

Item  
# 10

Prepared by and Return to:  
Jay W. Livingston, Esq.  
Livingston & Sword, P.A.  
393 Palm Coast Pkwy SW #1  
Palm Coast, Florida 32137

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF FLAGLER  
BEACH AND 110 HOLLY AVE. CORPORATION AND FLAGLER  
BRIDGE BOATWORKS & MARINA, INC.**

**THIS SETTLEMENT AGREEMENT**, (herein referred to as the “Settlement Agreement”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF FLAGLER BEACH**, a Florida municipal corporation (herein referred to as the “City”), and the owner of the subject property, **110 Holly Ave. Corporation**, a Florida Corporation, whose address is P.O. Box 280, Flagler Beach, FL 32136 (herein referred to from time-to-time as the “Owner” regardless of whether singular or plural ownership status). **Flagler Bridge Boatworks and Marina, Inc.**, a Florida Corporation, whose address is 145 Lehigh Avenue, Flagler Beach, Florida 32136, (herein referred to from time-to-time as the “Operator”) is the operator of the Marina on the Subject Property, as those capitalized terms are defined herein, and is joining in this Settlement Agreement and consenting to be bound by its terms.

***WITNESSETH:***

**WHEREAS**, this Settlement Agreement is the result of a settlement of Case Number 2010 CA 000456 brought in the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida (the “Lawsuit”);

**WHEREAS**, on October 8, 2009, the City adopted Ordinance 2009-17, which changed, in part, both how the City regulates vessels within its jurisdiction and revised the regulations

applicable to marinas located within the Tourist Commercial zoning district;

**WHEREAS**, on September 16, 2010 the City adopted Ordinance 2010-13 making further revisions to the City's regulations affecting vessels and liveaboard vessels;

**WHEREAS**, Ordinance 2009-17 and Ordinance 2010-13 are collectively referred to herein as the "Ordinance";

**WHEREAS**, in addition to the regulation of vessels and the permitted uses allowed at a marina within the Tourist Commercial zoning district, the City also changed and modified the parking requirements applicable to marinas and boat slips;

**WHEREAS**, the Owner is the owner of fee simple title to certain real property consisting of approximately 2.077 acres of uplands and approximately 1.623 acres of submerged lands, with a total project area of 3.7 acres, located at 127 Lehigh Avenue in the City of Flagler Beach, Flagler County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (referred to herein as the "Subject Property");

**WHEREAS**, prior to the City's adoption of the Ordinance the Owner constructed the Marina as depicted in Exhibit "A" (the "Marina");

**WHEREAS**, on February 18, 1999, the Florida Department of Environmental Protection ("FDEP") issued permit # 18-140599-001-EI authorizing development of an 82-slip marina, which may be utilized, in part, by liveaboard vessels subject to the general and specific conditions of the permit;

**WHEREAS**, on October 31, 2005 the FDEP agreed to a modification to permit # 18-140559-001-EI and issued permit modification # 18-140599-004-EM, which, in part, modified the permit to specifically allowed 50 of the 82 slips to be utilized by liveaboards and houseboats subject to the general and specific conditions of the modification and the unchanged provisions of the original permit. The original permit and the modification are collectively referred to

herein as the “Permit”;

**WHEREAS**, in addition to the Permits the United States Army Corps of Engineers (“USACOE”) also issued permit # 1997-01994(IP-JG) authorizing, *inter alia*, construction of the marina facilities.;

**WHEREAS**, prior to the adoption of the Ordinance, the City considered boat slips as additional parking spaces and did not consider such boat slips to generate a need for additional vehicular parking;

**WHEREAS**, the Owner previously assembled two (2) floating structures, which are currently docked at slips at the Marina (the “Existing Floating Structures”);

**WHEREAS**, 110 Holly Ave. Corporation and Flagler Bridge Boatworks and Marina, Inc. filed the Lawsuit against the City alleging both state preemption of laws regulating vessels within the Intracoastal Waterway and interference with their vested rights;

**WHEREAS**, on November 15, 2016 the Circuit Court entered a Final Order and Judgment in the Lawsuit; and

**WHEREAS**, the Court held that the Ordinance is not preempted by Section 327.60, Florida Statutes; and

**WHEREAS**, the Court held that the Existing Floating Structures are floating structures and not vessels as defined by Section 327.02, Florida Statutes; and

**WHEREAS**, the Court held that the Owner and the Operator have vested and grandfathered rights to utilize and operate the Marina consistent with the rights and obligations set forth in the Permit, including the right to utilize 50 of the 82 slips for houseboats or liveaboard vessels and the remaining 32 slips for transient vessels; and

**WHEREAS**, the Court held that the Existing Floating Structures are lawful pre-existing nonconforming uses that may remain at the Marina; and

**WHEREAS**, the Court held that the assembly of small personal watercraft and vessels from premanufactured components for retail sale that are substantially similar to the Existing Floating Structures at the Marina is a lawful pre-existing nonconforming use that may continue at the Marina; and

**WHEREAS**, the Court held that the construction of boats, “i.e. the creating and building of a boat from scratch or parts made on-site” is not a lawful use at the Marina; and

**WHEREAS**, the Court held that the City did not violate the Plaintiffs substantive due process rights and that Plaintiffs were not entitled to any monetary judgment; and

**WHEREAS**, to clarify among themselves any issues not fully resolved by the Court and to avoid the possibility of appeal and further protracted litigation, the parties desire to enter into this Settlement Agreement to settle and resolve the Lawsuit.

**WHEREAS**, the City of Flagler Beach Commission finds that this Settlement Agreement is consistent with and a valid exercise of the City’s powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; the *City of Flagler Beach Charter*; all other relevant laws and regulations; and the City’s police powers;

**WHEREAS**, this Settlement Agreement shall constitute a full resolution and settlement of all claims arising from or related to the Lawsuit; and

**NOW THEREFORE**, it is hereby resolved and agreed by and between the City and the Owner that this Settlement Agreement is subject to the following terms and conditions:

**SECTION 1. RECITALS.**

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this Settlement Agreement upon which the City and the Owner have relied.

