest, costs and reasonable attorney's

fees) shall be chargeable to the Owner in default. Such lien shall be subordinated and inferior to those liens listed in Subparagraphs 5.8a(1) and (2).

5.9 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage or mortgages granted or created by the Owner of any Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit that were recorded before the assessment became due. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Unit pursuant to a foreclosure, a deed in lieu of foreclosure, assignment in lieu of foreclosure under such purchase money or improvement mortgages or deeds of trust shall extinguish the lien of such assessments as to payments therefor coming due prior to such sale or transfer, except for claims for its pro-rata share of such assessments resulting from a reallocation among all Units, which reallocation, if necessary, will require a readjustment of the common assessment as provided in Paragraph 5.4b. No sale or transfer shall relieve such Unit, or the Owners thereof, from liability for any assessments thereafter becoming due or from the lien thereof.

5.10 STATEMENT OF ASSESSMENTS.

a. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Unit, the Association, by its Board, shall issue a written statement setting forth the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessments, the date of such assessment and the due date, credit for advance payments or for prepaid items, including, but not limited to, insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid assessments which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

b. The purchaser, donee or other transferee of a Unit, by deed or other writing (herein called "Grantee"), shall be jointly and severally liable with the transferor of such Unit (herein called "Grantor") for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the granting or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee. The Grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date such assessment becomes due, as well as any credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums. This statement shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Unit accruing prior to such ten (10) day period.

5.11 OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE. During the Declarant Control Period, the Declarant shall be responsible for the difference between the Common Expenses and the assessments charged to the Unit Owners other than Declarant. Declarant shall not be obligated to pay the regular monthly assessment for any Units owned by Declarant. Declarant shall, during the Declarant Control Period, maintain

the Common Elements at the level of maintenance established in accordance with this Declaration. During the Declarant Control Period, Declarant shall provide any additional funds necessary to pay actual cash outlays required to fund current Common Expenses of the Association. Declarant shall not be obligated to fund any reserve accounts until after the Declarant Control Period is terminated. After the Declarant Control Period is terminated, Declarant shall pay the regular monthly assessment for each Unit or Units it owns. In no event shall Declarant's liability for assessments be less than required by the Act.

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1 DESTRUCTION OR OBSOLESCENCE.

a. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Property upon its destruction, obsolescence or condemnation. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney-in-Fact herein provided. All of the Owners irrevocably constitute and appoint THE BREAKERS OF GALVESTON OWNERS ASSOCIATION, INC. if same be hereafter organized, their true and lawful Attorney in their name, place and stead, for the purpose of dealing with the Property upon its destruction, obsolescence or condemnation, as hereinafter provided. As Attorney-in-Fact, the Association, by its authorized officers shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Unit Owner which is necessary and appropriate to exercise the powers herein granted.

b. Repair and reconstruction of the improvement(s), as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in existence prior to the damage, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements, unless all of the Owners and all of the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter:

(1) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as Attorney-in-Fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(2) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-six and two-thirds percent (66-2/3%) of all the Common Elements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as Attorney-in-Fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Units. Such deficiency assessment shall be a special assessment made pro rata according to each Owner's percentage interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the

repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in Article V hereof. The lien provided for herein shall be subordinate to any recorded first mortgage lien, as provided in Paragraph 5.9 of this Declaration. Should the Association choose to foreclose said lien, as provided in Article V, the proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as Attorney-in-Fact, in the following order:

(a) For payment of taxes and special assessment liens in favor of any governmental assessing entity;

(b) For payment of the balance of the lien of any first mortgage;

(c) For payment of unpaid Common Expenses;

(d) For payment of junior liens and encumbrances in the order and extent of their priority; and

(e) The balance remaining, if any, shall be paid to the Unit Owner.

(3) If more than sixty-six and two-thirds percent (66-2/3%) of all of the Common Elements, not including land, are destroyed or damaged, and if the Owners representing the aggregate ownership of one hundred percent (100%) of the Common Elements, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire remaining Property shall be sold by the Association, as Attorney-in-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the Bylaws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into one hundred fifty-five (155) separate accounts, each such account representing one of the Units in the total Property. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney-in-Fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any one (1) account to another, toward the full payment of the lien of any first mortgage against the Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Unit Owner's percentage interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one (1) account to another, by the Association, as Attorney-in-Fact, for the same purposes and in the same order as is provided in Subparagraphs (b)(2)(a) through (e) of Paragraph 6.1 hereof. Any decision to terminate the

Condominium Regime as provided in this Paragraph 6.1b(3) must have the approval of First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

(4) If the Owners representing a total ownership interest of one hundred percent (100%) of the Common Elements adopt a plan for reconstruction, then all of the Owners shall be bound by the terms and provisions of such plan. Any assessment made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's proportionate interest in the Common Elements and shall be due and payable as provided by the terms of the plan. The Association shall have the authority to cause the repair and restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in Article V hereof, but will be subordinate to any prior recorded first mortgage lien, as provided in Paragraph 5.9 hereof. Should the Association foreclose said assessment lien, as provided in Paragraph 5.8, the proceeds derived from sale of such Unit shall be used and disbursed by the Association, as Attorney-in-Fact, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

(5) The Owners representing an aggregate ownership interest of sixty-seven percent (67%) of the Common Elements or more, may agree that the Common Elements of the Property are obsolete and that the same should be renewed or reconstructed. In such instance, the expenses thereof shall be payable by all of the Owners as Common Expenses.

(6) Any restoration, reconstruction or repair of the Property shall be performed substantially in accordance with this Declaration and the original Plans and specifications, unless other action is approved by the Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements, and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

(7) The Owners representing an aggregate ownership interest of one hundred percent (100%) of the Common Elements and all holders of first mortgages may agree that the Common Elements of the Property are obsolete and that the same should be sold. In such instance, the Association should record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the entire Property shall be sold by the Association, as Attorney-in-Fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the Bylaws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into one hundred fifty-five (155) separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association, and shall be

further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney-in-Fact, shall use and disburse the total amount of each of such funds, without contribution from one (1) fund to another, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Common Elements, nor shall Declarant or any person acquiring any interest in the Property or any part thereof seek any such judicial partition, unless the Property has been removed from the provisions of the Texas Condominium Act; provided, however, that if any Unit shall be owned by two or more co-tenants, as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition between co-tenants, but such partition shall not affect any other Unit.

6.3 CONDEMNATION.

a. If all or any part of the Property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association, as Attorney-in-Fact, shall be entitled to participate in proceedings incident thereto at its expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all First Mortgagees known to the Association to have an interest in any Unit. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association, as Attorney-in-Fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as Attorney-in-Fact, and such damages or awards shall be applied as provided herein. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Unit), the Association, as Attorney-in-Fact, in addition to the general powers set out herein, shall, upon the consent of Unit Owners affected, and the affected Owners' First Mortgagees, have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such Property to the condemning authority in lieu of such condemnation proceeding.

b. With respect to any such taking, all damages and awards shall be determined for the taking of the individual Units and for the taking of the Common Elements and for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner for the loss of the individual Unit plus an amount in proportion to his percentage interest in the Common Elements to be applied or paid as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof, unless restoration takes place as herein provided. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners shall decide whether to replace or restore, as far as possible, the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Plat attached hereto shall be duly amended by instrument executed by the Association, as Attorney-in-Fact, on behalf of the Owners. The decision to

repair or replace the Common Elements and the amendment of the Declaration and Plat shall be approved by Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements, and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements. In the event that such eminent domain proceeding results in the taking of or damage to one (1) or more, but less than sixty-six and two-thirds percent (66-2/3%) of the total number of Units, then the damages and awards for such taking shall be determined for each Unit and the following shall apply:

(1) The Association shall determine which of the Units damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged.

(2) The Association shall determine whether it is reasonably practicable to operate the remaining Units of the Property, including those damaged Units which may be made tenantable, as a Condominium in the manner provided in this Declaration.

