

HENRY B. FISHBURNE, JR.

ATTORNEY AT LAW

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March 10, 2000


Mr. Joseph E. Barnes, Manager
The I'On Company, L.L.C.
Post Office Box 986
Mt. Pleasant, SC 29465

Re: The I'On Club, LLC

Dear Joe:

Please find enclosed the original recorded *Recreational Easement and Agreement to Share Costs* dated February 9, 2000 and recorded February 15, 2000 in Book M342, page 051 in the RMC Office for Charleston County, SC.

Sincerely,


Henry B. Fishburne, Jr.

HBF,Jr/js
Enclosure

INDEXING NOTE: Please cross-reference to Declaration recorded at:

Deed Book ~~297~~ C297
 Page ~~282~~ 282

Prepared by/Record and return to:

Joseph E. Barnes
 The I'On Company, L.L.C.
 159 Civitas Street
 Mt. Pleasant, South Carolina 29464

THIS SPACE FOR RECORDER'S USE

RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS

THIS RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS ("Agreement") is made this ffth day of February, 2000, by and between I'ON CLUB, LLC, a South Carolina limited liability company ("Club Owner"), THE I'ON COMPANY, L.L.C, a South Carolina limited liability company ("Developer"), and I'ON ASSEMBLY, INC., a South Carolina nonprofit corporation ("Assembly").

BACKGROUND STATEMENT

WHEREAS, I'On is a planned community which Developer is developing in Charleston County, South Carolina (the "**Community**"); and

WHEREAS, the Assembly is the entity charged with administering that Declaration of Covenants, Conditions, and Restrictions for I'On recorded in Deed Book 297, Page 282 of the Registry of Mesne Conveyances for Charleston County, South Carolina, as such Declaration may be amended or supplemented from time to time ("**Declaration**"), and maintaining and operating certain property described therein as "**Commons**"; and

WHEREAS, the Commons consists of such real property and interests therein as the Assembly owns or otherwise holds possessory or use rights in for the common use and enjoyment of the owners of property subject to the Declaration or their lessees, the occupants of their property, and their guests and invitees, and such other persons as the Declaration or the Assembly's Board of Trustees may authorize; and

WHEREAS, Developer is the owner of the property described on Exhibit "A" of this Agreement ("**Eastlake and the Amenity Area**"), which Developer intends to convey to the Assembly as a part of the Commons; and

WHEREAS, Club Owner is the owner of the real property described on Exhibit "B" of this Agreement (the "**Club Property**"), on which it has constructed or intends to construct certain recreational facilities, including a boat ramp and dock and a driveway and parking area to

serve them ("**Boating Facilities**"), for the use and enjoyment of those persons who apply, are approved, and pay the required fees for membership in a club established by Club Owner known as the I'On Club (the "**Club Members**") and such other persons as Club Owner may authorize; and

WHEREAS, the Assembly desires to acquire and Club Owner is willing to grant a nonexclusive easement over the Club Property for access to and use and enjoyment of the Boating Facilities by the owners of property subject to the Declaration or their lessees, the occupants of such property, and their guests, in common with such other persons as Club Owner may authorize; and

WHEREAS, the Assembly and Club Owner desire to provide for a reasonable allocation between them of the costs which Club Owner incurs in maintaining, repairing, replacing, insuring and operating those portions of the Club Property subject to such easement; and

WHEREAS, Club Owner desires to obtain a right of access to and use of Eastlake and the Amenity Area for the purpose of sponsoring various clinics, lessons, and recreational activities for such Club Members and others as Club Owner may authorize to participate; and

WHEREAS, pursuant to Section 5-103(c) of the Declaration, the Assembly, acting through its Board of Trustees, is authorized to grant easements, licenses and similar interests over the Commons for any lawful purpose which its Board of Trustees determines to be consistent with the interests of the Assembly; and

