

**JAMES/KILMER CONDOMINIUM ASSOCIATION  
SPECIAL BOARD OF DIRECTORS MEETING  
November 3, 2009**

A Special Meeting of the Board of Directors of James/Kilmer Condominium Association (the "Association"), an Illinois not-for-profit corporation, was called to be held on Tuesday, November 3, 2009, in the James House Hospitality Room, 1560 North Sandburg Terrace, Chicago, Illinois, pursuant to By-Laws.

**CALL TO ORDER**

David Beck, President of the Association, called the meeting to order at 7:14 p.m., and declared that a quorum was present in that the following directors were present:

Judy Barnes  
David Beck  
Lynn Conner  
Duane Hickling  
Betty Latson  
Tom Meyers  
Karla Ross  
Dorsey Ruley  
Angus Shorey

Also present were Richard Vicens, Property Manager and Allan Werth, Site Supervisor, of Draper and Kramer, Inc., and David Sugar, attorney for the Association. Sharyl Lenhard and Barbara A. Roberts acted as Recording Secretaries.

Mr. Beck welcomed everyone and introduced Richard Vicens, Property Manager, and David Sugar, the Association's attorney. He then explained the agenda for the evening.

**CHAIRPERSON'S REPORTS**

**Duane Hickling, Infrastructure Committee**

Mr. Hickling narrated the Windows Replacement section of a PowerPoint presentation, answering questions raised since the October 1 Town Hall Meeting and on the Financial Survey responses, such as: Do the James House windows really need to be replaced? What is driving the cost of the project? What will happen if the windows are not replaced? Why is the process taking so long? Will the cost be lower when final negotiations are completed? [See Appendix for presentation.]

**Betty Latson, Finance Committee**

Ms. Latson then presented the Finance Perspective portion of the PowerPoint presentation, including a review of the financial parameters of the project, a summary of the results of the Financial Survey, a review of the Association's Capital Reserves, and options being considered by the Association to manage potential defaults on loans from the Association. [See Appendix for presentation.]

## OPEN OWNERS FORUM

Mr. Beck opened the meeting to questions and comments from unit owners. He asked that those present be considerate of everyone asking questions.

A recent Harris Bank presentation about loan options included a 20-year loan with an initial interest rate locked in for 10 years; why has this not been considered?

Ms. Latson: Only about 40% or less of the loan would be repaid after 10 years, at which time it would be subject to a new interest rate which would be different from current rates, thus altering the total of the direct charge for the remainder of the balance due; there is also the possibility that the lender would no longer be in this type of lending business, increasing the risk.

What risk is there to unit owners with the loans that the Association is offering?

Ms. Latson: None; the Association takes the loan from the bank and assumes the risk.

When will the Kilmer lawsuit be settled so unit owners do not have to pay for repairs to balconies?

Mr. Beck: Balconies are designated as limited common elements, so owners will have to pay for balcony repairs. Because of the lawsuit, we have become more cognizant of what constitutes a limited common element. We are doing the windows and the concrete repairs together because we were advised to do so by our consulting engineer. Kilmer balcony owners will also be direct-charged for their balcony repairs when those are performed. We hope in future to be able to collect a fund over time from balcony owners for future balcony repairs so owners will not have to be charged directly for them.

With regard to the projected reduction of 4% in charges to unit owners for every \$500,000.00 reduction in window replacement costs, there has been a substantial outlay of money for the Kilmer windows; what is anticipated for the repayment of that money so James House owners can take advantage of the reduction?

Mr. Beck: Attempts are being made to appeal or resolve the Kilmer lawsuit, but if we wait until that happens, if it happens, the price of the windows will continue to rise, negating any potential savings.

My balcony is in good condition; when were the balconies last repaired?

Mr. Beck: The last balcony project was in 2004; the railings have not been painted since the late 1990s, and many are rusting.

When the balconies were last worked on, the project was paid for by the Association; what changed in the meantime? The balconies are part of the façade of the building.

Mr. Beck: People in studios, for example, do not have balconies.

Mr. Sugar: The concept in your condominium Declaration is that there are certain parts of the building that serve only one unit. For example, the entry door that leads into your unit from the hallway is not part of your unit but is part of the common elements, but because it serves only your unit, it is classified as a limited common element, and that gives it a different status. When everyone has the same limited common elements, you can perhaps do something on a building-wide basis. Not everyone has a balcony, and under those circumstances it is permitted under your condominium documents for the Board to charge each unit the cost of taking care of the balcony that serves that unit exclusively as a limited common element. It has always been that way in your Declaration.

Mr. Ruley: Mr. Sugar was the Association's attorney of record in 2001; why was the concept of limited common elements not recognized then?

