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# DOLPHIN POINT

## MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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# DOLPHIN POINT

## MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS           §  
  §  
COUNTY OF CALHOUN         §

Matagorda Group, L.P., a Texas limited partnership, hereinafter called the Declarant, owns certain real property more particularly described on Exhibit "A" attached hereto and incorporated herein comprising a portion of the Ala Wai Village Subdivision, Section 1, a subdivision in Calhoun County, Texas, according to the established map or plat of record in Volume Z, Page 534, Map and Plat Records of Calhoun County, Texas, as amended in Volume Z, Page 569, Map and Plat Records of Calhoun County, Texas (Slide No. 365A), to be developed in phases as the Dolphin Point development in Calhoun County, Texas;

Declarant has subdivided into Lots (hereinafter defined) the first phase of such Development (hereinafter defined) pursuant to that certain Amended Plat of Ala Wai Village Subdivision, Section 1, a subdivision in Calhoun County, Texas according to the established map or plat of record in Volume Z, Page 625, Deed Records of Calhoun County, Texas (Slide No. 399AB); and

Declarant desires to create and carry out a plan for the improvement, development and sale of the Property (hereinafter defined) and to subject the Property to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth, all of which is expected to benefit the present and future owners of the Property.

NOW, THEREFORE, it is hereby declared that (i) all of the Property shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants, conditions, charges and liens which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof; and (ii) each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following easements, covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

### ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration or any Supplemental Declaration shall have the meanings hereinafter specified:

**1.1 Amenity Area.** "Amenity Area" shall mean all areas designated by Declarant to be held as open space or for passive or active recreational purposes for the benefit of all Owners.

**1.2 Architectural Review Committee.** "Architectural Review Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

**1.3 Articles.** "Articles" shall mean the Articles of Incorporation of Dolphin Point Property Owners Association, Inc., which shall be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

**1.4 Assessment.** "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

**1.5 Association.** "Association" or "Master Association" shall mean and refer to Dolphin Point Property Owners Association, Inc., a Texas non-profit corporation, its successors and assigns.

**1.6 Board.** "Board" shall mean the Board of Directors of the Association.

**1.7 Bylaws.** "Bylaws" shall mean the Bylaws of the Association to be adopted by the Board, and as from time to time amended.

**1.8 Channel.** "Channel" shall mean all or any portion of the channels, canals and waterways existing or to be constructed as depicted on a Plat and conveyed to the Master Association as Common Property or conveyed to the Master Association as Common Property by separate deed.

**1.9 Common Properties.** "Common Properties" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Members of the Association including, but not limited to all private streets, signs, gates, parkways, medians, islands, walls, bridges, bulkheading, safety lanes, trails, parks, greenbelts, recreational facilities, community facilities, pumps, landscaping, sprinkler systems, pavement, (to the extent not owned by appropriate governmental authorities), walkways, pipes, wires, conduits and other utility lines situated thereon (to the extent not owned by appropriate governmental authorities or by local utility companies). The Common Properties to be owned by the Association shall include: (i) those areas of land shown on any recorded plat or its equivalent of the Property or any portion thereof filed or approved by Declarant and identified thereon as held for open space or passive or recreational purposes for the benefit of all Owners, (ii) the private streets within the Subdivision, and (iii) those waterways, channels, areas of land and improvements thereon deeded to the Association by Declarant. Declarant reserves the right to effect redesigns or reconfigurations or deletions of the Common Properties by any means including, without limitation, any amendatory plat of all or any portion of the Development.

**1.10 Dolphin Point Restrictions.** "Dolphin Point Restrictions" shall mean, collectively (i) this Master Declaration, together with any and all Supplemental Declarations, as the same may

be amended from time to time, and (ii) the Articles and Bylaws from time to time in effect, as the same may be amended from time to time.

**1.11 Dolphin Point Rules.** "Dolphin Point Rules" shall mean such rules including but not limited to traffic rules, parking rules and any scheduled fines and penalties for violations established and promulgated by the Master Association from time to time.

**1.12 Declarant.** "Declarant" shall mean Matagorda Group, L.P., its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Matagorda Group, L.P. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

**1.13 Development.** "Development" shall mean the real property more particularly described on Exhibit "A" attached hereto and incorporated herein, which Declarant proposes to develop and subdivide in phases for residential and other purposes and to be known as Dolphin Point, a resubdivision of the Original Subdivision.

**1.14 Improvement.** "Improvement" shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to buildings, outbuildings, boat docks, storage sheds, patios, tennis courts, basketball goals, swimming pools, garages, storage buildings, fences, trash enclosures, animal enclosures, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**1.15 Lot.** "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot, with the exception of any lots described as Common Properties, on a Plat of the Property, together with all Improvements located thereon.

**1.16 Master Declaration.** "Master Declaration" or "Declaration" shall mean this instrument, and as it may be amended from time to time.

**1.17 Member.** "Member" or "Members" shall mean any person, persons, entity, or entities holding membership rights in the Association.

**1.18 Mortgage.** "Mortgage" shall mean any mortgage or deed of trust covering all or any portion of the Property given to secure the payment of a debt.

**1.19 Mortgagee.** "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

**1.20 Owner.** "Owner" or "Owners" shall mean and refer to a person or persons, entity or entities, excluding Declarant, holding a fee simple interest in all or any portion of the Property, but shall not include a Mortgagee.

**1.21 Original Subdivision.** "Original Subdivision" shall mean Ala Wai Village Subdivision, Section 1, a subdivision in Calhoun County, Texas, according to the established map and plat of record in Volume Z, Page 534, Map and Plat Records of Calhoun County, Texas, as amended in Volume Z, Page 569, Map and Plat Records of Calhoun County, Texas (Slide No. 364A), including the "channel" described in the foregoing described plat of said subdivision.

**1.22 Person.** "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

**1.23 Plans and Specifications.** "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, boat dock plans, water well plans, drainage plans, clearing plans, septic system plans or other sewage disposal system plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, samples or exterior colors, plans for utility services, all other documentation or information relevant to such Improvement.

**1.24 Plat.** "Plat" shall mean a final subdivision plat of any portion of the Property.

**1.25 Property.** "Property" shall mean that real property subject to the terms of this Declaration initially described as Tracts 1, 2 and 3 on Exhibit "A" attached hereto, and any additional real property which may be hereafter incorporated or annexed under the terms of this Declaration and brought within the scheme of this Declaration.

**1.26 Subdivision.** "Subdivision" shall mean and refer to the Property and such other portion of the Development that has been subdivided and shown on a map or plat of record in the Map and Plat or Deed Records of Calhoun County, Texas and brought within the scheme of this Declaration.

**1.27 Supplemental Declaration.** "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order to (i) subject any area of the Property to further covenants, conditions or restrictions, (ii) withdraw from or add real property to the Property, or (iii) annex additional land into the Development.

## **ARTICLE II ADDITIONS TO THE PROPERTY**

### **2.1 Phased Subdivision.**

(A) Incorporation. Declarant, its successors and assigns, shall have the right at any time prior to January 1, 2020, to incorporate within the scheme of this Declaration (i) additional real property in future phases of the Development without the consent or approval of any party, including the Owners of any Lots (other than Declarant), or (ii) lots or areas within the Original Subdivision with the consent of the record owner of any such Lot. As additional properties are incorporated within the scheme of this Declaration,

Declarant shall, with respect to said properties, record Supplemental Declarations which may incorporate this Declaration therein by reference and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties.

(B) **Annexation.** Additional properties may be annexed into the Development at any time with the consent of sixty-seven percent (67%) of all of Members of the Association and the written approval of Declarant. As additional properties are annexed into the Development, Declarant shall, with respect to said properties, record Supplemental Declarations which may incorporate this Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties.

(C) **Filing Supplemental Declarations.** To evidence the incorporation or annexation of additional property, Declarant shall record a Supplemental Declaration which shall incorporate this Declaration by reference. Following such incorporation or annexation and the recordation of such additional plat or maps, then and thereafter the Owners of all Lots in the Subdivision shall have the rights, privileges and obligations set forth in this Declaration and each applicable Supplemental Declaration.

**2.2 Merger or Consolidation.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

### **ARTICLE III GENERAL RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

**3.1 Antennae.** No exterior radio or television antenna or aerial or satellite dish receiver over eighteen inches in diameter, or other devices designed to receive telecommunication signals, including but not limited to, radio, television, or microwave signals which are intended for cable television, network television reception, communications or entertainment purposes shall be erected or maintained, except by Declarant, without the prior written approval of the Architectural Review Committee.

