

86 33436

O. R. 727 PG 1881

DECLARATION OF COVENANTS OF CONCH HOUSE MARINA

THIS DECLARATION OF COVENANTS (the "Declaration"), made as of the 12th day of December, 1986;

WITNESSETH:

WHEREAS, James A. Ponce, Sr. and Jacqueline S. Ponce, his wife (collectively, "Declarant") are the owners of (i) a 25-year leasehold estate granting Declarant, as lessee, the exclusive right to occupy and use certain sovereignty submerged lands described in the attached Exhibit A-1, (ii) all of the marina improvements (including a multiple boat docking facility) located within those submerged lands, and (iii) the adjoining uplands described in the attached Exhibit A-2; and

WHEREAS, Declarant desires to establish certain covenants, conditions, restrictions and easements appurtenant to the boat slips now or hereafter located within that marina, for the mutual benefit of Declarant and the purchasers or licensees of those boat slips;

NOW, THEREFORE, in consideration of the foregoing, the sum of \$1.00 and the mutual benefits to be derived herefrom, it is declared as follows:

ARTICLE ONE

DEFINITIONS

For the purposes of this Declaration:

1.01 "Assessment" shall mean any assessment imposed pursuant to Section 4.07 of this Declaration.

1.02 "Common Expense" shall mean any expense of the nature described in Section 4.06 of this Declaration, which shall be paid by way of the Assessments.

1.03 "Common Property" shall mean all of the Marina except the Slips.

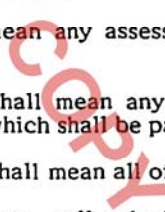
1.04 "Declarant" shall mean, collectively, the persons identified as such above, their successors and assigns.

1.05 "Declaration" shall mean this instrument as it may be amended from time to time.

1.06 "Docks" shall mean all dock structures, including pilings, deck, gangways, stairs, tie pilings and dolphins located within the Submerged Land, except the portion, if any, upon which Declarant operates a restaurant, lounge and other retail facilities from time to time.

1.07 "Lease" shall mean that Sovereignty Submerged Land Lease No. 550518482E between James Ponce, as lessee, and the Board of Trustees of the

THIS INSTRUMENT PREPARED BY:
ROBERT A. HEERIN, Attorney
200 LAURA STREET
JACKSONVILLE, FLORIDA 32202



O.R. 727 PG 1882

Internal Improvement Trust Fund of the State of Florida as lessor, effective July 29, 1986, concerning the Submerged Land, together with any modifications and renewals thereof.

1.08 "Limited Common Property" shall mean that portion of the Docks adjoining a Slip which, although it is part of the Common Property, is intended principally for use by the Owner of that Slip as described in Section 3.03 below, subject to the rights and qualifications described in Sections 2.03 and 3.03.

1.09 "Marina" shall mean, collectively, (i) Declarant's interest in the Lease and the Submerged Land, (ii) the Docks, and (iii) those easements and rights to use the Upland which are described in Section 2.03 below.

1.10 "Mortgage" shall mean any recorded first mortgage lien or security interest held by a bank, savings and loan association or other institutional lender, which encumbers any of the Slips.

1.11 "Mortgagee" shall mean the record holder of a Mortgage.

1.12 "Owner" shall mean the person or entity owning a Slip.

1.13 "Slip" shall mean that portion of the Marina more particularly described in Section 3.02 below.

1.14 "Submerged Land" shall mean that real property described in the attached Exhibit A-1 which is the subject of the Lease.

1.15 "Upland" shall mean that real property described in the attached Exhibit A-2.

ARTICLE TWO**DECLARATION**

2.01 Existing Property. The property subject to this Declaration shall consist of (i) Declarant's interest in the Lease and the Submerged Land, (ii) the Docks, and (iii) those easements and use rights in the Upland created by Section 2.03 below. That property, including the Slips, shall hereafter be held, sold and conveyed subject to the covenants, conditions, restrictions and easements described in this Declaration, and the Grantee of any deed transferring any of the Slips or conveying any other portion of the Marina shall be deemed by the acceptance of such deed to have agreed to observe, comply with and be bound by all such covenants, conditions, restrictions and easements.

2.02 Lease. Declarant agrees to use all reasonable efforts and diligence in order to maintain the Lease in full force and effect, and to cause its renewal on terms favorable to the Owners.

2.03 Easements. Declarant hereby establishes for the benefit of the Owners and their invitees (i) a non-exclusive easement and right to use the Docks and those portions of the Uplands designated from time to time by Declarant for pedestrian access from the public right-of-way to the Slips, (ii) a non-exclusive easement

O.R. 727 PG 1883

throughout those portions of the Upland designated as driveways and parking areas from time to time by Declarant, for automobile access from the public right-of-way and for parking in at least the minimum number of spaces then required by law for the use of the Slips, and (iii) a non-exclusive easement and right to use those portions of the Upland and the Docks designated from time to time by Declarant for the purpose of utilities apparatus and lines serving the Slips. The foregoing easements shall be appurtenant to the Slips, shall terminate upon the cancellation of the Lease or this Declaration, and shall be subject to the restrictions described in Sections 3.05 and 4.05 and the reservations described in Section 2.04 of this Declaration.

2.04 Reservations. Declarant hereby reserves the right, at Declarant's sole discretion and expense, (i) to close for repair or maintenance any of the easements established in Section 2.03 above, and (ii) to relocate all or any part of those easements from time to time, by substituting other similar facilities of a suitable size and nature, and (iii) to fix the precise location of all or any part of those easements as originally established or hereafter relocated, by executing and filing a supplemental declaration in the public records of St. Johns County, Florida. In addition, Declarant shall have the right to grant other nonexclusive easements and use rights affecting the same portions of the Uplands, provided they are not materially and adversely inconsistent with the easements and use rights granted in Section 2.03 above.

2.05 Additions: Withdrawals. Declarant shall have the exclusive right, from time to time and within Declarant's sole discretion, to annex to the Marina and to include within this Declaration such additional properties (whether real, personal or leasehold) as may hereafter be owned by Declarant, and in that event such additional property shall be considered within the definition of the Marina for all purposes of this Declaration, subject to any additions or modifications deemed necessary by Declarant to reflect the different character, if any, of the additional property. In addition, Declarant shall have the exclusive right, from time to time in its sole discretion, to withdraw any property from the operation and effect of this Declaration provided that (i) no property shall be withdrawn if the effect of such withdrawal would be to completely sever the lands remaining subject to this Declaration, it being the intent of this Declaration that the entire Marina shall at all times be contiguous, and (ii) the withdrawal of such property shall not cause a material increase (i.e., more than 10% over the prior year) in the annual Assessments against the Slips remaining subject to this Declaration. Any such addition or withdrawal of a fee simple, leasehold or easement interest in real property pursuant to this Section 2.05 shall be evidenced by Declarant's executing and filing a supplemental declaration in the public records of St. Johns County, Florida.

ARTICLE THREE

SLIPS

3.01 Nature. Each purchaser of a Slip shall receive an exclusive, assignable license to use and occupy that portion of the Marina described in Section 3.02 below, together with the appurtenances described in Section 3.03, all subject to this Declaration and the specific restrictions contained in Section 3.05. This exclusive license and the appurtenances shall terminate upon the cancellation of the Lease or this Declaration.

