

PARTIAL MODIFICATION OF RESTRICTIVE COVENANT

This Partial Modification of Restrictive Covenant executed this ____ day of February, 1988 by and among Coscan Florida, Inc., as successor in interest to City National Bank of Miami, as Trustee under Trust Agreement dated March 15, 1968 (collectively, "Declarant"), the Town of Golden Beach, a chartered municipality pursuant to the laws of the State of Florida ("Golden Beach") and Sea Pointe Development Corp. II, a Florida corporation ("Owner").

WHEREAS:

A. Whereas Declarant, on June 25, 1984, executed a Restrictive Covenant which was recorded among the Public Records of Dade County, Florida in Official Records Book 12197 Page 3190 ("Covenant");

B. The Covenant affected various parcels of real property located in Dade County, Florida;

C. One of said parcels of real property described in the Covenant as "Parcel E", the legal description of which (subject to a modification of the north boundary line of said Parcel "E") is now Golden Pointe Townhouses, according to the plat thereof as recorded among the Public Records of Dade County, Florida in Plat Book 133, Page 4 ("Property");

D. Owner is the owner of the fee simple title to the Property;

E. Since the recordation of the Covenant, the approved site plan for the development of the Property in effect at the date of recordation thereof was Rev/Mail Inland Infill Amendment No. 2, 164 87 dated June 11, 1987, Manual of County Commissioners, Metropolitan Dade County, Florida which approved a revised site plan for the Property as reflected by plans entitled Golden Pointe at The Waterways prepared by Robert Swedroe dated Revised February 9, 1987 except sheets 6, 7 and 8 dated Revised February 12, 1987, and Entrance Feature Plan entitled Golden Pointe Townhomes prepared by Bradshaw, Gill, Fueter and Associates dated received by Zoning Hearing Section February 5, 1987 (collectively, the "Revised Site Plan");

F. In accordance with the Covenant, the Revised Site Plan has been reviewed and approved by Golden Beach and the parties hereto wish to establish record notice of said approval and that the development of the Property in accordance with the Revised Site Plan does not constitute a violation of the Covenant.

NOW THEREFORE, Declarant, Golden Beach and Sea Pointe hereby acknowledge and agree to the following:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Golden Beach hereby approves the development of the Property in accordance with the Revised Site Plan notwithstanding differences between the Revised Site Plan and the site plan in effect at the time the Covenant was recorded.

3. Except as modified by this Partial Modification of Restrictive Covenant, the Covenant shall remain in full force and effect.

4. In the event that the property is not developed substantially in accordance with the Revised Site Plan, said development to be reflected by the issuance of a certificate of occupancy by the Dade County Building and Zoning Department based upon the Revised site plan, and zoning partial modification of Restrictive Covenant shall then this and void and of no further force or effect, provided, however, that it shall not be necessary to record a copy of said certificate of occupancy or any other instrument executed by any of the parties to reflect the completion of development in accordance with the Revised Site Plan. Rather, construction of improvements upon the property shall be conclusively deemed to be in compliance with the Revised Site Plan if an affidavit is recorded stating that a Certificate of Occupancy has been issued.

Notwithstanding the foregoing provisions under which this partial modification could be rendered null and void, this partial modification shall in all events remain forever effective as to all common areas and improvements thereon and as to any and all units acquired by an institutional lender by foreclosure or acceptance of a deed in lieu of title as provided herein, then no structure shall be constructed on the subject property which exceeds 50 feet in height. The rights granted an institutional lender shall accrue to the benefit of its successors and assigns. For purposes hereof, "institutional lender" shall mean and refer to the owner and holder of a mortgage encumbering a parcel, which owner and holder of said mortgage shall be a bank, National Mortgage Association, Savings bank, the Federal Mortgage Corporation, the Federal Home Loan the Veterans Administration, or other agency of the United States government, life insurance company, real estate mortgage investment trust or company or a lender generally recognized in the community as an institutional lender. Executed the day and year first above written.

Witnesses:

COBCAN FLORIDA, INC., a Florida corporation



By: 

SEA-POINTE DEVELOPMENT CORP., II, a Florida Corporation



By: 

(SIGNATURES CONTINUED NEXT PAGE)

DEC-30-'92 15:46 ID: CAN WATERWAYS
SERIAL: LILKSILIN et al.

TEL NO: 07
DEC 30, 92 14:48 NO. 006 P. 04
H477 P04

Patricia Russell
Ms to Herbert A. Tobin
and _____

TOWN OF GOLDEN BEACH

BY: *Herbert A. Tobin*
HERBERT A. TOBIN, Mayor

, Council President

Attest: _____
(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF DADR) 001

The foregoing instrument was acknowledged before me this 23 day of February, 1988 by John M. Lohr President of Coscan Florida, Inc. a Florida corporation, on behalf of the corporation.

