

## Draft 1 Covenant Change – Oct 11 2018

Community Meeting on Short Term Rentals  
Thursday, October 11, 10:00 a.m. at the Plantation House

Below is the proposed **Amendment to the Class A Covenants** crafted by the POA's Attorney to **limit Short Term Rentals**. If passed in its present form the Amendment would define a short term rental as the Occupancy of a Single-Family Dwelling Unit for a period of less than six (6) months by anyone other than an Authorized Occupant. The Amendment also addresses Airbnb , corporate ownership and other internet venues. Below, the Amendment is an explanation of the terms in the Amendment in hopefully plain language.

The purpose of the meeting on October 11, will be to present the Draft Amendment to the property owners subject to the Class A Covenants and receive feedback. Information on the informal Survey that was conducted in August will be presented on October 11. After the presentation the floor will be open for written questions from those in attendance. Index cards will be provided to submit questions at the meeting. The Board will use this community input as part of their analysis to further refine the proposed Covenant Amendment on Short Term Rentals if needed.

The present plan is to submit a final **Amendment on Limiting Short Term Rentals** to a vote in conjunction with the 2019 Annual Meeting which is in March of 2019.

## Amendment to the Land Use Restrictions, Protective Covenants, Building Standards Class "A" Residential

WHEREAS, HILTON HEAD PLANTATION COMPANY, a corporation organized and existing under the laws of the State of South Carolina was the owner of certain lands located within Hilton Head Plantation in Beaufort County, South Carolina; and

WHEREAS, HILTON HEAD PLANTATION COMPANY, in accordance with a resolution of its Board of Directors adopted at a meeting held on February 14, 1973, wherein the President and the Asst. Secretary of Hilton Head Plantation Company, Inc. adopted a Declaration of Restrictive Covenants Affecting Certain Lands in Hilton Head Plantation and nearby areas ("Declaration"); and

WHEREAS, a majority of the owners of lots substantially affected by such changes adopted Amended Land Use Restrictions Protective Covenants Building Standards Class "A" Residential recorded in the Office of the Registrar of Mesne Conveyances for Beaufort county, South Carolina on February 10, 1998 in Deed Book 1013, Page 1 (hereinafter referred to as Land Use Covenants); and

WHEREAS, under Article VII, Section 5 the Land Use Covenants may be amended at any time upon the affirmative vote or written consent, or any combination of vote or written consent of the Owners subject thereto holding at least 67% of eligible votes; and

WHEREAS, Owners holding at least 67% of the eligible votes have approved this Amendment.

NOW, THEREFORE, the Land Use Covenants are amended as follows:

1.

Section 3 – Definitions is amended by deleting (j) "Occupant" in its entirety and replacing it with the definition of "Occupant" found in Article II, Section 7.

2.

Article II is hereby amended by adding the following.

## Section 7. LEASING AND OCCUPANCY.

### DEFINITIONS.

(i) "Corporate Occupancy". If an Owner is a corporation, limited liability company, partnership, trust or any other legal entity or an unincorporated association that is not a natural person, the Owner shall designate in writing to the Board the name of an individual who will Occupy the Single-Family Dwelling Unit (hereinafter the "Authorized Corporate Occupant"). An Authorized Corporate Occupant shall only be a single officer, (but not an assistant officer), or the majority or 50% shareholder/member of an Owner that is a corporation; the majority or 50% member of an Owner that is a limited liability company; the majority or 50% member of an Owner that is a partnership; or a single beneficiary of an Owner that is a nonrevocable trust; provided the Owner, or other interest holder in the Single-Family Dwelling Unit or in the Owner, does not receive any rent or other consideration for such Occupancy and provided further that, with the exception of a single beneficiary of an Owner that is a trust, the Authorized Corporate Occupant must perform a valid corporate/entity/partnership/association function(s) for the Owner that is unrelated to the Single-Family Dwelling Unit or the Authorized Corporate Occupant's Occupancy thereof. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the Owner. The Authorized Corporate Occupant may not be changed more frequently than once every twelve (12) months without the Board's written consent, which the Board may grant or withhold in its sole discretion.

(ii) "Guest" shall mean a natural person who (a) is specifically invited by an Owner to occupy a Single-Family Dwelling Unit and (b) who does not pay the Owner either directly or indirectly any fee, service charge, or any other consideration in exchange for his or her Occupancy and (c) who does not Occupy the Single-Family Dwelling Unit for more than ninety (90) days in a year.

(iii) "Leasing" means the Occupancy of a Single-Family Dwelling Unit for a term of six (6) months or more by any person(s) other than: (1) the Owner or a parent, child or legal spouse of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant; or (3) a roommate of an Authorized Occupant or Authorized Corporate Occupant when the Authorized Occupant or Authorized Corporate Occupant also occupies the Single-Family Dwelling Unit as his or her primary residence.

(iv) "Occupant" means any person who stays or remains at a Single-Family Dwelling Unit overnight.

(v) "Occupy" or "Occupancy" shall refer to the situation when a person, natural or otherwise, stays or remains at a Single-Family Dwelling Unit overnight. By way of example, but not in limitation, a person who is permitted access to a Single-Family Dwelling Unit using the services of Airbnb or similar transient lodging company is considered an Occupant and the use of the Single-Family Dwelling Unit is considered Occupancy.

