

RESOLUTION NO. 2003 - 77

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF AMENDMENTS TO THE POND SYSTEM MAINTENANCE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, THE ST. AUGUSTINE OCEAN AND RACQUET CLUB CONDOMINIUM ASSOCIATION, AND ST. AUGUSTINE RESORTS, PROVIDING THAT SAID AMENDMENTS WILL MODIFY SAID AGREEMENT IN ORDER TO ACCOUNT FOR DESIGN CHANGES TO THE JOINT DETENTION/RETENTION FACILITY THAT WILL ACCOMMODATE THE STORM WATER PERMIT REQUIREMENTS FOR THE A1A BEACH BOULEVARD THREE-LANE TRANSPORTATION PROJECT.

RECITALS

WHEREAS, St. Johns County, Florida ("County") presently owns, and is desirous of improving, a public rights-of-way known as A1A Beach Blvd.; and

WHEREAS, in an effort to provide for needed storm water treatment on the A1A Beach Boulevard The Lane Transportation Project, on August 22nd, 2002 the County Administrator, with the approval of the Board of County Commissioners, executed a Pond System Maintenance Agreement, with the St. Augustine Ocean and Racquet Club Condominium Association ("Association"), and the St. Augustine Resorts ("Resorts"); and

WHEREAS, the Design Plans have been modified since the St. Johns Water Management District cannot permit the original design because a letter authorizing the post-design outflow into adjacent development, Anastasia Dunes, is now not forthcoming; and

WHEREAS, as a result, the County, Association, and Resorts wish to amend the Pond System Maintenance Agreement, and Section 6 of the Agreement "Miscellaneous" provides a mechanism whereby the parties may modify the terms; and

WHEREAS, the County, Association, and Resorts agree that a modification of the Agreement is required. **Exhibit "A"** modifies the Association's Agreement with the County, attached hereto, and incorporated herein, by reference and **Exhibit "B"** modifies the Resorts relationship to the other parties, attached hereto, and incorporated herein, by reference.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

Section 2. The Amendments to the Pond System Maintenance Agreement among the County, Association, and Resorts attached hereto are hereby approved, and the County Administrator is authorized to execute the Amendments to the Pond System Maintenance Agreement.

Section 3. The Clerk of St. Johns County (the "Clerk") is instructed to record these Amendments to the Pond System Maintenance Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 15th day of April, 2003

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Patricia DeBlonde
Deputy Clerk

RENDITION DATE 4-17-03



Exhibit "A" to Resolution
Association's Amendment
AMENDMENT TO AGREEMENT

RE: A1A Beach Blvd. Three Lane Pond System Maintenance Agreement

THIS AMENDMENT TO THE A1A Beach Blvd. Three Lane Transportation Project's Pond System Maintenance Agreement ("**Agreement**") by and between **ST. JOHNS COUNTY, FLORIDA** ("**County**"), a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 and **ST. AUGUSTINE OCEAN AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.** ("**Association**"), whose address is 880 A1A Beach Boulevard, St. Augustine, Florida 32080, is hereby entered into _____.

RECITALS

WHEREAS, The County owns, and is desirous of improving, a public right-of-way known as A1A Beach Blvd., a County road as described in the A1A Beach Blvd. Three Lane Transportation Project's Pond System Maintenance Agreement, and

WHEREAS, Association is the condominium association responsible for administration and operation of the St. Augustine Ocean and Racquet Club Condominium and is authorized by Chapter 718 to enter into agreements and easements with respect to the common property of the Condominium, and

WHEREAS, the Design Plans have been modified since the St. Johns Water Management District cannot permit the original design because a letter authorizing the post-design outflow into adjacent development, Anastasia Dunes, is now not forthcoming, and

WHEREAS, the new Design Plans, which no longer connect the St. Augustine Resort's Holiday Inn pond (Holiday Inn) to the Associations' ponds (which now comprise the Pond System), does reduce the likelihood of flooding the Association property, as did the original Design Plans, and

WHEREAS, Section 6. Miscellaneous of the Agreement provides a mechanism for the modification of the Pond System Maintenance Agreement, and

WHEREAS, both the County and the Association agree that a modification of the Agreement is desirable.