**3.2 Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior

written approval of the Architectural Review Committee and Declarant; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of any other Owner or the Architectural Review Committee. The Architectural Review Committee, in its sole and arbitrary discretion, may elect to withhold its consent to further subdividing any Lot.

**3.3 Rubbish and Debris.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. All refuse, garbage and trash shall be collected, at the expense of Owner. In the event the Owner shall fail or refuse to keep, or cause to be kept, such Owner's Property or any Improvements thereon free from rubbish or debris or any kind, and such failure or refusal shall continue for fifteen (15) days after delivery of written notice thereof, then the Association may enter upon such Property and remove or correct the same at the expense of the Owner and such entry shall not be deemed a trespass.

**3.4 Noise.** No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property such that it becomes or will become clearly audible at the property line of adjoining Lot Owners. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

**3.5 Construction of Improvements.** No Improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Plans and Specifications for the Improvement(s) by the Architectural Review Committee. Anything herein to the contrary notwithstanding, in the case of single family residences constructed on any Lot, the Architectural Review Committee, in its sole discretion, may limit its review to a review of specific floor plans, and elevations, and upon the Architectural Review Committee's approval of such specific floor plans and elevations, residences may be constructed consistent with the approved floor plans and elevations without the requirement of further review or approval by the Architectural Review Committee.

**3.6 Size Restrictions.** Any residence constructed on a Lot shall have a minimum of 1,100 square feet of heated and cooled living space.

**3.7 Height Restrictions.** The maximum height of any Improvement constructed on a Lot shall not exceed the following:

Lots 27 - 33	35 feet
Lots 22 - 26	44 feet
Lots 19 - 21	35 feet
Lots 14 - 18	44 feet

The height of each Improvement shall be measured from the finished elevation of the Lot to the top of the highest point of the Improvement including any allowed roof projections.

**3.8 Repair of Buildings.** All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

**3.9 Alteration or Removal of Improvements.** Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the prior written approval of the Architectural Review Committee.

**3.10 Roofing Materials.** All roofing material shall be subject to the approval of the Architectural Review Committee.

**3.11 Drainage.** There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Review Committee. Each private driveway constructed over a drainage ditch or drainage way shall have open drainage under such driveway with a net drainage opening area of sufficient size to permit the free flow of water without back water, and shall be a minimum of an 18-inch diameter pipe culvert, although the Architectural Review Committee may require a larger size and determine the grade.

**3.12 Hazardous Activities.** No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property. No open fires shall be lighted or permitted except (i) within safe and well-designed interior fireplaces; (ii) within contained barbecue units while attended and in use for cooking purposes; or (iii) in compliance with ordinances, regulations and permit requirements of local governmental authorities. Hunting, whether with firearms or cross bows, shall be prohibited on the Property.

**3.13 Temporary Structures.** No tent, shack or other temporary building, Improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Review Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration and location of such structure.

**3.14 Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. Declarant reserves the right to designate one or more drilling sites on the Property including any Lot or Lots owned by Declarant or any portion of the Common Properties for exploration and removal of oil, gas and other minerals.

**3.15 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Architectural Review Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service area, storage area, loading area and compost piles shall be appropriately screened from view from public or private thoroughfares and other properties and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.

**3.16 Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than seventy-two (72) hours.

**3.17 Fences.** The design, construction, materials and specifications of fences shall be subject to the prior written consent of the Architectural Review Committee. The Architectural Review Committee may, in its discretion, prohibit the construction of any proposed fence, or specify the materials of which any proposed fence must be constructed, or require that any proposed fence be partially screened by vegetation. Common cement fences, cinder block fences and chain link fences are specifically prohibited. Fence maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) days of written notification by the Master Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (i) any portion of a fence to lean so that the fence's axis is more than five (5) degrees out of vertical alignment, (ii) missing, loose, or damaged stone or wood rails in the fence, (iii) symbols, writings, and other graffiti on the fence, and (iv) broken or loose wires.

**3.18 Animals - Household Pets.** No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed or fenced areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed or fenced area shall be constructed in accordance with plans approved by the Architectural Review Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof.

**3.19 Maintenance of Lawns and Planting.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot in a clean, attractive manner and free of trash and other unsightly material.

**3.20 Construction Activities.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Review Committee, provided that such waiver shall be only for the reasonable period of such construction. The Architectural Review Committee is also empowered in the event of a dispute to set a reasonable schedule including days of the week and times for the performance of construction activities.

**3.21 Compliance with Provisions of the Dolphin Point Restrictions and Dolphin Point Rules.** Each Owner shall comply strictly with the provisions of the Dolphin Point Restrictions and Dolphin Point Rules as the same may be amended from time to time. Failure to comply with any of the Dolphin Point Restrictions and Dolphin Point Rules shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for fines, penalties, Assessments, damages or injunctive relief or both, asserted by the Board on behalf of the Association or by an aggrieved Owner.

**3.22 Sewer.** No residential dwelling shall be occupied unless toilet facilities are connected to and use only the central sanitary sewer system in the Subdivision. No outdoor toilets, cesspools or individual sewage disposal systems shall be constructed or used within the Subdivision and no sewage shall be discharged into a channel, canal or waterway.

**3.23 Grading, Digging and Jetting.** The digging of dirt or sand or the removal of any dirt or sand from any Lot is expressly prohibited, except when necessary in conjunction with landscaping of such Lot, or in conjunction with construction being done on such Lot. No fill material which will change the grade of a Lot shall be placed thereon without the approval in writing of the Architectural Review Committee. In no event shall any excavation be made or dirt removed from any Lot in such a manner as to jeopardize any bulkhead and the water or air "jetting" or piling within ten (10) feet of any bulkheading is expressly prohibited.

**3.24 Debris.** All channels, canals and waterways in the Subdivision shall be kept free of trash and debris. No fish or fowl carcasses shall be disposed of in the Channels.

**3.25 Commercial Boats.** No boat which is used for commercial purposes will be allowed to operate or be anchored or docked in any manner in any Channel. Furthermore, all boats operated, anchored, or docked in any manner in any Channel must be approved by the Architectural Review Committee as to appearance, size and loudness of motors in order that no boat of any type which

is unsightly, oversized or has an unusually loud motor will be allowed to be placed in any Channel and therefore detract from the value or enjoyment of the Lots abutting the Channel.

**3.26 Channel Structures.** No pier, wharf, boat dock or other structure shall be erected in any Channel except upon the express approval in writing of the Architectural Review Committee. The use of automotive tires or other unsightly materials for hold-off bumpers or pier construction is prohibited.

**3.27 Docking.** No boat docked parallel to the Channel bulkhead shall be docked closer than four (4) feet from such Channel bulkhead. No stern-to docking shall be allowed and precaution shall always be taken in the operation of boats in all Channels in the Subdivision to prevent the undermining of bulkheads.

**3.28 Exclusive Areas for Boat Stalls.** Each "area for boat stall" designated by a numerical designation on the plat attached hereto and incorporated herein as **Exhibit "B"** is for the exclusive use of the owner or occupant of the Lot with the corresponding number. The owners or occupants of other Lots shall not obstruct or interfere with the rights herein granted for the use of such boat stall areas by the persons entitled thereto. No Owner shall construct a boat dock or stall in the Channel except in such Owner's exclusive designated area.

**3.29 Water.** The drilling of any individual water wells on any Lot shall not be permitted.

**3.30 Lighting.** No exterior light (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any of the Property such that it will shine directly onto or toward any other Lot or be offensive or detrimental to any other portion of the Property or its occupants.

**3.31 Construction in Place.** All dwellings constructed on the Property shall be built in place on the applicable Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Review Committee.

**3.32 Unfinished Structures.** No structure shall remain unfinished for more than one (1) year after the same has been commenced.

**3.33 Set-back Requirements.** Set-back requirements shall be the more restrictive of (a) those set forth on any Plat, or (b) set forth by the Architectural Review Committee to protect view corridors or the natural landscape. The Architectural Review Committee, in its sole discretion, reserves the right to grant variances from the set-back requirements shown on the Plat.

**3.34 Rentals.** Nothing in the Declaration shall prevent the rental of any entire Lot and the Improvements thereon, by the Owner thereof.

**3.35 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such

restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

#### **ARTICLE IV USE RESTRICTIONS**

**4.1 General.** The Property shall be improved and used for single family residential use (except for any commercial tract designated as such on any recorded plat), for Common Properties including Amenity Areas and for all other permitted uses. Amenity Areas may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Property; provided, however that, as to any specific area, Declarant may, in its sole and absolute discretion, permit other improvements and uses.

