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DECLARATION OF CONDOMINIUM

FOR

GALVESTON ELECTRIC COMPANY LOFTS  
(a Condominium in Galveston, Galveston County, Texas)

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

THAT CHURCH STREET PARTNERS, LTD., a Texas limited partnership, being the owner of that tract of land located in Galveston, Galveston County, Texas more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes and the improvements thereon, and desiring to submit such land and improvements to the Texas Uniform Condominium Act (Chapter 82 of the Texas Property Code) for the purpose of establishing a condominium regime, does hereby adopt, establish, promulgate and impress this Declaration of Condominium upon such land and improvements.

ARTICLE I

*Definitions*

**Section 1.1 Definition of Terms.** When used in this Declaration of Condominium, the words set out below shall have the following meanings:

- (a) Allocated Interests - The undivided interest in the Common Elements and the common expense liability as set forth on Exhibit "B" attached hereto and made a part hereof for all purposes. The Allocated Interest of each Unit was established as described on said Exhibit "B."
- (b) Association - GEC Lofts Condominium Owners Association, Inc, a Texas non-profit corporation, the members of which shall be the Owners of Units during the period of their respective ownerships, and the successors and assigns of such Owners.
- (c) Board or Board of Directors - The Board of Directors of the Association, whether such Board be appointed by Declarant or elected by the Association in accordance with the provisions of this Declaration
- (d) Building - A three story building to be used for residential and commercial occupancy. The location of the Building on the Land is more particularly shown on Exhibit "C" attached hereto and made a part hereof for all purposes. The Building and Units are more

completely described on the plats and plans that are attached hereto as Exhibit "D" and made a part hereof for all purposes. With respect to said Exhibit C, it is understood and agreed that a part of Exhibit C is the survey prepared when Declarant purchased the Land and Building and shows the boundaries of the Land thereon and other improvements located on the Land.

- (e) Bylaws - The Bylaws of the Association
- (f) Common Elements – All of the General Common Elements and all of the Limited Common Elements of the Condominium.
- (g) Common Expense Charge - The assessment made and levied by the Board against each Owner and its Unit for administration, management and operation of the Condominium and the Condominium Regime and for repairs, maintenance, additions, alterations, reconstruction and operation of all or any portion of the Common Elements (including reserves for replacements) and other expenses provided by the terms of this Declaration to be paid by the Association, in accordance with the provisions hereof. As the context requires, Common Expense Charge shall mean the total assessment to be paid by all Owners.
- (h) Common Expense Fund - The accumulated Common Expense Charges and other amounts collected or received by the Association.
- (i) Condominium - The Land, the Building and all other improvements located or to be located on the Land and all other rights appurtenant to the Land, the Building and all other improvements located or to be located on the Land. The components of the Condominium are further herein classified as "General Common Elements," "Limited Common Elements," and "Units," as defined herein.
- (j) Condominium Regime - The legal rights and duties of ownership, use and administration created by the terms of the Texas Uniform Condominium Act as adopted in the State of Texas and all amendments thereto (to the extent that such amendments are applicable to this Declaration and the Condominium), this Declaration of Condominium, the Articles of Incorporation of the Association, the Bylaws of the Association, and the Rules promulgated thereunder.
- (k) Declarant – Church Street Partners, Ltd., a Texas limited partnership, and its successors and assigns that have been designated as such by Declarant pursuant to a written instrument duly executed by Declarant and recorded in the Office of the County Clerk of Galveston County, Texas.
- (l) General Common Elements – General Common Elements shall be and include all of the Land and Building except the Units and the Limited Common Elements, as defined in this Declaration, and shall include, without limiting the generality of the foregoing, all improvements located or to be located on the Land; foundations, supporting columns, girders, beams and slabs, supports; load-bearing walls, shear walls; exterior glass walls;

dividing walls between two or more Units or between such Units and Common Elements, roofs; halls, lobbies; walkways; stairs, stairways; fire escapes, entrances and exits of the Building, including the gate and the gate operator; grounds; gardens, the surface parking lot and all approaches, entrances and exits thereto and therefrom; areas used for storage of janitorial supplies, maintenance equipment and materials, electrical room for the Building, mechanical room for the Building; cable television lines, converters, conduit and facilities that do not exclusively service a Unit, electrical lines and cables up to and including the point of entry into the breaker boxes of a Unit; plumbing fixtures, pipes and lines installed in the walls of the Building or of a Unit that do not exclusively service such Unit; installations of all central services that do not exclusively service a particular Unit, including power, light, water, chilled and heated water lines and related equipment, heating, air conditioning (including "air handlers" and fan coil units not located within a Unit) and waste collection facilities; elevators, tanks, pumps, motors, fans and the backup generator for the Building, compressors, ducts; driveways; and in general all apparatus and installations existing for the common use or necessary or convenient to the operation, maintenance and use of the Land, the Building and all other improvements located or to be located on the Land as a condominium including the Common Areas (hereinafter defined), and all repairs and replacements of or additions to any of the foregoing. The lobbies, hallways, stairs, elevators, parking lot, and those portions of the Land and other General Common Elements intended to be used for passage or temporary occupancy by persons are sometimes referred to herein as "Common Areas "

- (m) Land - The real property more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.
- (n) Limited Common Elements - Those portions of the Common Elements reserved for the exclusive use of the Owners of certain Units to the exclusion of the Owners of all other Units, such as, by way of example only and without limitation, the Parking Spaces assigned to specific Units, as well as any Parking Spaces under the exclusive control and administration of the Association, that portion of cable television lines, converters, conduit and facilities that exclusively service a Unit; that portion of electrical lines and cables, plumbing fixtures, pipes and lines installed in the walls of the Building or of a Unit that exclusively service a Unit, installations of all central services that exclusively service a particular Unit, including power, light, water, chilled and heated water lines and related equipment, heating, air conditioning (including "air handlers" and fan coil units not located within a Unit) and waste collection facilities. If a portion of a Common Element serves only a specific Unit, it is a Limited Common Element with respect to that Unit; any portion serving more than one Unit or the Common Elements is a part of the General Common Elements. A Limited Common Element may be located partially within and/or partially outside the designated boundaries of a Unit. When used in this Declaration the term "Common Elements" includes the Limited Common Elements unless otherwise expressly indicated.
- (o) Managing Agent - The person, firm or entity that may be selected by the Board in accordance with the provisions hereof for the purposes of performing any duties, powers

or functions of the Board in connection with the administration, management and operation of the Condominium

- (p) Mortgage - A security interest, mortgage, deed of trust or lien granted by an Owner and covering a Unit to secure the repayment of a loan made to an Owner, duly filed for record in the Office of the County Clerk of Galveston County, Texas.
- (q) Mortgagee - The person or entity who holds a Mortgage as security for the payment of a debt
- (r) Owner - Any person or persons, firm, corporation or other entity that owns, of record, a Unit, or legal interest therein, including the Declarant, but the term "Owner" as to a particular Unit shall not include any Mortgagee of that Unit.
- (s) Parking Lot - That part of the Condominium designed for the parking of vehicles as shown on Exhibit "C."
- (t) Parking Spaces - The spaces for the parking of vehicles on the Parking Lot
- (u) Replacement Reserve Fund - The fund established pursuant to Article IV hereof for maintenance, repairs and replacements to the Condominium
- (v) Rules - The rules adopted by the Association concerning the management and administration of the Condominium and the use of the Common Elements in order to assure to all Owners the benefits of ownership of a Unit and use of the Common Elements. The initial Rules shall be initially promulgated by Declarant and attached to the Bylaws.
- (w) Special Assessment - Any assessment, approved by the Association as hereinafter set forth, over and above the Common Expense Charge deemed by the Board to be necessary for the preservation, repair, maintenance, management and administration of the Condominium
- (x) Texas Uniform Condominium Act - Chapter 82 of the Texas Property Code, which permits the creation of condominium regimes and provides the basic rules for their operation, together with all amendments thereto to the extent such amendments affect this Declaration or anything covered hereby
- (y) Units - The eight (8) condominium units located on floors one through three of the Building, as shown on Exhibit "D" attached hereto, the boundaries of which shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors and door frames that provide access to and egress from Common Areas, and which shall include the portions of the Building and the air space within such boundaries as shown on said Exhibit "D," excepting Common Elements. Included within the boundaries of each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the interior walls, floors or ceilings (such as, but

without limitation, paint, wallpaper, wall or floor coverings and carpets), interior walls and doors separating rooms within a Unit; and all utility pipes, lines, systems, fixtures or appliances servicing only that Unit including, without limitation, hot water heaters, chilled and heated water pipes, air handlers, fan coil units and all visible and exposed plumbing fixtures, lines and pipes within the boundaries of a Unit. It is expressly stipulated, and each and every purchaser of a Unit, his or its heirs, executors, administrators, assigns, successors and grantees hereby agree, that the square footage, size and dimensions of each Unit as set out and shown in this Declaration or in the plats attached as Exhibits hereto, are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions shown by the plats attached hereto. Each purchaser and Owner of a Unit or interest therein has had full opportunity and is under a duty to inspect and examine the Unit to be purchased by it prior to the purchase thereof, and agrees that the Unit is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand which it may have against the Declarant on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the plats attached hereto.

### **Section 1.2 Definitions of Rights and Responsibilities.**

- (a) Each Owner shall have exclusive ownership of its respective Unit and shall have the common right to share, with all other Owners, in the use of the Common Elements (other than the Limited Common Elements) in accordance with the purpose for which they are intended and the provisions hereof, without hindering or encroaching upon the lawful rights of other Owners. Without limitation, each Owner shall bear the cost of maintenance, repair and replacement of the following within such Owner's Unit: any and all lath, furring, wallboard, sheetrock, plasterboard, plaster, paneling, tiles, wallpaper, paint, or other materials constituting a part of the interior surfaces of the perimeter walls and ceilings, interior surfaces of all structural or load bearing interior walls; interior surfaces of all floors (including carpeting, tile, finished flooring, wood flooring, and all other portions of the floors constituting a part of the finished surfaces); nonstructural or non-load bearing interior walls, heating, cooling, and ventilation systems; garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, and any and all other appliances of any nature whatsoever, interior and exterior doors, interior glass surfaces, window panes, mullions and light bulbs, plumbing and other fixtures of any nature whatsoever from the point at which the plumbing or fixtures commence service to the individual Unit; "built-in" features; any decorative features, and any furniture and furnishings.
- (b) It is anticipated that Unit 1A shall be used for commercial purposes (the "Initial Commercial Unit"). Notwithstanding the foregoing, the Declarant shall have the right, prior to any sale or transfer of the Initial Commercial Unit, to divide and re-configure the Initial Commercial Unit into two Units, being Unit 1A and Unit 1C (the "New Units"), with the Allocated Interests that were previously allocated to the Initial Commercial Unit being allocated to the New Units based on square footage of the New Units, and to designate that either one or both of the New Units may be used for commercial or

residential use. Any Unit that may be designated for commercial use, whether the Initial Commercial Unit or a New Unit designated for commercial use, is herein called a "Commercial Unit."

- (c) In addition to the requirements set forth in Paragraph (a) above, the Owner of any Unit being used for commercial purposes shall maintain such Unit in a state of cleanliness and repair similar to that of a similar class space being used for similar commercial use. After the initial sale by Declarant of the Initial Commercial Unit (or, in the event that the Initial Commercial Unit has been divided and re-configured into the New Units, the New Units) the primary use thereof shall be for the use then in effect for such Unit, or such use as then designated by Declarant at the time of the sale. In no event shall any commercial use unreasonably interfere with the quiet enjoyment of the Owners of other Units. No such commercial use shall be a sexually oriented business, permit the sale of alcoholic beverages, or be a business that involves unreasonable loud sound (unless adequately restricted by sound insulation). Owners of residential Units in close proximity to any Commercial Unit may experience increased noise levels associated with the regular operation of such Unit during permitted hours of operation, as set forth in the Rules.
- (d) Each Owner shall bear the cost of any utility service for such Owner's Unit which is individually metered and billed directly by the utility company furnishing such service to such Owner. It is understood and agreed that water shall not be separately metered for the Units and shall be allocated among the Units as follows. The Initial Commercial Unit, shall be allocated seven percent (7%) of each bill. The remainder of each water bill shall be allocated among the remainder of the Units on the basis of square footage contained within each Unit. In the event that the Initial Commercial Unit is divided and reconfigured into the New Units, and both of those Units are used for commercial purposes, then each of the New Units shall be responsible for one-half (1/2) of such percentage allocation of each bill. In the event that one or both of the New Units is used for residential purposes, then each such residential Unit shall pay a portion of the water bill (with the other residence Units) based on square footage contained within such Unit.
- (e) Where the term "Owner" is used in the granting of licenses, easements, or rights to use Units, Common Elements or Limited Common Elements, such Owner's guests, tenants, servants, employees, invitees, and family members of such Owner residing with such Owner, shall also be entitled to the rights, easements or licenses so granted, subject to the terms and provisions hereof.

**Section 1.3 Parking Spaces** Parking Spaces shall be used only for parking of automobiles, minivans, motorcycles, and bicycles, and shall not be used for the parking or storage of recreational vehicles, boats or trailers. Parking Spaces shall be assigned to a Unit by the Association and may be re-configured from time to time by the Association, provided, however, that at all times a Unit shall have at least one (1) Parking Space. Any conveyance of any Unit shall be deemed to convey such Parking Spaces for the Unit even though the conveyance is made without specifically or particularly referring to the same.



## ARTICLE II

### *General Provisions*

#### **Section 2.1 Use Restrictions**

- (a) Other than for a Commercial Unit, no portion of the Condominium shall be used by an Owner, the Board or the Association for any commercial activity or purpose. A Commercial Unit may be used for commercial purposes as provided for in this Declaration and in the Rules.
- (b) All units other than a Commercial Unit shall be used only for residential purposes. For the purpose of this provision, a Unit shall be deemed to be used for residential purposes when it is used to house persons and their belongings, without regard to whether the persons are owners of the Unit or occupy the Unit pursuant to a rental, leasing or other arrangement. Except for the leasing or rental of any Unit for residential purposes, no Unit shall be used for any commercial, business or professional purpose or for charitable or church purposes. The use of a Unit for the maintenance of a personal library or for the keeping of personal business or professional records or accounts or for the handling of personal business or professional telephone calls or correspondence when used in conjunction with the residential occupancy of a Unit shall not be deemed to be in violation of this provision; but regular consultation with clients or other commercial activities in a Unit are prohibited.
- (c) No noxious or offensive activities of any sort shall be permitted, nor shall anything be done in any Unit or in or about any Common Element that shall be or may become an annoyance or nuisance to the other Owners, nor shall any loud or disturbing noises be emitted from any Unit in such a manner as to be an annoyance to or objectionable to another Owner. Without limitation, it is understood and agreed that there shall be no smoking in the General Common Elements of the Building.
- (d) Notwithstanding any other provisions of this Article, the Declarant may make such use of the Common Elements and Units as is reasonably necessary to facilitate and complete any improvements to the Land and/or the Building, the operation of Declarant's sales efforts and the showing of the Condominium and any unsold Units therein. The provisions of this Section 2.1(d) shall not prohibit the use by the Association of all Common Elements in any reasonable manner necessary in connection with the operation and maintenance of the Condominium.
- (e) Nothing shall be done in or kept in or on any Unit, Parking Space or Common Element that will increase the rate of insurance on the Condominium or any other Unit over that applicable to similar buildings, or result in uninsurability of the Condominium or any part thereof, or the cancellation, suspension, modification or reduction of insurance in or on or covering the Condominium or any part thereof. If, by reason of the occupancy or use of any Unit, Parking Space, or Common Element by any Owner in contravention of the restrictions set forth in this Section 2.1(e), the rate of insurance on all or any portion of

the Condominium shall be increased, such Owner shall immediately cease any such use and shall be personally liable to the Association for such increase caused thereby, and such sum shall be payable to the Association upon presentation to such Owner by the Association of a statement thereof

- (f) No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations, television or radio transmitting or receiving antennas, air conditioning units or any other equipment, item, or wiring on, in or across any portion of any Common Elements or protruding from or through any wall, floor, ceiling, window or door that is a Common Element, except as approved by the Association. All radios, televisions, electrical equipment or appliances or any kind or nature and the wiring thereof installed or used in a Unit shall fully comply with all rules, regulations or requirements of all state and local public authorities having jurisdiction
- (g) Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations or requirements of any governmental agency or authority with respect to the occupancy and use of its Units and with the provisions hereof, and the Bylaws and Rules promulgated hereunder.

**Section 2.2. Decorations, Maintenance and Repairs of Units and Common Elements** Subject to the terms of this Declaration and the Rules, any Owner shall have the right to decorate and redecorate its Unit and may make any non-structural improvements or non-structural alterations within its Unit (but not to Common Elements) and shall have the right to paint, repaint, tile, wax, paper, or otherwise furnish or decorate any interior surfaces of walls, partitions, ceilings and floors within the Unit

Each Owner shall, at its own cost and expense, maintain its Unit in good condition and repair. The Association shall maintain all Common Elements, including Limited Common Elements, the cost of which shall be an expense for which a Common Expense Charge may be assessed and levied (except to the extent that repair to Common Elements is caused by the negligence or misuse of a particular Owner, in which event such Owner shall be liable to the Association for the cost of such repair), and such Common Expense Charge shall be due and payable upon presentation to such Owner by the Association of a statement thereof

**Section 2.3 Alterations to Common Elements** No Owner shall do any act or permit any act to be done in, on or to any Unit, Parking Space, or any portion of the Common Elements that will impair the structural integrity, weaken the support or otherwise adversely affect the Building or any Common Elements

Decorative wall items such as lights, shelves and art work may be affixed to or installed on the walls of any Unit that are not Common Elements without prior approval of the Association provided such affixation or installation is done in a good and workmanlike manner. No Owner shall make any alterations to any of the Common Elements (including walls, windows and doors that are Common Elements) nor install, attach, paste or nail any article thereto without the prior approval of the Association. No Owner shall place, affix, permit or install any items, including without limitation decorative items, such as lights, shelves, artwork, plants, furniture,

accessories, rugs, carpets or any other items of whatsoever nature in any Common Area without the prior approval of the Association.

**Section 2.4 Additional Provisions** The Association, by provisions of its Bylaws or by Rules enacted pursuant to the provisions hereof or the Bylaws, may provide such additional rules and regulations for use of the Common Elements and Limited Common Elements, Parking Spaces, and the Units as are necessary or desirable in the judgment of the Association for the operation of the Condominium, provided such Rules and Bylaws are not in conflict with the provisions of this Declaration of Condominium and do not materially affect the Commercial Unit.

**Section 2.5 Approximate Measurements.** With respect to the plans and plats attached hereto as *Exhibit D*, same have been prepared from the original drawings of the Building obtained by Declarant when Declarant purchased the Land the Building, and such original drawings were used by Declarant as the basis in renovating the Building and converting it into a condominium project. **Declarant makes no representation or warranty that the dimensions and measurements shown on the plans and plats attached as *Exhibit D* accurately reflect the Units as constructed. Furthermore, additional partitions and other changes to the Units may have been made in connection with the construction of each Unit and the renovation of the Building and are not reflected thereon. It is expressly stipulated, and each and every Owner, its heirs, successors, assigns and legal representatives, accepting title to a Unit acknowledges that the square footage of the Unit, size and linear dimensions of each Unit as shown on such plats and plans and each area of constituting any part of the Common Elements as set out and shown thereon are approximate and are shown for descriptive purposes only and do not necessarily represent or reflect the precise percentage of square footage of any specific portion of the Condominium, and that Declarant does not warrant, represent or guarantee that any Unit actually contains the square footage, size and linear dimensions and elevation reflected thereon or herein. Each Owner further acknowledges that he shall have had full opportunity and is under a duty to inspect and examine his Unit prior to the purchase thereof and agrees that the Unit is purchased as actually and physically existing, and expressly waives any claim or demand of any kind which he or she may have against Declarant or any person whomsoever by reason of any difference, shortage or discrepancy between such Owner's Unit as actually and physically existing and as reflected in this Declaration and the Exhibits attached hereto, and further waives any requirement for adjustments in the percentage of Allocated Interests.**

### ARTICLE III

#### *Owner's Association*

##### **Section 3.1 Authority to Manage.**

- (a) The affairs of the Condominium and Condominium Regime shall be administered by the Association. The Association shall have all rights, powers and duties of an "Association", as that term is used in the Texas Uniform Condominium Act. The Association shall have the right, power and obligation to provide for the management, maintenance, and care of the Condominium and Condominium Regime as provided

herein, in the Bylaws and in the Rules. The business and affairs of the Association shall be managed by its Board of Directors. The Declarant shall appoint, dismiss and reappoint all of the members of the Board of Directors to ensure the stability of the Association's and the Condominium's affairs until the Interim Board is elected, as provided for in Section 3.4(b) below.

- (b) The Board may engage the Declarant or any entity, whether or not affiliated with Declarant, as the Managing Agent to perform the day to day functions of the Association and to provide for the maintenance, repair, replacement, administration and operation of the Condominium and Condominium Regime under a contract terminable by either party upon thirty (30) days prior written notice. Such contract shall provide for payment to the Managing Agent of a management fee substantially the same as the fees contracted for by managers of buildings similar to the Building (whether rental or condominium) in Galveston, Texas. The members of the Board shall not be liable for any acts or omissions of the Managing Agent.

**Section 3.2. Membership in the Association.** Each Owner (and only an Owner) shall be a member of the Association so long as it shall be an Owner, and such membership shall automatically terminate when such ownership ceases. Upon the transfer of ownership of a Unit (however achieved, including, without limitation, by foreclosure of a Mortgage or a deed in lieu thereof), the new Owner succeeding to such ownership shall likewise succeed to membership in the Association. The Association may issue certificates evidencing membership therein. For the purpose of determining the Owners entitled to notice of a meeting and to vote at any meeting, the membership in the Association shall be determined at the close of business on the 30<sup>th</sup> day preceding such meeting.

