

AMENDED AND RESTATED MASTER DECLARATION  
OF COVENANTS AND RESTRICTIONS  
FOR MARINER LAKES

THIS DECLARATION, made on the date hereinafter set forth by Romar Development Co., Inc., an Alabama Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Developer of certain real property in Baldwin County, Alabama, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Declarant desires to create a residential community known as Mariner Lakes on the land more particularly described on Exhibit A attached hereto and such other land as may be added thereto pursuant to the terms and provisions of this declaration.

WHEREAS, the Master Declaration of Covenants, Conditions, and Restrictions for Mariner Lakes, dated April 12, 1985, and recorded in the office of the Judge of Probate of Baldwin County, Alabama in Misc. 53 page 1744 at seq. (hereinafter "Master Declaration"), specifies, contemplates and provides that it may be amended and modified from time to time by Romar Development Co., Inc. ("Declarant") and recorded in the Office of the Judge of Probate of Baldwin County, Alabama;

WHEREAS, it is desirable that the said Master Declaration be amended and modified in order to make certain technical corrections and clarifications and to bring up to date certain of its provisions as set forth below; and

WHEREAS, the Declarant deems it necessary or desirable to amend and modify said Master Declaration as set forth below.

NOW THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof; and, further,

The undersigned does hereby proclaim, publish and declare that the original "Master Declaration of Covenants, Conditions and Restrictions for Mariner Lakes" and all amendments thereto, recorded as aforesaid, are hereby superseded by the amended and restated Declaration which reads as follows:

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Mariner Lakes Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, Unit or Parcel 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. The term "Owner" shall include Romar Development Co., Inc.

Section 3. "Owner's Association(s)" shall mean and refer to the various Associations of owners of Lots, Units, or Parcels and their successors and assigns, comprising all or a portion of the membership of Mariner Lakes Association, Inc.

Section 4. "Individual Owner Member" means and refers to any person owning all or part of the Lots, Units, or Parcels, in any additional lands added by the Declarant pursuant to Article VII

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hereof and brought under the jurisdiction and control of the Association in the manner specified in Section 2 of Article VII, and which Lots, Units or Parcels are not embraced within any Owner's Association.

Section 5. "Properties" shall mean and refer to that certain real property described on attached Exhibit "A", incorporated herein by reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) now or hereafter owned by the Association, or designated by the Declarant to be maintained by the Association whether or not title thereto has been formally conveyed to the Association as hereafter stated, for the common use and enjoyment of the Owners. As set forth in Exhibit "C" attached hereto and incorporated by reference herein, the lands and properties hereby designated as Common Area are: the access road, the beach and Gulf access, and the entry and exit lands and walls and monuments. However, it is expressly understood that the Declarant has only designated such as Common Area (as per Article II) and Declarant specifically retains all title thereto subject to Article III Section 7. If other or additional lands and properties are brought within the jurisdiction and control of the Association and made subject to the terms and provisions of this Declaration, such additional lands and properties may contain other Common Area which may include but not be limited to bodies of water and adjacent lands, lakes and adjacent lands, tennis court or courts and access thereto, extensions or expansion of the access road, recreation building and adjacent lands, and a television reception and distribution area, as demonstrated on Exhibit "D" attached hereto and incorporated herein by reference. The Common Area may also include other or additional lands and properties brought within the jurisdiction and control of the Association, that are not embraced within existing or future recorded plat maps or of existing or future recorded condominium declarations. There is specifically excluded from this definition of Common Area all of the common limited or private elements and areas that comprise part of or are embraced within any existing future recorded plat maps (which it is anticipated will be utilized for PUDs, townhouses, apartments or commercial developments) or recorded condominium declarations, so that this Association shall not be responsible to operate or maintain any such common limited or private elements or areas.

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded plat map of part of the Properties and designated as a lot. These Lots do not include any part of the Common Area, and may contain detached or attached housing. A Parcel or other land shall be automatically converted to a Lot upon the recording of the said plat map.

Section 8. "Unit" shall mean and refer to a condominium parcel, as that term is defined in the Alabama Condominium Ownership Act (Section 35-8-1, et seq., Code of Alabama, (1975), pursuant to a recorded declaration of condominium. A Parcel or other land shall automatically be converted to a Unit upon the recording of the said declaration of condominium.

Section 9. "Parcel" shall mean and refer to any and all parts of the Properties other than those parts which are embraced within a recorded plat or recorded declaration of condominium, or which are maintained by the Association as Common Area, or which are embraced within the access road or within land owned by a governmental body or agency or public utility company, whether or not such Parcel is developed or undeveloped, and without regard to the use or proposed use of such Parcel. Any Parcel, or part thereof, however, for which a plat has been filed of record or for which a declaration of condominium has been filed of record, shall, as to such portions, cease being a Parcel, or part thereof, and shall become Lots or Units, as appropriate.

Section 10. "Person" means a natural person, a corporation, a

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partnership, an association, trustee, or other legal entity.

Section 11. "Declarant" shall mean and refer to Romar Development Co., Inc., an Alabama corporation, its successors and assigns. It shall not include any person or party who purchases a Lot, Unit, or Parcel from Romar Development Co., Inc., however, unless such purchaser is specifically assigned by a separate recorded instrument, some or all of the rights held by Romar Development Co. Inc., as Declarant under this Declaration with regard to the conveyed property.

Section 12. "Board of Directors" shall mean and refer to the Association's Board of Directors.

Section 13. "Articles" shall mean and refer to the Articles of Incorporation of the Association, including any and all amendments or modifications to those Articles.

Section 14. "By-Laws" shall mean and refer to the By-Laws of the Association, including any and all amendments or modifications to those By-Laws.

Section 15. "General Land Plan" as set forth on Exhibit "B" and incorporated by reference hereto shall mean the conceptual general plan of development that demonstrates the possible manner in which other lands and properties adjacent to or in the vicinity of the lands set forth on Exhibit "A" may be developed and a possible Common Area that could be developed subject to the provisions of Article VII.

## ARTICLE II

### PURPOSE

Section 1. Operation, Maintenance and Repair of Common Area. The Declarant, in order to insure that the Common Area and other land for which it is responsible hereunder will continue to be maintained in a manner that will contribute to the comfort and enjoyment of the Owners and provide for other matters of concern to them, has organized the Association. The purpose of the Association shall be to operate, maintain, replace, renovate, and repair the Common Area of the Association and the Common Areas as designated from time to time by the Declarant whether or not title to the same has been formally conveyed to the Association, as hereafter stated; to pay for the costs incident to these responsibilities and the costs of street lighting for the Common Area; and to take such other action as the Association is authorized to take with regard to the Properties pursuant to its Articles of Incorporation and By-Laws, or this Declaration, and with regard to any other areas as designated by the Board of Directors. The Association shall operate, maintain and repair areas designated by Declarant as Common Areas, whether or not title to those areas has been formally conveyed to the Association.

Section 2. Declarant's Designation of Common Areas. For so long as Declarant owns any Lot, Unit, or Parcel, or part thereof, the Declarant in its sole and absolute election and discretion, may particularize Common Areas that shall thereby become the responsibility of the Association for management, maintenance, repair, replacement, and control as set forth in Article V, whether or not title to the same has been formally conveyed to the Association, by written document executed by the Declarant only, without the necessity of the consent, approval or joinder of any other Owners, Owner's Associations, Individual Owner Members or the Association, which will become effective upon its recording with the Judge of Probate of Baldwin County, Alabama, setting forth the designated Common Area and in substantially the following format:

#### Declarant's Designation of Common Area

The following property is hereby designated as Common Area of Mariner Lakes Association, Inc. and the Declaration is hereby amended accordingly: [Here set out the use or type of Common Area e.g., lakes, access road, tennis court, etc., and a map, diagram or

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survey in order to reasonably describe the designated property or the legal description thereof]

This is not a conveyance, deed, or other transfer of title of the above described property to the said Association, and Declarant specifically reserves title thereto.