John M. Lohr
Notary Public, STATE OF FLORIDA
My Commission Expires:

STATE OF FLORIDA)
COUNTY OF DADR) 001

The foregoing instrument was acknowledged before me this 23 day of February, 1988 by Don S. Vetter President of Sea Pointe Development Corp. II, a Florida corporation, on behalf of the corporation.

Don S. Vetter
Notary Public, STATE OF FLORIDA
My Commission Expires:

STATE OF FLORIDA)
COUNTY OF DADR) 001

The foregoing instrument was acknowledged before me this 23 day of February, 1988 by HERBERT A. TOBIN, Mayor, Council President, and Town of Golden Beach, Florida, a chartered municipality pursuant to the laws of the State of Florida, on behalf of the town. Herbert A. Tobin Town Clerk, of the

NOTARY PUBLIC STATE OF FLORIDA
COMMISSION EXPIRES: JULY 8, 1991
VERIFIED THIS HERETARY PUBLIC COMMISSION EXPIRES

Herbert A. Tobin
Notary Public, STATE OF FLORIDA
My Commission Expires:

ATTORNEYS' TITLE INFORMATION DISPLAY SYSTEM
DOR: 032588
TO: 031 DR 13588 879
R: DEBC PARTIAL MODIFICATION
MAMI TR U/Y COSCAN FLORIDA INC AS SUCCESSOR IN INTEREST TO SEN POINTE DEVELOPMENT CORP II
END PARTY: 03-15-88 AND TOWN GOLDEN BEACH SR: CN 88 00067043 DOI: 010100
LEGAL: ALL PG 133/4
COMMENTS: POST TO GOLDEN POINTE
ENRCHED: 133 /
PAGE 0110 OF 0115
FROM - 11/15/76 THRU - 01/01/88

SETTLEMENT AGREEMENT

This Settlement Agreement ("AGREEMENT") executed this 28th day of June, 1984, by and among CITY NATIONAL BANK OF MIAMI, as Trustee under Trust Agreement dated March 15, 1968 and known as Trust No. 2-550-6 ("CNB"), COSTAIN FLORIDA INC., a Florida corporation ("COSTAIN") (hereinafter collectively referred to as "OWNER"), the TOWN OF GOLDEN BEACH, a municipal corporation existing pursuant to the laws of the State of Florida ("GOLDEN BEACH"), INEZ LOVENER, NANCY ANDERSON and JOE HARTIGAN (hereinafter collectively referred to as the "INDIVIDUALS").

WHEREAS:

A. CNB is the record owner of the fee simple title to that certain real property located in Dade County, Florida, the legal description of which is attached hereto as Exhibit A and which, for purposes of this AGREEMENT, shall be deemed to include that certain real property described in Exhibit A-1 attached hereto, record title to which is held by SEA POINTE DEVELOPMENT CORPORATION, all of which real property shall hereinafter collectively be referred to as the "PROPERTY"; and

B. COSTAIN is the beneficial owner of the PROPERTY, except for that portion thereof described in Exhibit A-1 attached hereto; and

C. The Board of County Commissioners of Dade County, Florida ("COUNTY COMMISSION") approved a site plan for development of the Property known as "The Waterways" prepared by Sasald Associates, Inc. dated June, 1981 ("SITE PLAN") in accordance with its Resolution No. Z-31-82, as subsequently modified ("RESOLUTION"), which included the construction, operation and use of a portion of the Property as a marina ("MARINA"); and

D. GOLDEN BEACH instituted litigation with respect to the RESOLUTION, which litigation was dismissed by the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County ("CIRCUIT COURT") and which dismissal was subsequently affirmed by the District Court of Appeal of Florida, Third District; and

E. CNB filed an application for a Class I Coastal Permit ("PERMIT") to construct the MARINA in accordance with applicable provisions of the Code of Metropolitan Dade County, Florida ("CODE"); and

F. The COUNTY COMMISSION initially denied the application for the PERMIT and litigation concerning the same was instituted by CNB and is currently pending in the Circuit Court, Case Nos. 83-101-AP and 83-102-AP ("FIRST APPEAL"); and

G. A second application for the PERMIT was approved by the COUNTY COMMISSION, and GOLDEN BEACH and the INDIVIDUALS instituted litigation with respect to the same, which litigation is currently pending in the Circuit Court, Case No. 83-158-AP ("SECOND APPEAL"); and

H. The parties wish to settle the differences between them, terminate all pending litigation, and provide for certain other matters.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct.

