

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND CREATION OF ACCESS EASEMENT

Preamble

This Declaration of Covenants, Conditions, and Restrictions is made on December 1, 2021, by James Michael Lucas (“Declarant”), whose mailing address is P.O. Box 492 Port O’Connor, TX 77982. This instrument also creates an access easement that is for the benefit of the Property (as hereinafter defined).

Recitals

1. Declarant is the owner of all that certain real property (“the Property”) located in Calhoun County, Texas, described as follows:

BEING all of the Lots of ESPIRITU SANTOS BAY RESORT, a subdivision in Port O’Connor, Calhoun County, Texas, according to the plat recorded in Slide _____ of the Plat Records of Calhoun County, Texas.

2. The Declarant has devised a general plan for the entire Property as a whole, with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period.

3. This general plan will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property.

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

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

ARTICLE 1

Definitions

Developer

1.01. “Developer” means Declarant and their successors and assigns.

Lot

1.02. “Lot” means any of the plots of land shown on the plat and subdivision map recorded or to be recorded at the office of the County Clerk of Calhoun County, Texas affecting all or any part of the Property (the “Map”), on which there is or will be built a single family dwelling.

Owner

1.03. “Owner” means the record owner or owners of the fee simple title to any Lot or portion of a Lot in the Property on which there is or will be built a detached single family dwelling.

“Owner” includes contract sellers but excludes having only a security interest.

Access Easement

1.04. “Access Easement” means the Access Easement created and controlled by the terms of Article 4 herein, together with the subdivision gate and electronic controls of same.

ARTICLE 2

Exterior Maintenance

2.01. If an Owner of any Lot fails to maintain the premises in a neat and orderly manner, in keeping with the appearance of other homes in the area (not just the Property, but adjacent homes) all or any one (1) of the owners of other Lots in the subdivision shall have the right to send a letter by certified mail, Return Receipt Requested, to the Owner of said Lot, at the Lot address, notifying said Owner of their failure to maintain the premises in a neat and orderly manner, and of the action required to cure said failure. If the Owner fails to cure said failure within twenty (20) calendar days after the mailing of said letter by certified mail, all or any one (1) of the owners of other Lots in the subdivision shall have the further right to enter the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the Owner. In the event the Owner fails to repay the expense of the other Lot owners when requested, including their reasonable attorney’s fees, then the other Lot owners shall be entitled to a judgment against the Owner for all actual expenses they reasonably incurred in the cure of said failure to maintain the premises as well as in the collection of said expense.

Residential Use Only

2.02.(a) All Lots shall be used for residential purposes only. No business activity of a type that interferes with neighboring dwellings shall be allowed on the Property. Nothing contained herein shall prohibit home office use provided the use is not apparent from external appearances and does not increase traffic to the Lot beyond normal residential use. No advertising signs for a home business shall be located on any Lot.

2.02.(b) If longer than forty-five feet (45') in length, no manufactured homes, trailer homes or mobile homes shall be permitted to be permanently installed or located on any Lot. If shorter than forty-five feet (45') in length, any manufactured home, trailer home or mobile home installed on any Lot must be tied down and permanently affixed to the Lot, and must be located under a windstorm manufactured cover.

2.02.(c) Modular homes and mini-modular homes may be constructed on any Lot as well as free standing single family residential homes and barndominium homes. Boat sheds and outdoor sheds may be constructed on any Lot. All new construction shall conform to then current building codes and windstorm codes.

2.02.(d) Multi family homes, duplexes, four-plexes, boarding houses shall not be erected on any Lot.

2.02(e) Each Lot Owner may install or park no more than two (2) Recreational Vehicles (RV's) on a full time basis for occupancy by the Lot Owner and guests or invitees of the Lot Owner. Said RV's shall not be occupied by renters or tenants of the Lot Owner. Each RV must, at all times, be parked under a manufactured windstorm cover which shall be installed no later than twelve (12) months after the location and placement of an RV for the first time. Nothing contained herein shall prohibit the occasional parking and occupancy of an RV to be used by a friend or guest of a Lot Owner for a period of three (3) days or less.

2.02.(f) No carports may be installed on any Lot.

Setbacks

2.03. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the Plat of the Subdivision. For purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of the building on any Lot to encroach upon another Lot.

Utility Easements

2.04. Easements for the installation and maintenance of utilities and drainage facilities are adjacent to the property and/or reserved as shown on the Plat. No utility company, water district, political subdivision, or other authorized entity using these easements shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, flowers, or to other property of the Owner situated in the easement.

Noxious or Offensive Activities Prohibited

2.05. No noxious, unlawful, boisterous or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood. No criminal activity or use or sale of illegal drugs shall occur on any Lot.

