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INST. # 22519

DONNA HICKS SPENCER,
Register of Deeds

EX 03687 Pg 1453-1457

V(HB) Theodore Gibson

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR BAY POINTE

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAY POINTE ("Amendment") is made this 15 day of September, 2021, by BAY POINTE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association"), which does hereby adopt the following amendments to its Declaration (as defined herein), effective as of the date of recording of this Amendment.

The purpose of this Amendment is to amend the Declaration to restrict leasing of homes in Bay Pointe.

1. Bay Pointe (the "Community") is a single-family home subdivision located in Catawba County, North Carolina which is governed by the Association. Pursuant to Article Ten of that Declaration of Covenants, Conditions and Restrictions for the Community recorded in Book 1763, Page 496, Catawba County Registry (as further amended from time to time, the "Declaration"), and Section 2-117(a) of the North Carolina Planned Community Act, N.C. Gen. Stat. § 47F-1-101 et seq. (the "Act"), a written notice and ballot was mailed to all Owners in the Association proposing certain amendments to the Declaration. In excess of 67% of the ballots were subsequently returned by the June 12, 2021 deadline stated therein, including the requisite percentage of Off-Water Lots as provided in the Declaration, voting in favor of the proposed amendments.
2. Therefore, the Association does hereby adopt the following amendments to the Declaration in order to effectuate the leasing restrictions requested by the homeowners in the Community.
3. A new Section 2 is added at the end of Article Four of the Declaration as follows:

Section 2. Leasing Restrictions.

- (a) In order to preserve property values and the ability of mortgages within Bay Pointe (the "Community") to be federally-insured, the number of homes within the Community which may be leased at any one time shall not exceed 10% of the homes within the Community, being five (5) homes. Upon reaching capacity, a waiting list shall be maintained by the Board or its managing agent and no more homes may be leased unless an existing lease ends or an exception as provided herein applies.
- (b) A lease or rental generally exists whenever someone who is not the homeowner resides in the home and the homeowner does not. Leases include both oral

and written agreements. The payment or lack of payment of rent shall not be determinative as to whether a home is considered to be rented but may be one factor

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considered by the Board when determining whether a rental exists. Any home which is leased to the children, sibling, grandchildren, parents or grandparents of the Owner of the home shall not be considered leased for purposes of these leasing restrictions.

(c) Homes currently leased at the time this Amendment is recorded shall be grandfathered and allowed to remain leased, provided (1) the Owner has complied with subsection (e) below regarding providing lease information to the Board, and (2) the grandfathered status shall end upon the earliest of the date upon which any of the following occurs: (i) ownership of the home changes in any manner, including due to the death of the current Owner as of the date of this Amendment; (ii) the Owner or any family member(s) of the Owner re-occupies the home; or (iii) the home is not leased or not occupied for a period of four (4) months or more. The right to lease is not transferrable. In the event of a sale of a leased home, if the same tenant remains in place after the sale, no further approval shall be required unless and until that tenant vacates the home; but if a new tenant is intended to occupy the home after the sale, approval as set forth herein is first required. If and when a home is sold or otherwise changes ownership, the right to lease ends unless the current tenant remains in place under the new owner.

(d) Any Owner who desires to rent his or her home shall first notify the Board in writing to determine whether the number of permitted rentals is at capacity. The failure of an Owner to receive prior written approval constitutes a violation of these covenants and the Board may apply fines or take other measures as set forth in this section or elsewhere in the Declaration in such case. The Board shall advise the Owner within 15 days of the request as to whether there is room within the cap set forth in subsection (a) above for the Owner to lease his or her home. If there is, the Owner shall have 90 days to execute a lease with a tenant and provide a copy to the Association, or else their opportunity to lease is lost and shall be provided to the next Owner on the waiting list. Failure of the Board to respond within 15 days shall constitute a denial of the lease request. Any approval or disapproval of a lease shall be made solely as to the Owner's compliance with the Declaration and this Amendment, without regard to the identity of the tenant, the terms of the lease or whether the same are legal, fair or otherwise appropriate for any purpose whatsoever. The Declaration and all rules and regulations of the Association shall be given by the Owner to the tenant and the tenant shall abide by the same in the same manner as a Owner.

