

(SCHEDULE OF PERCENTAGES Continued)

<u>APARTMENT NO.</u>	<u>APPROX. GROSS SQ. FT. WITH BALCONY</u>	<u>PERCENTAGE</u>
706	1000	1.0884%
707	1000	1.0884%
708	500	.5442%
709	729	.7934%
710	947	1.0307%
801	947	1.0307%
802	729	.7934%
803	500	.5442%
804	1000	1.0884%
805	1000	1.0884%
806	1000	1.0884%
807	1000	1.0884%
808	500	.5442%
809	729	.7934%
810	947	1.0307%
901	947	1.0307%
902	729	.7934%
903	500	.5442%
904	1000	1.0884%
905	1000	1.0884%
906	1000	1.0884%
907	1000	1.0884%
908	500	.5442%
909	729	.7934%
910	947	1.0307%
1001	1448	1.5762%
1002	729	.7934%
1003	1000	1.0884%
1004	1000	1.0884%
1005	1000	1.0884%
1006	1000	1.0884%
1007	729	.7934%
1008	1448	1.5762%
1101	1448	1.5762%
1102	729	.7934%
1103	1000	1.0884%
1104	1000	1.0884%
1105	1000	1.0884%
1106	1000	1.0884%
1107	729	.7934%
1108	1448	1.5762%
1201	1448	1.5762%
1202	729	.7934%
1203	1000	1.0884%
1204	1000	1.0884%
1205	1000	1.0884%
1206	1000	1.0884%
1207	729	.7934%
1208	1448	1.5762%

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The above percentages fixing the percentage of undivided ownership interest of each Owner in the common elements and his share of the common expenses and voting representation cannot be changed except by the written consent of each and every Owner and Mortgagee of all Apartment Units in this condominium project, duly executed, acknowledged and filed for record; and the Developer, its successors, assigns and grantees, and their successors, heirs, executors, administrators, devisees and grantees, hereby covenant and agree that the undivided percentage interest in the common elements allocated to each Apartment shall be and remain an undivided interest and each Owner shall own his percentage interest as a tenant in common with the other Unit Owners, and that the interest in the common elements shall remain undivided and shall not be the object of an action for partition or division of the Co-ownership so long as suitable for a condominium regime, and in any event all mortgages must be paid prior to the bringing of an action for partition, or the consent of all mortgagees to such action must be obtained. Any covenant to the contrary shall be void. The percentage of ownership interest herein assigned and allocated to each Apartment shall not be separated from the Apartment to which it is assigned and may not be sold, conveyed encumbered or otherwise disposed of separately from the Apartment to which it is assigned, and each percentage interest in the common elements shall follow the respective Apartment to which it is allocated and assigned, even though the description in the instrument of conveyance or encumbrance shall refer only to the Apartment space.

12. COUNCIL OF CO-OWNERS.

(a) Organization and General Purposes. - The Council of Co-Owners (sometimes herein referred to as the "Council") shall be organized as a membership non-profit corporation under the laws of the State of Texas, the name of which corporation shall be BY THE SEA COUNCIL OF CO-OWNERS, INC., and it shall be and constitute the governing and administrative Body for all Unit Owners for the protection, preservation, upkeep, maintenance, repair, restoration, operation and replacement of the common elements, and the government, operation and administration of the condominium regime hereby established in accordance with its By-laws, and for such purposes the Council of Co-owners is hereby irrevocably appointed as attorney-in-fact for all Unit Owners. The Developer shall at its own cost and expense, as soon as practical after this Declaration has been filed for record in the Office of the County Clerk of Galveston County, Texas, prepare and forward to the Secretary of State of the State of Texas for filing in his Office, the Articles of Incorporation of the aforesaid non-profit corporation, and in this connection the Developer shall select and name the persons who are to act as the incorporators and the persons who are to serve as the initial directors of this non-profit corporation, and shall also designate the address of the initial registered office of this non-profit corporation and select and name its initial registered agent at such address; and until said Articles of Incorporation are filed in the Office of the Secretary of State of the State of Texas, or in the event of the dissolution of this non-profit corporation at any time, the Council of Co-Owners shall exist and function as an unincorporated organization or association.

(b) Membership, Voting Rights. - Each owner of an Apartment Unit, including Developer, shall by virtue of such ownership automatically be a member of the Council and shall remain a member thereof until such time as his total ownership ceases for any reason, at which time his membership in the Council shall also automatically cease. Membership in the Council shall be appurtenant to and shall automatically follow the ownership of each Apartment Unit, and upon any transfer of ownership howsoever caused or brought about, the new

Owner shall automatically be and become a member of the Council.

The aggregate number of votes for all members of the Council shall be one hundred (100) which shall be proportionately divided among the Unit Owners in accordance with and in direct proportion to their respective percentage of ownership interest in the common elements. If any person, including Developer, shall own more than one (1) Apartment Unit, then his representation for voting purposes shall be determined by his aggregate ownership interest in the common elements so that he may exercise the voting rights allocated to each Apartment Unit owned by him. In the event any Apartment is jointly owned by two (2) or more persons, then the person or persons owning more than fifty (50) per cent interest in such Unit shall exercise the full voting rights of such Apartment Unit. The Developer through any of its officers, directors or representatives may exercise all the votes allowed to the unsold Apartment Units while owned by Developer, its successors or assigns.

(c) Board of Directors. - The affairs of the Council shall be managed by a Board of Directors which shall be composed as provided for in the Articles of Incorporation and By-laws. All activities, rights, powers, duties, obligations, functions, and responsibilities of the Council of Co-Owners shall be performed, exercised, discharged and accomplished through its Board of Directors, except in any particular case where the laws of the State of Texas or the By-laws of the Council require that action be taken by vote of the members. The Board of Directors may employ the services of a manager or managing agent as provided for in the By-laws.

(d) By-laws. - The government and administration of this condominium regime by the Council shall be in accordance with the By-laws which have been initially adopted by Developer as sole owner of the project property, appended as EXHIBIT "A" attached hereto. These By-laws may be amended from time to time by the Council of Co-owners in accordance with the provisions thereof.

13. RIGHTS, FUNCTIONS AND OBLIGATIONS OF COUNCIL OF CO-OWNERS. In addition to all other rights, functions and obligations of the Council under the provisions of the Act, this Declaration or the By-laws, the Council shall have the following rights, functions and obligations:

(a) Right to Non-exclusive Easement. - The Council shall have a non-exclusive right and easement to make such use of the common elements as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under the Act, this Declaration or the By-laws, and a non-exclusive right of entry, after reasonable notice to the Owners during reasonable hours, into the individual Apartments as may be necessary for the operation of this condominium project or for making emergency repairs therein necessary to prevent damage to any other Unit or to the common elements or any part thereof, except that no notice shall be required in cases of emergency.

(b) Common Elements Maintenance. - The Council shall be obligated to provide as a common expense of all Unit Owners for the care, operation, management, maintenance, repair, replacement and restoration of the common elements. Without limiting the generality of the foregoing, said obligations shall include keeping the common elements in good, clean, attractive and sanitary condition, order and repair, keeping the common elements safe, attractive and maintained in a manner desirable as a residential community, and making necessary or desirable alterations, additions, betterments or improvements to or on the common elements.

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(c) Other Council Functions. - The Council may undertake or contract for any lawful activity, function or service for the common benefit or to further the common interests of all Unit Owners. Such activities, functions, or services may include, but shall not be limited to, the providing of police, patrol or similar security services, janitorial services, grounds maintenance or landscaping services, the providing of utilities or services which may be required for the enjoyment or betterment of the common elements, the providing of water, garbage and trash collection and sewage disposal services and other services for each of the individual Apartments, the providing of legal and accounting services necessary or desirable in connection with the operation of the condominium regime or the enforcement of the provisions of the Act, this Declaration or the By-laws, and any other services for the benefit and enjoyment of all the Unit Owners.

(d) Labor and Services. - The Council may as a common expense of the Owners, obtain and pay for the services of any person or entity as a manager or managing agent to manage, supervise and look after the day to day operations of this condominium project and regime, as well as the services of such other personnel as the Council shall determine to be necessary or desirable for the proper operation of this condominium project, whether such personnel are furnished or employed directly by the Council or by any person or entity with whom it contracts.

(e) Acquisition of Personal Property. - The Council may acquire as a common expense and hold for the common use or benefit of all Unit Owners, any tangible or intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Council, each Owner and each Owner's guests or tenants may use such property. All such property so acquired and owned by the Council shall be deemed to be part of the common elements for all purposes.