**4.2 Common Properties.** No land within the Common Properties shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy and Improvement. Declarant may, by written instrument, delegate its right to grant such approval to the Board. Access to any of the Common Properties may be limited to persons currently paying Assessment fees and other charges, or otherwise conditioned or restricted, or made available to Owners, all on such terms and conditions as Declarant may determine, in its sole discretion. The Architectural Review Committee and Declarant reserve the right to promulgate reasonable use restrictions for the Common Properties.

**4.3 Recreational Improvements.** Boat docks or any other proposed construction of recreational improvements within the Common Properties shall be subject to the prior written approval of the Architectural Review Committee and Declarant.

#### **ARTICLE V DOLPHIN POINT PROPERTY OWNERS ASSOCIATION, INC.**

**5.1 Organization.** Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Master Association as a non-profit corporation under the laws of the State of Texas. The Master Association shall be created for the purposes, charged with the duties, governed by the provisions and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Master Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration. Nothing in this Master Declaration shall prevent the creation, by provision therefor in Supplemental Declaration(s) executed and recorded by Declarant or any person or persons authorized by Declarant, of Subassociations to own, develop, assess, regulate, operate, maintain or manage the Property subject to such Supplemental Declarations.

**5.2 Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject, by covenants or record, to assessment by the Association,

including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to Assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or lienholder who acquired title to any Lot which is a part of the Property through judicial or non-judicial foreclosure, shall be a Member of the Association. It is understood that the Development may be developed in phases or sections, and such completed sections or phases or any part thereof shall, at the option and election of Declarant, be incorporated within the scheme of this Declaration and become bound hereby and a part hereof, which incorporation shall be evidenced by the filing of the Supplemental Declaration; provided, however, in the event that Declarant shall sell all or a portion of the Development to an unrelated third party purchaser without having first developed the same, such third party shall have the right to elect whether or not it desires such land to be incorporated herein pursuant to the terms of Section 2.1.

**5.3 Voting Rights.** The Association shall have two (2) classes of voting memberships:

A. Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine as provided by the Bylaws, but in no event shall more than one (1) vote be cast with respect to any Lot.

B. Class B. The Class B Member(s) shall be Declarant, and its successors and assigns, and shall be entitled to ten (10) votes (i) for each Lot owned by it, and (ii) for each one (1) acre of the Development not then subject to a recorded plat subdividing such acreage into lots ("Future Lot"); provided that the Class B membership shall cease and be converted to Class A membership (subject to reversion back to Class B membership upon the annexation of additional land) on the happening of either of the following events, whichever occurs earlier:

(1) the complete development of the Development and sale of all developed lots therein;

(2) January 1, 2020.

From and after the occurrence of one of the above events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot and one (1) vote for each Future Lot then owned by such Class B Member. The Class B membership shall be immediately reinstated upon annexation of any additional land. Such reinstatement of the Class B Member shall in any event cease in accordance with the limitations set forth on January 1, 2030.

**5.4 Powers and Authority of the Association.** The Master Association shall have the powers of the Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and

perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of the State of Texas or of the two preceding sentences. The Master Association and the Board, acting on behalf of the Master Association, shall have the power and authority at all times as follows:

A. **Dolphin Point Rules and Dolphin Point Bylaws.** To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Dolphin Point Rules, including but not limited to traffic rules, parking rules and a schedule of fines and penalties for violations, and Dolphin Point Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

B. **Insurance.** To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Master Association functions.

C. **Records.** To keep books and records of the Master Association's affairs.

D. **Assessments.** To levy Assessments as provided in Article VII below. An Assessment is defined as that sum which must be levied in the manner and against the Property set forth in Article VII hereof in order to raise the total amount for which the levy in question is being made.

E. **Right of Entry and Enforcement.** To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Dolphin Point Restrictions and the Dolphin Point Rules or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Dolphin Point Restrictions and the Dolphin Point Rules, and the expense incurred by the Master Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special Assessments. The Master Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Dolphin Point Restrictions and the Dolphin Point Rules. The Master Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Dolphin Point Restrictions and the Dolphin Point Rules; provided, however, that the Board shall never be authorized to expend any Master Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

F. **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Master Association.

G. Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Common Properties for the purpose of constructing, erecting, operating or maintaining the following:

- (1) Parks, parkways, trails, greenbelts or other recreational facilities or structures;
- (2) Fountains, walls, bridges, bulkheading, channels, fences and other facilities and structures;
- (3) Roads, streets, walks, driveways, trails and paths;
- (4) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (5) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (6) Any similar public, quasi-public or private improvements or facilities;

provided, however, that the Master Association shall not convey fee simple title in and to, or mortgage all or any portion of any Common Properties without the consent of at least sixty-seven percent (67%) of the Owners (excluding Declarant), except as may otherwise be permitted hereunder to effect redesigns, reconfigurations or deletions of the Common Properties by Declarant.

Nothing above contained, however, shall be construed to permit use or occupancy of any Improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed thereon by other provisions of this Declaration.

H. Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Master Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Master Association or may be furnished by the Manager. To the extent permitted by law, the Master Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Master Association hereby release the Master Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or utility provider function so delegated.

I. Utilities. To own, lease, maintain, repair, operate and replace a private wastewater treatment plant and associated wastewater lines for the use and benefit of Declarant and the Owners; to own, lease, construct, repair, maintain and replace water lines and associated meters for the benefit of Declarant and each Owner, and to bill and collect from each Owner appropriate sums for water and wastewater usage.

J. Association Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for all Common Properties; to maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, greenbelts, median strips, sidewalks, paths, trails, canals and other areas of the Property, as appropriate and the maintenance of which has not been accepted by the appropriate governmental entity; and to own and operate any and all types of facilities for both active and passive recreation.

K. Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Master Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles of Bylaws of the Master Association.

L. Construction on Association Property. To construct new improvements or additions to Common Properties, subject to the approval of the Architectural Review Committee as provided in this Declaration.

M. Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Property or to provide any service or perform any function on behalf of Declarant or any Person.

N. Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

O. Loans. To borrow funds (including without limitation the borrowing of funds from the Declarant and/or its affiliates) to pay the costs of operation, secured by such assets of the Association as deemed appropriate by the Board.

**5.5 Maintenance Authority.** The Master Association shall maintain all streets and roadways within the Property, which have been completed but not accepted by the appropriate governmental entity for maintenance. In addition, the Master Association shall be authorized to maintain and repair all access easements, rights-of-way, median strips, sidewalks, paths, trails, lakes, detention ponds and other areas of the Property, as appropriate. The Master Association shall maintain all Greenbelt or Amenity Areas dedicated to the Master Association for maintenance, by or with the consent of Declarant. The Master Association shall also maintain any landscaped medians and boulevard areas, not fronting lots, located on private roads within the Property. All signage, plant materials and Improvements, except Declarant's, used in said median or boulevard areas must be approved by the Architectural Review Committee.

**5.6 Lighting.** The Master Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the lighting (if any), including street lights within street rights-of-way and Amenity Areas and on Common Properties.

**5.7 Common Properties.** Subject to and in accordance with this Declaration, the Master Association, acting through the Board, shall have the following duties:

A. Ownership and Maintenance. To accept, own, operate and maintain all Common Property which may be conveyed or leased to it by Declarant, together with all Improvements of whatever kind and for whatever purpose which may be located in said area: to maintain all bulkheading, roadbeds and paving on or associated with any private streets, alleys or parking areas with the Common Properties; and to maintain in good repair and condition all lands, improvements and other Master Association property owned by or leased to the Master Association. Such maintenance shall include but not be limited to mowing and removal of rubbish or debris of any kind.

B. Channels. To the extent any channel canal or waterway is conveyed to the Master Association by Declarant, the Master Association shall maintain, repair and replace such waterway canal or channels' concrete bulkheading along the waterfront lot line of each Lot, provided each Owner of a Lot fronting on said channel canal or waterway shall be responsible for the repair and replacement of said waterway canal or channels' concrete bulkheading along the entire waterfront lot line of said Lot to the extent any damage is caused by said Owner.

C. Construction. To construct, maintain, repair and replace landscape improvements and irrigation systems within rights-of-way pursuant to agreement(s) with the local governmental authorities and any recorded plat.

D. Assessments. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Master Association, to the extent that such taxes and assessments are not levied directly upon the Members of the Master Association. The Master Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

E. Mortgage. Upon the approval of sixty-seven percent (67%) of each Class of Members, to execute mortgages, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Master Association. Additionally, the Master Association may accept lands in Amenity Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether Declarant or the Master Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien as shall be deemed appropriate by borrower, whether Declarant or the Association, on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees or Assessment paid by the Members of the Master Association, as the case may be, but subject to the limitations imposed by this Declaration.

F. Insurance. To take out and maintain current a policy of liability insurance coverage insuring Declarant and the Master Association and covering accidental bodily

injury and/or death caused by the use and enjoyment of the Common Properties, as well as casualty coverage on all real and personal property owned by the Master Association, if and in such amounts as the Board shall deem appropriate.

