

Restrictions & Covenants

This Modification of Restrictive Covenants ("Modification") is adopted the date and year set forth below:

1. "Architectural Control Committee" means the committee appointed by the Association to ensure compliance with these Covenants.
2. "Association" means EMERALD BAY HOMEOWNERS ASSOCIATION.
3. "Covenants" means the covenants, conditions, and restrictions contained in this Modification.
4. "Owners" means the undersigned record owners of the Property.
5. "Property" means the lots and improvements thereon described on EXHIBIT "A" attached to Management Certificate, filed of record in Official Public Records of Smith County, Texas on August 12, 2010 under File No. R-2010-00038530.

Covenants

Owners impose the following covenants on the Property:

1. All lots within the Property shall be used exclusively for residential purposes.
2. No lot shall be further subdivided except that fractions of lots may be separated to add to space of whole lots if the combination of whole and fractional lots is used as a single building site and if all other provisions of these Covenants are complied with.
3. No lot or any part of a lot shall be used for a street, access road, or public thoroughfare without the prior written consent of the Association, its successors and assigns.
4. No existing building or structure of any kind and no part of an existing building or structure shall be moved onto, placed on, or permitted to remain on any lot. All construction must be of new materials, except stone, brick or other materials used for antique decorative effect if such is approved in writing by the Architectural Control Committee.
5. All buildings other than boathouses shall be completely underpinned, with no piers or pilings exposed to view.
6. No building exceeding two stories in height above street grade shall be erected on any lot.
7. No building, fence, or other structure or improvements shall be erected, placed or altered on any lot until two copies of the construction plans and specifications of all exterior materials and a plan showing the proposed location of the structure have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design with existing structures and as to location with respect to topography and finish grade

elevation. If construction is not commenced within eight (8) months of such approval, the approval shall be null and void unless an extension is granted in writing.

8. No building shall be located nearer to the side street line than ten (10) feet, or nearer to the side lot line than five feet (5'). No building shall be located nearer to the rear lot line than five feet (5'), or as to lots abutting Lake Palestine, the three hundred fifty-five foot (355') MSL (Mean Sea Level) as established by the Upper Neches River Municipal Water Authority; no building shall be located nearer to the front lot line than twenty feet (20'); provided, however, the side lot line requirement shall not apply to lots on which homes have been built or approved for zero lot lines in Units IV, XIIA, XIV, XV, XVI, XXIII, XXIV, XXVII and Lots 11D, 11E, 12B, 13B, 13C, and 13D of Unit XX of Emerald Bay Subdivision.

9. No animal, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except dogs, cats, or other household pets, which may be kept, provided they are not kept, bred, or maintained for commercial purposes or kept in such numbers as to be a nuisance to area property owners.

10. No residential structure on lots bordering the golf course shall be located nearer than fifteen feet (15') from the property line abutting the golf course. Golfers shall have the right to retrieve their golf balls from any lot. Each lot owner, by the purchase of the lot, agrees to waive any claim for damages and to hold Association, its successors and assigns, harmless with respect to any claim for damages to persons or property arising out of or resulting from golf balls hit onto and/or retrieved from his or her lot or lots.

11. All residences shall be constructed to face or front on the street which the lot on which they are constructed fronts. A corner lot shall be deemed to front on the street on which it has the smaller dimension, unless otherwise approved by the Architectural Control Committee.

12. All homes and buildings may be all electric or may utilize alternative forms of energy, as permitted by the laws of the State of Texas, provided that:

- a. Rooftop solar panels must be located on a rear or side facing roof section so as to minimize visibility from the street; and
- b. Non-portable propane storage tanks must be installed according to the requirements of the State of Texas. All propane tanks or cylinders must be screened from the view of neighboring residences.

13. No fence, wall, hedge, or other non-residential structure shall be built nearer to the street than the building setback line therefrom as set out in Number 8 above. On lots abutting the golf course, no fence, wall, hedge, or any other non-residential structure shall be built on any location thereon unless same is approved by the Architectural Control Committee.

14. No sign may be maintained on any lot except one sign, not larger than seventy-two (72) square inches, setting forth the name of the owner of the property or occupants; and/or one "For Rent" or "For Sale" sign not larger than two hundred sixteen (216) square inches.

