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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MARINER'S COVETHE STATE OF TEXAS §  
§  
COUNTY OF GALVESTON §THIS Declaration is made on this 19<sup>th</sup> day of October, 1998, by MC INVESTMENT CO., INC. or "Declarant."

## WITNESSETH

WHEREAS Declarant and the undersigned are the Owners in part or whole, of that certain property situated in Galveston County Texas, which has been replatted and subdivided as Mariner's Cove Subdivision Section 1 and the plat thereof recorded in Map Book 18, Page 667 in the Official Records of Real Property of Galveston County, Texas and Mariner's Cove Subdivision Section 2 and the plat thereof recorded in Map Book 18, Page 666, hereinafter sometimes referred to as "the Properties" or "Subdivision;

WHEREAS, Mariner's Cove Subdivision Section 1 was previously platted as San Leon Landing and the plat thereof recorded in Map Book 17, Page 184, and replated as Sandpiper Cove Subdivision and the plat thereof recorded in Map Book 18, Page 253 in the Official Records of Real Property of Galveston County, Texas recorded in and restricted as San Leon Landing;

WHEREAS, the property platted as Mariner's Cove Subdivision Section 1 was initially restricted by the Declaration of Covenants, Conditions and Restrictions for San Leon Landing recorded under Clerk's File Number 8926758, Film Code Numbers 006-57-2344 through 2359 which Declaration was purportedly but improperly amended by the Declaration of Covenants, Conditions and Restrictions for Sandpiper Cove recorded under Clerk's File Number 9145909, Film Code Numbers 007-92-0289 through 0314, which in turn was purportedly but improperly amended by the Declaration of Covenants, Conditions and Restrictions for Mariner's Cove recorded under Film Code Numbers 010-95-1231 through 1258, all in the Official Records of Real Property of Galveston County, Texas;

WHEREAS, it is the desire of the undersigned Owners of individual Lots and of Declarant to give notice of the invalidity of the Declaration of Covenants, Conditions and Restrictions for Sandpiper Cove recorded under Clerk's File Number 9145909, Film Code Numbers 007-92-0289 through 0314 and the Declaration of Covenants, Conditions and Restrictions for Mariner's Cove recorded under Film Code Numbers 010-95-1231 through 1258, all in the Official Records of Real Property of Galveston County, Texas, and to properly amend the Declaration of Covenants, Conditions and Restrictions for San Leon Landing as the Declaration of Covenants, Conditions and Restrictions of Mariner's Cove and to impose the properly amended restrictions on Mariner's Cove Subdivision Section 2 by annexing said Section 2; and

WHEREAS, it is the desire of the undersigned Owners of individual Lots and of Declarant to create exclusive residential waterfront homesites in said subdivision for the purpose of preserving and enhancing the privacy and quiet enjoyment of homes built thereon by restricting by a general plan or scheme the use to which the Lots in said subdivision may be put and in order to insure uniformity and to maintain suitable standards for the use and occupancy of the Lots in said MARINER'S COVE, as exclusive residential waterfront sites for the benefit, use and convenience of each and every purchaser of Lots in said MARINER'S COVE and their heirs and assigns.

NOW THEREFORE, Declarant and the undersigned Owners hereby amend the Declaration of Covenants, Conditions and Restrictions for San Leon Landing recorded under Clerk's File Number 8926758 in the Official Records of Real Property of Galveston County, Texas, annex the property known as Mariner's Cove Section 2 as platted in the plat recorded in Map Book 18, Page 666 in the Official Records of Real Property of Galveston County, Texas and declare that the properties shall be developed, held, transferred,

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improved, sold, conveyed and occupied subject to the easements, restrictions, covenants and conditions hereinafter set forth, which are for the purpose of protecting the value and desirability of said properties, and shall constitute covenants running with the properties, shall be binding on all parties having any right, title and interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I DEFINITIONS

SECTION 1. "ASSOCIATION" shall mean and refer to MARINER'S COVE HOMEOWNERS ASSOCIATION, INC., and its successors and assigns. The Association has the power to collect and disburse those maintenance assessments as described in Article V hereof.

SECTION 2. "COMMON AREA" shall mean all real property and easements together with the improvements thereon and all riparian rights and waterways owned by the Association or owned by the Declarant or Owners and dedicated for the common use and benefit of the Owners. The Common Area specifically includes, but is not limited to, the private streets, canals, bridges, breakwaters, bulkheads, piers directly attached hereto which were constructed contemporaneously with the construction of the bulkheading, drainage easements, culverts and other areas of a non-residential nature shown on the Plat of MARINER'S COVE.

SECTION 3. "DECLARANT" shall mean and refer to not only MC INVESTMENT CO. INC., but also to all heirs, executors, administrators or assigns, as successor developer of Lots in the undeveloped state, but shall not include any purchaser of one or more developed Lots. For the purposes of this Declaration, "Developed Lot" shall mean a Lot on the street upon which it faces is opened and improved with utilities installed and ready to furnish utility service to such Lot, and "Undeveloped Lot" is any Lot which is not a Developed Lot.

SECTION 4. "LOT" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of any property designated herein as "Common Area".

SECTION 5. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 6. "PROPERTIES" shall mean and refer to: (a.) that certain property hereinabove described as MARINER'S COVE as platted in the plats recorded in Map Book 18, Page 666 and 667 and (b.) such additions thereto as may hereafter be made subject to this Declaration.

SECTION 7. "SINGLE FAMILY" shall mean and refer to a group of no more than six (6) persons sharing a common household and relationship within the Residential Building erected, built or placed on a Lot.

#### ARTICLE II BUILDING AND USE RESTRICTIONS

##### SECTION 1. RESIDENTIAL BUILDINGS

A. No residential building shall be built, placed, constructed, reconstructed or altered on any Lot or building site composed of a Lot and contiguous part of an additional Lot other than one (1) single structure with appurtenances.

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B. No structure shall be occupied or used until the exterior construction thereof is completed.

C. No detached buildings or structures shall be built, placed or constructed on or adjacent to any Lot except one dog house and one boat house. Dog houses and boat houses shall be constructed and maintained in a neat and attractive manner and in harmony with the quality and appearance of the other improvements within the subdivision. The number of said structures shall be limited to one dog house and one boat house per lot and any additional portion thereof. An owner that owns a building site composed of part of a Lot adjacent to a whole Lot is limited to one dwelling and the same number of dog houses and boat houses as if he owned only one Lot.

D. When construction of the residential building has begun, the exterior of such construction must be completed within one hundred twenty (120) working days from the date of beginning of construction.

E. Garage areas shall be confined to that area under and below the main living area only. No detached garage structures shall be built, placed, constructed, or reconstructed on any Lot for any purpose.

F. Placement, erection or construction of any prefabricated, mobile, or temporary home on any lot of the subdivision for residential or any other purpose is strictly prohibited, save and except a construction or sales office as provided for within this Declaration.

## SECTION 2. SINGLE-FAMILY RESIDENTIAL USE AND BOAT RESIDENCE.

A. Each Lot (including land and improvements) shall be used and occupied for single-family residential and related recreation purposes only.

B. No owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single-family residence for the Owner or his tenant and their families.

C. As used herein, the term "single-family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for garage apartments or other apartment use.

D. No Lot shall be used or occupied for any business, commercial, trade or professional purpose that generates extra traffic, noise or any odor. All manufacturing operations are prohibited and all home offices that are an annoyance or a nuisance are prohibited. The Homeowner's Association may take action against a use prohibited by this paragraph with or without the Owner approval described in this paragraph. However, if the Association receives written complaints from two Owners during a thirty (30) day period regarding such a use and no action has been taken by the Association, a vote of the Owners is required. If two thirds (2/3rds) of the votes cast by the owners favor action, the Association must take action to enforce this provision. In this situation the residents on either side of the Lot on which such use is occurring shall have five (5) votes, instead of their usual one.