Each Owner, Member and resident of the Property expressly understands, covenants and agrees with Declarant and the Association as follows:

(1) No Liability. Neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Member and resident of the Property.

(2) Maintain Insurance. Each Owner, Member and resident of the Property shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Member's and resident's own selection to select, purchase, obtain, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Member and resident covering his or her real and personal property.

**(3) RELEASE OF CLAIMS. EACH OWNER, MEMBER AND RESIDENT OF THE PROPERTY RELEASES DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, AND PARTNERS FROM ANY LIABILITY, CLAIMS, CAUSES OF ACTION OR DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER ARISING OUT OF OR RELATED (DIRECTLY OR INDIRECTLY) TO ANY AND ALL ASPECTS OF THE PROPERTY.**

**5.8 Private Streets.** The streets within the Property or otherwise conveyed to the Association are private and constitute a portion of the Common Properties which are subject to the jurisdiction of and administration by the Association. The Board is specifically authorized to recommend, adopt, implement, and enforce rules, regulations, mechanisms, and procedures governing use of the streets, covering items such as (but not necessarily limited to):

A. identification and entry programs for Members, their respective immediate families, their guests, and vehicles owned or driven by any of them;

B. speed limits, designated parking areas, restricted parking areas, and no-parking areas;

C. signs and graphics to provide announcements to unauthorized persons concerning potential criminal trespass matters;

D. a "fines" system through which the Association can levy and collect fines from its Members and its Members' guests, invitees and contractors for violations of the applicable rules and regulations; and

E. disclaimers of liability for any and all matters or occurrences on or related to the Common Properties.

**5.9 Rules of the Board of Directors.** All Members, residents and their families and guests shall abide by any reasonable rules and regulations adopted by the Board, including but not limited to the Dolphin Point Rules. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies.

**5.10 Indemnification.** THE MASTER ASSOCIATION SHALL INDEMNIFY ANY PERSON OR ENTITY WHO WAS OR IS A PARTY, OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED, PENDING OR COMPLETED ACTION, SUIT OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE OR INVESTIGATIVE BY REASON OF THE FACT THAT HE IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE MASTER ASSOCIATION AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED BY HIM IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING UNLESS IT IS FOUND AND DETERMINED BY THE BOARD OR A COURT THAT HE (1) ACTED IN BAD FAITH AND IN A MANNER HE REASONABLY BELIEVED NOT TO BE IN, OR OPPOSED TO, THE BEST INTERESTS OF THE MASTER ASSOCIATION, AND (2) WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE HIS CONDUCT WAS UNLAWFUL. THE TERMINATION OF ANY ACTION, SUIT OR PROCEEDING BY SETTLEMENT, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT, SHALL NOT OF ITSELF CREATE A PRESUMPTION THAT THE PERSON DID NOT ACT IN GOOD FAITH OR IN A MANNER WHICH HE REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE MASTER ASSOCIATION, AND WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE THAT HIS CONDUCT WAS UNLAWFUL. THE BOARD MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF ANY PERSON OR ENTITY WHO IS OR WAS THE DECLARANT HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE MASTER ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM OR INCURRED BY HIM IN ANY SUCH CAPACITY, OR ARISING OUT OF HIS STATUS AS SUCH, WHETHER OR NOT THE MASTER ASSOCIATION WOULD HAVE THE POWER TO INDEMNIFY HIM AGAINST SUCH LIABILITY HEREUNDER OR OTHERWISE. ADDITIONALLY, THE MASTER ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DECLARANT AND ITS PARTNERS, AGENTS AND EMPLOYEES AGAINST ANY EXPENSE OR LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES, EXPERT WITNESS OR OTHER FEES AND COSTS OF COURT INCURRED BY ANY OF THEM IN CONNECTION WITH OR ARISING OUT OF (I) THE USE OF THE PRIVATE ROADWAYS, CANALS, CHANNELS, UTILITY SYSTEMS OR OTHER AMENITY AREAS WITHIN THE PROPERTY OR ANY OTHER PORTION OF THE COMMON PROPERTY BY ANY PARTY PRIOR OR SUBSEQUENT TO ITS CONVEYANCE OR DEDICATION TO THE MASTER ASSOCIATION AND (II) ANY CLAIM RELATED TO

**THE DESIGN, MANNER OR TYPE OF CONSTRUCTION OR MAINTENANCE OF THE ROADWAYS OR OTHER IMPROVEMENTS ON OR WITHIN THE PROPERTY.**

**ARTICLE VI  
ARCHITECTURAL REVIEW COMMITTEE**

**6.1 Approval of Plans and Specifications.** No Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot or in any Channel, nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications therefor shall have been submitted to and approved by the Architectural Review Committee in accordance herewith.

**6.2 Membership of Architectural Review Committee.** The Architectural Review Committee shall consist of not less than three (3) nor more than five (5) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant or its successors or assigns deems appropriate.

**6.3 Actions of the Architectural Review Committee.** The Architectural Review Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Review Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Review Committee taken without a meeting, shall constitute an act of the Architectural Review Committee.

**6.4 Advisory Members.** The Voting Members may from time to time designate Advisory Members.

**6.5 Term.** Each member of the Architectural Review Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

**6.6 Declarant's Rights of Appointment.** Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Review Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Review Committee.

**6.7 Adoption of Rules.** The Architectural Review Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, landscaping code and other similar codes as it may deem necessary and desirable.

**6.8 Review of Proposed Construction.** Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Review Committee is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information which, in its sole discretion, it considers relevant, and may require an Owner to provide such other information as it deems relevant. Except as otherwise specifically

provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Architectural Review Committee has approved such Plans and Specifications in writing. The Architectural Review Committee may postpone review of the Plans and Specifications until such time as the Architectural Review Committee has received all information requested. In the event the Architectural Review Committee fails to approve or disapprove such Plans and Specifications within thirty (30) days after the submission of all information requested by the Architectural Review Committee, the Plans and Specifications shall be deemed approved without any further action required. The Architectural Review Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Review Committee. The Architectural Review Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental regulatory authorities.

**6.9 Variances.** The Architectural Review Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Architectural Review Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two (2) of the Voting Members. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof. Notwithstanding the foregoing, such variances shall not vary any local governmental ordinance unless a variance or special exception has been first granted by the respective local governmental authority.

**6.10 No Waiver of Future Approvals.** The approval or consent of the Architectural Review Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Review Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

**6.11 Work in Progress.** The Architectural Review Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

**6.12 Address.** Plans and Specifications shall be submitted to the Architectural Review Committee at the offices of Declarant on the Property, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

6.13 **Fees.** The Architectural Review Committee shall have the right to require a reasonable submission fee not to exceed \$100.00 for each set of Plans and Specifications submitted for its review.

6.14 **Certificate of Compliance.** Upon completion of any Improvement approved by the Architectural Review Committee and upon written request by the Owner of the Lot, the Architectural Review Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Review Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Review Committee of the actual construction of the Improvements or of the workmanship or material thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the Architectural Review Committee of the construction workmanship, materials or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Lot.

## **ARTICLE VII FUNDS AND ASSESSMENTS**

### **7.1 Assessments.**

A. Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property, except for any Lots owned by Declarant. No Assessment shall be due by Declarant for any Lots owned by Declarant, Future Lots, or any acreage owned or held by Declarant. The Common Properties shall not be subject to Assessments.

B. Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Property against which the Assessment fell due, and shall become a lien against each such Lot and all Improvements thereon. The Master Association may enforce payment of such Assessments in accordance with the provisions of this Article.

C. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose to the duration of the Assessment year or other period remaining after said date. Such proration shall be calculated on a per diem basis.

7.2 **Maintenance Fund.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Master Association and from which disbursements shall be made in performing the functions of the Master Association under this Master Declaration. The funds of the Master Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended. Nothing contained herein shall limit, preclude or impair the

establishment of other maintenance funds by a Subassociation pursuant to any Supplemental Declaration.

**7.3 Regular Annual Assessments.** Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Master Association during such year in performing its functions under the Dolphin Point Restrictions and Dolphin Point Rules, including but not limited to, the cost of all maintenance, the cost of insurance, the cost of any management fees, the cost of enforcing the Dolphin Point Restrictions and Dolphin Point Rules, and a reasonable provision for contingencies, a reserve fund for road, canal, channel and bulkheading and utility system maintenance, and appropriate replacement reserves less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Master Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Master Association at the beginning of the fiscal year or during the fiscal year in either annual or semi-annual installments on or before the due date as set by the Board, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual Assessment per Lot for 1999 exceed the sum of \$1,000.00. Thereafter, with the majority approval of the Board, the regular annual Assessment permitted hereunder may be increased by up to ten percent (10%) per year.

