

CUYAHOGA COUNTY RECORDER
LILLIAN J GREENE - 14
DECL 1/22/2009 10:23:15 AM
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AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
MACINTOSH FARMS CONDOMINIUM NO. 3

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF
CONDOMINIUM OWNERSHIP FOR MACINTOSH FARMS CONDOMINIUM NO. 3
RECORDED AT VOLUME 93-10913, PAGE 59 ET SEQ., OF THE CUYAHOGA
COUNTY RECORDS.

AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
MACINTOSH FARMS CONDOMINIUM NO. 3

WHEREAS, the Declaration of Condominium Ownership for MacIntosh Farms Condominium No. 3 (the "Declaration") and the Bylaws of MacIntosh Farms Condominium No. 3 Owners' Association, Inc. (the "Bylaws"), Exhibit "B" to the Declaration, were recorded at Cuyahoga County Records Volume 93-10913, Page 59 et seq., and

WHEREAS, the MacIntosh Farms Condominium No. 3 Owners' Association, Inc. (the "Association") is a corporation consisting of all Unit Owners in MacIntosh Farms Condominium No. 3 and as such is the representative of all Unit Owners, and

WHEREAS, Article XII(A) of said Declaration authorizes amendments to the Declaration and Bylaws Article VII, Section 10 authorizes amendments to the Bylaws, and

WHEREAS, Unit Owners representing at least 75% of the Association's voting power have executed instruments in writing setting forth specifically the matters to be modified (the "Amendments"), and

WHEREAS, the Association has in its records the signed, written consents to Amendments A and B signed by Unit Owners representing 76.53% of the Association's voting power as of October 29, 2008, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 76.53% of the Association's voting power authorizing the Association's officers to execute Amendments A and B on their behalf, and

WHEREAS, attached hereto as Exhibit A is a certification of the Association's President that copies of the Amendments will be mailed or hand delivered to all Unit Owners and all first mortgagees on the records of the Association once the Amendments are recorded with the Cuyahoga County Recorder's Office and that Unit Owners representing at least 75% of the Association's voting power affirmatively approved the Amendments, in writing, and

WHEREAS, attached hereto as Exhibit B is a certification from the Association's Secretary as to the consenting mortgagees, on the records of the Association, to the Amendments, and

WHEREAS, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for MacIntosh Farms Condominium No. 3 is hereby amended by the following:

AMENDMENT A

DELETE DECLARATION ARTICLE VI entitled, "INSURANCE AND RECONSTRUCTION," in its entirety. Said deletion to be taken from Pages 22-28 of the Declaration, as recorded at Cuyahoga County Records, Volume 93-10913, Page 59 et seq.

INSERT a new DECLARATION ARTICLE VI entitled, "INSURANCE AND RECONSTRUCTION." Said new addition, to be added on Pages 22-28 of the Declaration, as recorded at Cuyahoga County Records, Volume 93-10913, Page 59 et seq., is as follows:

ARTICLE VI

INSURANCE AND RECONSTRUCTION

(A) Property Insurance

(1) Coverage.

(a) Mandatory Coverage. The Association shall carry Property Insurance (also sometimes known as "casualty insurance" or "fire and extended insurance"), subject to a deductible as provided for in subparagraph (5) below, on all of the insurable improvements comprising the Common Elements, including the Limited Common Elements located outside the bounds of the Unit, from the backside of the drywall (plasterboard) out, but also including any structural components of the building located within the Unit, and all personal property as may be owned by the Association and for which the Association is responsible. Therefore, in general terms, the Association is responsible for having Property Insurance from the drywall out, excluding the drywall. This is known as a "bare walls" Property Insurance Policy.

(b) Optional Coverage. The Association may, as the Board so determines, also carry Property Insurance on some or all of the fixtures, structures, betterments, and other insurable installations and improvements installed within and/or as part of the Units. In deciding whether to increase, or later decrease

the scope of Property Insurance coverage permitted by this subparagraph, the Board may, among other factors, consider the Association's insurance claim history, the financial costs to the Association and the individual Unit Owners, mortgage market requirements, and the overall state of the condominium insurance market. The Board's decision as to the scope of Property Insurance coverage shall be reflected from time to time in the Board's meeting minutes, but not the terms of the insurance policy itself. The Unit Owners shall have the burden to determine whether any portion of the Units are insured under the Association's Property Insurance policy; provided, however, that, the Association shall provide the Unit Owners with at least thirty (30) days prior written notice of any increase or decrease in the scope of Property Insurance coverage, particularly as it pertains to the Units.

