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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
MARCUS POINTE SUBDIVISION,
LOCATED IN THE COUNTY OF ESCAMBIA, STATE OF FLORIDA

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INDEX

	<u>Page</u>
ARTICLE I - DEFINITIONS	1
Section 1 - Association	1
Section 2 - Back	1
Section 3 - Common Areas	1
Section 4 - Declaration	1
Section 5 - Developer	1
Section 6 - Front	1
Section 7 - Golf Course	1
Section 8 - Greenbelt Easement	1
Section 9 - Lot	1
Section 10 - Owner	2
Section 11 - Plat	2
ARTICLE II - MEMBERSHIP AND VOTING RIGHTS	2
Section 1 - Membership	2
Section 2 - Voting Rights	2
ARTICLE III - GENERAL PROVISIONS	3
Section 1 - Enforcement	3
Section 2 - Severability	3
Section 3 - Duration and Amendment	3
Section 4 - Nonliability of Association and Developer ..	3
Section 5 - Notice	3
Section 6 - Easements on Plat	3
Section 7 - Annexation	4
Section 8 - Golf Course Ownership	4
Section 9 - Miscellany	4
ARTICLE IV - COMMON AREAS	4
Section 1 - Owners' Easements of Use and Enjoyment	4
Section 2 - Delegation of Use	5
Section 3 - Reservation of Easement	5
Section 4 - Title to Common Areas	6
Section 5 - Parcel E/Waterfront Access	6
ARTICLE V - ASSESSMENTS	6
Section 1 - Creation of the Lien and Personal Obligation Assessments	6
Section 2 - Purpose of Assessments	6
Section 3 - Maximum Annual Assessment	6
Section 4 - Special Assessments	7
Section 5 - Segregation of Funds	7
Section 6 - Notice and Quorum for any Action Authorized under Section 3, 4 or 5	7
Section 7 - Uniform Rate of Assessment	7
Section 8 - Assessment Periods and Due Dates	7
Section 9 - Effect of Nonpayment of Assessment; Remedies of the Association	8
Section 10 - Subordination of Assessment Lien to First Mortgage	8
Section 11 - Maintenance	8
ARTICLE VI - ARCHITECTURAL CONTROL	8
Section 1 - Prior Approval	8

Section 2 - Architectural Review Committee 9
 Section 3 - Construction Plans 9
 Section 4 - Inspection During Construction and
 Prior to Occupancy 9

ARTICLE VII - ADDITIONAL RESTRICTIONS 10

Section 1 - Use 10
 Section 2 - Minimum Square Footage 10
 Section 3 - Maintenance 10
 Section 4 - Prohibited Residences 10
 Section 5 - Vehicles 11
 Section 6 - Nuisance 11
 Section 7 - Pets 11
 Section 8 - Appearance 11
 Section 9 - Dumping 11
 Section 10 - Compliance with Law 11
 Section 11 - Drainage 11
 Section 12 - Wiring 11
 Section 13 - Number and Type of Structures 12
 Section 14 - Lot Setbacks 12
 Section 15 - Antennas 12
 Section 16 - Basketball Goals 12
 Section 17 - Mailboxes 12
 Section 18 - Clotheslines 12
 Section 19 - Outdoor Cooking 12
 Section 20 - Garbage and Trash Receptacles 13
 Section 21 - Fences 13
 Section 22 - Adjacent Lots 13
 Section 23 - Trees 13
 Section 24 - Filling 13
 Section 25 - Topography 13
 Section 26 - Signs 13
 Section 27 - Completion of Construction 13
 Section 28 - Corners 13
 Section 29 - Waterfront Improvements 14
 Section 30 - Resubdivision 14
 Section 31 - Roofing Material 14
 Section 32 - Greenbelt Easement 15

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ARTICLE I - DEFINITIONS

Section 1 - Association. "Association" shall mean and refer to Marcus Pointe Homeowners Association, Inc., a corporation not-for-profit, its successors and assigns.

Section 2 - Back. When used in describing a particular side or end of a Lot (such as the phrase "Back Lot line" or the "Back line of the residential structure"), the word "Back" refers to that side of the Lot farthest away from the street shown on the Plat.

Section 3 - Common Areas. "Common Areas" shall mean and refer to all real property (including any improvements, fixtures or tangible personal property relating thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of recording the conveyance of the first Lot by the Developer are those areas shown on the Plat and which are designated as "Common Areas," if any, and Parcels A, B, C, D, E, F and G (but not Parcels H, I and J).

Section 4 - Declaration. "Declaration" shall mean and refer to this instrument and any recorded amendment or restatement hereof made pursuant to the terms hereof.

Section 5 - Developer. "Developer" shall mean and refer to Marcus Creek Partnership, a Florida General Partnership, its successors and assigns.

Section 6 - Front. When used in describing a particular side or end of a Lot (such as the phrase "Front Lot Line" or "the Front line of the residential structure"), the word "Front" refers to that side or end of the Lot contiguous with the street shown on the Plat.