**Section 3.3. Voting.** There shall be one vote in the affairs and management of the Association for each Unit. The total voting power of the Association shall be the sum of the votes of all of the Units. No Owner, other than the Declarant, shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Unit to the Secretary of the Association. Any Owner who is in default for more than thirty (30) days in the payment of his Common Expense Charge, any Special Assessment, or other sums owed to the Association may have his right to vote revoked by action of the Board, pending payment of such amounts. In the event that ownership interests in a Unit are owned by more than one member of the Association, the Owners of such Unit shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Unit. Such Owners shall appoint one of them as the Owner who shall be entitled to exercise the vote of that Unit at any meeting of the Association. Such designation shall be made in writing to the Board and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Unit is owned by more than one Owner of the Association and no single Owner is designated to vote on behalf of the Owners having an ownership interest in such Unit, and only one of the multiple owners of a Unit is present at a meeting of the Association, then that Owner may cast the vote allocated to that Unit. If there is more than one Owner of such Unit present and no single Owner has been designated, then the vote allocated to that Unit may be cast only in accordance with the unanimous agreement of such

Owners present If a unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote All Owners of the Association may attend meetings of the Association and all voting Owners may exercise their vote at such meetings either in person or by proxy The Declarant may exercise voting rights with respect to Units owned by it. Votes allocated to a Unit owned by the Association may not be cast.

#### **Section 3.4. Meetings of the Owners**

- (a) Meetings of the members of the Association shall be held at least once each year
- (b) There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board. During such period of Declarant control, the members of the Board shall serve at the pleasure of the Declarant (such Board being herein called the "Appointed Board"). The period of Declarant control terminates not later than the earlier of the 120<sup>th</sup> day after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than the Declarant or three years after the first Unit is conveyed. No later than the 120<sup>th</sup> day after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, not less than one-third (1/3) of the members of the Board must be elected by Owners other than Declarant (such Board being herein called the "Interim Board"). Not later than the termination of the period of Declarant control, the Owners shall elect the Board (herein called the "Fully Elected Board").
- (c) A meeting of the members of the Association shall be held to determine the members of the Interim Board when called by the Appointed Board upon no less than ten (10) and no more than fifty (50) days prior written notice to the Owners. Such written notice may be given at any time but must be given in such manner that the corresponding meeting will be held not later than one hundred twenty (120) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant. At such meeting, one-third of the members of the Interim Board shall be elected by Owners other than Declarant. The remaining members of the Interim Board shall be appointed by the Declarant. Elected members of the Interim Board shall serve for terms of one year each and elections of Interim Board members shall take place annually until the Fully Elected Board is selected in accordance with Section 3.4(d)
- (d) A meeting of the members of the Association to designate the Fully Elected Board shall be held when called by the Interim Board upon no less than ten (10) and no more than fifty (50) days prior written notice to the members. Such written notice may be given at any time but shall be given in a manner that such meeting shall be held not later than one hundred twenty (120) days after conveyance of seventy- five percent (75%) of the Units

to Owners other than Declarant. At such meeting the Fully Elected Board shall be elected in accordance with the provisions of the Bylaws

- (e) Annual and special meetings of the members of the Association shall be held at such place and time and date as shall be specified in the Bylaws

**Section 3.5. Meetings of the Board of Directors.** The Board of Directors shall meet in the manner set forth in the Bylaws

**Section 3.6. Administration of the Condominium** The Association, acting through its Board of Directors, its officers or other duly authorized management representatives (including, without limitation, a Managing Agent), shall manage the business and affairs of the Condominium and shall, without limitation, have the powers of collection and enforcement set forth herein; and, for the benefit of all of the Owners in the Condominium, shall cause to be provided, performed, maintained, acquired, contracted and paid for out of the Common Expense Fund the cost thereof, including, without limitation, the following

- (a) Utility services used in or for the Common Elements, water and sewer services used by or consumed by the Units, and not separately metered or charged to a Unit, and, if not separately metered or charged, other utility services for the Units. Electricity, telephone, cable television and other utility services separately metered or charged (including, without limitation, charges for chilled and heated water as allocated to each Unit by the Board for use of chilled or heated water in excess of the amount contemplated for such Unit under the Common Expense Charge) shall be paid for by the Owner of the Unit served by such utility services
- (b) The insurance required by Section 5.1 hereof and such other policies of casualty, liability and/or other insurance covering persons, property and risks as are determined by the Board to be in the best interest of the Condominium
- (c) The services of a Managing Agent and such other persons as the Board shall, from time to time, determine are necessary or proper to the management, operation and maintenance of the Condominium.
- (d) All supplies, tools, and equipment reasonably required for use by the Managing Agent or the Board in the management, operation, maintenance, cleaning and enjoyment of the Condominium.
- (e) The cleaning, maintenance, repairing, reconstruction and replacement of the Common Elements as the Board shall determine is necessary unless otherwise provided in this Declaration
- (f) The services of such persons utilized in the operation of the Condominium in the manner determined by the Board.

- (g) The removal of all trash, garbage and rubbish from the central garbage receptacle or receptacles of the Building, including the employment of the services of a garbage collection company or agency, public or private.
- (h) Costs of bookkeeping of the accounts of the Association and the annual audit provided for herein, costs of legal, accounting and other professional services engaged by the Board; premiums of fidelity bonds; and taxes or assessments of whatever type assessed or imposed against any of the Common Elements.
- (i) All other costs of management, operation and maintenance of the Condominium

The Board shall not, without the prior authorization of the members of the Association at a meeting of the members, contract to pay or pay for any one item of capital addition or improvement (other than replacement of existing Common Elements that in the aggregate as to all capital additions or improvements made in any one year constitute less than substantially all of the Common Elements). The Board shall have the right, without the prior authorization of the members of the Association, to enter into contracts and incur liabilities (including the borrowing of money) relating to the operation of the Condominium; provided, however, that no single borrowing in excess of \$25,000 nor any aggregate borrowing in excess of \$50,000 shall be permitted without the consent of the members of the Association.

Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit of or a convenience to any Owner or Owners or any occupant or occupants of any Unit other than services customarily available to all Owners and occupants of Units. The Board shall have the exclusive right and obligation to contract for all goods, services and insurance in connection with the administration of the Condominium, payment for which is to be made from the Common Expense Fund

**Section 3.7. Accounting and Audit** The Board of Directors shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Condominium and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Condominium or the Association. Both the books of accounts and all vouchers accrediting and supporting the entries made therein shall be available for examination at the office of the Association by all Owners at convenient hours on working days and the Board of Directors shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally accepted accounting principles or such other accounting procedures that are approved by the Board and that are sufficiently detailed to enable the Association to prepare a resale certificate as provided for in the Texas Uniform Condominium Act, and shall be audited at least once a year by an outside auditor. All filings of income tax returns and other filings required of the Association by applicable law shall be prepared and filed by the Board. The fiscal year of the Association shall be the calendar year unless another period is established by resolution of the Board

**Section 3.8. Right of Entry** The Board, or its duly authorized representative (including any then acting Managing Agent), shall have the right and authority to enter any Unit for the purposes of.

- (a) Making necessary repairs to Common Elements;
- (b) Performing necessary maintenance to the Common Elements (including, without limitation, cable television facilities), for which the Association is responsible,
- (c) Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit or any appurtenance thereto,
- (d) Protecting the property rights and welfare of other Owners,
- (e) Enforcing the provisions of this Declaration of Condominium, the Bylaws or the Rules promulgated thereunder, and
- (f) To the extent necessary, to permit authorized personnel to clean and maintain the perimeter windows and walls of the Building

Except in the event of an emergency, when any access to a Unit is required, such right of entry shall be exercised only in the presence of the Owner or other occupant of the Unit that is entered and in the presence of the Managing Agent or its agent. In all events, such right of entry shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Unit by the Owner or occupant thereof and shall, whenever possible, be preceded by reasonable notice to the Owner or occupant thereof. In the event that any damage to the property of any Owner is caused by negligence of the Association or its authorized representative in connection with the exercise of any such entry, such damage shall be repaired at the expense of the Association, and the Board is authorized to expend money from the Common Expense Fund therefore. The rights of entry herein granted to the Association or its duly authorized representative shall be accomplished by and exercised subject to such methods and procedures as may be set forth in the Rules.

**Section 3.9. Notices.** Any notice permitted or required to be given to a member of the Board or to an Owner may be delivered personally, by mail or by placing such notice in the mail distribution facilities of each Owner if such facilities are present in the Building or by facsimile. If delivery is made by mail, it shall be deemed to have been delivered when deposited in the U.S. mail postage prepaid, addressed to an Owner at its Unit or to such other address as the Owner may have given in writing to the Association for the purpose of service of notices. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile. Any address for purposes of notice may be changed from time to time by notice in writing to the Association

**Section 3.10. Disputes.** In addition to its other powers conferred by law or hereunder, the Board shall be empowered to create procedures for resolving disputes between Owners and the



Board or the Association, including appointment of committees to consider and recommend resolutions of or to resolve any such dispute.

**Section 3.11. Board Action in Good Faith.** An officer or director of the Association shall not be liable to the Association or any Owner for any action or omission occurring in such person's capacity as an officer or director so long as such action or omission is made or taken in good faith.

**Section 3.12. Indemnity of Board** The Association shall indemnify each member of the Board, a member of any committee established by the Board, and the officers of the Association against expenses and liabilities (including the cost and expenses of defending against any such alleged liability) as and to the extent set forth in the Bylaws. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which a Director, such committee member, or officer may be entitled by law or under any Bylaw, agreement, vote of Owners or otherwise.

## ARTICLE IV

### *Common Expense Fund; Assessments; Collection*

**Section 4.1. Common Expense Charges** Except as provided in Section 4.2 hereof, all Owners are required to contribute to the Common Expense Fund the Common Expense Charge in proportion to their Allocated Interests. The Common Expense Charge and Special Assessments shall be assessed in accordance with the provisions hereinafter set forth. Additionally, each Owner shall pay, upon demand, for any services rendered to such Owner by the Association or arising as the obligation of such Owner to the Association.

**Section 4.2. Payment of Common Expense Charges by Declarant** The Declarant shall pay to the Association, from the date of the initial assessment by the Association until the date that is the earlier of (i) the election of the Fully Elected Board or (ii) three (3) years after Declarant's first sale and conveyance of a Unit (the "Termination Date"), in lieu of any Common Expense Charge or Special Assessment with respect to all Units that the Declarant continues to own, an amount, if any, by which the "Actual Operating Expenses" (as hereinafter defined) incurred for any fiscal year (or portion thereof) of the Association ending prior to the Termination Date, exceeds the aggregate of the Common Expense Charges (less any portion thereof that is deposited in the Replacement Reserve Fund) payable during such period by other Owners of Units. If the amounts collected as Common Expense Charges from Owners other than the Declarant (less any portion thereof that is deposited in the Replacement Reserve Fund) exceed such Actual Operating Expenses for such period, then, within a reasonable time after the expiration of such period, an amount equal to such excess shall be refunded to the Owners who shall have paid such Common Expense Charges, in proportion to their respective contributions. For the purposes of this provision, the term "Actual Operating Expenses" shall mean those expenses reasonably necessary for the normal maintenance and operation of the Condominium and shall not include (i) capital expenditures (determined in accordance with generally accepted accounting principles); (ii) any amount paid into the Replacement Reserve Fund, or (iii) prepaid items, inventory items or similar expenses to the extent attributable to periods after such fiscal

year (or part thereof). After the Termination Date, the Common Expense Charge to be paid by each Owner (including the Declarant) shall be determined as provided in this Article IV. The Declarant, by notice in writing to the Association, may waive the benefits of the first sentence of this Section and in the event of such waiver, shall thereafter be bound to contribute to the Common Expense Fund the Common Expense Charges and Special Assessments in proportion to the Allocated Interests attributable to the Units owned by the Declarant.

**Section 4.3. Budgets, Establishment of Common Expense Charges and Special Assessments.** Until the completion of the first full fiscal year after the election of the Fully Elected Board, the Appointed Board or the Interim Board, as applicable, shall have the right and obligation to establish the annual budgets for each fiscal year projecting all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and Condominium Regime. Such budget, and all successive budgets, shall contain a reasonable allowance for contingencies and shall establish a reserve fund (the "Replacement Reserve Fund") for maintenance, repairs and replacements to Common Elements, including those that must be replaced on a periodic basis. Commencing with the first full fiscal year after the election of the Fully Elected Board, the Board of Directors shall establish an annual budget in advance for each calendar year and such budget shall project all expenses for the forthcoming year that may be required for the proper operation, management and maintenance of the Condominium and the Condominium Regime, including a reasonable allowance for contingencies and a reasonable addition to the Replacement Reserve Fund. The Common Expense Charge for such year shall be established by the Board after adoption of such annual budget by the Board of Directors. Copies of each such budget and the Common Expense Charge for each particular Unit for such year shall be made available to each Owner on or before the first day of the applicable fiscal year by such reasonable means as the Board of Directors may provide. If the Board of Directors at any time determines that the Common Expense Charges so levied are or may prove to be insufficient to pay the costs of operation, management, or maintenance of the Condominium for such fiscal year or in the event of casualty losses, condemnation losses or other events (including non-payment of Common Expense Charges by some Owners) that require that additional funds be supplied for the management, maintenance or operation of the Condominium, the Board of Directors shall have the authority, in its discretion, at any time or from time to time to increase such Common Expense Charges or to levy such Special Assessments as it shall deem necessary for that purpose. Except as otherwise specifically provided in Article V, Section 4 of the Bylaws, such Special Assessment shall not be levied, however, without the prior approval of Owners having at least a majority of the votes in the Association, unless a greater number or votes is required by law applicable to the Condominium.

The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Expense Charges whenever the same shall be determined, and in the event of any delay or failure to establish any annual budget each Owner shall continue to pay the Common Expense Charge, monthly, at the rate established for the previous period until a new annual budget is established.

**Section 4.4. Payment of Common Expense Charges, Special Assessments and Other Sums.**

The Common Expense Charge shall be allocated among those Owners obligated by this Declaration to pay same according to their respective Allocated Interests. Common Expense Charges shall be due and payable monthly in advance on the first day of each calendar month (or such other day as the Board may designate by written notice to all Owners) during the year for which such Common Expense Charge has been assessed. Special Assessments and other sums for which an Owner may be liable hereunder (including, without limitation, sums due under Section 2.2 hereof, charges for chilled and heated water allocated to a Unit by the Board and other sums incurred by the Association at the request of or in behalf of an Owner) shall be payable on or before ten (10) days after the date on which an invoice has been sent to an Owner. Payment of Common Expense Charges, Special Assessments and other sums due hereunder shall be in default if such Common Expense Charges, Special Assessments and other sums or any part thereof, are not paid to the Association on or before ten (10) days from the due date for such payment. Common Expense Charges, Special Assessments and other sums due hereunder in default shall bear interest at the highest non-usurious contract rate permitted by law from and after the date of delinquency until paid, due credit being given for all charges or fees theretofore contracted for, charged or received that shall be deemed to be interest under applicable law. The Board shall also have the right, in its discretion, by appropriate resolution of the Board, to establish late fees or delinquency charges to be imposed in addition to the interest to which such delinquent Common Expense Charges, Special Assessments and other sums due hereunder are subject. Each Owner (whether one or more persons) shall be personally liable for the payment of all Common Expense Charges, Special Assessments and other sums due hereunder, interest and late fees (or delinquency charges) that may be levied against such Owner and its Unit pursuant to the provisions hereof.

**Section 4.5. Individual Purpose Assessments.** In addition to Common Expense Charges and Special Assessments, as hereinabove provided for, the Association may, at any time and from time to time, determine, levy and collect assessments against any one or more, but fewer than all, of the Units, for any matters of maintenance, repair, replacement or improvement reasonably applicable only to such Units (or Limited Common Elements appurtenant exclusively to such Units) and not all the Units, or to reimburse the Association for all or portions of the Association's insurance deductible applicable to such Unit(s). The amounts determined, levied, and assessed pursuant to this Section shall be due and payable as determined by the Association, provided that written notice setting forth the amount of such individual purpose assessment for each Unit and the due date for payment thereof shall be given to the Owners of the affected Units not less than thirty days prior to the due date. All individual purpose assessments shall be considered special assessments for the purposes of the other provisions of this Declaration.

**Section 4.6. Assessments as Capital Contributions.** Assessments levied by the Association against each Owner pursuant to this Article IV which are expended on capital expenditures, or which are set aside as a reserve for future repairs or improvements within the Condominium (whether or not such repairs or improvements would otherwise be considered capital in nature pursuant to Section 263 of the Internal Revenue Code of 1986, as amended) (the "Code") shall be treated as capital contributions by such Owner to the Association and shall be shown on the books of the Association as such. The Association may elect to be governed by the provisions of Section 528 of the Code for a taxable year by filing Form 1120-H (U S Income Tax Return for

Homeowners Associations) if such election would allow the Association to reduce its federal income tax liability for such taxable year. The provisions of this Section may be amended by a majority of the Board if, in the sole discretion of the Board, such action is necessary to conform to any change in the Code or any Treasury regulation or ruling promulgated thereunder. Notwithstanding anything contained in this Declaration to the contrary, any amendment to this Section duly authorized by the Board shall not require the consent of any Owner or Mortgagee.

**Section 4.7. Enforcement** In order to secure the payment of the Common Expense Charges and Special Assessments levied hereunder and other sums due hereunder (including interest, late fees or delinquency charges), a vendor's lien and superior title shall be and is hereby reserved in and to each Unit and assigned to the Association, without recourse, which lien shall be enforceable as hereinafter set forth by the Association, the Board on behalf of the Association or any Owner on behalf of the Association. The liens described in this Section 4.7 and the superior title herein reserved shall be deemed subordinate to any Mortgage for the purchase or improvement of any Unit and any renewal, extension, rearrangement or refinancing thereof. The collection of such Common Expense Charges, Special Assessments and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees, shall be chargeable to and be a personal obligation of such defaulting Owner. The right to use the Common Elements and the voting rights of any Owner in default more than thirty (30) days in the payment of the Common Expense Charge, any Special Assessment or other charge owing hereunder for which an Owner is liable may be revoked by action of the Board of Directors for the period during which such default exists.

Notice of the lien referred to in the preceding paragraph may be given by the recordation in the Official Public Records of Real Property of Galveston County, Texas of an affidavit, duly executed, sworn to and acknowledged by an officer of the Association, setting forth the amount owed, the name of the Owner (or Owners) of such Unit according to the books and records of the Association, and the legal description of such Unit, or in such other manner as may be specified by the Texas Uniform Condominium Act.

Each Owner, by acceptance of a deed to its Unit, hereby expressly recognizes the existence of such lien as being prior to its ownership of such Unit and hereby vests in the Board or its agents the right and power to bring all actions against such Owner (or Owners) personally for the collection of such unpaid Common Expense Charges, Special Assessments, and other sums due hereunder as a debt, and to enforce the aforesaid lien by alternate methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to its Unit, each Owner by acceptance of such deed expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Unit, and all rights appurtenant thereto, for the purpose of securing the aforesaid Common Expense Charges, Special Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed any time and from time to time by

execution of an instrument in writing signed by the President of the Association pursuant to a resolution of the Board and filed in the Official Public Records of Real Property of Galveston County, Texas. In the event of the election by the Board to foreclose the lien herein provided for nonpayment of sums secured to be paid by such lien, it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Unit, and all rights appurtenant thereto, at the door of the County Courthouse of Galveston County, Texas on the first Tuesday in any month between the hours of 10 00 am, and 4:00 p.m. to the highest bidder for cash at public venue after the trustee and the Board, respectively, shall have given notices of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner (or Owners) of such Unit and its heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of the time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Galveston County, Texas and, in addition, the Board shall send written notice at least twenty-one (21) days preceding the sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner or Owners at the most recent address as shown by the record of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At the foreclosure, judicial or non-judicial, the Association shall be entitled to bid for and purchase the Unit as a Common Expense, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed, together with costs and attorney's fees. From and after any such foreclosure the occupants of such Unit shall be required to pay a reasonable rent for the use of such Unit, and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of the Unit by forcible detainer without further notice. It is the intent of the provisions of this Section to comply with the provisions of Section 51.002 of the Texas Property Code, relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Official Public Records of Real Property of Galveston County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002

The Owner of Unit purchased by the Association at the foreclosure sale may redeem the Unit within ninety (90) days after the date of the foreclosure sale in accordance with the Section 82.113(g) of the Texas Uniform Condominium Act. All funds realized from any foreclosure sale by the Association shall be applied first to the costs and expenses of filing and prosecuting the foreclosure, including all trustee's and attorneys' fees, and then towards payment of the indebtedness, and the remainder, if any, shall be paid over to the Owner or Owners as their interests may appear. In the event the proceeds realized from the foreclosure sale, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessments

sued on, then the purchaser acquiring title to such Unit at such foreclosure sale, other than the Owner sued, shall be liable for the deficiency, but such deficiency shall be deemed a Common Expense collectible from all Owners, including the purchaser at the foreclosure sale, on a prorata basis as in the case of other Common Expenses. The defaulting Owner shall remain personally liable to the other Owners paying such deficiency, and the Association may pursue recovery of such deficiency from the defaulting Owner.

In addition to the foregoing, the Association may exercise any and all rights and remedies available to it at law or in equity, including but not limited to, bringing a suit at law for a money judgment to enforce collection of any delinquent assessments, and the expenses incurred in collecting unpaid assessments, including interest, costs and attorneys' fees, shall be chargeable to the defaulting Owner

**Section 4.8. Common Expense Fund** The Common Expense Charges and Special Assessments collected shall be paid into the Common Expense Fund to be held and used for the benefit, directly or indirectly, of the Condominium, and such Common Expense Fund may be expended by the Board for the purposes set forth herein, including, without limitation, providing for the enforcement of the provisions of this instrument, the Bylaws of the Association and Rules promulgated thereunder; for the maintenance, operation, repair, benefit and welfare of the Common Elements, and generally for doing these things necessary or desirable in the opinion of the Board to maintain or improve the Condominium. The use of the Common Expense Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, so long as made in good faith.

**Section 4.9. Reserve Assessment** Upon the sale of a Unit (whether the first sale or any subsequent sale), the new Owner thereof shall pay to the Association a sum equal to three (3) times the monthly Common Expense Charge in effect for such Unit as of the date of closing on the sale thereof (hereinafter referred to as the "Reserve Assessment"). The Reserve Assessment shall be due and payable on the date the deed conveying the Unit to the new Owner is recorded or, in the case of a contract for deed or similar instrument, the date the contract for deed is executed. Payment of the Reserve Assessment shall be in default if the Reserve Assessment is not paid on or before the due date for such payment. Reserve Assessments in default shall bear interest at the rate of ten percent (10%) per annum from date of delinquency until paid. All Reserve Assessments collected by the Association shall be deposited into the Replacement Reserve Fund. No Reserve Assessment paid by an Owner shall be refunded to the Owner by the Association. Further, the Association may enforce payment of the Reserve Assessment in the same manner in which the Association may enforce the payment of Common Expense Charges and Special Assessments pursuant to Section 4.7 of this Article IV.