(3) In the event that the Association determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made tenantable, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Owners, as tenants in common, in the percentage ownership interest previously owned by each Owner in the Common Elements. Any decision to terminate the Condominium Regime of the Property must have the approval of Unit Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements, and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

(4) In the event that the Association determines it will be reasonably practicable to operate the undamaged Units and the damaged Units which can be made tenantable as a Unit, then the damages and awards made with respect to each Unit which has been determined to be capable of being made tenantable shall be applied to repair and to reconstruct such Unit so that it is made tenantable. The restoration shall be performed in accordance with this Declaration, the Plat and the original plans and specifications, unless other action is approved by Unit Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements, and First Mortgagees holding mortgages or Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against those Units which are tenantable. With respect to those Units which may not be tenantable, the award made shall be paid as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof; and the remaining portion of such Units, if any, shall become part of the Common Elements. Upon the payment of such award for the account of such Owner as provided herein, such Unit shall no longer be a part of the Property, and the proportionate ownership interest in the Common Elements appurtenant to each remaining Unit which shall continue as part of the Property shall be

equitably adjusted to distribute the ownership of the undivided interest in the Common Elements among the reduced number of Owners based upon the square footage of the individual remaining Units in proportion to the total square footage of all the remaining Units. If sixty-six and two-thirds percent (66-2/3%) or more of the Units are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Owners of Units, as provided herein; and this Condominium Regime shall terminate upon such payment. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants in common in the percentage ownership interest previously owned by each Owner in the Common Elements. The Owners representing an aggregate ownership interest of at least sixty-seven (67%) of the Common Elements and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements may agree that the Condominium Regime should be terminated and the Property sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the entire Property shall be sold by the Association, as Attorney-in-Fact for all of the Owners, free and clear of the provisions contained in the Declaration, the Plat and the Bylaws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's proportionate ownership interest in the regrouped estate. Any damages, awards, or sales proceeds provided in this paragraph to be paid to or for the account of any Owner by the Association shall be applied as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof.

ARTICLE VII

PROTECTION OF MORTGAGEE

7.1 NOTICE TO ASSOCIATION. An Owner who mortgages his Unit shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Unit. The Board shall maintain such information in a book entitled "Mortgagees of Units".

7.2 NOTICE OF DEFAULT; LAPSE IN INSURANCE. The Association shall notify a First Mortgagee in writing, upon written request of such Mortgagee identifying the name and address of the Mortgagee and the Unit number, of any default by the mortgagor in the performance of such mortgagor's obligations, as set forth in this Declaration, which is not cured within sixty (60) days. The Association, upon written request, shall notify a First Mortgagee of any lapse, cancellation or material modification of any insurance policy or fidelity bonds maintained by the Association.

7.3 EXAMINATION OF BOOKS. The Association shall permit First Mortgagees to examine the books and records of the Association upon request.

7.4 RESERVE FUNDS. The Association shall establish adequate reserve funds for replacement of Common Element components and fund the same by regular monthly payments rather than by extraordinary special assessments. In addition, there shall be established a working capital fund for the initial operation of the Condominium Property in an amount up to three (3) months'

estimated Common Assessments charge for each Unit, said deposit to be collected at the Closing of Unit sales and then transferred to the Association for deposit in a segregated account. The amounts paid will not be considered as advance payments of regular assessments. Within sixty (60) days after closing has been held for the first Unit, the Declarant shall pay each unsold Unit's share of the working capital fund to the Association. The Declarant will reimburse itself for its advance payment into the working capital fund from the funds collected at closing when the unsold units referred to above are eventually sold.

7.5 ANNUAL AUDITS. The Association shall furnish each First Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

7.6 NOTICE OF MEETINGS. The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings, one (1) such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

7.7 NOTICE OF DAMAGE, DESTRUCTION OR CONDEMNATION. The Association shall furnish the First Mortgagees timely written notice of any substantial damage or destruction of any Unit on which the First Mortgagee holds the mortgage if such loss exceeds One Thousand Dollars ($1,000.00) and of any part of the Common Elements if such loss exceeds Ten Thousand Dollars ($10,000.00).

7.8 MANAGEMENT AGREEMENTS. Any management agreement and/or service contract entered into by the Association (or the Declarant during the Declarant Control Period) will be terminable by the Association without cause and without payment of a termination fee upon ninety (90) days' or less written notice, and the term of such management agreement will not exceed a period of three (3) years, renewable by agreement of the parties to such agreement for successive one (1) year periods. In the event of the termination of the management agreement, as provided herein, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of old management agreement. Any decision to establish self-management by the Owners Association shall require the prior consent of Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements.

7.9 TAXES, ASSESSMENTS AND CHARGES. All taxes, assessments and charges which may become liens prior to the lien of the First Mortgagees under local law shall relate only to the individual Units and not to the Property as a whole.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 AMENDMENTS TO DECLARATION: APPROVAL OF OWNERS AND MORTGAGEES.

a. The consent of Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Element shall be required to add or amend any provisions to this Declaration which establish, provide for, govern or regulate any of the following:

(1) Voting;

(2) Assessments, assessment liens or subordination of such liens;

(3) Reserves for maintenance, repair and replacement of the Common Elements;

(4) Insurance or fidelity bonds;

(5) Rights to use of the Common Elements;

(6) Responsibility for maintenance and repair of the Units and Common Elements;

(7) Expansion or contraction of the Property, or the addition, annexation or withdrawal of property to or from the Property;

(8) Boundaries of any Unit;

(9) Convertibility of Units into Common Elements, or Common Elements into Units;

(10) Leasing of Units;

(11) Restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

(12) A decision by the Association to establish self management when professional management had been required previously by an eligible mortgage holder;

(13) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;

(14) Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or

(15) Any provisions which are for the express benefit of first mortgage holders, insurers, or guarantors of first mortgages.

b. The consent of Owners of Units representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements, shall be required to:

(1) partition or subdivide any Unit; said partitioning or subdividing shall also require the approval of the affected Owner and the First Mortgagee of any such Unit;

(2) by act or omission, seek to abandon, partition, subdivide, encumber, or transfer the Common Elements, other than the granting of easements for public utilities or other public uses; or

(3) use hazard insurance proceeds for losses to the Property for other than the repair, replacement or reconstruction of such Property, except as provided by statute in the case of substantial loss, and as provided in Paragraph 6.1b(3).

c. The consent of Owners of Units representing an aggregate ownership interest of at least one hundred percent (100%) of the Common Elements and First Mortgagees of Units representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements shall be required to terminate or abandon the Condominium Regime of the Property by act or omission, except for termination due to substantial destruction or condemnation.

d. Any amendment which would change the percentage ownership interest of the Unit Owners in the Common Elements will require the consent of Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements and First Mortgagees holding mortgages on Units representing an aggregate ownership interest of at least fifty-one percent (51%) of the Common Elements, provided that the change of percentage ownership must have the approval of each affected Owner and the affected Owner's First Mortgagee.

e. Any amendment to the Declaration must be approved by the requisite percentages of ownership interest at a meeting called by the Association, so long as such meeting is required by law. Should the meeting requirement not be mandated by law, an amendment may be effected with the certification by the Secretary of the Association that the necessary Owner approval was obtained, or by obtaining the signatures of the Owners who hold the requisite votes.

f. No amendment to the Declaration may alter or destroy a Unit or a Limited Common Element without the consent of the Owners affected and the affected Owners' First Mortgagee.

g. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration or Bylaws, and who does not deliver or post to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

h. Unless otherwise provided in this Paragraph 8.1 or elsewhere in this Declaration, any of the provisions herein may be amended by the consent of Owners of Units representing an aggregate ownership interest of at least sixty-seven (67%) of the Common Elements, but no amendment shall affect the rights given to the Declarant, herein, without the consent of the Declarant.

8.2 CORRECTION OF ERROR. Declarant reserves, and shall have the continuing right, until Declarant has transferred title to all of the Units in the Property, without the consent of the other Owners or any First Mortgagee or holder of any other lien on the Property or a Unit to amend this Declaration or the Bylaws for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as allowed by law, provided that no such amendment shall change the stated number of Units or percentage ownership interest in the Common Elements attributable thereto.

8.3 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Declarant Control Period, as defined herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Property, furnished by Declarant, and intended for the common use and enjoyment of the Unit Owners and occupants. No Owner shall have

any other interest and right thereto, and all such right and interest shall absolutely terminate upon the Owner's termination of possession of his Unit.

8.4 CHANGE IN DOCUMENTS. Upon written request, the holder of any mortgage covering any of the Units shall be entitled to written notification from the Association thirty (30) days prior to the effective date of any change in the Declaration, Bylaws, Plat or other Condominium documents.

8.5 NOTICE. All notices or demands intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and Building address of such Owner. All notices or demands intended to be served upon the Board or the Association, shall be sent by ordinary or certified mail, postage prepaid, to the attention of the Board at 7700 Seawall Blvd., Galveston, Texas 77551, until such address is changed by a notice of address change duly recorded in the Galveston County Condominium Records.

8.6 CONFLICT BETWEEN DECLARATION AND BYLAWS. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the Bylaws adopted by the Association, the provisions or application of this Declaration shall prevail.

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

8.8 OMISSIONS. In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part hereof, then such omitted matter shall be supplied by inference and/or by reference to the Act.

8.9 TEXAS CONDOMINIUM ACT. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act of the State of Texas and to all other provisions of law.

8.10 GENDER. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed, sealed and delivered by its proper corporate officer this 12th day of APRIL, 1985.

Kassis Investment
Company-Texas, Inc.,
a Texas corporation

By: James Gautier

Vice-President

003-77-0406

THE STATE OF TEXAS §
§
COUNTY OF GALVESTON §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared James Gautier, Vice-President of Kassis Investment Company-Texas, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 12th day of APRIL, 1985.