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Declarant

Section 3. Declarant's Removal of Property from Designation as Common Area. So long as Declarant owns a Lot, Unit or Parcel or part thereof, the Declarant, in its sole and absolute election and discretion may remove from the designation as Common Area all or any part of the Properties designated as Common Area as above stated in Section 2, by written document executed by Declarant only, without the necessity of the consent, approval or joinder of any other Owner, Owner's Association, Individual Owner Member or the Association, in the office, which shall become effective upon its recording of the Judge of Probate of Baldwin County, Alabama setting forth the designated Common Area so removed from being so designated, in substantially similar format as above stated and the same shall thereupon be automatically converted to a Lot, Unit or Parcel, as appropriate, of Declarant.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner, subject to the limitations stated below, shall have a right and non-exclusive easement of enjoyment in and to the Common Area, and that portion of the properties designated by the Declarant as Common Area whether or not title has been formally conveyed, and a right and non-exclusive easement of ingress and egress to the Common Area and that portion of the properties designated by the Declarant as Common Area whether or not title has been formally conveyed, for the purpose or purposes for which it or they were intended, and a right and non-exclusive easement of ingress or egress for pedestrian and vehicular travel and traffic over, upon, on, and across the access road, as described on Exhibit "C" attached hereto and incorporated herein by reference, which shall be appurtenant to and shall pass with the title to every Lot, Unit and Parcel, subject to the following provisions:

A. The right of the Association from time to time in accordance with its By-Laws to establish, modify, amend and rescind reasonable Rules and Regulations regarding use of the Common Area.

B. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

C. The right of the Association to suspend the voting rights of an Owner's Association and Individual Owner Member and the right to use of the Common Area by an Owner, the Owner's Association, or the Individual Owner Member for any period during which any assessment levied under this Declaration against Owner's Association or Individual Owner Member remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

D. The right of the Declarant and the right of the Association to dedicate or transfer the access road or any part or portion thereof, as described in Exhibit "C" attached hereto and incorporated herein by reference, or as set forth on Exhibit "D", to any public or governmental agency, body or authority.

E. The right of the Declarant and also the right of the Association to dedicate or transfer all or any part of the Common Area (except the access road in accordance with

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subparagraph D above) 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 the members of the Association and approved in writing on such instrument by a majority of the Board of Directors of such Association has been recorded with the Office of the Judge of Probate of Baldwin County, Alabama.

F. Declarant reserves the right to grant easements, both temporary and permanent, to or for all public authorities and for drainage over, under, or through any part of the properties except within the boundary of the walls of an actual and existing residence, condominium unit, apartment unit, or commercial office or unit, and to grant easements, both temporary and permanent, to or for all utility companies and television installation, service and maintenance, over, under, or through any part of the properties.

G. All of the properties including each lot, residence, structure, improvement, building, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, roof overhangs, balcony overhangs, shifting, settling, patios, balconies, stair landings and overhangs for all buildings constructed. A valid easement for such encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any residence structure, or building is partially or totally damaged or destroyed and then repaired or rebuilt, minor encroachments on, over or upon parts of the adjacent residences, structures, buildings, or Common Areas due to said repair, rebuilding or construction shall be permitted, and valid easements for said encroachments and the maintenance thereof shall exist so long as such residence, structure or building shall stand.

H. There is hereby created in favor of Declarant and the Association, and its agents, servants, employees, successors, assigns, and parties with whom contracts or agreements have been entered for such purpose or purposes, a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacement, removal, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, and a master television system. By virtue of this easement, it shall be expressly permissible to erect, lay, construct, repair, replace and maintain the necessary poles, lines, cables, and other equipment on the property and to affix and maintain electrical, telephone, or television wires, cables and conduits, and sewer and water lines, above, on or below any residence or land of any Owner, Owner's Association, and Individual Owner Member. An easement is hereby granted to the Association, over all of the Common Areas and to enter any residence to perform the duties of maintenance and repair of the residences or Common Areas, to maintain any utilities for which an easement has been granted and to prevent damage to any other residence. An easement is hereby reserved to Declarant to enter the Common Area during the period of construction and sale of the Properties, or any additions to the Properties, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of residences, including, without limitation, a business office, sales office, storage area, construction yards, signs and model units.

I. The right of the Association to otherwise deal with the Common Area as provided by its Articles.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to his tenants who reside at the Owner's Lot, Unit or Parcel, provided the Owner waives his use in writing.

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Section 3. Prohibition of Certain Activities. No damage to or waste of the Common Area or any part hereof shall be committed by any Owner, Owner's Association, or Individual Owner Member or any tenant or invitee of any Owner, Owner's Association, or Individual Owner Member. No noxious, destructive or offensive activity shall be permitted on or in the Common Area or any part hereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance or nuisance to any other Owner. No Owner, Owner's Association, or Individual Owner Member may maintain, treat landscape, sod or place or erect any improvement structure of any kind on the Common Area without the prior approval of the Board of Directors.

Section 4. Signs Prohibited. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. This section, however, shall not apply to the Declarant, its agents, leasees or subleasees.

Section 5. Animals. No animals shall be permitted on or in the Common Area at any time except as may be provided in the Rules and Regulations of the Association.

Section 6. Rules and Regulations. No Owner, Owner's Association, or Individual Owner Member or other permitted user shall violate the reasonable Rules and Regulations for the use of the Common Area, as the same are from time to time adopted by the Association.

Section 7. Title to Common Area. Not later than the time the Declarant no longer owns any Lots, Units or Parcels in the Properties, including any property that may be added in the future, the Declarant shall convey title and the Association shall accept title to any Common Area subject to such easements, reservations, conditions and restrictions as may then be of record. Declarant may convey title and the Association shall accept title at any time prior to the time referred to in this Section 7, at Declarant's option.

#### ARTICLE IV

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner's Association or Individual Owner Member which Owner's Association or Individual Owner Member being comprised of the Owners of Lots, Units, or Parcels in that particular Owner's Association or Individual Owner Member and which is subject to assessments, shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of any obligation. The Declarant shall also be a member so long as it owns one or more Lots, Units or Parcels.

Section 2. The Association shall have two classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the By-Laws.

The two classes of voting memberships and voting rights related thereto, are as follows:

A. Class A. Class A members shall be all Owner's Associations or Individual Owner Members subject to assessment; provided, however, so long as there is Class B membership, the Declarant shall not be a Class A member. The voting rights for Class A members shall be dependent upon the number of Lots, Units or Parcels owned by the various Owners who comprise each Owner's Association or Individual Owner Member. Each Owner's Association or Individual Owner Member will be entitled to vote, but the number of votes allotted to each Owner's Association or Individual Owner Member will be determined according to the number of Lots, Units or Parcels embraced within the Owner's Association or Individual Owner Member. Furthermore, each

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Owner's Association or Individual Owner Member shall have the right to split votes, but splitting of votes into fractions will not be allowed.

The voting rights for Class A Owner's Associations and Individual Owner Members shall be as follows:

1. Lots: An Owner's Association and an Individual Owner Member shall be entitled to one (1) vote for each Lot embraced within the particular Owner's Association or owned by an Individual Owner Member.

2. Units: An Owner's Association and an Individual Owner Member shall be entitled to one (1) vote for each Unit embraced within the particular Owner's Association or owned by an Individual Owner Member.

3. Parcels: An Owner's Association and an Individual Owner Member shall be entitled to eight (8) votes per acre for each Class A Parcel which it owns.

