**TALL SHIP ASSOCIATION**

**BOARD OF DIRECTORS MEETING MINUTES**

**Meeting Date**: November 14, 2017

**Place**: Lake View Room – New Marina Pool Bldg.

**Present**: Roger Heffelfinger, Rob Routman, Olimpia Borys and Barry Stuart (BOD)

Diane Lee and Geig Lee (FPM)

**Call to Order**: B. Stuart called the meeting to order.

**Introduction of Guests:** B. Stuart welcomed Denis & Judy Christenson, and Judith Kovaks.

**Approval of Minutes**: R. Routman made a motion to approve the minutes from October 10, 2017.

R. Heffelfinger seconded the motion and the motion carried.

**Treasurer's Report**: R. Routman discussed the financial report at length. Currently, the operating account has a cash gain of $33,892.00. Capital Reserves are at $389,328.91

R. Routman discussed the irrigation, grounds improvement and irrigation maintenance. After discussion, R. Routman made a motion to move the irrigation repairs in the operating account to the reserve II account. This motion passed unanimously. R. Routman made a motion to put tree removal in grounds and keys in building maintenance. The motion died after further discussion and there being no second. R. Routman stated the prepayments will need to be recalculated. All owners should be aware that they are still responsible for the loan repayment in case of slow pay and no pay owners.

**Liens and Delinquencies**:

Lien Priority - R. Routman discussed the engagement letter from Sam Albergotti regarding foreclosures and advised deletion of a paragraph agreeing to KKPOA lien priority. He felt that TSA lien priority is statutorily granted in situations of both sale and foreclosure. As provided in SC Code §27-31-200 “[u]pon the sale or conveyance … all unpaid assessments … [of TSA] to which Section 27-31-190 refers shall first be paid out of the sales price” save for taxes and mortgages. In the case of foreclosure, SC Code §27-31-210(a) provides “[a]ll sums assessed [by TSA] … constitute a lien on such apartment prior to all other liens” save for taxes and mortgages.

Foreclosures - With respect to additional overdue delinquent accounts, Routman moved to start the foreclosure process on Units 226 & 326. O. Borys seconded this motion and the motion passed.

Foreclosure Procedures - Our attorney, Sam Albergotti, advised TSA consider using a single member LLC (TSA would be the single member) to hold title on any foreclosed property if we go that far. This procedure was used in a foreclosure subject to mortgage by KKPOA which will likely be the legal procedure we will use. By avoiding title in TSA’s name we avoid the risks associated with ownership expenses and liabilities. We would take the property subject to the mortgage, not pay the mortgage and then it is up to the bank to foreclose or waive its claim (it did waive for a KKPOA case). We foreclose in our name and immediately assign the property to the LLC.

**Engineering & Property Managers Report:**

**Other Repair & Maintenance Issues:** G. Lee discussed the building repairs that have been done recently such as carpenter bee treatment and inspection of Unit 120 crawlspace.

**Column Repair**: G. Lee stated the quote given did not include reworking the concrete. Settlement has occurred at several columns. In order to stabilize, adjustable stabilizing poles have been ordered.

**Janitorial Contract:** G. Lee is working on new specifications of needs (changes from season to season). Stairwells will be blown 3x’s a week. Lee anticipates having the new specifications in the New Year.

**Landscape Report:** T. Shirley will prepare a landscape plan for the lower common area. Replacement of the removed overgrown holly at the Frigate entrance will be in the next couple of weeks. R. Routman advised that the capital reserves account was sufficient to approve and continue the next phase and encouraged consideration of implementation for the spring.

**120 Inspection Report:** G. Lee discussed the mold inspection report at length. Carpet Max has submitted a quote for mold remediation however, it does not include grading. After discussion,

G. Lee recommended accepting the bid from Carpet Max and paying the charges out of building maintenance. O. Borys made a motion to accept the contract with Carpet Max to remediate mold under #120 and continue with insulation repairs, ventilation fans and grading for an additional $3,500.00. R. Routman seconded this motion and the motion passed unanimously.

**Existing Business:**

**Handbook Revision:** O. Borys discussed the revisions in the handbook such as clarifying parking.

R. Routman presented a report examining the pros and cons of the parking policy. There are four legal documents which define the rights and duties of Tall Ship Association, Inc. and the unit owners. They are (1) the South Carolina Horizontal Property Act, SC Code §27-31-20 *et seq.*, (2) the Master Deed filed April 22, 1985 Plat book P-51 page 203, Oconee County, (3) the corporate By-Laws also filed with the Master Deed, and (4) the South Carolina Nonprofit Corporation Act, SC Code §33-31-101 *et seq.* Rules and regulations can be promulgated either (1) by the board under the master deed or (2) by amendment of the Bylaws by the owners.