Mr. Sugar: The Declaration allows for a discretionary choice on the part of the Board, but the court did not agree, which is why there is an appeal. The judges of the circuit court make the first decision, and their decision is reviewed by other judges who may or may not know more about the law than the

previous judges. The fact that an earlier judge ruled in a particular way is not a final ruling that is despositive and binding on everyone and everything, and in this case the Board has pursued and is pursuing an appeal.

When was the last special assessment levied on James House owners, and was that not a direct charge to each owner?

Ms. Latson and Ms. Barnes: It was in 1996-1997, and the amount was \$2.8 million for extensive concrete work, not just balconies. The term used at the time was "special assessment." Both Kilmer House and James House were involved, and owners were given choices for financing.

If the owners vote to proceed with the window replacement project, interior decorating in the area of the windows, as well as floor coverings and window treatments, will be damaged; what estimates have been included in the project with regard to those costs?

Mr. Beck: Four units in the building had windows replaced as part of the mock-up examples; their window treatments were restored, and their carpeting was not damaged. We will give owners the option of using the same company, which did a wonderful job of covering or moving items. There may be some damage to the plastering and that will be taken care of.

Mr. Hickling: In the contract bid, the contractor is responsible for the plastering and the wall repairs within an area 18 inches out from the windows; any damage in that area will be repaired when the new windows are installed. Also, with the new windows, we must avoid drilling into the frame of the new windows to hang window treatments because that would nullify the warranty on the windows.

Who will pay for the common element windows, both James House owners and Kilmer House owners?

Mr. Beck: That payment comes out of the Capital Reserves.

I will be trying to sell my studio in the coming months; will I still be responsible for payment if I choose the Association financing option? Also, will assessments be higher if the Association borrows?

Ms. Latson: If you sell your unit, you must pay off the outstanding balance of your direct charge. You could lower the price of the unit and let the buyer assume the responsibility to pay off the balance.

I cannot afford the direct charge; what if I also cannot find a buyer for my unit?

Ms. Latson: We are using the Financial Survey to get a sense of what owners need, and we will try to work with people to figure out solutions for them. We are trying to come up with a plan that will work for most of the owners, and there will be certain situations in which we will have to work through solutions for owners. With regard to higher assessments, if the Association took a 10-year loan, all unit owners would have to pay an increased amount, so either we force everyone to make the same payment regardless of their circumstances, or we give owners options. Go to the Web site and view the PowerPoint presentation for the October 1 Town Hall Meeting. Interest rates are good right now, and we hope to reduce the overall cost of the windows.

My balcony was repaired five years ago, and now water pools on it; is there any guarantee that the work will be done better this time?

Mr. Hickling: The engineers have assured us that they are investigating the ponding problem on several balconies and that that will be part of the new repair. The engineers will be inspecting the work to assure good quality, and we are going to hold the contractors and the engineers accountable.

Mr. Ruley: Is there any hold-back money in the contract in case there are problems?

Mr. Hickling: Any contract agreed to would specify progress payments, with 10% to 15% traditionally held back until the very end of the project when the punch list items are completed and the contract is released.

Mr. Ruley: Will the residents then have a chance to determine if their balconies are all right or not before the final payment is released?

Mr. Hickling: Not only will the residents be scrutinizing their balconies, but also, if the window replacement goes forward, there will be a project coordinator who will coordinate with every resident within 48 hours of completion to make sure that if there are any punch list items left unfinished, the contractor can take care of them immediately.

I have talked with about 70 unit owners about the windows project, their feelings about it and their ability to pay for it, and of those, at least six will be forced into foreclosure owing to the effects on them of the poor economy, such that the direct charge will be more than they can afford at this time. We need the new windows, but we should delay the project until the economy improves.

Ms. Latson: I have also talked to such owners, and many of them understand and agree that the windows need to be replaced. The situation is difficult, but even if we delay the project, there will always be some who cannot afford it, and the project will cost less now than in the future.

Mr. Ruley: I disagree with Ms. Latson's long-term financing position. Longer term financing when interest rates are low is far more attractive than when interest rates are up. Interest rates could go up in ten years, but it also gives an opportunity for people to sell their units, and money will be available later.

How many unit owners are in the building?

Mr. Beck: There are 520 unit owners.

Why should we hold up the project for the whole building because there are six people who are not working?

Mr. Ruley: That was six people out of 70; if that same percentage were applied to 520, that would be a large number potentially defaulting.

The Board and committees have performed quite a bit of due diligence, and I am pleased with what I am hearing from the Board. You have received a large number of surveys from owners about how they want to pay. It is a majority situation, it is going to be difficult for every one of us, but that is what you get when you live in a condominium building. Many subcontractors cannot even borrow against their receivables at this time; I assume that the contract will include a performance bond and waivers of lien, as well as 10% to 15% retention. We should also not give a 50% deposit to finance the 5% union increases that will occur in June. Also, the contractors should be liable for any situation.