O.R. 727 PG 1884

3.02 Boundaries. The Slips shall be located and identified as depicted in the attached Exhibit B. The perimeter boundaries of each Slip shall be the vertical planes passing through the innermost surfaces of the Docks or pilings surrounding that Slip, and the lower boundary shall be the surface of that portion of the Submerged Land lying beneath the Slip.

3.03 Appurtenances. Each Slip shall include, as appurtenances:

(a) Limited Common Property. The exclusive right to use and occupy (i) that portion of the upper surface of the docks surrounding the Slip, from the vertical boundaries described in Section 3.02 to the centerline of such upper surfaces, subject only to the easements established in Section 2.03 above, (ii) all cleats and tie pilings or dolphins adjoining the Slip and designated by Declarant for the exclusive use of the Owner of that Slip, and (iii) any dockbox or other improvement (including electric, water and other utilities connections) placed on the Docks adjacent to the Slip by Declarant for the exclusive use of the Owner of that Slip.

(b) Easements. Those easements described in Section 2.03 above.

(c) Personal Property, etc. An undivided interest in any personal property or equipment acquired, and any reserves or surplus accumulated, by way of Assessments paid by the Owner of the Slip as described in Sections 4.06 and 4.07 below.

(d) Representation. The right to vote for representatives to serve on the advisory board described in Section 4.05, and to participate as a member of any association of Owners hereafter created pursuant to Section 6.02 below.

3.04 Rental; Assignment. Except as limited in (c) below, each Slip and its appurtenances under this Declaration shall be freely transferable by the Owner (including the granting of a mortgage or security interest in the Slip), provided:

(a) Notice. The Owner of the Slip gives written notice to Declarant of the proposed transfer or granting of a mortgage or security interest, together with such further information as Declarant may reasonably request.

(b) Acceptance. The transferee (including any mortgagee or secured party) of the Slip shall, by acceptance of such interest in the Slip, be deemed to have agreed to observe, comply with and be bound by all of the covenants, conditions, restrictions and easements of this Declaration, and at Declarant's request, shall execute an instrument evidencing that agreement.

(c) First Refusal. In the case of a proposed sale or exchange of a Slip (but not a bona fide gift or devise), or in the case of a proposed lease or rental agreement of an indefinite term or of a definite term exceeding one (1) month, Declarant shall have the right of first refusal, for fifteen (15) days after

O. R. 727 PG 1885

receipt of the written notice provided in (a) above, to elect to acquire or lease that Slip on the same terms and for the same consideration as contained in the notice. Should Declarant elect not to exercise this right, the Owner may, within ninety (90) days after first giving the written notice required by (a) above, consummate the transaction on the same terms and for the same consideration as disclosed by that notice. However, in the event the transaction is not closed within such ninety (90) day period, or in the event the Owner wishes to vary the terms or consideration from that originally disclosed to Declarant, the Owner must once again give the notice required by (a) above and Declarant shall again have the right of first refusal provided herein as it relates to that transaction.

3.05 Restrictions. The Slip and its appurtenances are subject to the following conditions and limitations:

(a) Declaration. All of the covenants and restrictions contained in this Declaration.

(b) Subdivision. No Slip may be further subdivided by its Owner without Declarant's prior written consent, nor may any of the appurtenances described in Section 3.03 be severed from the Slip or transferred separately from the ownership thereof.

(c) Commercial Use. No Slip shall be used for commercial purposes without Declarant's prior written consent.

(d) Liveaboard. No Slip shall be used for residential or "liveaboard" purposes.

(e) Lease. Each Slip shall be used in a manner that fully complies with the Lease and any applicable laws or regulations at all times.

(f) Rules. Each Owner, and all invitees or guests of the Owner, shall comply with such rules and regulations for the operation of the Marina as may be adopted from time to time in the manner described in Section 4.05 below.

(g) Boat Approval. In order to protect the first-class quality and reputation of the Marina, no vessel shall be brought or kept within the Marina or any of the Slips unless it is first approved by Declarant as to size, appearance, seaworthiness and safety. In this regard, Declarant shall have the right to require in advance a recent photograph and description of the vessel, proof of its ownership and registration, and such other information as Declarant considers appropriate under the circumstances.

(h) Slip Rental. In the event an Owner wishes to rent or lease a Slip to a third party directly (i.e., not through Declarant or any rental program established by Declarant), that Owner (or the Owner's lessee or tenant) must first produce evidence of general liability insurance reasonably acceptable to Declarant, in an amount not less than \$500,000 or such greater or lesser limit as Declarant may hereafter reasonably require, naming Declarant as an additional insured thereunder.

O. R. 727 PG 1886

ARTICLE FOUR

OPERATION OF MARINA4.01 Maintenance.(a) By Owners. Each Owner shall:

- (i) Keep the Slip, its appurtenant Limited Common Property, and any boat within the Slip in a clean, orderly and safe condition and appearance at the Owner's expense.
- (ii) Not paint or otherwise alter the appearance of the Slip or its appurtenant Limited Common Property without Declarant's prior written consent.
- (iii) Promptly advise Declarant of any defect or need for repairs within the Marina for which Declarant is responsible under this Section 4.01.
- (iv) Promptly repair or replace, at Owner's expense, that portion of the Marina which is damaged due to the negligence or abuse of Owner or Owner's invitee. Such repairs may be made by Declarant and charged to Owner as an Assessment. Owner shall not undertake any repairs of the Marina without the prior written approval of Declarant.

(b) By Declarant. Declarant shall maintain the entire Marina, including the Docks, as a matter of Common Expense except for repairs to be performed by an Owner pursuant to Section 4.01(a) above.

4.02 Insurance.

(a) Marina. Declarant shall maintain general liability insurance on the Marina, for the benefit of the Owners, as a matter of Common Expense. At the request of any Owner or Mortgagee, Declarant shall obtain a certificate of insurance reflecting the coverage then in force and the interest of that Owner or Mortgagee. Such insurance may also include other additional risks or coverages which, in Declarant's judgment, are appropriate under the circumstances. In the event of an insured loss, Declarant shall be solely responsible for filing, prosecuting and settling any claim arising under such insurance policies. Any insurance proceeds payable with respect to policies maintained by Declarant as a matter of Common Expense shall be paid solely to Declarant, and shall be held by Declarant in trust for all of the Owners and Mortgagees, to be disbursed only in accordance with the terms of Article Five below.

(b) Slips, Etc. Each Owner shall be responsible for maintaining any desired insurance, at the Owner's expense, upon boats and other personal property kept within the Slip and its appurtenant Limited Common Property from time to time, as well as for the personal liability of such Owner.

O. R. 727 PG 1887

4.03 Utilities. Each Owner shall pay for all electrical, telephone, water and other utilities services provided to that Owner's individual Slip, whether such services are separately metered or otherwise allocated among the Slips by Declarant. Declarant shall pay for cable television service for all Slips, garbage service for the entire Marina and electric, water and other utilities services provided for the Common Property, as a matter of Common Expense.

4.04 Administration; Access. Declarant reserves the full right, power and authority to take whatever actions are reasonably necessary, in Declarant's judgment, to administer this Declaration and the Lease and operate the Marina in accordance therewith, including without limitation the right of access throughout the Slips and Common Property and, if reasonably necessary, within or upon the boats moored within the Marina in order to carry out Declarant's duties and obligations hereunder.