This Section 4.9 shall not apply in the case of a conveyance to a bona fide Mortgagee pursuant to a foreclosure or judicial sale of a Unit or to any conveyance made by the Owner of a Unit to a bona fide Mortgagee in lieu of foreclosure, provided that the subsequent sale of such Unit by such Mortgagee to any other purchaser shall meet the requirements of this Section. Further, this Section 4.9 shall not apply to the following (1) transfers of ownership of any Unit by one spouse to or for the benefit of the other spouse and/or members of the Owner's immediate

family (which term includes descendants, parents and siblings of the Owner and the spouses thereof) or (ii) transfers provided for in Section 11.3 of this Declaration

## ARTICLE V

### *Insurance*

**Section 5.1. General Provisions.** The Board of Directors shall have authority to and shall obtain insurance for the Condominium as follows

- (a) Insurance on the Building, including the Units (except as set forth in Section 5.2 below) and the Common Elements, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the so-called all-risk fire and extended coverage policy and any other extended coverage policy, policies, or endorsement thereto, designed for insuring condominium regimes in the State of Texas (with vandalism and malicious mischief endorsements), in amounts sufficient to prevent the Association or the Owners from becoming a co-insurer within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost thereof and which policy shall contain a replacement cost endorsement. The “full insurable replacement cost” of the Building, including the Units and the Common Elements, shall be determined from time to time but not less than once in a twelve-month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in making such determination. The cost of any and all such appraisals shall be a Common Expense Charge and paid for from the Common Expense Fund.
- (b) Insurance on the Building against all loss or damage from explosion of boilers, heating apparatus, pressure vessels and pressure pipes installed in, on or about the Building, without co-insurance clause, so long as available, in such amount as the Board may deem desirable
- (c) Commercial public liability and property damage insurance (including “umbrella” or “excess” coverage) against claims for personal injury or death or property damage suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in, on or about the Common Elements or upon, in or about the driveways, roadways, walkways and passageways, on or adjoining the Condominium, which public liability and property damage insurance shall be in a minimum amount of \$1,000,000 combined single limit, or such greater amounts as the Board shall deem desirable. Such liability and property damage insurance policy shall include medical payments insurance and shall contain a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not prejudice its, his, her or their action or actions against another named insured
- (d) Such worker’s compensation insurance as may be necessary to comply with applicable laws

- (e) Employer's liability insurance in such amount as the Board may deem desirable
- (f) Fidelity bonds indemnifying the Association, the Board and the Owners from loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association in such an amount as the Board may deem desirable
- (g) Liability insurance insuring the Board and officers 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 or omission in their representative capacities.
- (h) Such other insurance in such reasonable amount as the Board shall deem desirable.

The premiums for all insurance acquired on behalf of the Association or the Owners pursuant to the provisions hereof shall be Common Expense Charges and paid for from the Common Expense Fund

All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Texas. Policies of insurance of the character described in Subsections (a), (b) and (c) of this Section 5 1 shall name as insureds the Association and each Owner as their interests may appear; shall contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; shall be without contribution with regard to any other such policies of insurance carried individually by any Owner, whether such other insurance covers the Unit owned by such Owner and/or the additions and improvements made by such Owner to its respective Unit; shall waive the right of the insurer of subrogation under the policy against any Owner or the Association, shall provide that such policy shall not be terminated for non-payment of premiums or for any other cause without at least thirty (30) days prior written notice to the Association and at least ten (10) days prior written notice to the Mortgagee of each Unit. If possible, and if approved by the Board, all policies of insurance of the character described in Subsection (a) of this Section 5 1 shall contain an endorsement extending coverage to include the payment of Common Expense Charges with respect to Units damaged during the period of reconstruction thereof. Any loss covered by such insurance policies shall be adjusted and settled by the affected insurers with the Board acting on behalf of, and as trustee for, the Owners, and the proceeds of such insurance shall be paid to the Board as trustee for the Owners and their Mortgagees, as their interests may appear. Subject to Section 6 3, the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged Common Elements and Units and Owners and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

**Section 5.2. Individual Insurance.** Each Owner shall be responsible for insurance on the contents of its Units and the furnishings, interior walls (non-load bearing or non-shear), appliances, and all parts of the Units that are not Common Elements, and personal property therein, including wall coverings and floor coverings to the extent not covered by the policies of casualty insurance obtained by the Association for the benefit of all the Owners as above



provided. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Association for the benefit of all the Owners as above provided. Owners may carry individual policies of liability insurance insuring against the liability of such Owners, at their own cost and expense.

**Section 5.3. Subrogation** Each Owner and the Association hereby agree to and hereby waive all present and future rights of subrogation against the Declarant that they may be entitled to under any property insurance policies described in this Declaration.

## ARTICLE VI

### *Fire or Casualty; Restoration*

**Section 6.1. Duty to Restore** Any portion of the Condominium for which insurance is required under Section 82.111 of the Texas Uniform Condominium Act that is damaged or destroyed must be repaired or replaced promptly by the Association unless

- (a) the Condominium is terminated,
- (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or
- (c) at least eighty percent (80%) of the Owners, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, vote to not rebuild

**Section 6.2. Cost.** The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid out of the Common Expense Fund

**Section 6.3. Partial Restoration** If the entire Condominium is not repaired or replaced, any insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium. The insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which the Limited Common Elements were assigned, or to their Mortgagees, as their interests may appear. The remainder of the proceeds shall be distributed to all the Owners as their interests may appear. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interest shall be reallocated automatically as if the Unit had been condemned, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocation

**Section 6.4. Repair of Units.** Following any such fire or other casualty where there is no termination of the Condominium Regime as provided above, each Owner shall be responsible for the reconstruction, repair, and replacement of all personal property and other property not a Common Element in or part of its Unit, including, but not limited to, the floor coverings, wall coverings, interior walls, furniture, furnishings, decorative light fixtures and appliances located therein, to the extent each Owner wishes said reconstruction, repair, and replacement to be accomplished; the Association shall have no responsibility for any of same.

## ARTICLE VII

### Eminent Domain

**Section 7.1. Taking of Units** If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Owner of the Unit with a remnant that may not practically and lawfully be used for any purpose permitted by this Declaration, the condemnation award must compensate the Owner for the Unit and its Common Element interest, whether or not any Common Element interest is acquired. On acquisition, unless the decree provides otherwise, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. A remnant of a Unit remaining after part of a Unit is taken under this subsection is a Common Element.

**Section 7.2. Partial Taking of a Unit** Except as provided by Section 7.1, if part of a Unit is acquired by condemnation, the award must compensate the Owner for the reduction in value of the Unit and its Common Element interest. On acquisition, the condemned Unit's Allocated Interest shall be reduced in proportion to the reduction in size of the Unit, and the portion of the Allocated Interest divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

**Section 7.3. Partial Taking of Common Elements.** If part of the Common Elements is acquired by condemnation, the award must be paid to the Association, as trustee for the Owners, and to persons holding liens on the condemned property, as their interests may appear. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Owners in proportion to their respective Allocated Interests before the taking, but the portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

**Section 7.4. Recordation** The court decree in the condemnation proceedings shall be recorded in the Official Public Records of Real Property of Galveston County, Texas.

## ARTICLE VIII

### *Renovation - Termination*

**Section 8.1. Decision to Renovate** When it has been determined by the vote of Owners representing aggregate Allocated Interests of ninety percent (90%) or more of the Condominium, that all or substantially all of the Common Elements can and should be renewed, reconstructed, renovated or replaced (other than as may be called for under Articles VI and VII), the expenses thereof shall be borne by the Common Expense Fund and a Special Assessment may be assessed

therefor, provided, however, that any Owner not agreeing to such renewal, reconstruction, renovation or replacement may give written notice to the Board within ten (10) days following such decision to renew, reconstruct, renovate or replace that such Owner shall sell its Unit to the Association, for a cash price equal to the fair market value thereof. If such Owner and the Board, acting as agent of and on behalf of the Association, can agree on the fair market value therefor, then such sale shall be consummated within thirty (30) days after Owner and the Board agree upon such value. If such Owner and the Board are unable to agree upon the price thereof, the date when either party notifies the other that such party is unable to agree with the other as to such price or terms shall be the "Commencement Date" from which all periods of time mentioned in this Section 8.1 shall be measured. Within ten (10) days from the Commencement Date, the Owner and the Board shall designate in writing (and give notice of such designation to the other party) the appraiser selected by each such party who shall be a member of the Galveston Association of Realtors (or successor entity) and shall have been active in the sale of residential condominium units in the Galveston, Galveston County, Texas, area for a period of at least five (5) years prior thereto. If either party fails to make such designation within the aforesaid ten (10) day period, then the appraiser already designated by one of the parties shall, within five (5) days after the expiration of such ten (10) day period, appoint another appraiser, who shall likewise be a member of the Galveston Association of Realtors (or successor entity) and shall have been active in the sale of condominiums for a period of not less than five (5) years prior thereto. If the two appraisers designated by the Owner and the Board (or selected pursuant to the provisions of the preceding sentence) are unable to agree upon the price of such Units within ten (10) days from the date of their designation or selection, then they shall appoint a third appraiser, being subject to the same qualifications as herein set forth for the first two (2) appraisers. If the two (2) appraisers are unable to agree upon a third appraiser within fifteen (15) days from the date that such first two (2) appraisers are appointed (or selected pursuant to the preceding provisions hereof, if one party fails to designate an appraiser), then either Owner or the Board, on behalf of both, may request such appointment of the third appraiser by the Senior Judge of the United States District Court for the Southern District of Texas, Galveston Division, acting in his individual capacity. In the event of the failure, refusal or inability of any appraiser so appointed to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or so unable to act. Each party shall pay the fees and expenses of the original appraiser (and any successor) appointed by (or on behalf of, if such party fails to designate an appraiser) such party; the fees and expenses of the third appraiser, and all other expenses, if any, shall be borne equally by the Owner and the Board (which expenses borne by the Board, as aforesaid, shall be paid out of the Common Expense Fund). A decision joined in by two (2) of the three (3) appraisers shall be the decision of the appraisers. If no two (2) appraisers agree, then the average of the two (2) closest in mathematical determinations shall constitute the decision of the appraisers. After reaching a decision, the appraisers shall give written notice thereof to the Owner and the Board, whereupon the sale of such Unit shall be consummated at such price within fifteen (15) days thereafter.

**Section 8.2. Termination.** Termination of the Condominium may only be accomplished in accordance with the provisions of Section 82.068 of the Texas Uniform Condominium Act, or any successor provision.

## ARTICLE IX

### *Leasing of Units; Proceeds of Sale; Mortgages*

**Section 9.1. Terms of Lease.** No Unit shall be leased for a term of less than six (6) full consecutive calendar months. No Unit shall be leased unless the terms and provisions of such lease specifically provide that the lessee or occupant and any guest or invitee of such lessee or occupant shall comply with and abide by all of the restrictions pertaining to the use of Units and the Common Elements set forth in this Declaration, the Bylaws, Rules and the laws of the State of Texas applicable to the Condominium now or hereafter established governing the use of such Units and the Common Elements. Should any lessee or occupant not comply with such lease provision, then the Board shall have the right to cancel and terminate such lease, without any obligation or liability imposed upon the Owner, and for such purpose, the Board shall be regarded as the Owner's agent authorized to take such steps as may be necessary to effect the cancellation and termination of such lease and the eviction of the tenant under such lease. The Board shall have the right to collect rents from any tenant of an Owner that is more than sixty (60) days delinquent in the payment of any amount due to the Association.

**Section 9.2. Application of Proceeds of Any Sale.** Upon the sale or conveyance of a Unit by an Owner other than the Declarant, the proceeds of such sale or conveyance shall be applied as follows:

- (a) First, to assessments, liens and charges in favor of the State and any political subdivision thereof for taxes past due and unpaid on the Unit;
- (b) Secondly, to amounts due under any Mortgage,
- (c) Thirdly, to the payment of all unpaid Common Expense Charges and Special Assessments or other sums due and owing hereunder against the Unit or the Owner thereof; and
- (d) Fourthly, to the Owner of such Unit.

If such unpaid Common Expense Charges, Special Assessments or other sums due and owing hereunder against the Unit or the Owner thereof are not paid or collected at the time of sale or conveyance of a Unit, the grantee of such sale or conveyance shall be jointly and severally liable with the selling Owner for all unpaid Common Expense Charges and Special Assessments against the Unit and other sums due and owing hereunder against the Unit or the Owner thereof up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the selling Owner the amounts paid by the grantee therefor.

**9.3 Record of Mortgage.** Any Owner who mortgages his interest in a Unit shall, within 10 days after the execution of the Mortgage, give written notice to the Association in writing of the name and address of its Mortgagee.

**9.4 Foreclosure by Mortgagee.** In the event of a foreclosure of a Mortgage for the purchase or improvement of any Unit, or a conveyance by a deed in lieu of foreclosure, the purchaser at such foreclosure sale or the grantee under such deed in lieu of foreclosure and any successor in title to such Unit from the purchaser at such foreclosure sale (except the Owner upon whom such lien was foreclosed) shall not be liable for the Common Expense Charges or Special Assessments chargeable to such Unit or other sums due and owing hereunder against the Unit or the Owner thereof that became due prior to such foreclosure or any conveyance in lieu thereof. Such Mortgagee shall be liable for unpaid assessments.

## ARTICLE X

### *Amendment of Declaration, Bylaws and Rules; Conflicts Between Provisions*

**Section 10.1. Amendment of Declaration.** Except as otherwise provided by law (applicable to the Condominium) and elsewhere in this Declaration, the provisions of this Declaration, except for the specific matters described in Section 10.2 below, may be amended only by agreement of an aggregate number of members having not less than sixty-seven percent (67%) of the total voting power of the Association and entitled to vote on such amendment, such agreement to be evidenced by written ballot or by a vote at a meeting of the Association called for that purpose. Any amendment to this Declaration of Condominium shall become effective only upon the recordation in the Condominium Records of Galveston County, Texas of a written amendment signed and certified by the duly authorized officers of the Association, attesting to the proper adoption of such amendment and containing the text thereof. An action to challenge the validity of an amendment to the Declaration adopted by the Association under this Article X must be brought before the first anniversary of the date the amendment is recorded.

**Section 10.2. Exceptional Matters.** Except as specifically permitted elsewhere in this Declaration, an amendment to this Declaration may not create or increase special Declarant rights, increase the number of Units, change the boundaries of a Unit, alter or destroy a Unit or Limited Common Element, change a Unit's Allocated Interest, or change the use restrictions on a Unit unless the amendment is approved by agreement of an aggregate number of members having not less than 100% of the total voting power of the Association. The Board or the Declarant, if the Declarant owns a Unit that has never been occupied, may without a vote of the Owners or approval of the Association amend the Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

**Section 10.3. Amendment of Bylaws.** The Bylaws of the Association may be amended from time to time at any regular or special meeting by the affirmative vote of members having sixty percent (60%) of the voting power of the Association, provided notice of said proposed amendment is contained in the notice of any such meeting.

**Section 10.4. Amendments of Rules.** The Rules may be amended from time to time by the Board. Each Owner, by accepting conveyance of a Unit agrees to comply with and abide by the Rules as the same may be amended from time to time.

**Section 10.5. Conflict Between Provisions.** In the event of any conflict among the terms and provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws, the Rules or applicable law, or between any of them, the Bylaws shall control over the Rules; the Articles of Incorporation shall control over both the Bylaws and the Rules; this Declaration shall control over the Articles of Incorporation, the Bylaws and the Rules, and applicable law shall control over all of the foregoing

## ARTICLE XI

### *Miscellaneous*

**Section 11.1. Estoppel Certificate** Any Mortgagee and any prospective purchaser of a Unit shall be entitled upon written request therefor to a statement from the Board (or any party appointed by the Board) setting forth the amount of any unpaid Common Expense Charges, Special Assessments or other sums due and owing to the Association against the Unit or the Owner thereof. Any prospective purchaser shall not be liable for nor shall the Unit conveyed be subject to the lien provided in this Declaration of Condominium for any unpaid Common Expense Charges or Special Assessments made by the Board against the particular Unit involved or other sums due and owing hereunder against the Unit or the Owner thereof in excess of the amount set forth in such statement. Any such purchaser shall, however, be liable for any Special Assessments, Common Expense Charges, and any other sums owing hereunder against such Unit or the Owner thereof becoming due after the date of any such statement and shall be subject to the liens securing same as provided in this Declaration.

**Section 11.2. No Partition.** Except as may be otherwise specifically provided in this Declaration, the Common Elements shall remain undivided and shall not be subject to an action for partition or division of the co-ownership thereof so long as the Condominium is maintained as a Condominium Regime in accordance with the provisions hereof, and, in any event, all Mortgages secured by an interest in the Common Elements must be paid in full prior to bringing any action for partition or the consent of all holders of such Mortgages must be obtained; provided, however, that if any Unit shall be owned by two (2) or more Owners as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition of such Unit as between such co-tenants

**Section 11.3. Alteration of Boundaries of Units.** If one person, firm or entity (including Declarant) is the Owner of all or part of two (2) Units that are adjoining, whether adjoining vertically (above and below each other) or horizontally (on the same floor of the Building) or if two Owners of adjoining Units so agree, then such Owner or Owners shall have the right (subject to all applicable building codes and ordinances and upon written approval by the Board of plans and specifications therefor and with the consent of its Mortgagee) to remove all or any part of any intervening partitions or floor or to create doorways or other openings in such partition or floor, notwithstanding the fact that such partition or floor may in whole or in part be a Common Element, so long as no portion of any Common Element other than that partition or floor is damaged, destroyed or endangered. Likewise, in the event an Owner (including Declarant) shall own two (2) Units (or if the Owners of two (2) such Units so agree) such Owner or Owners shall

have the right (subject to all applicable building codes and ordinances and upon written approval of the Board of plans and specifications therefor and with the consent of its [or their] Mortgagee[s]) to install doorway openings in the wall separating such Units at such location as shall be appropriate to permit such Owner or Owners to utilize both such Units as one Unit. As provided for in Section 1.2 above, the Owner of the Commercial Unit may partition said Unit into two separate Units being Units 1A and 1C. All of such work shall be performed at the sole cost and expense of the Owner or Owners involved and shall be subject to reasonable rules and procedures relating thereto as may be established by the Board. In any of such events, the Owner or Owners involved may relocate the boundaries between adjoining Units by requesting the Association to prepare, at such Owner's expense, an appropriate instrument of amendment to this Condominium Declaration and the exhibits hereto to be executed by such Owners, which instrument, in order to be binding, shall be joined in by the President of the Association and filed for record in the Condominium Records of Galveston County, Texas. The instrument of amendment (i) shall show the boundaries between those Units that are being relocated, (ii) shall recite the occurrence of any conveyancing between the Owners of such adjacent Units, and (iii) shall specify any reasonable reallocation as agreed upon between the Owners of the Units involved of the aggregate Allocated Interests in the Common Elements pertaining to those Units. Such plats and floor plans as may be necessary to show the altered boundaries between the Units involved shall be certified as to their accuracy by a registered architect or engineer.

At any time prior to election of the Fully Elected Board, the Declarant shall have the right, at its option and sole cost and expense, without the consent of other Owners or the representative or representatives of any Mortgagee, to (i) make alterations, additions or improvements in, to and upon Units owned by the Declarant (hereinafter called "Declarant-Owned Units"), whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-Owned Unit, (iii) change the size and/or number of Declarant-Owned Units into one or more Units, combining separate Declarant-Owned Units into one or more Units, altering the boundary walls between any Declarant-Owned Units, or otherwise; and (iv) reapportion among the Declarant-Owned Units affected by such change in size or number pursuant to the preceding clause (iii), their appurtenant interest in the Common Elements; provided, however, that the Allocated Interest in the Common Elements of any Unit (other than Declarant-Owned Units) shall not be changed by reason thereof unless the Owners and Mortgagees, if any, of such Units shall consent thereto and, provided further, that the Declarant shall comply with all laws applicable to the Condominium and shall agree to hold all other Owners harmless from any liability arising therefrom. At any time prior to election of the Fully Elected Board, the Declarant shall also have the authority, at its sole option, cost and expense, to make improvements to the Common Elements without the prior consent of the Board, other Owners or the representative or representatives of holders of any Mortgage. No Owner shall ever be assessed for any such changes or improvements done by the Declarant pursuant to this provision. In the event of any such alteration, combination or improvement, the Declarant, at its sole cost and expense, shall file any amendment to this Declaration necessary to reflect such change or improvement.

**Section 11.4. Correction of Errors** Declarant reserves, and shall have the continuing right until election of the Fully Elected Board, without the consent of other Owners or the representatives of any Mortgagee, to amend this Declaration or the Bylaws for the purpose of

clarification or resolving any ambiguities or conflicts herein, or correcting any misstatements, errors or omissions herein, provided that no such amendment shall change the stated numbers of Units nor the Allocated Interest in the Common Elements attributable thereto (except as set forth in Section 11.3).

**Section 11.5. Enforcement.** The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all terms and provisions hereof. Failure by the Board or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

**Section 11.6. Severability** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof

**Section 11.7. Easements**

- (a) Prior to the election of the Fully Elected Board in accordance with Section 3 4 above, the Declarant shall have the right to grant to utility companies and other entities, such easements, rights-of-way, and other rights as may be reasonably necessary to service the Condominium and establish, operate or maintain the same as a viable condominium regime, without the consent or joinder of any other Owners or any Mortgagee
- (b) Each Owner is hereby granted an Easement in common with each other Owner for ingress and egress through all Common Elements, subject to this Declaration and the Rules promulgated from time to time by the Association. Such Easement shall be used jointly and in common with the other Owners and tenants of any Owners, each Mortgagee, and the agents, employees, customers and invitees of each Owner, tenant of each Owner and each such Mortgagee. Nothing contained herein shall be construed to create any rights of any nature in the public, nor shall any portion of the Common Elements be deemed to be dedicated for public use.

**Section 11.8. Declarant's Right to Lease or Rent Units.** The Declarant shall have the right to rent or lease Units owned by the Declarant to such parties and upon such terms and conditions as the Declarant may elect. All tenants or lessees of the Declarant shall have access to the Condominium and the Common Elements in the same manner as the Owners, and shall be bound by the terms of this Declaration, the Bylaws and the Rules

**Section 11.9. No Amendment Without the Prior Written Consent of Declarant** For so long as Declarant is the Owner of a Unit, the provisions of Sections 2.1(d), 11.3, 11 4 and 11.8 may not be added to, amended or deleted without the prior written consent of the Declarant.

