

CONDOMINIUM DECLARATION

FOR

VOL 2112 p. 10

THE MARINER HOUSE

THE STATE OF TEXAS X
X
COUNTY OF GALVESTON X

KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS, this Declaration is made by MARINER DEVELOPMENT COMPANY, hereinafter called DEVELOPER, the general partner of Mariner House-Galveston Limited, which is the owner in fee simple of the following described property:

All of Block 422 in the City of Galveston, Galveston County, Texas, and including in addition thereto the abandoned alley therein and the East 1/2 of a previously abandoned street right-of-way adjoining said Block 422 on the West thereof, formerly designated 3rd Street together with the privilege granted to Mariner Interests by Galveston County Ordinance Number 68-69 to use ten feet of both Avenue E and Avenue F, abutting Block 422 in the City of Galveston and;

All improvements, fixtures and tangible personal property (except personal property not owned by Developer) now or hereafter situated on the real property described immediately above, including but not limited to the condominium buildings located thereon comprised of 92 units known as The Mariner House, all other buildings and structures of any size, whether or not portable, furniture, carpets, draperies, window blinds or shades, appliances, fences, gates, bridges, culverts, air conditioning and heating equipment and shrubbery and landscaping

and which is further shown and depicted on the Survey Plat attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, Developer desires to establish a condominium regime under the Condominium Act of the State of Texas; and

WHEREAS, the property consists of Eight (8) three-story and Four (4) two-story buildings containing Ninety-Two (92) separately designated condominium units and other improvements appurtenant thereto on the property described in said Exhibit "A"; and

NOW, THEREFORE, Developer does hereby publish and declare that the following terms, covenants, restrictions, limitations, conditions, easements, uses and obligations shall constitute covenants to run with the land and shall be a burden and benefit to the Developer, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. DEFINITIONS - unless the context shall expressly provide otherwise.
 - a. "Unit" means the individual area or space contained within the perimeter walls, floors and ceilings of each of the ninety-two family units.

- b. "Condominium Unit" means one individual unit, the patio, fenced in yard area, designated parking spaces, and overhang easement, as depicted on Exhibit "A", together with the interest in the general common elements appurtenant to such unit, said interest in the general common elements shall not be reduced below that depicted on Exhibit "A".
- c. "Owner" means a person, firm, corporation, partnership, association or other legal entity, including the Developer, who owns one or more condominium units.
- d. "General Common Elements" means and includes:
- (1) the land on which the buildings are located;
 - (2) the foundations, bearing walls and columns, roofs, girders and support beams;
 - (3) the yards, gardens, parking areas, fences, swimming pool, walks, service drives and service easements;
 - (4) the installations consisting of equipment and materials making up central services, such as power, light, gas, garbage disposal facilities and the like; and
 - (5) all other parts of the property necessary or convenient to the existence, maintenance and safety of the condominium regime or normally in common elements.
- e. "Limited Common Elements" means a part of the general common elements reserved for the exclusive use of the owner of a condominium unit, such as designated parking spaces, balconies and patio areas indicated on the map as appurtenant limited elements to a specific unit only.
- f. "Common Expenses" means and includes:
- (1) all sums lawfully assessed against the general common elements by the Association;
 - (2) expenses of administration and management, maintenance, repair or replacement of the general common elements;
 - (3) expenses declared to be common expenses by the provisions of this Declaration of the By-Laws; and
 - (4) expenses agreed upon as common expenses by the owners.
- g. "Association of Unit Owners" or "Association" means a Texas non-profit association, the By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.
- h. "Entire Premises" or "Property" means and includes the land, the buildings, all improvements and structures thereon and all rights, easements and appurtenances belonging thereto.
- i. "Map", "Survey Map", "Plans" or "Plat" means and includes: the engineering survey of the land locating thereon all of the improvements; the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements, same being herewith filed, consisting of twenty-five sheets labeled Exhibits "A" through "M2" inclusive and incorporated herein,
2. THE MAP - shall be filed for record simultaneously with the recording of this Declaration as part hereof and prior to the first conveyance of any condominium unit. Such map shall consist of and set forth:

- a. the legal description of the surface of the land;
- b. the linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all other improvements built on said land;
- c. floor plans and elevation plans of the buildings built thereon, showing the building location, the letter of the building and the number of the unit; the linear dimensions of each unit; the limited common elements; and the general common elements.

The proportionate ownership of common elements and voting rights shall be as provided for in Exhibit O.