NOW THEREFORE, the parties hereby agree as follows:

1. The above Recitals are incorporated herein as Findings of Fact.
2. Since the revised Design Plans make no connection between the Holiday Inn's pond (Pond 1) and the Association pond (Pond 2) the Reciprocal Grant of Easement for flowing water attached hereto as **Exhibit "A"** to this Amendment is hereby rescinded, null and void.

3. The attached Design Plan designated **Exhibit "B2"** which represents an 80% completion is hereby inserted, replacing Exhibit "B" to the Pond System Maintenance Agreement.
4. Upon completion of the improvements, the St. Johns River Water Management District requires a safety railing where there is a greater than 4:1 slope. The bulk headed area will therefore require a safety railing. This railing will generally resemble and be consistent with the railings currently in use on the Association premises.
5. Upon completion of modifications and alterations on the Association property, the County will restore the surface of the Association premises and ponds to a preconstruction condition in a proper workmanlike manner. This includes, but is not limited to, palm trees of the same kind and equivalent height, grass, curbing, pavement, shrubbery, fencing, and sidewalks.
6. St. Johns County agrees to allow the Association to utilize Pond #2 for irrigation (including augmentation) as long as the pond level is maintained at 8.06 or lower (0.06 feet above Invert of Treatment Orifice). By maintaining the lake levels at 8.06 or lower the required treatment volume for storm water management will always be met.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment effective as of _____.

**FOR:
ST. JOHNS COUNTY, FLORIDA**

Witness Name _____

Ben W. Adams, Jr.,
County Administrator

Witness Name _____

**FOR:
ST. AUGUSTINE OCEAN AND RACQUET CLUB
CONDOMINIUM ASSOCIATION**

Philip H. Jacobs

Witness Name PHILIP H. JACOBS

Joseph K. Winsey

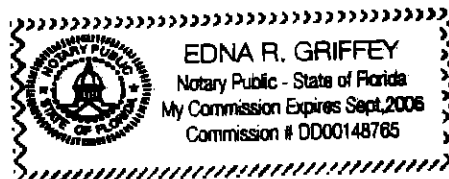
Joseph K. Winsey, President

Mary W. Jacobs

Witness Name MARY W. JACOBS

The foregoing instrument was sworn to and subscribed before me this 14th day of December 2002, by Joseph K. Winsey, President of St. Augustine Ocean & Racquet Club Condominium Association, Inc., a Florida Corporation, on behalf of the Association. He is personally know to me.

Edna R. Griffey



**AMENDMENT TO POND SYSTEM MAINTENANCE
AGREEMENT**

THIS AMENDMENT TO THE Pond System Maintenance Agreement ("Agreement") by and among **ST. JOHNS COUNTY, FLORIDA** ("County"), a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095, **ST. AUGUSTINE RESORTS, INC.** ("Resorts"), whose address is 111 West Fortune Street, Tampa, Florida 33602, and **ST. AUGUSTINE OCEAN AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.**, whose address is 880 A1A Beach Boulevard, St. Augustine, Florida ("Association").

WHEREAS, the County owns, and is desirous of improving, a public right-of-way known as A1A Beach Blvd., a county road. In an effort to provide for needed storm water treatment the above referenced parties entered into a Pond System Maintenance Agreement in or about August 22, 2002, which is recorded in Official Records Book 1806, page 1410, public records of St. Johns County, Florida ("Pond Agreement");

WHEREAS, pursuant to said Pond Agreement the parties exchanged easements which were attached to and recorded with said Pond Agreement, to wit:

(a) Grant of Drainage and Access Easement recorded in Official Records Book 1806, page 1420, St. Johns County records;

(b) Grant of Drainage and Access Easement recorded in Official Records Book 1806, page 1427, St. Johns County records; and,

(c) Reciprocal Grant of Easement in Official Records Book 1806, page 1432, St. Johns County records.

