

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF

WINDWARD LAKES

ORANGE BEACH, ALABAMA**

This Instrument Prepared By:

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STATE OF ALABAMA)

COUNTY OF BALDWIN)

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
WINDWARD LAKES**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION of Covenants, Conditions, and Restrictions of Windward Lakes, A Subdivision, (hereinafter referred to as "Declaration" or "Amended & Restated Declaration"), is made on this the _____ day of _____, 202____, by Windward Lakes Property Owners Association, Inc., (hereinafter referred to the "Declarant"), an Alabama Nonprofit Corporation, as amended, for the purpose of forming a property owners association and establishing certain rights, titles, easements, covenants and/or restrictions to run with the subject property.

RECITALS:

WHEREAS, Windward Lakes, A Subdivision, was originally created by that certain Declaration of Covenants, Conditions and Restrictions of Windward Lakes as Instrument No. 603209, on June 22, 2001, as well as the By-Laws of Windward Lakes Property Owners Association, Inc., as Instrument No. 603208 on June 22,2001, being recorded in the records in the Office of the Judge of Probate of Baldwin County, Alabama. Windward Lakes, A Subdivision, collectively consists of ninety-five (95) residential Lots and Common Areas according to the Plats filed in the records in the Office of the Judge of Probate of Baldwin County, Alabama as Slides 1939A, 2135A and 2135B; and,

WHEREAS, subsequently, Windward Lakes Property Owners Association, Inc. amended and restated its Declaration of Covenants, Conditions and Restrictions for Windward Lakes, A Subdivision on July 1, 2020, as recorded in the records of the office of the Judge of Probate of Baldwin County, Alabama on July 2, 2020, as Instrument Number 1840094; and,

WHEREAS, Windward Lakes Property Owners Association, Inc., acting to refine provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windward Lakes, A Subdivision by amendment, gave notice of the subject matter of this proposed revisions and amendments to be known as the First Amendment to the Amended and Restated Declaration in a notice of Annual Meeting given to all unit owners to be held on the _____ day of _____, _____; and,

WHEREAS, these proposed revisions and amendments were approved by the affirmative vote of not less than 67% of the Lot Owners of Windward Lakes Property Owners Association, Inc., cast in person or by proxy at said meeting.

WHEREAS, Windward Lakes, A Subdivision, shall be subject to these covenants, conditions, and restrictions included in this First Amendment to the Amended and Restated Declaration; and,

NOW, THEREFORE, the Board of Directors and the Association, their successors and assigns, do hereby declare that all of the property described on the Plat of Windward Lakes, A Subdivision, as recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slides 1939A, 2135A and 2135B, shall be held, sold, and conveyed subject to the following First Amendment to the Amended and Restated Covenants, Conditions and Restrictions of Windward Lakes, A Subdivision, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title, or interest in said Subdivision, or any party thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

WINDWARD LAKES

Article I ***Definitions***

1.01 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine, or neuter gender.

1.02 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Article I:

a. ***“Architectural Review Committee”*** or ***“ARC”*** means the Architectural Review Committee as established by the Board of Directors in accordance with this Declaration and the By-Laws.

b. ***“Articles of Incorporation”*** or ***“Certificate of Formation”*** means the Articles of Incorporation of Windward Lakes Property Owners Association, Inc., an Alabama Nonprofit Corporation, as recorded in the records of the Office of the Judge of Probate of Baldwin County, Alabama, as the same may hereafter be amended, altered, or repealed from time to time.

c. ***“Assessment”*** means the proportionate share (or share derived by formula) of the funds required for the maintenance of the Common Areas which from time to time may be levied against each Lot Owner, or monies assessed against a Lot, a Member, and/or Lot Owners under the provisions of this Declaration or the Bylaws.

d. ***“Association”*** shall mean and refer to Windward Lakes Property Owners Association, Inc., its successors and assigns.

e. ***“Board”*** or ***“Board of Directors”*** shall mean and refer to the Association's Board of Directors.

f. ***“By-Laws”*** shall mean and refer to the By-Laws recorded in the Judge of Probate of Baldwin County, Alabama, and any amendments thereto.

g. ***“Common Area”*** shall mean such property (real, fixtures, personal, and mixed) comprising Windward Lakes, A Subdivision, and contained within

the plat of Windward Lakes, including, but not limited to, the grounds, lakes, yards, shrubbery, trees, plants, ornamental decoration, recreation and community facilities, service areas, service facilities, walkways, parking spaces, parking facilities and areas, access roads, driveways, driveway areas, curbs, sidewalks, and all other facilities for service and utilities including but not limited to all pipes, conduits, ducts, wires, the plumbing network, the wiring network, the sewer network, and the television cables, wires, conduits, system and network; other than the properties and structures (real, fixtures, personal and mixed) as set forth as Lots 1 to 95 (inclusive) of said plat of Windward Lakes all facilities for service and utilities that are located within the actual boundaries of said Lots for the exclusive use of said Lot.

h. ***“Common Expenses”*** shall mean and include the actual and estimated expenses of the Association and any reasonable reserve for such purposes as may be found and determined necessary or useful by the Board of Directors, and all sums designated as common expenses by or pursuant to the Declaration documents, including but not limited to assessments by the Master Association for common expenses.

i. ***“Declaration”*** means the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Windward Lakes, and any amendments thereto, which may be made from time to time.

j. ***“Director”*** or ***“Directors”*** shall mean and refer to a Director or the Directors of the Board of Directors of Windward Lake Property Owners Association, Inc.

k. ***“House”*** or ***“Home”*** means any single family dwelling situated upon a Lot in Windward Lakes.

l. ***“Lakes”*** shall mean a series of water retention facilities within Windward Lakes. All these water retention facilities are common area of Windward Lakes.

m. ***“Lot”*** shall mean and refer to a plot of land designated as any numbered lot(s) shown upon the recorded subdivision map of the Properties with the exception of the Common Areas.

n. ***“Master Association”*** shall refer to Mariner Lakes Association, Inc.

o. ***“Member”*** shall mean a member of the Association. Only Owners shall be a member of the Association.

p. ***“Mortgagee”*** means a holder or beneficiary of any mortgage, deed with vendor's lien reserved, or any other form of instrument used for the purpose of encumbering or conveying real property as security for payment or satisfaction of any obligation.

q. ***“Owner”*** shall mean and refer to the owner of record of a Lot, evidenced by recorded instrument in the records of the Judge of Probate of Baldwin County, Alabama, and such owner's heirs, successors, or assigns, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Windward Lakes Subdivision, excluding those having such interest merely as security for the performance of an obligation.

r. ***“Person”*** means any individual, corporation, trust, partnership, joint venture, limited liability company, or other legal entity.

s. ***“Plat”*** shall mean those certain Plats recorded at Slides 1939A, 2135A and 2135B in the Offices of the Probate Court of Baldwin County, Alabama.

t. ***“Real Property”*** or ***“Property”*** means the property which has been subdivided by recording the Plat for Windward Lakes in the Office of the Judge of Probate of Baldwin County, Alabama.

u. ***“Rules and Regulations”*** shall mean and refer to the Rules and Regulations promulgated or to be promulgated by the Association.

v. ***“Subdivision”*** or ***“Properties”*** shall mean and refer to the Windward Lakes Planned Unit Development, the Lots and common areas of Windward Lakes as shown on Exhibit “A” attached hereto, together with such additions thereto, if any, as may hereafter be brought within the scope of this Declaration.