2. On Parcels C, D, E and F, the legal descriptions of which are attached hereto as Exhibits B through B-3, inclusive, as shown in the SITE PLAN filed with and approved by Dade County, OWNER will provide a green space parallel to the Intracoastal Waterway not less in width from the Intracoastal Waterway than the minimum building setbacks dimensioned on sheet Nos. 10, 12, 13 and 15 of the SITE PLAN.

2.01 Attached hereto as Exhibit C is a sketch which reflects the size and location of the green space to be provided by OWNER.

2.02 In order to provide record notice that the green space shall be provided, simultaneously with the execution of this AGREEMENT, CNB shall execute and record a restrictive covenant ("COVENANT"), a copy of which is attached hereto as Exhibit D.

2.03 The green space shall be landscaped by OWNER (or the owner(s) of the green space when the same is to be landscaped) within a reasonable time after completion of construction on a particular Parcel and may include, without limitation, walkways, bicycle paths, benches, lights and such other items as may be permitted by the CODE and/or COUNTY COMMISSION and/or the Dade County Zoning Appeals Board.

3. The development of Parcels C, D, E and F on the Intracoastal

3.01 The Town Council of GOLDEN BEACH will be permitted to appoint a technically qualified representative and alternate representative acceptable to COSTAIN ("GOLDEN BEACH REPRESENTATIVE") to consult COSTAIN and give it his advice with respect to COSTAIN's planning and/or review of others' plans for landscaping (including the landscaping referred to in Paragraph 2.03 above) and exterior appearance of buildings to be constructed on SITE PLAN Parcels C, D, E, and F on the Intracoastal Waterway.

3.02 COSTAIN shall be responsible for the review and approval of, and shall review for its approval, the nature, design, kind, shape, height, materials, color and location of all structures, improvements and landscaping, including all plans and specifications therefor, to be constructed on Parcels C, D, E and F on the Intracoastal Waterway.

3.03 In connection with its planning and/or review with respect to the matters described in paragraph 3.01 above, COSTAIN shall:

3.03.1 Notify GOLDEN BEACH by notice to its Mayor or Town Clerk that it is planning or reviewing matters described in the notice calling for consultation with and the advice of the GOLDEN BEACH REPRESENTATIVE.

3.03.2 Within 3 days after its receipt of said notice, GOLDEN BEACH shall contact COSTAIN and the GOLDEN BEACH REPRESENTATIVE shall meet with COSTAIN at COSTAIN's offices within 5 days after GOLDEN BEACH's receipt of said notice, or at some other mutually agreeable time, to consult with and advise COSTAIN as to the matters within the scope of this paragraph.

3.03.3 It is the intent of the parties that through the GOLDEN BEACH REPRESENTATIVE, GOLDEN BEACH shall be included in the review process of matters described in this paragraph and COSTAIN shall give due consideration to the advice of the GOLDEN BEACH REPRESENTATIVE, but the ultimate decision with respect to such matters shall be vested in COSTAIN.

4. The following Restrictions refer to Parcel E of the SITE PLAN (the hotel site):

4.01 No parking will be located east of the main building.

4.02 No Lighting will be directed across the Intracoastal Waterway toward GOLDEN BEACH.

4.03 No loud or offensive music will be permitted outdoors after dark which would unreasonably disturb residents of GOLDEN BEACH.

4.04 Lighting of tennis courts will conform to USLTA championship standards, and tennis court lights will be turned off by 10:00 P.M.

4.05 No grandstand or public address system will be built or installed at the tennis courts on Parcel E.

4.06 No major public tennis tournaments will be held on Parcel E, but tournament matches related to any tournament that may be held on the property's main recreation site (Parcel I) may be played on Parcel E.

4.07 The COVENANT shall include the matters set forth in paragraphs 4.01 through 4.06.

5. COSTAIN will attempt in good faith to obtain:

5.01 Dade County approval of a revision to the SITE PLAN for Parcel F that will permit rotation of the tower located closest to the Intracoastal Waterway so that it approximately parallels the buildings located on the northeast corner of the Aventura site. To the extent required under the CODE, COSTAIN shall make such presentations to, and appearances before, applicable Dade County staff personnel, the Dade County Zoning Appeals Board and COUNTY COMMISSION.

