

#4084

AFFIDAVIT BK #23

fee \$51.00

Filed at 9:20 AM
August 04, 2000

INSTR. NO. 004084

BK _____ PAGE _____

AFFIDAVIT EXPLANATORY OF TITLE

00 AUG -4 AM 9: 20

JAMES H. SCHELLER
RECORDER
DICKINSON COUNTY, IOWA
FEE \$ 51.00

STATE OF IOWA, COUNTY OF DICKINSON, ss.

RE: That part of Government Lot 1 in the Northeast Quarter (NE1/4) of Section 14, Township 99 North, Range 37 West of the 5th P.M., Dickinson County, Iowa, described as follows: Commencing at the North quarter corner of said Section 14; thence South 88°55'12" East 1834.14 feet along the northerly line of the Northeast Quarter (NE ¼) of said Section 14; thence South 1°32'24" West 62.57 feet to the point of beginning; thence South 0°18'18" East 237.92 feet; thence North 89°54'53" East 84.92 feet; thence South 15°26'08" East 123.05 feet; thence South 0°49'42" East 16.35 feet; thence North 88°19'05" East 379.96 feet to the Iowa State Conservation Commission Master Property Platted West Okoboji Lake westerly shoreline; thence North 4°26'18" West 49.78 feet along said shoreline; thence North 14°12'36" West 55.32 feet along said shoreline; thence North 24°51'36" West 91.18 feet along said shoreline; thence North 30°26'54" West 197.98 feet along said shoreline; thence North 17°54'24" West 2.46 feet along said shoreline; thence North 89°33'48" West 342.14 feet to the point of beginning, containing 3.37 acres

Also described as Tract 1 and Tract 2 on the 6/9/00 Bendixen sketch of description, hereinafter "Tract 1" and "Tract 2" attached hereto as Exhibit A.

I, Thomas L. Aller, being first duly sworn depose and state as follows:

1. That I am the Vice President of Village Lakeshares, Inc., a General Partner of Village Lakeshares L.P., hereafter referred to as "Developer" and I have served in that position for many years last past and that I am familiar with the above-described real estate located in Dickinson County, Iowa.

2. Tract 2 of the attached Bendixen Sketch of Description was referenced with other property as part of the metes and bounds description of the property on which the 42 Time-share Townhouses were to be located in the 1989 Declaration of Time-shares Program for Sunrise Cove, which was recorded in the Office of the Dickinson County Recorder on March 29, 1989 in Miscellaneous Book 2, Page 167 as Instrument No. 3403. The James R. Blum 2-5-99 survey shows there are no Time-share units or any other Sunrise Cove Time-share property now located on said Tract 2 or said Tract 1.

3. Said Tract 2 was part of what might have been, at the Developer's discretion, part of a possible future Time-share development phase for Sunrise Cove. Neither of the above-described Tracts 1 or 2 has been used in any Sunrise Cove Time-share development phase.

4. It is the intention of the Seventeenth Amendment to the Declaration of Time-share Program for Sunrise Cove to clarify that neither said Tract 1 nor Tract 2 are part of the location of the Sunrise Cove Time-share 1989 Declaration nor any subsequent amendments thereto.

5. To the best of this Affiant's knowledge, a Property Report was provided to all purchasers of Time-shares in said Sunrise Cove at the time of their purchase which, in defining the purchaser's rights, provided among other things, the following:

The Developer holds title to real estate on which all the existing townhouse units and hotel/motel units are built. The type of units added in any expansion will be in the discretion of the Developer. The time-share program may be terminated or amended at any time in the sole discretion of the Developer.

Said Property Report further provided that the common recreational amenities would be available to the purchasers in accordance with the Recreational License Agreement, which is described in Paragraph 6 below, until at least 1995.

