

The Enclave Covenant Amendments proposed by HOA Board • January 13, 2022 • v3

Cast your vote for each section by either circling or placing a check next to the Yes or No:

 Y or N

NOW THEREFORE, the Declaration of Covenants, Restrictions, Property Owners Association and Limitations Running with the Land for the Enclave at Lake James Subdivision is hereby amended as follows:

The Declaration shall be amended by striking Paragraph 4 in its entirety and replacing this Paragraph with the following Paragraph 4 of the Declaration:

 Y or N 4.(a) No mobile homes, tiny homes, house trailers, or junk or inoperable motor vehicles shall be allowed on any granted lot or tract. No building of a temporary character shall be erected or allowed to remain on said property for a continuous period in excess of three (3) months unless approved in writing by the Board of Directors (BOD).

 Y or N 4 (b) Any tent campsite or temporary structure on a lot shall not remain on the lot for more than fourteen (14) days out of a thirty (30) day period during the summer or seven (7) days out of a thirty day period during spring, fall or winter.

 Y or N 4 (c) Camping is limited to owners and guests and only when owners are present.

 Y or N 4 (d) Camping is only allowed with tents that blend into the landscape, i.e., are “earth-tone” colors. Tents cannot be seen from the four directional points of 1.) community roads, 2.) Lake James, 3.) and 4.) two adjacent residential lots. Permanent platforms or structures cannot be built to support tent camping. Approval to erect tents on property must be approved by adjacent neighbors. If neighbor does not respond to request for approval, such request can be submitted to BOD. Tent campers must have a sanitary plan for underground disposal of human waste. As bears and rodents are present in our neighborhood, proper, secure storage of food outside of a residential home is required at all times.

 Y or N 4 (e) One (1) recreational vehicle (RV) and/or camper can be on the Property for up to nine (9) months out of a twelve (12) month period. An exception is granted if a residence is under construction or completed.

Y or N 4 (f) An RV or camper may not be occupied for more than 14 days per thirty (30) day period unless approved in writing by the BOD.

Y or N 4 (g) Solar or electric-battery based generators are permissible as an electrical source for an RV or camper. Liquid-fuel based generators are only permitted if they are used sparingly and have a decibel level below 55 dBA during day or 45 dBA during night. As Duke Energy is available to power homes, larger generators are allowed for residences only if there is a power outage in the neighborhood.

Y or N 4 (h) Only one boat is allowed for storage per lot.

Y or N 4 (i) A porta-john or portable toilet may not be installed on a property for more than seven (7) days a year, except during the construction of a residential home. Such porta-johns shall be maintained and cleaned regularly.

The Declaration shall be amended by striking Paragraph 5 in its entirety and replacing this Paragraph with the following Paragraph 5 of the Declaration:

5. Construction of a building can be commenced by the owner on any lot or tract in said development only after all approvals are received and the impact fee is paid. The exterior construction of said building shall be completed within twelve (12) months from the date a building permit is obtained.

The Declaration shall be amended by striking Paragraph 12 in its entirety and replacing this Paragraph with the following Paragraph 12 of the Declaration:

12. ASSESSMENTS

- (a) Purpose of Assessments. The assessments for common expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the the Enclave at Lake James as may be more specifically authorized from time to time by the Board.
- (b) Apportionment of Common Expenses. Except as set forth in this Paragraph, common expenses shall be assessed against all Lots in accordance with the allocated interests in the common expenses as set forth in this Declaration.
- (c) Common Expenses Attributable to Fewer than All Lots.

- Y or N i. If a common expense is caused by the misconduct of a Lot Owner as deemed by the BOD, the Association may assess that expense exclusively against that Lot Owner's Lot.
- Y or N ii. Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.
- Y or N iii. The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.
- Y or N iv. Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

(d) Lien for Assessments.

- Y or N i. Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Burke and McDowell counties in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to the Planned Community Act and, the Declaration, Bylaws, and Rules and Regulations are enforceable as assessments under this Paragraph.
- ii. The lien under this Paragraph is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

iii. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Paragraph files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

iv. This paragraph does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which an earlier paragraph creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

v. A judgment, decree or order in any action brought under this Paragraph shall include costs and reasonable attorney's fees for the prevailing party.

vi. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Lot Owners including such purchaser, and its heirs, successors and assigns.

Y or N (e) Computation of Operating Budget and Annual Assessment.