**Section 11.10. Deed/Description of Unit.** Every deed, lease, deed of trust or other instrument may legally describe a Unit by its identifying Unit number followed by the words "Galveston Electric Company Lofts" and a reference to the Volume and beginning page number of the Condominium Records of Galveston County, Texas in which this Declaration and any amendments hereto are recorded. Every such description shall be good and sufficient for all



purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but the Common Elements appurtenant thereto.

**Section 11.11. Security. THE DECLARANT AND THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE CONDOMINIUM. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, ACCESS CONTROL SYSTEM, OR OTHER SECURITY SYSTEM (IF ANY) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT ANY SUCH SYSTEM WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. THE DECLARANT AND THE ASSOCIATION ARE NOT INSURERS, AND EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH OWNER AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS. FOR THE PURPOSES HEREOF, "DECLARANT" SHALL MEAN THE DECLARANT NAMED IN THIS DECLARATION, ITS PARTNERS AND THE PARTNERS AND MEMBERS OF SUCH PARTNERS AND ITS AND THEIR RESPECTIVE HEIRS, SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES. "ASSOCIATION" SHALL MEAN THE ASSOCIATION NAMED HEREIN AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND ITS AND THEIR RESPECTIVE HEIRS, SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES.**

IN WITNESS WHEREOF, Declarant has executed this instrument this 22<sup>nd</sup> day of 2005.

CHURCH STREET PARTNERS, LTD., a Texas limited partnership

By: Dincans SP, LLC, a Texas limited liability company, its general partner

By:   
Robert Deering, Managing Member

**EXHIBITS:**

- Exhibit A – Legal Description of Land**
- Exhibit B – Allocated Interest in the Common Elements, and Used  
For Determining Share of Common Expense Charges**
- Exhibit C – Survey of Property showing Location of Building on the  
Land and Parking Area**
- Exhibit D – Plans Showing Units**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on March 28 2005 by Robert Deering, Managing Member of Dincans SP, LLC, a Texas limited liability company, on behalf of said limited liability company, and said limited liability company executed this instrument as general partner on behalf of Church Street Partners, Ltd., a Texas limited partnership.

Linda A. Gilmore  
Notary Public, State of Texas

[SEAL]



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**

A 0.354 acre tract, being the north one half of lots 8 and 9 and all of lots number 10 and 11 of Block 441 of the City of Galveston, in the Michael B. Menard League Abstract 628, in the City of Galveston, Galveston County, Texas. Said tract being described in deeds to Houston Lighting & Power Company as follows: (1) being a portion of lots 10 and 11 as recorded in Volume 469 Page 512 of the Deed Records of Galveston County, Texas; (2) being the north one half of lots 8 and 9, and a portion of lots 10 and 11 as recorded in File # 8112998, Film Code #001-18-0181 Official Public Records of Real Property Galveston County, Texas. All coordinates and bearings herein stated refer to the Texas Coordinate System of 1927, South Central Zone, as defined in the Texas Natural Resources Code, 21.071, et seq. and are based on the City of Galveston base line monuments. A concrete monument with nail found for the intersection of the centerline of Avenue "F" (Church Street) and an eighteen (18) foot offset to the centerline of 21<sup>st</sup> Street, having coordinates North (Y)=559,195.12; East (X)=3,341,135.58 and a 60d nail found for the intersection of the centerline of Avenue "F" and 27<sup>th</sup> Street, having Coordinates, North (Y)=558,445.83 East (X)=3,338,920.80. All distances shown hereon are surface. To convert to grid distance, multiply by the applied scale factor of 0.999863388. Said 0.354 acre tract is described by metes and bounds as follows:

COMMENCING at a City of Galveston base line monument, being a concrete monument with a nail inside a well, being in the centerline of Avenue "F" (Church Street) and an eighteen (18) foot offset to the centerline of 21<sup>st</sup> Street, having coordinates North (Y)=559,195.12, East (X)=3,341,135.58,

THENCE S 71° 18' 31" W, a distance of 229.45 feet, along the centerline of Avenue "F" to a point, from which a City of Galveston base line monument set in the centerline of Avenue "F" and 27<sup>th</sup> Street, being a 60d nail, having coordinates North (Y)=558,445.83, East (X)=3,338,920.80, bears S. 71° 18' 31" W, a distance of 2,108.96 feet;

THENCE N. 18° 43' 24" W, a distance of 35.00 feet, to a point in the north right-of-way line of Avenue "F", same being the south line of Block 441, said point being the southwest corner of lot 11 and the southeast corner of lot 12 and being the POINT OF BEGINNING of the herein described 0.354 acre tract having coordinates North (Y)=559,154.75; East (X)=3,340,907.04, from which a found ½" iron rod bears S 67° 39' 49" E., a distance of 0.10 feet,

THENCE N 18° 43' 24" W., a distance of 120.00 feet, along the common line of lots 11 and 12, the same being the west line of this herein described tract and the EAST line of a tract of land granted to the Scottish Rite Temple Association, being described in a deed recorded in Volume 267 Page 383 Galveston County Deed Records, to a point in the south line of the twenty foot alley of Block 441, said point being the northwest corner of lot 11 and this herein described tract;

THENCE N 71° 18' 31" E., a distance of 171.43 feet, along the north line of lots 11, 10, 9 and 8, the same being the north line of this herein described tract and being the south line of the twenty foot alley of Block 441, to a point, being the northeast corner of lot 8 and this herein

described tract, being in the east line of lot 8 and Block 441, same being the west right-of-way line of 21<sup>st</sup> Street, from which the northeast corner of Block 441 bears N. 18° 43' 24" W., a distance of 140 00 feet, from block corner a found chiseled "X" in sidewalk bears N 18° 09' 31" W , a distance of 0.93 feet,

THENCE S 18° 43' 24" E., a distance of 60.00 feet, along the common east line of lot 8, Block 441 the same being the east line of this herein described tract and the west right-of-way of 21<sup>st</sup> Street, to a point being the most northerly southeast corner of this herein described tract, from which the southeast corner of Block 441 bears S 18° 43' 24" E , a distance of 60 00 feet, from block corner a found chiseled "X" in sidewalk bears S. 20° 36' 04" E , a distance of 60.00 feet, from block corner a found chiseled "X" in sidewalk bears S. 20° 36' 04" E., a distance of 1 08 feet,

THENCE S 71° 18' 31" W., a distance of 85.71 feet, across lots 8 and 9 along the most northerly south line of this herein described tract, same being the north line of a tract of land granted to Leland T Vandeventer, being described in deed recorded in File # 9749206, Film Code #012-24-0243 Official Public Records of Real Property Galveston County, to a point in the common line of lots 9 and 10, being the most northerly southwest corner of this herein described tract, from which a found chiseled "X" in concrete bears S 71° 51' 03" W., a distance of 1 28 feet;

THENCE S. 18° 43' 24" E., a distance of 60.00 feet, along the common line of lots 9 and 10, being the most westerly east line of this herein described tract and the west line of the above mentioned adjoining tract, to a point for the most southerly southeast corner of this herein described tract, said point being in the north right-of-way line of Avenue "F" and the southeast corner of lot 10, from said point a found chiseled "X" in sidewalk bearing S 27° 44' 58" E., a distance of 1.05 feet,

THENCE S 71° 18' 31" W., a distance of 85.72 feet, along the south line of lots 10 and 11, the same being the south line of this herein described tract and the north right-of-way line of Avenue "F", to the POINT OF BEGINNING and containing 0 354 acres of land

**EXHIBIT "B"**

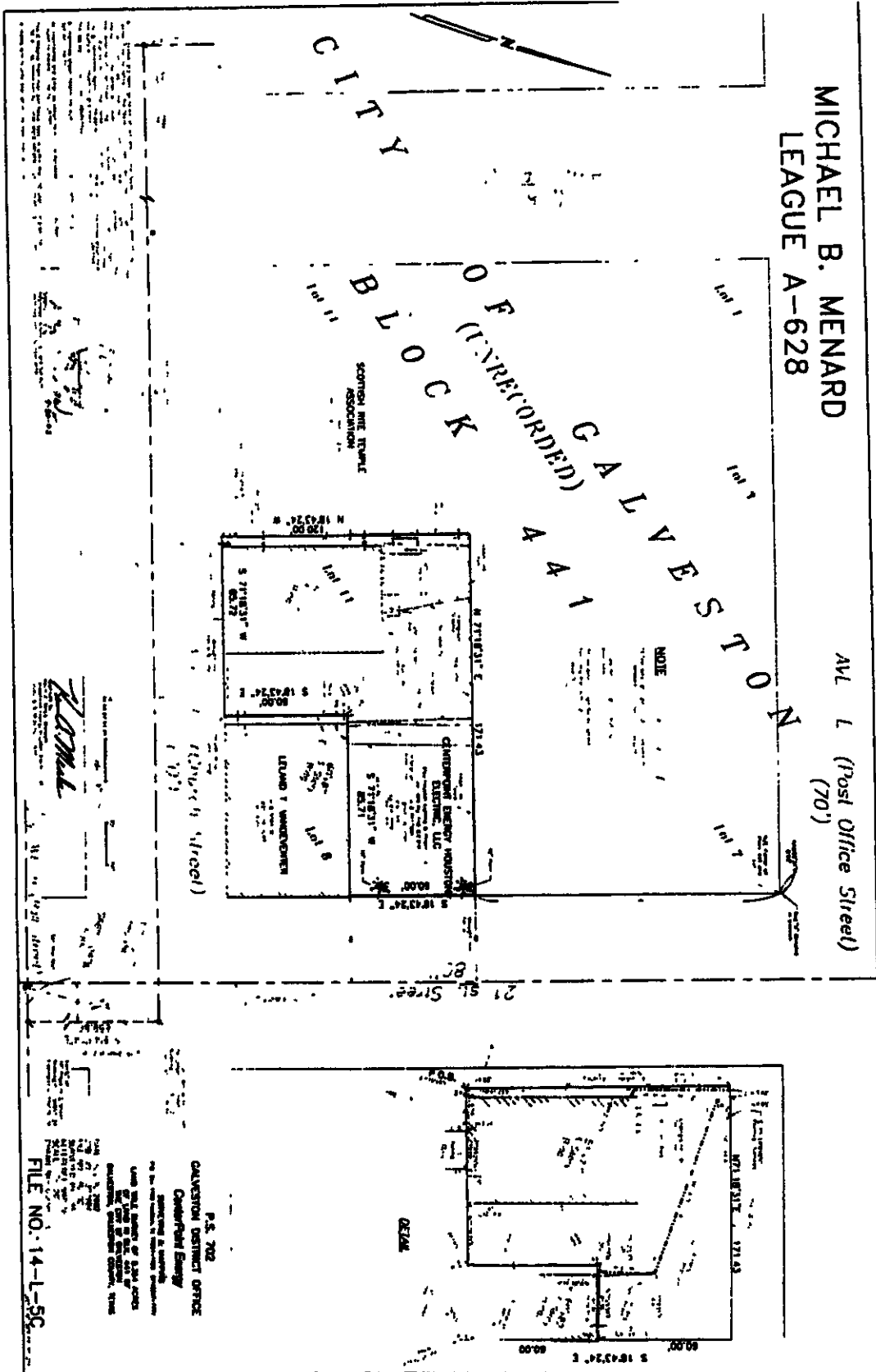
ALLOCATED INTEREST IN THE COMMON  
ELEMENTS, AND USED FOR DETERMINING  
SHARE OF COMMON EXPENSE CHARGES

<u>UNIT NO.</u>	<u>UNIT SIZE (SQ. FEET)</u>	<u>SIZE PLUS ALLOCATION (UNIT SIZE + ALLOCATIONS)<sup>1</sup></u>	<u>ALLOCATED INTEREST<sup>2</sup></u>
1A	2,554	2,692	22.7039%
1B	417	440	3.7109%
2A	928	1,274	10.7447%
2B	1,202	1,650	13.9158%
2C	1,046	1,436	12.1110%
3A	954	1,270	10.7110%
3B	1,213	1,614	13.6122%
3C	<u>1,112</u>	<u>1,481</u>	<u>12.4905%</u>
	9,426 sq. ft	11,857 sq. ft.	100.00%

1 This figure consists of the size of the Unit plus allocations of common area for the individual floor on which the Unit is located and for the Building. For purposes hereof, measurements were taken from and to the outside face of the brick on an exterior wall, as applicable

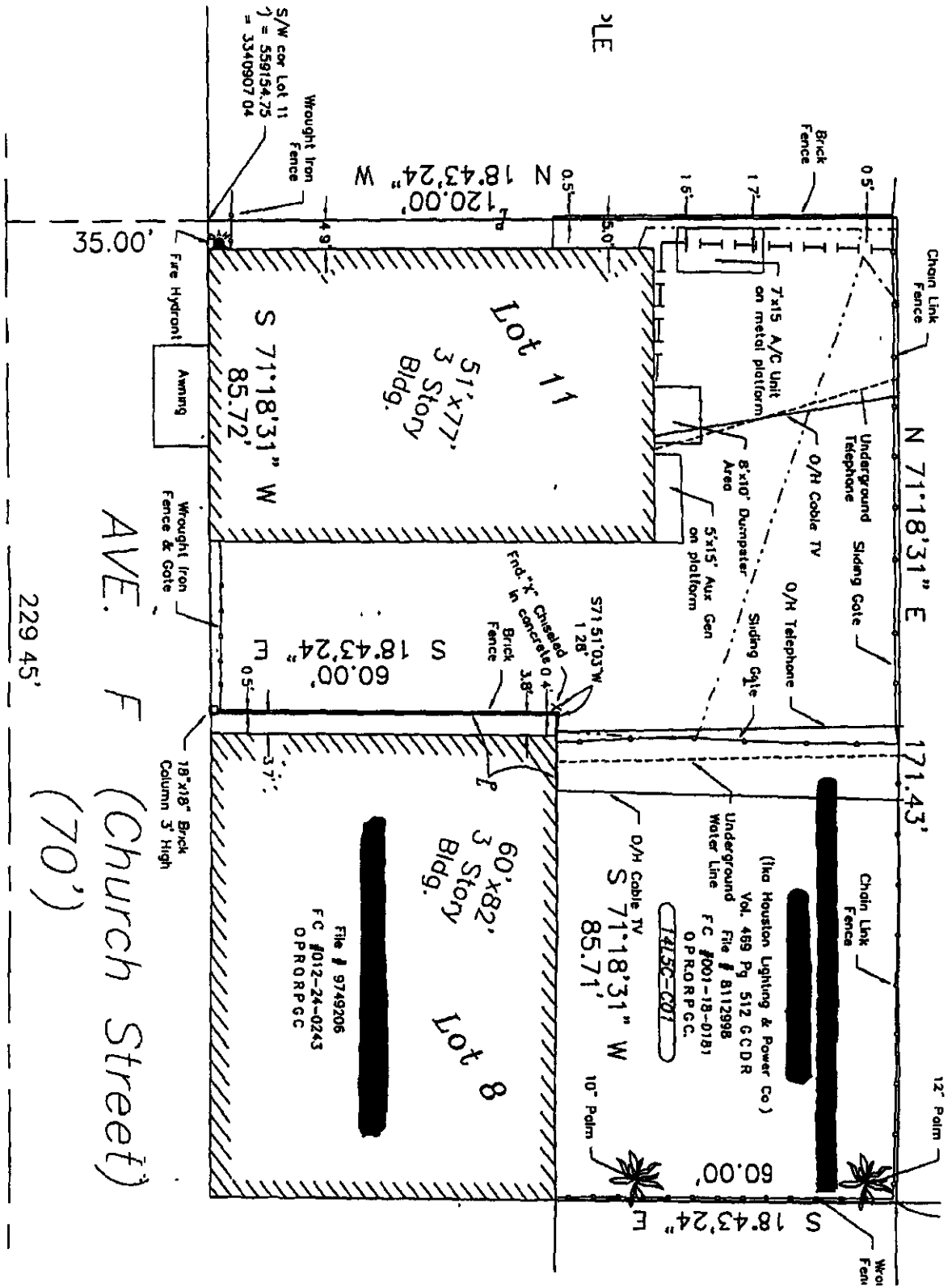
2 The Allocated Interest was determined by dividing the "Size plus Allocation" for each Unit by 11,859 square feet

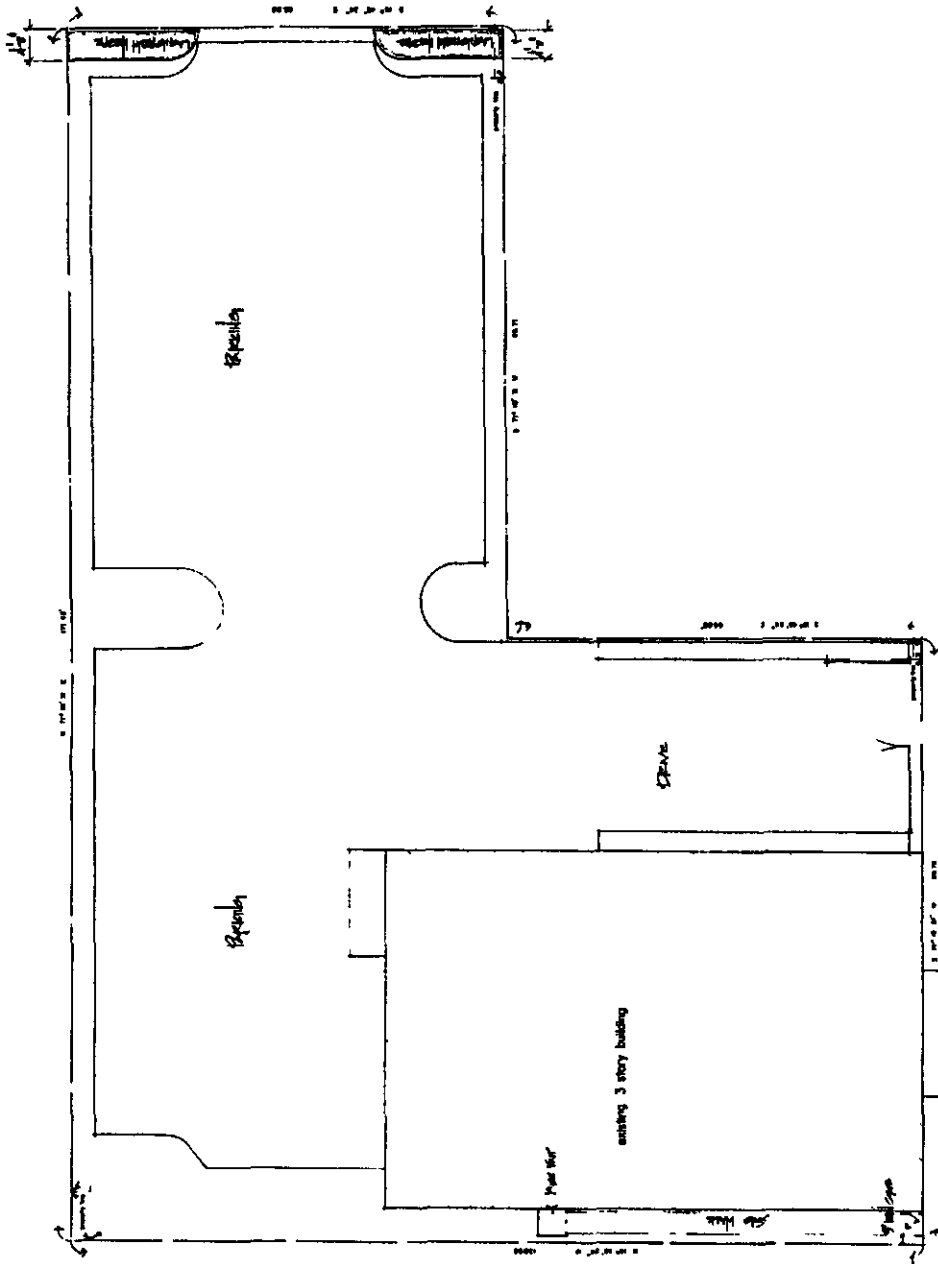
**EXHIBIT "C"**



85484 6 99999-99-999 / MWINKLER

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





21<sup>ST</sup> STREET (180' RW)

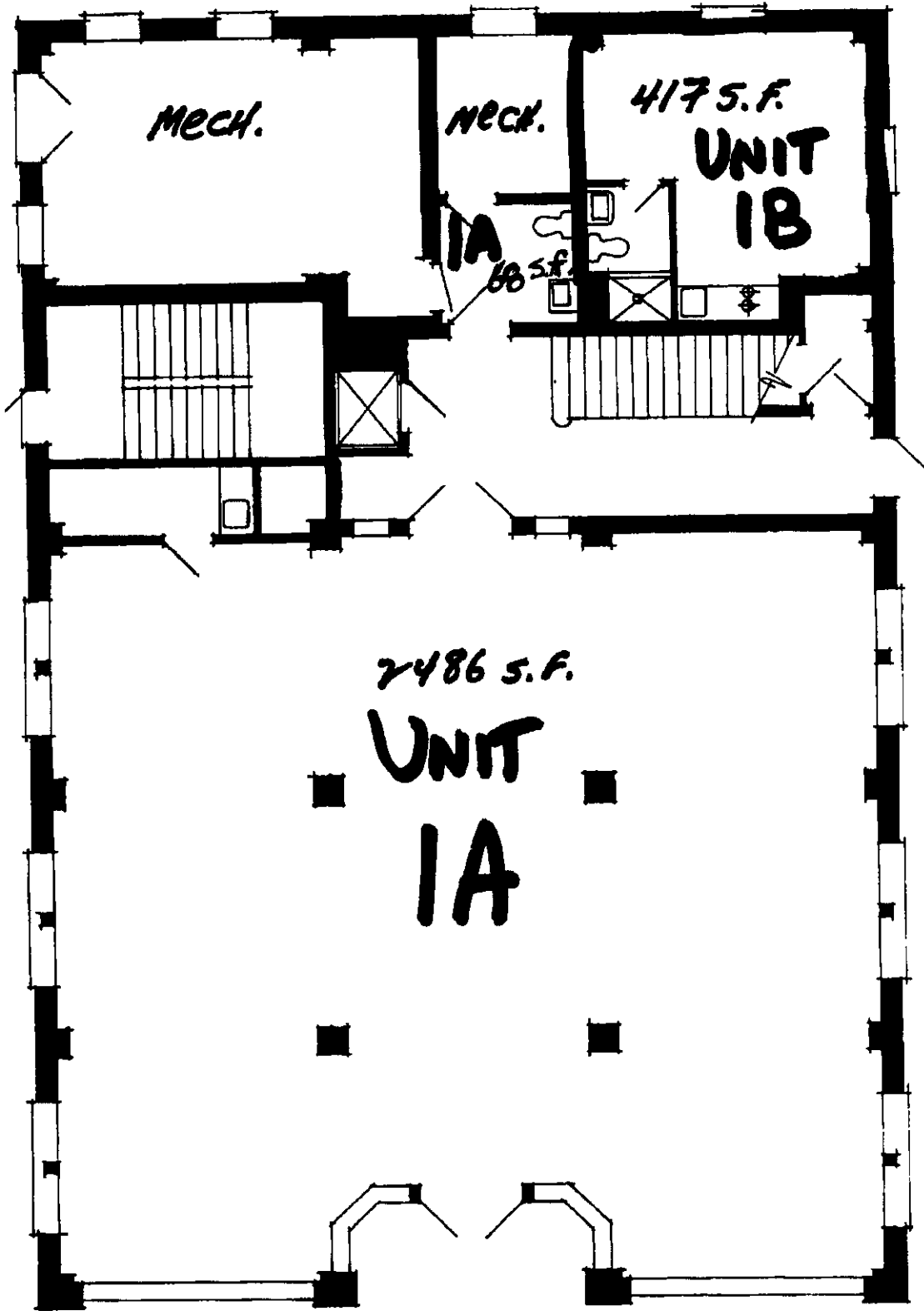


site plan 1/8"  
**DESIGNALLIANCE**  
 1100 GUYTON  
 2100 HANCOCK BLVD. SUITE 200  
 CHARLES STREET  
 ANNAPOLIS, MARYLAND 21403  
 410-293-8800 FAX 410-293-8801