6. The Time-share owners only had rights to use amenities at the location thereof and surrounding properties in accordance with the Recreational License Agreement, attached hereto marked Exhibit B and dated March 22, 1989, which was assigned by Long Lines LTD to Village Lakeshares L.P. as Developer of the Sunrise Cove Time-share Project. The said Recreational License Agreement is the only Recreational License Agreement that was entered granting the rights to use the facilities and amenities described therein, and, with the exception of the termination notice letter described in Paragraph 7 below and attached hereto as Exhibit C, said Recreational License Agreement has not been amended or otherwise modified by any subsequent agreement, oral promises or course of conduct relating to the use of the facilities and amenities described therein. There are no other agreements between the Developer and the Association or the Developer and the individual owners of Time-shares in the Sunrise Cove Time-share project for use of the facilities and amenities described therein, including without limitation, use of the boat ramp located on Tract 1.

7. March 21, 2001 at 11:59 p.m. is the anniversary date of the above-described Recreational License Agreement. The Developer has, by the attached Thomas L. Aller July 2000 letter, given notice to the Association pursuant to Paragraph 6 of the Recreational License Agreement regarding the use of facilities or amenities. The letter is hereto attached marked Exhibit C. The statements set forth in said letter are adopted as part of this Affidavit the same as if they were set forth herein in full.

8. On February 1, 1991, Village Resorts, Inc. as Landlord, entered into a 10-year Marina Lease with Parks Marina, Inc. as tenant. Said marina lease provided that tenant could install boat hoists in the water on West Lake Okoboji adjacent to the above-described property and a nonexclusive use of the boat road and ramp on tract 1. Said lease ends on midnight, January 31, 2001 for which Landlord has timely notified Tenant. Said lease has not thereafter been amended except for the assignment of the landlord's interest therein to Village Lakeshares, L.P.

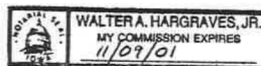
9. To the best of Affiant's knowledge other than matters described in the above Paragraph 8 which terminates January 31, 2001 and the Long Lines, LTD Easement Agreement dated April 5, 1994, and recorded easements of record, no person or entity other than Village Lakeshares, L.P. have any title rights or use rights in Tracts 1 and 2.

IN WITNESS WHEREOF, I have hereunto set my name this 26th day of July, 2000.

Thomas L. Aller
Thomas L. Aller

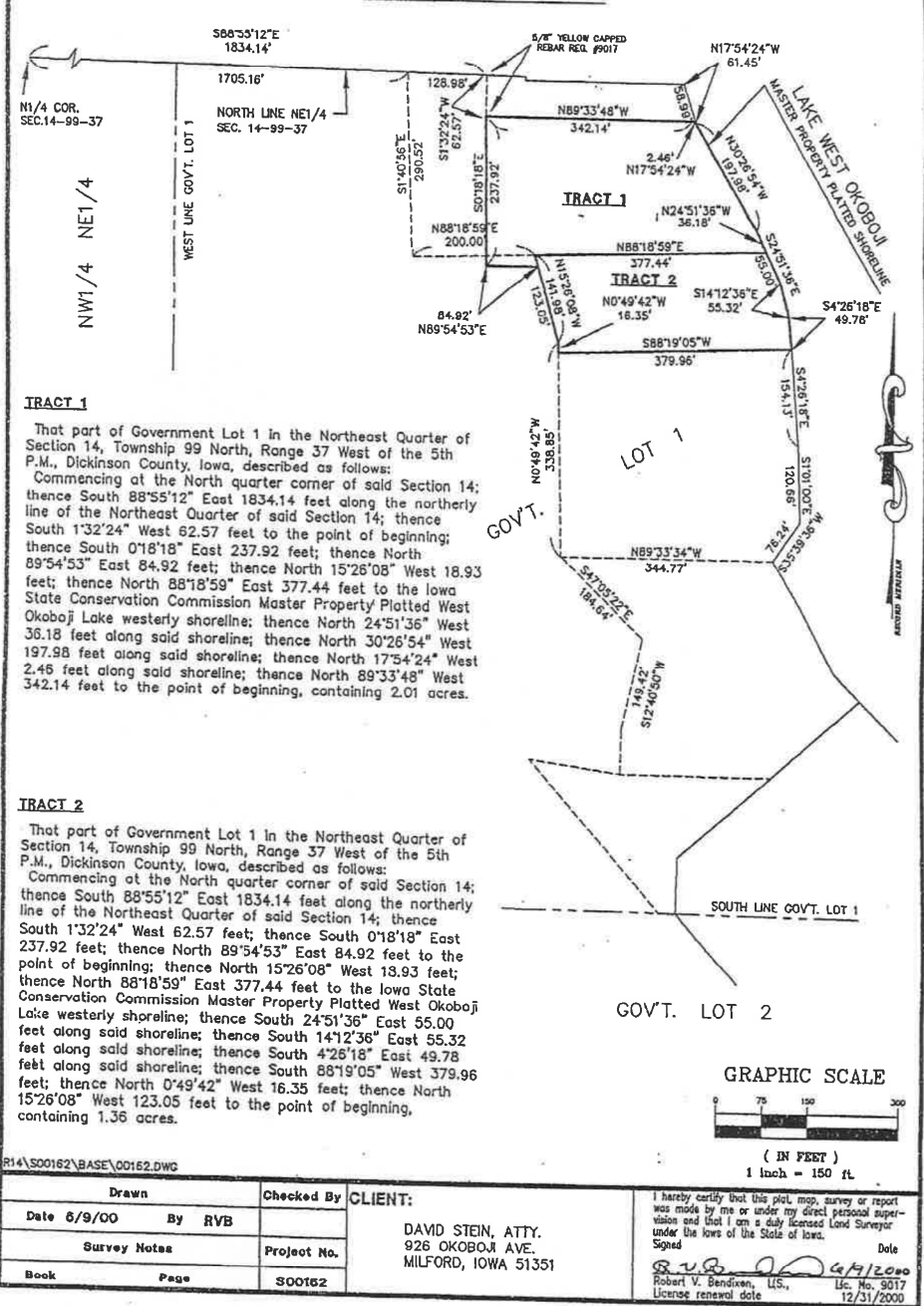
Sworn to and subscribed before me by Thomas L. Aller on this 26th day of July, 2000.

