

**COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COMMUNITIES OF MARCUS LAKE: THE COTTAGES AT MARCUS LAKE, THE ESTATES AT MARCUS LAKE, AND THE LUXURY APARTMENTS AT MARCUS LAKE, LOCATED IN THE COUNTY OF ESCAMBIA, STATE OF FLORIDA**

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

This Declaration, made this 3/27 day of March, 1997, by Marcus Lake Development Corporation, Inc., a Florida corporation, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in Escambia County, Florida which is more particularly described as follows, to wit:

**SEE ATTACHED EXHIBIT "A"**

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

**ARTICLE I - DEFINITIONS**

Section 1 - Association. "Association" shall mean and refer to The Communities of Marcus Lake Homeowners Association, Inc., a corporation not-for-profit, its successors and assigns (including but not limited to: The Cottages at Marcus Lake, a platted residential subdivision in Escambia County; The Estates at Marcus Lake, a platted subdivision in Escambia County; and The Luxury Apartments at Marcus Lake, an apartment complex which will make contributions to the Association as prescribed in these Covenants, Conditions and Restrictions). This is the Declaration of Covenants, Conditions and Restrictions to which the Articles of Incorporation and Bylaws of the Association make reference.

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 or end 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" or "Private Homeowners Association" to include, but not limited to, parcels shown on the recorded plat as being common areas.

Section 4 - Creekside. "Creekside" shall mean the Creekside Golf Club, Inc., its successors and assigns.

Section 5 - Declaration. "Declaration" shall mean and refer to this instrument and any recorded amendment or restatement hereof made pursuant to the terms hereof.

Section 6 - Declarant or Developer. "Declarant" or "Developer" shall mean and refer to Marcus Lake Development Corporation, Inc., a Florida corporation, its successors and assigns.

Section 7 - 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 nearest the street shown on the Plat.

Section 8 - Golf Course. "Golf Course" shall mean the golf course lying adjacent to portions of the Subject Property, commonly known as the Creekside Golf Course.

Section 9 - Lot. "Lot" shall mean and refer to any one of the Lots as shown upon the Plat.

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 several plats of the Subject Property to be known as The Communities of Marcus Lake, including but not limited to, the plat of The Cottages at Marcus Lake, the plat of The Estates at Marcus Lake, and the plat of The Luxury Apartments at Marcus Lake, which are being executed and recorded simultaneously herewith, or may be subsequently executed and recorded by the Developer.

Section 12 - Subject Property. "Subject Property" shall mean and refer to that real property, together with such additions thereto as may hereafter be brought within the jurisdiction of the Association, which is described above.

Section 13 - The Communities of Marcus Lake. "The Communities of Marcus Lake", when used in this document, shall include, but not be limited to, the platted subdivisions of The Estates at Marcus Lake, The Cottages at Marcus Lake, and The Luxury Apartments at Marcus Lake.

## ARTICLE II - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership. 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 three (3) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant (who shall become a Class A member as provided hereafter) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B members shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever comes earlier: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; (b) when seventy-five (75) percent of the units are deemed to homeowners; or (c) on July 4, 2000.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot which is owned by said Class B member. The Declarant shall not exercise its voting rights granted to it under this Article in an unreasonable manner, nor in such a way as to cause undue hardship upon any Owner. Likewise, Class A members shall not exercise their voting rights granted to them in a manner so as to hinder the Declarant, in any manner, in selling the lots it has remaining, nor to affect any reservation or right of the Declarant contained herein, or elsewhere, so long as Declarant holds at least one lot for resale purposes.

Class C. The Class C member shall be the owner of The Luxury Apartments at Marcus Lake, who, upon completion of the apartment complex, shall be entitled to one vote for each residential unit constructed in the complex.

Section 3 - Transfer of Control of Board. Notwithstanding the foregoing, members other than the

Declarant (which excludes builders, contractors, or others who purchase a Lot for the purpose of constructing improvements thereon for resale) are entitled to elect at least a majority of the members of the Board of Directors when the earlier of the following occurs:

- A. Three (3) months after ninety percent (90%) of the Lots in the subdivision have been conveyed to members; or
- B. Class B membership ceases to exist, as provided above.

Section 4 - Declarant's Voting Rights.