Mr. Beck: The Board voted for a 110% performance bond for the window project.

Are the six people who will be forced into foreclosure here tonight?

The unit owner who cited the example of those who will not be able to pay stated that it would be unfair to point them out in public.

My unit is not livable: there are cold drafts and water infiltration owing to the deteriorated condition of the windows. If people are going to be hurt, I want to know about it, but I want the project to go forward.

[Applause]

Ms. Ross: Did the six people in question indicate that they would move out if the windows were not replaced at this time?

The unit owner stated that the majority of them would stay in James House if they did not have to pay for the windows.

There is a problem with patio doors falling off their tracks, and it is surprising that no one has been hurt and that there have been no lawsuits, or that one of the doors has not fallen off the balcony.

I am living in one of the units with the sample new windows, and there are pros and cons with them. The screen cannot be removed from the front or the back to be cleaned. I volunteered my unit because my patio door frequently fell off its track. This has been remedied, but when my window treatments

were reinstalled, they were fastened to the ceiling, so the drapes fall off when they are pulled. However, there is no noise and no leakage, and my patio door does not fall off.

Mr. Beck: Those were sample windows only; the new samples are different, and the screens slide up.  
Unit owner: Based on owner feedback about the new samples, the manufacturers have already made some changes to one of the samples.

I received a letter under my door that suggested a different approach to financing, using our regular assessments and some of the reserves. Is it equitable to ask the owners to pay the total cost? Will they recoup their costs if they sell their units? At least one building in the area – I believe it is the Americana – is taking this suggested approach.

Ms. Latson: The Americana did its loan many, many years ago. We talked to them about it. We are in a different situation right now in that we do not have sufficient reserves to pay off this loan and would have to increase our assessments to do so, so everyone would be forced to pay the interest to borrow, would not get the tax deduction, and would be forced into whatever program we decided to follow. Instead we are giving owners the ability to borrow over ten years or to use their own financing. We are not accumulating excess cash to pay off the loan, so assessments would have to be increased.

Mr. Beck: One of the assumptions in that document, which was also made at the Town Hall Meeting, is that the Association nets \$98,000.00 extra each month, which could be used to pay off the loan. We do not have \$98,000.00 extra each month: Ms. Latson has shown you where that \$98,000.00 goes. We have to repair the roof, and make repairs and do façade and balcony work at Kilmer House. Part of being a homeowner is that one invests in one's property and then sells it.

The suggested approach would change how the cost is spread out, because people come and go, and they all participate through assessments. This approach would mean that the people currently living here would not necessarily have to pay the total cost unless they stayed here.

Mr. Beck: The Finance Committee did address this, and 12 or 13 unit owners were at the meeting at which it was discussed.

Mr. Meyers: The Finance Committee's method is inequitable. Owners should have been able to pay into a fund over a 10- or 15-year period, but this was not done, so we are now asking everyone to pay in one lump sum, no matter how long they have lived or will live here. This project will create an energy savings of about \$275,000.00, so that new buyers will have the advantage of the energy savings without having had to pay for it. The situation needs to be balanced out so the burden does not fall on one person. There are better ways to handle the situation that the Board has chosen not to investigate. Future interest rates and energy costs are unknown at this time. We are asking a particular group of people to pay for new windows that they may not be able to use.

Mr. Ruley: The Board will vote to approve the windows project tonight. On April 2 I sent an e-mail to the Board members and the Finance Committee proposing a 50-50 plan, and included a calculator so they could change interest rates. According to this plan, the Board would be responsible for 50% of the special assessment and finance it over the long term, which allows for changes in unit owners, and the present unit owners would be responsible for the other 50%. If a unit owner stays for the entire term of the financing, they will pay the entire amount in the end, but if not, they will pay only for what they are using.

Ms. Ross: What was the term of your suggested financing?

Mr. Ruley: I showed options for 20, 25 and 30 years. The number can be changed in the included calculator and will flow through.

I have lived here since 1987. I am a developer in Chicago and had a project financed last year to replace the windows in a 114,000-square-foot rental building. Both short-term project costs and long-term operating costs must be taken into account. This is the best time to spend money. I just spent millions and saved around 15%. Prices next year will probably go up 15%. We must consider the total cost of living in the building: the longer a problem such as water infiltration exists, the more costs are

going to be incurred owing to destruction of the concrete. We must look at the whole picture, and we must consider some owners' special needs. The Association can help with financing. Residents deserve to live in units that do not have air and water infiltration. We are part of a large community and must consider the greater good of the community. Furthermore, costs of windows will increase, and concrete replacement costs incurred because of the deteriorated windows will also increase. [Applause]

If the Appellate Court renders a different decision shortly, will that affect anything on the agenda?  
Mr. Sugar: Nothing is going to happen shortly. Any kind of a decision is well over a year away.