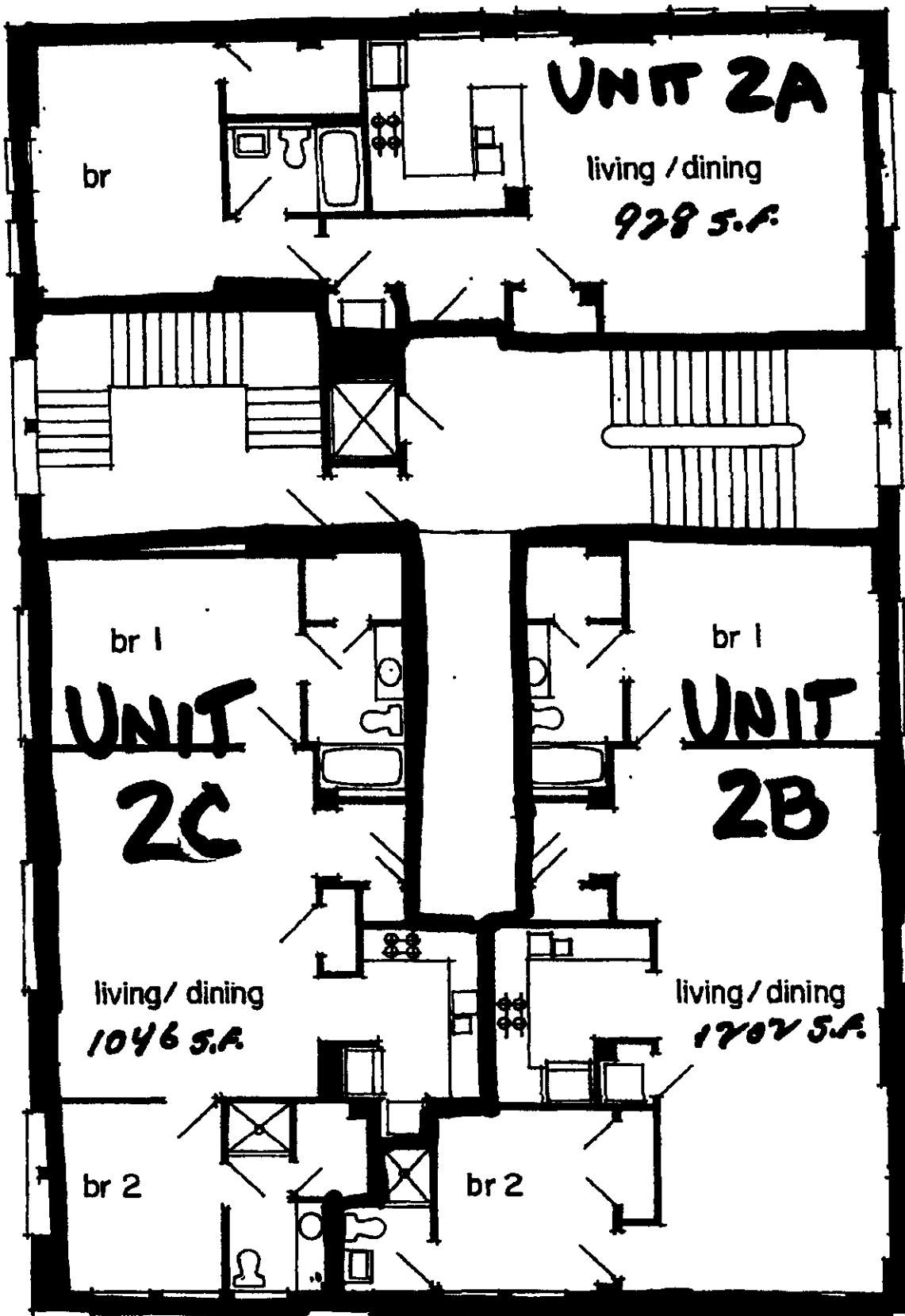
85484 6 99999-99-999 / MWINKLER



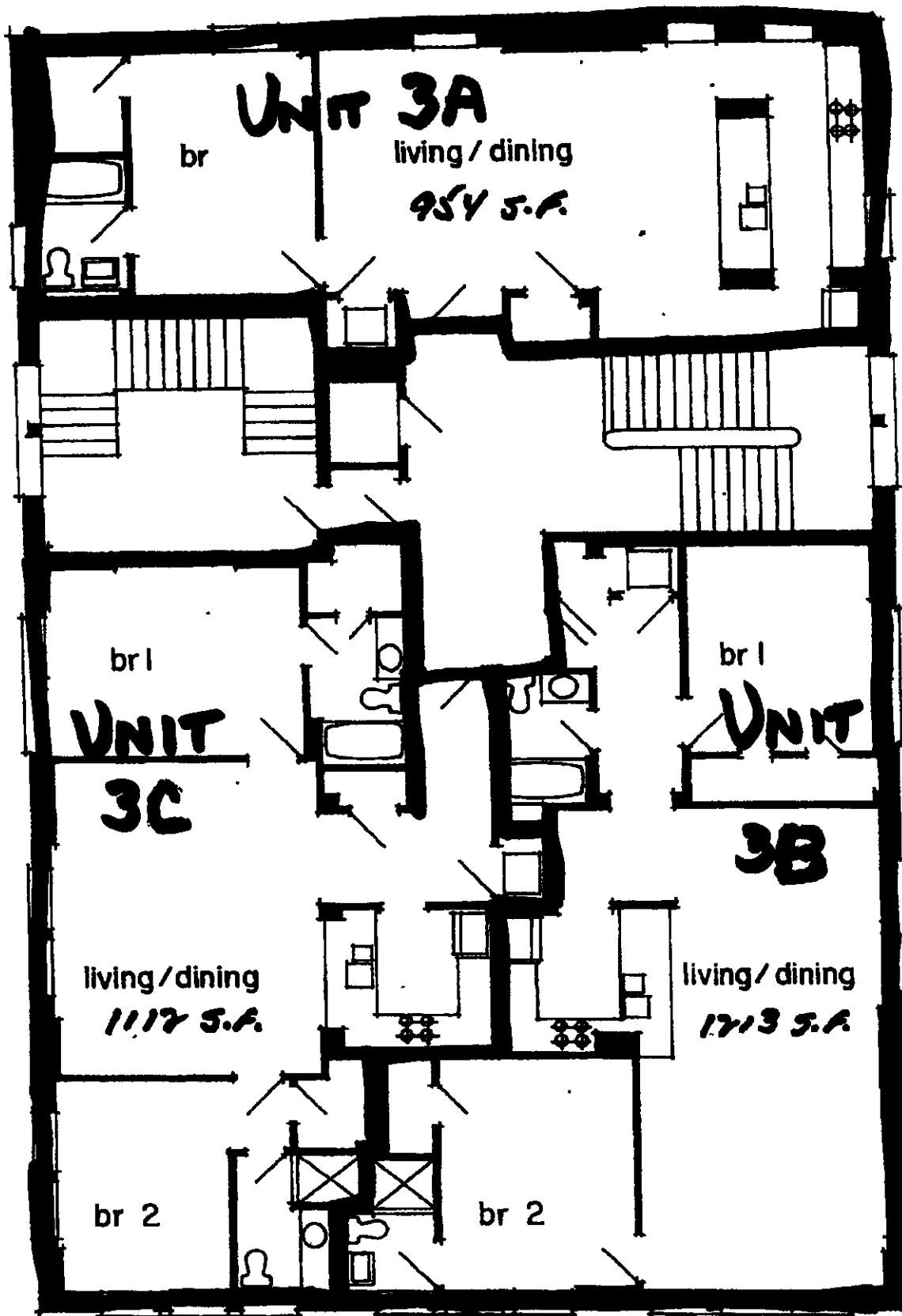
EXHIBIT "D"



**CHURCH STREET APARTMENTS 1<sup>ST</sup> FLOOR**

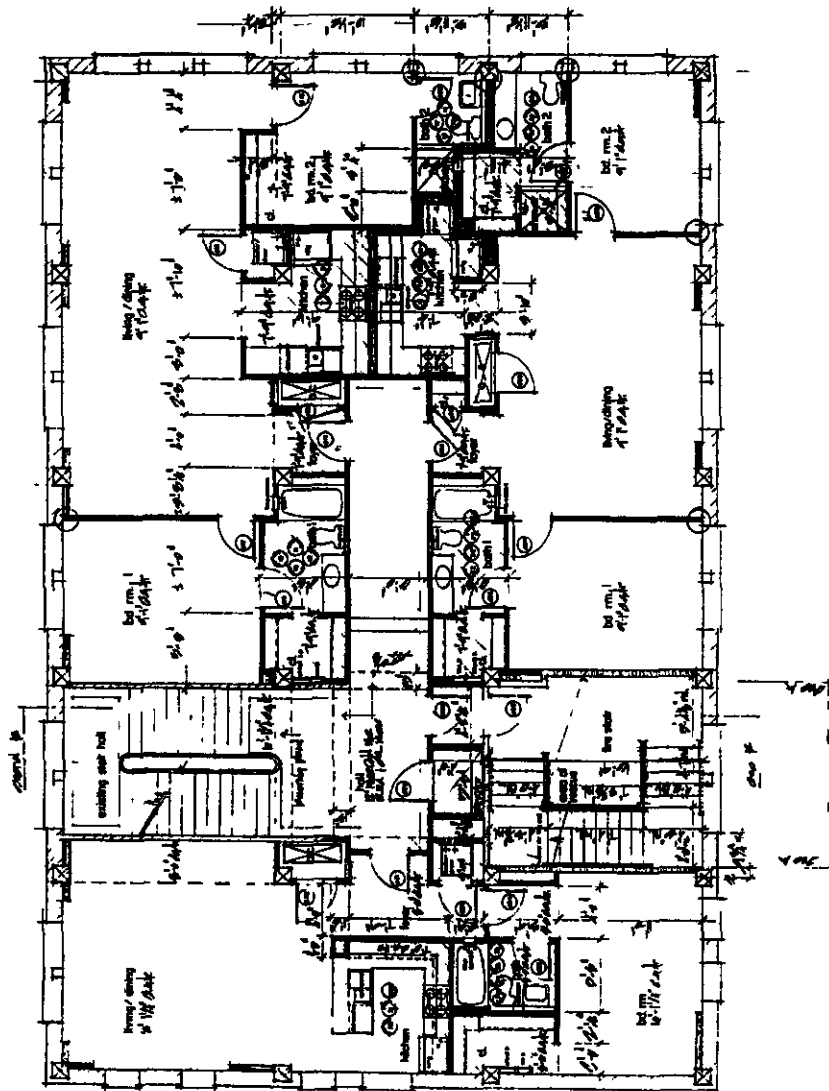
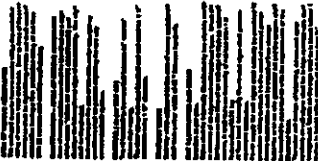
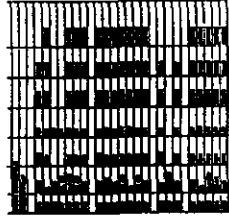


**CHURCH STREET APARTMENTS 2<sup>nd</sup> FLOOR**



**CHURCH STREET APARTMENTS 3<sup>rd</sup> FLOOR**





PAUL GARDNER  
REGISTERED ARCHITECT  
NO. 12078

2nd level floor plan 1/4"

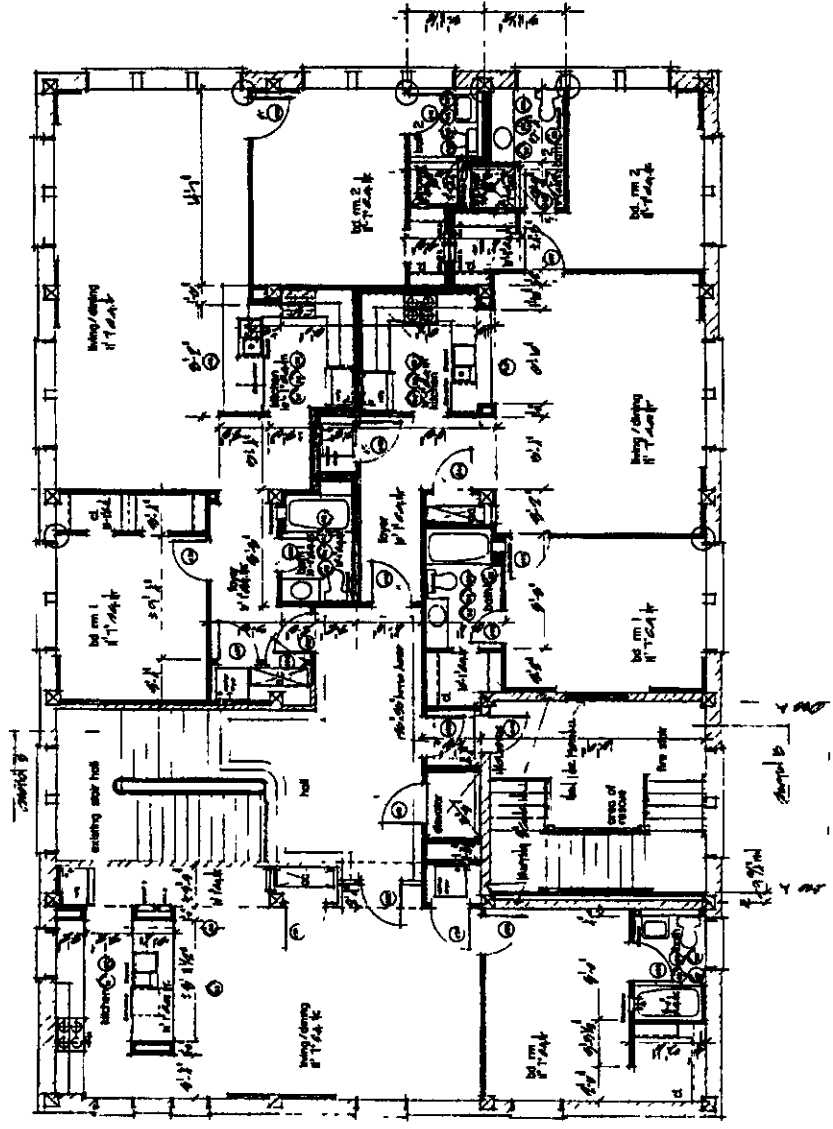
DESIGNALLIANCE

1100 GARDNER STREET, SUITE 100  
ANN ARBOR, MI 48106  
CHAMBERS STREET  
APARTMENTS  
ANN ARBOR, MI 48106

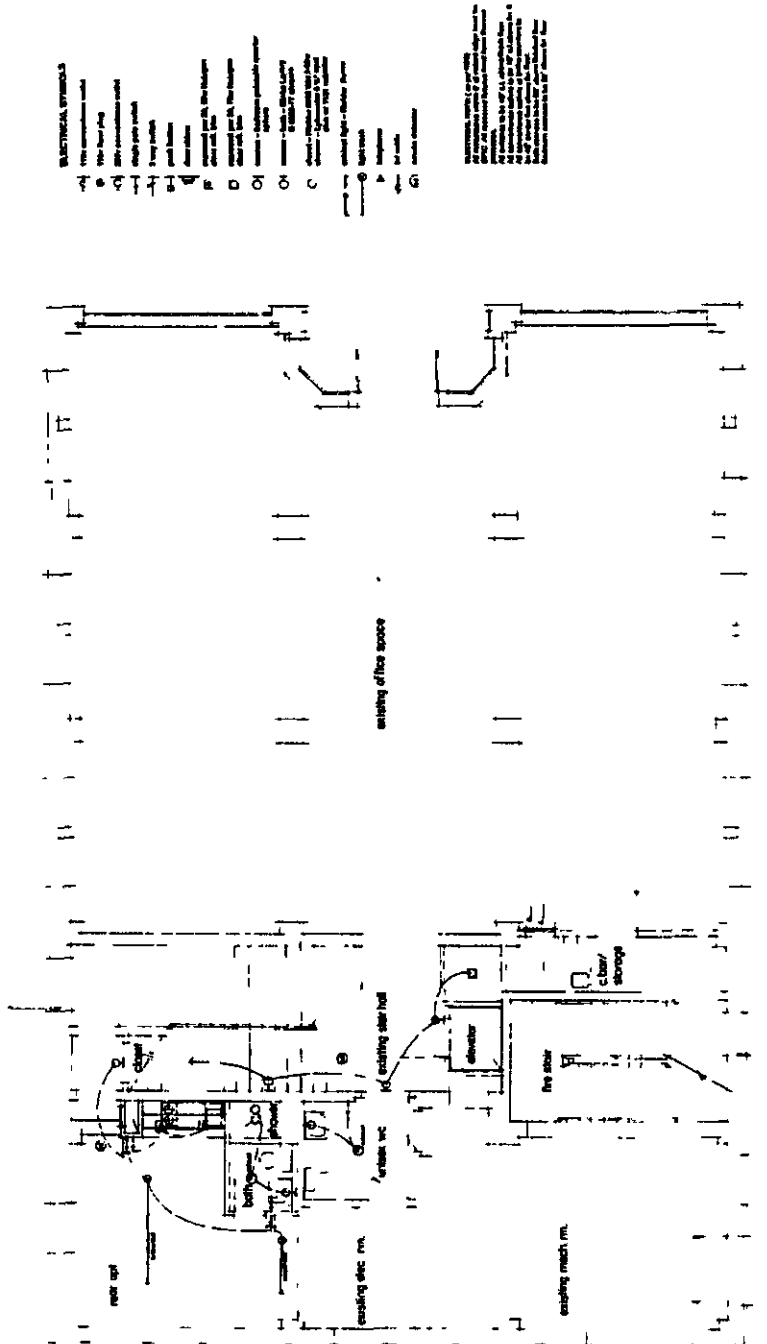
ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES (IBC) AND THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) CODES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL BUILDING DEPARTMENT AND FIRE DEPARTMENT. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES NOT TO BE REMOVED. THE CONTRACTOR SHALL MAINTAIN ALL NECESSARY SAFETY MEASURES IN PLACE THROUGHOUT THE CONSTRUCTION PROCESS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ADJACENT AREAS AND UTILITIES. THE CONTRACTOR SHALL MAINTAIN ALL NECESSARY RECORDS AND DOCUMENTATION THROUGHOUT THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ADJACENT AREAS AND UTILITIES. THE CONTRACTOR SHALL MAINTAIN ALL NECESSARY SAFETY MEASURES IN PLACE THROUGHOUT THE CONSTRUCTION PROCESS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ADJACENT AREAS AND UTILITIES. THE CONTRACTOR SHALL MAINTAIN ALL NECESSARY RECORDS AND DOCUMENTATION THROUGHOUT THE PROJECT.

