37.00 10

OCT-9-80RCCHB 575 39.00

BOAT DOCK OWNERSHIP DECLARATION

FOR

THE CLIFF OVER LAKE AUSTIN, II

2-40-2439

THE STATE OF TEXAS

COUNTY OF TRAVIS

THIS DECLARATION made this the _____ day of ______, 1980, by THE MOODY CORPORATION, a Texas corporation (hereinafter called "Developer"),

WITNESSETH:

WHEREAS, in pursuance of a plan for the development of THE CLIFF OVER LAKE AUSTIN, II, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Book 80, Pages 33-34 of the Plat Records of Travis County, Texas (hereinafter called the "Subdivision"), Developer has obtained preliminary approval from the City of Austin to erect eighteen (18) boat docks in Lake Austin adjacent to the Subdivision; and

WHEREAS, Developer intends by this Declaration to grant to the owners of eighteen (18) lots in the Subdivision the right to apply for permits to build said boat docks and to submit said eighteen Subdivision lots and said proposed boat dock facilities to the provisions of this Declaration;

NOW, THEREFORE, Developer hereby makes the following Declarations as to the definitions, restrictions, covenants, limitations, conditions, rights, privileges, obligations and liabilities which shall apply to govern, control, and regulate the disposition, encumbrance, acquisition, ownership, use, and enjoyment of the boat dock facilities, hereby specifying and agreeing that the provisions and contents of this Declaration shall be and constitute covenants to run with the eighteen Subdivision lots herein described, and shall be binding on Developer, its successors, assigns, and grantees and all subsequent owners of all or any part of the herein described eighteen Subdivision lots, and their grantees, successors, heirs, devisees, executors, administrators or assigns, to-wit:

1. $\underline{\mathtt{DEFINITIONS}}.$ - As herein used, unless the context otherwise requires:

DEED RECORDS
Travis County, Texas

(a) "DECLARATION" means this instrument and the By-laws and all exhibits attached hereto by which the boat docks are submitted to the provision of this Declaration, as from time to time lawfully amended.

- (b) "BY-LAWS" means the By-laws attached as Exhibit B to this Declaration which shall govern the administration of the Council of Co-Owners hereby established.
- (c) "FACILITIES" means all of the improvements, buildings, structures, fixtures and equipment constructed, placed or erected pursuant hereto, together with all easements, rights, hereditaments and appurtenances thereto in anywise belonging or appertaining.
- (d) "BOAT DOCK" means one of the eighteen separate and individual boat docks divided for individual and separate use and ownership as described in this Declaration and includes the space and all equipment and improvements encompassed by the boundaries of the boat dock which are to be individually and separately owned, as hereinafter defined, described and established in this Declaration.
- (e) "COMMON ELEMENTS" means the general common elements consisting of all portions of the facilities, except the individual boat docks which are to be individually and separately owned.
- (f) "BOAT DOCK UNIT" or "UNIT" means an estate of property comprised of a boat dock together with the one-eighteenth (1/18th) undivided ownership interest in the common elements conveyed with or allocated to such boat dock.
- (g) "OWNER OF A BOAT DOCK", "UNIT OWNER" and similar expressions mean the person or persons whose estates or interest individually, jointly or collectively, aggregate fee simple absolute ownership of a boat dock unit. The owners of the eighteen subdivision lots specified in paragraph 4 below shall each be entitled to apply for a permit to build one of the eighteen boat dock units described herein.
- 2. LOCATION OF FACILITIES. The facilities shall be located within the areas outlined and identified on Exhibit A as the "Facilities".
- 3. BOAT DOCKS. Each boat dock shall consist of the interior finished surfaces of the perimeter walls, foundation piers, roofs, ceilings, and the air space encompassed therein. The individual ownership of each boat dock shall also include the following

items, except that such items shall be deemed to be part of the building as a whole or the common elements for the purposes of any blanket hazard or casualty insurance policies mentioned in paragraph 15 below and the coverage and protection afforded thereunder, to-wit: The walls, partitions, cabinets, shelves, closets, interior and exterior doors, glass in windows and doors, roofs and ceilings, the interior lighting and electrical fixtures and appliances, and similar fixtures and/or equipment within a boat dock, all of which items aforesaid being designed and intended solely for the benefit of and to exclusively serve the particular boat dock in or to which the same are located or attached and are not designed or intended for the benefit, use, support, service or enjoyment of any other unit or the common elements or any part thereof. The ownership rights and liabilities related to common walls between the boat docks are more fully set forth in paragraph 22 below.

