

This Instrument Prepared By:  
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 Our File No. 6-92-026

**FIFTH AMENDMENT  
 TO DECLARATION OF COVENANTS AND RESTRICTIONS  
 FOR  
 VILLAGES OF VILANO**

**THIS FIFTH AMENDMENT** to the Declaration of Covenants and Restrictions for Villages of Vilano is executed this 13<sup>th</sup> day of NOVEMBER, 1995, by Vilano Venture, Inc., a Florida corporation, (the "Developer").

**W I T N E S S E T H:**

**WHEREAS**, the Developer has caused to be recorded a Declaration of Covenants and Restrictions for Villages of Vilano dated January 15, 1987, and recorded in Official Records Book 731, Page 1986, as amended by Amendments recorded in Official Records Book 740, Page 0077, Official Records Book 752, Page 1961, Official Records Book 1039, page 1591, and Official Records Book 1039, Page 1594, all of the public records of St. Johns County, Florida, (collectively the "Declaration"); and

**WHEREAS**, Article XII, Section 12.3(a), gives the Developer the right to amend the Declaration to cure any ambiguity or error in the Declaration; and

**WHEREAS**, Article XII, Section 12.9 gives the Developer the right to annex additional land on which a marina, condominium, or additional lots may be developed; and

**WHEREAS**, the Developer desires to annex additional contiguous land to Villages of Vilano to develop a marina condominium; and

**WHEREAS**, the Declaration is ambiguous or erroneous in that it does not delineate the rights and obligations of the owners of boat slips in the proposed marina condominium; and

**WHEREAS**, the Developer desires to amend the Declaration to cure this ambiguity or error;

**NOW, THEREFORE**, the Developer hereby amends the Declaration as follows:

**NOW, THEREFORE**, the Developer hereby amends the Declaration of Covenants and Restrictions for Villages of Vilano as follows:

1. The real property described on Exhibit "A" attached hereto is hereby made subject to the aforesaid Declaration of Covenants and Restrictions for Villages of Vilano and shall be held, occupied, sold, and transferred subject to the easements, restrictions, charges, liens, and covenants of said Declaration, as amended from time to time, which Developer is imposing for the benefit of all owners of the property or portions thereof for the purpose of preserving the value and maintaining the desirability of same.

2. Article I, Section 1.10, is hereby amended as follows:

**1.10 "Mortgage"** means any mortgage, deed of trust, or other instrument validly transferring any interest in any Lot or Boat Slip, or creating a lien upon any Lot or Boat Slip, in either case as security for performance of an obligation. The term "Mortgage" does not include judgment, involuntary liens, or liens arising by operation of law. "First Mortgage" means any mortgage constituting a lien prior in dignity to all other mortgages encumbering the same property.

3. Article I, Section 1.19 is hereby amended as follows:

**1.19 "Unit"** means a single family dwelling located on a Lot as shown on the plat, ~~or~~ a Condominium Unit located in a Condominium developed on the Property, or a Boat Slip in a marina developed on the Property, which hereafter may be made subject to the provisions of this Declaration.

4. The following Article I, Section 1.20, is hereby created:

**1.20 "Boat Slip"** means the part of the marina ~~condominium property described in Exhibit "A" attached to this amendment~~ which is subject to exclusive ownership.

5. The following Article I, Section 1.21, is hereby created:

**1.21 "Dwelling"** means a single family dwelling located on a Lot or a condominium unit located in a condominium developed on the Property. "Dwelling" does not refer to a Boat Slip.

6. Article I, Section 1.20 is hereby renumbered as Article I, Section 1.22.

7. Article III, Section 3.1 is hereby amended as follows:

**3.1 ~~Residential Use.~~** The ~~Lots and Units~~ Dwellings subject to this Declaration may be used for residential living units and for no other purpose except that one or more ~~Lots or Units~~ Dwellings may be used as model homes or temporary construction/sales offices by the Developer during the development and sale of Villages of Vilano and adjacent properties. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. The Boat Slips and marina condominium property may only be used in accordance with the Declaration of Covenants and Restrictions for the Marina at Villages of Vilano and the rules and regulations of the marina condominium association.

8. Article III, Section 3.14 is hereby amended as follows:

**3.14 ~~Leasing of Units.~~** No ~~owner~~ Owner shall lease his ~~unit~~ Dwelling for a term less than six (6) months. No Owner shall lease his Boat Slip for a term less than four (4) months. All such leases shall be in writing and shall specify that the same are subject to the Legal Documents and Rules and Regulations of the Association.

The Association shall be provided with a copy of all executed leases. If any owner shall lease his unit Unit he shall remain liable for the performance of all Rules and Regulations and provisions of the Legal Documents and shall be liable for any violations of same by his lessee. The Association may establish and charge an administrative fee for use of its common areas by the lessee of any Boat Slip that is not subject to assessments under Article VI of this Declaration.

9. Article III, Section 3.15(d) is hereby amended to include the following sentence at the end of that paragraph:

Notwithstanding the foregoing, use of the marina basin and recreational activities within the marina condominium property shall be governed by the Declaration of Covenants and Restrictions to the Marina at Villages of Vilano and the rules and regulations of the marina condominium association.

10. Article III, Section 3.17 is hereby amended to substitute the phrase "Lot or Boat Slip" for the word "Lot" wherever "Lot" appears in that section.

11. Article IV, Section 4.1 is hereby amended as follows:

4.1 Membership. Every Owner of a Lot or Unit Dwelling is a member of the Association. There shall be at least 228 memberships in the Association arising from ownership of Lots and Dwellings. Additional memberships may be created as a result of the purchase of Boat Slips by nonmembers as set forth below. The maximum number of memberships in the Association shall be 261.

(a) Lots and Dwellings. An Owner of more than one Lot or Unit Dwelling is entitled to one membership for each Lot or Unit Dwelling owned.

(b) Boat Slips. It is the intent of Developer that Owners (other than Developer) of one or more Dwellings who acquire one or more Boat Slips should not necessarily gain additional memberships and be required to pay additional assessments by virtue of his ownership of those Boat Slips. Accordingly, an Owner of a Boat Slip shall be entitled to one membership for each Boat Slip owned; provided, however, that the membership rights of an Owner (other than Developer) of one or more Dwellings who is also an Owner of one or more Boat Slips shall be determined by the following formulae:

(i) Owner owns one Dwelling and one Boat Slip. Number of memberships: One (one Dwelling, one Boat Slip).

(ii) Owner owns two Dwellings and one Boat Slip. Number of Memberships: Two (two Dwellings).

(iii) Owner owns one Dwelling and two Boat Slips. Number of memberships: Two (one Dwelling and one Boat Slip).

(iv) Owner owns one Boat Slip, but does not own a Dwelling. Number of memberships: One (one Boat Slip).

(v) Owner owns two Boat Slips,

but does not own a Dwelling. Number of memberships: Two (two Boat Slips).

In the event an Owner of a Boat Slip for which no membership exists by the operation of this subsection conveys that Boat Slip to a new Owner, then a new membership shall be created for that Boat Slip, unless the new Owner is not entitled to a membership under this subsection by virtue of his ownership of one or more Dwellings.

Each membership is appurtenant to the Lot or Unit upon which it is based and is transferred automatically by conveyance of title to that Lot or Unit, except as provided in subsection (b) above. The membership of the previous Owner automatically terminates upon conveyance of the Lot or Unit. Except for the Developer, no person other than an Owner may be a member of the Association, and membership in the Association may not be transferred or encumbered except by the transfer of title to a Lot or Unit; provided, however, the foregoing does not prohibit the assignment of any existing membership and voting rights by an Owner who is a contract seller to his vendee in possession.

12. Article IV, Section 4.2(a), is hereby amended as follows:

(a) **Class A.** So long as there is Class B membership, Class A members are all of the Owners members of the Association as defined in Section 4.1 except Developer and are entitled to one (1) vote for each Lot or Unit owned, membership held by that Owner. Upon termination of Class B membership, Class A members are all of the Owners members of the Association, including Developer, so long as Developer is an Owner. In the event Developer develops a condominium on the Property, other than a marina condominium, which hereafter may be made subject to the provisions of this Declaration, the Owners of said Units shall be entitled to one (1) vote per unit.

13. The first sentence in Article IV, Section 4.3 is hereby amended as follows:

**4.3 Co-Ownership.** If more than one person holds the record title to any Lot or Unit, Dwelling, or Boat Slip for which a membership exists pursuant to Section 4.1, all such persons are members, but there may be only one vote cast with respect to such Lot, or Unit Dwelling, or Boat Slip.

14. The first paragraph of Article VI, Section 6.1, is hereby amended as follows:

**6.1 Assessments Established.** For each Lot Unit, Dwelling, and Boat Slip for which a membership exists pursuant to Section 4.1, owned within the Property, Developer covenants, and each Owner of any Lot or Unit such Lot, Dwelling, or Boat Slip by acceptance of a deed or other conveyance or record title to such Lot or Unit, Dwelling, or Boat Slip, whether or not it is so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association:

(a) An Annual Assessment as defined in paragraph 6.2 of this Article;

(b) Special Common Area Assessments as



defined in paragraph 6.5 of this Article;

(c) Special Assessments for property taxes levied and assessed against the Common Area as defined in paragraph 6.4 of this Article;

(d) Specific Assessments against any particular Lot ~~or Unit~~, Dwelling, or Boat Slip that are established pursuant to any provision of the Legal Documents as provided in paragraph 6.7 of this Article; and

(e) All excise taxes, if any, that, from time to time, may be imposed upon all or any portion of the assessments established by this Article.

15. Article VI, Section 6.8, is hereby amended as follows:

**6.8 Uniformity of Assessments.** The Annual Assessment as specified in paragraph 6.2, and any Special Common Area Assessment must be ~~uniform throughout the Property~~ uniformly assessed against each membership as defined in Section 4.1, except that the Annual Assessment against any Lot ~~or Unit~~, Dwelling, or Boat Slip in which Developer owns an interest and which is not being occupied as a residence ~~or, in the case of a Boat Slip, by a vessel~~, may be fixed by the Board of Directors for so long as there is Class B membership in the Association in an amount not less than ten percent (10%) nor more than one hundred percent (100%) of the amount of the applicable Annual Assessment against Lots ~~or Units, Dwellings, or Boat Slips~~ owned by the Class A members of the Association then in effect; provided, however, that Developer shall fund the deficits, if any, between the aggregate amount assessed Class A members and Developer, and the total expenses of the Association during the applicable period of control. Developer shall be obligated to fund such deficits only as they are actually incurred by the Association. The Developer shall cease to pay any portion of the balance of the annual operating expenses of the Association under the provisions of this paragraph when Developer is no longer entitled to elect a majority of the Board of Directors of the Association. Thereafter, the Developer shall pay an annual assessment amount attributable to any ~~Lots and Units then owned~~ memberships then held by Developer and which are not being occupied by a residence ~~or vessel~~, at one-half (1/2) the rate assessed against ~~Lots or Units owned~~ memberships held by Owners other than Developer. This provision is not and shall not be construed as a guaranty or representation as to the level of assessments imposed under the provisions of this Article. Upon transfer of title of a Developer-owned Lot ~~or Unit~~, Dwelling, or Boat Slip, such Lot ~~or Unit, Dwelling, or Boat Slip~~ shall be assessed in accordance with the provisions of section 6.1 and in the applicable amount established against Lots or Units, Dwellings, or Boat Slips owned by the Class A members of the Association, prorated as of and commencing with, the month following the date of transfer of title.

16. Article X, Section 10.1, is hereby amended as follows:

**10.1 Water System.** The central water supply system provided for the service of Villages of Vilano shall be used as sole source of potable water for all water spigots and outlets located within or on all

buildings and improvements located on each Lot and within, on, or servicing all Boat Slips. Each Owner shall pay water meter charges established or approved by Developer or other supplier thereof, and shall maintain and repair all portions of such water lines located within the boundaries of his Lot or Boat Slip. No individual water supply system or well for consumption, or irrigation, or other purposes shall be permitted on any Lot or within any Boat Slip without prior approval of the Association.

17. Article XII, Section 12.3(b), is hereby amended as follows:

(b) **Owners.** Subject to the provisions of paragraphs 12.3(a) and 12.9, this Declaration may only be amended with the joinder of the Association and: (1) on or before thirty (30) years from the date it is Recorded by an instrument executed by the Association with the formalities from time to time required of a deed under the Laws of the State of Florida and signed by not less than seventy-five percent (75%) of all Owners members entitled to vote in accordance with Sections 4.1 and 4.2; and (ii) thereafter, by such instrument signed by not less than sixty percent (60%) of all Owners members entitled to vote in accordance with Sections 4.1 and 4.2. No amendment shall be effective until Recorded but the Association's proper execution shall entitle it to record the amendment in the Public Records, notwithstanding the informal execution by the requisite percentage of Owners members.

18. The first sentence of the last paragraph of Article XII, Section 12.6, is hereby amended as follows:

As used in this paragraph, the term "its successors or assigns" specifically does not include purchasers of Lots improved as completed residences or completed Boat Slips.

19. Article XII, Section 12.9, is hereby amended as follows:

**12.9 Annexation of Contiguous Land.**

Notwithstanding any other provision of this Declaration to the contrary, the Developer reserves and shall have the sole right to annex additional contiguous land, on which a condominium, marina condominium, or additional lots may be developed, and make same subject to this Declaration without the joinder or consent of any Owner, the Association, the holder of a Mortgage or lien affecting the property, or any other person. Notwithstanding, the aforesaid, nothing herein shall be deemed a joinder by ~~the First National Bank of Boston Fleet Bank of Boston~~ in this Declaration. The Owners of Units Lots, Dwellings, and Boat Slips situated on such additional contiguous land shall be members of the Association in accordance with the provisions of this Declaration and shall be subject to all the covenants, rules, regulations, and By-Laws in the same manner and with the same effect as the original Unit Owners of this Declaration and the Association.

20. This amendment is executed by the Developer pursuant to Article XII, Section 12.9, to annex additional contiguous land and make that land subject to the Declaration, and pursuant to Article XII, Section 12.3(a), to cure an ambiguity or error in the original Declaration.

21. All other terms and provisions of the Declaration not in conflict with the provisions of this amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this amendment to be executed on the day and year first above written.

Signed, sealed and delivered in the presence of:

Sharyn L. Kenson  
Witness

\_\_\_\_\_  
Witness

VILANO VENTURE, INC., a Florida corporation

By: James D. Borris  
JAMES D. BORRIS

Its: V. PRES  
3655 Coastal Highway  
St. Augustine, FL 32084

DEVELOPER

STATE OF FLORIDA

COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 1995, by JAMES D. BORRIS, as VICE PRESIDENT of Vilano Venture, Inc., a Florida corporation, who is personally known to me or who has produced \_\_\_\_\_ (identification and number) as identification.

Sharyn L. Kenson

Notary Public  
State of Florida at Large  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_



EXHIBIT "A"

A PORTION OF SECTION 32, TOWNSHIP 6 SOUTH, RANGE 30 EAST, ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE NORTHWEST CORNER OF TRACT "K" AS SHOWN ON PLAT OF VILLAGES OF VILANO UNIT III AS RECORDED IN MAP BOOK 26, PAGES 62, 63, 64 & 65 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH  $07^{\circ}20'00''$  EAST, ALONG THE WEST LINE OF SAID TRACT "K" AND THE WEST LINE OF TRACT "O" AS SHOWN ON SAID PLAT, A DISTANCE OF 527.39 FEET TO THE SOUTHWEST CORNER OF SAID TRACT "O"; THENCE, NORTH  $84^{\circ}17'42''$  WEST ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID PLAT, A DISTANCE OF 95.33 FEET; THENCE SOUTH  $89^{\circ}29'01''$  WEST, A DISTANCE OF 178 FEET MORE OR LESS TO THE WATERS OF THE NORTH RIVER (INTRACOASTAL WATERWAY); THENCE NORTHERLY ALONG SAID WATERS, A DISTANCE OF 415 FEET MORE OR LESS TO A POINT WHICH BEARS SOUTH  $67^{\circ}48'00''$  WEST FROM THE POINT OF BEGINNING SAID POINT BEING THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF THE AFOREMENTIONED TRACT "K"; THENCE NORTH  $67^{\circ}48'00''$  EAST, ALONG SAID LINE A DISTANCE OF 275 FEET MORE OR LESS TO THE POINT OF BEGINNING.

COPY