Section 7 - Golf Course. "Golf Course" shall mean and refer to that certain 18 hole golf course, complete with driving range, practice green, clubhouse, maintenance facilities and related improvements presently being constructed by Developer on real property adjacent to and in the immediate vicinity of the Marcus Pointe Subdivision, and which Golf Course is commonly referred to as the Marcus Pointe Golf Course.

Section 8 - Greenbelt Easement. "Greenbelt Easement" or "Greenbelt" shall mean and refer to all areas (including Common Areas as hereinabove defined) designated as such on the Plat.

Section 9 - Lot. "Lot" shall mean and refer to any one of the Lots as shown upon the Plat, EXCEPT lots 1 through 14, Block H and lots 1 through 11, Block I (hereinafter sometimes referred to as the "Patio Home" lots). Notwithstanding the preceding sentence or anything elsewhere herein contained, this Declaration shall not apply to or have any impact whatsoever with respect to the "Patio Home" lots or Parcels H, I and J. By way of explanation, Developer contemplates that the "Patio Home" lots shall, at some time in the near future, be restricted by Developer for construction of patio homes, at which time Developer will record in the public records of Escambia County, Florida, appropriate restrictions with respect thereto which will incorporate all applicable rules, regulations, zoning ordinances, building codes and the like relating thereto.

Section 10 - Owner. "Owner" shall mean and refer to all present and future record Owners, whether one or more persons or entities, of a fee simple title to any Lot and shall include contract sellers pursuant to an unrecorded contract and contract purchasers pursuant to a recorded contract. Owner shall not include those persons or entities having a record interest in a Lot merely as security for the performance of an obligation. Whenever herein a use or enjoyment restriction provides that an Owner can or cannot do, or fails to do, certain acts or things, the Owner shall also be deemed to include the Owner's family, guests, tenants and purchasers pursuant to an unrecorded contract, provided, however, that only an Owner, and not a member of the Owner's family, the Owner's guests, the Owner's tenants or the Owner's purchasers pursuant to an unrecorded contract, shall be held financially responsible for any such act or failure to act.

Section 11 - Plat. "Plat" shall mean and refer to the subdivision Plat of Marcus Pointe Subdivision, which is recorded in Plat Book 14, Page 48, 48A of the public records of Escambia County, Florida.

ARTICLE II - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership. The Association shall consist of all Owners of Lots. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2 - Voting Rights. The Association shall have two classes of membership:

Class A. Class A shall be the Owners (with the exception of Developer) of all Lots (including any subsequently annexed Lots). Class A Owners shall not be entitled to vote until the first to occur of: (1) that date when Developer no longer owns any Lots (including any subsequently annexed Lots); or (2) the date five (5) years after this Declaration is recorded. At that time (or such earlier date as Developer, in its sole discretion, shall irrevocably determine as evidenced by an instrument recorded in the public records of Escambia County, Florida), each Lot shall be entitled to one vote. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as determined by the Owners thereof, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The only Class B member shall be Developer, which shall be entitled to three (3) votes for each Lot owned (including Lots annexed from time to time). The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; provided, however, that if, after conversion of the Class B membership to Class A membership, there are additional Lots annexed with the result that the total votes outstanding in the Class A membership would not equal or exceed the total votes outstanding in the Class B membership if there were then

a Class B membership, the Class B membership shall thereupon be reinstated until the then total votes outstanding in the Class A membership again equals or exceeds the then total votes outstanding in the Class B membership.

ARTICLE III - GENERAL PROVISIONS

Section 1 - Enforcement. The Association, the Developer or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the right to do so thereafter. If any court proceedings are required for the successful enforcement of any restrictions, conditions, covenants or reservations herein contained, or any liens or charges against any Owner or against any other person or entity, said Owner, person or entity expressly agrees to pay all costs, including reasonable legal fees, of the person or entity who initiates such successful judicial proceedings for the enforcement of said restrictions, conditions, covenants, reservations, liens or charges.

Section 2 - Severability. Invalidation of any one of the restrictions, conditions, covenants, reservations, liens or charges, by judgment or court order, shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect thereafter.

Section 3 - Duration and Amendment. The restrictions, conditions and covenants of this Declaration shall run with and bind the land, shall be deemed a part of all deeds and contracts for conveyance of any and all Lots, and shall be binding on all Owners for a period of forty (40) years from the date this Declaration is recorded, unless amended by an instrument signed by two-thirds of the Owners then entitled to exercise voting rights in accordance with Article II, Section 2 hereof. After the initial 40-year term, this Declaration shall be automatically extended for successive periods of ten (10) years, unless amended by an instrument signed by a majority of the then Owners. Notwithstanding the foregoing, Developer reserves the right unto itself to amend this Declaration at any time within five (5) years after date hereof if doing so is necessary or advisable to accommodate FHA, VA, FNMA or the like financing of residential structures within the Subdivision. Any such amendment must be recorded in the Public Records of Escambia County, Florida.

Section 4 - Nonliability of Association and Developer. Neither the Association nor Developer shall in any way or manner be held liable to any Owner or any other person or entity for failure to enforce, or for any violation of, the restrictions, conditions, covenants, reservations, liens or charges herein contained by any Owner, other than itself.