ARTHUR M. MABASA
Notary Public State of Texas
My Commission Expires 5-7-87

Arthur M Mabasa
Notary Public in and for the
State of T E X A S

My Commission Expires:

Printed Name:

1184001
WP0302

EXHIBIT "A" 003-77-0407

REAL PROPERTY DESCRIPTION

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 Seawall Boulevard
Galveston, Texas 77551

DESCRIPTION OF A TRACT OF LAND OUT OF LOT 152, SECTION ONE, TRIMBLE AND LINDSEY SURVEY OF GALVESTON ISLAND, CITY AND COUNTY OF GALVESTON, TEXAS

BEGINNING at an iron rod at the Northeast corner of Lot 152, said point lying in the South right of way line of Stewart Road, 100 foot right of way and the West right of way line of 77th Street, 50 foot right of way;

THENCE from said beginning point S25°E, along the East line of Lot 152 and along the West right of way line of 77th Street, a distance of 330.60 feet to an iron rod for corner, said point lying in the Northerly right of way line of Seawall Blvd, 150 foot right of way;

THENCE S55°55'W, along the Northerly right of way line of Seawall Blvd., 150 foot right of way a distance of 334.19 feet to an iron rod for corner in the West line of Lot 152;

THENCE N25°W, along the West line of Lot 152, a distance of 383.36 feet to an iron rod for corner being the Northwest corner of Lot 152;

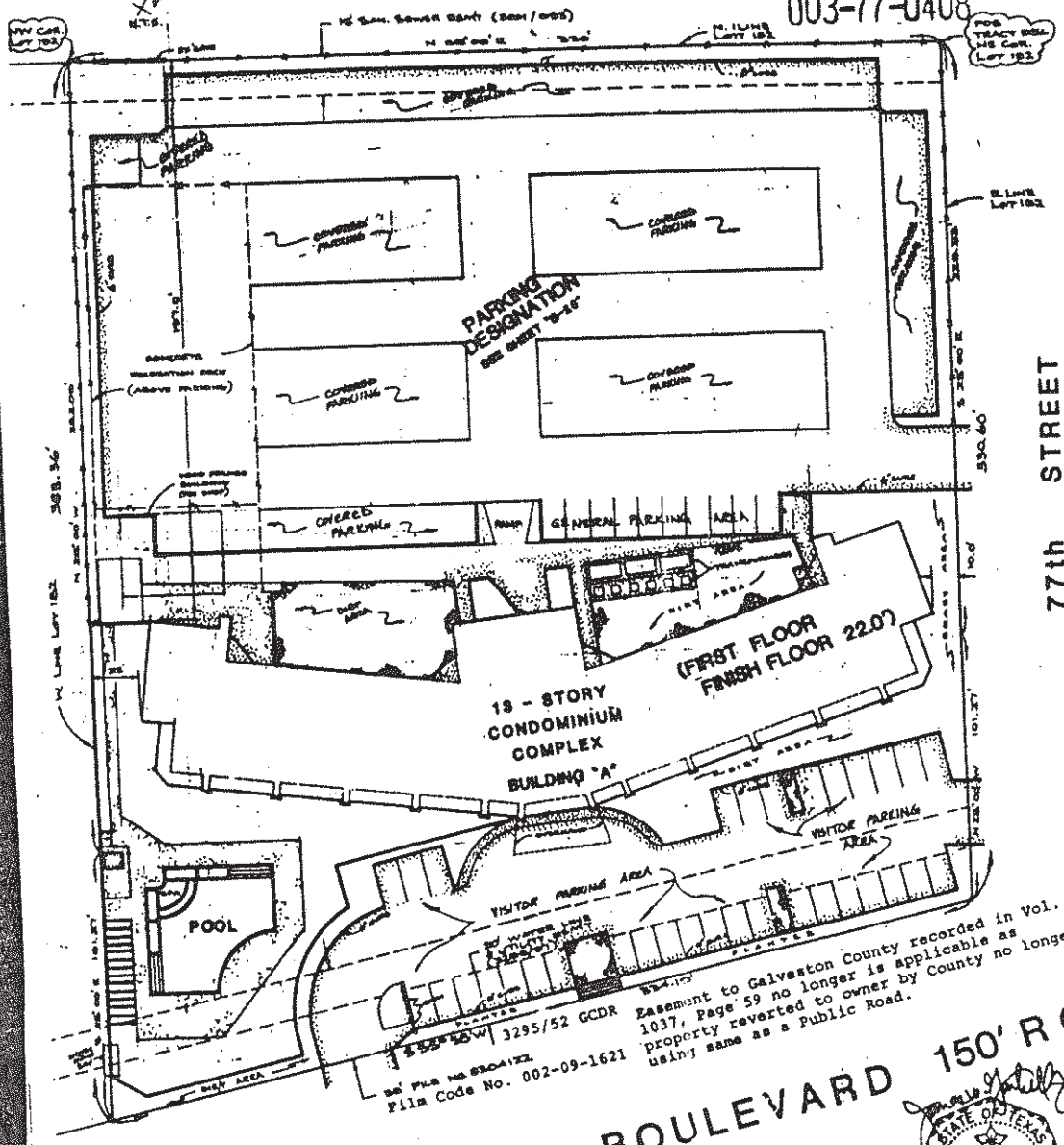
THENCE N65°E, along the North line of Lot 152, a distance of 330 feet to the place of beginning and containing 117,803.40 square feet, more or less.

H.L. & P. CO. Right Of Way described in Film Code 002-81-1479 does not lie within the Southerly 100 feet. Said right of way lies in in the part of the tract North of the Southerly 100 feet with said tract being previously described in Film Code 003-26-1758 GCDR.

J. W. GARTRELL, JR., P.E.
GULF COAST ENGINEERING AND SURVEYING
P.O. BOX 282 LA MARQUE, TX. 77568
409-935-2482 TEXAS CITY
713-488-6869 HOUSTON

003-77-0408

STEWART ROAD
(100' ROW)



3295/52 GCDR

Easement to Galveston County recorded in Vol. 1037, Page 59 no longer is applicable as property reverted to owner by County no longer using same as a Public Road.

Film Code No. 002-09-1621

SEAWALL BOULEVARD 150' ROW

Unit Re-Cap:

A1	- 1 Unit
A2	- 1 Unit
B1	- 11 Units
B2	- 11 Units
C1	- 52 Units
C2	- 52 Units
D1	- 13 Units
D2	- 12 Units
D3	- 1 Unit
P14	- 1 Unit
Total	155 Units

LEGEND:

S.F.	- SQUARE FEET
109	- UNIT 109
P1	- PENTHOUSE 1
109-B	- UNIT 109 BALCONY
A1	- UNIT TYPE
G-P	- GUEST PARKING
1103-P	- UNIT 1103 PARKING ASSIGNED

STATE OF TEXAS
J. W. GARTRELL JR.
1445
REGISTERED PUBLIC SURVEYOR

STATE OF TEXAS
J. W. GARTRELL JR.
22360
REGISTERED PROFESSIONAL ENGINEER

UPDATED 4/11/85

J. W. GARTRELL, JR., P.E.
GULF COAST ENGINEERING AND SURVEYING
P.O. BOX 282 LA MARQUE, TX. 77568
409-935-2482 TEXAS CITY
713-488-6869 HOUSTON

"B-1"

