

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
MALLARDS COVE

Tyler, Smith County, Texas

Declarant

Grady Rowland

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AND RESTRICTIONS OF
MALLARDS COVE**

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**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS OF MALLARDS COVE**

This Declaration of Covenants, Conditions, and Restrictions is made on December 1, 2015, by Grady Rowland (herein referred to as "Declarant,") who is the owner of all that certain real property located in Smith County, Texas described in the Plat filed on October 14, 2015 in Cabinet E, Slide 362A of the Plat Records of Smith County, Texas, of which the attached Exhibit A is an accurate representation thereof.

The Declarant has devised a general plan for the Lots 1 through 17 and Lot 20, herein referred to as the "Property" or the "subdivision", with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period. These Declarations do not apply to Lots 18 and 19 as shown on the Plat attached as Exhibit A, and said lots are hereby expressly excluded from these Covenants, Conditions, and Restrictions, as well as the definition of "Property" or "subdivision."

This general plan will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property. Each successive owner of an interest in any Lot is herein referred to in this instrument as "Owner." If there are multiple Owners for any one Lot and a dispute shall arise as to any provision in these restrictions, then the Owner who is first named in the conveyance(s) or other instruments transferring title as to that Lot that are filed of record shall be the controlling interest as to that Lot.

Therefore, in accordance with both the doctrines of restrictive covenants and implied equitable servitudes, the Declarant desires to restrict the Property according to these covenants, conditions, and restrictions in furtherance of this general development plan.

NOW THEREFORE, it is declared that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions:

ARTICLE 1: CONSTRUCTION AND IMPROVEMENTS

1.1 Use. All numbered Lots on the recorded plat of the subdivision shall be used exclusively for single-family residential purposes. The term "single-family" as used herein shall refer not only to the architectural design of the Dwelling but also to the permitted number of inhabitants, which shall be limited to a single family. No multi-family dwellings may be constructed on any Lot; however a detached guesthouse or secondary living quarter may be constructed if approved by the Declarant or the Architectural Control Committee ("ACC"). No building, outbuilding or portion thereof shall be constructed for income property, such that tenants would occupy less than the entire Lot. Furthermore, no lot and no building erected or maintained on any lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes. Notwithstanding anything in this section to the contrary, "home office/telecommuting" or other such non-public activities of the resident are permitted.

1.2 Subdivision of Lots. No Lot shall be further subdivided except that fractions of Lots may be separated to add space to adjacent whole Lots if the combination of whole and fractional Lots is used as a single building site and all other provisions of these restrictions are complied with.

1.3 Minimum Square Feet. No residential building shall be erected on any said Lots which shall have less than 2,600 square feet of floor space within the heated/cooled area if located on the waterfront, or less than 2,000 square feet of floor space within the heated/cooled area if located on any other Lot or Lots. For 2 story homes, the main floor must contain a minimum of 65% of the heated/cooled space. However, this requirement shall not apply to a detached guesthouse or secondary living quarter so long as the primary residential building complies with the requirement. Any secondary living quarter shall have a minimum of 300 heated/cooled square feet. The primary residence must be erected prior to or at the same time as the erection of the secondary residence. Prior to commencement of any construction, plans (including plot plans showing drainage plans) must be approved by the Declarant or the ACC. All materials used for exterior construction shall be new unless otherwise approved.

1.4 Paint Maintenance. All painted improvements and other painted structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or structure thereon. The approval of the Declarant or the ACC otherwise required for improvements under this paragraph or other paragraphs contained in this Declaration, shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

1.5 Air Conditioning Units. Any air conditioning unit installed on a Lot shall be located or screened so as not to be visible from any street within the Property. No air condition window units will be permitted.

1.6 Propane Usage. All homes may use propane gas. All dwellings will be allowed an unrestricted number of gas burning/solid fuel fireplaces or appliances. LP gas tanks must be certified to be buried and not exposed above ground. The proposed tank must be approved by the ACC and submitted with construction plans.

1.7 Pools. The design and construction of all swimming pools must be approved by the Architectural Control Committee ("ACC"), as defined in Paragraph 3.1. No above ground swimming pools will be allowed.

1.8 Slope/Grading. The slope of any Lot must be maintained so as not to divert the normal flow of water and drainage to an adjacent Lot.

1.9 Compliance with Building Codes. Construction of improvements on each Lot must comply with the current building code published by the Congress of American Building Officials and all applicable local building codes that are enforced by governmental agencies. Owner is responsible for applying for and obtaining all applicable governmental permits and other approvals, including payment of all fees for those permits and other approvals. Owner shall take all reasonable precautions to minimize interference with traffic and to protect the general public and residents of the Subdivision, from injury from movement of vehicular traffic in connection with construction of each lot.

1.10 Miscellaneous Construction Provisions. In addition to, and without limiting the generality of the foregoing, Owner agrees to the following:

A. Storage of Building Materials. Building materials stored on a Lot during construction will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site. All excess construction materials must be removed or stored within approved buildings after construction is completed.

B. Scrap Materials and Trash. Owner agrees that scrap materials and trash produced in connection with the construction of a house on a Lot shall be confined to a particular area of such Lot, preferably to the side or behind the house. Trash will be placed in a solid container within such area at the end of each workday and removed from the Lot frequently enough so that trash does not overflow from such container. Upon completion of the constructed homes, garbage or trash shall not be placed outside of an enclosed building, except in sixty (60) to eighty (80) gallon containers meeting the specifications of the ACC. The placement, maintenance and appearance of all such containers shall be subject to reasonable rules and regulations of the ACC. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon.

C. Clean Roads and Utilities. Owner agrees to protect pavements, curbs, gutters, swells or drainage course, sidewalks, streets, utility structures including, without limitation, fire hydrants, manhole covers, valve boxes, and second stage inlets and other property contiguous, in the vicinity of, or leading to each Lot from damage, and shall keep pedestrian and road right-of-way and drives, and other property, clean and clear of equipment, building materials, dirt, debris and similar materials. Damage caused to any of the foregoing by Owner or Owner's invitees or agents shall be the sole responsibility of Owner and shall be subject to an Individual Assessment. Owner further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency.

1.11 Maintenance. Owner agrees to keep the interior and exterior of all improvements constructed on a Lot in good working condition and repair. Without limiting the generality

of the foregoing, Owner agrees to promptly replace any glass, paint, roof materials, bricks, stone or other exterior building materials on any houses which are damaged or unduly worn.

1.12 Setbacks. No building or structure shall be located closer than 35 feet to the front property line. Nor shall the dwelling structure extend closer than 25 feet to the back property line. However, pools and covered patios approved by the ACC on lakefront lots may be constructed to the 355 ft. MSL line. No structure shall be erected closer than 7 feet 6 inches to side property line and structures on corner Lots must be 15 feet from side property line.

1.13 Temporary Structures. No structure of a temporary character, trailer, cellar, tent, shack, garage or other outbuilding, motor home, mobile home, manufactured home, house trailer or camper shall be used as a residence either temporarily or permanently. However, this restriction shall not prohibit the use of a motor home, house trailer, camper or a tent for the lodging of temporary guest visiting the family for a period not greater than 14 days after the residence is built.

1.14 Garages. An enclosed garage must be constructed and maintained to accommodate at least two (2) full-sized automobiles for each Lot with a Dwelling Unit. Each driveway must be able to accommodate two vehicles in front of the garage for off-street parking requirements. Detached garages are permitted if approved by the Declarant or the ACC. No garage shall be permanently enclosed for conversion to any other use. No front street facing garage will be permitted without the approval of the ACC. Owner shall provide and install at Owner's expense all driveway approaches in conformance with all applicable regulatory requirements. All driveways shall be entirely of concrete or a paving material approved by the ACC and shall be paved before any Dwelling Unit may be occupied. No driveway or other roadway may be constructed on any Lot in such a manner as to furnish access to any adjoining Lots or other property without the prior written consent of the ACC. All driveways shall be constructed in such a manner that all run-off will not cause erosion problems to adjacent Lots or create dusting upon entry and exit. Culverts for each driveway must be a minimum of 5 feet from the side property line. Driveways shall be a minimum of 12 feet in width.