4.05 Rules, Etc. Declarant shall adopt and modify or supplement, from time to time, reasonable rules and regulations for the use of the Marina, provided such rules are not inconsistent with the terms of this Declaration or the Lease. To assist Declarant in promulgating such rules, Declarant shall establish an advisory board consisting of not less than three (3) nor more than seven (7) Owners selected by majority vote, on an annual basis, of all Owners (with each Slip entitled to one (1) vote for each advisory board seat to be filled, but without cumulative voting). In the event an Owner (or the Owner's guest or invitee) violates any of the foregoing rules or the other restrictions contained in Section 3.05 above, Declarant may:

(a) Fine. Impose a fine upon the Owner, if such fine is recommended by the advisory board after notice to the Owner and a hearing conducted by the advisory board at which the Owner and Declarant had an opportunity to present their respective positions and supporting evidence. Any such fine recommended by the advisory board shall (i) not exceed an amount equal to the regular monthly Assessment for the Slip as of the date of the violation, and (ii) be collectible by Declarant as an Assessment in accordance with Section 4.07 below, and shall be used to defray the cost of rectifying the violation, with the excess, if any, applied to the general Common Expenses.

(b) Suspension. In the event of a continuing violation which, in Declarant's judgment, jeopardizes (i) the safety of persons or property, (ii) the structural integrity of the Docks or other Common Property, or (iii) the Lease or any of the licenses or permits necessary for the operation of the Marina, Declarant may immediately suspend the Owner's rights under this Declaration until such time as Declarant is satisfied that the violation or risk of harm has ceased.

(c) Correction. After notice from Declarant and a reasonable opportunity to cure the violation, Declarant may take such action as Declarant considers reasonably necessary in order to completely correct the violation at the Owner's expense, which expense shall be collectible as an Assessment in the manner provided in Section 4.07 below.

O.R. 727 PG 1888

(d) Other Remedies. In addition to the specific steps provided above, Declarant may take such other actions as may be available at law or in equity, all of which remedies shall be cumulative and not mutually exclusive. Declarant's failure to demand strict performance of this Declaration, the rules and other restrictions described herein at all times does not waive Declarant's right to fully enforce such restrictions in that instance or upon any future violation. The Owner of a Slip responsible (either directly or through that Owner's guests or invitees) for such a violation shall pay all costs incurred by Declarant in enforcing this Declaration, the rules and other restrictions described herein, and shall indemnify and hold Declarant, its agent and employees harmless against any claim arising from such enforcement action.

4.06 Common Expenses. The Common Expenses shall consist of all of the costs of administration, management and operation of the Marina, except the costs of any goods or services which are incurred by Declarant after receiving written notice from the Owners of seventy-five percent (75%) of the Slips directing Declarant not to procure such goods or services as a matter of Common Expense. The Common Expenses shall include, without limitation, the costs of:

- (a) Maintenance of the Common Property and Limited Common Property, except as otherwise specified in Section 4.01;
- (b) Marina insurance premiums, as described in Section 4.02;
- (c) Marina utilities serving the Common Property and cable television service for all Slips, as described in Section 4.03;
- (d) Taxes affecting the Common Property;
- (e) Rent and other sums due under the Lease;
- (f) Replacement of the Common Property as necessary;
- (g) Any other action reasonably necessary or desirable, in Declarant's judgment, to keep the Common Property clean, orderly and safe in condition and appearance, or to preserve or enhance the value of the Slips;
- (h) Creation of reserve funds which, together with future deposits thereto, will be sufficient in Declarant's judgment to cover the cost of anticipated future improvements and replacements of the Common Property;
- (i) Any other action approved by Owners of seventy-five percent (75%) of the Slips; and
- (j) Repayment (with interest) of funds borrowed for any of the foregoing purposes.

4.07 Assessments, Etc. The Common Expenses shall be assessed and paid by the Owners to Declarant in the following manner:

O. R. 727 PG 1889

(a) General Assessments. All Common Expenses attributable to the Marina generally (and not to an individual Owner or that Owner's Slip) shall be borne by all Owners pro rata, in accordance with the number of Slips owned by each.

(b) Individual Assessments. In addition to the general Common Expenses described in (a) above, each Owner shall pay as an additional Assessment those Common Expenses or costs attributable solely to that Owner or Slip such as, for example, the costs of repairing certain damage to the Limited Common Property as described in Section 4.01(a), or the cost of enforcing this Declaration or the rules of the Marina as described in Section 4.05 (including without limitation any fines imposed or corrective costs incurred by Declarant).

(c) Nature of Obligation. All Assessments (including any amounts due under (b) above), together with interest thereon at the rate described below and all costs of collection (including reasonable attorney's fees, whether incurred at or before trial, on appeal or in bankruptcy proceedings) shall constitute a personal obligation of the Owner of the Slip as of the date the Assessment is fixed and such Owner's heirs, successors and assigns, and shall be payable to Declarant on demand. The Assessments as to each Slip, together with interest and costs of collection as herein provided, shall be a charge and continuing lien upon the Slip, which lien shall be enforceable by Declarant by way of a foreclosure action in a court of competent jurisdiction. The lien of the Assessments shall be subordinate to any Mortgage recorded prior to the date as of which the particular Assessment was determined, but not to any future advance made under that Mortgage after such Assessment arises; provided, however, that such subordination shall apply only to Assessments which become due and payable prior to a sale of the Slip pursuant to a decree of foreclosure, or any transfer in lieu thereof.

(d) Payment Date. General Assessments levied pursuant to (a) above shall be payable monthly, in advance, on the first day of each calendar month, based on a budget prepared by Declarant and distributed to the Owners effective January 1 of each year (or the first day of any different fiscal year that Declarant may hereafter adopt for that purpose). All special Assessments for Common Expenses not included in an annual budget, and any individual Assessments levied by Declarant in accordance with (b) above, shall be due and payable as of the first day of the calendar month following the month in which such Assessment is established by Declarant.

(e) Interest; Late Charges. In addition to the remedies provided in this Article Four, (i) all Assessments shall bear interest at the lesser of eighteen percent (18%) per annum or the highest rate allowed by law beginning thirty (30) days after they are due, and (ii) a late charge of four percent (4%) of any Assessment shall be imposed if full payment is not received by Declarant within fifteen (15) days after such Assessment is due.

O. R. 727 PG 1890

ARTICLE FIVE

CONDEMNATION, CASUALTY, ETC.

5.01 Condemnation. In the event all or any part of the Marina is taken by condemnation or comparable government action, Declarant shall have the sole and exclusive right and obligation, on behalf of all Owners and Mortgagees to apply for and receive any award or other compensation given as a result, to be held by Declarant in trust for the benefit of the Owners and disbursed as provided in this Section 5.01.

(a) Partial. In the event part of the Marina is taken by condemnation or comparable government action, the remainder of the Marina shall be restored as nearly as possible to its condition prior to the taking. The cost of such restoration shall be paid first from the award, if any, recovered by Declarant on behalf of the Owners, and thereafter by Assessments of all Owners as a matter of Common Expense. Any surplus award remaining after such restoration shall be held by Declarant for the benefit of the Owners, to defray future Common Expenses; provided, however, that if any Slips are taken by condemnation and cannot be replaced or restored by Declarant, the Owners thereof (jointly with their Mortgagees, if any) shall first be paid a refund in the amount, if any, calculated in accordance with Section 5.03 from the award received by Declarant on account of such taking, and any deficiency in the amount of that refund shall be paid by Declarant.

