

REGULATIONS REGARDING LEASING
(Including Short-term leasing and amenities leasing)
for
LAKE WINDCREST PROPERTY OWNERS' ASSOCIATION, INC.

STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

WHEREAS Lake Windcrest Property Owners' Association, Inc. (the "Association") a Texas nonprofit corporation, is the governing entity for Lake Windcrest, Sections 1, 2, 3, 4 and 5, additions in Montgomery County, Texas, according to the maps or plats thereof, recorded in the Map Records of Montgomery County, Texas, under Clerk's File Nos. 9703380, 9775014, 9783120, 9829736, and 99041369, respectively, along with any replats, supplements, and amendments thereto (hereinafter the "Subdivision"); and,

WHEREAS, each section of the Subdivision is subject to a Declaration of Covenants, Conditions and Restrictions, recorded in the Real Property Records of Montgomery County, Texas, under Clerk's File Nos. 9704956, 9777917, 9810931, 9829883, and 99042813, along with all amendments, and supplements thereto (collectively, the "Declaration"); and

WHEREAS, Section 3.10 of the Declaration restricts the use of the Subdivision to single-family residential purposes, and provides that no noxious or offensive activity of any sort shall be permitted, nor shall anything be done which may be or become an annoyance or nuisance to the Subdivision; and

WHEREAS, Section 8.10 of the Declaration authorizes the Association to adopt and enforce Rules and Regulations, fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of the Declaration; and

WHEREAS, Texas Property Code § 204.010(a)(6) authorizes the Association, through its Board of Directors, to regulate the use of the Subdivision; and

WHEREAS, the Declaration does not otherwise provide owners of Lots in the Subdivision with leasing rights that prohibit the Board of Directors from exercising its statutory authority to regulate the use of the Subdivision under § 204.010(a)(6) with respect to leasing activities; and

WHEREAS, based on a review of activity in the Subdivision and surrounding neighborhoods, the Board of Directors has determined that short term leases and leases for less than the entire Lot are uses of the Subdivision that, both by their intrinsic nature and practice in the Subdivision, constitute an annoyance or nuisance to the Subdivision; and

WHEREAS, the Board of Directors has further determined that the leasing and renting of swimming pools and other amenities separate from the entire Lot is a business or commercial use in violation of Section 3.01 of the Declaration and violates the single-family residential use restriction of Section 3.10 of the Declaration, and constitutes a nuisance and annoyance; and

WHEREAS, the Association deems short-term leases as defined herein and leasing less than the entire Lot at a time, to be inconsistent with single family residential purposes, deems such uses as activities which diminish the residential character of the Subdivision, considers the mere existence of such uses and the effect of such uses a nuisance or annoyance to the Subdivision, and deems it necessary to advise owners and potential purchasers that such practices are prohibited within the Subdivision; and

WHEREAS, the Association further deems it necessary to adopt regulations governing certain aspects of using the Subdivision for leasing purposes, and to be able to contact tenants and offsite owners in order to provide necessary services, obtain access, enforce the Declaration and otherwise meet its duties and obligations of governance under the Declaration; and

WHEREAS, this Dedicatory Instrument consists of Restrictive Covenants as defined by Texas Property Code § 202.001, et. seq., and the Association shall have and may exercise discretionary authority with respect to these Restrictive Covenants;

NOW THEREFORE, pursuant to the foregoing, and as evidenced by the Certification hereto, the Association, through its Board of Directors, hereby adopts, establishes and imposes on the Subdivision, the following "Regulations":

- 1) **"Transient or Hotel Purpose" means leasing, renting, letting, licensing, or otherwise conveying an interest in a "Lot", as that term is defined by the Declaration, or any portion thereof, within the Subdivision to any person:**
 - a. **in a manner or through any service that Chapter 351 or Chapter 352 of the Texas Tax Code applies to (or their successor statutes), or for which any hotel or similar tax is paid to any political subdivision; or**
 - b. **who, during the life of the lease, does not (i) receive or intend to receive their regular mail from the United States Postal Service at that Lot; (ii) pay for or intend to pay for all or part of the utilities for that Lot in their name; (iii) own the furniture, or a significant portion thereof, on that Lot; or (iv) list or intend to list the street address for that Lot on their Form 1040, US Individual Income Tax Return, or other Internal Revenue Service forms for the applicable year.**

The foregoing list shall be interpreted as non-exhaustive. Additional factors establishing a Transient or Hotel Purpose or Residential Purpose may be considered by the Board of Directors in enforcing this provision.