3. The real property is hereby divided into the following separate fee simple estates:
 - a. Ninety-Two fee simple estates, consisting of Ninety-two separately designated units, each such unit identified by number and by building letter, as designated on the map, the units in each building being described as follows:

BUILDING A - Containing 4 units, numbered 101 through 104 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "A" hereto attached, marked Exhibits "B1 and B2."

BUILDING B - Containing 12 units, numbered 201 through 212 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "B" hereto attached, marked Exhibits "C1 and C2."

BUILDING C - Containing 4 units, numbered 301 through 304 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "C" hereto attached, marked Exhibits "D1 and D2."

BUILDING D - Containing 8 units, numbered 401 through 408 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "D" hereto attached, marked Exhibits "E1 and E2."

BUILDING E - Containing 8 units, numbered 501 through 508 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "E" hereto attached, marked Exhibits "F1 and F2."

BUILDING F - Containing 8 units, numbered 601 through 608 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "F" hereto attached, marked Exhibits "G1 and G2."

BUILDING G - Containing 8 units, numbered 701 through 708 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "G" hereto attached, marked Exhibits "H1 and H2."

BUILDING H - Containing 8 units, numbered 801 through 808 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "H" hereto attached, marked Exhibits "I1 and I2."

BUILDING I - containing 8 units, numbered 901 through 908 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "I" hereto attached, marked Exhibits "J1 and J2."

BUILDING J - Containing 8 units, numbered 1001 through 1008 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "J" hereto attached, marked Exhibits "K1 and K2."

BUILDING K - Containing 8 units, numbered 1101 through 1108 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "K" hereto attached, marked Exhibits "L1 and L2."

BUILDING L - Containing 8 units, numbered 1201 through 1208 inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "L" hereto attached, marked "Exhibits "M1 and M2."

4. A portion of the general common elements is set aside and reserved for the exclusive use of individual owners, such areas being the limited common elements. The limited common elements reserved for the exclusive use of the individual owners are the automobile parking spaces, balcony and patio spaces, which are shown on the map. Such spaces are allocated and assigned by the Developer to the respective condominium units, as indicated on Exhibits "B1" through "M2" inclusive, hereto attached; the balcony(s) or patio assigned to each unit being designated by the unit number preceded by the prefix "B" and parking spaces assigned to each unit being designated by the unit number preceded by the prefix "G", as shown on Exhibit "A", which each owner of a condominium unit shall have exclusive use of and which will be designated at the time of sale. Such limited common elements shall be used in connection with the particular unit, to the exclusion of the use thereof by the other owners, except by invitation. A portion of the common area is intended as a recreation area and is improved with a swimming pool and other recreational facilities. Reasonable regulations governing the use of said recreational facilities by owners and their guests and invitees shall be promulgated by the Developer and by the Board of Managers, after same have been elected and by the Managing Agent. Each owner shall be required to comply strictly with said Rules and Regulations and shall be responsible to the Board of Managers for the compliance therewith by members of his family, relatives, guests and invitees, both minor and adult.
5. Each unit and its undivided interest in and to the general common elements appurtenant thereto, said undivided interest being proportionate to the square footage of each unit to the total square footage of all units, shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.
6. Every deed, lease, mortgage, trust deed or other instrument may legally describe a condominium unit by its identifying unit number and building letter as shown on the map, followed by the words "THE MARINER HOUSE" and by a reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements.
7. Developer shall give written notice to the assessor of the creation of condominium ownership of this property, as is provided by law, so that each unit and its percentage of undivided interest in the general common elements shall be deemed a separate parcel and subject to separate assessment and taxation.
8. A condominium unit may be held and owned by more than one person, as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.
9. The general common elements shall be owned in common by all of the owners of the units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof, but such partition shall not affect any other condominium unit.

10. Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.
11. Each unit shall be occupied and used by the owner only as and for a single family residential dwelling for the owner, his family, his social guests or his tenants.
12. If any portion of the general common elements encroaches upon a unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of an adjoining unit or units encroaches upon the general common elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachment and easement shall not be considered or determined to be encumbrances either on the general common elements or the unit.
13. No labor performed or materials furnished and incorporated in a unit, with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor, shall be the basis for filing of a lien against the general common elements owned by such other owners. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request.
14. The administration of this condominium property shall be governed by the By-Laws of THE MARINER HOUSE CONDOMINIUM ASSOCIATION, a non-profit association, hereinafter referred to as the "Association". A copy of the "By-Laws" is hereto attached, marked Exhibit "N", and incorporated herein; and same shall be deemed adopted by the Developer, as sole owner of the property herein described, and all owners shall be bound thereby. The Developer may, at its election, cause to be formed a Texas non-profit corporation bearing said name, in which event, such non-profit corporation shall be composed of owners of condominium units as herein set out, and such non-profit corporation shall thereafter act and do all things to be done by "Association", and the said non-profit corporation, if formed, shall be bound by, adopt and observe as its By-Laws the By-Laws hereto attached, marked Exhibit "N". "Association" as here used shall refer to the member owners as a group, both before and after incorporation. In the event of incorporation, a certified copy of the Certificate of Incorporation of THE MARINER HOUSE CONDOMINIUM ASSOCIATION shall be recorded, which shall provide that three persons shall act as a Board of Managers and shall serve as the Managers until their successors have been elected and qualified. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership. The Managing Agent shall be MARINER DEVELOPMENT COMPANY, whose address is 16310 Brook Villa Drive, Houston, Texas 77059, and the Managing Agent shall perform all of the duties of the Board of Managers until December 31, 1977, or until 80% of the units shall be sold to owner/occupants, whichever first occurs.
15. The Managing Agent or Board of Managers of the Association shall have the irrevocable right to have access to each unit from time to time, during reasonable hours, as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the general or limited common elements or to another unit or units.

16. The owner shall maintain and keep in repair the interior of his own unit, including the fixtures therein. All fixtures and equipment, with the heating and air conditioning system installed within the unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity and hereafter referred to as "utilities") enter the unit, shall be maintained and kept in repair by the owner thereof. Without limitation on the generality of the foregoing, an owner shall maintain and keep in good repair (and replace, if so required) the air conditioning compressor, fans, ductwork, heating unit and cooling coils utilized in and for his unit; as well as all other fixtures situated within or installed into the limited common elements appurtenant to such unit; and an owner shall be obliged to promptly repair and replace any broken or cracked windows, doors or glass therein.
17. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. No owner shall in any way alter, modify, add to or otherwise perform any work whatsoever upon any of the common elements, without prior written consent to the Board of Managers.
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18. An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his unit, nor shall owner be deemed to own the utilities running through his unit which are utilized for, or serve more than one unit, except as a tenant in common with the other owners. An owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper and other such finishing materials.
19. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Managing Agent or Board of Managers on behalf of the owners or, in proper cases, by an aggrieved owner.
20. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing at least 85 percentage of the aggregate interest of the undivided ownership of the general common elements and at least 75 percentage of the first mortgagees (based upon one vote for each first mortgage owned) of condominium units have given their prior written consent and agree to such revocation or amendment by instruments duly recorded; the making of physical changes in the interior of a unit or units coming into the possession of a mortgagee by virtue of foreclosure of any first mortgage, and physical changes to and alterations of the unit or units owned, by virtue of foreclosure of any first mortgage, may be made without the consent of the other owners or mortgagees and this Declaration may be amended without other owners' or mortgagees' consent, by the owner acquiring same by such foreclosure, to correspond with such physical changes; provided, however, that the percentage of the undivided interest of each unit owner in the general common elements as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.
21. The assessments made, which shall be based upon the cash requirements deemed to be such aggregate sums as the Managing Agent or Board of Managers of the Association shall from time to time determine, are to be paid by all of the owners, including the Developer, to provide for the payment of all estimated expenses growing out of or connected with utility costs to include water and electricity, the maintenance and operation of the general common elements, which sum may include, among other things, cost of management, taxes, assessments, fire insurance, with extended coverage and vandalism and malicious mischief with endorsements attached, issued in the amount of the maximum replacement value of all of the condominium units, casualty and public liability and other insurance premiums, landscaping and care of the grounds, common

lighting, repairs and renovations, garbage collections, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus funds, as well as, other costs and expenses relating to the general common elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the owners from the obligation to pay.

22. The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinabove and including for such other risks of a similar, or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The insurance shall be carried in blanket policy form, naming the Association the insured, which policy or policies shall indemnify the interest of each condominium unit owner and which shall provide for a standard, non-contributory mortgage clause in favor of each first mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice to each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate indemnifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that policy, including payment of the insurance premium applicable to that owner's interest or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.
23. All owners shall be obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet utility cost to include water and electricity and the common expenses. The assessments shall be made pro rata, according to each owner's percentage interest in and to the general common elements. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on or before the fifth day of each month. Failure to pay by the fifteenth day of each month shall require the imposition and assessment of a late charge of \$25, and contribution for monthly assessments shall be prorated, if the ownership of a condominium unit commences on a day other than on the first day of the month.

