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April 5, 2013

VIA FIRST CLASS AND ELECTRONIC MAIL

Brandon Pierce, President
Beaumont's Seven Harbors White and Duck Lake Association
3976 Woodland Drive
Highland, MI 48356
Email: admbenefits@comcast.net

Re: Research on Maintenance Fees and Lien Issues

Dear Mr. Pierce:

The Association asked that we answer the following questions:

1. What, if any, deed maintenance fees may be charged against the units within the Association;
2. May the liens that were against delinquent units be re-recorded; and
3. What is the best way to memorialize the maintenance fee agreements going forward?

This letter provides a thorough analysis to answer the three questions. Briefly, the Association has mandatory dues that are set by the general membership at the annual meeting. The Association has authority to lien delinquent units. The Association would be best served by recording an amendment to the Master Deed specifying the maintenance fees and mandatory nature.

In 1937, the Master Deed was recorded against all future lots within the Association. That deed specifies that each parcel is a member of the Association. It also creates lien authority in favor of the Association against any delinquent unit. The deed mentions bylaws, but does not specify when, if ever, the bylaws must be created or if they must be recorded to be effective. Without a specific timeframe for bylaws creation, the default rule is under Michigan's Nonprofit Corporation Act, which requires bylaws to be drafted at the time of incorporation. Finally, the deed creates mandatory maintenance dues, which are capped at a $5.00 annual fee.

In 1947, the Association was officially created by filing its Articles of Incorporation. As an entity recognized by state law, the Association stated several procedural requirements, including that all members must pay an annual maintenance fee. At that time, the maintenance fee was capped at $20.00 per unit.

In 1956 and 1959, restrictions were recorded against the units. These restrictions include a clause setting the expiration date in 1986. It is our understanding that this clause has caused concern amongst Association members about whether dues are mandatory and if they were mandatory, whether they are no longer mandatory. The 1956 and 1959 restrictions are the same in all respects other than the 1959 restrictions include unit owner signatures. Both speak to a mandatory Association. While there is an expiration date stated, and our research indicates that the expiration likely occurred, the Association membership and dues were mandatory since its inception. Therefore, the restrictions' expiration, if that occurred, does not impact the Association's mandatory nature.

Also in 1959, the Articles of Incorporation were amended. Amongst other amendments, the fees on each lot were adjusted to a minimum of $2.00 and a maximum of $15.00. The dues had been at this point ranging between $5.00 and $20.00 and were typically based on the percentage of taxable value of each unit. In 1978, the Articles of Incorporation were again amended. This amendment states, "Maintenance fees shall be collected from each property owner in each subdivision… [and] the maintenance fees may be increased or decreased as required for the upkeep and maintenance of the Association and its properties and roadways." The determination of the fee is set by vote of the majority of paid-up members present at the general membership meeting. The 1994 bylaws reiterate this fee schedule.

As of the 1937 Master Deed, all subsequent purchasers were on notice that each parcel was a member of the Association and subject to an annual maintenance fee. Further, each unit owner was aware that the Association held lien authority over delinquent maintenance dues. This position was further formalized by the Association's creation in 1947. As of that point, all subsequent purchasers were on notice that their unit and ownership interest came with responsibilities and obligations to the Association.

While the recording of deeds could have been better handled, the Association documents have been filed with the State of Michigan and available to anyone on notice. Purchasers subsequent to the Master Deed were on notice. Therefore, it is sufficient that unit owners were aware of their obligations to the Association and the Association could collect. As of 1978, the maintenance fees are to be set by a vote of the general membership at the annual meeting. Those fees are to be adjusted as needed to meet the Association's obligations. This has been the rule governing the Association for 35 years. Even though the building restrictions recorded in 1956 and 1959 may have expired, the 1978 Articles of Incorporation amendment is the governing document for Association rules and procedure. Assuming that the maintenance fees have been set in accordance with the 1978 amendment requirement for a general membership vote of paid-up

members, and I have no documentation in my possession to the contrary, the Association is free to collect whatever maintenance fee was set in compliance with the required vote.

The Association has the authority to collect mandatory dues and lien delinquent units. To better formalize this position, and to put further subsequent purchasers on notice, it is recommended to record a Master Deed Amendment specifying how dues are set and the mandatory nature.

If you have any further questions or concerns, please do not hesitate to contact my office.

Very truly yours,

ADKISON, NEED & ALLEN, P.L.L.C.

Barry D. Malone

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