- A. Declarant shall be entitled to one seat of the Board of as long as Declarant holds at least ten (10) Lots for sale in the ordinary course of business.
- B. After Declarant relinquishes control of the Association, Declarant may continue to vote any Declarant-owned lots in the same manner as any other member.

**ARTICLE III - GENERAL PROVISIONS**

Section 1 - Enforcement. The Association, or any Owner shall have the right to enforce by any proceeding by 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 rights 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 a reasonable attorney's fee, of the Owner or the Association 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 40 years from the date this Declaration is recorded, unless amended by an instrument signed by three-fourths (3/4) of the then Owners. After the initial 40-year term, this Declaration shall be automatically extended for successive periods of 10 years, unless amended by an instrument signed by majority of the then Owners. Notwithstanding the foregoing, Developer reserves the right unto itself to amend this Declaration at any time within three (3) years after a 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 - Non-liability of Association. The Association shall not 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, reservation, lines 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 - Miscellany. Any single violation of any provision of this Declaration by an Owner shall constitute a continuing violation which shall allow the Association 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.

Section 7 - Annexation. Developer may, with the written consent of two-thirds (2/3) of the then owners, annex such additional residential property and common areas (regardless of whether contiguous or not). Such annexation shall be evidenced by an instrument recorded in the Public Records of Escambia County, Florida by the Declarant describing the real property to be annexed. Notwithstanding the foregoing, Declarant reserves the right unto itself to annex adjacent properties for a period of three (3) years, and may accomplish same by executing in recordable fashion a Notice of Annexation and recording same in the public

records of Escambia County. All property so annexed shall be subject to the provisions of this Declaration.

Section 8 - FHA/V.A. Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional properties; dedication and mortgaging of Common Area; amendment of this Declaration of Covenants, Conditions and Restrictions; mergers and consolidations; dissolution of the Association; amendment of the Articles of Incorporation of the Association; and amendment of the Bylaws of the Association.

Section 9 - Conflict. The restrictions, conditions, reservations, covenants, provisions and setbacks contained herein, if in conflict with the Articles of Incorporation or By-laws, are superior and supersede the Articles and Bylaws; if in conflict with information reflected on the recorded plats of the Communities of Marcus Lake, are superseded by the recorded plat.

#### 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 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 60 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 shall be 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 the members entitled to cast three-fourths (3/4) 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 30 days and not more than 60 days in advance; provided, however, that for a period of one year from date of recording this Declaration, Developer may, without action of the Association, grant such subsurface utility 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.

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, including any Lot Owner's easement necessary to secure ingress/egress to any residence within the Subject Property.

D. The right of the Association to reasonably limit the use of the Area denominated as "Common Area" on the Plat.

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 delivery persons.

#### Section 3 - Reservation of Easement

A. Declarant 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. Declarant does hereby reserve a non-exclusive 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 as Developer deems appropriate or necessary in connection with the sale and development of the Subject Property as a subdivision.

Section 4 -- Title to Common Areas. Declarant hereby covenants for itself, its successors and assigns, that fee simple title to any Common Areas shown on the Plat shall, as of the time of recording the conveyance of the first Lot by Declarant, 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 and taxes for the current year.

Section 5 -- Specific Conveyance of Lake Area to the Association. By separate Special Warranty Deed, Declarant has conveyed to the Association an area comprised of approximately 24.55 acres, for use as Common Area by the Association. The legal description of the property so conveyed is attached hereto as Exhibit "B", and the instrument of conveyance shall be recorded by Declarant simultaneously with the recordation of the first plat of The Communities of Marcus Lake.

Section 6 -- Gulf Power Company Easement. No Lot owner in the Communities of Marcus Lake shall fence any area that is shown on the plat as being subject to a Gulf Power Company easement, without first obtaining the written approval of the Association. The Association shall not approve such application unless it is first approved by Gulf Power Company, or its designee.

Section 7 -- Lots Adjacent to Marcus Lake. Lot Owners in The Estates at Marcus Lake and The Cottages at Marcus Lake who have lots bordering on Marcus Lake are prohibited from fencing any portion of their property that abuts the lake, without first obtaining the written consent of the Association.

#### ARTICLE V -- ASSESSMENTS

##### Section 1 -- Creation of the Lien and Personal Obligation Assessments.

A. 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 attorney's 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 attorney's 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.

