

Cross-Reference: 9709754906

AMENDMENT TO MIDDLETON PLACE
CONDOMINIUM DECLARATION

This is an Amendment to the Middleton Place Condominium Declaration in Fishers, Hamilton County, Indiana.

WITNESSETH:

WHEREAS, the Middleton Place condominium community located in Hamilton County was originally created and formed pursuant to the Indiana Horizontal Property Act codified at Indiana Code § 32-1-6-1 et seq., as amended, and pursuant to a certain "Middleton Place Condominium Declaration" (hereafter, "Declaration") which was recorded on December 19, 1997, as **Instrument No. 9709754906** in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, Middleton Place consists of one hundred sixty (160) Condominium Units and Common Areas applicable thereto; and

WHEREAS, defined terms used herein, and not otherwise defined, shall have the meanings ascribed to them in the Declaration; and

WHEREAS, the Board of Directors of Middleton Place Condominium Association, Inc. ("Association") recommended that the Owners approve the following amendment to the Declaration; and

WHEREAS, Article XVII, Section 1(a) of the Declaration states that the Declaration may be amended upon prior written approval by the Owners holding at least sixty-seven percent (67%) of the total percentage vote; and

WHEREAS, Article XVII, Section 1(b)(x) of the Declaration further provides that for the "imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit," at least sixty-seven percent (67%) of the "Eligible holders of a first mortgage lien" must give their prior approval; and

WHEREAS, in the definitions section of the Declaration, the phrase "eligible holder of a first mortgage lien" is defined as one which "has given written notice to the Association requesting notifications of any proposed action that requires the consent of a specified percentage of Eligible holders of first mortgage liens"; and

WHEREAS, no holders of first mortgage liens have given written notice to the Association requesting notifications of any proposed action that requires the consent of a specified percentage of Eligible holders of first mortgage liens; and

WHEREAS, after notice was duly given, the Annual Meeting of the Association and the Owners was held on the 19th day of September, 2001, whereat the Owners of Condominium Units comprising over sixty-seven percent (67%) of the total percentage vote within Middleton Place voted, in person or by proxy, to approve the following amendment to the Declaration; and

WHEREAS, said Owners, under the authority of the Declaration, wish to make certain changes and amendments to the Declaration as described below.

NOW, THEREFORE, the Middleton Place Condominium Declaration is hereby amended as follows:

1. There shall be a new Article XX added to the Declaration as follows:

Article XX
Leasing of Units and Maximum Number of Units Owned

Section 20.1. Limits on the Number of Leased Units ("Rental Cap"). In order to insure that the residents within Middleton Place share the same proprietary interest in and respect of the Units and the Common Areas, no more than ten percent (10%) of the Units may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article XX. If at any time such percentage of Units are leased or rented, an Owner who wants to rent or lease his or her Unit which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Unit shall immediately notify the Board of Directors or Managing Agent of such fact and that Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Unit. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if Units may be leased or whether the maximum number of Units within Middleton Place is currently being leased. If the maximum number of Units is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

Notwithstanding the foregoing, the "rental cap" described above shall not apply to any Unit of an Owner in Middleton Place who, as of October 1, 2001, is renting or leasing said Unit and provides written proof thereof to the Association's Managing Agent by that date. Such proof shall include a copy of each executed lease by such Owner which identifies the tenant (but which may have the rental amount deleted). The Owners of record of such currently-rented Units shall not be subject to the provisions of this Section 20.1, but shall be subject to the remaining provisions of this Article XX. However, when the legal owners of record of any of the above-described Units sell, transfer or convey such

Unit(s) to another Owner after October 1, 2001, such Unit(s) shall immediately become subject to this Section 20.1.

Section 20.2. Hardship Exceptions and Waiver. Notwithstanding Section 20.1 above, if an Owner wishes to rent or lease his or her Unit, but the maximum number of Units is currently being leased, the Owner may request the Board of Directors to waive the "rental cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "rental cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Unit, but only if the Owner satisfies all other requirements of this Article XX. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;
- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Middleton Place due to a change of employment or retirement of at least one (1) of such Owners;
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (5) other similar circumstances.

Section 20.3. General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors. No portion of any Unit other than the entire Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Unit. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

Section 20.4. One Year Waiting Period. In addition to all other provisions of this Article XX, for a period of at least one (1) year after an Owner's acquisition of a Unit, said Owner cannot lease such Unit. After such time, said Unit will be eligible to be leased if all other conditions of this Article XX are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 20.4, if an Owner wishes to lease a Unit prior to the end of the one year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 20.2 above.

Section 20.5. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 20.6. Association's Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Managing Agent by the Owner within thirty (30) days after execution.

Section 20.7. Violations. Any lease or attempted lease of a Unit in violation of the provisions of this Article XX shall be voidable at the election of the Association's Board of Directors or any other Middleton Place Owner, except that neither party to such lease may assert this provision of this Article XX to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Middleton Place Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 20.8. Maximum Number of Units Owned by a Single Owner. In order to encourage Middleton Place being and remaining a community where the Owners reside on the property:

(a) No Owner may own more than two (2) Units within Middleton Place at any time. This restriction shall not apply to any Owner who owns more than two (2) Units which were purchased or with respect to which there was a binding purchase agreement prior to the recording of this restriction.

(b) If any Owner is the Owner of more than one (1) Unit, such Owner or the majority of the principals of such Owner shall and must reside in Middleton Place in at least one (1) of such Units, unless otherwise approved in writing by the Board of Directors upon a showing by such Owner, satisfactory to the Board of Directors, of an undue hardship as defined in Section 20.2 above.

As defined in the Declaration, "Unit Owner" means a person or persons owning a fee-simple interest in a Unit or Units. As used in this Section 20.08 above, "Owner" also means those persons or entities who comprise less than all persons or entities who own in any form or manner the fee simple title or any part thereof to any Unit and those persons or entities who have any interest in any form or manner in the fee simple title or any part thereof to any Unit. As an example, if any person or entity owns or has any interest in the ownership of two (2) Units, whether in his, her or its name only, as joint tenants, as life tenant or by or through any corporation, partnership, trust, limited liability company, or any other entity, that person cannot own a third Unit, whether in his, her or its name only, as joint tenants, as life tenant or by or through a corporation, partnership, trust, limited liability company, or any other entity.

Any purchase agreement, conveyance or lease or rental agreement executed subsequent to the recording of this restriction which violates any provision of this Section 20.8 shall be voidable at the election of the Association's Board of Directors or any Middleton Place Owner, except that neither party to such agreement, conveyance or lease may assert this provision of this Article XX to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Middleton Place Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 20.9. Institutional Mortgagees. The provisions set forth in this Article XX shall not apply to any institutional mortgagee of any Unit which comes into possession of the Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure.

2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Condominium Unit shall constitute a ratification of this Amendment, together with the Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Condominium Unit or the Middleton Place Horizontal Property Regime subdivision as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