1.15 Storage of Boats and Other Vehicles. Commercial vehicles, motor homes, travel trailers, campers, tractors, boats, trailers and similar wheeled vehicles may not be parked or located on any Lot for more than 14 consecutive days or more than 24 days in any calendar year unless they are stored behind the front building line and in a permanently enclosed garage. Such enclosure must be approved in writing by the Declarant or by the ACC, as the case may be, and must be designed to match the architecture of the primary residence. Stored vehicles and vehicles which are either inoperable or not registered shall not be permitted on any Lot except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on a Lot must be removed within seventy-two (72) hours thereof. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such periods of time as is reasonably necessary to provide service or to make delivery to a dwelling Unit or the common areas. Any vehicle parked in violation of this section or parking rules promulgated by the Board of Directors may be towed. No vehicle of any size, which is used for the transportation of inflammatory or explosive cargo,

may be stored in the subdivision at any time. All unlicensed, gas operated recreational vehicles such as 4-wheelers, 3-wheelers, all-terrain vehicles, etc. are strictly prohibited from being operated on the lots, roads and right-of-ways in the Development. Notwithstanding anything herein to the contrary, these restrictions shall not restrict the use of golf carts or other vehicles authorized by law to be operated on the Property.

1.16 Signs. No signs of any type shall be allowed on any Lot except (1) one sign of not more than six square feet advertising the Lot or Home for sale, (2) a sign owned by the Declarant or owned by the Mallards Cove Property Owners' Association, or (3) political sign(s) of not more than twenty four square feet advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

1.17 Sewage. No outside toilets of any kind are permitted excepts during the period of construction of a Dwelling Unit during which time chemically treated outside toilets may be maintained in a manner subject to Declarant's approval. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or unsanitary sewage being carried into any body of water or water source. All homes must comply with all state, federal, and county laws and must use aerobic systems designed by a licensed sanitarian and/or a state licensed engineer. All systems must be designed with all applicable law and these restrictions, and approved prior to the construction of any residence.

If water and sewer services are provided by Emerald Bay Municipal Utility District (EBMUD) then EBMUD shall have the right of ingress and egress across each Lot to install, construct, operate, maintain, repair and remove water and sewer facilities and lines over, across or in any dedicated right of way or easement. Owner agrees that all claims for damages, if any, arising out of the installation, construction, operation, maintenance, repair or removal of water or sewer facilities or lines included but not limited to any inconvenience caused thereby, against the EBMUD, or any of its agents, servants or representatives are waived by Owner and the Association.

Owner acknowledges and agrees that Owner is responsible for installing, constructing, maintaining and repairing lift stations and lines up to the point of the gravity line valve on his/her Lot. Owner is responsible for obtaining a Customer Service Inspection Report from a Certified Customer Service Inspector, and any other required inspections, which shall be submitted to the EBMUD upon completion of construction of any sewer and/or water line servicing the Lot or improvements thereon. Customer Services Inspection Report forms are available from the EBMUD. Owner acknowledges and agrees that EBMUD has the right and the authority to turn water service off to a Lot for nonpayment of any services provided by EBMUD.

1.18 Utilities. The Owner shall construct, furnish or install all on-site utility extensions, including without limitation, water and electric extensions, from the point of connection adjacent to the perimeter of the Lot to any portion of the Lot. Owner further agrees to pay any utility deposit or charge, including any connection tap or inspection fee, for water, sewer, electrical,

gas, telephone, cable television, or utility service for the Lot or any part thereof any costs or charges for meters for utility service. The installation of all utilities shall be underground.

1.19 Minerals. No oil drilling, oil development operations, refining, or quarrying operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

1.20 Animals. No animals, livestock, or poultry of any kinds shall be raised, bred, or kept on any Lot except, that a maximum of three (3) dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for the purpose of breeding or selling same, whether for profit or not. Exchange of such animals for anything of value to the seller shall constitute a sale and therefore prohibited under this provision.

No dog shall be allowed to run free in the subdivision but must, at all times, either be (1) restrained on the Owner's Lot either by a fence or by a chain or other restraint that is adequate to confine the dog on the Lot, or (2) if taken off the Owner's Lot, be restrained at all time on a leash controlled by an individual who has sufficient strength and ability to restrain the dog. No Pit Bulls, Chows, or mix breeds thereof will be permitted on the property.

1.21 Yard Maintenance. All Lots will be kept free of trash, garbage and debris at all times. During the growing season the Lot shall be kept free of weeds and underbrush for reasons of sanitation and fire prevention. If, in the opinion of the Board of Directors of Mallards Cove Property Owners Association, an unsanitary or hazardous condition exists, or if the height of the vegetation exceeds 9 inches, the Mallards Cove Property Owners Association reserves the right to clean up and/or mow the Lots and charge the Owner(s) a reasonable fee for this service. Failure to pay the charges for the cleanup and/or mowing where the Mallards Cove Property Owners Association has done so shall give the association, or its agent, the right to place a lien against the Lot for this service.

1.22 Nuisance. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the subdivision in which said Lot is located. Construction crews will not be allowed to work on Sunday and shall not work earlier than 7:00 a.m., nor later than 7:00 p.m. any other day of the week.

1.23 Firearms. Discharge of any pistol, rifle, shotgun or any other firearm, or any bow and arrow, or any like device capable of killing or injuring, is not permitted.

1.24 Antennae. No exterior television, radio or other antennae of any type shall be placed, allowed or maintained upon any Lot without the prior written approval and authorization of the ACC except small satellite dishes less than 24" in size.

ARTICLE 2: EASEMENTS

2.1 Access of Declarant and Association. Full rights of ingress and egress shall be had by the Declarant and the Association at all times over and upon each Lot and the Property for carrying out the rights, functions, duties, and obligations hereunder; provided, that any such entry shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the easement user.

2.2 Development Access. Declarant hereby reserves for itself, its successors and assigns, the right to (1) dedicate streets, walks and alleys throughout the Property, and (2) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities and related facilities, which may include, but shall not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television, electronic communications of all sorts, and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance, and reconstruction of improvements within the Property, including without limitation dredging along the waterfront lots, and including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping, and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided that any such improvement removed by Declarant shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. All claims for damages, if any, arising out of such construction or other activities by Declarant are hereby waived by each Owner and the Association.

2.3 Utility Access. Full rights of ingress and egress shall be had by Declarant, any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation, or installation of such utility. All claims for damages, if any, arising out of the installation, construction, operation, maintenance, repair or removal of utilities on account of temporary or other inconvenience caused thereby, against the Declarant or any utility company or governmental authority, or any of their agents or servants are waived by each Owner and the Association.

ARTICLE 3: PLAN APPROVAL

3.1 Architectural Control Committee. Declarant shall have the power to designate and appoint an Architectural Control Committee ("ACC") consisting of not less than 3 qualified persons, which shall serve at the pleasure of the Declarant. After the Declarant no longer owns any Lot in the subdivision or after the Declarant has assigned the right of control to the Property

Owners' Association by instrument in writing, the ACC shall serve at the pleasure of the Board of Directors of the Property Owners' Association. Until Declarant designates and appoints in writing an ACC, Declarant shall fill that function and shall have full authority to take all actions set out herein to be undertaken by the ACC.

3.2 Approval of Contractor, Plans, and Specifications. The ACC must review and approve in writing all of the following items which relate to projects on the Property:

- (1) Contractor to be employed by an owner to construct improvements on a Lot.
- (2) Construction of any building, fence, wall or other structure.
- (3) Any exterior addition, change, or alteration in any building, fence, wall, or other structure.
- (4) Any initial landscaping and subsequent, substituted landscaping projects, or grading of any Lot or Lots.