An adequate reserve fund for replacement of the common elements must be established and must be funded by regular monthly payments, rather than by special assessments.
24. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use of enjoyment of any of the general common elements or by abandonment of his unit.
25. All sums assessed, but unpaid, for the share of common expenses chargeable to any condominium unit, including interest thereon at eight (8%) percent per annum, shall constitute a lien on such unit, superior (prior) to all other liens and encumbrances, except for:
 - a. tax and special assessment liens in favor of any assessing unit; and

- b. all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien; a deed given in lieu of foreclosure, as to priority of liens, shall have the same effect as a foreclosure.

To evidence such lien the Board of Managers or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the office of the Clerk and Recorder of Galveston County, Texas. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association a reasonable rental for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the condominium unit at foreclosure sale and to acquire, hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expenses payable, with respect to such unit, and upon such payment, such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrances.

26. Upon the written request of any owner or any encumbrancer or prospective encumbrancer of a condominium unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which became due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessment, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the unit conveyed by subject to a lien for, any unpaid assessments against the subject unit.

27. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security

instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create a second mortgage on the following conditions: (1) That any such second mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses and other payments created by this Declaration and by the By-Laws; (2) That the mortgage under any second mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a second mortgagee upon written request by the Association.

28. In the event any owner of a condominium unit shall wish to sell, lease or rent the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof, together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the Board of Managers for all of the owners. The remaining owners through the Board of Managers, or a person named by them, shall have the right to purchase, lease or rent the subject unit, upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase, lease or rent is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the ten day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase, lease or rent.

In the event any owner shall attempt to sell, lease or rent his condominium unit without affording to the other owners the right of first refusal herein provided, such sale, lease or rental shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or renter. Possession of or residence in a condominium unit by any other person than the record owner, his lineal descendants or lineal descendant's relatives, continuing for a period of ten days, shall be deemed, for this purpose, to constitute a leasing or renting of the condominium unit, whether or not any consideration has been paid therefor; and in such event the Board of Managers may require the removal of such occupant, it being hereby agreed that the Board of Managers, in event of the possession of the condominium unit upon demand therefor of and from such occupant, with or without notice to the record owner thereof; and in the event of failure to surrender such possession, the Board of Managers may institute its action in starting Forcible Entry and Detainer Proceedings for the possession of such unit, and have and retain such possession until the record owner thereof or the purchaser (in the event of sale, all prerequisites of the plaintiff having been complied with) retakes physical possession of such premises. During any time when the Board of Managers shall have possession of such unit hereunder, the record owner, all of his guests, licensees and invitees, shall be deemed to waive any claim for damages to person or property in or on the unit. The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing of renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his interest in the project parcel to trust deed, mortgage or other security instrument.

The failure of or refusal by the Board of Managers to exercise the right to so purchase, lease or rent shall not constitute or be deemed to be a waiver of such right to purchase, lease or rent when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The provisions of this Article 28 shall not apply to any sale, lease or rental, if made by the Developer, at any time hereafter whether same be a "first sale or letting" or "resale or reletting" of a unit; the Developer shall have the further right to use any one unit as office and sales area and display advertising signs at the premises at any time hereafter until ninety-one (91) units have been sold by Developer.

The right of first refusal, as provided herein, shall extend and run for the period of the lives of the now living children of Robert F. Kennedy, formerly Attorney General of the United States and the now living children of Bob Casey, M. C., whichever of said children shall live longer, plus the period of twenty-one (21) years from the date of execution of this Declaration.

Except as is otherwise provided in paragraph 29, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a condominium unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

29. In the event of any default on the part of any owner under any first mortgage, which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgage in lieu of such foreclosure, shall be made free and clear of the provisions of paragraph 28 and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall be thereupon and thereafter subject to the provisions of this Declaration and By-Laws. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage of its nominee, the said holder or nominee may thereafter sell and convey the condominium unit free and clear of the provisions of paragraph 28, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of paragraph 28.

If an owner of a condominium unit can establish to the satisfaction of the Managing Agent or Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of paragraph 28.

30. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of a condominium unit, the Managing Agent or Board of Managers of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:
- a. with respect to a proposed lease or sale under paragraph 28, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;
 - b. with respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or his nominee, pursuant to paragraph 29, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 28;
 - c. with respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of paragraph 28;

Such a certificate shall be conclusive evidence of the facts contained therein.