Walter A. Hargraves, Jr.
NOTARY PUBLIC



Jacobson-Westergard & ASSOC., INC. 105 S 6th ESTHERVILLE, IOWA 51334 (712) 362-2647

SKETCH OF DESCRIPTION



RECREATIONAL LICENSE

This RECREATIONAL LICENSE (hereinafter referred to as "License" or "Agreement") made this 22nd day of March, 1989, by and between Long Lines, Ltd., an Iowa corporation (hereinafter referred to as "LICENSOR") and Sunrise Cove Time-share Association, Inc. an Iowa corporation (hereinafter referred to as "LICENSEE").

In consideration of the sum of Ten Dollars (\$10.00) paid by LICENSEE to LICENSOR and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **GRANT OF LICENSE.** LICENSOR hereby grants to LICENSEE, for the benefit of owners of Time-share Estates in Sunrise Cove (hereinafter referred to as "Project"), and for the benefit of LICENSEE, and other authorized users of units in the PROJECT (hereinafter collectively referred to as "BENEFICIARIES"), a non-exclusive license to use, subject to all the terms and conditions hereof, the 9-hole miniature golf course, tennis courts, swimming pools, health club, beach, and all other common recreational space and associated facilities of each of the foregoing (hereinafter referred to as "Facilities") currently existing or to be located on the site of Village West Resort (hereinafter referred to as the Resort) which is adjacent to the Project and legally described on Exhibit "A".

2. **DESIGNATED USE OF SPECIFIC FACILITIES.** With respect to the Facilities, BENEFICIARIES shall have the right to use the Facilities at the Resort on an equal basis with Resort guests. In addition, LICENSOR, as the current owner of Brooks Golf Course and Village East Resort, will provide access to the golf course and racquet club ("off-site amenities") on an equal basis with Resort guests for a fee.

LICENSEE acknowledges that LICENSOR may limit BENEFICIARIES use to less than all available Facilities and to use of certain specific Facilities in the future.

3. **FEES.** LICENSEE will be charged for the use of the Facilities as annually set by LICENSOR. The fee will be calculated as the Association's share of costs, including capital costs, to operate and maintain the amenities. The initial fee shall be \$3.53 per time-share Estate. LICENSEE may collect payment from owners by a management fee but LICENSEE shall remain obligated for payment.

