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Iredell County, NC
Ronald N. Wyatt Register of Deeds
BK 2499 PG 444-447

Prepared by and return to: Ted F. Mitchell, Esq., 9300 Harris Corners Parkway, Suite 210
Charlotte, North Carolina 28269

NORTH CAROLINA Reference: Deed Book 2397, Pages 1794-1936

COUNTY OF IREDELL

**FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS, COVENANTS AND AGREEMENTS OF BAYCROSSING**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS, COVENANTS AND AGREEMENTS OF BAYCROSSING made and entered into this 7th day of July 2017, for the BayCrossing Owners Association, Inc., hereinafter referred to as the "Association," a North Carolina nonprofit corporation, located in the BayCrossing subdivision, Mooresville, Iredell County, North Carolina.

**WITNESSETH**

**WHEREAS**, BayCrossing is comprised of certain real property as shown on that certain plats thereof recorded in Plat Book 46 at Pages 5-6, Page 172-173, Plat Book 46, Page 81, Plat Book 47, Pages 33-34, Plat Book 47, Page 145, Plat Book 53, Page 73, Plat Book 53, Page 92 of the Iredell County Registry; and

**WHEREAS**, the real property that comprises BayCrossing Owners Association has been previously subjected to the Amendment Declaration of Covenants, Conditions and Restrictions for BayCrossing being recorded at Deed Book 2397, Pages 1794-1936 of the Iredell County Registry of Deeds (the "Declaration"); and

**WHEREAS**, the Section 2.25 of Declaration identifies Off-Site Septic Systems as referring to all portions of any Septic System serving a Septic Lot located upon a Septic Easement Area and all pipes related to the transportation of the sewage from Septic Lots to Septic Easements Areas, said pipes including sanitary sewer lateral connection or lines over, in or on that portion of the real property owned by the Association i.e., common areas;



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**WHEREAS**, Section 2.32 of the Declaration identifies Septic Easement(s) as meaning the septic easement or septic easements reserved over the Septic Easement Areas, including common areas, for the benefit of the Septic Lot Owner(s), as more particularly described in Section 7.29 of this Declaration;

**WHEREAS**, Section 5.6 of the Declaration requires that the Off-Site Septic System for each Septic Lot must be maintained by the Owner of such Septic Lot in an orderly operation condition and in compliance with any requirements imposed by the Association or any governmental authority;

**WHEREAS**, Section 7.29 of the Declaration states that, non-exclusive Septic Easements for the purpose of providing septic service and for use as septic drainage fields are reserved and granted, over, across and under the Septic Easement Lots and the Septic Easement Areas, to and for the benefit of the Association and the Septic Lot Owners and that the Septic Easements are an appurtenance to, and run with the title to, the Lot it serves and for which it is reserved with any deed, deed of trust, mortgage, transfer or other conveyance of any of the Septic Lots shall also transfer or convey the Septic Easement appurtenant to such Septic Lot, even if not expressly included therein

**WHEREAS**, North Carolina Code Section 15A NCAC 18A .1938(j) requires that the entire wastewater sewage system shall be on property owned or controlled by the person owning or controlling the system and that any easement(s), right(s)-of-way, or encroachment agreement(s): (1) is appurtenant to specifically described property and runs with the land and is not affected by change of ownership or control; (2) is valid for as long as the wastewater system is required for the facility that it is designed to serve; (3) describes and specifies the uses being granted and shall include ingress and egress, system installation, operation, maintenance, monitoring, and repairs: (4) specifies by metes and bounds description or attached plat, the area or site required for the wastewater system and appurtenances including a site for any required system replacement; and (5) shall be recorded with the register of deeds in the county where the system and facility is located; and

**WHEREAS**, Article 6, Section 6.1 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for BayCrossing specifically provides that the "The Association reserves the right to impose upon the Common Elements henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, governmental and quasi-governmental purposes, **sewer**, water, gas, drainage, irrigation, lake access and maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Planned Community or any portion thereof";

**NOW THEREFORE**, the Association hereby records this First Amendment in order to clarify the rights-of-way and easements previously granted to Owners in the BayCrossing subdivision to maintain the Off-Site Septic Systems for their lots.

**WITNESSETH:**

**NOW, THEREFORE,** the Article 6 of the Amended and Restated Declaration of Restrictions, Conditions, Easements, Covenants and Agreements for BayCrossing is hereby amended and restated by adding Section 6.12 as follows:

Section 6.12 **Perpetual Easement for Septic**. The Association grants to the Owners, their respective successors and assigns, a perpetual right-of-way, privilege and easement to go in, upon and through that certain tracts or lot of land and premises described in those plats of the BayCrossing subdivision identified immediately below, to which reference is hereby made, and to construct, maintain, operate in, upon and through said premises in a proper manner a sanitary sewer lateral connection or lines under, in or on that portion of the said real property, i.e., Common Elements of the Association, said portion being more particularly described as the Roadways as defined and described in Sections 2.10, 2.31 and 5.3 of the Declaration and shown in the following:

Plat Book 46 at Pages 5-6, Page 172-173, Plat Book 46, Page 81, Plat Book 47, Pages 33-34, Plat Book 47, Page 145, Plat Book 53, Page 73, Plat Book 53, Page 92 of the Iredell County Registry,

Pursuant the Declaration, including but not limited to Section 5.6 and Section 7.29, the Owner(s) are responsible for the general maintenance of the Off-Site Septic System for each Septic Lot, including all lateral connection or lines, must be maintained by the Owner(s) of such Septic Lot in an orderly operation condition and in compliance with any requirements imposed by the Association or any governmental authority. As such, the cost of maintaining said Off-Site Septic System within and under the aforementioned right-of-way and easement shall be borne entirely by the Owner(s) subject to the terms and conditions of the Declaration.

The Owner(s) of the Septic Lot, their successors and assigns, shall have the perpetual right-of-way and easements at all times to enter said common area for the purpose of inspecting said lines and systems and making necessary repairs and alterations thereon and additions thereto; together with the right at all times to relocate said lines and systems and to cut away and keep clear on said right-of-way and easements obstructions that may endanger the proper maintenance and operation of the same.

The aforementioned right-of-way and easement shall not be affected by the change of ownership, but shall be perpetual and shall pass to the respective Owner(s) successors and assigns, with said right-of-way and easement being appurtenant to the Lots within the BayCrossing subdivision and not affected by change of ownership or control. Finally, said right-of-way and easement is valid for as long as any of the affected Off-Site Septic systems are required.

**IN WITNESS WHEREOF**, the undersigned President of BayCrossing Owners Association, Inc. hereby certifies that the above First Amendment to the Amended and Restated Declaration of Restrictions, Conditions, Easements, Covenants and Agreements of BayCrossing was duly adopted by the Association in accordance with and pursuant to the North Carolina Planned Community Act, and the Bylaws of the Association.

This 7TH day of July 2017.

BAYCROSSING OWNERS ASSOCIATION, INC.

(Seal)

By: _____
President

Attest: _____
Secretary

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

I, Jasmine Cocknell, Notary Public for said county and state, certify that Peter Jenkins personally came before me this day and acknowledged that (s)he is Secretary of BayCrossing Owners Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself/himself as its Secretary.

Witness my hand and official seal this 7th day of July 2017.

(Seal)

_____
Notary Public

My commission expires 3/22/20

JASMINE COCKRELL NOTARY PUBLIC MECKLENBURG COUNTY, NC MY COMMISSION EXPIRES MARCH 22, 2020