

**ORDINANCE NO. 1561**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the City of Fairhope, Alabama, is not needed for public or municipal purposes during the term of this lease, to-wit:

Commence at the Point of Intersection of the West Right-of-Way of Sea Cliff Drive and the division line between Lot A and Lot B in Sea Cliff, a subdivision in the City of Fairhope, Alabama, as shown by Map or plat thereof recorded in Deed Book 7, at page 90-91, Probate Records, Baldwin County, Alabama, and run thence South 36 degrees 04' 27" West, 20.69 feet to a concrete post; thence run South 60 degrees 58' 40" East, 57.08 feet for a POINT OF BEGINNING; thence continue South 60 degrees 58' 40" East, 14.47 feet; thence run South 47 degrees 17' 55" East, 93.76 feet to an iron pin marker; then run South 16 degrees 03' 55" East, 113.7 feet to a utility pole; thence run South 11 degrees 23' 33" East, 139 feet, more or less, to a point on the North margin of Bayou Volanta (Fly Creek); thence run Westwardly 38 feet, more or less, and Northwestwardly 47 feet, more or less, along and following the meanders of said Bayou Volanta to a point in the Southward extension of a fence; thence run North 08 degrees 40' 24" Est, 30 feet, more or less, to a fence corner post; thence run North 45 degrees 31' 26" West, along and with fence 140.22 feet to a fence corner post; thence run North 25 degrees 45' 18" West, 60.2 feet; thence run North 05 degrees 38' 20" Est, 33.65 feet; thence run North 36 degrees 33' 05" East, 100.2 feet to the POINT OF BEGINNING. Tract contains 0.76 acres, more or less.

SECTION 2. The City of Fairhope, Alabama, having received an offer from Eastern Shore Marine, Inc. to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the City of Fairhope, Alabama, to lease said real property to Eastern Shore Marine, Inc. under the following terms and conditions, to-wit:

The term of this lease agreement shall begin on February 1, 2016 and ending at midnight on October 14, 2017; the rent for said lease shall be \$3,000.00 per month payable monthly in advance on the fifteenth day of each month, or six per cent (6%) of Tenant's gross revenues, per month payable monthly, on or before the fifteenth day of each month for the previous month, whichever is higher for use of the property described above also known as the boatyard, which lessee agrees to pay to LESSOR at P.O. Drawer 429, Fairhope, Al 36533, or at such other place or places as LESSOR may from time to time designate.

SECTION 3. Pursuant to the authority granted by Section 11-47-21 of the Code of Alabama of 1975, the Mayor of the City of Fairhope, Alabama, is hereby directed to execute said lease agreement in the name of the City of Fairhope, Alabama.

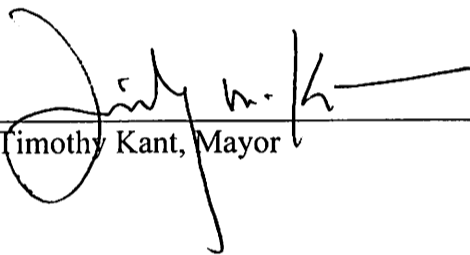
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SECTION 4. The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. This ordinance shall take effect immediately upon its due adoption and publication as required by law.

ADOPTED THIS 11TH DAY OF JANUARY, 2016

  
\_\_\_\_\_  
Timothy Kant, Mayor

ATTEST:

  
\_\_\_\_\_  
Lisa A. Hanks, MMC  
City Clerk

## LEASE AGREEMENT

### STATE OF ALABAMA COUNTY OF BALDWIN

THIS LEASE agreement made and entered into this 21<sup>st</sup> day of January, 2016, at Fairhope, Alabama by and between the CITY OF FAIRHOPE, ALABAMA, hereinafter referred to as "Landlord" or "Lessor" and EASTERN SHORE MARINE, INC., hereinafter referred to as "Tenant" or "Lessee".

