

Prepared By and Return To:
Harbor Title & Escrow Company
3755 7th Terrace, Suite 301
Vero Beach, Florida 32960

IN THE RECORDS OF
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA.

1128222

99 APR 28 PM 2:17

HARBOR ACCESS, DOCKING AND DECK OVERHANG AGREEMENT

THIS AGREEMENT is made and entered into this 26th day of April, 1999, by GHA HARBOR, LTD., a Florida limited partnership (the "Grantor").

RECITALS

A. Grantor is the owner of that certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Grand Harbor Yacht Basin").

B. Grantor is the owner of that certain real property more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Docking Property"). The Docking Property is located within and part of the Grand Harbor Yacht Basin.

C. Grantor is the owner of that certain property more particularly described on Exhibit "C" attached hereto and made a part hereof (the "North Harbor Village Property").

D. Grantor desires to provide for harbor access, docking and other related purposes as hereinafter provided over, under and across a portion of the Grand Harbor Yacht Basin and the Docking Property for the benefit of the North Harbor Village Property and for the benefit of property owners within North Harbor Village.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, representations and agreements contained in this Agreement, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, it is agreed as follows:

1. Incorporation of Recitals. The recitals to this Agreement are true and correct and are hereby incorporated into and made a part of this Agreement.

2. Grant, Dedication and License of Harbor Access and Docking Rights. Grantor hereby grants and dedicates for the benefit of all owners of the North Harbor Village Property and their successors, assigns, agents, contractors and subcontractors the following:

- (a) a perpetual non-exclusive docking easement, dedication and license (the "Docking Rights") in favor of and appurtenant to the North Harbor Village Property over, under and across the Docking Property only for the purpose of excavating, constructing, using and maintaining docking structures, dolphin pilings and/or other related structures and other allied uses pertaining thereto. Each property owner within the North Harbor Village Property shall use and enjoy the Docking Rights in such a manner as to avoid and/or minimize interference with all other adjacent property owners within the North Harbor Village Property so that they may also use and enjoy the Docking Rights. Each property owner within North Harbor Village shall use and enjoy the Docking Rights which are adjacent to and nearby their upland property (and no other portion of the Docking Rights) in such a manner so that all other property owners within North Harbor Village may also use and enjoy the Docking Rights which are adjacent to and nearby their upland property.

OR 1270 pg 1048

28.50
6.00
1.00

- (b) a perpetual non-exclusive easement, dedication and license (the "Access Rights") in favor of and appurtenant to the North Harbor Village Property over and across the Grand Harbor Yacht Basin for the purpose of ingress and egress as may be necessary for construction, repair, replacement, maintenance and/or use and enjoyment of the Docking Rights.

3. Indemnification. Each property owner within North Harbor Village shall maintain comprehensive general liability insurance with respect to the Docking Property, with a limit of not less than \$500,000.00, under which policy Grantor shall be an additional insured and shall be entitled to at least thirty (30) days' notice of any cancellation of said insurance. Each property owner within North Harbor Village shall be liable for any personal injury or damage to real and personal property which may result from the use of the Docking Property by them, their agents, contractors, subcontractors, designees, invitees, or licensees and each property owner within North Harbor Village shall indemnify, defend and hold Grantor harmless from such damages or costs incurred by Grantor by virtue thereof.

4. Grant of Additional Rights by Grantor. The grant of the Docking Rights and Access Rights shall in no way restrict the right of Grantor to grant other easements, dedications and licenses or make other uses of the Docking Property or Access Property so long as such other grants and uses are not inconsistent with the rights of the property owners of North Harbor Village provided hereunder.

5. Improvements to Docking Property. Every property owner within North Harbor Village shall not make any improvements whatsoever to the Docking Property without first obtaining the written consent of the Grantor. Failure to comply with this provision shall result in the termination of the Docking Rights.