(b) Total. In the event that (i) the entire Marina is taken by condemnation or comparable government action, or (ii) the Lease is terminated prior to its original expiration date (except by virtue of Section 5.02(b) below) for reasons not the fault of any Owner, then each Owner shall receive (jointly with that Owner's Mortgagee, if any) a prorated refund in the same manner and from the same source as described in (a) above.

5.02 Casualty. Declarant shall be solely responsible for filing and adjusting claims under any insurance policies maintained as a matter of Common Expense, as described in Section 4.02 above, and shall hold and apply any such insurance proceeds as described herein.

(a) Reconstruction. Unless the Marina is terminated as described in (b) below, Declarant shall rebuild or replace any casualty damage as nearly as possible to its condition prior to the casualty, first applying any insurance proceeds received by Declarant, and thereafter levying Assessments against the Owners for any deficiency as a matter of Common Expense. Any excess insurance proceeds remaining after all costs of repairing or replacing the casualty damage have been paid shall be held by Declarant for the benefit of the Owners to defray future Common Expenses.

(b) Termination. Upon the occurrence of any casualty damage to the Marina, (i) if all of the Owners and Mortgagees elect in writing to terminate this Declaration and the Marina, or (ii) if all of the Slips are damaged or destroyed, and Declarant is unable (after exercising all reasonable efforts and diligence) to

O. R. 727 PG 1891

obtain the necessary permits or government approvals for the repair or replacement of such damage, Declarant shall distribute any net insurance proceeds (after deducting the costs of filing and adjusting the insurance claims) to the Owners (jointly with their Mortgagees, if any) ratably, in proportion to the relative amounts of the refunds calculated for each under Section 5.03 below.

5.03 Refund. Subject to the limitations and sources of payment described above, the refund to be paid under certain circumstances described in Sections 5.01 and 5.02 shall be calculated for each Slip by multiplying the original purchase price first paid to Declarant for that Slip by a fraction, the numerator of which shall be the number of months of the original 25-year Lease term remaining as of the date of the event causing the termination of that Slip, and the denominator of which shall be the total number of months of the original 25-year Lease term which remained as of the time that Slip was first sold by Declarant.

ARTICLE SIX

AMENDMENT, ETC.

6.01 Amendment.

(a) Adoption. All amendments of this Declaration must be approved in writing by Declarant and a majority of the Owners, if other than Declarant, except for:

- (i) Additions and withdrawals of property from this Declaration pursuant to Section 2.05 above;
- (ii) Termination of this Declaration under the circumstances described in Article Five above;
- (iii) Amendments which shall discriminate against any Slip or change its boundaries or share of the Common Expenses, unless the Owner and Mortgagee (if any) of that Slip shall consent in writing;
- (iv) Any amendment affecting Section 4.02 ("Insurance") or Article Five ("Condemnation, Casualty, Etc."), unless all Owners and Mortgagees consent in writing; and
- (v) Amendments required to maintain the Lease in effect, which need only be approved by Declarant.

(b) Execution. Any amendment of this Declaration shall be evidenced by a certificate executed by Declarant reciting (i) the exact nature of the amendment, and (ii) the date and manner of its adoption, which certificate shall be filed in the public records of St. Johns County, Florida.

6.02 Assignment. In addition to the amendments described in Section 6.01 above, Declarant shall have the sole and exclusive right at any time to assign

O.R. 727 PG 1892

to and withdraw from such other person or entity as Declarant may select, any of the rights, powers, privileges and easements granted to or reserved by Declarant herein. In this regard, Declarant may (but need not) hereafter establish an association of the Owners to which Declarant may grant any of the foregoing rights or powers, and each Owner shall automatically become a member of any such association upon its formation, without further requirements of joinder or execution of any instrument. To the extent Declarant chooses to assign or withdraw any of the foregoing rights, powers, privileges or easements hereunder, Declarant shall file an instrument in the public records of St. Johns County, Florida specifically describing (i) this Declaration, (ii) the assignee, (iii) the right, power, privilege or easement affected, and (iv) such further terms or conditions as Declarant may elect to include.

ARTICLE SEVEN

MISCELLANEOUS

7.01 Notice. Any notice or consent to be given under this Declaration must be in writing, and shall be given when (i) hand delivered, (ii) sent by private courier, or (iii) deposited in the United States mail, first-class postage prepaid, and addressed:

(a) If to Declarant, at 57 Comares Avenue, St. Augustine, Florida 32084, or such other address as Declarant may hereafter designate by written notice to the Owners and Mortgagees; and

(b) If the Owners or the Mortgagees, at such address as each of them last furnished to Declarant in writing, it being the express responsibility of such Owners and Mortgagees to maintain a current address listing with Declarant.

7.02 Severability. This Declaration shall be severable, so that the invalidity, in whole or in part, of any provision hereof shall not affect the validity or enforceability of the remainder of this Declaration.

7.03 Private Rights. The rights, privileges and easements established by this Declaration (i) shall be for the benefit of and restricted solely to those persons and entities herein expressly described, and (ii) without Declarant's written consent, shall not be assignable or transferable except in conjunction with a complete transfer of a Slip. In no event shall this Declaration be construed to create any rights in or for the benefit of the general public.

7.04 Effect. This Declaration shall run with the land and shall bind and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

O.R. 727 PG 1893

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

JAMES A. PONCE, SR. and JACQUELINE S. PONCE, his wife

John A. Harkin
Bonnie Goldsmith

By: David M. Ponce
Attorney-in-Fact

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 12th day of December, 1986, by David M. Ponce as attorney-in-fact on behalf of James A. Ponce, Sr. and Jacqueline S. Ponce, his wife.

Bonnie Goldsmith
Notary Public, State of Florida at Large

My commission expires:

Notary Public, State of Florida
My Commission Expires Feb. 21, 1989
Bonded Thru Troy Fain - Insurance, Inc.

393h

COPY



O.R. 727 PG 1894

SUBMERGED LAND

Survey description of a part of Davis Shores Subdivision, Ocean View Section Block 1, parts of Lot 108, 109, 110 in Section 17, Township 7 South, Range 30 East, St. Johns County, Florida more particularly described as follows:

Commence at the Southwest corner of Lot 16, Block 31, run thence N 64° 33' E along the Southeast line of Lot 16 Block 3 a distance of 45.22 feet to a point; thence S 34° 39' E 361.53 feet to a point on the approximate high water line of Salt Run, (elevation 3.1 feet N.G.V.D.) and the Point of Beginning; thence N 61° 47' 16" E 185.90 feet; thence S 28° 12' 44" E 38.85 feet; thence N 61° 47' 16" E 85.30 feet; thence N 28° 12' 44" W 28.85 feet; thence N 61° 47' 16" E 90.20 feet; thence S 28° 12' 44" E 24.10 feet; N 61° 47' 16" E 76.10 feet; thence N 28° 12' 44" W 24.10 feet; thence N 61° 47' 16" E 92.17 feet; thence S 28° 12' 44" E 29.70 feet; thence N 61° 47' 16" E 30.10 feet; thence N 28° 14' 38" W 360.47 feet; thence S 61° 47' 16" W 60.60 feet; thence S 28° 12' 44" E 49.80 feet; thence S 61° 47' 16" W 273.05 feet; thence S 27° 45' 00" E 37.99 feet; thence S 28° 06' 00" E 50.00 feet; thence S 28° 28' 00" E 50.00 feet; thence S 28° 49' 00" E 50.00 feet; thence S 29° 11' 00" E 50.00 feet; thence S 29° 32' 00" E 25.00 feet; thence S 61° 47' 16" W 30.12 feet; thence N 28° 12' 44" W 25.00 feet; thence S 61° 47' 16" W 32.30 feet; thence N 28° 12' 44" W 0.77 feet; thence S 61° 47' 16" W 22.07 feet; thence S 28° 12' 44" E 25.77 feet; thence S 61° 47' 16" W 146.60 feet; thence S 28° 12' 44" E 8.00 feet; thence N 61° 47' 16" E 3.40 feet to the Point of Beginning.