5.02 The support of other developers in the immediate vicinity of The Waterways to join with COSTAIN and GOLDEN BEACH in requesting the State of Florida to implement Florida Marine Patrol patrolling of the Intracoastal Waterway in the portion of the Intracoastal Waterway between the bridge constituting a portion of the N.E. 192 Street Causeway and the Dade-Broward County line. It is the intent of the parties that the area of the Intracoastal Waterway described in this paragraph, which is not presently patrolled by the Florida Marine Patrol, shall have, at the very minimum, one fully equipped marine patrol unit available to patrol this area during all weekends and holidays. Towards this end, both COSTAIN, GOLDEN BEACH, and such other developers shall request the State of Florida to implement such marine patrol. However, in the event the parties are unable to obtain sufficient State involvement to implement the foregoing intent, COSTAIN will seek the cooperation of such developers and GOLDEN BEACH to initiate and implement a plan of action and cost sharing formula to provide police patrols as described in this paragraph.

5.03 Approval from governmental agencies having jurisdiction to post speed control, "no wake", manatee warning and other permissible signs to

control the speed and manner of operation of boats in the portion of the Intracoastal Waterway described in paragraph 5.02 above. The number and location of such signs shall be determined by the governmental agencies having jurisdiction.

5.04 GOLDEN BEACH shall assist and cooperate with COSTAIN with respect to the matters described in paragraphs 5.01, 5.02 and 5.03 above, and shall attempt to obtain jurisdiction or such other authority as may be necessary from governmental agencies having jurisdiction to exercise police powers on the portion of the Intracoastal Waterway described in paragraph 5.02 above.

6. Providing that neither GOLDEN BEACH nor the INDIVIDUALS are in default under this AGREEMENT, the following payments shall be made by COSTAIN to GOLDEN BEACH which GOLDEN BEACH, in its exclusive discretion, shall utilize for the purposes of minimizing the alleged impact of the SITE PLAN, beautifying the western side of GOLDEN BEACH or off-setting expenses of the litigation described in this AGREEMENT, but the failure of GOLDEN BEACH to so utilize the payments described below shall not affect the validity or enforceability of this AGREEMENT:

6.01 Upon the execution of this AGREEMENT and documents required hereunder, the sum of \$10,000.00.

6.02 On January 31, 1985, \$35,000.00.

6.03 Upon the issuance of a building permit for each of the six buildings to be located on Parcels C, D, E and F on the Intracoastal Waterway, the sum of \$12,500.00 per building which amount shall be paid by COSTAIN or the then owner(s) of the building to be constructed.

6.04 The COVENANT shall include the matters set forth in paragraphs 6.02 and 6.03.

7. GOLDEN BEACH, the INDIVIDUALS and COSTAIN acknowledge that the items described in paragraphs 5.01, 5.02 and 6.03 above are not within the control of either party and that accordingly, the failure to accomplish the same, except for the failure of COSTAIN to use good faith efforts, shall not be a basis to nullify any other provision of this AGREEMENT or a basis for non-performance by either party of its duties and obligations under this AGREEMENT. Further, COSTAIN shall not be required to institute litigation, appellate or original, in the event that those items are not approved by the

COUNTY COMMISSION, the State of Florida or other applicable governmental agency.

8. GOLDEN BEACH and the INDIVIDUALS will not oppose:

8.01 The issuance by Dade County of the Class 1 Coastal PERMIT approved by the County Commission on June 7, 1983.

8.02 Development of The Waterways in accordance with the SITE PLAN and this AGREEMENT, or modifications of the SITE PLAN provided that such modifications are not contrary to the provisions of paragraphs 2 through 4 above and do not increase the maximum building height presently approved for each of Parcels C, D, E and F on the Intracoastal Waterway.

8.03 An increase in the number of boat slips within the MARINA provided that:

8.03.1 any such increase is accompanied by a plan to adequately patrol the Intracoastal Waterway in the portion of the Intracoastal Waterway described in paragraph 5.02 above with respect to the speed and manner of operation of boats at the time of completion of construction of the MARINA; and

8.03.2 no fueling, commercial maintenance or other commercial operations are included in the request for additional slips.

9. The agreements of GOLDEN BEACH and the INDIVIDUALS under paragraph 8 above shall include, but not be limited, to the following:

9.01 They shall not take any action, directly or indirectly, at the staff, administrative, Zoning Appeals Board, COUNTY COMMISSION, state or federal levels in opposition to the development of The Waterways in accordance with the RESOLUTION and this AGREEMENT;

9.02 They shall not institute administrative action or review, or litigation, appellate or original, which may be involved with respect to any action taken by COSTAIN permitted under the RESOLUTION or this AGREEMENT;

9.03 They shall assist COSTAIN in the defense of any opposition to the development of the PROPERTY in accordance with the RESOLUTION and this AGREEMENT at the staff level, or any administrative or judicial proceeding instituted by a resident or property owner in GOLDEN BEACH, or any other person or entity which, if brought by GOLDEN BEACH or the INDIVIDUALS, would constitute a violation of this AGREEMENT, but neither GOLDEN BEACH

nor the INDIVIDUALS shall be required to provide counsel or bear any expenses incurred by OWNER in connection with any such staff, administrative or judicial proceedings. They will, however, upon COSTAIN's request appear at such staff, administrative or judicial proceedings and express their agreement to action proposed by OWNER, provided such action is in accordance with the RESOLUTION and this AGREEMENT.

