

Prepared by: Sellers, Ayers, Dortch & Lyons, P.A.
 310 South McDowell Street, Suite 410
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Filed Electronically

**CERTIFICATION OF AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS – HAWKES BAY**

This **CERTIFICATION OF AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – HAWKES BAY** is made pursuant to N.C.G.S. §47F-2-117 and Article XII, Section 3 of the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – HAWKES BAY** recorded in Book 1173 at Page 974 of the Iredell County Public Registry on November 18, 1999, as amended and supplemented by instruments recorded thereafter (“Declaration”), and is effective upon recordation in the Iredell County Public Registry.

Statement of Purpose

The Declaration provides in Article XII, Section 3 for amendment of the leasing provisions in the Declaration with the approval of Owners entitled to cast at least two-thirds (2/3) of the votes in the Association. Section 3 also provides and requires the consent and approval of Mortgagees holding Mortgages on Lots to which at least a majority of the votes are appurtenant, but Mortgagees are entitled to notice only if they have provided the Association with notice as provided and required under Article X, Section 2. No Mortgagees have provided the Association with notice as required under Article X, Section 2. Further, N.C.G.S. §47F-2-117 requires that amendments be approved by owners entitled to cast not less than sixty-seven percent (67%) of the votes in the Association. In accordance with the requirements of N.C.G.S. §47F-2-117, the following amendment was approved by the affirmative vote of more than sixty-seven percent (67%) of the Owners. Accordingly, the due and proper adoption of the following amendment is certified by the President and Secretary of the Association for recordation.

NOW, THEREFORE, with the affirmative vote and consent of Members/Owners entitled to cast not less sixty-seven percent (67%) of the votes in the Association, **Article VIII, Section 1** of the Declaration is deleted in its entirety and the following is substituted in lieu thereof:

Section 1. Land Use, Building Type and Residential/Leasing Restrictions. All Lots in the subdivision shall be known and described as residential lots and shall be used only for private residential and recreational purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single-family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding 2 ½ stories in height above the ground shall be erected or permitted to remain upon any Lot. No mobile home, modular home or shell home or log home may be erected or permitted to remain on any Lot. A private garage, outbuildings, fixed piers and floating boat dock facilities incidental to the residential use of the Lot are expressly provided upon the condition that they are not rented, leased nor otherwise used for remuneration subject to other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence. No boat (including a house boat), whether existing on a Lot or docked at a fixed pier or floating boat dock which is appurtenant to any Property in the Subdivision may at any time be used as a residence.

Leasing of Lots and the improvements thereon (collectively referred to herein as "Premises") is permitted only as expressly provided herein. For purposes of this Section 1, the Premises shall be deemed to be "leased" or "rented" if any occupant pays or provides money or other consideration of any type in exchange for permission to occupy the Premises or any portion thereof for any period of time.

- (a) The Premises must be leased in its entirety. The leasing of anything less than the entire Premises is prohibited. If leased or rented, the Premises must be leased or rented for a period of thirty (30) or more consecutive days ("Minimum Lease Term"). The Premises may be leased or rented only to tenants who intend to occupy the Premises for at least the Minimum Lease Term.
- (b) No Owner shall offer or advertise his Premises for lease or rental for less than the Minimum Lease Term. Each solicitation, advertisement or offer of leasing, rental or occupancy for less than the Minimum Lease Term shall be deemed to be a separate violation of this Section 1 on each day each offer, advertisement or solicitation is made.
- (c) If any lease, rental agreement or tenancy is terminated less than thirty days from its commencement or if any tenant/occupant fails to continuously occupy the Premises for at least thirty consecutive days, there shall be a rebuttable presumption that the tenancy was for less than the Minimum Lease Term and each day from the date the tenancy is terminated or the Premises are vacated to the date thirty days from its commencement date shall be deemed a separate violation of this Section 1.
- (d) All leases and rental agreements shall be in writing. A copy of the written lease shall be provided to the Association prior to the commencement of the tenancy and the Owner shall specify the lease commencement and termination dates and identify all permitted tenants/occupants by name, if that information is not in the lease provided. The Association shall be notified immediately of any changes to the lease terms or the permitted tenants/occupants.
- (e) All leases shall require, without limitation, that the tenants/occupants acknowledge receipt of a copy of this Declaration and a copy of the Association's Bylaws and Rules and Regulations ("Governing Documents"), and

all of the terms and provisions of the Governing Documents shall be deemed incorporated into every lease or rental agreement whether or not that is stated in the lease or rental agreement. The lease shall obligate the tenants/occupants to comply with the Governing Documents, and shall provide that any failure to comply with the Governing Documents shall be grounds for termination and eviction.

- (f) The Owner shall be responsible for all acts and omissions of his tenants/occupants. Without limiting the generality of the forgoing and in the event of any violation of the Governing Documents by any tenant or occupant or anyone present on the Premises during the tenancy, the Association may require the Owner to terminate the lease or rental agreement and evict the tenants/occupant, which remedy shall be in addition to all other remedies provided by law for violations. Each day that an Owner fails to terminate a lease or rental agreement and/or to pursue eviction after receiving written notice from the Association requiring termination and eviction as provided herein shall be deemed a separate violation of this Section 1.
- (g) Any ownership or leasing arrangement for any Premises having the characteristics of a vacation time-sharing ownership plan, a vacation time-sharing lease plan or a fractional/shared ownership is expressly prohibited.

IN WITNESS WHEREOF the undersigned officers of the Hawkes Bay Owners Association, Inc. certify the proper adoption of these amendments, and do hereby certify that approval of this amendment was obtained as required by the Declaration and in accordance with North Carolina law and that this amendment to the Declaration has been duly adopted to be effective upon recordation.

HAWKES BAY OWNERS ASSOCIATION, INC.

By: David E. Nelson
Name:
President

By: Barbara M. Nelson
Name:
Secretary

[NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

State of North Carolina

County of Mecklenburg

I, a notary public for the County and State aforesaid, certify that David Earl Nelson, being first duly sworn, appeared before me this day and certifies that (s)he is the President of **HAWKES BAY OWNERS ASSOCIATION, INC.** and, upon authority duly given and as the act of the association, certified the due adoption and execution of the forgoing instrument.

This the 19 day of October, 2018.

Kathryn A. Lampeter
Notary Public

Seal or Stamp:

My Commission Expires: 1-31-2022

KATHRYN A. LAMPETER
Notary Public
Mecklenburg Co., North Carolina
My Commission Expires Jan. 31, 2022

State of North Carolina

County of Mecklenburg

I, a notary public for the County and State aforesaid, certify that Barbara M. Nelson, being first duly sworn, appeared before me this day and certifies that (s)he is the Secretary of the **HAWKES BAY OWNERS ASSOCIATION, INC.** and, upon authority duly given and as the act of the association, certified the due adoption and execution of the forgoing instrument.

This the 19 day of October, 2018.

Kathryn A. Lampeter
Notary Public

Seal or Stamp:

My Commission Expires: 1-31-2022

KATHRYN A. LAMPETER
Notary Public
Mecklenburg Co., North Carolina
My Commission Expires Jan. 31, 2022