WHEREAS, the Assembly's Board of Trustees has determined that it is in the interests of the Assembly to promote sponsorship of clinics, lessons and other recreational activities within the Community and to enter into this Agreement; and

WHEREAS, Developer, as the current owner of Eastlake and Amenity Area, is willing to grant an easement over Eastlake and the Amenity Area to Club Owner for such purpose;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Club Owner, Assembly, and Developer hereby agree as follows:

Article I **Easements**

1.1. Easement for Use and Enjoyment of Boating Facilities.

(a) Subject to subsection (b) below, Club Owner hereby grants to Assembly, for the benefit of the owners of property subject to the Declaration or their lessees, the occupants of such

property, and their guests, in common with such other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the driveways and designated parking areas within the Club Property, for the purposes of vehicular and pedestrian access to the Boating Facilities and temporary parking of vehicles and boat trailers, for periods not to exceed 12 hours in any 24 hour period without Club Operator's express permission, while using the Boating Facilities or while the boat launched from such trailer is in the water; and

(ii) the boat ramp which is part of the Boating Facilities, for the purpose of launching and recovery of boats; and

(iii) the boat dock which is part of the Boating Facilities, for the purpose of temporary docking of boats for periods not to exceed 8 hours in any 24 hour period, and for use and enjoyment of the dock by pedestrians, for fishing, and for such other purposes as Club Owner may permit.

(b) The foregoing easement shall be subject to:

(i) the right of Club Owner to adopt and amend reasonable rules and regulations pertaining to the use of the Boating Facilities, including, without limitation, rules establishing operating hours, limitations on and fees for guest use, and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to Club Members and other authorized users of the Boating Facilities;

(ii) the right of Club Owner to suspend the right of any person to use the Boating Facilities for any infraction of such rules and regulations and to recover from the Assembly or from such person all costs which Club Owner incurs in repairing any damage to the Club Property or the Boating Facilities resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(iii) the right of Club Owner to temporarily close or reserve the Boating Facilities from time to time, for limited periods of time, for maintenance and special events, including, without limitation, private parties, lessons, and similar activities;

(iv) the right of Club Owner to deny access to the Boating Facilities pursuant to this easement for any period during which the Assembly is delinquent in paying amounts owed to Club Owner hereunder; and

(v) the right of Club Owner to offer boat and/or tackle rentals, sell bait and offer similar items and services for a fee or other charge, and to appropriate for its exclusive use such portion of the Boating Facilities as Club Owner deems reasonably necessary to provide such items or services;

(vi) the right of Club Owner to install on the Club Property a fence, gate, key entry or other mechanisms or systems to limit access to the Boating Facilities by unauthorized persons and during times that the Boating Facilities are closed, and to require authorized users to purchase, for a fee not to exceed Club Owner's cost, a key, pass card or similar devices to gain access to the Boating Facilities; and

(vii) any other easements and restrictions of record affecting the Club Property.

1.2. Easement for Use and Enjoyment of Commons.

(a) Subject to subsection (b) below, Assembly hereby consents to the grant of, and Developer hereby grants to Club Owner, for the benefit of such Club Members, their guests, and other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the property described on Exhibit "A" as "Eastlake" and the boathouse and other facilities thereon, for purposes of boating, fishing, storing boats, boat rentals, and conducting clinics, lessons and other activities sponsored by Club Owner which do not materially adversely interfere with use of the lake by others and for which Club Owner may or may not charge a fee, in its discretion;

(ii) the property described on Exhibit "A" as "Amenity Area", for the purpose of engaging in games, sports and other recreational activities and conducting clinics and lessons sponsored by Club Owner, for which Club Owner may or may not charge a fee, in its discretion;

provided, no person may exercise this easement without the prior permission of Club Owner and then only to the extent authorized by Club Owner.

