

YOUR COPY

Recording Time, Book and Page

DRAFTED BY:  
D.T. SCARBOROUGH III, ATTORNEY AT LAW  
PO BOX 1669  
PINEHURST, NC 28370

BRIEF DESCRIPTION FOR INDEX  
Amendment to Declaration

## AMENDMENT TO DECLARATION OF MIDDLETON PLACE

THIS AMENDMENT made and entered into this \_\_\_\_\_, by MIDDLETON PLACE ASSOCIATION OF SOUTHERN PINES, INC., a North Carolina non-profit association (hereafter referred to as "Association") by and on behalf of the OWNERS OF LOTS IN THE PLANNED COMMUNITY KNOWN AS MIDDLETON PLACE (hereafter Middleton Place), as reflected on the attached Exhibit of all Owners;

### WITNESSETH:

WHEREAS, the Association on behalf of and after approval by the Owners previously filed certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (hereafter the "Declaration") recorded in the Office of the Register of Deeds of Moore County, North Carolina, in Book 1140 Page 0315 et seq; and

WHEREAS, Middleton Place Association of Southern Pines, Inc. is the Association of Owners of as designated under the Declaration for the purpose of exercising and performing functions designated in the Declaration; and

WHEREAS, the Association and its Members desire to amend certain provisions of the Declaration concerning assessments; and

WHEREAS, the hereinafter described Amendment was submitted to the Annual Meeting of the Owners of Middleton Place after being recommended by the Board of the Association, pursuant to written notice and at which a quorum was present by person or proxy for voting throughout; and

WHEREAS, at the Annual Meeting of the Owners of Middleton Place, the hereinafter described Amendment was approved by a two-thirds majority vote of the Owners as evidenced by the consents attached hereto;

NOW, THEREFORE, the Declaration and By-Laws governing the administration, operation, holding, conveying, hypothecating, encumbering, and transferring of any Middleton Place Lot are amended as follows:

ARTICLE V Section 1 is amended by deleting the current Section 1 and replacing with the following provision:

**Section 1. Creation of the Lien and Personal Obligation of Owners for Assessments.** Each Owner for each Lot owned within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments for common expenses; (2) special assessments for capital improvements; and (3) exterior maintenance assessments on an as needed basis, such assessments to be established and collected as hereinafter provided and (4) emergency assessments to cover the expenses associated with the cleanup and repair of damage due to Acts of God, including but not limited to ice and snow storms, hurricanes, tornadoes, floods and other unforeseen acts of nature on an as needed basis, such emergency assessments to be established and collected as hereinafter provided. The annual, special, and exterior maintenance, and emergency assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall pass to his successors in title and both shall be jointly and severally liable for such delinquent assessments.

ARTICLE V Section 7 is amended by deleting the current Section 7 and replacing with the following provision:

**Section 7. Procedure for setting Exterior Maintenance and Emergency Assessments.**

a. At the time as the Board of Directors adopts each annual budget as provided in Article V.6 above, it shall also provide each Owner any exterior maintenance assessment proposed for the next calendar year based on the maintenance schedule promulgated by the Board of Directors. In the event the actual cost of any such exterior maintenance is less than the exterior maintenance assessment, the Association shall make an adjustment with the Owner, in the form of a credit or rebate as the Association may elect, after determining the preference of the Owner. As the Association performs such other exterior maintenance as is required, the Owner shall be assessed the actual expense thereof, which such assessment shall be due and payable upon receipt of such assessment from the Association.

b. Immediately following the Act of God, the Board shall determine as soon as reasonably possible the estimated expense and shall provide each Owner written notice of the Owner's estimated share of the emergency assessment which shall be due and payable within thirty (30) days after the issuance of the emergency assessment. If the actual expenses as finally determined are more than the estimate, then the Board shall provide each Owner written notice of the additional amount due for the emergency assessment, which shall be due and payable within thirty (30) days after the issuance of the final expense of the emergency assessment. In the event the actual cost of the emergency repairs is less than the estimated emergency assessment, the Association shall make an adjustment with the Owner, in the form of a credit or rebate as the Association may elect, after determining the preference of the Owner.

ARTICLE V Section 8 is amended by deleting the current Section 7 and replacing with the following provision:

**Section 8 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment (annual, special, exterior maintenance, or emergency) not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen (18%) percent per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such

delinquency, whichever is greater, and shall constitute a lien on the Lot when filed of record in the office of the Clerk of Court of Moore County. In addition to such interest charge, the delinquent owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the cost of the late payment. A claim of lien, however labelled, shall set forth the name and address of the association, the name and address of the record owner of the lot at the time the claim of lien is filed, a description of the lot and the amount of the lien claimed. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, late payment fee, fines, cost and reasonable attorneys' fees of such action of foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

To the extent that any provision of the present Declaration or By-Laws conflict with this Amendment, then the provisions of this Amendment shall control.

IN WITNESS WHEREOF, Middleton Place Association of Southern Pines, Inc. has caused this instrument to be signed in its name by its duly authorized officer and the required number of owners have provided their written consent to this Amendment, the day and year first above written.

MIDDLETON PLACE ASSOCIATION OF SOUTHERN PINES, INC.

By: \_\_\_\_\_  
\_\_\_\_\_ President

NORTH CAROLINA \_\_\_\_\_ COUNTY

I, Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ [Name of official] personally came before me this day and acknowledged that he (or she) is \_\_\_\_\_ [Title of official] of Middleton Place Association of Southern Pines, Inc. a NC non profit corporation, and that he/she as \_\_\_\_\_ [Title of official], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public