31. The Developer hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Developer or from any owner shall constitute appointment of the attorney-in-fact herein provided.

All of the owners irrevocably constitute and appoint THE MARINER HOUSE CONDOMINIUM ASSOCIATION, a non-profit association, or its successor non-profit corporation, if same be hereafter organized, their true and lawful attorney in their name, place and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner, which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements, as used in the succeeding subparagraphs, means restoring the improvements to substantially the same condition in which it existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacement unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

- a. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed.
- b. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than fifty percent of all of the general common elements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense made pro rata according to each owner's percentage interest in and to the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 25. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any first mortgage;
- (2) For payment of taxes and special assessment liens in favor of any assessing entity;

- (3) For payment of unpaid common expenses;
 - (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
 - (5) The balance remaining, if any, shall be paid to the condominium unit owner.
- c. If more than fifty (50%) percent of all of the general common elements, not including land, are destroyed or damaged, and if the owners representing and aggregate ownership interest of ninety-five (95%) percent or more, do not voluntarily, within one hundred (100) days thereafter, make provisions for the reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such facts and upon the recording of such notice by the Associations' president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all the owners, free and clear of the provisions contained in this Declaration, the Map the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each owner's interest (as such interests appear on the policies), and such divided proceeds shall be paid into ninety-two (92) separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph b. (1) through b. (5) of this paragraph.

If the owners representing an aggregate ownership interest of ninety-five (95%) percent, or more, adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan but not sooner than thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 25. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, as if not so paid, the Association shall cause to be recorded a notice that the condominium unit of delinquent owner shall be sold by the Association. The proceeds derived from sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph b. (1) through b. (5) of this paragraph.

- d. The owners representing an aggregate ownership interest of ninety-five (95%) percent, or more, may agree that the general common elements of the property are obsolete and that the same should be

renewed or reconstructed. In such instance, the expense thereof shall be payable by all of the owners as common expenses; provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), and appraiser, who shall be a member of the Houston or Galveston Real Estate Board. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with him another appraiser (to be selected from the Houston or Galveston Real Estate Board). If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Houston or Galveston Estate Board) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Houston or Galveston Real Estate Board), and from the names of the four persons so nominated shall be drawn by lot by a judge of any court of record in Texas, and the name so drawn shall be umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which in any event shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owners. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in sub-paragraph b. (1) through b. (5) of this paragraph.

- e. The owners representing an aggregate ownership of ninety-five (95%) percent, or more, may agree that the general common elements of the property are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such facts, and upon recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into ninety-two (92) separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the unit and name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in sub-paragraph b. (1) through b. (5) of this paragraph.

32. Upon date defined in paragraph 14 herein, the Developer shall execute and deliver a bill of sale to the Association transferring title to all items of personal property located on the entire premises and furnished by the Developer, which property is intended for the common use and enjoyment of the condominium unit owners and occupants. No owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the owner's termination of possession of his condominium unit.

- 33. All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner in care of the unit number and the building address of such owner. All notices, demands or other notices intended to be served upon the Managing Agent, MARINER DEVELOPMENT COMPANY, or the Board of Managers of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to 16310 Brookvilla Drive, Houston, Texas 77059, until such address is changed by a notice of address change duly recorded.
- 34. If any of the provisions of this Declaration or any paragraph, sentence, phrase, clause or word, or the application thereof in any circumstance be invalidated, such invalidity shall not effect the validity of the remainder of this Declaration and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
- 35. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and all other provisions of law.
- 36. That, whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- 37. The rights of a first mortgagee over a condominium unit owner as to condemnation awards, shall be the same as provided in this Declaration, as to insurance proceeds; notwithstanding, any other provision of this Declaration to the contrary, no provisions of said Declaration shall give a condominium unit owner, or any other party, priority over any right of first mortgagees of condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common elements.

IN WITNESS WHEREOF, Developer has duly executed this Declaration this the 7th day of July, 1977.

MARINER HOUSE-GALVESTON, LIMITED,
a Texas limited partnership
John Raymond Hook d/b/a
MARINER DEVELOPMENT COMPANY,
general partner.

BY: John Raymond Hook

THE STATE OF TEXAS X
 X
COUNTY OF GALVESTON X

BEFORE ME, the undersigned authority, on this day personally appeared John Raymond Hook, MARINER DEVELOPMENT COMPANY, known to me to be the person 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, as the act and deed for said Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7 day of JULY, 1977.

Merna H. Clements
Notary Public in and for
Galveston County, T E X A S