(e) All Owners shall supply the Association with the following required information not less than ten (10) days before the date that the lease is to start. To the extent that any home is already leased at the time of the recording of this Amendment, the Owner shall have thirty (30) days thereafter to supply the Association with the information required herein:

1. A true and complete copy of the lease (social security numbers and monetary information may be redacted);
2. The Owner's current contact information including mailing address, physical address not within the Community, email address, and phone numbers;

3. Any property manager's contact information (if the Owner is employing a property manager to assist with the leasing and management of the home);
4. All of the tenant/occupants' name(s);
5. Email address and phone number(s) for the principal tenants; and
6. The make, model and color of each of the occupants' vehicles.

(f) Homes may be rented only in their entirety and no single rooms may be rented except in the case of a single roommate or caretaker of an Owner who also lives in the home. No bed and breakfast facility may be operated in any home. No lease term shall be less than twelve (12) months. No subleasing or assignment of lease rights by the Owner or tenant is permitted. No transient tenants may be accommodated in a home. Short-term rentals such as the type promoted by Airbnb, VRBO and similar services are expressly prohibited, as is the listing or advertising of homes in the Community for such short-term rentals.

(g) The Board may make exceptions to the leasing cap due to bona fide family medical or employment hardship, and may only do so upon a written Board determination setting forth the specific facts supporting the reasons for the exception and placing a reasonable limitation on the duration of the exception, not to exceed two (2) years. After no more than two (2) years, such exception and the lease of any such home shall terminate.

(h) The Board may from time to time without necessity of amending the Declaration adopt reasonable rules and regulations not inconsistent herewith so as to carry out these leasing restrictions in further detail. Such rules and regulations shall be effective when adopted or at such other date set forth therein.

(i) Enforcement.

1. The Association shall have all of its rights set forth elsewhere in the Declaration or in the Act to enforce these leasing restrictions, including at law or in equity, including but not limited to the right to fine the Owner, suspend community rights and privileges of the Owner and tenants, and/or file an action for specific performance.
2. The Association shall have the unilateral right to terminate any lease upon default by the tenant in observing any of the provisions of the Declaration, bylaws or rules and regulations of the Association, including failure of the Owner to pay assessments. Fines may be assessed at a rate of up to \$50.00 per day, after notice and hearing, for any violation of these restrictions.
3. Each Owner hereby acknowledges and agrees that any and all leases entered into by such Owner in connection with his or her home shall be deemed to incorporate by this reference a collateral assignment of rents and leases in favor of the Association, which collateral assignment of rents and leases shall provide that in the event such Owner leasing his or her home is past due in the payment of his or her assessments, all rentals shall be paid to the Association until all of the Owner's obligations are current. In addition, the Association may direct the tenants of any

home which is leased in violation of these restrictions to pay all rental payments directly to the Association and not to the Owner as and when due.

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4. The Association may evict any tenant(s) occupying a home in violation hereof via an action in any court of competent jurisdiction.
 5. Each Owner hereby agrees that all of the foregoing are appropriate remedies for any violation hereof, failure to pay assessments, or other violation of the Declaration by the Owner or any tenant. The Owner and the tenant are jointly and severally responsible for all fines, attorneys' fees and other costs incurred by the Association in enforcing the terms of this section.
4. The undersigned hereby certify that this Amendment has been approved by the signatures, affirmative votes, and/or the written ballots of at least 67% of all the Owners in the Community, including the requisite percentage of Off-Water Lots, pursuant to the Declaration and is being recorded for purposes of amending the Declaration consistent therewith. This Amendment shall run with the land and be binding upon all current and future owners of all lots and other real property in the Community. All capitalized terms used and not defined herein shall have the meanings ascribed them in the Declaration. This Amendment does not affect the security interest of any mortgagee and is therefore not executed by any mortgagee or governmental agency.
5. Except as specifically set forth herein and amended and/or supplemented hereby, the Declaration shall remain in force as written and is hereby ratified and affirmed by the parties hereto.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the Association in accordance with the due approval of the Owners and by authority duly granted by its Board of Directors has caused this Amendment to be executed as of the day and year first noted above.

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BAY POINTE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation

By: *Theodore Gibson*
Theodore Gibson, President

ATTEST:

Andrew Brignoli
Andrew Brignoli, Secretary of the Association

STATE OF NORTH CAROLINA
COUNTY OF ~~CABARRUS~~ *Catawba - mgt*

I, *Marisol Gonzalez Guerra*, Notary Public of the County and State aforesaid, certify that Theodore Gibson personally came before me this day and acknowledged that he is the President of BAY POINTE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial stamp or seal this *15th* day of *September*, 2021.

My commission expires: *11.30.2025*

Notary Public, *Marisol Gonzalez Guerra,*
[NOTARIAL SEAL]

