

AMENDMENT  
to  
SECOND AMENDMENT AND RESTATEMENT OF RESTRICTIVE COVENANTS

---

THE STATE OF TEXAS       §  
  §  
COUNTY OF BURNET       §

WHEREAS, the "Second Amendment and Restatement of Restrictive Covenants" ("**Restrictions**") was recorded in Volume 754, Page 501, *et seq.* of the Official Public Records of Real Property of Burnet County, Texas on July 24, 1997, which Restrictions impose various covenants, conditions, restrictions easements, liens and charges upon the Subdivision; and

WHEREAS, the Restrictions were previously amended by instrument entitled "Third Amendment of Restrictive Covenants" recorded in Volume 1038, Page 163, *et seq.* of the Official Public Records of Real Property of Burnet County, Texas; and

WHEREAS, Paragraph 17, of the Restrictions, entitled "General Provisions" provides the Restrictions may be amended by a vote of two-thirds (2/3rds) of the Owners in the Subdivision who are not then delinquent in the payment of any assessments or other charges payable to Windermere Oaks Property Owners' Association (the "**Association**") in person, by proxy or mail in ballot at a meeting duly called for that purpose; and

WHEREAS, Section 209.0041(h) of the Texas Property Code provides that a declaration may be amended only by a vote of sixty-seven percent (67%) of the total votes allocated to property owners entitled to vote on the amendment of the declaration, unless the declaration contains a lower percentage, in which event the percentage in the declaration controls; and

WHEREAS, the Restrictions provide for amendment by the approval of a lower percentage of owners than the percentage set forth in Section 209.0041 of the Texas Property Code; therefore, Section 209.0041 controls with respect to the percentage of votes necessary to effect an amendment to the Restrictions; and

WHEREAS, two-thirds (2/3rds) of the Owners in the Subdivision subject to the Restrictions, as evidenced by the ballots attached hereto and incorporated herein by reference, desire to amend the Restrictions.

NOW, THEREFORE, the following provisions of the Restrictions are amended as set forth below:

**Paragraph 18, of the Restrictions, entitled "Leasing", is added to read as follows:**

**18. LEASING.** It is permitted for Owners to lease (as defined below) a residence in the Subdivision, so long as:

- (1) Occupants are leasing the entire lot (including all land and improvements comprising the lot and residence) for use as a residence;
- (2) The term of the lease is greater than thirty (30) days;
- (3) The lease is to occupants who comprise a single family;
- (4) The Owner and the occupants have the intent that only the occupants remain on the lot and residence during the term of the lease;
- (5) The lot, residences or any portion thereof is not subleased or part of a member entity agreement;
- (6) The lot and residence is not made subject to any type of timesharing agreement, fraction-sharing or similar program where the right to the use of the lot rotates among members of the legal entity or program on a fixed or floating time schedule over a period of time;
- (7) The lease is in writing; and
- (8) The lease complies with any dedicatory instrument recorded by the Association, including any leasing policy, rule, or regulation promulgated by the Board of Directors of the Association.

The term “**leasing**” as used herein means the occupancy of a residence by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Uses such as short-term leases and house exchanges [less than thirty (30) days], subleases, temporary or transient housing, hotel, motel, vacation rental, AirBnB, VRBO, Misterbandb, Expedia, bed and breakfast or any other similar entity will each be considered a “**business use**” and are expressly prohibited. Leasing pursuant to this Paragraph 18 will not be considered a “**business use**”. The provisions regarding leasing contained herein will not preclude: (A) the Association or an institutional lender from leasing a residence upon taking title following foreclosure of its security interest in the lot and residence or upon acceptance of a deed in lieu of foreclosure, (B) the seller or transferor of a lot and residence from leasing back the residence on such lot for a period of time up to thirty (30) days after the closing of the sale or transfer of such lot and residence, or (C) the leasing of a lot and residence on a month-to-month basis after the expiration of a lease in compliance with this Paragraph to the occupant who executed the original lease. Leases will not relieve the Owner from compliance with the Restrictions or the dedicatory instruments of the Association.

(A) Rules and Regulations. The Board of Directors of the Association may promulgate policies or rules and regulations further governing the leasing of lots (including all land and improvements comprising the lot and/or residence). All leases must be in writing and will contain such terms as the Board of Directors of the Association may prescribe from time to time. The Board of Directors of the Association and the Association will not be responsible for any loss, damage, or injury to any person or property arising out of authorized or unauthorized leasing.

(B) Governing Law. It is not the intent of this provision to exclude from a lot any individual who is authorized to so remain by State or federal law. If it is found that this provision is in violation of any applicable law, then this provision will be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by applicable law.

(C) Violations. In addition to any other remedies available at law or otherwise, any violation of this Paragraph by an Owner or occupant will subject the Owner to fines, as determined and established by the Board of Directors of the Association, and in accordance with any State or federal law. Such fines will be the personal obligation of the Owner and a lien against the respective lot to be enforced in the same manner as assessments pursuant to Paragraph 13 hereof.

For all Lot Owners who have active or scheduled rentals for less than thirty (30) days on AirBnB, VRBO, Misterbandb, Expedia or any other similar entity as of the recording date of the Amendment in the Burnet County Real Property Records, the effective date of the Amendment will be twelve (12) months after the recording date of the Amendment. For all other Lot Owners, the effective date will be the date the Amendment is recorded in the Burnet County Real Property Records.

Except as amended herein, all provisions in the Restrictions, as amended, remain in full force and effect.

In the event of a conflict between this amendment and the Section One Restrictions, the Section Two Restrictions or the Hill Restrictions, this amendment shall control.

Capitalized terms used herein have the same meanings as that ascribed to them in the Restrictions, unless otherwise indicated.

IN WITNESS WHEREOF, the President of Windermere Oaks Property Owners' Association hereby executes this instrument evidencing the Association's approval of this Amendment and the ballots attached hereto as **Exhibit A**, which are fully incorporated herein by reference, represent the approval of two-thirds (2/3rds) of the Owners in the Subdivision subject to the Restrictions at a meeting dully called for this purpose.

**ATTESTATION:**

**WINDERMERE OAKS PROPERTY OWNERS' ASSOCIATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: Secretary

Its: President

THE STATE OF TEXAS     §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared \_\_\_\_\_, as President of Windermere Oaks Property Owners' Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purpose and in the capacity therein expressed.

\_\_\_\_\_  
Notary Public in and for the State of Texas