WHEREAS, the design plans for the pond system (Design Plans) have been modified since execution of the Pond Agreement because the St. Johns River Water Management District cannot permit the original design since a letter authorizing the post-design outflow into adjacent development, Anastasia Dunes, is now not forthcoming, and

WHEREAS, the new Design Plans no longer connect the Resorts' pond to the pond system as originally conceived but rather conveys storm water through a proposed outfall to a different location. As a result of the design change, the County proposes to construct a separate outfall on the Resorts property and proposes to amend the Pond Agreement accordingly, and

WHEREAS, the parties desire to amend the Pond Agreement to eliminate Resorts as a party to and beneficiary of said Agreement; to modify the Grant of Drainage and Access Easement between the County and Resorts, recorded in Official Records Book 1806, page 1420, St. Johns County records; and to release and terminate the

Reciprocal Grant of Easement between Resorts and Association recorded in Official Records Book 1806, page 1432, St. Johns County records.

NOW THEREFORE, the parties hereby agree as follows:

1. The above Recitals are incorporated herein as Findings of Fact. A copy of the revised Design Plans is attached as Exhibit A.
2. Since the revised Design Plans do not connect the pond on the land owned by Resorts (Pond 1) to the ponds on land managed by Association (Ponds 2 and 3), the Reciprocal Grant of Easement between Resorts and Association recorded in Official Records Book 1806, page 1432, St. Johns County records is no longer necessary and is hereby released, terminated and rescinded.
3. The Pond Agreement is hereby amended to delete Resorts as a party to the Agreement, to eliminate all reference to Resorts in the Agreement, and to delete Exhibits D-1 and E to the Pond Agreement as exhibits to said Agreement. The parties each agree that Resorts shall have no rights or responsibilities under the Pond Agreement. The County and Resorts hereby release and terminate the easements and rights reserved and set forth in Exhibit D-1 recorded in Official Records Book 1806, page 1420, St. Johns County records.
4. To facilitate the new proposed outfall, Resorts agrees to grant to County a temporary Construction Easement, in the form attached hereto and incorporated by reference as **Exhibit "A."**
5. Undertaking of the County as to the proposed outfall to be provided to Resorts:
 - A) Performance of all installation and construction activities associated with the construction of this outfall in a proper workmanlike manner.
 - B) Maintenance and repair of that portion of the Resort's outfall that is located within the Road's right-of-way.
 - C) Restoration of Resorts' premises within the temporary construction easement granted by Resorts to a pre-construction condition including, but not limited to, concrete, pavement or landscaping as a result of the County's construction or maintenance activity.
6. Miscellaneous. This Agreement governed by Florida law, is binding upon the successors and assigns of the parties hereto and may be amended only in writing. No obligation of the County hereunder shall be secured by any obligations of the County to expend ad valorem tax monies. Any future modification of or improvements to the pond system within the

Association property shall be subject to the mutual agreement of Association and the County and shall not require any agreement of Resorts.

7. Notices. All notices, demands or requests provided for or permitted pursuant to this Agreement must be in writing, and shall be deemed to have been properly given or served by hand or by depositing the same in the United States Mail, postage prepaid by Registered or Certified Mail with Return Receipt Requested and sent to each of the parties at the following addresses:

St. Johns County
4020 Lewis Speedway
St. Augustine Florida 32084

St. Augustine Resorts, Inc.
111 West Fortune Street
Tampa, Florida 33602

St. Augustine Ocean and Racquet Club
Condominium Association, Inc.
880 A1A Beach Boulevard,
St. Augustine, Florida

Any party may change its address for purposes of this paragraph by written notice to the other parties in accordance with the terms of this paragraph. All notices shall be deemed to have been given upon receipt or inability to deliver because of refusal to accept.

8. Equitable Remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agrees that in the event of a breach or a threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, in addition to such other remedies as may be available to the aggrieved party at law.
9. Binding Agreement; Recording of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, members, successors and assigns. This Agreement shall be recorded in the public records of St. Johns County, Florida.
10. Attorneys Fees. In the event of any litigation involving this Agreement, the prevailing party shall be entitled to reimbursement for its attorneys' fees incurred at trial and all appellate proceedings. The prevailing party shall be awarded attorney's fees only upon the termination of all litigation.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment effective as of February _____, 2003.

FOR:
ST. JOHNS COUNTY, FLORIDA

Witness Name _____

Ben W. Adams, Jr.,
County Administrator

Witness Name _____

FOR:
ST. AUGUSTINE RESORTS, INC.


Witness Name _____

Andre P. Callen, as President of St.
Augustine Resorts, Inc.

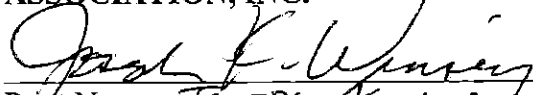
(Corporate Seal)

Witness Name _____

FOR:
ST. AUGUSTINE OCEAN AND
RACQUET CLUB CONDOMINIUM
ASSOCIATION, INC.




Witness Name PHILIP A. JACOBS



Print Name: JOSEPH K. WINSEY
as President of St. Augustine Resorts

(Corporate Seal)



Witness Name TIMOTHY G. PALMER

ACKNOWLEDGEMENTS FOR ALL PARTIES

STATE OF FLORIDA
COUNTY OF St Johns

The foregoing instrument was acknowledged before me this 12 day of March 2003 by Joseph K. Winsey, as President of St. Augustine Ocean and Racquet

Club Condominium Association, Inc., a Florida non-profit corporation. On behalf of this corporation, who is personally known or who has produced _____ as identification.



Edna R. Griffey
NOTARY PUBLIC
My commission expires: Sept 06
State Florida of Florida
My commission number: 0000148765

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this __ day of _____, 2003 by Andre P. Callen, as President of St. Augustine Resorts, Inc., a Florida corporation. On behalf of this corporation, who is personally known or who has produced _____ as identification.

Notary Public
My commission expires:
State _____ of _____ Florida
Commission Number _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this __ day of _____, 2003 by _____, as _____ of St. Johns County, a political subdivision of the State of Florida. On behalf of this political subdivision, who is personally known or who has produced _____ as identification.

Notary Public
My commission expires:
State _____ of _____ Florida
Commission number _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment effective as of February _____, 2003.

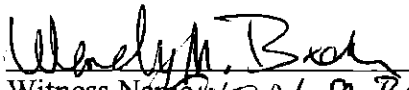
**FOR:
ST. JOHNS COUNTY, FLORIDA**

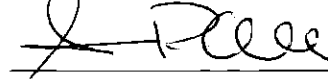
Witness Name _____

Ben W. Adams, Jr.,
County Administrator

Witness Name _____

**FOR:
ST. AUGUSTINE RESORTS, INC.**


Witness Name Wendy M. Boehm


Andre P. Callen, as President of St.
Augustine Resorts, Inc.


Witness Name David R. Clement

(Corporate Seal)

**FOR:
ST. AUGUSTINE OCEAN AND
RACQUET CLUB CONDOMINIUM
ASSOCIATION, INC.**

Witness Name _____

Print Name: _____
as President of St. Augustine Resorts

Witness Name _____

(Corporate Seal)

ACKNOWLEDGEMENTS FOR ALL PARTIES

**STATE OF FLORIDA
COUNTY OF _____**

The foregoing instrument was acknowledged before me this ___ day of _____,
2003 by _____, as _____ of St. Augustine Ocean and Racquet

Club Condominium Association, Inc., a Florida non-profit corporation. On behalf of this corporation, who is personally known or who has produced _____ as identification.

NOTARY PUBLIC
My commission expires:
State _____ of _____ Florida
My commission number: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this 24th day of March, 2003 by Andre P. Callen, as President of St. Augustine Resorts, Inc., a Florida corporation. On behalf of this corporation, who is personally known or who has produced _____ as identification.



Suzanne M. Frazer
Commission # CC 918045
Expires March 21, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

[Handwritten Signature]

Notary Public
My commission expires:
State _____ of _____ Florida
Commission Number _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ___ day of _____, 2003 by _____, as _____ of St. Johns County, a political subdivision of the State of Florida. On behalf of this political subdivision, who is personally known or who has produced _____ as identification.