(b) The foregoing easement shall be subject to:

(i) the requirement that Club Owner make arrangements in advance with the Assembly before exercising the easement for group activities or in a manner that will materially limit the access to or use of such facilities by others;

(ii) the right of the Assembly to charge Club Owner reasonable user fees for use of the Commons by persons who are not otherwise authorized to use the Commons pursuant to the Declaration, and to charge Club Owner for any reasonable costs incurred and documented by the Assembly in making the facilities available to Club Owner, over and above its usual and customary costs, such fees and costs to be agreed upon between Club Owner and the Assembly in advance of such use;

(iii) the right of the Assembly to adopt and amend reasonable rules and regulations pertaining to the use of the Commons, including, without limitation, rules establishing operating hours and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to all authorized users of the Commons (whether authorized

pursuant to this Agreement or otherwise) and shall not unreasonably interfere with the ability of Club Owner to exercise the easement rights granted herein;

(iv) the right of the Assembly to suspend the right of any person to use the Commons for any infraction of such rules and regulations and to recover from any person exercising such easement all costs which the Assembly incurs in repairing any damage to the Commons resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(v) the right of the Assembly to temporarily close or reserve portions of the Commons from time to time, for limited periods of time, for maintenance and special events;

(vi) the right of the Assembly to install a fence, gate, key entry or other mechanisms or systems to limit access to portions of the Commons by unauthorized persons and during times that the Commons are closed, and to require authorized users to purchase, for a fee not to exceed the Assembly's cost, a key, pass card or similar devices to gain access; and

(vii) any other easements and restrictions of record affecting the Commons.

Article H

Obligation to Maintain and Insure

2.1. Maintenance Responsibility. Club Owner shall maintain the portions of the Club Property that are subject to an easement under Article I in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community. Assembly shall maintain Eastlake and the Amenity Area in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community.

2.2. Insurance Responsibility. Club Owner and the Assembly shall each obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available, on the property and facilities which it is obligated to maintain under Section 2.1:

(a) Property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements, in amounts sufficient to cover full replacement cost (less a reasonable deductible);

(b) Commercial general liability insurance, insuring such party for damage or injury caused by the negligence of such party or any of its employees, agents or contractors while acting on such party's behalf, in such amount as the party deems prudent; provided, if available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Each party shall have the other named as an additional insured under this coverage.

2.3. Right to Enforce. If either Club Owner or the Assembly fails to adequately to perform its maintenance responsibilities hereunder or fails to obtain and maintain insurance as required herein, the other party may notify it of such default and, unless the defaulting party takes affirmative steps to cure such default within a reasonable period of time set forth in the notice, the other may pursue any and all remedies available to it at law or in equity to enforce the defaulting party's obligations hereunder.

Article III
Obligation of Assembly to Share Costs

3.1. Covenant to Pay. The Assembly shall be obligated to pay to Club Owner assessments as provided for herein to cover a share of the costs incurred by Club Owner in maintaining, repairing, replacing, operating and insuring the Boating Facilities. Such obligation shall be a separate and independent covenant on the part of the Assembly, and no diminution or abatement of the Assembly's financial obligations hereunder or setoff shall be claimed or allowed by reason of any alleged failure of Club Owner to adequately maintain or insure the Boating Facilities, the sole remedy of the Assembly for failure of Club Owner to perform being suit at law or in equity.

3.2. Computation of Assessment.

(a) Not later than November 1 of each year, Club Owner shall prepare an estimated budget for maintenance, operation, repair, replacement and insurance of the Boating Facilities during the coming calendar year, including a reasonable and appropriate amount to be placed in a reserve fund for capital repairs to and replacement of improvements to the Boating Facilities (the "Budget"). The costs of operation shall include, by way of example and not limitation, utility costs, insurance premiums, and compensation and related costs of personnel who devote all or a portion of their time to the maintenance and/ or operation of the Boating Facilities (including, without limitation, any management personnel, and maintenance personnel), allocated in proportion to the average time devoted to matters relating to the Boating Facilities, if less than full time is so devoted.

