

PROPOSED AMENDMENT NO. 3

TO

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS §

COUNTY OF BEXAR §

KNOW ALL MEN BY THESE PRESENTS:

This is the Third Amendment to the Declaration of Restrictive Covenants (the “Amendment”) for North Castle Hills subdivision (“Association”).

WHEREAS, a certain instrument entitled Declaration of Restrictive Covenants recorded in Volume 7919, pages 719-728 of the Deed Records of Bexar County, Texas on the 29th day of September, 1976., (“Declaration”).

WHEREAS, a certain instrument entitled amendment to Declaration of Restrictive Covenants recorded in Volume 8005, pages 524-526 of the Deed Records of Bexar County, Texas on the 1st day of Feb., 1977 (“Declaration”).

WHEREAS, a certain instrument entitled Amendment No. 2 to Declaration of Restrictive Covenants under Clerks File No. LT1-81-20100204257-1 recorded in the Real Property Records in Bexar County, Texas, on the 12th day of November 2010 (“Declaration”).

WHEREAS, Owners of Lots in North Castle Hills Homeowners Association, Inc. to which are allocated at least fifty-one percent (51%) of the total votes in the Association by an accumulated vote count, approved this Amendment.

NOW, THEREFORE, the Declaration for North Castle Hills subdivision is amended as follows:

THIRD AMENDMENT DEFINED TERMS

Definitions. The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1. *"ACC" means Architectural Control Committee of the Association.*
2. *"ADU" means Accessory Dwelling Unit.*
3. *"Applicable Law" means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Governing Documents is applied and pertaining to the subject matter of the Governing Provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.*
4. *"Association" means the Association of Owners of all Lots in the Property, initially organized as North Castle Hills Homeowners Association, Inc. (NCHHA), a Texas nonprofit corporation.*
5. *"Board" means the Board of Directors of the Association.*
6. *"Declarant" means the duly authorized Association Board member signing the*

Declaration on behalf of the owners of the lots in the subdivision.

I.

USE OF LAND *AND RESTRICTIONS*

All lots in the subdivision shall be known and described as single-family residential lots. No structure shall be erected, placed, altered or permitted to remain on any residential lot in said subdivision other than one detached single-family dwelling, and a private garage, *ADU*, storage or utility room or such outbuildings as are customarily appurtenant to dwellings. At the time of the erection of a dwelling on any lot, an attached or detached garage sufficient to store two (2) cars shall be erected thereon; provided, however, that no garage, *ADU*, storage or utility room shall be erected on any lot until after or coincidental with the building of a dwelling thereon, and in keeping with these restrictions, said garage, *ADU*, storage or utility room shall not face the street upon which the front door of the main dwelling faces.

No building previously constructed elsewhere shall be moved on any lot in the subdivision. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence, either temporarily or permanently.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Nuisance: A nuisance would be an interference with a specific Lot owner's right to use and enjoy their own private property. (Examples would be the neighbor playing loud music or making other loud noises, or something on their property results in foul odors that interfere with a lot owner's enjoyment of their own property.

Infringement of Property Rights: An infringement would be a more severe impact or burden to a lot owner by a neighboring lot owner. Examples of an infringement of property rights includes, but is not limited to:

- *Frequent work or other commercial activity in the front yard, driveway or street in front of a neighboring lot, such as frequent auto repair, welding, or carpentry which may involve working for customers other than the lot's resident;*
- *Safety concerns due to frequently increased traffic, excessive non-resident/customer visitation;*
- *Health concerns such as accumulation of trash that can attract rodents and other pests, storage of hazardous materials, long term visible and open storage of construction materials;*
- *Health and safety concerns associated with non-working vehicles stored on the driveway or street visible from the public right-of-way.*

Infringements of this type that cause health and safety concerns, disrupt the peace and quiet enjoyment of other neighboring lot owners and can negatively impact surrounding property values.

Remedies for Nuisance and Infringement of Property Rights:

First, if there is no concern for personal safety, neighbors should try to work out lower grade and more infrequent nuisances between themselves. If this is not possible, or ineffective, lot owners should contact City of San Antonio Code Compliance via the 311 non-emergency phone line.

It is imperative that a lot owner keep track of their efforts to resolve these issues before the NCHHA Board gets involved. If the referenced options above do not work, the Board can try to assist the aggrieved lot owner(s) and community at large to resolve the issue. The Board will meet, and in its discretion, determine what options might be most effective in trying to resolve the issues.

The Board will initially attempt to reach out to the lot owner or resident to discuss the offending activities and the impacts on their neighbors. If there is no change or attempt to address the offending activity, the Board may send a letter or email communication behalf of the community identifying the offending nuisance or infringement and requesting that the lot owner or resident rectify the nuisance or infringement situation within a reasonable time frame, most likely 30 days. The letter will outline potential penalties for failure to rectify the nuisance or infringement. The Board will listen to the offending lot owner/resident's response, if any, and communicate with the complaining lot owners the status of their complaint.