(f) Rules and Regulations. - The Council may make and enforce reasonable and uniformly applied rules and regulations governing the use of the individual Apartments and the common elements. Such rules and regulations may, without limitation: (i) regulate the use of the common elements to assure the Equitable and proper use and enjoyment thereof by all persons entitled thereto, (ii) prohibit any conduct or activity in any Apartment or on any part of the common elements which constitutes a nuisance in law or in fact or which would not be consistent or in keeping with the peaceful, quiet and reasonable use and enjoyment of any Apartment or the common elements, (iii) prohibit, restrict or regulate the use of any portion of the common elements by any guests of any Owner, and (iv) regulate and control vehicular traffic and parking on the project land.

The Council shall furnish each Owner with a written copy of each and every rule and regulation or shall post the same in a conspicuous place on the common elements, however, failure to furnish or post any copy shall not be deemed to invalidate any rule or regulation to any extent.

The Council shall have the right to enforce any of the rules and regulations of the Council and the obligations of any Owner under this Declaration or the By-laws.

14. INDIVIDUAL MAINTENANCE AND REPAIRS. - Each Unit Owner shall furnish and be responsible for, at his own cost and expense, except to the extent that any loss or damage is covered under any insurance policy, all of the maintenance, repairs and replacements within his own Apartment, except as to the common elements located therein. Specifically, but without limitation, each Unit Owner at his own expense (except as above mentioned) shall maintain, repair or replace the interior surfaces of his Apartment and all interior partitions or room walls, all exterior and interior doors, his own cooking range, oven, refrigerator, sink, garbage disposal, and all other individual kitchen or bath room appliances, his individual air conditioning unit or system for space cooling and heating, his individual lighting fixtures and equipment, all interior bath room fixtures, appliances and plumbing, and all elements and contents appurtenant to his Apartment which are individually and privately owned and do not constitute any part of the common elements. In the event and to the extent that any equipment, facilities, appliances or fixtures within one Apartment shall be connected to similar equipment facilities and fixtures serving another Apartment or the common elements, then reciprocal easements for the maintenance for same shall exist. Each Unit Owner shall also keep clean at his own expense the interior and exterior surface of all plate glass, window panes and other glass surfaces appurtenant to his Apartment.

15. DECORATING. - Each Unit Owner shall furnish and be responsible for, at his own cost and expense, all of the decorating within his own Apartment, including painting or wall papering, washing, cleaning, panelling, floor covering, draperies, wall covering, window shades, curtains, and all other furnishings and interior decorations.

16. COMMON EXPENSES, ASSESSMENTS. -

(a) Budget. - The Board of Directors of the Council, (sometimes herein referred to as "the Board") shall prepare or cause to be prepared and adopt an estimated Annual Budget for the common expenses of this condominium project for each fiscal year of the Council. Such Budget shall take into account the estimated common expenses and cash requirements for the year, including, but not limited to, the costs of salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, management fees, and all such other costs and expenses which the Board shall deem necessary or proper for the fulfillment and performance of the functions and obligations of the Council. The annual Budget may also take into account and provide for a reserve for contingencies for the year and a reserve for replacements of the common elements in reasonable amounts. Any surplus or deficit in regards to previous Budgets shall also be considered. Each annual Budget shall take effect on the first day of the fiscal year for which it is prepared. If it shall appear to the Board at any time that the Budget adopted for any fiscal year shall be insufficient, the Board may revise such Budget to cover the estimated deficiency, to become effective on the first day of the calendar month next following the revision.

The Board shall make reasonable efforts to furnish copies of the Annual Budget and any revision thereof to each Unit Owner not later than fifteen (15) days prior to its effective date. The Annual Budget as adopted by the Board and any revision thereof shall serve

as the basis for the regular monthly assessments against the Unit Owners unless any such Budget for any fiscal year is changed or modified by the members of the Council at any special meeting of the members called for that purpose, as provided in paragraph (c) below, in which case such Budget as so changed or modified by the members of the Council shall be the basis for the regular monthly assessments thereafter becoming payable during such fiscal year. In the event the Board shall fail to adopt a Budget and until a new Budget is adopted for any fiscal year, the Budget last adopted and any revision thereof shall continue to serve as the basis for the regular monthly assessments, unless changed or modified by the members of the Council as provided for in said paragraph (c) below.

(b) Regular Assessments. - On or before the first day of the first month and of each succeeding month of the fiscal year covered by the annual Budget, each Unit Owner shall pay to the Council or to such agent or person as the Board may designate in Galveston County, Texas, and without demand, as his regular monthly assessment, one-twelfth (1/12th) of his proportionate share of the estimated annual common expenses as shown by the Annual Budget and any revision thereof. Such proportionate share for each Unit Owner shall be in proportion to his ownership interest in the common elements as fixed in this Declaration. The Council or its agent authorized to collect the monthly assessments shall receive the same as Trustee for the use and benefit of each Unit Owner, and shall use, expend and disburse the same to pay the common expenses and for all other purposes authorized by the Act, this Declaration or the By-Laws of the Council. The regular monthly assessments shall be due and payable monthly in advance whether or not a statement for same is sent or received, and failure to send or receive a statement of assessment shall not excuse the payment of any regular monthly assessment as it becomes due and payable on the first day of each calendar month. No Owner of any Apartment Unit or interest therein shall be exempt from paying his prorata part and share of the common expenses by a waiver of the use or enjoyment of the common elements or any part thereof or by abandonment of his Apartment Unit or his interest therein. The assessments for common expenses shall be the debt and obligation of the Owner at the time the monthly assessment becomes due and payable. No Unit Owner shall be liable for the payment of any monthly or other assessment which becomes due and payable after his ownership ceases. Regular assessments for common expenses shall be on a monthly basis and shall become due and payable monthly.

(c) Modification by Members. - The members of the Council may modify or change any Budget or revision thereof adopted by the Board for any fiscal year, provided that any such modification or change shall have the assent of the members of the Council who in the aggregate own at least sixty per cent (60%) of the common elements. A meeting of the members of the Council shall be called for this purpose, written notice of which shall be sent to all members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

(d) Special Assessments. In addition to the regular monthly assessments authorized by this Declaration or the By-Laws, the Board may levy in any fiscal year a special assessment or assessments, applicable to that fiscal year only, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction or unexpected major repair or replacement of a described capital improvement constituting or to constitute part of the common elements, including the necessary fixtures and personal property related thereto, or for such other purpose or purposes as the Board of Directors may consider appropriate, all of which costs shall be a common expense of the Unit Owners in proportion to their ownership interest in the common elements as set out in this Declaration, provided that any such assessment shall receive the affirmative vote of at least 66-2/3% of the total votes cast, in person or by proxy, at a meeting of the members of the Council as hereinafter provided for. At any such meeting the members of the Council may, by the required affirmative vote aforesaid, amend or modify the amount or purpose of, or may otherwise amend or modify, any such special assessment proposed to be levied by the Board. (Continued on next page)

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A meeting of the members of the Council shall be called for this purpose, written notice of which shall be sent to all members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

(e) Reserve for Replacements. - The Council may establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of the amount included in the monthly assessments for this purpose. Such funds shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America, or may in the discretion of the Board be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only for the purposes of effecting the replacement of the common elements and equipment of the project and for operating contingencies of a non-recurring nature. The amounts required to be allocated to the reserve for replacements may be reduced by appropriate resolution of the Board of Directors, upon the accumulation in such reserve for replacements of a sum equal to twenty per cent. (20%) of the full replacement value of the condominium project as such full replacement value is annually determined by the Board of Directors for casualty insurance purposes. The proportionate interest of any Unit Owner in any reserve for replacements shall be considered as an appurtenance of his condominium unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Apartment Unit to which it appertains and shall be deemed to be transferred with each such Apartment Unit.

(f) Assessments against Developer. - Notwithstanding any provision of this Declaration to the contrary, it is agreed and all Owners agree that the Developer shall not be assessed in respect to any Apartments owned by it which has not been completed and is not ready for use or occupancy. The determination made by Developer in good faith as to whether an Apartment has been completed and is ready for occupancy shall be binding and conclusive on all other Owners.

(g) Non-payment of Assessment. - Any assessment levied pursuant to this Declaration or the By-laws of the Council or any installment or part thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors bear interest at a rate not to exceed ten per cent (10%) per annum and also subject the Owner obligated to pay same to the payment of such penalty or late charge as the Board may fix, and the Council may bring an action at law against the Owner personally obligated to pay the same for collection of the delinquent amount and/or foreclosure of the lien against the Apartment Unit as hereinafter provided for, and in case any such action is brought a reasonable amount for attorneys fees, not less than 10% of the principal and interest then owing, shall also be recoverable.

