



*Legal solutions  
Lasting relationships*

Francis J. Collins\*  
Edward J. Hannafin  
Robert M. Opotzner  
E. O'Malley Smith  
Thomas W. Beecher  
Eva M. DeFranco  
Christopher K. Leonard  
Paula Boa Sousa  
Hillel Goldman\*\*  
Laura A. Goldstein  
Gregg A. Brauneisen\*\*  
John J. Bowser\*\*  
Stephen E. Yost

\* Of Counsel  
\*\* Also Admitted in New York

**Collins Hannafin, P. C.**  
**Attorneys at Law**  
148 Deer Hill Avenue  
Danbury, Connecticut 06810  
203.744.2150 T  
203.797.1034 F  
chlaw-ct.com

June 10, 2020

Board of Directors  
Carlson's Ridge Homeowner's Association, Inc.  
c/o REI Property & Asset Management, Inc.  
2A Ives Street  
Danbury, Connecticut 06810

Re: ***Carlson's Ridge Homeowner's Association, Inc. – Foundation Leaks and  
Underground Drainage***  
Our File Number: 20-17895-1-K

Dear Board Members:

Recently I was contacted by Terry D'Andrea, President of the Executive Board for Carlson's Ridge Homeowner's Association, Inc. Terry asked me to clarify responsibilities with regard to maintenance, repair and replacement for foundation leaks and underground drainage.

Section 5.3 of the Declaration for Carlson's Ridge defines the boundaries of the Units as the "walls, floors, windows, exterior doors and ceilings..." Subsection (e) of Section 5.3 of the Declaration goes on to state "each Unit shall include the spaces and improvements lying within the boundaries described in Section 5.3(a), (b), and (c) and (d) above..." Section 2.5 of the Declaration defines "Common Elements" as "all portions of the Common Interest Community other than the Units..." Section 2.5 of the Declaration makes it clear that any item or area not considered to be a part of the Unit is considered part of the Common Elements. Section 2.17 of the Declaration defines "Limited Common Elements" as "a portion of the Common Elements allocated by the Declaration or by the operation of [Subsection (2) or (4) of Section 47-221 of the Act for the exclusive use of one or more but fewer than all of the Units..." Limited Common Elements are defined in Article VI of the Declaration. Article VII of the Declaration sets forth who as between the Association and the Unit Owner is responsible for performing maintenance, repair and replacement responsibilities. Section 7.1 of the Declaration states "the Association shall maintain, repair and replace all of the Common Elements, except those portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired and replaced by the Unit Owners." Section 7.2 of the

Declaration provides that "Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association." Section 7.3 of the Declaration states in part that the Unit Owner shall be responsible for maintenance, repair and replacement of Limited Common Elements of the type described in Article VI, Subsection 6.1(c) of the Declaration. Section 6.1(c) of the Declaration provides that space heating, water heating and air conditioning apparatus and all electrical switches, television, telephone and electrical receptacles and light switches serving one unit exclusively are Limited Common Elements. Section 7.3 of the Declaration goes on to state that the Association shall be responsible for maintenance, repair and replacement of all Limited Common Elements other than the types described in Subsection 6.1(c) of the Declaration.

Turning now to the items to be reviewed, we first look at foundations. Foundations are not included within the definition of the Unit contained in Article V of the Declaration. Similarly, basements do not fall within any of the definitions of Limited Common Elements contained in Section 6.1 of the Declaration. This means that foundations would be considered a part of the Common Elements and pursuant to Section 7.1 of the Declaration, the Association would be required to perform all maintenance, repair and replacement of the foundations.

Looking next at underground drainage, exterior underground drainage would not be part of the Unit as per Article V of the Declaration. Pursuant to Section 6.1(a) of the Declaration, any drainage fixture located outside of the Unit boundaries which serves one Unit would be a Limited Common Element assigned to the Unit. Conversely, if the drainage fixture served more than one Unit pursuant to Section 6.1(a) of the Declaration that fixture would be considered a part of the Common Elements. If the drainage facility were determined to be a Limited Common Element serving only one Unit the Association would still be responsible for carrying out the maintenance, repair and replacement of that drainage facility due to the fact that Section 7.3 of the Declaration provides that the only type of Limited Common Element the Unit Owner would be responsible to maintain, repair and replace are those items listed in Subsection 6.1(c) of the Declaration. In short, the Association would perform all maintenance, repair and replacement on exterior drainage facilities.

The last question which needs to be addressed is even though the Association would be responsible for maintaining, repairing and replacing foundations and all exterior drainage facilities, would any of the Common Expenses incurred by the Association in the performance of those maintenance, repair and replacement responsibilities be assessed to less than all of the Units?

Board of Directors of  
Carlson's Ridge Homeowner's  
Association, Inc.

Page 3

June 10, 2020

Section 20.3 of the Declaration identifies those Common Expenses which are to be assessed against less than all of the Unit Owners. Subsection (a) of Section 20.3 reads "any Common Expense associated with the maintenance, repair or replacement of a limited common element shall be assessed against the units to which the limited common element expense is assigned pursuant to Section 6.1..." Subsection (b) of Section 20.3 states in part "any common expense or portion thereof imposed on the association benefitting fewer than all units shall be assessed exclusively against the units benefitted." Pursuant to Section 6.1(a) of the Declaration an exterior drainage facility which serves only one Unit would be considered a Limited Common Element allocated to that Unit. For example, if we had an exterior drainage pipe which served only one Unit the Association would be responsible for carrying out the maintenance, repair or replacement of that pipe but pursuant to Subsections (a) and (b) of Section 20.3 of the Declaration, the Common Expenses incurred by the Association for such maintenance, repair or replacement would be assessed to the Unit benefitted by the Limited Common Element drainage pipe. It is important to be clear that the Association would perform maintenance, repair and replacement of all the items discussed and in almost all instances the expenses incurred by the Association would be assessed to all Unit Owners. The one exception would be an exterior drainage facility which is designed to serve only one Unit. In that unique circumstance, the Association would perform the maintenance, repair or replacement but would assess the costs incurred in carrying out the maintenance, repair or replacement to the lone Unit Owner benefitted by the exterior drainage facility.

Hopefully this clarifies who is responsible to carry out maintenance, repair and replacement for foundations and underground drainage facilities and which Unit Owner or Owners pay the charges in connection therewith. Let me know if you have any further questions.

Very Truly Yours,



Christopher K. Leonard

CKL/jjv

cc: Kent Humphrey – REI Property & Asset Management, Inc.