6. Maintenance of Docking Property. Every property owner within North Harbor Village hereby agrees and acknowledges that it is their responsibility to maintain all structures and improvements located within the Docking Property, including, not but limited to, the docking structures, dolphin pilings, walkways and stairs, mooring facilities, sea walls, rip-rap and all other related structures. Every property owner within North Harbor Village shall maintain all structures and improvements located within the Docking Property in the same quality and condition as the Grand Harbor Yacht Basin. If any property owner within North Harbor Village fails to maintain the Docking Property in said condition, Grantor shall have the right, but not the obligation, to so maintain the Docking Property and charge 125% of the cost thereof. Further, failure to comply with this provision shall result in the termination of the Docking Right. Notwithstanding anything herein to the contrary or otherwise, if the North Harbor Village Property Owners Association, Inc. decides to maintain the Docking Property (as part of its general maintenance obligation or otherwise), each owner within North Harbor Village shall pay their applicable portion of the expenses associated with the maintenance of the Docking Property and shall be relieved of the maintenance obligations hereunder. There shall be two different levels of maintenance assessments: (1) for Lots within North Harbor Village with a walkway parallel to the upland property and (2) for Lots without walkways parallel thereto but with docking structures only.

7. Grant, Dedication and License of Overhang Rights. Grantor hereby provides each property owner within North Harbor Village and their successors, assigns, agents, contractors and subcontractors the following:

- (a) a perpetual non-exclusive overhang easement, dedication and license (the "Overhang Rights") in favor of and appurtenant to the North Harbor Village Property over, under and across the Docking Property for the purposes of allowing cantilevered decks, porches, walkways, patios and railings and/or other related structures to overhang and intrude into the Docking Property; provided, however, the extent of the Overhang Rights shall be limited to three and one-half feet (3.5') from the North Harbor Village Property onto the Docking Property.

8. Miscellaneous Provisions.

- (a) Assigns. This Agreement shall be binding upon and inure to the benefit of the

parties hereto, their respective representatives, successors and assigns.

- (b) **Further Assurances.** The parties hereto agree to execute any and all further instruments and documents and take all such action as may be reasonably required by any party hereto to effectuate the terms, provisions and intent of this Agreement.
- (c) **Amendment.** This Agreement may not be amended, modified, altered or changed in any respect except by further agreement in writing duly executed by the parties hereto.
- (d) **Severability.** If any of the provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to the persons or situations other than those as to which it shall have been invalid or unenforceable, shall not be affected thereby and shall continue to be valid and be in force to the fullest extent permitted by law.
- (e) **Captions.** The Agreement headings and captions contained in this Agreement are for convenience and reference only and in no way define, limit, or describe the scope of the intent of this Agreement.
- (f) **Construction.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require.
- (g) **Exercise of Rights.** Notwithstanding anything herein to the contrary, any rights granted to any property owner within North Harbor Village shall be exercised so as to avoid and/or minimize interference with the use and operation of the Grand Harbor Yacht Basin and any surrounding property owned by Grantor.
- (h) **Applicable Law.** The validity of this Agreement and all of its terms and provisions, as well as rights and duties of the parties hereunder, shall be interpreted and construed in accordance with the laws of the State of Florida with venue lying in Indian River County, Florida.
- (i) **Notices.** All notices which shall be given under this Agreement shall be made in writing by certified mail, return receipt requested, with property postage affixed, by telex, by telecopy or by hand-delivery addressed:

As to Grantor: GHA Harbor, Ltd.
2121 Grand Harbor Boulevard
Vero Beach, FL 32967
Attn: Managing Partner

Notice shall be deemed given upon hand-delivery, receipt of telex, receipt of telecopy or upon the date of execution of the return receipt or the date delivery is refused.

- (j) **Covenants Running with the Land.** It is intended that the terms, covenants and conditions set forth in this Agreement shall be construed as both covenants and conditions and that they shall run with the land and be affirmatively enforceable against the parties hereto, and any successor and assign thereof, and shall continue to be easements and covenants benefiting, binding, and running with the land.
- (k) **No Waiver.** No waiver of any default or breach by either party hereto shall be implied from any omission by the other party to take any action with respect to a default or breach. The waiver of any default in the performance of any term, covenant or condition of this Agreement shall not be deemed a waiver of any subsequent default in the performance of the same term, provision, or covenant, or any other term, provision or covenant of the Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written above.