(h) Assessment Certificates. - The Board of Directors or its representative shall furnish to any prospective purchaser or mortgagee of any Apartment Unit, at the request of the Owner, a written certificate as to the amount of the regular and/or special assessments which have become due and are unpaid up to a given date in respect to the Apartment Unit to be sold or mortgaged; and in the case

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of a sale the purchaser shall not be liable nor shall the Apartment Unit purchased be liable or subject to any lien for any unpaid assessment which has become due and is not shown on such certificate for the period of time covered thereby, however, the Selling Owner shall be liable for same and in case of his failure or refusal to pay then the same shall be collectible from all other Unit Owners on a prorata basis in proportion to their share of the common expenses, and they shall have recourse against the Selling Owner; but in the event of a mortgage the unpaid assessments not shown on said certificate for the period of time covered thereby shall remain the obligation of the Unit Owner mortgaging his Apartment Unit, but the assessment lien securing same as provided for in this Declaration shall be and remain inferior and secondary to the mortgage and liens held by the mortgagee to whom or for whose information said certificate was furnished. A charge not to exceed Twenty-five and no/100 Dollars (\$25.00) may be levied in advance by the Council for each certificate so delivered.

17. LIENS TO SECURE ASSESSMENTS. - The assessments for common expenses, both regular and special, shall be a personal obligation of the Owner of each Apartment as well as an indebtedness against the Apartment Unit itself; and in the event any default is made in the payment of any such assessment or any part thereof as the same shall become due and payable, then a valid and subsisting lien is hereby created and shall exist upon and against the Apartment Unit of the Owner in default, which lien shall exist for the benefit of all other Co-owners and the Council. No lien shall exist against any Apartment Unit for assessments which have not yet become due and payable. The liens provided for herein shall be prior to all other liens, except that such liens shall be subordinate, secondary and inferior to (1) all liens for taxes or special assessments levied by the City, County and State Governments or any political subdivision or special district thereof, and (2) all liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date the assessment became due and payable, and (3) all liens securing any loan made to any purchaser for any part of the purchase price of any Apartment Unit when such Apartment Unit is purchased from the Developer.

The liens to secure common expenses as herein provided for may be foreclosed without prejudice and subject to the aforesaid prior and superior liens, by suit by the Board of Directors or any authorized officer or member of the Council, acting in behalf of all Unit Owners in like manner as mortgages on real property. No foreclosure suit or sale thereunder shall affect or impair any of the prior liens above mentioned. The Board or any person authorized by it, acting in behalf of all unit owners, shall have power to bid in the Apartment Unit foreclosed on at the foreclosure sale, the amount of which bid shall not exceed the total amount of all assessments in default, interest and other charges thereon and costs of foreclosure. In the event the Board shall purchase any Apartment Unit at any such foreclosure sale, it shall have authority to hold, lease, mortgage or convey the same as Trustee of all other Co-owners. All funds realized from the foreclosure sale shall be applied first to the cost and expense of filing and prosecuting suit, including all costs of Court and a reasonable amount for attorneys fees, and then towards payment of the indebtedness sued on, together with interest and other charges thereon, and the remainder, if any, shall be paid over to the defendant or defendants in such foreclosure suit 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 assessment sued on, together with interest and other charges thereon, then the Purchaser acquiring title to such Apartment Unit at such foreclosure sale, whoever he may be, other than the Unit Owner sued, shall not be liable for the deficiency, except for a prorata part thereof as hereinafter stated, and any such deficiency shall be deemed a common expense, collectible from all Unit Owners, including the Purchaser at the foreclosure sale, on a prorata basis as in the case of the other common expenses. The defaulting Unit Owner sued shall remain personally liable to the Unit Owners paying the deficiency.

18. UTILITIES FOR COMMON ELEMENTS. - All utilities and services furnished to the common elements, such as, but not limited to, water, electricity for light and power, telephone, sewer service, and garbage and trash pick up shall be a common expense of all Unit Owners.

19. UTILITIES FOR APARTMENTS. - The water service to each individual Apartment shall be a common expense of all Unit Owners as there are no separate water meters for the Apartments. The electricity furnished to each Apartment for lighting or power shall be separately metered and shall be the separate expense of each Unit Owner who shall make his own contracts and deposits therefor. Each Unit Owner shall also be separately responsible for his telephone service and shall make his own contracts and deposits therefor.

20. PROPERTY INSURANCE. - The Board of Directors shall have the authority to obtain and continue in effect blanket property insurance to insure the buildings, structures and Apartment Units in or on the project property and the owners thereof, against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and against risks of whatever character, without prejudice to the right of each unit owner to insure his Apartment unit on his own account for his own benefit. Such insurance obtained by the Board may be written in the name of and the proceeds thereof may be payable to the Board or any person designated by it or by the Council, as Trustee for each unit owner in their respective percentage of ownership interest in the common elements. Each unit owner and his mortgagee, if any, shall be a beneficiary of such insurance, in the ratio of his percentage of ownership interest in the common elements as aforesaid, even though not expressly named in the policy as an insured or beneficiary. All costs, charges and premiums for such insurance shall be a common expense and each unit owner shall pay his prorata part and share of same as in the case of other common expenses of this condominium regime. In case of any injury, damage to or destruction of any part of the project property covered by such insurance, the insurance indemnity and proceeds shall be applied to reconstruct or repair the building or property so damaged or destroyed, except as may be otherwise provided for by the Act, as now existing or hereafter amended. The Board shall have complete power and authority to compromise, settle and adjust any and all claims arising under any such policy or policies of insurance.

21. PUBLIC LIABILITY AND OTHER INSURANCE. - The Board of Directors or its representative shall also have the authority to obtain comprehensive public liability insurance, in such limits as it shall deem desirable, and workmen's compensation insurance and any other liability insurance as it may deem desirable, insuring each Unit Owner and the Council, Board of Directors and managing agent

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from and against liability in connection with the common elements, to the extent such insurance may be obtained, and all costs, charges and premises for all such insurance shall be deemed as a common expense of this condominium regime, and each Unit Owner shall pay his prorata share of same as in the case of other common expenses as provided for in this Declaration.

22. INDIVIDUAL INSURANCE. - Each unit owner shall be responsible at his own personal cost and expense, for his own personal insurance on the contents of his own Apartment and his additions and improvements thereto, and his decorations and furnishings and personal property thereto and his personal property stored elsewhere on the project property, as well as his personal liability insurance to the extent not covered by the liability insurance for all of the unit owners which may be obtained as a common expense.

23. EASEMENTS FOR ENCROACHMENTS. - If any portion of the common elements shall be situated or encroach upon any apartment, or if any apartment or fixture thereof shall actually encroach upon any portion of the common elements, as the Apartments and common elements actually and physically exist, or as shown by the survey plats attached hereto, then there shall be deemed to be mutual valid easements for such encroachments and for the maintenance of same so long as such encroachments exist. In the event the Apartment Building or other structure is totally or partially damaged or destroyed and then repaired, restored or rebuilt, the Unit Owners agree that all encroachments of or upon the common elements and facilities due to repair or reconstruction shall be permitted and that a valid easement for such encroachments and maintenance thereof shall exist.

24. ALTERATIONS, ADDITIONS AND IMPROVEMENTS. - No alterations of any portion of the common elements or additions or improvements thereon shall be made by any Unit Owner without the prior written approval of the Board of Directors. No Unit Owner shall make any structural modification or substantial alteration of his apartment or the installations located thereon, except in a manner authorized by the Board of Council in writing.

25. USE AND ACCESS OF DEVELOPER. - Until Developer has completed all construction work and has sold and conveyed all Apartments, the Developer and its workmen, agents, servants or employees shall have free and unobstructed use of and access to all of the project property as may be required for the completion of construction and to facilitate sale of the unsold Apartments.

26. TAXES. - Taxes, assessments and other charges of the City, County, State or other political entities or any special district thereof, shall be separately assessed, and each unit owner shall pay as his own personal expense all tax assessments against his Apartment Unit. Taxes are not part of the common expenses. Taxes on personal property owned by the Council as part of the common elements shall be paid by the Council as a common expense.