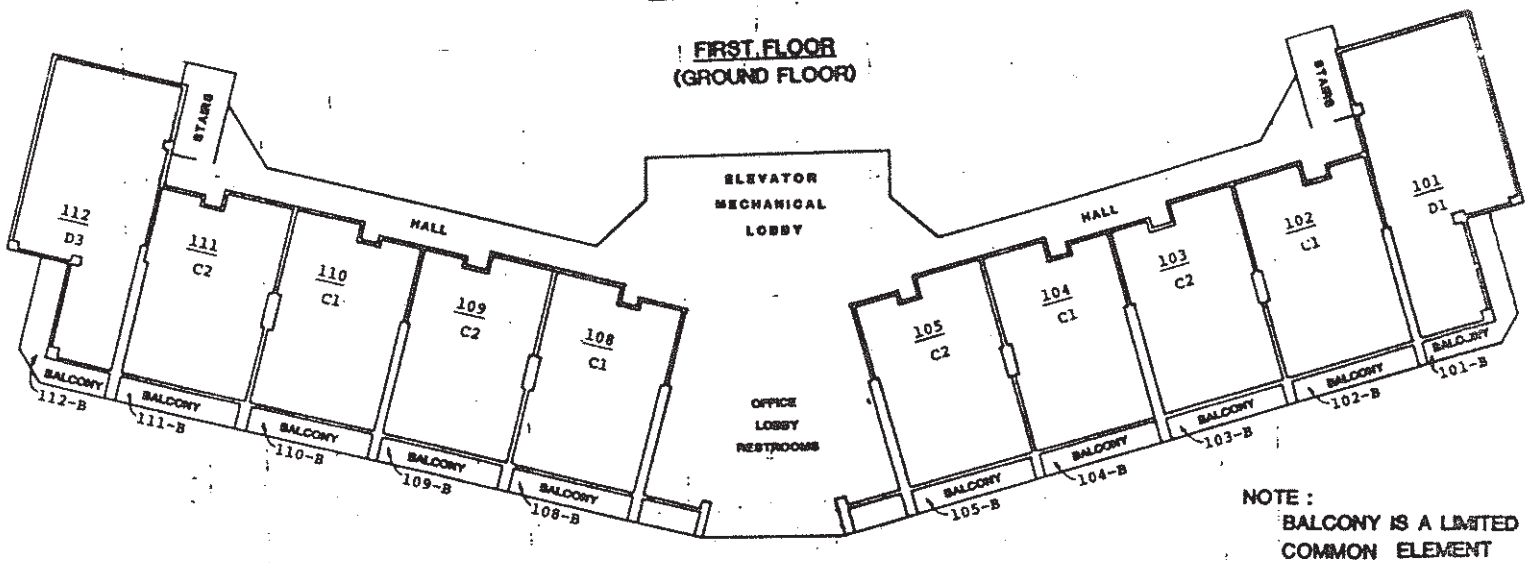
March 21, 1985

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

FIRST FLOOR
(GROUND FLOOR)



NOTE :
BALCONY IS A LIMITED
COMMON ELEMENT

"B-2"
March 21, 1985

If This Property Does Not Lie Within The 100 Year Flood Plain.

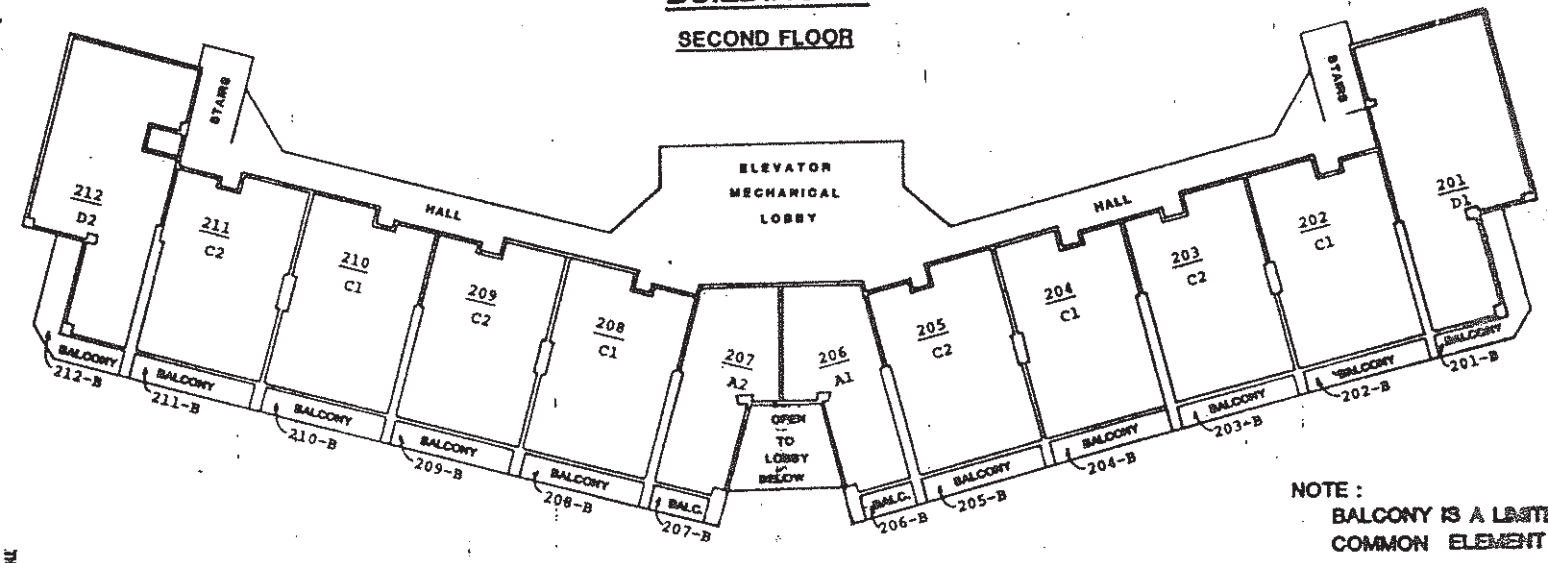
003-77-0409

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

SECOND FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-3"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

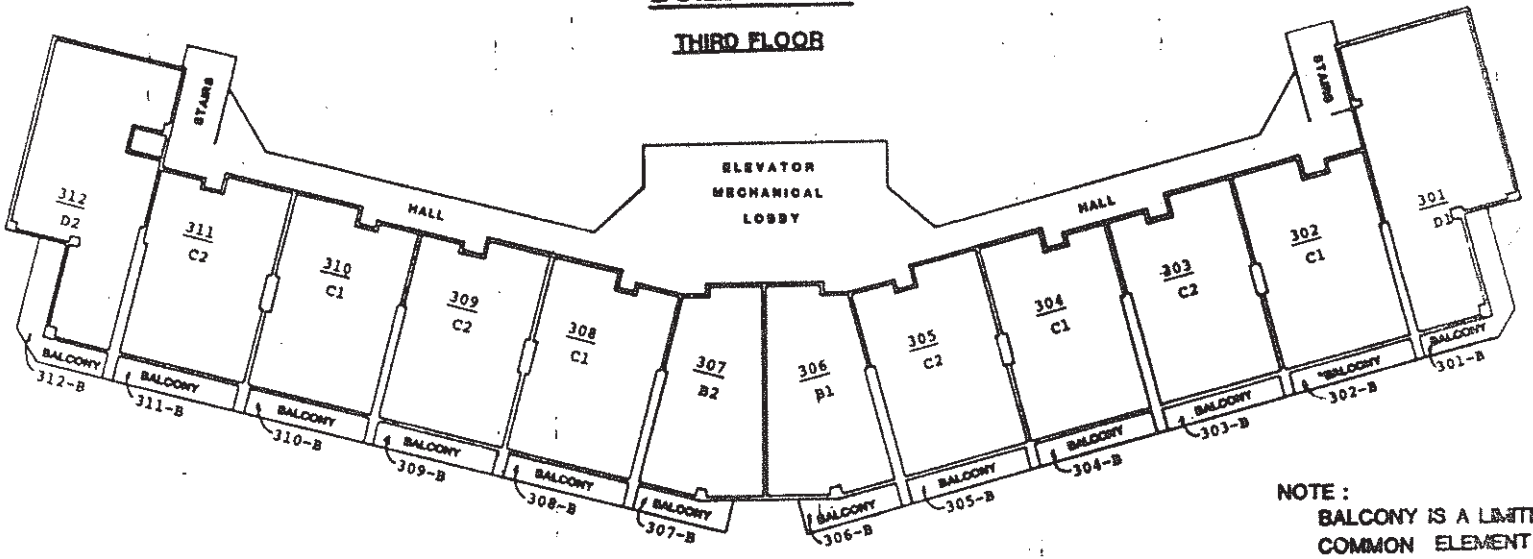
003-77-0410

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

THIRD FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-4"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

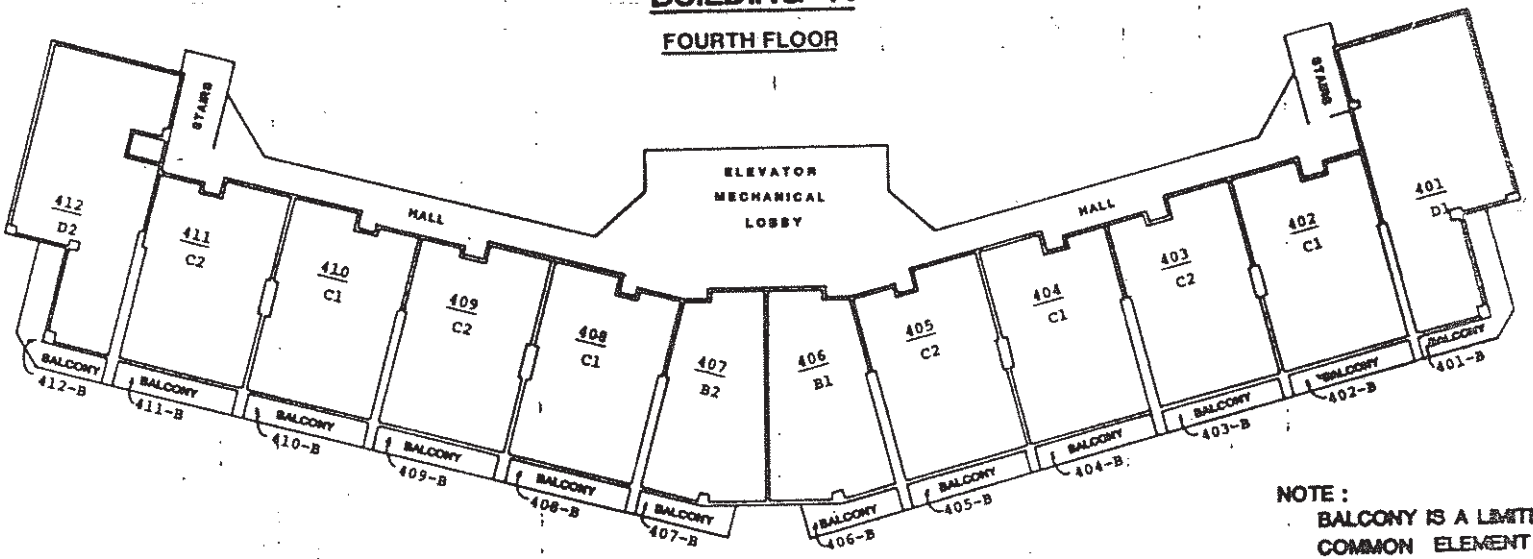
003-77-0411

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

FOURTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-5"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