(2) Risks to be Insured and Amount Thereof. The Association's Property Insurance shall protect against loss or damage by fire and hazards now or hereafter embraced by an "all-risk" or special form policy, and all other perils which are customarily covered by similarly constructed and situated condominium associations in Cuyahoga County, Ohio. The amount of insurance purchased shall be sufficient to cover the full replacement value, less deductible, of the cost of repair or reconstruction needed to restore the property to the condition it was in immediately prior to the damage or destruction from any such casualty (excluding excavation and foundation costs and other items normally excluded from such coverage).

(3) Beneficiary Interests. Subject to the provisions of subparagraph (4) below, the Association's Property Insurance shall be for the benefit of the Association, each of the Unit Owners, and the holders of mortgages upon the Ownership interests, as their interest may appear, and shall provide for the issuance of certificates of insurance with mortgagees' endorsements to the holders of mortgages on the Units, if any.

(4) Claim Filing. The Board shall have the sole right and authority to file, or authorize the filing of, and adjust any and all claims for damage or destruction that are or may be covered by the Association's Property Insurance policy regardless of the person(s), including mortgagees, who may be named as an additional insured or beneficiary of such policy, as the Board determines is consistent with the intent of the Declaration and in the Association's best interests; provided, however, that a mortgagee having an interest in such losses

may participate in the settlement negotiations, if any, related thereto. The failure or refusal of the Association to process or file any claim for damage or destruction to any part of the Condominium Property under the Association's Property Insurance shall not give rise to any claim against the Association or the Board.

(5) Deductible. The Association's Property Insurance may include a reasonable deductible as determined by the Board. In the absence of any negligence, the deductible shall be paid by the party who would be responsible for the loss or repair in the absence of insurance. In the event of multiple parties or combined claims covered by the Association's Property Insurance policy, the deductible shall be allocated in relation to the amount each party's claim bears to the total amount of the claim, with the party incurring the larger share of the loss responsible for the larger share of the deductible. The Association may assess the amount of any deductible attributable to any Unit(s) as provided for in this Article VI or the repair of any such Unit(s), to the Unit Owner(s) of such Unit(s).

(6) Responsibility for Damage.

(a) Association. If any loss or repair is due to the Association's negligence or intentional act, then, in such case, the Association shall be responsible for the cost of such loss or repairs to the extent not covered by any insurance policy in accordance with this Article VI, including any deductible amount.

(b) Unit Owner. If any loss or repair is due to the negligence or intentional act of a Unit Owner, or anyone the Unit Owner is responsible for, such as a family member, tenant, guest, or contractor of the Unit Owner, in such case, the said Unit Owner shall be responsible for the cost of such loss or repairs to the extent not covered by any insurance policy in accordance with this Article VI, including any deductible amount.

(7) Insurance Company Rating. All policies shall be written with a company licensed to do business in the State of Ohio and, unless not reasonably available to the Association, holding a rating of "AAA" or better by Standard & Poor's Insurance Ratings, or its present day equivalent.

(8) Mortgagee and Other Additional Insurance Requirements. Notwithstanding anything to the contrary anywhere in this Article VI, the Board shall have the full right and authority, but not the obligation, to purchase Property Insurance, and/or any other insurance policy or endorsement, that includes any and all such terms, conditions or requirements, as the Board determines is in the Association's best interest and is necessary to comply with any requirements of the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), the designee of FNMA or FHLMC, or any other financial institution or government agency. If the Association provides, as the Board so decides, any additional insurance coverage beyond the minimum requirements contained in subparagraph (1)(a) above, for less than all the Unit Owners, the Association may levy a special assessment against only those Unit Owners so requiring such additional insurance in an amount to be determined by the Board.

(9) Disbursement of Excess Insurance Proceeds. The Association shall use insurance proceeds received to defray the cost of repairing the damage to the Common Elements. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association and placed in the reserve fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements.

(10) Availability of Insurance. All insurance coverage is subject to modification as the Board determines necessarily based on the availability of coverage and the cost of the coverage. If the cost of one hundred percent (100%) full replacement coverage, less the deductible, for Property Insurance is unreasonably expensive, as the Board so determines, then in no event shall the coverage be in an amount less than eighty percent (80%) of the then current replacement cost, less the deductible and with exclusions as provided for in subsection (2) above.