For all regular annual Assessments accruing after January 1, 2000, the annual Assessment may be adjusted to the Maximum Allowable Increase by a majority vote of the Board and without the approval of the membership of the Association. The Maximum Allowable Increase is defined as the product of ten multiplied by the number of years since 1999, expressed as a percentage. Any increase in excess of the Maximum Allowable Increase shall require the approval of sixty-seven percent (67%) of the votes of each Class of Members of the Association who are voting by person or by proxy at a meeting duly called and held in accordance with the Articles and Bylaws of the Association.

**7.4 Special Assessments.** In addition to the regular annual Assessments provided for above, the Board, with the approval of sixty-seven percent (67%) of the votes of each Class of Members, may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Master Association under the Dolphin Point Restrictions and Dolphin Point Rules. The amount of any special Assessments shall be at the reasonable discretion of the Board and all such special Assessments shall be due and payable to the Association within thirty (30) days of the date of written notice of such special Assessment.

**7.5 Owner's Personal Obligation for Payment of Assessments.** The regular and special Assessments, and any fines and penalties provided for herein, shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, fine or penalty, the Owner of the Lot shall be obligated to pay interest on the amount

of the Assessment from the due date at a percentage rate of eighteen percent (18%) per annum, together with all costs and expenses of collection, including reasonable attorneys' fees.

**7.6 Assessment Lien and Foreclosure.** All sums assessed in the manner provided in this Article but unpaid, shall together with interest as provided in Section 7.5 hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

A. All liens for taxes or special assessments levied by the applicable city, county or state government, or any political subdivision or special district thereof;

B. All liens securing all amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date any Assessment became due and payable; and

C. All liens including, but not limited to, vendor's liens, deeds of trust and other security agreements which secure any loan made by any lender to a Member for any part of the purchase price of any Lot, or for any part of the cost of constructing, repairing, adding to or remodeling any Improvements utilized for residential purposes.

Notwithstanding the above, no lien shall be deemed or held superior to the lien hereby created unless the Master Association is made a party to any court proceeding to enforce any of the above listed liens or receives written notice of such lienholder's intent to non-judicially enforce such lien. The Master Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Master Association. To evidence the aforesaid assessment lien, the Master Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Master Association and shall be recorded in the office of the County Clerk of Calhoun County, Texas; provided, however, no such written evidence shall be necessary for the creation or attachment of such lien. Such lien for payment of Assessment shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by either (i) the Master Association foreclosing against the defaulting Owner's Lot in like manner as a mortgage on real property, as provided in the TEXAS PROPERTY CODE, subsequent to the recording of a notice of assessment lien as provided above, or (ii) the Master Association instituting suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Master Association. The Master Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Master Association shall report to such Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

**ARTICLE VIII  
EASEMENTS AND RIGHTS RETAINED BY DECLARANT**

**8.1 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights, made by Declarant prior to the Property becoming subject to this Master Declaration, are incorporated herein by reference and made a part of this Master Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property and other property in the Development. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for access, ingress and egress for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of fifteen (15) feet on each side of such Lot line. An easement over the Common Properties shown on any recorded plat is hereby retained by Declarant, its successors and assigns or designees, for the benefit of the Development. Declarant reserves the right to drill water wells on any portion of the Common Properties to provide for irrigation of the Common Properties or for use in connection with a community water system.

**8.2 Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the easement areas affecting the Property for ingress and egress in connection with installing, replacing, repairing, maintaining and extending all utilities, including, but not limited to, water, sewer, gas, cable, television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the Declarant, Association or utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Review Committee. Declarant, Association or the utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

**8.3 Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Review Committee thereon, require. Each Owner further covenants not to disturb or displace any vegetation within the drainage easements as defined in this Master Declaration and shown on the plat. There shall be no construction of Improvements, temporary or permanent in any drainage easement, except as approved in writing by the Architectural Review Committee.

**8.4 Surface Areas.** Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein except for such improvements for which a

public authority, the Association or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither Declarant, the Association nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Master Association for any damage done by them or either of them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

**8.5 Title to Easement and Appurtenances Not Conveyed.** Title to any Lot conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Properties or Amenity Areas or any drainage improvements, water lines, gas lines, sewer lines, storm sewer lines, electrical lines, telephone lines, or any other pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents or the Association through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

**8.6 Amenity Areas.** Each Owner shall have an easement of use and enjoyment in and to all Amenity Areas which shall be appurtenant to and shall pass with title to such Owner's Lot, subject to the following provisions:

A. The right of the Master Association to suspend the Owner's voting rights and right to use the Amenity Areas for any period, during which any Assessment against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Master Association;

B. The right of the Master Association to dedicate or transfer all or any part of the Amenity Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;

C. The right of the Master Association to borrow money for the purpose of improving the Amenity Areas and, in furtherance thereof, to mortgage the Amenity Areas, all in accordance with the Articles and Bylaws;

D. The right of the Master Association to make reasonable rules and regulations regarding the use of the Amenity Areas and any facilities thereon; and

E. The right of the Master Association to contract for services with third parties on such terms as the Master Association may determine.

**8.7 No Right to Use of Marina.** The Marina designated on the Plat of the Property and depicted on Exhibit "B" attached hereto is not an Amenity Area or Common Property and shall not be owned by the Master Association. No Owner or Member shall have any right to use the Marina solely as a result of its ownership of a Lot. Rights to use the Marina shall only be acquired through a separate slip rental agreement and Matagorda Group, L.P., on behalf of itself, its successors and

successors and assigns, shall reserve a perpetual and exclusive easement through, under, over, and across the Channel for purposes of constructing, owning, maintaining, repairing and operating the Marina. Said rights to use the Channel shall convey to any party holding any right to use the Marina under a slip rental agreement.

## ARTICLE IX GENERAL PROVISIONS

**9.1 Term.** This Master Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2020, unless amended as herein provided. After January 1, 2020, this Master Declaration, including all such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners, excluding Declarant, of at least seventy-five percent (75%) of the Lots within the Property then subject to this Master Declaration.

**9.2 Nonliability of Board and Architectural Review Committee Members.** Neither Declarant, the Architectural Review Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Master Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of Declarant's, the Architectural Review Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of Declarant, the Architectural Review Committee or its members or the Board or its members, as the case may be. Neither Declarant, the Architectural Review Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property.

### **9.3 Amendment.**

A. **By Declarant.** This Master Declaration or any Supplemental Declaration may be amended by Declarant acting alone without the necessity of notice to or the approval of the Master Association or any Members, to correct typographical and grammatical errors, and ambiguities.

B. **By Owners.** In addition to the method in Section 9.3A, this Declaration may be amended by the recording in the Official Records of Calhoun County, Texas an instrument executed and acknowledged by the President and Secretary of the Master Association, setting forth the amendment and certifying that such amendment has been approved by the Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast pursuant to Section 5.3 hereof.

**9.4 Notices.** Any notice permitted or required to be given by this Master Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Master Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Master Association.

**9.5 Interpretation.** The provisions of this Master Declaration shall be liberally construed to effectuate the purposes of creating a plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Master Declaration. This Master Declaration shall be construed and governed under the laws of the State of Texas.

**9.6 Mergers and Consolidations.** The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than sixty-seven percent (67%) of the votes of the Association.

**9.7 Exemption of Declarant.** Notwithstanding any provision in this Master Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Review Committee. Without in any way limiting the generality of the preceding sentence, this Master Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Property, however, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by Declarant shall be limited to Lots owned by Declarant and the Common Properties.

**9.8 Assignment by Declarant.** Notwithstanding any provision in this Master Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Master Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

**9.9 Enforcement and Nonwaiver.**

A. **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of the Dolphin Point Restrictions and the Dolphin Point Rules. All claims, demands, disputes, differences, controversies and misunderstandings arising under, out of, in connection with or in relation to this Declaration with the exception of the enforcement of a failure to pay Assessments, shall be submitted to, and shall be determined by binding arbitration in accordance with, the provisions of the Texas Uniform Arbitration Act, V.T.C.A., Civ. Prac. & Rem. Code §§171.001 to 171.020.