EXHIBIT A-1

O.R. 727 PG 1895

UPLAND

The following lots located in DAVIS SHORES SUBDIVISION, according to the plat thereof filed in Map Book 3, page 98, public records of St. Johns County, Florida:

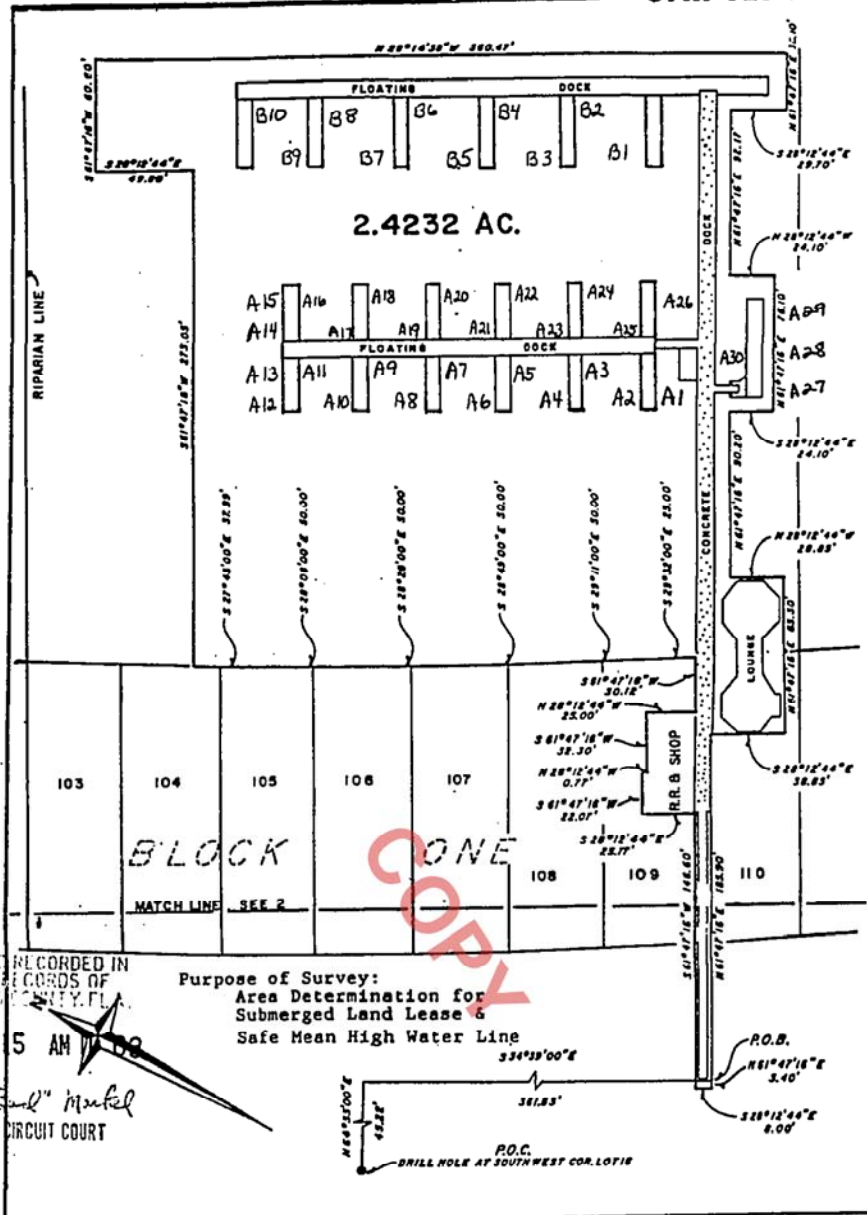
<u>Block</u>	<u>Lots</u>
1	100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113 and 114
31	4 through 16, inclusive, and 35 through 48, inclusive
32	30, 31 and that part of 32 more particularly described at Official Records Book 444, page 585, public records of St. Johns County, Florida

0626h

COPY

EXHIBIT A-2

O.R. 727 PG 1896



FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY, FLA.
1986 DEC 5 AM 11:08
Carl "Bud" Mikel
CLERK OF CIRCUIT COURT

Purpose of Survey:
Area Determination for
Submerged Land Lease &
Safe Mean High Water Line

CERTIFICATION: WE HEREBY CERTIFY, that the herein described LAND SURVEY & SKETCH are true and correct to the best of our knowledge and belief, that the herein was prepared under our direction and supervision, and that the herein conforms to the applicable requirements of Chapter 472 and Rule 21-HH (F.A.C.).

DATED THIS 27th DAY OF Dec., 1986
RALPH D. DEBUZZIO & ASSOCIATES, INC.
Ralph D. Debuizio
JOHN R. VAN NORMAN JR., PLS FL. REG NO. 1537
INVALID UNLESS EMBOSSED WITH SURVEYOR'S IMPRESSION SEAL

Ralph D. Debuizio & Associates, Inc.	
DATE: 10-17-86	REVISIONS
P.B. 3 Pg. 98	DATE DESCRIPTION
JOB NO. 86-228	
OWN. BY: MDH	

88 RIBERIA ST., SUITE 400, ST. AUGUSTINE, FLORIDA, 32084
CRYSTAL BIVER
ST. LEONARD (904) 824-3035

EXHIBIT B

90 825

FIRST SUPPLEMENTAL DECLARATION
OF COVENANTS OF
CONCH HOUSE MARINA

THIS SUPPLEMENTAL DECLARATION OF COVENANTS (the "Supplement")
is made as of the 8th day of January, 1990;

WITNESSETH:

WHEREAS, James A. Ponce, Sr. and Jacqueline S. Ponce, his wife (collectively,
"Declarant") are the parties identified as such in that Declaration of Covenants dated
December 12, 1986 which is filed in Official Records Book 727, page 1881, public records
of St. Johns County, Florida (the "Declaration," which is incorporated herein by this
reference, and all defined terms contained in this Supplement shall have the same
meanings ascribed to them in the Declaration); and

WHEREAS, the Lease has been expanded to encompass that additional
Submerged Land which is described in the attached Exhibit A-3 (the "Expansion Leased
Land"), and Declarant has constructed additional Slips within the Expansion Leased Land,
and desires to include that Expansion Leased Land and those additional Slips within the
definitions of the terms "Submerged Land" and "Slips," respectively, and to extend the
operation of the Declaration thereto;

NOW, THEREFORE, in consideration of the foregoing, the sum of \$1.00 and the
mutual benefits to be derived herefrom, it is declared as follows:

1. Addition. Declarant hereby annexes to the Marina all of Declarant's
leasehold interest in that Expansion Leased Land described in the attached Exhibit A-3,
together with the additional Slips constructed within that Expansion Leased Land as
depicted in the attached Exhibit B-1, all pursuant to the authority reserved by Declarant
under Section 2.05 of the Declaration. To that end, the Declaration is hereby specifically
amended pro tanto to reflect that the additional Slips shall be included within the
definition of the term "Slips" wherever used in the Declaration, and the Expansion
Leased Land shall be included within the term "Submerged Land," as fully as if the
attached Exhibits A-3 and B-1 had been included in the Declaration at the time of its
original execution.