Article II

Architectural Review Committee

2.01 Establishment and Composition. There is hereby established an Architectural Review Committee (“ARC”). The ARC shall consist of at least three (3) persons (who are Owners) which shall be appointed by the Board of Directors of the Association and whose decisions must be in writing and signed by at least two (2) ARC members. ARC members shall serve without salary or pay, and none of the ARC members shall be required to be an architect or to meet any other non-specified qualifications for membership. The term of each ARC member shall be for a period of three (3) years and thereafter until the appointment of a successor; however, the Board of Directors (“Board”) by a majority Vote may remove any ARC member prior to the expiration of such ARC member's term: Any new ARC member appointed to replace an ARC member who has

resigned or been removed shall serve such ARC member's unexpired term. ARC members who have resigned or whose terms have expired may be reappointed. Any ARC member may resign at any time from the ARC by giving written notice thereof to the Board, and vacancies shall be filled by the Board. An affirmative vote of a majority of the ARC shall be required in order to issue any approval of plans, proposals, or specifications.

2.02 Function of the ARC. No improvement, building, garage, or any other structure of any nature or addition shall be commenced, erected, placed, attached, altered, maintained, or permitted to remain on any portion of any Lot until plans and specifications in such form and detail as the ARC may require shall be submitted and approved in writing by the ARC. (See also Subsection 3.06) The ARC shall receive, consider, and act upon all proposals, plans, specifications, complaints, requirements for determination, or other matters submitted pursuant to the terms of this Declaration, and to carry out any other duties imposed on it by this Declaration. All determinations of the ARC are subject to review by the Board of Directors which shall have authority to review, amend, reverse, or override such determinations by majority vote of the Board.

2.03 Purposes of the ARC. The purpose of the ARC shall be directed toward obtaining the following objectives:

- a. Preventing excessive or unsightly grading, indiscriminate earth moving, clearing of property, or removal of trees and vegetation which could cause disruptions of natural water courses or erosion of natural land forms.
- b. Insuring that the architectural design of structures and their materials and colors are visually harmonious with the overall appearance of the lands.
- c. Insuring that the plans for landscaping provide visually pleasing settings for structures on the Lot and on adjoining Lots and blend harmoniously with the natural landscape.
- d. Insuring that any development, structure or landscaping complies with the provisions of these covenants and the guidelines adopted by the ARC.

2.04 Procedure for Submission and Approval by ARC. One (1) set of plans and specifications prepared by a registered and currently licensed architect who shall affix his official registration seal thereto, shall be submitted and approved prior to the commencement of construction. The submission must be accompanied by an executed plan submission form (available from the ARC). Plans and specifications to be submitted and approved shall be retained by the ARC and shall include, as a minimum the following:

a. A plot plan showing location of all proposed improvements, structures, walks, garages, patios, and/or driveways. Existing and finished grades shall be shown Lot corners and at corners for proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details, if any appreciable change in the Lot contour is contemplated;

b. Exterior elevations, exterior materials, colors, textures, and shapes;

c. Landscaping plans, including walkways, elevation changes, watering-systems;

d. Driveway size and location;

e. Heated and cooled areas;

f. Floor plans;

g. 'Design Proposals' which shall include more detailed building and site design documents sufficient and definitive in detail so that there can be determined the character, exterior appearance, and building and-landscape materials proposed; and,

h. 'Construction Plans and Specifications' which shall be a true extension of the preliminary concept plans and design proposals. The copy of the plans and specifications submitted to the ARC may be kept by the ARC. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ARC may reject them totally or may approve or disapprove in part.

In the event the information submitted to the ARC is, in the ARC's sole opinion, incomplete or insufficient in any manner, the ARC may require the submission of additional or supplemental information. Approvals shall be dated and shall not be effective for construction commenced more than six (6) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. If the ARC fails to approve or disapprove any material submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or to give notice of its actions as above required, the ARC shall be deemed to have disapproved the submission, provided however that the failure to approve or disapprove within such period shall not relieve the submitting Owner from the obligation to conform the improvements to the provisions contained in the other articles of this Declaration. Refusal or approval of plans, site location, building height, or specifications may be based by the ARC upon any ground which is consistent with the objectives of these covenants, so long as such ground is not arbitrary or capricious. ARC may extend any of the deadlines upon written request of the Owner.

The approval, rejection, or withholding of any approval by the ARC or by the Board of the plans, proposals, and specifications and the location of all structures, and every alteration of any structure shall not be construed or interpreted as representation or determination by the that any building code, plumbing code, electrical code or other applicable governmental regulations or requirements have or have not been properly met by the Owner. Each Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the City of Orange Beach and any other appropriate governmental agencies.

Neither the Board of Directors, the Association, nor the ARC shall have any duty, responsibility, or liability to any Owner or to any other person whomsoever in respect to the exercise of its right or the failure to exercise its rights. The ARC and the Board may reject plans, proposals, and specifications based on any grounds or reason whatsoever, including purely aesthetic grounds, in its sole and absolute discretion. The ARC's decision to approve, reject, or withhold its approval of such proposed work may, in the sole exercise of its discretion, be based upon: (i) the harmony of its exterior design, color, and location in relation to, and its effect upon, surrounding structures, vegetation, topography, and the overall community design; (ii) the character of the exterior design; (iii) the ARC's design and construction standards; (iv) the general development plan; or, (v) any other material and relevant factors.

2.05 Waiver and Estoppel. The approval of the ARC of any plan, specification or drawings, or any materials accompanying the same for matters requiring approval of the ARC shall not be deemed a waiver of, or create any right of estoppels against, the ARC's right to withhold approval of any other similar or dissimilar plan, drawing, specification, or materials subsequently submitted for approval.

2.06 Variances. The ARC may, subject to Board approval, grant variances from the requirements contained herein or as elsewhere promulgated by the ARC, on a case-by-case basis; provided however that the variance sought is reasonable and does not impose a hardship upon other Owners. The granting of such a variance by the ARC shall not nullify or otherwise affect the ARC's right to require strict compliance with the requirements set forth herein on any other occasion. All variances granted by the ARC are subject to review by the Board.

2.07 Board Review. Any Plan, specification, or drawings approved by ARC shall be subject to review by the Board. Submissions shall be made to the Board within 7 days of the issuance of any writing by the ARC approving any Plan, specification, or drawing. The Board of Directors shall have thirty days to complete a review of such approval, and may, in its sole discretion, approve, revise, or revoke such approval. A decision of the

Board shall be final. In the event the Board fails to act within a thirty day period allotted, the approval of the ARC shall stand.

2.08 Requirements. No improvements of any nature whatsoever shall be constructed, altered, or maintained upon any parts of the Lots, except (i) such improvements as are approved by the ARC in accordance with this Article II; or, (ii) improvements which pursuant to this Article II do not require consent of the ARC. The Owner of any Lot who wishes to construct any improvement, building, garage, or any other structure of any nature or addition thereto, shall be required to submit plans and specifications, more specifically described in Subsection 2.04 above. Failure to follow said procedures will result in a fine of One Hundred Dollars (\$100.00) for each day such plans and specifications are not submitted to the ARC and/or until such failure is remedied and agreed to by the ARC or Board of Directors, as well as the costs of any court proceedings, including attorneys' fees incurred by the Association in enforcing these provisions here. Said fines may be collected and enforced in the same manner as assessments for Common Expenses.

2.09 Owner's Responsibilities. The Owner of any Lot shall have the duty of and responsibility for keeping the premises, improvements, and personal landscaping in a well maintained, safe, clean, and attractive condition at all times. The Architectural Review Committee, the Board of Directors, any Committee established by the Board acting on an affirmative majority vote of its members, may give notice to any owner who is not maintaining such Owner's property in accordance with this paragraph. Such Owner shall within twenty (20) days of such notice undertake the care and maintenance required to restore the Lot to a safe, clean, or attractive condition. Should Owner fail to fulfill this duty and responsibility after such notice, the Association shall have the right to assess the Lot Owner a fee of Two Hundred Fifty Dollars (\$250.00) and an additional fee of One Hundred Dollars (\$100.00) each month until the required care and maintenance is performed by Owner. In the event these fees are not paid to the Association by the Owner, same shall be placed as a lien against the Lot and collected as provided for the non-payment of Association dues under the By-Laws of the Association.