9.04 They shall not, at any time, take any action, directly or indirectly, to oppose the issuance of the PERMIT by Dade County, or any other permits which may be required by any governmental agency having jurisdiction, in order for the OWNER to construct, operate or use the MARINA and develop the PROPERTY in accordance with the RESOLUTION and this AGREEMENT;

9.05 GOLDEN BEACH shall not provide, directly or indirectly, any funds, the services of its counsel or any other assistance of any other type to any resident of, or property owner in, GOLDEN BEACH, or any other person or entity, or as to any action which, if taken or instituted by GOLDEN BEACH or the INDIVIDUALS, would constitute a violation of this AGREEMENT including, without limitation, the FIRST APPEAL or SECOND APPEAL.

10. At the time of the execution of this AGREEMENT, OWNER shall deliver to GOLDEN BEACH an opinion of counsel for OWNER that this AGREEMENT and the COVENANT constitute the valid, binding and enforceable agreements of and against the OWNER, their successors and assigns, if such successors and assigns are notified of the existence of this AGREEMENT, and COSTAIN shall so notify its successors and assigns. However, OWNER shall not be required to so notify purchasers of residential units which may be constructed on the PROPERTY, and no such purchasers shall be obligated to perform any duties or obligations of OWNER under this AGREEMENT nor be subject to any liability by virtue of OWNER's failure to perform its duties and obligations.

11. At the time of execution of this AGREEMENT, GOLDEN BEACH shall deliver to OWNER an opinion of counsel for GOLDEN BEACH that the execution of this AGREEMENT was approved at a duly called and constituted meeting of the Town Council of GOLDEN BEACH and that this AGREEMENT constitutes the valid, binding and enforceable agreement of and against GOLDEN BEACH.

12. Simultaneously with the execution of this AGREEMENT, there shall be executed and filed with the CIRCUIT COURT stipulations for dismissal of the

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RESTRICTIVE COVENANT

This Restrictive Covenant made this 28th day of June, 1984 by CITY NATIONAL BANK OF MIAMI, as Trustee under Trust Agreement dated March 15, 1968 and known as Trust No. 2-550-6, ("DECLARANT") and its successors and assigns.

WHEREAS:

A. DECLARANT is the owner of certain parcels of real property located in Dade County, Florida, the legal descriptions of which are attached hereto as Exhibits A, B, C and D and which shall hereinafter be designated as "Parcel C", "Parcel D" "PARCEL E" or "PARCEL F", respectively, or collectively as the "PARCELS"; and

B. COSTAIN FLORIDA, INC. ("COSTAIN") is the DECLARANT'S representative with respect to the development of the PARCELS more particularly described in Exhibits A, B, C and D; and

C. The DECLARANT has plans to develop the PARCELS, as a result of which GOLDEN BEACH, as a chartered municipality pursuant to the laws of the State of Florida, as the owner of affected property located at 1 Golden Beach Drive, Golden Beach, Florida (more particularly described as Golden Beach, Section D, Plat Book 10-10, Lots E, F and G), and allegedly affected residents has opposed the development of the PARCELS in various litigation because of the alleged negative impacts and effects of the project on the Town, its property and those residents' property; and

D. DECLARANT, COSTAIN and GOLDEN BEACH have settled their differences by entering into a Settlement Agreement executed on even date which provides for the execution and filling of this Restrictive Covenant; and

E. This Restrictive Covenant is being executed and recorded with the intent of benefiting GOLDEN BEACH, as the owner of property described above in order to minimize and reduce any alleged impact or effect of the DECLARANT'S development of

the PARCELS, and additionally this Restrictive Covenant is being executed and recorded in order to burden DECLARANT'S PARCELS including their successors and assigns with the restrictions, obligations, conditions and covenants set forth below.