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	CONCRETE	100	YD	120.00	12000.00
2	STEEL	500	LB	0.50	250.00
3	BRICK	2000	SQ YD	1.50	3000.00
4	CEMENT	500	YD	100.00	50000.00
5	WATER	1000	YD	100.00	100000.00
6	ELECTRICAL	100	YD	100.00	10000.00
7	MECHANICAL	100	YD	100.00	10000.00
8	PLUMBING	100	YD	100.00	10000.00
9	PAINT	100	YD	100.00	10000.00
10	LABOR	1000	HR	100.00	100000.00
11	PERMITS	1	SET	1000.00	1000.00
12	INSURANCE	1	YR	1000.00	1000.00
13	TRAVEL	100	HR	100.00	10000.00
14	MEALS	100	HR	100.00	10000.00
15	TOOLBOX	100	HR	100.00	10000.00
16	SAFETY	100	HR	100.00	10000.00
17	WASTE	100	YD	100.00	10000.00
18	UTILITIES	100	HR	100.00	10000.00
19	TESTING	100	HR	100.00	10000.00
20	INSPECTION	100	HR	100.00	10000.00
21	REPAIRS	100	HR	100.00	10000.00
22	DEMOLITION	100	YD	100.00	10000.00
23	FOUNDATION	100	YD	100.00	10000.00
24	FRAMING	100	YD	100.00	10000.00
25	ROOFING	100	YD	100.00	10000.00
26	CLADDING	100	YD	100.00	10000.00
27	INTERIORS	100	YD	100.00	10000.00
28	MECHANICAL	100	YD	100.00	10000.00
29	ELECTRICAL	100	YD	100.00	10000.00
30	PLUMBING	100	YD	100.00	10000.00
31	PAINT	100	YD	100.00	10000.00
32	LANDSCAPE	100	YD	100.00	10000.00
33	UTILITIES	100	YD	100.00	10000.00
34	TESTING	100	YD	100.00	10000.00
35	INSPECTION	100	YD	100.00	10000.00
36	REPAIRS	100	YD	100.00	10000.00
37	DEMOLITION	100	YD	100.00	10000.00
38	FOUNDATION	100	YD	100.00	10000.00
39	FRAMING	100	YD	100.00	10000.00
40	ROOFING	100	YD	100.00	10000.00
41	CLADDING	100	YD	100.00	10000.00
42	INTERIORS	100	YD	100.00	10000.00
43	MECHANICAL	100	YD	100.00	10000.00
44	ELECTRICAL	100	YD	100.00	10000.00
45	PLUMBING	100	YD	100.00	10000.00
46	PAINT	100	YD	100.00	10000.00
47	LANDSCAPE	100	YD	100.00	10000.00
48	UTILITIES	100	YD	100.00	10000.00
49	TESTING	100	YD	100.00	10000.00
50	INSPECTION	100	YD	100.00	10000.00

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
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6	ELECTRICAL	100	YD	100.00	10000.00
7	MECHANICAL	100	YD	100.00	10000.00
8	PLUMBING	100	YD	100.00	10000.00
9	PAINT	100	YD	100.00	10000.00
10	LABOR	1000	HR	100.00	100000.00
11	PERMITS	1	SET	1000.00	1000.00
12	INSURANCE	1	YR	1000.00	1000.00
13	TRAVEL	100	HR	100.00	10000.00
14	MEALS	100	HR	100.00	10000.00
15	TOOLBOX	100	HR	100.00	10000.00
16	SAFETY	100	HR	100.00	10000.00
17	WASTE	100	YD	100.00	10000.00
18	UTILITIES	100	HR	100.00	10000.00
19	TESTING	100	YD	100.00	10000.00
20	INSPECTION	100	YD	100.00	10000.00
21	REPAIRS	100	YD	100.00	10000.00
22	DEMOLITION	100	YD	100.00	10000.00
23	FOUNDATION	100	YD	100.00	10000.00
24	FRAMING	100	YD	100.00	10000.00
25	ROOFING	100	YD	100.00	10000.00
26	CLADDING	100	YD	100.00	10000.00
27	INTERIORS	100	YD	100.00	10000.00
28	MECHANICAL	100	YD	100.00	10000.00
29	ELECTRICAL	100	YD	100.00	10000.00
30	PLUMBING	100	YD	100.00	10000.00
31	PAINT	100	YD	100.00	10000.00
32	LANDSCAPE	100	YD	100.00	10000.00
33	UTILITIES	100	YD	100.00	10000.00
34	TESTING	100	YD	100.00	10000.00
35	INSPECTION	100	YD	100.00	10000.00



**3rd level floor plan** 1/4" = 1'-0"  
**DESIGN ALLIANCE**  
 1000 ...  
 CHURCH STREET  
 APARTMENTS  
 ...



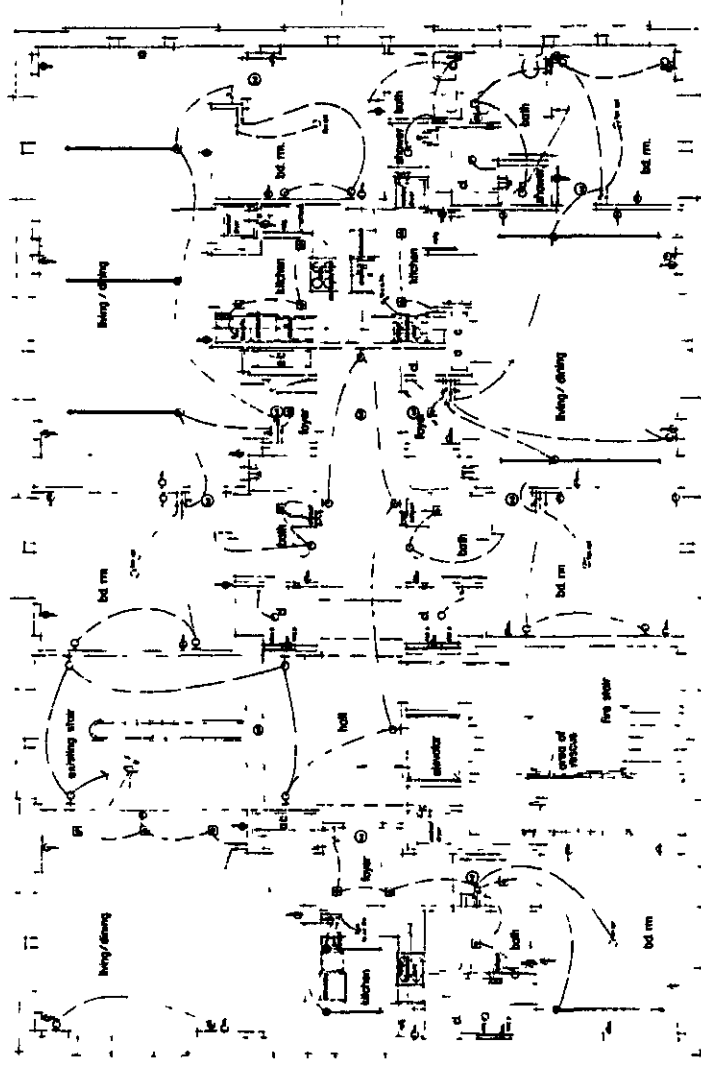
- ELECTRICAL SYMBOLS**
- 1. 120V 15A single phase receptacle
  - 2. 208V 15A single phase receptacle
  - 3. 208V 30A single phase receptacle
  - 4. 208V 60A single phase receptacle
  - 5. 208V 100A single phase receptacle
  - 6. 208V 150A single phase receptacle
  - 7. 208V 200A single phase receptacle
  - 8. 208V 250A single phase receptacle
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  - 22. 208V 950A single phase receptacle
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  - 47. 208V 2200A single phase receptacle
  - 48. 208V 2250A single phase receptacle
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  - 201. 208V 9900A single phase receptacle
  - 202. 208V 9950A single phase receptacle
  - 203. 208V 10000A single phase receptacle



1st level electrical plan 149"

**DESIGN ALLIANCE**  
 1000 North 1st Street, Suite 100  
 Philadelphia, PA 19106  
 (215) 561-1000  
 www.designalliance.com

- ELECTRICAL SYMBOLS**
- 1. 120 volt receptacle
  - 2. 208 volt receptacle
  - 3. 120 volt lighting fixture
  - 4. 208 volt lighting fixture
  - 5. 120 volt lighting fixture
  - 6. 208 volt lighting fixture
  - 7. 120 volt lighting fixture
  - 8. 208 volt lighting fixture
  - 9. 120 volt lighting fixture
  - 10. 208 volt lighting fixture
  - 11. 120 volt lighting fixture
  - 12. 208 volt lighting fixture
  - 13. 120 volt lighting fixture
  - 14. 208 volt lighting fixture
  - 15. 120 volt lighting fixture
  - 16. 208 volt lighting fixture
  - 17. 120 volt lighting fixture
  - 18. 208 volt lighting fixture
  - 19. 120 volt lighting fixture
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  - 23. 120 volt lighting fixture
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  - 52. 208 volt lighting fixture
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  - 54. 208 volt lighting fixture
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2nd level electrical plan 1/4"

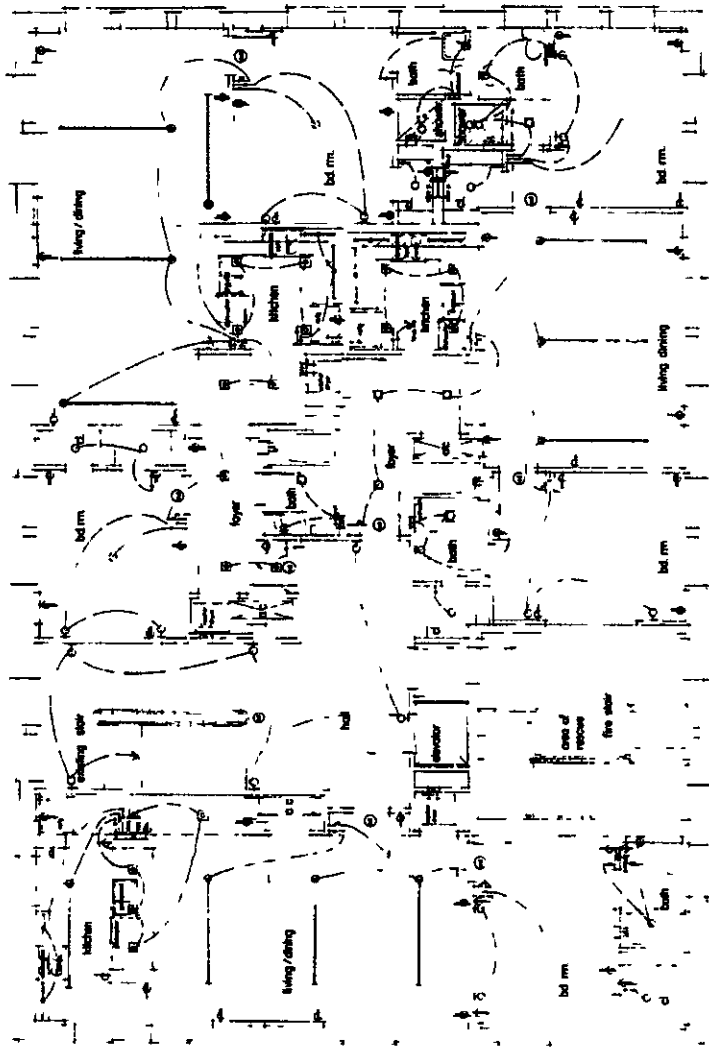
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 Suite 100  
 Charlotte, NC 28202  
 Phone: 704.375.1111  
 Fax: 704.375.1112  
 www.designalliance.com

6




**ELECTRICAL SYMBOLS**


- 1. Two conductor cable
- 2. Three conductor cable
- 3. Non-metallic sheath
- 4. Single phase service
- 5. Three phase
- 6. Air conditioner
- 7. Electric range
- 8. Electric water heater
- 9. Electric clothes dryer
- 10. Electric furnace
- 11. Electric boiler
- 12. Electric radiator
- 13. Electric baseboard heater
- 14. Electric floor heating
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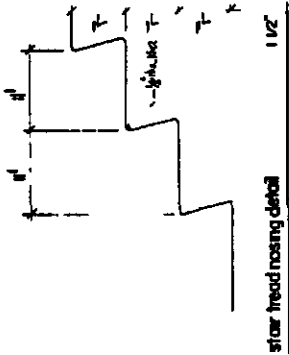


DESIGN ALLIANCE

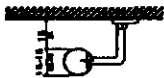
3rd level electrical plan 1/A

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7



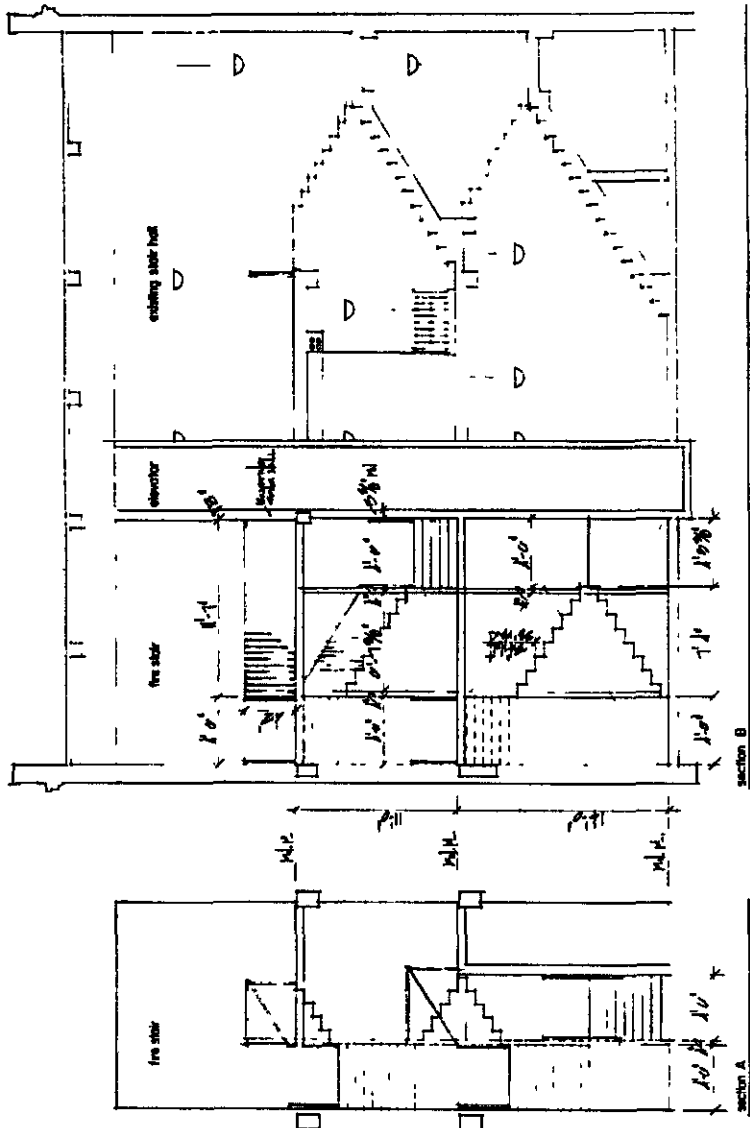
stair tread nosing detail



handrail

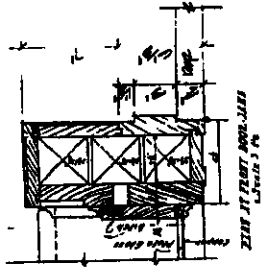
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.  
 2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AND SHALL BE APPROVED BY THE ARCHITECT.  
 3. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.  
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**NOTES:**  
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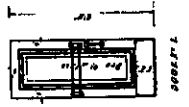


sections 1/4"  
**DESIGN ALLIANCE**  
 1410 GLENN AVENUE  
 SUITE 200  
 CHAMBERS STREET  
 APARTMENTS  
 CHAMBERS STREET  
 CHAMBERS STREET  
 CHAMBERS STREET

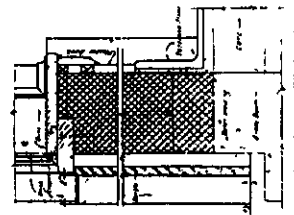




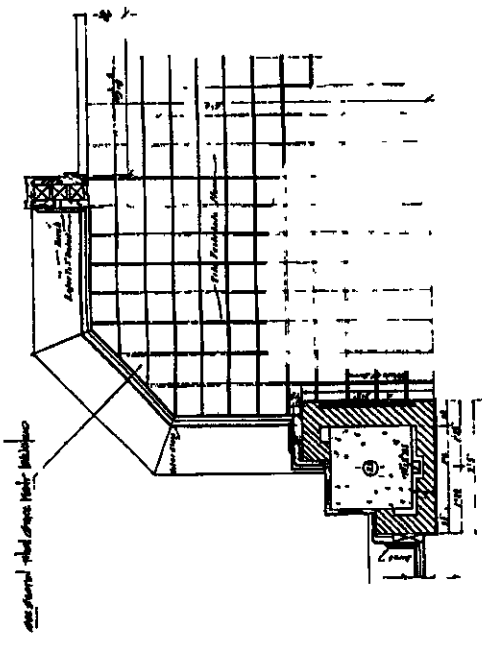
detail



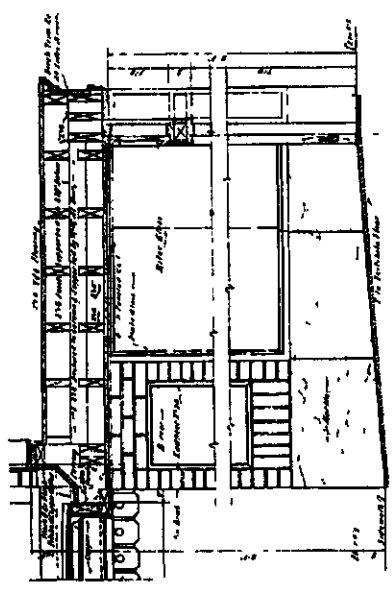
front door



section



plan

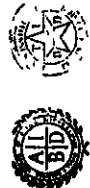
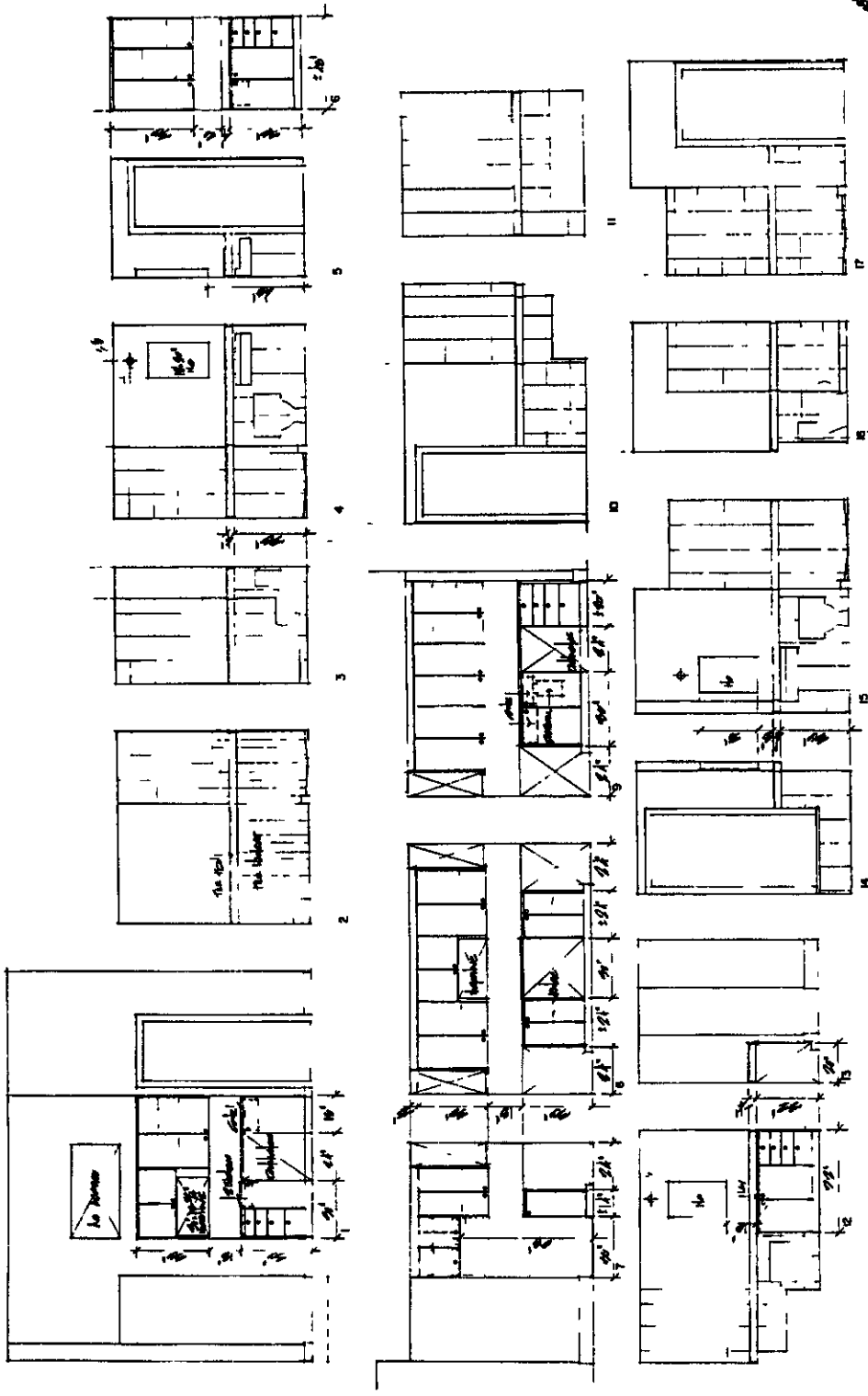


elevation



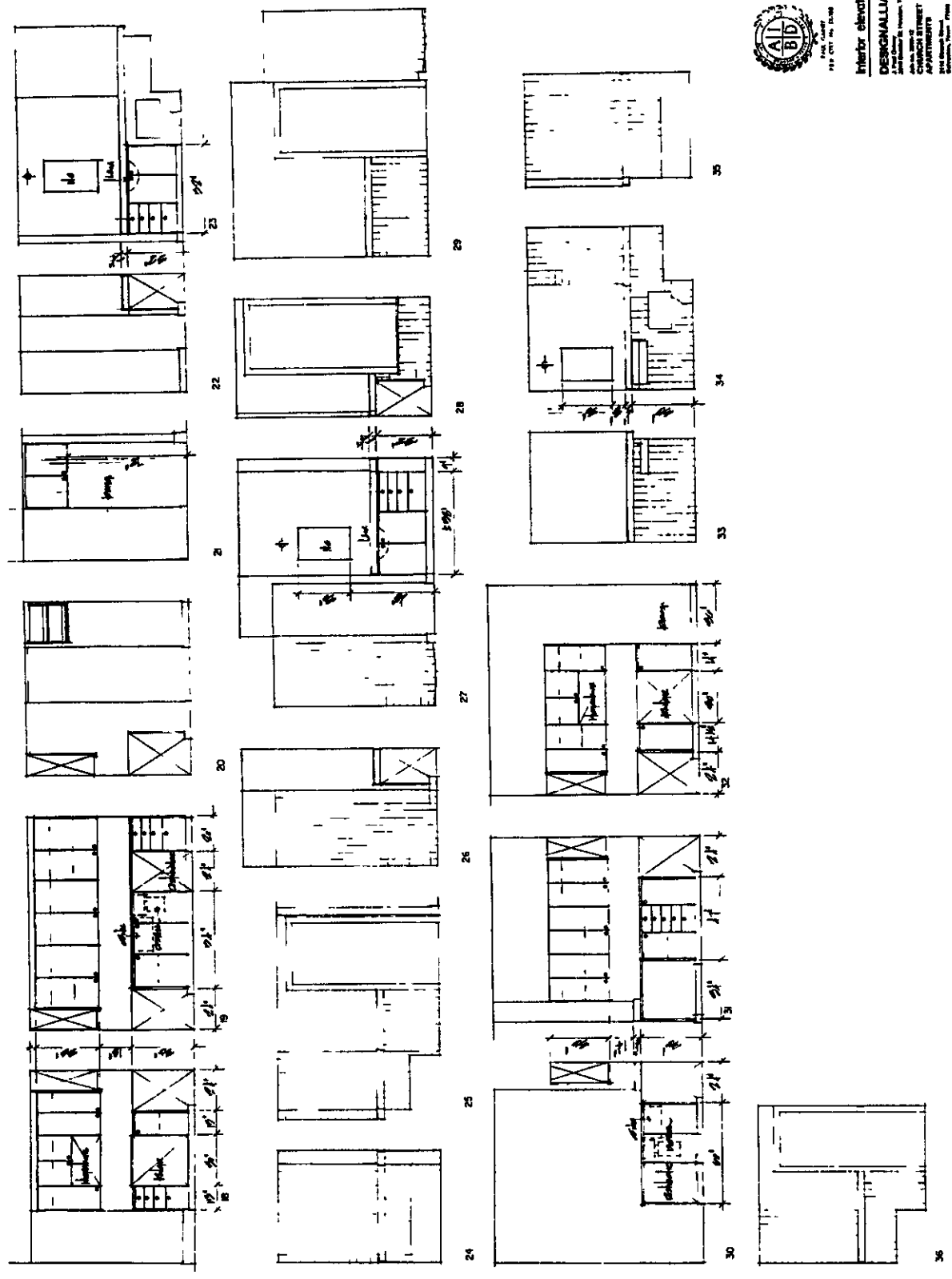
1875

Church Street entrance  
DESIGN ALLIANCE  
100 West 42nd Street, New York, NY 10018  
ARCHITECTS  
100 West 42nd Street  
APARTMENTS  
100 West 42nd Street