(vi) "Roommate" shall be defined as any person who occupies a Single-Family Dwelling Unit as his/her primary residence pursuant to a written agreement with the Authorized Occupant or Authorized Corporate Occupant thereof (the "Roommate Agreement") under which such person will Occupy the entirety of the Single-Family Dwelling

Unit for a period of at least ninety (90) consecutive days, during which period the Authorized Occupant or Authorized Corporate Occupant also resides in the SingleFamily Dwelling Unit. Notwithstanding the presence of an Owner, a person shall not be considered a roommate when that person’s access to the Single-Family Dwelling Unit is arranged through the services of Airbnb, VRBO, or similar transient lodging service.

The Board may require submission of additional true and accurate information that the Board deems necessary, in its reasonable discretion, to determine whether a person identified as an Authorized Occupant, Roommate or Guest meets the requirements set forth hereunder, including but not limited to, requesting copies of the written Roommate Agreement.

(vii) “Short Term Leasing” shall mean the Occupancy of a Single-Family Dwelling Unit for a period of less than six (6) months by anyone other than an Authorized Occupant, an Authorized Corporate Occupant, or by a Roommate for a period of less than ninety (90) days.

**LEASING REQUIREMENTS**

**Lease Terms.** A Single-Family Dwelling Unit may be leased only in its entirety; no rooms or fractions of a Single-Family Dwelling Unit may be leased. There shall be no subleasing of a Single-Family Dwelling Unit or assignment of a lease without prior written Board approval. All leases must be for a term of at least six (6) months, except with written Board approval.

**Compliance with Association Documents.** The Owner must provide the tenant/Occupant of the Single-Family Dwelling Unit copies of the Association Documents. The terms of the Association Documents are deemed to be incorporated into each lease or other occupancy agreement for any Single-Family Dwelling Unit, whether or not expressly stated therein, and into the terms of any tenancy or other Occupancy arrangement even if no written lease or agreement exists between the Owner and the Occupant.

The Owner and each Occupant shall comply with all provision of the Association Documents. The Owner and Occupants are responsible for violations by any guests of the SingleFamily Dwelling Unit and may be sanctioned for any such violation.

If a Single-Family Dwelling Unit is leased or Occupied in violation of the Association Documents, if an unauthorized Lease or Occupancy arrangement is entered into for the SingleFamily Dwelling Unit, or if the Owner, Occupant or Guest violates the Association Documents, the Association shall be authorized to take all enforcement actions against the Owner and/or Occupant.

**Short Term Leasing.** Short Term Leasing is expressly prohibited.

-----End Amendment Language-----

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**Short Term Occupancy of a Home in Hilton Head Plantation  
Explanation of Terms**

The Amendment addresses the persons eligible to occupy a home when it is owned by a corporation, LLC, trust, or partnership to avoid a home from becoming a corporate hotel.

Corporate occupancy has developed into an issue in many associations when the home is occupied by an ever changing stream of people who claim to be an officer, members, or employee of the Corporate Owner. Their occupancy is almost always for a short period, usually a weekend or a week or two. That use can resemble a hotel to the neighbors. The Amendment limits the persons who may occupy such a hone to persons who have a majority ownership interest in the entity. The entity is obligated to name the authorized occupants and

the names may not be changed more frequently than once every twelve (12) months. Those persons are referred to in the Amendment as Authorized Corporate Occupants.

The Amendment next addresses leasing. It begins by defining leasing as occupancy of a home for six (6) months or more by anyone other than the Owner and persons who are an Authorized Corporate Occupant or an Authorized Occupant, or a Roommate. An Authorized Occupant includes the Owner and a parent, child or legal spouse of an Owner. A Roommate is any person who occupies a home as his or her primary residence with an Authorized Corporate Occupant or an Authorized Occupant pursuant to a written agreement for a period of at least ninety (90) days. The definition of a Roommate is intended to prohibit an Owner from renting rooms in a home for less than six (6) months by calling the person a roommate.

With Airbnb, VRBO and similar services, short term occupancy – days, weekends, a week or two – is occurring, especially in destination communities like Hilton Head Plantation. Courts around the country have consistently ruled that such use does not violate a declaration's prohibition on the business or commercial use of a home. Focusing on how the home is occupied for a fee, the courts see that as leasing. Accordingly, control of that use must be addressed in an amendment.

Short Term Leasing is defined in the proposed Amendment as any occupancy that is less than six (6) months by anyone other than an Authorized Corporate Occupant, Authorized Occupant or Roommate. Short Term Leasing is expressly prohibited.

Lastly, the Amendment addresses occupancy by a Guest. A "Guest" is defined as a person who is specifically invited by an Owner and who does not pay the Owner in anyway. The definition of a Guest is intended to prevent an Owner from circumventing the Short Term Leasing prohibition. A person who is unknown to the Owner and also compensates the Owner is not a Guest. For example, a person who books a home or room in a home using Airbnb, or similar transient lodging service, is not considered a Guest.

In summary, no home may be leased/occupied for a term of less than six (6) months. That limitation does not apply to persons who are Authorized Corporate Occupants, Authorized Occupants, Roommates or Guests.