**Premises and Term.** Landlord does hereby lease and demise unto Tenant that premises situated in Baldwin County, Alabama which is described in attached Exhibit "A", which is made a part hereof and incorporated herein by this reference, for continuous use and occupancy for and during the term of two years and seventeen days, beginning February 1, 2016 and ending October 14, 2017. This period is herein referred to as the "term" or "period" of said lease and shall include any extensions. Upon final termination of the lease, whether for the original term or the extended term, Landlord shall pay to the Tenant for the approved improvements and additions, a sum equal to the original cost or the original value of the improvements and additions, whichever is less, when purchased or incorporated into the property, less depreciation calculated on a twenty (20) year straight line depreciation schedule beginning September 1, 2005.

**Rent:** Tenant promises and agrees to pay to Landlord for the term of this lease the sum of \$3,000.00 per month payable monthly in advance on the fifteenth day of each month, or six per cent (6%) of Tenant's gross revenues, per month payable monthly, on or before the fifteenth day of each month for the previous month, whichever is higher. Tenant shall make available to Landlord, at Landlord's primary place of business, and at Landlord's request, all of Tenants records, tax filings, and books of accounts for the previous month or months for the purpose of confirming Tenant's gross receipts. In addition, Tenant shall file with Landlord, a copy of Tenants annual tax return, filed with the Internal Revenue Service and the Alabama State Department of Revenue within thirty (30) days of the annual filing. The six (6%) percent of gross receipts shall be paid by Tenant for or on behalf of every person, firm, company or corporation doing gainful business or performing gainful work on the leased premises, whether they be independent contractors or employees of Tenant, except, however, this provision shall not apply to any work performed personally by the owner of any vehicle or watercraft nor where the said owner shall contract with any third party for work where the tenant herein does not profit thereby. This provision shall not be construed to permit any assignment of the leased premises by the Tenant without the express written consent of the Landlord. Tenant shall provide to Landlord, each month, a list of all independent contractors and employees who have performed any work or done any business on the leased premises for third parties. Further, as additional rent Tenant shall pay to Landlord one cent per gallon for all gasoline sold and one-half cent per gallon for all diesel fuel sold from the leased premises.

**Late Charge:** A late charge of \$500.00 shall be added to any payment unpaid more than 15 days past its due date.

**Improvements and Services.** Among other things, Tenant shall furnish and provide the following improvements, facilities and services on the leased premises, during the term of this lease:

A hoist lift or boat transporting machine of a mobile, self-propelled, sling type with a capacity of not less than twenty (20) tons, comparable to the Travel Lift brand to be installed on a concrete apron of sufficient strength for support.

Reinforcement of the existing bulkhead, installation of finger piers, enclosure of the entire leased area with a chain link fence and gates and placement of shell over the entire area.

Bathrooms in the existing structure shall at all time be open and available to the general public, and they shall be maintained by the Landlord.

The improvements, and additions required hereinabove, and all other improvements and additions to the leased premises, must have the prior written approval of the Landlord. All improvements, facilities and services shall remain available to the public, during the entire term of this lease and any extension thereof. Landlord recognizes Tenant has previously provided the improvements described above and this provision of the previous lease is retained to emphasize Tenant's duty to retain and maintain the improvements. The Parties do not contemplate the Tenant has a duty to rebuild any of such improvements.

The failure of Tenant to provide the improvements, facilities and services during the term of this lease or to obtain the prior written consent of Landlord for any improvements or additions shall constitute a default herein and, at the option of the Landlord, shall constitute a default as hereinafter provided.

**Use of Premises.** The premises, during the term of this, lease shall be used and occupied solely for the purpose of a boat sales, repair, maintenance and overhaul business; and, Tenant shall not use nor permit the same to be used for any other purpose or purposes without the prior written consent of the Landlord. Tenant at all times shall fully comply with all laws, ordinances and regulations of any lawful authority having jurisdiction of said premises including, but not limited to, such as shall relate to health, safety, sanitation and cleanliness. Tenant will not commit any waste to said property nor permit the same to be done and will take good care of said premises at all times, and will not, by any act or omission, render Landlord liable for any violation thereof.