3.3 Standard for Review. The ACC shall review applications for proposed work in order to (1) ensure conformity of the proposal with these covenants, conditions, and restrictions and (2) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

3.4 Failure of Committee to Act. If the ACC fails either to approve or reject an application for proposed work within 60 days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

3.5 Building Materials; Type of Construction. Unless otherwise approved by the Committee, the exterior wall area of all residences above the foundation excluding detached garages (but not excluding attached garages), gables, windows, and door openings must be of masonry, stucco, redwood, cedar, stone, Hardy Board, or brick veneer. No structure of any kind or character, which incorporates frame construction on the exterior, shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. All buildings others than boathouses shall be completely underpinned with no piers or pilings exposed to view. The use of cedar wood shingles or other combustible material for roofing is prohibited. Approved roofing materials shall consist of one of the following: 1) concrete or clay tiles; 2) slate; 3) non-reflective metal (subject to ACC review); 4) fiberglass/asphaltic architectural shingles with a thirty (30) year minimum warranty. Notwithstanding the foregoing, the Declarant or the ACC is empowered to waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Geodesic domes and/or underground residences are strictly prohibited. Mailboxes shall be designed to match the architecture of the home. No pre-erected, used, or modular houses may be moved onto any Lot or Lots.

3.6 Owner's Reconstruction Obligation. Unless otherwise approved in writing by the ACC, in the event of reconstruction or restoration necessitated by damage to or destruction of any improvements and/or landscaping, the Owner shall commence restoring such damaged or destroyed improvements as soon as practicable but the construction must commence within six (6) months from the date of damage and the Owner must diligently pursue such construction until completion.

3.7 Fencing. The fencing shall be constructed of wrought iron material painted black and be a maximum of six (6) feet in height from the ground. Brick or stone columns may be used if desired. Fencing that is installed which is visible to the street and perpendicular from the house to the property side line must be wrought iron, painted black and no higher than six (6) feet high above the ground. Black vinyl coated chain link fencing may be used in back yard areas installed from front wrought iron fencing to the rear property line. Fencing on the rear property line shall be wrought iron, painted black and no higher than six (6) feet high above the ground.

3.8 Miscellaneous Practices. All Owners will be absolutely responsible for the conduct and behavior of their agents, guests, representatives, builders, contractors, and subcontractors. The following practices are prohibited in Mallards Cove:

- a. Changing oil on any vehicle or equipment on the site itself.
- b. Allowing concrete suppliers and contractors to clean their equipment other than at locations included in the approved site plan.
- c. Removing any rocks, plant material, topsoil, or similar items from any property of others within Mallards Cove, including construction sites, except in accordance with ACC approvals.
- d. Discharging any type of firearm on the property or creating any unduly loud or offensive noises.
- e. Using disposal methods or units other than those approved by the ACC.
- f. Careless disposition of cigarettes and other flammable material. At least one 10-pound ABO-rated dry chemical fire extinguisher shall be available in a conspicuous place on the construction site at all times.
- g. Careless treatment or removal of any plant materials not approved for removal by the ACC.
- h. Allowing excessive dust or noise on the construction site. Radios and other audio equipment will not be allowed to play at levels that are disruptive to the neighbors.

3.9 Boat Docks & Sea Walls. Upon purchase of a lot, maintenance of any existing dock or sea wall located on the lot is the sole responsibility of the owner. All waterfront lots must maintain good standing with the Upper Neches River Municipal Water Authority (UNRMWA). Boat docks shall be built according to the following design criteria:

- a. Set back from the property line of each Lot if extended into to lake shall be 10 feet.
- b. The maximum height of all boat dock structures shall not exceed 18' as measured from the 348 elevation.
- c. All plans must be submitted to and approved by the ACC prior to submission to the UNRMWA, and any changes required by the UNRMWA, if any shall be

resubmitted to and approved by the ACC.

3.9.1 The Association shall have the option to construct a boat dock on lot 12 which, if and when constructed, is to be maintained by the Association at the expense of and for the exclusive use and benefit of the following lots: 13, 14, 15, 16, and 17. Maintenance fees for such dock shall be included in individual assessments to the aforementioned lots. Unless otherwise agreed in writing and paid by the Association, each aforementioned lot will be responsible for the utilities, if any, servicing the boat slips assigned to it. Utilities for this dock paid for by the Association may be included in individual assessments to the benefitted lots.

3.10 Waiver. So long as Declarant owns a Lot in the subdivision, Declarant will have the power to waive as to any specific Lot any of the restrictions, in whole or in part, set out herein. Any such waiver shall not constitute a waiver to the full enforcement of these restrictions as to any other Lot in the subdivision or a waiver of any portions of these restrictions not waived as to that particular Lot.

3.11 NO LIABILITY. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR ANY MEMBER OF ANY OF THE FOREGOING SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVED OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATION, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY DWELLING UNIT.

ARTICLE 4: ASSESSMENTS

4.1 Purpose of Assessments. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and promoting the common benefit, and enjoyment of Owners and Occupants, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes

for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

4.2 Personal Obligation. An Owner is obligated to pay its pro rata share of the Assessments to which it is subject to levied by the Board against the Owner or its Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt itself from its Assessment liability by waiver of the use or enjoyment of the common area or by abandonment of its Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

4.3 Control for Assessment Increases. Except for Declarant's rights during the Development Period, this Section of the Declaration may not be amended without the approval of Owners of at least sixty-seven percent (67%) of the Lots. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

- a. Veto Increased Dues. Upon filing of this Declaration and at least thirty (30) days prior to the effective date of an increase in Regular Assessments, the Board will notify the Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a Majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.
- b. Veto Special Assessment. At least thirty (30) days prior to the effective date of a Special Assessment, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless Owners of at least Majority of the Lots (excluding the Lots owned by Declarant) disapprove the Special Assessment by petition or at a meeting of the Association.
- c. Approve Certain Special Assessments. After the Development Period has expired, the following actions must be funded by a Special Assessment approved by Owners of at least a Majority of the Lots (excluding the Lots owned by Declarant):
 1. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
 2. Construction of additional improvements within the Property, but not replacement of improvements in place at the end of the Development Period.
 3. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

4.4 Types of Assessments. There are three (3) types of Assessments: Regular, Special, and Individual.

4.4.1 Regular Assessments. Regular Assessments are based on the annual budget. Each Lot is liable for a pro-rata share of the annual budget. In calculating Regular Assessments, each Owner's pro rata share shall be determined by dividing the total annual budget by the number of Lots. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year, commonly referred to as January through December, in an amount that covers the estimated deficiency. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

1. Maintenance, repair, and replacement, as necessary, of the common area, which shall include without limitation Lot 20, as well as all streets, lighting, gates, and fencing on common areas or for the general benefit of the Property,
2. Utilities billed to the Association, except as stated otherwise herein.
3. Services billed to the Association and serving all Lots.
4. Taxes on property owned by the Association, if any, and the Association's income taxes.
5. Management, legal, accounting, auditing, and professional fees for services to the Association.
6. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
7. Insurance premiums and deductibles.
8. Contributions to the reserve funds.
9. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents;

4.4.2 Special Assessments. In addition to Regular Assessments, the Board may levy one or more Special Assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Legal fees incurred by Declarant for the benefit of the Property, for the incorporation of the Association, or on behalf of the Association may be collected by the levy of a Special Assessment.

4.4.3 Individual Assessments. In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of Owner or Owner's agents, including without limitation damage to roads, curbs, or other common areas; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

4.5 Annual Budget. The Board will prepare and approve an estimated annual budget for each fiscal year thirty (30) days prior to the end of the fiscal year; provided that the Board will prepare and approve an estimated annual budget for the first fiscal year within ninety (90) days after the end of the Development Period. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for Assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

4.6 Due Date. Regular Assessments are due on the first day of each month, and are delinquent if not received by the Association on or before the first day of the month. Alternatively, Regular Assessments may be paid annually on January 1st of each year, or at a prorated amount if the owner does not own the lot for the entire calendar year. If Regular Assessments are increased during the calendar year, annual payers will be assessed a lump sum for the associated increase. Special Assessments and Individual Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Assessment is given.