27. INSPECTION - WAIVER. - Each purchaser of an Apartment Unit has full opportunity and shall be under a duty to inspect and examine the Apartment to be purchased by him prior to consummating his purchase thereof, and agrees that the Apartment is purchased as actually and physically existing. It is expressly agreed, and each and every purchaser of an Apartment Unit agrees for himself, his heirs

executors, administrators and assigns, that the square footage, size and dimensions of each Apartment and each area constituting any part of the common elements as set out and shown in this Declaration or the survey plats attached hereto, are approximate only and are shown for descriptive purposes only, and that the Developer does not warrant, guarantee or represent that any apartment or any area constituting any part of the common elements actually contains the area, square footage or dimensions shown by the plat thereof; and each purchaser of an Apartment Unit, for himself, his heirs, executors, administrators and assigns expressly waives any claim or demand of any kind or nature which he could possibly have against Developer or any person whomsoever on account of any difference or shortage or discrepancy between the size, square footage or dimensions actually and physically existing and the size, square footage and dimensions shown on the survey plats attached hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever, or in connection with any matter, the existing physical boundaries of any Apartment or of any Apartment reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movement of the building, and regardless of variances between boundaries as shown on the plat and the actual boundaries of the building.

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28. RESTRICTIONS. - The following restrictions, covenants and conditions are placed upon each Apartment in this condominium project as a general plan or scheme of restrictions for the benefit of each Apartment Unit, to-wit:

(1) Each Apartment shall be used and occupied for residential purposes only and no Apartment shall be used for any business, commercial, trade or professional purposes, except as permitted in Paragraph (7) below.

(2) No Apartment shall be altered, remodeled, subdivided or converted into more than one dwelling unit.

(3) No trash, garbage or debris shall be placed on any part of the common elements, except in the receptacles or area designated for disposal of same.

(4) No signs or posters of any kind shall be placed on any part of the common elements, except as may be authorized by the Board or Council or as provided for in Paragraph (7) below.

(5) No unlawful, immoral, noxious or offensive activities shall be carried on or permitted in any Apartment or elsewhere on the project property, nor shall anything be done therein which shall constitute a nuisance or cause unreasonable noise or disturbance to others.

(6) No signs, poster or advertisement, and no clothes line or other apparatus for the hanging of clothing or laundry, shall be placed on or attached to any balcony, nor shall any other matter or thing which would be detrimental to the appearance of the Apartment Building be placed on or attached to any balcony.

(7) Notwithstanding anything in this Declaration to the contrary, it is agreed (a) that the Developer or its agent may use any Apartment (s) which it owns as a "model Apartment" for display

to the public and/or as a sales office for the sale of Apartments in this condominium project or in any other condominium project(s) then under construction or planned by Developer, and Developer may place and maintain such signs on any part of the common elements as it may desire to advertise any such project(s) or the sale of any such Apartment(s), and (b) that any office space which is part of the common elements and/or any Apartment in this condominium project may be used at any time or from time to time without limitation as the office or residence of a management agent or resident manager who may serve and act as such agent or manager at the same time for this condominium project and for any other condominium project(s) hereafter developed or established by Developer, its successors or assigns, and (c) that the Developer (but no other Unit Owner) shall have the unconditional right to rent, lease or sell and convey any Apartment or Apartments for use as a restaurant and related purposes, in which case the tenant or purchaser and their successors or assigns, shall have the right to carry on and conduct a restaurant and related business in such Apartment or Apartments, provided, however, that the rental or lease agreement between Developer and the tenant or the deed of conveyance from Developer to the purchaser shall contain an express provision which shall expressly authorize and permit such use as a restaurant and related purposes.

29. LEASE OR RENTAL. - Each Owner shall have the right to lease or rent his Apartment at any time and from time to time, with or without the services of a rental agent or broker. In the event any Owner desires the services of a rental agent or broker he shall be free to engage the services of an agent or broker of his own choice. Any lease or rental of any Apartment shall be subject to the provisions of this Declaration, the By-laws and the Rules and Regulations pertaining to this condominium project. No lease or rental of any Apartment shall release the Owner from any of his obligations or liabilities as an Owner of an Apartment in this condominium project. The Developer, its successors and assigns in like manner, and at any time and from time to time, shall have the right to lease or rent any of its unsold Apartments.

30. RECONSTRUCTION, APPLICATION OF INSURANCE PROCEEDS. -

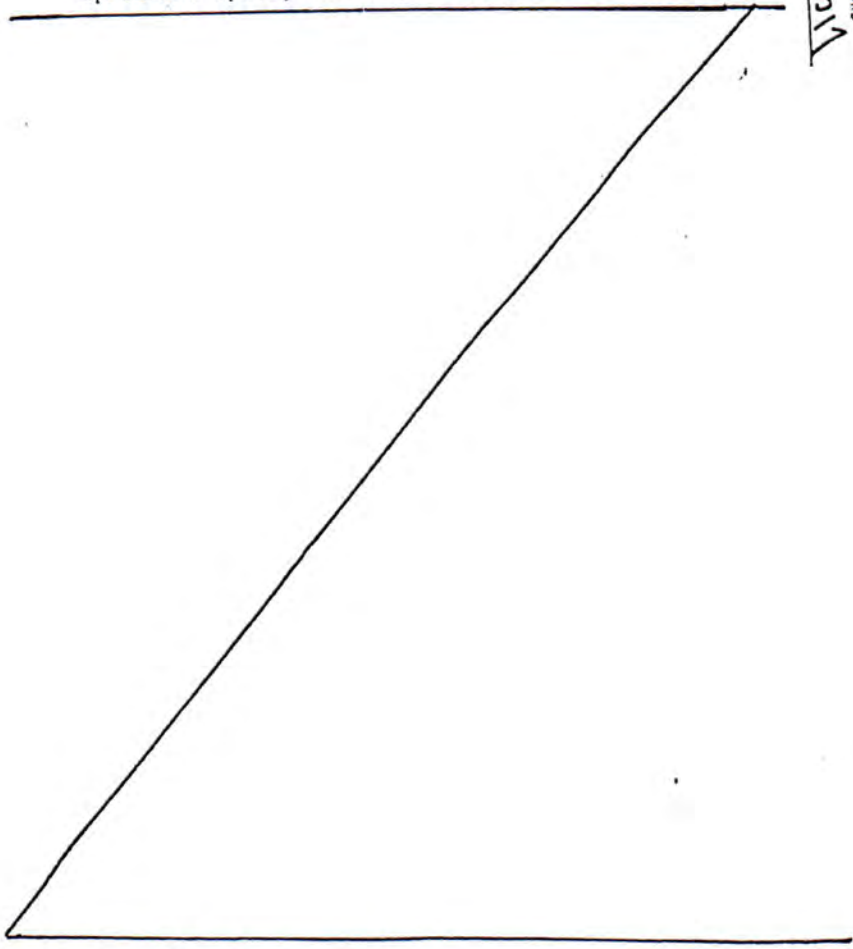
(A) in case of any injury or damage to or destruction of any part of the project property covered by insurance, the insurance indemnity and proceeds shall be applied except as provided in paragraph (B) below to reconstruct or repair the building or property so damaged or destroyed, and if such insurance indemnity or proceeds collected shall exceed the total cost of such reconstruction or repair, then unless the contract of insurance or the By-laws, as existing or as hereafter amended, shall otherwise specify, the Board of Directors or other agent or person named as Trustee in the policy of insurance and collecting said proceeds, shall pay over such excess as follows:

- (a) If the damage, injury or destruction affected only the common elements and no part of any individual Apartment suffered any injury, damage or destruction, as determined by the Board of Directors, then such excess shall be paid to the Unit Owners and their respective mortgagees, if any, according to their respective interest in the insurance as established in this Declaration.

(b) In the event the damage, injury or destruction does not affect or extend to any of the common elements and affects only individual Apartments, as determined by the Board, then such excess shall be paid over to the Unit Owners suffering such damage or destruction and their respective mortgagees, if any, as their respective interests may appear.

(c) In the event the damage, injury or destruction affects both common elements and any individual apartment space, then a percentage of such excess

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in the proportion that the total cost of repairing or restoring the common elements as determined by the Board, bears to the total cost of repairing and reconstructing all of the property injured, damaged or described, shall be paid over to all of the Unit Owners and their respective mortgagees in the ratio of their respective interests in the insurance as established in this Declaration, and the remainder of such excess shall be paid over to the Unit Owner or Owners suffering such damage, injury or destruction, and their mortgagees, as their respective interests may appear.

(B) Reconstruction or repair shall not be compulsory where it comprises the whole or more than two-thirds (2/3rds) of the building as determined by the Council of Co-Owners through its Board of Directors. In such case, and unless unanimously agreed upon by all of the Unit Owners, the insurance indemnity collected shall be delivered and paid prorata to the Unit Owners and their respective mortgagees, if any, as their respective interests may appear, entitled to it in accordance with their percentage interest as set forth in this Declaration.