(B) Owner Insurance. Except as may be insured by the Association in accordance with Section (A)(1) above, each Unit Owner shall separately insure those portions of his/her Unit and the Limited Common Elements from and including the drywall in, along with any utilities and fixtures that the Unit Owner must maintain. This includes, without limitation, all fixtures, windows, perimeter and interior doors installations, plaster or plasterboard, wall and floor coverings and improvements within or a part of said Unit and all utilities within and serving only the said Unit. The Unit Owner shall also carry insurance on the Limited Common Elements and Unit

up to the amount of the Association's Property Insurance deductible when either such areas are insured by the Association. The Property Insurance carried by the Unit Owner shall insure against loss by fire and other hazards and perils now or hereafter embraced by an "all-risk" or special form policy. Each Unit Owner shall file a copy of the policy(ies), or such other evidence of insurance as the Board may require, with the Association within thirty (30) days of receipt of a request from the Association. Each Unit Owner shall further separately insure the personal contents of his/her Unit, as well as any other personal property, which he/she stores elsewhere on the Condominium Property.

(C) Damage and Destruction.

(1) Immediately after the damage or destruction by fire or other casualty to all or any part of the Condominium Property covered by the Association's Property Insurance, as determined by the Board, the Board or its duly authorized agent may proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Such costs may include professional fees and premiums for such bonds as the Board deems necessary. Each Unit Owner shall be deemed to have delegated, and does delegate upon acquisition of any title interest in a Unit, to the Board or its agent, his/her right to file for and adjust with insurance companies all losses under the Property Insurance policies referred to in Section (A) of this Article VI. In furtherance of this delegation, the Board, and its authorized agents, is and are hereby appointed the attorney-in-fact for all Unit Owners to make proof of loss, to negotiate loss adjustment, and to acknowledge receipt for any sums received on or under any and all of said policies.

(2) In the event any damage to or destruction of the Common Elements renders fifty percent (50%) or more of the Units then comprised within the Condominium Property untenable, the Unit Owners may, by the vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, elect not to repair or restore such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owners. In the event of any such sale or a sale of the Condominium Property after such election, by agreement of all Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be

considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Elements. No Unit Owner, however, shall receive any portion of his/her share of such proceeds until all liens and encumbrances on his/her Unit have been paid, released or discharged.

(D) Restoration of Buildings.

(1) Unless Unit Owners elect not to restore the damaged property as provided for in Section (C)(2) above, following the occurrence of a casualty for which insurance proceeds are recovered, the Association shall repair and reconstruct all damage to or destruction of the Common Elements and Limited Common Elements the Association insures substantially as such Elements existed immediately before the damage or destruction, provided that the Board may provide for the use of such new or alternative materials as the Board reasonably determines are in the Association's best interest. Distribution and/or payment of Association insurance proceeds for the repair and reconstruction of any Unit, if any, shall be determined by the Board.

(2) If the cost of the repair for the damages or destruction to the Common Elements exceeds the amount of the insurance proceeds received, such excess may be provided for either by means of a special assessment levied by the Board against all Unit Owners in proportion to each Unit Owner's share in the Common Elements or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair, and replacement of the Common Elements, as the Board, in its sole discretion, may determine. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction.

(3) If the cost of repairs to the Common Elements and the Limited Common Elements the Association insures, is less than the amount of such insurance proceeds, the excess shall be retained by the Association and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Elements.

(4) If the cost of the repair for the damages or destruction to the Limited Common Elements exceeds the amount of the insurance proceeds received, such excess may be provided for by means of a

special assessment levied by the Board against the Unit Owner(s) having the exclusive use of such Limited Common Elements.

(5) After any damage to or destruction of his/her Unit and the Limited Common Elements the Unit Owner insures, each Unit Owner shall restore his/her Unit and the Limited Common Elements, including utilities serving the Unit, at the Unit Owner's sole expense, to such minimum standards as the Board may at any time and/or from time to time, in its sole discretion, establish and shall complete such restoration within eight (8) months after the damage or destruction or such sooner time as the Board determines necessary to properly repair the Common Elements and/or Limited Common Elements. Minimum standards may include requiring installation of drywall finished with at least one coat of primer, basic floor coverings, and utility lines, ducts, vents, and related fixtures, and equipment.

(E) Public Liability Insurance and Other Insurance Coverage.