B. The owner of The Luxury Apartments at Marcus Lake shall pay to the Association, on an annual basis, an assessment calculated as follows: one-third (1/3) of the operating budget of the Association, as approved by the Association at the annual meeting of the Association's Board of Directors. Such payment shall be made within thirty (30) days after the date that the budget is fixed by the Board of Directors.

Section 2 -- Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Subject Property and for the improvement and maintenance of the Common Area and for maintenance of the subdivision entrance; maintenance of the road right-of-way landscaping; maintenance of any island landscaping; maintenance of the subdivision entrance sign, lighting, water pump, sprinkler system, electric meter, and landscaping at the entrance to The Cottages at Marcus Lake, along that portion of Massachusetts Avenue which abuts The Cottages at Marcus Lake, and throughout The Communities of Marcus Lake; the payment of the electric power bills for the operation of the sprinkler system and lighting on any islands throughout the subdivision, if any; the payment of the water bills for the sprinkler systems; and the cleaning of debris from lots or building sites on which a residential dwelling has not yet been constructed. The Association shall have the obligation to maintain the Common Areas and such other areas as may be determined by the Association, and shall pay all ad valorem real estate taxes assessed upon it.

Section 3 -- Maximum Annual Assessment. Until December 31, 1997, the maximum annual assessment shall be \$150.00 per Lot.

A. From and after December 31, 1997, the maximum annual assessment may be increased each year by not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

B. From and after December 31, 1997, the maximum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of the Owners 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.

D. Notwithstanding any of the preceding provisions, the Association shall be obligated to pay all ad valorem real property taxes upon the Common Areas and no limitation above shall ever prohibit the Association from increasing the annual assessment to an amount sufficient to pay such taxes and for such maintenance and repairs.

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, reconstruction, repair, 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, including fixtures and personal property related thereto, landscaping, special signage and street lights; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners 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 and 4. Written notice of any meeting of Owners called for the purpose of taking any actions authorized under Section 3 or 4 of this Article shall be sent by United States mail, postage prepaid, to all affected Owners of record (as of 30 days prior to the date of mailing such notice) not less than 10 days, nor more than 30 days, in advance of the meeting. At the first such meeting called, the presence of affected Owners or of proxies entitled to cast 51% 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-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7 - Rate of Assessment. The annual and special assessments pertaining to all matters shall be fixed at a uniform rate for all Lots in The Communities of Marcus Lake as defined in this document.

Section 8 - Assessment Periods and Due Dates. The annual assessment shall be assessed on a fiscal year basis (January 1 - December 31) 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. Written notice of the annual assessment shall be mailed to every affected Owner. The Association is not required to provide 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 30 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 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 attorney's fees shall be paid by Owner to the attorney for the Association. Attorneys' fees and costs shall constitute a lien against the Lot.

Section 10 - Subordination of Assessment Lien to First Mortgage. Any lien of the Association for assessments under this Article V recorded after the date of recordation of any mortgage shall be subordinate to the mortgage on the Lot. When the mortgagee of a mortgage of record, or other purchaser, of a Lot obtains title to the Lot as a result of foreclosure of the mortgage, or, as a result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the assessments by the Association

pertaining to such Lot or chargeable to the former owner of such Lot which became due prior to the acquisition of title as a result of the foreclosure, or deed in lieu of foreclosure, unless such assessment is secured by a claim of lien for assessments that is recorded in the public records of Escambia County, Florida, prior to the recording of the foreclosed mortgage (or for which a deed in lieu of foreclosure is given), and such subordinate lien shall be extinguished automatically upon the recording of the certificate of title or the deed in lieu of foreclosure. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot so sold or transferred, from the lien of any assessments thereafter becoming due. All such assessments, together with interest, costs, and attorney's fees, shall, however, continue to be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due. Except as herein above provided, the sale or transfer of an interest in any Lot shall not affect the assessment lien. Any liens extinguished by the provisions of this article shall be reallocated and assessed against all lots as a common expense.

Section 11 - Maintenance. In the event an Owner shall fail (after 30 days written notice from the Association sent United States Mail, postage prepaid) 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 shall, after approval of three-fourths (3/4) 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 exterior of the building or any other improvement erected thereon. The cost of such Lot and/or exterior maintenance, together with interest at the maximum rate then allowed by law (if not paid within 10 days after written demand therefor), as well as reasonable attorneys' 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 maintenance is performed.