Signed, sealed and delivered
in the presence of:

GRANTOR

GHA HARBOR, LTD., a Florida limited
partnership

By: GHA DEVELOPMENT, INC.,
a Florida corporation, its general
partner

Dawn M. Dalton
Name: DAWN M. DALTON

By: Ronald V. D'Haeseleer
Name: Ronald V. D'Haeseleer
Title: President

Debbi Fletcher
Name: DEBBI FLETCHER



STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 26th day of APRIL, 1999, by Ronald V. D'Haeseleer, President of GHA Development, Inc., a Florida corporation, as general partner of GHA Harbor, Ltd., a Florida limited partnership, on behalf of said entities, who is personally known to me.

My Commission Expires:



Dawn M. Dalton
Print Name DAWN M. DALTON
Notary Public, State of Florida

OR 1270 Pg 1051

EXHIBIT "A"

TRACT "A" YACHT BASIN, HARBOR VILLAGE PHASE I, GRAND HARBOR PLAT NO. 12, PLAT BOOK 13, PAGE 95, of the Public Records of Indian River County, Florida.

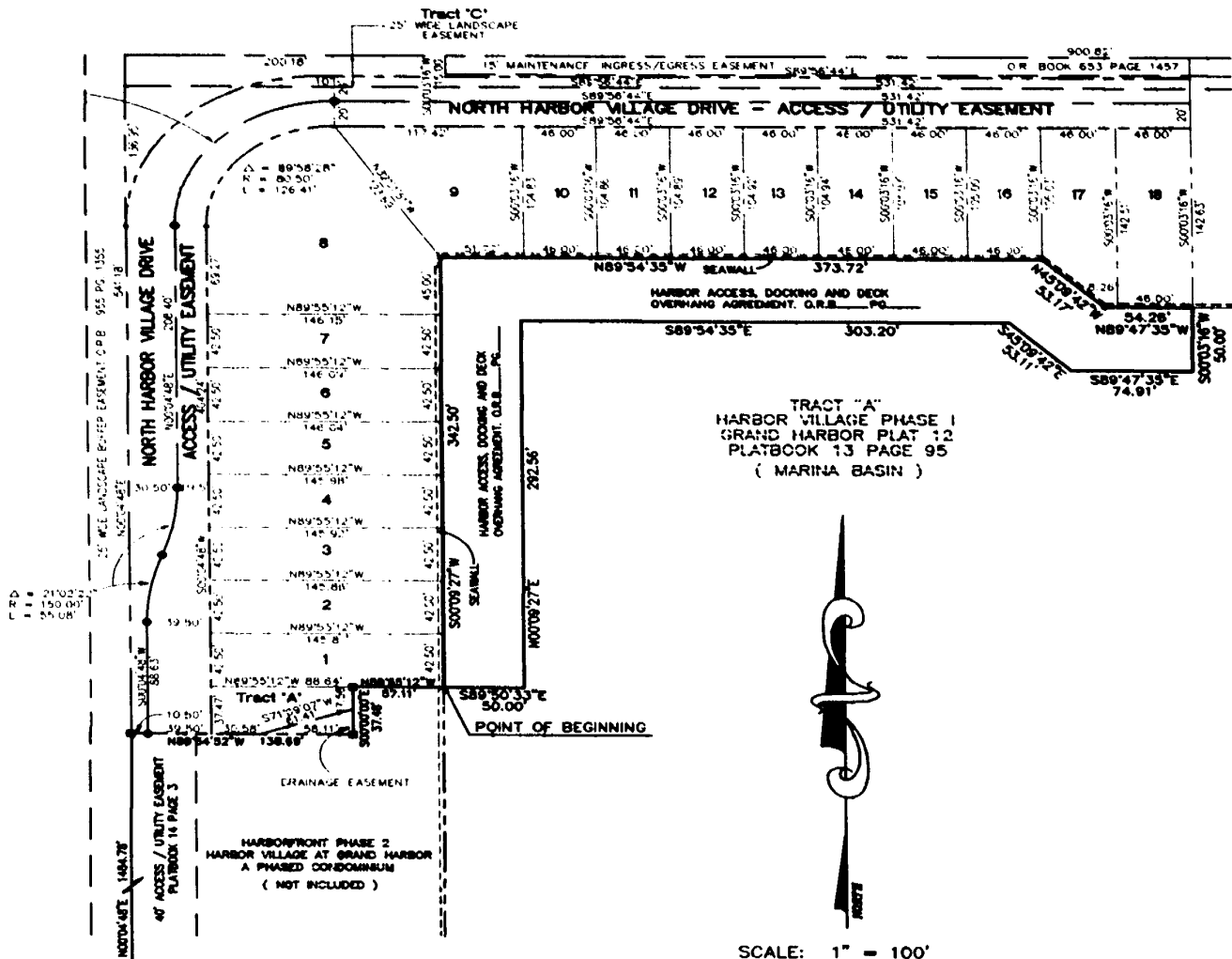
EXHIBIT "B"