B. **Nonwaiver.** The failure to enforce any provision of the Dolphin Point Restrictions and the Dolphin Point Rules at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

C. **Liens.** The Master Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Master Declaration.

**9.10 Construction.**

A. **Restrictions Severable.** The provisions of the Dolphin Point Restrictions and the Dolphin Point Rules shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

B. **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

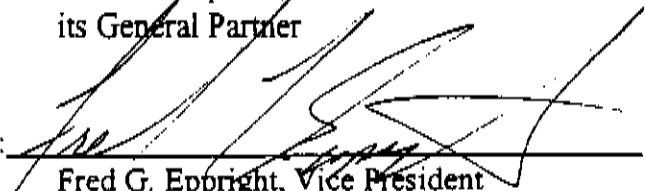
C. **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

**9.11 Disclaimer by Declarant. EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTY, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY DECLARANT; AND (III) THE DESIGNATION OR LOCATION OF COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY RECORDED PLAT. DECLARANT SPECIFICALLY RETAINS THE RIGHT, BUT NOT THE OBLIGATION, TO USE OTHER PHASES OF THE DEVELOPMENT FOR COMMERCIAL USES, HIGHER DENSITY RESIDENTIAL USES, AND A MARINA. DECLARANT FURTHER RESERVES THE RIGHT TO DESIGNATE WHICH OWNERS HAVE THE RIGHT TO USE ANY AMENITIES OR IMPROVEMENTS CONSTRUCTED IN OTHER PHASES OF THE DEVELOPMENT.**

IN WITNESS WHEREOF, Declarant has executed this Master Declaration as of this the 15th day of September, 1999.

**MATAGORDA GROUP, L.P.,**  
a Texas limited partnership

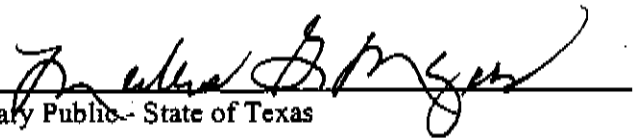
By: Sovereign Investments, Inc.,  
a Texas corporation  
its General Partner

By:   
Fred G. Eppright, Vice President

THE STATE OF TEXAS §  
§  
COUNTY OF ~~CALHOUN~~ TRAVIS §

This instrument was acknowledged before me on this the 15th day of September, 1999, by FRED G. EPPRIGHT, Vice President of Sovereign Investments, Inc., a Texas corporation, General Partner of Matagorda Group, L.P., a Texas limited partnership, on behalf of said limited partnership.

My Commission Expires:

  
Notary Public - State of Texas



ODMA P. C. RAUSTIN  
146:12495-12

## EXHIBIT "A"

### Description of Development

#### Tract 1

Lots 14 through 33, Block 1, Ala Wai Village Subdivision, Section 1, a subdivision in Port O'Connor, Calhoun County, Texas, according to the Amended Plat thereof dated December 9, 1998 and recorded in Volume Z, Page 625, Deed Records, Calhoun County, Texas (Slide No. 399AB).

#### Tract 2

That certain 0.0258 acre, more or less, tract of real property contiguous to and east of Lot 19, Block 1, Ala Wai Village Subdivision, Section 1 and more particularly described on Schedule A-1 attached hereto and incorporated herein for all purposes ("Barringer Tract").

#### Tract 3

That certain 0.0459 acre, more or less, tract of real property contiguous to and south of Lot 12, Block 1, Ala Wai Village Subdivision, Section 1 and more particularly described on Schedule A-2 attached hereto and incorporated herein for all purposes ("Starnes Tract").

#### Tract 4

All of Block 2, Ala Wai Village Subdivision, Section 1 according to the map and plat thereof, recorded in Volume Z, Page 534, Map and Plat Records of Calhoun County, Texas, as amended in Volume Z, Page 569, Map and Plat Records of Calhoun County, Texas (Slide No. 364A).

#### Tract 5

That certain 4.241 acre, more or less, tract of real property comprising a portion of the development reserve portion of Block 1, Ala Wai Subdivision, Section 1 according to the map and plat thereof recorded in Volume Z, Page 534, Map and Plat Records of Calhoun County, Texas, as amended in Volume Z, Page 569, Map and Plat Records of Calhoun County, Texas (Slide No. 364A) and more particularly described on Schedule A-3 attached hereto and incorporated herein for all purposes.

0.0258 ACRE  
(1125 Square Feet)

Part of the Santiago Gonzales  
Survey, A-19, Calhoun  
County, Texas.

STATE OF TEXAS §

COUNTY OF CALHOUN §

**DESCRIPTION** of a tract or parcel of land containing 0.0258 acre (1125 Square Feet) situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas. Said 0.0258 acre described being that portion of Block One as shown on the recorded Amended Plat of ALA WAI VILLAGE SUBDIVISION, SECTION I in Volume Z, Page 625, Slide 399 A&B of the Calhoun County Plat Records lying between the Northwest line of the Marina of Block One and the Southeast line of a 0.155 acre tract as described in Volume 46, Pages 276-279 of the Calhoun County Official Records. This 0.0258 acre (1125 Square Feet) is more fully described by metes and bounds as follows:

**BEGINNING** at a point for the South corner of the aforesaid 0.155 acre tract, same being the West corner of this tract which is also the point of intersection of the Southeast line of said 0.155 acre tract with the Northeast line of Lot 19, Block One of ALA WAI VILLAGE SUBDIVISION, SECTION I;

**THENCE**, N 63° 22' 00" E, a distance of 75.00 feet, with the said Southeast line of said 0.155 acre tract, to a point for the North corner of this tract and the East corner of said 0.155 acre tract. Said point being in the Southwest line of 11th Street;

**THENCE**, with the Southwest line of said 11th Street, S 26° 38' 00" E, 15.00 feet to a point for the East corner of this tract;

**THENCE**, S 63° 22' 00" W, passing at 30.00 feet the North corner of the aforementioned Marina and for a TOTAL DISTANCE of 75.00 feet to a point for the South corner of this tract. Said point also being the East corner of Lot 19, Block One, of the aforesaid subdivision;

**THENCE**, N 26° 38' 00" W, with the Northeast line of Lot 19, Block One, for a distance of 15.00 feet to the **PLACE OF BEGINNING**; **CONTAINING** within these metes and bounds 0.0258 acre (1125 Square Feet) situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas.

0.0459 ACRE  
(2000 Square Feet)

Part of the Santiago Gonzales  
Survey, A-19, Calhoun  
County, Texas.

STATE OF TEXAS §

COUNTY OF CALHOUN §

**DESCRIPTION** of a tract or parcel of land containing 0.0459 acre (2000 Square Feet) situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas. Said 0.0459 acre described being that portion of Block One as shown on the recorded Amended Plat of ALA WAI VILLAGE SUBDIVISION, SECTION I in Volume Z, Page 625, Slide 399 A&B of the Calhoun County Plat Records lying between the Northwest line of the Entrance Channel to the Marina of Block One and the Southeast line of Lot 12, Block One of said subdivision. This 0.0459 acre (2000 Square Feet) is more fully described by metes and bounds as follows:

**BEGINNING** at a point for the South corner of the aforesaid Lot 12, Block One, same being the West corner of this tract which is also the point of intersection of the Southeastward projection of the Northeast line of 11th Street with the Southeast line of said Lot 12, Block One, ALA WAI VILLAGE SUBDIVISION, SECTION I;

**THENCE**, N 63° 22' 00" E, a distance of 100.00 feet to a point for the North corner of this tract and the East corner of said Lot 12, Block One. Said point being in the Southwest line of a 100 foot wide channel as shown on said subdivision plat;

**THENCE**, with the Southwest line of said 100 foot wide channel, S 26° 38' 00" E, 20.00 feet to a point for the East corner of this tract at the point of intersection with the Northwest line of the aforementioned Marina Entrance Channel;

**THENCE**, S 63° 22' 00" W, with the Entrance Channel a distance of 100.00 feet to a point for the South corner of this tract;

**THENCE**, N 26° 38' 00" W, for a distance of 20.00 feet to the **PLACE OF BEGINNING**; **CONTAINING** within these metes and bounds 0.0459 acre (2000 Square Feet) situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas.

Schedule A-2

4.241 Acres  
TRACT THREE

Part of the Santiago Gonzales Survey,  
A-19, Calhoun County, Texas.