With regard to the letter put under our doors, there were some good points in it, but I was amazed at the comment that under 5% of the buildings in this general area have had special assessments, and probably no more than a thousand dollars. Outer Drive East is levying a special assessment for plumbing and the health club, and owners of the two-bedroom units are being assessed \$21,000.00, so we are not alone, and we should proceed with the project.

If too many people default, will it be difficult to get loans from banks? Also, regardless of the Board's vote tonight, will all unit owners be voting up or down on the project?

Mr. Beck: There is a motion on tonight's agenda, mirroring a provision in the Illinois Condominium Property Act, which allows a unit owner override vote. We are calling the vote for November 17; that vote will require more than 50% of the percentage ownership of James House to vote against the project to override it. If that happens, the Board's decision will be overturned.

Ms. Latson: Before we can get a loan, the bank will look at our delinquency reports. At this time, we are in no danger, and the document put under your doors was incorrect in this regard.

If defaults remain at a manageable level, mortgage loans to buyers will not be affected?

Ms. Latson: The two are not related. We do not put a lien on a unit because there is a direct charge. A lien only happens if there is a default, and it has no effect on an individual getting a mortgage to buy a unit in the building.

Mr. Ruley: Would the percentage of defaults be calculated against the 524 units in James House or against the number of units in the Association as a whole?

Ms. Latson: I believe it would be calculated only against the 524 units.

Mr. Ruley: It is my understanding that banks look at the number of defaults in the Association, but I am not certain of that.

When I got a loan, the bank wanted to know the default rate of the condominium association, so it was a factor. Is there any risk of James House reaching a percentage that would cause lenders to refuse to lend to us?

Mr. Sugar: When an individual unit owner goes to get a mortgage, one of the issues in a condominium development like this is that lenders look at the level of delinquency in the entire association. The Association at this time is nowhere near a level that would cause concern, but there is no way to predict what might happen in the future. However, the results of the Financial Survey indicate that roughly half of the James House owners currently intend to pay in full, which suggests that the risk of excessive delinquencies is very low.

Your response about the number of people intending to pay in full is based on the results of the survey, but that does not reflect the total number of units.

Ms. Ross: Did you respond to the Financial Survey?

Yes. I'm also concerned about why we are voting on this after the Board elections. There should be a more equitable solution for short-term unit owners or those who will have trouble paying.

Speaking for other young professionals in the building, my fiancé and I bought a unit about a year and a half ago, and at the time, Management explained that there were problems with the windows and that there could possibly be a special assessment. We are aware of the situation, we got involved in the Windows Committee, and we are aware of the financial aspects of the project. We recognized that it is not just about us, and decided to educate ourselves and get involved in the Association. [Applause]

Will tonight's motion include the 50-50 idea from Dorsey Ruley?

Mr. Beck: Tonight's motion includes the payout that the Finance Committee is recommending: the lump-sum, or the three-, five-, seven- or ten-year payment plan; it does not include the 50-50 plan. The 50-50 plan was not formally presented in a public meeting.

Ms. Latson: Dorsey has been at all of the Finance Committee meetings and all of the meetings at which bank representatives appeared, at which discussions were held about what is and is not available. The 50-50 plan does not work for our Association because it would force everybody to borrow up to ten years. Continued discussions about the 50-50 plan are baffling because Mr. Ruley has been at all the meetings, and if it were available and safe and good for all the unit owners, there would be no problem. However, it was discussed at length, and some people will need and will be able to get 30-year financing, but the banks themselves recommend nothing over ten years. This point is also made in publications that Mr. Ruley himself gave to me.

Mr. Ruley: In the 50-50 plan, the first 50% can be paid off instantly if someone chooses to, or it can be financed long term. The other 50% would be financed for a longer term.

Ms. Latson: Who will give us the money, and what term are you considering?

Mr. Ruley: The bankers who talked to us consider the loan to be extremely risky; they also said they would amortize loans over any length of time. The only thing the Board is voting on tonight is the plan as presented, and the 50-50 plan is not part of that plan.

Mr. Sugar, could the proposed resolution be amended by the Board before the vote?

Mr. Sugar: Yes.

Ms. Latson, you are saying that the 50-50 plan is not being included so as to consider all the unit owners, but at the same time you are also informing us that all the people cannot be considered because, while you do not want them to go into foreclosure, you are not going to consider them. Please reconsider your phrasing.

Mr. Beck: Half of the owners in the building are offering to pay up front.

Not everyone responded to the survey.

Mr. Beck: The people that did respond are willing to pay off half the loan up front. With the 50-50 plan, that option is removed.

Why is that so? If people pay the money up front, then they only have to borrow half of it.

Mr. Beck: Some people want to pay the entire amount up front so they do not have to pay the interest.

Let them do that.

