

## DECLARATION OF EASEMENTS AND RESTRICTIONS

**Date:** February 25, 2008

**Owner of the Property Subject to the Easement:** VILLA MONTECHINO, LP, acting by and through its General Partner, Atlas Interests, LLC.

**Mailing Address of Owner of the Property Subject to the Easement:** 5001 Marshalls Harbor Drive, Lago Vista, Texas 78645

**Property Subject to the Easement:** Lots 34 and 48, Marshall's Harbor Subdivision, as Shown in Document Number 200000248, Official Public Records of Travis County, Texas

**Owner of the Property Benefited by the Easement:** Mickey Redwine

**Mailing Address of Owner of the Property Benefited by the Easement:** 591 VZ CR 4823, Ben Wheeler, Texas 78754-2747

**Property Benefited by the Easement:** Lot 42A of the Marshall's Harbor Subdivision, according to the map or plat thereof recorded in Document #200300224, Official Public Records of Travis County, Texas.

**Declaration:** Owner of the Property, Lots 34 and 48 in the Marshall's Harbor Subdivision, hereby declares that the Property shall be held, sold, and conveyed subject to the following easement and restrictions for the purpose of assuring that the Redwine Marina currently located on Lot 42A in Marshall's Harbor Subdivision can be anchored on and float over portions of Lots 34 and 48 at any lake elevation as long as the Marina ingresses and egresses in a straight line from the I-beam that it is attached to and travels up and down as the lake's elevation changes. This easement is based on the above referenced I-Beam remaining in its location as of the date of this agreement

The owner of the Property further declares this easement is his consent that allows the Redwine Marina to penetrate the LCRA 75ft. set back rule at any lake elevation as it relates to lots 34 and 48.

The anchors may be placed where necessary at any lake elevation on lots 34 and 48 to stabilize the Redwine Marina but shall never be located farther from the common property line of lots 34 and 48 as shown on attached exhibit (A).

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## DEFINITIONS

1.01 "Owner" or "Owners" shall refer to the record owner, whether one or more persons or entities, his, her or its heirs, successors and assigns, of any right, title, or interest in or to the Property or any part thereof.

1.02 "Tract" or "Tracts" shall refer to the real property, or a part of the real property, defined as "Property".

## GRANT OF EASEMENT

2.01 The area contained in the easement is hereby reserved for the non-exclusive right of the owner of Lot 42A to allow the Redwine Marina currently located on a portion of Lot 42A which is under the waters of Lake Travis to be anchored on and float over Lots 34 and 48 of Marshall's Harbor Subdivision under the waters of Lake Travis. This grant of Easement is to (1) eliminate any disputes on whether the Redwine marina complies with its permit from the LCRA, Villa Montechino, LP consenting to any non-compliance with the provisions of the LCRA permit; (2) to allow the marina to float over portions of Lots 34 and 48 at any lake level; and (3) to consent to the anchors being located at their location on the date of this Declaration of Easements and Restrictions and to permit those anchors to be relocated if necessary on Lots 34 and 48 at any lake level in order to stabilize the marina.

2.02 Any change of boundaries, easements, and restrictions of Lots 34 and 48 will not interfere with the free access of the Redwine Marina located on Lot 42A to float over or be anchored on portions of Lots 34 and 48 of Marshall's Harbor Subdivision under the waters of Lake Travis pursuant to the provisions of this Declaration of Easements and Restrictions.

2.03 The Owner of Lot 42A shall have the duty to maintain the Redwine Marina when it is located within the easement described in this Declaration in such a manner as to effectuate the intent of this Declaration and to insure reasonable ingress and regress to Lots 34 and 48 by the Owners of Lots 34 and 48.

2.04 Anchors for the Redwine Marina are allowed to be placed and left in place on lot 34 and/or lot 48 regardless of the elevation of the lake and whether the anchors are in use full time or not. Further, the anchors can be relocated on Lot 34 and/or Lot 48 at low lake levels in order to stabilize the marina.