E. Declarant reserves the right to construct townhomes on Lots 1A, 11 and 18 provided that the number of townhomes is limited to two homes per lot constructed with a common entrance so that they appear to be one single family dwelling.

F. No Owner, nor anyone else (except Declarant) shall reside, or give the appearance of residing, in or on, any vessel using the Common Area private canal or marina at Mariner's Cove. Exceptions to this, such as transient yachting guests, will require written approval from the Homeowners Association if said guest should be on site for more than five days.

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**SECTION 3. MINIMUM ELEVATION.**

Any residential building erected on any Lot for use and occupancy as a residence shall be constructed in compliance with all federal, state and local regulations and standards and satisfy all mandatory minimum elevation requirements as to the interior living area of the residential structure. Provided, however, in no event shall the elevation of the interior living area of the residential structure (exclusive of porches and decking), measured to the top of the lowest interior living area floor, be less than eleven feet (11) above Mean Sea Level (M.S.L.), unless otherwise approved by any governing authority having jurisdiction and authority to approve such a waiver and subsequent approval of same pursuant to Article III hereof.

**SECTION 4. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS.**

A. The interior living area of the residential structure (exclusive of porches and decking) satisfying the minimum elevation requirements described in Section 3 above, shall contain not less than one thousand five hundred (1,500) square feet.

B. Any enclosed area on the ground level of the residential structure shall contain not less than one hundred (100) square feet and shall be constructed and improved in compliance with all federal, state and local regulations and standards, and in accordance with the provisions of Article III of this Declaration.

**SECTION 5. LOCATION OF THE IMPROVEMENTS ON THE LOT.**

A. On Lot 2, Lot 9, Lot 10, Lot 11, Lot 12, Lot 19 and Lot 20, all in Section 1, a building may be located within a distance of, but not nearer to, the bulkhead than ten (10) feet. On Lot 13, Section 1, all building lines herein stated shall apply except that a building constructed on said Lot 13 may be constructed along a straight line situated along and parallel to the straight portion of the bulkhead as platted and a distance of fifteen (15) feet from the straight portion of the bulkhead as platted and continuing in a straight line until it meets the south property line of said Lot 13 as platted. Said building may be allowed to be constructed closer to the bulkhead than fifteen (15) feet along said straight line where the bulkhead curves in a westerly direction within Lot 13 and said building may be allowed to be constructed as close to the bulkhead as is necessary for the building to be constructed on and along said straight line to a point where it meets the south property line of Lot 13. On Lots 1A, 3 through 8, and 14 through 18, all in Section 1, all buildings must be located more than fifteen (15) feet from the bulkhead. Notwithstanding any provisions herein regarding a structure, any structure to be constructed may not in any way compromise or jeopardize the integrity of the bulkhead or any supporting structure thereof. A deck is not considered a building and may be constructed closer to the canal than ten (10) feet so long as the construction of said deck does not compromise the integrity of the bulkhead. Any deck constructed must be attached to the house constructed on its same Lot or Lots and must be approved by the architectural committee. No dock may be a free standing structure. No building shall be located nearer than twelve (12) feet to the north lot line of any Lot with the exception of Lot 20 where a distance of at least ten (10) feet from the north lot line shall be maintained.

B. At least seventy five (75%) per cent of the length of the south wall on any dwelling constructed on any Lot must be built on and along the south lot line of the Lot upon which said dwelling is constructed with the exception of dwellings constructed upon Lot 1, Lot 9, Lot 10, Lot 11, Lot 12, and Lot 21. No zero lot line rule shall apply to dwellings constructed upon Lot 1, Lot 9, Lot 10, Lot 11, Lot 12, and Lot 21. However, all other building lines herein shall apply to the Lots exempted herein from the south zero lot line rule. A dwelling may be constructed which overlaps a platted lot line between contiguous Lots if said contiguous Lots are under a single ownership. Any dwelling constructed on a building site composed of more than one contiguous Lot is also exempt from the south zero lot line rule, however no structure may be constructed on a part of a Lot that is equal to less than one whole platted Lot, and any whole Lot and part of a contiguous Lot under one ownership may contain no more than one

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dwelling as herein described. If more than one whole Lot and part of a contiguous adjoining Lot is under one ownership then all other building lines shall apply to a dwelling situated upon said Lot and contiguous part Lot as if said Lot and contiguous part were a single Lot as provided herein. This restriction is not intended to preclude the construction of dwellings along the south lot line of any Lot or Lot and adjoining part of a Lot which is excepted herein from the south zero lot line rule.

C. For the purpose of these covenants and restrictions, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

D. Dwellings constructed on Lot 1, Lot 11, and Lot 21 shall be allowed to have windows, doors or other exterior openings in the south wall of said dwellings. A dwelling situated on Lot 10 shall be allowed to have windows, doors and other exterior openings in all exterior walls except its southwest exterior wall or walls.

E. Standard size roof overhangs may overlap adjacent Lots at the zero lot line boundary only. Bay windows and other cantilevered overhangs which are attached to and are part of the structure of a house constructed on a Lot shall be allowed to overlap the building lines but may in no event overlap a Property line nor encroach upon or, whether overhanging an easement line or not, interfere with in any way any utility or other aerial easement or the performance of the utility upon or within said easement.

#### SECTION 6. WATERFRONT IMPROVEMENTS

A. No pier, pylons, deck, boat slip, dock, or other similar structure shall be placed or erected along the banks of, or into the water of the canal without the prior, written permission of the Architectural Committee, pursuant to Article III of this Declaration.

1. No dock may be a free standing structure. No homemade type dock shall be constructed, such as those floating on barrels or exposed foam flotation material or other materials not manufactured for the purpose of construction of boat docks. Any boat house constructed shall meet all state standards and codes and shall have the appearance of being in harmony with all other structures in Mariner's Cove. No boat house may have the appearance of being constructed in a make shift manner. Plywood or any other type of outer wall siding which would not be approved as an outer wall siding used in the construction of a dwelling constructed in Mariner's Cove may be used in construction of a boathouse. The maximum height of the top roof line on any boat house constructed shall be fifteen (15) feet above the level of the top of the bulkhead as it exists at the time of the filing of these restrictions. Any boat lift that is constructed must be of a type of construction which is considered to be standard type boat lift construction using materials which are considered standard for that purpose. The maximum height of any boat lift shall be the same as the maximum height allowed for the rooftop line of a boat house.

2. Any owner desirous of constructing a boat house or lift shall, for the present and future good of all Owners, be required at his individual expense to re-enforce the Bulkhead behind the boathouse to the satisfaction of the Homeowners Association and the Architectural Control Committee.

3. Should the Architectural Control Committee grant an Owner permission to construct a waterfront improvement, the Owner shall be obligated under the terms of this declaration to maintain and keep the improvement in a safe, sightly, and sanitary condition, free of litter, fishing poles, buckets and other items of personal property when such are not in use.

4. In the event that an Owner or an occupant fails to maintain an improvement in a safe and

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sightly manner, or fails to keep such improvements, or the Common Areas adjacent thereto free of personal property as set out in subsection 4 of this section, such default continuing after three (3) days written notice thereof, Declarant or his assigns, may without being under any duty to do so, without any liability to the Owner or occupant in trespass or otherwise, enter upon said Lot or improvement and cause to be removed such litter or articles of personal property, or do any other things necessary to secure compliance with these restrictions and to place said Lot in a safe and sightly and sanitary condition, and may charge the Owner of such Lot for the reasonable cost of such work, which may be established from time to time by the Declarant or the Association, as the case may be. The Owner agrees by the purchase of the Lot to pay such statement immediately upon receipt thereof, the amount of which shall be deemed a Reimbursement Assessment under the provisions of Article V, Section 10 of this Declaration.

B. Any waterfront improvements constructed under this section shall be the exclusive property of the Owner, who shall be granted an easement into and over the Common Area upon which the improvements are located, and into such other Common Areas as may be set out further within this Declaration. The ownership of any such waterfront improvements shall pass with title to the Lot and improvements thereon.