Section 12 - Limitations on Association Actions. The Association may elect to provide any other services it desires to promote the health, safety, and welfare of the residents of the subdivision including the purchase of other properties, whether adjacent to the subdivision or not, for recreational or other purposes.

## 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 the Subject Property 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 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, plot plans and/or landscaping plans within 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 the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. The plans submitted to the Architectural Review Committee shall, without limitation, show the elevation and other matters set forth on the front, rear and both side walls of the structure.

Section 2 - Architectural Review Committee. The Architectural Review Committee shall initially consist of four (4) representatives of Declarant who shall serve until their resignation therefrom. After three-fourths (3/4) of the Lots in the subdivision are sold, the Board of Directors of the Association shall appoint one (1) additional person to serve on the Architectural Review Committee, who shall be an Owner of a Lot within the subdivision, and who may not be an Officer, Director or Stockholder of the Developer. It is contemplated that the Subject Property will be developed as a first-class, single-family, residential subdivision of high standards. Accordingly, decisions of the Architectural Review Committee shall be based upon the uniform application of such reasonable, but high, standards as are consistent with a first-class, single-family 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, 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. The initial members of the Architectural Review Committee shall be Dr. James C. Boyd, Dr. Ralph M. Boyd, Ms. Sandra Boyd Preer, and Mr. J. Dan Gilmore.

Section 3 - Construction Plans. All construction plans shall be accompanied by a complete landscape plan for the entire Lot.

## 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 Subject Property as a whole, and that same is consistent with a first-class, single-family, residential subdivision of high standards 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. Except as herein provided, 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 and Residential Design. No residential structure shall be erected or placed on any building site, exclusive of garages, porches, patios and terraces, in The Cottages at Marcus Lake, of less than 1,350 square feet; and in The Estates at Marcus Lake, of less than 1,600 square feet. No dwelling in The Cottages at Marcus Lake, with more than one story of living area, shall have a ground floor living area of less than 800 square feet and a total living area of 1,350 square feet; no dwelling in The Estates at Marcus Lake, with more than one story of living area, shall have a ground floor living area of less than 1,000 square feet and a total living area of 1,800 square feet. No residential structure shall exceed three stories in height. All residential structures shall contain an attached private garage for two (2) cars.

Section 3 - Maintenance. All structures, improvements, yards, drives and landscaping must be diligently and properly maintained at all times. (This Section is not applicable to the Developer and shall apply 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 shall any structure of a temporary character be used as a residence.

Section 5 - Vehicles. Automobiles, boats, campers, trucks, vans, motorbikes, trailers, motorhomes 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 and any adjoining Lots, except for short-term parking not exceeding a forty-eight (48) hour duration. The parking or 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 animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or building site, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are not permitted to run at large. In no event shall more than three household pets be kept on any Lot or building site at any one time. Pets shall not be allowed to molest golfers retrieving golf balls. There is an expressed prohibition against any "pot-bellied pigs", and such shall not be allowed in this subdivision nor shall they be defined as household pets in this document.

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 of



the Subject Property, or upon any property contiguous thereto.

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, 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 any of the Subject Property with respect to any such matters shall have a license to enter upon any of the Subject Property at all reasonable times to make such inspections and recommendations.

Section 11 - Release of Restrictions. When a building or other structure has been erected or its construction substantially advanced and the building is located on any Lot or building site in a manner that constitutes a violation of these covenants and restrictions or the building setback lines shown on the recorded plat, the committee may release the Lot or building site, or parts of it, from any part of the covenants and restrictions, or setback lines that are violated. The committee shall not give such a release except for a violation that it determines to be a minor and inconsequential violation, in its sole discretion which is not subject to review.

Section 12 - Wiring. No above ground electric, telephone, cable television, radio or any other such wiring or utility services shall be permitted. (There shall be an exception for all necessary above ground electrical wiring in the Common Areas in connection with any lift stations for sewage and/or storm drainage).

Section 13 - Lot Setback. No residential dwelling shall be constructed on any Lot or building site in the subdivision which does not conform to the front and side setback lines as shown on the recorded Plats of The Communities of Marcus Lake. The Architectural Review Committee shall have the authority to increase or decrease side lot and a side street line setback provided the Committee determines that such determination will not adversely affect the value of subject Lot or adjacent Lots within the subdivision. Notwithstanding the foregoing, all residential structures shall be set back from the rear lot line a minimum of fifteen (15) feet, unless a greater rear setback is required by the Escambia County Land Development Code.