2.05 This Declaration is not a conveyance of an interest in real property to the public or any governmental body.

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## CONSIDERATION

3.01 The consideration for this easement is the dismissal with prejudice by all parties of the lawsuit styled *Villa Montechino LP vs. Mickey Redwine*, docketed as Cause No. D-1-GN-06-004716, pending in the 261<sup>st</sup> District Court of Travis County, Texas; and Redwine's dismissal of his involvement of the following law suit: Cause No. D-1-GN-05-002184, *Bobby L. Poe, et al. v. The City of Lago Vista, Texas v. Villa Montechino, LP*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas

## ENFORCEMENT

4.01 Any Owner of Lot 42A shall have the right to enforce, by any proceeding at law or in equity, including specific performance, the easement and restrictions imposed by this Declaration. Failure to enforce any easement or restriction created in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

## MODIFICATION OR TERMINATION

5.01 This Declaration may be modified, amended, or terminated only by the joint action of (a) the Owner of Lot 42A of Marshall's Harbor Subdivision; (b) the Owner of Lot 34 of Marshall's Harbor Subdivision; and, (c) the Owner of Lot 48 of the Marshall's Harbor. Such joint action shall only become effective after it has been reduced to writing, signed by all parties and filed in the Travis County Real Property Records.

## OBLIGATIONS TO RUN WITH THE LAND

6.01 The obligations of Owner of the Property created in this Agreement run with the land described as the Property in this Easement.

## FINAL AGREEMENT

7.01 This Agreement supercedes any and all prior agreements on the issues addressed in this Agreement, either oral or written.

## ATTORNEY'S FEES

8.01 In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, and/or equity) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its or his reasonable attorney fees and costs and expenses incurred.

## SEVERABILITY

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9.01 If any part of this Declaration or the application of this Declaration is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Declaration shall not be affected thereby. All provisions of this Declaration are, therefore, severable for the purpose of maintaining in full force and effect the remaining provisions of this Declaration.

Signed by Owner of the Property this 25 day of Feb, 2008.

VILLA MONTECHINO LP acting by and through its General Partner, Atlas Interests, LLC

By: [Signature]  
Brian S. Atlas, Manager

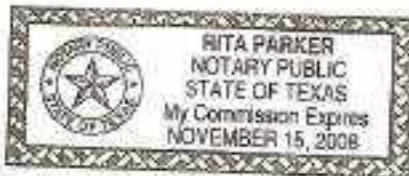
[Signature]  
Brian S. Atlas, Individually

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was sworn to, subscribed and acknowledged before me, the undersigned authority, on this the 25 day of Feb, 2008 by Brian S. Atlas, Manager on behalf of Atlas Interests, LLC, General Partner of VILLA MONTECHINO LP.



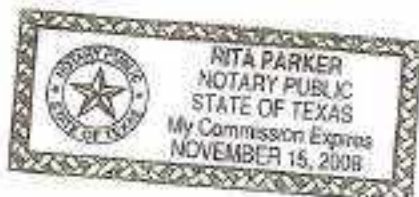
[Signature]  
Notary Public in and for the State of Texas

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF TRAVIS


This instrument was sworn to, subscribed and acknowledged before me, the undersigned authority, on this the 25 day of Feb, 2008 by Brian S. Atlas.



[Signature]  
Notary Public in and for the State of Texas

[Handwritten initials]  
4 me

**ACCEPTED AND AGREED TO:**

  
\_\_\_\_\_  
Mickey Redwine

2-25-08  
\_\_\_\_\_  
Date

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was sworn to, subscribed and acknowledged before me, the undersigned authority, on this the 25 day of Feb, 2008 by Mickey Redwine.



