

Cross Reference: 94-18205



**SIXTEENTH AMENDMENT AND SUPPLEMENTAL DECLARATION
TO WATERSCAPE HORIZONTAL PROPERTY REGIME**

This Sixteenth 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, as amended, does hereby amend the Declaration and the *By-Laws of the Waterscape Horizontal Property Regime and of Waterscape Homeowners Association, Inc.* (the "By-Laws"), as follows:

WITNESSETH:

WHEREAS, the Waterscape condominium community located in Hamilton County, Indiana was established by the Declaration.

WHEREAS, Paragraph 18 of the Declaration states that it may be amended to add material provisions, which establish, provide for, govern, or regulate the leasing of Units, by a resolution proposed by the Board of Directors, or Owners having in the aggregate at least a majority of the Percentage Vote, and approved by the consent of a Constitutional Majority of Owners.

WHEREAS the Board of Directors of Waterscape Homeowners Association, Inc. ("Board") has passed a resolution recommending that the Owners approve the following amendments to the Declaration.

WHEREAS, a Constitutional Majority of Owners have voted to approve the amendments to the Declaration pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the Owners hereby amend the Declaration. The restrictions contained herein shall run with the land and shall be binding upon the present and future Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Waterscape Horizontal Property Regime.

Paragraph 26 of the Declaration is amended to read as follows:

26. Sale, Lease, or Other Transfer of Unit by Owners. The Owners want to encourage residents to not only maintain property values but also to improve them and recognize that owner occupants have more incentive to do so compared to non-owner occupants. For the purpose of maintaining the congenial and residential character of Waterscape, and for protection of the Owners by having financially responsible residents who share the same proprietary interest in and respect of the Units, the Common Areas, and the Limited Areas, the lease of any Unit by any Owner shall be subject to the following conditions and restrictions:

(a) Limit on Number of Leased Units. No more than 15% of the Units may be leased to non-owner occupants at any given time, except as may be otherwise provided in this Paragraph 26 or elsewhere in the Declaration. Prior to the execution of any lease, and in addition to the other requirements of this Paragraph 26, the Unit Owner must notify the Board or the Board's agent, in writing, as to the Owner's intent to lease their Unit. After receiving such notice, the Board or the Board's agent shall advise the Owner if the Unit may be leased or whether the maximum number of Units is currently being leased. If the maximum number of Units is already being leased, the Board or the Board's agent shall place the Owner on the waiting list in priority order based on the date of notice from the Owner, and shall notify the Owner of that Owner's position on the waiting list.

When an existing non-owner occupant vacates a Unit, the Owner of that Unit shall immediately notify the Board or the Board's agent of such fact and the Owner shall have ninety (90) days from the date of the Unit's vacancy to re-lease the Unit if the Owner desires. If the Owner fails to re-lease the Unit within said ninety (90) day period, the Unit may not be re-leased until all prior Owners on the waiting list, if any, have had a chance to lease their Units. An Owner on the waiting list who obtains the opportunity to lease their Unit must present an executed lease to the Board or to the Board's agent within sixty (60) days of the date of notice that they may lease the Unit, or that Owner will forfeit their position on the waiting list.

(b) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease, including renewals, shall be for a term of less than one (1) year, or for a term of more than two (2) consecutive years, without the prior written approval of the Board. No portion of any Unit other than the entire Unit may be leased for any period. No subleasing is permitted. No Owner will be permitted to lease their Unit if the Owner is in violation of the Declaration, By-Laws, or any rules or regulations promulgated by the Board, as amended, or is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered. All leases shall contain a written provision, signed or initialed by the Owner and the tenant affirming that: (a) the lease is made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws and any rules and regulations promulgated by the Board, 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 Dwelling; (b) the Owner has supplied copies of the Declaration, By-Laws and rules and regulations to the tenant prior to the effective date of the lease; and (c) a violation of the terms of the Declaration, By-Laws and rules and regulations promulgated by the Board constitutes a breach of the lease, which may be enforced by either the Owner or in a direct action by the Association. In addition, the Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

(c) Exceptions. If the non-owner occupants of a Unit are the children, step-children, parents, or parents-in-law of the Owner, the occupancy by such non-owner occupants shall not be subject to this Paragraph 26 so long as the Owner delivers to the Board, within thirty (30) days of the non-owner occupant's occupation of the Unit, a written statement setting forth each non-owner occupant's relation to the Owner, the nature and circumstances of the occupancy, and the name, telephone number and, if available, email address of each non-owner occupant.

Additionally, the Board may, in its sole discretion, grant an exception, for not more than one (1) year at a time, to the limit provided in this Paragraph 26, to an Owner if the Board determines, by majority vote of the entire Board, that the Owner is actively and in good faith trying to sell his Unit (a "Sales Exception") or that the Owner has a significant hardship (a "Hardship Exception"). In the Board's sole discretion, the Board may impose further conditions or limitations on an Owner's lease of his/her Unit when granting a Sales Exception or Hardship Exception. For purposes of this subparagraph, examples of a significant hardship for purposes of a Hardship Exception may include:

- (i) Death, dissolution or liquidation of an Owner;
- (ii) Divorce or marriage of an Owner;
- (iii) Necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of the Property due to a change of employment or retirement of at least one (1) such Owner(s);
- (iv) Necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owner(s);
- (v) Difficult real estate market conditions; or
- (vi) Other similar circumstances.