Section 14 - 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 15 - Basketball Goals. No outside basketball goals shall be erected on any Lot unless hidden from view from the Front Lot line.

Section 16 - Mailboxes. At the time of completion of a residential dwelling on a Lot, a mailbox shall also be erected or constructed on the Lot and shall be set in brick and shall be similar in design and style to the residential dwelling situated on said Lot or building site.

Section 17 - Clotheslines. Outside clotheslines or other items detrimental to the appearance of the subdivision shall not be permitted on any Lot.

Section 18 - Outdoor Cooking. All outdoor cooking, including permanent or portable Bar-B-Que grills, shall be screened from view from the Front Lot line.

Section 19 - Garbage and Trash Receptacles. All garbage and trash receptacles must be covered with an appropriate structure, or otherwise concealed in an effective manner, at the residential structure.

Section 20 - Fences. The Architectural Review Committee shall have complete control covering the erection of fences, including control over the style, building materials, height and location of fences, and may refuse to authorize any fence whatsoever in its absolute discretion, which is not subject to review.

Section 21 - Garage Doors / Garage Size. Garage doors must remain closed at all times except when automobiles are entering or leaving the garage. All dwellings must be constructed with a two-car garage.

Section 22 - House Numbers. After erection of a dwelling unit on any lot, the owner shall cause to be displayed such identification of his premises as may be required by the Association. If the numbering of each unit for identification to be used by the U.S. Postal Service is not sufficient for service and emergency personnel to quickly identify each unit, the Association shall design a home identification system to accomplish such quick identification. Regardless of what identification system is required, each owner shall

use the size and type designated by the Association.

Section 23 -- Signs. No sign of any kind shall be displayed to the public view on any Lot or building site in the subdivision except for one sign of not more than five square feet, advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales period; provided Declarant may erect a sign not exceeding five feet in height by eight feet in width, on any lot or building site which it owns. The owner of a model home may exceed these restrictions, if approved by the Architectural Review Committee.

Section 24 -- Drainage Easements. Drainage easements shall not be obstructed in any way that will alter the natural and normal flow of drainage.

Section 25 -- Surface Flow. No one shall change the natural contours of the land causing undue and harmful flow of surface water drainage to adjoining property owners. In order to facilitate natural surface water drainage, it may be necessary for the Developer to contour each Lot or building site to provide a continuous drainage pattern from Lot to Lot within the subdivision. These drainage patterns shall not be altered.

Section 26 -- Sodding and Landscaping. With respect to each Lot or building site on which a residential dwelling is constructed, it is required that at the time of initial construction and prior to occupancy, that the front yard and side yards be sodded and that the sodding be properly and perpetually maintained. With respect to each corner Lot or building lot site on which a residential dwelling is constructed, it is required that at the time of initial construction, in addition to the sodding of the Front yard, the entire side yard fronting on the side street shall be sodded, and that all sodding shall be properly and perpetually maintained. Each lot shall be landscaped in a tasteful manner which shall be properly and perpetually maintained. In The Estates at Marcus Lake, all Lots that abut the Golf Course shall be sodded, including front, rear and side yards, and all sodding shall be properly and perpetually maintained. All lots in The Estates at Marcus Lake and The Cottages at Marcus Lake that abut Marcus Lake shall be entirely sodded, including front, rear and side yards, and all sodding shall be properly and perpetually maintained.

Section 27 -- Multiple Lots as Building Sites. If one or more Lots, or one Lot and all or a portion of an adjacent Lot, or two or more fractional parts of adjoining Lots, within the subdivision, are utilized for one single family residential purpose, the setback requirements herein shall be measured from the boundary line of the entire building site or plot being then utilized and devoted to the single family residence. Two fractional parts of adjacent Lots may be utilized as a single family residential building site or plot, provided that no such building site or plot shall contain fewer square feet than the smallest plotted Lot within the subdivision nor have a width, at the building setback line, of less than the width, at the building setback line, of the smallest plotted Lot within the subdivision.

Section 28 -- Model Homes. Notwithstanding Section I supra, the Architectural Review Committee shall have the right to authorize the use of any Lot as a model home site, to be used under such terms and conditions as it may prescribe, which decisions will not be subject to review.