4. OWNERS. Subject to amendment as provided in paragraph 29 below, the owners of the following eighteen (18) lots in the Subdivision are hereby granted the privilege of applying to the City of Austin for a permit to build one boat dock each in the general location shown and depicted on the plat attached hereto as Exhibit A:

<u>Lot</u> 41	Block
	В
42	В
43	· В
44	В
45	В
46	В
47	В
48	В
49	В
50	В
51	В
52	В
53	В
56	В
57	В
58	В
ro.	B
60	В

Ownership of the boat dock units shall be appurtenant to and not separable from the ownershp of such lots, and upon conveyance of any of the above lots by an owner, the new owner of the conveyed

lot shall automatically become the owner of the boat dock unit owned by the former lot owner. Developer expressly disclaims any and all representations and/or warranties as to the right of any owner to build a boat dock. Developer has merely obtained preliminary approval to erect the facilities and each owner shall be responsible, at each owner's sole risk and expense, for obtaining final approval from the City of Austin and for the construction of the boat dock to be owned by him. Each owner shall be obligated to comply with all applicable federal, state and local statutes, rules, regulations, ordinances or other applicable laws.

- 5. <u>UTILITY EASEMENTS</u>. Valid easements shall exist in each boat dock and in each portion of the common elements for the benefit of each unit owner and of the municipality and each authorized utility company, for the installation, maintenance, repair, removal or replacement of any and all authorized utility lines, pipes, wires, conduits, facilities and equipment serving the facilities as a whole or any individual boat dock or appurtenances thereto or any part of the common elements, and the ownership of each boat dock and interest in the common elements shall be subject to such easements.
- 6. COMMON ELEMENTS. The general common elements, also simply referred to as "common elements", shall consist of the 40 foot Drainage and Pedestrian Access easement and the Drainage and Public Utility Easement adjacent to Lake Austin as depicted on the recorded plat of the Subdivision, all walkways providing access to each boat dock, and all structures, fixtures, equipment and appliances which are designed and intended for the common and mutual use and benefit of the boat docks. Each unit owner shall own an undivided one-eighteenth (1/18th) interest in the common elements.
- 7. COUNCIL OF CO-OWNERS. Each owner of a boat dock unit shall automatically be a member of the "Council of Co-owners" (hereinafter referred to as the "Council") which shall be the governing and administrative body for all unit owners for the protection, preservation, upkeep, maintenance, repair, operation and replacement of the common elements and the government, operation and administration of the facilities, and shall remain a member thereof until such time as his unit ownership ceases for any reason, at which time his membership in the Council shall also automatically cease. Upon any transfer of ownership of one of the eighteen lots in the Subdivision set forth in paragraph 4 above, the new owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Council.
- 8. REPRESENTATION FOR VOTING. The aggregate number of votes for all members of the Council shall be eighteen (18), and each

- 9. BOARD OF ADMINISTRATION. The affairs of the Council shall be managed by a Board of Administration (hereinafter referred to as the "Board"). At or as soon as convenient after the organizational meeting of the Council, the Council shall elect the first Board which shall consist of not less than three (3) members, all of whom shall serve without pay or compensation for such term as specified in the By-laws. The Board shall have such powers, duties, functions, authority and responsibility as shall be specified in this Declaration or in the By-laws and as may be delegated to it from time to time by the Council.
- 10. BY-LAWS. The government and administration hereby established shall be in accordance with the By-laws, which have been initially adopted by Developer and which are attached hereto as Exhibit B and identified as such. The By-laws may be amended from time to time by the Council in accordance with the provisions thereof.
- 11. CONSTRUCTION, ALTERATIONS, ADDITIONS AND IMPROVEMENTS. No construction or alterations of any boat dock or additions or improvements thereto shall be made by any unit owner without the prior written approval of the Board or Council in accordance with rules and procedures to be hereafter established by the Board. Before commencement of construction, each unit owner shall submit to the Board or Council may reasonably request. A common walkway providing direct access to each boat dock shall be constructed as the boat docks are erected, each owner to be responsible, at his own expense, for building the portion of the walkway adjacent to his boat dock in accordance with plans and specifications provided by the Board or Council. The first unit owner shall be required to erect his boat dock at the location designated by the Board and shall also construct that portion of the common walkway adjacent to his boat dock. Thereafter, each unit owner shall build his boat dock adjacent to the previously built dock, together with that portion of the walkway adjacent to his boat dock.
- 12. MAINTENANCE, REPAIRS AND REPLACEMENTS. Each unit owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own boat dock. Specifically, but without limitation, each unit owner, at his own expense, shall maintain, repair or replace the interior surface of his boat dock and all interior partitions or room walls, all ceilings, walls, roofs and doors, all glass in windows or doors, and all other individual equipment or appliances, his individual lighting equipment and fixtures, and contents of his