B. Class B. The Class B member shall be the Declarant. Class B Lots, Units and Parcels shall be all Lots, Units and Parcels owned by the Declarant which have not been converted to Class A as provided below. The voting rights appurtenant to the Class B Lots, Units and Parcels shall be as follows:

1. Lots: The Declarant shall be entitled to three (3) votes for each Class B Lot which it owns.

2. Units: The Declarant shall be entitled to three (3) votes for each Class B Unit which it owns.

3. Parcels: The Declarant shall be entitled to forty (40) votes per acre for each Class B Parcel which it owns.

C. Termination of Class B. From Time to Time, Class B membership may cease and be converted to Class A Membership, and any Class B Lots, Units and Parcels then subject to the terms of this Declaration shall become Class A Lots, Units and Parcels upon the happening of any of the following events, whichever occurs earlier:

1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

2. On December 31, 2005, or

3. When the Declarant waives in writing its right to Class B membership.

Notwithstanding the foregoing, if at any time or times subsequent to any such conversion, additional land is added by the Declarant pursuant to Article VII hereof, such additional land shall automatically be and become Class B Lots, Units or Parcels, as appropriate. In addition if following such addition of land, the total votes allocable to all Lots, Units and Parcels then owned by the Declarant (calculated as if all such Lots, Units or Parcels are Class B, whether or not they are) shall exceed the remaining total votes outstanding in the remaining Class A membership (i.e., excluding the Declarant), then any Class A Lots, Units and Parcels owned by the Declarant shall automatically be reconverted to Class B. Any such reconversion shall not occur, however, if either occurrence 2 or 3 above shall have taken place.

D. Computation. Where votes of a Class A or Class B member are determined by the acreage in a Parcel, the votes shall be calculated by multiplying the acreage of the Parcel by

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the number of votes per acre, and rounding to the nearest whole number. For example, if a Class A Parcel shall contain 24.3 acres, the Class A Owner's Association or Individual Owner Member, as the case may be, shall be entitled to one hundred ninety-four (194) votes. Acreage shall be as determined in good faith by the Secretary of the Association as provided in the By-Laws.

## ARTICLE V

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Responsibilities. The Association, subject to the rights of the Owner's Associations and Individual Owner Members set forth in this Declaration, shall be responsible for the exclusive management, maintenance repair, replacement and control of the Common Area of the Association and the Common Area as designated from time to time by the Declarant, and shall keep the same in good, clean and proper condition, order and repair. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration, control, management, maintenance, repair and replacement of the Common Area of the Association and the Common Area designated from time to time by the Declarant and performance of its other obligations hereunder. The Association shall operate and maintain areas designated by Declarant as Common Areas, whether or not title to those areas has been formally conveyed to the Association.

The Association may borrow funds upon competitive terms in order to finance the aforesaid maintenance, repair, and replacement of the Common Areas of the Association and the Common Areas of the Association and the Common Areas as designated from time to time by the Declarant, which said funds shall be repaid by the Association from the annual assessments or special assessments if necessary or desirable.

Section 2. Manager. The Association may obtain, employ and pay for the service of an entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Association or the Manager.

Section 3. Real and Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and real property, and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Association's Articles or By-Laws.

Section 4. Purchase of Land and Improvements. The Association may purchase lands, improvements and residences within the Property and otherwise acquire, hold, lease, mortgage and convey the same. It may also lease or license the use of part or all of the Common Areas in a manner not inconsistent with the rights of the owners.

Section 5. Agreements. The Association may enter into agreements by which its powers and responsibilities or some of them may be exercised or performed by some other person or persons.

Section 6. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association additionally shall cause all persons responsible for collecting and disbursing Association moneys to be insured or bonded with adequate fidelity insurance or bonds.

Section 7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or By-Laws, and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privileges granted herein or therein.

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## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner's Association and Individual Owner Member within the Properties is subject to assessments, except as hereinafter limited or exempted. The Declarant, for each Owner's Association and Individual Owner Member within the Properties, hereby covenants, and each Owner's Association and Individual Owner Member is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and unexpected operating costs, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge and a continuing lien on the Common Areas and Common Elements of each Owner's Association and on each Lot, Unit and Parcel within each Owner's Association and owned by each Individual Owner Member. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Each Owner's Association and Individual Owner Member and Owner hereby and by these presents, and by acceptance of the deed to any Lot, Unit or Parcel, within said Property, and any party which accepts or acquires any interest of any kind or nature in said property, whether by deed, mortgage, judgment lien, or otherwise (except Declarant), shall have appointed and is thereby deemed to have appointed Declarant as that party's irrevocable true and lawful attorney-in-fact, coupled with an interest, for that party and in that party's name, place and stead, to sign, seal, execute and deliver any and all documents, amendments, and instruments in order to effectuate membership in Mariner Lakes Association, Inc., and to be bound and liable for its share of the common expense. This power of attorney shall be a durable power of attorney and shall not be affected by the disability, incompetency or incapacity of the principal.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area of the Association and the Common Area as designated from time to time by Declarant and the carrying out of the other responsibilities and obligations of the Association under this Declaration, the Articles and the By-Laws. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of the Properties, services and facilities related to the use and enjoyment of the Common Area of the Association and the Common Area as designated from time to time by the Declarant, including the costs of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes and assessments made or levied against the Common Area of the Association and the Common Area as designated from time to time by the Declarant; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and such other needs as may arise.

Section 3. Special Assessments 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 capital improvement upon the Common Area of the Association and the Common Area as designated from time to time by the Declarant, including fixtures and personal property related thereto and for other purposes as designated by the Association, provided that any

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such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written Notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than ninety (90) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast one-fourth (1/4) of all the votes of each class of membership shall constitute a quorum.

Section 5. Assessment Rate.

- A. For so long as Mariner Lakes I and Leeward Village are the recorded developments in Mariner Lakes, and until such time as additional developments are brought within the jurisdiction and control of Mariner Lakes Association, Inc. (the "Master Association") with the formation of their respective Owner's Associations, the annual assessment rate for each said Owner's Association shall be set and fixed by the Board of Directors and shall be based upon the Class A voting rights as set forth in the Article IV of the Master Declarations such that each unit in each lot shall bear 1/98th of the said annual assessment (currently there being a total of 98 said units and lots in said Developments).
- B. At such time that additional developments that generally conform to the type, size, and configuration of either Mariner Lakes I or Leeward Village are brought within the jurisdiction and control of the Master Association, this Declaration shall be further amended so as to provide that the respective Owner's Associations shall share equitably in the said annual assessment in conformity with the above and in accordance with their Class A voting rights such that each unit and each lot shall bear their proportionate percentage of the said annual assessment.
- C. At such time that other developments that do not generally conform to the type, size and configuration of either Mariner Lakes I or Leeward Village are brought within the jurisdiction and control of the Master Association, this Declaration shall be further amended so as to provide that their respective Owner's Associations shall share equitably in the annual assessment such that the annual assessment rate for each Owner's Association and each Individual Owner Member shall be fixed by the Board of Directors and shall be based upon the number of acres, or fractional part thereof, embraced within each said Owner's Association or owned by each Individual Owner Member or other appropriate and equitable bases taking into consideration the total number of owners in Mariner Lakes compared to the number in the new development, the amount of use the new development owners will make of the common areas, the new development owners accessibility to the common areas, the type and configuration of the new development, the size of each lot, unit or parcel within the new development, and all other relevant factors, as determined by the Board of Directors, but which may be modified by the membership in accordance with the method of assessing for Special Assessments for Capital Improvements as set forth in Section 3 below.