LICENSEE acknowledges the fact that LICENSOR may increase the fees imposed in the future. The use of off-site amenities will be billed to and paid directly by owners.

EXHIBIT B

4. ADHERENCE TO PUBLISHED RULES; CONSEQUENCES OF VIOLATIONS. LICENSEE acknowledges that it, and those claiming rights to the use of the Facilities under it, will obey all posted rules and regulations of LICENSOR for use of Facilities. Violators will be subject to the reasonable penalties for violations of the rules and regulations as imposed by LICENSOR in its sole discretion from time to time; however, such violations shall not otherwise affect the rights of LICENSEE and other BENEFICIARIES to this Agreement.

5. CONDITION OF FACILITIES NOT WARRANTED. LICENSOR does not warrant or represent that the Facilities are safe, healthful, or suitable for the purposes for which they are permitted to be used under the terms of this License.

6. TERM. The BENEFICIARIES may begin using the Facilities upon occupancy under a Time-share Estate. This License shall continue for a period of five (5) years from the date hereof, and shall be automatically renewable for successive year periods unless terminated sooner as provided herein. Either party may terminate this Agreement at the end of the initial or subsequent term by giving written notice to the other, specifying the date of termination, such notice to be given not less than thirty (30) days prior to the end of the term. Should the Facilities, or any essential part thereof, be totally destroyed by fire or other casualty, this Agreement shall immediately terminate; and in the case of partial destruction where use would be materially inhibited without major reconstruction, this Agreement may be terminated by either party giving written notice of the other, specifying the date of termination, such notice to be given within thirty (30) days following such partial destruction and not less than thirty (30) days prior to the termination date therein specified.

7. NO INTEREST OR ESTATE GRANTED. LICENSEE agrees that neither it nor its BENEFICIARIES have or shall claim, at any time, any interest or estate of any kind or extent whatsoever in the Resort premises upon which the Facilities are located, by virtue of this License or any permitted use hereunder.

8. CONSENT OF LICENSOR FOR ASSIGNMENT OR SUBLICENSE. No assignment of this License or any interest therein and no sublicense for any purpose shall be made or granted by LICENSEE or its BENEFICIARIES without the prior written consent of LICENSOR.

9. RESPONSIBILITY FOR OPERATION, REPAIR AND MAINTENANCE OF FACILITIES. It is understood by the parties hereto that the responsibility for operation, repair and maintenance of the Facilities rests solely with LICENSOR and that neither LICENSEE nor its BENEFICIARIES shall be required to make any payments in addition to the fees described in Paragraph 3 hereinabove.

10. INSTALLATION OR ATTACHMENT OF PROPERTY TO HOTEL PREMISES; MODIFICATION OR ALTERATION OF FACILITIES. LICENSEE agrees that neither it nor its BENEFICIARIES shall install or attach any property to the resort premises upon which the Facilities are located nor, in any way, modify or alter the Facilities.

11. NOTICES. Any notice mailed which is addressed to LICENSEE at P.O. Box OR, Spirit Lake, Iowa, 51360, or delivered to LICENSEE, shall be notice hereunder by LICENSOR; any notice mailed, addressed to LICENSOR at P.O. Box OR, Spirit Lake, Iowa, 51360, or delivered to LICENSOR shall be notice hereunder by LICENSEE unless and until LICENSOR or LICENSEE shall designate a different address.

12. WRITTEN AGREEMENT AS ENTIRE UNDERSTANDING OF PARTIES. The making execution and delivery of this Agreement by LICENSEE has been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This instrument may be amended or modified only by a written instrument signed by the respective parties hereto.

13. BINDING EFFECT. This Agreement is binding upon the successors and assigns of the parties hereto.

14. GOVERNING LAW. The provisions of the Agreement shall be governed by Iowa law.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals on the dates hereinbelow listed.

LICENSOR:

LONG LINES, LTD.

BY: [Signature] PRESIDENT - CO.

