Minutes of the Woodbridge Inn Board Meeting with Carberry LLC (unit 111) 1/26/07

Present at the meeting/teleconference: Paul Sakiewicz, Nathan Richey, Brad Redman, Nicole Vamvakias, Jim Schneider, and Dan Ulmer

1. Definition of Common Elements (Residential vs. Commercial):
Several Declarations/Bylaws, Rules and Regulations were discussed with respect to the current disagreement between the association and the owners of unit 111. A catalyst in the issue at hand was that during the 1/06 HOA meeting the association decided to proceed with repairing the hot tub, and to repair the damage to the sub floor under the hot tub (located in unit 108). During 4/06 a vote was held and the special assessment for $74,000 dollars to repair the hot tub ($60,000) and a few additional miscellaneous charges ($14,000) were approved by a majority (90%) of the voting homeowners. The special assessment notification for each homeowner's share based on a pro rated square footage formula was sent to homeowners and was paid by virtually all of the homeowners except for unit 111 and another unit (which has recently paid the full amount). Discussions and letters between the association and the owners of unit 111 ensued in the following months and a teleconference on 9/27/06 was held as to the arguments regarding why the owners of unit 111 believed they were not required to pay a portion of the assessment; however a solution was not achieved at that conference, but several issues were raised by both the association and the owners of unit 111. Around 12/06 telephone contact was again established between Nathan Richey (the managing member of the LLC that owns unit 111 (Carberry Place LLC)) and Paul Sakiewicz (HOA president) to discuss the historical and current issues between Carberry Place LLC and the association. After a few conversations, Carberry Place LLC agreed to pay its pro-rata share of the non-hot tub related part of the special assessment was paid within a few days (prior to that point Carberry was unaware that a portion of the $74,000 special assessment was for non-hot tub related expenses). In addition to Carberry's agreement to immediately fund its pro-rata share of the non-hot tub related expenses, an agreement was made to further discuss the hot-tub/clubhouse issues and the special assessment related thereto. These minutes are a reflection of this meeting:

Nathan wants to establish clarity as needed and an agreement between all involved parties with respect to what our declarations and bi-laws state; as, in Carberry's view, past actions of the association board's last president and past property management team conflicted with the belief's of the current board members. In the past Nathan believed, based on communications he states he, and the employees of the commercial unit (111), received, from a prior HOA board president outlining that they were not allowed access to the clubhouse and that they were not allowed access to any portion of the property, with the exception of their own unit and the areas to and from the garbage dumpsters and the grease bin. Furthermore, Nathan states that he has not received a key to the clubhouse, both when he purchased the property and when the property manager changed the locks in the past. As a result of these aforementioned items, Nathan was taken aback when he received an invoice to pay

for the special assessment, which in large part was for the repair of a unit he thought he, and his tenants, had no access to. This was the main reason for his refusal to pay the special assessment. Nathan has discussed this issue at length with his LLC's lawyer and two other independent lawyers (his tenant's lawyer and a local lawyer that would be retained should the assessment issue be taken to court). As a result of these conversations coupled with the lawyers' independent reviews of the related governing documents (the declarations, maps, etc.) they have all agreed that inconsistencies exist within property's governing documentation with respect to defining elements of the property (Commercial Common Elements, Residential Common Elements, etc.) and that unit 111 should have to pay the hot tub related portion of the special assessment (based on the holes in the legal documents that govern the historical actions of the past president of the association and the past property management team).

Maps and Declarations were reviewed at the meeting and unit 108 is marked as GCE (General Common Element). The Declarations discuss different elements including limited common elements, residential common elements, commercial common elements, general common elements, but the maps do not show or reflect what is meant by those individual types of elements.

After further discussion, Nathan agreed to pay the outstanding amount of the hot tub related special assessment (approximately $8,500 dollars) in return for the following:

- the HOA will not charge and will waive the 18% interest or legal fees pertaining to this assessment, since the time period between due date of the assessment and the clarification date, will be deemed a timeframe of discovery of arguments, and therefore will not be subject to the 18% interest charge.
- the association board will work with the collective owners that are represented by the board to come to an agreement with respect to who will have access to the hot tub and clubhouse in the future.
    - The board agreed to clarify the issues as follows: A vote shall be held and a "straw poll" [what's a straw poll?] letter shall be sent to homeowners, around the end of February, 2007, asking the homeowners if would like to (1) define the clubhouse – unit 108 as a general common element with access allowed to all owners (residential and commercial just the same, including their respective tenant (Fiesta Jalisco) and its employees in the case of Carberry) or (2) whether the owners would like to view unit 108 as a residential element, in which case the declarations must be rewritten to document the change and furthermore this change must be approved by 75% of homeowners and 67% of first mortgagees. Should the hot tub/clubhouse area be converted to residential common element, the owners of commercial unit (111), and its tenants and employees, will not have access to the hot tub/clubhouse area, nor will they pay for its operation, maintenance, improvements, etc. Furthermore, should additional items be added to the premises (tennis courts, etc.), unit 111 will be able to opt out of those obligations and benefits as well.