NOW, THEREFORE, DECLARANT hereby declares that the PARCELS shall be held, sold, transferred, burdened and conveyed subject to the following restrictions, covenants and conditions which are intended to and shall run with the PARCELS and be binding upon DECLARANT, its successors, assigns, transferees and upon all parties having any right, title or interest in the PARCELS or any portion thereof and their heirs, successors and assigns and shall inure to the benefit of each owner of the PARCELS and THE TOWN OF GOLDEN BEACH and their respective heirs, successors and assigns:

1. A portion of the PARCELS, hereafter designated as the "GREEN SPACE", the legal description and a sketch of which is attached hereto as Exhibit "E", shall forever be subject to the following:

1.01 No building or parking structure shall be constructed on the GREEN SPACE.

1.02 The GREEN SPACE shall be landscaped by the DECLARANT and/or COSTAIN (or the owners of the GREENSPACE when the same is to be landscaped) within a reasonable time after the completion of the building on each individual Parcel and may include, without limitation, walkways, bicycle paths, benches, lights and such other items as may be permitted by the Code of Metropolitan Dade County, Florida and/or the Board of County Commissioners of Dade County, Florida ("COUNTY COMMISSION") and/or the Dade County Zoning Appeals Board.

2. The development of PARCELS, C, D, E and F which are located adjacent to the Intracoastal Waterway shall be subject to the following:

2.01 The Town Council of Golden Beach, Florida or its successors or assigns will be permitted to appoint a technically qualified representative and alternative representative

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("GOLDEN BEACH REPRESENTATIVE") acceptable to DECLARANT's representative, COSTAIN, to consult Costain and give it his advice with respect to COSTAIN's planning and/or review of others' plan for landscaping (including the landscaping referred to in paragraph 1.02 above) and exterior appearance of buildings to be constructed on PARCELS C, D, E and F of the Intracoastal Waterway.

2.02 COSTAIN shall be responsible for the review and approval of, and shall review for its approval, the nature, design, kind, shape, height, materials, color and location of all structures, improvements and landscaping, including all plans and specifications therefor, to be constructed on PARCELS C, D, E and F on the Intracoastal Waterway.

2.03. In connection with its planning and/or review with respect to the matters described in 2.01 above, DECLARANT and/or COSTAIN shall:

2.03.1 Notify GOLDEN BEACH by notice to its Mayor or its Town Clerk that it is planning and/or reviewing matters described in the notice calling for consultation with and the advice of the GOLDEN BEACH REPRESENTATIVE.

2.03.2 Within three (3) days after its receipt of said notice, GOLDEN BEACH shall contact COSTAIN and the GOLDEN BEACH REPRESENTATIVE shall meet with COSTAIN at COSTAIN's offices within five (5) days after GOLDEN BEACH's receipt of said notice or at some other mutually agreeable time to consult with and advise COSTAIN as to the matters within the scope of this Paragraph.

2.03.3 It is the intent of the parties that through the GOLDEN BEACH representative, GOLDEN BEACH shall be included in the review process of the matters described in this Paragraph and COSTAIN shall give due consideration to the advice of the GOLDEN BEACH REPRESENTATIVE, but that the ultimate decision with respect to such matters shall be vested in COSTAIN.

2.03.4 Furthermore, all references in this Paragraph to the DECLARANT, COSTAIN, GOLDEN BEACH and the GOLDEN

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BEACH REPRESENTATIVE shall also be considered references to their successors and assigns.

3. The following restrictions refer to PARCEL E:

3.01 No parking will be located east of the main building, as depicted on the site plan filed with and approved by the COUNTY COMMISSION ("SITE PLAN").

3.02 No lighting will be directed across the Intracoastal Waterway toward GOLDEN BEACH.

3.03 No loud or offensive music will be permitted outdoors after dark which would unreasonably disturb the residents of GOLDEN BEACH.

3.04 Lighting and tennis courts will conform to USLTA championship standards, and tennis court lights will be turned off by 10:00 P.M.

3.05 No grandstand or public address system will be built or installed at the tennis courts on PARCEL E.

3.06 No major public tennis tournaments will be held on PARCEL E, but tournament matches related to any tournament that may be held on the SITP PLAN's main recreation site (PARCEL I) may be played on PARCEL E.

4. Providing that neither GOLDEN BEACH nor the "INDIVIDUALS", as defined in the certain Settlement Agreement of even date among DECLARANT, COSTAIN, GOLDEN BEACH and the INDIVIDUALS are in default under the terms of said Agreement, the following payments shall be made by the DECLARANT and/or COSTAIN or their successors and assigns to GOLDEN BEACH or its successors or assigns which GOLDEN BEACH in its exclusive discretion shall utilize for the purposes of minimizing any alleged impact of the development of the PARCELS, beautifying the western portions of GOLDEN BEACH, or offsetting the expenses of the recited legal proceedings:

4.01 On January 31, 1985, \$35,000.00.

4.02 Upon the issuance of a building permit for each of the six buildings to be located on PARCELS C, D, E and F on the Intracoastal Waterway, the sum of \$12,500.00 per building,

