

HOME OWNERS ASSOCIATION OF POST OAK FOREST, INC.

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR HOMEOWNERS ASSOCIATION OF
POST OAK FOREST, INC.**

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

KNOW ALL MEN BY THESE PRESENTS:

This FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOMEOWNERS ASSOCIATION OF POST OAK FOREST, INC. (this “First Amendment”) is made effective as of January 11, 2023, by the Home Owners Association of Post Oak Forest, Inc. (hereinafter referred to as the “Association”).

WITNESSETH:

WHEREAS, the Association is charged with administering and enforcing those certain covenants, conditions and restrictions contained in the Declaration of Covenants, Conditions and Restrictions for Homeowners Association of Post Oak Forest, Inc., filed of record and recorded on April 24, 2009, at Volume 9059, Page 21, *et seq.*, at Instrument No. 01026709 of the Official Public Records, Brazos County, Texas (the “Declaration”), as such may be amended and/or supplemented from time to time; and

WHEREAS, the following is the recording history of the Declaration:

Declaration of Covenants, Conditions and Restrictions for Post Oak Forest, filed of record on April 2, 1974, and recorded on April 4, 1974, at Volume 326, Page 42, *et seq.*, at Instrument No. 88670 of the Official Public Records, Brazos County, Texas (the “Original Declaration”); and

Amendment to the Declaration of Covenants, Conditions and Restrictions for Post Oak Forest, filed of record on July 6, 1977, and recorded on July 7, 1977, at Volume 376, Page 439, *et seq.*, at Instrument No. 128156 of the Official Public Records, Brazos County, Texas (the “First Amendment to Original Declaration”); and

Second Amendment to Declaration of Covenants, Conditions and Restrictions for Post Oak Forest, filed of record and recorded on December 11, 1984, at Volume 747, Page 711, *et seq.*, at Instrument No. 315681 of the Official Public Records, Brazos County, Texas (the “Second Amendment to Original Declaration”); and

Amendment to Declaration of Covenants, Conditions and Restrictions for Post Oak Forest, filed of record and recorded on March 15, 2000, at Volume 03754, Page 00006, *et seq.*, at Instrument No. 0710822 of the Official Public Records, Brazos County, Texas (the "Third Amendment to Original Declaration"); and

Post Oak Forest - Amendment to Declaration of Covenants, Conditions and Restrictions, filed of record and recorded on July 15, 2003, at Volume 5446, Page 72, *et seq.*, at Instrument No. 00821749 of the Official Public Records, Brazos County, Texas (the "Fourth Amendment to Original Declaration"); and

Declaration of Covenants, Conditions and Restrictions for Homeowners Association of Post Oak Forest, Inc., filed of record and recorded on April 24, 2009, at Volume 9059, Page 21, *et seq.*, at Instrument No. 01026709 of the Official Public Records, Brazos County, Texas (the "Declaration") [Note that this document amended and restated the Original Declaration and subsequent amendments to same]; and

Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for Post Oak Forest, filed of record and recorded on July 13, 2015, at Volume 12807, Page 249, *et seq.*, at Instrument No. 01236486 of the Official Public Records, Brazos County, Texas (the "Inaccurate Amendment to Original Declaration") [Note that this document improperly amended the Original Declaration, as such should have been an amendment to the Declaration filed of record and recorded on April 24, 2009, at Volume 9059, Page 21, *et seq.*, at Instrument No. 01026709 of the Official Public Records, Brazos County, Texas, which amended and restated the Original Declaration and subsequent amendments to same. As a result of such, and in light of this First Amendment to the Declaration, the Sixth Amendment to Declaration/Inaccurate Amendment to the Original Declaration is hereby rescinded]; and

WHEREAS, the members of the Association desire to amend the Declaration and to adopt specific restrictions related to the leasing of lots within the development, and sanctions for any violations of the Declaration; and

WHEREAS, the members of the Association desire to rescind the Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for Post Oak Forest/the "Inaccurate Amendment to Original Declaration"; and

WHEREAS, Article X, Section 3 of the Declaration, entitled "Amendment" provides, in part, that: "...During the first thirty (30) years following recordation hereof, this Declaration may be amended by an instrument signed by eighty percent (80%) of the then owners of the lots, agreeing to such amendment, and thereafter, by an instrument signed by not less than two-thirds (2/3) of the Lot Owners..."; and

WHEREAS, Section 209.0041(h) of the Texas Property Code provides that "a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls"; and

WHEREAS, the approval of not less than 67 percent of the total votes allocated to property owners in the property owners' association was obtained for the following amendment to the Declaration as evidenced by the signatures of the Lot Owners which are attached hereto and made a part hereof; and

WHEREAS, it is the desire of the Association to file this amendment to act as the First Amendment to the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Article IX of the Declaration is amended by deleting Section 2, Section 3, Section 4 and Section 5 in their entirety, and replacing such with the following language as a new Section 2:

2. **RENTAL/LEASING OF LOTS.** At its conception, Post Oak Forest was an owner-occupied residential community and the neighborhood desires to continue to be primarily owner-occupied, preserving its beauty, tranquility, and value. The Rental/Leasing of Lots (which includes any dwelling unit/home on such Lot) is not desired and can only be done as expressly provided by this Article IX. Notwithstanding any provision contained in this Declaration to the contrary, the Rental/Leasing of Lots is regulated by this Article to, among other things, protect the Owners' equity in their Lots, to prevent the development from assuming the character of a renter-occupied complex or hotel-commercial property, and to comply with eligibility requirements of underwriting lenders for mortgage financing. Therefore, Lots may be Rented/Leased subject to the following, and subject to any reasonable rules, regulations and/or requirements (including penalties for infractions related to same) not set forth in this Article as may be determined from time to time by the Board of Directors, as long as such rules, regulations or requirements are not in conflict with the terms set forth in this Article:

1. **Definition of Rental/Leased/Leasing.** "Rental/Leased"/"Leasing" is defined as the occupancy of a Lot for any period of time by any person, other than the Owner, for which the Owner, or any designee of the Owner, receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. For purposes of this Section, if a Lot is owned by a trust and the beneficiary of the trust is living in the Lot, that Lot shall be considered "Owner-occupied" rather than Rented/Leased.
2. **Definition of "Tenant."** A Tenant is any person having the right to reside/live/stay in, occupy or use, a Lot, whether the Owner is present or not, and whether paying rent or not, and whether identified on the lease or not, other than: (1) the record Owner of the Lot as shown in the Brazos County, Texas, real property records, and (2) the record Owner's spouse, partner, mother, father, daughter, son, sister or brother (whether whole or half-blood), grandmother, grandfather,

grandson or granddaughter. The determination of who constitutes a Tenant is subject to the sole discretion of the Board of Directors.

3. Rental/Leasing Conditions and Restrictions. The Rental/Leasing of Lots is subject to the following additional conditions:

- a) Except in instances where a hardship exemption has been granted, at no time may more than fifteen percent (15%) of the Lots be Rented/Leased at any time (maximum of 5 Lots).
- b) As long as the Rental/Leasing limitation set forth in 3.a) above has not been met, and subject to any other limitations set forth in this Article IX, an entire Lot may be Rented/Leased for private residential purposes only without prior written approval of the Board of Directors. No Lot may be Rented/Leased for a term of less than six (6) consecutive months.
- c) A Lot may not be Rented/Leased for hotel or transient purposes. No Lot may be Rented/Leased on an hourly, daily, weekend, weekly, monthly or quarterly basis.
- d) No more than one (1) lease may be signed for the same Lot and same lease term.
- e) All leases must be in writing and must be made expressly subject to the Declaration, Bylaws, and the Regulations (the "Documents").
- f) There shall be no subletting of a Lot or assignment of a lease unless prior written approval is obtained from the Board of Directors
- g) An Owner desiring to rent/lease a Lot must disclose that fact in writing to the Board at least ten (10) days before presenting a lease form to a potential lessee. As long as all requirements set forth in this Article IX, along with any and all other applicable provisions of this Declaration, then an Owner may rent/lease his/her Lot.

If the Rental/Leasing limitation set forth in 3.a) above has been reached, the requesting Owner will be put on a wait list kept by the Board. Owners will be added to a wait list in the order of their request. When

applicable, the next Owner on the wait list will then be allowed to rent their Lot, subject to the provisions of this Article, once the number of Rented/Leased Lots are under the leasing cap. If the Owner that is next on the wait list declines to rent their Lot when the opportunity becomes available, the Owner will be removed from the list and the next Owner on the wait list will then be allowed to rent their Lot, subject to the provisions of this Article, so long as the number of Rented/Leased Lots is under the leasing cap.

- h) An Owner must provide the Association with the Tenant's contact information, including the name of all occupants and a contact telephone number for the Tenant. A completed copy of the Association's Tenant Information Form, if one has been created, must be provided to the Association by an Owner prior to the occupancy of that Owner's Lot pursuant to a lease. The Owner must provide the Association with a written statement signed by the Owner and the Tenant acknowledging that said occupant(s) agree to be bound by the Documents, including all Rules and Regulations and policies promulgated pursuant thereto, and any amendments thereof, and any federal, state, or local laws and ordinances. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing the Tenant with copies of the Documents and notifying the Tenant of any changes to the Documents and for compelling performance under them.
 - i) A lease or lease renewal made in violation of this Article is void. The Board may impose a fine of no less than \$50.00, per day for each day the lease is purportedly in place to enforce any provision of this Article IX, and any other provision of the Declaration, Bylaws or Rules regarding leasing.
4. Hardship. The Board may approve a deviation or variance from the provisions of this Article IX. The decision to do so is at the sole and absolute discretion of the Board which is final when made and not subject to appeal or other challenge.
5. Grand-fathered Lots. Owners that have been leasing their Lot will be allowed to continue to lease their Lot until such Lot is sold. The grand-fathered Lots are: 10 Forest Drive, 18 Forest

Drive, 19 Forest Drive, and 31 Forest Drive. Any Lot that is grand-fathered will no longer be grand-fathered when sold. Grand-fathered Lots count towards the Rental/Leasing limitation set forth in 3.a) above.

