

Cross-References: 8315019 at Book 176, Page 625

**Amendment to the Declaration and By-Laws Establishing
a Plan of Condominium Ownership of Premises Known as The Maples of Carmel**

This Amendment to the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel was hereby made as of the date set forth below.

WITNESSETH:

WHEREAS, Declarant, C.P. Morgan Co., Inc., established the community located in Hamilton County, Indiana commonly known as The Maples of Carmel, and executed a certain "Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel," which was recorded on November 28, 1983, as Instrument No. 8315019 at Book 176, Page 625 in the Office of the Recorder of Hamilton County, Indiana (hereafter, the "Declaration");

WHEREAS, the Declarant caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name The Maples of Carmel Condominium Owners' Association, Inc. ("Association");

WHEREAS, the Co-owners in Maples of Carmel desire to amend certain provisions in the Declaration;

WHEREAS, Article X, Section 8 of the Declaration provides that the Declaration may be amended or changed, in whole or in part, at any time upon the approval of at least seventy-five percent (75%) in the aggregate of the Percentage Vote;

WHEREAS, on November 14, 2016, a meeting of the Association was held, at which time this Amendment to the Declaration was discussed and voted on;

WHEREAS, pursuant said meeting, at least seventy-five percent (75%) of the Percentage Vote in The Maples of Carmel voted to approve this Amendment to the Declaration.

NOW, THEREFORE, the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel is hereby amended as follows:

A new Article IV, Section 13 is hereby added to the Declaration, which shall read as follows:

13. Leasing.

(a) General Purposes of Leasing Restrictions. The Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner-occupants maintain their property better than renters generally. The Association's members wish to insure that the residents within The Maples of Carmel share the same proprietary interest in and respect of the Units and the Common Areas. They also 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. Thus, the provisions of this Section 13 shall be applicable.

(b) Limits on the Number of Leased Units ("Rental Cap"). No more than **twenty** percent (**20%**) of the Condominium Units may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Section 13. At all times, at least **eighty** percent (**80%**) of all Units shall be Owner-occupied. The Units described in Section 13(c) below shall count towards the **twenty** percent (**20%**) Rental Cap. If at any time such percentage of Units are leased or rented, an Owner who wants to rent or lease his or her Unit that is not already rented shall be placed upon a waiting list by the Board of Directors. 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 the Unit may be leased or whether the maximum number of Units within the Maples of Carmel 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. The Board of Directors and the Managing Agent shall have two weeks or ten (10) business days to respond in writing to the Owner's notice of his or her intent to lease and answer whether the Owner is approved to lease his or her Unit.

(c) Effective Date of "Rental Cap" on Existing Rentals. Within fifteen (15) days after the date on which this Amendment is recorded in the Office of the Recorder of Hamilton County (the "Recording Date"), the Board of Directors or Managing Agent shall provide written notice to all

Owners setting forth the Recording Date and the then current address of the Managing Agent. The provisions of Section 13(b) (the "Rental Cap") shall not apply to the Owner of any Unit in the Maples of Carmel, which, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Managing Agent of the Association (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of the executed lease of such Owner-landlord's Unit (or Units) which is in effect as of the Recording Date. Such lease copies may have the rental amount deleted. The Owners of such pre-Recording Date rented Units shall not be subject to the provisions of Section 13(b), but shall be subject to the remaining provisions of this Section 13. However, when the legal owners of record of any pre-Recording Date rented Units sell, transfer, or convey such Unit(s) to another Owner after the date of recording of this Amendment, such Unit(s) shall immediately become subject to Section 13(b). The failure of any such Owner-landlord of a leased or rented Unit to deliver a copy of such pre-Recording Date lease within said sixty-day period to the Managing Agent shall result in said Owner-landlord's Unit being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). Any Unit that falls under the exception of this Section 13(c) shall, nevertheless, be counted as one of the **twenty percent (20%)** of Units that may be rented at any given time even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Unit.

(d) One Year Waiting Period. In addition to all other provisions of this Section 13, 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 Section 13 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association.

(e) General Lease Conditions.

(i) 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.

(ii) 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 Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.

(iii) No portion of any Unit other than the entire Unit shall be leased for any period.

(iv) No subleasing shall be permitted.

(v) 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.

(vi) All leases 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.

(vii) The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.

(viii) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Unit, even if during the term of a lease.

(ix) All Owners who do not reside in the Unit shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the Unit.

(f) 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 the 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.

(g) Violations. Any lease or attempted lease of a Unit in violation of the provisions of this Section 13 shall be voidable by a vote of the Association's Board of Directors or at the discretion of any other Owner, except that neither party to such lease may assert this provision of this Section 13 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

(h) Burden of Proof -Owner Occupancy. Anything to the contrary herein notwithstanding, if at any time a Unit is not occupied by one of the Owners thereof, there shall be a presumption that the Unit is being leased and subject to the provisions of this Section 13, and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 13, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 13, any occupancy where an Owner does not reside in the Unit, including occupancy by non-owner family members, pursuant to a rent-to-buy contract or similar arrangement, or pursuant to any option to purchase, shall be considered a rental subject to the provisions of the Rental Cap in Section 13(b).

Full Force and Effect. All other provisions of the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel shall remain in full force and effect.

Certification. The undersigned officers hereby represent and certify that all requirements for and conditions precedent to this Amendment to the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel have been fulfilled and satisfied.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we, the undersigned officers, do hereby execute this Amendment to the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel and certify that at least seventy-five percent (75%) of the Percentage Vote in The Maples of Carmel voted to approve this Amendment and certify the truth of the facts herein stated this _____ day of _____, 2017.

THE MAPLES OF CARMEL CONDOMINIUM OWNERS' ASSOCIATION, INC.

By: _____
Kyle McLaughlin, President

Attest: _____
Wendy Mememed, Secretary

STATE OF INDIANA)
)
COUNTY OF _____)

Before me a Notary Public in and for said County and State, personally appeared Kyle McLaughlin and Wendy Mememed, President and Secretary, respectively, of The Maples of Carmel Condominium Owners' Association, Inc., who acknowledged execution of the foregoing Amendment to the Declaration and By-Laws Establishing a Plan of Condominium Ownership of Premises Known as The Maples of Carmel, for and on behalf of said corporation, and who, having been duly sworn, states that the representations contained herein are true.

Witness my hand and Notarial Seal this ____ day of _____, 2017.

My Commission Expires: _____
_____ Notary Public

Residence County: _____
_____ Signature

"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."
Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, Esq.
Eads Murray & Pugh, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216