

Fence Easement Agreement

This Fence Easement Agreement (the Agreement) is entered into on this ^{26th} 26 day of September, 2012 between Simsbury Association, (Simsbury) a Michigan nonprofit corporation whose address is c/o McShane & Associates, Inc., 6230 Orchard Lake Road, Suite 200, West Bloomfield, MI 48322 and Pebblecreek II Association, (Pebblecreek) a Michigan nonprofit corporation whose address is 7498 Gatehouse Drive, West Bloomfield, MI 48322, (the two associations collectively referred to herein as the "Parties") on the following terms and conditions.

- 1. Purpose.** The Parties are the Michigan nonprofit corporations designated by their respective Master Deeds to administer each project as a Michigan residential condominium project. The projects share portions of common boundaries upon or near which is presently located a dilapidated wooden boundary fence. The Parties desire to enter into this Fence Easement Agreement for the purposes of (a) facilitating the removal of the existing fence and (b) replacing it with a new fence and (c) providing for the future maintenance, repair and replacement of the fence and for the sharing of certain related expenses for their mutual benefit.
- 2. Subject Properties; Fence Location and Easement.** Simsbury administers the condominium project described in the attached Exhibit A. Pebblecreek II administers the condominium project described in the attached Exhibit B. The new fence which is the subject of this Agreement shall be installed as nearly as practical to the common boundaries between Simsbury and Pebblecreek II. To the extent that the location of the fence varies from the precise common boundary, each Party hereby grants the other an easement over their respective projects for the fence and access thereto for maintenance, repair and replacement and agrees that the fence shall be for the use and benefit of the Parties and shall be an appurtenance of the two projects and run with the land.
- 3. Consideration.** The Parties agree that in consideration of the mutual obligations set forth herein, the adequacy and receipt of which are hereby acknowledged, Simsbury and Pebblecreek II shall cause the existing fence to be removed and replaced by a new fence in accordance with the plans and specifications which both Parties have approved. Simsbury and Pebblecreek II shall be responsible for mutually contracting for such work and they shall each pay fifty percent of the entire cost of same.
- 4. Condition and Maintenance.** The Parties shall cooperate with each other for the future maintenance, repair and replacement of the subject fence, with Simsbury and Pebblecreek II each paying 50% of the cost. In the event the maintenance or repair is attributable to the acts or omissions of either of the Parties, such Party shall bear the entire cost. All maintenance, repairs and replacements shall be made in a timely manner so as to keep the fence in good repair and appearance. In the event of a deadlock between the Parties as to the necessity for or type of maintenance, repair and replacement, the question shall be submitted to binding, expedited arbitration (not to exceed 60 days) before a single

arbitrator of the Parties' joint choosing; or failing agreement, an arbitrator appointed by the American Arbitration Association. The arbitrator's decision shall be final and enforceable in any Court of competent jurisdiction. The costs of arbitration shall initially be split equally among the parties, however, the arbitrator in his/her final award may fully assess the same against the losing Party in favor of the prevailing Party.

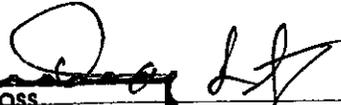
5. **Entire Agreement.** This Agreement and all exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and all prior negotiations and agreements with respect to the easement between the Parties, whether written or oral, shall be of no further force and effect. This Agreement shall not be modified except by a written document signed by both Parties
6. **Notice.** Except as otherwise provided, all notices required under this Agreement shall be effective only if in writing or in a form of electronic or facsimile transmission which provides evidence of receipt, and shall be either personally served, electronically transmitted, or sent with postage prepaid to the appropriate party at its address as set forth in the introductory paragraph of this Agreement. Any party may change its address by giving notice of the change or a new facsimile transmission number to all the other parties as provided in this section.
7. **Severability.** If any term, covenant, or condition of this Agreement or the application of which to any party or circumstance shall be to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall be effective, and each term, covenant, or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
8. **Jurisdiction and Venue.** Any disputes under this conveyance shall be subject to the laws of the State of Michigan and venue for any disputes shall lie in Oakland County, Michigan.
9. **Time is of the Essence.** Time shall be of the essence in the performance ^{and} ~~and~~ ~~con~~ under this Agreement.
10. **Effective Date.** The Parties have signed this Agreement and it shall be effective as of the day and year first above written.

SIGNATURES AND ACKNOWLEDGEMENTS ON NEXT PAGE

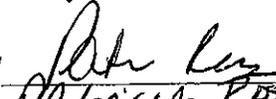
Simsbury Association

Executed: September 23, 2012

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)


PATRICIA ROSS
Notary Public - Michigan
Wayne County
My Commission Expires Jul 24, 2014
Acting in the County of Oakland

Acknowledged before me in Oakland County, Michigan on September 28 2012 by Dan Levitsky as President of Simsbury Association.

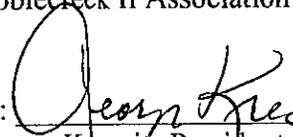
/s/ 
PATRICIA ROSS Notary Public,
State of Michigan, County of Oakland.
My commission expires 7-24-2014
Acting in the County of Oakland

PATRICIA ROSS
Notary Public - Michigan
Wayne County
My Commission Expires Jul 24, 2014
Acting in the County of Oakland

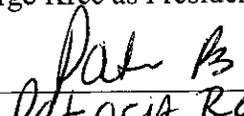
Pebblecreek II Association

Executed: September 28, 2012

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

By: 
George Krec, its President

Acknowledged before me in Oakland County, Michigan on September 28, 2012 by George Krec as President of Pebblecreek II Association.

/s/ 
PATRICIA ROSS Notary Public,
State of Michigan, County of Oakland.
My commission expires 7-24-2014
Acting in the County of Oakland

Drafted by and when recorded return to:
D. Douglas Alexander (P-29010)
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Plymouth, MI 48170

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