6. **Power of Attorney.** The Owner has the primary responsibility to enforce any lease made by the Owner. The lease shall grant to the Board a power of attorney for enforcement of the Documents by the Association. Each Owner appoints the Association as his or her attorney-in-fact, with full authority to act in the Owner's place in all respects, solely for the purpose of enforcing the Documents against the Owner's Tenants. However, the Owner of a Rented/Leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against a Tenant, and furthermore, the Association is not liable to the Owner for any damages, including lost rent, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's Tenant.

7. **Remedies for Tenant Noncompliance.** If the Board determines that a Tenant of a Rented/Leased Lot has failed to comply with the conditions and requirements of the Documents, and if the Board determines that enforcement action is warranted, the Board may take the following actions, in addition to all other remedies the Association may be entitled to pursuant to its Documents and/or relevant law:
 - a) The Board may notify the Owner by mail, e-mail or other legally acceptable/required form of notice, advising the Owner of the alleged violation by the Tenant;

 - b) Except as otherwise permitted by relevant law, or in circumstances where immediate action or less than the notice set forth hereinafter is required, the Owner will have thirty (30) days, after receipt of such notice to investigate and correct the alleged breach by the Tenant or advise the Board in writing that the violation has been remedied or has not occurred; and

8. **No Landlord-Tenant relationship exists.** In no event shall it be determined that a landlord/tenant relationship exists between the Association and the Tenant/occupant.

9. Lenders' foreclosures. The provisions and restrictions on Rental/Leasing and ownership as contained in this Section shall not apply to foreclosing commercial lenders or impair the right of commercial First Mortgagees to foreclose or take title to a Lot, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, to take possession and lease an acquired Lot, or to otherwise act upon their mortgages.
 10. The Association, via the Board, may adopt, publish, and enforce any further rules, regulations, procedures and/or policies, including penalties for infractions related to same, in connection with the Rental/Leasing of a Lot that are not inconsistent with the provisions herein.
 11. No terms(s) or provision(s) of a lease may be written or used in any way to circumvent this Article IX.
2. Article IX of the Declaration is amended by revising Section 6 to now be labeled as Section 3 (no amendments are made to the language of such Section).
 3. Article X, Section 1 of the Declaration is amended to add the following new paragraph to the end of said Section 1:

The Association, via the Board of Directors, shall have authority to adopt and enforce reasonable rules, regulations, restrictions, policies, procedures and/or guidelines regarding the development, and shall have the authority to establish penalties for the violations and infractions thereof, as well as authority to establish penalties for the violations and infractions of any governing legal document of the Association, including reasonable fines. Any fine levied by the Board shall constitute an assessment and shall become a part of the assessment lien on the Owner's Lot and shall become the personal obligation of the Owner. Any such assessment that remains unpaid shall be collected as set forth Article IV of this Declaration and as may be set forth by applicable law.

4. The members of the Association desire to rescind the Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for Post Oak Forest/the "Inaccurate Amendment to Original Declaration".

Except as modified by this First Amendment, the Declaration shall remain in full force and effect. To the extent any other provisions of the Declaration, and all other governing legal documents of the Association, conflict with this First Amendment, this First Amendment is controlling and supersedes any other provision that provides otherwise.

IN WITNESS WHEREOF, the undersigned officer of the Association hereby represents that (i) not less than 67 percent of the total votes allocated to property owners in the property owners' association have consented to and approved of this First Amendment as evidenced by the written consents of the Owners attached hereto as Exhibit "A"; and (ii) the undersigned officer has been authorized, by a resolution passed by the majority of the Board, to execute this First Amendment.

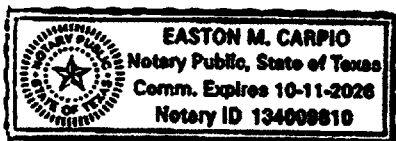
**HOME OWNERS ASSOCIATION OF
POST OAK FOREST, INC.**

By: Stacy M. Light
 Its: President

STATE OF TEXAS §
 COUNTY OF Brazos §

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared Stacy M. Light, President of Home Owners Association of Post Oak Forest, Inc., a Texas non-profit 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 purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19th day of January, 2023.



Easton Carpio
 Notary Public in and for the State of Texas

**Brazos County
Karen McQueen
County Clerk**

Instrument Number: 1493824
Volume : 18441

ERecordings - Real Property

Recorded On: January 25, 2023 01:11 PM

Number of Pages: 40

" Examined and Charged as Follows: "

Total Recording: \$182.00

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

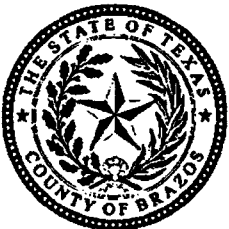
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 1493824
Receipt Number: 20230125000064
Recorded Date/Time: January 25, 2023 01:11 PM
User: Thao C
Station: CCLERK06

Record and Return To:

Simplifile
5072 NORTH 300 WEST
PROVO UT 84604



STATE OF TEXAS
COUNTY OF BRAZOS

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 Public Records of Brazos County, Texas.

Karen McQueen
County Clerk
Brazos County, TX