(In order to comply with Texas State Law Reference Texas Property Code Section 202.009, effective June 18, 2005, the following will apply: Regulation of Display of Political Signs: One political sign per candidate. Sign can be in place ninety (90) days prior to election date and must be taken down within ten (10) days after the election date.)

15. No obnoxious or offensive activity that is an annoyance or nuisance to the neighborhood may be conducted on any of the Property.

16. No temporary structure such as a tent, shack, trailer, trailer house, mobile home or bus body shall be kept, placed, or maintained on any residential lot, except that, on any lot on which a residence has been constructed, there may be parked one camper or travel type trailer of not more than forty-five feet (45') in length, but in no case shall such trailer be occupied or used as a residence while parked on said lot.

17. The owner of each lot shall keep it clean and free of weeds and debris such as will be in keeping with the other property and the community at any particular time. Upon failure to perform such obligation, Association, or its successors and assigns, may, at its option, have the lot cleaned and the cost of expense thereof shall be and constitute a lien upon said lot payable by Owner of said lot to Association, its successors or assigns. Any structure which is significantly damaged, as by fire, windstorm, or any other occurrence, within twelve (12) months after the occurrence or after notice by the Architectural Control Committee, must be removed or construction to repair or rebuild must be commenced. Likewise, if any structure becomes physically deteriorated through ordinary wear and tear, or neglect, such that its appearance is not in keeping with other property in the community, or constitutes a fire hazard, it must be repaired within six (6) months after notification of deficiency by the Architectural Control Committee.

18. Association retains an easement of five (5) feet along the perimeter of each lot for the purpose of utilities. It shall not be a violation of this provision if wires or cables carried by such poles pass over some portion of said lots not within the five (5) foot wide strip, provided that such lines do not hinder the construction of buildings on any lot in this subdivision. On lots improved with, or approved for construction of zero lot line homes, this requirement is waived for the lot lines occupied, or to be occupied by a portion of the residence.

19. The exterior of all buildings must be completed within one hundred sixty (160) days from beginning of construction.

20. No outside toilets or privies or other pit type toilet shall be used, constructed or maintained upon any lot, except that a portable toilet may be used during construction. All sanitary regulations of the State Department of Health must be complied with in the use and enjoyment of said lots, and all water and garbage from said lots must be disposed of as provided by such regulations. Garbage on the premises shall be kept watertight containers with tight fitting covers, and no cans, bottles, paper, trash or rubbish shall be placed, deposited, accumulated, or thrown on the ground or in any place except a proper container as aforesaid.

21. Semi-trailer trucks shall not be permitted to park on the street, driveways, or lots overnight and no vehicle of any size which normally transports inflammatory or explosive cargo, shall be kept on the Property at any time.

22. These Covenants are to run with the land and shall be binding on all parties claiming under them and shall not be altered, changed, amended, or revoked in whole or in part, except however, they may be changed, altered, amended or revoked, in part, by petition of the owners of at least sixty-six percent (66%) of the Property.

23. Enforcement shall be by any Member or by the Board of Directors of the Association, acting under the Bylaws, Rules and Regulations of the Association, or by proceedings at law and/or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

24. Mandatory Memberships

a) Any person, upon becoming an Owner, shall automatically become a Member of the Association.

Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged or alienated, except together with the title to the said property interest. Every Owner shall pay assessments levied by the Association and shall comply with all applicable Restrictions and Covenants, Bylaws, and Rules and Regulations adopted by the Association. The assessments 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, the Owner shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and three quarter percent per month, (annualized at the rate of 21% per annum), together with all costs and expenses of collection, including reasonable attorneys' fees.

b) No sale, transfer, lease, or other disposition of any lot in Emerald Bay Subdivision shall be consummated unless and until the purchaser or transferee has applied for and has been accepted as a member of the Emerald Bay Club, Inc. or its successors or assigns. Purchaser or transferee further covenants and agrees to remain a member in good standing of the Emerald Bay Club, Inc., and will pay assessments, dues, and other charges levied by Emerald Bay Club, Inc. and comply with all applicable Restrictions and Covenants, Bylaws, and Rules and Regulations adopted by the Emerald Bay Club, Inc. Provided however, that in case of sale, transfer or lease, of any lot to a firm or corporation, such firm or corporation must designate a member or officer of such firm or corporation to be elected and accepted into the Emerald Bay Club, Inc. in their own name, and the election and acceptance of such individual on behalf of such firm or corporation shall be in complete satisfaction of this requirement for lot owners in this subdivision to be members of the Emerald Bay Club, Inc. This restriction shall not apply, however, to lending institutions who may bid said property in at any foreclosure sale brought by them without regard to such membership restriction, nor shall it apply with respect to the transfer of such property pursuant to a duly probated Will or by virtue of intestacy, pursuant to the Statutes of the State of Texas.

