

PLAINTIFF-APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF

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STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF ROBERT J. ROMIG, by BOBBIE JO
KOOMAN, Personal Representative, and TERRY
ROMIG,

Plaintiffs-Appellants,

v

BOULDER BLUFF CONDOMINIUMS UNITS 73-
123, 125-146, INC., doing business as BOULDER
BLUFF ESTATES CONDOMINIUM
ASSOCIATION, and GEROW MANAGEMENT
COMPANY, INC.,

Defendants-Appellees.

FOR PUBLICATION
October 15, 2020
9:05 a.m.

No. 347653
Ottawa Circuit Court
LC No. 18-005518-NO

ESTATE OF ROBERT J. ROMIG, by BOBBIE JO
KOOMAN, Personal Representative, and TERRY
ROMIG,

Plaintiffs-Appellants,

v

BOULDER BLUFF CONDOMINIUMS UNITS 73-
123, 125-146, INC., doing business as BOULDER
BLUFF ESTATES CONDOMINIUM
ASSOCIATION, "BOULDER BLUFF ESTATES
CONDOMINIUM ASSOCIATION," and GEROW
MANAGEMENT COMPANY, INC.,

Defendants-Appellees.

No. 348254
Ottawa Circuit Court
LC No. 18-005518-NO

Before: LETICA, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

In Docket No. 347653, plaintiffs, Bobbie Jo Kooman, as personal representative for the Estate of Robert J. Romig, and Terry Romig, appeal by leave granted¹ the trial court's order granting partial summary disposition in favor of defendant Gerow Management Company, Inc., (Gerow) pursuant to MCR 2.116(C)(10). In Docket No. 348254, plaintiffs appeal by leave granted² the trial court's order granting partial summary disposition in favor of defendants Boulder Bluff Condominiums, Units 73-123, 125-146, Inc., doing business as Boulder Bluff Estates Condominium Association, and Boulder Bluff Estates Condominium Association (the Association),³ pursuant to MCR 2.116(C)(8).⁴

We conclude that the Association's denial of the initial request for installation of a railing as an accommodation to assist a disabled person did not constitute discrimination in a "real estate transaction" as that phrase is defined in the Persons with Disabilities Civil Rights Acts, (PWDCRA), MCL 37.1101 *et seq.* Because plaintiffs' claimed violations of the protections delineated in the PWDCRA are limited to "the sale, exchange, rental, or lease of real property, or an interest therein," and plaintiffs' request did not arise from such a transaction, the trial court properly granted defendants' motions for partial summary disposition. Therefore, finding no errors warranting reversal, we affirm.

I. BASIC FACTS⁵ AND PROCEDURAL HISTORY

In 2009, Terry Romig (Terry) purchased Unit 85 of Boulder Bluff Condominiums, and she lived there with her ex-husband Robert J. Romig, (the decedent). The decedent was disabled and had limited ability to stand and walk. Consequently, in June 2016, Terry submitted an accommodation request to Gerow in accordance with the bylaws of Boulder Bluff Condominiums for permission to install a railing on the front porch and adjacent stairs of Unit 85. With the request, Terry submitted a photograph of the type and kind of railing to be installed. At the request of

¹ *Estate of Robert J Romig v Boulder Bluff Condominiums*, unpublished order of the Court of Appeals, entered July 29, 2019 (Docket No. 347653).

² *Estate of Robert J Romig v Boulder Bluff Condominiums*, unpublished order of the Court of Appeals, entered July 29, 2019 (Docket No. 348254).

³ Plaintiff Bobbie Jo Kooman is the daughter of the decedent, Robert J. Romig, and the personal representative of his estate. Plaintiff Terry Romig is the purchaser and co-owner of the condominium where Robert J. Romig resided before his death. Defendant Boulder Bluff Condominiums, Units 73-123, 125-146, Inc., in effect, does business as Boulder Bluff Estates Condominium Association and is a Michigan non-profit corporation designed to administer the affairs of Boulder Bluff Condominiums. Gerow Management, Inc. is the corporation that serves as the property manager for the Association.

⁴ For efficient administration purposes, the appeals were consolidated. *Estate of Robert J Romig v Boulder Bluff Condominiums*, unpublished order of the Court of Appeals, entered September 4, 2019 (Docket Nos. 347635; 348254).

⁵ There were no depositions or affidavits filed by the parties addressing the facts in the lower court record. Accordingly, our factual summary is drawn from the complaint, the dispositive motion pleadings, and the trial court's written opinion and order.

Gerow's employee, Terry provided additional information regarding the coverage and location of the railing, the installer, and the method of attachment of the railing to the porch. She also advised that installation could occur "around July 4." While waiting for a decision from the board of directors of the Association, the decedent fell down the stairs and was hospitalized. Terry informed Gerow and the board of directors of the decedent's fall. Nonetheless, on July 1, 2016, Gerow notified Terry by letter that the board of directors denied the modification request to install a railing to the porch and stairs of Unit 85. The board denied the request because "the proposed railing would be a permanent change modifying the overall appearance of the unit in comparison to the rest of the association as well as the installation would cause damage to the concrete porch."

In a letter dated July 28, 2016, counsel for Terry and the decedent advised the Association board that they did not comply with their bylaws because the denial failed to advise of the changes necessary to permit the proposed improvement. The letter also stated that their denial was contrary to federal and state housing law, including MCL 559.147 of the Michigan Condominium Act. Counsel attached a letter from Dr. Diana Dillman advising that the decedent was disabled and needed to have side and hand rails for his safety. On August 20, 2016, the decedent fell a second time while attempting to maneuver the front porch stairs. Once again, he was hospitalized for this fall. In a letter dated August 23, 2016, Gerow advised Terry that her request to install a railing on the front porch adjacent to her unit was approved and delineated the specifications for the installation. On January 31, 2017, the decedent died.

Ultimately, plaintiffs filed a three-count complaint against defendants alleging that their delay or refusal to allow the disability modification discriminated against the decedent. Specifically, in count one and two, they alleged that defendants, in delaying or refusing the handrail, violated the PWDCRA, MCL 37.1101 *et seq.* In count three, plaintiffs alleged that defendants violated Michigan's Condominium Act, MCL 559.101 *et seq.* Gerow moved for partial summary disposition, arguing that plaintiffs did not have a cause of action pursuant to MCL 37.1506a(1)(a) or MCL 37.1502(1)(b) because both provisions of the PWDCRA required that the alleged discrimination occur "in connection with a real estate transaction." It claimed that the alleged discrimination did not occur "in connection with a real estate transaction" because Terry owned her condominium unit years before the alleged discrimination occurred. The trial court agreed with Gerow and found that this situation did not fit the PWDCRA's definition of a "real estate transaction." After the trial court granted Gerow's motion, Boulder Bluff Condominiums and the Association filed their own motion for partial summary disposition relying on the "real estate transaction" argument raised by Gerow, and the trial court granted this motion as well. Plaintiffs appeal by leave granted both orders granting defendants' motions for partial summary disposition.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed *de novo*. *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018). Summary disposition is proper under MCR 2.116(C)(8) if the opposing party has failed to state a claim upon which relief can be granted. *Brickey v McCarver*, 323 Mich App 639, 641; 919 NW2d 412 (2018). A motion for summary disposition premised on MCR 2.116(C)(8) tests the legal sufficiency of the complaint by solely examining the pleadings. *Sullivan v State of Michigan*, 328 Mich App 74, 80; 935 NW2d 413 (2019). All well-pleaded factual allegations are accepted as true and construed in the light most

favorable to the nonmoving party. *Id.* A motion for summary disposition under MCR 2.116(C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly uphold a right of recovery. *Brickey*, 323 Mich App at 641-642.

Summary disposition is appropriate pursuant to MCR 2.116(C)(10) where there is “no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10). When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018).

III. STATUTORY INTERPRETATION

“A decision on . . . the interpretation of a statute [is] reviewed de novo.” *ADR Consultants, LLC v Mich Land Bank Fast Track Auth*, 327 Mich App 66, 74; 932 NW2d 226 (2019). Issues involving statutory interpretation present questions of law that are reviewed de novo. *Meisner Law Group, PC v Weston Downs Condo Ass’n*, 321 Mich App 702, 714; 909 NW2d 890 (2017). “The primary goal of statutory interpretation is to give effect to the intent of the Legislature.” *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010). The most reliable evidence of legislative intent is the plain language of the statute. *South Dearborn Environmental Improvement Ass’n, Inc v Dep’t of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). If the language of the statute is clear and unambiguous, it is presumed that the Legislature intended the meaning plainly expressed in the statute. *Gardner v Dep’t of Treasury*, 498 Mich 1, 6; 869 NW2d 199 (2015). The court’s interpretation of a statute must give effect to every word, phrase, and clause. *South Dearborn*, 502 Mich at 361. Further, an interpretation that would render any part of the statute surplusage or nugatory must be avoided. *Id.* Common words and phrases are given their plain meaning as determined by the context in which the words are used, and a dictionary may be consulted to ascertain the meaning of an undefined word or phrase. *Id.* “In construing a legislative enactment we are not at liberty to choose a construction that implements any rational purpose but, rather, must choose the construction which implements the legislative purpose perceived from the language and the context in which it is used.” *Frost-Pack Distrib Co v City of Grand Rapids*, 399 Mich 664, 683; 252 NW2d 747 (1977). [*Le Gassick v Univ of Mich Regents*, ___ Mich App ___, ___; ___ NW2d ___ (2019), (Docket No. 344971) slip op at 4].