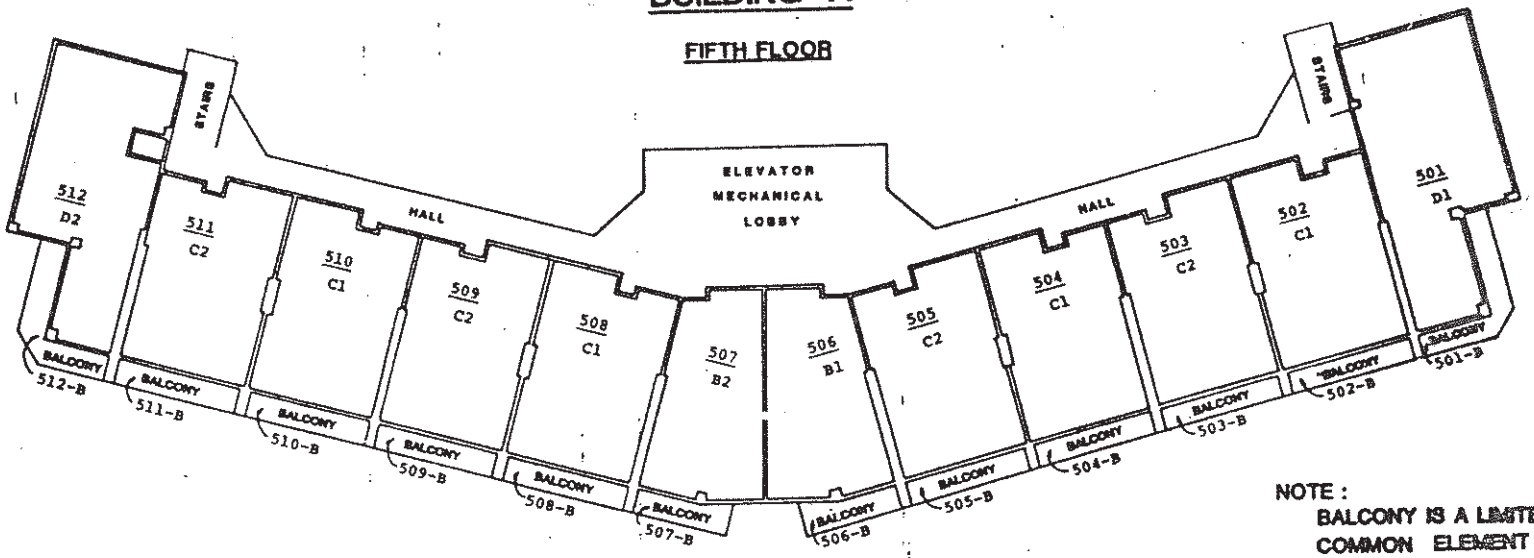
003-77-0412

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

FIFTH FLOOR



"B-6"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

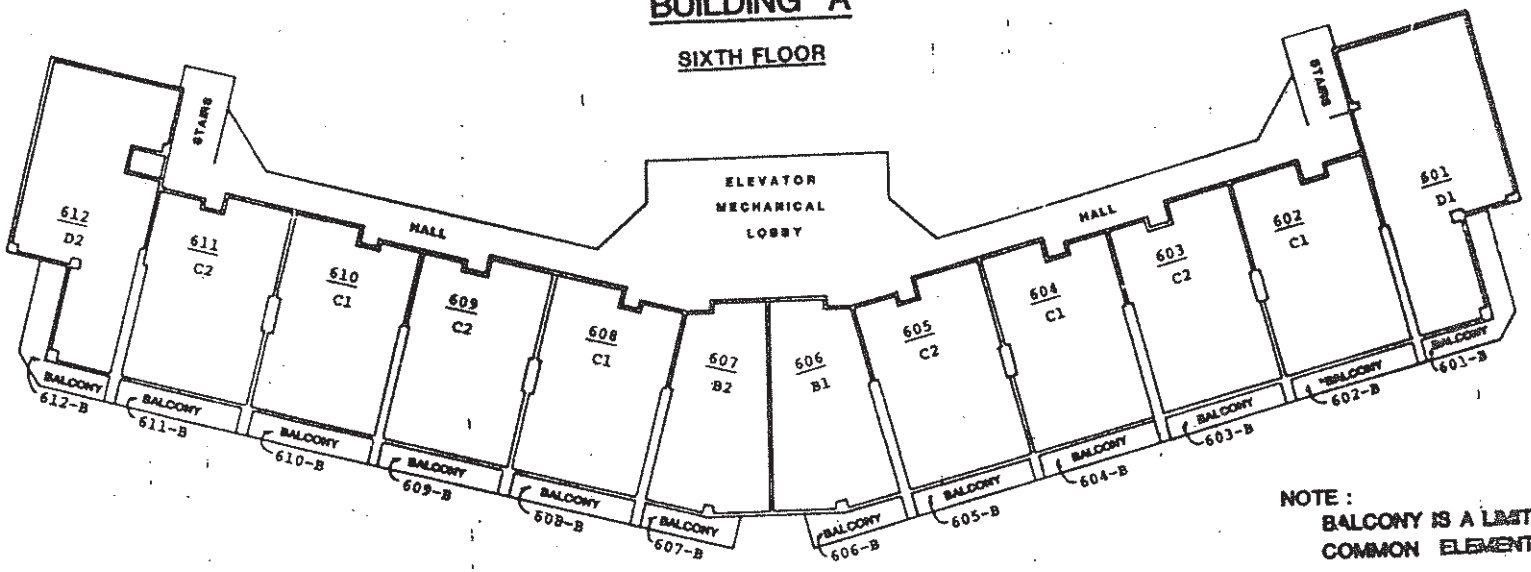
003-77-0413

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

SIXTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-7"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

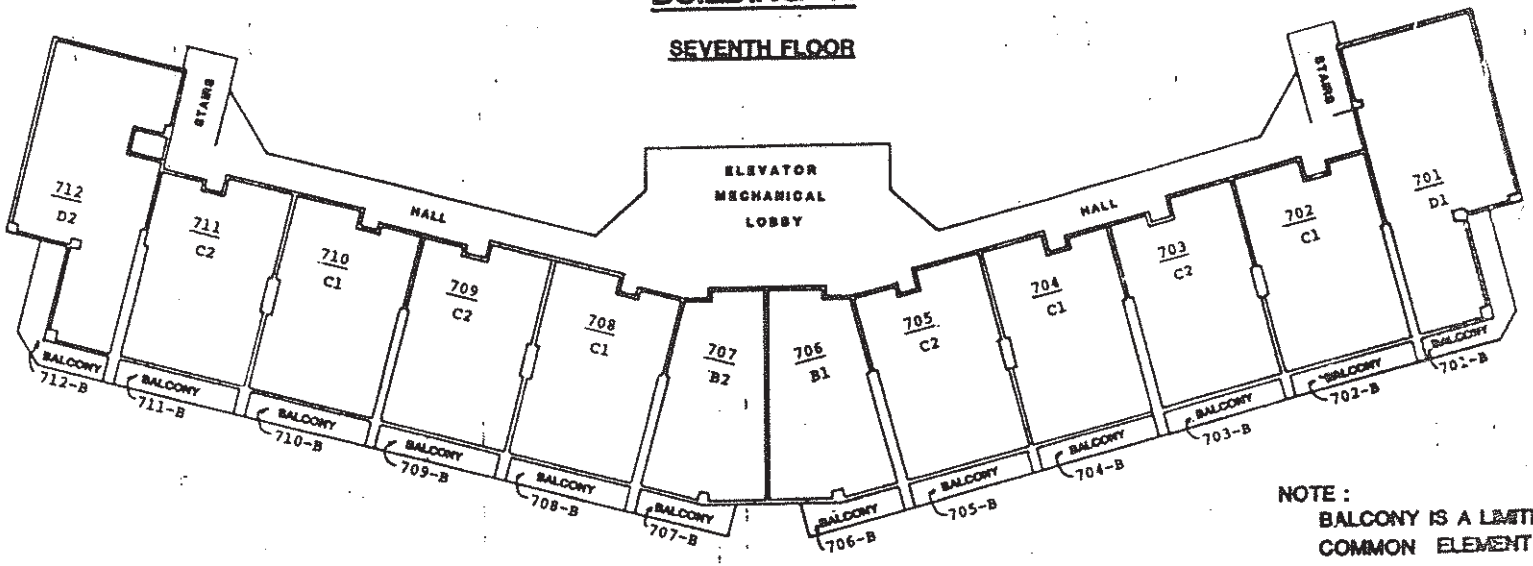
003-77-0414

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

SEVENTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-8"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