C. No improvement referred to in this section may extend more than twenty (20) feet over or into the water of the canal, measured from the center line of the bulkhead adjacent to or adjoining such improvement. Additionally, no boating craft shall be allowed to be docked in the canal if such craft extends more than twenty (20) feet into the canal from the center line of the bulkhead.

D. No Owner shall be allowed to place, or erect any boat slip, pier, dock, or similar waterfront improvement unless:

1. Such improvement is situated entirely within the boundary lines of the Lot as projected outward along said property line to the center of the canal.
2. Such improvement is no closer than five (5) feet to the property line of any adjoining Lot, as measured outward along said adjoining property line(s) from the bulkhead, to the center of the canal.

E. No Owner shall be entitled to the use of any waterfront improvement not situated within the boundaries of his Lot, as set out herein, unless he has the permission of the Owner of such improvements. Nothing, however, shall prevent the use of the pier attached to and constructed contemporaneously with the bulkhead, as set out in the plat of this subdivision or in this Declaration, by any Owner or by the Declarant.

F. No tires or any part thereof shall be placed or used as a bumper, a fender, or in any other manner along any bulkhead, pier, piling, waterfront improvement, or on any boat or other craft docked or moored within the canal.

G. No mooring lines to secure a boat, dock or any other object may be tied to the bulkhead. All mooring lines for any purpose shall be secured to the pilings on the canal side of the dock or to any other dock facilities constructed along the canal for such purposes and in no case shall interfere with or cause potential danger to pedestrian traffic along the Common Area cat walk.

#### SECTION 7. JETTY BOAT SLIPS

A. No raised or covered boat slips will be allowed.

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B. The boat slip will be assigned to Owners by the Declarant.

#### SECTION 8. BULKHEADS.

A. The bulkheads located on the Properties have been placed and constructed thereon for the purpose of creating, preserving and defining the boundaries of the canal, waterways and other bodies of water and developing, protecting and defining the waterfront boundaries of the Lots.

B. The bulkheads are herein designated as Common Area for the benefit of and maintenance by the Association and the members thereof, yet are part of and appurtenant to the Lot of the subdivision to which they are adjoined or attached.

C. Each Owner's easement of use and enjoyment of the bulkheads is hereby restricted and limited to only such uses as are incidental to the Owner's use and enjoyment of his Lot and the Common Area as will not harm, damage or in any way adversely affect the placement or structural soundness and effectiveness of the bulkheads as established boundaries and protective devices of the Subdivision.

D. An affirmative duty is imposed upon each Owner, for himself, his family members, his tenants, and his contract purchasers who reside upon the property, and for each of their guests and invitees on the property, to maintain a clean and safe area in, on, and around the bulkhead adjoining his Lot, not to damage or harm the bulkhead through intentional misuse, neglect, negligence or construction to, on, or around the bulkhead and not to cut, split, divide, separate or detach any part of the bulkhead in any manner, except as may be approved under Article III of this Declaration.

E. In the event of any damage or harm to the bulkhead by reason of any action on the part of an Owner, an occupant, or the guest of either such Owner or occupant, such bulkhead shall be repaired or replaced at the sole cost and expense of the Owner, who shall be deemed to be responsible therefor.

1. In the event said Owner fails and refuses to make such repairs or replacement and such failure and refusal continues for three (3) days after written demand to repair or replace is given by the Association, Declarant or their assigns may, without being under any duty to do so, enter upon said Lot, without any liability in trespass or otherwise and make such repairs to, or replace so much of the bulkhead as may be necessary, and may charge the Owner of such Lot for the expenses incurred for such repair.

2. The Owner agrees by the purchase of the Lot to pay such expenses immediately upon receipt of a statement thereof, which expenses shall be deemed to be a reimbursement assessment to that Owner, as set forth in Article V hereof.

F. Natural deterioration of the bulkhead shall be expected. The maintenance of the bulkhead and repair of damage due to normal wear and tear to the bulkhead shall be the responsibility of the Homeowners Association. The Homeowners Association shall take immediate action to repair any defect found in the bulkhead, regardless of its location. The resulting expense shall be the responsibility of the Homeowners Association.

G. No walkways, slabs or other similar construction having a subsurface foundation thickness in excess of two (2) inches or a width exceeding four (4) feet shall at any time be placed or constructed upon the ground which is above the subsurface structure of any bulkhead located adjacent to or adjoining such walkway or slab.

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**SECTION 9. SANITARY SEWER SYSTEM AND UTILITIES.**

A. No residential building placed or erected on a Lot shall be occupied until the same is connected and tied into the sanitary sewer system made available to the Owners. No connections to the water system and the sanitary sewer system shall be used until such connections are inspected and approved by the appropriate utility company furnishing utility services to the properties.

B. No sewage septic tanks shall be used or permitted.

C. No sewage shall be disposed of in any manner other than by the sanitary sewer system referred to in this section.

D. In no event shall any sewage, garbage, refuse or other waste be drained, dumped, or in any other manner discharged into any canal, waterway or any other body of water within or adjacent to this subdivision.

E. No "privy", vault or other outhouse of similar character shall be placed, erected or allowed on any Lot.

F. Each Owner of a Lot shall, at his own cost and expense, furnish, install, own and maintain (all in accordance with the requirements of all governing authorities and codes) such service cables, lines, pipes, meter loops, meters, transformers, taps and other equipment or fixtures necessary to finish and connect the various utility services to the improvements located on such Lot. Electrical service to each Lot shall be exclusively of the type known as single phase, 110/220 volt, three wire, 60 cycle, alternating current.

G. Any utility service connected to any dwelling constructed on any Lot or Lots in Mariner's Cove shall be via underground connection from the utility's source at the pole or pipeline. Any above ground connection to a dwelling from any power pole or other type of pole or other supporting object or from any underground pipeline, whether said connection should be pipe, conduit, wire, string, cable or any other type of visible connection supplying water, sewer, electricity, telephone, cable T.V. or any other utility or convenience, is strictly prohibited.

**SECTION 10. EASEMENTS.**

A. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat of the Subdivision and no structure of any kind shall be erected upon any of said easements.

1. Each utility company using the easements is hereby granted all rights of ingress and egress over, upon and across the Common area in connection with its installation and maintenance of utilities servicing the Subdivision.

2. Neither Declarant nor any utility company using the easement shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by said easements.

B. Full rights of ingress and egress shall be had by the Declarant and Association at all times over and upon each Lot for the maintenance and repairs of each Lot and Common Area in accordance with the provisions hereof and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association or Declarant upon any Lot shall be made with as little inconvenience to the Owner as may be reasonably practical, and any damage caused thereby shall



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be repaired by the Association at the expense of its maintenance fund, except as to damage caused during or by use of the above described utility easements.

C. Full rights of ingress and egress shall be had by any authorized fire prevention agency for the purpose of extinguishing fires to any of the buildings in the Subdivision. No such fire prevention agency shall be held liable for any damage done by them or their assigns, their agents, employees, or servants to streets, shrubbery, trees, or flowers of the Owner of a Lot in the subdivision. Such damage created by any of the aforementioned agencies to the streets shall be repaired at the expense of the Homeowners Association out of the funds held in reserve.

D. Each Owner or occupant of a Lot, the members of their household, and their guests shall have access to and the use of all Common Areas set out on the plat of this subdivision and in the Declaration.

E. Each Owner shall have an exclusive easement to the use of an area within the canal extending from the canal side of the pier adjacent to the Owner's Lot into the canal a distance of twenty (20) feet into the canal beyond the center line of the bulkhead, and bounded by the Lot's intersecting property lines projected outward into the canal.