Additionally, statutes must be construed as a whole with the provisions read in the context of the entire statute so as to produce a harmonious whole. *Bachman v Swan Harbour Ass’n*, 252 Mich App 400, 414; 655 NW2d 415 (2002). “The last antecedent rule provides that a modifying clause is confined to the last antecedent unless something in the subject matter or dominant purpose [of the statute] requires a different interpretation.” *Andrew P Campbell v Mich Dept of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 350248); slip op at 4 (quotation marks and citation omitted; alteration in original). “However, this rule does not apply when the modifying clause is set off by punctuation, such as a comma.” *Id.* (quotation marks and citations

omitted). Additionally, “[a] dependent clause set off by commas from the rest of the sentence is not to be viewed as an independent clause operating separately but, rather, as part of the complex sentence overall.” *Id.* (quotation marks and citations omitted). Furthermore, “the word ‘or’ is a disjunctive word that is used to indicate a disunion, a separation, an alternative.” *Id.* (quotation marks and citations omitted).

IV. PWDCRA

When this Court construes “the statutory provisions contained in the PWDCRA, [it] must construe the language reasonably, keeping in mind the purpose of the act.” *Bachman*, 252 Mich App at 414. “The purpose of the PWDCRA is to ensure that all persons be accorded equal opportunities to obtain housing.” *Id.* The PWDCRA “is remedial and is to be liberally construed to effectuate its ends.” *Id.* However, in general, “the policy behind a statute cannot prevail over what the text actually says.” *Elezovic v Ford Motor Co*, 472 Mich 408, 421-422; 697 NW2d 851 (2005).

“The PWDCRA, which was enacted in 1976 for the protection of persons with disabilities, is divided into six separate articles.” *Bachman*, 252 Mich at 412. Relevant to this case, Article 5 addresses the protected area of housing. *Id.*

Plaintiffs submit that two provisions of the PWDCRA were violated in this case, MCL 37.1502(1)(b) and 37.1506a(1)(a). MCL 37.1502 prohibits certain discriminatory acts and provides in relevant part as follows:

(1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual’s ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

* * *

(b) Discriminate against a person in the terms, conditions, or privileges of a *real estate transaction* or in the furnishing of facilities or services in connection with a *real estate transaction*. [Emphasis added].

MCL 37.1506a also prohibits certain discriminatory acts and provides in relevant part as follows:

(1) A person shall not do any of the following in connection with a *real estate transaction*:

(a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter’s

agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. [Emphasis added].

MCL 37.1501 provides definitions relevant to Article 5 of the PWDCRA, and MCL 37.1501(d) defines “real estate transaction” as “the sale, exchange, rental, or lease of real property, or an interest therein.”

V. ANALYSIS

Plaintiffs allege that the trial court erred in granting partial summary disposition to defendants because: (1) the definition of “real estate transaction” includes the phrase “an interest therein” and the condominium association’s governing documents constitute “an interest therein;” (2) the trial court failed to interpret the statute as a whole; and (3) the trial court erred in determining that protections are inapplicable once a real estate purchase or exchange is complete. We disagree.

A. CONDOMINIUM ASSOCIATION MASTER DEED AND BYLAWS

The plain language of MCL 37.1502(1)(b) precludes discrimination against a disabled person “in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.” Additionally, the plain language of MCL 37.1506a(1)(a) provides that reasonable modifications cannot be refused when necessary for a disabled person’s full enjoyment of premises in connection with a real estate transaction. Again, real estate transaction is defined as “the sale, exchange, rental, or lease of real property, or an interest therein.” MCL 37.1501(d).

Plaintiffs submit that the condominium association’s master deed provides⁶ that a person who acquires an ownership interest has rights to her apartment as well as common elements, and therefore, constitute “an interest therein.” Accordingly, plaintiffs assert that the master deed and bylaws satisfy the real estate transaction definition. However, plaintiffs’ interpretation of the phrase “real estate transaction” is contrary to the plain language of MCL 37.1501(d). As noted, the last antecedent rule provides that a modifying clause is confined to the last antecedent, but the modifying clause “an interest therein” is separated from the last antecedent by a comma and the word “or.” The comma means that the last antecedent rule does not apply in this case. See *Campbell*, ___ Mich App at ___; slip op at 4. It also demonstrates that the modifying clause “an interest therein” “is not to be viewed as an independent clause operating separately, but rather, as part of the complex sentence overall.” *Id.* (quotation marks and citations omitted). Therefore, pursuant to the rules of statutory interpretation, under MCL 37.1501(d), a “real estate transaction” means the (1) “sale . . . of real property, or an interest therein,” (2) “exchange . . . of real property,

⁶ Plaintiffs rely on the following language: “Each person who shall acquire or own an Apartment in the Project (the ‘Co-owner’ thereof) shall have a particular and exclusive property right to his Apartment and to the limited common elements appurtenant thereto, and an undivided and inseparable right to share with other Co-owners the general common elements of the Project, as set forth in this Consolidating Master Deed.”

or an interest therein,” (3) “rental . . . of real property, or an interest therein,” or (4) “lease of real property, or an interest therein.”

Applying this interpretation of the definition of “real estate transaction” to this case, it is evident that plaintiffs do not have a cause of action under the PWDCRA. As stated earlier, plaintiffs raised a claim under MCL 37.1502(1)(b), which prohibits “[d]iscriminat[ion] against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.” The Legislature did not define the phrase “in connection with,” and this Court may consult a dictionary to determine the meaning of the phrase. See *In re MJG*, 320 Mich App 310, 326; 906 NW2d 815 (2017). Although there are many definitions for the word “connection,” the definition relevant in this case is “relationship in fact.” *Merriam-Webster’s Collegiate Dictionary* (11th ed). See also *MJG*, 320 Mich App at 326.

In this case, the alleged discrimination did not have a relationship in fact with a real estate transaction because the alleged discrimination did not pertain to the (1) “sale . . . of real property, or an interest therein,” (2) “exchange . . . of real property, or an interest therein,” (3) “rental . . . of real property, or an interest therein,” or (4) “lease of real property, or an interest therein.” MCL 37.1501(d). Additionally, defendants did not allegedly discriminate against the decedent “in the terms, conditions, or privileges of a,” (1) “sale . . . of real property, or an interest therein,” (2) “exchange . . . of real property, or an interest therein” (3) “rental . . . of real property, or an interest therein,” or (4) “lease of real property, or an interest therein.” MCL 37.1501(d). Instead, the alleged discrimination occurred years after Terry purchased the home and after the decedent began residing in the home.

Plaintiffs also raised a claim in their complaint pursuant to MCL 37.1506a(1)(a), which prohibits certain discriminatory acts “in connection with a real estate transaction.” However, as stated earlier, the alleged discriminatory act did not have a relationship in fact with the (1) “sale . . . of real property, or an interest therein,” (2) “exchange . . . of real property, or an interest therein,” (3) “rental . . . of real property, or an interest therein,” or (4) “lease of real property, or an interest therein.” MCL 37.1501(d). The alleged discriminatory act occurred years after Terry had purchased Unit 85 from Boulder Bluff Condominiums.

B. STATUTE AS A WHOLE AND COMPLETED TRANSACTIONS

Plaintiffs also contend that the statute must be examined as a whole and limiting its protections to instances of sales or leases negates the remedial “value” of the PWDCRA and renders the statute meaningless or nugatory. However, it must be noted that defendants did not seek summary disposition of count three, plaintiffs claimed violation of MCL 559.147a of the Michigan Condominium Act. The following rules address statutes that relate to the same subject matter:

When two or more statutes arguably relate to the same subject or have the same purpose, the statutes are deemed *in pari materia* and must be read together in order to discern legislative intent. *Measel v Auto Club Group Ins Co*, 314 Mich App 320, 329 n 7; 886 NW2d 193 (2016). The purpose of the rule of *in pari materia* is to effectuate the legislative goal as evinced by the harmonious statutes on a particular

subject. *Id.* “When two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute.” *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007). “It is . . . well established that a later-enacted specific statute operates as an exception or a qualification to a more general prior statute covering the same subject matter and that, if there is an irreconcilable conflict between two statutes, the later-enacted one will control.” *In re Midland Publishing Co, Inc*, 420 Mich 148, 163; 362 NW2d 580 (1984). These are statutory-construction doctrines designed to discern the intent of the Legislature. [*House of Representatives v Governor*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 353655), slip op at 13].

MCL 559.147a(1) addresses improvements or modifications pertaining to persons with disabilities and provides, in pertinent part:

A co-owner may make improvements or modifications to the co-owner’s condominium unit, including improvements or modifications to common elements and to the route from the public way to the door of the co-owner’s condominium unit, at his or her expense, if the purpose of the improvement or modification is to facilitate access to or movement within the unit for persons with disabilities who reside in or regularly visit with unit, or to alleviate conditions that could be hazardous to persons with disabilities who reside in or regularly visit the unit.

Although plaintiffs urge this Court to extend the protections of the PWDCRA beyond the “sale, exchange, rental, or lease of real property, or an interest therein,” MCL 37.1501(d), “we are not at liberty to choose a construction that implements any rational purpose but, rather, must choose the construction which implements the legislative purpose perceived from the language and the context in which it is used.” *Le Gassick v Univ of Mich Regents*, ___ Mich App at slip op 4, quoting *Frost-Pack Distrib Co*, 399 Mich at 683. Moreover, provisions of the PWDCRA arguably overlap with MCL 557.147a(1) of the Michigan Condominium Act and must be read together to discern legislative intent. MCL 557.147a(1) expressly affords persons with disabilities the right to make improvements or modifications to facilitate access to or movement in the unit.⁷ It contains no express limitations or correlation to a “real estate transaction” or the timing of the sale or purchase. Thus, the Legislature’s confinement of housing provisions in the PWDCRA to “real estate transactions” does not preclude subsequent legal action after a disabled person completes the real estate transaction in light of MCL 557.147a, and we will not extend the application of the PWDCRA beyond real estate transactions because it would serve the rationale purpose of protecting a disabled person.

Therefore, the trial court did not err by granting partial summary disposition in favor of defendants. Plaintiffs do not have any claims arising under the PWDCRA.

⁷ To be clear, we do not address the merits of whether plaintiffs factually satisfy a claim pursuant to MCL 557.147a(1) or the application of that law to these facts.