16.03 Shall be construed and enforced in accordance with the laws of the State of Florida.

17. This instrument is executed by CNB, not personally but solely as Trustee under the terms of that certain Trust Agreement dated March 15, 1968, creating Trust No. 2-550-6, and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that nothing herein contained shall be construed as creating any liability on CNB personally to pay any monies or perform any duties that each and that all of the covenants, undertakings, representations and agreements of the Trustee are not made individually, or for the purpose of binding it personally, but this instrument is executed and delivered by CNB, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said Trust Agreement and no personal liability or responsibility is assumed by, nor shall at any time be asserted or enforced against CNB, on account hereof, or on account of any covenant, undertaking, representation or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto, and by all persons claiming by or through or under said parties or holder hereof.

18. The rights, duties and obligations conferred and imposed upon GOLDEN BEACH are personal to the Town of GOLDEN BEACH as a municipality and may not be assigned to, nor exercised or performed by any one other than the Town of GOLDEN BEACH as a municipality except a successor in interest to all of the rights, title and interest of GOLDEN BEACH as a municipality in accordance with the laws of the State of Florida.

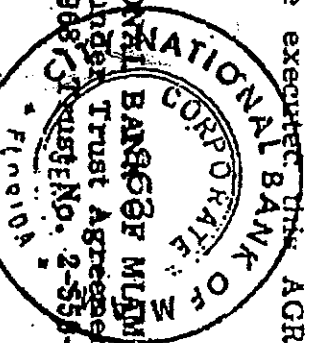
IN WITNESS WHEREOF, the parties have executed this AGREEMENT the date above written.

Witnesses:



Patricia K. Perry
(AS TO

CITY NATIONAL BANK OF MIAMI,
as Trustee under Trust Agreement dated
March 15, 1968, Trust No. 2-550-6



By: *Franklin H. Perry*
(Corporate Seal)
SEALER AND PRESIDENT & TRUST OFFICER

FIRST APPEAL and the SECOND APPEAL, copies of which stipulations are attached hereto as Exhibits E and E-1, and general releases, copies of which are attached hereto as Exhibits F and F-1.

13. GOLDEN BEACH represents and warrants that:

13.01 The execution of this AGREEMENT by it, and the performance of its duties and obligations hereunder, have been approved at a duly called and constituted meeting of the Town Council of GOLDEN BEACH; and

13.02 It has been advised by its legal counsel that its agreements hereunder, and the performance of its duties and obligations, are valid, binding and enforceable in accordance with the terms of this AGREEMENT.

14. GOLDEN BEACH and the INDIVIDUALS represent and warrant that the payment of the monies to GOLDEN BEACH as provided in paragraph 6 above shall constitute full and complete discharge by OWNER of its obligations to make any payments of money in consideration of the execution of this AGREEMENT, and that no monies or other consideration shall be payable to the INDIVIDUALS.

15. The parties acknowledge that in the event of the failure of any of the parties hereto to perform any of their duties and obligations hereunder, it will be impossible to determine the damages that will accrue to the other party and that accordingly, in the event any party institutes any action or proceeding to enforce the provisions of this AGREEMENT, the party against whom such action or proceeding is brought hereby irrevocably waives any claim or defense that the party bringing the action has an adequate remedy at law and that such party shall not plead in any proceeding the claim or defense that such remedy at law exists. However, nothing contained in the preceding sentence shall be construed to preclude either party from seeking damages by reason of the failure of the other party to perform its duties and obligations hereunder, and in the event that litigation is instituted with respect to this AGREEMENT, the prevailing party in any such litigation shall be awarded reasonable attorneys' fees and costs incurred by the court.

16. THIS AGREEMENT:

16.01 Constitutes the entire agreement among the parties hereto, and merges and extinguishes any other agreements, written or oral, concerning the subject matters hereof;

16.02 Shall be binding upon and inure to the benefit of the parties, their heirs, legal representatives, successors and assigns; and

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which amount shall be paid by the DECLARANT and/or COSTAIN or the then owners of the building to be constructed who seek to construct the building.

5. This Restrictive Covenant shall be binding upon the DECLARANT and COSTAIN and their successors and assigns and shall inure to the benefit of the DECLARANT and COSTAIN, their successors and assigns as well as to GOLDEN BEACH and its successors and assigns.