F. Any Lot which has a north property line which is adjacent to a Lot to its north upon which a dwelling is constructed having any part of the structure of said dwellings situated on or along or within five (5) feet of the south lot line of its Lot shall contain an access easement in favor of the Owner of the Lot to its north for the purpose of inspection and/or repair or maintenance of said improvements on the Lot adjoining to the north. The use of said easement shall occur at reasonable times which are agreeable to all parties concerned and shall not be abused so as not to constitute a violation of privacy of the Owner of the Lot over which said easement exists, however said Owner of the property over which said easement exists shall not unreasonably withhold permission for the use of said easement by the adjoining property Owner for the purposes provided for herein. The cost of repair for any damage done to said easement or any property thereto shall be paid by the party responsible for the existence of such damage.

#### SECTION 11. PROHIBITION OF TRADE AND OFFENSIVE ACTIVITIES.

A. No Lot shall be used or occupied for any business, commercial, trade or professional purpose, either apart from or in connection with the use thereof as a private residence, whether for profit or not.

B. No commercial boating craft of any kind, including, without limitation, fishing and shrimping boats, shipping vessels, offshore rigging boats and charter boats, shall be allowed on or operated from any canal or waterway adjacent to any Lot, except in the case of one of these vessels being hired specifically to wheel wash the common canal.

C. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot or Common Area which may be or become an annoyance or a nuisance or interfere with the quiet environment within the subdivision.

D. The canals and any other Common Area shall at all times be kept free of debris, trash, rubbish, garbage and other unsightly and/or unsanitary articles that would constitute any annoyance, nuisance, or hazard to navigation.

#### SECTION 12. USE OF TEMPORARY STRUCTURES.

No structures of a temporary character, tents, shacks, garages, barns or other structures, or vehicles, including, but not limited to, mobile homes, campers, and trailers, shall be used on any Lot at any time as a residence or for storage purposes. This section shall not, however, limit the rights of

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Declarant or his agents or assigns to use such structures as provided for elsewhere within this Declaration.

### SECTION 13. STORAGE AND PARKING OF AUTOMOBILES, BOATS, TRAILERS, AND OTHER VEHICLES.

A. Except as may be provided herein, no boat trailers, boats on trailers, boats on the ground, travel trailers, inoperative automobiles, campers, or vehicles of any kind shall be parked or stored in the private streets, any right-of-way, or in any place on a Lot where they are visible. Storage of such items and vehicles must be blocked from public view and be within the structure of the residential building.

B. Automobiles, trucks and recreational vehicles owned by Owners or their guests and invitees for personal use only may be allowed to park on the driveways on Lots but only for periods of time not to exceed three (3) days. Such vehicles may, upon approval by and at the sole discretion of the Association, be allowed to park upon the Lots for longer periods of time, in no event, however, to exceed seven (7) consecutive days. No vehicles parked under this subsection shall be parked for more than nine (9) calendar days in any given month.

C. No commercial or commercial size trucks, vans or trailers shall be parked on driveways or on streets within the Subdivision for periods of time exceeding twelve (12) hours, nor more than twenty-four (24) hours in any calendar week. At such times as any vehicles are parked in accordance with this section, they must not be parked in a manner or position which restricts or prevents the free and unobstructed use of any private street.

D. Under no circumstances shall any boat be stored on a Lot. Additionally, no automobiles, trucks or other vehicles shall be stored on blocks, jacks or any other type of raised stand.

E. Any automobile over the age of ten (10) years must be parked and garaged under the resident structure after eight o'clock PM., (8:00 PM).

F. Declarant may park or dock and reside in or on vehicles or boats, at his sole discretion and may be hook up to Common Area utilities, water, etc. at no additional expense to Declarant so long as Declarant owns property in Mariner's Cove or until the year 2005.

G. No unsightly boats or vessels are allowed. All boats or vessels docked for a period of more than three days must have the approval of the Homeowners Association. Approval must be in written form. A fine of up to \$75 (seventy five dollars) per day may be levied by the Homeowners Association against any Owner deemed responsible for docking an unsightly boat or vessel within the private marina. Any boat or vessel that originally obtains written approval must be maintained appropriately and in such a manner so as not to become unsightly or it shall become eligible for the above mentioned fine of up to \$75 per day. However, before any fine can be levied against the Owner of said boat or vessel considered under this parameter, a thirty day "warning notice" must be given to the Owner in writing. If the Owner still has not moved the boat or vessel in question after the 30 day warning notice has expired, then a vote of 2/3 (two thirds) of the Owners shall be all that is required to implement any fine(s) decided upon by the current Board of the Homeowners Association.

### SECTION 14. STORAGE OF GARBAGE, WASTE OR UNSIGHTLY OBJECTS.

A. No Lot shall be used as a dumping ground for rubbish, trash or garbage or other waste material. Garbage shall only be kept in sanitary containers of metal, plastic or masonry materials with sanitary cover lids. No structure intended for the storage of any of the foregoing containers shall be permitted anywhere on a Lot outside of the area directly beneath the living area of a residential building.

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B. No Lot shall be used for open storage visible from the street of any materials whatsoever. Provided however, new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may remain thereon for a reasonable time so long as the construction progresses without undue delay. Upon completion of the improvements all excess materials shall be removed from the Lot.

#### SECTION 15. MINING AND/OR MINERAL OPERATIONS.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

#### SECTION 16. WALLS, FENCES, HEDGES AND LANDSCAPING.

A. No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than the front building line on such Lot, nor on corner Lots nearer to the side lot line than the building setback line parallel to the side street.

B. The ownership of any wall, fence or hedge erected on a Lot by Declarant or his assigns, shall pass with the title to the Lot and it shall be the Owner's responsibility to maintain said wall, fence or hedge thereafter in accordance with the provisions herein.

C. No wall, fence or hedge higher than four feet above ground level may exist on any Lot or Lots between the rear line of the dwelling and the bulkhead. Any and all trees or bushes shall be routinely pruned, especially those on the marina-canal side of any residence. Further no trees or bushes over the height of four (4) feet will be permitted after the date of the recordation of this Declaration without the express written consent of the Architectural Control Committee.

D. No chain link fence may be constructed on any Lot. Any fence constructed on any Lot or Lots must have prior approval of the Architectural Control Committee as provided herein.

E. All landscaping must be approved in writing by Architectural Control Committee.

#### SECTION 17. LOT MAINTENANCE.

A. The Owner or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, and shall in no event use any Lot for storage of material and equipment in public view except as incident to construction of improvements thereon as herein permitted.

B. The accumulation of garbage, trash or rubbish of any kind or the burning of any such materials is prohibited.

1. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirement such default continuing after five (5) days written notice to the Owner of said Lot thereof, Declarant or his assigns, may without being under any duty to do so and without any liability to the Owner or occupant in trespass or otherwise, enter upon said Lot, mow said Lot or cause to be removed from said Lot, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions and to place said Lot in a neat, attractive, healthful and sanitary condition.

2. The Declarant or his assigns may charge the Owner of such Lot for the reasonable cost of such

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work, which may be established from time to time by the Declarant or the Association, as the case may be. The Owner agrees by the purchase of the Lot to pay such statement immediately upon receipt thereof, the amount of which shall be deemed a reimbursement assessment, under the provisions of Article V, Section 10 of this Declaration.

3. Declarant or his assigns may, at his sole discretion, may impose a fine(s) for any blatant, continued disregard of any of the items mentioned in this section. Said fine may not exceed \$500 (Five Hundred) for each offense per thirty day period.

#### SECTION 18. LOT DRAINAGE.

A. Each Lot shall be maintained so as to preserve the drainage of the Lot and adjacent roadway areas, public or private.

B. The erection or placing of any structure or object or the filling in or excavation of any area of the Lot which will prevent free and adequate drainage or allow water to stand on the Lot, or adjacent Lots, or adjacent roadways, is prohibited.