unit, which are individually and privately owned and do not constitute any part of the common elements. The duties and liabilities of owners in connection with common walls between the boat docks is set forth in paragraph 22, below. All portions of the common elements shall be maintained, repaired or replaced by the Board or its representative as a common expense of all owners of completed boat docks. All workmen and other persons authorized by the Board or the Council or their representative shall be entitled to reasonable access at reasonable times to the individual boat dock as may be required from time to time in connection with the maintenance, repair or replacement of or to the common elements or any equipment, facilities or fixtures affecting or serving other units or the common elements. In the event and to the extent that equipment, facilities and fixtures within one unit shall be connected to similar equipment, facilities and fixtures serving another unit or the common elements, then reciprocal easements for the maintenance of same shall exist.

13. COMMON EXPENSES - ASSESSMENTS. Upon completion of construction of each boat dock, the owner of the completed boat dock shall be bound and obligated and agrees to pay, as assessments therefor are made during his tenure of ownership, his prorata part and share of the expenses of administration and of maintenance, repair, upkeep, protection, replacement and operation of the Common Elements and of any other expenses lawfully agreed to by the Council or the Board as authorized by this Declaration or by the By-laws, all of which expenses herein mentioned are in this Declaration referred to as the "common expenses." Before an owner has built a boat dock hereunder, he shall not be liable for any assessment provided herein. The prorata part and share of the common expenses which shall be assessed against each owner who has completed construction of a boat dock, and which each such owner agrees to pay, shall be in the same ratio his boat dock bears to the total number of boat docks constructed. Assessments for common expenses and payments thereof shall be made as determined and provided for in the By-laws, as from time to time amended. No owner of any completed boat dock or interest therein shall be exempt from paying or contributing his prorata part and share of the common expenses by waiver of the use or enjoyment of the common elements or any part thereof or by abandonment of the boat dock or his interest therein. The amount of common expenses assessed against each completed boat dock shall be the debt and obligation of the owner at the time the assessment is made. No unit owner shall be liable for the payment of any assessment made after his ownership ceases. Assessments for common expenses shall be on an annual basis and shall become due and payable annually. For boat docks completed during the calendar year, the annual assessment for common expenses shall be one an annual basis and shall become due and payable annually.

and at the time of completion, the owner of the completed boat dock shall pay the prorated portion of the annual assessment for the remainder of the calendar year. All sums collected for common expenses shall constitute and be known as the "Maintenance" Fund."

14. LIENS TO SECURE ASSESSMENTS. The assessments for common expenses shall be made against the owner of each completed boat dock then owning the same and also against the owner's Subdivision lot, and in the event any unit owner shall fail or refuse to pay his prorata share and part of the common expenses as the same shall become due and payable, then all such assessments which have become due and payable and which have not been paid shall be secured by a valid lien on such boat dock unit and Subdivision lot for the benefit of all other owners of completed boat docks. No lien shall exist against any Subdivision lot for assessments which have not yet become due and payable.

Such lien for common expenses herein provided for may be foreclosed, without prejudice and subject to the aforesaid prior and superior liens, by suit by the Board or any authorized member of the Council, acting in behalf of all unit owners in like manner as mortgages on real property. All funds realized from any foreclosure sale of any Subdivision lot shall be applied first to the cost and expense of filing and prosecuting suit, including all costs of court and a reasonable amount of attorney's fees, and then towards payment of the indebtedness sued on, and the remainder, if any, shall be paid over to the defendant or defendants in the suit as their interest may appear. In the event the proceeds realized from the foreclosure sale, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessments sued on, then the purchaser acquiring title to such Subdivision lot at such foreclosure sale, whoever he may be, other than the unit owner sued, shall not be liable for the deficiency, but such deficiency shall be deemed a common expense, collectible from all owners of completed boat docks, including the purchaser at the foreclosure sale, on a prorata basis as in the case of other common expenses. The defaulting unit owner sued shall remain personally liable to the unit owners paying such deficiency.