Article III **Protective Restrictions**

3.01 Residential Only Restrictions. The Properties within Windward Lakes shall be used only for low density single family residential purposes. There shall be only one (1) such residence per Lot. No trade or business use will be permitted off or on the Lots within the subdivision. No building may be erected on any Lot prior to the erection of a dwelling. No trailer home, mobile home, tent, shack, ham, travel trailer, nor any other

home, shack, barn, tent, or other outbuilding, trailer home, mobile home, modular home, or travel trailer will be conclusive.

3.02 Dwelling Quality and Size.

a. ***Maximum Building Coverage.*** A maximum of fifty one percent (51%) of the gross total Lot area can be covered by a building or structure, excluding roof overhang, unenclosed balconies and unenclosed walkways.

b. ***Minimum Square Footage.*** None of the Lots shall contain any residential structure that has less than 1,200 square feet of heated and cooled living area, and no ground floor of any multi-story residential structure shall have less than 1,200 square feet of heated and cooled area.

3.03 Maximum Building Heights/Stories. All structures must conform to Federal Flood Zone regulations for minimum finished floor elevations. The total maximum height of structures shall not exceed the height restrictions, if any, as may be imposed by applicable governmental authorities. In no instance, shall the height of any structure exceed two habitable stories.

3.04 Building and Accessory Structure Setbacks. Setback requirements represent the perimeters in which all buildings, garages, decks, patios, or other permanent structures can be built in both horizontal and vertical applications. All building setbacks are measured from and perpendicular to the property lines. Minimum yard requirements are: (i) Front - 20 Feet; (ii) Side - 5 Feet; and, (iii) Rear - 20 Feet.

For purposes of this document, the front of each Lot shall be the side of such Lot adjacent to a right of way. In the event that a Lot contains more than one side adjacent to a right of way, the shortest side adjacent to a right of way shall be considered the front of the Lot.

3.05 Aesthetic Appearance. Each property Owner shall provide a visually screened in area to serve as a service yard for garbage receptacles, electric meters, and air

ARC. Studios are not allowed to serve as the main dwelling on the property. Garages must be equipped with automatic door openers.

3.08 Design Criteria. The following are allowed or required:

a. ***Exterior Color.*** Houses or other buildings must be painted or otherwise colored. All proposed colors to be applied to the exterior of any structure must be submitted to the ARC for approval. This includes initial colors proposed for new building and any proposed colors for re-application. No more than three (3) colors, exclusive of the roof color, may be used in any one scheme.

b. ***Exterior Materials.*** Only conventional stucco shall be allowed as the exterior sheathing for any structure. Other materials may be approved by the ARC if, in its sole discretion, these materials are compatible with the Subdivision. No foil or other reflective materials may be used on any windows for sunscreens, blinds, shades, or other purposes on any Lot, nor shall any window-mounted nor wall-mounted heating or air conditioning units be permitted on any Lot.

c. ***Foundation.*** Concrete or concrete block shall not be exposed as a result of a slab or pier foundation. The same must be faced or covered to grade or below grade with conventional stucco or other exterior materials acceptable to the ARC. Exposed concrete shall be painted the same color as house if painted.

d. ***Roof Materials and Appurtenances.*** Roof accessories such as vent stacks and roof vents shall be painted to match the roof color, and whenever possible placed out of the street view of the house. All vents shall be covered with lead or copper boot. No roofs allowed with less than a 6:12 of pitch.

e. ***Chimneys.*** No wood burning fireplaces, stoves, or similar devices are allowed, however, ventless gas fireplaces shall be allowed; No chimney is required for a ventless gas fireplace and thus no chimney shall be allowed even if it is an architectural feature of the house design.

f. ***Driveways/Parking.*** All homes must have a driveway of a permanent nature which shall be constructed of concrete, brick pavers, or aggregate with a permanent curb wall of concrete. All driveways shall be completed at the time of the completion of the main dwelling structure and must be designed in a fashion to accommodate automobiles for both the Owner and guests. Access to garages shall be reviewed by the ARC on an individual basis.

3.09 Pool and Pool Enclosures. All pools and pool enclosures will be considered on a case by case basis by the ARC. Any pool placed on the property must be designed to complement the architectural components of the residence. Pools must be of an in-ground nature. Pool enclosures may not be freestanding. If screening is desired, the enclosure

must be designed as an integral part of the residential structure's roof and walls, and must not appear as an added appendage. All pools, equipment pumps, etc., shall be stored out of view and pump houses must be architecturally compatible with main structure. All pools shall be calculated in maximum lot coverage restrictions.

3.10 Exterior Lighting. Exterior lighting may be provided for safety and security, and shall be in character with the general subdivision. Recessed down lighting, sconces, and vertical lighting are recommended. Flood lights are not permitted. No lighting should be located as to interfere with vehicular traffic or become a nuisance to neighbors by adversely affecting the night time environment of adjacent properties. The ARC shall review and approve or disapprove all post mounted and building fixtures which are visible from any street or any other Lot.

3.11 Landscaping Approval. To preserve the esthetic appearance of the properties, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented or installed by any Owner, unless and until the plans therefore have been submitted to and approved in writing by the ARC. Such plans shall include a calculation of the ratio of the area to be covered by grass lawns versus the area to be landscaped by trees and bushes, and the ARC shall be entitled to promulgate standards with respect to such ratios. No hedge, shrubbery planting, or tree which obstructs site lines of streets shall be placed or permitted to remain on any Lot where such hedge, shrubbery planting, or tree interferes with traffic site lines, including site lines at the intersection of a driveway and a street. Unless located within ten (10) feet of a building or a recreational or park facility, no Owner shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the ARC, except as set forth in the preceding sentence, and provided further that the dead or diseased trees which are inspected and certified as dead or diseased by the ARC or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation shall be cut and removed promptly from any Lot as the case may be. All landscaping as required on each Lot must be completed prior to occupancy.

3.12 Maintenance. The Owner of any Lot shall have the duty and responsibility for keeping the premises, improvements, appurtenances, and landscaping in a well maintained, safe, clean, and attractive condition at all times. The ARC, acting on an affirmative vote by a majority of its members, may give notice to any Owner who is not maintaining such Owners property in accordance with this paragraph and such Owner shall within ten (10) days of such notice, undertake the care and maintenance required to restore said Lot to a safe, clean, or attractive condition. Should any such Owner fail to fulfill this duty and responsibility after such notice, the ARC will have the right and power to have such care and maintenance performed, and the Owner shall be liable for the cost thereof. In the event such cost is incurred and not reimbursed to the Association, same shall be a lien against the property and collected as provided for the non-payment of an Assessment

under the By-Laws of the Association and/or this Declaration. The Association shall enter into a landscape maintenance agreement with an independent contractor selected and approved by the Board for the purpose of maintaining lawns and landscaping on all Lots and Common Areas within the Subdivision. The risk of loss and cost of replacement of any dead or destroyed landscaping on a lot shall be at the sole expense of the Owner. The Board of Directors, the ARC, nor the Association shall be liable for any such costs irrespective of cause. Common Area landscaping is the responsibility of the Association.