#### SECTION 19. SIGNS, ADVERTISEMENTS, BILLBOARDS.

A. Except as may be hereinafter provided, no sign, advertisement, billboard or advertising structure of any kind shall be placed, maintained or displayed to the public view on any Lot or boat moored in the canal, except a total of two signs, of not more than six (6) square feet, for each building site, advertising the property for sale or rent. No more than one of said signs may be placed on the street side of the residential building and no more than one of said signs may be placed on the canal side or the bay side of the residential building, as the case may be. In any event, no more than a total of two of the said signs as described herein may be placed on a Lot at one time. Said signs shall be a standard real estate agent's sign or other sign which may be approved by the Architectural Control Committee.

B. Declarant or his assigns, and/or the Association shall have the right to remove any signs, advertisements, billboards or structures which may be placed on said Lots not in conformance with Section 18A above, and in doing so shall not be subject to any liability for trespass or any other tort in connection therewith or arising from such removal.

C. Declarant or his assigns, may maintain, as long as he owns property in MARINER'S COVE, in or upon such portion of the properties as Declarant may chose, such facilities as in his sole discretion may be necessary or convenient, including, but without limitation, billboards and other signs, not subject to the size limitation as set out above, for offices, storage areas, model units and signs. Declarant may use, and permit builders who are at the relevant time building and selling houses in MARINER'S COVE to use, residential structures for sales offices and display purposes, but all rights of Declarant and of any builder acting with Declarant's permission under this subsection shall be operative and in effect only at the discretion of Declarant or his assigns.

#### SECTION 20. BUILDING AND ROOFING MATERIAL.

A. The exterior of residential buildings shall be at least twenty five percent (25%) stucco or brick. The remainder of the exterior shall be finished with an acceptable wood or siding. Under no circumstances shall any metal, felt, paper, or T-111 be used as exterior siding on any residential building erected on a Lot. All buildings must be kept in good repair and in neat and clean condition and must be painted when necessary to preserve the attractiveness thereof. The roof of any building shall be constructed of or covered with tile, fiberglass or composition type shingles or architectural metal roofing of a type designed

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and intended for residential roofing or by a residential type roofing material of comparable quality or better. Any other type of roofing material shall be permitted only at the sole discretion of the Architectural Control Committee who shall have complete authority to approve or disapprove any roofing materials not designated herein.

#### SECTION 21. ANTENNAS

A. A satellite dish antennas over one meter in diameter may be utilized by a Homeowner so long as:

1. Such satellite dish is installed in a substantial, good and workman-like manner, and is subsequently maintained pursuant to the provisions of this Declaration.
2. The location and installation of such satellite dish is approved in advance by the Architectural Control Committee, pursuant to Article III of this Declaration.

B. All cable lines must be run underground from the power pole in the utility easement to the dwelling which it serves.

C. The Homeowners Association will adopt and publish guidelines for the placement of antennas and of satellite dishes of one meter or less in diameter.

#### SECTION 22. ACCEPTABLE PETS.

A. Except as may be hereinafter provided, no animals or livestock, including but not limited to horses, cattle, sheep, goats, swine, poultry, et cetera, shall ever be kept in any dwelling or on any Lot by an Owner or an occupant or the guest of any Owner or occupant of any dwelling in Mariner's Cove. Specifically, pit bulldogs are prohibited and any breed of dog or any other animal of any kind which is presently or has historically been bred for the purpose of fighting are additionally prohibited from being kept in any dwelling or on any Lot. The keeping of any wild or undomesticated animals or any animal considered dangerous for any reason by a majority of the Board of Directors of the Homeowners Association is strictly prohibited.

B. Except as provided above an Owner or occupant of a Lot in the subdivision may keep up to four pets, including dogs, cats, domesticated birds or other common household pets on his property, so long as:

1. Such animals are kept inside the residence or chained, tethered, caged or fenced within the boundaries of the Owner or occupant's Lot.
2. Such animals are regarded and treated as "house pets" and reside in the homeowner's residence at night.
3. Any fence within which an animal is kept shall be constructed in a manner which will prevent the animal from placing its head, snout or other appendages of its body through the fence onto or over any adjoining property Owner's property or onto or over any Common Area of the subdivision.
4. Such animals are not kept, bred or maintained for any commercial or other business purpose.
5. Each pet is approved and has written approval from the acting Board of the Homeowners Association. If any pet becomes, or is deemed, a nuisance or undesirable after it has been accepted, the Homeowners Association retains the right to revoke its previous approval with a 2/3

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vote of the Owners and impose the same penalties set out in Article Section 12, Paragraph G of these Restrictive Covenants. The same notice and penalty parameters shall apply to any Homeowner that neglects to keep their yard clean and odor free.

6. Such animals are not allowed to run up and down their fence line, bark, act vicious, and/or disturb the tranquility of the neighborhood in general. Dogs that tend to bark vociferously shall be deemed undesirable by the Homeowners Association. A vote of the Owners will be required on any pet's approved status if the Homeowners Association receives two written complaints regarding said pet in a thirty (30) day period. In this particular instance, the residents on either side of the residence housing the pet in question shall be allocated five (5) votes, instead of their usual one vote.

#### SECTION 23. CLOTHES LINES.

No clothing or other materials shall be aired, hanged or dried in the Subdivision except within an enclosed structure or within the area directly under the Residential Building.

#### SECTION 24. WORKING HOURS.

Except in an emergency or when other unusual circumstances exist, as it may be determined by the Architectural Control Committee or Board of Directors of the Homeowners Association, outside construction work or noisy interior construction work shall be permitted only after 7:00 A.M. and not later than 9:00 P.M.

#### SECTION 25. STREET NUMBERS AND MAILBOXES.

Mailboxes, house numbers and similar objects used in the subdivision must be harmonious with the overall character and esthetics of the subdivision, and shall be subject to approval pursuant to Article III of this Declaration.

### ARTICLE III ARCHITECTURAL CONTROL

#### SECTION 1. APPROVAL REQUIRED FOR ALL CONSTRUCTION OR ALTERATION.

A. No buildings, fences, or improvements of any type shall be erected or placed on a Lot, or changes made in the design thereof after original construction, on any Lot until the construction plans and specifications and a plan showing the Location of the structure or improvements have been submitted to and approved in writing by the Architectural Control Committee (herein referred to as "Committee") or its duly authorized representative, as to compliance with these restrictions, quality of material, color, harmony of external design with existing and proposed structures, and location with respect to topography and finish grade elevation.

B. The Committee shall have the right to require evidence that construction techniques to be used on any Lot or waterfront improvements will not cause damage to any bulkhead, drainage easement or other Common Area.

C. The Declarant, Committee, and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. The approval or lack of disapproval by the Committee shall not in any way be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty relating to fitness of design, purpose, or the adequacy of the proposed construction or compliance with applicable statutes, codes and

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regulations.

D. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied.

## SECTION 2. COMMITTEE MEMBERSHIP.

A. The initial members of the Committee shall be Brenda C. Golden and one additional member who will be appointed by the Declarant. If there exists at any time one or more vacancies in the committee, the remaining member or members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that Declarant may from time to time, without liability of any character for so doing, remove and replace any such members of the Committee as he may in his sole discretion determine.

B. Declarant hereby retains the right, but is not absolutely bound by the percentage mentioned in this paragraph, to assign the duties, powers, and responsibilities of the Committee to MARINER'S COVE HOMEOWNERS ASSOCIATION, INC., (hereinafter referred to as the "Association"), when seventy five percent (75%) of all Lots in MARINER'S COVE are owned by Owners. If such assignment has not been made by January 1, 2005, it shall be deemed to have been made on that date.

## SECTION 3. VARIANCES.

A. The Committee, the Association as assignee, or an authorized representative, is hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee or its duly authorized representative such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole.

B. The Committee may require to be submitted such documents and items, (including as examples, but without limitation, written request for and description of the variances requested, plans, specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance.

