

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

2204350

FLEXIBLE USE OWNERSHIP

This Declaration of Covenants, Conditions and Restrictions for Flexible Use Ownership ("Declaration") is made by Mariner Properties, Inc., a Florida corporation ("Declarant") as owner of those certain Unit Weeks in Units located in the condominium project known as "Hurricane House, a Condominium" (the "Condominium"), which Unit Weeks are described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

By this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment and possession of the Property, and hereby declares that the Property is and shall be held, used, conveyed, hypothecated, transferred, encumbered and occupied subject to the following limitations, covenants, conditions, restrictions and easements, all of which are declared to be in furtherance of a plan established for the purpose of enhancing the value, desirability and enjoyment of the Property. All such limitations, covenants, conditions, restrictions and easements are intended to run with the land, to wit, each Unit Week in a Unit and each Owner and each Owner's successors and assigns are and shall be bound by this Declaration for the benefit of each other Unit Week in a Unit covered by this Declaration.

ARTICLE I

DEFINITIONS

Association, means Hurricane House Condominium Association, Inc., a Florida non-profit corporation.

Condominium, means Hurricane House, a Condominium, as described in the Declaration of Condominium thereof.

Declarant, means Mariner Properties, Inc., a Florida corporation, its successors and assigns; if any such successor or assign acquires one or more Unit Weeks from the Declarant and is designated by Mariner Properties, Inc. as the Declarant by a duly recorded written instrument.

Declaration, means this Declaration of Covenants, Conditions and Restrictions for Flexible Use Ownership, as amended from time to time.

Declaration of Condominium means the Declaration of Condominium for the Condominium as recorded in Official Records Book 1889, at Page 201, of the Public Records of Lee County, Florida, as amended. 2754

Designated Five Day Period, means that Five Day Period assigned to an Owner pursuant to the provisions of Article IV.

Designated Seven Day Period, means that Seven Day Period assigned to an Owner pursuant to the provisions of Article IV.

Designated Two Day Period, means that Two Day Period assigned to an Owner pursuant to the provisions of Article IV.

Designated Unit, means the Unit assigned to an Owner pursuant to the provisions of Article IV.

This instrument prepared by:  
Mark G. Langer, Esq.  
Mark G. Langer, P.A.  
7000 S.W. 62nd Ave., Suite 311  
South Miami, Florida 33143

RECORD VERIFIED - CHARLIE GREEN, CLERK  
BY: G. SHERWOOD, D.C.

OFF 1889 PG 2755  
REC

Five Day Period, means that period of time commencing at 8:00 P.M. on Sunday and ending at 10:00 A.M. on the following Friday.

Flexible Use Period, means the period of time beginning with the commencement of Unit Week Number 16 through and including the termination of Unit Week Number 51.

Owner, means (i) the grantee named in each initial deed of a Unit Week in a Unit conveyed by the Declarant, (ii) the successive Owners of each Unit Week in a Unit so conveyed by Declarant and (iii) Declarant with respect to any Unit Week in a Unit not so conveyed.

Property, means the Unit Weeks in the Units which are described in Exhibit "A" attached hereto and made a part hereof.

Rules and Regulations, means the Rules and Regulations adopted and promulgated from time to time by the Association relative to the possession, use and enjoyment of the Units during the Unit Weeks or portions thereof.

Seven Day Period, means that period of time commencing at 3:00 P.M. on Friday and ending at 10:00 A.M. on the following Friday.

Two Day Period, means that period of time commencing at 3:00 P.M. on Friday and ending at 4:00 P.M. on the following Sunday.

Unit, means any of the condominium units located in the Condominium which are described in Exhibit "A" attached hereto and made a part hereof.