Section 5 - Notice. Unless otherwise expressly provided herein, the requirements of the Association to give any type of notice provided herein may be satisfied by mailing said notice, postage prepaid, to the last mailing address of the Owner as reflected on the records of the Association.

Section 6 - Easements on Plat. The restrictions, conditions, reservations and covenants herein contained are all subordinate to any easements, reservations, covenants, restrictions or setbacks shown on the Plat.

Section 7 - Annexation. Developer may, in its sole discretion and without consent of any Owner or the Association, annex such additional residential property and Common Areas (regardless of whether contiguous or not, and either single residential detached or multi-family) as Developer shall in good faith determine. Such annexation shall be evidenced by an instrument recorded in the public records of Escambia County, Florida, by Developer describing the real property to be annexed and any modifications and/or qualifications to this Declaration to be applied to such annexed property (including different use restrictions, such as, but not limited to, minimum square footage) all as determined by the Developer in its sole discretion, but in good faith.

Section 8 - Golf Course Ownership. At present, the Developer owns the Golf Course. If, at any time in the future, the Developer ceases to own the Golf Course (whether voluntarily by, for example, sale, or involuntarily by, for example, reason of exercise by others of creditors' remedies), the then new owners of the Golf Course, and their successors and assigns, shall, in addition to the Developer, have all the same rights, privileges, responsibilities and protections of Developer under this Article III as if originally named herein.

Section 9 - Miscellany. Any single violation of any provision of this Declaration by an Owner shall constitute a continuing violation which shall allow the Association, the Developer or any other Owner to seek permanent injunctive relief. In no event shall a violation of the restrictions, conditions or covenants ever be interpreted to work a reverter or a forfeiture of title.

ARTICLE IV - COMMON AREAS

Section 1 - Owners' Easements of Use and Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to suspend the voting rights, if any, and the right of an Owner to use and enjoy any recreational facilities situated upon the Common Areas for any period during which any assessment against his Lot remains unpaid or any violation of the provisions of this Declaration remains uncured; and for a period not to exceed ninety (90) days for any infraction of its published rules and regulations pertaining to the use and enjoyment of any such recreational facilities;
- B. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility, or to the owner of the Golf Course, for such purposes and subject to such conditions as may be agreed to by the members. No such dedications or transfer shall be effective unless an instrument signed by the members entitled to cast two-thirds of the votes of the Association has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days and no more than sixty (60) days in advance; provided, however, that for a period of five (5) years from date of recording this Declaration,

Developer may, without action of the Association: (1) dedicate Common Area parcels C, D, F and/or G to any public body, agency, authority or utility, for such uses and purposes and subject to such conditions as Developer, in its sole discretion, deems appropriate; and (2) grant such easements, licenses or the like across, to or under all or any portion of the Common Areas which Developer, in its sole discretion, deems appropriate or necessary for the benefit of any or all Owners or necessary or appropriate to accommodate the reasonable needs of the golf course referenced above.

- C. The right of the Association, in accordance with its articles and bylaws, to borrow money for the purpose of improving and maintaining the Common Areas and facilities, and in aid thereof, to mortgage said property, but the right of said mortgagee in said properties shall be subordinate to the rights of Owners hereunder.
- D. The right of the Association to reasonably limit the use of any Common Area.

Section 2 - Delegation of Use. Subject to the provisions of Section 1 of this Article, any Owner may delegate, in accordance with the bylaws of the Association, his right of use and enjoyment of the Common Areas and facilities to the members of his family, guests, his tenants, contract purchasers who reside on his Lot, contractors performing work for the Owner, suppliers and purveyors of services solicited by the Owner and deliverymen.

Section 3 - Reservation of Easement.

- A. Developer does hereby grant a nonexclusive perpetual easement and right of ingress and egress across, under and to all Common Areas unto each and all law enforcement, fire fighting and postal or delivery organizations, and to any other persons, organizations or entities who, in the normal course of their operation, respond to public or private emergencies, or who provide public or private utility services.
- B. Developer does hereby reserve a nonexclusive perpetual easement and right of access across, under and to all Common Areas for construction thereon of subdivision improvements, sale of Lots and such other purposes and uses (including drainage) as Developer deems appropriate or necessary in connection with the sale and development of the Subject Property as a subdivision.
- C. Developer does hereby reserve a nonexclusive perpetual easement and right of access across, under and to all Common Areas for purposes of subsequently assigning same (with or without restriction on the exercise thereof, as Developer in its sole discretion shall determine) to a subsequent owner of the Golf Course.
- D. A general utility easement 5 feet in width along all interior and rear Lot lines of each Lot for purposes of installation and maintenance of public utilities and drainage easements is hereby reserved. Within such easements, no structures, planting or

other materials of a permanent nature shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of such utilities, or which may change the direction or flow of drainage channels in the easements, or obstruct or retard the flow of water through any such drainage channels. This easement area of each Lot and all improvements within same shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority or utility company is responsible.

Section 4 - Title to Common Areas. Developer hereby covenants for itself, its successors and assigns, that fee simple title to any Common Areas, as of the time of recording the conveyance of the first Lot by Developer, be, without any further action required other than recordation of this Declaration, considered conveyed to the Association subject to the terms of this Declaration, subsurface utility easements, easements then of record, taxes for the current year, and reservation by Developer of all oil, gas and minerals.