Junk Cars, Rubbish, Trash and Garbage

2.06. No Lot shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash, garbage, leaves, brush, or other debris. No junk cars or cars not capable of running and being driven, shall be parked on a Lot or on the adjacent street, for more than two (2) weeks total. The adjoining Lot owners in the subdivision may have any said junk cars removed, at the expense of the offending Lot Owner, provided all or any one (1) of the owners of other Lots in the subdivision send a letter by certified mail, Return Receipt Requested, to the Owner of said Lot, at the Lot address, notifying said Owner of their violation herein and of the action required to cure said violation. If the Owner fails to cure said violation within twenty (20) calendar days after the mailing of said letter by certified mail, the all or any one (1) of the owners of other Lots in the subdivision shall have the further right to enter the Lot in order to remove said junk car or cars, all at the expense of the Owner. In the event the Owner fails to repay the expense of the other Lot owners when requested, including their reasonable attorney's fees, then the other Lot owners shall be entitled to a judgment against the Owner for all actual expenses they reasonably incurred in the cure of said violation herein, as well as in the collection of said expense.

Cars, RV's and Boats

2.07. No cars or boats shall be parked in the driveway or access easement in a way that interferes with full use of the access easement by the adjoining Lot Owners. All cars, RV's and boats owned by Lot Owners or the occupants of the Property shall at all times be parked fully on the Lot and not in or on the Access Easement.

Oil and Mining Operations

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

Environmental Covenants

2.09. No Owner of any interest of any Lot in the Subdivision subject to this Declaration will engage in, or permit any other party to engage in, any activity on the Owner's Lot which will violate, or create liability of either the Owner or the Lot, under any environmental law, statute, regulation, ordinance or ruling, including, but not limited to, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. ' 6901, et seq., as amended, the Texas Solid Waste Disposal Act ("TSWDA"), Chapter 361 Texas Health and Safety Code (Vernon's) as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1996 ("SARA"), 42 U.S.C. ' 9601, et seq., as amended, the Federal Water Pollution Control Act, 33 U.S.C. ' 1251, et seq., or the Clean Air Act, 42 U.S.C. ' 7401, et seq. In the event the Lot subject to this Declaration is used in any way which is in violation of the terms and conditions of any applicable environmental law, statute, regulation, ordinance or ruling, the Owner of the Lot which engaged in, or permitted, such activity shall indemnify and hold harmless all other owners of Lot in the Subdivision from any loss, drainage, or liability arising as a consequence of such improper use.

ARTICLE 3

General Provisions

Enforcement

3.01. Any Lot Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

Severability

3.02. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

Covenants Running with the Land

3.03. These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the entire subdivision. Consequently, they shall run with the real property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Lot, and each Lot Owner.

Duration and Amendment

3.04. The covenants, conditions, and restrictions of this Declaration shall be effective for a term of 20 years from the date this Declaration is recorded, after which prior the covenants, conditions, and restrictions shall be automatically extended for successive periods of 10 years, subject to termination by a prior termination instrument signed by more than 50 percent of the Owners. The covenants, conditions, and restrictions of this Declaration may be amended at any time by an instrument signed by more than 50 percent of the Owners. Neither any amendment nor any termination shall be effective until recorded in the Official Records of Calhoun County, Texas, and all requisite governmental approvals, if any, have been obtained.

Attorneys' Fees

3.04. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees, and costs.

Liberal Interpretation

3.05. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

ARTICLE 4

Access Easement Creation

4.01. There is created hereby a fifty foot (50') in width access easement ("Access Easement") at the front of each Lot in the Property. The point where the Access Easement intersects a public road shall be gated with an electronic gate and electronic controls and the same shall be included in the definition of the Access Easement.

Use

4.02. Each Owner shall be entitled to use the Access Easement to gain vehicular and pedestrian access to their property, but shall not be entitled to park in such a way as to block ingress and egress by other Lot owners to their respective properties. Said Access Easement shall also be used for the installation of utilities for the benefit of each of the Lots in the subdivision.

Maintenance and Repair

4.03. At such time or times as the Access Easement including the subdivision gate or electronics of the gate, are in need of maintenance or repairs, it shall be the joint and mutual right and

obligation of the Owner of each Lot to bear one- forty second (1/42) of the cost of maintenance or repair. If anyone owns more than one Lot, the obligation to maintain or repair the Access Easement shall be allocated as 1/42 per Lot (not per Owner). The cost shall be borne equally without regard to the location of the needed repair or maintenance or the cause of the damage. The Lot Owners may designate an Owner or Owners to coordinate the repair or maintenance and reimburse the Owners as described herein. In the event the Owners do not designate a coordinating Owner, any Owner may coordinate the repair or maintenance and seek reimbursement provided they limit the expense to maintenance and/or repair (and not enhancement or improvement), after obtaining written bids from third party contractors and providing a copy of the bids to the other Lot Owners. Upon completion of the repairs or maintenance, the Owner who has initiated the repair or maintenance shall be entitled to seek reimbursement from the other Lot Owners. In the event the Owner fails to repay the expense of the other Lot owners when requested, including their reasonable attorney's fees, then the other Lot owners shall be entitled to a judgment against the Owner for all actual expenses they reasonably incurred in the cure of said failure to maintain the premises as well as in the collection of said expense.

Duration

4.04. The Access Easement created herein shall be an easement appurtenant to the Lots and shall be binding upon Declarant and all its successors and assigns. **THE ACCESS EASEMENT CREATED HEREIN SHALL NOT TERMINATE OR BE MODIFIED** in the event of termination or amendment of this Declaration unless it is specifically amended or modified, by recorded instrument, signed by 100% of the then current Lot Owners.

This Declaration is dated this ____ day of _____, 2021.

James Michael Lucas
