

FIRST AMENDMENT
to
RESTRICTIONS, ASSESSMENTS AND EASEMENTS
of
ROCKY CREEK RANCH, PHASE 1

ROCKY CREEK RANCH, INC. TO THE PUBLIC

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

WHEREAS, Rocky Creek Ranch, Inc., as Developer, caused the instrument entitled "Restrictions, Assessments and Easements of Rocky Creek Ranch, Phase 1 Rocky Creek Ranch, Inc. to the Public" (the "**Restrictions**") to be recorded in Volume 680, Page 728, *et seq.* of the Official Public Records of Real Property of Comal County, Texas, which Restrictions impose various covenants, conditions, restrictions, easements, liens and charges on the following real property:

Rocky Creek Ranch, Phase 1, a subdivision in Comal County, Texas according to the map or plat thereof recorded in Volume 9, Page 222 of the Plat Records of Comal County, Texas

WHEREAS, Paragraph 12, of the Restrictions, provides as follows:

These covenants shall be binding for a period of thirty (30) years from the date they are filed for record in the Official Public Records of Real Property of Comal County, Texas, unless changed or amended as provided herein. Said covenants shall be automatically extended, upon the expiration of said term, for successive periods of ten years each. The record owners of legal title of fifty-one (51%) percent of the lots of all recorded phases of Rocky Creek Ranch Subdivision as shown by the Official Public Records of Real Property of Comal County, Texas, may amend or change said covenant in whole or part at any time. Any change or amendment shall be set forth and evidenced by a successor instrument bearing the signatures of the requisite number of record owners and the recording of same in the office of the County Clerk of Comal County, Texas.

WHEREAS, the Restrictions were recorded in 1989 and therefore, the first 30 years has expired; and

WHEREAS, Section 209.0041 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 case the lower percentage 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, the Restrictions control with respect to the percentage of votes necessary to effect an amendment to the Restrictions; and

WHEREAS, owners of legal title of fifty-one percent (51%) of the lots of all recorded phases in Rocky Creek Maintenance Corporation (the "**Association**") desire to amend the Restrictions (evidenced by the Ballots attached hereto as Exhibit "A" and incorporated herein for all purposes).

NOW, THEREFORE, Paragraph 20 is added to the Restrictions to read as follows:

20. 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 the occupants remain on the lot for the entire term of the lease, and that it become the occupants' place of permanent residency; that is, the occupants will make the lot and residence their permanent home;
- (5) The lot, residences or any portion thereof is not subleased or part of a member entity agreement;
- (6) The lot is not made subject to any type of timesharing agreement, fraction-sharing or similar program where the right to the exclusive use of the lot rotates among members of the program on a fixed or floating time schedule over a period of years;
- (7) The lease is in writing; and
- (8) The lease complies with any dedicatory instrument recorded by Rocky Creek Maintenance Corporation (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 lot and 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, and bed and breakfast will each be considered a “**business use**” and are expressly prohibited. Leasing pursuant to this section 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 section 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) Grandfather Clause. Owners’ of lots actively engaged in single family short-term leasing (as defined above) and currently registered and permitted with the Water Oriented Recreation District of Comal County as of the date this First Amendment to the Restrictions, Assessments and Easements has been recorded in the Official Public Records of Real Property of Comal County, Texas are not subject to this Paragraph 20 until the lot has been conveyed to a new Owner, at which time: (a) the lot shall be subject to this Paragraph 20; and (b) this Grandfather Clause shall not be applicable to the conveyed lot. As used herein, the term “conveyed to a new Owner” means any transfer of title to a lot except: (a) a transfer of title to a lot (including a transfer of a partial ownership interest) by one spouse to the other spouse; (b) a transfer of title to a lot that is incident to a divorce proceeding; (c) a transfer of a co-Owner’s interest in a lot to another co-Owner; (d) the transfer of title to a lot from one co-Owner to another co-Owner that is incident to a probate proceeding; or (e) the creation of a security interest in or mortgage encumbering a lot.

(C) 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.

(D) Violations. In addition to any other remedies available at law or otherwise, any violation of this section 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 17 hereof.

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

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 Rocky Creek Maintenance Corporation hereby executes this instrument certifying the Association's approval of this amendment and the ballots attached hereto as Exhibit "A" and incorporated herein represent the approval of the owners of legal title of fifty-one percent (51%) of the lots of all recorded phases in the Association. This amendment is effective upon its filing of record in the Official Public Records of Real Property of Comal County, Texas.

**ROCKY CREEK
MAINTENANCE CORPORATION**

By: _____

Printed: _____

Its: President

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned notary public, on this ___ day of _____, 20___, personally appeared _____, as President of Rocky Creek Maintenance Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose and in the capacity therein expressed.

Notary Public in and for the State of Texas