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget for the planned community, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of all the lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

Y or N (f). Personal Liability of Lot Owners.

The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

No Waiver of Liability for Common Expenses.

 Y or N iii. (f) No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

 Y or N (g) Special Assessments.

- i. If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.
- ii. The Board of Directors may levy special assessments for capital improvements upon the common elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of all the lot owners at a special meeting of the Association duly called for that purpose.

 Y or N (h) Capital Budget and Contribution.

The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within

the budget and assessment as provided in this paragraph. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

The Declaration shall be amended by striking Paragraph 13 in its entirety and replacing this Paragraph with the following Paragraph 13 of the Declaration:

Y or N 13. NUISANCES.

No noxious or offensive activities shall be conducted upon any Lot or the Common Elements, nor shall anything be done thereon which may become an annoyance or nuisance to the subdivision. No plant, animal, device or thing of any sort whose normal use or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the subdivision by the Lot Owners, tenants and guests thereof may be maintained.

The Declaration shall be amended by striking Paragraph 14 in its entirety and replacing this Paragraph with the following Paragraph 14 of the Declaration:

14. RESIDENTIAL USE AND RENTAL OF LOTS.

Y or N i. All Lots shall be used, improved and devoted exclusively to single-family residential use. No trade or business shall be carried on upon any Lot, such as mechanical repair or manufacturing or leasing of dock slips, but this restriction shall not prohibit a work-from-home occupation which does not unreasonably increase traffic or cause any noxious or offensive activity upon the Property.

Y or N ii. Short-term rentals shall not be permitted unless a Certificate of Occupancy of a residential home has been issued for the Property. Each rental shall be for a minimum of two (2) days. If such rentals result in a noxious or offensive activity such as loud or raucous parties and cause annoyance to neighbors, the BOD can revoke a lot owner's ability to the rental market for up to six months.

The Declaration shall be amended by striking Paragraph 15 in its entirety and replacing this Paragraph with the following Paragraph 15 of the Declaration:

15. ARCHITECTURAL REVIEW

(a) Architectural Committee. The Architectural Committee (ARC) shall be the Board of Directors of the Association or a Committee chosen by the Board of Directors.

Y or N (b) Improvements. No building, fence, wall or other structure or shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein, including, without limitation, be made

until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association. All proposed plans and specifications shall be submitted first to the Association's Management Architectural Review Board (ARB) and, if approved, shall be submitted to the ARC. The ARC shall approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to the ARC by the Owner. In passing upon such plans, the ARC and BOD may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved. Refusal to approve the proposed plans may be based by the ARC or BOD on any grounds, including purely aesthetic considerations. No alterations in the external appearance of any structure shall be made without approval by the ARC or BOD as provided herein; provided, however, that no approval by the ARC or BOD granted hereunder shall constitute or be construed as approval by ARC or BOD or any other person as to the structural suitability or quality of any structure or material.

Y or N (c) The BOD is authorized to establish an ARC and to delegate to said ARC the following powers:

- i. to adopt, administer, and enforce uniform architectural standards which conform to the architectural and other protection in the Declaration. Said standards shall be adopted with the goal of maintaining the beauty of the natural environment of the areas and the overall plan for the Development; and
- ii. to adopt, administer, and appoint review committees with the goal of fairly and impartially enforcing architectural standards; and
- iii. to make special exception to any standards adopted by the ARC or any review committees, upon proper allocation to the ARC. The means and manner of such application shall be adapted by the ARC.

Said ARC shall consist of no fewer than three (3) members, at least one (1) of whom shall be a member of the Association, and one (1) of said three (3) shall be a member of the BOD. The BOD, may, in its sole discretion, appoint a professional architect, engineer, or land planner, who may or may not be a member of the Association to serve on said ARC and may provide that said architect, engineer, or land planner be fairly compensated for services. The

BOD may approve the distribution of funds to meet the reasonable expense of the ARC.