A Transient or Hotel Purpose shall be found to exist in any instance in which Subsection 1.a. applies. If Subsection 1.a. does not apply, but one or more of the factors in Subsection 1.b. do apply, or if there are any other factors that cause the Board of Directors to believe that a Transient or Hotel purpose exists or may exist do apply, then the Board of Directors shall determine on a case-by-case basis, and in their sole and absolute discretion, whether such a Transient or Hotel Purpose exists.

- 2) **"Short Term Lease" means leasing a Lot within the Subdivision for a Transient or Hotel Purpose. Short Term Leases are prohibited in the Subdivision.**
- 3) **The foregoing prohibition on Short Term Leases is contemplated to exclude instances wherein an Owner conveys their entire fee simple interest in a Lot to a new Owner, and the new Owner permits the former Owner to continue to reside on the Lot under a lease for a limited specified period of time after the date on which the conveyance of said fee simple interest takes place, provided that the circumstances of such a lease are actually incident to a *bona-fide* conveyance of a Lot, and the contracts related thereto. The specific circumstances of such an arrangement shall be considered by the Association and the Board of Directors, in its sole and absolute discretion, to determine whether or not it constitutes a violation of these Regulations.**
- 4) **No Lot shall be leased unless the lease is for the entire Lot.** Leasing individual rooms or areas in the same Lot to one or several different tenants is prohibited, and the Association further considers such uses as violating the "single family residential purposes" restriction.

Notice: Pursuant to Title VIII of the Civil Rights Act of 1968, as amended, upon written request an Owner may be entitled to a reasonable accommodation to this provision if such accommodation may be necessary to afford an Owner or resident of a Lot equal opportunity to use and enjoy the Lot and Dwelling because of a disability/disabilities.

- 5) **No Lot shall be advertised on Airbnb.com, VRBO, or any similar site or advertisement source for a Short Term Lease.**
- 6) No Lot shall be leased or used for any commercial or business purpose, or any event, media activity or other similar purpose. Uses of a Lot that generate excessive traffic, offensive noise, illegal activity, and other nuisance or annoyance activity is strictly prohibited.
- 7) **Any Owner who leases their Lot for any period of time must provide the following information to the Association, at least 7 days in advance of the effective date of the lease:**
 - a) The Lot Owner's offsite mailing address, and contact information including phone number and email address.
 - b) The names and contact information, including phone number and email address of the tenants who will reside at the Lot being leased.
 - c) The number of residents, including all adults, children and dependents, who are authorized to reside in the Lot under the terms of the lease.
- 8) **For any Owner who leases their Lot the lease must be in writing and must specify the following:**
 - a) The tenant agrees to use the Lot solely for the purpose as a single family residence.
 - b) The Lot may be occupied only by members of the tenant's immediate family and others whose names are specified in the lease agreement.
 - c) Neither the tenant, nor the Owner, may sublet or assign the leased Lot or any portion of the leased Lot.
 - d) Tenant specifically agrees to comply with the Declaration, Bylaws, Rules, Regulations, and all other Governing Documents of the Association.
- 9) **Any Owner who leases their Lot must provide a copy of the Declaration, Bylaws, Rules, Regulations, and all other Governing Documents to their tenant.**
- 10) **Any Owner who leases their Lot must provide a copy of the lease agreement to the Association.** A consumer or credit report, or a lease/rental application submitted by the applicant, tenant, or their agent to the Owner or the Owner's agent, do not have to be provided. The copy of the lease must be submitted to the Association within 7 days of the effective date of the lease, and within 7 days of the effective date of any renewal or extension of the lease.
- 11) **All tenant communication to the Association shall be directed solely through the landlord/Owner of the Lot.** A written assignment of such communication rights to the tenant, may be provided to the Association by the record Owner or the Owner's personal representative.
- 12) Owners are responsible for ensuring that their family, tenants, guests, and invitees comply with the Declaration, the Rules, Regulations and all other Governing Documents of the Association, including but not limited to the Association **Lake Rules and Regulations**, and the **Enforcement and Fine Policy**, recorded in the Montgomery County Real Property Records, under Clerk's File Nos. 2022109158 and 2022109160, respectively. The failure of a family member, tenant, guest, or invitee to comply will result in enforcement action against the Owner of the Lot associated with the family member, tenant, guest, or invitee.
- 13) Violation notices may be sent to both the Owner of the Lot as well as the tenant in order to obtain compliance.