Interior elevations 1/2  
**DESIGN ALLIANCE**  
 1000 10th St. Suite 100  
 San Francisco, CA 94103  
 ARCHITECTS  
 1000 10th St. Suite 100  
 San Francisco, CA 94103

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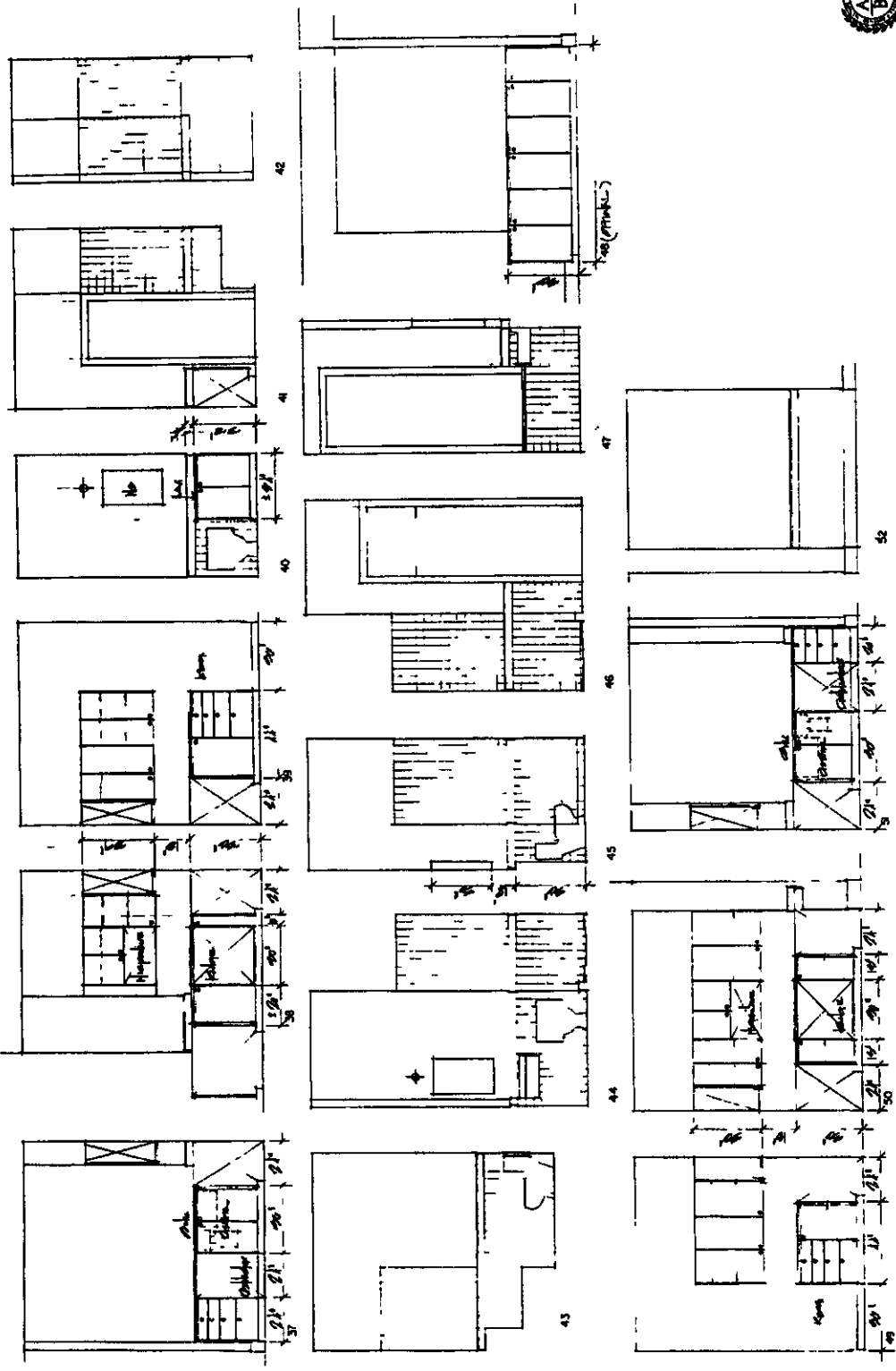


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1111 CITY OF BIRMINGHAM

Interior elevations 1/2"  
 DESCHALLANCE  
 2 The Colonnade  
 2000 Riverchase Lakeside Dr., Suite 100  
 Birmingham, AL 35244  
 CHURCH STREET  
 APARTMENTS  
 200 Church Street  
 Birmingham, AL 35203



1110 12th St. N.W.  
 Washington, D.C. 20004

Interior elevations 1/2"

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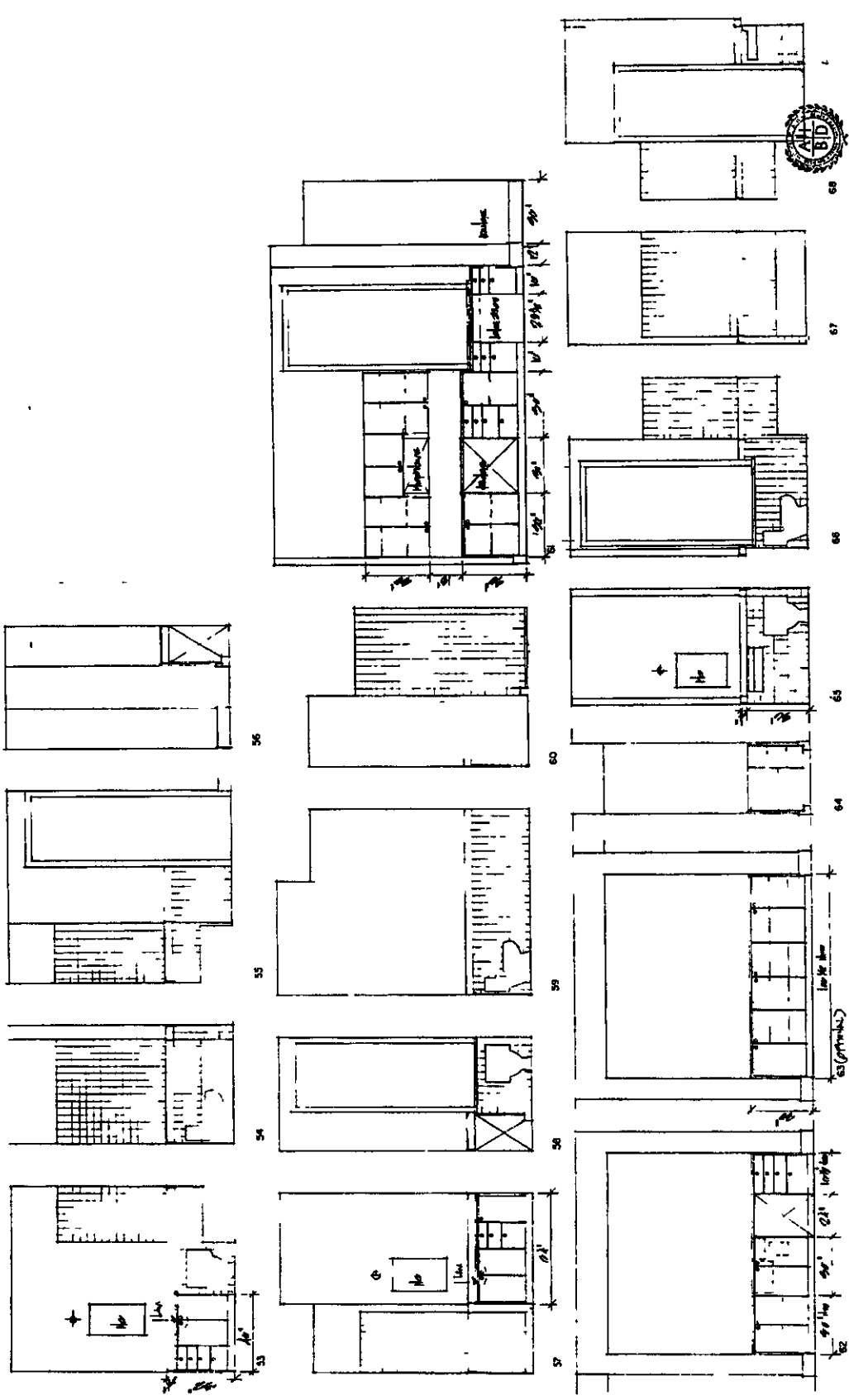
Washington, D.C. 20036

CHURCH STREET

APARTMENTS

Washington, D.C.

11/10/00



Interior elevations 1/2"  
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OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

2005 MAR 30 03:11 PM 2005019411  
MAYCUM'S \$124.00  
Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS

**RECORDER'S MEMORANDUM**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

BYLAWS OF THE  
GEC LOFTS CONDOMINIUM OWNERS ASSOCIATION, INC.

GEC LOFTS CONDOMINIUM OWNERS ASSOCIATION, INC., a Texas non-profit corporation (the "Association"), is the corporation referred to in the Declaration of Condominium for the Galveston Electric Company Lofts (the "Declaration"), which creates a condominium regime in Galveston, Galveston County, Texas, pursuant to the provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code (the "Act"). Capitalized words and phrases used in these Bylaws shall have the same meanings given to them in the Declaration, unless otherwise specifically provided herein. In the event of any conflict between the terms and provisions of these Bylaws and the Declaration, the Declaration shall control.

ARTICLE I

Members, Meetings and Voting Rights

**Section 1. Members.** Upon becoming an Owner, each Owner shall automatically be a member of the Association, all as more fully set forth in the Declaration, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall also automatically cease, and no other person or entity shall be entitled to membership in the Association, except as expressly provided herein or in the Declaration. Upon any transfer of ownership of any Unit, the new Owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.

**Section 2. Voting.** Subject to the provisions of Section 3 of this Article I, each Owner shall be entitled to one vote for each Unit owned by such Owner, all as more fully set forth in the Declaration. The Declarant may exercise voting rights with respect to Units owned by it. Votes allocated to a Unit owned by the Association may not be cast.

**Section 3. Qualifications for Voting.** No Owner, other than the Declarant, shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Unit to the Secretary of the Association. Any Owner who is in default for more than thirty (30) days in the payment of his Common Expense Charge, any Special Assessment, or any other sums owed to the Association may have his right to vote revoked by action of the Board of Directors, pending payment of such amounts. In the event that ownership interests in a Unit are owned by more than one member of the Association, such members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one vote be cast for each Unit. Such Owners shall appoint one member who shall be entitled to exercise the vote of that Unit at any meeting of the Association. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Unit is

owned by more than one member and no single member is designated to vote on behalf of the members having an ownership interest in such Unit, and only one of the multiple owners of a Unit is present at a meeting of the Association, then that person may cast the vote allocated to that Unit. If there is more than one Owner of such Unit present and no single Owner has been designated, then the vote(s) allocated to that Unit may be cast only in accordance with the unanimous agreement of such Owners present. If a Unit is owned by a corporation, the vote appurtenant to that Unit may be cast by any officer of the corporation in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote. All members of the Association may attend meetings of the Association, and all voting members may exercise their vote at such meetings either in person or by proxy.

**Section 4. Annual Meetings.** After the election of the first Fully Elected Board, the annual meeting of the members of the Association shall be held in the Building or at such other place as may be designated in writing by the Board at 8:00 p.m. on the third Wednesday in March of each calendar year (or the first business day thereafter if such day is a federal holiday). At the discretion of the Board, the annual meeting of the members of the Association may be held at such other reasonable day and time as may be designated by written notice of the Board delivered to the members not less than ten (10) nor more than fifty (50) days prior to the date fixed for said meeting.

**Section 5. Notice.** Any notice permitted or required to be given to a member of the Board or to an Owner, including but not limited to, notice of a meeting of the Association and/or the Board, may be delivered personally, by mail, or by facsimile. If delivery is made by mail, it shall be deemed to have been delivered upon deposit in the U.S. Mail, postage prepaid, addressed to an Owner at his Unit or to such other address as the Owner may have given in writing to the Association for the purpose of service of notices. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile. Any address for purposes of notice may be changed from time to time in writing to the Association. For the purpose of determining the members entitled to notice of a meeting and to vote at any meeting, the membership of the Association shall be determined at the close of business on the thirtieth day preceding such meeting.

**Section 6. Special Meetings.** Special meetings of the members may be called at any time by the President or any Vice President, by members having at least fifty-one percent (51%) of the total voting power in the Association, or by a majority of the Board of Directors. Written or printed notice stating the place, date and time of such special meeting and the purpose or purposes for which the meeting is called shall be delivered to each member not less than ten (10) nor more than thirty (30) days before the date of such meeting. Business transacted at any special meeting shall be limited to the purposes stated in the notice of the meeting.

**Section 7. Quorum.** The presence in person or by proxy at the beginning of a meeting of Owners representing a majority of the total voting power of the Association shall constitute a

quorum for holding any meeting of the Association. The majority of Owners present in person or represented by proxy at a meeting, though less than a quorum, shall have the power to adjourn and reconvene the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such reconvened meeting, at which a quorum shall be present or represented by proxy, any business may be transacted as was set out in the notification of the original meeting.

**Section 8. Proxies.** At any meeting of the Association, votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association at or before the appointed time of each meeting of the Association. An Owner may not revoke a proxy given under this Section except by giving actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or if it purports to be revoked without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time. Furthermore, a proxy shall automatically terminate upon conveyance by the Owner of his Unit.

**Section 9. Majority Vote.** Except as otherwise provided in the Declaration or these Bylaws, all action to be taken or authorized by the members shall be deemed validly taken or authorized upon adoption by the vote of Owners representing a majority of the total voting power of the Association.

**Section 10. Cumulative Voting.** At all meetings of the Association, cumulative voting shall not be permitted.

## ARTICLE II

### Board of Directors

**Section 1. Number and Qualification.** The Board of Directors shall consist of three (3) persons. None of the Directors need be members of the Association during the period of Declarant Control (as hereinafter defined in Article X, Section 3 below). After the period of Declarant Control, all Directors must be members of the Association. If any Unit is owned by a partnership, corporation, limited liability company, or trust, any officer, partner, trustee, or employee of that Owner shall be eligible to serve as a Director notwithstanding the preceding sentence. Co-Owners of a single Unit may not serve on the Board of Directors at the same time. Co-Owners of more than one Unit may serve on the Board of Directors at the same time, provided the number of Co-Owners serving at one time does not exceed the number of Units they co-own. No Owner may be elected or appointed as a Director if any assessment against the Owner or such Owner's Unit is delinquent at the time of election or appointment. No Owner may continue to serve as a Director if any assessment against the Owner or such Owner's Unit is delinquent more than sixty (60) days.

**Section 2. Election.** After the period of Declarant Control, the Directors shall be elected by the Owners at each annual meeting. At the meeting of the Owners of the Association convened for the election of the first Fully Elected Board, the Owners shall elect one Director for a term of one (1) year, one Director for a term of two (2) years, and one Director for a term of three (3) years. Thereafter, at the annual meeting of the Owners, the Owners shall elect the

number of Directors necessary in order to fill the positions of the Directors whose terms have expired at the time of the annual meeting, each to serve a term of three (3) years. Owners may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The nominees receiving the highest number of votes shall be elected. All votes shall be cast by written ballot. A Director takes office upon the adjournment of the meeting or balloting at which he or she is duly elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his or her successor is duly elected or appointed. So long as there is a Commercial Unit, the Fully Elected Board shall have at all times one Director who is an Owner of a Commercial Unit or, if such Owner of a Commercial Unit is a partnership, corporation, limited liability company, or trust, any officer, partner, trustee or employee of that Owner.

The elected members of the Board (other than members of the Interim Board and the first Fully Elected Board) shall serve for a term of three (3) years unless sooner terminated by death, resignation or removal.

**Section 3. Removal and Vacancies.** Any Director may be removed from the Board with or without cause, by the affirmative vote of Owners representing a majority of the voting power of the Association, at a special meeting called for such purpose or at an annual meeting. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. In such an event, a successor for such removed Director shall be selected by a vote of the Association. Vacancies in the Board of Directors caused by reasons other than removal by the Owners shall be filled by the remaining Directors. A Director elected or appointed to fill a vacancy created on the Board shall serve for the unexpired term of his predecessor.

**Section 4. Compensation and Expenses.** No member of the Board shall receive any compensation from the Association for acting as such, but shall be reimbursed for reasonable expenses incurred while serving in such capacity.

**Section 5. Action by Written Consent.** The Directors shall have the right to take any action without a meeting which they could take at a meeting by obtaining the written approval of all of the Directors so long as (a) such Board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue, and (b) a record of the Board action is filed with the minutes of Board meetings. Notwithstanding the foregoing, with respect to those matters described in clause (a) in the immediately preceding sentence, if the Owner is not able to attend a Board meeting within two weeks after the scheduled date for such Board meeting, then the Board may act on such matter by unanimous written consent without a Board meeting. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**Section 6. Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors; provided, however, such meetings shall be held at least quarterly. Notice of regular meetings shall be

given to each Director, personally or by mail, telephone or facsimile, at least ten (10) days prior to the date set for such meeting.

Meetings of the Board shall be open to Owners; provided, however, the Board shall have the right to adjourn a meeting of the Board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual Unit Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting. Owners who are not Directors may not participate in any deliberations or discussions unless the Board of Directors expressly so authorizes such participation at the meeting.

Any meeting of the Board may be conducted by telephone conference or other remote communications technology in accordance with the provisions of Article 1396-9.11 of the Texas Non-Profit Corporation Act (the "TNPCA"); provided that notice of such meeting is given as provided for in these Bylaws. Notwithstanding the foregoing, the Board may not conduct a meeting by telephone conference or other remote communication technology if the meeting involves voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue; provided, however, if the Owner is not able to attend a Board meeting within two weeks after the scheduled date for such Board meeting, then the Board may hold the meeting by telephone conference or other remote communications technology.

**Section 7. Special Meetings.** Special meetings of the Directors may be called by the President or by any two (2) Directors. Not less than three (3) days notice of the meeting shall be given to each Director personally or by mail, telephone or facsimile, which notice shall state the time, place and purpose of the meeting.

**Section 8. Notice; Waiver of Notice.** Notice to any Director shall be given as provided in Article I, Section 5 above. Any Director may waive notice of a meeting before or after the meeting by a signed, written waiver.

**Section 9. Quorum.** A quorum at Board meetings is present throughout a meeting of the Board if persons entitled to cast at least fifty percent (50%) of the votes on the Board are present at the beginning of the meeting. The acts approved by a majority of those present at a duly called meeting at which a quorum is present shall constitute the acts of the Board.

**Section 10. Nomination.** Nomination for election to the Board (except the Appointed Board) shall be made from the floor at the annual meeting of the Association.

**Section 11. Powers and Duties.** All of the powers, authority and duties of the Association existing under the Act, the Declaration and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject only to approval by Owners when such is specifically required by the Act, the Declaration and the Bylaws.

**Section 12. Order of Business.** At meetings of the Board of Directors, business shall be transacted in such order as from time to time the Board may determine. A chairman shall be chosen annually by the Board from among the Directors to preside over all Board meetings. The Secretary of the Association shall act as secretary of the meetings of the Board of Directors, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

**Section 13. Presumption of Assent.** A Director of the Association who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

### ARTICLE III

#### Officers

**Section 1. Executive Officers.** The executive officers of the Association shall be a President, one or more Vice Presidents, a Treasurer and a Secretary. The President and the Secretary must be members of the Association; none of the other officers need be members of the Association. An officer may also be a Director. All officers shall be elected annually by the Board of Directors and shall serve until their successors shall have been elected or until they have been removed or have resigned. All officers shall be subject to removal at any time by the Board of Directors. The Board of Directors may, in its discretion, elect acting or temporary officers and elect officers to fill vacancies occurring for any reason whatsoever, and may, in its discretion, limit or enlarge the duties and powers of any officer elected by it. Any person may hold two or more offices except the President shall not also be the Secretary. The Board shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be necessary or advisable to manage the affairs of the Association.

**Section 2. President.** The President shall be the chief executive officer of the Association and shall have all of the powers and duties which are usually vested in the office of President of an organized association including, but not limited to, the power to sign all leases, mortgages, deeds and other written instruments that have been approved by the Board or pursuant to the authority granted by the Board.

**Section 3. Vice Presidents.** Each Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President and shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. If more than one Vice President is elected, the Board of Directors shall designate who is the First Vice President, who is the Second Vice President, etc. In the absence of the President, the First Vice President shall perform the duties of the President. Such authority to act for the President shall vest in the Vice Presidents in the order of their numerical designation by the Board of Directors.

**Section 4. Secretary.** The Secretary shall record the votes and keep the minutes of all proceedings of the Association and shall attend to the giving and serving of all notices to the Owners and Directors and other notices required by law; shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an organized association and as may be required by the Board or the President.

**Section 5. Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness; shall keep the books of the Association in accordance with generally accepted accounting procedures or such other accounting procedures approved by the Board; shall cause an annual statement of the Association's books to be made at the completion of each fiscal year; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership of the Association at its regular annual meeting, and shall make a copy available to each of the members of the Association; and shall perform all other duties assigned to him by the Board of Directors or incident to the office of Treasurer.

**Section 6. Compensation.** The compensation of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing a Director as an employee of the Association nor preclude the Board from contracting with a Director for the management of the Condominium.