Section 6. Declarant's Assessment. Notwithstanding any provision of this Declaration or the Association's Articles or By-Laws to the contrary, as long as there is Class B membership in the Association, the Declarant shall not be obligated for, nor

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subject to, any annual assessment for any Lot, Unit or Parcel which it may own, provided the Declarant shall be responsible for paying the difference between the Association's expenses of operation otherwise to be funded by annual assessments and the amount received from Owners, other than the Declarant, in payment of the annual assessments levied against their respective Class A Lots, Units or Parcels. Such difference, herein called the "deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments (including any borrowed funds, debts, amounts and payments owed for loans or borrowed funds for financing the maintenance, repair, and replacement of the Common Areas of the Association and the Common Areas as designated from time to time by the Declarant and for financing said capital improvements and/or included in any annual or special assessments). The Declarant may at any time give written notice to the Association terminating effective as of the last day of the next month its responsibility for the deficiency, and waiving its right to exclusion from annual assessments. Upon giving such notice, or upon termination of Class B membership, whichever is sooner, all lands and properties owned by the Declarant shall thereafter be assessed at 25% of the annual assessment established by the Board of Directors for Class A members other than the Declarant. Declarant shall not be responsible for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments. Such assessment shall be prorated as to the remaining months of the year, if applicable. Declarant shall be assessed only for Lots, Units and Parcels that are encumbered by this Declaration. Upon transfer of title of a Lot, Unit or Parcel owned by the Declarant, the Lot, Unit or Parcel shall be assessed in the amount established for Lots, Units or Parcels for Class A members prorated as of and commencing with the month following the date of transfer of title. Notwithstanding the foregoing, any Lots, Units or Parcels from which the Declarant derives any rental income, or holds an interest as mortgagee or contract seller, shall be assessed at the same amount as Lots, Units or Parcels for Class A members prorated as of and commencing with, the month following the execution of the rental agreement or mortgage, or the contract purchaser's entry into possession, as the case may be.

Section 7. Exemption from Assessments. The Common Area of this Association, and those parts of the properties designated as Common Area by Declarant whether or not title to them has been formally conveyed to the Association, and the common, limited or private elements and areas of any other Owner's Association, or Condominium Association, the access road, the Gulf and beach access, and any property dedicated to and accepted for maintenance by a public or governmental authority or agency, and any property owned by a public or private utility or agency, shall be exempt from assessment and the charges and lien provided for or created by this Article VI shall not apply thereto.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Owner's Association or Individual Owner Member on the first day of the month following the conveyance of the first Lot, Unit or Parcel within that Owner's Association or Individual Owner Member to an Owner. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment to be paid monthly against each Owner's Association or Individual Owner Member at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner's Association or Individual Owner Member subject thereto. The due dates shall be established 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, unit or Parcel have been paid. A properly executed certificate of the Association as to the status of assessments for an Owner's Association or Individual Owner Member is binding upon the Association as of the date of its issuance.

Section 9. Lien for Assessments. All sums assessed to Owner's Association or Individual Owner Member pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be secured by a continuing lien on all Common Areas and Common Elements and each Lot, Unit and Parcel with each said Owner's Association and on all Lots, Units and Parcels owned by each Individual Owner Member in favor of the Association.

Section 10. Effect of Nonpayment 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 at 18% per annum. The Association may bring an action at law against the Owner, Owner's Association, or Individual Owner Member personally obligated to pay the same, or foreclose the lien against the Common Area or Common Elements or Lots, Units or Parcels. No Owner, Owner's Association, or Individual Owner Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of his Lot, Unit or Parcel.

Section 11. Foreclosure. The Lien for sums assessed pursuant to this Declaration may be enforced by judicial or non-judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed. In any such foreclosure, the Owner's Association or Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner's Association and Individual Owner Member shall also be required to pay to the Association any assessments against the Owner's Association and Individual Owner Member which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Common Areas or Common Elements, or Lots, Units, or Parcel foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the owner thereof.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Common Area, Common Elements, Lot, Unit or Parcel shall not affect the assessment lien. However, the sale or transfer of any Common Areas, Common Elements Lots, Units or Parcels pursuant to foreclosure of the lien created herein or mortgage foreclosure, or any conveyance or proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Owner's Association or Individual Owner Member thereof from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

### ADDITIONAL PROPERTY

#### Section 1.

A. Additions to the Properties. Additional land may be brought within the jurisdiction and control of the Association in the manner specified in Section 2 of this Article and made subject to all the terms of this Declaration as if part of the properties initially included within the terms hereof, provided such is done within twenty (20) years from the date this instrument is recorded. Notwithstanding the foregoing, however, under no circumstances shall the Declarant be required to make such additions, and until such time as such additions are made to the Properties in the manner hereinafter set forth, no other real property owned by the Declarant or any other person or party whomsoever, other than the Properties, shall in any way be affected by or become subject to the Declaration. All additional land which, pursuant to this Article, is brought within the jurisdiction and control of the Association and made subject to the Declaration shall thereupon and thereafter be

included within the terms "Properties" as used in this Declaration. Notwithstanding anything contained in this Section 1, the Declarant neither commits to, nor warrants or represents, that any such additional development of additional property shall occur.

B. General Land Plan. The present general conceptual plan of development as demonstrated on Exhibit "B" is only a possible manner by which adjacent lands or lands in the vicinity may be developed and shall not bind the Declarant to make any such additions or adhere to the general plan of development. Such general plan of development is a conceptual proposal only, and may be amended, or modified, changed, altered, eliminated or relocated by the Declarant in its sole discretion, in whole or in part, at any time, or abandoned or discontinued. As used herein, the term "General Land Plan" shall mean such general conceptual plan of development, together with any amendments or modifications thereof hereafter made.

Section 2. Procedure for Making Additions to the Properties. Additions to the Properties may be made and thereby become subject to this Declaration by, and only by, one of the following procedures:

A. Additions by Declarant. The Declarant shall have the right from time to time, in its discretion and without need for consent, approval, or joinder of any other Owner's Association or its members, Individual Owner Member, or the Association or its members, to bring within the jurisdiction and control of the Association and make subject to the scheme of this Declaration, any additional land as set forth on Exhibit "B". In the Declarant's sole discretion, portions of this land may be committed or designated as Common Area.

B. Mergers. Upon a merger or consolidation of the Association with another non-profit corporation as provided in its Articles, its property (whether real or personal or mixed), rights and obligations may, by operation of law, be transferred to the surviving or consolidated corporation or, alternatively, the property, rights and obligations of the other non-profit corporation may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other land as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Properties.

Section 3. General Provisions Regarding Additions to the Properties.

A. The additions authorized under Section 2 (A) of this Article shall be made by the Declarant filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land extending the scheme of the covenants and restrictions of this Declaration to such land, except as hereinafter provided in Section 3 (C). Such Supplement need only be executed by the Declarant and shall not require the joinder or consent of any other Owners, Owner's Association or its members, Individual Owner Member, or the Association or its members. Such Supplement may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land or permitted use thereof. Notwithstanding anything herein to the contrary, until such time as the Declarant sells and conveys to a third party (who is not an affiliate, subsidiary, or alter ego of Declarant) any of the additional land (units of lots) brought within the jurisdiction and control of the Association, the Declarant may withdraw the said additional lands from the said jurisdiction and control of the Association by filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions executed

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by the Declarant only.

Each Owner's Association and Individual Owner Member and Owner Member and Owner hereby and by these presents, and by acceptance of the deed to any Lot, Unit or Parcel, within said Property, and any party which accepts or acquires any interest of any kind or nature in said property, whether by deed, mortgage, judgment lien, or otherwise (except Declarant), shall have appointed and is thereby deemed to have appointed Declarant as that party's irrevocable true and lawful attorney-in-fact, coupled with an interest, for that party and in that party's name, place and stead, to sign, seal, execute and deliver any and all documents, amendments, and instruments in order to effectuate and implement the Supplement to Declaration of Covenants, Conditions and Restrictions; to amend this Declaration to bring within the jurisdiction and control of the Association and to make subject to the scheme of this

Declaration any additional land set forth on Exhibit "B" and commit or designate parts or portions thereof as Common Area; to make such additions and modifications of the covenants and restrictions as Declarant deems necessary; to alter, reallocate or reduce the said assessments and charges in accordance with Article VI and grant and confer voting privileges in accordance with Article IV; and to implement all other terms and provisions of this Declaration. This power of attorney shall be a durable power of attorney and shall not be affected by the disability, incompetency or incapacity of the principal.