Affirmed. No taxable costs, a public question being involved.

/s/ Anica Letica

/s/ Kirsten Frank Kelly

/s/ James Robert Redford

Court of Appeals, State of Michigan

ORDER

Estate of Robert J Romig v Boulder Bluff Condominiums

Docket No. 347653; 348254

LC No. 18-005518-NO

Anica Letica
Presiding Judge

Kirsten Frank Kelly

James Robert Redford
Judges

The motion for reconsideration is DENIED.

Anica Letica

Presiding Judge

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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 17, 2020

Date

Jerome W. Zimmer Jr.
Chief Clerk

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (EXCERPT)
Act 220 of 1976

37.1501 Definitions.

Sec. 501. As used in this article:

(a) "Housing accommodation" includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more persons.

(b) "Immediate family" means a spouse, parent, child, or sibling.

(c) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these persons.

(d) "Real estate transaction" means the sale, exchange, rental, or lease of real property, or an interest therein.

(e) "Real property" includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

History: 1976, Act 220, Eff. Mar. 31, 1977.

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (EXCERPT)
Act 220 of 1976

37.1502 Owners, persons engaging in real estate transactions, real estate brokers, and real estate salesmen; prohibited conduct.

Sec. 502. (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

- (a) Refuse to engage in a real estate transaction with a person.
- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.
- (d) Refuse to negotiate for a real estate transaction with a person.
- (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, fail to bring a property listing to a person's attention, refuse to permit a person to inspect real property, or otherwise deny or make real property unavailable to a person.
- (f) Make, print, circulate, post, or mail or cause to be made or published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect to a real estate transaction.
- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (h) Discriminate against a person in the brokering or appraising of real property.

(2) A person shall not deny a person access to or membership or participation in a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property, or discriminate against a person in the terms or conditions of that access, membership, or participation.

History: 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (EXCERPT)
Act 220 of 1976

37.1506a Real estate transaction; prohibited conduct; "covered multifamily dwellings" defined.

Sec. 506a. (1) A person shall not do any of the following in connection with a real estate transaction:

(a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features:

(i) The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.

(ii) The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(iii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(iv) All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

(2) As used in this section, "covered multifamily dwellings" means buildings consisting of 4 or more units if the buildings have 1 or more elevators, and ground floor units in other buildings consisting of 4 or more units.

History: Add. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

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STATE OF MICHIGAN
IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

414 Washington Street
Grand Haven, MI 49417
616-846-8315

**BOBBIE JO KOOMAN, PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF ROBERT J. ROMIG, deceased, and
TERRY ROMIG,**

OPINION AND ORDER ON
MOTION FOR SUMMARY
DISPOSITION

Plaintiffs,

File No. 2018-5518-NO

v

**BOULDER BLUFF CONDOMINIUMS,
UNITS 73-123, 125-146, INC. D/B/A
BOULDER BLUFF ESTATES
CONDOMINIUM ASSOCIATION, a
Michigan Non-profit corporation, "BOULDER
BLUFF ESTATES CONDOMINIUM
ASSOCIATION", an unregistered business entity,
GEROW MANAGEMENT COMPANY,
INC., a Michigan Corporation,**

Defendants.

Before this Court is defendant Gerow Management Company Inc.'s motion for partial summary disposition pursuant to MCR 2.116(C)(8) regarding plaintiff Bobbie Jo Kooman's (in her capacity as personal representative for the estate of Robert J. Romig) and plaintiff Terry Romig's claims against Gerow under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* For the reasons below, Gerow's motion is properly understood as a partial motion for summary disposition pursuant to MCR 2.116(C)(10), and that motion is GRANTED.

Background

On July 10, 2009, Terry acquired "Unit 85" of Boulder Bluff Condominiums.¹ Decedent Robert Romig lived with Terry in Unit 85.² Robert was disabled and had a limited ability to stand and walk.³

¹ Quit Claim Deed, July 10, 2009, attached as Exhibit A to Gerow's Brief in Support of Motion for Partial Summary Disposition, December 14, 2018 and as Exhibit 1 to Plaintiffs' Brief in Support of its Response to Gerow's Motion for Partial Summary Disposition, December 14, 2018.



On approximately June 17, 2016, Terry submitted an accommodation request to defendants (including Gerow), seeking permission to install a railing on the front porch and adjacent stairs of Unit 85.⁴ This request was ultimately denied.⁵

On August 20, 2016, Robert fell off the front stairs of Unit 85.⁶ Robert died on January 31, 2017.⁷

On September 28, 2018, plaintiffs filed their complaint against Gerow and the other defendants. Plaintiffs raised two claims under the PWDCRA. The first alleged that defendants violated the PWDCRA by unreasonably denying plaintiffs a reasonable disability modification necessary for Robert to have the opportunity for full and equal enjoyment of Unit 85 under MCL 37.1506a(1)(a).⁸ The second alleged that defendants violated the PWDCRA by discriminating against plaintiffs regarding the terms and conditions of housing under MCL 37.1502(1)(b).⁹

In addition to the two PWDCRA claims, plaintiffs raised a third claim: violation of the Condominium Act, MCL 559.101 *et seq.*¹⁰

On December 14, 2018, Gerow filed a motion for partial summary disposition pursuant to MCR 2.116(C)(8) seeking dismissal of plaintiffs' two PWDCRA claims.¹¹ Specifically, Gerow argues that because Terry acquired Unit 85 in 2009, and because the protections of the PWDCRA only apply to "real estate transactions," plaintiffs' PWDCRA claims should be dismissed.¹²

The same day, plaintiffs filed their response to Gerow's motion.¹³ Plaintiffs argue that the definition of the term "real estate transactions" includes "an interest therein," and that

² Complaint, September 28, 2018, 29.

³ Complaint, 28.

⁴ Complaint, 34-37.

⁵ Complaint, 50.

⁶ Complaint, 47.

⁷ Complaint, 49.

⁸ Complaint, 56-60.

⁹ Complaint, 61-65.

¹⁰ Complaint, 66-72.

¹¹ Gerow's Motion for Partial Summary Disposition, December 14, 2018.

¹² Gerow's Brief, 2-4.

¹³ Plaintiffs' Response to Gerow's Motion for Partial Summary Disposition, December 14, 2018.

because plaintiffs' PWDCRA claims involve defendants' interpretation and application of condominium bylaws, those claims involve "real estate transactions".¹⁴

On January 14, 2019, Gerow and plaintiffs appeared before this Court and reiterated their arguments.

Standard of Review

As an initial matter, the operative fact, Terry's acquisition of Unit 85 on July 10, 2009, is not contained in the complaint, and is instead supported by copies of a quit claim deed attached to Gerow's and plaintiffs' briefs. Because "[a] party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions,"¹⁵ Gerow's motion is properly viewed as a MCR 2.116(C)(10) motion.¹⁶

This Court acknowledges that "[g]enerally, a motion for summary disposition under MCR 2.116(C)(10) is premature when discovery on a disputed issue has not been completed. However, summary disposition before the close of discovery is appropriate if there is no reasonable chance that further discovery will result in factual support for the nonmoving party."¹⁷ Here, while a MCR 2.116(C)(10) is premature,¹⁸ plaintiffs and Gerow each acknowledge that Terry acquired Unit 85 on July 10, 2009. Because there is no reasonable chance that further discovery would result in factual support for a different acquisition date, Gerow's de facto MCR 2.116(C)(10) motion may be addressed.¹⁹

Summary disposition may be granted under MCR 2.116(C)(10) if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A defendant may satisfy its burden under MCR 2.116(C)(10) by "submitting affirmative evidence that negates an essential element of the nonmoving party's claim, or by demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim."²⁰ "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial."²¹ "A genuine issue of material fact exists when the record, drawing all reasonable

¹⁴ Plaintiffs' Brief, 4-8.

¹⁵ *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010).

¹⁶ See *Spiek v Mich Dep't of Transp*, 456 Mich 331, 338; 572 NW2d 201 (1998).

¹⁷ *Colista v Thomas*, 241 Mich App 529, 537-538; 616 NW2d 249 (2000) (citations omitted).

¹⁸ Case Preparation Order, November 25, 2018.

¹⁹ *Colista*, 241 Mich App at 537-538.

²⁰ *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016) (quotations and citation omitted).

²¹ *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ."²²

Legal Analysis

This case presents an issue of statutory interpretation regarding the PWDCRA. In *Bachman v Swan Harbour Ass'n*, 252 Mich App 400, 414; 653 NW2d 415 (2002), the Michigan Court of Appeals articulated the rules for the interpretation of the PWDCRA:

In construing the statutory provisions contained in the PWDCRA, we construe the language reasonably, keeping in mind the purpose of the act. The purpose of the PWDCRA is to ensure that all persons be accorded equal opportunities to obtain housing. The Civil Rights Act, MCL 37.2101 *et seq.*, is remedial and is to be liberally construed to effectuate its ends. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. Statutes are to be construed as a whole, and courts should presume that every word has some meaning and should avoid any construction that would render any part of a statute surplusage or nugatory. Further, provisions must be read in the context of the entire statute so as to produce an harmonious whole.²³

Here, plaintiffs raise two claims of violations of the PWDCRA, the first under MCL 37.1506a(1)(a), the second under MCL 37.1502(1)(b). MCL 37.1506a(1)(a) provides, in relevant part:

(1) A person shall not do any of the following in connection with a *real estate transaction*:

(a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises.²⁴

MCL 37.1502(1)(b) provides, in relevant part:

(1) An owner or any other person engaging in a real estate transaction, . . . shall not, on the basis of a disability . . . of a person residing in . . . a dwelling after it is sold, rented, or made available, . . . that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

* * *

²² *Nuculovic v Hill*, 287 Mich App 58, 62; 783 NW2d 124 (2010).

²³ Citations omitted.

²⁴ Emphasis added.