**Condition of, Damage to and Maintenance of Premises.** Tenant shall examine said premises before taking possession, and Tenant's entry into possession shall constitute conclusive evidence that, as of the date thereof, the said premises were in good order and satisfactory condition. Landlord does not warrant the condition of the not premises or that the property is fit for any particular purpose, except as hereinafter set out.

At its sole cost and expense, Tenant shall maintain and keep in good repair the grounds, bulkheads, finger piers, roof, exterior, supporting walls of any buildings, the interior of said premises, including floors, heating units, air conditioning units, store fixtures, store equipment, electrical fixtures and equipment, electrical installations, plumbing, plumbing equipment and fixtures, all machinery, all hardware, all interior painting or decorations of every kind, all door and window screens and replace all broken or damaged glass. Such repairs and replacements shall be made only by competent and responsible workmen.

If Tenant fails to do or undertake the replacement, maintenance and repair of the items and things herein required of Tenant, the Landlord may do and undertake the same, after two days' written notice, and the Tenant will upon demand pay the Landlord the costs and expenses thereof, together with interest thereon at the highest legal rate. Any sum thus due from Tenant to Landlord by virtue hereof shall be secured as additional rent under the terms of this lease.

Landlord shall not be liable for any loss or damage caused by, or growing out of, any breakage, leakage, disorder or defective condition of the heating, air conditioning, or mechanical installations and/or systems, electric wiring, pipes, or plumbing. Landlord shall not be liable for any damage to any property on said premises caused by, or growing out of, fire, rain, lightning, wind, high water, over-flow water, freezing or other causes.

**Fixtures.** All improvements and additions to the leased premises shall become the property of the Landlord, with the exception of furniture or trade fixtures. Said furniture and trade fixtures remain the property of the Tenant, and may be removed by the Tenant upon the expiration of this lease, provided all terms, conditions and covenants of this lease have been complied with by the Tenant and Tenant restores the building and premises to its original condition, natural wear and tear excepted. No improvements by Tenant, including painting, shall be made upon said property without the prior written consent of Landlord. Landlord shall have the right to require a written waiver of mechanics' or materialmen's liens by the contractor prior to executing written consent to place said improvements on the property.

**Indemnity and Insurance: Waiver of Subrogation.** Tenant will indemnify, protect and save harmless Landlord, its officers, officials, agents, appointees and employees, from any loss, cost, damage, liability or expense including court costs, attorney's fees and any other legal costs caused by injury or damage to any person or to property of any person other than Tenant while in or on said premises herein leased; and, the Landlord shall not be liable for any loss of any property of Tenant, however occurring. The Landlord, its officers, officials, agents, appointees, and employees shall be indemnified by the Tenant against such liability arising from all causes, including the acts or omissions of Landlord, Tenant or third persons. In furtherance hereof, Tenant will obtain and provide a copy to Landlord of a policy of general liability insurance subject to approval of Landlord in amounts of not less than \$2,000,000.00 showing Landlord as an additional loss payee. The amount of said insurance shall be increased by twenty (20%) percent of the original amount every two (2) years, on or before the anniversary date of this lease. The policy shall at all times provide that the Landlord shall be notified not less than thirty (30) days in advance of any proposed cancellation of the policy.

Tenant shall maintain insurance covering its stock of goods, inventory, leasehold improvements and other property located in the- above described premises, and insurance covering the building and other improvements owned by either Landlord or Tenant on the above described premises for the full value of said improvements with a copy of said policy to be deposited with Landlord and non-cancelable until not less than thirty (30) days' notice has been given to Landlord of the proposed cancellation. Tenant agrees not to assign to any insurance company any right or cause of action for damage to the property of Tenant located on the above described premises which Tenant now has or may subsequently acquire against Landlord during the term hereof. This agreement not to assign rights or causes- of action shall apply only where such insurance as described herein and applicable law allow the Insured to enter into such an agreement; and, this agreement shall apply only as respects insured loss occurring on the property described herein.

**Utilities.** Tenant shall pay all the charges for all utilities used in and about the leased premises.

**Overloads.** Tenant will not overload the building, its floors, roof, or walls, the bulkheads, pier and concrete apron and shall be liable for all damages to the premises or other consequences of overloading.