The ARC shall be responsible to the BOD, which shall have a veto power over any decision made by the ARC. The veto power may be exercised by a majority of the Directors at any BOD meeting, after application made by an aggrieved member or by any member of the ARC. However, no approval is needed for authorized action taken, if no application is made by an aggrieved member. The ARC shall promulgate from time to time such procedural rules and regulations as it deems necessary and proper, which shall include, but not necessarily be limited to the following:

- (1) Guidelines and procedure to be followed by an applicant seeking its approval.
- (2) Guidelines and procedure to be followed by an applicant seeking a special exception.
- (3) An adequate application form to be prepared and submitted by an applicant seeking its approval as a special exception.
- (4) A schedule of reasonable fees applicable for the processing of applications. These fees include an Architectural Review Fee of three hundred dollars (\$300) and a nonrefundable Impact Fee for construction projects of one thousand five hundred dollars (\$1,500). The BOD reserves the right to raise the impact fee by 3-5% at its discretion.
- (5) A procedure for calling a meeting of the BOD or ARC (which may include regularly scheduled meetings).
- (6) Such other procedural rules, regulations, and requirements as the ARC may deem necessary and proper, which are not in conflict with the Bylaws and the Declaration.

(c) LANDSCAPING

- Y or N (i.) Landscaping that is native to the area is recommended for all additions to an owner's lot. A lot that has been altered from its present state shall be finished with grass, pine needles or mulch and shall be maintained to be harmonious with the neighborhood.

Y or N (ii.) No major landscaping improvements of more than three (3) trees or bushes shall be installed upon the lots by an owner without approval of the ARC. Any landscaping alteration exceeding the above shall be submitted to the ARC for approval showing the nature, kind, shape, height, materials and location of the trees or shrubs to be added to the topography. In passing upon such plans, the ARC and BOD may take into consideration the suitability and desirability of the proposed landscaping and the proposed trees or shrubs to the Lot involved. Refusal to approve the proposed plans may be based by the ARC or BOD on any grounds, including purely aesthetic considerations. No alterations in the external appearance of any structure shall be made without approval by the ARC or BOD as provided herein; provided, however, that no approval by the ARC or BOD granted hereunder shall constitute or be construed as approval by ARC or BOD or any other person as to the structural suitability or quality of any structure or material.

 Y or N (iii.) In altering the landscape for a home, driveway or installation of trees and shrubs, owners should take care to preserve as many existing trees as possible to preserve the aesthetic look of the neighborhood and shall not, for instance, engage in “clear-cutting” a lot.

 Y or N (iv.) Owners are allowed to maintain a vegetable garden, provided such gardens:

- are not for commercial production
- are at least 30 feet from a lot’s boundaries
- are maintained appropriately and asthetically
- do not result in erosion or water runoff to a neighbor’s property
- are trimmed at the end of the growing season and covered with straw, grass or mulch until the next growing season

The Declaration shall be amended by adding the following Paragraph 27 to the Declaration:

27. ENFORCEMENT POWERS AND PROCEDURES.

 Y or N (a) Rules Making Authority. The Enclave at Lake James shall be used only for those uses and purposes set out in the Declaration and Bylaws. The BOD shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a

majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.

Y or N (b) **Fining Powers.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot, and become a personal obligation of the Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote. In the event that any occupant of a Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments are not to be regarded as fines that warrant a hearing under this Paragraph.

- (a) **Abatement and Enjoinment of Violations.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

- (b) In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors shall not impose a fine or charge for damages against an Owner or suspend an Owner's community privileges or services unless and until the following procedure is followed:

- (c) Notice. If it appears that a owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iii) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (iv) that the owner has the right to be represented by an attorney at the hearing.

- (d) Hearing. The hearing shall be held before the BOD and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The BOD shall render its Final Decision to the Owner regarding imposition of the fine or suspension of community privileges or services. Charges for late payments are not to be regarded as fines that warrant a hearing under this Paragraph.

IN WITNESS WHEREOF, the undersigned officers of The Enclave at Lake James Property Owners Association, Inc. hereby certify that the above amendment to the Declaration of Covenants, Restrictions, Property Owners Association and Limitations Running with the Land for the Enclave at Lake James Subdivision was duly adopted by the Association and its membership in accordance with and pursuant to the Declaration.

This _____ day of _____, 2022.

THE ENCLAVE AT LAKE JAMES PROPERTY OWNERS ASSOCIATION, INC.

by: _____
President

Attest: _____
Secretary

STATE OF NORTH CAROLINA
COUNTY OF _____

I _____, Notary Public for _____
County, North Carolina, certify that _____ personally
came before me this day and acknowledged that he (or she) is Secretary of The Enclave at Lake
James Property Owners Association, Inc. a nonprofit 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 and attested by himself (or herself) as its Secretary.

Witness my hand and official seal, this the _____ day of _____,
2022.

(SEAL) _____
Notary Public

My commission expires _____.