(b) Discriminate against a person in the terms, conditions, or privileges of a *real estate transaction* or in the furnishing of facilities or services in connection with a *real estate transaction*.²⁵

Accordingly, for plaintiffs' PWDCRA claims to proceed in this case, they must have a "connection" with a "real estate transaction" or arise out of "the terms, conditions, or privileges" of a "real estate transaction." MCL 37.1501(d) of the PWDCRA defines "real estate transaction" as "the sale, exchange, rental, or lease of real property, or an interest therein."

In this case, plaintiffs' argue that MCL 37.1501(d) should be construed such that "an interest therein [of real property]" would be sufficient to constitute a "real estate transaction." Based on that construction of MCL 37.1501(d), plaintiffs argue that defendants' "interpretation and application of the Bylaws constitute 'an interest therein'" under MCL 37.1501(d), and that plaintiffs' PWDCRA claims should be allowed to proceed.²⁶

The flaw in plaintiffs' proffered construction is that the term "real estate transaction" in MCL 37.1501(d) is comprised of two parts: the noun "transaction" and the adjective phrase "real estate," which modifies the noun "transaction." The definition of "real estate transaction" in MCL 37.1501(d) correspondingly contains two parts: "the sale, exchange, rental, or lease . . ." which defines the word "transaction," and ". . . of real property, or an interest therein," which defines the adjective phrase "real estate." By using the definition of the adjective phrase "real estate" to modify the definition of the noun "transaction," MCL 37.1501(d) is properly understood to define a "real estate transaction" as being comprised of any of the following: (1) the "sale . . . of real property, or an interest therein," (2) the "exchange . . . of real property, or an interest therein," (3) the "rental . . . of real property, or an interest therein," or (4) the "lease . . . of real property, or an interest therein."

By merely relying on the phrase "an interest therein," plaintiffs' construction of MCL 37.1501(d) would render the word "transaction" in the term to be defined ("real estate transaction") surplusage or nugatory, which is not permitted by the rules of statutory construction.²⁷ Moreover, plaintiffs' construction of MCL 37.1501(d) would permit the protections in MCL 37.1506a(1)(a) and MCL 37.1502(1)(b) to be applied any time a plaintiff could invoke some connection to "an interest" in real estate. If this was intended by the Michigan legislature, it simply could have used language to that effect, rather than intentionally drafting into those provisions a requirement that there be a connection to a "real estate transaction." And, as noted in *Bachman*, 252 Mich App at 414, "[t]he purpose of the PWDCRA is to ensure that all persons be accorded equal opportunities to *obtain housing*."²⁸ This Court's construction of MCL 37.1501(d) is consistent with that purpose.

²⁵ Emphasis added.

²⁶ Plaintiffs' Brief, 5.

²⁷ *Bachman*, 252 Mich App at 414.

²⁸ Emphasis added.

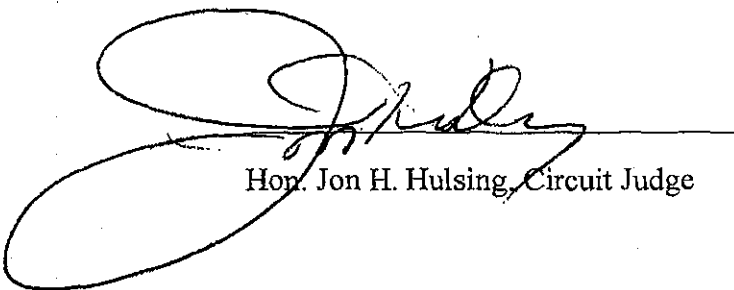
Therefore, because Terry acquired Unit 85 on July 10, 2009,²⁹ there was no connection between that “sale” of “real property, or an interest therein” and the circumstances in the summer of 2016 plaintiffs allege in support of their PWDCRA claims. Nor did those circumstances arise out of “the terms, conditions, or privileges” of the July 10, 2009 “sale” of “real property, or an interest therein.” For this reason, plaintiffs may not raise their PWDCRA claims under MCL 37.1506a(1)(a) and MCL 37.1502(1)(b).

Conclusion

Because there is no genuine issue regarding the material fact that Terry acquired Unit 85 on July 10, 2009, and Gerow is entitled to partial judgment as a matter of law, Gerow’s motion for partial summary disposition regarding plaintiffs’ PWDCRA claims is GRANTED pursuant to MCR 2.116(C)(10).

IT IS SO ORDERED.

Dated: 1-24-2019



Hon. Jon H. Hulsing, Circuit Judge

²⁹ Quit Claim Deed.

STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

414 Washington Street
Grand Haven, MI 49417
616-846-8315

**BOBBIE JO KOOMAN, PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF ROBERT J. ROMIG, deceased, and
TERRY ROMIG,**

Plaintiffs,

**ORDER ON
MOTION FOR SUMMARY
DISPOSITION**

File No. 2018-5518-NO

v

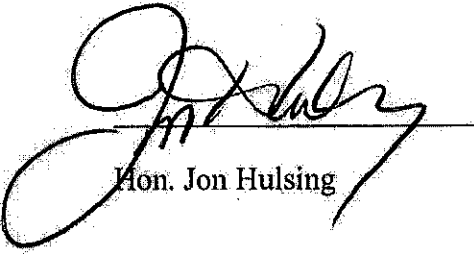
**BOULDER BLUFF CONDOMINIUMS,
UNITS 73-123, 125-146, INC. D/B/A
BOULDER BLUFF ESTATES
CONDOMINIUM ASSOCIATION, a
Michigan Non-profit corporation, "BOULDER
BLUFF ESTATES CONDOMINIUM
ASSOCIATION", an unregistered business entity,
GEROW MANAGEMENT COMPANY,
INC., a Michigan Corporation,**

Defendants.

Before this Court are defendants Boulder Bluff Condominiums, Boulder Bluff Estates Condominium Association, a Michigan Non-profit corporation, and Boulder Bluff Estates Condominium Association, an unregistered business entity combined motion for partial summary disposition pursuant to MCR 2.116(C)(8). This is a question of law. For the same reasons stated in the Court's Opinion and Order granting defendant Gerow Management Company, Inc.'s motion for partial summary disposition under MCR 2.116(C)(8), partial summary disposition is GRANTED for the Boulder Bluff defendants.

Oral argument is dispensed with pursuant to MCR 2.119(E)(3).

March 7, 2019


Hon. Jon Hulsing

PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (EXCERPT)
Act 220 of 1976

37.1103 Definitions.

Sec. 103. As used in this act:

(a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) "Commission" means the civil rights commission established by section 29 of article V of the state constitution of 1963.

(c) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(d) Except as provided under subdivision (f), "disability" means 1 or more of the following:

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

(B) For purposes of article 3, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service.

(C) For purposes of article 4, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution.

(D) For purposes of article 5, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent, or maintain property.

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i).

(e) "Drug" means that term as defined in section 7105 of the public health code, 1978 PA 368, MCL 333.7105.

(f) For purposes of article 2, disability does not include either of the following:

(i) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual.

(ii) A determinable physical or mental characteristic caused by the use of an alcoholic liquor by that individual, if that physical or mental characteristic prevents that individual from performing the duties of his or her job.

(g) "Person" includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state, or any other legal, commercial, or governmental entity or agency.

(h) "Person with a disability" or "person with disabilities" means an individual who has 1 or more disabilities.

(i) "Political subdivision" means a county, city, village, township, school district, or special district or authority of this state.

(j) "State average weekly wage" means the state average weekly wage as determined by the Michigan employment security commission under section 27 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.27.

(k) "Temporary employee" means an employee hired for a position that will not exceed 90 days in duration.

(l) "Unrelated to the individual's ability" means, with or without accommodation, an individual's disability does not prevent the individual from doing 1 or more of the following:

(i) For purposes of article 2, performing the duties of a particular job or position.

(ii) For purposes of article 3, utilizing and benefiting from a place of public accommodation or public service.

(iii) For purposes of article 4, utilizing and benefiting from educational opportunities, programs, and facilities at an educational institution.

(iv) For purposes of article 5, acquiring, renting, or maintaining property.

History: 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998;—Am. 1999, Act 201, Eff. Mar. 10, 2000. Rendered Thursday, December 9, 2021

2000.

Compiler's note: Enacting section 1 of Act 201 of 1999 provides:

“Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision in Doe v Department of Corrections, 236 Mich App 801 (1999). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act.”

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Metro Health
METRO HEALTH MEDICAL GROUP
7888 Georgetown Cir Dr
Jenison MI 49428-5101
Diana L. Dillman, DO

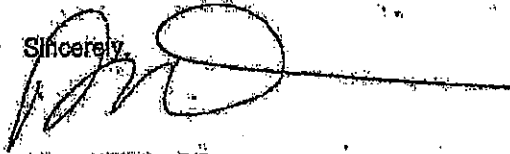
July 5, 2018

Robert J Romig
7629 Boulder Bluff Dr
Jenison MI 49428

To Whom It May Concern:

Robert J Romig is disabled. He needs to have side rails and hand rails for his safety.

Sincerely,



Diana Dillman DO

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CONSOLIDATING MASTER DEED OF
BOULDER BLUFF CONDOMINIUMS
(Act 59, Public Acts of 1978)
as amended

RECORDED
JAN 16 2021
REGISTERED
OFFICE OF THE CLERK
OF THE COUNTY OF
OTTAWA

Ottawa County Condominium Subdivision Plan No. 96
(Consolidating Plans Numbered 16, 26, 31, 34 & 42)

- (1) Master Deed consolidating Sections 1, 2, 3, 4 and 5 of Boulder Bluff Condominiums.
- (2) Exhibit A to Consolidating Master Deed: Condominium By-laws of Boulder Bluff Condominiums.
- (3) Exhibit B to Consolidating Master Deed: Condominium Subdivision Plan for Boulder Bluff Condominiums.