**Default.** Upon the happening of any one or more of the events as expressed in subparagraphs below (which said events shall separately and severally constitute a default hereunder at Landlord's option), the Landlord shall have the right at the option of the Landlord to: (1) annul and terminate this lease, and thereupon re-enter and take possession of said premises; or (2) re-enter and re-let said premises from time to time, as agent of the Tenant, and such re-entry and/or re-letting shall not discharge Tenant except that net rents (that is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re-letting shall be a credit against the Tenant's liability for rents under the terms of this lease. Nothing herein shall be construed to require the Landlord to re-enter and re-let in such event. Nor shall anything herein be construed to postpone the right of the Landlord to sue for rents, whether matured by acceleration or otherwise; Landlord shall have the right to demand, collect and/or sue therefore at any time after default.

Each of the following may be treated by Landlord as a default:

Tenant's failure to pay any one or more of said installments of rent as and when the same becomes due, or failure to pay on demand any amount due Landlord and secured as additional rent hereunder;

Tenant's removal, attempt to remove or permitting of removal from said premises (except in the usual course of trade) the goods, furniture, effects or other property of the Tenant brought thereon;

Execution or other legal process upon the goods, furniture, effects or other property of the Tenant brought on said premises or upon the interest of the Tenant in this lease;

Filing of a petition in bankruptcy or a petition under the bankruptcy laws by or against the Tenant, or commission by the Tenant of an act of bankruptcy;

An assignment for the benefit of creditors by the Tenant or appointment of a receiver for Tenant's property;

Before the expiration of the term hereof, and without the written consent of the Landlord, Tenant vacates said premises or abandons the possession thereof, or uses the same for purposes other than herein specified or ceases to use said premises for the purposes herein specified;

Tenant's failure to provide records, tax filings and returns and books of account to Landlord as provided for herein;

Tenant's failure to properly insure the property as provided for herein;

Tenant's violation of any other term, condition or covenant on the part of the Tenant herein contained.

Upon default, upon breach of condition, or upon any termination of this lease or re-entry of said premises, the rents hereunder or the entire rental period and any other indebtedness payable under provisions hereof shall be and become immediately due and payable and without regard to whether or not possession of the premises shall have been surrendered to or taken by the Landlord. Said sum shall bear interest at the maximum legal rate.

**Attorney fee and exemption waiver.** Tenant agrees to pay a reasonable attorney's fee and all costs, if it becomes necessary for Landlord to employ an attorney to collect any of the rent agreed to be paid, to enforce any of the provisions of this lease, to obtain possession of the leased premises, or otherwise to exercise any option or enforce any right given to Landlord upon default by Tenant. Tenant expressly waives any exemptions secured to Tenant, whether a corporation or individual, under the laws of any state or the United States of America as against the collection of any debts herein or hereby incurred or secured.

**Relation of Parties.** The execution of this lease or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to create between Landlord and Tenant the relationship of principal and agent, partnership, or joint venture, and the relationship between them shall be that only of Landlord and Tenant.

**Landlord's reservation of rights.** The failure of Landlord to insist upon a strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall remain in full force and effect. The receipt by Landlord of rent with the knowledge of the breach of any covenant of the lease shall not be deemed a waiver of such breach. No waiver of Landlord of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by Landlord.

**Signs.** The Tenant shall not erect on, display on, or cause to be painted on or affixed to the demised premises any lettering, signs, advertisements, awnings, or other projections thereon, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. The Tenant's request shall be in writing and shall contain such information as to the proposed lettering and/or signs as the Landlord may reasonably require.

**Condemnation.** If the whole of the demised premises shall be taken by Federal, State, County, City, public utility, or other authority for public use or under any statute, or by right of eminent domain, the term hereby granted and all rights of the Tenant hereunder shall immediately cease and terminate, and the Tenant shall be entitled only to that part of any award that may be made for such taking, to the extent of Tenants improvements thereon. If but a part of the demises premises be taken by right of eminent domain, this lease shall continue in full force and effect as to the property remaining, provided such property remaining is capable of continued enjoyment by the Tenant for the uses and purposes provided for hereunder. Tenant shall not be entitled to any award that may be made for such taking, except to the extent of Tenant's improvements thereon, nor shall such taking constitute a termination of this lease, or a constructive eviction of Tenant. However, the rent payable hereunder shall be adjusted as of the time of such taking to equitably reflect the change in the size of said remaining property.