Unit Week, means those periods of ownership in those Units in the Condominium which are described in Exhibit "A" attached hereto and made a part hereof and any other Unit Weeks in Units in the Condominium, which may be annexed hereto, pursuant to the provisions of Article V hereof. Unit Weeks are computed as follows:

Unit Week No. 1, is the seven (7) days commencing on the first Friday in each year. Unit Week No. 2, is the seven (7) days succeeding. Additional weeks up to and including Unit Week No. 51, are computed in a like manner. Unit Week No. 52, contains the seven (7) days succeeding the end of Unit No. 51, without regard to the month or year plus any excess days not otherwise assigned. Unit Weeks run from noon on the first Friday of the period to noon on the last Friday of the period.

## ARTICLE II

### EXCLUSIVE USE AND OCCUPANCY

Each Owner, during the Unit Week in the Unit which is conveyed by the Declarant to the Owner, shall have the exclusive right to occupy the Unit, subject to the provisions of Article III and Article IV.

## ARTICLE III

### CROSS USE EASEMENT RIGHTS

In order to give each Owner greater flexibility in utilizing the Units during the Unit Weeks, each Unit and Unit Week shall be available for reservation, occupancy and use ("Use Right Easement") by every Owner, subject to the provisions of this Declaration and the Rules and Regulations.

ARTICLE IV

RESERVATION PROCEDURE

A. Each Owner, with respect to each Unit Week in a Unit owned, shall, not later than March 15th of each year, but not before February 15th for the succeeding year, unless otherwise provided in the Rules and Regulations, request from the Association, the reservation of a specific Seven Day Period or a specific Two Day Period and a specific Five Day Period. The Association, upon receipt of the reservation request, shall assign a Designated Seven Day Period in a Designated Unit, in the case of the Owner's desire to reserve a Seven Day Period or a Designated Two Day Period and Designated Five Day Period in a Designated Unit, in the case of the Owner's desire to reserve a Two Day Period and a Five Day Period, if the reservation request is available.

In the event a reservation request is not available, the Association shall so notify the Owner, and request from the Owner, additional reservation request(s) of specific Seven Day Periods, in the case of an Owner's desire to reserve a Seven Day Period, or specific Two Day Periods and Five Day Periods, in the case of an Owner's desire to reserve a Two Day Period and a Five Day Period, in the Flexible Use Period. Upon the confirmation of a reservation request, the Association shall designate a Unit for the Owner's use during the Designated Seven Day Period or Designated Two Day Period and Designated Five Day Period.

B. In the event the Association determines that the foregoing reservation system is unmanageable or is, for any reason, unfair to the Owners, the Association may, without the consent of the Owners, revise and/or supplement the reservation system from time to time by the adoption of Rules and Regulations which may contain one or more of the following features:

(1) A system which assures that each Owner will have an opportunity to make a reservation for the more popular holiday periods;

(2) A priority system for reservations which will give preference to those Owners who did not receive their desired reservation in the previous year.

(3) Different minimum and maximum time periods for requesting a reservation request.

(4) The collection of a service charge for the requesting and cancelling of a reservation.

(5) Such other conditions, restrictions, limitations and fees as the Association shall deem necessary under the circumstances to assure a manageable and fair system.

C. An Owner who does not make a timely reservation, pursuant to Paragraph A, of this Article IV, shall not be guaranteed the assignment by the Association of a Designated Seven Day Period, Designated Two Day Period or Designated Five Day Period in a Designated Unit. Such Owner may, however, make a reservation request for a Seven Day Period, Two Day Period or Five Day Period on a space available basis.

D. There shall be no accrual or carryover of unused time from one year to the next.

OFF 1889PG2151

E. An Owner's failure to properly request a reservation or utilize a Designated Seven Day Period or a Designated Two Day Period and Designated Five Day Period in a Designated Unit shall not relieve such Owner from the payment of all assessments and charges as provided for in the Declaration of Condominium and the Declaration.

## ARTICLE V

### ANNEXATION AND DEANNEXATION

A. Declarant may annex one or more Unit Weeks in Units in the Condominium to this Declaration, without the consent of the Association or any Owner, except the Owner of the affected Unit Week, at any time. Upon such annexation and at all times thereafter, this Declaration shall govern the use, enjoyment, possession and ownership of such Unit Weeks in Units in the Condominium.