No interest in real estate being conveyed hereby, no revenue stamps are required.

This instrument Drafted By: **William K. Van E Hof**
Varnum, Ridgeling, Schmidt & Howlett
Suite 800, 171 Monroe Avenue, N.W.
Grand Rapids, MI 49503

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CONSOLIDATING MASTER DEED OF
BOULDER BLUFF CONDOMINIUMS
(Act 59, Public Acts of 1978)
as amended

This Consolidating Master Deed is made and executed the 13th day of November, 1996, by HSSU MICHIGAN DEVELOPMENT CO., a Michigan corporation (the "Developer"), whose principal office is located at 1364 Baldwin, Jenison, Michigan, represented hereby by its President and Secretary, who are fully empowered and qualified to execute this Consolidating Master Deed on behalf of said corporation.

1. Developer has completed the construction of a Condominium Project known as Boulder Bluff Condominiums (the "Project"), pursuant to plans approved by the Township of Georgetown on a parcel of land more specifically described in Paragraph 2 hereof. The Project has been developed in five successive sections over a period of approximately twelve (12) years so as to comprise a total of one hundred forty-five (145) living units (the "Apartments"). All such Apartments shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved or in any other manner utilized only in accordance with and subject to the provisions of the Michigan Condominium Act, being Act 69 of the Michigan Public Acts of 1978, as amended (the "Act"), and to covenants and conditions set forth herein. The Condominium By-Laws of Boulder Bluff Condominiums attached as Exhibit A and the Condominium Subdivision Plan attached as Exhibit B are hereby incorporated by reference and made a part of this Consolidating Master Deed.

2. The overall site on which the Developer has constructed the Project is situated in the Township of Georgetown, County of Ottawa and State of Michigan, and is described as follows:

That part of the SW 1/4, Section 14, T6N, R13W, Georgetown Township, Ottawa County, Michigan, described as: Commencing at the NW corner of said SW 1/4; thence

L1171-573

N90°00'E 1363.0 feet along the North line of said SW 1/4; thence S00°28'W (parallel to the West line of said SW 1/4) 316.0 feet to the PLACE OF BEGINNING of this description; thence N90°00'E 477.03 feet; thence S10°28'W 1022.06 feet; thence N58°59'W 505.78 feet; thence S37°07'30"E 112.83 feet along the Easterly line of Boulder Bluff Drive (66 feet wide); thence Northerly 555.26 feet along said Easterly line on a 561.05 foot radius curve to the left, the chord of which bears N9°47'45"W 514.46 feet; thence Northerly 115.30 feet on a 361.0 foot radius curve to the right, the chord of which bears N8°32'W 114.92 feet; thence S00°28'W 14.27 feet to the PLACE OF BEGINNING. This parcel contains 8.435 Acres.

Also, that part of the SW 1/4, Section 14, T6N, R13W, Georgetown Township, Ottawa County, Michigan, described as follows: Commencing at the NE corner of said SW 1/4; thence N90°00'E 1297.0 feet along the North line of said SW 1/4; thence S00°28'W (parallel to the West line of said SW 1/4) 200.0 feet to the PLACE OF BEGINNING of this description; thence S00°28'W 129.73 feet along the Westerly line of Boulder Bluff Drive (66 feet wide); thence Southerly 138.03 feet along said Westerly line on a 433.0 foot radius curve to the left, the chord of which bears S8°32'E 135.47 feet; thence Southerly 192.29 feet along said Westerly line on a 516.05 foot radius curve to the right, the chord of which bears S9°47'45"W 473.84 feet; thence S37°07'30"W 294.68 feet along the Westerly line of Boulder Bluff Drive to the most Easterly corner of Lot 33, Jenison Woodcrest Plat No. 1; thence N46°23'15"W 86.35 feet to the most Northerly corner of said Lot 33; thence N00°29'45"E 906.05 feet along the Easterly line of Jenison Woodcrest Plat No. 1; thence N90°00'E 294.0 feet to the place of beginning. This parcel contains 5.966 Acres.

3. The seventeen buildings which comprise the Project contain a total of 148 individual Apartments, all for residential purposes and each capable of individual utilization by reason of having its own entrance from and exit to a common element of the Project. Each person who shall acquire or own an Apartment in the Project (the "Co-owner" thereof) shall have a particular and exclusive property right to his Apartment and to the limited common elements appurtenant thereto, and an undivided and inseparable right to share with other Co-owners the general common elements of the Project, as set forth in this Consolidating Master Deed.

4. The Common Elements of the Project, as set forth in Exhibit B, and the respective responsibilities for the maintenance, repair and replacement thereof are as follows:

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(a) The general common elements, except as otherwise provided herein, are for the use and enjoyment of the Co-owners of all Apartments in the Project, subject to such charges as may be assessed to defray the cost of operation thereof. Said general common elements are:

- (1) the land described in Paragraph 2 hereof, including easement interests of the Condominium in the land provided to it for ingress and egress, if any;
 - (2) the driveways, roads, sidewalks, yards, gardens, trees, shrubs and other plantings;
 - (3) the electrical and telephone wiring networks throughout the Project, including those contained within common walls, up to the point of connection with electrical and telephone fixtures within an Apartment;
 - (4) The plumbing and gas line networks throughout the Project, including those contained within common walls, up to the point of connection with plumbing and gas fixtures within an Apartment;
 - (5) The heating network throughout the Project, including that contained within common walls, up to the point of connection with heating fixtures within an Apartment;
 - (6) The water distribution system, sanitary sewer system and storm drainage system throughout the Project;
 - (7) The foundations, perimeter walls, roofs, ceilings and floors (including windows, doors and chimneys therein), entrances and exits of the Project;
 - (8) The portions of any garage, carport or parking space not otherwise designated as a limited common element in the Condominium Subdivision Plan attached hereto as Exhibit B;
 - (9) The swimming pool, tennis courts, shuffle board court, community building, and other recreational areas constructed on the property described in Paragraph 2 hereof, as set forth in the Condominium Subdivision Plan attached hereto as Exhibit B; and
 - (10) All other common elements of the Project not herein designated as limited common elements which are not enclosed within the boundaries of an Apartment, and which are intended for common use or are necessary to the existence, upkeep and safety of the Project.
- (b) The limited common elements, as described herein, are reserved for the use of specified Apartments as set forth

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in the Condominium Subdivision Plan attached hereto as exhibit

B. Said limited common elements are:

- (1) Garage and/or carport interior spaces;
- (2) The balcony, patio, stoop, deck, plant ledge and/or screened porch appurtenant to certain Apartments in the Project;
- (3) The separate air-conditioner and/or furnace located within or adjacent to any Apartment in the Project;
- (4) The basement storage areas assigned to certain Apartments in the Project; and
- (5) The interior surfaces of Apartment perimeter walls (including windows and doors therein), ceilings and floors contained within an Apartment.

Each hallway, stair or basement in the Project shall be limited in use to the Co-owners of Apartments in the building in which such limited common elements are located.

(c) The cost of maintenance, repair and replacement of the limited common elements described in sub-paragraph (b)(1) and the decoration and interior maintenance of the limited common elements described in sub-paragraphs (b) (4) and (b)(5) shall be borne by the Co-owner of the Apartment to which such limited common elements respectively appertain. The costs of maintenance, repair and replacement of all other general and limited common elements described above shall be borne by the Association except: (i) to the extent of repair or replacement in cases of Co-owner fault; and (ii) as otherwise specified in the Condominium By-laws attached hereto as Exhibit A.

(d) No Co-owner shall use his Apartment or the common elements appurtenant thereto for purposes other than as a single-family residence, in any manner inconsistent with the purposes of the Project or in any other way which interferes with or impairs the rights of another Co-owner in the use and enjoyment of his Apartment or the common elements appurtenant thereto.

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(c) Public utilities furnishing services to the Project, such as electricity, gas, water, sewage disposal and telephone, shall have access to the common elements and to the Apartments at such times as may be reasonable for the installation, repair or maintenance of such services, and any costs incurred in opening and repairing any wall of the Project to install, repair or maintain such services shall be an expense of administration, to be assessed against all Co-owners in accordance with the Condominium By-laws attached hereto as Exhibit A.

5. A complete description of each Apartment in the Project, with elevations therein, referenced to an official bench mark of the United States Geological Survey sufficient to relocate accurately the space enclosed by the description without reference to the structure itself, is set forth in the Condominium Sub-division Plan of Boulder Bluff Condominiums, as surveyed by Excel Engineering, Inc., consulting engineers and surveyors, attached hereto as Exhibit B.

(a) Each Apartment shall include all that space contained within certain horizontal planes and vertical planes designated by a heavy outline on the interior finished surface of the walls, floors and ceilings as illustrated in Exhibit E attached hereto and delineated by detailed dimensional descriptions of the same contained by said outline, less any common elements contained therein. In determining dimensions, each Apartment shall be measured from the interior finished unpainted surfaces of the walls and ceilings and from the interior surfaces of the finished subfloor.

(b) The total value of the Project is 100 and the percentage thereof assigned to each Apartment shall be determinative of the proportionate share of each respective Co-owner in the common elements of the Project, the proceeds and expenses of administration and the value of such Co-

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owner's vote at meetings of the Association of Co-owners. Such percentage of value shall not be changed except with the unanimous consent of all Co-owners and holders of all mortgages encumbering an Apartment in the Project, expressed in an amendment to this Consolidating Master Deed, duly executed and recorded.