I

## **SECTION 2. REPRESENTATION OF OWNER.**

- (a) The Owner hereby represents and warrants to the City that it is the Owner of and controls the Subject Property.
- (b) The Owner agrees to use the Subject Property and operate the Marina according to all State and Federal permits and all regulations contained therein. This representation shall be binding on the Owner, Flagler Bridge Boatworks and Marina, Inc., and their respective heirs, tenant's successors and assigns.
- (c) This Settlement Agreement shall be recorded in the Public Records of Flagler County, Florida and shall run with the land and be binding on the Subject Property, and inure to benefit of the Owner and the Operator and their respective successors and assigns.

## **SECTION 3. PERMITTED PRIMARY USES**

The existing zoning for the Subject Property currently allows the following uses:

- (a) **Wet Slips.** The Subject Property shall be permitted to use the existing 82 wet slips for the docking and mooring of vessels, of any kind, as defined in the Constitution of the State of Florida and in the Florida Statutes, including, without limitation, sailboats, navigable barges, houseboats and liveaboard vessels, subject to the restrictions contained herein and in the Permit. The wet slips shall be permitted to be used as follows in addition to any other use allowed by the current Code of Ordinances and Land Development Code of the City of Flagler Beach as they may be amended from time to time:
  - i. Up to 50 slips for the mooring of houseboats, which may be assembled at the Marina as provided herein, or any other vessels, which may

constitute liveaboard vessels or houseboats as defined by state statutes.

Other than the two Existing Floating Structures allowed to remain pursuant to the Court's Order, no Floating Structures, as defined in Section 192.001, Florida Statutes, shall be allowed at the Marina. Notwithstanding other provisions contained herein, no additional parking shall be required for the 50 slips described in this paragraph.

- ii. 32 of the 82 permitted slips are to be used solely for transient vessels of any type. Notwithstanding other provisions contained herein, no additional parking shall be required for the 32 slips described in this paragraph.

(b) **Fueling Station.** Fueling facilities for vessels at the Marina are allowed by existing City Code and shall be permitted so long as all required State, Federal and local permits, and approvals, as may be required, are obtained. As long as such fueling facilities are located at the Marina so that they only serve transient vessels and vessels moored at the Marina and do not serve land based vehicles and cars no additional parking shall be required for fueling facilities at the marina.

(c) **Boat Assembly.** The assembly of houseboats at the Marina is permitted on the Subject Property subject to the provisions contained herein. The manufacture or construction of boats from scratch or parts made on-site is not permitted on the Subject Property ~~except the box units that will be assembled into the houseboat hulls may be constructed inside the building to be built as specified below.~~ For the purposes of this Settlement Agreement, the term "assembly" shall mean and include the construction and assembly of pre-

manufactured box units into the internal structure of the houseboat hulls, the application of fiberglass to such frames to make the hulls water tight and capable of navigation, and the assembly and finishing work of any and all decks, cockpits, living quarters, helms, engine transoms and other components and improvements necessary to complete the houseboats, for the mooring and berthing of such houseboats at the designated slips at the Marina. ~~Other than~~The construction of the boxes to be assembled into the houseboat hulls, the framing, assembly and finishing work for the living quarters, all are all permitted on-site at the Marina. All components and parts that are assembled in and on the finished hulls shall be pre-manufactured or built off-site before being assembled and integrated into the houseboats. Such onsite assembly shall include, without limitation but not be limited to, the houseboat hulls and the application of fiberglass to make the hulls water tight and capable of navigation. The assembly of the houseboat hulls shall be limited to hand tools and rollers and under no circumstances will chop guns, sprayers, injection molds or other industrial type fiberglass application methods and processes be allowed. The Owner shall construct a building at the Marina to be used for boat and in vessel repair and houseboat assembly manufacturing operations. Construction and assembly be allowed. Assembly of houseboats and construction of the boxes to be assembled into the houseboat hulls and the boxes they are comprised of, including shall be permitted at the Marina until all fiberglass application, shall be performed inside the building constructed for this purpose. The if (50) of the liveboard slips are occupied at which time the houseboat construction and assembly operation shall cease. After the



~~fifty (50) liveaboard slips are occupied the Owner shall also, when practicable, perform other portions of the~~ only be allowed to construct and assemble additional houseboats at the Marina, as provided herein, if an owner of a houseboat assembly inside chooses to leave the building Marina. No additional parking shall be required for the boat assembly operation, including any additional structures or buildings not existing at the time of this Settlement Agreement, so long as any such structures or buildings are solely for the purposes of vessel repair and the boat assembly operation.

- (a) **Dry Boat Storage.** The storage of up to 36 vessels and boats on trailers or storage racks is allowed on the Subject Property by the Permit and existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the Dry Boat Storage unless such use is increased to the storage of more than 36 vessels.
- (b) **Boat Supply Shop.** A ships store and bait and tackle shop on the Subject Property is permitted by existing code so long as the floor area does not exceed 4,000 square feet. Notwithstanding other provisions contained herein, no additional parking shall be required for the boat supply shop so long as the floor area does not exceed 4,000 square feet.
- (c) **Boat Maintenance & Repair.** The Marina is permitted to utilize the uplands of the Subject Property for vessel maintenance and repair. Such use may include, without limitation, a travel-lift or other facilities used to haul out vessels and boats docked at the Marina, and may also include any and all accessory uses necessary for the repairs and maintenance of vessels and boats. Notwithstanding other provisions contained herein, no additional parking shall

be required for boat maintenance and repair.