Mr. Beck: The 50-50 plan does not include that option.

Mr. Ruley: Forty-six percent of respondents are cited as being willing to pay the entire amount up front; it could also be interpreted that those owners do not like the internal financing by the Association at 200 basis points over.

How long will the window replacement take to complete on a per-unit basis? Will unit owners be able to occupy their units while construction is taking place?

Mr. Hickling: The contractor's plan is to complete one floor per day, starting from the top of the building, so unit owners would only be out of their units for one day during working hours – 7:00 to 5:00. There may be some follow-up items to be finished the next day, such as plastering, but that would not call for the unit owner to leave the unit.

If the 50-50 plan is offered and if I want to pay 100% of my direct charge, would I be able to do so?

Mr. Ruley: It could be structured that way; it would be more of an accounting issue.

Would the assessment have to be increased with the 50-50 plan, even if I paid 100%?

Mr. Beck: Yes.

Mr. Ruley: The 50-50 plan is not being considered, but 50% of the charge could be paid for any way an owner wished to pay for it. However, the plan as stated is going to be carried tonight.

I can pay the entire amount; however, we are discussing how to be fair to individual unit owners, but those suffering financial hardship will suffer the most. The 50-50 plan would mean that everyone would have to pay a little more to lessen that hardship. It seems to be all right that the least able people are bearing the cost and might have to sell or undergo foreclosure.

Mr. Beck: This was discussed through endless Finance Committee meetings, so it is not being discussed for the first time tonight. There are issues with how much everyone's assessments would increase and how that would affect the values of the units compared to units in other buildings. Mr. Sugar might agree that we are probably going out longer – ten years – to attempt to accommodate people than other associations.

Mr. Ruley: If we have a default rate and we have to pay up for people defaulting, will that not ultimately cost us more than we are talking about?

Mr. Sugar: Associations should be run for the benefit of the majority of the owners. As with any bell curve, there will be people at both ends whose needs may not be well accommodated, but a condominium association is a form of democracy, and what is best for a majority of the unit owners is what a condominium board should do. I have been involved with probably 30 condominium association loans in the last 12 to 16 months, and not one of them was for as long as ten years. It is extraordinary that this Board is making that long a financing option available as part of the program. Three to five years is typical, rarely seven years, but I have not seen a ten-year bank loan involving a condominium association in a long, long time.

Mr. Ruley: This is an enormous special assessment.

Mr. Sugar: The special assessment at 400 East Randolph is around \$25 million, and individual unit owners will be paying more than unit owners here. We are considering a very large special assessment, but the Board is considering something costly, and the Board and the unit owners will speak about whether or not this project needs to be performed, and when.

How will the unit owner vote work? What about people who do not vote?

Mr. Beck: The vote will be monitored by the same auditing service that counts the ballots for the Board elections. The letter that will be sent to unit owners tomorrow explains that more than half of the percentage ownership of James House must vote against the project in order to override it. If a unit owner does not vote, that is the equivalent of voting to support the Board. That is a difficult standard, and the law may have been written that way because the legislature assumes that the Board will act in the best interests of the Association, so it is made difficult for the ownership to overturn an assessment.

Is it correct that if someone falls off our balcony, the Association is not liable because we meet code requirements on the balcony?

Mr. Sugar: No. If someone is injured because part of this building is in a deteriorated condition, the Association is definitely going to be liable.

The Board has decided to restrict our window opening to four inches, and I was told that this was a City of Chicago code requirement, but Klein and Hoffman says that this is not so and that there are no restrictions on our window openings. I believe that the Board still wants to restrict the size of the opening because of fear of liability problems. I have heard that the windows will be installed with four-inch openings.

Mr. Beck: No.

Mr. Hickling: There are many building codes around the country to which window manufacturers must adhere, so when the windows are made, the openings are restricted to four inches. However, the installer can modify the opening at the time of installation, so the opening can be made larger. The City of Chicago code states that the window opening can be no greater than four inches if the windows are within 24 inches of the floor, and our windows are more than 24 inches from the floor, so we are not restricted to the four-inch opening.

### **RECESS**

At 8:54 p.m., Mr. Beck called for a brief recess.

### **RECONVENE**

The meeting reconvened at 9:02 p.m. Mr. Beck stated that the next part of the meeting would be for discussion of the proposed resolutions, and that remarks would be restricted to Board members only, with no unit owner comments. He further stated that there are three action items to consider, and that for each one a motion will be made and seconded, followed by discussion by the Board and then a vote. Mr. Beck called for the Board members to extend to each other the same courtesy that was practiced by the unit owners.

