

This instrument prepared by:
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**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
DONELSON DOWNS**

This First Amendment to the Declaration of Covenants, Conditions, and Restrictions for Donelson Downs is effective the ___ day of _____, 2022 having been adopted by the Owners/Members in the Donelson Downs Owners Association, Inc. (“Donelson Downs” or “Association”) in accordance with Article XIII, Section 1 of the Declaration of Covenants, Conditions, and Restrictions for Donelson Downs and Article VIII, Section 4 of the By-Laws for Donelson Downs Owners Association, Inc. (hereinafter collectively the “Declaration”) dated April 15, 2019 and recorded in the Register’s Office for Davidson County, Tennessee, on April 23, 2019 in Instrument No. 20190423-0037390.

WITNESSETH

WHEREAS, all capitalized terms not otherwise defined herein shall have the meanings set forth in the Declaration; and,

WHEREAS, to the extent that any change or new Article and/or Section created by this Amendment, conflicts with any existing Article and/or Section of the Declaration, the Article and/or Section created by this Amendment shall control; and,

WHEREAS, pursuant to Article XIII, Section 1 of the Declaration and Article VIII, Section 4 of the By-Laws for Donelson Downs Owners Association, Inc., the same may be amended upon the affirmative vote of more than fifty percent (50%) of the Members present at a duly called meeting of the Association or the affirmative written consent of such percentage of the Members at which a quorum is present; and,

WHEREAS, as evidenced by their signatures below, the President and Secretary of Donelson Downs Owners Association, Inc., certify that no less than fifty percent (50%) of the Members in the Association have consented to this Amendment and as such, this Amendment to the Declaration of Covenants, Conditions and Restrictions for Donelson Downs shall be adopted.

NOW, therefore, the above-referenced Declaration is amended as follows:

1. Article XI, Section 4, of the Declaration is hereby deleted in its entirety and replaced with the following:

4. Leasing.

A. Definitions.

- i. **“Leasing”**. For purposes of this Declaration is defined as any short-term transient or vacation-type occupancy or the regular, exclusive monthly, quarterly or annual occupancy of a Home by any person or persons other than the Owner, or any lease-purchase or similar agreement, regardless of whether the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.
- ii. **“Tenant”**. Means a person entitled under a rental agreement to occupy a Home to the exclusion of others.
- iii. **“Home or House”**. Shall mean an independently owned structure on a separate Lot that has been constructed for use as a single-family residential dwelling.
- iv. **“Transient”**. Means any right to use, occupy or possession, or the use, occupancy or possession of a Home for a period of thirty (30) calendar days or less.
- v. **“Short-term rental Unit” or “STR”** means a Home that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days.
- vi. **“Single-Family”**. An individual, or two or more persons related by blood, marriage or law, or, unless otherwise required by federal or state law, a group of not more than three unrelated persons living together in a Home.
- vii. **“Biological Unit Owner Heir” or “Biological Heir”** Means the biological or legally adopted children or grandchildren of a Unit Owner; the parent(s), of a Unit owner; the sisters, brothers, nieces or nephews of a Unit Owner; the step-parent and step-sister or step-brother of a Unit Owner.

B. Lease Restrictions and Exceptions

- i. **Occupancy Requirement.** All new Owners of a Home who become an Owner subsequent to the date of this Amendment, shall own and occupy such Home as the Owner’s primary place of residence for the immediate twelve (12) consecutive months after the date of purchase or other acquisition of title, as a prerequisite to being eligible to lease such Home. The occupancy requirement herein may be satisfied only by the Owner whose name appears on the deed or other instrument which vests fee simple title in such Owner’s name. No agent, assignee or other person or entity affiliated with the Owner

may occupy the Home as a means of satisfying the twelve (12) month occupancy requirement herein.

ii. **Hardship Exceptions.** With the exception of Owners in the Association as of the date of this Amendment all of whom are expressly permitted to lease their Homes, no person or entity who becomes an Owner after the date of this Amendment, shall be permitted to lease any Home owned by such Owner unless approved pursuant to this Section 4, part B, ii. And if so approved, all such leasing shall further be subject to Section 4, parts C, D, E, F, and G contained in this Amendment. Subject to all of the restrictions recited within this Section 4, the Board in its discretion, shall be empowered to allow reasonable leasing of Homes to avoid undue hardship for reasons to include, but not limited to:

- a) Owners who must relocate their place of residence and cannot, within ninety (90) calendar days from the date that the Home was placed on the real estate market, sell the Home for at least the current appraised market value, after having made reasonable and diligent efforts to do so.
- b) Deceased Owners whose Homes must be occupied by their heirs or devisees, or whose estate is being administered by their estate and/or surviving heirs at law and must be leased until such Home is sold or permanently occupied by heirs devisees and/or heirs at law.
- c) Owners who take a leave of absence or are temporarily relocated a distance of fifty (50) miles or greater from the Home but who intend to return to reside in the Home.
- d) Owners who are members of the United States armed forces and are deployed for more than sixty (60) calendar days from their Home and who produce a copy of such orders to the Board as evidence of such deployment.
- e) In all such hardship situations the Owner shall reapply at the end of the natural lease term for renewal of the hardship exception created herein.

Those Owners who are required to demonstrate, and who have so demonstrated, that the inability to lease their Home would result in undue hardship and who have obtained the requisite written approval from the Board, may lease their Home for such duration as the Board reasonably determines is necessary to prevent undue hardship. Under no circumstances however, shall the Board grant any such hardship exception for more than one (1) year at a time, and the Owner shall reapply for the renewal of a hardship exception no less than sixty (60) calendar days prior to the natural expiration of the lease. If the Owner makes such application for renewal of hardship

exception to the Board and does not receive a written approval of renewal hardship exception from the Board prior to the natural expiration of the lease, the hardship exception shall be presumed to be approved. The Board shall not unreasonably withhold approval.

- C. Lease Requirements Such Leasing as is permitted herein, shall be subject to reasonable rules promulgated by the Board as may be adopted from time to time, and the following requirements:
- i. All leases shall be in writing and a copy of the fully executed lease or lease summary naming all tenants and occupants, the cellular number and email address of all tenants and occupant above the age of eighteen (18) years of age, shall be filed with the Association Secretary or community manager prior to occupancy. The names and contact information provided to the Association Secretary or community manager shall only be used in the event of an emergency or to provide other notices as may reasonably need to be provided.
 - ii. Names of all tenants and occupants shall be filed with the Board or community manager prior to occupancy.
 - iii. Lease terms shall be for no less than one (1) year.
 - iv. There shall be no assignment of any lease unless such assignment is in writing and made only to those excluded transfers of ownership identified Paragraph (4)(b)(ii) below and a copy of such written assignment is provided to the Board or community manager.
 - v. There shall be no subleasing of leases except with the prior written approval of the Owner and a copy of such written sublease provided to the Board or community manager.
 - vi. No transient tenants shall be accommodated in any Home.
 - vii. No Home shall be advertised and/or used as an STR, vacation or seasonal rental, or bed and breakfast through any service such as Vacation Rental by Owner (“VRBO®”), Airbnb®, hometogo.com, or any similar short-term leasing marketing service.
 - viii. No Home shall be leased except in its entirety.
 - ix. Tenants and occupants named in all leases shall be subject to the Declaration, By-Laws and rules and regulations for Donelson Downs, all existing amendments thereto and future amendments as they may be adopted from time to time.

- x. The Association shall be considered a third-party beneficiary of all leases and subleases for the limited purpose of enforcing all lease terms and conditions in the event the Owner fails or refuses to do so.
- xi. The Board in its discretion, shall be permitted but not required to adopt a reasonable leasing fee to be charged to Owners wishing to lease their Home for the purpose offsetting any damage to Common Area which is attributed to a Tenant or occupant of a Home. If such leasing fee is so adopted, it shall be paid by the Owner on or before the date of occupancy of all Tenants and occupants.