(C) Where the insurance indemnity is insufficient to cover the cost of reconstruction and reconstruction is required as provided for herein and in the Act, the building or reconstruction costs in excess of the insurance proceeds shall be paid by all Unit Owners directly affected by the damage in proportion to their respective percentage interests in the common elements as set forth in this Declaration, or as may be provided for in the By-laws and if one or more of the Unit Owners comprising the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of the Unit Owners benefited thereby upon proper resolution setting forth the circumstances of the case and the cost of the work as provided for in the Act. The provisions of this paragraph (C) may be changed by unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurs, as provided for in the Act.

31. SEVERABILITY. - If any provision of this Declaration or the By-laws attached hereto or any section, sentence, paragraph, clause, phrase or word, or the application thereof in any circumstance, shall be held invalid or unenforceable, the validity or enforceability of the remainder of the Declaration or By-laws and of the application of any such provision, section, sentence, paragraph, clause, phrase or word in any other circumstances shall not be affected thereby.

32. REMEDIES. In the event any default is made by any Unit Owner under the Act, this Declaration or the By-laws or rules and regulations applicable to this condominium project, the Board of Directors or the Council, or their representative, shall have all of the rights and remedies which may be provided by the Act, this Declaration or the By-laws, or which may be available at law or in equity, and may prosecute any action or other proceedings in law or in equity against any defaulting Unit Owner and/or others for enforcement of any lien or to enforce compliance with the matter in respect to which default has been made, by injunctive relief or otherwise, or for the collection of any sums or debts or damages in default or arising from any default. All expenses incurred in connection with any such action or proceedings shall be part of the common expenses of this condominium

regime and collectible from each Unit Owner as in the case of other common expenses. The Board of Directors or its authorized representative shall be further empowered to correct and cure any matter in default and to do whatever may be necessary for such purpose, and all expenses incurred in connection therewith shall be charged and assessed against such defaulting Unit Owner and shall be secured in the same manner as assessments for common expenses.

33. RIGHTS AND OBLIGATIONS. - The rights and obligations of the respective Unit Owners under this Declaration and the By-laws, including amendments thereto, shall be deemed to be covenants running with the land, so long as the project property remains subject to the provisions of the Act, and shall enure to the benefit of and be binding on each and all of the respective Unit Owners and their respective heirs, executors, administrators, successors, legal representatives, assigns, purchasers, lessees, grantees and mortgagees and all others having or claiming an interest in any Apartment Unit, subject to the provisions of the Act, this Declaration and the By-laws. Upon acceptance or recordation of any deed or other instrument conveying title to an Apartment Unit, or upon otherwise acquiring title to any Apartment Unit, the Owner thereof shall be deemed to have accepted and agreed to and shall be bound by and subject to each and all of the provisions of the Act and of this Declaration and By-laws, as now existing or hereafter amended.

34. INTERPRETATION. - If any declaration or provision, word, sentence or clause contained in this Declaration or in the By-laws shall be susceptible to two (2) or more interpretations, then the interpretation which shall most nearly be in accordance with the Act and the general purposes and intent of this Declaration and the By-laws shall govern.

35. OMISSIONS. - In the event of the omission from this Declaration of any provision or stipulation which shall be vital, necessary or expedient for the accomplishment of the purposes and intent of this Declaration, then in such event this Declaration shall not thereby fail, either in whole or in part, but any and all such omitted matter shall be supplied by inference and/or by reference to the provisions of the Act pursuant to which this Declaration is filed for record, and the provisions of the Act are hereby made a part hereof by reference thereto.

36. PERPETUITIES. - If any provision of this Declaration or the By-laws would otherwise violate the rule against perpetuities or any other rule, statute or law imposing time limits, then notwithstanding anything herein to the contrary, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living children and descendants of BING CROSBY, the famous crooner, movie star and friend of Bob Hope, plus twenty-one (21) years thereafter.

37. ADJOINING APARTMENTS. - If any Owner shall own two Apartments which adjoin each other, he may, at his own cost and expense, and provided that he does not cause any damage to any of the common elements, cut or install openings or doors in any of the walls separating the Apartments, in order to use both Apartments as a single dwelling place for his own convenience; however, this shall not in any way or to any extent affect the legal status of each Apartment as a separate and distinct Apartment and freehold estate under this

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Declaration, and each Apartment shall be and remain a separate Apartment for all legal purpose under the Act, this Declaration or the By-laws. It being understood that the only purpose for such openings or doors shall be for easier, more convenient and ready access from one Apartment to the other, and no such opening or doors shall have any other affect, result or purpose.

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38. UTILITY EASEMENTS. - A valid easement shall exist in each Apartment and in each portion of the common elements for the benefit of each Unit Owner, the municipality and all other governmental bodies, and each utility company for the installation, maintenance, repair, removal or replacement of any and all utility lines, wires, conduits, facilities and equipment, serving the Apartment Building as a whole or any individual Apartment or the common elements or any part thereof, and the ownership of the Apartments and interest in the common elements shall be subject to such easements. Prior to the filing of this Declaration for record, the Developer may grant specific easements as may be required by any governmental body and utility company, in which event the project land and property and the ownership thereof shall be subject to all such specific easements so granted, with the same force and effect as if fully set out in this Declaration. After this Declaration is filed for record, then the Board of Directors shall have the authority to authorize and empower any officer of the Council of Co-owners, as the act and deed of the Council, and as attorney-in-fact for all Unit Owners, to grant such specific easements as may be required and as the Board shall deem proper, and in such event the ownership of the Apartments and the interest in the common elements shall be subject to all such specific easements so granted.

39. RESERVATION OF NAME. - In the event the Developer, its successors or assigns, shall at any time or from time to time hereafter decide to develop or establish any other condominium project or projects on Galveston Island, whether or not the vicinity of this condominium project, then the Developer, for itself, its successors and assigns, reserves and shall have the right to use the words "BY THE SEA" in the name of such condominium project or projects and in the corporate names of their respective Council of Co-owners, provided that a number in sequence shall be added to such words in order to distinguish one condominium project from the others. The Board of Directors of this condominium project shall give such written consent as the Secretary of State of the State of Texas may require on account of the similarity of corporate names.

40. AMENDMENTS. - The provisions of this Declaration may be changed, altered or amended only with the written consent of Unit Owners, which must include Developer if it is then the owner of any Apartment which is not rented or leased, who in the aggregate own at least 66-2/3% of the common elements, and each such amendment shall be filed for record in the same manner as this Declaration. No amendment shall affect or impair the rights of any mortgagee, unless such mortgagee in writing consents to same.

41. WAIVER OF REGIME. - As provided for in the Act, all of the Co-owners or the sole Owner of the project property constituted into a condominium regime by this Declaration, may waive this regime and request the County Clerk to regroup or merge the records

of the filial estates with the principal property, provided, that the filial estates are unencumbered, or, if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

IN WITNESS WHEREOF, THE DEVELOPER, NIS LAND CORPORATION, a CORPORATION HAS CAUSED THIS DECLARATION TO BE EXECUTED AND ITS CORPORATE SEAL AFFIXED HERETO BY ITS DULY AUTHORIZED PRESIDENT AND SECRETARY, this the 15th day of SEPTEMBER, 1975.



ATTEST:

BY: Mr. N. S. Shapiro
Secretary

NIS LAND CORPORATION

BY: [Signature]
President

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THE STATE OF TEXAS I
 I
COUNTY OF HARRIS I

Before me, the undersigned authority on this day personally appeared N. S. SHAPIRO, as President of NIS LAND CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said NIS LAND CORPORATION, a corporation, and that he executed the same as the act of said corporation for the purposes and consideration therein expressed, and in the capacity as therein state.

GIVEN under my hand and seal of office this the 15th day of SEPTEMBER, 1975.