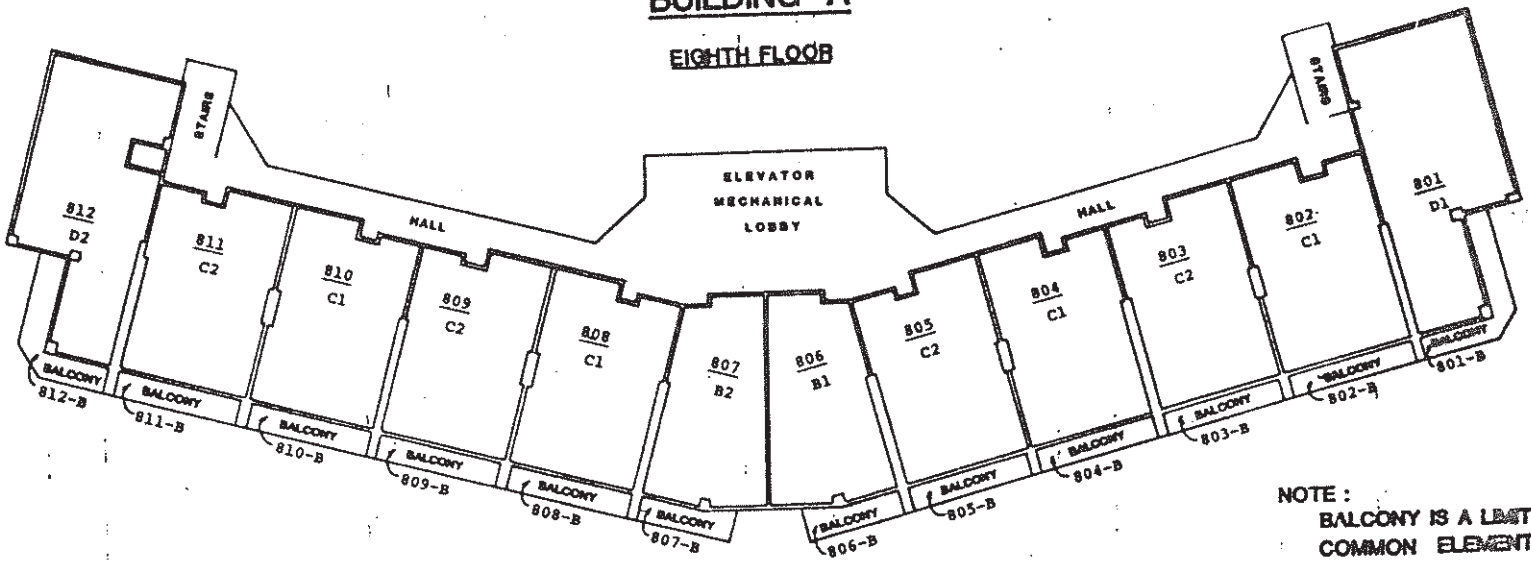
003-77-0415

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

EIGHTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-9"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

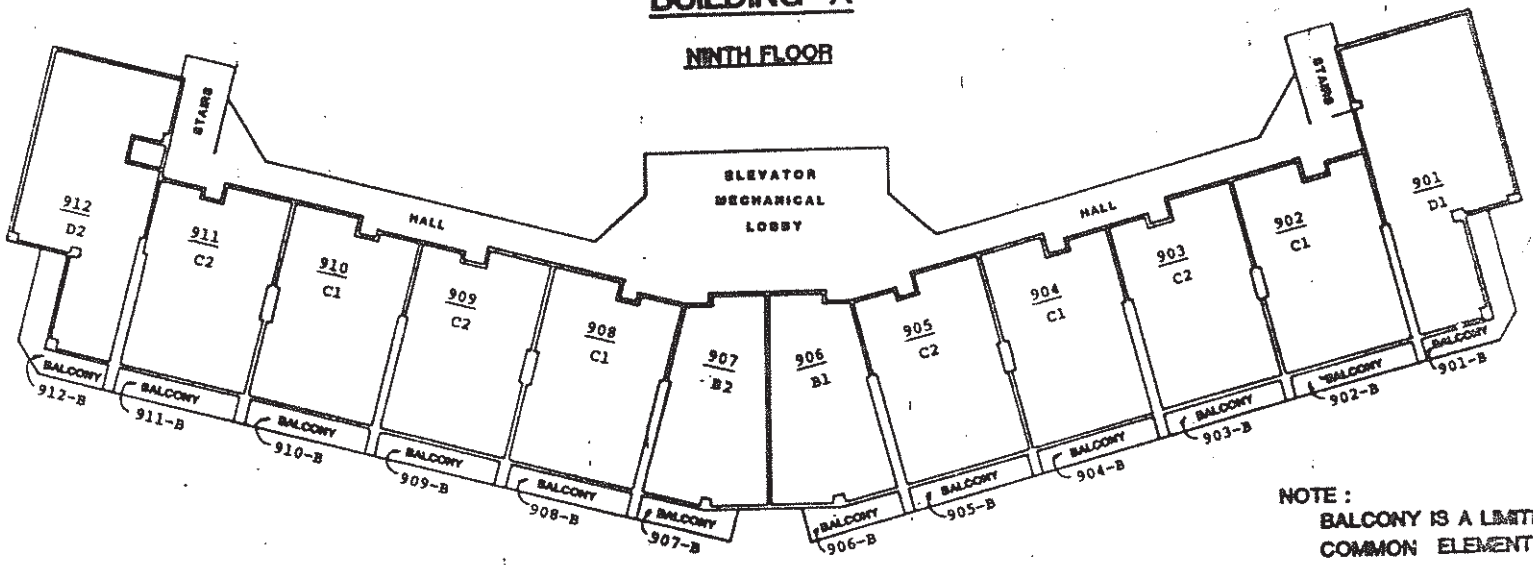
003-77-0416

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

NINTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-10"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

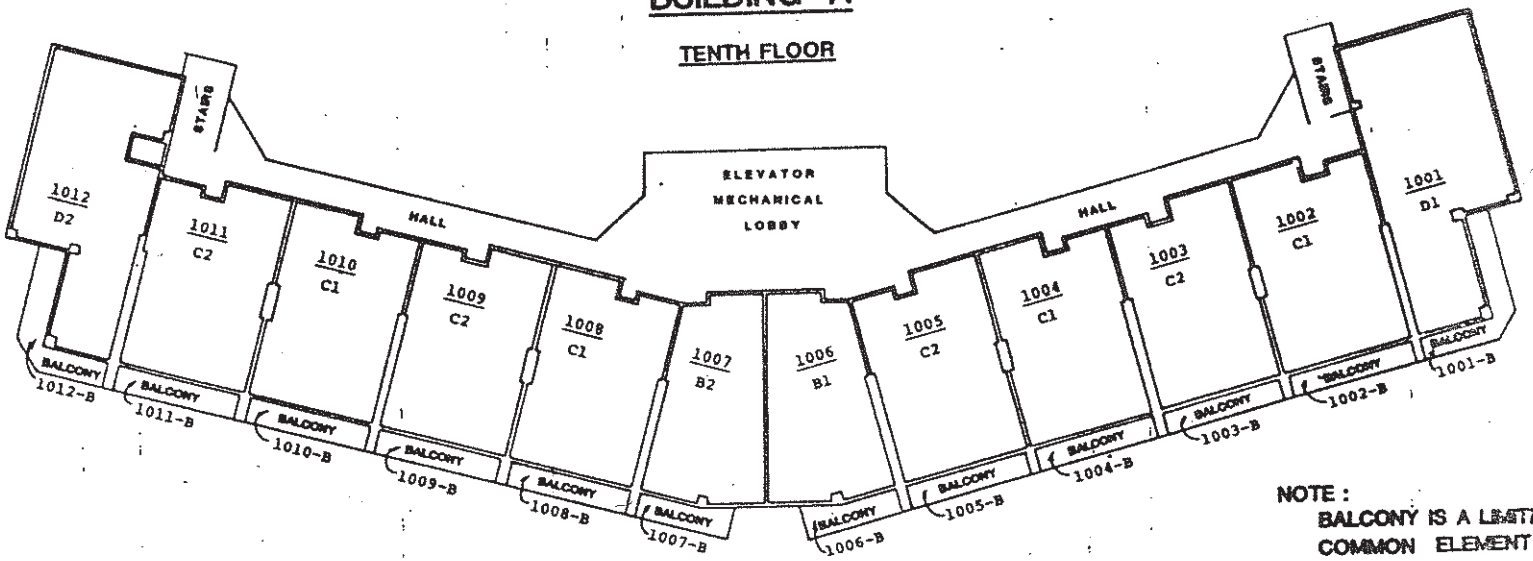
003-77-0417

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

TENTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-11"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