The board has promulgated rules allowing individual owners to place a blue sign reserving a common area parking space for individual use. The board speculated reservation of parking as a courtesy was allowable under Article XII’s general provision that the “use of General Common Elements … shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Board.” However, this blue sign practice may not be allowable under the South Carolina Horizontal Property Act. Total reservation is definitely prohibited by SC Code §27-31-70 which provides “[t]he common elements, both general and limited, shall remain undivided … [a]ny covenant to the contrary shall be void.” Partial (blue sign) reservation appears to be prohibited by SC Code §27-31-70 which provides “[e]ach co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of other co-owners.” So the issue for consideration is whether the blue sign policy “hinders or encroaches” upon another owner’s right to use the space. There is a well recognized legal doctrine that a law or policy which “chills” (discourages or pressures) one’s exercise of a right is disfavored.

Since the board has always acknowledged that there is no explicit authorization for division of common area and has refused to enforce and prevent other owners from using a reserved space, the blue sign policy will continue as a mere courtesy. However, since the blue sign policy probably hinders, encroaches or chills an owner from using their undivided ownership of the parking place most convenient for them, any owner protest or owner attempt to claim exclusivity must result in reconsideration of policy deletion.

**Cruz remodel request:** The remodeling request approval has been sent to owners along with sound dampening requirements.

**Master Deed and Bylaws review:** R. Routman reported that TSA’s posted Master Deed and Bylaws are not current in that they do not reflect the December 2012 annual meeting’s vote to reduce the TSA Board from seven to five directors. The Association’s attorney is in the process of conducting a title search and preparing an updated version of the master deed and bylaws. This will ensure current copies reflect all recorded changes. Once updated a mail out will be sent to owners for approval as an Amended and Restated Master Deed and Bylaws.

Our attorney advises that there is insufficient time to prepare an Amended and Restated Master Deed and Bylaws in suitable format for recording and advance presentation to the owners before the December 10th meeting. He provided an alternative which is to copy KKPOA’s amendment allowing voting by mail on amendments to the Deed. This could possibly be done in time for the 2017 annual meeting. This would provide for future amendment without calling special meetings or waiting for annual meetings. Copies of the documents were forwarded by the treasurer to the board.

One important reason for updating the published documents available to owners is given in the SC Horizontal Property Act which dominates and authorizes the Master Deed. The Master Deed so acknowledges in the second paragraph’s statement “intends by this Master Deed to submit the property … to the provisions of the Horizontal Property Act.” That the “Master Deed … shall be recorded.” is a requirement of SC Code §27-31-100. That the “bylaws … shall be … recorded with the master deed” is a requirement of SC Code §27-31-150. Article XXVI of the Master deed allows for amendment of the Master Deed with a 2/3 vote, the Bylaws with a majority vote and voting rights with 100% vote. Article XXVI requires “[a]ll amendments shall be recorded and certified.” Article XXVII denies validity to unrecorded Bylaw amendments stating “[n]o modification or amendment … shall be valid unless set forth in or annexed to a duly recorded amendment to the Master Deed.”

Due to prior time commitments for Foothills personnel and Secretary Borys, further discussion was delayed to allow Foothills to present new business.

**New Business:**

**Hardy remodel request Unit 311:** G. Lee has spoken with the flooring company regarding the sound deadening requirement. The board agreed that the TSA policy should be interpreted promote obtaining the highest decibel sound deadening consistent with floor installation and that the type of material chosen is open provided it yields a higher sound deadening rather than focusing on the thickness.

**Quorum:** At 12:30 pm attendance was reduced to directors Barry Stuart, Roger Heffelfinger and Rob Routman, which still constituted a quorum, and guest Judith Kovaks.

**Vote-by-mail Amendment:** The directors returned to discussion of presenting the suggested Vote-by-mail amendment to the master deed at the annual meeting. The main focus was on the utility of the amendment given that another vote would be needed once a verified up to date copy of the Master Deed and Bylaws was prepared. Proxies and attendance at annual meetings is usually not enough to amend Bylaws with a simple majority. Master deed amendments require a two thirds majority of owners which would probably not be obtainable for the current annual meeting. The pro side included that voting by mail may be the most practical given the increasingly nonresident ownership. After further extensive discussion, a consensus was reached that calling for a vote would at least yield a sample of the opinion of the owners if the vote was short of passing. Routman moved the vote-by-mail amendment be sent out and Heffelfinger seconded. The motion carried.

**Annual Meeting Agenda:** Barry Stuart presented a proposed agenda for the annual meeting. A discussion followed concerning presentation topics and presenter assignments.

Routman moved to adjourn. Heffelfinger seconded. Motion carried