Section 5 - Parcel E/Waterfront Access. Notwithstanding any other provision of this Declaration, neither the Association nor any Owner or others shall use Parcel E or any other Common Area for access to Crescent Lake or the East or West branch of Bayou Marcus Creek without the Developer's prior written authorization recorded in the public records of Escambia County, Florida (and which authorization Developer reserves the right to grant or deny, in its absolute and sole discretion).

ARTICLE V - ASSESSMENTS

Section 1 - Creation of the Lien and Personal Obligation Assessments. Each Owner of each Lot by acceptance of a deed (or in the situation of a contract purchaser pursuant to a recorded contract, by acceptance of such contract), whether or not it shall be so expressed in such deed or such contract, is deemed to covenant and agree to pay to the Association: (a) an annual assessment and (b) any special assessments, both of such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost and reasonable legal fees, shall be a charge and a continuing lien upon the Lot against which such assessment is made from the time such assessment becomes due. Each such assessment, together with interest, cost and reasonable legal fees, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment becomes due.

Section 2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the acquisition, improvement, construction, management, care and maintenance of any Common Area or any real property owned by the Association or public property adjacent to, or in the vicinity of the Lots and Common Areas (including, but not limited to, lawn and landscaping maintenance, street light expense and utility charges relating to such matters) and subdivision security. The Association shall have the obligation to maintain the Common Areas and shall pay all ad valorem real property taxes assessed upon it, as well as any other fees, levies, assessments, taxes or the like that might be imposed, assessed and/or levied. The Association shall fund in a reserve account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to the Common Areas.

Section 3 - Maximum Annual Assessment. Until January 1, 1991, the maximum annual assessment shall be \$100.00 per Lot.

- A. From and after January 1, 1991, the maximum annual assessment may be increased each year by not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1, 1991, the maximum annual assessment may be increased above twenty-five percent (25%) by a vote of two-thirds of the Owners then entitled to voting rights in accordance with Article II, Section 2, and who are voting in person or by proxy, at a meeting of the members of the Association duly called for this purpose.
- C. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4 - Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment per Lot applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, improvement or maintenance upon any Common Areas or any real property owned by the Association, public property adjacent to or in the vicinity of the Common Areas or any of the Lots, landscaping, special signage and street lights; provided that any such assessment shall have the assent of two-thirds of the votes of Owners who are then entitled to voting rights in accordance with the provisions of Article II, Section 2, and who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5 - Segregation of Funds. Funds collected by the Association from the annual assessments and any special assessment pertaining to matters shall be maintained separately. Notwithstanding the requirement that separated and segregated funds are required as aforesaid, there need be no physical division of such funds and same may be held in a consolidated account in which each separate fund shall have an undivided interest.

Section 6 - Notice and Quorum for any Action Authorized under Section 3, 4 or 5. Written notice of any meeting of Owners called for the purpose of taking any action authorized under Section 3, 4 or 5 of this Article shall be sent by United States mail, postage prepaid, to all affected Owners of record (as of ninety (90) days prior to the date of mailing such notice) not less than fifteen (15) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of affected Owners or of proxies entitled to cast 60% of all the votes of the affected membership shall constitute a quorum. If the required quorum is not present, the required quorum of a subsequent meeting shall be one-third of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7 - Uniform Rate of Assessment. The annual assessments and special assessments pertaining to all matters shall be fixed at a uniform rate for all Lots; provided, however, notwithstanding any other provision elsewhere contained in this Declaration, Developer shall never be obligated to pay any annual assessment for any Lots owned by it.

Section 8 - Assessment Periods and Due Dates. The annual assessment shall be assessed on a calendar year basis and is due and payable on such date as set forth by a Resolution of

the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the annual assessment for each Lot in advance of each annual assessment period (except for the year 1990, when the Board of Directors of the Association may fix the amount of the 1990 annual assessment at any time prior to November 30, 1990). Written notice of the annual assessment shall be mailed to every affected Owner. The Association is not required to prorate the first year's annual assessment. The Association shall, upon written request and for a reasonable charge, furnish a sealed certificate signed by an officer of the Association stating what assessments are outstanding against any Lot and the due date for such assessments. A properly executed and sealed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9 - Effect of Nonpayment of Assessment; Remedies of the Association. Any annual or special assessment not paid within fifteen (15) days after the due date shall bear a late charge of ten percent (10%) of the assessment amount, plus interest from such date at the highest legal rate per annum. The Association may, after first giving ten (10) days written notice to the holder of any first mortgage, bring an action at law against the Owner personally obligated to pay same, and/or foreclose the lien against the Lot. No Owner may waive or otherwise avoid personal liability for the assessments provided for herein by nonuse of any Common Areas or abandonment of his Lot. Reasonable legal fees and costs shall be paid by Owner to the attorney for the Association. Legal fees and costs shall constitute a lien against the Lot.