**Subordination to mortgage.** This lease shall at all times be subject and subordinate to the lien of any bonds, warrants, or mortgages now on or hereafter placed upon the premises, and to all advances made or hereafter to be made upon the security thereof. The Tenant binds and obligates himself to execute and deliver such further instrument or instruments subordinating this lease to the lien of any such bonds, warrants, or mortgages at any time same shall be requested by the Landlord. Whether or not this lease is subordinate to any such bond, warranty or mortgage, the Tenant's right to quiet enjoyment of the premises demised hereby shall be maintained as long as Tenant shall pay all rentals and perform all duties required of Tenant hereunder.

**Prohibition on Transfer By Tenant.** Each and every transfer or assignment of this lease by the Tenant or any interest therein, and each and every subletting of said premises, or any part thereof, or any interest therein, shall be null and void, unless the prior written consent of the landlord be obtained. Any violation of this provision constitutes a substantial and material breach of the conditions of this Lease, with all of the rights thereunto pertaining as in the case of default for any other cause hereunder.

**Waste or Nuisance.** Tenant shall not permit, cause or allow any act or omission in, on or about said premises which shall unreasonably cause or be likely to unreasonably cause injury or damage to any person, or to the premises, or to the right of way adjoining the premises. Tenant shall not allow, cause or allow any unreasonably obnoxious, disturbing or offensive odors, fumes, gases, smoke, dust, steam or vapors or any loud or disturbing noise, sound or vibration to originate on or be omitted from said premises. Tenant shall at all times keep said premises in orderly condition and shall keep the entranceways adjoining the premises free from rubbish and dirt. Tenant agrees to permit no waste of the property, but on the contrary to take good care of the same and upon termination of this lease to surrender possession of the same in as good condition as at the commencement of the term or as they may be put in during the term as reasonable use and wear thereof will permit.

**Binding effect.** The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of the Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. This provision shall not permit the assignment of the lease or subleasing of the premises, except as heretofore provided.

**Landlord's Access.** Landlord, its agents or representatives, at all reasonable times may enter said premises to inspect to insure compliance with the terms hereof and to exhibit the premises to prospective tenants or purchasers.

**Notice.** Any notices, demands, communications, or election to exercise any option herein, whether intended for the Landlord or the Tenant, shall be in writing and may be delivered in person or by registered or certified mail to the address of the party intended as the recipient thereof at such address as stated hereon, or to such other address as the parties may from time to time designate in writing.

**Cumulative rights.** All rights and remedies provided herein for the Landlord are cumulative and are in addition to any other remedies accruing to Landlord by operation of law.

**Additional terms.** Lessee agrees to comply with the following additional requirements of Lessor:

A. Lessee shall provide and maintain, to the satisfaction of Lessor, a ten-foot (10') landscape buffer zone, creating a visual screen between the leased premises and all property fronting on Sea Cliff Drive and between the leased premises and private property located west of Sea Cliff Drive.

B. Trees on the leased premises may not be cut or removed, except those marked and approved by Lessor. Any hardwood trees, other than those approved by Lessor, which are cut or die from damage, which, if in the opinion of the Fairhope Tree Commission, was an intentional, willful, or neglect act, shall cause Lessee to pay \$2,000 per such tree into the City Tree Fund, which is maintained for the planting and preservation of trees within the municipality.

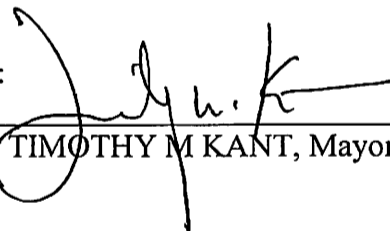
C. The leased premises shall be kept free of debris and litter at all times, including, but not limited to, adjacent parking areas. Sufficient containers shall be approved by Lessee in and around the leased premises to provide for proper disposal of litter and debris.

