

STATE OF TEXAS §  
COUNTY OF HAYS §

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WATERLEAF FALLS (KYLE) HOMEOWNERS' ASSOCIATION, INC.**

**Document reference.** Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions for Waterleaf Subdivision filed as Vol. 2291 Page 342, document No. 03026210 of the Official Public Records of Hays County, Texas, to that certain First Supplement to Declaration of Covenants, Conditions and Restrictions filed as Vol. 2598 Page 180, document No. 04035989, to that certain Second Supplement to Declaration of Covenants, Conditions and Restrictions filed as Vol. 3239 Page 655, document No. 70025679 and to that certain Third Supplement to Declaration of Covenants, Conditions and Restrictions filed as Vol. 4214 Page 271, document No. 11025212 of the Official Public Records of Hays County, Texas (together with all amendments and supplements, the "**Declaration**").

WHEREAS the Declaration provides that owners of lots subject to the Declaration are automatically made members of Waterleaf Falls (Kyle) Homeowners' Association, Inc. (the "**Association**");

WHEREAS Section 7.5 of the Declaration provides that the Declaration can be amended with the consent of members holding at least sixty six and two thirds (66-2/3) percent of the votes in the Association; and

WHEREAS the amendments attached as Exhibit "A" have receive the requisite consent and approval;

THEREFORE the Declaration has been, and by these presents is, amended as provided in Exhibit "A".

Subject solely to the amendments contained in Exhibit "A", the Declaration of the Association remains in full force and effect.

**WATERLEAF FALLS (KYLE) HOMEOWNERS' ASSOCIATION, INC.**

Acting by and through its Board of Directors

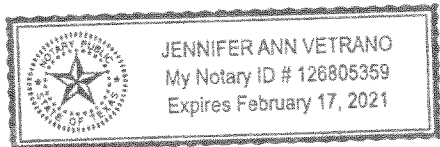
Signature: *Tracy Scheel*  
Printed Name: Tracy Scheel  
Title: President

Exhibit "A": Amendment to the Declaration

**Acknowledgement**

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This instrument was executed and acknowledged before me on the 16<sup>th</sup> day of April, 2019, by Tracy Scheel in the capacity stated above.



*Jennifer A. Vetrano*  
Notary Public, State of Texas

EXHIBIT "A"

Amendment to the Declaration

**Article III Section 3.4 is amended to replace the word "duty" in the second line with the words "right but not duty", and the restate subsection (d) in its entirety, so that the first paragraph and subsection (d), read in their entirety as noted below (subsections (a), (b) and (c) are unchanged:**

**"Section 3.4 Association's Powers.** In addition to the rights of the Association set forth in other sections of this Declaration, the Association shall have the right, but not duty to enforce the covenants under this Declaration and maintain all Areas of Common Responsibility and shall have the right, power, and authority to do any act which is consistent with or required by the provisions of this Declaration or the Bylaws, whether the same be expressed or implied, including but not limited to the following

[Subsections (a) - (c) are unchanged]

(d) The power to adopt rules and regulations concerning the Property."

**Article IV Section 4.1 is hereby restated to read in its entirety as follows:**

**"Section 4.1 Creation of a Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) annual assessments or charges (ii) charges in connection with the transfer of a Lot, (iii) special assessments for capital improvements, and (iv) all other amounts due under any Dedicatory Instruments (Dedicatory Instrument being defined as any Declaration, Bylaw, Rule, Article of Incorporation, any amendment thereto, and any other applicable restrictive covenant). Such assessments and charges (collectively, the "Assessments") are to be fixed, established and collected as provided in the Dedicatory Instruments and applicable law. Assessments shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment shall also constitute a personal obligation of the person or entity who was the record Owner of such Lot at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by such successors; however, the lien upon the Lot shall continue until paid."

**Article IV Section 4.7 (b) is hereby repealed and restated as "Intentionally Omitted." The first paragraph for section 4.7 and subsections (a) and (c) are unchanged:**

"(b) Intentionally Omitted."