- (d) **Boat Ramp.** The existing boat ramp is permitted by existing code and may be expanded by the Owner subject to all required Federal, State and local permits.
- (e) **Caretaker Quarters.** One single family residential dwelling unit for the caretaker of the marina and his or her family is permitted by existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the caretaker quarters.
- (f) **Restroom and Laundry Facilities.** Attached or detached restroom facilities, including showers, and laundry facilities are permitted by existing code in any ship's store and bait and tack shop and elsewhere on the Subject Property for vessel owners and their guests. As long as the facilities and amenities described in this paragraph are only used by vessel owners and their guests or transient vessels that navigate to the Marina no additional parking shall be required for the uses described in this paragraph.
- (g) **Club House and Amenity Center.** A clubhouse or amenity center for owners of vessels docked at the Marina and their guests is permitted by existing code. As long as the clubhouse or amenity center is used only by owners of vessels docked at the Marina and their guests or transient vessels that navigate to the Marina no additional parking shall be required for the uses described in this paragraph.
- (h) **Restaurant.** An up to 185 seat waterfront restaurant and bar in the existing restaurant shell on the Property. The restaurant shall not be required to provide more than 49 regular parking spaces and 2 handicap spaces, in

addition to the boat slips that also may serve as parking spaces. One boat slip shall accommodate up to one hundred fifty square feet of restaurant floor area or per three fixed seats or as established by the Florida Building Code, whichever is greater.

The foregoing describes certain uses that are allowed by existing Code and judicial interpretation of existing Code. Nothing provided herein shall be interpreted to relieve the Owner, Operator, or any successor or assign from obtaining all necessary permits and approvals, including site plan approval, as applicable, unless such approvals have been specifically and expressly waived herein.

|

#### **SECTION 4. DENSITY.**

In addition to the use of up to 50 permitted slips for houseboats and liveaboard vessels, one residential dwelling unit on the upland portion of the Marina shall be allowed for the caretaker quarters, as provided in Section 3(e) above.

#### **SECTION 5. DEVELOPMENT STANDARDS.**

The following development standards shall apply to the Subject Property:

- (a) **Maximum Building Height.** The maximum building height, including the maximum height for dry boat storage, on the uplands of the Subject Property shall be thirty-five (35) feet.
- (b) **Parking.** The Subject Property shall be exempt from the additional parking requirements created by the Ordinance but shall not be exempt from any other parking requirements except as specifically and expressly provided herein. The Owner and/or the Operator shall use its best efforts to ensure that all employees, residents, invitees, licensees and guests, as the case may be, park on-site or other lawful private parking areas so as not to park on or adjacent to any public rights-of-way. The Owner and/or the Operator shall be permitted to utilize the vacant property located on the opposite side of 5<sup>th</sup> Street from the Subject Property, which is designated Flagler County Property Appraiser's Number 12-12-31-2425-00830-0010, if the Owner and/or the Operator is able to secure a lease for such purposes. Notwithstanding the foregoing, the Owner and/or the Operator is not waiving any rights it has to utilize public rights-of-way for parking purposes as is permitted by the City's Code of Municipal Ordinances and Land Development Regulations but shall use its best efforts to ensure that such use only occurs after available private parking areas on-site

or otherwise are full or in situations where temporary activities necessary for the development, improvement of the Subject Property or operation of any business thereon restrict the available private parking onsite or otherwise.

(c) **Buildings.** The locations and sizes of buildings shown on the attached Exhibit “A” are allowed and in conformity with this Settlement Agreement and any applicable local, State and Federal laws and regulations. Additional buildings and structures may be constructed to the extent they are permitted by this Settlement Agreement or the codes and ordinances of the City in place at the time of the proposed construction so long as any additional buildings or structures do not require additional parking beyond that already existing on the Subject Property.

(d) **Utilities.** The Subject Property is located wholly within the municipal limits of the City and is therefore within the City’s water and wastewater service areas. All proposed permanent uses within the Marina will be served by central water and sewer services. The City shall be the potable water and wastewater service provider for the Marina and the occupants of any slips with water and sewer connections.

#### **SECTION 6. EXISTING FLOATING STRUCTURES**

The two Existing Floating Structures docked at the Marina on the effective date of this Agreement shall be permitted to remain and will count towards the 50 houseboats permitted at the Marina.

#### **SECTION 7. LAND DEVELOPMENT CODE APPLICABILITY.**

This Settlement Agreement is the result of settled litigation and expressly recognizes and confirms the vested rights acquired by the Owner on the Subject Property prior to the adoption of

the challenged legislation. Those rights determined herein to have vested and which are no longer lawful conforming uses shall be allowed to continue as lawful nonconforming uses as provided in the Land Development Code. The Subject Property and the uses permitted thereon as specified in this Settlement Agreement shall be exempt from the provisions added by the Ordinances to the City's Code of Ordinances and Land Development Regulations. **The foregoing exemption shall include, without limitation, the following sections from the City's Code of Ordinances in effect on the date of this Agreement, which shall not apply to the Subject Property:**

- **Section 2.06.08.5(2)(d);**
- **Section 2.06.08.5(2)(e);**
- **Section 2.06.08.5(3)(b);**
- **Section 2.06.08.6 in its entirety;**
- **Section 2.06.08.7(1); and**
- **Section 2.06.08.7(3).**

**The vested rights outlined herein shall not be considered abandoned for any reason other than written notice by the Owner to the City of its intent to abandon the rights to develop and use the property as more specifically described herein.**

#### **SECTION 8. SETTLEMENT AND RELEASE OF CLAIMS**

The parties to this Settlement Agreement hereby release and forever discharge each other, their employees and agents and all other persons, firms or entities, whether known or unknown, from any and all claims arising out of the Lawsuit. The parties hereto warrant and represent that the claims in connection with which this release are given have not been assigned in whole or in part. Upon execution and recording of this Settlement Agreement the plaintiffs in the Lawsuit shall file a voluntary dismissal of the case with prejudice. After both parties have completed the

execution of this Settlement Agreement, counsel for the parties shall file all necessary documents to dismiss any pending motions and/or appeals. If any party is required to bring any litigation based upon a breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and paraprofessional fees, expenses and costs at trial and on appeal.

