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2017 DEC 27 AM 8:52

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LIBER 51419 PAGE 665
\$26.00 MISC RECORDING
\$4.00 REMONUMENTATION
12/27/2017 09:08:33 A.M. RECEIPT# 152059
PAID RECORDED - OAKLAND COUNTY
LISA BROWN, CLERK/REGISTER OF DEEDS

**FIFTH AMENDMENT TO THE CONSOLIDATING MASTER DEED OF
SIMSBURY**

This Fifth Amendment to the Consolidating Master Deed of Simsbury is made and executed this 22nd day of December, 2017, by Simsbury Association, a Michigan nonprofit corporation (the "Association"), in pursuance of the provisions of the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended (the "Condominium Act").

RECITALS:

A. The Association, the nonprofit corporation organized for the administration and management of Simsbury (the "Condominium"), a condominium project established pursuant to the Consolidating Master Deed recorded in Liber 14358, Page 633 et seq., as amended by the First Amendment recorded in Liber 15763, Page 752 et seq., the Second Amendment recorded in Liber 17346, Page 470 et seq., the Third Amendment recorded in Liber 20713, Page 124 et seq., and the Fourth Amendment recorded in Liber 41993, Page 575 et seq., Oakland County Records (the "Master Deed"), and known as Oakland County Condominium Subdivision Plan No. 469, desires to amend the Condominium Bylaws, Exhibit A to the Master Deed (the "Condominium Bylaws"), pursuant to the authority granted by Sections 90, 90a and 112 of the Condominium Act (MCL §§559.190, 559.190a and 559.212), for the purpose of revising the leasing and rental restrictions. (8P)

B. This Amendment neither enlarges the Common Elements of the Condominium nor alters the formula for determining existing percentages of value in the Condominium.

C. The Master Deed shall be amended upon recording with Oakland County Register of Deeds for, as required by Section 73 of the Condominium Act (MCL §559.173).

NOW THEREFORE, the following changes are hereby made to the Master Deed:

1. Article VI, Section 2 of the Condominium Bylaws shall, upon recording of this Amendment with the Oakland County Register of Deeds, be deleted in its entirety and replaced with the following new Section 2:

Section 2. Leasing and Rental of Units.

A. Right to Lease. A Co-owner may only lease a Unit within the Condominium if the Co-owner has followed the disclosure procedures contained

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in subsection C below and obtained the Board of Director's prior written approval as more fully set forth in this Section 2. With the exception of those Units under an approved lease as of the effective date of the Fifth Amendment to the Consolidating Master Deed, the Board of Directors shall not grant approval if (1) the leasing of such Unit would result in any one person or entity (including spouses, affiliates or commonly owned entities) leasing more than 1 Unit at any given time, or (2) the leasing of such Unit would cause the total number of leased Units in the Condominium to exceed 8 Units. Co-owners who were permitted to lease their Units as of the effective date of the Fifth Amendment to the Consolidating Master Deed, shall be entitled to continue leasing their Units despite the foregoing limitations on the number of Units that may be rented, provided the provisions of the Condominium Documents are followed and an approved lease form is on file with the Association prior to the effective date of the Fifth Amendment to the Consolidating Master Deed. In the event of a sale or transfer of ownership of a leased Unit, or in the event such a Unit is no longer being leased, prepared for lease, or held out or otherwise marketed for lease, all automatic rights to lease that Unit shall terminate and no further leasing of the Unit shall take place without first obtaining the written approval of the Board of Directors in compliance with these provisions. In addition, no Co-owner, including those Co-owners permitted to lease their Units as of the effective date of this Amendment, shall lease less than an entire Unit, and all leases shall (i) be for an initial term of no less than twenty four (24) months, (ii) require the lessee to comply with the Condominium Documents, and (iii) provide that failure to comply with the Condominium Documents constitutes a default under the lease. A Co-owner may only lease a Unit for the same purposes as set forth in Article VI, Section 1, and in accordance with the provisions of this Section. No Co-owner shall accommodate transient tenants or occupants. For purposes of this Section, "transient tenant or occupant" refers to a non-Co-owner occupying a Unit for less than sixty (60) days and who has paid consideration for the occupancy. For purposes of this Section, "lease" refers to any occupancy agreement, whether or not in writing or for rent or other consideration, where the Co-owner does not occupy their Unit as a primary or secondary residence for a majority of the year. The terms of all leases, occupancy agreements and occupancy arrangements shall incorporate, or be deemed to incorporate, all of the provisions of the Condominium Documents. The Association may require the use of a standard lease addendum to ensure compliance with the requirements of this Section.

B. Exception to 8 Unit Leasing Limitation. Notwithstanding the provisions contained in subsection A above or anything to the contrary contained in the Condominium Documents, the Association recognizes that circumstances may arise beyond a Co-owner's control that may justify an exception to allow the temporary leasing of a single Unit, regardless of the 8 Unit rental limitation. Therefore, under the following circumstances, but only for so long as such circumstances exist and only so long as the Co-owner has occupied the Unit for the immediately preceding six (6) months and the leasing of the Unit will not result in that Co-owner or any related person or entity leasing

more than 1 Unit, the Board may allow a Co-owner to lease their Unit even though 8 or more of the Units may already be leased:

(1) A Co-owner must relocate to a nursing home or similar facility for a period likely to exceed six (6) months;

(2) A Co-owner must relocate for medical purposes (treatment, rehabilitation, or recuperation) for a period likely to exceed six (6) months;

(3) A Co-owner must relocate for employment purposes for a period likely to exceed six (6) months;

(4) A Co-owner or the estate of a Co-owner must rent a Unit due to an inability to sell the same without incurring a financial loss as a result of mortgage liens recorded against the Unit exceeding the fair market value of the Unit; or

(5) Any similar extenuating situation approved by the Board of Directors.