### **ACTION ITEMS**

#### **James House Window and Balcony Door Replacement Resolution**

Upon motion duly made by Judy Barnes and seconded by Karla Ross, the following resolution was made:

**WHEREAS, the perimeter windows and balcony doors that serve units in the James House building are deteriorated and in need of replacement at a cost of approximately \$12,300,000.00; and**

**WHEREAS, Section 3.02 of the Association's Declaration of Condominium Ownership provides that windows and balcony doors in the perimeter walls adjoining a unit are Limited Common Elements of that adjoining unit; and**

**WHEREAS, Section 4.06(iii) of the Association's Declaration authorizes the Board, in its sole discretion, to provide Limited Common Element replacements as long as a portion of the cost is charged directly to the owners of the units benefited by the work; and**

**WHEREAS, the Board of Directors deems it in the best interests of the Association and its unit owners to replace all of the perimeter windows and balcony doors that serve units in the James House building at an estimated cost of \$12,300,000.00, and to exercise its discretion to directly charge the owner of each James House unit for 100% of the cost of the replacement windows and doors to be installed for the benefit of the owner's unit, based on the number of windows and doors replaced;**

**NOW, THEREFORE, BE IT RESOLVED THAT, the Board hereby (a) authorize replacement of the perimeter windows and balcony doors that serve units in the James House building at an estimated cost of \$12,300,000.00, and (b) direct that 100% of the cost of the replacement windows and balcony doors installed for the benefit of each James House unit be charged directly to that unit's owner, based on the number of windows and doors replaced, owners to have the option to pay for the windows and doors on a lump-sum basis through the use of their own funds or self-financing, or over a 3-, 5-, 7- or 10-year period in equal monthly installments to the Association, financed by a bank loan obtained by the Association on behalf of those owners opting for that loan program.**

Discussion ensued. Mr. Meyers asked for and received confirmation that the actual amount charged to owners will be the exact cost of the windows. Ms. Latson stated that unit owners will know the exact charges when they decide on their payment options. Mr. Meyers stated that he wished this to be made part of the resolution, and Mr. Beck agreed that Mr. Meyers could amend the resolution.

**Upon motion duly made by Tom Meyers and seconded by Duane Hickling, the following resolution was made:**

**BE IT RESOLVED, THAT THE James House Window and Balcony Door Replacement resolution be amended to include language, following each citation of the estimated cost of \$12,300,000.00, to the effect that James House unit owners will be charged the exact cost of the replacement of their perimeter windows and, if applicable, their balcony doors.**

Ms. Latson objected to mention of the exact cost of the windows because of the possibility of including in the cost a reserve to cover defaults on the unit owner loans carried by the Association. Mr. Sugar suggested rewording the amendment to read "...the exact cost of the replacement, including financing...." Further discussion ensued about the amending motion and how it should be worded. Mr. Sugar then advised that the original resolution be left as is, stating that the approximation of the cost is the best estimate available at this time and is a reasonable basis for the resolution, as more exact numbers will not be available for some time. He added that the intent is not to charge any unit owner more than actual cost, but rather to include a magnitude of costs so that anyone referring to the minutes in the future will know upon what cost basis the Board was making its decision. Mr. Meyers then raised an objection to the reserve for defaults. Mr. Beck directed Mr. Meyers's attention to the statement in the resolution that unit owners would be charged 100% of the cost of the replacement windows and balcony doors. **Mr. Meyers withdrew his motion.**

Further discussion ensued about the original motion. Mr. Meyers stated that he is in favor of the windows project but feels that not enough details are available to the Board or the unit owners to make an informed decision to approve the project. He also expressed concerns about the validity of the results of the Financial Survey. Mr. Meyers stated that if the Board agrees to proceed with the project tonight, the Association will lose its leverage with the contractors who are bidding on the project. He then asked why the Board is approving the project before the Annual Meeting, thus burdening new directors with the project, and concluded that the majority of unit owners would be better served if the Board postponed a decision on the project. Mr. Beck stated that he called the meeting for this date because everyone currently on the Board has been working on the windows replacement project for two or three years, and that further the Finance Committee wanted a decision. His remarks were greeted with applause.

Mr. Ruley acknowledged that the windows must be replaced, but stated that he promised to ask his constituents how they want him to vote, and that his response from 70 or 75 units out of approximately 130 that he polled split among those who want the windows replaced, those who do not want the windows replaced, and those who want them replaced but do not like the financing options. He added that he will vote based on the numbers of those responses.

Ms. Ross commented that she has worked very hard on the project, that most Board members have also worked on the various committees involved with the project, and that many owners have come to various meetings and have inspected the window samples. She added that in any financial situation involving a group, there will always be some who will be adversely affected and who deserve help, but that nevertheless owners have been given ample warning of the impending necessity of the project to give them time to act, and that if the windows are not replaced, owners' property values and the building's reputation will be negatively affected, whereas there is a good chance that improving the building as a whole will improve the value of units on the market. Ms. Ross remarked that the Association has the best possible leverage at this point and that the bidders will be eager to be awarded the final contract and understand that pricing will be a very important factor. She noted that the results of the survey indicating that a sizable number of unit owners are willing to pay the entire direct charge at once may create interest among more banks because the Association will not have to borrow so much. Ms. Ross concluded by urging a vote now to proceed, lest the project be pushed back to 2011 or 2012. Her remarks were greeted with applause.