(1) The Association shall insure itself, the members of the Board, the Unit Owners and Occupants against liability for personal injury, disease, illness, or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Elements, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile, and off-premises employee coverage, such insurance to afford protection to a limit of not less than Two Million Dollars (\$2,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than Two Million Dollars (\$2,000,000.00) in respect to any one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner. In the event the insurance effected by the Association on behalf of the Unit Owners and Occupants against liability for personal injury or property damage arising from or relating to the Common Elements shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Unit Owners, and any Unit Owner who shall have paid all or any portion of such deficiency in an amount exceeding his proportionate share thereof based on his percentage of interest in the Common Elements shall have a right of contribution for the other Unit Owners according to their respective percentages of interest in the Common Elements. Such policy shall not insure against liability

for personal or bodily injury or property damage arising out of or relating to the individual units.

(2) Worker's compensation insurance as required by law.

(3) Such other insurance as the Declarant prior to the formation of the Association and the Board thereafter may determine, including, without limitation, errors and omissions insurance, liability insurance for Board members and fidelity coverage against dishonest acts of person handling Association funds.

(F) Waiver of Subrogation. Each Unit Owner and Occupant, as a condition of accepting title and possession, or either one of such, of a Unit, and the Association agree that, in the event any part(s) of the Condominium Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance of any Unit Owner, Occupant or the Association, and the lessees of any one of them, as provided for in this Article VI, the rights of recovery and subrogation, if any, of any party or their respective insurance company, against the other, or against the employees, agents, licensees or invitees of any party, with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived to the extent of the insurance proceeds actually recovered.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this revision of the Association's and Unit Owners' property (casualty) insurance and public liability insurance, and other insurance coverage obligations as well as property restoration responsibilities. Upon the recording of this Amendment, only Unit Owners of record at the time of such filing shall have standing to contest the validity of the Amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought within the court of common pleas within one year of the recording of the Amendment.

AMENDMENT B

DELETE DECLARATION ARTICLE XX, SECTION (I) entitled, "Notices," in its entirety. Said deletion to be taken from Page 52 of the Declaration, as recorded at Cuyahoga County Records, Volume 93-10913, Page 59 et seq.

INSERT a new DECLARATION ARTICLE XX, SECTION (I) entitled, "Notices." Said new addition, to be added on Page 52 of the Declaration, as recorded at Cuyahoga County Records, Volume 93-10913, Page 59 et seq., is as follows:


(I) Notices. All notices required or permitted hereunder, and under the Bylaws, to the Association or the Board of Directors, shall be in writing and shall be sent by regular U.S. mail, first-class postage prepaid, to the Board of Directors or the Association at the address of the Condominium Property or to such other address as the Board of Directors may designate from time to time by notice in writing to all Unit Owners. All notices to any Unit Owner shall be hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to such Unit Owner's Unit address or to such other address as may be designated by him/her from time to time, in writing, to the Board of Directors. Any notice required or permitted to be given to any Occupant of a Unit other than a Unit Owner shall effectively be given if hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Unit address.

Any conflict between this provision and any other provision of the Declaration and Bylaws shall be interpreted in favor of this amendment permitting notices by regular U.S. mail. Upon the recording of this amendment, only Unit Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

EXHIBIT A

CERTIFICATION OF PRESIDENT

The undersigned, being the duly elected and qualified President of the MacIntosh Farms Condominium No. 3 Owners' Association, Inc., hereby certifies that copies of the Amendments to the Declaration to be mailed or hand delivered to all Unit Owners and all first mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.




TODD WINTEREGG, President

STATE OF OHIO)
)
COUNTY OF Summit) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named TODD WINTEREGG who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Sigmore Hills, Ohio, this 19th day of January, 2009.



NOTARY PUBLIC

NANCY-ANNE WARGO
Notary Public, State of Ohio
My Commission Expires May 5, 2011
Recorded in Summit County

EXHIBIT B

CERTIFICATION OF SECRETARY

The undersigned, being the duly elected and qualified Secretary of the MacIntosh Farms Condominium No. 3 Owners' Association, Inc., hereby certifies that there is on file in the Association's records, the names of the following mortgagees, if any, who have consented to the proposed Amendments to the Declaration.

N O N E




STEPHANIE KACZMAREK, Secretary

STATE OF OHIO)
)
COUNTY OF SUMMIT) SS

BEFORE ME, a Notary Public in and for said County, personally appeared the above named STEPHANIE KACZMAREK who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Sagamore Hills, Ohio, this 19th day of January, 2009.



NOTARY PUBLIC

NANCY-ANNE WARGO
Notary Public, State of Ohio
My Commission Expires May 5, 2011
Recorded in Summit County