The owner of any interest in any Lot, Unit or Parcel in the Properties agrees to execute and deliver such instruments, papers and documents as are necessary or desirable to accomplish the admission of additional lands in accordance with the provisions and intent of this Declaration.

B. Regardless of which of the foregoing methods is used to add additional land to that subject to the terms and provisions of this Declaration, no addition shall revoke or diminish the rights of the Owner's Associations and Individual Owner Members to the utilization of the Common Area as established hereunder except to grant to the Owners of the land being added to the Properties the right to use the Common Area according to the terms and conditions as established hereunder, and the right to vote and be assessed as hereinafter provided.

C. Nothing contained in this ARTICLE VII shall obligate the Declarant to make additions to the Properties.

Section 4. Voting Rights of the Declarant as to Additions to the Properties. The Declarant shall have no voting rights as to the land added to the Properties or any portion thereof until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. Upon such land or portion thereof being added to the Properties, the Declarant shall have the Class B voting rights as to the Lots, Units and Parcels thereof as is provided by ARTICLE IV, Section 2, of this Declaration.

Section 5. Assessment Obligation of the Declarant as to Additions to the Properties. The Declarant shall have no assessment obligation as to the land or any portion thereof added to the Properties until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. At such time, the Declarant shall have, but only as to such of the additional land as is added, the assessment obligation hereinafter set forth. As to such added land, the Declarant shall be exempt from annual assessments with regard to Lots, Units and Parcels which it owns, upon the same terms and conditions as contained in Article VI, Section 6, of this Declaration, and shall have the same right as therein provided to waive its exemption, and become subject to assessment at twenty-five percent (25%) of the annual assessment established for Lots, Units and Parcels owned by Class A Members other than the Declarant.

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Section 6. Voting Rights of Owners other than the Declarant as to Additions to the Properties. Any Lots, Units or Parcels on land added to the Properties which are embraced by Owner's Associations or owned by Individual Owner Members other than the Declarant, or its assignees, shall be entitled to voting rights as set forth and granted by ARTICLE IV, Section 2, of this Declaration to other Owners of Class A Lots, Units and Parcels.

Section 7. Assessment Obligation of Owners Other than the Declarant as to Additions to the Properties. Any Lots, Units or Parcels on land added to the Properties which are embraced by Owner's Associations or owned by Individual Owner Members other than the Declarant, or its assignees, shall be subject to assessments, both annual, special and otherwise in accordance with the terms and provisions of the Declaration in the same manner as all other Owner's Associations or Individual Owner Member containing or owning Class A Lots, Units and Parcels within the Properties.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 1. Additional Restrictions. In addition to this Declaration the Declarant may record for parts or all of the Properties specific deed restrictions, declarations of covenants, conditions and restrictions, Declaration of Condominiums, Community or Condominium Association documents, applicable thereto either by master instrument or individually recorded instruments. Such documents may vary as to different parts of the Properties in accordance with the location, topography and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific documents, such land shall be subject to both the specific documents and this Declaration. The Association shall have the power to enforce all restrictions if expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Section 1 shall require the Declarant to impose uniform restrictions, or to impose restrictions of any kind on all or any part of the properties.

Section 2. Enforcement. The Association, the Declarant, or any Owner's Association or Individual Owner Member, 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 the Association, Declarant, or by any Owner's Association or Individual Owner Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If a person or party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorney's fees, for all trial and appellate proceedings incurred by the party enforcing the provisions of this agreement. Declarant shall not be obligated to enforce this Declaration and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended, modified, extended, terminated or voided by an instrument signed by not less than two-thirds (2/3) of the total votes of all Owner's Associations and Individual Owner Members and the respective first mortgagees, if any, of all Lot, Unit, and Parcel Owners. Any amendment must be recorded. For so long as the Declarant owns any Lot, Unit or Parcel in the



Properties, any amendment of this Declaration must be approved in writing by the Declarant. Provided however, even though the said covenants and restriction may fail to be extended, or this Declaration amended, modified, extended, terminated, or voided, the non-exclusive easement appurtenant over the access road set forth on Exhibit "C" for ingress and egress shall not be modified, abridged or negated in such a manner as to leave any Owner without access to the public street or highway shown on Exhibit "C" unless the instrument amending this declaration is signed by such owner and his first mortgagee, if any.

Section 5. Exception.

A. Anything in this Declaration to the contrary notwithstanding, if any amendment to this Declaration is required at any time by an institutional mortgagee, such as a bank, savings and loan association or insurance company, or any state or federal governmental agency, or the Federal Housing Administration (FHA), or the Veterans Administration (VA), or Federal National Mortgage Association (FNMA), such amendment shall be effective upon recording of such amendment, as executed by the Declarant, in the Public Records of Baldwin County, Alabama, without the necessity of the approval or joinder of any other Owner's Associations, Individual Owner Members, or the Association. No such amendment may adversely affect the lien or priority of any institutional first mortgagee recorded prior to the amendment.

B. Until the completion of the contemplated improvements on the Properties, and closing of all Lot, Unit or Parcel sales, including specifically any additional lands and properties that may be brought within the jurisdiction and control of the Association and made subject to the terms and provisions of this Declaration, the Declarant specifically reserves the right, without the consent, approval or joinder of any person or other legal entity of any other Owner, Owner's Association or its member, Individual Owner Member, or the Association or its members, to make amendments, modifications, extensions, termination or voiding of this Declaration and its exhibits or in the plan of development, as may be required by any lender, governmental authority, or, as may in Declarant's sole judgment, be necessary or desirable including, but not limited to, changes in assessments. This paragraph shall take precedence over any other provision of this Declaration or its attachments. No such amendment shall be effective to impair the security or priority of an institutional first mortgagee.

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ARTICLE IX

EASEMENTS

Section 1. Each Lot, Unit or Parcel and the Common Area shall be subject to easements for public utilities purposes (including, but not limited to, fire and policy protection, garbage and trash removal, water and sewage system, electric, telephone and gas service), and for a master television system and the utilities and applicable governmental agencies having jurisdiction thereover, and the master television system company and their employees and agents shall have the right of access to any Lot, Unit or Parcel or the Common Area in furtherance of such easements. The easement areas contained in any Lot, Unit or Parcel whether or not shown on any plat, map or condominium declaration shall at all times be properly maintained by the Owner whether or not the utility company properly maintains the easement area.

Section 2. The Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns a Lot, Unit or Parcel) and for the Board of Directors of the Association, without joinder or consent of any person or entity of any other Owner, Owner's Association or its members, Individual Owner Member, or the Association or its members whatsoever, to grant such additional rights of way, licenses, and easements, including, but not limited to, drainage, irrigation, wells and pumps, satellite, dish, and/or cable television and television systems, television antennas,



electric, telephone, gas, water or other utility easement, or to relocate any existing utility easement in any portion of the property as the Declarant, its designee, or the said Board of Directors shall deem necessary or desirable for the proper operation and maintenance of the property, or any portion thereof, or for the general health or welfare of the Lot, Unit or Parcel Owners, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Lot, Unit or Parcels for permitted purposes.

Section 3. Declarant retains for itself, its successors in interest, agents, employees and assigns, a non-exclusive easement for ingress and egress over and across all streets, roadways, Common Areas, driveways and walkways that may from time to time exist on the property.