STATE OF TEXAS §

COUNTY OF CALHOUN §

**DESCRIPTION** of a tract or parcel of land containing 4.241 acres, more or less, designated as TRACT THREE, situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas. Said 4.241 acres, more or less, being in and a part of Block ONE, Ala Wai Village, Section I, recorded in Volume Z, Page 569, Slide 364A of the Calhoun County Plat Records and is more fully described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod found for the West corner of this TRACT THREE, at the point of intersection of the Northeast line of 10th Street with the Southeast line of Commerce Street and bears N 63° 22' 00" E, 1080.00 feet and S 26° 38' 00" E, 60.00 feet from a 5/8 inch iron rod found marking the West corner of St. Christopher's Haven Marina as per the recorded plat in Volume Z, Page 469 of the Calhoun County Plat Records;

**THENCE**, N 63° 22' 00" E, with Southeast line of Commerce Street, distance 300.00 feet to a 5/8 inch iron rod found for corner at the point of intersection with the Southwest line of 9th Street;

**THENCE**, S 26° 38' 00" E, with the Southwest line of 9th Street passing at 300.00 feet a 5/8 inch iron rod found on line and for a **TOTAL DISTANCE** of 505.00 feet to a 5/8 inch iron rod set for corner at the point of intersection with the Northwest line of Water Street;

**THENCE**, S 63° 22' 00" W, with the Northwest line of Water Street a distance of 360.00 feet to a 5/8 inch iron rod set for corner;

**THENCE**, S 26° 38' 00" E, a distance of 30.00 feet to a 5/8 inch iron rod set for corner;

**THENCE**, S 63° 22' 00" W, a distance of 130.00 feet to a 5/8 inch iron rod set for corner in the Northeast line of an existing channel as shown in the Recorded Plat of Ala Wai Village Subdivision;

**THENCE**, with the said Northeast line of said channel, N 18° 22' 00" E, 42.43 feet to a 5/8 inch iron rod set for corner and N 26° 38' 00" W, 205.00 feet to a Lead Plug found for corner in an existing concrete bulkhead, which is also the West corner of Lot 13, BLOCK ONE of the Ala Wai Village Subdivision;

**THENCE**, N 63° 22' 00" E, a distance of 100.00 feet to a one(1) inch iron pipe found for corner, which is also the North corner of Lot 13, BLOCK ONE;

**THENCE**, S 26° 38' 00" E, a distance of 50.00 feet to a 5/8 inch iron rod set for corner;

**THENCE**, N 63° 22' 00" E, a distance of 60.00 feet to a 5/8 inch iron rod set for corner in the Northeast line of 10th Street;

**Schedule A-3**

THENCE, N 26° 38' 00" W, passing at 50.00 feet a 5/8 inch iron rod found on line and for a **TOTAL DISTANCE** of 350.00 feet to the **PLACE OF BEGINNING**; **CONTAINING** within these meets and bounds 4.241 acres, more or less, designated as **TRACT THREE**, situated in and a part of the Santiago Gonzales Survey, A-19, Calhoun County, Texas.

The foregoing **DESCRIPTION** was prepared from an actual on the ground survey made under my direction and supervision in December 1996, and is true and correct to the best of my knowledge and belief.



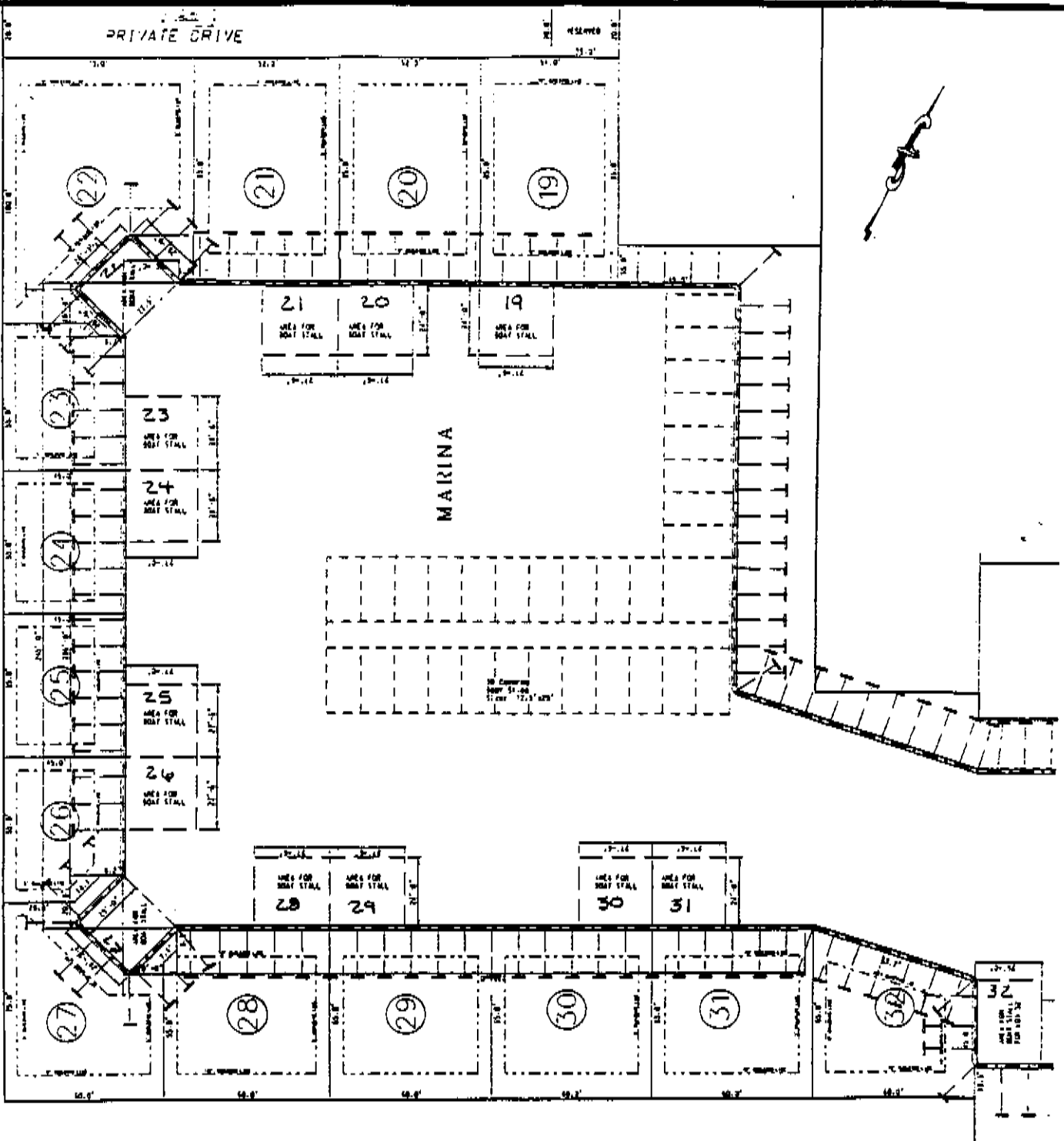
A handwritten signature in cursive script, appearing to read "David W. Gann", written over a horizontal line.

**DAVID W. GANN**  
**REGISTERED PROFESSIONAL LAND SURVEYOR**  
**NO. 3816**

Job #2282.001

**Exhibit "B"**

Subdivision Plat



LOT LAYOUT  
 ALI WAI VILLAGE MARINA  
 PORT O'CONNOR, TEXAS

**G & W ENGINEERS, INC.**  
 • ENGINEERING • SURVEYING • ARCHITECTURE • PLANNING  
 205 W Live Oak St. Port Lavaca, Texas 77979 (512)552-4508

SCALE: 1" = 20'
DATE: 11/11/88
BY: G.W.
CHECKED: G.W.
APP. G.W.
DATE: 11/11/88
BY: G.W.
CHECKED: G.W.
APP. G.W.
DATE: 11/11/88
BY: G.W.
CHECKED: G.W.
APP. G.W.

# EXHIBIT B

**Exhibit "B"**

Subdivision Plat

COPY

SUPPLEMENTARY DECLARATION  
TO  
MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DOLPHIN POINT

File # 69023  
FILED  
AT 8:29 O'CLOCK A M  
JUL - 3 2001  
MARLENE PAUL  
COUNTY CLERK, CALHOUN COUNTY, TEXAS  
BY *[Signature]* DEPUTY

281-308

THE STATE OF TEXAS §  
§  
COUNTY OF CALHOUN §

A. MATAGORDA GROUP, L.P., a Texas limited partnership ("Declarant") is the owner of Lots 34 through and including 52, Block One and Lots 1 through and including 16, Block Two (collectively, all such lots being the "Additional Property"), Ala Wai Village Subdivision Section I, a subdivision in Calhoun County, Texas, according to the plat thereof recorded in Volume Z, Page 534, Plat Records, Calhoun County, Texas, and in Volume Z, Page 569, Plat Records of Calhoun County, Texas, as amended in Volume Z, Page 625, Plat Records of Calhoun County, Texas, and as further amended in Volume Z, Page 632, Plat Records of Calhoun County, Texas, which Declarant has subdivided and developed as the second phase of the Dolphin Point development in Port O'Connor, Texas; and

B. That certain Master Declaration of Covenants, Conditions and Restrictions for Dolphin Point, recorded in Volume 235, Page 878 of the Official Records of Calhoun County, Texas (the "Declaration") authorizes Declarant at any time and from time to time to incorporate within the scheme of the Declaration additional properties within the Development, and the Additional Property constitutes property within the Development.