Theresa L. Walker
Notary Public in and for
Harris County, T E X A S

TERESA L. WALKER
Notary Public, in and for Harris County, Texas
My Commission Expires June 1, 1977

THE STATE OF FLORIDA |
COUNTY OF DADE |

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I hereby certify that on this day personally appeared before me, the undersigned, an Officer duly authorized to administer oaths and to take acknowledgments, Sumner H. Shafmaster ~~and~~, as nominee of the Trustees of FIRST MORTGAGE INVESTORS, a voluntary association, to me well known to be the persons described in and who executed the foregoing instrument and they duly acknowledged before me that they executed the same for the purposes and consideration therein expressed, and in the capacities therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Miami Beach, in said County and State, this the 16th day of September, 1975.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES NOV. 14, 1977
BONDED THRU GENERAL INSURANCE UNDERWRITERS

Marylin Taylor
NOTARY PUBLIC, State of Florida At Large



CONSENT OF MORTGAGEE

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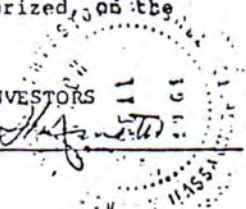
FIRST MORTGAGE INVESTORS, a Massachusetts Business Trust, herein called "Mortgagee", whose post office address is 801 Forty-First Street, Miami Beach, Florida, 33140, being the owner and holder of a Deed of Trust mortgage, dated the 16th day of April, 1974, and recorded in Volume 2472, Page 835, et seq., in the Office of the County Clerk of Galveston County, Texas, upon, against and covering the "project property" defined and described in the attached and foregoing CONDOMINIUM DECLARATION FOR BY THE SEA and the survey plats attached as Exhibits thereto, as such owner and holder of said Deed of Trust mortgage and the indebtedness therein described and thereby secured and for valuable consideration received, has consented to and does hereby consent to said attached and foregoing CONDOMINIUM DECLARATION FOR BY THE SEA and the By-laws and survey plats attached as Exhibits thereto and to the filing for record and recording of said CONDOMINIUM DECLARATION FOR BY THE SEA and all Exhibits attached thereto in the Office of the County Clerk and in the Condominium Records of Galveston County, Texas, for the purpose of submitting the said project property above mentioned to the condominium regime established by the Condominium Act of the State of Texas, as now existing and as may be hereafter amended, and in order to create, and establish a condominium project and regime and a plan of condominium ownership for and in respect to said project property under the laws of the State of Texas and in accordance with the provisions of said CONDOMINIUM DECLARATION FOR BY THE SEA and said Exhibits attached thereto; and the Mortgagee agrees that the lien and provisions of said Deed of Trust mortgage shall hereafter be upon and against each and all of the one hundred four (104) Apartment Units constituting the condominium project and regime known as BY THE SEA, as defined and described in and according to said attached and foregoing CONDOMINIUM DECLARATION FOR BY THE SEA and the Exhibits attached thereto, together with all of the hereditaments and appurtenances thereto, including, but not limited to, all of the undivided interests in the Common Elements of said condominium project appertaining and assigned to each Apartment as set forth in said CONDOMINIUM DECLARATION FOR BY THE SEA, it being the intent of Mortgagee herein to cover and include all properties heretofore covered by its liens and in no way to release any properties therefrom by virtue hereof.

The name "First Mortgage Investors" is the designation of the Trust under the Trust's Declaration of Trust. All persons dealing with the Trust shall be conclusively deemed to have agreed to look solely to the property and assets of the Trust for the enforcement of any claims against the Trust as none of the Trustees, shareholders, officers, nominees, employees or agents of the Trust in their individual capacities assume any personal liability for the obligations of the Trust and the respective properties of the Trustees, shareholders, officers, nominees, employees and agents of the Trust in their individual capacities shall not be subject to the claims of any such persons with respect to any such obligations. The execution and delivery of this Agreement by a Trustee, officer or nominee, of such trust does not bind any of such Trustees, shareholders, officers, nominees, employees or agents of the Trust, personally, but binds only the Trust estate of First Mortgage Investors

IN WITNESS WHEREOF, FIRST MORTGAGE INVESTORS has caused these presents to be duly executed and acknowledged by the undersigned nominee of the Trustees of FIRST MORTGAGE INVESTORS, hereunto duly authorized, on the 16th day of September, 1975.

FIRST MORTGAGE INVESTORS

By Sumner H. Shafmaster



SUMNER H. SHAFMASTER, as
Nominee of the Trustees of First
Mortgage Investors, a Massachusetts
Business Trust.

CERTIFIED COPY OF RESOLUTION

The undersigned, Assistant Secretary of First Mortgage Investors (the "Trust"), a Massachusetts business trust, hereby certifies that set forth below is a true and correct copy of a resolution adopted by the Executive Committee of the Trust at a meeting duly called and held on August 7, 1975 and that said resolution has not been amended or rescinded and is in full force and effect as of the date hereof:

RESOLVED:

1. That pursuant to Article 1 of the Declaration of Trust, as amended, whenever in the opinion of the Managing Trustee or Secretary it will be of practical advantage to the Trust to take and hold title to property of the Trust in the name of a nominee, title shall be taken substantially in the following form:

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1(a) "To X, as nominee of the Trustees of First Mortgage Investors, with power to satisfy, discharge, release, subordinate, foreclose, assign, and/or transfer the within mortgage (or other instrument), and to execute deeds of conveyance and deed restrictions and to designate a substitute nominee in his stead."

As an alternative to the form contained in Paragraph 1(a) of this resolution, title to property of the Trust may be taken substantially in the following form:

1(b) "To X, as nominee of the Trustees of First Mortgage Investors, with power to satisfy, discharge, release, subordinate, foreclose, assign, and/or transfer the within mortgage (or other instrument), and to execute deeds of conveyance and deed restrictions and to designate a substitute nominee in his stead, and to assign to and confer upon such substitute nominee all of the right, title, and interest of X as nominee and with the same powers that are conferred upon said nominee."

2. That whenever title is thus taken in the name of a nominee, such nominee shall execute a designation or designations of a substitute nominee or nominees, in form approved by counsel to the Trust, and all such designations shall be deposited with and retained by the Trust, or by its Investment Advisor, First Mortgage Advisory Company, for use in case the original nominee is not available to foreclose, execute a required satisfaction, discharge, release, subordination, assignment, transfer and/or deeds of conveyance and deed restrictions.

3. That the following persons and only such persons may be named as nominees of the Trustees of First Mortgage Investors to take and hold title to property of the Trust, with powers indicated in Paragraph 1(a) of this resolution (or in the alternative form contained in Paragraph 1(b) of this resolution), or may be designated as substitute nominees for any such nominee:

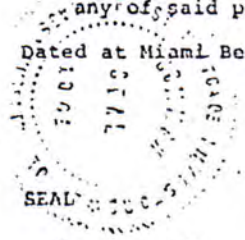
- | | |
|--------------------------|----------------------|
| (1) Jack R. Courshon | (3) Dennis P. Coyle |
| (2) Sumner H. Shafmaster | (4) Martin W. Taplin |

4. That, without regard to the identity of the nominee in whose name title to property of the Trust may be or may have been taken, and notwithstanding other provisions of this resolution or the designation of a particular substitute nominee pursuant to this resolution or to previous resolutions superseded by this resolution, each of the persons named in Paragraph 3 above shall have power, in behalf of the Trustees of First Mortgage Investors, to satisfy, discharge, release, subordinate, foreclose, assign, and/or transfer any mortgage (or other instrument), and to execute deeds of conveyance and deed restrictions, and in addition, to execute financing statements, loan agreements, contracts, leases, condominium declarations, plats, and any and all legal documents, and to endorse checks payable to any of said persons as nominee of the Trustees of First Mortgage Investors.

Dated at Miami Beach, Florida, this 16th day of September, 1975.

Jack R. Courshon

Assistant Secretary of
FIRST MORTGAGE INVESTORS



AMENDMENT TO CONDOMINIUM DECLARATION FOR
BY THE SEA CONDOMINIUMS

WHEREAS, by Condominium Declaration filed in Volume 2112 at page 295 in the Condominium Records in the office of the County Clerk of Galveston County, Texas, a condominium regime was established for By The Sea Condominiums on the property therein described; and

WHEREAS, such Condominium Declaration provides, in paragraph 40 thereof, that such declaration may be changed, altered or amended with the written consent of Unit Owners (as therein described and defined) who own, in the aggregate, at least 66-2/3% of the common elements of such condominium regime; and

WHEREAS, such Unit Owners owning more than 66-2/3% of such common elements have now given their written consent to an amendment to such declaration providing, in effect, that the front balcony railings attached to the balconies of each individual apartment shall be deemed to be "limited common elements" as otherwise defined and described in such Condominium Declaration"; and

WHEREAS, this instrument and the certifications herein contained are made and filed in the Galveston County Condominium Records for the purchase of evidencing such amendment to such Condominium Declaration.