15. STATEMENT OF ASSESSMENTS. The Board or its representative shall furnish to any prospective purchaser or mortgagee of any of the Subdivision lots listed in Paragraph 4 above, at the request of the unit owner, a written statement as to the amount of the assessments for common expenses which have become due and are unpaid up to a given date in respect to the owner's boat dock unit; and in the case of a sale of the Subdivision lot, the purchaser shall not be liable or subject to any lien for any unpaid

assessment which has become due and is not shown on such statement for the period of time covered thereby; however, the selling owner shall remain liable for same.

- 16. UTILITIES. If separate meters can be provided by the City of Austin, all utilities such as electricity for light and power, which are intended to serve each individual boat dock shall be on separate meters and shall be separately paid by the owner of each unit, and each unit owner shall also separately pay all deposits, installation charges, connection fees and any other amounts required in connection with or for such utilities and services. If separate meters cannot be provided by the City of Austin, utilities serving each individual boat dock shall be a common expense, with each owner of a completed boat dock paying the portion of such utilities which each owner's appropriate use bears to the total used, said approximation based upon standard usage rates determined by current engineering techniques. All utilities which are designed and intended to serve the common elements or any portion thereof shall be a common expense of all owners of completed boat docks and each owner of a completed boat dock shall pay his prorata part thereof.
- 17. PROPERTY INSURANCE. The Board shall obtain and continuously keep in effect blanket property insurance to insure the structures in or on the facilities and the owners thereof, against risks of loss or damage by fire and other hazards covered under standard extended coverage provisions, without prejudice to the right of each unit owner to insure his boat dock on his own account for his own benefit. Such insurance obtained by the Board may be written in the name of and the proceeds thereof may be payable to the Board or any person designated by it, as Trustee for each owner of a completed boat dock. All costs, charges and premiums for such blanket insurance shall be a common expense and each owner of a completed boat dock shall pay his prorata part and share of same. In case of any injury, damage or destruction to any part of the facilities covered by such insurance, each unit owner shall be obligated to restore his boat dock to its former condition. Upon completion of reconstruction, the unit owner's prorata proportion of insurance proceeds shall be paid to the owner of the reconstructed boat dock. The Board shall have complete power and authority to compromise, settle and adjust any and all claims arising under any such policy or policies of blanket insurance.
- 18. <u>PUBLIC LIABILITY AND OTHER INSURANCE</u>. The Board or its representative shall also have the authority to obtain comprehensive public liability insurance, in such limits as it shall deem desirable, and any other liability insurance as it may deem

desirable, insuring each unit owner, the Council, and the Board from and against liability in connection with the boat docks and the common elements. To the extent such insurance may be obtained, all costs, premiums and charges therefor shall be deemed a common expense, and each owner of a completed boat dock shall pay his prorata share of same.

- 19. INDIVIDUAL INSURANCE. Each unit owner shall be responsible at his own personal cost and expense, for his own personal insurance on the contents of his own boat dock, and all boats, furnishings and personal property therein and his personal property stored elsewhere on the facilities, as well as his personal liability insurance to the extent not covered by the liability insurance for all of the unit owners which may be obtained as a common expense.
- 20. USE AND ACCESS BY DEVELOPER. Until Developer has sold and conveyed all of the Subdivision lots listed in Paragraph 4 above, Developer and its agents, servants or employees shall have free and unobstructed use of and access to all of the facilities as may be required to facilitate sale of the Subdivision lots.
- 21. TAXES. Taxes, assessments and other charges of the City, county, state or other political entities or any special district thereof, against the common elements and the boat docks shall be collectively assessed and taxed and each owner of a completed boat dock shall pay as his own personal expense his prorata share of all such assessments.
- PARTY WALLS. Each wall which is built as a part of the 22. PARTY WALLS. Each wall which is built as a part of the original construction of a boat dock and placed on the dividing line between two boat docks shall constitute a "party wall," and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, either owner may restore it, and if the other owner thereafter makes use of the wall, he shall contribute one-half of the cost of restoration thereof, without prejudice, however, to the right of the restoring owner to call for a larger contribution from the other owner under any rule of law regarding contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions. The right of any owner to contribution from any other owner under this paragraph shall be appurtenant to the first owner's Subdivision lot. In the event of any dispute arising concerning a party wall or under the provisions of this paragraph, each party shall choose

one arbitrator who is a member of the Council, and such arbitrators shall choose one additional arbitrator who is a member of the Council, and a decision by a majority of all the arbitrators shall be binding on all parties. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board shall select an arbitrator from the Council for the refusing party.