(c) The number of each Apartment in the Project as it appears in the Condominium Subdivision Plan, and the percentage of value assigned to each such Apartment are as follows:

<u>Apt. No.</u>	<u>Percentage of Value Assigned</u>	<u>Apt. No.</u>	<u>Percentage of Value Assigned</u>	<u>Apt. No.</u>	<u>Percentage of Value Assigned</u>
<u>Building A</u>					
1	0.58	25	0.58	49	0.58
2	0.60	26	0.60	50	0.60
3	0.60	27	0.60	51	0.60
4	0.58	28	0.58	52	0.58
5	0.58	29	0.58	53	0.58
6	0.62	30	0.62	54	0.62
7	0.62	31	0.62	55	0.62
8	0.58	32	0.58	56	0.58
9	0.58	33	0.58	57	0.58
10	0.62	34	0.60	58	0.60
11	0.62	35	0.60	59	0.60
12	0.58	36	0.58	60	0.58
13	0.58	37	0.58	61	0.58
14	0.60	38	0.62	62	0.62
15	0.58	39	0.62	63	0.62
16	0.58	40	0.58	64	0.58
17	0.58	41	0.58	65	0.58
18	0.60	42	0.60	66	0.77
19	0.60	43	0.60	67	0.77
20	0.58	44	0.58	68	0.58
21	0.58	45	0.58	69	0.58
22	0.62	46	0.62	70	0.62
23	0.62	47	0.62	71	0.62
24	0.58	48	0.58	72	0.58
<u>Building B</u>					
73	0.79	79	0.79	87	0.77
74	0.84	80	0.77	88	0.76
75	0.77	81	0.84	89	0.78
76	0.77	82	0.77	90	0.76
77	0.84	83	0.77	91	0.77
78	0.79	84	0.84		
		85	0.77		
		86	0.79		
<u>Building C</u>					
<u>Building D</u>					
<u>Building E</u>					
<u>Building F</u>					

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Appt. No.	Percentage of Value Assigned	Appt. No.	Percentage of Value Assigned	Appt. No.	Percentage of Value Assigned
<u>Building G</u>					
92	0.77	96	0.77	100	0.77
93	0.76	97	0.76	101	0.76
94	0.76	98	0.76	102	0.76
95	0.76	99	0.77	103	0.76
				104	0.77
<u>Building H</u>					
105	0.77	110	0.77	118	0.77
106	0.76	111	0.76	119	0.76
107	0.76	112	0.76	120	0.77
108	0.76	113	0.76	121	0.76
109	0.77	114	0.76	122	0.76
		115	0.76	123	0.79
		116	0.76		
		117	0.77		
<u>Building I</u>					
125	0.82	128	0.82	132	0.82
126	0.77	129	0.77	133	0.77
127	0.82	130	0.80	134	0.80
		131	0.82	135	0.82
<u>Building J</u>					
136	0.82	139	0.79		
137	0.77	140	0.83		
138	0.80	141	0.83		
145	0.82	142	0.79		
		143	0.79		
		144	0.83		
		145	0.85		

6. So long as the Developer owns one or more of the Apartments in the Project, it shall be subject to the provisions of this Consolidating Master Deed and Exhibits A and B attached hereto.

7. If the Condominium Project is totally or partially damaged or destroyed, or partially taken by eminent domain, the repair, reconstruction or disposition of the property shall be as provided in the Condominium By-laws attached hereto as Exhibit A.

8. Every portion of an Apartment which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of the common elements. In the event that any portion of an Apartment or common element encroaches upon another Apartment or common element due to

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the shifting, settling, or moving of a building, reciprocal easements shall exist for the maintenance of such encroachment for so long as such encroachment exists, and for the maintenance thereof after re-building in the event of destruction.

9. There shall be permanent easements for the maintenance and repair of common elements, which easements shall be administered by the Association of Co-owners, and there shall be easements to, through and over those portions of the land, structures, buildings, improvements and walls (including interior Apartment walls) as may be reasonable for the installation, maintenance and repair of all utility services furnished to the Condominium.

10. Except as otherwise provided herein, the Condominium Project shall not be vacated or revoked, nor shall any of the provisions of this Consolidating Master Deed be amended (except Exhibits A and B hereto which may be amended as therein provided), unless all of the Co-owners and holders of all mortgages encumbering Apartments in the Project unanimously agree to such termination, revocation or amendment by instruments duly executed and recorded as provided herein.

IN WITNESS WHEREOF, the Developer has duly executed this Consolidating Master Deed this day and year first above written.

Signed, Sealed and Delivered
in Presence of:

WEST MICHIGAN DEVELOPMENT CO.

Clarence Nedetz
Clarence Nedetz

By Harvin R. Brunzel
Harvin R. Brunzel, President

Julia Praz
Julia Praz

And Michael F. Kelly
Michael F. Kelly, Secretary

STATE OF MICHIGAN }
COUNTY OF KENT } ss.

On this 11th day of November, 1986, before me, a Notary Public in and for said County, appeared HARVIN R. BRUNZEL and MICHAEL F. KELLY, to me personally known, who being by me duly sworn, did say that they are respectively the President and Secretary of WEST MICHIGAN DEVELOPMENT CO., the Corporation named in and which executes the within instrument, and stated that the

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said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and the same persons acknowledged said instrument to be the free act and deed of said Corporation.

Notary Public, Kent County, RI
My commission expires: 1/1/2021

NOTARY PUBLIC
STATE OF RHODE ISLAND
My Commission Expires 01/01/2021

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EXHIBIT A

CONDOMINIUM BY-LAWS

BOULDER BLUFF CONDOMINIUMS

ARTICLE I

CONDOMINIUM PROJECT

Section 1. Organization. Boulder Bluff Condominiums, a Condominium Project located in the Township of Georgetown, Ottawa County, Michigan, has been constructed in five successive sections so as to comprise a total of 148 living units. As completed, the Condominium Project shall be administered by an Association of Co-owners organized as a non-profit corporation under the laws of the State of Michigan.

Section 2. Compliance. All present and future Co-owners, mortgagees, lessees or other persons who may use the facilities of the Condominium in any manner shall be subject to and comply with the provisions of Act 59, P.A. 1978, as amended (the "Act"), the Consolidating Master Deed and all amendments thereto, and the Articles of Incorporation, Association By-Laws and other Condominium Documents which pertain to the use and operation of the condominium property, current copies of which shall be kept by the Association and made available for inspection at reasonable hours to Co-owners, prospective purchasers and prospective mortgagees of apartments in the Project; provided, that in the event of a conflict between the provisions of the Act and any other document referred to herein, the provisions of the Act shall govern. The acceptance of a deed or conveyance, the entering into of a lease or the act of occupancy of an apartment in the Project shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

ARTICLE II

MEMBERSHIP AND VOTING

Section 1. Membership. Each Co-owner of a Condominium Apartment in the Project, present and future, shall be a member of the Association and no other person or entity shall be entitled to membership. The share of a member in the funds and assets of the Association may be assigned, pledged or transferred only as an appurtenance to his Apartment in the Condominium.

Section 2. Voting Rights. Except as limited in the Consolidating Master Deed and in these By-Laws, each Co-owner shall be entitled to one vote for each Apartment owned when voting by number and one vote, the value of which shall equal the total of the percentages assigned to him as set forth in the Consolidating Master Deed, when voting by value. Voting shall be by value, except in those instances where voting is specifically required to be in value and in number, and no cumulation of votes shall be permitted.

Section 3. Members Entitled to Vote. If an Apartment is owned by one person, his right to vote shall be established by the presentation of evidence of ownership of that Apartment. If an Apartment is owned by more than one person, or is under lease, the person is entitled to cast the vote of the Apartment and to receive all notices and other communications from the Association shall be designated by a certificate signed by all the record

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owners of the Association. Such certificate shall state the name and address of the individual representative designated, the number or number of the Apartment or Apartments owned, and the name and address of the person or persons, firm, corporation, partnership, association, trust or other legal entity who is the Co-owner thereof. All certificates shall be valid until revoked, until superseded by a subsequent certificate or until a change in the ownership of the Apartment concerned.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Association before the appointed time of the meeting.

Section 5. Majority. At any meeting of members at which a quorum is present, 51% of the Co-owners attending in value, in accordance with the percentages allocated to each Apartment in the Consolidating Master Deed for the Project, shall constitute a majority for the approval of the matters presented to the meeting, except as otherwise required herein, by the Condominium Documents or by law.

ARTICLE III

MEETINGS AND QUORUM

Section 1. Initial Meeting of Members. The first meeting of members of the Association shall be called at such time as eighty (80%) percent of all Apartments in all phases of the Condominium (determined with reference to the recorded Consolidating Master Deed) have been sold and the Purchasers thereof qualified as members of the Association, but in no event later than December 31, 1975.

Section 2. Annual Meeting of Members. Thereafter, an annual meeting of the members shall be held in each year at the time and place specified in the By-laws of the Association of Co-owners. At least 10 days prior to the date of an annual meeting, written notice of the time, place and purpose of such meeting shall be mailed to each member entitled to vote at the meeting.

Section 3. Quorum of Members. The presence in person or by written consent of one-fourth in number and value of the Co-owners entitled to vote shall constitute a quorum of members. If a quorum shall not be present at a meeting, the members present may adjourn the meeting for not more than 30 days.

ARTICLE IV

ADMINISTRATION

Section 1. Board of Directors. The business, property and affairs of the Association shall be managed by a Board of Directors to be elected in the manner set forth in the Association Bylaws.

Section 2. Powers and Duties. The Board shall have all powers and duties necessary for the administration of the affairs of the condominium. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

(a) Care, upkeep and maintenance of the common elements, including the execution of contracts, deeds of conveyance, easements and rights-of-way affecting the condominium property;

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(b) Determination, assessment and collection of amounts required for the operation and other affairs of the Condominium;

(c) Employment and dismissal of personnel as necessary for the efficient operation of the Condominium;

(d) Adoption and amendment of rules and regulations covering the details of the use of Condominium property;

(e) Opening of bank accounts on behalf of the Condominium and designating signatories required therefor;

(f) Obtaining insurance for Condominium property, the premiums of which shall be an expense of administration; and

(g) Making repairs, additions and improvements to, or alterations of, the Condominium property, and repairs to and restoration of the property in accordance with the other provisions of these By-laws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

Section 3. Book of Account. The Association shall cause to be kept detailed books of accounts showing all expenditures and receipts affecting administration of the Condominium, which shall specify the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the Association and its Co-owners. Such accounts shall be open for inspection by the Co-owners during reasonable working hours at a place to be designated by the Association, and shall be audited annually by qualified independent auditors. The cost of such audit shall be an expense of administration.