Section 10 - Subordination of Assessment Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage which is originally recorded as a first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of such a first mortgage or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to the date of such sale or transfer. No such sale or transfer shall relieve such Lots from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11 - Maintenance. In the event an Owner shall (after thirty (30) days written notice from the Association sent United States Mail, postage prepaid) construction improvements on a Lot without prior approval of the Architectural Review Committee (as herein established), or shall fail to implement any construction in accordance with plans previously approved by the Architectural Review Committee, or shall fail to maintain a Lot or to maintain the improvements situated thereon in a neat, clean and orderly fashion and otherwise satisfactory to the Board of Directors of the Association, the Association may, after approval of 2/3 vote of its Board of Directors, have the right, through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and/or any improvements erected thereon. The cost of such corrective action, together with interest at the maximum rate then allowed by law (if not paid within ten (10) days after written demand thereof), as well as reasonable legal fees and costs, shall be a charge on the Lot, shall be a continuing lien on the Lot and shall also be the personal obligation of such Owner at the time such corrective action is performed.

ARTICLE VI - ARCHITECTURAL CONTROL

Section 1 - Prior Approval. No building, fence, wall,

mailbox, driveway, gate, lightpost, landscaping or other structure or improvement of any nature whatsoever shall be commenced, erected or maintained upon any Lot or any Common Area by any Owner, the Association or anyone else, nor shall any exterior addition to or change, alteration or modification be made to any of the foregoing until the design, plans, specifications, plot plan and landscaping plan showing the nature, kind, shape, height, material, color and location of same have been submitted to and approved in writing by the Architectural Review Committee (as well as payment of such reasonable, but uniformly imposed, fee as the Architectural Review Committee might from time to time establish) as complying with the standards generally set forth in Section 2 of this Article VI. In the event the Architectural Review Committee fails to approve or disapprove such design, plans, specifications, plat plans and/or landscaping plans within thirty (30) days after same have been received by said Committee, or in any event, if no suit to enjoin the erection of such improvements or the making of such alterations has been commenced prior to ninety (90) days after the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.

Section 2 - Architectural Review Committee. The Architectural Review Committee shall consist of four (4) members and shall originally be composed of Neal B. Nash, John S. Carr, Joseph M. Thames and Ronald L. Gring. Upon occurrence of a vacancy on the Architectural Review Committee, or in the event a member of the Committee cannot or does not continue to serve, then a new member of the Committee, who need not be an Owner, shall be appointed to serve. A member of the Architectural Review Committee may be removed by two-thirds vote of the Board of Directors of the Association. Appointment of a new member to the Architectural Review Committee shall be made by the originally named Committee members then serving on the Committee, and if there be no originally named Committee members then serving on said Committee, new members to the Committee shall be appointed by the Board of Directors of the Association; provided, however, the owners of the Golf Course shall always be entitled to twenty-five percent (25%) representation on the Architectural Review Committee, that person originally representing the Golf Course interest being Ron Gring. Should a vacancy in that position occur, then the owners of the Golf Course shall have a right to appoint a successor, failing which such appointment shall be made as aforesaid. The members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Declaration. All decisions of the Architectural Review Committee shall be by majority vote. Decisions of the Architectural Review Committee shall be based upon the uniform application of such reasonable standards as are consistent with a first-class single residential subdivision, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, uniform carriage light poles, garage doors, location in relation to surrounding structures and topography, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

Section 3 - Construction Plans. All construction plans shall be thorough and complete; include all elevations; reflect all exterior material types, design and color; and shall be accompanied by a complete landscape plan for the entire Lot.

Section 4 - Inspection During Construction and Prior to Occupancy. The Architectural Review Committee, or their representative, shall have the right to inspect the Owner's property and improvements during construction and prior to occupancy to insure construction in accordance with the

construction plans submitted and approved by the Architectural Review Committee. Failure of an Owner to comply with the provisions of this Article VI, or failure of an Owner to carry out construction in accordance with the provisions of this Article VI, shall subject such Owner to the sanctions provided for in Section 11 of Article V.

ARTICLE VII - ADDITIONAL RESTRICTIONS

The following restrictions are guidelines which it is anticipated will be observed and adhered to in substantially all situations. However, the Architectural Review Committee is hereby vested with the authority to grant in writing waivers and variances from any of the following restrictions utilizing the same standards of review as those set forth in Article VI, Section 2, where it is clearly demonstrated by the person requesting the waiver that both the granting of such a waiver will not impact adversely on the aesthetic qualities of the proposed improvements, the Lot upon which same is located, and the neighborhood as a whole, and, that same is consistent with a first-class single residential subdivision contemplated hereby. Neither the Architectural Review Committee, nor any of its members, shall in any way or manner be held liable to any Owner, the Association or any other person or entity for its good faith exercise of the discretionary authorities herein conferred.

Section 1 - Use. All Lots shall be occupied solely for single residential purposes and shall not be used for commercial, trade, public amusement, public entertainment, business or any other purpose of any kind or character.