(d) Twelve Month Waiting Period. In addition to all other provisions of this Paragraph 26, for a period of at least twelve (12) months after an Owner's acquisition of a Unit, the Owner may not lease their Unit to non-owner occupants. After such time, said Unit will be eligible to be leased to non-owner occupants if all other conditions of this Paragraph 26 and the Declaration are satisfied. In the case of the transfer of ownership of a Unit that was properly leased under these rules by the previous Owner, the new Owner can continue with the pre-existing lease only to finish the term of the lease that was in place at the time of the transfer; and when that lease term ends, the new Owner may not further extend the lease or re-lease the Unit unless and until the new Owner meets all requirements of this Paragraph 26 the same as other Owners who are not exempted.

(e) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of an Owner from their responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, By-Laws and any rules and regulations promulgated by the Board, or from the Owner's liability to the Association for payments of any assessments or fees. Owners of leased units are responsible for any fines assessed by the Association against a non-owner occupant or any damages caused by a non-owner occupant.

(f) Approval of Form of Lease. Prior to entering into a lease with a tenant, whether it is a lease for a new tenant or a renewal of a lease with an existing tenant, the Owner shall submit to the Board the form of the proposed lease the Owner intends to use (which need not include the identity of a prospective renter or the rental amount) for review by the Board for compliance with the requirements of this Paragraph 26. The Board may employ an attorney in connection with any such review, and a reasonable fee may be charged to the applicant to offset the expense so incurred. In the event the Board fails to approve or disapprove the form of the

lease within thirty (30) days after submission by the applicant, the form of the lease shall be deemed approved. Immediately upon execution of a lease between an Owner and a tenant, and prior to the tenant taking possession of the Owner's Unit, the Owner shall provide a copy of the executed lease (which may have the rental amount deleted) to the Board along with a fully completed Lease Information Form, which the Owner may obtain from the Board.

(g) Violations. If any Owner leases his/her Unit in violation of the provisions of this Paragraph 26, the Association may bring legal action to enjoin the improper conduct and the attempted lease shall be voidable.

(h) Effective Date of Leasing Restrictions. The leasing restrictions in this Paragraph 26 shall not apply to any Unit of an Owner who, at the time of the recording of this document, is renting or leasing said Unit to non-owner occupants in conformance with the terms of the Declaration in effect prior to the time of the recording of this document, so long as such Unit continues to be owned by the same Owner and is not occupied as a residence by such Owner. In order for this exception to apply, said Owner must deliver a copy of an executed lease (which may have the rental amount deleted), which is in effect at the time of the recording of this document, to the Board within thirty (30) days after the recording of this document and shall furnish a copy of any subsequent lease renewal (which may have the rental amount deleted) within thirty (30) days after its execution. Failure of an Owner to timely deliver a copy of any such lease to the Board shall result in said Owner's Unit being subject to these restrictions. However, in this latter circumstance, these restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such lease so long as the non-owner occupant tenants remain the same. Any Unit, which falls under the exception of this Paragraph 26, shall, nevertheless, be counted as one of the fifteen (15) maximum Units that may be leased at any given time even though such maximum does not apply to restrict such excepted Unit.

(i) Institutional Mortgages. The provisions set forth in this Paragraph 26 shall not apply to any institutional mortgage holder of any Unit, which comes into possession of the mortgage holder 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. However, when a Unit is sold or conveyed by such an institutional mortgage holder to a subsequent purchaser, that subsequent purchaser shall be bound by this Paragraph 26.

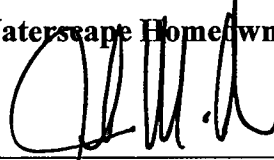
(j) No Right of First Refusal. The Association shall have no right of first refusal to purchase any Unit, which an Owner wishes to sell and an Owner may sell his or her Unit free of any such restriction.

(k) Burden of Proof. If at any time a Unit is not occupied by one of the Owners thereof, and is being occupied by any non-Owner, there shall be a presumption that the Unit is being leased and subject to the provisions of this Paragraph 26 and the Owners shall have the burden of proving to the satisfaction of the Board that the occupancy is not in violation of the terms of this Paragraph 26, including without limitation the delivery to the Board of a written statement of the nature and circumstances of the occupancy and any written document that is the legal basis for the occupancy. Any occupancy, including occupancy

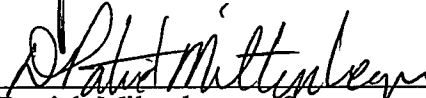
pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase, by anyone other than an Owner shall be deemed to be a lease, rental, or other similar arrangement, unless the Owner delivers to the Board a written purchase contract, conditional sales contract, or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Unit.

IN WITNESS WHEREOF, Waterscape Homeowners Association, Inc. has caused this amendment to the Bylaws to be executed this 14th day of November, 2011.

Waterscape Homeowners Association, Inc.



Joseph Mrak, President

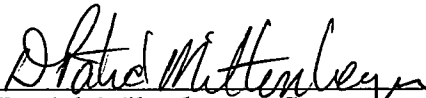


D. Patrick Miltenberger, Secretary

AFFIDAVIT OF MAILING TO MORTGAGE COMPANIES

I am the Secretary of the Waterscape Homeowners Association, Inc. I hereby certify that I have mailed, by certified mail, return receipt requested, a copy of the foregoing Amendment and Supplemental Declaration to Waterscape Horizontal Property Regime to all mortgagees who are entitled to notice of such Amendment pursuant to the Declaration and By-Laws of the Association.

Waterscape Homeowners Association, Inc.



D. Patrick Miltenberger, Secretary

11-15-11

Date

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared **Joe Mrak** and **Pat Miltenberger**, 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 15th day of November, 20 11.

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.