25. If, notwithstanding the requirements of membership in the Association and Emerald Bay Club, Inc., their successors or assigns, as a condition to the acquisition of title to any lot or lots in Emerald Bay Subdivision, title to any lot shall in some manner be acquired by a party who has not been approved for membership in the Association or in Emerald Bay Club, Inc., or if any owner shall cease to be a member of the Association or in Emerald Bay Club, Inc., then, nevertheless, said owner on behalf of said owner, his or her heirs or assigns, does hereby covenant and agree that said owner will bear and pay such portion of the specific assessments, dues and expenses required and expended by the Association and/or Emerald Bay Club, Inc., their successors and assigns, solely for the maintenance of the lanes, roads, parks, lakes, Emerald Bay Club property and the furnishing of security protection that they would otherwise be required to pay if they were then in fact a member of the Association and/or Emerald Bay Club, Inc. Such assessments, dues and expenses are to be determined by the Boards of Directors of the Association and the Emerald Bay Club, Inc. Further, by the acceptance and retention of title to any lot or lots, each owner, on behalf of said owner, any heirs and assigns, does hereby covenant and agree that the Association and/or Emerald Bay Club, Inc., their successors and assigns, shall have a lien upon the subject lot or lots (second only to the liens for taxes and any duly recorded mortgage) to secure the payment of the aforementioned assessments, dues and expenses, accrued interest, and incurred costs of collection, including court costs and reasonable attorney's fees incurred in connection with collection of these expenses.

26. Invalidation of any of these Covenants by judgment or court order shall in nowise affect any of the other provisions, that shall remain in full force and effect. Further, the violation of any of the restrictions or provisions hereof shall not affect the rights of any subsequent bonafide lien holder with a mortgage on any said lots.

27. There shall be no vapor or flood lights used after 11:00 o'clock P. M.

28. FOR UNITS IX AND X OF EMERALD BAY SUBDIVISION. In addition to the Covenants that apply to all Property, UNITS IX and X shall have the following additional restrictions: No structure for the purpose of storing water craft of any kind or character shall be constructed on or over the water lying adjacent to lots, tracts or parcels of land in these units. All piers constructed out over the water lying adjacent to these lots, tracts or parcels of land in these units shall not extend further than twenty (20) feet from elevation three hundred forty-five (345) out into the water.

29. The undersigned Owners hereby designate the Architectural Control Committee as the body with the authority to enforce the Covenants. Members of the Architectural Control Committee shall be appointed by the President of Association from time to time.

30. Notwithstanding anything stated to the contrary herein, the Owners recognize that certain lots, as of imposition of these Covenants, may not be in compliance with the Covenants established herein. Owners hereby specifically waive the right to enforce the compliance with these Covenants of any lots to the extent they do not comply with these Covenants as of the date of the execution of these Covenants. Specifically, no action shall be taken in connection with any present violation of a covenant.

31. TO THE EXTENT THE COVENANTS IMPOSED BY THIS MODIFICATION ARE INCONSISTENT WITH ANY RESTRICTIONS HERETOFORE IMPOSED UPON ANY OF THE PROPERTY, THE COVENANTS IMPOSED BY THIS MODIFICATION SHALL PREVAIL. ANY RESTRICTIONS PREVIOUSLY IMPOSED ON A PARTICULAR UNIT WITHIN THE PROPERTY ATTEMPTING TO EXEMPT OWNERS OF CERTAIN LOTS IN SUCH UNIT FROM THE OBLIGATION TO PAY FEES OR ASSESSMENTS OTHERWISE PAYABLE TO THE ASSOCIATION AND/OR EMERALD BAY CLUB ARE HEREBY CANCELLED AND SHALL BE OF NO FURTHER FORCE OR EFFECT.

This Modification runs with the Property and is binding on the Property through October 21,2025.

Thereafter, this Modification automatically continues for successive terms of ten (10) years each, unless at least three (3) months before the end of a term, sixty-six percent (66%) of the Owners of the Property, elect in writing not to extend the term.