**Article IV Section 4.8 (b) is hereby repealed and restated in its entirety as follows. Subsection (c) is repealed and restated as "Intentionally Omitted." The first paragraph for Section 4.8 and subsections (a), (d) and (e) are unchanged:**

"(b) Any Assessment provided for in the Dedicatory Instruments which is not paid when due shall be delinquent. If any such Assessment is not paid within 30 days after the date of delinquency (with no notice required to be given), a late fee in an amount determined by the board may be charged. The late fee may be assessed in every month for which the owner's account maintains a delinquent balance. The Association may at its option bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the Association's lien in accordance with Chapter 209, Texas Property Code. All costs of collection, including legal fees, regardless of whether a lawsuit or other legal action is filed, shall be due and added to the amount of such Assessments. Each Owner vests in the Association or it assigns the right and power to bring all actions at law or in equity foreclosing such lien against such Owner.

(c) Intentionally Omitted"

**Article IV Section 4.10 is amended to replace the words “ninety (90) days” in the third sentence with the words “thirty (30) days” so that the section reads in its entirety as follows:**

**“Section 4.10 Management Agreements.** The Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the development and performance of its obligations hereunder. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled with or without cause and without penalty by the Association with thirty (30) days written notice and the management company with thirty (30) days written notice. Any and all management agreements shall be for a term not to exceed one year and shall be made with professional and responsible party or parties with proven management skills and experience managing a project of this type. The Association may, at its discretion, assume self-management of the development by the Association.”

**Article V Section 5.3 is amended and restated to read in its entirety as follows:**

**“Section 5.3 Approval of Plans.** The committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specification within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until approval of the Committee is obtained. The Committee may approve any deviation from these covenants and restrictions as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee’s rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the Committee of the plans and specification or its determination that the completed construction or modification has been constructed in accordance with the plans and specifications shall be deemed to be an acknowledgment by the Committee that such are in accordance with this Declaration and such acknowledgment shall be binding against the Owners of the Lots and the Property. In considering plans and specifications for approval or disapproval the Committee may consider the following, without limitation:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, acceptability of floor plan, dimensions, locations of improvements, and proper facing of main elevation with respect to adjacent streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other Lots; and
- (iii) other standards set forth within this Declaration or other Dedicatory Instruments.

The Committee is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Lot Owners or the general value of Lots.”

**Article VI Section 6.7 is amended by the repeal of all Subsections EXCEPT (b), (e), and (n). All other subsections are restated as follows:**

**“Section 6.7 Uses Specifically Prohibited.**

[Subsections (b), (e) and (n) are unchanged]

- (a) No temporary or pre-fabricated dwelling shop, trailer or home of any kind or any improvement of a temporary character (except Architectural Review Committee approved children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot. No building material of any kind or characteristic shall be placed or stored within view of the street except within a two-week period prior to construction commencement, and then such material may only be placed totally within property lines of the Lot upon which the improvements are to be erected unless approved by the current Board of Directors, and any remaining materials must be removed within 2 weeks of completion of the project.
- (b) [unchanged]
- (c) Trucks with tonnage in excess of 5 tons GVW (gross vehicle weight) or 10,000 lbs and any vehicle with commercial advertisement (other than standard dealer and make/model lettering) shall not be permitted to park overnight on the Property and Public Streets (according to city code 47-71) unless such vehicle is properly concealed in the garage or approved in advance in writing by the Association. Contact the property management company to request permission. Owners are also responsible for following any applicable government ordinance.
- (d) No vehicle of any size which transports flammable or explosive cargo may be kept on the Lot, HOA Property or Public Street at any time.
- (e) [unchanged]
- (f) No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as a dwelling house; unless approved by the current Board of Directors.
- (g) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property. Any storage building on a Property must receive prior approval from the ARC and (a) may not exceed 10.5 feet in height, (b) footings and/or foundations may not exceed 8 inches above ground level, (c) must be made out of materials that are harmonious with the primary residence (i.e.-painted the same color as the house, shingles to match the house) and (d) must be located within all setback lines and easements affecting any Property.
- (h) Animals
  - 1) Pets
    - a. A pet is defined as any domesticated non-exotic dog, cat, rabbit, ferret, reptile, fish, arachnid, amphibian, bird and rodent. No animals other than pets as defined herein are allowed on the property, except as otherwise expressly provided herein.
    - b. No Pet shall be kept /bred for commercial purposes.
    - c. If a pet is deemed dangerous or potentially dangerous by the City of Kyle, the homeowner must notify the HOA in writing within 24 hours and must adhere to all applicable city codes.
    - d. If a pet is deemed dangerous or potentially dangerous by the City of Kyle, the homeowner must post a visible in public view "Beware of Dog" sign of a size, composition, and in a location approved by the ACC.