3.13 Miscellaneous Restrictions. No trade or business activity or noxious or dangerous activity of any kind whatsoever shall be carried on upon any Lot or on the Common Areas; nothing shall be done thereon which may be or become an annoyance, nuisance, health hazard, or safety hazard to the neighborhood, and without limiting the foregoing, no garage sales, rummage sales, or the like shall be allowed on any Lot or on the Common Area, and no hunting, firearms, or explosives shall be used thereon. No camping shall be allowed on any Lot, nor in the Common Areas of Windward Lakes.

No private water wells, septic tanks, or similar facilities shall be allowed. No work shall be done on any Lot, which, in the opinion of the ARC, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement thereto. No athletic equipment shall be erected or situated on any Lot so that the same is visible from any street.

3.14 Excavation of Site. No soil, rock, gravel, or clay shall be excavated or removed from the Property for commercial purposes. No sand shall be removed from any Lot for any purpose.

3.15 Walls and Fences. No wooden privacy, cyclone, or chain link fence, or most any other type wall or fence shall be allowed. Exceptions may be granted by the ARC on a case by case basis.

3.16 Utility and Drainage Easements. Permanent or perpetual easements are reserved, as shown on the recorded subdivision Plat, for, installation and maintenance of utilities and drainage facilities and for landscaping. All landscaping on each Lot must be provided with an underground irrigation system. Each Lot shall be required to connect to the central irrigation system servicing Windward Lakes and be connected by a contractor approved by the ARC.

3.17 Owner's Easement of Enjoyment. There is hereby, reserved, created, and granted to each Owner, the Association, and each one shall have and is hereby granted appurtenant to each Lot, a non-exclusive easement and right of ingress, egress, use and enjoyment, in and to the Common Areas for the purpose or purposes for with it or they were intended, 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 from time to time in accordance with its By-Laws to establish, modify, amend, and rescind reasonable Rules and Regulations regarding the Common Areas.

b. The right of the Association to charge an initial admission fee, an initial insurance assessment fee, initial working capital fee, general and special assessments for common expenses, special assessments for capital improvements; assessments for the payment of all assessments, obligations, and responsibilities of the Association, reserve fund fee, and other fees for the maintenance of the Common Areas and for the common expenses and assessments by the Master Association, Mariner Lakes Association, Inc.

c. The right of the Association to designate the parking of automobiles and other vehicles in designated areas within the Common Area. No Owner, nor the Association shall interfere with the rights of ingress and egress of the Owner of any particular Lot.

d. The right of the Association, in addition to its other rights as hereinafter set forth, to suspend the voting rights and the right to use the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days from any infraction of its published Rules and Regulations after a hearing by the Board of Directors of the Association, and the right of the Association to enforce said Rules and Regulations of the Association by assessing fines and monetary penalties against those responsible for violations therefore in an assessment not to exceed One Hundred Dollars (\$100.00) per day per violation for each day such violation exists which said fines and monetary penalties may be collected and enforced in the same manner as assessments for Common Expenses.

e. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility by an instrument signed by two-thirds (2/3) of the Members of the Association and approved in writing on such instrument by a majority of the Board of Directors of the Windward Lakes Property Owners Association and recorded with the Office of the Judge of Probate of Baldwin County, Alabama.

3.18 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, the right of enjoyment to the Common Area to the members of his family, his tenants and guests, or contract purchasers who reside on the property.

3.19 Trash Receptacles. All trash receptacles must be tightly closed and rodent proof, and must be stored out of sight of roadways, not exposed to any street view or curb. No lumber, metals, or bulk materials may be kept, stored, or allowed to accumulate on any

Lot, except building materials during the course of construction. No refuse or trash shall be kept, stored, or allowed to accumulate except between scheduled pick-ups. Garbage cans/trash containers will only be displayed on the right-of-way on the night prior or assigned day for trash pickup.

3.20 Outdoor Equipment. All swimming pool equipment, housings and sprinkler pumps and other such outdoor equipment must be underground or placed in walled-in or sight-screened areas so that they shall not be readily visible from any adjacent streets or properties, or adequate landscaping shall be installed around these facilities and maintained by the Owner.

3.21 Solar Collectors. Solar collectors shall only be permitted at locations and on structures as are first approved in writing by the ARC.

3.22 Other Structures. No trailer, basement, tent, shack, garage, bam, or other outbuilding shall be erected on any Lot at any time, either temporarily or permanently, unless authorized herein. No structure of a temporary character may be used as a residence.

3.23 Signs. No sign of any kind shall be displayed to public view on any Lot or structure, unless the placement, character, form, size, lighting, and time of placement of such sign shall be first approved in writing by the ARC. All signs must also conform with governmental codes and regulations and with any master design plans.

3.24 Antennas. No outside antennas, antenna poles, antenna masts, satellite dishes, electronic devices, antenna towers, or citizen band (CB) or amateur band (ham) antennas shall be permitted. Satellite dishes will be allowed with special permission from the ARC, so long as said dish is no larger than 18 inches in diameter and visually screened from all adjacent properties and all rights of way.

3.25 Pets and Animals. Commonly accepted household pets such as dogs, cats, and pet birds may be kept in reasonable numbers as determined by the Board of Directors. All animals shall be contained on the Owner's Lot and shall not be permitted to roam free, provided that such domestic pets shall not be used or kept for any commercial purpose, and further that said domestic pets do not constitute a disturbance and nuisance to other Lot Owners. The Association shall have the right to designate certain areas of the Common Areas as 'Pet Areas', and shall have the right to designate other areas of the Common Areas as 'No Pet Areas'. No farm or wild animal, nor any dangerous or obnoxious animal shall be kept or permitted to be kept.

3.26 Nuisances. Nothing may or shall be done which may be or may become an annoyance or nuisance to any person or the Subdivision. No obnoxious, unpleasant, or offensive activity will be carried on, nor may anything be done which can be reasonably construed a nuisance, public or private in nature.

3.27 Enforcement. The Board of Directors shall have, in its sole discretion, the right to set penalties and fines for infraction of any obligation of the Unit Owners or failure of a Unit Owner to comply with these provisions. Each such fine or penalty shall be collected by the Association as any other assessment and will constitute a lien against the Owner's Lot.

3.28 Trucks, Commercial Vehicles, Recreation Vehicles, Motor Homes, Boats, Campers and Trailers.

a. No commercial truck, vehicle or equipment shall be permitted to be parked or to be stored at any place on the properties. This prohibition on parking shall not apply to temporary parking of trucks and commercial vehicles used for pickup and delivery. Further provided, an automobile, van, or pickup regularly used by an Owner as personal transportation to and from Owner's business and which is capable of being parked inside Owner's residential garage shall not be considered a commercial vehicle even though it may have a sign or logo on the side or rear thereof.

b. No boat, boat trailer or other trailer of any kind, camper, motor home, or disabled vehicle shall be permitted to be parked or stored unless kept fully enclosed inside a garage.

c. None of the aforementioned vehicles shall be used as a domicile or residence, either permanent or temporary.

d. No vehicles or equipment of any kind shall be allowed on any lawn on either Common Areas or Lots.

e. Docks, piers, and other structures built over water are not allowed.

f. No boats, trailers, buses, recreational, or commercial vehicles shall be stored in driveways. Owners may park in driveways for a reasonable period of time during loading and unloading and/or cleaning of the vehicle.

3.29 Building Construction In General. No construction whatsoever shall be commenced until the party proposing to undertake such construction shall have obtained all construction and work permits necessary from all governmental agencies having jurisdiction over any aspect of such construction and the approval of the ARC. All construction shall be done by a licensed general contractor. Construction sites shall be kept in an orderly and non-cluttered manner. No fires will be allowed and under no circumstances shall work crews be allowed to become a nuisance to adjoining property Owners. No construction shall take place on Sundays, nor between the hours of 9:00pm to 6:00am on any other day of the week. It shall be the Owner's responsibility to ensure that these restrictions are followed.