2. Effect. Except as specifically amended in this Supplement, the Declaration
shall remain in full force and effect as originally executed. This Supplement shall run
with the land and shall bind and inure to the benefit of the parties hereto, their
respective successors and permitted assigns.

THIS INSTRUMENT PREPARED BY:
ROBERT A. HEEMIN, Attorney
200 LAURA STREET
JACKSONVILLE, FLORIDA 32202

Return to:

O.R. 843 PG 0303

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

JAMES A. PONCE, SR. and JACQUELINE S. PONCE, his wife

[Signature]
Alice E. Heller

By: [Signature]
Attorney-in-Fact

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 8th day of January, 1990, by David M. Ponce, as attorney-in-fact on behalf of James A. Ponce, Sr. and Jacqueline S. Ponce, his wife.

Alice E. Heller
Notary Public
My commission expires:

H6748



COPY

O.R. 843 PG 0304

A parcel of submerged lands lying Easterly of Lots 100 thru 114, Block 1, Davis Shores as recorded in Mapbook 3, page 98, Public Records of St. Johns County, Florida and lying in Section 16, Township 7 South, Range 30 East in the Waterway known as "Salt Run", said parcel being more particularly described as follows:

For a Point of Commencement use the Northwest corner of Lot 16, Block 31 of said Davis Shores, thence North $62^{\circ}32'00''$ East, 45.22 feet; thence South $36^{\circ}40'00''$ East, 361.53 feet to the Point of Beginning of the existing lease as recorded in O.R. 737, page 1550; thence along the next ten courses of the existing lease; thence North $59^{\circ}46'16''$ East, 185.90 feet; thence South $30^{\circ}13'44''$ East, 38.85 feet; thence North $59^{\circ}46'16''$ East, 85.30 feet; thence North $30^{\circ}13'44''$ West, 28.85 feet; thence North $59^{\circ}46'16''$ East, 90.20 feet; thence South $30^{\circ}13'44''$ East, 24.10 feet; thence North $59^{\circ}46'16''$ East, 76.10 feet; thence North $30^{\circ}13'44''$ West 24.10 feet; thence North $59^{\circ}46'16''$ East, 92.17 feet; thence South $30^{\circ}13'44''$ East, 29.70 feet to the Point of Beginning of the Proposed Lease; thence South $59^{\circ}46'14''$ West, 40 feet; thence South $30^{\circ}13'44''$ East, 161.00 feet; thence North $59^{\circ}46'14''$ East, 227.0 feet; thence North $30^{\circ}15'38''$ West, 540.00 feet; thence South $59^{\circ}46'14''$ West, 237.00 feet; thence South $30^{\circ}13'44''$ East, 68.33 feet to a point on the existing lease boundary and then the next 5 courses along said existing lease boundary; thence North $59^{\circ}46'16''$ East, 19.6 feet; thence North $30^{\circ}13'44''$ West, 49.80 feet; thence North $59^{\circ}46'16''$ East, 60.60 feet; thence South $30^{\circ}15'38''$ East, 360.47 feet; thence South $59^{\circ}46'16''$ West, 30.10 feet to the Point of Beginning. Said proposed lease parcel contains +2.26 acres.

COPY

EXHIBIT A-3

O.R. 843 PG 0305

FILED AND RECORDED IN
PUBLIC RECORDS OF
DUCK COUNTY, FLA.