- 23. <u>RESTRICTIONS</u>. The following restrictions, covenants and conditions are placed upon each boat dock unit as a general plan or scheme of restrictions for the benefit of each boat dock unit,
- (1) Each boat dock unit shall be used by the unit owner only for storage of boats, boating equipment and other personal property of the unit owner and for no other purpose or purposes.
- (2) No boat dock unit shall be constructed, altered, remodeled or improved except as permitted in Paragraph 11 above.
- (3) No trash, garbage or debris shall be placed on any part of the common elements, except in the receptacles or areas designated for disposal of same.
- (4) No signs or posters of any kind shall be placed on any part of any boat dock or the common elements, except as may be authorized by the Board or Council.
- (5) No unlawful, dangerous, hazardous, immoral, noxious or offensive activities shall be carried on or permitted on any part of the facilities; nor shall anything be done therein or thereon which shall constitute a nuisance or cause unreasonable noise or disturbance to others.
- 24. MAINTENANCE OF COMMON AREAS. The cost and expense for the upkeep and maintenance of the common elements, including the cost and expense of garbage removal, the cost of common lighting and all other expenses incidental to the upkeep, maintenance and/ or operation of such common areas shall be a common expense of the owners of a completed boat dock, and shall be included in the assessments for the usual and ordinary cost and expense for the main-enance, repair, upkeep and operation of the common elements, and each owner of a completed boat dock shall pay his prorata share thereof.
- 25. REMEDIES. In the event any default is made by any unit owner under this Declaration or the By-laws appended hereto, or rules or regulations of the Board or of the Council, the Board or the Council, or their representative, shall have all of the rights

and remedies which may be provided by this Declaration or the Bylaws, or which may be available at law or in equity, and may prosecute any action or other proceeding against any defaulting unit
owner and/or others for enforcement of any lien or to enforce compliance with the matter in respect to which default has been made,
by injunctive relief or otherwise, or for the collection of any
sums or debts or damages in default or arising from any default.
All expenses incurred in connection with any such action or proceeding shall be part of the common expenses and collectible from
each unit owner as in the case of other common expenses. The
Board or its authorized representative shall be further empowered
and authorized to correct and cure any matter in default and to do
whatever may be necessary for such purpose, and all expenses incurred in connection therewith shall be charged and assessed
against such defaulting unit owner and shall be secured in the
same manner as assessments for common expenses.

- 26. RIGHTS AND OBLIGATIONS. The rights and obligations of the respective unit owners under this Declaration and the By-laws, as may be amended, shall be deemed to be covenants running with the land, and shall inure to the benefit of and be binding on each and all of the respective unit owners and their respective heirs, executors, administrators, successors, legal representatives, assigns and purchasers, and all others having or claiming an interest in any Subdivision lot covered hereby, subject to the provisions of this Declaration and the By-laws. Upon acceptance or recordation of any deed to any of the lots set forth in Paragraph 4 above, the owner thereof shall be deemed to have accepted and agreed to and shall be bound and subject to each and all of the provisions of this Declaration and By-laws.
- 27. NOTICES. Notices provided for in this Declaration or the By-laws shall be in writing and shall be addressed to the Board or the Council at the address which may be established from time to time, and of which the unit owners shall be notified. Notices to the unit owners may be sent to the mailing address of their respective Subdivision lots or to such other address which any unit owner may in writing designate by notice thereof to the Board or the Council.
- 28. SEVERABILITY INTERPRETATION. If any provision of this Declaration or the By-laws or any section, sentence, paragraph, clause, phrase or word, or the application thereof in any circumstance shall be invalid or unenforceable, the validity or enforceability of the remainder of this Declaration or By-laws and the application of any such provision, section, sentence, paragraph, clause, phrase or word in any other circumstance shall not be affected thereby. If anything in this Declaration or the By-laws

shall be susceptible to two or more interpretations, then the interpretation which shall most nearly be in accord with the general purposes and intent of this Declaration and the By-laws shall govern.

29. AMENDMENTS. Except as hereinafter provided in this paragraph, the provisions of this Declaration shall not be changed or amended without the written consent of each and every unit owner and each such amendment shall be filed for record in the same manand each such amendment shall be filled for record in the same manner as this Declaration. Developer as owner of any boat dock unit hereby reserves and shall at all times have the right to amend this Declaration without the consent or approval of any other person for the purpose of correcting any typographical or other error in this Declaration or if it be deficient in any such respect and for the purpose of amending paragraph 4 above so as to change the designation of any Subdivision lots still owned by Developer as lots which will be conveyed pursuant to the terms of this Declaration. tion.