4.7 Reserve Funds. The Association will establish, maintain, and accumulate reserve for operations and for replacement and repair. The Association will budget for reserves and use its best efforts to fund reserves out of Regular Assessments.

4.8 Association's Right to Borrow Money. After the Development Period has expired, the Association is granted the right to borrow money, subject to the consent of Owners of at least a Majority of Lots and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

4.9 Assessment Lien. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that its title may be subject to the continuing lien for Assessments attributable to a period prior to the date it purchased its Lot

4.10 Superiority of Assessment Lien. The assessment lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and Assessments levied by governmental and taxing authorities, (2) any interim construction lien, and (3) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment Lien is superior to any mechanic's lien for construction of improvements to the Lot or an assignment of the right to insurance proceeds on the Lot, regardless of when recorded or perfected.

4.11 Effect of Mortgagee's Foreclosure. A Mortgagee's foreclosure of its deed of trust lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the Mortgagee's foreclosure sale is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

4.12 Perfection of Lien. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real Property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

4.13 Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's Assessment Lien. The Board may appoint, from time to time, an Association Officer, agent, trustee, substitute trustee, or attorney to exercise the power of sale on behalf of the Association. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

4.14 Foreclosure of Lien. The Assessment Lien may be enforced by non-judicial foreclosure in accordance with the provisions applicable to the exercise of power of sale as set forth in Section 51.002 of the Texas Property Code, as it may be amended from time to time. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorney's fees. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

4.15 Damages for Nonpayment of Assessments. In the event of default in the payment of an Assessment, such Owner shall be obligated to pay interest on the principal amount due plus late charges, if any, from the date due at a rate of interest of 10% per annum or an amount to be determined by the Board of Directors of the Association ("Board"), but not to exceed the maximum permitted by law. The Board may also levy reasonable late charges against an Owner in default of Assessment payments. An Owner in default shall also be liable to the Association for all expenses incurred by the Association to collect such Assessment, interest, and late charges, including attorney's fees.

ARTICLE 5: PROPERTY OWNERS' ASSOCIATION

5.1 Creation. Declarant shall create a Property Owners' Association for the subdivision. When created, the Owners of Lots within the subdivision shall constitute the Association. Each Owner of a Lot, including Declarant, shall automatically be a member of any such Association. Association membership shall be appurtenant to ownership of a Lot. Ownership of a Lot is the sole criterion for membership in the Association.

5.2 Transfer of Membership. Association membership will be transferred to the grantee of a conveyance of a Lot when such conveyance is filed of record in the real property records of Smith County, Texas. Membership shall not be assigned, pledged, or transferred in any other way. Any attempt to make a prohibited transfer shall be void.

5.3 Management of Association. Any such Association shall be incorporated as a nonprofit corporation. The Association shall be managed by its Board of Directors pursuant to the procedures set forth in the Association's articles of incorporation and bylaws, subject to this Declaration.

5.4 Membership Voting, Elections, and Meetings. The Owners of a Lot shall have one vote in the Association. Owners of multiple lots will have 1 vote for each lot owned. Any person or entity that holds an interest in and to a Lot merely as security for the performance of an obligation shall not be a member until such time as the holder or its successor acquires fee simple title to the Lot through foreclosure or conveyance in lieu thereof. If there are multiple Owners for any one Lot and a dispute shall arise as to a vote, then the Owner who is first named in the conveyance(s) or other instruments transferring title that are filed of record shall be entitled to cast the vote for that Lot. The Owners shall elect a Board consisting of 3 directors, vote on any other matter the Board chooses to place before the membership, and discuss any matter of Association business that the Board or any Owner wishes to bring before the entire membership.

5.5 Duties and Powers of Board of Directors. Through the Board of Directors, the Association shall have the following powers and duties:

1. To adopt rules and regulations to implement this Declaration and the Association's bylaws.
2. To enforce this Declaration, the bylaws, its rules and regulations and assess fines for violations thereof.
3. To elect officers of the Board and select members of the ACC when that power devolves to the Board.
4. To delegate its powers to committees, officers, or employees.
5. To prepare a balance sheet and operating income statement for the Association and deliver a report to the membership at its annual meeting.

6. To establish and collect regular assessments to defray expenses attributable to the Association's duties, to be levied against each Owner.
7. To establish and collect special assessments for capital improvements or other purposes.
8. To file liens against Lot Owners because of nonpayment of assessments and fines duly levied and to foreclose on those liens.
9. To receive complaints regarding violations of this Declaration, the bylaws, or the rules and regulations.
10. To hold hearings to determine whether to discipline Owners who violate this Declaration, the bylaws, or the rules and regulations.
11. To give reasonable notice to all Owners of all annual meetings of the membership and all discipline hearings.
12. To enforce the provisions of this Declaration, the bylaws, or the rules and regulations and to enjoin and seek damages from any Owner for violation of such provision or rules.
13. To hold regular meetings of the Board at least quarterly.
14. To accept property as a common area, to manage and maintain any common area in a state of high quality and in good repair, and to provide adequate reserves for repairs or replacements.
15. To pay taxes and assessments that are or could become a lien on any common area.
16. To pay the costs of any liability insurance and fire insurance on any common area and any liability insurance for officers, committee members and members of the Board.
17. To promulgate, amend and enforce reasonable Rules and Regulations for the use and enjoyment of the common areas; to charge reasonable admission or other fees for use of the common areas; and to limit the number of guests of Owners using any portion of the common areas.
18. To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and, generally, to have all of the powers necessary or incidental to the operation and management of the Association and the subdivision.

ARTICLE 6: DEVELOPMENT PERIOD

6.1 Development Period. "Development Period" means that period of time during which the Property is being developed, constructed, or marketed, and extends from the date this Declaration is recorded until title to all of the Lots that may be created have been conveyed to Owners other than builders or other persons who purchase Lots for the purpose of constructing Buildings for resale to Owners. The Development Period may not exceed ten (10) years from the date this Declaration is filed.

6.2 Association During Development Period. For the benefit and protection of the Owners and mortgagees, and for the purpose of ensuring a complete and orderly completion of the Mallards Cove Subdivision, Declarant may retain control of the Association, subject to the following:

During the Development Period, Declarant may, without approval of the members appoint, remove, and replace any Officer or Director of the Association, none of whom need be members or Owners.

6.3 Organizational Meeting. Within sixty (60) days after the end of the Development Period, or prior thereto, at the Declarant's option, Declarant will call an organizational meeting of the members of the Association for the purpose of electing, by vote of the Owners, Directors to the Board.

6.4 Declarant Votes. During the Development Period, the vote appurtenant to each Lot owned by Declarant is weighted three (3) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Development Period, Declarant may cast the equivalent of three (3) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Development Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

6.5 Development Period Rights. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

1. The right to appoint and remove members of the ACC.
2. The right to amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, to resolve conflicts, clarify ambiguities, and to correct inadvertent misstatements, scrivener's errors, or omissions in the Documents.
3. The right to erect, construct, and maintain on and in the common areas and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.
4. The right, at the expense of Declarant, to install, maintain, replace, relocate,

and remove signs, banners, flags, display lighting, and seasonal landscaping on the Property for purposes of promoting, identifying, and marketing the Property.

5. Subject to the rights of Owners and Occupants, the right of ingress and egress in and through the Property to construct improvements upon, maintain, manage, and market the Property, and to discharge Declarant's obligations under this Declaration.
6. The right to complete or make improvements indicated on the Plat.
7. The right to use improvements owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.
8. The absolute right to exercise any of the foregoing rights without the prior approval of the ACC, the Board, or the Owners.
9. The absolute right to amend plats filed of record in the sole discretion of Declarant, such right not limited to but expected by Declarant to be needed to facilitate marketing of the undeveloped Lots.

6.6 Working Capital Fund. Declarant may establish a working capital fund for the Association by collecting contributions from purchasers when the sale of a Lot closes. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. If Declarant establishes the fund, Declarant will transfer it to the Association by the end of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs.

6.7 General Reservation. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself, its agents, employees, and contractors.

6.8 Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not common expenses of the Association.