Section 4. There is hereby reserved, created, and granted to each and every Owner within the Properties a non-exclusive easement appurtenant to each Lot, Unit, and Parcel, and right of access, for ingress and egress, pedestrian and vehicular travel and traffic over, upon, and across the access road as described on Exhibit "C" to the public street or highway as set forth on Exhibit "C" for the use, benefit and enjoyment of each said Owner of each said Lot, Unit or Parcel within the Properties, their respective family members, tenants, guests, invitees, agents, servants, employees, and persons in privity with them.

#### ARTICLE X

##### USE RESTRICTIONS

Section 1. Model Homes. Every person, firm or corporation purchasing a Lot, Unit or Parcel recognizes that the Declarant, its agents and designated assigns, shall have the right to (1) use Lots, Units or Parcels, and improvements erected thereon, for sales offices, field construction offices, storage facilities and general business offices, (2) maintain fluorescent-lighted or spotlighted model homes which are open to the public for inspection seven (7) days per week for such hours as the Declarant deems appropriate or necessary, and (3) conduct any other activities on Lots, Units or Parcels to benefit sales efforts.

Section 2. Use of Accessory Structures. No tents, shack, barn, utility shed or other buildings, other than the dwelling and its required garage, shall, at any time, be erected on a Lot, Unit or Parcel and used temporarily or permanently as a residence or for any other purpose, except temporary buildings, offices or facilities used by Declarant, builders or contractors, without the prior written approval of the Declarant. This restriction shall not apply to any portion of the Property that is for commercial use, designated by the Declarant for Commercial use and upon which commercial structures are or will be constructed.

#### ARTICLE XI

##### ADDITIONAL PROVISIONS

Section 1. The Association is required to make available to Lot, Unit, and Parcel owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning the project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 2. The Association, prior to passage of control as defined in this Declaration, is not bound either directly or indirectly to contracts or leases (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at anytime after transfer of control, upon not more than 90 days notice to the other party, except that with respect to contracts for essential services

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and utilities such as water, gas, telephone, sewer or electrical service and with respect to contracts, leases, easements or agreements concerning, involving or regarding TV service, conduits, cables, reception, dish, reception equipment, and related facilities, the above restriction shall not apply and all such contracts, leases, easements, and agreements shall be fully binding upon the Association.

Section 3. The Association has a reasonable right of entry upon any residence to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the project.

The Association has the right to grant permits, licenses, and easements over the Common Areas for utilities, roads, television service and other purposes reasonably necessary or useful for the property maintenance or operation of the project.

Section 4. The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas which the Association may be obligated to maintain. The fund is maintained out of regular assessments for common expenses.

Section 5. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the Lot, Unit or Parcel securing its mortgage.
- b. Any 60-day delinquency in the payment of assessments or charges owned by the Owner of any Lot, Unit or Parcel on which it holds the mortgage.
- c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage or mortgage holders.

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## ARTICLE XII

### MISCELLANEOUS

Section 1. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice-versa; the use of the one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 2. Severability. If any provision or provisions of this Declaration, or any section, sentence, clause, phrase or work herein, or the application thereof, is in any circumstance held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

IN WITNESS WHEREOF, the said ROMAR DEVELOPMENT CO., INC., has caused THESE PRESENTS to be executed by its Vice-President and its seal affixed, all thereunto duly authorized, this the day and year first above written.

ATTEST:

ROMAR DEVELOPMENT CO., INC.

By:

*Darrell Groves*  
Its Secretary

*John F. Morrissey*  
As Vice-President

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

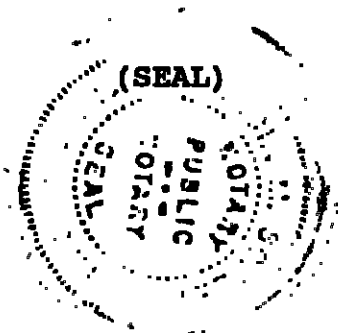
I, Patricia M. Schlette, a Notary Public, in and for said State, hereby certify that John F. Morrissey and Darrell Groves, whose name as Vice-President and Secretary of Romar Development Co., Inc. are signed to the foregoing instrument, and who are known to me acknowledged before me on this day that, being informed of the contents of the instruments, they, as such agent and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 5th day of December, 1994.

*Patricia M. Schlette*  
Notary Public

My Commission Expires:

PATRICIA M. SCHLETTE  
Notary Public State of Missouri  
County of St. Louis  
My Commission Expires Nov. 7, 1997



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## EXHIBIT A

### PARCEL ONE: WESTERN ENTRANCE LOOP ROAD THROUGH LEEWARD VILLAGE

Commencing at the Northwest Corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama, run thence South 00°09'30" West a distance of 486.87 feet; run thence North 75° 59' East a distance of 406.80 feet to the Point of Beginning of the Property herein described; continue thence North 75° 59' East a distance of 61.84 feet; run thence North a distance of 184.31 feet; run then Northwardly along the arc of a curve to the left, having a radius of 772.87 feet, a distance of 206.83 feet; run thence North 15° 20' West a distance of 591.70 feet; run thence Northeastwardly along the arc of a curve to the right, having a radius of 214.01 feet, a distance of 361.70 feet; run thence North 81° 30' East a distance of 102.34 feet; run thence North 08° 30' West a distance of 60 feet; run thence South 81° 30' West a distance of 102.34 feet; run thence Southwestwardly along the arc of a curve to the left, having a radius of 274.01 feet, a distance of 463.10 feet; run thence South 15° 20' East a distance of 591.70 feet; run thence Southwardly along the arc of a curve to the right having a radius of 712.87 feet, a distance of 190.77 feet; run thence South a distance of 199.29 feet to the point of beginning. Containing 89,822 square feet (2.06 acres, more or less).

### PARCEL TWO: M-4 CLUBHOUSE-TENNIS COURTS-PARKING

Commencing at the Northwest Corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama, run thence South 00°09'30" West a distance of 187.86 feet; run thence North 75° 59' East a distance of 459.17 feet; thence run Northwestwardly along the arc of a curve to the left, having a radius of 772.87 feet a distance of 92.97 feet; run thence North 15° 20' West a distance of 198.41 feet to the point of beginning of the property herein described; continue thence North 15° 20' West a distance of 393.20 feet to a point of curvature; run thence Northwardly along the arc of a curve to the right, having a radius of 214.01 feet, a distance of 92.90 feet; run thence North 74° 40' East a distance of 65.09 feet; run thence South 45° 20' East a distance of 120.00 feet; run thence North 74° 40' East a distance of 100.00 feet; run thence South 15° 20' East a distance of 385.00 feet; run thence South 75° 59' West a distance of 245.00 feet to the point of beginning. Contains 104,971.12 square feet.

### PARCEL THREE: BOARDWALK

Commencing at the Northwest Corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama, run thence South 00°09'30" West along the West boundary of said Section 17, a distance of 611.72 feet to a point on the Southerly right-of-way line of Alabama Highway No. 182; run thence North 75° 59' East along said right-of-way line a distance of 1724.00 feet to the point of beginning of the property herein described; continue thence North 75° 59' East along said right-of-way line, a distance of 6.18 feet to a point; run thence South a distance of 500 feet more or less to the margin of the Gulf of Mexico; run thence Southwestwardly along said margin a distance of 6.0 feet more or less to a point of intersection with a line that bears South from the point of beginning; run thence North 500.00 feet more or less to the point of beginning. Containing 0.07 acres more or less. Contains 3,000 more or less square feet.

### PARCEL FOUR: M-6 MARSH BETWEEN MARINER AND LEEWARD

Commencing at the Northwest Corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama, run thence North 00° 01'05" East a distance of 512.50 feet to the point of beginning of the following described property; thence continue North 00° 01' 05 East a distance of 79.32 feet to a point; thence run North 75° 59' East a distance of 207.74 feet to a point on the West line of Loop Road (60' R/W), thence run Southwardly and along a curve to the left, having a radius of 274.01', a delta of 06° 16'36", a chord distance of 30.0 feet and a chord bearing South 03° 01'10" East, a distance of 30.02 feet to a point; thence run South 63° 51' 54" West a distance of 226.30 feet to the point of beginning.