3.30 Utilities. All residences on any Lot must be served by underground utilities including but not limited to, sewer, water, electricity, telephone, cable, and irrigation. All Lots shall connect to the subdivision irrigation system as per Subsection 3.16 above. No individual water supply system (for human consumption) or individual septic system shall be permitted on any Lot. Each Owner may be required to pay tap fees and/or assessments associated with such services.

3.31 Mailboxes and Newspaper Boxes. No mailboxes or newspaper boxes may be installed or maintained on any Lot without the prior written approval of the ARC. Each member shall install on their Lot a mailbox as prescribed, from time to time, by the ARC.

3.32 No Subdivision of Lots. No further subdivision of Lots shall be permitted.

3.33 No Time Sharing. No time shares will be permitted upon any Lot of Windward Lakes.

3.34 Rentals. Short-term rental of any residence for less than one (1) month shall not be permitted.

3.35 Sex Offenders. Owners shall not allow convicted sex offenders to rent, occupy, visit or use an Owner's property. Owners who rent their property through any rental agency or who allow any third person to provide access to their Lot shall instruct such persons of this restriction and require them to be bound thereby. In the event that an Owner is notified by the police, sheriffs department, the Association's property manager, agents, or by the Board of Directors that a sex offender is occupying or otherwise using an Owner's Lot, such Owner shall, at Owner's expense, cause such person to be evicted from the Owner's Lot. In the event that the Owner fails to do so, the Association may undertake any and all necessary legal action to cause the removal of such convicted sex offender from the Owner's Lot and the Owner shall reimburse the Association of all attorneys fees, costs, and related expenses of the legal proceedings. Such fees, costs, and expenses will be a lien on the Owner's Lot. A convicted sex offender may not own, rent, lease, or otherwise occupy any property in Windward Lakes.

Article IV **Association and Amendments**

4.01 Property Owners Association. The Association has established the Windward Lakes Property Owner's Association, Inc., a non-profit Corporation, for the purposes stated in the Articles of Incorporation and By-Laws of the Corporation, recorded in the Office of the Judge of Probate of Baldwin County; Alabama. Each Owner should obtain and review a copy of the Articles of incorporation from the Association, a copy of its By-Laws, and the Declaration of Covenants, Conditions and Restrictions of Windward Lakes.

4.02 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. Members shall all be Owners of Lots, and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity holds an interest in a Lot, all such persons or entities shall be Members. The vote for each such Lot shall be as they determine, but in no event shall more than one (1) vote be cast with respect to each Lot. Such vote may not be divided.

4.03 Association's Maintenance and Ad Valorem Tax Responsibility. The Association shall maintain and keep in good repair the Common Areas, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and any improvements which may be situated upon such areas. The Association shall establish and maintain an adequate reserve fund, as determined by the Board of Directors, for the periodic maintenance, repair, and replacement of improvements to the Common Areas, which, shall be maintained out of regular assessment for Common expenses. The Association shall pay all ad valorem taxes assessed against the Association assets, said payment to be maintained out of regular assessment for Common Expenses.

Article V

Insurance and Casualty Losses

5.01 Owner Insurance. Each Owner shall and is hereby deemed responsible for maintaining sufficient insurance upon his or her residence so as to provide full replacement value thereof if available in the event of a casualty, including, without limitation: (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location, and use as the buildings on the land including, but not limited to, vandalism, malicious mischief, and windstorm; (c) liability insurance; and, (d) flood insurance. Such insurance, if available, shall be sufficient to cover the full replacement value, or for necessary repair or reconstruction work. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures compromising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall properly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

5.02 Association Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to, and shall obtain all-risk insurance, if reasonably available for all insurable improvements on the Common Areas except for

roads, trees, shrubs, landscaping, signs, and underground utility lines. If all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance, if reasonably available, shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board must also obtain, if reasonably available, a public liability policy covering the Common Areas, the Association, and its Members for all damage or injury resulting from operation, maintenance, or use of the Common Areas, or caused by the negligence of the Association or any of its Members or Agents, and any legal liability that results from lawsuits relating to employment contracts with the Association in which the Association is a party. The public liability policy must have at least a One Million Dollar (\$1,000,000) limit per occurrence, and Two Million Dollar (\$2,000,000) general aggregate.

Premiums for all insurance on the Common Areas shall be Common Expenses of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total. If the Association has employees, the Board must provide a workmen's compensation policy.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association. Such insurance shall be governed by the provisions hereinafter set forth:

a. All policies shall be written with a company licensed to do business in Alabama and holding a rating of A-XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

b. Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors, provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

c. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons.

d. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

i. A waiver of subrogation by the insurer as to any claim against the Association, its Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

ii. A waiver by the insurer of its rights to repair and reconstruct instead of paying cost;

iii. That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owner;

iv. That no policy may be canceled, invalidated, or suspended on account of the conduct of any Director; officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter with which the defect may be cured by the Association, its manager, any owner, or mortgagee;

v. That any 'other insurance' clause in any policy exclude individual Owners' policies from consideration; and,

vi. That no policy may be canceled or substantially modified without at least thirty (30) days prior written notice to the Association. In addition to the other insurance required herein, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on Directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the Directors' best business judgment, but may not be less than three (3) months assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

Article VI

Assessments

6.01 Creation of the Lien and Personal Obligations for Assessments. Each Owner, by acceptance of a deed to a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agent designated by the Association to hold such monies), in the manner set forth herein:

a. Annual assessment or charges levied each year by the Association;

b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and,

c. Individual assessments which may be levied against any Lot and the Lot Owner thereof as a result of such Owner's or Occupant's failure to comply with any provisions of this Declaration or Rules adopted by the Board of Directors.

The annual, special, and individual assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such assessment is made, which lien may be enforced in the manner hereinafter provided and/or as provided by laws of the State of Alabama. Each such Assessment, together with interest, late charges, costs, and reasonable attorneys' fees shall also be the personal obligation of the person(s), jointly and severally, who was or were the Owner(s) of such Lot and improvements thereon at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessments, interest, penalties, fines, and costs of collection. Upon recording of a notice of lien, there shall exist a perfected lien for all unpaid assessments, including special assessments, on the respective Lot prior and superior to all other liens, except: (1) all taxes, bonds, assessments, and other liens which by law would be superior thereto; and, (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure. In addition to the other rights of the Association, at law or in equity, a suit to recover a money judgment for unpaid Common Expenses and attorneys' fees may be maintained without foreclosing or waiving the lien securing the same.

6.02 Annual Assessment for Capital Improvements and Maintenance. An Assessment shall be levied annually by the Association to be used exclusively for the operation of the Association and the management, repair, care, and maintenance of the Common Areas and any improvements constructed thereon, which are for the benefit of all Lot Owners, and to provide all services which the Association is authorized to provide hereunder, including, but not limited to, payment of taxes and insurance, costs of labor and equipment, erosion control devices, materials, management, bookkeeping and Lot Owner information services, repayment of loans, and such other action as is necessary to carry out its authorized functions. Such assessments shall not be used to maintain or repair any property not belonging to the Association.

In the event the Board of Directors makes determination in any year that the annual Assessment is inadequate to cover the cost of the operation of the Association and the management, repair, care, and maintenance of the Common Areas, or to provide those services the Association is authorized to provide hereunder, the Board of Directors shall determine the additional cost to cover these expenses for the budget year and shall assess

the Lot Owners proportionately. No vote of the Membership shall be required, so long as the additional amount does not exceed ten percent (10%) of the annual assessment.