SEE LEGAL DESCRIPTION AND SKETCH ATTACHED HERETO.

EXHIBIT "C"

LOTS 1 THROUGH 18, INCLUSIVE, NORTH HARBOR VILLAGE - GRAND HARBOR PLAT 20, PLAT BOOK 15, PAGE 123, of the Public Records of Indian River County, Florida.

SKETCH OF LEGAL DESCRIPTION HARBOR ACCESS, DOCKING AND DECK



LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN SECTION 13, TOWNSHIP 32 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 13, TOWNSHIP 32 SOUTH, RANGE 39 EAST; THENCE N04°04'48"E ALONG THE WEST LINE OF SECTION 13 A DISTANCE OF 1484.78 FEET; THENCE S89°54'52"E A DISTANCE OF 138.69 FEET; THENCE N00°00'00"E A DISTANCE OF 37.48 FEET; THENCE S89°55'12"E A DISTANCE OF 57.11 FEET TO THE POINT OF BEGINNING;

THENCE S89°50'33"E A DISTANCE OF 50.00 FEET; THENCE N00°09'27"E A DISTANCE OF 292.56 FEET; THENCE S89°54'35"E A DISTANCE OF 303.20 FEET; THENCE S45°09'42"E A DISTANCE OF 53.11 FEET; THENCE S89°47'35"E A DISTANCE OF 74.91 FEET; THENCE N00°03'16"E A DISTANCE OF 50.00 FEET; THENCE N89°47'35"W A DISTANCE OF 54.28 FEET; THENCE N45°09'42"W A DISTANCE OF 53.17 FEET; THENCE N89°54'35"W A DISTANCE OF 373.72 FEET; THENCE S00°09'27"W A DISTANCE OF 342.50 FEET BACK TO THE POINT OF BEGINNING.

CONTAINING 0.89 ACRES MORE OR LESS.

504712.dwg dsk (2006)

TITLE SHEET OF 1000

DATE: 6-21-02

PROJECT NO.: 90-4712

DESIGNED BY: MRP

CHECKED BY: MRP

DATE: 7-1-02

SCALE: 1" = 100'

SHEET: 1 OF 1

MASTELLER, MOLE & REED INC.

PROFESSIONAL ENGINEERS AND SURVEYORS
LAND SURVEYING ENGINEERS R.L. 0001

2200 14th Avenue, Vero Beach, Florida 32980 (888) 264-2660

MAP OF SURVEY FOR

HARBOR TITLE & ESCROW
COMPANY

NOT VALID WITHOUT THE SIGNATURE
AND THE ORIGINAL RAISED SEAL OF A
FLORIDA LICENSED SURVEYOR AND MAPPER.

END OF SHEET

OR1270PG1053