B. Any annexation authorized by Paragraph A hereof shall be made by recording in the Office of the Clerk of Lee County, Florida, a Supplemental Declaration of Covenants, Conditions and Restrictions duly executed and acknowledged with regard to the Unit Weeks in the Units in the Condominium to be annexed, which shall extend the scheme of this Declaration to such Unit Weeks. The Supplemental Declaration shall contain the following:

(1) A legal description of the Unit Weeks in the Units in the Condominium to be annexed;

(2) The names and addresses of the record Owners of the Unit Weeks in Units in the Condominium to be annexed; and

(3) A statement submitting the annexed Unit Weeks in Units in the Condominium to this Declaration.

C. Declarant may deannex, at any time, one or more Unit Weeks in Units in the Condominium from the requirements, obligations and restrictions set forth in this Declaration, without the consent of the Association or any Owner, except the Owner of the affected Unit Week. In the event Declarant shall desire to deannex a Unit Week in a Unit in the Condominium, Declarant shall record in the Office of the Clerk of Lee County, Florida, a document entitled "Notice of Termination of Status," duly executed and acknowledged. The Notice of Termination of Status shall contain the following:

(1) A legal description of the Unit Weeks in the Units in the Condominium to be deannexed;

(2) The names and addresses of the record Owners of the Unit Weeks in Units in the Condominium to be deannexed; and

(3) A statement that the deannexed Unit Weeks in Units in the Condominium shall cease being subject to the provisions of the Declaration.

Upon recordation of the Notice of Termination of Status, the Unit Weeks in the Units in the Condominium described therein, shall cease being subject to the provisions of this Declaration.

D. Declarant reserves the right, but not the obligation, at its sole option, to assign its rights hereunder to annex, at any time, one or more Unit Weeks in Units in the Condominium to this Declaration and to deannex, at any time, one or more Unit Weeks in

Units in the Condominium from the requirements, obligations and restrictions set forth in this Declaration to the Association. Such assignment shall be evidenced by the recording in the Public Records of Lee County, Florida, of an Assignment executed by the Declarant of its rights hereunder, which assignment shall be accepted by the Association.

## ARTICLE VI

### USE AND OCCUPANCY

A. An Owner shall occupy and use his Designated Unit as a single family private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees.

B. An Owner shall not permit or suffer anything to be done or kept in his Designated Unit which will increase the rate of insurance for the Condominium, or which will obstruct or interfere with the rights of other Owners, or annoy them by unreasonable noises, or otherwise, nor shall an Owner commit or permit any nuisance, immoral or illegal acts in or about the Condominium.

C. An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed, on the interior or exterior walls, doors or windows of his Designated Unit.

D. In the event any Owner fails to vacate his Designated Unit at the expiration of his Designated Seven Day Period, Two Day Period, Five Day Period or portion thereof, or at such earlier time as may be fixed by the Rules and Regulations, he shall be deemed a "Holdover Owner." It shall be the responsibility of the Association to take such steps as may be necessary to remove such Holdover Owner from his Designated Unit, and to assist the Owner assigned any subsequent Seven Day Period, Two Day Period, Five Day Period or portion thereof, who may be affected by the Holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall secure, at its expense, alternate accommodations for any Owner who may not occupy his Designated Unit due to the failure to vacate of any Holdover Owner. Such accommodations shall be as near in value to the Owner's own Designated Unit as possible. The Holdover Owner shall be responsible for the following "holdover charges": the cost of such alternate accommodations and any other costs incurred due to this failure to vacate. In the event it is necessary that the Association contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the Holdover Owner.

The Association shall submit a bill to the Holdover Owner in accordance with this paragraph for the holdover charges which shall be due and payable within ten (10) days of the date of same.

