



- (c) "Facilities" shall mean a right-of-way for vehicular and pedestrian traffic, future public alleyway, boardwalk, sidewalk, public utility, including without limitation water, waste water, electric, and gas, lift station and lift station facilities constructed at or near the natural ground elevation, (except electrical or other such improvements which are required to be constructed above the base flood elevation), and Network lines and pipes, together with all conduits, equipment, improvements, and other appurtenances used in connection with such lines and pipes as Grantee deems necessary.
  - (d) "Grantee" and "Grantor," respectively, shall include such Party's successors and assigns.
  - (e) "Network" shall mean Grantee owned data and communication network used for Grantee's utility and governmental purposes, including without limitation supervisory control and data acquisition (SCADA), utility operations, email, emergency response or planning, law enforcement and security, fire response protection, and recreational property operation and oversight.
  - (f) "Obstruct" shall mean to interfere or obstruct in a manner that would hinder Grantee's access to or maintenance or use of the Easement for the Purpose of Easement, including without limitation: constructing any building, structure, or other obstruction on the Easement Property; altering topography, installing fences, structures, rockeries, walls or other like improvements on the Easement Property; planting of difficult to restore landscaping; and piling or storage of dirt, trash, garbage, debris or other materials on the Easement Property; or hindering or failing to allow Grantee reasonable access to the Easement Property through Grantee's land contiguous to the Easement Property.
  - (g) "Permitted Improvements" shall mean landscaping, vegetation, driveways, sidewalks, and any building or structure that (i) complies with any applicable ordinances, development codes, and engineering guidelines of The City of Port Lavaca, Texas, and (ii) prior to commencement of installation or construction has been specifically approved in writing by the City Council or the City Council's designee and such approval makes specific reference to this Agreement or the Easement.
2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "benefited property." Nevertheless, the Easement herein granted shall pass to Grantee's successors and assigns, subject to all of the terms hereof. The Easement rights of use granted herein is irrevocable. Nothing herein removes Grantor's rights of use and ownership in the Easement Property, subject to the terms of this Easement.
3. *Purpose of Easement.* The purpose of the Easement shall be to construct the Facilities and provide for vehicular and pedestrian traffic and for the Grantee to erect, construct, reconstruct, install, replace, repair, operate, use, inspect, modify, remove, and maintain the Facilities over, along, across, under, into, and through the Easement Property. The Easement shall also be used for the purpose of providing access for the construction, reconstruction, inspection, modification, removal, use, operation, repair, maintenance, replacement and expansion of the Facilities.

4. *Term.* The Easement upon and across the Permanent Easement Property shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Reservation of Rights.* Grantor retains the title to the Easement Property, subject to the rights granted to Grantee in this Agreement. Except as otherwise provided in this Agreement, Grantor retains the right to use the Easement Property for all lawful purposes provided such use does not Obstruct the Easement.
6. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7, immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Grantor. Grantee has the right to eliminate any encroachments into the Easement Property. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this Agreement. Grantee has the right to remove or relocate any vehicles, products, fences, buildings, Permitted Improvements, or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities.
7. *Maintenance.* Notwithstanding any contrary provision, Grantor shall retain, as reasonably necessary not to Obstruct the Easement, the obligation to regularly mow or cut back vegetation and to keep the Easement Property free of litter, debris, and trash.
8. *Indemnification.* To the extent allowed by Texas law, but not otherwise, each Party shall indemnify, defend, and hold harmless the other for all claims, losses, demands, suits, proceedings, expenses, damage, or liability, including reasonable attorney's fees, to which the other is in any way subject, resulting from and to the extent of the negligence, gross negligence, or willful misconduct of such Party or the direct or indirect employees, agents, contractors, or permittees under such Party's direct or indirect control, authority, or permission.
9. *Equitable Rights of Enforcement.* This Agreement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
10. *Attorney's Fees.* If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

11. *Binding Effect.* This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.
12. *Choice of Law.* This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in a state district court in Calhoun County, Texas.
13. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
14. *Waiver of Default.* A Party's failure, delay, or neglect to enforce any right under this Agreement shall not be deemed a consent or a waiver of any other of that Party's rights. It is not a waiver of or consent to default if the non-defaulting Party fails to declare immediately default or delays in taking any action. Pursuit of any remedy does not preclude pursuit of any other remedy in this Agreement or as provided by law.
15. *Further Assurances.* Each Party agrees to execute and deliver any additional documents, certificates, and instruments and to perform any additional acts necessary or appropriate to perform or evidence the terms, provisions, performance, transactions, and conditions of or contemplated by this Agreement. Approvals, consents, certificates, or permissions required or permitted in this Agreement shall (a) not be unreasonably withheld, denied, conditioned, or delayed, (b) be limited to the particular instance, and (c) shall not be considered a course of dealings.
16. *Integration.* This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. The Parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement. No subsequent oral agreement, representation, or warranty concerning this instrument shall have force or effect. Any subsequent modification must be in writing and signed by both Parties.
17. *Legal Construction.* If any provision in this Agreement is for any reason unenforceable, (a) this Agreement shall be construed as if such provision had never been a part of this Agreement, and (b) the remainder of this Agreement will valid and enforceable, if and to the extent such construction does not deprive either Party of the substantial benefit of its bargain. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.
18. *Notices.*
  - (a) Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified

mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

(b) The Grantor's address for notice is:

Port Lavaca Development Company, LLC  
1904 Lighthouse Beach Road  
Port Lavaca, Texas 77979

(c) The Grantee's address for notice is:

The City of Port Lavaca, Texas  
202 N. Virginia  
Port Lavaca, Texas 77979

- 19. *Recitals/Exhibits.* Any recitals in this Agreement are represented by the Parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
- 20. *Assignability.* Grantee shall not assign the Easement to any natural person or non-governmental entity without first obtaining Grantor's written consent. Any assignee shall expressly assume the assignor's obligations under this Agreement.

IN WITNESS WHEREOF, this instrument is executed and effective this \_\_\_\_\_ day of , 2020.

Port Lavaca Development Company, LLC

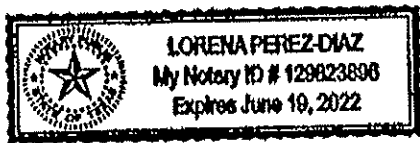
  
Steven Russell Thorne, President

THE STATE OF TEXAS

§  
§  
§

COUNTY OF CALHOUN

This instrument was acknowledged before me on this the 24<sup>th</sup> day of April, 2020 by Steven Russell Thorne and Jodi Dee Thorne.



  
Notary Public Signature



FIELDNOTE DESCRIPTION  
OF AN ACCESS EASEMENT IN TWO TRACTS

STATE OF TEXAS  
COUNTY OF CALHOUN

TRACT A: BEING a 0.108 acre tract of land situated in the Maximo Sanchez League, A-35 Calhoun County, Texas; same being a portion of Lots 1 through 6, Block 2 of the Cottage Cove Subdivision, as recorded in Volume Z, Page 816 of the Calhoun County Deed Records, Slide No. 543B. This 0.108 acre tract is more particularly described by metes and bounds as follows:

POINT OF BEGINNING being the north corner of Lot 6, Block 2 of the above mentioned Cottage Cove Subdivision;

THENCE S.  $39^{\circ}21'48''$  E., along the northeast boundary-line of the said Cottage Cove Subdivision, a distance of 315.0 feet to a point in the east corner of Lot 1, Block 2 of the said Cottage Cove Subdivision;

THENCE S.  $50^{\circ}38'12''$  W., a distance of 30.0 feet to a point in the southeast boundary-line of said Lot 1, Block 2;

THENCE N.  $33^{\circ}55'23''$  W., a distance of 316.48 feet to the POINT OF BEGINNING; CONTAINING WITHIN these metes and bounds 0.108 acre situated in the Maximo Sanchez League, A-35, Calhoun County, Texas.

TRACT B: BEING a 0.107 acre tract of land situated in the Maximo Sanchez League, A-35 Calhoun County, Texas; same being a portion of Lots 1 through 3, Block 1 of the Cottage Cove Subdivision, as recorded in Volume Z, Page 816 of the Calhoun County Deed Records, Slide No. 543B. This 0.107 acre tract is more particularly described by metes and bounds as follows:

POINT OF BEGINNING being the north corner of Lot 3, Block 1 of the above mentioned Cottage Cove Subdivision;

THENCE S.  $39^{\circ}21'48''$  E., along the northeast boundary-line of the said Cottage Cove Subdivision, for a distance of 156.0 feet to a point in the east corner of Lot 1, Block 1 of the said Cottage Cove Subdivision;

THENCE S.  $50^{\circ}38'12''$  W., a distance of 30.0 feet to a point in the southeast boundary-line of said Lot 1, Block 1;

THENCE N.  $39^{\circ}21'48''$  W., a distance of 156.0 feet to a point in the northwest boundary-line of Lot 3, Block 1 of the said Cottage Cove Subdivision;

THENCE N.  $50^{\circ}38'12''$  E., a distance of 30.0 feet to the POINT OF BEGINNING; CONTAINING WITHIN these metes and bounds 0.107 acre situated in the Maximo Sanchez League, A-35, Calhoun County, Texas.







**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS 2020-01310

EM Fee: \$54.00

04/28/2020 09:42 AM cblevins



*Anna M. Goodman*

Anna Goodman, County Clerk  
Calhoun County, Texas