32. Leasing. "Leasing" for the purpose of this Modification is defined as regular, exclusive occupancy of a Lot by any Person (including a corporation, partnership, trust or other legal entity) other than the Owner for which the Owner or any related party of the Owner receives consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument, regardless of whether or not such occupancy is pursuant to a written lease. Lots and the Dwelling thereon ("Leased Premises") may be leased only in their entirety - no rooms, floors, garages, accessory dwelling unit, pools, other areas within the Lot or any fraction or portion of the Lot may be leased. Any leasing arrangement, agreement or contract must be for a term of at least six (6) months and in writing. Short term house swapping, or leasing, or subleasing arrangements or agreements (anything less than six months) as for example, but not limited to Airbnb, VRBO, Swimply or otherwise are specifically and expressly prohibited. The name of the tenant, contact information of the tenant, and the start and end dates of the lease must be provided to the Association upon the lease's execution. The start and end dates of any renewal agreement must also be provided to the Association.

a) The Board of Directors is hereby authorized to promulgate, enforce and amend, from time to time, rules which govern the leasing of the Lots. Such rules shall cover all aspects of leasing and may include, without limitation, minimum lease terms (but not less than six(6) months), reporting requirements by Owner to the Association with

respect to the leasing of a Lot and the tenants occupying a Lot (“Tenants”), mandatory terms that must appear in a lease agreement, Owner’s obligation to fully inform Tenants of obligations under this Modification and any other governing documents or dedicatory instruments of the Association, and sanctions for violating such rules. The rules promulgated by the Board of Directors shall comply in all respects with Federal, State and local laws or ordinances, and such rules shall serve to supplement this Modification when filed with the Office of the County Clerk.

b) Owner must provide Tenants with copies of the Association’s dedicatory instruments (as that term set forth in Section 202.006 of the Texas Property Code), including all rules, regulations (the “Governing Documents”), as a condition of entering into the lease. Each Owner covenants and agrees that any lease of a Leased Premises shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the Tenants, by occupancy of the Leased Premises, agrees to the applicability of this covenant and incorporation of the following language into the lease:

1. Compliance with the Modification, Bylaws and any Rules and Regulations. The Tenant shall comply with all provisions of the Modification, Bylaws and any Rules and Regulations of the Emerald Bay Homeowners Association and shall control the conduct of Tenants, all occupants and guests of the Leased Premises in order to ensure such compliance. The Owner shall cause all occupants of his or her Leased Premises (the “Occupants”) to comply with the Modification, Bylaws and any Rules and Regulations of the Emerald Bay Homeowners Association, and shall be responsible for all violations by such Tenants and/or Occupants, notwithstanding the fact that such Tenants and/or Occupants of the Leased Premises are fully liable and may be sanctioned for any such violation. If the Tenant or Occupant violates the Modification, Bylaws or any Rule or Regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the Tenant, and such fine may be assessed against the Tenant. If the fine is not paid by the Tenant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the Tenant’s failure to pay the fine.
2. Any violation of the Modification, Bylaws or any Rule or Regulation by the Tenant, any Occupant, or any guest of the Tenant, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease and to evict the Tenant in accordance with Texas law.

c) OWNER RESPONSIBLE; ASSOCIATION NOT LIABLE FOR DAMAGES;

The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against the Owner and/or the Owner’s Tenants. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association’s enforcement of the Association’s Governing Documents against the Owner’s Tenants.

d) Applicability.

1. No Application to a Leaseback. This provision shall not restrict, limit or in any way interfere with any Owner from participating in a leaseback upon the sale of a home in the Association. “Leaseback” means an arrangement where the seller of a home within the Association leases the home back from the purchaser; in a leaseback arrangement, the specifics of the arrangement are made immediately after the sale of the home, with the amount of the payments and the time period specified.
2. No Application to Seller’s Temporary Residential Lease. The provisions do not apply in instances where an Owner sells his or her Lot and delivers the Lot to the buyer according to a temporary residential lease form promulgated by the Texas Real Estate Commission.
3. No application to Association Leases. This provision shall not apply to any leasing transactions entered into by the Association.

ADOPTED: October 21, 2010.

AMENDED (24, 25 and 32 Official Public Records of Smith County File # 202301014517) May 18, 2023.