Each day a Holdover Owner fails to vacate his Designated Unit at the expiration of his Designated Seven Day Period, Two Day Period, Five Day Period or portion thereof, or at such earlier time as may be fixed by the Rules and Regulations, shall be considered a separate violation of the Declaration for which the Association shall have the right to levy a fine of Fifty (\$50.00) Dollars pursuant to the procedure described in Article VIII, Section 7 of the By-Laws.

E. Each Owner agrees not to make, cause, or allow to be made, any repairs, modifications, alterations, or replacements to the exterior or interior of his Designated Unit, or of the furnishings, appliances, personal property, or decor thereof.

F. Each Owner shall be responsible for the expenses of repairs or replacements to his Designated Unit or its components, furnishings, carpeting, appliances, or other property, real, personal, or mixed, occasioned by the specific use or abuse of the Owner or any licensee or tenant of said Owner.

G. In the event an Owner fails to maintain his Designated Unit as required herein, or makes any alterations or additions, or otherwise violates or threatens to violate the provisions hereof, the Association, shall have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the Association shall have the right to levy a special assessment against the Owner for such necessary sums to remove any unauthorized addition or alteration and to restore the Unit to good condition and repair. Said special assessment shall have the same force and effect as all other special assessments as provided for by Article XIV of the Declaration of Condominium and Article VI of the By-Laws of the Association.

H. In the event an Owner fails to pay any fee or charge for the reservation and occupancy of a Unit as may be provided for in this Declaration or the Rules and Regulations when due, a lien shall be filed against said Owner's Unit Weeks in accordance with the provisions of Article XIV, of the Declaration of Condominium.

## ARTICLE VII

### AMENDMENT

A. This Declaration may be amended by the affirmative vote of the Owners owning not less than fifty-one (51%) percent of the Unit Weeks in Units subject to this Declaration. For the purpose of determining whether or not the requisite number of votes had been obtained, only those votes cast by voting members, as defined in the Declaration of Condominium, shall be valid. An amendment adopted in this fashion shall be evidenced by a certificate of the Association which shall include the recording data identifying this Declaration and shall be executed in the form required for the execution of a deed.

B. The Declarant reserves the right at any time until December 31, 1991, to amend this Declaration, in such manner as the Declarant may determine to be necessary, in its sole discretion, including, but not limited to, the amending of the definition of Flexible Use Period to include additional Unit Weeks. Said amendment need only be executed and acknowledged by the Declarant and the consent of the Owners other than the Declarant, the Association, the Owner and holder of any lien encumbering a Unit Week in a Unit subject to this Declaration, or any others shall not be required. The Declarant's ability to annex and deannex Unit Weeks pursuant to Article V shall not be deemed as an amendment pursuant to this Article VII.

C. No amendment to this Declaration shall change the rights and privileges of the Declarant without the Declarant's written approval.

## ARTICLE VIII

### TERMINATION DATE

This Declaration shall remain in effect until January 1, 2027 and thereafter shall remain in effect for successive periods of ten (10) years unless prior to expiration of the original period or any extension period an amendment hereto is recorded terminating this Declaration upon the expiration of said period.

ARTICLE IX

ENFORCEMENT OF RESTRICTIONS

In the event that any Owner shall fail to comply with any of the provisions of this Declaration, the Association or any other Owner or Owners may bring an action for damages, or to enjoin the violation or specifically enforce the provisions of this Declaration. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorneys' fees. No breach of any provision hereof by any Owner or by the Association or failure of any Owner or the Association to comply with any provision hereof shall permit or empower any other Owner to violate any such provision or excuse any such breach or failure and each Owner shall continue to perform and comply with and hold his Unit Week in a Unit subject to all of the provisions of this Declaration notwithstanding any such breach or failure.