THEREFORE, in consideration of the premises, Walter Neeley and Beverly Shapiro, the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc. (a Texas non-profit corporation, acting as the governing and administrative body for all Unit Owners and as the council of co-owners, all as further described and defined in the Condominium Declaration For By The Sea recorded in Volume 2112 at page 295 of the Condominium Records of Galveston County, Texas) hereby certify as follows:

1. That By The Sea Council of Co-Owners, Inc., has received the written consent of the Unit Owners who own, in the aggregate, 71.5243% of the common elements of such condominium regime, approving and adopting an amendment to the By The Sea Condominium Declaration by adding the following paragraph thereto:

"Notwithstanding anything in the Declaration which might be interpreted to the contrary, the balcony railings attached to the balconies of each apartment shall be limited common elements as that term is defined in the Declaration."

2. That such written consents have been executed and delivered to the Board of Directors of By The Sea Council of Co-Owners, Inc., have not since been amended, modified or rescinded, and all such consents remain effective in accordance with their terms.

3. That Walter Neeley and Beverly Shapiro are the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc., and that each of them are authorized by the Board of Directors of such corporation to make this certification and cause it to be filed in the Condominium Records in the office of the County Clerk of Galveston County, Texas, to evidence the above-described amendment to such Condominium Declaration.

BY THE SEA COUNCIL OF CO-OWNERS, INC.

By Walter Neeley
Walter Neeley, President

By Beverly Shapiro
Beverly Shapiro, Secretary

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THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Walter Neeley, President of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 24th day of September, 1980.



Roland L. Bassett
Notary Public in and for
Galveston County, Texas

My Commission Expires: 7/8/84

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Beverly Shapiro, Secretary of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 24th day of September, 1980.



Roland L. Bassett
Notary Public in and for
Galveston County, Texas

My Commission Expires: 7/8/84

STATE OF TEXAS
COUNTY OF GALVESTON
I hereby certify that this instrument was filed on the
date and time stamped herein by me and was duly recorded
in the volume and page of the names recited of Galveston
County, Texas as stamped herein by me

SEP 26 1980



Mark J. Chestnut
COUNTY CLERK Galveston County, Texas

FILED FOR RECORD
SEP 26 4 25 PM 1980
The City of Galveston
Galveston County, Texas

252085

SECOND AMENDMENT TO CONDOMINIUM DECLARATION
FOR BY THE SEA CONDOMINIUMS

WHEREAS, by Condominium Declaration filed in Volume 2112 at page 295 in the Condominium Records in the office of the County Clerk of Galveston County, Texas, a condominium regime was established for By The Sea Condominiums on the property therein described; and

WHEREAS, such Condominium Declaration provides, in paragraph 40 thereof, that such declaration may be changed, altered or amended with the written consent of Unit Owners (as therein described and defined) who own, in the aggregate, at least 66-2/3% of the common elements of such condominium regime; and

WHEREAS, such Unit Owners owning more than 66-2/3% of such common elements have now given their written consent to an amendment to such declaration providing, in effect, that the parking spaces which are "Limited Common Elements" may be covered or uncovered as determined by the Board of Directors of By The Sea Council of Co-Owners, Inc; and

WHEREAS, this instrument and the certifications herein contained are made and filed in the Galveston County Condominium Records for the purpose of evidencing such amendment to such Condominium Declaration.

THEREFORE, in consideration of the premises, Walter Neeley and Beverly Shapiro, the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc. (a Texas non-profit corporation, acting as the governing and administrative body for all Unit Owners and as the council of co-owners, all as further described and defined in the Condominium Declaration for By The Sea recorded in Volume 2112 at page 295 of the Condominium Records of Galveston County, Texas) hereby certify as follows:

1. That By The Sea Council of Co-Owners, Inc. has received the written consent of the Unit Owners who own, in the aggregate, 68.6695% of the common elements of such condominium regime, approving and adopting an amendment to the By The Sea Condominium Declaration by adding the following paragraph thereto:

"The parking spaces which are "Limited Common Elements" as defined in the Declaration may be covered or uncovered from time to time as determined by the Board of Directors of the By The Sea Council of Co-Owners, Inc."

2. That such written consents have been executed and delivered to the Board of Directors of By The Sea Council of Co-Owners, Inc., have not since been amended, modified or rescinded, and all such written consents remain effective in accordance with their terms.

3. That Walter Neeley and Beverly Shapiro are the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc., and that each of them are authorized by the Board of Directors of such corporation to make this certification and cause it to be filed in the Condominium Records in the office of the County Clerk of Galveston County, Texas, to evidence the above-described amendment to such Condominium Declaration.

BY THE SEA COUNCIL OF CO-OWNERS, INC.

By Walter D. Neeley
Walter Neeley, President

By Beverly Shapiro
Beverly Shapiro, Secretary

Record and return to:

ROLAND L. BASSETT
700 InterFirst Bank Building
Galveston, Texas 77550

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Walter Neeley, President of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 4th day of January, 1981.

Roland L. Bassett
Notary Public in and for
Galveston County, Texas

My Commission Expires: 7/8/84

ROLAND L. BASSETT
700 InterFirst Bank Building
Galveston, Texas 77550

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Beverly Shapiro, Secretary of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 1st day of January, 1981.

Bida L. Rector
Notary Public in and for
Galveston County, Texas

My Commission Expires: 2-28-81

THIRD AMENDMENT TO CONDOMINIUM DECLARATION
FOR BY THE SEA CONDOMINIUMS

001-01-1175

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WHEREAS, by Condominium Declaration filed in Volume 2112 at page 295 in the Condominium Records in the office of the County Clerk of Galveston County, Texas, a condominium regime was established for By The Sea Condominiums on the property therein described; and

WHEREAS, such Condominium Declaration provides, in paragraph 40 thereof, that such declaration may be changed, altered or amended with the written consent of Unit Owners (as therein described and defined) who own, in the aggregate, at least 66-2/3% of the common elements of such condominium regime; and

WHEREAS, such Unit Owners owning more than 66-2/3% of such common elements have now given their written consent to an amendment to such declaration changing the method of apportioning special assessments for the Limited Common Elements, as defined in such Condominium Declaration; and

WHEREAS, this instrument and the certifications herein contained are made and filed in the Galveston County Condominium Records for the purpose of evidencing such amendment to such Condominium Declaration.

THEREFORE, in consideration of the premises, Richard L. Bassett and Beverly Shapiro, the duly elected and acting Vice President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc. (a Texas non-profit corporation, acting as the governing and administrative body for all Unit Owners and as the council of co-owners, all as further described and defined in the Condominium Declaration for By The Sea recorded in Volume 2112 at page 295 of the Condominium Records of Galveston County, Texas) hereby certify as follows:

1. That By The Sea Council of Co-Owners, Inc. has received the written consent of the Unit Owners who own, in the aggregate, 68.9645% of the common elements of such condominium regime, approving and adopting an amendment to the By The Sea Condominium Declaration by amending paragraph 16(d) thereof to hereafter read as follows:

"16(d) Special Assessments. In addition to the regular monthly assessments authorized by this Declaration or the By-Laws, the Board may levy in any fiscal year a special assessment or assessments, applicable to that fiscal year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected major repair or replacement of a described capital improvement constituting or to constitute part of the common elements, including the necessary fixtures and personal property related thereto, or for such other purpose or purposes as the Board of Directors may consider appropriate, provided that any such assessment shall receive the affirmative vote of at least 66-2/3% of the total votes cast, in person or by proxy, at a meeting of the members of the Council as hereinafter provided for. At any such meeting, the members of the Council may, by the required affirmative vote aforesaid, amend or modify the amount or purpose of, or may otherwise amend or modify, any such special assessment proposed to be levied by the Board.

A meeting of the members of the Council shall be called for this purpose, written notice of which shall be sent to all members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Such special assessments shall be apportioned as follows:

- (1) a special assessment for the general common elements and common expenses shall be charged against and paid by the Unit Owners in proportion to their ownership of the common elements, as set out elsewhere in this Declaration; and

001-01-1176

(2) a special assessment for the limited common elements shall be charged against and paid by each Unit Owner in the same proportion as the expenditure, if any, to be made for or with respect to such Unit's limited common elements bears to the total expenditures for all limited common elements."

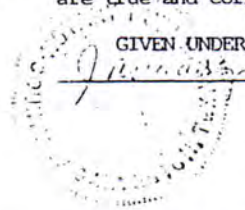
2. That such written consents have been executed and delivered to the Board of Directors of By The Sea Council of Co-Owners, Inc., have not since been amended, modified or rescinded, and all such written consents remain effective in accordance with their terms.