Section 2 - Minimum Square Footage. No residential structure shall be erected or placed on any Lot with a living area, exclusive of garages, porches, patios and terraces, of not less than 2,000 square feet for "waterfront" and "golf course" Lots, and 1,800 square feet for "interior" Lots. (As used in the preceding sentence "golf course" lots mean and refer to all Lots having 25 feet or more of frontage on the golf course to be constructed in the immediate vicinity of the Subject Property; "waterfront" Lots mean and refer to Lots 7, 8 and 9, in Block B; Lots 5, 6 and 7, in Block C; Lots 1 through 7 (inclusive), in Block D; and Lots 13 through 21 (inclusive) and Lots 26, 27 and 28, all in Block E; and "interior" Lots refer to all other Lots.) No residential structure of more than one story, exclusive of garages, porches, patios and terraces, shall be erected or placed on any such Lots having a ground floor area of less than 1,000 square feet.

Section 3 - Maintenance. All structures, improvements, yards, drives and landscaping must be diligently and properly maintained at all times. A landscape sprinkler system shall be required for each home. Failure to provide such maintenance shall be grounds for lawsuit or any necessary or appropriate legal or equitable relief by any other Owner in the subdivision, the Association, the Developer and/or any appropriate governmental authority. All Lots must be maintained in high standards and in a graded, cleared and neat condition. (This Section is not applicable to the Developer and shall apply only after sale of Lots by Developer. Further, this Section is not applicable to Owners until ten (10) days after Owner's residence shall be available for occupancy).

Section 4 - Prohibited Residences. No boat, trailer, camper, house trailer, truck, van, basement, tent, shack, garage, barn, boathouse or any other such similar structure or vehicle (other than the primary dwelling to be located on the Lot) shall at any time be used as a residence, temporary or permanent, nor

(09/26/90)

shall any structure of a temporary character be used as a residence.

Section 5 - Vehicles. Automobiles, campers, trucks, vans, motorbikes, trailers, motorhomes, boats, golf carts and the like, stored or for any reason left upon the premises or owned or regularly used by the residents must either be completely garaged or stored in such a location so that same is out of view from both the Front Lot line, any adjoining Lots, and, in the case of a "golf course" or "waterfront" Lot, the Back Lot Line, except for short-term parking not to exceed forty-eight (48) hours duration. Storage of any such items in any other manner (such as in the street, road right-of-way or in any portion of the driveway which is not out of view from both the Front Lot line and any adjoining Lots) is expressly prohibited.

Section 6 - Nuisance. No noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the Owners of other Lots.

Section 7 - Pets. No person shall have, keep or maintain on any Lot any fowl, reptiles or animals, domestic or otherwise, except dogs, cats and other customary household pets provided that such pets: (a) are not kept, bred or maintained for commercial purposes; (b) are duly licensed, if applicable; (c) do not constitute a nuisance; (d) and are not permitted to be present beyond the boundaries of the Owner's Lot without being caged or leashed.

Section 8 - Appearance. All residences, structures and improvements shall be designed to present a pleasing, attractive, tasteful, neat and well-maintained appearance from all views.

Section 9 - Dumping. No garbage, rubbish, trash or other unsightly objects shall be stored on any Lot, any road or road right-of-way within Marcus Pointe Subdivision, or dumped into any waterways, or on any of the Common Areas, or upon any property contiguous thereto. An industrial waste container shall be used during construction of all homes.

Section 10 - Compliance with Law. All laws of the United States, the State of Florida and the County of Escambia, and all rules and regulations of their administrative agencies now and hereafter in effect, pertaining to sewage disposal, water supply, sanitation, zoning, building permits, tree preservation, land use planning and the like shall be observed by all Owners, unless an appropriate permit or variance to do otherwise is properly granted, and any governmental official having a lawful and administrative duty to inspect with respect to any such matters shall have a license to enter upon Lots or Common Areas at all reasonable times to make such inspections and recommendations.

Section 11 - Drainage. In the interest of public health and sanitation and in order that all Lots, the Common Areas and all other land and waters in the same locality may be benefited by a decrease in hazards of water pollution and by the protection of water supplies, recreation, wildlife, marine life and other public uses, no Owner shall use a Lot in any manner or for any purpose that would result, directly or indirectly, in the drainage or dumping into any body of water or drainage system, of any refuse, sewage or other materials which might end to pollute same, and sewage from all residences shall be treated at an approved sewage treatment plant.

Section 12 - Wiring. No above-ground telephone, cable television, radio or any other such wiring or utility services

(except electricity) shall be permitted. (There shall be an exception for any necessary above-ground electrical wiring in the Common Areas in connection with any lift stations for sewage and/or storm drainage).

Section 13 - Number and Type of Structures. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling not to exceed two and one-half stories having a maximum height from ground elevation of 35 feet; a private garage attached or detached from the main dwelling, with optional servant's room, tool room, storage room or laundry room attached to said garage; and a cabana located adjacent to any swimming pool or tennis court. Any detached garage or any such cabana shall be attractively designed and built in harmony of external design and location in relation to surrounding structures and topography and shall be located to the rear of the dwelling so as to be generally out of view from the street. Each residence shall have a garage (attached or detached) which must be enclosed, capable of housing not less than two (2) automobiles, and which shall provide for side entry (unless the configuration of the Lot is such that the Architectural Review Committee in good faith determines that side entry is not feasible).