UNIVERSITY SAVINGS ASSOCIATION THE MOODY CORPORATION BY CENT THE STATE OF TEXAS	K)
COUNTY OF Idania	
BEFORE ME, the undersigned authority, on this day personally appeared Socki Bobey (Securior New York of The Moody Corporation, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated. ALVEN UNDER MY HAND AND SEAL OF OFFICE on this the Authority day of 1980.	•
NOTARY SEA!. NOTARY RUBLIC, County, T E X A S	
My Commission Expires:	
Hotary Public in and for Harris County, Taxos	

My Commission Expires May 4, 1981

2-43-2451

THE STATE OF TEXAS

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COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared John A. Hendricks Vice Pres UNIVERSITY SAVINGS ASSOCIATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 7th day of October, 1980.

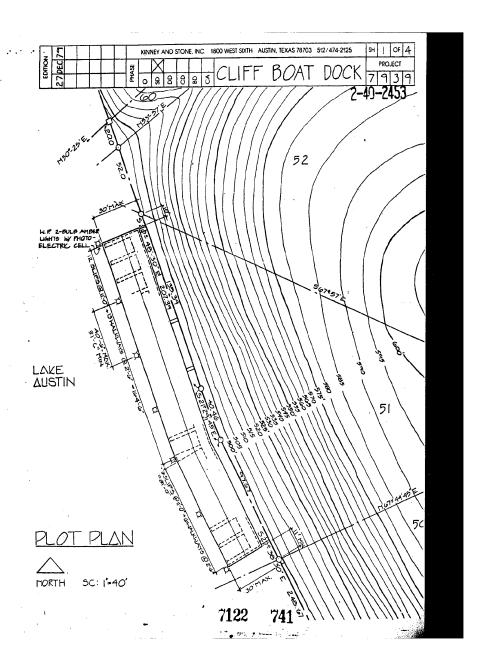
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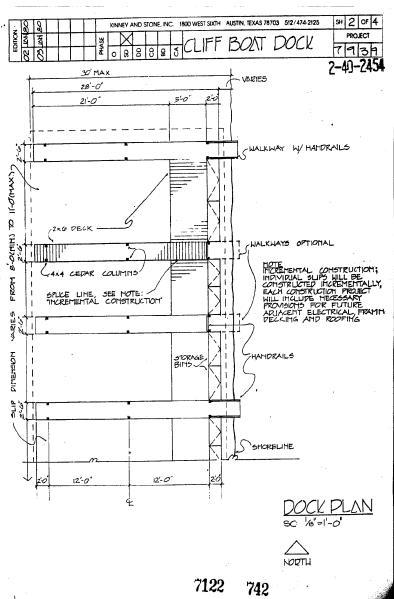
NOTARY PUBLIC Travis County, T E X A S Tracee H. Colvin

2-47-2452

EXHIBIT "A"

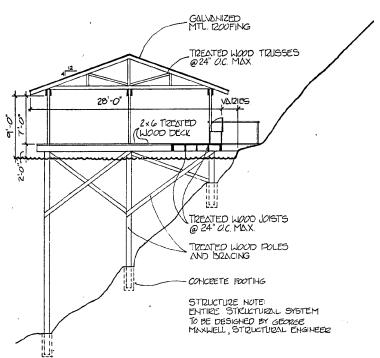
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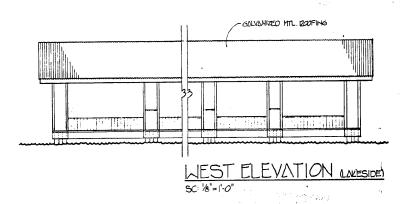
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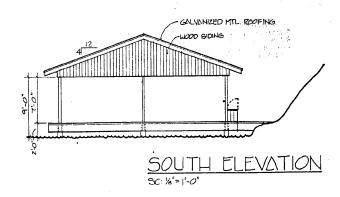


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COUNTY CLERK
TRAVIS COUNTY TEXAS

2-47-2457

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CHARGE AUSTIN TITLE CO.
Rick Flipelt
Chauses + Daugleity
P.O. Box 98
Lustin, Tx 78767

STATE OF TEXAS

I bready cortify that this instrument was FILED on all dails and at the time stamped between by ma; and was daily RECORDED, in the Volume and Page of the samed RECORDS of Travis County, Texas, as Samped become by ma.

OCT 9 1980

COUNTY CLERK
TRAYES COUNTY, TEXAS