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Jennifer Hayden
HAMILTON County Recorder IN
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**NINETEENTH AMENDMENT AND SUPPLEMENTAL DECLARATION
TO WATERSCAPE HORIZONTAL PROPERTY REGIME**

This Nineteenth Amendment and Supplemental Declaration to Waterscape Horizontal Property Regime, made on the date hereinafter set forth, by the Waterscape Homeowners Association, Inc., pursuant to paragraph 18 of the Declaration of Horizontal Property Regime (the "Declaration"), recorded in the Office of the Recorder of Hamilton County, Indiana on April 18, 1994 under instrument number 94-18205, and as thereafter amended, does hereby amend the Declaration and the By-Laws of the Waterscape Horizontal Property Regime and of Waterscape Homeowners Association, Inc., as follows:

Effective November 5, 2015, Paragraph 28 of the Declaration shall be amended in its entirety to read as follows:

28. Right of Action and Enforcement / Grievance Resolution Procedure. Subject to the provisions of Paragraph 34, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with these provisions of the Declaration, By-Laws, or any rules, regulations, or decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right of action against the Association. Subject to the Grievance Resolution Procedures set forth below, the provisions of this Declaration, the By-Laws, the Articles, the Act, the Statute, or the rules and regulations adopted pursuant thereto as each may be amended from time to time may be enforced by the Association or by any aggrieved Owner through court proceedings for injunctive relief, for damages, or for both.

Grievance Resolution Procedures:

Section 1. Definitions.

(a) "Claim" refers to any of the following:

- 1) A claim arising out of, or relating to, the interpretation, application, or enforcement of the Condominium Instruments.
- 2) A claim relating to the rights or duties of the Association or the Board of Directors under the Condominium Instruments.
- 3) A claim relating to the maintenance of the condominium.
- 4) Any other claim, grievance, or dispute among the Parties involving the condominium.
- 5) The term "Claim" does not include an "Exempt Claim" as that term is defined below.

(b) "Claimant" means a Party who has a Claim against another Party.

(c) "Exempt Claim" means any of the following claims or actions:

- 1) A claim by the Association for Assessments or dues and any action by the Association to collect Assessments or dues.
- 2) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief:
 - (A) to maintain the status quo and preserve the Party's ability to enforce the Declaration, By-Laws, plats, floor plans and any rules and regulations adopted by the Board of Directors of the Association, and any exhibits or schedules to those items, which shall collectively be referred to as the "Condominium Instruments"; or
 - (B) when an emergency condition exists that jeopardizes the health or safety of any of the residents within the Property.
- 3) A suit to which an applicable statute of limitations would expire within the notice period. This subdivision does not apply if a party against which the claim is made agrees to toll the statute of limitations as to the claim for the period reasonably necessary to comply with this chapter.
- 4) A dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement, or other instrument.
- 5) A claim that is substantively identical to a claim:
 - (A) that was previously addressed by the Parties; or
 - (B) which was resolved by a judicial determination in favor of one (1) of the Parties.

(d) "Legal Proceedings" refers to either of the following:

- 1) An action maintained in a court.
- 2) An administrative proceeding initiated under an applicable law.

(e) "Party" and/or "Parties" refer to any of the following:

- 1) The Association.
- 2) A Co-Owner.
- 3) The Board of Directors.

(f) "Respondent" refers to the Party against whom a Claimant has a Claim.

Section 2. Initiation of Legal Proceedings; Compliance With Procedures. A Claimant may not begin Legal Proceedings seeking redress or resolution of a Claim until the Claimant has complied with these Grievance Resolution Procedures.

Section 3. Notice; Contents. A Claimant shall provide notice of the Claim to the Respondent, stating plainly and concisely the following information:

- (a) The nature of the Claim, including the date, time, location, persons involved, and the Respondent's role in the Claim.
- (b) The basis of the Claim, including the provision of the Condominium Instruments or other authority out of which the Claim arises.
- (c) What the Claimant wants the Respondent to do or not to do to resolve the Claim.
- (d) That the Respondent has a right to meet with the Claimant, if the Respondent makes a written request for a meeting.
- (e) The name and address of the person from whom the Respondent must request a meeting under subdivision (4).