6.9 Obligation for Assessments. Until the Association levies an Assessment against the Lots, Declarant will pay all the expenses of the Property and the Association as they accrue to be reimbursed by the Association for costs and expenses for which the Association is obligated to provide by the Documents. Such reimbursement to occur as soon as funding is available to the Association. From the date of the initial Assessment until the end of the Development Period, Declarant, at its sole discretion, will pay either (1) the rate of Assessment for non-Declarant Owners on each Lot owned by Declarant with a developed Building, or (2) the operational expenses of the Association minus the operational expense

portion of the Assessments paid by Owners other than Declarant. The Declarant will not use Assessments to defray the cost of capital expenditures. Notwithstanding anything to the contrary herein, the Declarant may use Assessments to defray the legal costs of drafting and filing this Declaration, forming the Association, and any other professional fees incurred on behalf of the Property.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association. Disputes between Owners that are not regulated by these Restrictions shall not be subject to the dispute resolution process.

In a dispute between any of the above entities or individuals, the parties must submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Subdivision, work for any of the parties, represent any of the parties, nor have a conflict of interest with any of the parties. The Board shall endeavor to maintain a list of potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than 30 days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled. The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments or fines by the Association as set out in this Declaration nor to the foreclosure of liens securing any such assessments or fines.

7.2 Additional Property. Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association upon approval of Owners of at least a majority of the Lots. Such annexation shall be accomplished by recording, in the Deed Records of Smith County, Texas, a declaration of annexation, including an amendment of Exhibit A.

7.3 Severability. If any covenant, condition, or restriction contained herein, or any portion thereof, shall be invalid, which invalidity shall not be presumed until the same is determined by the judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant, or restriction, each of which shall remain in full force and effect.

7.4 Enforcement. These restrictions, covenants and conditions may be enforced by the Declarant, by the Mallards Cove Property Owners Association or by the Owner of any Lot or Lots in said subdivision, either by proceedings for injunction or to recover damages for breach thereof or both.

7.5 Amendment. These restrictions, covenants, and conditions are to run with the land and shall be binding in perpetuity on all Owners within the subdivision and all persons claiming under them. Except for amendments regarding assessments and amendments during the Development Period as stated herein, these restrictions, covenants and conditions may be amended in whole or in part at any time by an instrument by a majority of the votes in the subdivision and recorded in the real property records of Smith County, Texas.

This Declaration is executed on December 1, 2015.

DECLARANT:

SIGNED this 1 day of December, 2015

Grady Rowland
Grady Rowland

THE STATE OF TEXAS

SECTION

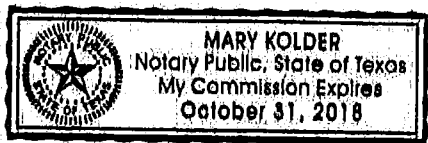
COUNTY OF SMITH

This instrument was acknowledged before me on December 1, 2015, by Grady Rowland.

Mary Kolder
Notary Public in and for
The State of Texas

Mary Kolder
Notary's Name: Typed or Printed

My Commission Expires:



LIENHOLDER'S SUBORDINATION TO DECLARATION

Date: December 1, 2015

Holder of Note and Lien:

William R. Gilpin
11070 Hebron Road
Tyler, TX 75708

Notes dated May 13, 2015 and October 21, 2015 from Borrower, Grady Rowland, to Lender, William R. Gilpin for principal amounts of \$200,000.00 and \$100,000.00, respectively.

Notes and Lien Are Described in the Following Documents ("Lien"): Those Deeds of Trust dated May 13, 2015 and October 21, 2015 filed in the Real Property Records of Smith County, Texas filed at file numbers 2015-0100021833 and 2015-0100050129, respectively.

Property subject to Declaration ("Property"):

All that certain real property located in Smith County, Texas described in the Plat filed on October 14, 2015 in Cabinet E, Slide 362A of the Plat Records of Smith County, Texas, SAVE AND EXCEPT Lots 18 and 19, which are specifically excluded from these Covenants, Conditions, and Restrictions.

Consent and Subordination by Lienholder:

In order to preserve restrictions, enforceability thereof, to maximize the existing Property value, and other good and valuable consideration of which the receipt and sufficiency is hereby acknowledged. Lienholder, William R. Gilpin, as the holder of a lien on the Property, agrees to be bound by and consents to the subordination of any interest held by Lienholder, including without limitation the aforementioned Lien evidenced by the Deed of Trust to the Declaration of Covenants, Conditions & Restrictions for Mallards Cove ("Declaration") as filed by Declarant Grady Rowland, except that this Agreement does not alter the superiority of a Lienholder's deed of trust lien as provided by Article 4 of the Declaration and the Lienholder's right to foreclose thereunder. This Declaration shall survive any transfer or foreclosure by Lienholder of any interest held by Lienholder, including without limitation the foreclosure of the Construction Deed of Trust, Security Agreement and Financing Statement described above.

When the context requires, singular nouns and pronouns include the plural.

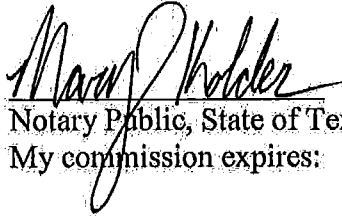
William R. Gilpin



STATE OF TEXAS)

COUNTY OF SMITH)

This instrument was acknowledged before me on December 1, 2015, by William R. Gilpin.



Notary Public, State of Texas
My commission expires:



LIENHOLDER'S SUBORDINATION TO DECLARATION

Date: December 1, 2015

Holder of Note and Lien:

American State Bank
5202 Old Jacksonville Hwy
Tyler, TX 75703

Note dated May 15, 2015 from Borrower, Grady Rowland, to Lender, American State Bank for a principal amount up to \$950,000.00.

Note and Lien Are Described in the Following Documents ("Lien"): That Deed of Trust dated May 13, 2015 filed in the Real Property Records of Smith County, Texas filed at file number 2015-0100022519.

Property subject to Declaration ("Property"):

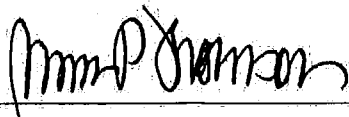
All that certain real property located in Smith County, Texas described in the Plat filed on October 14, 2015 in Cabinet E, Slide 362A of the Plat Records of Smith County, Texas, SAVE AND EXCEPT Lots 18 and 19, which are specifically excluded from these Covenants, Conditions, and Restrictions.

Consent and Subordination by Lienholder:

In order to preserve restrictions, enforceability thereof, to maximize the existing Property value, and other good and valuable consideration of which the receipt and sufficiency is hereby acknowledged. Lienholder, American State Bank, as the holder of a lien on the Property, agrees to be bound by and consents to the subordination of any interest held by Lienholder, including without limitation the aforementioned Lien evidenced by the Deed of Trust to the Declaration of Covenants, Conditions & Restrictions for Mallard's Cove ("Declaration") as filed by Declarant Grady Rowland, except that this Agreement does not alter the superiority of a Lienholder's deed of trust lien as provided by Article 4 of the Declaration and the Lienholder's right to foreclose thereunder. This Declaration shall survive any transfer or foreclosure by Lienholder of any interest held by Lienholder, including without limitation the foreclosure of the Construction Deed of Trust, Security Agreement and Financing Statement described above.

When the context requires, singular nouns and pronouns include the plural.

American State Bank



Bruce Thomson, EVP of American State Bank

)
STATE OF TEXAS

COUNTY OF SMITH)

This instrument was acknowledged before me on December 1, 2015, by Bruce Thomson as
Executive Vice President of American State Bank.