The maximum annual assessment may be increased each year by not more than ten percent (10%) above the maximum assessment for the previous year without a majority of votes of the Association. The Board of Directors may fix the annual assessment at any amount not in excess of the maximum.

6.03 Special Assessment for Ongoing Capital Reserves, Capital Improvements and Maintenance. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Association who are voting in person or by proxy at a meeting duly called for this purpose. The Association may also levy a special assessment applicable for that year only, for the purpose of maintaining an on-going capital reserve to maintain, improve, and expand the Common Areas.

Written notice of any meeting called for the purpose of taking any action authorized under this Article VI shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty (60%) percent of all the Votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and that required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.04 General Provisions. The Board of Directors shall fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on the specified Lot have been paid. A properly executed certificate of Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Annual and special assessments for capital improvements, on-going capital reserves, and maintenance must be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly, or monthly basis, or in any other manner as determined by the Board of

Directors. The Owner's obligation for paying monthly dues begins when Owner is deeded title to a Lot. Dues are prorated at closing.

6.05 Effect of Non-Payment of Assessments, Liens, and Remedies of the Association. Any assessment (whether annual, special, or individual) which is not paid within thirty (30) days after the due date shall bear interest thereon until paid at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama (currently 18% per annum). In addition to interest, any assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

a. The Association may commence and maintain a suit at law against any Lot Owner for a personal money judgment or seek injunctive relief to enforce all such charges and obligations for assessments or fines and other amounts including the late charge and interest specified above as well as all attorneys' fees, court costs, and all other costs and expenses paid or incurred by the Association in connection therewith; and/or,

b. Furthermore, the Association may enforce the lien created in this Declaration, against each Lot in the amount of all Assessments or fines outstanding against such Lot (the "Assessment Lien"). Interest, costs, and reasonable attorneys' fees of any action brought by the Association in respect of an Assessment and/or the Assessment Lien applicable to such Assessment shall be added to the amount of such Assessment and shall be secured by the Assessment Lien. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each assessment as a debt and to foreclose the Assessment Lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien with a power of sale on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the Assessment Lien. The Assessment Lien may be foreclosed by the Association in the same manner as real estate mortgages with a power of sale in the State of Alabama. The Association shall have the power to bid for an interest foreclosed under an Assessment Lien at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments by non-use of the Common Area or abandonment of said Owner's Lot. The Board of Directors may also suspend the use rights of any Owner

of the Common Area in the event of a failure to pay any assessment within thirty (30) days of the applicable due date. Furthermore, and without limiting any rights of the Association or Declarant hereunder, the Association shall have the right to transfer, assign, and convey to any third party any debt associated with any unpaid Assessments and the Assessment Lien that is associated therewith.

6.06 Acceleration of Assessment Installments Upon Default. If an Owner shall be in default in the payment of an installment upon any Assessment, the Board of Directors may accelerate the remaining installments of such Assessment upon notice to the Owner, and thereupon the unpaid balance of the Assessment shall come due upon the date stated in the notice, but not less than ten (10) days after hand-delivery to the Owner, or not less than twenty (20) days after placing such notice in the United States First-Class mail to said Owner, postage prepaid, whichever shall first occur. Upon default in the payment of an installment upon any Assessment, the Board of Directors shall be entitled to charge interest and service charges at the highest available rate allowable under Alabama law.

6.07 Subordination of the Lien to Mortgages. The lien of the assessments shall only be subordinate to the lien of any first mortgage as is required by law. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall only extinguish the lien of assessment as required by law as to payments that become due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any assessments thereafter becoming due.

6.08 Working Capital Fund. In order to insure that the Association will have cash available to meet start up and unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable, there shall be established a working capital fund equal to the total amount of two (2) months' assessments.

6.09 Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it, nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the Assessment Lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

Article VII
Mariner Lakes Association, Inc.

7.01 Mariner Lakes Association, Inc. An umbrella association named Mariner Lakes Association, Inc. was created, April 12, 1985, (an Amended and Restated Master Declaration of Covenants and Restrictions For Mariner Lakes was recorded on October 27, 2017, and as thereafter may be further amended) for the purpose of maintaining, repairing, renovating, replacing, operating, managing, and administering all aspects of the common areas of that association that are contained, located, or embraced within the map attached to the Amended and Restated Master Declaration of Covenants and Restrictions For Mariner Lakes, as Exhibits "C & D", including but not limited to, all bodies of water, lakes, ponds, tennis court or courts, beach and Gulf access, television reception systems, driveways, roadways, access drives, circular drives, club house, entry wall, monument, and other community and recreational facilities. Such association is established as a non-profit corporation.

7.02 Mariner Lakes Association, Inc. Mariner Lakes Association shall act as a Master Association such that some or all other associations or similar entities established pursuant to the various other developments within Exhibit "B" to Amended and Restated Master Declaration of Covenants and Restrictions For Mariner Lakes, including townhouses, condominiums, offices, apartments, and other facilities, shall be members of such Master Association and shall represent each Lot Owner, unit owner, tenant, and other persons within each said development. It is further contemplated that each such association and similar entity will appoint one or more persons who will represent the association or similar entity before the Master Association; however, due to the nature of the different types of developments, each said association and similar entity may share in various degrees in the use and enjoyment of the Common Areas of the Master Association, may bear different amounts of the expense of the maintenance, repair, replacement, and operation of the said common areas, and may be entitled to more than one vote in the affairs of the Master Association.

7.03 Windward Lakes' Membership in the Master Association. Windward Lakes Property Owners Association shall be a member of the Master Association. The Board of Directors of Windward Lakes Property Owner's Association shall appoint at least two (2) Owners to be the Association's representatives, who shall be entitled to vote as delegates and/or Members of the Master Association.

7.04 Assessment of Common Expenses of Master Association. Windward Lakes Property Owner's Association (and in turn, each Member thereof) shall be assessed as common expense its share of the cost and expense of maintaining, repairing, renovating, replacing, operating, managing, and administering the said Common Areas of Mariner

Lakes Association, which assessment shall be enforceable by Mariner Lakes Association against Windward Lakes Property Owner's Association and each Lot Owner therein the same as, in the same manner, and with the same penalties for delinquent or non-delinquent payment, as assessment for common expense of Windward Lakes Property Owner's Association against its members as herein expressed.

7.05 Determination of Share of Common Expense. The share of Windward Lakes Property Owner's Association in the said common expense shall be determined by the Board of Directors of the said Master Association at least annually by published documentation available to each Lot owner in accordance with the actual cost and expense of said common areas as compared to the total number of owners of Lots, units, and parcels within the entire Master Association.