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**PARCEL FIVE: MARINER LAKES TOWNHOMES**

**A-1**

Beginning at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence North 00 01' 05" East a distance of 305.0 feet; run thence East a distance of 102.0 feet; run thence South 43 24' 45" East a distance of 136.0 feet; run thence South 12 30' East a distance of 54.0 feet; run thence North 74 40' East a distance of 114.0 feet to the West line of a 60 foot roadway; run thence South 15 20' East along said West line a distance of 192.0 feet; run thence Southwardly along the arc of a curve to the right, having a radius of 712.87 feet, a distance of 91.67 feet; run thence South 75 59' West a distance of 398.86 feet; run thence North 00 09' 30" East a distance of 187.86 feet to the point of beginning. Contains 133,459.88 square feet.

**A-2**

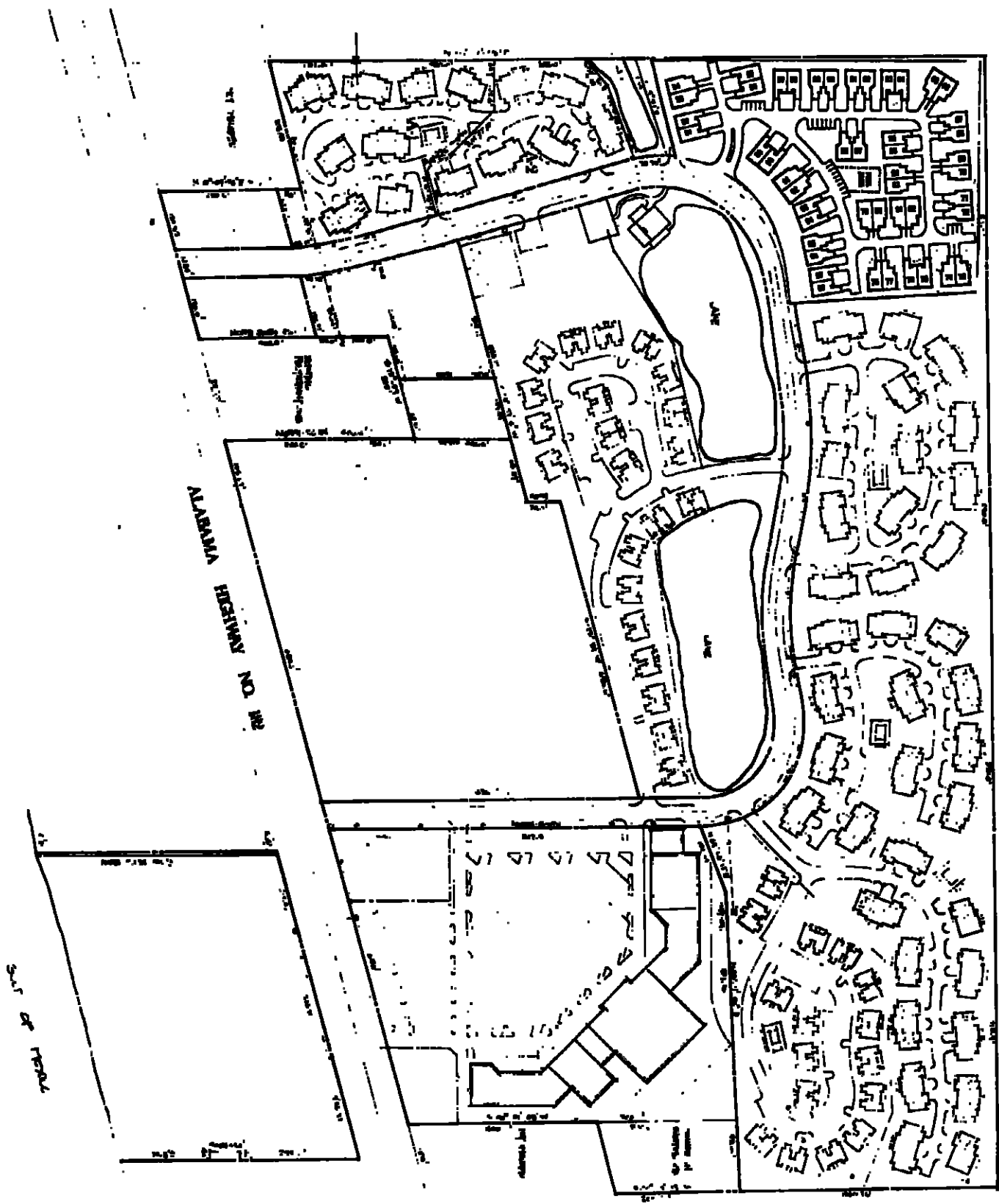
Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East Baldwin County, Alabama; run thence North 00 01' 05" East a distance of 305.0 feet to the point of beginning of the property herein described; continue thence North 00 01' 05" East a distance of 185.0 feet; run thence North 52 38' East a distance of 64.49 feet; run thence North 75 59' East a distance of 165.0 feet to the West line of a 60 foot roadway; run thence South 15 20' East along said West line a distance of 399.70 feet; run thence South 74 40' West a distance of 114.0 feet; run thence North 12 30' West a distance of 54.0 feet; run thence North 43 24' 45" West a distance of 136.0 feet; run thence West a distance of 102.0 feet to the point of beginning. Contains 78,195.39 square feet.