Valerie Hardy
Notary Public, State of Texas
My commission expires:

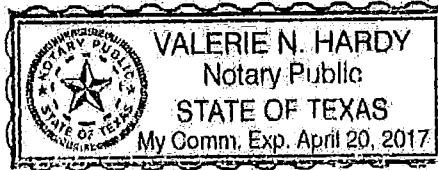
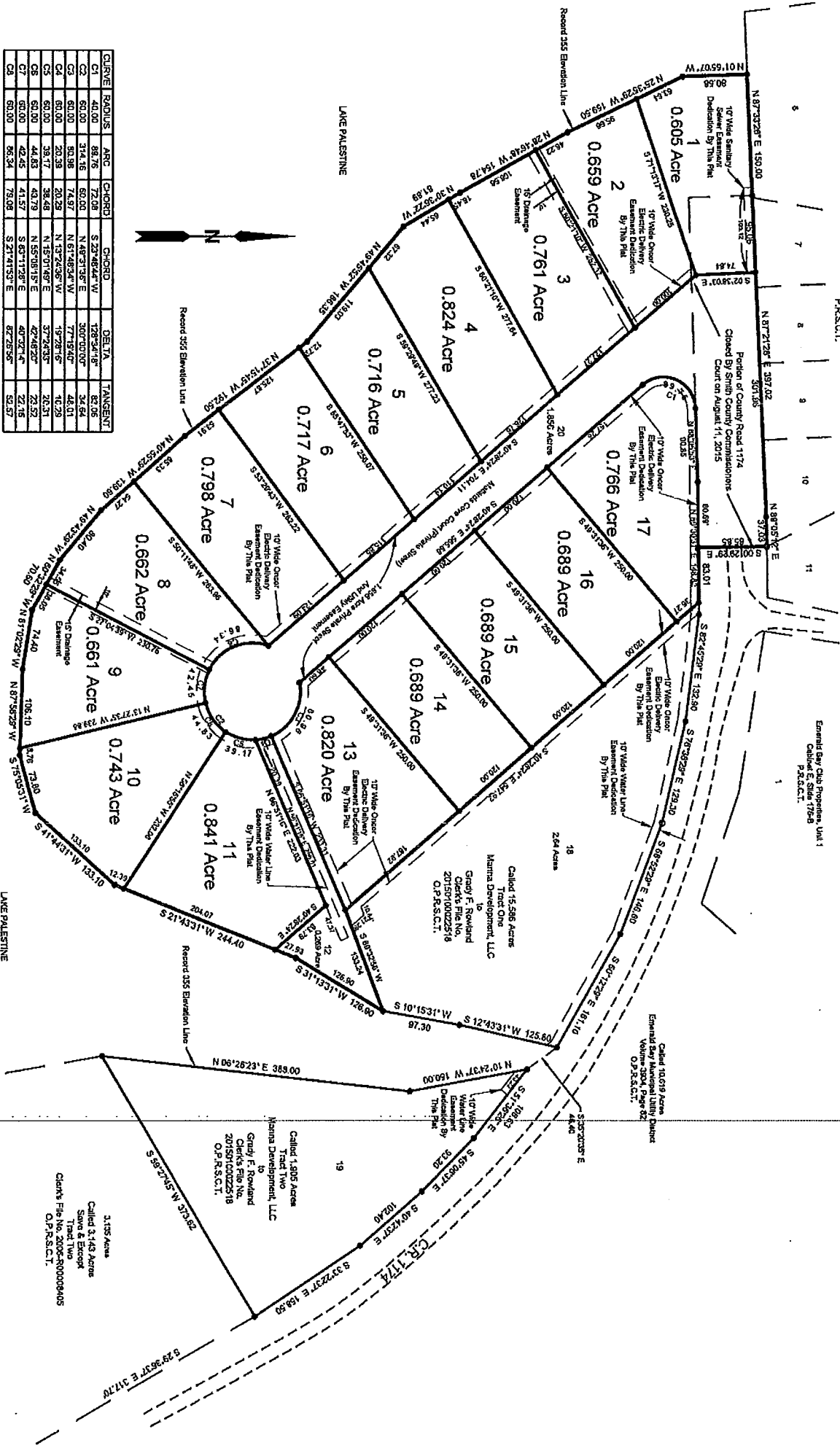


Exhibit A

Emerald Isle II
 Cabinet B, Slide 225-B
 P.R.S.C.T.

Emerald Bay Club Properties, Unit 1
 Cabinet E, Slide 175-B
 P.R.S.C.T.



CURVE	RADIUS	ARC	CHORD	CHORD	DELTA	TANGENT
C1	40.00	88.76	72.08	S 23°48'44" W	128°34'18"	82.06
C2	60.00	314.16	60.00	N 48°31'15" E	300°00'00"	34.64
C3	60.00	60.98	74.97	N 61°48'34" W	77°19'40"	48.01
C4	60.00	20.39	20.29	N 13°24'39" W	19°28'15"	16.29
C5	60.00	39.17	38.49	N 15°01'49" E	57°24'35"	28.51
C6	60.00	44.83	43.79	N 55°08'15" E	47°46'22"	22.52
C7	60.00	41.57	41.57	S 65°11'29" E	40°23'24"	22.16
C8	60.00	66.34	73.08	S 27°14'13" E	87°25'55"	52.57

Smith County



DO NOT REMOVE


THIS PAGE IS PART OF THE INSTRUMENT

Filed for Record in
Smith County, Texas
12/2/2015 2:09:53 PM
Fee: \$142.00
20150100055746

BY LAWS

Deputy - Brenda Calhoun

I hereby certify that this
instrument was filed and duly
recorded in the Official Public
Records of Smith County, Texas


Karen Phillips
County Clerk



AMENDMENT OF
 THE DECLARATION OF COVENANTS,
 CONDITIONS & RESTRICTIONS FOR

 MALLARDS COVE

Pursuant to the Declaration of Covenants, Conditions & Restrictions for MALLARDS COVE filed in the Official Public Records of Smith County, Texas at clerk's file no. 2015-0100055746 ("Declaration"), this Amendment is made by Grady Rowland ("**Declarant**") on the date signed below, and concerns the real property described therein and hereinbelow, namely that real property located in Smith County, Texas described in the Plat filed on October 14, 2015 in Cabinet E, Slide 362A of the Plat Records of Smith County, Texas.

In accordance with the Declaration, Declarant hereby amends the Declaration to replace Article 3.9.1 with the following:

3.9.1. Multi-tenant Boat House exclusively serving Lots 13, 14, 15, 16, 17 and 18. The Association shall maintain Lot 12 and the Multi-tenant Boat House constructed by Declarant on Lot 12 ("Boat House") at the expense of and for the exclusive use and benefit of Lots 13, 14, 15, 16, 17, and 18. Lot 12 and the Boat House consists of common elements as well as Units assigned for the exclusive use of certain Lots as assigned hereinbelow in Article 8. As constructed and notwithstanding anything to the contrary herein, the common elements and unfinished Units meet the requirements of the Declaration; however, further improvements to the Boat House concerning the finish out of each Unit by its assigned Lot Owner shall be completed in accordance with this Declaration with all amendments, including without limitation, Article 8. Each assigned Lot Owner shall be exclusively responsible for the finish out of their assigned Unit in compliance with this Declaration as amended from time to time. Further expenses for improvements, maintenance and utilities attributable to Lot 12 and the Boat House shall be included in Individual Assessments to the Lot Owners of Lots 13, 14, 15, 16, 17 and 18 with such expenses related to common elements being divided equally among said Lot Owners of Lots 13-18, and such expenses directly attributable to a specific Unit being the responsibility of the Lot Owner assigned to such Unit. The Association may establish a Boat House Committee to perform the Association's duties concerning Lot 12 and the Boat House required by the Declaration, including without limitation, maintaining Lot 12 and the Boat House and assessing Lot Owners for expenses of same, so long as the Boat House Committee consists entirely of each and every Lot Owner 13-18. If established, the Boat House Committee shall act by majority rule to elect officers from the Boat House Committee members to perform the duties of the Association in regards to Lot 12 and the Boat House and shall comply with this Declaration and

state law. Nevertheless, if the Boat House Committee fails to perform such duties, the Association shall be required to perform such duties.

In accordance with the Declaration, Declarant hereby amends the Declaration to add the following:

ARTICLE 8: MULTI-TENANT BOAT HOUSE

8.1 Definitions. Capitalized terms in Article 8 shall have the meaning described in this Article 8.1. Where a conflict in definition exists between this Article 8 and the remaining Declaration, a term defined in Article 8.1 shall only apply to Article 8, and where a capitalized term is not defined in Article 8.1, such shall have the same meaning as the remainder of the Declaration.