  
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Notary Public in and for the State of Texas

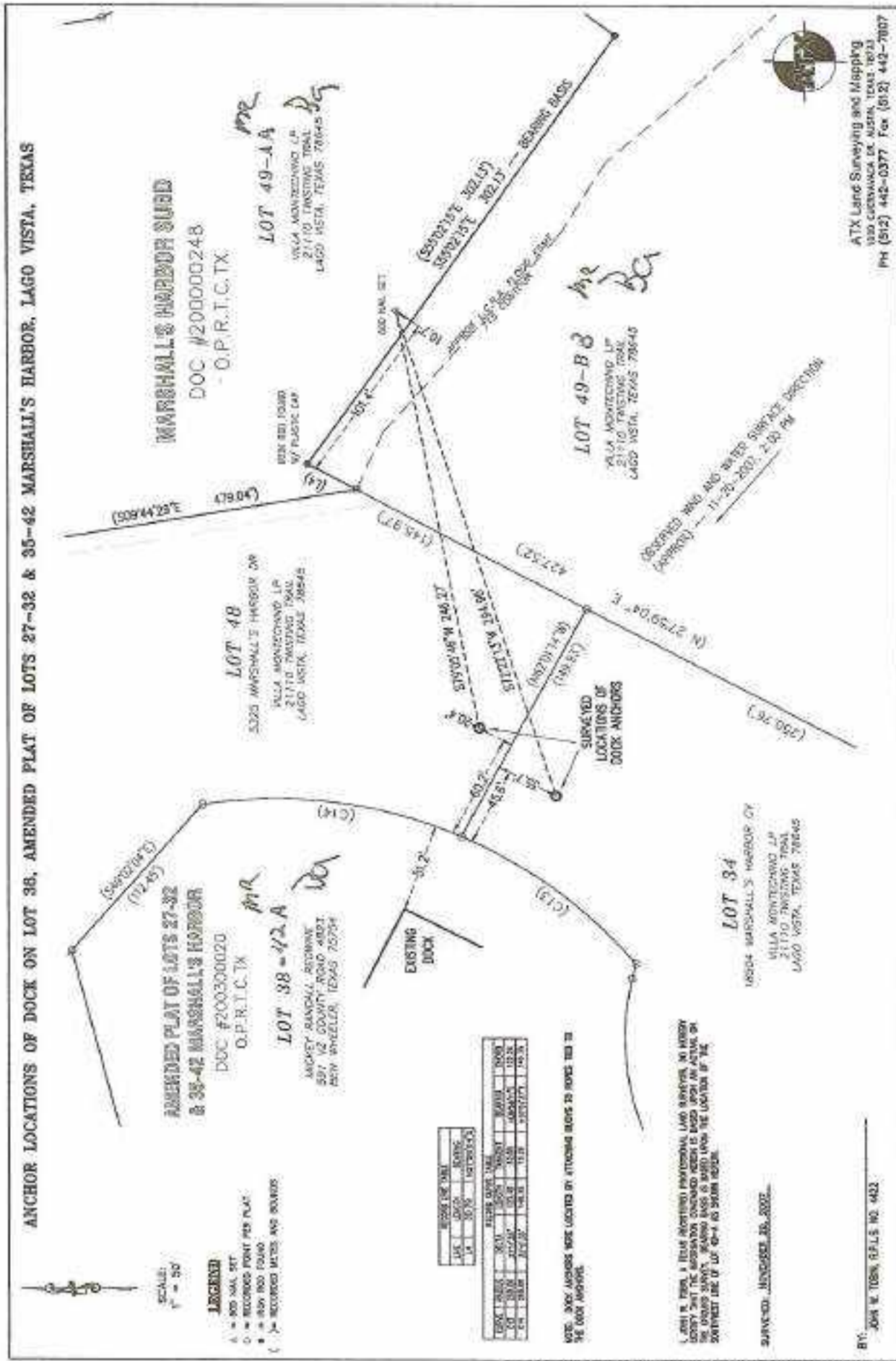
**AFTER RECORDING RETURN TO:**

Scanlan, Buckle & Young, P.C.  
602 West 11<sup>th</sup> Street  
Austin, Texas 78701





EXHIBIT (A) ANCHOR LOCATION



J.P. 1/26