D. Landlord hereby notifies Tenant that the City intends to combine both this lease and the marina lease and let out for bid one lease combining the two leases approximately six (6) months prior to the expiration of said leases.

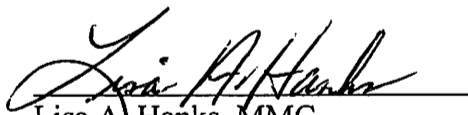
IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease by affixing their signatures and seals on the day and year first above set forth.

LANDLORD:

CITY OF FAIRHOPE


By:   
TIMOTHY M KANT, Mayor

Attest:

  
Lisa A) Hanks, MMC  
City Clerk

TENANT:

EASTERN SHORE MARINE, INC.

By:   
EDWARD WALL, as its President



STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that TIMOTHY M. KANT whose name is signed to the foregoing conveyance as Mayor of the City of Fairhope, and who is known to me acknowledged before me on this day, that being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date for and as the act of said municipal corporation.

Given under my hand this the 13<sup>th</sup> day of January 2016.

Roxanna Hufe Legarty  
NOTARY PUBLIC My Commission Expires 03/23/2016  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that EDWARD WALL, whose name as President of Eastern Shore Marine, Inc. is signed to the foregoing conveyance as Tenant, and who is known to me acknowledged before me on this day, that being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 21<sup>st</sup> day of January 2016.

Lisa A. Hanna  
NOTARY PUBLIC  
My Commission Expires: 8/28/18

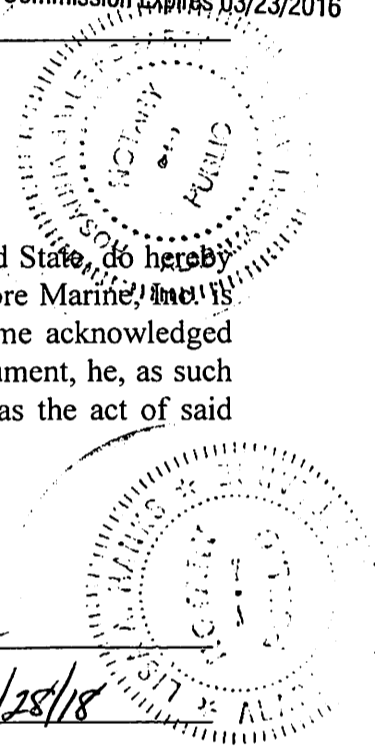


EXHIBIT "A"

Commence at the Point of Intersection of the West Right-of-Way of Sea Cliff Drive and the division line between Lot A and Lot B in Sea Cliff, a subdivision in the City of Fairhope, Alabama, as shown by Map or plat thereof recorded in Deed Book 7, at page 90-91, Probate Records, Baldwin County, Alabama, and run thence South 36 degrees 04' 27" West, 20.69 feet to a concrete post; thence run South 60 degrees 58' 40" East, 57.08 feet for a POINT OF BEGINNING; thence continue South 60 degrees 58' 40" East, 14.47 feet; thence run South 47 degrees 17' 55" East, 93.76 feet to an iron pin marker; then run South 16 degrees 03' 55" East, 113.7 feet to a utility pole; thence run South 11 degrees 23' 33" East, 139 feet, more or less, to a point on the North margin of Bayou Volanta (Fly Creek); thence run Westwardly 38 feet, more or less, and Northwestwardly 47 feet, more or less, along and following the meanders of said Bayou Volanta to a point in the Southward extension of a fence; thence run North 08 degrees 40' 24" Est, 30 feet, more or less, to a fence corner post; thence run North 45 degrees 31' 26" West, along and with fence 140.22 feet to a fence corner post; thence run North 25 degrees 45' 18" West, 60.2 feet; thence run North 05 degrees 38' 20" Est, 33.65 feet; thence run North 36 degrees 33' 05" East, 100.2 feet to the POINT OF BEGINNING. Tract contains 0.76 acres, more or less.