***/SIGNATURES ON NEXT PAGE(S)/***

Signed, sealed and delivered  
in the presence of:

110 Holly Ave Corporation,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Howard Sklar, President

Print Name: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

Flagler Bridge Boatworks and Marina Inc.,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Howard Sklar, President

Print Name: \_\_\_\_\_

STATE OF FLORIDA \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE this \_\_\_\_\_  
day of \_\_\_\_\_, 2017, by Howard Sklar, as President of both 110 Holly Ave  
Corporation, a Florida corporation, and Flagler Bridge Boatworks and Marina Inc., a Florida  
corporation who is personally known to me or who has produced  
\_\_\_\_\_ as identification, and who executed the foregoing  
Waiver, Release and Settlement Agreement and acknowledged to and before me that he/she  
executed said instrument for the purposes therein expressed freely and voluntarily.

\_\_\_\_\_  
NOTARY SIGNATURE  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Notary Comm. No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



City of Flagler Beach  
A Florida Municipal corporation

BY \_\_\_\_\_  
Linda Provencher, Mayor  
Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Penny Overstreet  
City Clerk

**EXHIBIT "A"**  
**"AS-BUILT" SURVEY**  
**RESTAURANT PARKING LAYOUT**  
**AND**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

original

Prepared by and Return to:  
Jay W. Livingston, Esq.  
Livingston & Sword, P.A.  
393 Palm Coast Pkwy SW #1  
Palm Coast, Florida 32137

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF FLAGLER  
BEACH AND 110 HOLLY AVE. CORPORATION AND FLAGLER  
BRIDGE BOATWORKS & MARINA, INC.**

**THIS SETTLEMENT AGREEMENT**, (herein referred to as the "Settlement Agreement") is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF FLAGLER BEACH**, a Florida municipal corporation (herein referred to as the "City"), and the owner of the subject property, **110 Holly Ave. Corporation**, a Florida Corporation, whose address is P.O. Box 280, Flagler Beach, FL 32136 (herein referred to from time-to-time as the "Owner" regardless of whether singular or plural ownership status). **Flagler Bridge Boatworks and Marina, Inc.**, a Florida Corporation, whose address is 145 Lchigh Avenue, Flagler Beach, Florida 32136, (herein referred to from time-to-time as the "Operator") is the operator of the Marina on the Subject Property, as those capitalized terms are defined herein, and is joining in this Settlement Agreement and consenting to be bound by its terms.

**WITNESSETH:**

**WHEREAS**, this Settlement Agreement is the result of a settlement of Case Number 2010 CA 000456 brought in the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida (the "Lawsuit");

**WHEREAS**, on October 8, 2009, the City adopted Ordinance 2009-17, which changed, in part, both how the City regulates vessels within its jurisdiction and revised the regulations

applicable to marinas located within the Tourist Commercial zoning district;

**WHEREAS**, on September 16, 2010 the City adopted Ordinance 2010-13 making further revisions to the City's regulations affecting vessels and liveaboard vessels;

**WHEREAS**, Ordinance 2009-17 and Ordinance 2010-13 are collectively referred to herein as the "Ordinance";

**WHEREAS**, in addition to the regulation of vessels and the permitted uses allowed at a marina within the Tourist Commercial zoning district, the City also changed and modified the parking requirements applicable to marinas and boat slips;

**WHEREAS**, the Owner is the owner of fee simple title to certain real property consisting of approximately 2.077 acres of uplands and approximately 1.623 acres of submerged lands, with a total project area of 3.7 acres, located at 127 Lehigh Avenue in the City of Flagler Beach, Flagler County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (referred to herein as the "Subject Property");

**WHEREAS**, prior to the City's adoption of the Ordinance the Owner constructed the Marina as depicted in Exhibit "A" (the "Marina");

**WHEREAS**, on February 18, 1999, the Florida Department of Environmental Protection ("FDEP") issued permit # 18-140599-001-EI authorizing development of an 82-slip marina, which may be utilized, in part, by liveaboard vessels subject to the general and specific conditions of the permit;

**WHEREAS**, on October 31, 2005 the FDEP agreed to a modification to permit # 18-140559-001-EI and issued permit modification # 18-140599-004-EM, which, in part, modified the permit to specifically allowed 50 of the 82 slips to be utilized by liveaboards and houseboats subject to the general and specific conditions of the modification and the unchanged provisions of the original permit. The original permit and the modification are collectively referred to herein as

the "Permit":

**WHEREAS**, in addition to the Permits the United States Army Corps of Engineers ("USACOE") also issued permit # 1997-01994(IP-JG) authorizing, *inter alia*, construction of the marina facilities;

**WHEREAS**, prior to the adoption of the Ordinance, the City considered boat slips as additional parking spaces and did not consider such boat slips to generate a need for additional vehicular parking;

**WHEREAS**, the Owner previously assembled two (2) floating structures, which are currently docked at slips at the Marina (the "Existing Floating Structures");

**WHEREAS**, 110 Holly Ave. Corporation and Flagler Bridge Boatworks and Marina, Inc. filed the Lawsuit against the City alleging both state preemption of laws regulating vessels within the Intracoastal Waterway and interference with their vested rights;

**WHEREAS**, on November 15, 2016 the Circuit Court entered a Final Order and Judgment in the Lawsuit; and

**WHEREAS**, the Court held that the Ordinance is not preempted by Section 327.60, Florida Statutes; and

**WHEREAS**, the Court held that the Existing Floating Structures are floating structures and not vessels as defined by Section 327.02, Florida Statutes; and