"Boat House" means the Multi-tenant Boat House improvements constructed on Lot 12 for the purpose of storing boats as well as attached living quarters, and consists of Common Elements and Units as described herein.

"Committee" means the committee formed at the discretion of the Association, and which is comprised of the Lot Owners described below.

"Common Elements" means all portions of Lot 12 and the Boat House other than the Units.

"Common Expenses" means expenditures made by or financial liabilities of the Association related to the Boat House, together with any allocations to reserves.

"Lot Owner" means the Owners with a possessory interest in a Unit as shown below:

Boat House Unit Number	Lot Number
22247 - 13	13
22247 - 14	14
22247 - 15	15
22247 - 16	16
22247 - 17	17
22247 - 18	18

"Member" means Owner.

"Owner" means every Lot Owner with a possessory interest in a Unit as provided herein.

"Residential Purposes" means recreational or dwelling purposes or both.

"Rules" means the Rules related to the Boat House adopted by the Association or Committee that do not conflict with law or the Declaration.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Unit.

"Unit" means a physical portion of the Boat House designated for exclusive possession by the assigned Lot Owner, the boundaries of which are described herein and on Exhibit B.

8.2 Clauses and Covenants.

A. Imposition of and Agreement to the Covenants. All Owners and other occupants of the Units by their acceptance of their deeds, leases, or by occupancy of any Unit agree that the Boat House is subject to the Covenants. Each Owner, each occupant of a Unit, and the Association agree to comply with the Declaration and to be subject to an action arising out of or related to the Declaration for declaratory judgment, damages, or for injunctive relief.

B. Plat

B.1. The Plat filed on October 14, 2015 in Cabinet E, Slide 362A of the Plat Records of Smith County, Texas, as amended from time to time is part of this Declaration and is incorporated by reference.

B.2. To the extent that a Unit or Common Element encroaches on another Unit or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct or relieve Declarant or any other person of liability for failure to adhere to the Plat.

C. Use and Activities

C.1. *Permitted Use.* Lot 12 and the Boat House are for the exclusive use and benefit of the Lot Owners of Lots 13, 14, 15, 16, 17 and 18. Each Unit shall be for the exclusive use and benefit of the Lot Owner assigned to such Unit as provided herein, and shall be used only for Residential Purposes by a single family. However, an Owner may lease a Unit for Residential Purposes for daily or weekly rental as the Owner and their tenant may agree so long as such lease term does not exceed two weeks or 14 calendar days.

C.2. *Prohibited Activities.* Use and Occupancy Restrictions. Subject to the Declarant's rights described in the Declaration, the following use restrictions apply to all Units and to the Common Elements:

- a. any activity that is otherwise prohibited by the Declaration or rules created thereunder;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;

- d. any dumping of trash or rubbish, except in approved locations and in an approved manner;
- e. any storage of --
 - i. building materials except during the construction or renovation of a Unit or
 - ii. boat trailers, vehicles or watercraft, except that parking and storage of watercraft within the assigned slip in the Boat House is expressly permitted at all times and temporary parking of golf carts, atv's, utv's and side by side's are expressly permitted directly in front of an Owner's assigned Unit while Unit is in use by Owner, Owner Affiliates or Owner's tenants;
- f. any keeping or raising of animals, except for common domesticated household pets, such as dogs and cats, not to exceed two such pets confined to the Unit;
- g. any commercial or professional activity except reasonable home office use;
- h. the drying of clothes outside of a Unit;
- i. the display of any sign except --
 - i. one not more than five square feet, advertising the Unit for sale or rent and
 - ii. political signage not prohibited by law or the Dedicatory Instruments; and
- j. the long-term renting of a Unit which is defined as exceeding fourteen (14) calendar days.

D. Units

D.1. *Number of Units.* The number of Units in the Boat House is six (6) as shown on the attached Exhibit B.

D.2. *Identification and Assignment of Units.* The identification number of each Unit is shown on Exhibit B. The Units are licensed to Lot Owners for as long as they own the Lots as follows:

Boat House Unit Number	Lot Number
22247 - 13	13
22247 - 14	14
22247 - 15	15
22247 - 16	16
22247 - 17	17
22247 - 18	18

D.3. *Unit Boundaries.* The boundaries of each Unit are the walls, floors, and ceilings of the Unit. The boundaries of each Unit are located as shown on Exhibit B and are more particularly described in paragraph D.4.

D.4. *Parts of Unit.* A Unit includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces that are a part of a Unit, and the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. A Unit does not include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that is partially within and partially outside the designated boundaries of a Unit, of which the portion serving only that Unit is a Common Element.

D.5. *No Subdivision or Consolidation of Units.* No Unit will be subdivided or consolidated with another Unit (unless approved by the Association).

D.6. *No Structural Modification of Unit without Association Approval.* No structural modifications or alterations will be made in a Unit unless plans, specifications, and any other documents requested by the Association are submitted to and approved by the Association in accordance with the Declaration, law and all applicable rules created thereby. The Association, and its members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove of any request. Any structural modification made to a Unit (a) without Association approval, (b) not in conformity with the Association approval, or (c) without the required permit from the applicable entity are unauthorized modifications. The Association may require the Owner to restore the Unit, at the Owner's expense, to the condition before the unauthorized modifications were made.

D.7. *Maintenance.* Each Unit will be maintained by its Owner. Maintenance fees for the Boat House shall be included in Individual Assessments to the Lot Owners of Lots 13-18. Unless otherwise agreed in writing and paid by the Association, each of the aforementioned Lot Owners will be responsible for all costs of Lot 12 and the Boat House including without limitation, utility expense, insurance expense, property tax expense, yard maintenance expense, drive and parking expense and building maintenance expense. Such expenses common to the Boat House shall be divided equally among the Owners of Lots 13-18, whereas expenses directly attributable to a specific Unit shall be assessed to that Lot Owner having exclusive use of that specific Unit. Utilities for Common Elements of Lot 12 and the Boat House paid by the Association shall be equally apportioned amongst the Lot Owners of Lots 13-18 and included in Individual Assessments to those Lot Owners.

D.8. *Restrictions on Transfer.*

A Unit is exclusively licensed for use and possession by the Lot Owner and their short term tenants as permitted herein and may not be conveyed; and

All leases and rental agreements between Owners and their tenants as permitted herein shall be in writing and subject to the reasonable requirements of the Board.

E. Association and Committee

E.1. *Establishment and Governance.* The Association may establish a Boat House Committee to perform the Association's duties related to Lot 12 and the Boat House. Such Committee is established and governed by the Declaration and state law. If formed, the Committee will administer and manage Lot 12 and the Boat House in accordance with the Declaration. The Association has the powers (a) of a nonprofit corporation under the Texas Business Organizations Code, and (b) as stated in the Declaration, respectively as amended. If formed, all duties and acts of the Association shall be carried out by the Committee, except as otherwise provided by the Declaration or Bylaws or by law.

E.2. *Declarant Control.* Declarant has all the powers reserved in the Declaration.

E.3. *Membership and Voting Rights.* If the Boat House Committee is formed, every Lot Owner of Lots 13-18 is a Member of the Boat House Committee. Membership is appurtenant to and may not be separated from ownership of a Unit. On termination of the Declarant Control Period, the Members have the voting rights provided in the Bylaws.

G. Remedial Rights

G.5. *Remedy of Violations.* The Association may access an Owner's Unit to remedy a violation of the Declaration and bylaws or rules created thereunder.

G.6. *Suspension of Voting.* An Owner delinquent in payment of any Assessment may not vote.

G.7. *Suspension of Other Rights.* If an Owner violates the Declaration, bylaws or rules, the Association may suspend the Owner's rights under the Declaration in accordance with law until the violation is cured.