ARTICLE X

ACCEPTANCE BY GRANTEES

Each Owner, by the acceptance of a deed of conveyance for a Unit Week in a Unit subject to this Declaration, accepts the same subject to all restrictions, conditions, covenants, reservations, charges, and to the jurisdiction, rights and power created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, or implied in those rights, benefits and privileges hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said Unit Week in a Unit subject to this Declaration, and shall inure to the benefit of such Owner in a like manner as though the provision of this Declaration were recited and stipulated at length in each and every such deed.

ARTICLE XI

RULES AND REGULATIONS

The Association shall have the right to promulgate, from time to time, Rules and Regulations relative to the reservation, possession, use and enjoyment of the Units.

ARTICLE XII

GENERAL PROVISIONS

A. If any provision of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of any such provision, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

B. The provisions of this Declaration shall be binding upon all parties having or acquiring any Unit Week in a Unit subject to this Declaration or any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns.

C. No breach of the provisions contained herein shall defeat or render invalid the lien of any mortgage on any Owner's Unit Week in a Unit subject to this Declaration if such mortgage is recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, and is given in good faith and for value and all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

D. The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

E. The captions of the articles hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.

F. This Declaration shall be construed under the laws of the State of Florida.

WHEREFORE, this Declaration of Covenants, Conditions and Restrictions for Flexible Use Ownership is made by Declarant on December 30, 1986.

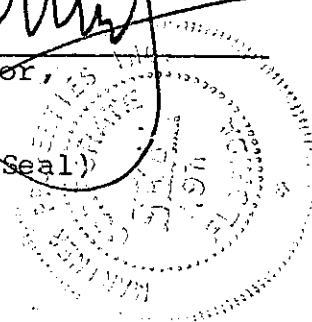
Signed, sealed and delivered in the presence of:

MARINER PROPERTIES, INC., a Florida corporation

Johanna P. Seybold  
John Bennett

By: [Signature]  
Robert M. Taylor,  
President

(Corporate Seal)



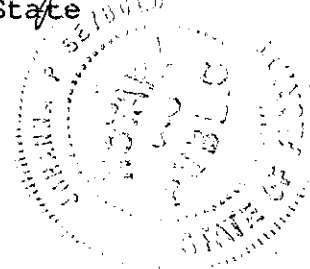
STATE OF FLORIDA )  
                          ) SS:  
COUNTY OF LEE     )

BEFORE ME, the undersigned authority, personally appeared Robert M. Taylor, to me well known to be the person described in and who executed the foregoing Declaration of Covenants, Conditions and Restrictions as President of MARINER PROPERTIES, INC., a Florida corporation, and he acknowledged before me that he executed such instrument as such officer of said corporation and that the seal affixed thereto is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal, at the State and County aforesaid, this 30 day of December, 1986.

Johanna P. Seybold (SEAL)  
Notary Public, State  
of Florida

(Notary Seal)



My Commission Expires:  
NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES FEB 18 1987  
BONDED THRU GENERAL INSURANCE UND



EXHIBIT "A"

DESCRIPTION OF FLEXIBLE USE OWNERSHIP PROPERTY

The following numbered unit weeks in the indicated Condominium Parcels of Hurricane House, a Condominium, according to the Declaration of Condominium thereof, as recorded in the Office of the Clerk of the Circuit Court in and for the County of Lee, State of Florida, in Official Records Book ~~789~~ at Page ~~2681-2784~~ until 12:00 noon on the first Friday in the year 2027, at which date said estate shall terminate, together with a remainder over in fee simple absolute, as tenants in common with the other owners of all of the unit weeks in each of the Condominium Parcels hereinafter specified in the percentage interest determined and established by Exhibit Number 6 to the aforesaid Declaration of Condominium:

<u>Condominium Parcel Number</u>	<u>Unit Week Number</u>
Units 102 through 116 inclusive	Weeks 16 through 51 inclusive

REC 1889PG2763

RECORDED AND RECORD VERIFIED  
JAN 5 4 19 PM '87  
CLERK OF CIRCUIT COURT  
LEE COUNTY FLA