C. The Committee shall approve and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot for which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing when applicable the conditions on which the variance has been approved and signed by a majority of the then members of the Committee or by the Committee's duly authorized representative. Any request for a variance shall be deemed to have been disapproved for the purpose hereof in the event of either:

- (1) written notice of disapproval from the Committee, or
- (2) failure by the Committee to respond to the request for variance within thirty (30) days after its receipt of the required documents.

D. In the event the Committee or any successor to the authority thereof shall not then be

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functioning Directors of the Association, or if the Association shall not have succeeded to the authority of the Committee as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except at the discretion of the Committee, or if it shall have succeeded to the authority of the Committee in the manner provided herein, the Board of directors of the Association. The Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

ARTICLE IV  
MARINER'S COVE HOMEOWNERS ASSOCIATION, INC.  
MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP AND ASSESSMENT.

Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. ASSOCIATION VOTING RIGHTS AND MEMBERSHIP.

Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Holders of future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder.

Class B. The Class B member(s) shall be Declarant or his heirs, executors, administrators or assigns and shall be entitled to seven (7) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership including any duly annexed area; or
- (2) on January 1, 2005.

Article V  
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.

Declarant, in the case of each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments together with interest, late fees, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due.



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**SECTION 2. PURPOSE OF ASSESSMENT.**

Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, enforcement of the restrictions contained herein, maintenance of any Common Area, bulkheads, parkways, and entry ways, negotiation and approval of dredging, repair of breakwaters, bulkheads and piers, and contracts for police and security service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control and other services as may be in the community's interest.

**SECTION 3. AMOUNT OF ANNUAL ASSESSMENT.**

A. From and after January 1, 2000 the maximum annual assessment shall be \$840.00 or \$70.00 per month.

B. From and after January 1 2001 the maximum annual assessment may be increased each year by an amount equal to not more than ten percent (10%) above the maximum annual assessment which could have been made without a vote of the membership in the case of the previous year.

C. From and after January 1, 2001 the maximum annual assessment may be increased to an amount in excess of ten percent (10%) of the maximum assessment for the previous year by a vote of 51% (fifty one percent) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose.

D. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

**SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS.**

In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Common Area or of a capital improvement upon a Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of fifty one percent (51%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Notwithstanding the foregoing, the Association shall have the power and authority in an emergency situation or under circumstances which present an immediate threat to the health, safety and welfare of the members of the Association, or a threat of preventable damage or destruction of a Common Area or Lot within the subdivision, to levy a special assessment under this section or under Section 8 of this Article without calling a meeting or obtaining the assent of the members prescribed above.

**SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4 OF THIS ARTICLE.**

Written notice of any meeting called for the purpose of taking any action under sections three and/or four of this article shall be given to all members of the association in writing not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the meeting shall be adjourned but another meeting may be called subject to the same notice requirement, but the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum applicable in the case of the preceding meeting. Such subsequent meeting shall be held no more than sixty (60) days following the preceding meeting.

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**SECTION 6. RATE OF ASSESSMENT.**

A. All Lots in MARINER'S COVE shall commence to bear their applicable maintenance fund assessment simultaneously in accordance with Article V, Section 7 and Lots owned by Declarant are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by The Board of Directors in accordance with the provisions of Sections 3 and 7 hereof.

B. All Lots in MARINER'S COVE which are not occupied by a resident and which are owned by Declarant, a builder, or a building company, shall be assessed at the rate of one-sixth (1/6) of the annual assessment above. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated according to the rate required during each type of ownership.

C. Any Lot that is purchased, but not built upon, shall be assessed at the rate of one half (1/2) the rate set by the Homeowners Association until one year after purchase or until the Owners begin construction of a residence, whichever shall first occur.

D. Owners of Lots in Section 2 or any subsequently annexed areas will be required to pay all regular and special assessments provided however they shall be assessed only fifty percent (50%) of any special assessment for Bulkhead repair or maintenance, since they do not derive direct benefits from living directly on the water.

E. It is the intention of the Declarant to annex the lots surveyed to the west of Port Drive, which will be known as the Port Annex, and which will include and add lots 1-11. In the event this annexation does materialize, the Owners of lots 10 and 11 shall maintain their bulkheads on the Bay independently of the Homeowners Association and at their sole expense. However, the Owners of lots 10 and 11 shall still be required to participate in the regular assessments and special assessments using the formula set forth in Article V, Section 6, paragraph D.

F. The same parameters set forth in the above paragraph D shall also apply to Lot 1A, Section 1, at the end of Starboard Drive.

G. Owners of building sites composed of a Lot and a portion of a contiguous Lot shall be assessed for the full Lot and for the fractional portion of the contiguous Lot.

**SECTION 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.**

The annual assessments provided for herein shall commence as to all Lots in MARINER'S COVE on January 1, 2000. The annual assessment shall be adjusted according to the number of months remaining in the then current calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by US first class mail) to every Owner subject thereto. The payment dates shall be established by the Board of Directors. The payment(s) shall be prorated and paid annually or monthly reflecting all changes made by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies.

**SECTION 8. EFFECT OF NON PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the highest non-usurious rate allowed under the laws of the State of Texas, or other

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applicable law, or if no such limitation is imposed, then at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Lot and any improvements thereto. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any other or directive of any municipal or other governmental authority.

#### SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien for the assessments and charges provided for herein shall be subordinate to the Lien of any first mortgage existing at any time upon the particular Lot involved. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise), shall extinguish the lien of such assessments as to payments which became due prior to the foreclosure. Such foreclosure shall not extinguish the debt for payments thereafter becoming due or from the lien thereof, but such lien shall exist as and constitute a separate and distinct charge and lien on each Lot.

#### SECTION 10. REIMBURSEMENT ASSESSMENTS.

For work undertaken on behalf of Owners, the Committee or the Association, as the case may be, may levy reimbursement assessments against an individual Owner if such body exercises its right to undertake work, including but not limited to, repairs to bulkheads for damages caused by an Owner or his occupant or guest, as permitted in this Declaration. Any failure by an Owner to pay such a reimbursement assessment may subject the Owner to the remedies set out in sections 8 and 9 of this Article.

### ARTICLE VI GENERAL PROVISIONS

#### SECTION 1. ENFORCEMENT.

Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

#### SECTION 2. SEVERABILITY.

Waiver or invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions. All other provisions shall remain in full force and effect.

#### SECTION 3. OWNER'S EASEMENT OF ENJOYMENT.

Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

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1. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility or improvement situated upon the Common Area, and the right to establish and enforce rules and regulations governing the use and enjoyment of the Common Area.
2. The right of the Association to suspend an Owner's voting rights and right to use any recreational facility for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.
3. The right of the Association to dedicate or transfer its interest, title, easement, or other rights in any or all or any part of the Common Area, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of the members agreeing to such dedication or transfer has been recorded in the Public Record of Real Property of Galveston County, Texas.
4. The right of the Association to collect and disburse those funds as set forth in Article V.
5. All other rights of the Association, Declarant or other persons and all covenants, conditions and restrictions set forth in these provisions of this Declaration are provided for in the By-Laws of the Association.

#### SECTION 4. DELEGATION OF USE.

Any Owner may delegate in accordance with the provisions hereof or of the By-Laws of the MARINER'S COVE HOMEOWNER'S ASSOCIATION, INC. his right of enjoyment to any Common Area and facilities to the members of his family, his tenants, guests or contract purchasers who reside on the property.

#### SECTION 5. TITLE TO COMMON AREAS.

Declarant may retain the legal title to the Common Area in the properties until such time as it has completed improvements thereon, if any, and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Area has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all of the rights and privileges relating to such Common Area and facilities granted to the Association in this Declaration and in any amendments to this declaration.

#### SECTION 6. AMENDMENT.

A. The covenants and restrictions of this declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

B. This Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than seventy five percent (75%) of the Lots within MARINER'S COVE and thereafter by an instrument signed by those Owners owning not less than sixty percent (60%) of the Lots within MARINER'S COVE.

C. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Galveston County, Texas.