**WHEREAS**, the Court held that the Owner and the Operator have vested and grandfathered rights to utilize and operate the Marina consistent with the rights and obligations set forth in the Permit, including the right to utilize 50 of the 82 slips for houseboats or liveaboard vessels and the remaining 32 slips for transient vessels; and

**WHEREAS**, the Court held that the Existing Floating Structures are lawful pre-existing nonconforming uses that may remain at the Marina; and

**WHEREAS**, the Court held that the assembly of small personal watercraft and vessels from premanufactured components for retail sale that are substantially similar to the Existing Floating Structures at the Marina is a lawful pre-existing nonconforming use that may continue at the Marina; and

**WHEREAS**, the Court held that the construction of boats, "i.e. the creating and building of a boat from scratch or parts made on-site" is not a lawful use at the Marina; and

**WHEREAS**, the Court held that the City did not violate the Plaintiffs substantive due process rights and that Plaintiffs were not entitled to any monetary judgment; and

**WHEREAS**, to clarify among themselves any issues not fully resolved by the Court and to avoid the possibility of appeal and further protracted litigation, the parties desire to enter into this Settlement Agreement to settle and resolve the Lawsuit.

**WHEREAS**, the City of Flagler Beach Commission finds that this Settlement Agreement is consistent with and a valid exercise of the City's powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; the *City of Flagler Beach Charter*; all other relevant laws and regulations; and the City's police powers;

**WHEREAS**, this Settlement Agreement shall constitute a full resolution and settlement of all claims arising from or related to the Lawsuit; and

**NOW THEREFORE**, it is hereby resolved and agreed by and between the City and the Owner that this Settlement Agreement is subject to the following terms and conditions:

**SECTION 1. RECITALS.**

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this Settlement Agreement upon which the City and the Owner have relied.

## **SECTION 2. REPRESENTATION OF OWNER.**

- (a) The Owner hereby represents and warrants to the City that it is the Owner of and controls the Subject Property.
- (b) The Owner agrees to use the Subject Property and operate the Marina according to all State and Federal permits and all regulations contained therein. This representation shall be binding on the Owner, Flagler Bridge Boatworks and Marina, Inc., and their respective heirs, tenant's successors and assigns.
- (c) This Settlement Agreement shall be recorded in the Public Records of Flagler County, Florida and shall run with the land and be binding on the Subject Property, and inure to benefit of the Owner and the Operator and their respective successors and assigns.

## **SECTION 3. PERMITTED PRIMARY USES**

The existing zoning for the Subject Property currently allows the following uses:

- (a) **Wet Slips.** The Subject Property shall be permitted to use the existing 82 wet slips for the docking and mooring of vessels, of any kind, as defined in the Constitution of the State of Florida and in the Florida Statutes, including, without limitation, sailboats, navigable barges, houseboats and liveaboard vessels, subject to the restrictions contained herein and in the Permit. The wet slips shall be permitted to be used as follows in addition to any other use allowed by the current Code of Ordinances and Land Development Code of the City of Flagler Beach as they may be amended from time to time:
  - i. Up to 50 slips for the mooring of houseboats, which may be assembled at the Marina as provided herein, or any other vessels, which may constitute liveaboard vessels or houseboats as defined by state statutes.

Other than the two Existing Floating Structures allowed to remain pursuant to the Court's Order, no Floating Structures, as defined in Section 192.001, Florida Statutes, shall be allowed at the Marina. Notwithstanding other provisions contained herein, no additional parking shall be required for the 50 slips described in this paragraph.

- ii. 32 of the 82 permitted slips are to be used solely for transient vessels of any type. Notwithstanding other provisions contained herein, no additional parking shall be required for the 32 slips described in this paragraph.

(b) **Fueling Station.** Fueling facilities for vessels at the Marina are allowed by existing City Code and shall be permitted so long as all required State, Federal and local permits, and approvals, as may be required, are obtained. As long as such fueling facilities are located at the Marina so that they only serve transient vessels and vessels moored at the Marina and do not serve land based vehicles and cars no additional parking shall be required for fueling facilities at the marina.

(c) **Boat Assembly.** The assembly of houseboats at the Marina is permitted on the Subject Property subject to the provisions contained herein. The manufacture or construction of boats from scratch or parts made on-site is not permitted on the Subject Property. For the purposes of this Settlement Agreement, the term "assembly" shall mean and include the construction and assembly of pre-manufactured box units into the internal structure of the houseboat hulls, the application of fiberglass to such frames to make the hulls water tight and capable of navigation, and the assembly and finishing work of any and all decks,



cockpits, living quarters, helms, engine transoms and other components and improvements necessary to complete the houseboats, for the mooring and berthing of such houseboats at the designated slips at the Marina. The construction of the boxes to be assembled into the houseboat hulls, the framing, assembly and finishing work for the living quarters are all permitted on-site at the Marina. All components and parts that are assembled in and on the finished hulls shall be pre-manufactured or built off-site before being assembled and integrated into the houseboats. Such onsite assembly shall include, but not be limited to, the houseboat hulls and the application of fiberglass to make the hulls water tight and capable of navigation. The assembly of the houseboat hulls shall be limited to hand tools and rollers and under no circumstances will chop guns, sprayers, injection molds or other industrial methods and processes used in vessel manufacturing operations be allowed. Assembly of houseboats and construction of the boxes to be assembled into the houseboat hulls shall be permitted at the Marina until all fifty (50) of the liveaboard slips are occupied at which time the houseboat construction and assembly operation shall cease. After the fifty (50) liveaboard slips are occupied the Owner shall only be allowed to construct and assemble additional houseboats at the Marina, as provided herein, if an owner of a houseboat chooses to leave the Marina. No additional parking shall be required for the boat assembly operation, including any additional structures or buildings not existing at the time of this Settlement Agreement, so long as any such structures or buildings are solely for the purposes of vessel repair and the boat assembly operation.