Section 4. Administrative Expenses. The Association shall be assessed as the entity in possession of any tangible personal property of the Condominium owned or possessed in common by the Co-owners, and personal property taxes based thereon shall be treated as expenses of administration. All costs incurred by the Association in satisfaction of any liability arising out of, caused by or connected with the common elements or the administration of the Condominium shall be expenses of administration, and all sums received as proceeds of, or pursuant to, any policy of insurance carried by the Association securing the interests of the Co-owners against liabilities or losses arising out of, caused by or connected with the common elements or the administration thereof shall be receipts of administration.

Section 5. Managing Agent. The Board may employ for the Condominium a Managing Agent at a compensation established by the Board to perform such duties and services as the Board shall authorize, including, but not limited to, the powers and duties listed in Section 2 of this Article. The Developer or any person or entity related thereto may serve as Managing Agent if so appointed.

Section 6. Officers. The Association By-laws shall provide the designation, number, terms of office, qualifications, manner of election, duties, removal and replacement of officers of the Association and may contain any other provisions pertinent to officers of the Association not inconsistent herewith. Officers may be compensated but only upon the affirmative vote of more than fifty (50+) percent of all Co-owners in number and in value.

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ARTICLE V

OPERATION OF THE PROPERTY

Section 1. Determination of Assessments. The Board shall from time to time, and at least annually, adopt a budget for the Condominium which shall include the estimated funds required to defray common expenses, and shall allocate and assess such common charges against all Co-owners according to their respective common interests on a monthly basis. Absent Co-owner approval as herein provided, such assessment shall be increased only in accordance with the following:

(a) If the Board shall find the budget as originally adopted is insufficient to pay the costs of operation and maintenance of the common elements;

(b) To provide for replacement of or additions to the common elements in an amount not to exceed \$1000 or \$25 per unit annually, whichever is less; or

(c) In the event of emergency or unforeseen development.

Any increase in assessments other than or in addition to the foregoing, including assessments for the purchase or lease of an Apartment pursuant to Article VII, or the purchase of an Apartment for use of a resident manager shall be considered as a special assessment requiring approval by a vote of 60% or more Co-owners in number and in value.

Section 2. Levy of Assessments. All assessments levied against the Co-owners to cover expenses of administration shall be apportioned among and paid by the Co-owners in accordance with the percentage of value allocated to each Apartment by the Consolidating Master Deed, without increase or decrease for the existence of any rights to the use of limited common elements appurtenant thereto; provided, that a surcharge in an amount to be calculated each year by the Board of Directors shall be added to the assessment for each Garden Apartment located in Buildings A, B & C to reimburse the Association for all costs incurred for the following expenses unique to Buildings A, B & C, including: (i) gas utility service and other costs of operating, maintaining and repairing boilers and central heating systems; (ii) cost of the electric service for lighting fixtures located outside the Apartments but inside of said buildings; and (iii) cost of operation, maintenance, repair and replacement of elevators and elevator systems. The common expenses shall consist, among other things, of such amounts as the Board may deem proper for the operation and maintenance of the Condominium property under the powers and duties delegated to it hereunder, and may include, without limitation, amounts to be set aside for working capital of the Condominium, a general operating reserve, for a reserve for replacement and for meeting any deficit in the common expenses for any prior year. The Board shall advise each Co-owner in writing of the amount of common charges payable by him and shall furnish copies of each budget on which such common charges are based to all Co-owners and mortgagees.

Section 3. Collection of Assessments. Each Co-owner shall be obligated for the payment of all assessments levied with regard to his Apartment during the time that he is the owner thereof, and no Co-owner may exempt himself from liability for his contribution toward the expenses of administration by waiver of the use or enjoyment of any of the common elements, or by the abandonment of

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his Apartment. In the event of default by any Co-owner in paying the assessed common charges, interest at the legal rate shall be charged on such assessment from the due date thereof. Unpaid assessments shall constitute a lien on the Apartment prior to all other liens except tax liens and sums unpaid on a first mortgage of record, and the Association may enforce the collection thereof by suit at law for a money judgment or by foreclosure of the lien securing payment in the same manner that real estate mortgages may be foreclosed by action under Michigan law. In an action for foreclosure, a reasonable rental for the Apartment may be collected from the Co-owner thereof or anyone claiming under him, and all expenses incurred in collection, including interest, costs and attorney's fees, and any advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the Co-owner in default. The Association may discontinue the furnishing of any services to a Co-owner in default upon 7 days written notice to such Co-owner of its intent to do so. A Co-owner in default shall not be entitled to vote at any meeting of the Association so long as such default continues.

Section 4. Maintenance and Repair. All maintenance of and repair to any Apartment, other than maintenance of and repair to any general common element contained therein, shall be made by the Co-owner of such Apartment. Any Co-owner who desires to make repairs or structural modifications to his Apartment must first obtain the written consent of the Association, and shall be responsible for all damage to any other Apartments or to the common elements resulting from such repairs or from his failure to effect such maintenance and repairs.

All maintenance of and repair to the general common elements, whether located inside or outside the Apartments, and to limited common elements to the extent set forth in the Consolidating Master Deed, shall be made by the Association and be charged to all the Co-owners as a common expense unless necessitated by the negligence, misuse or neglect of a Co-owner, in which case such expense shall be charged to access to each Apartment from time to time during reasonable purpose of maintenance, repair or replacement of any of the common elements located therein or accessible therefrom. The Association or its agents shall also have access to each Apartment at all times without notice for making emergency repairs necessary to prevent damage to other Apartments, the common elements or both.

Section 5. Taxes. All special assessments and property taxes shall be assessed against the individual Apartments and not upon the total property of the Project or any part thereof. Taxes and special assessments which have become a lien against any property of the Condominium Project shall be expenses of administration and shall be paid by the Co-owners in the manner provided in Section 1 of this Article. The value assessed for property tax purposes against each Apartment shall bear the same relation to the assessment against the entire Condominium Project as the percentage of value assigned to each individual Apartment bears to the total value of said Project.

Section 6. Insurance. The Association shall be required to obtain and maintain, to the extent available, the following insurance for the benefit of the Association, its members and their mortgagees as their respective interest may appear:

(a) Fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the Apartment buildings and other property, both real and personal (but not including the furniture or furnishings or other personal property installed by apartment owners)

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comprising the Condominium, in an amount equal to the maximum insurable replacement value thereon excluding foundation and excavation costs as determined annually by the Board of Directors.

(b) Public liability insurance in such limits as the Board may from time to time determine, covering each Director and Officer of the Association, the managing agent, and each Apartment owner. Such public liability coverage shall also cover cross liability claims of one insured against another.

(c) Worker's Compensation insurance, if applicable, and such other insurance as the Board may determine.

Apartment owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Apartment owner.

Section 7. Destruction or Condemnation. If the Condominium Project or any of its general common elements are destroyed, damaged or condemned, in whole or in part, a decision to reconstruct, rebuild or repair the property shall be made in the following manner:

(a) If the common elements destroyed, damaged or condemned render 50% or more of the Apartments in any building forming a part of the Condominium Project untenable, said property will not be reconstructed or repaired unless within 60 days thereafter the Co-owners of at least 75% of the common elements in number and in value agree in writing to such reconstruction or repair.

(b) If the common elements destroyed, damaged or condemned do not render 50% or more of the Apartments in any building forming a part of the Condominium Project untenable, said property shall be reconstructed or repaired unless within 60 days thereafter the Co-owners of at least 75% of the common elements in number and in value agree in writing that such construction or repair shall not be made.

(c) Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings forming a part of the Condominium Project, or if not, then in accordance with the plans and specifications approved by the Co-owners of damaged Apartments, which approval shall not be unreasonably withheld. Upon completion of any such reconstruction or repair, the percentages of value assigned to each Apartment may be adjusted as necessary to reflect the changes occasioned thereby.

The portion of insurance proceeds representing damage for which the responsibility of reconstruction or repair lies with an individual Co-owner shall be paid to that Co-owner unless there is a mortgage endorsement, in which event the payment shall be made to the Co-owner and the mortgagee jointly, and such proceeds shall be used for reconstruction or repair when required by these by-laws. If the proceeds of any insurance or award received by the Association in connection with such destruction or condemnation are not sufficient to defray the estimated costs of reconstruction or repair by the Association, or if at any time during construc-

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tion or repair or upon completion of such reconstruction or repair the funds for payment of the cost thereof are insufficient, assessment shall be made against the Co-owners who are responsible for the costs of reconstruction or repair of the damaged property in sufficient amounts to provide funds to pay the estimated costs thereof.

Section 8. Use Restrictions. In order to provide for congenial occupancy of the Condominium property, and for the protection of the values of the Apartments, the use of Condominium property shall be subject to the following limitations:

(a) Townhouse Apartments shall be used exclusively for single family residence and Garden Apartments to the east of Boulder Bluff Drive for the residence of adult single persons and married couples without children below the age of sixteen (16) years (except for Building 3, in which no children below the age of twelve (12) years shall be housed) and the common elements shall be used only for furnishing of services and facilities for which they are reasonably suited and which are incidental to the use and occupancy of single family residential Apartments. Provided, that persons not of the same immediate family residing together may occupy an Apartment with written consent of the Board of Directors, which consent shall not be unreasonably withheld.

(b) A "family" shall mean one (1) person or group of two (2) or more persons related by bonds of consanguinity, marriage or legal adoption. No more than two (2) persons may occupy a one-bedroom Apartment, and no more than four (4) persons may occupy a two-bedroom Apartment as such Apartments are designated in the Consolidating Master Deed. In the event that a violation of this section by a family in occupancy of an Apartment results from the birth or the adoption of a child, this restriction shall be suspended as to such family for a period of one year to enable the family a reasonable time which to vacate such Apartment. No basement area shall be used as a place of habitation at any time except for walk-out units or units with daylight windows in Buildings M-Q.