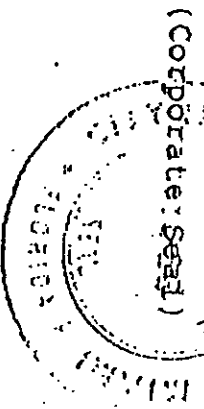
6. The rights, duties and obligations conferred and imposed upon GOLDEN BEACH are personal to the Town of GOLDEN BEACH as a municipality and may not be assigned to, nor exercised or performed by any one other than the Town of Golden Beach as a municipality except a successor in interest to all of the rights, title and interest of GOLDEN BEACH as a municipality in accordance with the laws of the State of Florida.

Executed the day and year first above written.

Witnesses:

CITY NATIONAL BANK OF MIAMI, as Trustee under Trust Agreement dated March 15, 1968 (Trust No. 2-550-6)

BY: *[Signature]*
FRANK G. BRIGANCE, JR.
Senior Vice President and Trust Officer



[Signature]

STATE OF FLORIDA)
COUNTY OF DADE) SS:

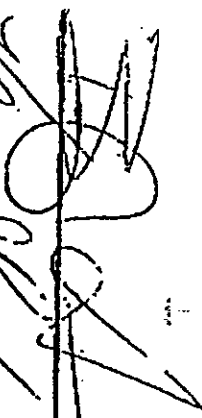
The foregoing Restrictive Covenant was acknowledged before me this 27th day of June, 1984 by FRANK G. BRIGANCE, JR., Senior Vice President and Trust Officer of CITY NATIONAL BANK OF MIAMI, Trustee under Trust Agreement dated March 15, 1968 and known as Trust No. 2-550-6 for the purposes therein expressed.

[Signature]
Notary Public State of Florida at Large

My Commission Expires:

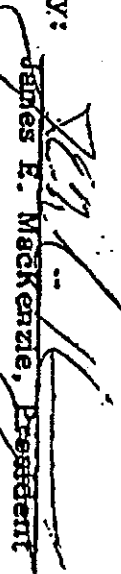
NOTARY PUBLIC STATE OF FLORIDA
My Commission Expires Aug 3 1985
Behind Your General Ins. Underwriters

This Instrument Prepared By:
HOWARD M. TALENFELD, ESQ.
Colodny, Fass & Talenfeld, P.A.
526 N.E. 124th Street
North Miami, Florida 33161

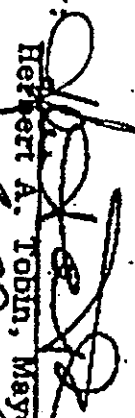




(As to James E. Mackenzie)

COSTAIN FLORIDA, INC.


By: 
James E. Mackenzie, President
(Corporate Seal)

TOWN OF GOLDEN BEACH

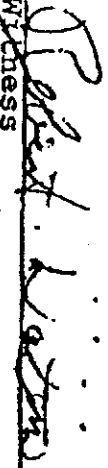
By: 
Herbert A. Tobin, Mayor

Lee Duffner, M.D., Council President




(As to Herbert A. Tobin,
Lee Duffner, M.D., and
Misses C. Colwell)




Witness

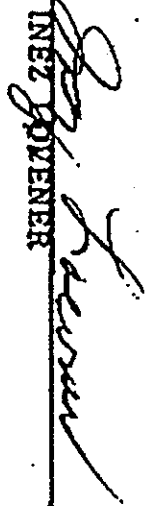


Witness


Attest: 
John Drago, Acting Town Clerk
(Corporate Seal)



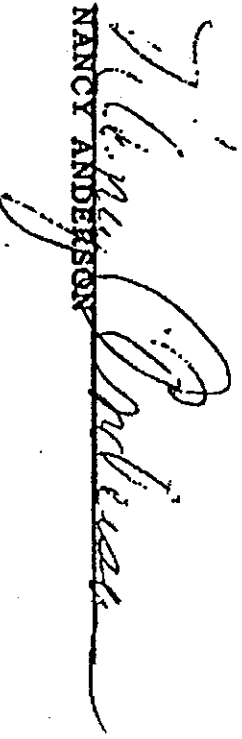
(As to Inez Lovener)




INEZ LOVENER




(As to Nancy Anderson)



NANCY ANDERSON



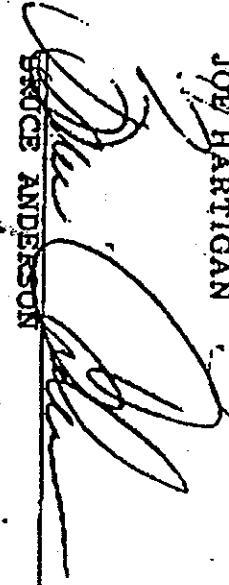
(As to Joe Hartigan)



JOE HARTIGAN



(As to Bruce Anderson)



BRUCE ANDERSON