- e. All unleashed dogs must be enclosed within the home and/or secure fencing around the home. All pets outside of the home and the home parameters must be leashed or restrained.
- f. All animals must be registered with the City of Kyle in accordance with City ordinance. At the time of adoption of this amendment, registration requirements apply to (without limitation) reptiles, cats and dogs.
- g. All pets must be current on all applicable vaccinations.
- h. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots.
- i. No home shall have more than 4 cats and dogs (not more than a total of four; i.e. four dogs no cats, two cats two dogs, etc.)
- j. No unreasonable noise or other nuisance type activity shall be allowed; no activity that unreasonably, in the board's discretion, interferes with other residents' use and enjoyment of their property.

2) Livestock/ Poultry

- a. Livestock of any kind may be kept/bred for commercial purposes. Livestock includes horses and all equine species (mules, donkeys, etc.), cows and all bovine species, sheep and all ovine species, llamas, goats and all caprine species and pigs and all swine species.
  - b. No hoofed livestock, standard, miniature, and/or pigmy, shall be permitted on any property or lot within the confines of the Waterleaf Falls subdivision.
  - c. Chickens, roosters, or other fowl are prohibited
  - d. Bees – No more than 1 European colony per property or lot shall be permitted and all city codes must be adhered to. A split hive may be permitted for no more than 30 days. No Africanized colony will be permitted.
- (i) No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers and concealed from public view except on designated trash collection days. All containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may only be stored on Lots during construction of the improvement thereon. Homeowners, or agents of, must subscribe to City of Kyle waste management services.
- The Association may to the maximum extent allowed by law, after any notice requirement required by law, enter onto a Lot and cure any violation of a Dedicatory Instrument, and charge all costs of cure, including reasonable administrative expense, to the Lot.
- (j) No individual water supply system shall be permitted on any Lot with the exception to rain water collection systems per State of Texas property code and Approval of the Architectural Review Committee.
- (k) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air- conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence. A R C approval must be obtained if installation requires any structural changes to the home or slab on which the unit sits.
- (l) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells,

tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property other than the 2-acre tract referred to in article 1.4 above. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property other than on the 2-acre tract referred to in article 1.4 above.

- (m) Except with the written permission of the Committee or as preempted by the FCC or other governmental agency, no antennas, satellite dishes or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except that one satellite dish or similar antenna that must be no greater than one (1) meter in diameter and must be placed in the least conspicuous location on a Lot where an acceptable quality signal can be received. Any system not in use must be removed.
- (n) [unchanged]
- (o) Within those easements on each Lot as designated on the Plat of the Development, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels. The general grading, slope and drainage plan of a Lot as established by the Declarant's approved development plans may not be altered without the approval of the City and/or other appropriate agencies having authority to grant such approval.
- (p) No fence, wall, hedge nor shrub planting which obstructs sight lines at an elevation between three and six feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within that area is ten feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum height of six feet above the adjacent ground line.
- (q) The only signs allowed on a lot are as follows: one professionally printed school support sign, no more than one per school-age student who lives at the home, no more than 2' x 2' in size; one professionally printed for sale or for lease sign no more than 2' x 2'; and one home alarm system sign no larger than 1' x 1' is allowed. Notwithstanding, the board may adopt rules allowing (with any limitations) other signage, including allowing/regulating political signage.
- (r) Out-door clotheslines and drying racks visible to adjacent Properties are prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a drying yard or other suitable enclosure or screening to shield from public view clothes drying racks, yard maintenance equipment and/or storage of materials.
- (s) Except within fireplaces in the main residential dwelling and equipment for outdoor cooking, no burning of anything shall be permitted anywhere on the Property.
- (t) Basketball Goals - all basketball goals must either be portable (temporary), set in cement next to the driveway or attached to the garage on the front of the home and must be kept behind all building setback lines. No basketball nets may be allowed to hang out over any street at any time. All temporary basketball goals must be stored out of view when not in use."