After the discussion, Mr. Beck requested a roll-call vote, the results of which were as follows: Betty Latson–Yes, Judy Barnes–Yes, Karla Ross–Yes, Angus Shorey–Yes, Lynn Conner–Yes, Duane Hickling–Yes, Tom Meyers–No, Dorsey Ruley–No. The motion carried.

**Unit Owner Override of the Window and Balcony Door Replacement Resolution**

Upon motion duly made by Karla Ross and seconded by Tom Meyers, the following resolution was made:

**WHEREAS, the Board has adopted a resolution (a) authorizing replacement of the perimeter windows and balcony doors that serve units in the James House building at an estimated cost of \$12,300,000.00, and (b) directing that 100% of the cost of the replacement windows and balcony doors installed for the benefit of each James House unit be charged directly to that unit's owner based on the number of windows and balcony doors replaced (the "Window and Balcony Door Replacement Resolution"); and**

**WHEREAS, implementation of the Window and Balcony Door Replacement Resolution will require that the owners of the James House units (but not the owners of the Kilmer House units) bear significant costs; and**

**WHEREAS, the Board deems it in the best interests of the Association to afford the owners of James House units an opportunity to override the Window and Balcony Door Replacement Resolution, utilizing procedures and voting standards that parallel the unit owner override provisions of Section 18(a)(8)(ii) of the Illinois Condominium Property Act applicable to certain special assessments and assessment increases;**

**NOW, THEREFORE, BE IT RESOLVED THAT, the owners of James House units be afforded an opportunity to override the Window and Balcony Door Replacement Resolution, utilizing procedures and voting standards that parallel the unit owner override provisions of Section 18(a)(8)(ii) of the Illinois Condominium Property Act applicable to certain special assessments and assessment increases.**

**BE IT FURTHER RESOLVED THAT, the Board hereby call a special meeting of the owners of James House units (but not the owners of Kilmer House units) for 7:00 p.m. on November 17, 2009 in the penthouse meeting room at James House, 1560 North Sandburg Terrace, Chicago, Illinois, for the sole purpose of having the owners of James House units vote on whether to override the Window and Balcony Door Replacement Resolution.**

**BE IT FURTHER RESOLVED THAT, the owners of James House be given not less than ten days written notice of the November 17, 2009 special meeting, accompanied by a Special Proxy form with which to direct a vote on whether to override the Window and Balcony Door Replacement Resolution.**

**BE IT FURTHER RESOLVED THAT, the Window and Balcony Door Replacement Resolution be deemed ratified by James House unit owners unless the owners of James House units representing more than 50% of the ownership interest in James House, based on each unit's total percentage interest in the Association assigned to all James House units, affirmatively vote at such meeting, either in person or by proxy, to override the Window and Balcony Door Replacement Resolution.**

**BE IT FURTHER RESOLVED THAT, if the owners of James House units representing more than 50% of the ownership interest in James House, based on each unit's total percentage ownership interest in the Association assigned to all James House units, affirmatively vote at such meeting, either in person or by proxy, to override the Window and Balcony Door Replacement Resolution, the Board will rescind its Window and Balcony Door Replacement Resolution.**

In response to a question from Ms. Conner, Mr. Sugar explained that the gist of the resolution is that the owners of units in James House will be allowed to vote in favor of or against what the Board just voted on for the window replacement project, and that the Board agrees in advance that if the owners of units representing more than half of the total percentage ownership in James House vote against the Board's window replacement resolution, then the Board will rescind that resolution. If the majority of the total percentage ownership in James House does not vote against the Board's window replacement resolution, then the Board will proceed. It will be deemed approval by the unit owners and ratification of the Board's decision.

Mr. Meyers questioned the legality of the pending resolution, stating that it is not a standard override according to either the Declaration or the Illinois Condominium Property Act. Mr. Sugar agreed that it is not a standard override, and stated that unit owners do not have the right to override the Board's decision, but that in effect the Board is affirming that it will follow the same process, procedures and requirements as if it were a decision subject to a unit owner override, and give the unit owners a right that they do not currently have. Mr. Meyers then expressed concern that excluding Kilmer House unit owners from the vote might lead to trouble, citing a possible example of a problem that could arise. Mr. Beck responded by saying that according to Mr. Meyers's logic, if Kilmer House in the future needed to replace its windows, James House could effectively prevent Kilmer House from doing so because

James House unit owners constitute 83.3% of the population of unit owners; he added that this would be a bad precedent to set. He further stated that what has been approved is a direct charge to James House unit owners only, and does not involve Kilmer House unit owners. Mr. Beck added his opinion that most Kilmer House residents do not wish to become involved in this matter, nor do they wish to give James House, with its greater percentage ownership in the Association, the power to veto anything that Kilmer House would wish to do.