(a) **Dry Boat Storage.** The storage of up to 36 vessels and boats on trailers or

storage racks is allowed on the Subject Property by the Permit and existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the Dry Boat Storage unless such use is increased to the storage of more than 36 vessels.

- (b) **Boat Supply Shop.** A ships store and bait and tackle shop on the Subject Property is permitted by existing code so long as the floor area does not exceed 4,000 square feet. Notwithstanding other provisions contained herein, no additional parking shall be required for the boat supply shop so long as the floor area does not exceed 4,000 square feet.
- (c) **Boat Maintenance & Repair.** The Marina is permitted to utilize the uplands of the Subject Property for vessel maintenance and repair. Such use may include, without limitation, a travel-lift or other facilities used to haul out vessels and boats docked at the Marina, and may also include any and all accessory uses necessary for the repairs and maintenance of vessels and boats. Notwithstanding other provisions contained herein, no additional parking shall be required for boat maintenance and repair.
- (d) **Boat Ramp.** The existing boat ramp is permitted by existing code and may be expanded by the Owner subject to all required Federal, State and local permits.
- (e) **Caretaker Quarters.** One single family residential dwelling unit for the caretaker of the marina and his or her family is permitted by existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the caretaker quarters.
- (f) **Restroom and Laundry Facilities.** Attached or detached restroom facilities, including showers, and laundry facilities are permitted by existing code in any

ship's store and bait and tack shop and elsewhere on the Subject Property for vessel owners and their guests. As long as the facilities and amenities described in this paragraph are only used by vessel owners and their guests or transient vessels that navigate to the Marina no additional parking shall be required for the uses described in this paragraph.

(g) **Club House and Amenity Center.** A clubhouse or amenity center for owners of vessels docked at the Marina and their guests is permitted by existing code. As long as the clubhouse or amenity center is used only by owners of vessels docked at the Marina and their guests or transient vessels that navigate to the Marina no additional parking shall be required for the uses described in this paragraph.

(h) **Restaurant.** An up to 185 seat waterfront restaurant and bar in the existing restaurant shell on the Property. The restaurant shall not be required to provide more than 49 regular parking spaces and 2 handicap spaces, in addition to the boat slips that also may serve as parking spaces. One boat slip shall accommodate up to one hundred fifty square feet of restaurant floor area or per three fixed seats or as established by the Florida Building Code, whichever is greater.

The foregoing describes certain uses that are allowed by existing Code and judicial interpretation of existing Code. Nothing provided herein shall be interpreted to relieve the Owner, Operator, or any successor or assign from obtaining all necessary permits and approvals, including site plan approval, as applicable, unless such approvals have been specifically and expressly waived herein.

#### **SECTION 4. DENSITY.**

In addition to the use of up to 50 permitted slips for houseboats and liveaboard vessels, one residential dwelling unit on the upland portion of the Marina shall be allowed for the caretaker quarters, as provided in Section 3(c) above.

#### **SECTION 5. DEVELOPMENT STANDARDS.**

The following development standards shall apply to the Subject Property:

- (a) **Maximum Building Height.** The maximum building height, including the maximum height for dry boat storage, on the uplands of the Subject Property shall be thirty-five (35) feet.
- (b) **Parking.** The Subject Property shall be exempt from the additional parking requirements created by the Ordinance but shall not be exempt from any other parking requirements except as specifically and expressly provided herein. The Owner and/or the Operator shall use its best efforts to ensure that all employees, residents, invitees, licensees and guests, as the case may be, park on-site or other lawful private parking areas so as not to park on or adjacent to any public rights-of-way. The Owner and or the Operator shall be permitted to utilize the vacant property located on the opposite side of 5<sup>th</sup> Street from the Subject Property, which is designated Flagler County Property Appraiser's Number 12-12-31-2425-00830-0010, if the Owner and/or the Operator is able to secure a lease for such purposes. Notwithstanding the foregoing, the Owner and/or the Operator is not waiving any rights it has to utilize public rights-of-way for parking purposes as is permitted by the City's Code of Municipal Ordinances and Land Development Regulations but shall use its best efforts to ensure that such use only occurs after available private parking areas on-site or otherwise are full or

in situations where temporary activities necessary for the development, improvement of the Subject Property or operation of any business thereon restrict the available private parking onsite or otherwise.

(c) **Buildings.** The locations and sizes of buildings shown on the attached Exhibit "A" are allowed and in conformity with this Settlement Agreement and any applicable local, State and Federal laws and regulations. Additional buildings and structures may be constructed to the extent they are permitted by this Settlement Agreement or the codes and ordinances of the City in place at the time of the proposed construction so long as any additional buildings or structures do not require additional parking beyond that already existing on the Subject Property.

(d) **Utilities.** The Subject Property is located wholly within the municipal limits of the City and is therefore within the City's water and wastewater service areas. All proposed permanent uses within the Marina will be served by central water and sewer services. The City shall be the potable water and wastewater service provider for the Marina and the occupants of any slips with water and sewer connections.

#### **SECTION 6. EXISTING FLOATING STRUCTURES**

The two Existing Floating Structures docked at the Marina on the effective date of this Agreement shall be permitted to remain and will count towards the 50 houseboats permitted at the Marina.