If, after the above efforts have been attempted, and have failed to rectify the nuisance and/or infringement to neighboring lot owners right to quiet enjoyment of their properties, the NCHHA Board may assess the following penalties.

Penalties:

Nuisance/Infringement of Property Rights - \$500.00

Late fee if not paid within 60 days - \$100.00

Lien Filing: *If all previous efforts to resolve the nuisance/infringement fail, and the offending lot owner/resident fails to pay the penalty for the violation of their neighbor and community rights, the NCHHA may file a lien for the uncollected amount due with Bexar County. If the balance of penalties remains uncollected at the time of sale of the offending property, the lien on the property will ensure that the penalties are collected at the Closing of the sale.*

Activities Generally Not Considered to be Nuisance or Infringement of Property Rights in the front yard/driveway:

This list includes, but is not limited to: Yard Sales, Lemonade Stand, occasional vehicle repair for lot owner, friend or neighbor, home repair, home improvement projects, recreational activities with friends or family.

Leases. *Nothing in this Declaration shall prevent the lease or rental of any Lot and the Improvement thereon by the Owner thereof for residential purposes only, so long as any lease or sublease shall be in writing, for a minimum term of four (4) months or 120 days, and subject to the provisions of the Declaration, Bylaws and Association Rules, as then existing and as may be amended. Within ten (10) days after the execution of any lease or sublease, the Owner shall provide notice to the Board, including the names of the tenants and length of time the lease or sublease is in effect.*

- (i) Leases and Subleases Prohibited. Leasing of residences other than in strict compliance with the "Leases" section herein, including "short term" or vacation rentals, is prohibited.*
- (ii) Advertisements. No Home or Lot shall be advertised for lease or sublease for a period less than four (4) months. Further, no Home or Lot shall be advertised or listed on any short term or vacation rental website, media platform or database (e.g. Airbnb, VRBO, Flipkey, HomeAway, Hometogo, etc.)*
- (iii) Any leases or subleases that are prohibited by this Third Amendment, but were not prohibited under the previous Deed Restrictions, shall be allowed to continue their current use until their current City of San Antonio permitted use expires. At that point, renewal of the now prohibited lease or sublease shall not be permitted, and/or the now prohibited lease or sublease will become subject to this Third Amendment and subject to enforcement mechanisms provided in these Deed Restrictions.*

Remedies for Lease and Sublease Noncompliance:

Penalties after two (2) written warnings:

Lease and Sublease noncompliance - \$1,000.00 plus attorneys' fees for the current calendar year and include a ten (10) percent increase per year for each subsequent year not in compliance will be assessed.

Late fee if not paid within 60 days - \$100.00. The time period for remediation shall be listed in the warning letter(s).

Lien Filing: *If all previous efforts to resolve the lease noncompliance fail, and the offending lot owner/resident fails to pay the penalty for this violation, the NCHHA may file a lien for the uncollected amount due with Bexar County. If the balance of penalties remains uncollected at the time of sale of the offending property, the lien on the property will ensure that the penalties are collected at the Closing of the sale.*

Garbage and Other Waste. No Lot may be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and such substances must not be kept or stored upon any Lot, except bona fide construction materials being used at such a time in the building construction or renovation. The garbage and other waste accumulated from normal household operations may be kept temporarily for purposes of ordinary waste collection. All such waste substances being kept on a Lot pending collection thereof must be kept in sanitary containers with securely closed tops or lids or in plastic bags with the tops thereof securely closed. In anticipation of bulk item and brush pickup days provided by the City of San Antonio, Homeowners may place items for those bulk pickup and brush pickup events in the locations near the curb as determined by the City of San Antonio.

Any such container must be hidden, as much as possible, from public view, except when awaiting collection on a regularly scheduled collection day. The temporary location of such containers pending collection, and the period such containers or bags may be situated at such temporary location, are all subject to the approval of the Architectural Control Committee. All containers, bags, or other equipment for the storage or disposal of waste must be kept in a clean and sanitary condition.

No Lot may be used for burning any rubbish, trash, storage items or any other materials.

Regular City of San Antonio (COSA) Garbage, Recycle, Landscape Waste Collection. Any such COSA issued waste container should be hidden, as much as possible, from public view, except when awaiting collection on a regularly scheduled collection day. If it is not possible, those containers should be kept as far away as possible and cannot create a nuisance (smell, unsightly overflowing contents, etc.) for neighbors in proximity. Complaints about COSA bins storage in sight shall be addressed between neighbors. Neighbors are asked to be vigilant about returning empty COSA bins to proper storage after COSA pickup occurs.