Section 14 - Lot Setbacks.

A. Front: No structure shall be located nearer the front Lot line than 25 feet, except that structures on corner Lots shall not be required to be set back more than 15 feet from each side Lot line.

B. Side: No structure shall be located any nearer than 8 feet from any side Lot line. The 8 foot side Lot line setback may be waived by the Architectural Review Committee provided a written consent to such waiver, executed in recordable fashion by each of the adjoining property owners, is received by the Architectural Review Committee.

C. No driveway shall be located nearer than 1 foot from any side Lot line and 5 feet from rear Lot lines.

D. In the event of any conflict between these setback distances and those reflected on the Plat, the Plat setback distances shall control.

Section 15 - Antennas. No visible outside antennas, satellite systems, poles, masts, windmills or towers shall be erected on any Lot. No radio transmitting equipment shall be erected on, or operated from, any Lot.

Section 16 - Basketball Goals. No outside basketball goals shall be erected on any Lot unless hidden from view from the Front Lot line and, in the case of a "golf course" or "waterfront" Lot, the Back Lot Line.

Section 17 - Mailboxes. All mailboxes shall be neat and attractive in appearance and shall be constructed of materials and design as are in architectural conformity with the residential structure.

Section 18 - Clotheslines. Outside clotheslines or other items detrimental to the appearance of the subdivision shall not be permitted on any Lot.

Section 19 - Outdoor Cooking. All outdoor cooking, including permanent or portable Bar-B-Que grills, shall be screened from view from the Front Lot line and, in the case of a "golf course" or "waterfront" Lot, the Back Lot Line.

Section 20 - Garbage and Trash Receptacles. All garbage and trash receptacles must be covered with an appropriate structure, or otherwise concealed from view in an effective manner, at the residential structure. Curb side placement of garbage and trash receptacles shall be limited to reasonably short durations of a few hours to accommodate scheduled curb side pickup.

Section 21 - Fences. No chain link fence shall be allowed. No fence or other type of construction over six (6) feet in height shall be allowed (other than in conjunction with a tennis court, swimming pool or other recreational facility, in which case same shall be appropriately concealed from view or camouflaged by landscaping or otherwise) on any Lot. All permitted fences must be painted or stained with color and style subject to approval. Any fence constructed shall be in conformity with the architectural design of the residential structure and shall be made of wood, brick or other decorative material or shall consist of growing hedge. With the exception of a growing hedge not to exceed four (4) feet in height, no fence shall be erected near to the front Lot line of any Lot than the front line of the residential structure. No fence of any type or construction shall be allowed on any Lot line or Common Area property line which abuts the Golf Course, with the exception of a growing hedge. Fencing is permitted around swimming pools located on Lots adjacent to the Golf Course, subject to the following restrictions: Fencing must (a) be of a wrought iron type construction or a growing hedge; (b) be located within ten (10) feet of pool's edge; and (c) not be more than four (4) feet in height.

Section 22 - Adjacent Lots. The same Owner of two or more adjacent Lots may construct a swimming pool, tennis court or other recreational facility on one of such Lots provided the Owner has first constructed his residence and has first obtained the approval of the Architectural Review Committee.

Section 23 - Trees. No tree of a diameter exceeding 6 inches (measured 4 feet above the ground) may be removed without prior approval of the Architectural Review Committee.

Section 24 - Filling. No Lot shall be increased by the filling in of any body of water on which it may abut.

Section 25 - Topography. Any construction or grading to raise or lower the existing ground level or to otherwise affect the topography shall require the prior approval of the Architectural Review Committee.

Section 26 - Signs. No sign of any kind shall be displayed to public view on any Lot except the following: (a) one professionally made sign of not more than 6 square feet advertising the property for sale; (b) one professionally made sign of not more than 6 square feet used by a builder during the construction period to advertise his construction; and (c) a name plate and/or street number identification marker, the design, color, location and specifications of which shall first be approved by the Architectural Review Committee.

Section 27 - Completion of Construction. No building that is unfinished on the exterior shall be occupied. Any construction commenced upon a Lot shall be pursued diligently and such construction must be completed within nine (9) months after commencement.

Section 28 - Corners. No fence, hedge or shrub planting which obstructs vehicular sight lines shall be placed or permitted

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to remain on any corner Lots.