- 14) **No Owner shall lease the individual amenities of their Lot separate from the entire Lot, including swimming pools and other amenities.** Leasing swimming pools or other amenities on a Lot without leasing the entire Lot is prohibited and the Association further considers such uses as violating the “single family residential purposes” restriction.
- 15) No Owner may allow access to, or use of, their swimming pool or other amenities for commercial or business purposes at any time.
- 16) **No Lot’s swimming pool or other amenities (both outdoor and indoor) shall be advertised on Swimply.com or a similar site or advertisement source for pool or amenity rentals.**
- 17) In accordance with the Association **Lake Rules and Regulations**, access to Association lakes for any purpose is strictly limited to Owners and guests who are accompanied by an Owner. Owners are strictly prohibited from lending or otherwise providing their gate access card to any person. Tenants under a lease permitted by these Regulations may apply for access in accordance with the Lake Rules.
- 18) Nothing in this policy shall be construed as prohibiting Owners from inviting social guests to use their swimming pools or other amenities, provided that such uses are not commercial or business-related in nature, no money or fee is paid for the use, and such activity does not otherwise constitute a nuisance.
- 19) These Regulations shall be carried out and applied by the Board of Directors in their sole discretion, in light of the circumstances and considerations related to an alleged violation, leasing in the Subdivision generally, and any and all such other considerations or circumstances that the Board of Directors deems relevant.
- 20) Violation of these Regulations shall also constitute a violation of Sections 3.01 and 3.10 of the Declaration as applicable. Pursuant to Section 8.11(vi) of the Declaration, the Board of Directors hereby adopts the following fines for violation of these Regulations:
 - a. For each instance of a violation, a fine shall be levied against the violating Lot and Lot Owner in the amount of \$1,000.00.
 - b. Each day on which a violation exists shall constitute an instance of a violation.
 - c. Fines shall continue to accumulate on each consecutive day the violation continues, regardless of whether the same or a different tenant occupies or uses the Lot or amenity on the consecutive days.
 - d. In order to levy the fines established herein, notice and opportunity to be heard, pursuant to § 209.006 of the Texas Property Code (or its successor statute) must be mailed to the address of record for the Owner as reflected in the Association records, ***however, leasing a Lot within the Subdivision for a Transient or Hotel Purpose (a Short-Term lease), leasing less than the entire lot, leasing an amenity on the Lot or advertising such leases in violation of these Regulations shall each constitute an “uncurable violation” as described by Texas Property Code §209.006, and such violations shall immediately incur the fine(s);*** no additional notice shall be required to continue levying fines in accordance with these Regulations if the Owner has previously been given notice under § 209.006 in the preceding six (6) months prior to levy.
 - e. A majority of the Board of Directors hereby votes to approve and hereby agrees that the managing agent shall have, and be delegated, the non-exclusive authority to initiate and continue to impose the aforementioned fines against all Owners, on behalf of the Board, in

the regular course of its deed restriction enforcement efforts, in accordance with these Regulations.

f. The fines provided for herein relating to the subject matter of these Regulations supersede any general fines for violation of the Declaration and other rules and regulations, as provided in the **Enforcement and Fine Policy**.

21) In accordance with Section 8.11 of the Declaration, the Association shall have the right to undertake any action authorized by the Declaration and/or applicable law, including, but not limited to initiating legal action, the cost of which, including actual attorney's fees and other reasonable costs incurred in enforcement and/or in connection with such violation, shall be levied against the Owner's assessment account as provided by Section 8.11(v) of the Declaration.

22) Pursuant to Section 6.03 of the Declaration all charges, fines, levies, costs of enforcement, including attorney's fees and other costs are secured by the assessment lien on the violating Owner's Lot.

CERTIFICATION

"I, the undersigned, being a Director of Lake Windcrest Property Owners' Association, Inc., hereby certify that the foregoing instrument, titled: Regulations Regarding Leasing, was approved by at least a majority of the Association Board of Directors, at an open Board of Directors meeting, properly noticed to the members and at which a quorum of the Board of Directors was present."