7.06 Rules and Regulations Concerning Common Areas. Mariner Lakes Association, Inc., may promulgate reasonable rules and regulations concerning the use and enjoyment of the said common areas, which may be amended from time to time, including the right to enforce said rules and regulations by assessing fines and monetary penalties against those responsible for violations therefore in an assessment not to exceed One Hundred Dollars (\$100.00) per day per violation for each day such violation exists which said fines and monetary penalties may be collected and enforced in the same manner as assessments for common expenses. Windward Lakes Property Owner's Association and all Members thereof shall be subject to all Rules and Regulations regarding the Mariner Lakes common areas as are contained in the Amended and Restated Master Declaration of Covenants and Restrictions for Mariner Lakes, dated October 27, 2017, and all amendments thereto, recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

7.07 Easement for Use of Common Areas of Mariner Lakes Association, Inc. There is hereby reserved, created, and granted to each Lot Owner within the Plat of Windward Lakes at Mariner Lakes, a non-exclusive easement appurtenant to each said Lot, for the use, benefit, and enjoyment of the common areas of Mariner Lakes Association upon such time as each of the said various Common Areas are fully and completely developed, including specifically the access drive and the beach and Gulf access as set forth and described on Exhibit 'B' (to Amended and Restated Master Declaration of Covenants and Restrictions for Mariner Lakes) and incorporated herein by reference, which said easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right of the Master Association to charge each Owner through his association, its share of the cost and expense of maintaining, repairing, renovating, replacing, operating, managing, and administering the said common areas, which shall be assessed as a common expense and shall be enforceable against each Owner and his association the same as, in the same manner, and with the same

penalties for delinquent or nonpayment, as assessments for Common Expense of Windward Lakes Property Owner's Association, Inc.

b. The right of the Master Association in addition to its other rights as hereinafter set forth, to suspend the voting rights and the right to use the common area by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days from any infraction of its published rules and regulations after a hearing by the Board of Directors of the Association.

c. The right of the Master Association to dedicate or transfer all or part of any part of the common area to any public agency, authority, or utility for such purpose 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 a majority of the Board of Directors of Windward Lakes Property Owners Association, Inc., has been recorded with the Office of the Judge of Probate of Baldwin County, Alabama.

Article VIII **Amendment of Declaration**

8.01 Procedure for Amendments. This Declaration may be amended in the following manner:

a. The Association shall have the right to alter, amend or repeal this Declaration by the affirmative vote of all Members to which at least two-thirds (2/3) of the votes in the Association are allocated. Notice of the subject matter of any proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

b. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

Article IX **Mortgages**

9.01 Notice to Mortgagees of Default by Owner. In the event of default in the performance by an Owner of any of his duties or obligations under this Declaration, the By-Laws or Articles of Incorporation, or Rules and Regulations of the Association, the Association shall, if such default is not cured within sixty (60) days, upon request by the holder of a mortgage constituting a first lien on the residence of such defaulting Owner, give written notice of such default to such mortgage holder; provided, however, that if the

default is a failure to pay any charges of assessments to the Association, such notice shall be given if such default is not cured within fifteen (15) days; and provided further, however, that the Association shall have no obligation to give any notices to, or to take any other actions required by this Declaration with respect to any mortgage other than those from whom the Association has received a copy of the mortgage or written notice which sets out the particular Lot or Lots, the name of the mortgagor, the name and address of the mortgagee, and the date of the mortgage.

Article X **Easements**

10.01 Easements for Utilities. The Association reserves the right to grant easements, both temporary and permanent, to all public authorities, utility companies, and for drainage and television installation, service, and maintenance, over any part of any Lot and/or the Common Areas.

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

10.03 Other Easements. There is hereby created in favor of the Association, and its agents, servants, employees, successors, assigns, and parties with whom contracts or agreements have been entered for such purpose or purposes, a blanket easement upon, across, over, and under all of the Properties for ingress, egress, installation, replacement, removal, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, cable, and a master television system. By virtue of this easement, it shall be expressly permissible to erect, lay, construct, repair, replace, and maintain the necessary poles, lines, cables, and other equipment on the property and to affix and maintain electrical, cable, telephone, or television wires, cables, and conduits, and sewer and water lines, above, on, or below any residence or land of any Owner. An easement is granted to the Association, its officers, agents, and employees, including employees of any management company having a contract with the Association, over all the common areas, to maintain any utilities for which an easement has been granted.

Article XI
Miscellaneous

11.01 Enforcement. In the event any Lot Owner fails to comply with any provision contained in this Declaration, the By-Laws or the Articles, the Association, through its Board of Directors, shall have the right to enforce such provision by any means available at law or in equity, including, without limitation, the right to impose a fine against the Owner(s) and Lot(s) owned by the non-complying party. If a fine is imposed, such fine may be collected in the same manner provided for the collection of Assessments set forth in this Declaration and in the By-Laws. Failure by the Association, the Board of Directors, the Architectural Review Committee, and/or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.02 Attorneys' Fees. In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction, or covenant herein contained (due to alleged violation or breach), or for the enforcement of any lien against any Lot or against any Owner, the Association, if prevailing, shall be entitled to recover all costs, including reasonable legal fees and expenses.

11.03 Severability. Invalidation of any one of the covenants, restrictions, easements, and/or limitations, or any part thereof, by judgment, statute, or court order, shall in no wise affect any of the other provisions which shall remain in full force and effect.

11.04 Term. The provisions of this Declaration shall run with the land and shall be binding on all Owners or upon all parties and persons claiming under or through them, each of whom shall by virtue of his acceptance or acquisition of title or other interest, whether or not it be so expressed in the deeds or other instruments of conveyance, accepts and agrees to be bound by and to abide by all terms and provisions of this instrument, all of which shall be and remain in full force and effect in perpetuity.

11.05 Successors. Deeds of conveyance of any Lot within the Subdivision may contain the provisions, restrictions, covenants, and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all of said deeds, by becoming an seller of any Lot within the Subdivision, each such Owner for himself, his heirs, personal representatives, successors, transferee and assigns, binds himself, and such heirs, personal representatives, successors, transferee, and assigns, to all the provisions, restrictions, covenants, and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

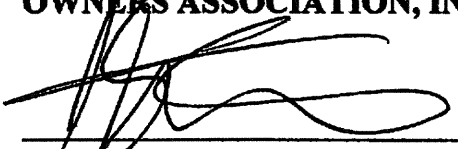
11.06 Captions and Headings. The captions and headings in this Declaration are strictly for convenience only, and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.

11.07 Approval of Plans Not Binding. No approval of plans, location, or specification shall ever be construed as representing or implying that such plans, specifications, or standards, will, if followed, result in a properly designed residence or that said residence will comply with applicable federal, state, or local governmental laws, regulations, and ordinances and each Owner shall be responsible for ensuring that his plans, specifications, piers, walkovers, and any other matters regulated by law, and construction pursuant thereto as well as the use of his Lot comply in all respects with all federal, state, or local governmental laws, regulations, and ordinances. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike, revised, or approved, under these covenants nor for any defects and construction pursuant to such plans and specifications. The Owner shall have the sole responsibility for compliance with approved plans and does hereby hold the ARC, the Board of Directors, and the Association harmless for any failure thereof caused by the Owner, architect, or builder.

11.08 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

IN WITNESS WHEREOF, Windward Lakes Property Owners Association, Inc. has caused this First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Windward Lakes, A Subdivision, to be executed this 10th day of April, 2023.

**WINDWARD LAKES PROPERTY
OWNERS ASSOCIATION, INC.**


BY: **JOSEPH STODGHILL,**
Its President

ATTESTED:


BY: **KELLIE ROBERTS,** Its Secretary

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certifies that **Joseph Stodghill**, whose name as President of Windward Lakes Property Owners Association, Inc., an Alabama Nonprofit Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the 10th day of APRIL, 2023.

Candace F. Martin

Notary Public

My Commission Expires: _____

My Commission Expires 06/26/2024

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certifies that **Kellie Roberts**, whose name as Secretary of Windward Lakes Property Owners Association, Inc., an Alabama Nonprofit Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the 10th day of APRIL, 2023.

Candace F. Martin

Notary Public

My Commission Expires: _____

My Commission Expires 06/26/2024

EXHIBIT A

To the extent that this Exhibit A does not conflict with this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Windward Lakes, this Exhibit A adopts all previously recorded drawings, plats, and plans of the Development as recorded in the records of the Office of the Judge of Probate, Baldwin County, Alabama, including the original Exhibit A, General Land Plan, of the original Declaration of Covenants, Conditions, and Restrictions of Windward Lakes.