Nathan stated that he would be comfortable either way, but would like to clarify and address the issue once and for all. If the clubhouse were redefined as a residential element than the commercial owners, tenants and employees will have no further access to the amenities of the clubhouse, and shall be exempt of charges and maintenance relating to the clubhouse from the time of the change on; in practical terms this would mean a decrease of the prorated share of the commercial unit 111 from roughly 14% to roughly 13.5% as it relates to common shared expenses.

[Editorial comment: The "straw poll" letter will also poll homeowners if they would agree to a change of rules in that the restaurant may have during the summer months of operating the restaurant, speakers on the deck, and play music during the hours of 11AM – 8PM at a reasonable and not intrusive loudness. Rather than making this a board decision the board feels it would be fair to ask owners for their input on this issue.]

Expenses: It was discussed and agreed that unit 111 is a separately metered unit as it relates to gas/ water/ sewer/cable and therefore according to the declarations is responsible for paying their metered utilities directly. Unit 111 shall therefore be exempt from the other collective and residential utilities charges as stated in the declarations.

Furthermore since Unit 111 pays for half the waste removal already, it shall not be responsible for paying a pro rated share of the other half of waste removal. The second half shall be the sole responsibility of the residential owners. This change will be made retroactive to 1/2006, since Nathan brought this issue to our attention back then, but has foregone pursuing it at that time (as the more important issues were being addressed). Furthermore, snowplowing was discussed and it was agreed that this expense is included in the common expenses and that the contractor we use for plowing shall continue plowing the upper lot, where restaurant guests frequently park, since part, if not all, of that lot is clearly on Woodbridge Inn property, and it is required that we provide safe passage and conditions to residents/guests of Woodbridge Inn.

Water heater: Last year Fiesta Jalisco paid for the replacement of its water heater, using the association's preferred plumbing vendor (Premier). It was discussed and agreed upon that the association should have paid for this expenditure, in accordance with the governing documents of the property. As a result, it was agreed upon that Fiesta Jalisco will be reimbursed for this expense once proof of payment is provided to the association. For simplicity, once proof of payment is received, unit 111's account with the association will receive a credit for the expenditure.

Garage Ceiling Repair: It was discussed and agreed that the garage ceiling in the restaurant building is in poor shape and the culprit for that may lie in the kitchen floor, the sub floor structure, or both(located inside and underneath unit 111). It was agreed upon that the garage ceiling will be paid for by the association, in accordance with the related settlement agreement between the association and Carberry.

We will have to approach this problem in concert with the restaurant and will have the kitchen floor and the related sub floor evaluated before any repairs are started. We agreed that repairing the garage ceiling without repairing leaks under the kitchen and possible plumbing problems will not be a good approach and therefore the kitchen floor has to be looked at and repaired first. (Prior to even that repair we will have to repair the deck on top of the restaurant in order to avoid leaks from and through the ceiling into the restaurant). We shall plan in the "down season" for the restaurant to close the restaurant, take out the kitchen/floor, repair the damage to the sub floor, repair the plumbing lines and drains, and place a water impermeable floor (like epoxy or heavy duty linoleum or other) in the kitchen area in order to avoid future water leaks into the garage underneath, even if there were water spills in the kitchen area. This repair is targeted to be done in one week, but might take longer depending on the damage encountered.

It was further agreed that the flooring project would be paid for by the responsible party (or parties), which will be derived from the evaluation(s) provided by the contractor(s).

[I deleted this paragraph as it's not something I agreed to – it will be very subjective for either party to place blame on what damaged the sub-floor – was it the common element leak that lasted for months? Was it occasional water leak from the restaurant during the last two years? Was it from the sprinklers that were kicked on during the restaurant's smoke fire, which could be covered by insurance? As you can see, this could be very subjective and I don't want to set up something, or agree to something in advance, that may create something we will fight about. I believe the restaurant should pay if it's a kitchen floor problem and that the association should pay for it if it's a sub-floor issue (a limited common element). Therefore, at this stage, I think we should just agree that the responsible party (or parties) will pay for their portion(s) of the damage.]

Respectfully submitted by

Paul Sakiewicz
2/1/07

Please submit comments and corrections
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