(b) Not later than November 15 of each year, Club Owner shall send a copy of the Budget to the Assembly along with notice of the assessment for the Assembly's share of such costs. The Assembly's share shall be computed by multiplying the total Budget by a fraction, the numerator of which is the number of Lots subject to assessment under the Declaration as of November 1 of the year preceding the year for which the Budget is to be effective (y) and the denominator of which is that number (y) plus the number of memberships in the Club issued and outstanding to persons who do not own a Lot in the Community as of such date (z), reflected by the following formula:

$$\text{Assembly's} = \frac{y}{y+z} \times \text{Budget}$$

Share

y + z

(c) The total assessment levied for the Assembly's share of the Budget shall be payable in equal quarterly installments on or before the last day of each calendar quarter.

(d) In the event that the Club Owner for any reason fails to determine the Budget for any year, then until such time as a Budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

3.3. Adjustment for Actual Expenses. Within 60 days after the end of each fiscal year, Club Operator shall provide to the Assembly a statement of expenses for the previous year in an actual versus budget format. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are less than reflected in the Budget, any excess amount paid by the Assembly for such year shall be credited against future amounts due from the Assembly. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are greater than reflected in the Budget, the shortfall may be added to the Budget for the following year for purposes of computing the Assembly's assessment for that year.

3.4. Delinquencies; Collection. Any amounts due from the Assembly hereunder which are delinquent for a period of more than 10 days shall incur a late charge in the amount of \$25.00 or 10% of the amount due, whichever is greater. In addition, the Assembly shall reimburse Club Owner for costs incurred in attempting to collect the past due amount, including reasonable attorneys' and paralegals' fees actually incurred, whether or not suit is filed. If the delinquent amount remains unpaid 45 days after the due date, Club Owner may institute suit to collect the delinquent amount, plus late charges, interest at the rate of 18% (or the maximum rate permitted by law, whichever is less) from the date first due and payable, and costs of collection, as described above. All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest and then to other delinquent amounts.

3.5. Expenditure of Funds. The assessments levied by Club Owner hereunder may be used for such purposes relating to the maintenance, operation, repair, replacement and insurance of the Boating Facilities as Club Owner deems appropriate. The judgment of Club Owner in the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and neither Club Owner, its members, officers, or agents shall be liable to any person or entity for any error in judgment, or any action or inaction relating to the expenditure of such funds; provided, nothing herein shall protect any person from liability for gross negligence or willful misconduct in the handling of such funds.

3.6. Recordkeeping. Club Owner shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities under this Agreement. Such books and records and financial statements related thereto shall be made available for inspection and copying by the Assembly's officers, trustees, or agents upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be

paid by the Assembly or person requesting such copies. If the Assembly desires to have the records audited, it may do so at its own expense, and Club Owner shall cooperate by making available to the party performing the audit the records, including all supporting materials (e.g., check copies, invoices, etc.) for the year in question. If the amount of actual expenses for the year is disputed after audit, the Assembly and Club Owner shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by five (5%) percent or more, Club Owner shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by two (2%) percent or less, then the Assembly shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by Club Owner and the Assembly. Variances shall be taken into account in the following year's Budget as provided above.

Article IV General

4.1. Amendment. This Agreement may be amended only by an instrument signed on behalf of the Assembly, with the approval of a majority of the members of its Board of Trustees, and by the Club Owner. Amendments to this Agreement shall become effective upon recordation in the Registry of Mesne Conveyances for Charleston County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Agreement.

4.2. Term. This Agreement, as it may be amended pursuant to Section 4.1, shall have a term of 30 years and thereafter shall automatically be renewed for successive periods of 10 years each unless and until terminated by either party at the end of the initial or any renewal term by written notice to the other given not less than 6 months prior to the end of such term. However, if any of the covenants, conditions, restrictions, or other provisions of this Agreement shall be declared by a court of law to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.3. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any nonessential provision to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this Agreement are declared to be severable.