D. Excluded Parties

- i. **Mortgage/Deed of Trust:** With the exception of Section 4, part C of the Lease Requirements section above, and Section 4, parts E, F, and G below, the prohibition upon Leasing imposed by this Amendment shall not apply to any Leasing transaction entered into by the holder of any first mortgage and/or Deed of Trust on a Home who becomes the Owner of the Home through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage and/or Deed of Trust.
- ii. **Existing Owners:** Subject to Section 4, part C of the Lease Requirements section above, and Section 4, parts E, F, and G below, existing Owners as of the date of this Amendment may lease their Home and are effectively “grandfathered”. The exclusion herein shall only be applicable to Owners, Tenants and occupants who, as of the date of this Amendment, currently are in compliance with the existing Declaration, By-Laws, amendments thereto and Association rules and regulations and other policies for the Association.
 - a) Once an Owner who has enjoyed this grandfathered status, transfers ownership to any third party, his or her Home shall then be subject to the provisions recited within this Amendment.
 - b) A transfer of ownership for the purposes of this part, shall expressly exclude the following transfers of ownership: transfers of title between spouses; transfers of ownership to a Trust, the beneficiary and/or trustor of which, is the homeowner; transfers of ownership by homeowner to a legal entity for tax or estate planning purposes; transfers of title by testate or intestate succession. All such transfers however, shall be subject to Section 4, part C of the Lease Requirements section above, and Section 4, parts E, F, and G below.
 - c) All existing Owners who currently lease their Homes shall provide a copy of their written lease to the Association within thirty (30) calendar days of this Amendment. Owners who currently do not lease their Home, but who may lease at a future date, shall provide a copy of

the fully executed written lease agreement which shall name all tenants and occupants, to the Association management company within thirty (30) calendar days prior to tenant's occupancy.

- iii. **Family Members:** Homes which are occupied by the children or grandchildren of a Home Owner; Homes which are occupied by the parent or parents of a Home Owner; and Homes occupied by aunts, uncles, sisters, brothers, nieces or nephews of the Home Owner, shall not be considered as Homes which are leased. Such Homes shall however, be subject to the lease restrictions recited in Section 4, part C of the Lease Requirements section above, and Section 4, parts E, F, and G below.
 - iv. **Association:** With the exception of Section 4, part C of the Lease Requirements section above, and Section 4, parts E, F, and G below, the provisions of this Amendment shall not apply to any leasing transaction entered into by the Association who becomes the Owner of a Home through foreclosure of its lien or any other means pursuant to the satisfaction of a Notice of Lien or judgment in the Association's favor.
- E. Tenants and Occupants Liability Tenants, occupants and invitees of any Owner shall be subject to and shall comply with the Declaration, By-Laws and all amendments thereto, and all Association rules and regulations and other policies duly adopted by the Board for the Association.
- F. Rental Fine Policy Violations of this Section 4 shall be subject to the same remedies within the Declaration which currently exist for other violations, including the failure and/or refusal to pay assessments. In addition to such remedies, the Board shall adopt reasonable rules and regulations for the enforcement of any leasing restriction created herein. Such rules and regulations shall include procedures for issuing notices and reasonable fines against Home Owners in violation. All costs, including reasonable attorney's fees incurred in the enforcement of this part, shall be the responsibility of the Home Owner. Any and all such costs and reasonable attorney's fees, together with fines created by such rules and regulations, shall be a continuing lien against the Home and shall further be the personal obligation of the Home Owner.
- Fines created by Rules and Regulations composed for the enforcement of this Section 4, together with the costs and reasonable attorneys' fees for the enforcement thereof, shall be a charge on the land and shall be a continuing lien upon the Home against which each such fine is levied; and such fines, together with costs and reasonable attorneys' fees for the enforcement thereof, shall be the personal obligation of the person who was the Home Owner of such Home at the time the fine(s) were levied.
- G. Tenant/Occupant Violations

- i. Written notice shall be mailed to tenants, occupants and the Owner at the last address provided by the Owner to the Association, of any and all violations of the Declaration, By-Laws, Association rules and regulations and amendments thereto by such tenant or occupant. Such written notice shall give the Owner ten (10) business days to provide the Association with written evidence of the measures such Owner has taken to ensure such violations by their tenant or occupant does not continue. Any violation by such tenant or occupant of the same or similar nature within sixty (60) days of the original violation, shall be considered a continuation of the previous violation. The rules and regulations adopted by the Board for the enforcement of this Section 4 shall be implemented against any Owner who fails to provide such written notice to the Association as required in this part or whose tenant's or occupant's actions are considered a continuation of a previous violation.

- ii. **Lease Termination.** After the Board-adopted rules and regulations for the enforcement of this part has been implemented as a measure and prerequisite to compel the tenant's or occupant's compliance through the Owner, should such violations continue, the Association shall be entitled to file suit against such tenant or occupant and Owner for unlawful detainer, and the Association shall further be entitled to file Writs to seek possession of the Owner's Home, and evict such tenant or occupant. All costs for such action, including reasonable attorneys' fees, shall be a continuing lien and charge against such Owner's Home, and be the personal obligation of such Owner.