Mr. Ruley noted that Association funds, including those supplied by Kilmer House unit owners, are being used to pay for replacement windows in the common elements – the penthouse, lobby, Management Office and Chief Engineer's apartment. Mr. Beck countered that that cost is not part of the direct charge, which is the subject of the window and balcony door replacement resolution, but rather is a cost for replacing windows in common elements, adding that that cost will be included in the contract to be voted on later and will be paid from Capital Reserve funds. He reiterated that no money is being taken from Kilmer House unit owners for James House unit owner windows.

Mr. Meyers stated that the Declaration forbids creating two classes of unit owners, and that this situation, in effect, does create two classes of unit owners. Mr. Sugar responded that the direct charge that forms the basis for the resolution just adopted is specifically contemplated by the Association's Declaration, and he quoted the Declaration as follows: "At the discretion of the Board, the Board may perform or cause to be performed such maintenance, repairs and replacements of the limited common elements, and the cost thereof shall be assessed, in whole or in part, to unit owners benefited thereby." He added that the court ruling having to do with the use of common funds did not address the appropriateness or legality of the direct charge, and the Declaration specifically provides for it. He added that the resolution now being considered concerns the unit owner override vote, the right to do which is not provided for in the Illinois Condominium Property Act, but which the Board is voluntarily giving to the James House unit owners, and by which the Board is agreeing to abide.

**After the discussion, Mr. Beck requested a roll-call vote, the results of which were as follows: Betty Latson–Yes, Judy Barnes–Yes, Karla Ross–Yes, Angus Shorey–Yes, Lynn Conner–Yes, Duane Hickling–Yes, Tom Meyers–Yes, Dorsey Ruley–Yes. The motion passed unanimously.**

#### **James House Balcony Project Resolution**

Mr. Beck explained the purpose of the resolution, and pointed out that there is no unit owner vote called for in this resolution because the maintenance and repairs to the balconies and railings must be performed. **Upon motion duly made by Duane Hickling and seconded by Tom Meyers, the following resolution was made:**

**WHEREAS, the balconies and railings that adjoin and serve certain units in the James House building are deteriorated and in need of maintenance and restoration, including concrete and railing repairs, balcony and railing repainting, and waterproofing of concrete surfaces, at an estimated cost of approximately \$900,000.00; and**

**WHEREAS, Section 3.02 of the Association's Declaration of Condominium Ownership provides that the balconies that adjoin and serve certain James House units are Limited Common Elements of those units; and**

**WHEREAS, Section 4.06(b)(iii) of the Association's Declaration authorizes the Board, in its sole discretion, to provide Limited Common Element maintenance, repair and restoration as long as some portion of the work is charged directly to the owners of the units benefited by the work; and**

**WHEREAS, the Board of Directors deems it in the best interests of the Association to maintain, repair and restore all of the balconies and balcony railings that adjoin and serve units in the James House building at a cost of approximately \$900,000.00, and to exercise its discretion to directly charge the owner of each James House unit with an adjoining balcony for 100% of the cost of the balcony and balcony railing maintenance, repair and restoration work performed on the balcony that adjoins and serves that owner's unit, based on the square footage of the balcony and the linear feet of the railing;**

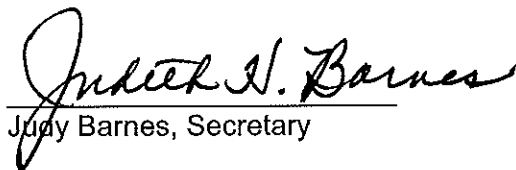
**NOW, THEREFORE, BE IT RESOLVED THAT, the Board hereby (a) authorize maintenance, repair and restoration of all the balconies and balcony railings that serve units in the James House building at a cost of approximately \$900,000.00, and (b) direct that the owner of each James House unit with an adjoining balcony be directly charged for 100% of the cost of the balcony and balcony railings maintenance, repair and restoration work performed on the balcony that adjoins and serves the owner's unit, based on the square footage of the balcony and the linear feet of the railing.**

The motion passed unanimously.

**ADJOURNMENT**

Mr. Beck thanked all those in attendance for their cooperation. There being no further business to come before the Board, the meeting was adjourned at 9:55 p.m.

Respectfully submitted,

  
Judy Barnes, Secretary

**APPENDIX**

**PowerPoint Presentation**

**JAMES HOUSE WINDOWS REPLACEMENT AND FINANCING QUESTIONS  
NOVEMBER 3, 2009**