



VG-286-2022-39871

Grayson County
Deana Patterson
County Clerk
Sherman, TX 75090

Instrument Number: 2022 - 39871

Real Property Recordings

Recorded On: December 19, 2022 11:35 AM

Number of Pages: 7

Parties: FOUNTAIN CREEK ESTATES HOMEOWNERS ASSOCIATION INC

" Examined and Charged as Follows: "

Total Recording: \$36.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described Document because of color or race is invalid and unenforceable under federal law.

File Information:

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JASON M BAILEY ESQ
4301 WESTBANK DRIVE #A-150
AUSTIN TX 78746



STATE OF TEXAS
COUNTY OF GRAYSON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Deana Patterson
County Clerk
Grayson County, TX

AFTER RECORDING RETURN TO:

Jason M. Bailey, Esq.
Cagle Pugh
4301 Westbank Drive, Suite A-150
Austin, Texas 78746

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS FOR FOUNTAIN CREEK ESTATES PHASE 1
A Subdivision to the City of Pottsboro, Grayson County, Texas**

Cross reference to that certain Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas, recorded as Document No. 2002-15523 in the Official Public Records of Grayson County, Texas; as amended by that certain First Amendment to Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas, recorded as Document No. 2011-19578 in the Official Public Records of Grayson County, Texas; as amended by that certain Second Amendment to Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas, recorded as Document No. 2012-10788 in the Official Public Records of Grayson County, Texas.

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS, AND RESTRICTIONS FOR FOUNTAIN CREEK ESTATES PHASE 1,
A Subdivision to the City of Pottsboro, Grayson County, Texas**

RECITALS:

- A. WHEREAS, that certain *Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas*, recorded as Document No. 2002-15523 in the Official Public Records of Grayson County, Texas and amended and supplemented from time to time (collectively the “**Declaration**”)
- B. WHEREAS, the Declaration establishes the Fountain Creek Estates Homeowners’ Association, Inc. (the “**Association**”) as a property owners’ association and makes the owners of any Lot within the Property mandatory members of such property owners’ association.
- C. WHEREAS, Article XII, Section 12.3(a) of the Declaration provides “At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association;”
- D. WHEREAS, Members of the Association desire to amend the terms and provisions of the Declaration.
- E. WHEREAS, as evidenced by the attached certification by the Secretary of the Association, members of the Association representing least two-thirds (2/3) of the total votes in the Association entitled to vote on this Third Amendment to Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas, at a meeting of the Association’s membership conducted on the ____ day of _____, 2022.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article VII, Section 7.01, Use Restrictions, is hereby deleted in its entirety and replaced with the following:

7.01 Use Restrictions. Except as otherwise provided to the contrary in Section 6.12 above, and Section 7.22 below, each Lot and Dwelling shall be used for single -family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such does not create regular customer, client or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant provided that it is done in compliance with Section 7.22.

2. Leasing of Lots. Article VII, Section 7.22 is hereby added to the Declaration and provides as follows:

7.22 Leasing of Lots. An Owner may not lease any portion of their Lot until that Owner has occupied that Lot for a minimum of two (2) years, after which an entire Lot (but not less than an entire Lot) may be leased. A Lot may not be leased for hotel or transient purposes. The lease of a Lot to a tenant must be for an initial term of no less than one (1) year. There may be no concurrent or overlapping leases on a Lot, e.g., once a lease is executed for an initial period, no additional lease may be executed for or during that term on that Lot. Subleasing is strictly prohibited. A Lot may not be leased more than one time per year. The purpose of these provisions is to prohibit short term rentals and to prevent the Subdivision from becoming a rental community thereby preserving and protecting the overall character of the Subdivision. Any lease that attempts to circumvent this prohibition by offering early cancellation, early termination without penalty, or any other scheme attempting to evade this prohibition shall be deemed a violation of this restriction.

(a) Lease Cap - Limit on Number of Leased Premises. Not more than two percent (2%) of the total number of Lots may be leased at any given time (the "Lease Cap"), subject to any exceptions contained within this Section.

(b) Leasing Permit. Prior to leasing, Owners must apply to the Association and obtain a leasing permit. Leasing permits are nontransferable and shall expire immediately if the Lot is sold. An Owner may only be issued one (1) permit in any twelve (12) month period.