90 JAN 11 PM 12:09

[Signature]
CLERK OF CIRCUIT COURT

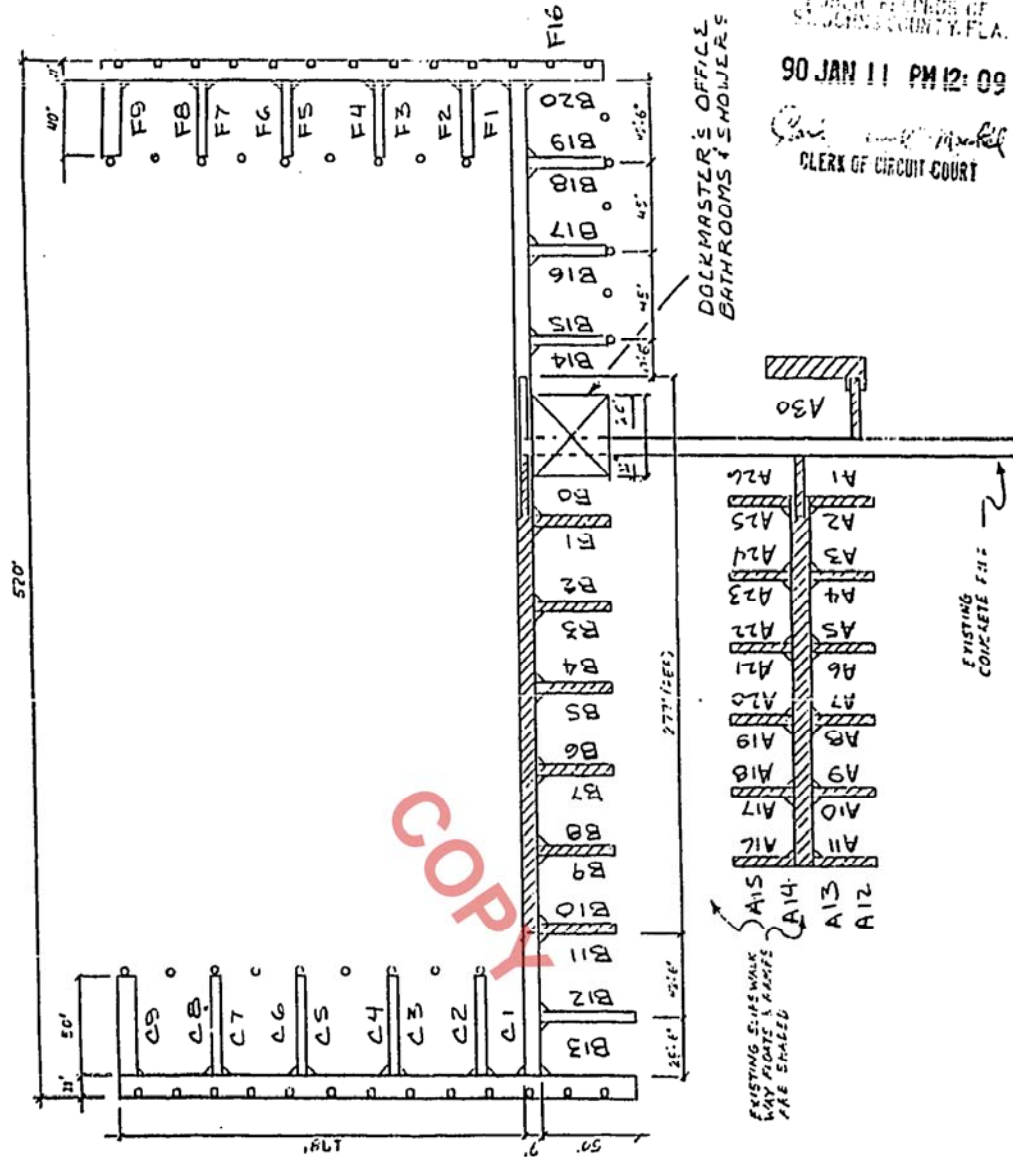


Exhibit B-1

PREPARED BY AND RETURN TO:
Robert A. Heckin, Esq.
4347-7 University Blvd. South
Jacksonville, Florida 32216

Recorded in Public Records St. Johns County, FL
Clerk# 97023183 O.R. 1249 PG 247 04:12PM 07/02/1997
Recording \$9.00 Surcharge \$1.50

3666

THIRD AMENDMENT
TO
DECLARATION OF COVENANTS OF
CONCH HOUSE MARINA

THIS AMENDMENT is made as of the 1ST day of JULY, 1997 by
JAMES A. PONCE, SR. and JACQUELINE S. PONCE, his wife (collectively,
"Declarant").

WITNESSETH

WHEREAS, Declarant is the party identified as such in that Declaration of Covenants
of Conch House Marina dated December 12, 1986 which is filed in Official Records Book
727, page 1881, as modified by that First Supplemental Declaration of Covenants of Conch
House Marina recorded in Official Records Book 843, page 302, and by that Second
Supplemental Declaration of Covenants of Conch House Marina recorded in Official Records
Book 857, page 1180, all of the public records of St. Johns County, Florida (collectively, the
"Declaration"); and

WHEREAS, the "Lease" as defined in the Declaration has been replaced, and
Declarant desires to amend the Declaration accordingly;

NOW, THEREFORE, in consideration of the foregoing premises, it is declared as
follows:

1. *Modification.* Section 1.07 of the Declaration is hereby amended to read in its
entirety as follows:

"1.07 "Lease" shall mean that Sovereignty Submerged
Land Lease No. 550518482E between James Ponce, as lessee,
and the Board of Trustees of the Internal Improvement Trust
Fund of the State of Florida as lessor, effective July 29, 1986,
concerning the Submerged Land, as previously modified and as
replaced by that Submerged Land Lease between the City of St.
Augustine as Lessor and James A. Ponce, Sr., together with any
modifications and renewals thereof."

O.R. 1249 PG 0248

2. *Effect.* Except as specifically modified in this Amendment, the Declaration shall remain in full force and effect as originally executed. This Amendment shall run with the land and shall bind and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF, Declarant has executed this Amendment as of the day and year first above written.

JAMES A. PONCE, SR., and
JACQUELINE S. PONCE, his wife

[Signature]
Print Name Courtney Dean Scherer

By: [Signature]
David M. Ponce
Attorney-in-fact

[Signature]
Print Name EDWARD C. SPENCER

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 1ST day of JULY, 1997, by David M. Ponce, as attorney-in-fact on behalf of James A. Ponce, Sr. and Jacqueline S. Ponce, his wife, and who is personally known to me, or who produced _____ as identification.

[Signature]
Notary Public LYNN F. WRIGHT
My commission expires 07-23-99

A2362

 LYNN F. WRIGHT
MY COMMISSION # CC483035 EXPIRES
July 23, 1999
BONDED THRU TROY FAIN INSURANCE, INC.

3

RET →

PREPARED BY AND RETURN TO:
David J. Heekin, Esq.
David J. Heekin, P.A.
8705 Perimeter Park Boulevard, Suite 8
Jacksonville, Florida 32216

**FIFTH AMENDMENT
TO
DECLARATION OF COVENANTS OF
CONCH HOUSE MARINA**

THIS AMENDMENT is made as of the 1ST day of JANUARY, 2006, by CONCH HOUSE BUILDERS LLC, a Florida limited liability company, whose mailing address is 57 Comares Avenue, St. Augustine, Florida 32080 (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the successor "Declarant" under the Declaration of Covenants of Conch House Marina recorded in Official Records Book 727, page 1881, as amended by that First Supplemental Declaration of Convents of Conch House Marina recorded at Official Records Book 843, page 302, by that Second Supplemental Declaration of Covenants of Conch House Marina recorded at Official Records Book 857, page 1180, by that Third Supplemental Declaration of Covenants recorded at Official Records Book 903, page 812, by that Third Amendment to Declaration of Covenants recorded at Official Records Book 1249, page 247, and by that Fourth Amendment to the Declaration of Covenants of Conch House Marina recorded at Official Records Book 2612, page 950, all of the public records of St. Johns County, Florida (collectively, the "Declaration"); and

WHEREAS, the Declarant has constructed additional Slips within the Submerged Land and desires to include those additional Slips within the definition of the term "Slips" and to extend the operation of the Declaration thereto;

NOW, THEREFORE, in consideration of the foregoing premises, it is declared as follows:

1. *Modifications.* Pursuant to Sections 2.05 and 6.01(a)(i) of the Declaration:

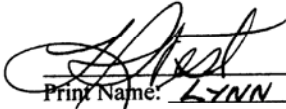
(a) *Slips.* The Slips shall mean those portions of the Marina more particularly described in Article 3 of the Declaration and identified by letter and number in the attached Exhibit B-3, which supersedes in its entirety those previous site plans of the Marina attached as Exhibit B to the original Declaration and Exhibits B-1 to the First Supplemental Declaration and Second Supplemental Declaration, and Exhibit B-2 to the Fourth Amendment described above.

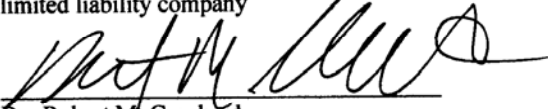
2. *Effect.* Except as expressly modified in this Amendment, the Declaration shall remain in full force and effect as originally executed and previously amended. This Amendment shall run with the land and shall bind and inure to the benefit of the parties hereto, their respective successors and permitted assigns.


IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

Witnesses:

CONCH HOUSE BUILDERS, LLC, a Florida limited liability company


Print Name: LYNN F. WEST


By: Robert M. Graubard
Its: Manager



Print Name: G.J. ANTONE

STATE OF FLORIDA
COUNTY OF ST. JOHNS

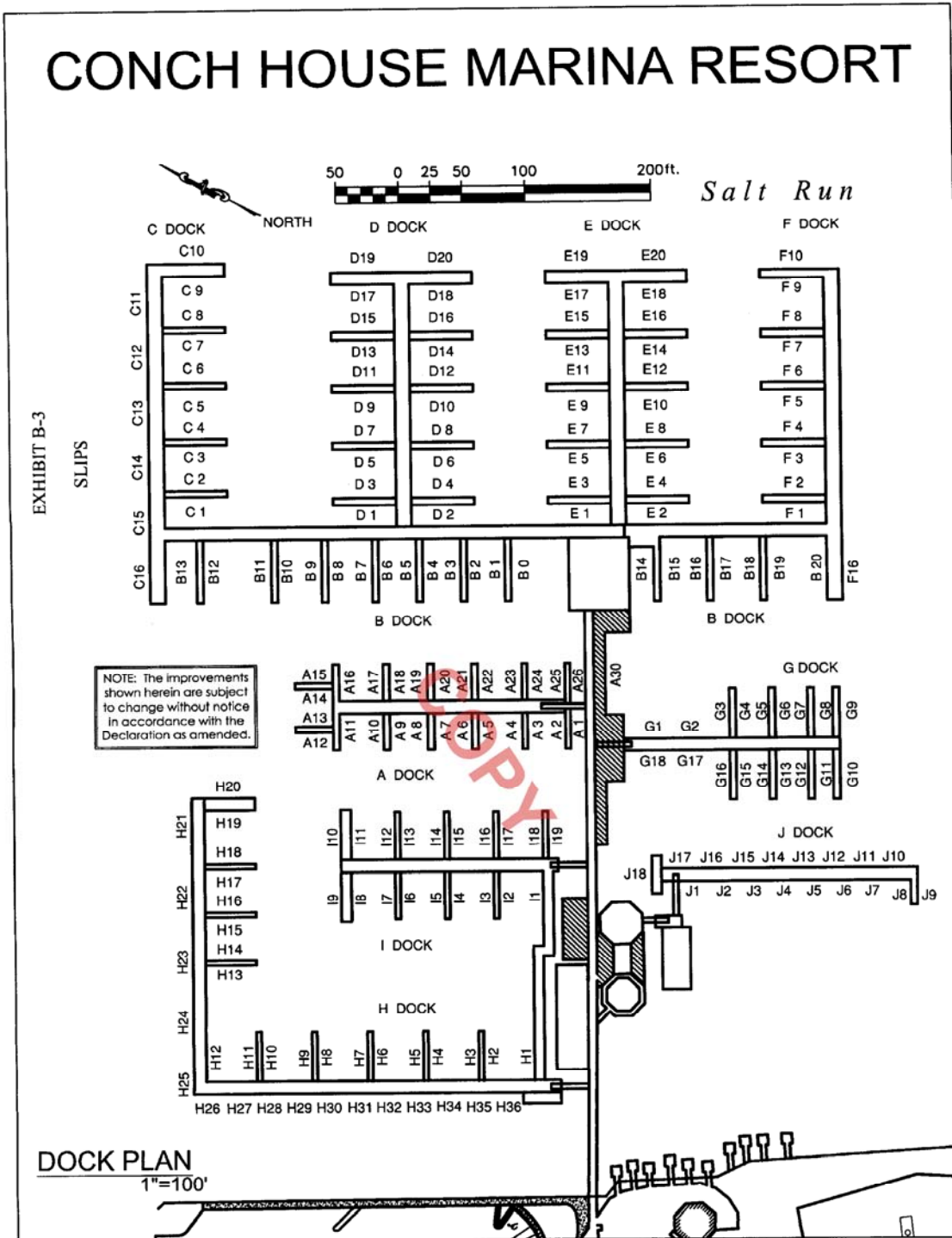
The foregoing instrument was acknowledged before me this 1ST day of JANUARY, 2006, by Robert M. Graubard, as Manager of Conch House Builders LLC, a Florida limited liability company, on behalf of the company. He [CHOOSE ONE:]

- is personally known to me OR
- produced a Florida driver's license as identification OR
- produced _____ as identification.

[NOTARY SEAL]


Print Name: LYNN F. WEST
Notary Public, State of Florida
Commission Number: DD 212016
My Commission Expires: 07-23-07





91 19806

O.R. 903 PG 0812

THIRD SUPPLEMENTAL DECLARATION
OF COVENANTS OF
CONCH HOUSE MARINA

THIS SUPPLEMENTAL DECLARATION OF COVENANTS (the
"Supplement") is made as of the 25th day of July, 1991;

W I T N E S S E T H :

WHEREAS, James A. Ponce, Sr. and Jacqueline S. Ponce, his wife (collectively, "Declarant") are the parties identified as such in that Declaration of Covenants dated December 12, 1986 which is filed in Official Records Book 727, page 1981, public records of St. Johns County, Florida and amended on January 8th, 1990 by the First Supplemental Declaration of Covenants and recorded in the Official Records Book 843, Page 0302, public records of St. Johns County, Florida, and the Second Supplemental Declaration of Covenants dated April 10, 1990 and recorded in the Official Records Book 857, Page 1180, public records of St. Johns County, Florida (the "Declaration", First Supplemental Declaration and Second Supplemental Declaration are incorporated herein by this reference, and all defined terms contained in this Supplement shall have the same meanings ascribed to them in the Declaration, First Supplement and Second Supplement); and

WHEREAS, Declarant has discovered an error in the original description of the uplands as described in the Declaration and set out in Exhibit A-2 attached to the Declaration, and

WHEREAS, Declarant seeks to correct said description and Exhibit A-2 attached to the Declaration and acting in accordance with Section 2.05 of the Declaration;

NOW THEREFORE, in consideration of the foregoing, the sum of \$1.00 and the mutual benefits to be derived herefrom, it is declared as follows:

1. Withdrawal. Declarant hereby withdraws and releases from the Marina Uplands the following lots located in Davis Shores Subdivision, according to the plat thereof filed in Map Book 3, Page 98 public records of St. Johns County, Florida, Block 32, Lots 30, 31 and that part of 32 more particularly described at Official Records Book 444 Page 585, public records of St. Johns County, Florida, all pursuant to the authority reserved by Declarant under Section 2.05 of the Declaration. To that end, the Declaration is hereby specifically amended **pro tanto** to reflect that only the remaining lots be included within the definition of the term "Upland" wherever used in the Declaration, as fully as if this Supplement and Withdrawal had been included in the Declaration at the time of its original execution.

O.R. 903 PG 0813

2. Effect. Except as specifically amended in this Supplement, the Declaration, the First Supplemental Declaration and the Second Supplemental Declaration shall remain in full force and effect as originally executed. This Supplement shall run with the land and shall bind and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF, This declaration has been executed as of the day and year first above written.

Signed, sealed and delivered in the presence of:

JAMES A. PONCE, SR. and JACQUELINE S. PONCE, his wife

Carol A. Lagasse
CAROL A. LAGASSE

By: *James A. Ponce Sr.*
Attorney-in-fact
David-Mr-Ponce-
JAMES A. PONCE, SR.
Jacqueline S. Ponce
JACQUELINE S. PONCE

Lexie Goode
LEXIE GOODE

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 25th day of July 1991, by ~~David-Mr-Ponce-as-attorney-in-fact-on~~ behalf of James A. Ponce, Sr. and Jacqueline S. Ponce, his wife.

COPY

Carol A. Lagasse
Notary Public
My commission expires: 11/13/92

This Instrument prepared by: David M. Ponce
57 Comares Avenue
St. Augustine, Florida 32084

FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY, FLA.

91 JUL 29 PM 3:20

Paul "Bank" Munkel
CLERK OF CIRCUIT COURT