- iii. **Lease Termination due to Violence or Threats to Health, Safety or Welfare.** Should any tenant or occupant willfully or intentionally commit a violent act, or behave in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare or the life or property of other owners, tenants or occupants at Donelson Downs; or creates a hazardous or unsanitary condition in their Home or within Donelson Downs that affects the health, safety or welfare or the life or property of other owners, tenants or occupants; or permits such acts by any person present at Donelson Downs at the invitation of such tenant or occupant, the Association shall, on behalf of the Owner, be entitled to exercise all of the remedies and shall comply with all of the requirements of Tenn. Code Ann. § 66-28-517 as the same may be amended from time to time, and the Association shall further be entitled to file suit against such tenant and/or occupant for unlawful detainer seeking eviction and shall be entitled to file Writs seeking possession of the House on behalf of the Owner.

All costs incurred by this part, together with reasonable attorneys' fees for the enforcement thereof, shall be a charge on the land and shall be a continuing lien upon the Home against which such costs and reasonable attorney's fees were incurred; and such costs, together with reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Home at the time the fine(s) were levied.

2. Article IV, Section 3, of the By-Laws is hereby deleted in its entirety and replaced with the following:

3. **Place and Time of Meeting.** Meetings of the Members of the Association may be held at a place and at such a time to be determined by the Board and as specified in the written notice of such meeting. Meetings shall be allowed to take place virtually if so decided upon by the Board.

3. Article V, Section 1, of the By-Laws is hereby deleted in its entirety and replaced with the following:

1. **Board Authority and Number.** The affairs of the Association shall be managed by a Board of Directors. During the Appointment Period, the members of the Board, who need not be Members of the Association, shall be appointed by the Declarant and shall serve at the pleasure of the Declarant. After the Appointment Period, the Board shall consist of five (5) directors each of whom must be a member of the Association or be the Declarant, its assignee or officer, agent, or representative thereof.

4. Article V, Section 4, of the By-Laws is hereby deleted in its entirety and replaced with the following:

5. **Term of Office.** Directors shall be elected for terms of three (3) years or until their successor is elected. Provided, however, that the terms of the initial Directors elected by the Members after the Appointment Period shall be staggered where one (1) Director serves for a one (1) year term, two (2) Directors serve for a two (2) year term, and two (2) Directors serve for a full three (3) year term. After all initial Director terms have lapsed, all terms thereafter will be for a full three (3) years. If the individual terms of the initial Directors can't be agreed upon by the Board the decision for such shall be decided by the then setting President for the Association.

Only the changes and amendments made by this Amendment to the Declaration of Covenants, Conditions and Restrictions for Donelson Downs shall be changed. All other terms, conditions, restrictions and provisions of the Declaration and previous amendments thereto, shall survive and continue to remain in full force and effect.

(signatures and acknowledgements appear on the following page)

IN WITNESS WHEREOF, the undersigned have executed this instrument as of this the _____ of _____, 2022.

**DONELSON DOWNS OWNERS
ASSOCIATION, INC.**

By:
Its: President

STATE OF TENNESSEE
COUNTY OF _____

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, _____, to me known (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged themselves to be the President of Donelson Downs Owners Association, Inc., the within named bargainor, and that they, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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

Notary Public

My Commission Expires: _____

**AFFIDAVIT OF MEMBER CONSENT FOR AMENDMENT
BY
SECRETARY OF DONELSON DOWNS OWNERS ASSOCIATION, INC.**

The undersigned, _____, Secretary of Donelson Downs Owners Association, Inc., certifies and affirms that in accordance with Article XIII, Section 1 of the Declaration of Covenants, Conditions, and Restrictions for Donelson Downs and Article VIII, Section 4 of the By-Laws for Donelson Downs Owners Association, Inc., that certify that no less than fifty percent (50%) of the Members in the Association have consented to this Amendment and as such, this Amendment to the Declaration of Covenants, Conditions and Restrictions for Donelson Downs shall be adopted.

**DONELSON DOWNS OWNERS
ASSOCIATION, INC.**

By:
Its: Secretary

STATE OF TENNESSEE
COUNTY OF _____

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, _____, to me known (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged themselves to be the Secretary of Donelson Downs Owners Association, Inc., the within named bargainor, and that they, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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

Notary Public

My Commission Expires: _____