3. That Richard L. Bussitt and Beverly Shapiro are the duly elected and acting Vice President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc., and that each of them are authorized by the Board of Directors of such corporation to make this certification and cause it to be filed in the Condominium Records in the office of the County Clerk of Galveston County, Texas, to evidence the above-described amendment to such Condominium Declaration.

BY THE SEA COUNCIL OF CO-OWNERS, INC.
By Richard L. Bussitt
Richard L. Bussitt, Vice President
By Beverly Shapiro
Beverly Shapiro, Secretary

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

) BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Bussitt Vice President of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

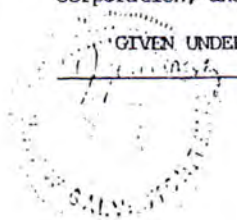


GIVEN UNDER my hand and seal of office, this the 4th day of January, 1981.

Wanda K. Rooster
Notary Public in and for
Galveston County, Texas
My Commission Expires: 2-28-81

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Beverly Shapiro, Secretary of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.



GIVEN UNDER my hand and seal of office, this the 4th day of January, 1981.

Wanda K. Rooster
Notary Public in and for
Galveston County, Texas
My Commission Expires: 2-28-81

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Corporations Section

**ARTICLES OF AMENDMENT TO THE ARTICLES OF
INCORPORATION OF BY THE SEA COUNCIL OF CO-OWNERS, INC.**

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which limit directors' liability and indemnify officers and directors for certain acts or omissions as director.

ARTICLE ONE

The name of the corporation is By the Sea Council of Co-Owners, Inc.

ARTICLE TWO

The following amendment to the Articles of Incorporation was adopted by the corporation on October 24, 1987:

The Articles of Incorporation are hereby amended by adding thereto a new Article Eight to read as follows:

ARTICLE EIGHT

**Limit of Directors Liability
and
Indemnification of Officers and Directors**

1. No director of this corporation shall be liable to this corporation or to any of its members for monetary damages for an act or omission in the director's capacity as a director, except that this provision shall not eliminate or limit the liability of a director for:

- (a) Any breach of a director's duty of loyalty or an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
- (b) A transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- (c) An act or omission for which the liability of a director is expressly provided for by statute.

2. The corporation shall indemnify to the full extent permitted by law any person made, or threatened to be made, a party to any action or proceeding (whether civil, criminal or otherwise) by reason of the fact that he (or his testator or intestate) is or was either (a) a director or officer of the corporation, or (b) serving at the request of this corporation any other corporation, partnership, joint venture, trust, employee benefit plan or otherwise, in any capacity, provided that such person is found to be entitled to indemnification in accordance with the standard of conduct and procedures set forth in sections 4 and 5 of this Article.

3. The Corporation shall also advance to any person who may be entitled to indemnification all expenses incurred in defending a civil or criminal action or proceeding prior to the final disposition of such action or proceeding. All expenses which are advanced by the Corporation hereunder shall be repaid to the Corporation in the event the person receiving such advancement is ultimately found not to be entitled to indemnification, or where partial indemnification is granted, to the extent the expenses so advanced by the Corporation exceed the indemnification to which he is entitled. The Corporation must receive a written undertaking by or on behalf of such person to repay the amount paid or

reimbursed if it is ultimately determined that he has not met the standard of conduct required for indemnification.

4. Upon the request of any person seeking indemnification, the Board of Directors shall act promptly in accordance with the procedures set forth in Section 5. Indemnification shall be granted only if it is determined that the following standard of conduct has been met:

- A. That the person conducted himself in good faith;
- B. That the person reasonably believed that his conduct was in the Corporation's best interests.
- C. And, in the case of any criminal proceeding, that the person had no reasonable cause to believe that his conduct was unlawful.

5. A determination of indemnification must be made by a majority vote of a quorum of the directors of the Corporation who at the time of the vote are not named defendants or respondents in the proceeding. If such a quorum cannot be obtained, a determination of indemnification shall be submitted to and approved by a majority vote of a quorum of the members of the Corporation who at the time of the vote are not named defendants or respondents in the proceeding. If such a quorum of members cannot be obtained, then a determination of indemnification must be made by special legal counsel selected by the Board of Directors.

6. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation covering any liability asserted against him in such a capacity, whether or not the Corporation would have had the power to indemnify him against that liability.

ARTICLE THREE

The amendment was adopted at a meeting of the members of the corporation held on October 24, 1987, at which a quorum was present, and the amendment received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast.

Dated Nov. 9, 1987.

BY THE SEA OF COUNCIL OF
CO-OWNERS, INC.

By: William S. Cox
Its President

and: Patricia L. Campion
Its Secretary

THE STATE OF TEXAS)
)
COUNTY OF GALVESTON)

Before me, a Notary Public, on this day personally appeared William S. Cox, known to me be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 7th day of Nov., 1987.

Albert Hutson
Notary Public in and for the State of Texas
Print Name: Albert Hutson
My Commission Expires: Oct 21, 1988

FOURTH AMENDMENT TO CONDOMINIUM DECLARATION BY THE SEA CONDOMINIUMS

WHEREAS, by Condominium Declaration filed in Volume 2112 at page 295 in the Condominium Records in the office of the County Clerk of Galveston County, Texas, a condominium regime was established for By The Sea Condominiums on the property therein described; and

WHEREAS, such Condominium Declaration provides, in paragraph 40 thereof, that such declaration may be changed, altered or amended with the written consent of Unit Owners (as therein described and defined) who own, in the aggregate, at least 66 2/3% of the common elements of such condominium regime; and

WHEREAS, such Unit Owners owning more than 66 2/3% of such common elements have now given their written consent to an amendment to such declaration providing, in effect, that: for the purpose of positioning individual owner air conditioning units ONLY, a 22 (twenty-two) inch wide strip of each north balcony, from floors 2 to 12, beginning at the northern edge and extending inward (south), but no further than a line connecting the inner corners of the riser boxes, exclusive of the stairwells and the elevator lobbies, shall be deemed as "Limited Common Elements", as otherwise defined and described in such Condominium Declaration; and

WHEREAS, this instrument and the certifications herein contained are made and filed in the Galveston County Condominium Records for the purchase of evidencing such amendment to such Condominium Declaration.

THEREFORE, in consideration of the premises, George W. Thoma and Bert Simon, the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc. (a Texas non-profit corporation, acting as the governing and administrative body for all Unit Owners and as the council of co-owners, all as further described and defined in the Condominium Declaration For By The Sea recorded in Volume 2112 at page 295 of the Condominium Records of Galveston County, Texas) hereby certify as follows:

- 1. That By The Sea Council of Co-Owners Inc., has received written consent of the Unit Owners who own, in the aggregate, 72.9665% of the common elements of such condominium regime, approving and adopting an amendment to the By The Sea Condominium Declaration by adding the following paragraph thereto:

"Notwithstanding anything in the Declaration which might be interpreted to the contrary, for the purpose of positioning individual air conditioning units ONLY, a 22 inch wide strip of each north balcony, from floors 2 to 12, beginning at the northern edge and extending inward, but no further than a line connecting the inner corners of the riser boxes, shall be deemed as limited common elements, exclusive of the stairwells and the elevator lobbies, as that term is defined in the Declaration."

- 2. That such written consents have been executed and delivered to the Board of Directors of By The Sea Council of Co-Owners, Inc., have not since been amended, modified or rescinded, and all such consents remain effective in accordance with their terms.
- 3. That George W. Thoma and Bert Simon are the duly elected and acting President and Secretary, respectively, of By The Sea Council of Co-Owners, Inc., and that each of them are authorized by The Board of Directors of such corporation to make this certification and cause it to be filed in the Condominium Records in the office of the County Clerk of Galveston County, Texas, to evidence the above-described amendment to such Condominium Declaration.

BY THE SEA COUNCIL OF CO-OWNERS, INC.

By George W. Thoma, President

By Bert Simon, Secretary

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, The undersigned authority, on this day personally appeared George W. Thoma, President of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 16th day of December, 1991.



Jay R. Cabattoni
Notary Public in and for
Galveston County, Texas

My Commission expires: 5/23/93

THE STATE OF TEXAS)
(
COUNTY OF GALVESTON)

BEFORE ME, the undersigned authority, on this day personally appeared Bert Simon, Secretary of By The Sea Council of Co-Owners, Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation, and that the statements contained therein are true and correct.

GIVEN UNDER my hand and seal of office, this the 13th day of DECEMBER, 1991.



Janet H. Case
Notary Public in and for
~~Galveston~~ County, Texas
Harris

My Commission expires: 9-16-95