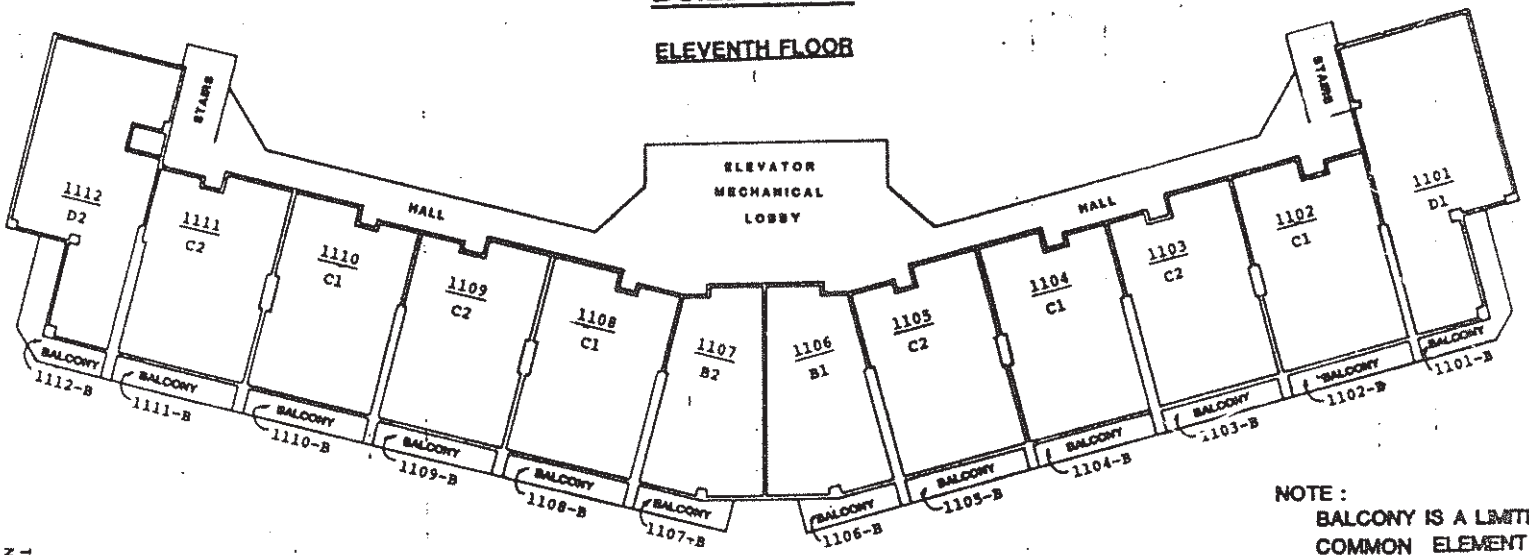
003-77-0418

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

ELEVENTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-12"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

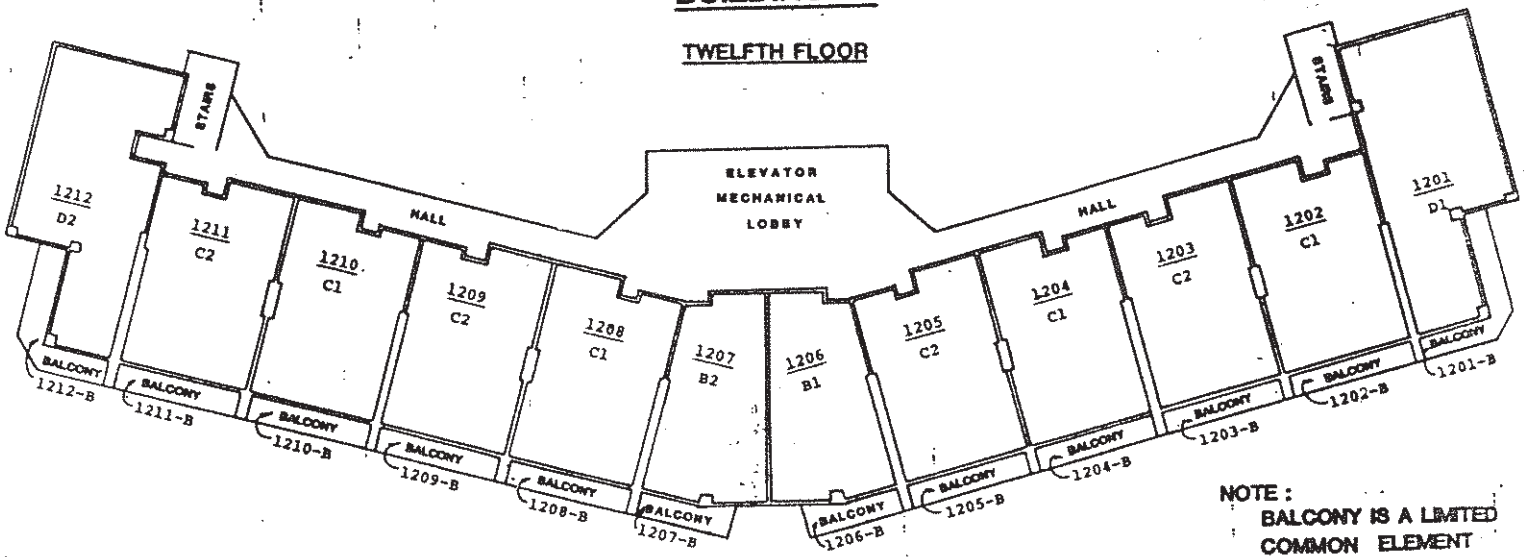
003-77-0419

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

TWELFTH FLOOR



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-13"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

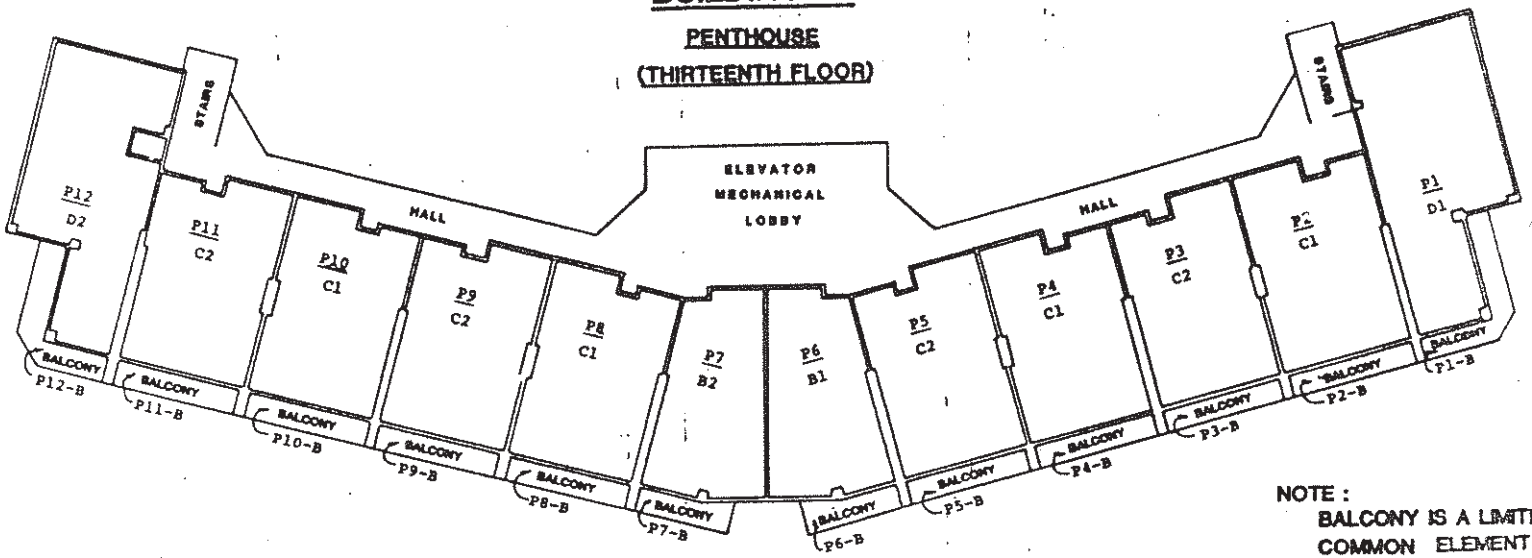
003-77-0420

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

PENTHOUSE
(THIRTEENTH FLOOR)



NOTE :
BALCONY IS A LIMITED COMMON ELEMENT

"B-14"
March 21, 1985

This Property Does Not Lie Within The 100 Year Flood Plain.