**Article VI Section 6.17 is amended to delete the last two sentences of this section, so it reads in its entirety as follows:**

**“Section 6.17 General Maintenance of Lots.** Following occupancy of the Home upon any Lot, each Owner shall maintain and care for the Home, all improvements and all trees, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not limited to: (i) the replacement of worn and/ or rotted components, (ii) the regular painting of all exterior surface, (iii) the maintenance, repair and replacement of roofs, ran gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (iv) regular mowing and edging of lawn and grass areas.”

**Article VII Section 7.2 (a) is restated to read in its entirety as follows:**

“(a) The Association and the Owner of any Lot on the Property shall have the power, but not duty, to enforce the provisions of the dedicatory instruments against any Lot/Owner, including with the right to bring any suit or undertake any legal process to enforce the performance thereof. Failure by any Owner or the Association to enforce any Dedicatory Instrument provision shall in no event be deemed a waiver of the right to do so thereafter. In the event that costs are incurred including legal fees, in the Association’s enforcement of the Dedicatory Instruments, the Association may assess all such costs, regardless of whether suit is filed, to the Owner’s account/Lot to the maximum extent allowed by law.”

**Article VII Section 7.7 is restated to read in its entirety as follows:**

**“Section 7.7 Remedies.** Enforcement of these covenants and restrictions may be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and the Declarant’s and/or the others Owners’ remedies at law for breach of the Owners’ obligations contained herein would be inadequate. Enforcement may be commenced by the Association, the Declarant, the City, or any Owner against any person or persons violating or attempting to violate them, and failure by the Association, the Declarant 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 rights created herein are the unique and enforceable by specific performance. In addition to the remedies set forth herein, the Association will also have the right and power to levy fines against any Owner in breach of their obligations set forth in the Dedicatory Instruments.”

**Article VII Section 7.23 is hereby ADDED to read as follows:**

**“Section 7.23 Leasing.** In the event a Member leases its Home or Lot, it is the responsibility of the Member upon rental (i) to register the Lot with the HOA as rental property prior to tenant move-in, (ii) to give a copy of all Dedicatory Instruments to all tenants and occupants prior to tenant move-in, (iii) to have their tenant complete and sign a form approved by the Association indicating that each tenant will abide by this Declaration and any other dedicatory instruments of the Association, and provide the same to the HOA Board of Directors within 30 days of any signed lease agreement, and (iv) ensure all restrictions and laws of the City are maintained and followed.

The minimum lease term for any lease is six months. If a tenant fails to fulfill the lease term (moves out early), the property may not be re-occupied by the owner or another tenant without prior approval of the board and unless any replacement lease is in compliance with this rule. This is to prevent a situation for example where a home is leased “for six months” but in reality, is leased for the weekend and the tenant “leaves early” and the owner moves back in.

No Owner may advertise the lease of any Lot/home for a term of less than the minimum lease term. All advertisements for the lease of a Lot/home must clearly state that the minimum lease term required by this provision (or any longer term the Owner wishes to apply). Daily or weekly rates (or any rate less than monthly) may not be advertised. Fines may be assessed for any violation of this provision, regardless of whether the advertised home is actually leased for a period of less than the minimum lease term.”

**Article VII Section 7.24 is hereby ADDED to read as follows:**

**“Section 7.24 Responsibility for Violations.** Owners are responsible for all resident, tenant, and invitee (including contractor) violations of the Dedicatory Instruments.”



**After recording, please return to:**

Niemann & Heyer, L.L.P.  
Attorneys at Law  
Westgate Building, Suite 313  
1122 Colorado Street  
Austin, Texas 78701

File Server:CLIENTS:Waterleaf:Decl Amend 4-19.doc

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Elaine H. Cárdenas, Hays County Clerk, Texas Rec \$58.00 Deputy Clerk: MCASTRO**