**Section 7. Election of Officers.** The officers shall be elected no less than annually by the Directors and shall hold office at the pleasure of the Board of Directors. The President shall be elected from among the members of the Board of Directors. Except for resignation or removal, officers shall hold office until their respective successors have been designated by the Board of Directors.

**Section 8. Removal and Resignation of Officers.** A majority of Directors may remove any officer, with or without cause, at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for that purpose. A successor may be elected at any regular or special meeting of the Board of Directors called for that purpose. An officer may resign at any time by giving written notice to the Board of Directors. Unless the notice of resignation states otherwise, it is effective when received by the Board of Directors and does not require acceptance by the Board of Directors. The resignation or removal of an officer who is also a Director does not constitute resignation or removal from the Board of Directors.

**Section 9. Authorized Agents.** Except when the Condominium documents require execution of certain instruments by certain individuals, the Board of Directors may authorize any person to execute instruments on behalf of the Association. In the absence of Board of Directors designation, the President, any Vice President and the Secretary shall be the only persons authorized to execute instruments on behalf of the Association.



## ARTICLE IV

### Committees; Authorized Agents

**Section 1. Committees.** In addition to any committees expressly provided for in the Declaration and the Bylaws, the Board of Directors by resolution passed by a majority of the Board of Directors, may appoint such other committees as may be deemed appropriate by the Board. The establishment of a committee or the delegation of authority to it shall not relieve the Board of Directors, or any individual Director, of any responsibility imposed by these Bylaws or otherwise imposed by law. Any such committee shall have and may exercise all of the delegated authority of the Board in the management of the business and affairs of the Association, except where action of the full Board is required by statute or by the Condominium documents. All committees shall keep regular minutes of their proceedings and shall report the same to the Board when requested to do so.

## ARTICLE V

### Obligations of the Owners

**Section 1. Proof of Ownership.** Except for those Owners who initially purchase a Unit from Declarant, any person, on becoming an Owner of a Unit, shall furnish to the Board of Directors evidence of ownership in the Unit, in form and substance as may be required by the Board of Directors from time to time and acceptable to the Board of Directors, which evidence shall remain in the files of the Association. An Owner shall not be deemed to be in good standing nor be entitled to vote at any annual or special meeting of the Association unless this requirement is first met.

**Section 2. Owners' Information.** Not later than the 30th day after the date of acquiring an interest in a Unit, the Owner shall provide the Association with: (i) the Owner's mailing address, telephone number, and driver's license number, if any; (ii) the name and address of the holder of any lien against the Unit, and any loan number; (iii) the name and telephone number of any person occupying the Unit other than the Owner; and (iv) the name, address, and telephone number of any person managing the Unit as agent of the Owner. An Owner shall notify the Association not later than the 30th day after the date the Owner has notice of a change in any of the foregoing information, and shall provide the information on request by the Association from time to time. If an Owner fails to maintain a current mailing address with the Association, the address of that Owner's Unit shall be deemed to be his or her mailing address.

**Section 3. Assessments.** As more fully provided in the Declaration, each Owner is obligated to pay to the Association Common Expense Charges, Special Assessments, Individual Purpose Assessments (as described in Section 4.5 of the Declaration) and other sums that may become due and owing (herein collectively called the "Assessments") together with such late charges and interest thereon and costs of collection thereof as provided in the Declaration, which shall be a charge on the Unit and shall be a continuing lien upon each Unit against which each such Assessment is made and shall also be the continuing personal obligation of the Owner of such Unit at the time when the Assessment became due. Any Assessment which is not paid

when due shall be delinquent. If any Assessment or part thereof, late charge or service charge is not paid when due, the unpaid amount of such Assessment, late charge or service charge shall bear interest from and after the date when due at the rate which is the lesser of eighteen percent (18%) per annum or the highest lawful rate allowed under applicable law, and the Association may, at its election, retain the services of an attorney for collection, and there shall also be added to the amount of such unpaid Assessment, any late charge or service charge, and any and all collection costs incurred hereunder by the Association, including reasonable attorneys fees. No Owner may waive or otherwise escape liability for any Assessment provided for in the Declaration by the non-use of the Common Elements or by the abandonment of his or her Unit. An Owner shall be deemed to be in good standing and entitled to vote at any meeting of the Association if he or she is current in the payment of the Assessment made or levied against such Owner and such Owner's Unit. For the purposes hereof, the highest lawful rate allowed under applicable law, with respect to the laws of the State of Texas, shall be the weekly ceiling rate as set forth in Chapter 303 of the Texas Finance Code.

**Section 4. Compliance With Condominium Documents.** Each Owner shall comply with the provisions and terms of the Declaration, these Bylaws, the Articles of Incorporation for the Association, and Rules promulgated for the Condominium and any amendments thereto (collectively, the "Condominium Documents"). Further, each Owner shall always endeavor to observe and promote the cooperative purposes for which the Condominium was established.

## ARTICLE VI

### Association Records

**Section 1. Records.** The Association shall keep the following records:

- (a) Minutes or a similar record of the proceedings of meetings of the Association.
- (b) Minutes or a similar record of the proceedings of meetings of the Board of Directors.
- (c) The name and mailing address of each Owner, the currency and accuracy of the information being the responsibility of the Owners.
- (d) The name and mailing address of each mortgagee, the supply of, and the currency and accuracy of, the information being the responsibility of each Owner and such Owner's mortgagee.
- (e) Financial records and books of account for the Association that comply with generally accepted accounting principles or such other accounting procedures that are approved by the Board and that are sufficiently detailed to enable the Association to prepare a resale certificate as provided for in the Act. Such financial records and books of account shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association and Owners.

- (f) The plans and specifications used to renovate the Condominium.
- (g) The plans and specifications acquired by the Association over time for improvements to the Condominium as provided to the Association by the Declarant or the Owners.
- (h) The Condominium Information Statement and any amendments thereto.
- (i) Copies of income tax returns prepared for the Internal Revenue Service.
- (j) Copies of the Condominium Documents. Also, for at least four (4) years, all voting records, proxies, and correspondence by which amendments to the Condominium Documents were approved.
- (k) Such other records as required by Section 82.114 of the Act.

**Section 2. Inspection of Books and Records.** An Owner, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the Association relevant to that purpose, at the expense of the Owner.

**Section 3. Annual Audit.** The Association shall, as a Common Expense, annually obtain an independent audit of the Association's records. Copies of the audit shall be made available to the Owners. An audit required by this Section 3 shall be performed by a certified public accountant if required pursuant to a vote of the Board or a majority vote of the members of the Association voting at a meeting of the Association.

**Section 4. Resale Certificates.** The Managing Agent, if any, or any officer of the Association, may prepare, or cause to be prepared, certify, and execute resale certificates in accordance with Section 82.157 of the Act. The Association may charge a reasonable fee for preparing a resale certificate. The Association may refuse to furnish a resale certificate until the fee is paid. Any unpaid fees may be assessed against the Unit for which the resale certificate is furnished.

## ARTICLE VII

### Indemnification and Insurance

**Section 1. Indemnification.** Each person who is or was a Director, officer, or committee member of the Association, or any person who, while a Director, officer, or committee member of the Association, is or was serving at the request of the Association as a Director, officer, committee member, partner, venturer, proprietor, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, and the heirs, executors, or administrators or estate of such person, shall be indemnified by the Association to the fullest extent permitted or authorized

by the Act or any successor provision, as amended from time to time, against any liability, cost, or expense incurred by such person in his or her capacity as a Director, officer, or committee member, or arising out of his or her status as a Director, officer, or committee member, including, without limitation, any act or omission deemed to constitute simple negligence. However, the foregoing indemnity obligations shall not apply to acts or omission of a Director, officer or committee member which are deemed criminal, as a result of willful misconduct, or outside the scope or capacity of his or her duties and/or office. The rights granted pursuant to this Article VII shall be deemed contract rights, and no repeal or amendment of this Article VII shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment or repeal.

**Section 2. Advance Payments.** The Association may, but shall not be obligated to, pay expenses incurred in defending a civil or criminal act, suit or proceeding arising out of a Director's, officer's, or committee member's capacity or status as Director, officer, or committee member in advance of the final disposition of such action, suit, or proceeding, without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding shall be made only upon delivery to the Association of both a written affirmation by such person of his or her good-faith belief that he or she has met the standard of conduct necessary for indemnification under this Article VII and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it is ultimately determined that such person is not entitled to be indemnified under this Article VII or otherwise.

**Section 3. Appearance as a Witness.** Notwithstanding any other provision of this Article VII, the Association may, but shall not be obligated to, pay or reimburse expenses incurred by a Director, officer or committee member in connection with his or her appearance as a witness or other participation in a proceeding at a time when he or she is not a named defendant or respondent in the proceeding.

**Section 4. Indemnification of Employees and Agents.** The Association, by adoption of a resolution of the Board of Directors, may, but shall not be obligated to, indemnify and advance expenses to an employee or agent of the Association to the same extent and subject to the same conditions under which the Association may indemnify and advance expenses to Directors, officers and committee members under this Article VII.

**Section 5. Non-Exclusive.** The indemnification provided by this Article VII shall not be exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law or under any agreement or otherwise.

**Section 6. Insurance.** The Association may, but shall not be obligated to, maintain Insurance at its expense, to protect itself and any person who is or was a Director, officer, committee member, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, committee member, partner, venturer, proprietor, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and any liability, cost, or expense incurred by him or her in

such capacity or arising out of his or her status as such person, whether or not the Association would have the power to indemnify such person against that liability under this Article VII or the Act.

## ARTICLE VIII

### Amendment of Bylaws

**Section 1. Proposals.** The Association shall provide an Owner of each Unit with any proposed amendment of these Bylaws in accordance with the requirements of Section 82.070 of the Texas Property Code, as same may be amended from time to time. Such description shall be included in the notice of any annual or special meeting of the Association if such proposed amendment is to be considered at said meeting.

**Section 2. Consents.** Except as otherwise provided by law or the Declaration, an amendment shall be adopted by the affirmative vote of at least seventy-five percent (75%) of the percentage of votes entitled to be cast by Owners present, whether in person or by proxy, at a meeting at which a quorum is present; provided, however, after the period of Declarant Control, no amendment hereof materially and adversely affecting the rights or obligations of the Owner of a Commercial Unit shall be valid, unless such amendment is also approved by the Owner of a Commercial Unit present, whether in person or by proxy, at a meeting at which a quorum is present.

**Section 3. Effective.** To be effective, each amendment must be in writing, reference the names of the Condominium and the Association, be signed by the President of the Association acknowledging the requisite approval of Owners, and be delivered to an Owner of each Unit at least 10 days before the amendment's effective date. Further, if these Bylaws are publicly recorded, the amendment must recite the recording information for the Bylaws, be in a form suitable for recording in the real property records, and be delivered to the county clerk for recordation.

**Section 4. Declarant Protection.** As long as the Declarant owns a Unit in the Condominium, no amendment of these Bylaws may affect the Declarant's rights herein without the Declarant's written acknowledged consent. Specifically, this Section 4 may not be amended without prior written approval of the Declarant. The Declarant's written consent shall be part of the amendment instrument.

## ARTICLE IX

### Rules

**Section 1. Rules.** The Board of Directors shall have the right to establish and amend, from time to time, reasonable rules for (i) the administration of the Association; (ii) the maintenance, management, operation, use, conservation, and beautification of the Condominium; and (iii) the health, comfort, and general welfare of the occupants of Units, whether or not any such occupant is an Owner; provided, that such rules may not be in conflict with law or this

Declaration and the Articles of Incorporation and Bylaws of the Association or materially and adversely affect the interests of an Owner of a Commercial Unit. The initial Rules for the Condominium are attached hereto as ***Exhibit A***. The Board at all times shall maintain the then-current and complete rules in a written form which can be copied and distributed to the Owners. Rules need not be recorded.

**Section 2. Adoption and Amendment.** Any rule may be adopted, amended or terminated by the Board, subject to the terms of this Article, provided that the Rule and the requisite Board approval are properly recorded as a resolution in the minutes of the meeting of the Board.

**Section 3. Notice and Comment.** The Board shall give written notice to an Owner of a Unit of any amendment, termination, or adoption of a rule as required by Section 82.070 of the Texas Property Code, as may be amended from time to time. The Board may, but shall not be required, to give similar notice to occupants of Units who are not Owners.

**Section 4. Distribution.** Upon request from any Owner or an occupant of a Unit, the Board shall provide a current and complete copy of the Rules at the cost of the requesting party. Additionally, the Board, from time to time, shall distribute copies of the current and complete Rules to an Owner of each Unit and, if the Board so chooses, to occupants of a Unit who are not Owners.

## ARTICLE X

### Declarant Provisions

**Section 1. Conflicts.** The provisions of this Article X shall control over any provision to the contrary in these Bylaws.

**Section 2. Board of Directors.** During the period of Declarant Control, Section 3.4 of the Declaration shall govern the number, qualification and appointment of Directors. The initial directors shall be appointed by Declarant and need not be Owners or occupants of the Units. Directors appointed by Declarant may not be removed by Owners during the period of Declarant Control and may be removed by Declarant only. During the period of Declarant Control, Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

**Section 3. Declarant Control; First Meeting of Owners.** There shall be a period of Declarant Control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board (such period being herein called the period of "Declarant Control"). The first meeting of the Owners shall be held, and the period of Declarant Control shall end, not later than the earlier of (i) 120 days following the conveyance by Declarant of more than 75% of the Units or (ii) 3 years after the first Unit is conveyed by Declarant. Until the first meeting of Owners, the affairs of the Association shall be managed by the first Board of Directors named in the Articles of Incorporation or their successors, and during such period it shall have the right to exclusively represent, act as and constitute the Board, shall have the protections referenced under Article VIII, Section 4 above,

and shall have the right to exclusively exercise and perform all of the rights, powers, authority functions and duties herein or in the Act or these Bylaws given to the Association or the Board; provided, however, that not later than 120 days following the conveyance by Declarant of more than 50% of the Units not less than 1 of the members of the Board shall be elected by the Owners; and not later than the termination of the period of Declarant Control, all members of the Board shall be selected by the Owners.

## ARTICLE XI

### Miscellaneous Provisions

**Section 1. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 2. Deposits.** All funds of the Association not otherwise employed shall be deposited, from time to time, to the credit of the Association in such banks, trust companies or other depositories (including certificates of deposit and money market or similar funds) as the Board of Directors may select.

**Section 3. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the thirty-first day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

**Section 4. Insurance Proceeds.** In the event of any casualty loss covered in Section 6.1 of the Declaration for which the insurance proceeds are insufficient to provide for the repair, restoration or rebuilding of the Building as required in said Section, the building costs in excess of the insurance proceeds shall be assessed against all of the Owners as a Special Assessment in proportion to the Allocated Interest of each Owner, without the necessity for the consent of the members of the Association. The provisions of this Section of the Bylaws may be amended only by the affirmative vote of all the Owners and all Mortgagees, adopted subsequent to the date on which such fire or casualty loss occurs.

ET# 03206455 18 NR Galv

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STEWART TITLE COMPANY

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM  
FOR  
GALVESTON ELECTRIC COMPANY LOFTS  
(a Condominium in Galveston, Galveston County, Texas)**

ENC 2005027061 2 PGS

THIS FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM ("Amendment") is effective as of the 30th day of March, 2005, and made by CHURCH STREET PARTNERS, LTD., a Texas limited partnership ("Declarant")

**RECITALS**

- 1. That certain Declaration of Condominium for Galveston Electric Company Lofts recorded on March 30, 2005 under Clerk's File No. 2005019411 in the Official Public Records of Real Property of Galveston County, Texas (the "Declaration") contains a typographical error on Exhibit B thereof.
- 2. The Declaration provides in Section 11.4 that the Declarant has the continuing right to amend the Declaration in order to make corrections or resolve ambiguities
- 3. A typographical error was made on Exhibit B in item 2 at the bottom of the page and it currently reads that the condominium has 11,859 square feet. By this Amendment, Exhibit B to the Declaration shall be corrected in item 2 to show the correct square feet of 11,857.

**AGREEMENTS**

- 1. NOW, THEREFORE, the Owners, by this Amendment, do hereby declare that item 2 in Exhibit B is hereby corrected to reflect the correct square feet in the condominium as 11,857 square feet
- 2. This Amendment shall run with the land and shall inure to the benefit of, and be binding upon, the Owners, their heirs, successors, legal representatives and assigns

Except as amended hereby, the Declaration remains in full force and effect.



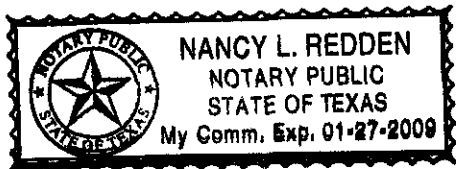
**CHURCH STREET PARTNERS, LTD.,** a Texas limited partnership

By: Dincans SP, L L C., a Texas limited liability company, its General Partner

By *Robert Deering*  
Robert Deering  
Managing Member

STATE OF TEXAS §  
COUNTY OF Galveston §

This instrument was acknowledged before me on the 8<sup>th</sup> day of April, 2005 by Robert Deering, Managing Member of Dincans SP, LLC, , general partner of Church Street Partners, Ltd , a Texas limited partnership.



*Nancy L. Redden*  
Notary Public, State of Texas

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Dalgie*  
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Mary Ann Dalgie ,COUNTY CLERK  
GALVESTON, TEXAS





## EXHIBIT "A"

### LEGAL DESCRIPTION

A 0.354 acre tract, being the north one half of lots 8 and 9 and all of lots number 10 and 11 of Block 441 of the City of Galveston, in the Michael B. Menard League Abstract 628, in the City of Galveston, Galveston County, Texas. Said tract being described in deeds to Houston Lighting & Power Company as follows. (1) being a portion of lots 10 and 11 as recorded in Volume 469 Page 512 of the Deed Records of Galveston County, Texas; (2) being the north one half of lots 8 and 9, and a portion of lots 10 and 11 as recorded in File # 8112998, Film Code #001-18-0181 Official Public Records of Real Property Galveston County, Texas. All coordinates and bearings herein stated refer to the Texas Coordinate System of 1927, South Central Zone, as defined in the Texas Natural Resources Code, 21.071, et seq and are based on the City of Galveston base line monuments. A concrete monument with nail found for the intersection of the centerline of Avenue "F" (Church Street) and an eighteen (18) foot offset to the centerline of 21<sup>st</sup> Street, having coordinates North (Y)=559,195.12, East (X)=3,341,135.58 and a 60d nail found for the intersection of the centerline of Avenue "F" and 27<sup>th</sup> Street, having Coordinates, North (Y)=558,445.83 East (X)=3,338,920.80. All distances shown hereon are surface. To convert to grid distance, multiply by the applied scale factor of 0.999863388. Said 0.354 acre tract is described by metes and bounds as follows:

COMMENCING at a City of Galveston base line monument, being a concrete monument with a nail inside a well, being in the centerline of Avenue "F" (Church Street) and an eighteen (18) foot offset to the centerline of 21<sup>st</sup> Street, having coordinates North (Y)=559,195.12; East (X)=3,341,135.58;

THENCE S 71° 18' 31" W., a distance of 229.45 feet, along the centerline of Avenue "F" to a point, from which a City of Galveston base line monument set in the centerline of Avenue "F" and 27<sup>th</sup> Street, being a 60d nail, having coordinates North (Y)=558,445.83; East (X)=3,338,920.80, bears S. 71° 18' 31" W., a distance of 2,108.96 feet;

THENCE N. 18° 43' 24" W., a distance of 35.00 feet, to a point in the north right-of-way line of Avenue "F", same being the south line of Block 441, said point being the southwest corner of lot 11 and the southeast corner of lot 12 and being the POINT OF BEGINNING of the herein described 0.354 acre tract having coordinates North (Y)=559,154.75; East (X)=3,340,907.04; from which a found 1/2" iron rod bears S. 67° 39' 49" E., a distance of 0.10 feet,

THENCE N 18° 43' 24" W., a distance of 120.00 feet, along the common line of lots 11 and 12, the same being the west line of this herein described tract and the EAST line of a tract of land granted to the Scottish Rite Temple Association, being described in a deed recorded in Volume 267 Page 383 Galveston County Deed Records, to a point in the south line of the twenty foot alley of Block 441, said point being the northwest corner of lot 11 and this herein described tract;

THENCE N. 71° 18' 31" E., a distance of 171.43 feet, along the north line of lots 11, 10, 9 and 8, the same being the north line of this herein described tract and being the south line of the twenty foot alley of Block 441, to a point, being the northeast corner of lot 8 and this herein

described tract, being in the east line of lot 8 and Block 441, same being the west right-of-way line of 21<sup>st</sup> Street, from which the northeast corner of Block 441 bears N. 18° 43' 24" W, a distance of 140.00 feet, from block corner a found chiseled "X" in sidewalk bears N. 18° 09' 31" W, a distance of 0.93 feet;

THENCE S. 18° 43' 24" E., a distance of 60.00 feet, along the common east line of lot 8, Block 441 the same being the east line of this herein described tract and the west right-of-way of 21<sup>st</sup> Street, to a point being the most northerly southeast corner of this herein described tract, from which the southeast corner of Block 441 bears S. 18° 43' 24" E, a distance of 60 00 feet, from block corner a found chiseled "X" in sidewalk bears S. 20° 36' 04" E., a distance of 60 00 feet, from block corner a found chiseled "X" in sidewalk bears S. 20° 36' 04" E., a distance of 1 08 feet;

THENCE S. 71° 18' 31" W., a distance of 85 71 feet, across lots 8 and 9 along the most northerly south line of this herein described tract, same being the north line of a tract of land granted to Leland T. Vandeventer, being described in deed recorded in File # 9749206, Film Code #012-24-0243 Official Public Records of Real Property Galveston County, to a point in the common line of lots 9 and 10, being the most northerly southwest corner of this herein described tract, from which a found chiseled "X" in concrete bears S. 71° 51' 03" W, a distance of 1 28 feet,

THENCE S. 18° 43' 24" E, a distance of 60.00 feet, along the common line of lots 9 and 10, being the most westerly east line of this herein described tract and the west line of the above mentioned adjoining tract, to a point for the most southerly southeast corner of this herein described tract, said point being in the north right-of-way line of Avenue "F" and the southeast corner of lot 10, from said point a found chiseled "X" in sidewalk bearing S. 27° 44' 58" E., a distance of 1.05 feet;

THENCE S. 71° 18' 31" W., a distance of 85.72 feet, along the south line of lots 10 and 11, the same being the south line of this herein described tract and the north right-of-way line of Avenue "F", to the POINT OF BEGINNING and containing 0 354 acres of land

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

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JOHNS \$20.00  
Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS