

**FIFTH SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EAST SHORES VI**

**THIS FIFTH SUPPLEMENTAL DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR EAST SHORES VI** (this "Fifth Supplemental  
Declaration") is made and entered into this 07<sup>th</sup> day of November, 1994 by **CRESCENT  
RESOURCES, INC.**, a South Carolina corporation ("Declarant").

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

**WHEREAS**, Declarant has previously filed the Declaration of Covenants, Conditions and Restrictions: East Shores dated September 14, 1990 and recorded in Book 771, Page 364, Burke County Public Registry as supplemented by that certain Supplemental Declaration of Covenants, Conditions and Restrictions: East Shores II dated October 26, 1990 and recorded in Book 773, Page 1826, Burke County Public Registry, all as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions for East Shores and to Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores II dated December 20, 1990 and recorded in Book 774, Page 1229, Burke County Public Registry and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for East Shores and to Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores II dated March 28, 1991 and recorded in Book 777, Page 1862, Burke County Public Registry and that certain Second Supplemental Declaration of Covenants, Conditions and Restrictions For East Shores III dated September 18, 1992 and recorded in Book 801, Page 342, Burke County Public Registry and that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions for East Shores and to Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores II and to Second Supplemental Declaration of Covenants, Conditions and Restrictions For East Shores III dated September 18, 1992 and recorded in Book 801, Page 367, Burke County Public Registry and that certain Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for East Shores and to Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores II and to Second Supplemental Declaration of Covenants, Conditions and Restrictions For East Shores III dated June 23, 1993 and recorded in Book 809, Page 9, Burke County Public Registry, and that certain Third Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores IV dated December 8, 1993 and recorded in Book 817, Page

**DRAWN BY AND MAIL TO:**

Tim M. Kinskey, Esq.  
Parker, Poe, Adams & Bernstein L.L.P.  
2500 Charlotte Plaza  
Charlotte, NC 28244

FILED  
LOUISE ANDERSON  
*Book 834, Page 345*  
'94 NOV 14 A11:43  
*Louise Anderson*  
REGISTER OF DEEDS  
BURKE CO., N.C.

1234, Burke County Public Registry and that certain Fourth Supplemental Declaration of Covenants, Conditions and Restrictions for East Shores V dated February 9, 1994 and recorded in Book 820, Page 618, Burke County Public Registry, and that certain Fifth Amendment to Declaration of Covenants Conditions and Restrictions for East Shores and to Supplemental Declaration of Covenants Conditions and Restrictions for East Shores II and to Second Supplemental Declaration of Covenants Conditions and Restrictions for East Shores III and recorded in Book 827, Page 1324, Burke County Public Registry (collectively referred to hereinafter as the "Declaration");

**WHEREAS**, pursuant to Article II, Section 2 of the Declaration Declarant may cause additional property made subject to the terms and scheme of the Declaration by filing a Supplemental Declaration in Burke County Public Registry;

**WHEREAS**, Declarant desires to cause those certain thirty-three (33) Boatslips located within the Phase VI Pier which are designated as Boatslips 1 through 33 on Exhibit A attached hereto and incorporated herein by reference to be made subject to the terms and scheme of the Declaration; and

**WHEREAS**, Declarant desires to cause that certain property located in Burke County, North Carolina and more particularly set forth on that certain map of East Shores Phase VI, recorded in Map Book 11, Pages 38 of the Burke County Public Registry (the "Phase VI Property" or "Phase VI") to be made subject to the terms and scheme of the Declaration.

**NOW, THEREFORE**, Declarant, by this Fifth Supplemental Declaration, hereby declares that (subject to certain rights of amendment, as set forth in the Declaration) all of the Phase VI Property and Phase VI Boatslips is, are and shall be held, sold, conveyed and occupied subject to the Declaration as supplemented by this Fifth Supplemental Declaration and the easements, covenants, conditions, restrictions, charges and liens set forth therein and in this Fifth Supplemental Declaration, all of which shall run with the title to the Phase VI Property and be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in and to the Phase VI Boatslips and the Phase VI Property, or any part thereof, their heirs, successors and assigns, subject to the following additional terms and conditions:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. "Additional Property" as defined in the Declaration shall be deemed to include the Phase VI Property (as defined above).

Section 1.2. "Boatslips" as defined in the Declaration shall be deemed to include the Phase VI Boatslips.

Section 1.3. "Club Lot" as defined in the Declaration shall be deemed to include each of the Phase VI Lots.

Section 1.4. "Common Area" or "Common Areas" as defined in the Declaration shall be deemed to include the Dock Maintenance Easements, Phase VI Access Easements, Phase VI - Northern Parking Area, Phase VI Pier, Phase VI Roadway and Public Roads (prior to their acceptance for public maintenance) and any property shown and designated on the Phase VI Map as "Common Area," "Common Open Space" or "COS." Only the Owners of certain Lots and the Association, as designated in the Declaration and this Fifth Supplemental Declaration, shall be entitled to the use of the Dock Maintenance Easements, Phase VI Access Easements, Phase VI - Northern Parking Area, Phase VI Pier and Phase VI Roadway.

Section 1.5. "Dock Maintenance Easements" shall mean and refer to the easement hereby reserved and granted by Declarant over the entire Phase VI Roadway and the easements hereby reserved and granted by Declarant centered over the side Lot lines between Lots 71 and 72, and 72 and 73 and consisting of a ten foot wide strip running the entire length of such Lots from the Phase VI Roadway to the waterfront, for use by the Association and its agents pursuant to Section 2.1 of this Fifth Supplemental Declaration.

Section 1.6. "Entrance Monuments" as defined in the Declaration shall be deemed to include the easement areas designated on the Phase VI Map as "Sign & Landscape Easement Area" and shall also be deemed to include the area designated on the Phase VI Map as "Common Area" that is within the Public Road.

Section 1.7. "Frontage Fence" as defined in the Declaration shall be deemed to include the easement areas designated on the Phase VI Map as "Sign & Landscape Easement Area."

Section 1.8. "Lot" or "Lots" as defined in the Declaration shall be deemed to include the separately numbered parcels depicted on the Phase VI Map, which Lots do not include the Common Areas.

Section 1.9. "Map" as defined in the Declaration shall be deemed to include the Phase VI Map as defined in this Fifth Supplemental Declaration.

Section 1.10. "Non-Waterfront Lots" as defined in the Declaration shall be deemed to include the Phase VI - Northern Boat Slip Lots and the Phase VI - Southern Boat Slip Lots (defined below), some of which adjoin the waters of Lake James but upon which certain circumstances prevent the construction of individual piers or boatslips.

Section 1.11. "Phase VI Access Easements" shall mean and refer to the Phase VI - Northern Access Easement and the Phase VI - Southern Access Easement.

Section 1.12. "Phase VI Boatslips" shall mean and refer to those certain thirty-three (33) additional Boatslips located within the Phase VI Pier, which shall be designated as Boatslips 1 through 33 incorporated herein by reference.

Section 1.13. "Phase VI Boatslip Lots" shall mean and refer to the Phase VI - Northern Boatslip Lots and Phase VI - Southern Boatslip Lots.

Section 1.14. "Phase VI Map" shall mean and refer to the map entitled "East Shores - Phase VI", recorded in Map Book 11, Pages ~~38~~<sup>4</sup> ~~39~~<sup>39</sup> in the Burke County Public Registry and any revisions or re-recording of the Phase VI Map recorded by Declarant from time to time in the Burke County Public Registry.

Section 1.15. "Phase VI - Northern Access Easement" shall mean and refer to the appurtenant easement hereby reserved and granted by Declarant over the portion of the Phase VI Roadway within Lots 57 and 58 and fronting the property designated as "Common Open Space 0.85 Ac." on the Map, together with the real property between Lots 57 and 58 designated as "Boat Access" on the Phase VI Map, as well as all signs, gazebo, lighting and other improvements located thereon for the common use and benefit of Phase VI - Northern Boatslip Lot Owners for access to the Phase VI - Northern Pier. The Phase VI - Northern Access Easement shall be governed and maintained in accordance with Article IV, Section 8 and Article IX, Section 9 of the Declaration and Article V of this Fifth Supplemental Declaration.

Section 1.16. "Phase VI - Northern Boatslip Lots" shall mean and refer to Lots 53 through 59, Lots 74 through 87, and Lots 91 through 98, all as shown on the Phase VI Map.

Section 1.17. "Phase VI - Northern Parking Area" shall mean and refer to the parking lot to be constructed upon and over all or portions of the property designated "Common Open Space 0.85 Ac." for the common use and benefit of the Phase VI - Northern Boatslip Lot Owners in connection with the Phase VI - Northern Pier, Boatslips, and Access Easement. The Phase VI - Northern Parking Area shall be maintained and governed in accordance with Article IV, Section 9 of the Declaration.

Section 1.18. "Phase VI - Northern Pier" shall mean and refer to that certain pier or piers containing the Phase VI - Northern Boatslips, constructed over the waters of Lake James at the terminus of the Phase VI - Northern Access Easement and shown on Exhibit A hereto.

Section 1.19. "Phase VI Pier" shall mean and refer to those certain piers, containing the Phase VI Boatslips, sometimes referred to individually by the category of Phase VI Boatslip which they contain (Phase VI - Northern or Phase VI - Southern), which may be constructed over the waters of Lake James, which Piers are shown on Exhibit A attached hereto. The Phase VI Pier shall be governed and maintained in accordance with the terms of Article IV, Section 8 of the Declaration and Article V of this Fifth Supplemental Declaration.

Section 1.20. "Phase VI Promontory Lots" shall mean and refer to Lots 57 through 77 (inclusive) together with the Common Area designated "Common Open Space 0.85 Ac." as shown on the Phase VI Map.

Section 1.21. "Phase VI Roadway" shall mean and refer to the private road designated as "Harbor View Terrace Ext." adjoining the Phase VI Promontory Lots as shown on the Phase VI Map, which will be maintained by the Association as set forth in the Declaration.

Section 1.22. "Phase VI - Southern Access Easement" shall mean and refer to the appurtenant easement hereby reserved and granted by Declarant over the twenty foot wide strip along the rear of Lots 71, 72, 73 and 88 adjacent to the waters of Lake James to be used only by the Owners of Phase VI - Southern Boatlip Lots for access to the Phase VI - Southern Pier. The Phase VI - Southern Access Easement shall be governed and maintained in accordance with Article IV, Section 8 and Article IX, Section 9 of the Declaration and Article V of this Fifth Supplemental Declaration.

Section 1.23. "Phase VI - Southern Boatlip Lots" shall mean and refer to Lots 71 through 73 and Lot 88 as shown on the Phase VI Map, which adjoin the waters of Lake James but upon which certain circumstances prevent the construction of individual piers or boatslips.

Section 1.24. "Phase VI - Southern Pier" shall mean and refer to that pier or piers containing the Phase VI - Southern Boatslips constructed over the waters of Lake James and as shown on Exhibit A hereto and more particularly addressed in Article VI.

Section 1.25. "Promontory Lots" as defined in the Declaration shall be deemed to include the Phase VI Promontory Lots.

Section 1.26. "Property" as defined in the Declaration shall be deemed to include the property shown on the Phase VI Map (exclusive of the public rights-of-way shown on the Phase VI Map once accepted for public maintenance).

Section 1.27. "Public Roads" as defined in the Declaration shall be deemed to include the roads and cul-de-sacs labeled on the Phase VI Map as "Harbor View Terrace" and "Brentwood Place" excluding the Phase VI Roadway.

Section 1.28. "Roadway" as defined in the Declaration shall be deemed to include the Phase VI Roadway.

Section 1.29. "Septic Easement" shall mean and refer to the easements for septic service and for use as a septic drainage field over, across and under portions of the Common Area as provided in Article VI of the Fifth Supplemental Declaration.

Section 1.30. "Septic Lot" shall mean and refer to each Lot to which a Septic Easement is appurtenant as provided in Article VI of the Fifth Supplemental Declaration.

Section 1.31. "Waterfront Lots" as defined in the Declaration shall be deemed to include Lots 60 through 70 and Lots 89 and 90, all as shown on the Phase VI Map.

Section 1.32. "Well Lot" as described in Article IX, Section 19 of the Declaration shall include the property designated as "Well Lot" on the Phase VI Map; provided, however, it may serve any Lot within the Development.

## ARTICLE II

### PROPERTY RIGHTS

Section 2.1. Owners' Rights to Use and Enjoy Common Areas and Access Easements. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to such Owner's Lot, subject to the limitations in the Declaration and subject to the following:

(a) access for the Phase VI - Northern Boatslip Lot Owners to and from the Phase VI - Northern Pier and Boatslips shall be exclusively over and across the Phase VI - Northern Access Easements, and the Phase VI - Northern Boatslips, Pier and Access Easements may only be used by the Owners of Phase VI - Northern Boatslips;

(b) access for Phase VI - Southern Boatslip Lot Owners to and from the Phase VI - Southern Pier and Boatslips shall be exclusively over and across the Phase VI - Southern Access Easement, and Phase VI - Southern Boatslips, Pier and Access Easement may only be used by the Owners of Phase VI - Southern Boatslips; and

(c) the Dock Maintenance Easements may be used only by persons designated by the Association or the Owners of the Phase VI - Southern Boatslip Lots to maintain the Phase VI - Southern Access Easement, and may only be used for access to and from such Access Easement when performing such maintenance. The Owners of Lots 71 through 73 and Lot 88 shall maintain the portions of their Lots lying within the Phase VI - Southern Access Easement.

## ARTICLE III

### PROMONTORY LOTS

Section 3.1. Designation of Promontory Lots. The Phase VI Promontory Lots are hereby designated by Declarant as Promontory Lots, subject to the terms, conditions and

restrictions applicable to Promontory Lots, including but not limited to the Promontory Assessments, all as set forth more particularly in the Declaration.

## ARTICLE IV

### CLUB LOTS

Section 4.1. Designation of Club Lots. The Lots numbered 53 through 98 on the Phase VI Map are hereby designated by Declarant as Club Lots, subject to the terms, conditions and restrictions applicable to Club Lots, including but not limited to the Club Assessments and Special Club Assessments, all as more particularly set forth in the Declaration.

## ARTICLE V

### COVENANT FOR PHASE VI BOATSLIP AND SPECIAL PHASE VI BOATSLIP ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Phase VI Boatslip and Special Phase VI Boatslip Assessments. The Declarant, for each Non-Waterfront Lot owned within Phase VI, hereby covenants, and each Owner of any Non-Waterfront Lot within Phase VI by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, in addition to the Annual and Special Assessments provided for herein, Phase VI Boatslip Assessments and Special Phase VI Boatslip Assessments, as hereinafter defined, for maintenance and repair costs of the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Non-Waterfront Lot against which each such assessment or charge is made and upon the right to use the Phase VI Pier, Phase VI Access Easements, Phase VI - Northern Parking Area and the Phase VI Boatslip appurtenant to such Non-Waterfront Lot. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Non-Waterfront Lot effective at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5.2. Purpose of Phase VI Boatslip Assessments. The assessments to be levied annually by the Association against each Non-Waterfront Lot within Phase VI ("Phase VI Boatslip Assessments") shall be used as follows:

- (a) to maintain, repair and reconstruct, when necessary, the Phase VI Pier and Phase VI Boatslips, including all lighting and other fixtures, poles, wires, railings and other facilities located thereon;

- (b) to maintain, repair and reconstruct, when necessary, the Phase VI - Northern Parking Area;
- (c) to maintain any and all drainage pipes, inlets, basins, ditches, swales and other facilities installed upon the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area;
- (d) to maintain, repair and reconstruct, when necessary, any and all structures, lighting fixtures, poles, wires, railings and other facilities, including any gazebo, located upon the Phase VI Access Easements;
- (e) to provide and pay for lighting of the Phase VI Pier, Phase VI Boatslips, the Phase VI Access Easements and Phase VI - Northern Parking Area, to the extent necessary for the safety and enjoyment of the users thereof;
- (f) to keep the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area clean and free from debris, to maintain same in a clean and orderly condition and to maintain the landscaping on the Phase VI Access Easements in accordance with the highest standards for private parks, including any necessary removal and replacement of landscaping;
- (g) to pay all ad valorem taxes levied against the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area and any other property owned by the Association in connection therewith;
- (h) to pay all lease payments, if applicable, to Duke Power Company for the lease of the land on which the Phase VI Pier and Phase VI Boatslips are located;
- (i) to pay the premiums on all insurance carried by the Association in connection with the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area pursuant hereto or pursuant to the Bylaws;
- (j) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Phase VI Pier, Phase VI Boatslips, Phase VI Access Easements and Phase VI - Northern Parking Area; and
- (k) to maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (f) above for the purposes set forth in Article IV, Section 7 of the Declaration.

Section 5.3. Payment of Phase VI - Northern Boatslip Assessments; Due Dates. The Phase VI - Northern Boatslip Assessments provided for herein shall commence as to each

Phase VI - Northern Boatslip Lot on January 1, 1995. The Phase VI - Northern Boatslip Assessments for the fiscal year beginning January 1, 1995 shall be Three Hundred Eighty-Five and 00/100 Dollars (\$385.00) per Phase VI - Northern Boatslip Lot, one-half (½) of which amount shall be due and payable no later than January 30, 1995 and the remaining one-half (½) of which amount shall be due and payable no later than July 31, 1995. The Phase VI - Northern Boatslip Assessments for each and every fiscal year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 5.4, and shall be due and payable in two (2) semi-annual installments of one-half (½) each, such installments being due and payable no later than January 30 and July 31, respectively, of each such fiscal year. The Board of Directors shall fix the amount of the Phase VI - Northern Boatslip Assessment as to each Phase VI - Northern Boatslip Lot for any fiscal year at least thirty (30) days prior to January 1 of such fiscal year, and the Association shall send written notice of the amount of the Boatslip Assessment, as well as the amount of the first installment due, to each such Phase VI - Northern Boatslip Lot Owner on or before January 1 of such fiscal year. In addition, the Association shall send written notice that the second Phase VI - Northern Boatslip Assessment installment is due and the amount of such installment to each such Phase VI - Northern Boatslip Lot Owner or before July 1 of each fiscal year. Failure of the Association to send the notice described in this Section 5.3 shall not relieve the Owners of their liability for Phase VI - Northern Boatslip Assessments. Notwithstanding the above, the Association may alter the dates of the fiscal year for setting the Phase VI - Northern Boatslip Assessments and may alter the collection dates for the Phase VI - Northern Boatslip Assessments in any manner not inconsistent with this Article. Furthermore, the Association may increase or decrease the frequency of collection of Phase VI - Northern Boatslip Assessments in any reasonable manner.

Section 5.4. Maximum Phase VI - Northern Boatslip Assessment.

(a) For fiscal years beginning January 1, 1996 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Phase VI - Northern Boatslip Assessments each year by a maximum amount equal to the previous year's Boatslip Assessments times the greater of (1) ten percent (10%), or (2) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Phase VI - Northern Boatslip Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Phase VI - Northern Boatslip Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after January 1, 1996, the Phase VI - Northern Boatslip Assessments may be increased without limitation if such increase is approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Phase VI - Northern Boatslip Lots, taken at a duly held meeting of such Members in accordance with the Bylaws.

(c) The Board of Directors may fix the Phase VI - Northern Boatslip Assessments at an amount not in excess of the maximum set forth in Subparagraph (a) above (the "Maximum Phase VI - Northern Boatslip Assessment"). If the Board of Directors shall levy less than the Maximum Phase VI - Northern Boatslip Assessment for any fiscal year and thereafter, during such fiscal year, determine that the important and essential functions of the Association as to the Phase VI - Northern Pier, Boatslips and Access Easement cannot be funded by such lesser assessment, the Board may, by a vote in accordance with the Bylaws, levy a supplemental Phase VI - Northern Boatslip Assessment ("Supplemental Phase VI - Northern Boatslip Assessment"). In no event shall the sum of the Phase VI - Northern Boatslip and Supplemental Phase VI - Northern Boatslip Assessments for any year exceed the applicable Maximum Phase VI - Northern Boatslip Assessment for such year.

Section 5.5. Special Assessments for Phase VI - Northern Boatslip Improvements. In addition to the Phase VI - Northern Boatslip Assessments authorized above, the Association may levy, in any assessment year, a special Phase VI - Northern Boatslip Assessment ("Special Phase VI - Northern Boatslip Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Phase VI - Northern Pier, Phase VI - Northern Boatslips, and any capital improvement located on the Phase VI - Northern Access Easement, including lighting and other fixtures, poles, wires, gazebo, railings and other facilities located thereon and personal property related thereto. Provided that any such assessment must be approved by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by Members owning Phase VI - Northern Boatslip Lots, taken at a duly held meeting of such Members in accordance with the Bylaws, and further providing that any such Special Phase VI - Northern Boatslip Assessment may be levied only against the Owners of Phase VI - Northern Boatslip Lots.

Section 5.6. Payment of Phase VI - Southern Boatslip Assessments; Due Dates.

(a) The Phase VI - Southern Boatslips shall be maintained, repaired and replaced, as necessary, privately by the Owners of Phase VI - Southern Boatslip Lots, with each such Owner sharing such costs on a pro rata basis. However, in order to preserve, protect and enhance the values of Lots in the Development, the Association shall have a contingent right to establish and collect Phase VI - Southern Boatslip Assessments against Phase VI - Southern Boatslip Lots only upon the occurrence of any of the following:

(i) a written request for Phase VI - Southern Boatslip Assessments signed by a majority of the Phase VI - Southern Boatslip Lot Owners;

(ii) a written request for Phase VI - Southern Boatslip Assessments signed by one (1) Phase VI - Southern Boatslip Lot Owner, and a determination by the Board of Directors that such request for assessments is necessary; or

(iii) a determination by the Board of Directors that maintenance, repairs or other costs described in Section 5.2 are necessary for the Phase VI - Southern Boatslips, Pier or Access Easements.

(b) Any Phase VI - Southern Boatslip Assessments shall be in an amount as set by the Board of Directors. Any Phase VI - Southern Boatslip Assessments shall be due and payable in one installment within thirty (30) days of the Association's written notice of the amount. Failure of the Association to send such notice shall not relieve the Owners of Phase VI - Southern Boatslip Lots of their liability for such assessments.

#### Section 5.7. Assessment Rate.

(a) With the exception set forth in subsection (b) below, both Boatslip and Special Boatslip Assessments must be fixed at a uniform rate for all Phase VI Boatslip Lots within a category (all Owners of Phase VI - Southern Boatslips will pay the same rate as one another and all Owners of Phase VI - Northern Boatslips will pay the same rate as one another); and

(b) Boatslip and Special Boatslip Assessments for each Phase VI Boatslip Lot owned by Declarant and unoccupied as a residence shall be one-third (1/3) of the Boatslip and Special Boatslip Assessments for each other Phase VI Boatslip Lot in the Subdivision not owned by Declarant; provided, however, Declarant shall pay no Boatslip or Special Boatslip Assessment for a Phase VI Boatslip Lot until such a Phase VI Boatslip Lot has, as an appurtenance, an actual constructed Boatslip.

## **ARTICLE VI**

### **SEPTIC EASEMENT; DECLARANT'S OPTION TO PURCHASE COMMON AREA SUBJECT TO SEPTIC EASEMENT**

Section 6.1. Septic Easement. A non-exclusive easement for the purpose of providing septic service and for use as a septic drainage field (the "Septic Easement") is hereby reserved to Declarant, and granted to the Owners of the Lots hereinafter specified as such Lots are shown on the Phase VI Map (the "Septic Lots" or "Septic Lot"), over, across and under that portion of the Common Area shown and described on the Phase VI Map as follows:

<u>Septic Lots</u>	<u>Septic Easement</u>
Lot 56	Area described as Common Area Septic Easement Lot 56A on the Phase VI Map.
Lot 57	Area described as Common Area Septic Easement Lot 57A on the Phase VI Map.
Lot 58	Area described as Common Area Septic Easement Lot 58A on the Phase VI Map.
Lot 67	Area described as Common Area Septic Easement Lot 67A on the Phase VI Map
Lot 68	Area described as Common Area Septic Easement Lot 68A on the Phase VI Map
Lot 69	Area described as Common Area Septic Easement Lot 69A on the Phase VI Map.
Lot 70	Area described as Common Area Septic Easement Lot 70A on the Phase VI Map.
Lot 71	Area described as Common Area Septic Easement Lot 71A on the Phase VI Map.
Lot 72	Area described as Common Area Septic Easement Lot 72A on the Phase VI Map.
Lot 73	Area described as Common Area Septic Easement Lot 73A on the Phase VI Map.
Lot 74	Area described as Common Area Septic Easement Lot 74A on the Phase VI Map.
Lot 75	Area described as Common Area Septic Easement Lot 75A on the Phase VI Map.
Lot 76	Area described as Common Area Septic Easement Lot 76A on the Phase VI Map.
Lot 77	Area described as Common Area Septic Easement Lot 77A on the Phase VI Map.

The Septic Easement shall be an appurtenance to and run with the title to the Septic Lot to which it is assigned as set forth above. Any deed, deed of trust, mortgage, transfer or other conveyance of any of the Septic Lots shall also transfer or convey the Septic Easements appurtenant thereto, even if not expressly included.

The Septic Easement herein reserved and granted shall include the right to construct, install, excavate, dig, build, maintain, operate, remove and reinstall a septic system and equipment in and upon the Septic Lot and to clear (and continue to clear as necessary) all trees, brush and other plants and to remove all rocks if necessary for the proper construction, installation and maintenance of said system, all at the sole expense of the Owner of the Septic Lot to which the Septic Easement is Appurtenant; provided, however, that if the need to repair said septic system is caused by the negligent or willful act of the Association, its

successors and assigns, their agents, employees, members, invitees or licensees, then the cost to repair shall be borne by the Association or its successors and assigns. Except for damage caused by the negligent or willful act of the Association, its successors and assigns, their agents, employees, members, invitees or licensees as provided above, the Owner of the Septic Lot shall promptly and reasonably restore any portion of the surface of the Septic Easement appurtenant thereto (but not trees, brush or other plants, except grass) disturbed by the installation or maintenance of said septic system. Should the Owner of Septic Lot fail to so restore the surface of the Septic Easement appurtenant thereto, in the sole judgment of the Board of Directors, then the Board of Directors shall have the power to specially assess such Owner for the cost of said restoration in accordance with Article VIII, Section 2 of the Declaration.

In addition to the above-described rights, the Owner of the Septic Lot, to which the Septic Easement is appurtenant, its agents, independent contractors, successors and assigns, shall have the right of ingress, egress and regress over and across the Septic Easement in order to construct, install and maintain a septic system, as described above.

The Owner of the Septic Lot to which the Septic Easement is appurtenant shall be responsible for obtaining all necessary environmental permits and other permits for the installation and use of said septic system and shall hold the Association, its successors and assigns, harmless from any loss, damage or liability relating thereto, except to the extent that such loss, damage or liability results from the negligent or willful act of the Association, its successors and assigns, their agents, employees, members, invitees, or licensees. Prior to the installation of a septic system on any Septic Easement, the Owner of the Septic Lot to which such Septic Easement is appurtenant shall have the proposed location of such septic system staked and approved by the appropriate governmental authorities, and such septic system shall be approved by, and constructed and maintained in accordance with all regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction thereover.

The Association shall hold fee simple title to the Common Areas subject to the Septic Easements. For so long as the Subdivision is not serviced by a public or private sewer lines, no fence, building or improvement of any kind shall be constructed on the Septic Easement, and no use shall be made of the Septic Easement which is inconsistent with or may interfere in any way with the use of the Septic Easement for septic purposes. For so long as the Subdivision is not serviced by a public or private sewer lines, the Association shall not transfer, mortgage, pledge, encumber or otherwise convey the Septic Easement or any portion thereof to any other party.

The Septic Easements hereby granted and reserved shall run with the title to the Septic Lot to which the Septic Easement is appurtenant and shall be in full force and effect until such time as the Subdivision is serviced by a public or private sewer line servicing the Septic Lot or Lots, such that there is no need for a septic system servicing any such septic Lot or

Lots. At such time as each Septic Lot is connected to a public or private sewer line and is serviced thereby, then the Septic Easement reserved and granted hereby as an appurtenance to such Septic Lot shall terminate and shall thereafter be null and void and of no further force and effect.

Section 6.2. Declarant's Option to Purchase Common Area Subject to the Septic Easements. Declarant herein reserves and grants unto itself, its successors in interest and assigns, the exclusive right and option (the "Option") to repurchase any or all of the Common Area subject to the Septic Easements (the "Option Property"). The terms and conditions of this Option are as follows:

(a). Term. The Option Property is subject to the Septic Easements reserved and granted over, across and under the Option Property to the Owners of the Septic Lots to which such Septic Easements are appurtenant as set forth herein and as designated and shown on the Phase VI Map. This Option shall become effective with respect to each portion of the Option Property on the date (the "Effective Date") that public or private sewer service is available to the Septic Lot to which such Septic Easement is appurtenant and either: (i) the Owner of such Septic Lot or any public or private utility, or governmental agency or any similar party has connected any residence on such Septic Lot to such public or private sewer line or: (ii) the Declarant has, at Declarant's cost and expense, connected any residence on such Septic Lot to such public or private sewer line. Declarant hereby reserves and grants unto itself, its successors in interest, and assigns, an non-exclusive easement for the purpose of connecting any residence on such a Septic Lot to any public or private sewer line providing service to such Septic Lot, including such access across the Septic Lot and the right to install any pipes and apparatus as may be necessary to connect any such residence to such sewer line. Notwithstanding the above, this Option shall vest in Declarant and become effective no later than the day before the date of death of the youngest lineal descendant now living of Woodard E. Farmer, Jr., Stephen M. Schreiner or Gilbert D. Stephenson, Jr., plus 21 years. Upon taking effect, this Option shall exist and continue with respect to each portion of the Option Property until 5:00 o'clock P.M. on the date thirty (30) years from the date this Option becomes effective with respect to each portion of the Option Property.

(b). Exercise. Grantor may, at any time after the Effective Date and during the option period, exercise this Option by giving written notice to the Association, deposited in the U.S. mail, certified or registered mail, return receipt requested, addressed to the Association at the address of its registered agent. Notwithstanding the date and time of the expiration of this Option set forth in Paragraph (A) hereof, Grantor shall have at least thirty (30) days in which to exercise this Option in the event that the Effective Date occurs less than thirty (30) days prior to the expiration date of this Option.

(c). Purchase Price. The purchase price for the purchase of each portion of the Option Property pursuant to this Option shall be One Dollar (\$1.00), payable in cash at closing.

(d). Closing. The closing of the purchase of each portion of the Option Property pursuant to this Option shall take place no later than thirty (30) days from the Association's receipt of the above-described written notice of exercise of this Option, at a place and time designated by Declarant. Declarant shall furnish to the Association at closing a general warranty deed conveying fee simple marketable title to the respective portion of the Option Property, free of all encumbrances except ad valorem taxes for the current year (prorated to the date of closing), easements and restrictions of record as of the date hereof and such other encumbrances as may be assumed or specifically approved by Declarant. Declarant shall pay for all closing costs and expenses, including preparation of the deed, the excise tax (revenue stamps) required by law and the cost of recording the deed. The Association shall furnish Declarant at closing with an affidavit and indemnification agreement, in form satisfactory to Declarant, showing that all labor and materials, if any, furnished to the respective portion of the Option Property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Declarant against all loss from any cause or claim arising therefrom.

(e). Parties. This Option shall be binding upon and shall inure to the benefit of Declarant and the Association, their successors in interest and assigns.

## ARTICLE VII

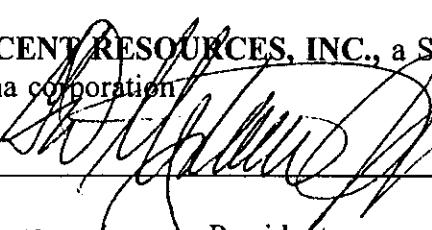
### MISCELLANEOUS

All capitalized terms not otherwise defined in this Fifth Supplemental Declaration shall have the same meaning as in the Declaration. Except as amended or modified hereby to reflect specific differences in character of the Phase VI Boatslips or the Phase VI Property, all covenants, conditions, restrictions and easements established by and contained in the Declaration shall remain in full force and effect and apply to the Phase VI Boatslips, Phase VI Property and the Lots in Phase VI.

Without limiting the foregoing, the Declarant, for each Lot in Phase VI, hereby covenants, and each Owner of a Lot in Phase VI by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Annual Assessments and Special Assessments, as defined in the Declaration and such Annual Assessments and Special Assessments shall be established and collected as provided in the Declaration.

IN WITNESS WHEREOF, Declarant has caused this Fifth Supplemental Declaration to be executed under seal effective the day and year first above written.

CRESCENT RESOURCES, INC., a South Carolina corporation

By:   
\_\_\_\_\_  
Vice President

ATTEST:

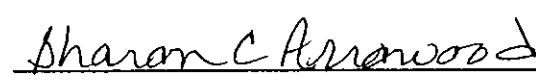
  
\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

STATE OF NORTH CAROLINA

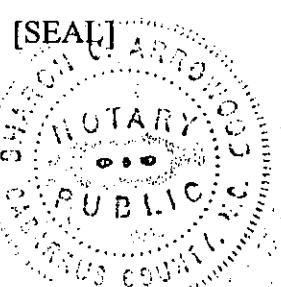
COUNTY OF MECKLENBURG

This 10th day of November, 1994, personally came before me Gilbert D. Stephenson, Jr. who, being by me duly sworn, says that he is the Vice President of CRESCENT RESOURCES, INC., a South Carolina corporation, and that the seal affixed to the foregoing instrument is the official seal of the Corporation, and that said writing was signed and sealed by him/her, in behalf of said Corporation, by its authority duly given and he/she acknowledged the writing to be the act and deed of the Corporation.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

10/13/98



DEC/26919-1

STATE OF NORTH CAROLINA—BURKE COUNTY

The foregoing certificate of Sharon C.  
Arrowood N.P. of said county is adjudged

to be correct. Let the instrument with its certificates, be registered. This 14 day of Nov. 1994

Louise Anderson, Register of Deeds

LUCILLE ANDERSON

by Alma Gates, Deputy

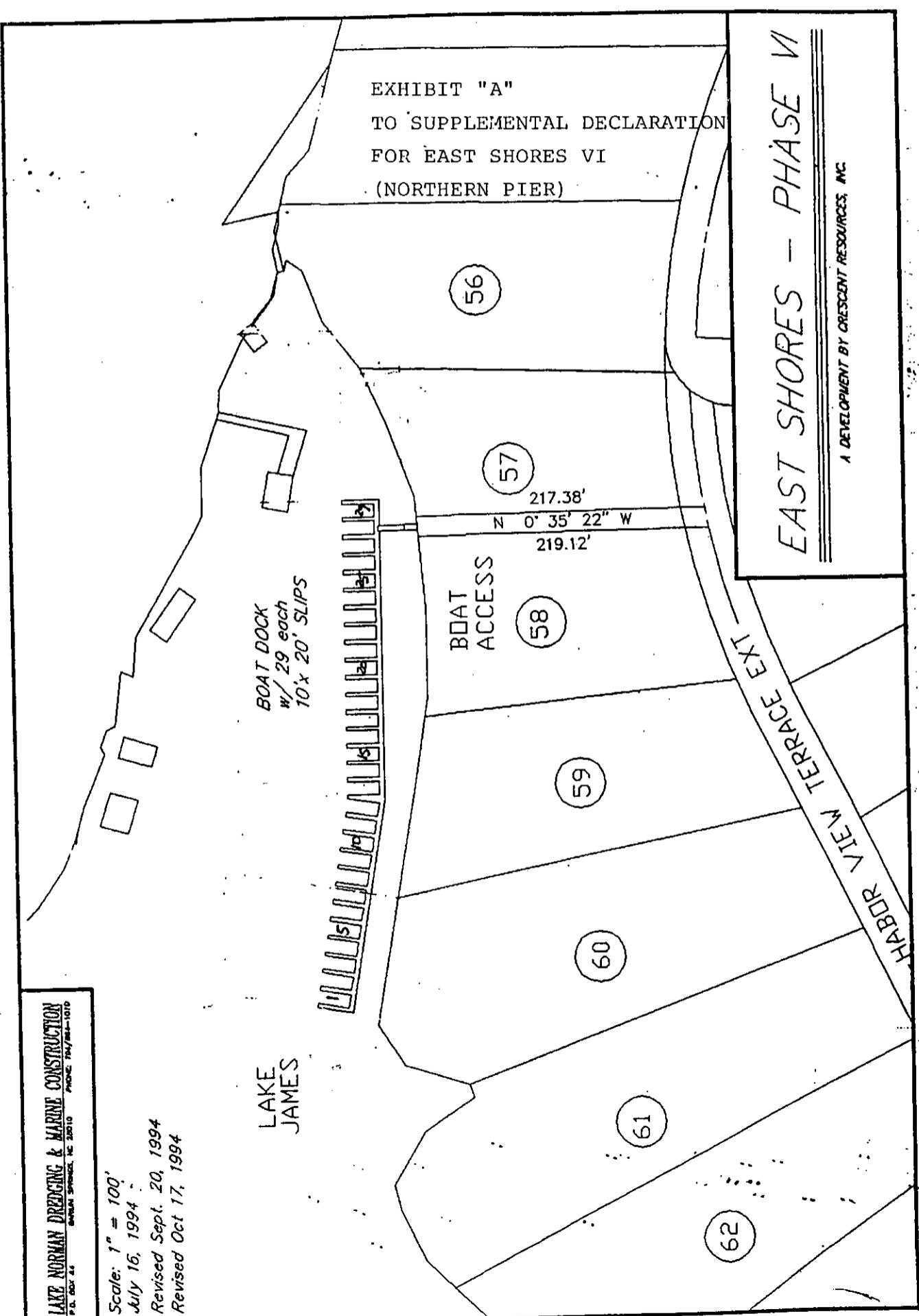


EXHIBIT "A"  
TO SUPPLEMENTAL DECLARATION  
FOR EAST SHORES VI  
(SOUTHERN PIER)

EAST SHORES - PHASE VI

A DEVELOPMENT BY PRESENT RESOURCES INC

LAKE NORMAN DREDGING & MARINE CONSTRUCTION  
P.O. BOX 44  
MAYSVILLE, NC 27050  
PHONE 910/664-1750

Scale: 1" = 100'  
July 16, 1994  
Revised 8/16/94  
Revised 10/26/94

RAMP

BOAT DOCK  
W/ 4 each  
10' x 20' SLIPS

LAKE JAMES

BK0834PC0362