1. Leasing Permit Fee. Each Leasing permit shall be subject to a monthly fee of four hundred dollars (\$400) payable monthly by the Owner to the Association. This leasing permit fee will automatically increase by ten percent (10%) each year for any multiyear tenant.
2. A permit will be granted if the Owner is in good standing, meaning that there are no outstanding violations of the Declaration, Bylaws or Rules, and no delinquent amounts are owed to the Association, and there is no permit waiting list.
3. If more than two percent (2%) of the Lots are leased, no additional lease permits shall be issued, unless the Owner is granted an exception as provided below. The Association shall maintain a waiting list of Owners who have requested a permit but have been denied due to the Lease Cap and such permits shall be offered to those owners when a permit becomes available in the order the original application was received.

(c) Notice to the Board. All leases shall be in writing. Oral leases are strictly prohibited.

1. A copy all leases shall be provided to the Board within ten (10) days after execution and shall contain the following:
 - a) Name, address, and ages of the Lessee and all occupants.
 - b) State the initial term of not less than one (1) year.
 - c) An acknowledgment by the parties that copies of the Declaration, Bylaws and any Rules and Regulations have been provided to the Lessee.
2. Owners must notify the Association of any termination or any extension of any Lease.

(d) Exceptions.

1. Hardship Leasing Permit. If the Lease Cap has been met or exceeded and due to such inability to lease, a hardship upon an Owner will result, the Owner may seek a Hardship Leasing Permit by applying to the Board of Directors. The Board of Directors shall have the authority to issue or deny requests for a Hardship Leasing Permit in its absolute and sole discretion. A "hardship" as described herein shall include, but not be limited to the following situations: (A) an Owner must relocate his or her residence outside of the county and cannot, within six (6) months from the date that the Lot was placed for sale, sell the Lot except at a price below the current appraised market value and after having made reasonable efforts to do so; (B) where an Owner dies and the Lot is being administered by his or her estate; and (C) an Owner takes a leave of absence or temporarily relocates but intends to return to and reside in the Lot. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year and shall automatically terminate one (1) year after the date issued. Owners may apply for additional Hardship Leasing Permits. Granting of the Hardship Leasing Permits shall not be deemed a waiver of the right of the Association to enforce these leasing provisions.
2. Leasebacks. 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 Subdivision. "Leaseback" means an arrangement where the seller of a home within the Subdivision 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.
3. Association Leases. This provision shall not apply to any leasing transactions entered into by the Association.

- (e) Enforcement. The restrictions adopted and established for the Property by this restriction is imposed upon and made applicable to the subject Property and shall run with the Property and shall (i) be binding upon and inure to the benefit of and be enforceable by any owner, and each purchases and grantee of the subject Property or any portion thereof, and the respective heirs, legal representatives, successors and assigns of any owner and (ii) inure to the benefit of and be enforceable by any owner

of the property in this subdivision, and their respective heirs, legal representatives, successors and assigns of any such owner.

(f) **Strict Compliance.** Each owner of the Property, or any portion thereof, shall strictly comply with the purpose of this restriction. Failure to strictly comply with this restriction shall be grounds for an action to recover sums due for damages, injunctive relief, or both, including reasonable and necessary attorney fees, maintainable by any owner and the respective heirs, legal representatives, successors and assigns of each owner.

(g) **Fines.** The association may levy fines for violations of this Section that shall be enforceable and collectable in the same manner as provided for assessments. A fine of Five Thousand Dollars (\$5,000.00) shall be assessed for each violation of this Section. Each day of noncompliance shall constitute a new violation.

3. **Effective Date.** This amendment shall be effective upon its recording in the Official Public Records of Grayson County, Texas.

4. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration and any amendment or supplement thereto. Unless expressly amended by this instrument, all other terms and provisions of the Declaration and any amendment or supplement thereto remain in full force and effect as written and are hereby ratified and confirmed.

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SECRETARY'S CERTIFICATE

The undersigned Secretary of the Fountain Creek Estates Homeowners' Association, Inc. (the "Association") hereby certifies that this Third Amendment to Declaration of Covenants, Conditions, Easements, and Restrictions for Fountain Creek Estates Phase 1, a Subdivision to the City of Pottsboro, Grayson County, Texas, was approved by members of the Association representing least two-thirds (2/3) of the total votes in the Association entitled to vote, at a meeting of the Association's Members conducted on the 15 day of December, 2022.

**Fountain Creek Estates Homeowners'
Association, Inc.**

Sandra Duncan
Secretary Sandra Duncan

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

THIS INSTRUMENT was acknowledged before me this 19th day of December, 2022 by Sandra Duncan Secretary of Fountain Creek Estates Homeowners' Association, Inc.

Audra L. Burnett
Notary Public of Texas