Notary Public
My commission expires:
State _____ of _____ Florida
Commission number _____

Exhibit "A" to Amendment

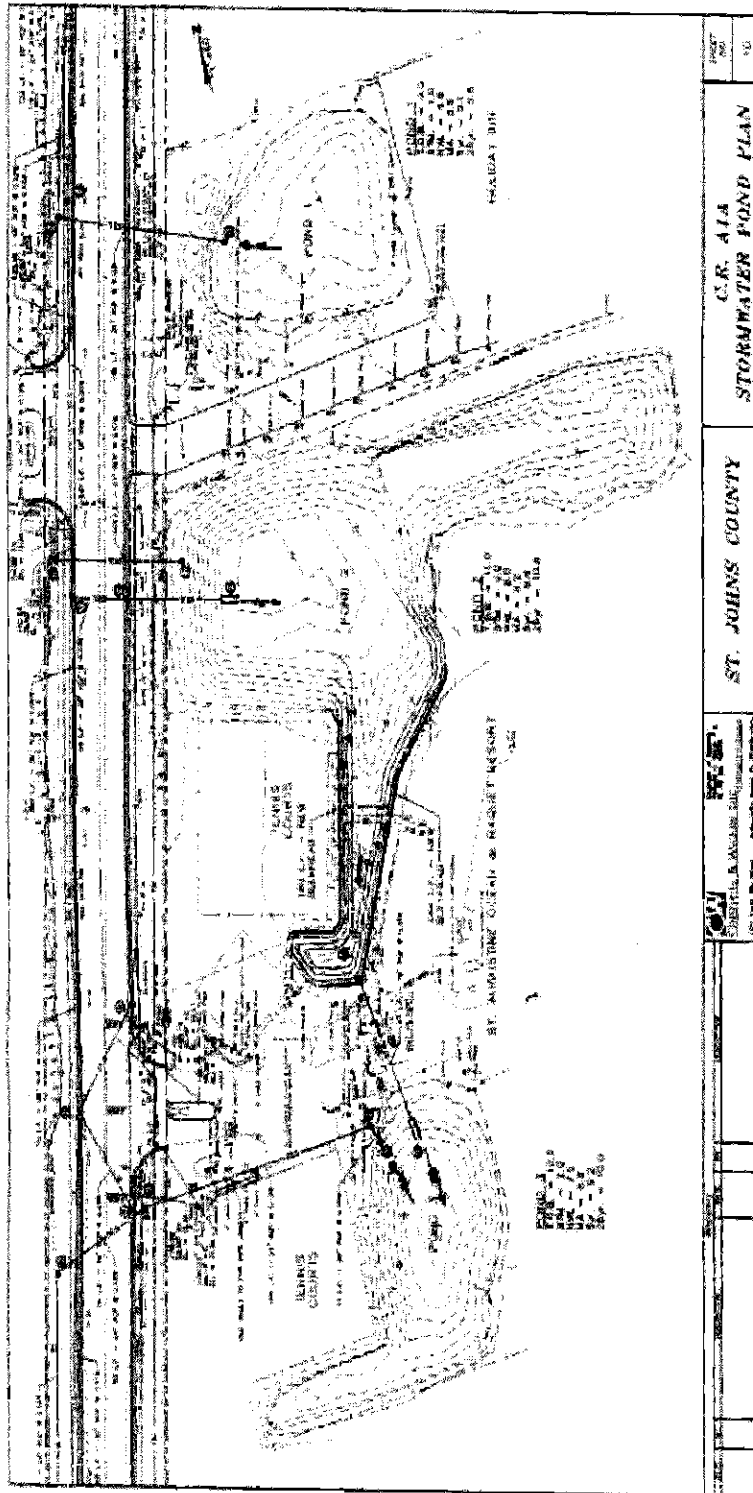


Exhibit "B" to Amendment

TEMPORARY CONSTRUCTION EASEMENT

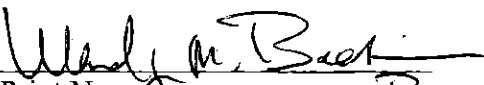
THIS TEMPORARY CONSTRUCTION EASEMENT made this _____ day of _____, 2003, by and between ST. AUGUSTINE RESORTS, INC. ("**Resorts**"), a Florida Corporation, whose address is 111 West Fortune Street Tampa, Florida 33603, Grantor and ST. JOHNS COUNTY ("**County**"), a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway St. Augustine, Florida 32084, Grantee.