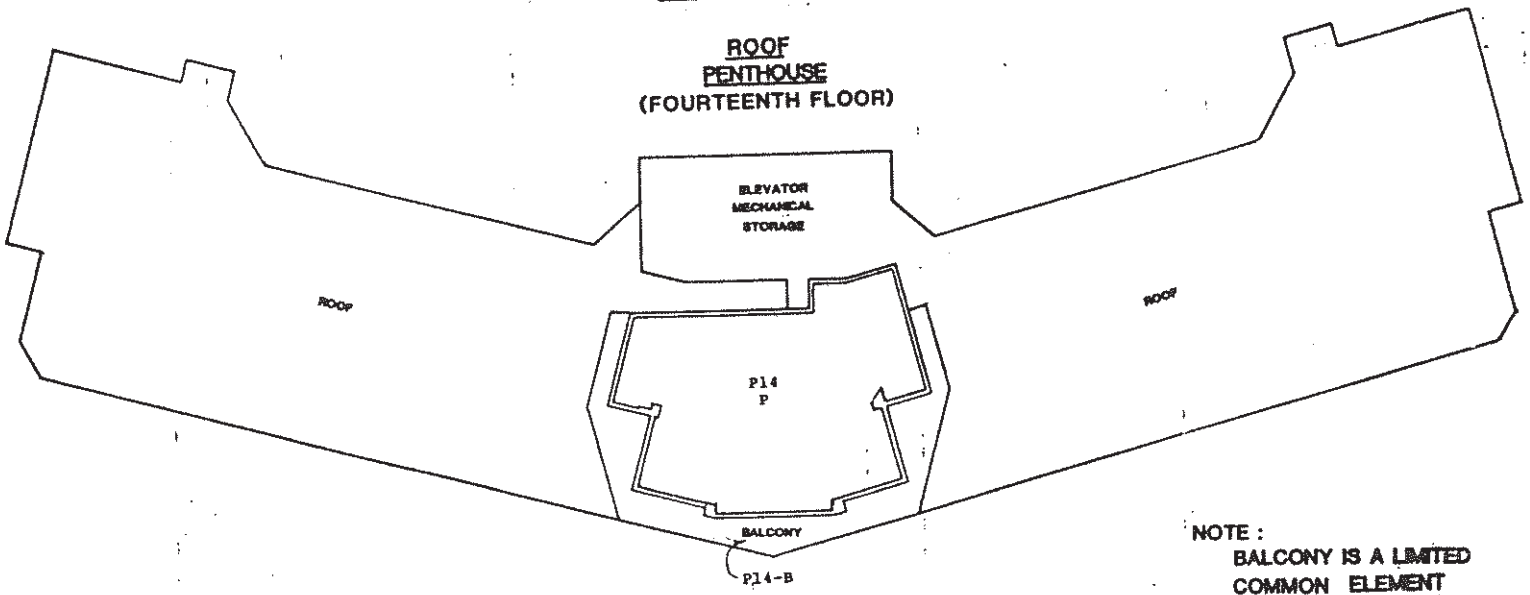
003-77-0421

THE BREAKERS OF GALVESTON CONDOMINIUMS

7700 SEAWALL BOULEVARD
GALVESTON, TEXAS 77551

BUILDING "A"

ROOF
PENTHOUSE
(FOURTEENTH FLOOR)



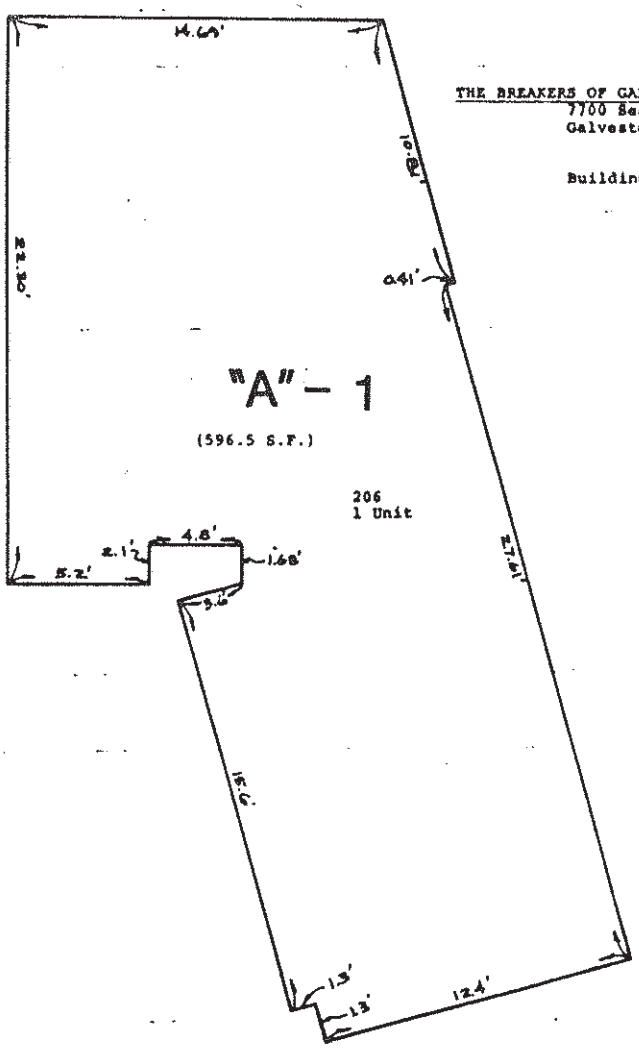
NOTE :
BALCONY IS A LIMITED
COMMON ELEMENT

"B-15"
March 21, 1985

This Property Does
Not Lie Within The
100 Year Flood Plain.

003-77-0422

Scale 1/4" = 1' (±)



THE BREAKERS OF GALVESTON CONDOMINIUMS
7700 Seawall Boulevard
Galveston, Texas 77551

Building "A"

003-70423

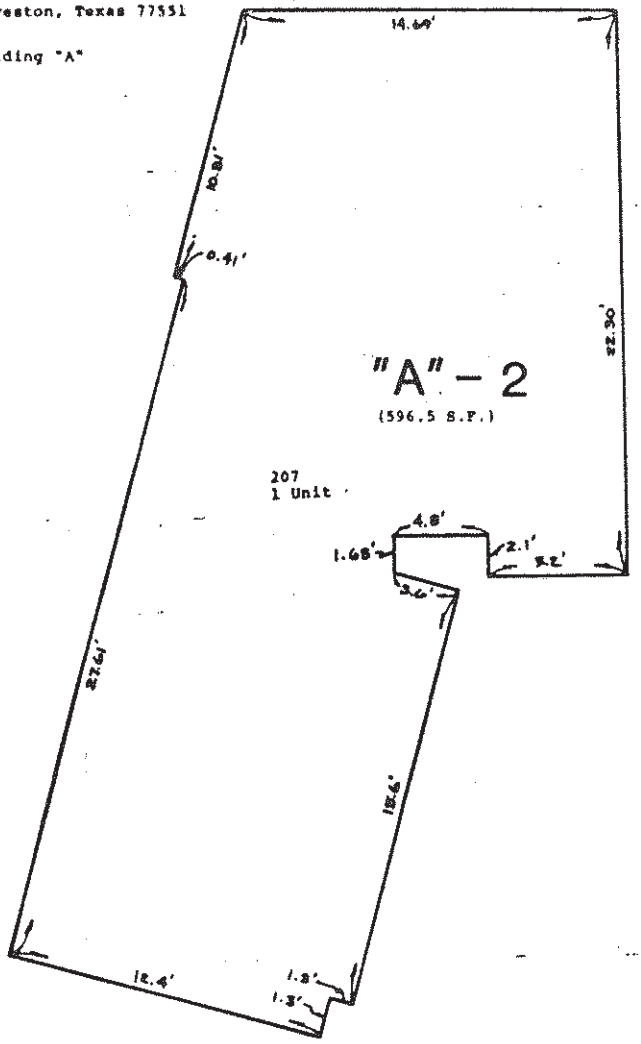
"B-16"
March 21, 1985

Scale 1/4" = 1' (1)

THE BREAKERS OF GALVESTON CONDOMINIUMS
7700 Seawall Boulevard
Galveston, Texas 77551

Building "A"

003-77-0424



"B-17"
March 21, 1985