By: *Suzanne Callison*

Print Name: Suzanne Callison

Title: SECRETARY

ACKNOWLEDGEMENT

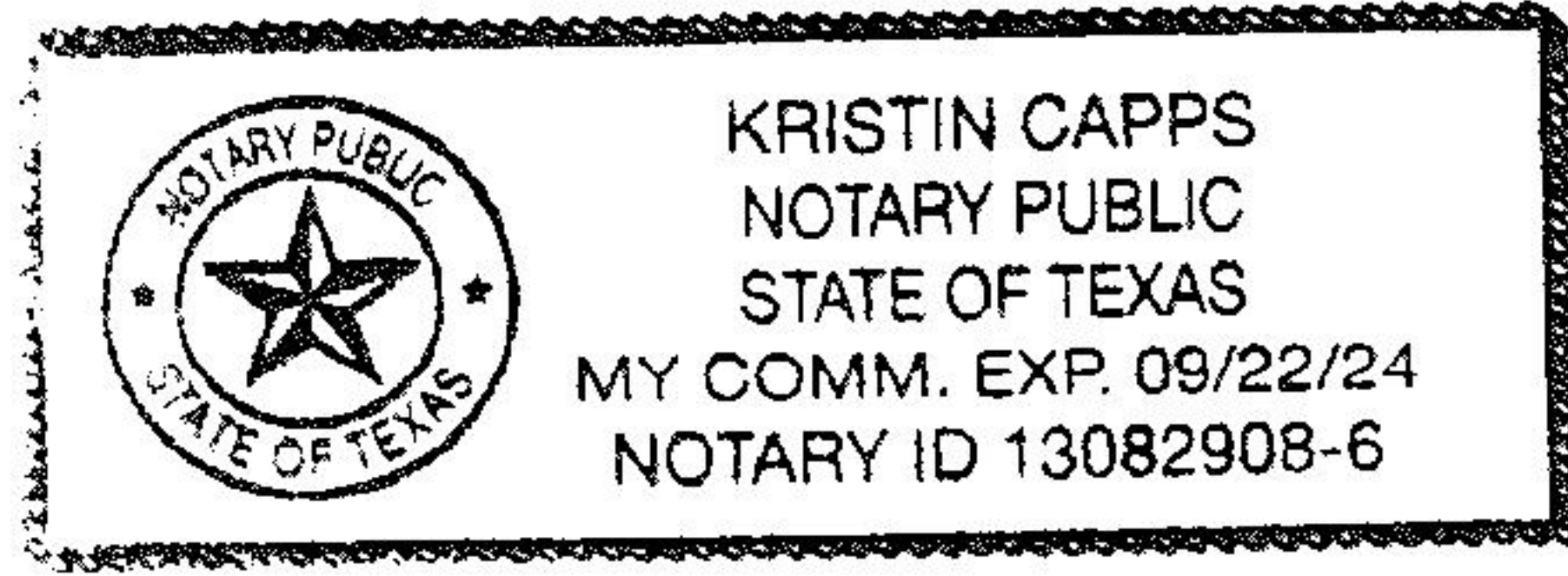
STATE OF TEXAS §
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BEFORE ME, the undersigned authority, on this day, personally appeared the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same as the act of the Association for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 10 day of April, 2023.

Kristin Capps
Notary Public, State of Texas

Prepared and E-recorded by:
HOLTTOLLETT, P.C.
9821 Katy Freeway, Ste. 350
Houston, Texas 77024



E-FILED FOR RECORD

04/11/2023 11:00AM



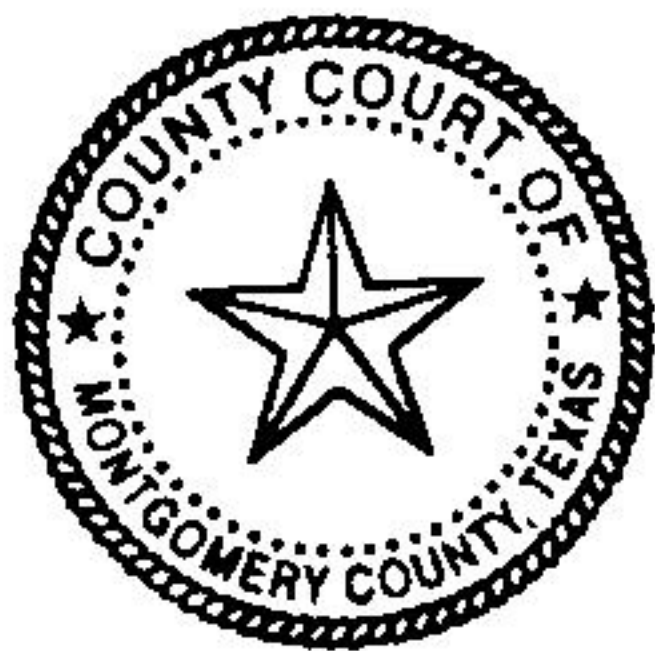
L. Brandon Steinmann

County Clerk,
Montgomery County, Texas

STATE OF TEXAS,
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number sequence on the date and time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

04/11/2023



L. Brandon Steinmann

County Clerk,
Montgomery County, Texas