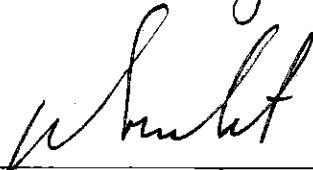
WITNESSETH that for and in consideration of the sum of Ten Dollars (\$10.00) the, receipt and sufficiency of which is hereby acknowledged, the Grantor hereby gives, grants, bargains and releases to the Grantee, a temporary construction easement not to exceed one (1) year from the date hereof, to enter upon and use the grantor's property as described in **Schedule "A"** for construction of an drainage outfall serving Pond 1 on grantor's property ("**Holiday Inn**") as depicted on the map attached as Schedule B.

It is understood and agreed by the parties hereto that the construction rights granted herein shall terminate upon completion of this transportation project (Project Name: **A1A Beach Blvd. Three Lane Transportation Project**).


IN WITNESS WHEREOF, grantor has hereunto set hand and seal the day and year first above written.

Signed, sealed and delivered in
Our presence as Witnesses:


Print Name: Wendy M. Baer


Print Name: David R. Clement

GRANTOR:
ST. AUGUSTINE RESORTS, INC.

By: 
Andre P. Callen, as President of St.
Augustine Resorts Inc.

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 24th day of MARCH,
2003, by Andre P. Callen, as President of St. Augustine Resorts, Inc., a Florida
corporation, on behalf of the corporation. Mr. Callen is personally known to me or
produced a _____ for identification.



Suzanne M. Frazer
Commission # CC 918045
Expires March 21, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

[Signature]
Notary Public

State of Florida

My commission Number _____

My commission expires _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ___ day of _____,
2003 by _____, as _____ of St. Johns County, a
political subdivision of the State of Florida. On behalf of this political subdivision, who
is personally known or who has produced _____ as identification.

Notary Public

My commission expires:

State of Florida, County of St. Johns

My commission number _____

Schedule "A"

LEGAL DESCRIPTION OF GRANT OF TEMPORARY CONSTRUCTION EASEMENT OVER PROPERTY OWNED BY ST. AUGUSTINE RESORTS, INC.

A temporary construction easement over the Westerly 275 feet of the following described parcel:

The South 200 feet of the North 400 feet of Lot 5, in Section 3, Township 8 South, Range 30 East, which lies East of a line running parallel with and 50 feet East of the center line of State Road A1A (formally State Road 140) as now located in St. Johns County, Florida, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: The South 200 feet of the North 400 feet of Government Lot 5, Section 3, Township 8 South, Range 30 East, St. Johns County, Florida, being more particularly described as follows: For a point of beginning, commence at a point in the southerly line of the North 400 feet of said Government Lot 5 at its intersection of the easterly right-of-way line of State Road No. A1A, formerly State Road No 140, (a 100 foot right-of-way as now established), said point also being a found iron pipe, thence North $17^{\circ}09'10''$ East along said easterly right-of-way line of State Road No. A1A, a distance of 209.95 feet to a found concrete monument; thence North $89^{\circ}41'58''$ East leaving said easterly right-of-way line of State Road No. A1A, a distance of 923.11 feet to a found concrete monument; thence continue North $89^{\circ}41'58''$ East, a distance of 235.00 feet to the approximate high water line of the Atlantic Ocean; thence south $02^{\circ}20'32''$ East along said approximate high water line, a distance of 200.41 feet; thence South $89^{\circ}41'58''$ West, leaving said approximate high water line, a distance of 213.00 feet to a found concrete monument; thence continue South $89^{\circ}41'58''$ West, a distance of 1015.22 feet to the point of beginning. [This parcel containing 238,972 square feet or 5.486 acres more or less].

Note: This easement covers the Pond Area and also provides for use of the driveway and parking spaces for temporary access to the Pond Area.

**Schedule "A" Continued – Depiction of Easement Area
(Resorts to County)**