DATED: March 22, 1984

LICENSEE:

SUNRISE COVE TIME-SHARE
ASSOCIATION, INC.

BY: [Signature]

DATED: March 22, 1984

LEGAL DESCRIPTION

Portions of Gov't Lot 1 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Twp. 99 N, Range 37 West of the 5th P.M., Dickinson County, Iowa, described as follows:-

Commencing at the North quarter corner of said Section 14; thence on an assumed bearing of South 0°23.0' West 1318.23 feet along the westerly line of the NE $\frac{1}{4}$ of said Section 14 to the southerly line of the N $\frac{1}{2}$ of said NE $\frac{1}{4}$; thence South 89°03.0' East 83.10 feet along said NE $\frac{1}{4}$ North Half southerly line to the point of beginning at the easterly right-of-way line of Iowa Primary Road No. 32 (Iowa State Highway Commission Project F-490 Official Plans); thence continuing South 89°03.0' East 2073.73 feet along said Northeast Quarter North Half southerly line; thence North 1°32.3' East 88.34 feet; thence North 49°42.8' East 390.37 feet to the Iowa State Conservation Commission West Okoboji Lake westerly shoreline; thence North 45°23.4' West 61.53 feet along said shoreline; thence North 28°53.0' West 96.08 feet along said shoreline; thence North 32°02.2' West 107.28 feet along said shoreline; thence North 35°39.6' East 76.24 feet along said shoreline; thence North 1°01.0' West 120.66 feet along said shoreline; thence North 4°26.3' West 203.91 feet along said shoreline; thence North 14°12.6' West 55.32 feet along said shoreline; thence North 24°51.6' West 91.18 feet along said shoreline; thence North 30°26.9' West 197.98 feet along said shoreline; thence North 17°54.4' West 61.45 feet along said shoreline to a point 3 feet southerly of the northerly line of the Northeast Quarter of said Section 14; thence North 89°33.8' West 258.50 feet to a point 5.84 feet southerly of the southwest corner of Lot 42 of Auditor's Plat No. 121, Dickinson County, Iowa; thence North 1°04.2' East 5.84 feet to the southwest corner of said Lot 42 and the Northerly line of the NE $\frac{1}{4}$ of said Section 14; thence North 88°55.2' West 1807.78 feet along said NE $\frac{1}{4}$ northerly line to the easterly right-of-way line of Iowa Primary Road No. 32; thence South 12°51.1' West 168.92 feet along said right-of-way line; thence South 0°25.2' West 49.47 feet along said right-of-way line; thence South 89°37.0' East 15.00 feet along said right-of-way line; thence South 0°25.2' West 982.51 feet along said right-of-way line; thence South 6°38.8' East 121.95 feet along said right-of-way line to the point of beginning, containing 67.37 acres, EXCEPT a tract described as follows:-

Commencing at the north quarter corner of said Section 14; thence South 88°55.2' East (Section 14-99-37 Northeast Quarter westerly line is assumed to bear South 0°23.0' West) 1898.09 feet along the northerly line of the Northeast Quarter of said Section 14 to the southwest corner of Lot 42 of Auditor's Plat #121, Dickinson County, Iowa, a Reg. #3869 capped 5/8" rebar 569.5 feet easterly of the northwest corner of said Government Lot 1; thence South 1°04.2' West 5.84 feet to the point of beginning; thence South 7°34.5' East 50.49 feet; thence South 89°33.8' East 268.04 feet to the Iowa State Conservation Commission West Okoboji Lake westerly shoreline; thence North 17°54.4' West 52.67 feet along said shoreline to a point 3 feet southerly of the northerly line of said Gov't Lot 1; thence North 89°33.8' West 258.50 feet to the point of beginning, containing 0.30 acres;

AND FURTHER EXCEPTING THOSE TRACTS OF LAND conveyed to Missouri River Enterprises, Inc., by deed dated April 14, 1987, filed for record May 8, 1987, and recorded in Land Deed Record 48, page 71, described as follows:-

TRACT 1: Commencing at the North quarter corner of Section 14, Twp. 99, Range 37, West 5th P.M.; thence South 88°55.2' East along the North line of the NE $\frac{1}{4}$ for a distance of 90.31 feet to a point in the East right-of-way line of Iowa Highway No. 32; thence continuing South 88°55.2' East along said North line for a distance of 1018.22 feet; thence South 01°04.8' West for a distance of 490.44 feet to a point on the North line of the entrance road easement; thence South 84°04' West along said North easement line for a distance of 94.45 feet; thence North 51°17' West along said North easement line for a distance of 588.12 feet; thence North 89°37' West along said North easement line for a distance of 489.78 feet to the

EXHIBIT A (cont.)