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D. Declarant shall have and reserves the right at any time and from time to time prior to three years from the date of recording of this Declaration, without joinder or consent of any other party to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgage.

Declarant, further reserves the right to amend this Declaration in any manner by an instrument in writing duly signed, acknowledged and filed of record. This right shall continue for as long as the Declarant owns property in Mariner's Cove. The Owners may overrule such an amendment by an instrument in writing signed and acknowledged by owners of two thirds (2/3rds) of the Lots in the Property and duly recorded, if such document is recorded within six months of the date of recording of the amendment to be overruled.

#### SECTION 7. ANNEXATION.

Additional residential property and Common Area may be annexed to the Properties at the Declarant's sole discretion.

#### SECTION 8. MISCELLANEOUS ADDENDUM AND PROVISIONS.

A. Window or wall unit air conditioners are prohibited on or in any structure unless approved by the Committee or approved by one third (1/3) of the Owners.

B. All outside lights and lighting must be approved in writing by Declarant or Declarant's designated representative.

C. Any and all window coverings must be approved in writing by Declarant or Declarant's designated representative.

D. All garage doors shall remain closed when not in immediate use.

E. Basketball goals, trampolines, swings, slides and all other lawn recreation equipment and accessories are prohibited, unless written consent is provided by Declarant or Declarant's designated representative.

#### SECTION 9. BOOKS AND RECORDS.

The books, records and papers of the Association shall, during reasonable business hours, be subject to inspections by any members. The Articles of Incorporation, By-Laws of the Association, and Restrictive Covenants shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

#### SECTION 10. INTERPRETATION.

If the Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this declaration shall govern.

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## SECTION 11. OMISSIONS.

If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity or effect to any other word, clause, sentence, or provision appearing in this declaration shall be omitted hereof, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be applied by inference.

IN WITNESS WHEREOF, the undersigned, being Declarant and Owners, together owning at least seventy five percent (75%) of the Lots within San Leon Landing Section 1, have set their hands on the date above their signature.

## EXECUTION BY DECLARANT

I represent that MC INVESTMENTS CO., INC. owns record title to the property located at 2269 East Bayshore Blvd., San Leon, Texas 77539, being Lots 1A, 1B and Lots 2-5, Lot 8, Lots 10-13, Lot 15, and Lot 18, in Section 1, and Lots 1 through 7 in Section 2, Mariner's Cove Subdivision, Galveston County, this 19<sup>th</sup> day of October, 1998.

DECLARANT:

MC INVESTMENTS CO., INC.

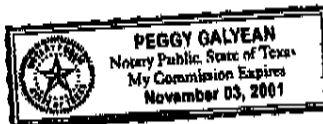
By Brenda C. Golden  
Brenda C. Golden, President

THE STATE OF TEXAS

COUNTY OF HARRIS ~~GALVESTON~~

This instrument was acknowledged before me on this the 19<sup>th</sup> day of October, 1998, by BRENDA C. GOLDEN, President of MC INVESTMENTS, INC., a Texas corporation, on behalf of said corporation.

Peggy Galvan  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

*return to:*

MIESZKUC, DAUGHTRY & SCOTT, PC  
17044 EL CAMINO REAL  
HOUSTON, TEXAS 77058

013-04-0338

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at Mariner Cove  
San Leon, Texas, 77539, being Lot 6, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 16 day of September, 1998.

James P. Bowman Jr.  
(Signature)  
James P. Bowman Jr.  
(Print Name)

NA  
(Signature)  
NA  
(Print Name)

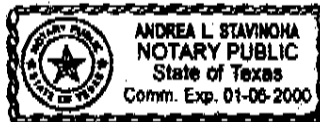
THE STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS INSTRUMENT was acknowledged before me on this 16<sup>th</sup> day of Sept.1998, by James P. Bowman Jr.

Andrea L. Stavino  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

ANDREA L. STAVINO  
(Print Name of Notary)



013-04-0339

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 124 Harbord  
Mariner Cove  
San Leon, Texas, 77539, being Lot 2, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 14 day of September, 1998.

[Signature]  
(Signature)

GLENN GASSETT  
(Print Name)

[Signature]  
(Signature)

BARBARA A. GASSETT  
(Print Name)

THE STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS INSTRUMENT was acknowledged before me on this 14<sup>th</sup> day of September1998, by Glenn Gasset and Barbara Gasset

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

MARY ANN MIKULEC  
(Print Name of Notary)





013-04-0340

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 132 Starboard  
San Leon, Texas, 77539, being Lot 9, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 21<sup>st</sup> day of September, 1998.

[Signature]  
(Signature)  
John Eric Humphreys  
(Print Name)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)

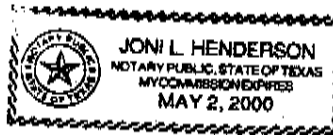
THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS INSTRUMENT was acknowledged before me on this 21<sup>st</sup> day of September1998, by [Signature] and \_\_\_\_\_

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Joni L. Henderson  
(Print Name of Notary)



013-04-0341

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 132 STALBOARD  
San Leon, Texas, 77539, being Lot 9, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 22 day of September, 1998.

Karla R Humphreys  
(Signature)

(Signature)

Karla R Humphreys  
(Print Name)

(Print Name)

THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS INSTRUMENT was acknowledged before me on this 22 day of September,  
1998, by Karla R Humphreys

Lee Ann Maldonado  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Lee Ann Maldonado  
(Print Name of Notary)



013-04-0342

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 123 ~~St~~ Port + Marina Cove  
San Leon, Texas, 77539, being Lot 16, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 12<sup>th</sup> day of September, 1998.

Ingrid Rich  
(Signature)

Ingrid Rich  
(Print Name)

Jack E. Rich  
(Signature)

Jack E. Rich  
(Print Name)

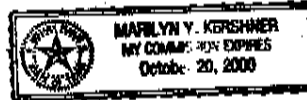
THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS INSTRUMENT was acknowledged before me on this 12<sup>th</sup> day of September1998, by Ingrid Rich and Jack Rich.

Marilyn Y. Kershner  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Marilyn Y. Kershner  
(Print Name of Notary)

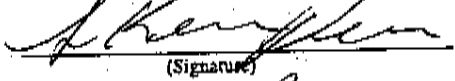


013-04-0343

Mariner's Cove

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 119 Port,  
San Leon, Texas, 77539, being Lot 12, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 21 day of September, 1998.

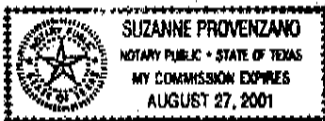
  
(Signature)S. Kevin Price  
(Print Name)  
(Signature)  
(Print Name)

THE STATE OF TEXAS §

COUNTY OF GALVESTON §

THIS INSTRUMENT was acknowledged before me on this 21st day of September1998, by S. Kevin Price and \_\_\_\_\_.  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

(Print Name of Notary)



013-04-0344

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at 100 Post Drive at  
2269 E. Bayshore  
San Leon, Texas, 77539, being Lot 19, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 12 day of September, 1998.

Vance Keiffer  
(Signature)

(Signature)

VANCE KEIFFER  
(Print Name)

(Print Name)

THE STATE OF TEXAS

COUNTY OF GALVESTON

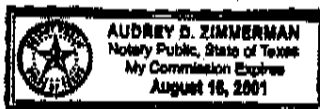
THIS INSTRUMENT was acknowledged before me on this 14<sup>th</sup> day of September,

1998, by VANCE KEIFFER and \_\_\_\_\_

Audrey D. Zimmerman

NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Audrey D. Zimmerman  
(Print Name of Notary)



013-04-0345

Harold

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at Marina Cove  
San Leon, Texas, 77539, being Lot 20, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
Texas, this 16 day of Sept, 1998.