Section 29 - Waterfront Improvements. Any construction, modification, changes or alterations in existing or new improvements, between the waters edge of Crescent Lake or the East or West branches of Bayou Marcus Creek and the Back Lot setback line, consisting of the construction or alteration of fences, patios, gazebos, swimming pools, retaining walls, sea walls, groins, piers, docks, boat docks, jetties and the like, shall first be approved by the Architectural Review Committee, in addition to any governmental agency having jurisdiction over such matters. No wharf, groin, pier, dock, boat dock, sea wall, jetty or the like shall extend into Crescent Lake more than 25 feet from the shoreline and same shall not be located nearer than 10 feet from any side Lot line; provided, however, that the Owners of two or more adjoining Lots may, with the Architectural Review Committee's prior approval, construct a common boat dock or similar structure, in which event the side Lot setback just referenced shall not apply to those Lot lines common to such adjoining Lots. No boat houses and no boat hull scraping, painting or the like shall be allowed in, on or over the lake. Other than Developer, the original and all successor Owners of Lots 7, 8 and 9, Block B; 5, 6 and 7, Block C; 1 through 7, Block D; and Lots 13 through 21 and 26, 27 and 28, Block E; shall, within ninety (90) days after acquiring title to such Lots, apply for membership in and become and remain members of (unless precluded by the then Articles of Incorporation, Bylaws or other rules, regulations and procedures as are in existence from time to time) the Crescent Lake Preservation Association, Inc., which membership it is recognized might require such Lot Owners to pay reasonable periodic membership dues and assessments; provided, however, such Lot Owners shall not be required to so join if they are required to pay any initiation fee, up front charge or the like.

Section 30 - Resubdivision. Two or more adjacent Lots may, with the approval of the Architectural Review Committee, be resubdivided into a lesser number of residential sites provided that the square foot area of each resubdivided residential building site equals or exceeds the square foot area of the smallest Lot which is resubdivided. In such a case, the perimeter of the thusly resubdivided Lots (in lieu of the pre-existing Lot lines) shall be utilized for determining setback requirements and the like. In the event of such resubdivision (which said resubdivision need not necessarily be accomplished by formal platting of the Lots thusly resubdivided), the Architectural Review Committee may take into consideration the thusly increased land area and shall, notwithstanding the other restrictions and guidelines contained in this Article VII indicating the contrary, be authorized to allow additional structures (such as a guest house, servants quarters and the like) and such other waivers and variances from the provisions of this Article VII which the Architectural Review Committee deems appropriate, provided same do not adversely impact on the aesthetic qualities of the thusly resubdivided Lots, the Marcus Pointe Subdivision as a whole, and provided that same is consistent with a first-class single residential subdivision. The preceding sentence is not intended to leave the inference that the Architectural Review Committee does not have the powers and authorities to grant variances and waivers of other appropriate cases, but rather is intended to simply make it clear that in the case where residential building sites result from such a resubdivision it is foreseeable that numerous variances and waivers might properly be granted. No such resubdivision or combination of multiple Lots shall result in a diminution of the number of Lots subject to the assessments provided for elsewhere herein.

Section 31 - Roofing Material. Highly reflective metal roofs and the like shall be prohibited on "golf course" Lots.

Section 32 - Greenbelt Easement. Within any Greenbelt Easement, no dredging, filling or structural improvements of a temporary or permanent nature shall be placed or permitted to remain by any Owner or the Association which is contrary to any applicable environmental rules or regulations pertaining thereto. In addition, and notwithstanding any other provision in this Declaration to the contrary, within Parcel A, no structural improvements (whether temporary or permanent) shall be made and no clearing (other than minimal underbrushing) shall be undertaken without the advance written consent of four (4) of the Lot Owners of Lots 1 through 7, Block D, and a two-thirds vote of the Board of Directors of the Association, it being the intent that Parcel A shall serve as a natural buffer/greenbelt for such Lots.

IN WITNESS WHEREOF, the Developer, in pursuance of due and proper action of its Partners, has executed these presents, causing its name to be signed by a General Partner authorized to do so, this 28th day of ~~October~~ ^{September}, 1990.

Signed, sealed and delivered in the presence of:

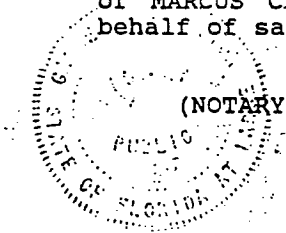
[Signature]
[Signature]

MARCUS CREEK PARTNERSHIP,
 a Florida General Partnership

By: [Signature]
 DAVID H. HEAD
 General Partner

STATE OF FLORIDA
 COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 28th day of ~~October~~ ^{September}, 1990, by DAVID H. HEAD, General Partner of MARCUS CREEK PARTNERSHIP, a Florida General Partnership, on behalf of said Partnership.



(NOTARY SEAL)

[Signature]
 Notary Public - State of Florida
 My Commission Expires: 10/9/91

JOINDER BY MORTGAGEES

THE UNDERSIGNED, owners of a Mortgage encumbering portions of Marcus Pointe Subdivision do hereby join in this "Declaration of Covenants, Conditions and Restrictions of Marcus Pointe," intending that by so doing their rights as Mortgagees are subject to the terms and conditions of this Declaration.

Signed, sealed and delivered in the presence of:

[Signature]
[Signature]

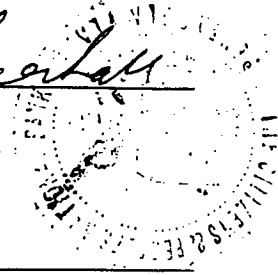
THE CITIZENS AND PEOPLES NATIONAL
 BANK OF PENSACOLA

By: [Signature]
 Its Vice President

[Signature]
[Signature]

MARTINE'S CORPORATION

By: [Signature]
 Its Vice President



(09/26/90)

OR 303 2917PC 701

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