C. Procedures for Leasing. The leasing of Units shall conform to the following additional provisions:

(1) Disclosure. A Co-owner desiring to rent or lease a Unit, shall disclose that fact in writing to the Association at least ten (10) days before presenting a lease form to a potential tenant, and shall at the same time supply the Association with a copy of the exact lease form for its review for its compliance with the Condominium Documents. Each Co-owner shall, promptly following the execution of any approved lease of a Unit, forward a true copy of the fully executed lease to the Board. If no lease form is to be used, then the Co-owner shall supply the Association with the name and address of the potential tenant or other occupants, along with the amount and due dates of any rental or compensation payable to the Co-owner, and the term of the proposed occupancy arrangement. Co-owners who do not live in the Unit they own must keep the Association informed of their current correct address and phone number.

(2) Administrative Fee. The Board of Directors may charge such reasonable administrative fees for reviewing, approving and monitoring lease transactions in accordance with this Section as the Board, in its discretion, may establish. Any such administrative fees shall be assessed to and collected from the leasing Co-owner in the same manner as the collection of assessments under Article II of these Bylaws.

(3) Compliance with Condominium Documents. Tenants and non-Co-owner occupants shall comply with all of the conditions of the Condominium Documents.

(4) Default by Tenant or Non-Co-owner Occupant. If the Board determines that a tenant or non-Co-owner occupant has failed to comply with the conditions of the Condominium Documents, the Association shall take the following action:

(a) Notification. The Association shall notify the Co-owner by certified mail advising of the alleged violation.

(b) Time to Cure. The Co-owner shall have fifteen (15) days after receipt of such notice to investigate and correct the alleged tenant or non-Co-owner occupant breach or advise the Association that a violation has not occurred.

(c) Remedies. If after fifteen (15) days the Association believes that the alleged breach is not cured or may be repeated, it may institute on its behalf or derivatively by the Co-owners on behalf of the Association an action for eviction against the tenant or non-Co-owner occupant for breach of the conditions of the Condominium Documents. The relief set forth in this Section may be by summary proceeding, although the Association may pursue relief in any Court having jurisdiction and whether by summary proceeding or otherwise. The Association may hold the tenant, the non-Co-owner occupant and the Co-owner liable for any damages caused by the Co-owner, tenant or non-Co-owner occupants. The Co-owner shall be responsible for reimbursing the Association for all costs incurred as a result of a tenant's or non-Co-owner occupant's failure to comply with the Condominium Documents, including the pre-litigation costs and actual attorneys' fees incurred in obtaining their compliance with the Condominium Documents.

(5) Notice to Pay Rent Directly to Association. When a Co-owner is in arrears to the Association for assessments, the Association may give written notice of the arrearage to the Co-owner's tenant or non-Co-owner occupant and the tenant or non-Co-owner occupant after receiving the notice shall deduct from their rental payments to the Co-owner the arrearage and future assessments as they fall due and shall pay them to the Association. The deductions shall not be a breach of the rental agreement or lease by the tenant or non-Co-owner occupant. If the tenant or non-Co-owner occupant, after being so notified, fails or refuses to remit rent to the Association that is otherwise due the Co-owner, then the Association may (1) prohibit the tenant from utilizing any of the General Common Elements, (2) issue a statutory Notice to Quit for non-payment of rent, and enforce that notice by summary proceedings, and/or (3) initiate proceedings pursuant to Section 112(4)(b) of the Condominium Act.

D. Lender Exception. Notwithstanding anything to the contrary and except for the prohibition on transient tenancies, first mortgage lenders or first mortgagee guarantors in possession of a Unit following a default of a first mortgage, foreclosure, or deed or other arrangement in lieu of foreclosure shall

not be subject to the restrictions contained in this Article VI, Section 2 and which relate to the term of any lease or rental agreement.

E. Department of Veterans Affairs Financing. To the extent that any provision set forth in the Master Deed and Bylaws, as amended, regarding leasing and a right of first refusal is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations (“DVA Financing”), such provision shall not apply to any Unit that is:

(1) encumbered by DVA Financing or;

(2) owned by the Department of Veterans Affairs

F. Rent Loss Insurance Coverage. Those Co-owners that rent their Unit are advised to obtain insurance coverage for reimbursement of rental income that may be lost while the Unit is being repaired, rebuilt or is otherwise not capable of being occupied. The Association shall have absolutely no responsibility for obtaining such coverage and Co-owners shall have absolutely no claim against the Association for lost rental income.

G. Amendments for Secondary Mortgage Market Purposes. The Association may amend this Section 2 to facilitate mortgage loan financing for existing or prospective Co-owners and to enable the purchase or insurance of such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans Administration, the Department of Housing and Urban Development, Michigan State Housing Development Authority or by any other institutional participant in the secondary mortgage market which purchases or insures mortgages. The foregoing amendments may be made without the consent of Co-owners or mortgagees.

2. In all other respects, the Consolidating Master Deed, including the Condominium Bylaws applicable as Exhibit A, and the Condominium Subdivision Plan applicable as Exhibit B, as previously recorded, are hereby ratified and confirmed.

[SIGNATURE AND ACKNOWLEDGMENT ON FOLLOWING PAGE]

The Association has caused this instrument to be executed the day and year first above written.

Simsbury Association, a Michigan Nonprofit Corporation

By: 
Name: DAN LEVITSKY
Title: President

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 22 day of December, 2017 by DAN LEVITSKY, the President of Simsbury Association, a Michigan Nonprofit Corporation, on behalf of the Corporation.


SUSAN J. MERRITT, Notary Public
Wayne County, Michigan
Acting in OAKLAND County, Michigan
My Commission Expires: MAY 23, 2020

Document drafted by and when recorded return to:
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