(c) No Co-owner shall make alterations in exterior appearance or structural modifications to his Apartment without the written approval of the Association. The Association shall not approve any alterations or structural modifications which would jeopardize or impair the soundness, safety or appearance of the Condominium Project.

(d) No nuisances shall be permitted on the Condominium property nor shall any use or practice be permitted which is a source of annoyance to its residents, or which interferes with the peaceful possession or proper use of the Condominium property by its residents.

(e) No immoral, improper, offensive or unlawful use shall be made of the Condominium property or any part thereof, and all valid laws, zoning ordinance and regulations of all governmental bodies having jurisdiction thereof shall be complied with. Such compliance shall be accomplished to the sole expense of the Apartment owners of the Association, whichever shall have the obligation.

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to maintain or repair such portion of the Condominium property.

(f) No portion of an Apartment (other than the entire Apartment) may be rented, and no transient tenants may be accommodated therein, provided, that nothing herein shall prevent the rental or sublease of an Apartment for the same purposes set forth in Subsection (a) of this Article or of a limited common element appurtenant to such Apartment, provided that approval of such transaction is obtained from the Association in the same manner required by Article VII hereof.

(g) No signs or other advertising devices shall be displayed which are visible from the exterior of any Apartment or upon the common elements, including "For Sale" signs, without written permission from the Association.

(h) No animal, including household pets, shall be kept without the prior written consent of the Association which consent, if given, shall be revocable at any time by the Board of Directors thereof. Any pets permitted to be kept in the Condominium shall be kept under such care and restraint as not to be obnoxious on account of noise, odors or unsanitary conditions, and no savage or dangerous animals shall be kept. No animal may be permitted to run loose upon the common elements, limited or general, and any person who causes or permits any animal to be brought or kept on the Condominium property shall indemnify and hold harmless the Association for any loss, damage or liability which the Association may sustain as a result of the presence of such animal on the Condominium property.

(i) No recreational vehicles, boats or trailers shall be parked or stored on the common drives or parking lots of the Condominium without the written approval of the Association, and no commercial vehicles or trucks shall be parked in or about the Condominium except for the making of deliveries or pick-ups in the normal course of business.

(j) The common elements shall not be used for the storage of supplies, personal property, trash or refuse of any kind except for common trash receptacles placed at the discretion of the Board of Directors, nor shall the common elements be used in any way for the drying, shaking or airing of clothing or other fabrics. In general, no activity shall be carried on nor condition maintained by any Co-owner either in his Apartment or upon the common elements which bespoils the appearance of the Condominium.

Section 9. Rules of Conduct. Rules and regulations concerning the use of Apartments and common elements may be promulgated and amended by the Board with the approval of the majority of the Apartment owners. Copies of such rules and regulations shall be furnished by the Board to each Apartment owner prior to their effective date.

Section 10. Remedies on Breach. Failure to comply with any of the terms of the Consolidating Master Deed, these By-laws, the Articles of Incorporation, By-laws or duly adopted Rules and Regulations of the Association, shall be grounds for relief, which may include without intending to limit the same, an action to

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recover sums due for such damages, injunctive relief or any of those remedies as appropriate to the nature of such breach which are set forth in Section 2 of this Article. The failure of the Association to enforce any right, provision, covenant or condition which is set forth in the Consolidating Master Deed, these By-laws, the articles of incorporation, by-laws or duly adopted Rules and Regulations of the Association shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

ARTICLE VI

MORTGAGES

Section 1. Mortgage of Apartments. No Co-owner may mortgage his Apartment or any interest therein without the approval of the Association except to a bank, pension fund, insurance company, savings and loan association, credit union or other institutional lender. The approval of any other mortgage may be granted upon conditions determined by the Association, or may be arbitrarily withheld; provided, that nothing herein shall be construed to prevent the Developer from accepting a purchase money mortgage as a part of the purchase price of an Apartment nor prevent a Co-owner from accepting a purchase money mortgage from a subsequent purchaser.

Section 2. Notice of Mortgage. A Co-owner who mortgages an Apartment shall notify the Association of the name and address of his mortgagee and shall file a notarized copy of the note and mortgage with the Association, which shall maintain such information in a book entitled "Mortgages of Apartments".

Section 3. Rights of Mortgagee. Notwithstanding any other provision of the Master Deed, the condominium by-laws or the corporate by-laws, except as otherwise required by mandatory law or regulation, with respect to any first mortgage of record of a condominium unit, unless the holder of such mortgage shall otherwise consent in writing:

(a) The holder of the mortgage is entitled to written notification from the Association at least thirty (30) days prior to the effective date hereof; (i) any change in the condominium documents; and (ii) any change of manager (not including change in employees of corporate manager) of the condominium project.

(b) The holder of the mortgage is entitled to written notification from the Association of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under the condominium documents which is not cured within thirty (30) days.

(c) Any holder of the mortgage which comes into possession of the unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed in lieu of foreclosure, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged unit, including but not limited to, restrictions on the age of unit occupants and restriction upon the posting of signs pertaining to the sale or rental of the unit.

(d) Any holder of the mortgage which comes into possession of an Apartment pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed in lieu of foreclosure, shall take the property free

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of any claims for unpaid assessments or charges against the mortgaged unit which accrue prior to the time such holder comes into possession of the unit (except for claims for a pro rata reallocation of such assessments or charges to all units including the mortgaged unit).

(a) Unless all holders of first mortgage liens on individual units have given their prior written approval, the Association shall not:

(i) Fail to employ a professional manager for the condominium;

(ii) change the pro rata interest or obligations of any unit for purposes of levying assessments and charges and determining shares of the common elements and proceeds of the property;

(iii) partition or subdivide any unit or the common elements of the project; nor

(iv) by act or omission seek to abandon the condominium status of the project except as provided by statute in case of substantial loss to the units and common elements of the condominium project.

ARTICLE VII

APPROVAL OF TRANSFER OR LEASE

Section 1. Approval Required. No Co-owner may effectively dispose of his Apartment or any interest therein by sale or lease, except to another Co-owner in the Condominium, without approval of the Association. If any Co-owner shall acquire his title by gift, devise or inheritance, the continuance of the ownership of his Apartment shall be subject to the approval of the Association.

Section 2. Notice of Intent. A Co-owner intending to make a bona fide sale or lease of his Apartment or any interest therein shall give written notice of such intention to the Association, together with the name and address of the intended purchaser or lessee, the terms and conditions of the proposed transaction and such other information concerning the intended purchase or lease as the Board may reasonably require. The giving of such notice shall constitute a warranty and representation by the Co-owner to the Association and to any purchaser produced by the Association as hereinafter provided that such Co-owner believes the proposal to be bona fide in all respects. No proposed transaction shall be deemed bona fide which is not evidenced by an agreement of sale or lease, subject to the approval and right of first refusal contained herein, executed by the selling or leasing Co-owner and the proposed purchaser or lessee and containing all pertinent terms of the sale or lease proposed to be made. A Co-owner who has obtained his title by gift, devise or inheritance shall give notice to the Association of the acquiring of his title, together with such personal information as the Board may reasonably require, and a certified copy of the instrument evidencing his title. If the notice herein required is not given, then at any time after receiving knowledge of a transaction, or event transferring ownership or possession of an Apartment the Board, at its election and without notice, may disapprove the transaction or new ownership.

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(a) A termination of the Condominium shall be evidenced by a certificate of the Association executed by the President and Secretary certifying as to facts representing the termination, which certificate shall become effective upon being recorded in the public records of Ottawa County, Michigan.

(b) After termination of the Condominium, the remaining Co-owners shall own the Condominium property and all assets of the Association as tenants in common in undivided shares, and the respective mortgages and liens shall have mortgages and liens upon their undivided shares of said apartment owners, such undivided shares shall be the same as the undivided shares in the common elements appurtenant to each Co-owner's apartment prior to termination.

ARTICLE X

SEVERABILITY

The invalidity or unenforceability of any particular provision contained herein shall not affect any other provision hereof, and in such event these By-laws shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

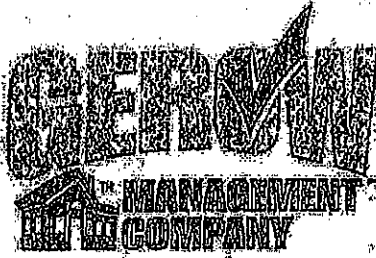
PERSONS WITH DISABILITIES CIVIL RIGHTS ACT (EXCERPT)
Act 220 of 1976

37.1102 Opportunity guaranteed; civil right; accommodation of person with disability; undue hardship.

Sec. 102. (1) The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.

(2) Except as otherwise provided in article 2, a person shall accommodate a person with a disability for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

History: 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.



4050 Cedar Commercial Drive
Cedar Springs, Michigan 48319
gerowmanagement.com
phone: 616-433-9090
fax: 616-433-9510

July 1, 2016

Terry Romig
7529 Boulder Bluff Dr.
Jenison, MI 49428

Re: Railing

Dear Ms. Romig:

I am writing you this letter on behalf of the Board of Directors of the Boulder Bluff Estates Condominium Association. The Board has received your request for permission to install a railing on the front porch adjacent to your unit.

The Board has denied your request as the proposed railing would be a permanent change modifying the overall appearance of the unit in comparison to the rest of the association as well as the installation would cause damage to the concrete porch.

If you have any questions, please contact Gerow Management Company, Inc. at 616-433-9090.

Respectfully,
Boulder Bluff Estates Condominium Association
Board of Directors

Natasha Bigalle
Property Coordinator
Gerow Management Company, Inc.

Cc: Board of Directors