C. Declarant, acting herein by and through its undersigned duly authorized representative, desires to apply the Declaration to the Additional Property, as described in Article II, Section 2.1 of the Declaration thereby making the Additional Property subject to all covenants, conditions and restrictions of the Declaration. The Declaration is incorporated herein by reference for all purposes.

NOW, THEREFORE, it is hereby declared that (i) the Additional Property is hereby added to and brought within the scheme of the Declaration and is hereby made a part of the Properties making the Additional Property subject to all covenants, conditions and restrictions of the Declaration; (ii) the Additional Property shall be held, sold, conveyed and occupied subject to the Declaration which is for the purpose of protecting the value and desirability of, and which shall run with, the Additional Property and shall be binding on all persons having any right, title and interest to the Additional Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof; and (iii) each contract or deed which may hereafter be executed with regard to the Additional Property or any part thereof shall conclusively be held to have been executed, delivered and accepted subject to the Declaration regardless of whether or not the same are set out or referred to in said contract or deed.

The Declaration is hereby ratified and confirmed as to the Additional Property.

Article III, Section 3.7 of the Declaration is hereby amended to add the following to the language therein:

"The maximum height of any Improvement constructed on a Lot shall not exceed the following:

Lots 34 - 45	44 feet
Lots 46 - 52	35 feet
Lots 1 - 16, Block Two	44 feet

Additionally, the Improvements constructed on any Lot with a height limitation of 35 feet shall include no more than two (2) stories of living area; provided if the ground level is improved with only a garage, tackle room, storage closet or "mud" room it shall not be considered a living area for purposes of the two (2) story limit set forth above."

Except for the defined terms created under this Supplementary Declaration, all defined terms shall have the meaning specified in the Declaration.

**DECLARANT:**

MATAGORDA GROUP, L.P.  
a Texas limited partnership

By: Sovereign Investments, Inc.,  
a Texas corporation  
General Partner

By:   
Fred G. Eppright, Vice President

THE STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 27th day of June, 2001, by Fred G. Eppright, Vice President of Sovereign Investments, Inc., a Texas corporation, General Partner for Matagorda Group, L.P. a Texas limited partnership.



*[Handwritten Signature]*

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires:

**AFTER RECORDING RETURN TO:**

David R. Hewlett, Esq.  
Winstead Sechrest & Minick P.C.  
100 Congress, Suite 800  
Austin, Texas 78701

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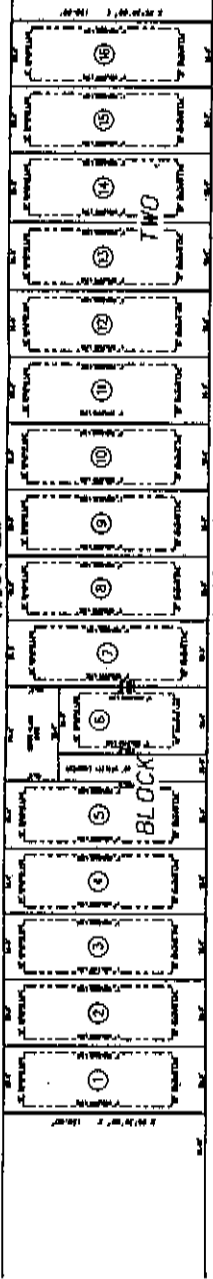
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CHE	
D.P.	
DATE	
REV	

G & W

ALA WAI VILLAGE SUBDIVISION, SECTION 1

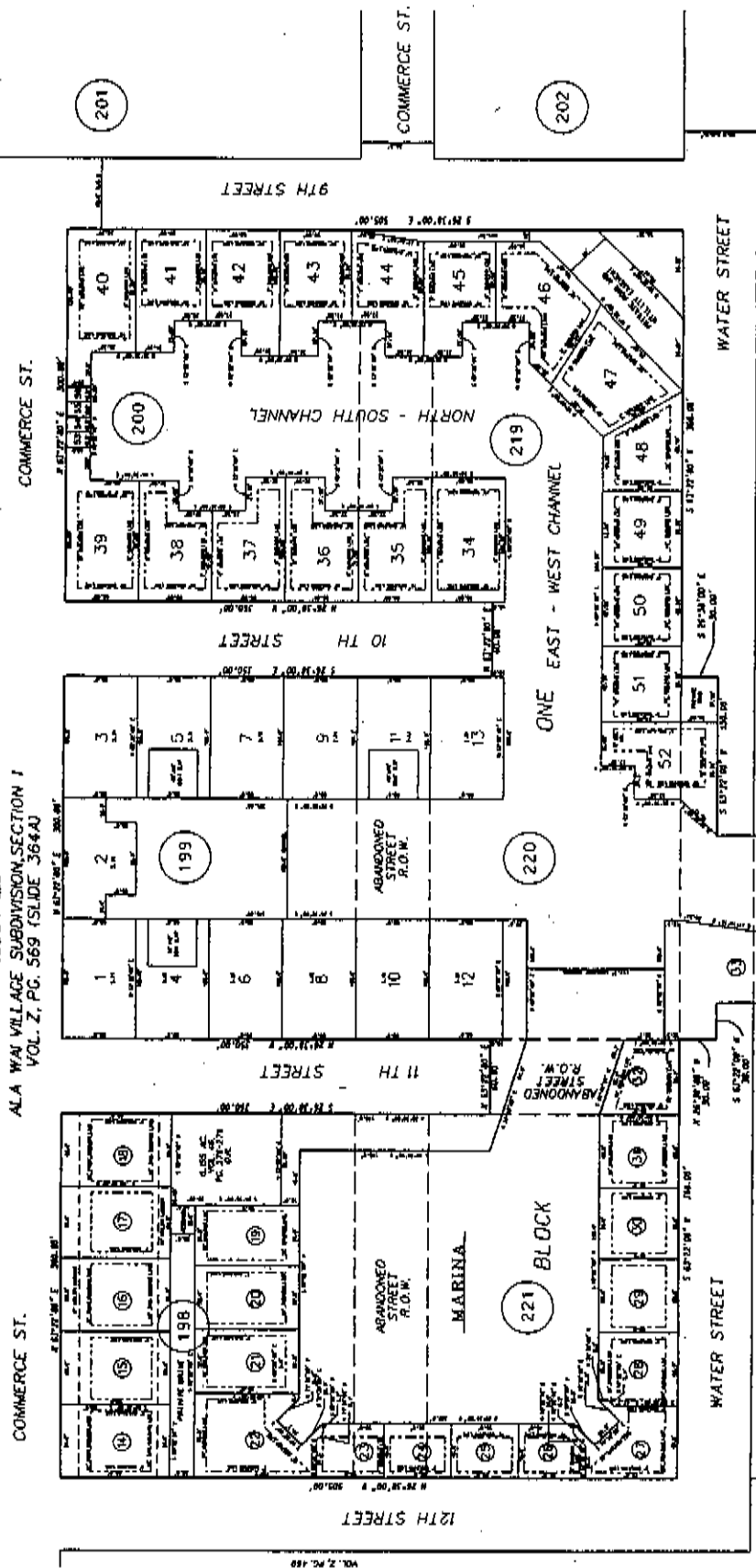
NO.	22
JOB	22
SHEET	22

MAPLE STREET SANTIAGO GONZALES SURVEY A-19



OLD INDIANOLA RAILROAD R.O.W. (ABANDONED)

ALA WAI VILLAGE SUBDIVISION, SECTION 1 VOL. 2, P.C. 569 (SLIDE 364A)



- NOTES:
1. ALL PROPERTIES NOT SHOWN AS BEING OWNED BY THE STATE OF ALASKA ARE SUBJECT TO THE CLAIMS OF THE STATE OF ALASKA.
  2. A PRIVATE CANAL, BEING THE PROPERTY OF THE STATE OF ALASKA, IS SHOWN ON THIS MAP WITHIN THE BOUNDARIES OF BLOCK 200.
  3. THE STATE OF ALASKA HAS A RIGHT OF WAY IN LOTS 14, 15, 16 AND 17 OF THIS SURVEY.
  4. ALL PROPERTIES ARE IN ZONE A10, 100 YEAR FLOOD ELEVATION 5.0 S.E.A.L.
  5. THE DIMENSIONS OF ALL STREETS SHOWN HEREON ARE APPROXIMATE AND SUBJECT TO THE SURVEY.
  6. LOTS 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 ARE NON-BUILDING LOTS.

ST. DIMENSIONS WITH ADJUSTMENTS VOL. 2, P.C. 489

GULF INTERCOASTAL WATERWAY