**PARCEL SIX: LEEWARD VILLAGE**

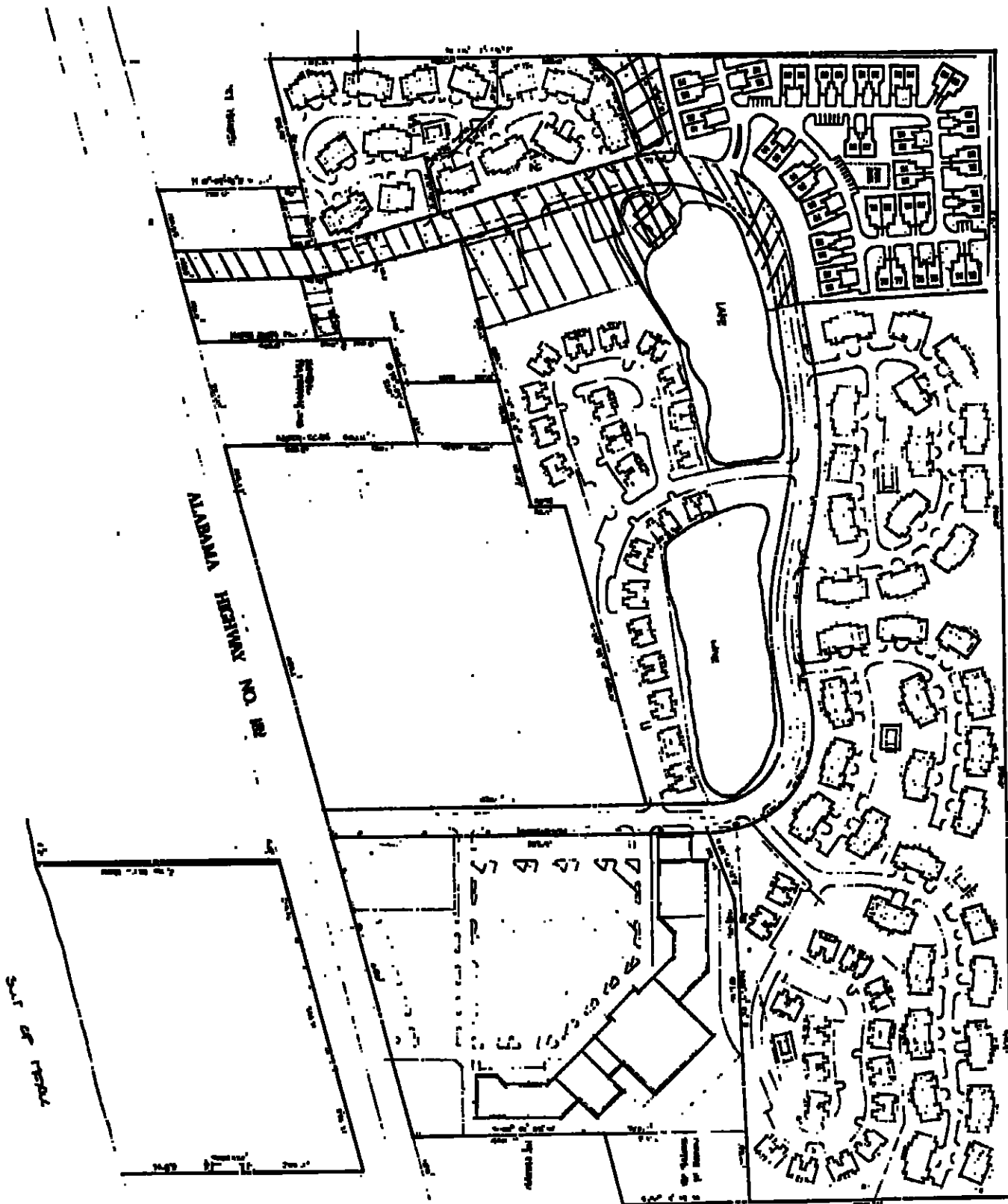
Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, thence run North 00°-01'-05" East a distance of 591.82 feet to the Point of Beginning of the following described property: Thence continue North 00°-01'-05" East a distance of 734.15 feet to a point; thence run South 89°-54'-30" East a distance 510.00 feet to a point; thence run South 03°-45'-00" East a distance of 398.31 feet to a point on the North right-of-way of Loop Road; thence run South 81°-30'-00" West along said North right-of-way a distance of 102.34 feet to the P.C. of a curve to the left having a radius of 274.01 feet and a central angle of 81°-22'-54"; thence run Southwestwardly and along said curve an arc length of 389.19 feet to a point; thence run South 75°-59'-00" West a distance of 207.74 feet to the Point of Beginning in accordance with a site plan by Givens Surveying & Engineering, Co., Inc., dated November 9, 1987. Described property contains 6.67 acres, more or less.

**PARCEL SEVEN: WINDWARD VILLAGE**

Commencing at the Northwest corner of Fractional Section 17, Township 9 South, Range 5 East, Baldwin County, Alabama; run thence North 00° 01' 05" East a distance of 1325.97 feet; run thence South 89° 54' 30" East a distance of 510.0 feet to the point of beginning of the property herein described; continue thence South 89° 54' 30" East a distance of 630.0 feet; run thence South 3° 45' East a distance of 425.50 feet to the North line of a 60 foot roadway; run thence Westwardly along the arc of a curve to the right, having a radius of 671.78 feet, a distance of 109.24 feet; run thence North 77° 48' 03" West a distance of 100.0 feet; run thence Westwardly along the arc of a curve to the left, having a radius of 863.02 feet, a distance of 311.78 feet; run thence South 81° 30' West a distance of 117.22 feet; run thence North 3° 45' West a distance of 398.31 feet to the point of beginning. Contains approximately 5.63 Acres, 245,046.69 square feet.

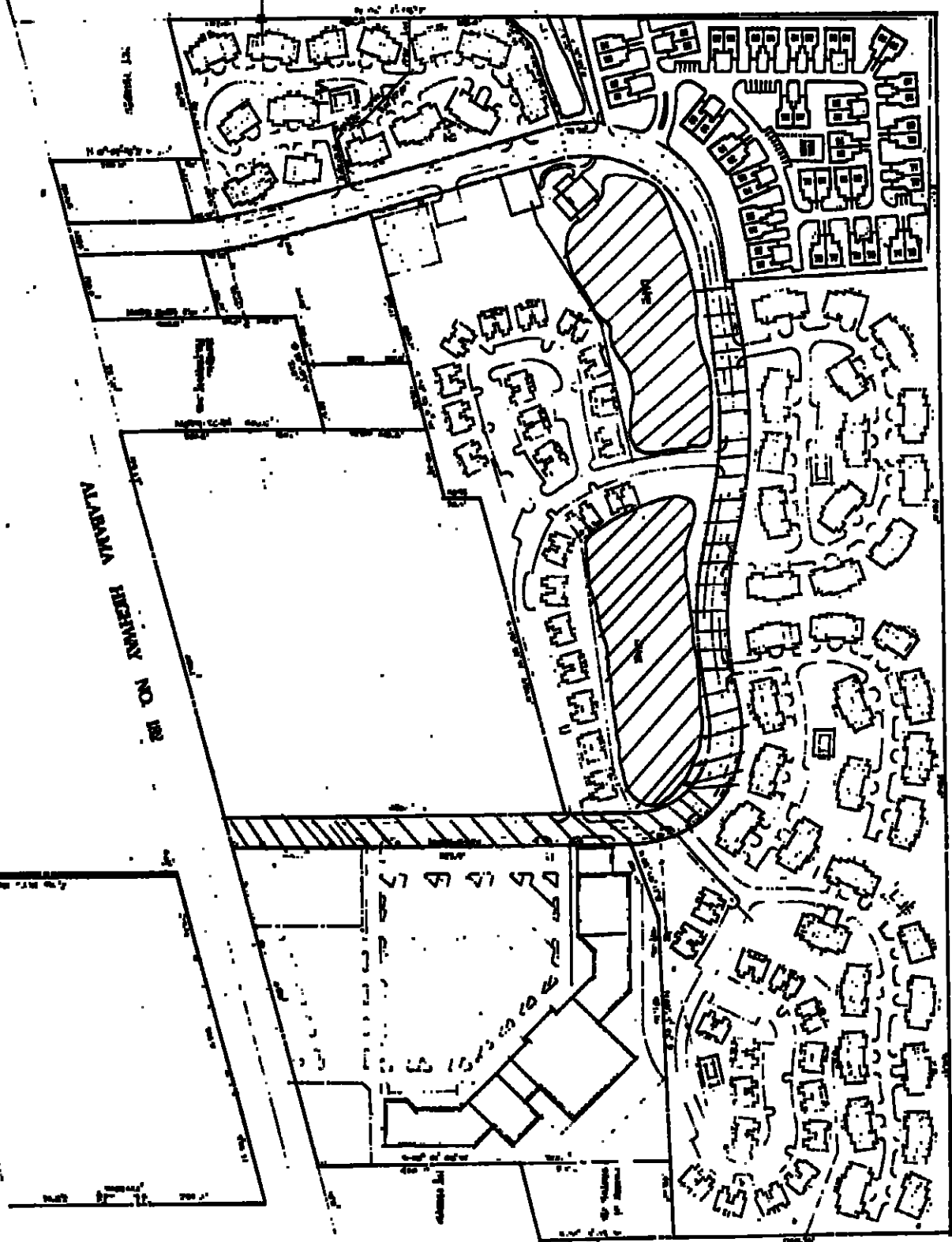


MARINER LAKES  
GENERAL LAND PLAN  
EXHIBIT B



MISC 00060 PAGE 1383

MARINER LAKES  
EXHIBIT C  
COMMON AREA OWNED



MARINER LAKES

EXHIBIT D

ADDITIONAL COMMON AREA

RECORDED FILE 1384  
STATE OF ALABAMA  
E. WILSON COUNTY  
RECORDED  
FILE NO. 1384

Dec 7 8 45 AM '94

RECORDED  
FILE NO. 1384  
1384-84  
JAN 10 1995  
JAN 10 1995