4.4. Notices. Any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given, if personally delivered, at the time of personal delivery, or if

mailed, on the second business day following the deposit of the envelope containing such notice in the United States Mail, registered or certified, first class postage prepaid, and properly addressed:

(a) if to Club Owner, at the address of the principal office of I'On Club, LLC in the State of South Carolina; or

(b) if to the Assembly, at the address of the principal office of I'On Assembly, Inc. in the State of South Carolina.

4.5. Indemnification; Assumption of Risk. Each party shall indemnify and hold harmless the other from any loss, damages, and costs, including reasonable attorneys and paralegal fees, which the indemnified party may incur as a result of the failure of persons exercising the easement granted to the other party herein to comply with the rules and regulations adopted for use of the property subject to such easement.

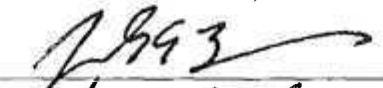
Each person exercising the easement rights granted hereunder assumes all risk of personal injury, including death, and loss or damage to personal property, arising out of their use of the property subject to the easement and agrees that the Assembly, Club Owner and their respective owners, members, officers, trustees, directors, agents and employees, shall have no liability for, and further agrees to indemnify and hold each of the foregoing harmless from, any and all claims arising out of any such injury, loss or damage, unless and except to the extent that such injury, loss or damage is the direct result of the gross negligence or willful misconduct of the party to be held liable.

4.6. Binding Effect; Successors and Assigns. This Agreement and the easements created herein shall run with the title to Eastlake and the Amenity Area and the Club Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in Eastlake and the Amenity Area or the Club Property, their successors, successors-in-interest and assigns, as well as the owners of the real property now and hereafter made subject to the Declaration and their respective successors and successors-in-title.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CLUB OWNER: I'ON CLUB, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By: 
Name: Joseph E. Banner
Title: Manager

BK M 342PG060

WITNESSES:

David E. Hampton
David E. foU^/(Printed Name)

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E Hampton

Sworn to before me this 9th
day of February, 2000:

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

[Notarial Seal]

DEVELOPER: THE I'ON COMPANY, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By: Joe Barnes
Name: Joseph E. Barnes
Title: Manager

WITNESSES:

David A Pro...
David A Pro... (fainted Name)

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E. Thompson

Sworn to before me this 9th
day of February 2000:

[Notarial Seal]

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

ASSEMBLY:

I'ON ASSEMBLY INC., a South Carolina nonprofit corporation

[Corporate Seal]

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By:

1993
Name: PRESIDENT JOSEPH E. BARNES
Title: PRESIDENT

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named IOn Assembly, Inc., a South Carolina nonprofit corporation by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

Joe E. Hampton

Sworn to before me this 9th
day of February, 2000:

Linda M. German
Notary Public for the State of South Carolina

[Notarial Seal]

My Commission Expires: 3/2/2009

Exhibit "A"Eastlake and the Amenity Area

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Eastlake, 13.48 acres" on a plat entitled "Plat of Eastlake Containing 13.48 Acres, Owned by The I'On Company, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated December 21, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 229, said tract having such size, shape, buttings, and boundings as shown on said plat;

TOGETHER WITH:

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Amenity Area, 109,934 square feet" on a plat entitled "Final Subdivision Plat of Lots 11-49, 60-69, Phase I-A, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 12, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book EC, Page 631, said tract having such size, shape, buttings, and boundings as shown on said plat;

Said tract butting and bounding according to said plat as follows: to the south on the right-of-way of Mathis Ferry Road, to the west on the right-of-way of Eastlake Road, to the north on a 20' Drainage Easement, and to the east on property now or formerly of R. E. Mevers (TMS #514-00-00-074).

1 M 342PG064

Exhibit "B"

Club Property

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as Lot CV-6 on a plat entitled "Conditional Subdivision Plat of Phase II, Subphases A-E, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 19, 1999, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 108-109, said tract having such size, shape, buttings, and boundings as shown on said plat;