Section 4. Good Faith Negotiation; In-Person Meeting.

- (a) This Section 4 applies if a Respondent has requested a meeting under Section 3 above not later than ten (10) business days after the date of the notice of the Claim given under Section 3 above.
- (b) The Claimant and the Respondent shall meet in person to resolve the Claim by good faith negotiation, at the time and place agreed to by the Claimant and the Respondent.

- (c) subject of the Claim to inspect the property, if appropriate or necessary. If the Respondent agrees to take corrective action, the Claimant must provide the Respondent and the Respondent's agents with full access to the property to take and complete corrective action.

Section 5. Impasse; Conditions; Mediation; Binding Arbitration.

- (a) The parties are considered to be at an impasse if:
 - 1) the Respondent does not request a meeting under Section 3 above;
 - 2) either Party fails to attend a meeting agreed upon under Section 4 above;
or
 - 3) the Parties are unable to settle the Claim at a meeting held under Section 4 above.
- (b) Either Party may, not later than ten (10) days after an impasse is reached, request in writing that the other Party submit the claim to mediation or binding arbitration.
- (c) The Party making the request under subsection (b) of this Section 5 is responsible for the costs of the mediator or arbitrator.

Section 6. Commencement of Legal Proceedings; Conditions. If an impasse is reached and:

- (a) neither party requests mediation or arbitration; or
- (b) mediation or arbitration does not result in a settlement of the Claim;

the Claimant may begin Legal Proceedings.

Section 7. Settlement; Written Agreement.

- (a) This Section 7 applies if a Claim is settled through negotiation, mediation, or arbitration.
- (b) The settlement of the Claim must be documented in a written agreement signed by each of the Parties.
- (c) If a Party fails to abide by the settlement agreement signed under subsection (b) of this Section 7, the other Party may begin Legal Proceedings without again complying with these Grievance Resolution Procedures.
- (d) If a Party who begins Legal Proceedings under this Section 7(c) prevails in those Legal Proceedings, the Party is entitled to recover from the other Party:
 - 1) court costs;

- 2) attorney's fees; and
- 3) all other reasonable costs incurred in enforcing the settlement agreement.

Section 8. Release or Discharge of Liability. A release or discharge of a Respondent from liability to the Claimant with respect to the Claim does not release or discharge the Respondent with respect to any other person who is not a party to the Claim.

Section 9. Power of Board of Directors. The Board of Directors, on behalf of the Association, and without the consent of the members of the Association, may do any of the following:


- (a) Negotiate settlements of Claims or Legal Proceedings under these Grievance Resolution Procedures.
- (b) Execute settlement agreements, waivers, releases of claims, or any other document resulting from application of these Grievance Resolution Procedures.

Section 10. Costs. Except as otherwise provided in these Grievance Resolution Procedures, each Party shall bear its own costs for application of these Grievance Resolution Procedures, including attorney's fees.


The foregoing Nineteenth Amendment and Supplemental Declaration to Waterscape Horizontal Property Regime shall be considered an amendment to the Declaration.

IN WITNESS WHEREOF, Waterscape Homeowners Association, Inc. has caused this amendment to be executed this 5th day of November, 2015.

Waterscape Homeowners Association, Inc.



Joseph Mrak, President



Ann B. Stock, Secretary

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared **Joseph Mrak** and **Ann B. Stock**, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 14th day of December, 2015.

My Commission Expires: 10-1-2016 Karen R. Woodall
Signature Notary Public

My County of Residence: Marion KAREN R. WOODALL
Printed Signature Notary Public



This document prepared by Joshua T. Robertson, Attorney at Law, Cohen Garelick & Glazier, 8888 Keystone Crossing Boulevard, Indianapolis, Indiana 46240; (317) 573-8888; Fax: (317) 574-3855.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Joshua T. Robertson, Attorney.