#### **SECTION 7. LAND DEVELOPMENT CODE APPLICABILITY.**

This Settlement Agreement is the result of settled litigation and expressly recognizes and confirms the vested rights acquired by the Owner on the Subject Property prior to the adoption of

the challenged legislation. Those rights determined herein to have vested and which are no longer lawful conforming uses shall be allowed to continue as lawful nonconforming uses as provided in the Land Development Code. The Subject Property and the uses permitted thereon as specified in this Settlement Agreement shall be exempt from the provisions added by the Ordinances to the City's Code of Ordinances and Land Development Regulations. **The foregoing exemption shall include, without limitation, the following sections from the City's Code of Ordinances in effect on the date of this Agreement, which shall not apply to the Subject Property:**

- **Section 2.06.08.5(2)(d);**
- **Section 2.06.08.5(2)(e);**
- **Section 2.06.08.5(3)(b);**
- **Section 2.06.08.6 in its entirety;**
- **Section 2.06.08.7(1); and**
- **Section 2.06.08.7(3).**

**The vested rights outlined herein shall not be considered abandoned for any reason other than written notice by the Owner to the City of its intent to abandon the rights to develop and use the property as more specifically described herein.**

#### **SECTION 8. SETTLEMENT AND RELEASE OF CLAIMS**


The parties to this Settlement Agreement hereby release and forever discharge each other, their employees and agents and all other persons, firms or entities, whether known or unknown, from any and all claims arising out of the Lawsuit. The parties hereto warrant and represent that the claims in connection with which this release are given have not been assigned in whole or in part. Upon execution and recording of this Settlement Agreement the plaintiffs in the Lawsuit shall file a voluntary dismissal of the case with prejudice. After both parties have completed the execution of this Settlement Agreement, counsel for the parties shall file all necessary documents

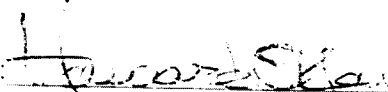
to dismiss any pending motions and or appeals. If any party is required to bring any litigation based upon a breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and paraprofessional fees, expenses and costs at trial and on appeal.

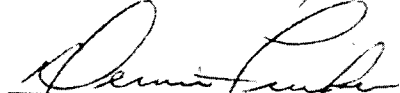
***/SIGNATURES ON NEXT PAGE(S)/***

Signed, sealed and delivered  
in the presence of:

110 Holly Ave Corporation,  
a Florida corporation


  
Print Name: JEFFERY A. PETERSON

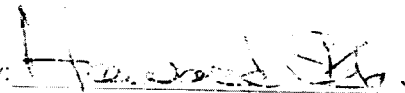
By:   
Howard Sklar, President

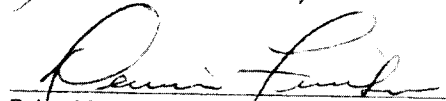
  
Print Name: Dennis Fischer

Signed, sealed and delivered  
in the presence of:

Flagler Bridge Boatworks and Marina Inc.,  
a Florida corporation

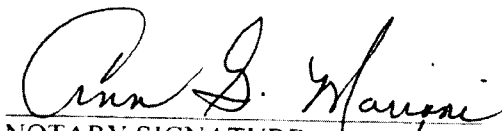
  
Print Name: JEFFERY A. PETERSON

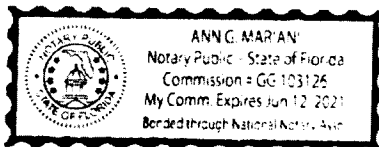
By:   
Howard Sklar, President

  
Print Name: Dennis Fischer

STATE OF FLORIDA  
COUNTY OF Flagler

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE this 12<sup>th</sup> day  
of July, 2017, by Howard Sklar, as President of both 110 Holly Ave Corporation, a  
Florida corporation, and Flagler Bridge Boatworks and Marina Inc., a Florida corporation who is  
personally known to me or who has produced \_\_\_\_\_ as  
identification, and who executed the foregoing Waiver, Release and Settlement Agreement and  
acknowledged to and before me that he/she executed said instrument for the purposes therein  
expressed freely and voluntarily.

  
NOTARY SIGNATURE  
Print Name: ANN G. MARIANI  
Notary Public, State of Florida  
Notary Comm. No.: GG 103126  
My Commission expires: 6/12/2021





City of Flagler Beach  
A Florida Municipal corporation

BY \_\_\_\_\_  
Linda Provencher, Mayor  
Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Penny Overstreet  
City Clerk