Remedies of the Association for Garbage and Other Waste Noncompliance. After two written warnings, the Association may request the City of San Antonio to remediate the issue at the Homeowner's expense. If the City of San Antonio cannot or will not address the issue, the Association will be allowed to remediate the issue at the Homeowner's expense.

III.

ARCHITECTURAL CONTROL

No building, fence or other structure shall be erected, placed or altered on any lot in the subdivision until the plans and specifications for such building, fence or other structure and a plat showing the location of such building, fence or other structure shall have been approved in writing as to the quality of workmanship and materials, conformity and harmony of exterior design with existing structures in the subdivision and as to the location with respect to topography and finished grade elevation by an architectural committee. In the event of the death or Resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove such plans and specifications and plat, and authority to designate a successor committee member or members with like authority. For purposes of continuity of said committee, the architectural control committee chair shall be the individual elected by the North Castle Hills Homeowners (NCHHA) Association.

All NCHS property owners shall be invited to a meeting for purposes of voting for this individual. In the event said committee or its designated representative fails to approve or disapprove any plans and specifications or plat within thirty (30) days after the same have been submitted to it, or in the event no suit to enjoin the erection or alteration of such building, fence or structure has been commenced prior to the completion thereof, such approval shall not be required and this covenant shall be deemed to be fully complied with. The committee shall have the express authority to perform its fact-finding function hereunder and shall have the power to construe and interpret this covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The powers and duties of the committee and of its designated representative and the requirements of this covenant shall run concurrently with the terms of these covenants; provided that at any time the then record owners of a majority of the lots in the subdivision shall have the power, through a duly recorded instrument, to remove any committee member or members and replace them with other members or to withdraw from the committee any of its powers or duties. The architectural control committee shall not be entitled to any compensation for services rendered pursuant to this covenant.

VIII.

SIGNS

Political Signs. In compliance with State of Texas Law (Texas Property Code 2002.0), one or more signs advertising a political candidate or ballot item for an election may be displayed on a homeowner's Lot (1) not more than Ninety (90) days before the date of the election to which the sign relates, (2) not more than one sign for each candidate or ballot item, and (2) shall be removed by the eleventh (11th) day after the election date. All political signage must be ground mounted.

Political signs cannot: (1) threaten the public health or safety; (2) cannot be larger than four (4) feet by six (6) feet; (3) cannot violate county or state law; (4) cannot contain language, graphics, or any display that would be offensive to the ordinary person; and (5) shall not be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

If not removed by the eleventh (11th) day after the election the Association Board will provide one written request to homeowner for political sign removal. If this request is not fulfilled within three days of the request, the Association may remove the sign displayed in violation of a restrictive covenant permitted by this section and will not be subject to criminal trespass.

Other Types of Yard Signs. Home security signs, signs promoting a school student's achievement or sports participation, or other types of similar neighborhood supportive sentiments are allowed. If a neighbor finds any particular sign offensive, a written complaint via email or the USPS should be submitted to the Association Board. The Association Board will acknowledge receipt of the complaint and then have up to sixty (60) days to respond. If necessary, the Board will attempt to mediate the issue and find a mutually beneficial solution.

XI.

TERMS

These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of thirty (30) years from the date the same are recorded, after which time said covenants shall automatically be extended for successive periods of ten (10) years unless an instrument *voted on and approved* by a majority of the owners of the lots in the subdivision controlled by these covenants *and signed by representatives of the owners on the elected North Castle Hills Homeowners Association Board* has been recorded agreeing to change said covenants in whole or in part.

XII.

ENFORCEMENT

If the parties hereto, or any of them, or their heirs, successors, lessees, or assigns shall violate or attempt to violate any other covenants herein contained, it shall be lawful for any person or persons owning real property situated in the subdivision controlled by these covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages for such violations. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided lots in the subdivision, controlled by these covenants. The reservation of this right of enforcement shall not create an obligation of any kind to enforce same.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies afforded by this section are cumulative of and not in lieu of any other enforcement rights available to the Association or Owner under these Declarations and under the law. As of the formalization date of these Deed Restriction Amendments, Bexar County provides a free mediation service. Mediation is required before any other legal action can be taken to resolve neighborhood complaints against the Association Board or its volunteers. Venue of any legal proceeding brought pursuant to the rights granted by these Declarations shall be in Bexar County, Texas. The prevailing party in any litigation brought pursuant to this Section shall be entitled to recover their reasonable and necessary attorney's fees, court costs and litigation expenses.

All other previous Amendments, Articles and Sections of the Declaration remain in full force and effect.

END OF PROPOSED AMENDMENT NO. 3