Harold Bludworth  
(Signature)

(Signature)

HAROLD BLUDWORTH  
(Print Name)

(Print Name)

THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS INSTRUMENT was acknowledged before me on this 16<sup>th</sup> day of September  
1998, by HAROLD BLUDWORTH and \_\_\_\_\_

Marin Dutton  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS  
My Comm. Expires May 1, 2000  
(Print Name of Notary)



013-04-0346

## EXECUTION BY OWNERS

We (I) represent that we (I) own record title to the property located at Mariner Cove  
 San Leon, Texas, 77539, being Lot 2D, Block 1, Section 1, Mariner's Cove Subdivision, Galveston County,  
 Texas, this 16 day of SEP, 1998.

Betty J. Bludworth  
 (Signature)

(Signature)

BETTY J. BLUDWORTH  
 (Print Name)

(Print Name)

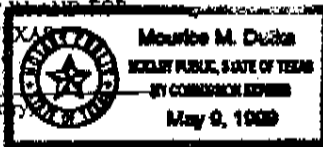
THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS INSTRUMENT was acknowledged before me on this 16 day of September  
 1998, by Betty J. Bludworth and \_\_\_\_\_

Marion Duke  
 NOTARY PUBLIC IN AND FOR  
 THE STATE OF TEXAS

(Print Name of Notary)



## RECORDER'S MEMORANDUM

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

FILED AND RECORDED  
 OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

Patricia Ritchie  
 10-21-98 02:14 PM 9852185  
 DEBNER \$70.75  
 Patricia Ritchie, County Clerk  
 GALVESTON COUNTY, TEXAS

return to:  
 MIESZKUC, DAUGHTRY & SCOTT, PC  
 17044 EL CAMINO REAL  
 HOUSTON, TEXAS 77058

014-12-0024

RECORDED AT THE REQUEST OF  
FIRST AMERICAN TITLE

GAL 9904074 3 Pgs

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MARINER'S COVE**

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

**RECITALS**

WHEREAS, WECO INVESTMENTS, LTD., a Texas limited partnership, (successor in interest to MC INVESTMENTS CO., INC.) is the "Declarant" under those certain Declaration of Covenants, Conditions and Restrictions For Mariner's Cove dated October 19, 1998 and being recorded under Film Code Numbers 013-04-0316 through 0337 of the Official Public records of Real Property for Galveston County, Texas, (hereinafter the "Declaration"); and

WHEREAS, the Declarant now desires to amend the Declaration to (i) clarify and expressly reserve the right in Declarant to (a) change the descriptions and dimensions of any Lot owned by Declarant, including, without limitation combining Lots 1A and 1B of Section 1 into a single Lot, (b) change and replat the subdivision of the Property as Declarant may deem necessary or advisable, in Declarant's sole discretion, and (c) change the description, dimension and/or location of any of the Common Areas as Declarant may deem necessary or advisable, in Declarant's sole discretion, (ii) exclude any construction activities by Declarant from requiring any approval or consent under Article III of the Declaration, (iii) allow Declarant to grant, without the necessity of approval or consent by any other party, variances under Article III to any purchasers of Lots from Declarant until January 1, 2005, (iv) change the date in Article III, Section 2.B. from "January 1, 2005" to "January 1, 2000", (v) provide for the conveyance of the Common Areas designated as Reserve "B", Reserve "C" and Reserve "D" on the plat of the Properties from Declarant to the Association as of January 1, 2000, with the conveyance of all or a portion of Reserve "A" at such time and to the extent as Declarant deems it appropriate or shall no longer need or require an office to be located thereon but in no event after January 1, 2005, (vi) add to the designation in Article V, Section 6.F "as the same may be reconfigured or combined with other Lots from time to time pursuant to the terms of this Declaration", and (vii) provide that Declarant shall have no duty, obligation or liability whatsoever, whether expressed or implied, to develop or perform any function or service regarding the Properties.

NOW THEREFORE, effective as of the Effective Date (as hereinafter defined) the undersigned Declarant does hereby amend the Declaration as follows:

1. The above recitals are incorporated herein for all purposes. Any defined terms used herein shall have the meaning as set forth in the Declaration, unless otherwise noted herein.
2. Article VI of the Declaration is hereby amended to add the following new sections thereto:

"SECTION 12. SUPERIOR RIGHT OF DECLARANT. Notwithstanding anything to the contrary contained in this Declaration, the Declarant hereby expressly reserves and shall have the superior right, without the approval or consent of any Owner or the Association, to (i) change or amend the descriptions and dimensions of any Lot owned by Declarant, including, without limitation, combining Lots 1A and 1B of Section 1 into a single Lot, (ii) change and replat the subdivision of the Properties as Declarant may deem necessary in Declarant's sole discretion, provided, that Declarant shall not be allowed to change the dimensions or description of an Owner's Lot without the consent of the Owner, and (iii) change or amend the descriptions, dimensions and/or locations of any Common Areas as Declarant may deem necessary in Declarant's sole discretion, provided, that Declarant shall not be allowed to change the dimensions or description of an Owner's Lot without the consent of the Owner.

SECTION 13. VARIANCES BY DECLARANT. Notwithstanding anything to the contrary contained in this Declaration, until January 1, 2005 the Declarant shall have the right to grant, without the necessity of approval or

RECORDED'S MEMORANDUM

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



014-12-0025

consent by any other party, variances under Article III to any purchasers of Lots from Declarant.

**SECTION 14. CONVEYANCE OF COMMON AREAS FROM DECLARANT TO ASSOCIATION.** Notwithstanding anything to the contrary contained in this Declaration, the Common Areas designated as Reserve "B", Reserve "C" and Reserve "D" on the plat of the Properties shall be deemed conveyed to the Association as of January 1, 2000, and Declarant shall take all necessary actions (including, without limitation, recording a deed without warranty to the Association) to evidence and properly record such conveyance. Further notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the right to convey to the Association at such time and to the extent Declarant deems it appropriate or shall no longer need or require an office to be located thereon all or a portion of the Common Areas designated as Reserve "A" on the plat of the Properties, provided that such conveyance shall be on or before January 1, 2005, and Declarant shall take all necessary actions (including, without limitation, recording a deed without warranty to the Association) to evidence and properly record such conveyance(s).

**SECTION 15. NO DUTY, OBLIGATION OR LIABILITY OF DECLARANT.** Notwithstanding anything to the contrary contained herein, Declarant shall have no duty, obligation or liability whatsoever, whether expressed or implied, to develop or perform any function or service regarding the Properties."

3. Article III, Section 2.B. is hereby amended to change "January 1, 2005" to "January 1, 2000".
4. Article V, Section 6.F. is hereby replaced in its entirety with the following: "F. The same parameters set forth in the above paragraph D shall also apply to Lot 1A, Section 1, as the same may be reconfigured or combined with other Lots from time to time pursuant to the terms of this Declaration."

IN WITNESS WHEREOF this First Amendment To Declaration Of Covenants, Conditions and Restrictions For Mariner's Cove is hereby executed effective as of November 30, 1999 (the "Effective Date"). This First Amendment To Declaration Of Covenants, Conditions and Restrictions For Mariner's Cove may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument.

WECO INVESTMENTS, LTD.

By: Peter D. Webb

Peter D. Webb

Printed Name, Title

VICE PRESIDENT

STATE OF TEXAS §  
§  
COUNTY OF GALVESTON §

This instrument was acknowledged before me on November 30, 1999, by Peter D. Webb as General Partner of WECO INVESTMENTS, LTD., a Texas limited partnership, on behalf of said limited partnership.



Audrey D. Zimmerman  
Notary Public  
State of Texas  
My Commission Expires: 8-16-2001

After Recording  
Mariner's Cove  
c/o Peter WEBB  
139 PORT  
SAN LEON, TX 77539

FROM :

FAX NO. :

Aug. 14 2009 10:22AM P34

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY



014-12-0026

12-2-99 10:18 AM 9960474  
LONG \$11.00  
Patricia Ritchie, County Clerk  
GALVESTON COUNTY, TEXAS