Section 29 -- Easements Prohibited. No Lot Owner may grant easements across the Owner's Lot for ingress and egress to adjoining properties, sewer, utilities or any other purposes without the prior written approval of Declarant.

Section 30 -- Watercraft. At no time shall any gasoline-powered or other type of petroleum-powered boat, personal watercraft, etc. be allowed in any Common Area, including Marcus Lake itself. The owner of any water vessel shall have the prior written consent of the Association before using same on Marcus Lake, which is considered Common Area for The Communities of Marcus Lake. The use of canoes, paddleboats, rowboats and other types of human-powered vessels may be allowed by the Association after an application has been submitted by the Lot Owner and approved by the Association's Board of Directors.

## ARTICLE VIII -- GOLF COURSE PROVISIONS

### Section 1 -- Lots Adjacent to Golf Course.

A. All Lot Owners in The Estates at Marcus Lake subdivision that are adjacent to the Golf Course shall be henceforth restricted from erecting any type of fence or other type of barrier along the common boundary between their Lot and the Golf Course. Homeowners along this boundary may apply to the Homeowners Association to erect a small fenced area for the purpose of

retaining a "dog run" for their pets.

B. All Lot Owners along the said common boundary shall be required to put in a sprinkler and irrigation system in their rear yard that will rotate on a 360 degrees basis so as to provide irrigation to the area just to the north of their rear property boundary.

C. Neither the Association, nor its officers, agents or employees, nor any Lot owner or resident shall disturb or cause to be obstructed any markers, including "out-of-bounds" posts and their imaginary linking lines, used by the Golf Course to facilitate the playing of golf.

D. Declarant and Lot Owners adjacent to the Golf Course hereby grant a nonexclusive perpetual easement and right of access to players on the Golf Course to enter onto the Lots for the sole purpose of retrieving any golf balls that may find their way into their yards, provided such recovery may be made without damaging any flowers, shrubbery, or other property where a golf ball may rest. Lot Owners hereby agree to hold harmless and free from any liability Creekside, the Golf Course, and the individual golfers for any property damage, personal injury or death by golf balls, golf carts, golf maintenance equipment, interaction with traffic on the Subject Property's roadways or for Owner or Subdivision residents' own acts or omissions.

Section 2 - Golf Course Trail. Owners within The Communities of Marcus Lake are entitled to the use of the access trail for the purposes of entering the Golf Course, conditioned on the Owner agreeing to use the trail with the usual and customary decorum associated with the golf course use. This trail shall be used exclusively to provide access to and from the Creekside Golf Club for the sole purpose of using its facilities. All players must register in person at the Pro Shop before play. This trail cannot be used for any other purpose other than the above stated unless approved by the Association and the owner/president of Creekside Golf Club. As a condition precedent to use by Owners of the Golf Course trail, all owners and residents using the Golf Course trail to access Creekside Golf Club shall release and hold harmless Creekside and/or any golfers using the Golf Course from any claims or suits for property damage, personal injury, or death caused by golf balls, golf carts, golf maintenance equipment, interaction with traffic on the Subject Property's roadways or for Owner or Subdivision residents' own acts or omissions.

Section 3 - Golf Course General. All owners and residents of any property in the Subject Property shall release and hold harmless and free from liability Creekside and/or any golfers using the Golf Course from any claims or suits for property damage, personal injury or death caused by golf balls, golf carts, and golfing operations. Each such owner and resident acknowledges the desirability of living next to the Golf Course, and each owner and resident realizes the risks inherent in living in such close proximity to the Golf Course, and voluntarily assumes such risks in order to enjoy the benefits of living in proximity to the Golf Course.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions, this 31 day of March, 1997.

Signed, sealed and delivered  
in the presence of:

Marcus Lake Development Corporation, Inc.,  
a Florida corporation

Sara K. Elens  
Sara K. Elens  
Judy L. Cubanks  
Judy L. Cubanks

By: James C. Boyd  
James C. Boyd, M.D., President

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 31 day of March, 1997, by James C. Boyd, M.D., as President of Marcus Lake Development Corporation, Inc., a Florida corporation, on behalf of the corporation, who personally appeared before me and is personally known to me.

Prepared By: Vincent J. Whibbs, Jr.  
118 W. Cervantes St.  
Pensacola, FL 32501

[Signature]  
Notary Public