G.8. *Damage to Property or Violation of Declaration, bylaws or rules.* An Owner is liable to the Association (a) for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees ("Owner Affiliates"), and (b) for violations of the Declaration, bylaws or rules by the owner or Owner Affiliates, in accordance with law.

H. Common Elements

H.1. *Allocation of Specified Common Elements.* The Association may designate parts of the Common Elements from time to time for use by less than all of the Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Association. Any such designation by the Association shall not be a sale or disposition of such portions of the Common Elements.

I. Allocated Interests

I.1. *Allocated Interests.* The Owners' respective Common Expense Liability and the Owners' respective votes in the Committee allocated to each Unit are set forth as follows:

Boat House Unit Number	Lot Number	Common Expense Liability	Owners' Votes
22247 - 13	13	One-sixth	1
22247 - 14	14	One-sixth	1
22247 - 15	15	One-sixth	1
22247 - 16	16	One-sixth	1
22247 - 17	17	One-sixth	1
22247 - 18	18	One-sixth	1

I.2. *Determination of Allocated Interests.* The interests allocated to each Unit have been calculated as follows:

- a. the undivided interest in Common Elements, on the basis of each Unit's pro-rata interest considering the total number of Units, namely one-sixth interest per Unit;
- b. the percentage of liability for Common Expenses, on the basis of each Unit's pro-rata interest considering the total number of Units, namely one-sixth interest per Unit;
and
- c. the number of votes in the Committee, on the basis of each Unit's pro-rata interest considering the total number of Units, namely one vote per Unit.

J. Amendment of Article 8

Article 8 may be amended by consent of Owners of Lots 13-18 to which at least fifty-one (51.00%) percent of the votes in the Association are allocated-

- J.1. by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;
- J.2. at a meeting of the Members after written notice of the meeting has been delivered to an Owner of each Unit state that a purpose of the meeting is to consider an amendment to the Declaration; or
- J.3. by unanimous written consent of the Owners.

K. Reconstruction after Loss

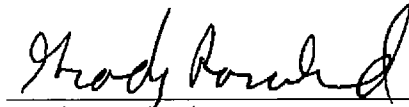
On a casualty to any portion of Lot 12 or the Boat House for which insurance is required, the Association must promptly repair or replace that portion unless (1) repair or replacement would

be illegal under any state or local health or safety statute or ordinance, or (2) at least 80 percent of the Owners vote to not rebuild. Each Unit Owner may vote (in person or by proxy at a meeting; electronically or by written ballot in the absence of a meeting) regardless of whether the owner's unit or limited common element has been damaged or destroyed. Costs will be assessed and paid by the Lot Owners as provided herein.

Capitalized terms used herein without definition shall be defined as in the Declaration.

DECLARANT:

SIGNED this 14th day of July, 2020

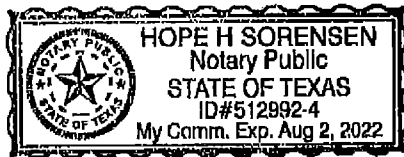


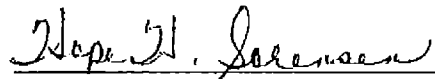
Grady Rowland

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on July 14, 2020, by Grady Rowland.





Notary Public in and for
The State of Texas

AFTER RECORDING RETURN TO:

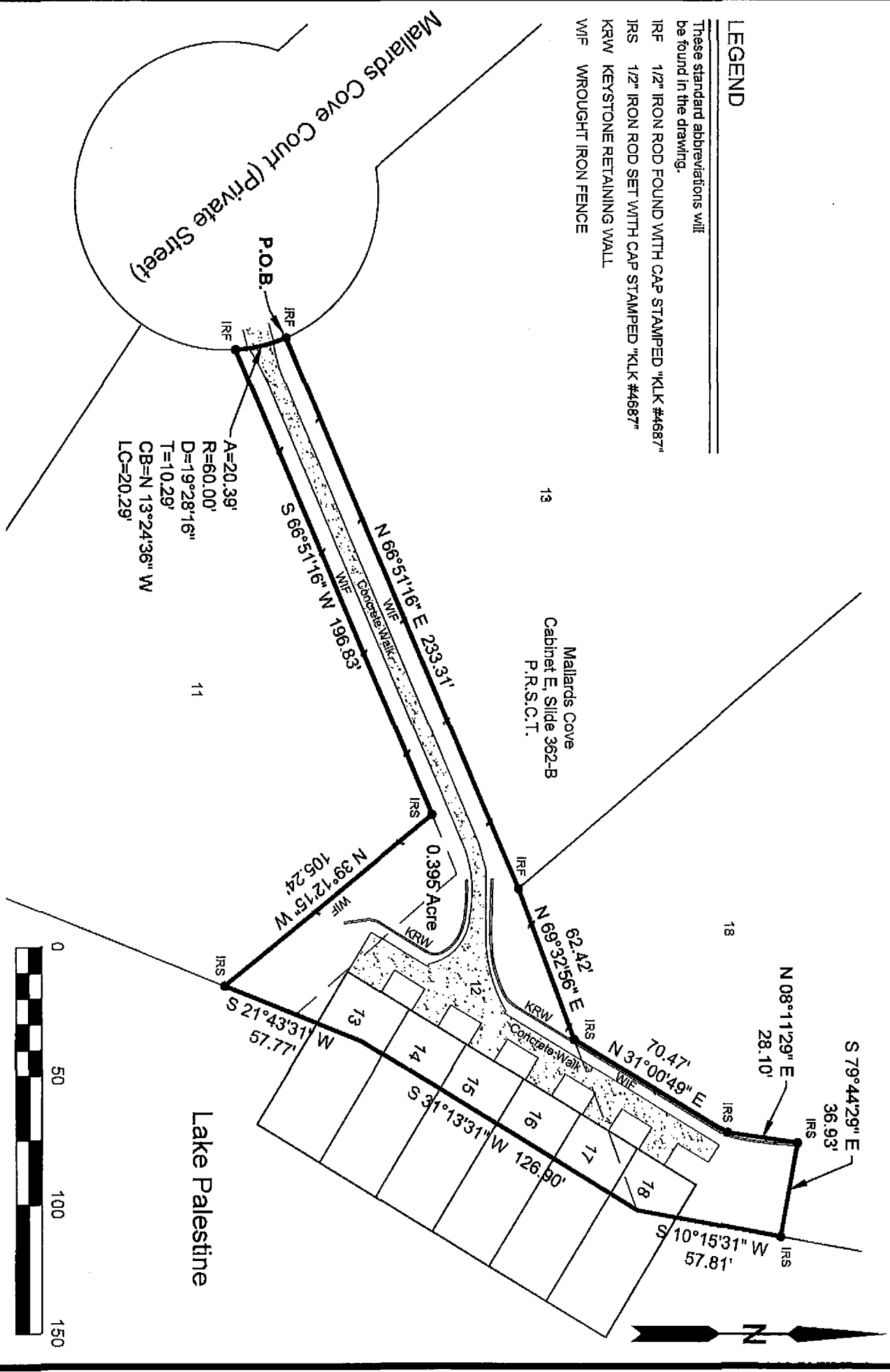
CLINT JAMES, PC
815 Rice Road
Tyler, TX 75703

EXHIBIT B MALLARDS COVE EXHIBIT

LEGEND

These standard abbreviations will be found in the drawing.

- IRF 1/2" IRON ROD FOUND WITH CAP STAMPED "KLK #4687"
- IRS 1/2" IRON ROD SET WITH CAP STAMPED "KLK #4687"
- KRW KEYSTONE RETAINING WALL
- WIF WROUGHT IRON FENCE



Smith County



DO NOT REMOVE

THIS PAGE IS PART OF THE INSTRUMENT

Filed for Record in
Smith County, Texas
07/14/2020 02:11:00 PM
Fee: \$58.00

20200100024478

RESTRICTION

Deputy -Sunni Whittaker

I hereby certify that this instrument was
filed and duly recorded in the Official
Public Records of Smith County, Texas

A handwritten signature in cursive script that reads "Karen Phillips".

Karen Phillips
County Clerk