LEGAL DESCRIPTION

(Continued)

East right-of-way line of Iowa Highway No. 32; thence North $12^{\circ}51.1'$ East along said right-of-way line for a distance of 151.99 feet to the point of beginning; and ALSO EXCEPT

TRACT 2:- Commencing at the North quarter corner of Section 14; thence South $0^{\circ}25.2'$ West along the West line of the NE $1/4$ for a distance of 215.50 feet; thence South $89^{\circ}37'$ East for a distance of 68.94 feet to a point on the East right-of-way line of Iowa Highway No. 32; and the point of beginning; thence continuing South $89^{\circ}37'$ East along the South line of the entrance road easement for a distance of 455.54 feet; thence South $51^{\circ}17'$ East along said South easement line for a distance of 592.27 feet; thence North $84^{\circ}04'$ East along said South easement line for a distance of 279.43 feet; thence South $04^{\circ}51.3'$ East for a distance of 782.62 feet; thence South $89^{\circ}03.0'$ East for a distance of 300.00 feet; thence South $00^{\circ}57.0'$ West for a distance of 200.00 feet; thence South $89^{\circ}03.0'$ East for a distance of 601.77 feet; thence South $41^{\circ}52.7'$ East along a line parallel to, and 75 feet West of the East property line, for a distance of 639.93 feet; thence South $01^{\circ}32.3'$ West along a line parallel to and 75 feet West of the East property line, for a distance of 622.87 feet to a point on the North right-of-way line of a county road; thence North $88^{\circ}48.1'$ West along said right-of-way line for a distance of 2542.56 feet to a point on the East right-of-way line of Iowa Highway No. 32; thence North $43^{\circ}24.4'$ West along said right-of-way line for a distance of 44.90 feet; thence North $0^{\circ}25.2'$ East along said right-of-way line for a distance of 1249.10 feet; thence North $06^{\circ}38.8'$ West along said right-of-way line for a distance of 121.95 feet; thence North $0^{\circ}25.2'$ East along said right-of-way line for a distance of 982.51 feet to the point of beginning; except that which may be submitted to Sunrise Cove Condominium as recorded from time to time.



July 26, 2000

Board of Directors
Sunrise Cove Time-Share Association
Village West Resort
P. O. Box OR
Spirit Lake, Iowa 51360-0645

Dear Board Members:

As part of our preparations to sell the Village West Resort properties, we reviewed the Recreational License dated March 22, 1989. This document gives the Sunrise Cove Time-Share Association a non-exclusive license to use certain recreational facilities of the Resort. It also gives the Developer the right to limit this use to less than all available facilities and to limit the use of certain facilities in the future.

In order to avoid any misunderstanding about which areas are included in this Recreational License, this letter is provided to verify that the area formerly occupied by the A, B and C-Rows was never included, is not now included, and is specifically excluded from the License. This area is further defined as generally northerly and easterly of E-Row and of the principal Resort facility to Lot 42, having approximately 300 feet, more or less, of lake frontage which is currently undeveloped. It is also outlined for identification purposes at Exhibit A.

All other recreational facilities identified in the Recreational License remain available for use by the Time-Share Association unless and until the Developer notifies the Association under the provisions of the License. Unless otherwise modified by agreement of the parties, the Easement Agreement dated April 5, 1994 with Long Lines, LTD continues in accordance with its terms at least until December 31, 2001, and may be terminated thereafter in accordance with said terms.

Sincerely,

VILLAGE LAKESHARES, L.P.