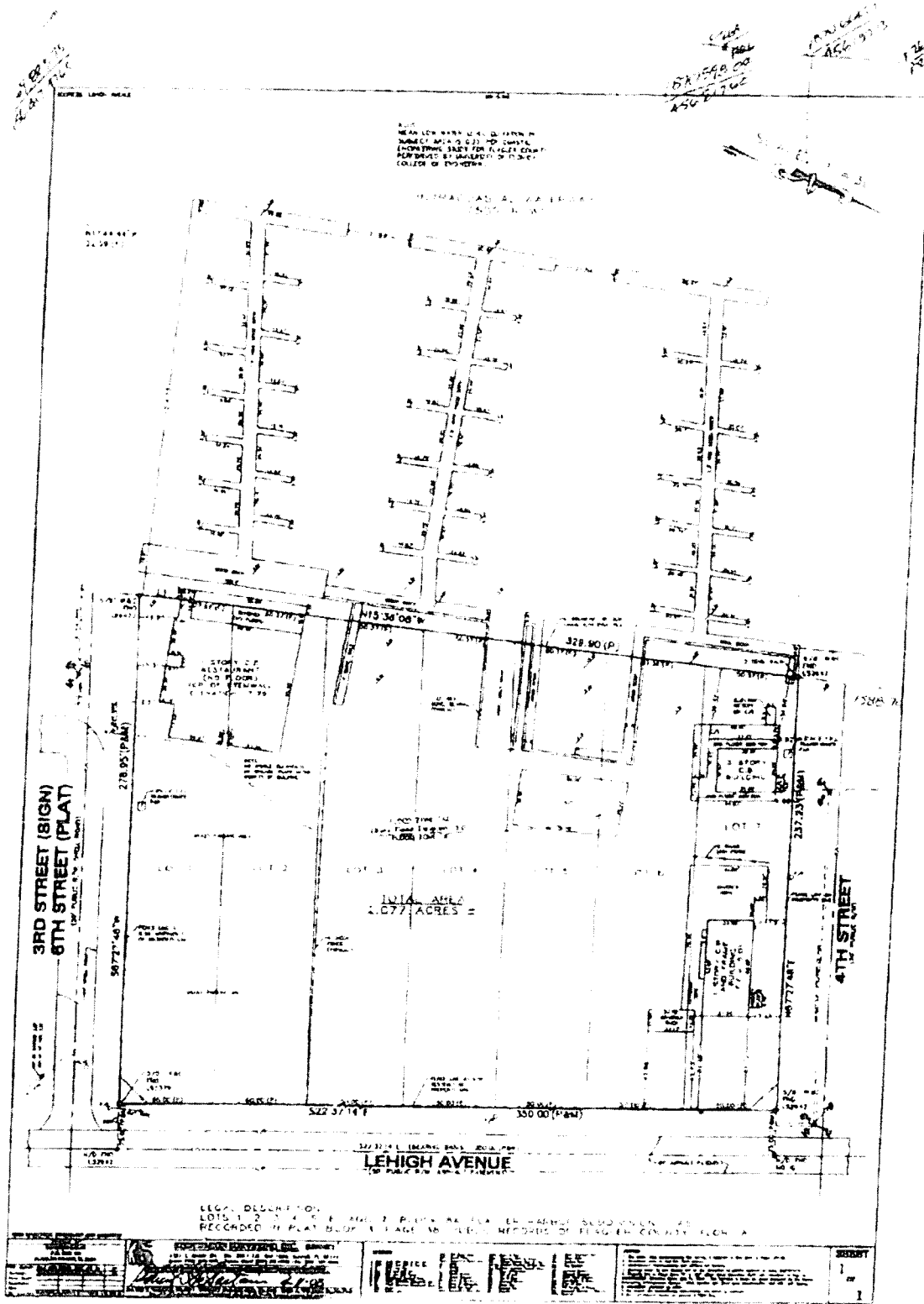
**EXHIBIT "A"**

**"AS-BUILT" SURVEY**

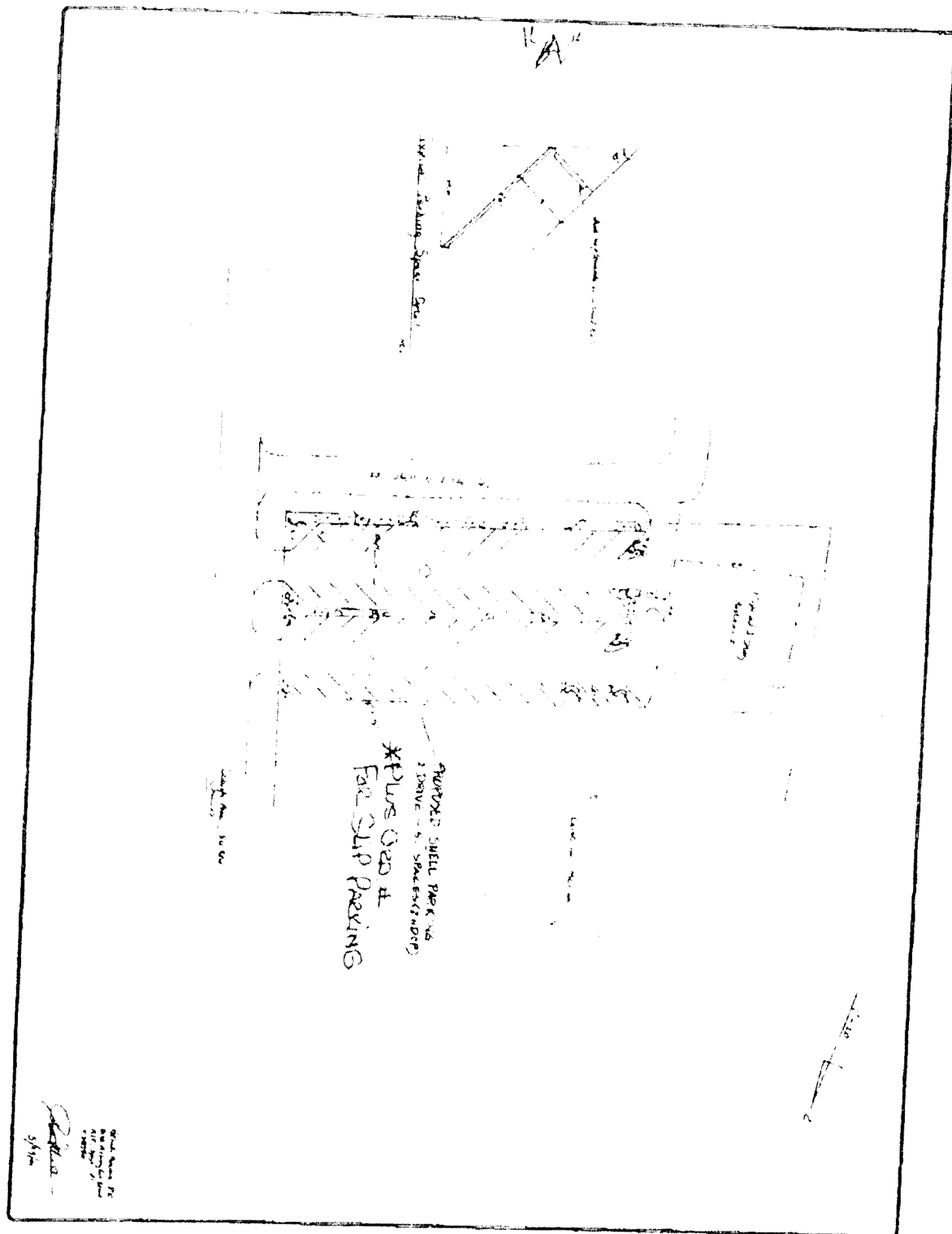
**RESTAURANT PARKING LAYOUT**

**AND**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**



|   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|



|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|----|

FLAGLER BRIDGE RESTAURANT  
PARKING LAYOUT

|   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|----|