EXHIBIT B

AMENDED AND RESTATED RULES AND REGULATIONS CONCERNING COMMON AREAS OF WINDWARD LAKES

Windward Lakes Property Owners Association, Inc., may promulgate reasonable Rules and Regulations concerning the use and enjoyment of its common areas, which may be amended from time-to-time, by a majority vote of the Board of Directors or by a majority vote of the members as represented by the total allocated votes in the Association. Furthermore, the Board of Directors, in its sole discretion, has the right to enforce said Rules and Regulations by assessing fines and monetary penalties against those responsible for violations thereof in an amount not to exceed One Hundred Dollars (\$100.00) per day, per violation, for each day such violation exists. Said fines and monetary penalties may be collected and enforced in the same manner as assessments for common expenses. Windward Lakes Property Owners Association members shall be subject to all Rules and Regulations regarding the common areas as are set forth in the Amended and Restated Rules and Regulations and all subsequent amendments thereto as well as all other covenants and restrictions which are set forth in the Association's Declaration and By-Laws, as amended.

Welcome to Windward Lakes

For the safety and enjoyment of all residents and guests, we ask that you familiarize yourself with the following summary of the official Rules and Regulations of Windward Lakes. Homeowners and renters work together as one community to achieve the best possible environment for a healthy and enjoyable living experience.

The Windward Lakes Property Owners Association, Inc. ("Association"), acting through its Board of Directors ("Board"), has adopted the following Rules and Regulations ("Regulations").

As used in these Rules and Regulations, the term "Homeowner" shall apply to the Owner of any home, to his family, tenants whether or not in residence, servants, employees, agents, visitors, and to any guests, invitees, or licensees of that Homeowner, his family, or tenant of that Homeowner.

Furthermore, we refer all Homeowners to Article III of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Windward Lakes ("Declaration") titled Protective Restrictions. This section of the Declaration provides detail and explanation of specific restrictions not contained within this document but nonetheless deemed as equally important.

1. The Association reserves the right to alter, amend, modify, repeal, or revoke these Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Board.

2. All Homeowners are obligated to inform non-Homeowners of these Regulations.

3. No article, including but not limited to, garbage cans, bottles, or mats, shall be placed in any of the Common Areas. Nothing shall be hung or shaken from any doors, windows, roofs, or patios or placed upon any windows of any home.

4. The Board must approve any type of T.V. antennae or satellite dish intended for installation on the exterior of a home prior to such installation.

5. Any Homeowner may identify his home with a nameplate of a type and size approved by the Board of Directors and mounted in a place and manner approved by the Association.

6. No Homeowner shall make or permit any disturbing noises or activity in the home or permit and condone any activities therein which interfere with the rights, comforts, and conveniences of other Homeowners or tenants. No Homeowner shall play upon or cause to be played any musical instrument, or operate a phonograph, radio, television set, loudspeaker, or other sound amplification device if the same will disturb or annoy other Homeowners.

7. Unless otherwise authorized by the Board, no buses, trucks, boats, recreational, or commercial vehicles shall be parked except in garages and/ or driveways. All vehicles must have current license plates and be in good operating condition. Furthermore, absolutely no vehicles shall be parked on Association grounds displaying a "For Sale" Sign.

8. The Board shall promulgate rules of behavior regarding the swimming pool and cabana, and all Homeowners must comply with said rules. A summary of the swimming pool rules and regulations is posted at the swim complex. In addition, absolutely no one other than Homeowners, tenants and guests are allowed access to and use of the swimming pool and cabana restrooms. Violations of this policy should be reported immediately to the Board.

9. Other Swimming Pool Rules:

a. Only swimwear is allowed to be worn in the swimming pool.

b. **Babies/Toddlers:** For sanitation purposes and to be in accordance with the Baldwin County Health Department, pool diapers must be worn at all times for those children who are not yet potty trained.

c. **Supervision:** Children under the age of fourteen (14) must be supervised and accompanied at all times by a parent or guardian.

d. No coins, small toys, rocks, or other small objects are allowed in the swimming pool as they could cause damage to the pool's skimmers and main drain.

e. No pets are allowed in the swimming pool/cabana area.

f. Absolutely no glass is allowed in the swimming pool area.

g. Lewd, indecent behavior in the swimming pool is not acceptable and will not be tolerated.

10. All pets must be under the Homeowner's control at all times. Pet owners shall be responsible for the immediate cleanup of waste.

11. Temporary overflow parking for automobiles, trailers, boats, motor homes, and the like is available in the parking area adjacent to the Mariner Lakes Association, Inc. (Master Association) clubhouse and tennis courts. Absolutely no parking is allowed along Windward Place and on Windward Lakes Avenue.

12. The parking spaces located in front of the swimming pool and cabana are designated for the automobiles of residents, guests, and renters who are using the swimming pool and cabana. They are intended for no other use.

13. All mailboxes for Windward Lakes Phase II homes (Lots 37-95) must be installed in the exterior lot right of way (Lots 37-70) per order of the Orange Beach Postmaster. The Postmaster has decreed that no mail will be delivered to mailboxes installed on the interior lot right of way, thereby affecting Lots 71-95. For further information, please contact an Association Director or the Postmaster.

14. **Rentals:** Homeowners are provided the privilege of renting their homes. For the safety and benefit of all Homeowners the names of all current renters must be registered with the Board of Directors of the Windward Lakes Property Owners Association, Inc.

15. All Homeowners renting their premises shall:

a. Review these rules and regulations with their renters.

b. Insist that the outside of the home is kept clean and tidy during the rental period. Bicycles, tricycles, beach gear, pool gear, clothing, food, and the like must be kept inside the home or garage and off of the driveway and yard.

c. Review with the renter the trash pick-up schedule.

d. Review with the renter the Rules and Regulations governing the Mariner Lakes Association, Inc. (Master Association) and use of the tennis courts, clubhouse, boardwalk, and so on.

16. All golf carts which are driven on the Association's common areas shall be subject to the following regulations:

a. Each driver of each golf cart shall have a valid driver's license and said license shall be in his possession at all times during which the golf cart is operated.

b. The owner of each golf cart shall be strictly liable for all damages to the Associations common areas, personal property, and/or any personal injuries which may be caused by the operation of the golf cart.

c. Golf carts shall be operated in a safe and courteous manner and maintained in a road worthy condition.

Julie Dalton

From: Simplifile - System Message <no-reply@simplifile.com>
Sent: Friday, April 21, 2023 10:01 AM
To: Julie Dalton
Subject: Notice of Recorded Package in Baldwin County, AL: 1st Amendment to Amended Dec - Windward Lakes
Attachments: Document 1-001.pdf

April 21, 2023 | 9:00 a.m. (MT)

Simplifile

Notice of Recorded Package in Baldwin County, AL: 1st Amendment to Amended Dec - Windward Lakes

Package: 1st Amendment to Amended Dec - Windward Lakes
County: Baldwin County, AL
Submitter: Daniell, Upton, Anderson, Law & Busby, P.C.
Submitting User: David Daniell F. Daniell

Document 1 (Declaration of Condo)

Recording Number: E 2059143
Recording Date: 04/21/2023 9:59 AM CDT
Recording Fees: 121.00
Taxes: 0.00
Simplifile Submission Fee: 5.00

Recorded documents have been attached to this email for your convenience. However, any documents that are not recordable, such as helper documents, are not attached for privacy reasons.

To view this package, login to your Simplifile account and then paste the following URL into the address bar: <https://simplifile.com/sf/ui/submitter/package/2D9D4352-5095-357F-1E9C-DA04A5FC3819/details>

For more information, please call Baldwin County, AL at (251) 937-0230 or Simplifile Support at 800.460.5657

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