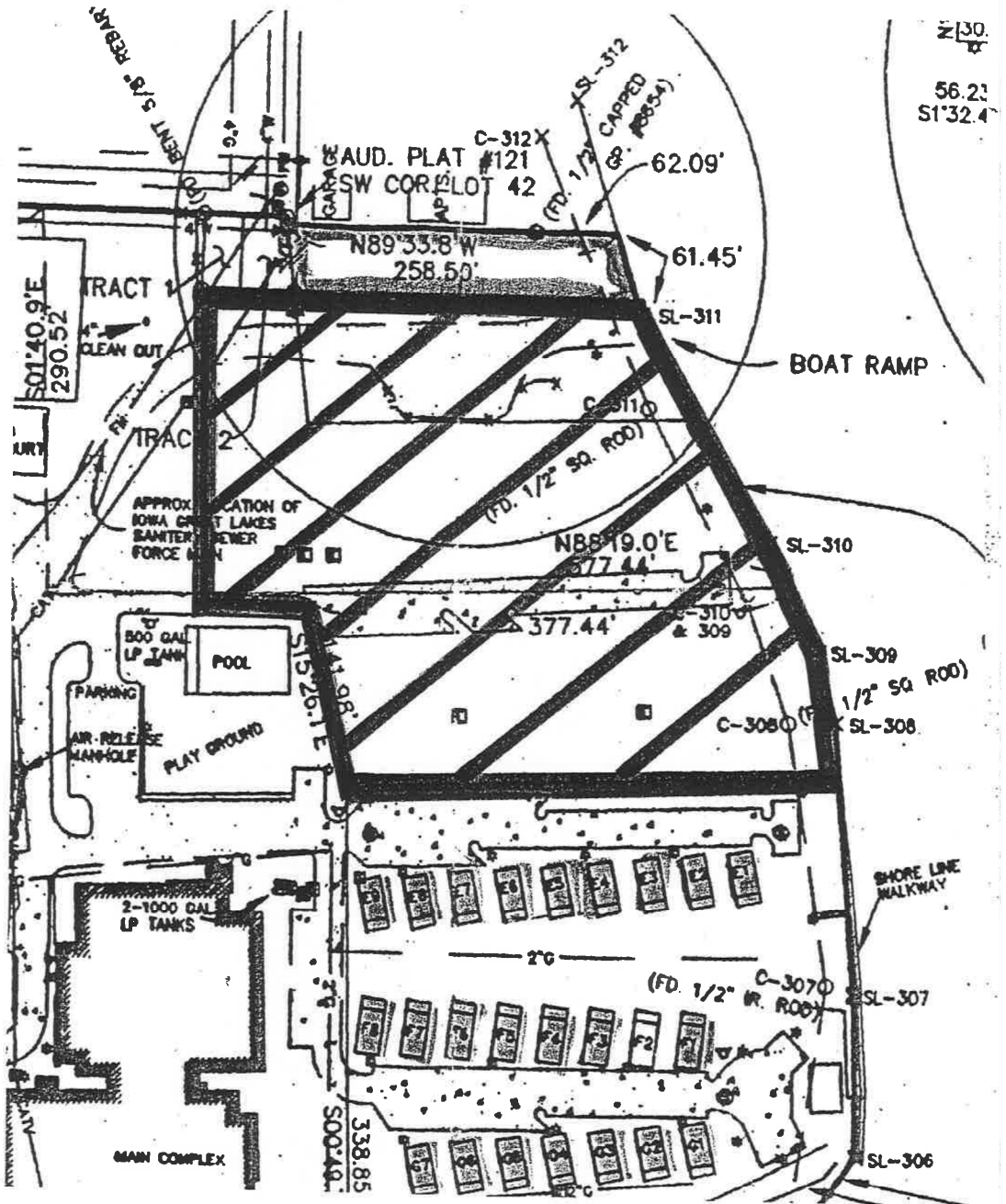
A handwritten signature in cursive script that reads "Thomas L. Aller".

Thomas L. Aller
Vice-President

Enclosure: Exhibit A

EXHIBIT C

EXHIBIT A



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S1'32.4'