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August 6, 2010

Via U.S. Mail & Email – torres.studio@gmail.com

Board of Directors
Sea View Villas Condominium Association
c/o Deborah Torres, President
736 Gould Avenue, #33
Hermosa Beach, CA 90254

Re: ***Opinion Letter Regarding Interpretation of CC&Rs***

Ladies and Gentlemen:

You have asked us to address the following issues with respect to the existing recorded Declaration of Restrictions, the First Amendment and the Second Amendment thereto (collectively, the ***"CC&Rs"***), for the Sea View Villas community (***"Community"***): (i) what are the ownership interests of the Sea View Villas Condominium Association (***"Association"***) and of the Owners, respectively, as to the various components of the buildings both within and outside of the Units, such as plumbing located inside walls both within, between units, and outside of Units to cleanouts, windows at various locations in the units, and various portions of the decks; (ii) what are the maintenance, repair and replacement obligations of the Association and of the Owners, respectively, concerning the plumbing, windows, decks (a.k.a. private open space) and certain improvements located thereon or adjacent thereto, including deck assemblies from deck surface material down to concrete structure, edge flashing at west edge of deck, gutters and downspouts, paint and stucco on the wall surfaces adjoining the deck, parapet walls including flashing to deck, (a.k.a. perimeter walls of balconies not including west building wall), deck railings, sunshades that overhang the deck, windows and doors leading to the decks and flashing surrounding each and flashing of doors and west wall to deck, wall assembly between deck and interior of unit including but not limited to posts and insulation and window and door headers and framing, interior drywall and interior painting of west wall; (iii) if the Association is responsible for repair/replacement of portions of the decks, deck railings, and other areas that vary in size depending on the Unit, then can the Association charge a special assessment to the Owners that varies based on size; (iv) what other areas of the CC&Rs are ambiguous, unclear or uncertain; and (v) whether the Association can amend the CC&Rs to change the maintenance, repair and replacement responsibilities of the Owners and the Association and apply those changes retroactively under California law.

It is important before addressing each of the issues set forth above to provide a background concerning the body of California law applicable to the Community. The original Declaration of Restrictions for this Community was recorded in 1980, and the amendments were recorded in 1980 and 1984, respectively, all before the enactment of a significant body of law called the Davis-Stirling Common Interest Development Act (***"Davis-Stirling Act"***), commencing at California Civil Code Section 1351, et. seq. One of the main purposes of the Davis-Stirling Act was to provide clarity where previously recorded and subsequently

recorded CC&Rs were not clear about a variety of issues, including ownership and maintenance responsibilities of owners and associations. The California Court of Appeal has stated that the State Legislature has applied the Davis-Stirling Act "both prospectively and to existing documents (citations omitted)." see Fourth La Costa Condominium Owners Ass'n v. Seith, 159 Cal.App.4th 563, 585 (2008). Thus, although the Davis-Stirling Act was enacted in 1986 and the CC&Rs were recorded before this date, the Davis-Stirling Act is intended to provide rules of interpretation with respect to language within the CC&Rs that is ambiguous, unclear, uncertain or silent to the extent such issues are addressed in the Davis-Stirling Act.

However, the Court cited above also stated: "The same rules that apply to interpretation of contracts apply to the interpretation of CC&R's. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as same is ascertainable and lawful. Where the language of a contract is clear and not absurd, it will be followed (citations omitted)." see Fourth La Costa at page 575. Further, the same Court in another case stated: "The language of the CC&R's governs if it is clear and explicit, and we interpret the words in their ordinary and popular sense unless a contrary intent is shown (citations omitted)."see Harvey v. Landing Homeowners Association, 162 Cal.App.4th 809, 817 (2008).

Therefore, if the language of the CC&Rs is clear and does not require interpretation, then the Davis-Stirling Act should not be used to insert language where no ambiguity exists. In addition, references in the Davis-Stirling Act to the language in the "Declaration" will extend to the Condominium Plan for the Community as well, because the CC&Rs incorporate language from the Condominium Plan in Section 2.1 of the CC&Rs. All capitalized terms used in the remainder of this letter that are not defined in this letter will have the meanings given them in the CC&Rs.

A. Ownership Interests.

1. **Common Area**. Our legal representation letter stated that we would address the ownership interests of the Association (i.e., the Common Area) however, the CC&Rs provide in Section 1.4 that the Condominium includes both "an undivided equal interest in the Common Area and ownership of a separate interest in a Unit", and Section 1.6 states that "the Common Area is the entire Project excepting all Units therein," so the Association does not have a separate ownership interest in the Project. Therefore, the Owners own all portions of the Project, but the Association has the obligation to manage, maintain, repair and replace the Common Area pursuant to Section 5 of the CC&Rs. Since Section 1.6 of the CC&Rs states that the Common Area is the entire Project excepting all Units therein, the obligations concerning the Common Area will depend entirely on what has been designated as part of a Unit or exclusive easement area in the CC&Rs, and what additional obligations may be read into the CC&Rs pursuant to the Davis-Stirling Act where the CC&Rs are silent.

2. **Condominium/Unit**. As stated above, Section 1.4 of the CC&Rs states that each Owner has both an undivided equal interest in the Common Area and a separate interest in the Unit. This section will discuss what improvements are included within the definition of Unit.

a. **Unit**. The Unit is defined in Section 1.5 of the CC&Rs as "that portion of a Condominium which is not owned in common with Owners of other Condominiums in the Project." Section 2.1 of the CC&Rs states that Declarant divided the Project into "(a) Thirty-three (33) designated and legally described Units which are shown, defined and described on the recorded Condominium Plan for the Project; and (b) The Common Area consisting of the remainder of the Project, excepting the Units

as shown on the Condominium Plan." Section 2.3 of the CC&Rs also states that the Condominium includes any exclusive easements in the Common Areas. The Condominium Plan defines the Unit in the General Notes and Definitions on Sheets 3 and 4, in Notes 3, 4, 7 and 8. According to the Condominium Plan, the Unit includes all the elements shown on the Condominium Plan that bear a Unit number applicable to a particular Unit, excluding those items listed in Note 9 of the Condominium Plan. Thus, the Unit consists of:

The interior airspace within the areas designated as "A" or "B" along with the Unit number listed on the Condominium Plan, the lateral boundaries of which are "the interior surfaces of the perimeter walls, windows and doors thereof at the limits" of the Unit shown on the Condominium Plan. "The lower vertical boundary of each such element is the interior surface of the floor thereof and the upper vertical boundary of each such element is the interior surface of the ceiling thereof…Each such element includes the respective portions of the building and improvements lying within said boundaries (except as stated in Note 3 above) and the airspace so encompassed." In addition, the Unit includes an element consisting of a balcony or patio area, the "lateral and vertical boundaries of each such element are the exterior surfaces of the perimeter walls, windows and doors of the adjacent building structure, where such surfaces adjoin such element and the interior surfaces of the perimeter walls, floors and ceilings of each such element where such surfaces exist. Otherwise the lateral and vertical boundaries of each such element are vertical and horizontal planes at the dimensions and elevations shown hereon for each such element. Each such element includes only the airspace encompassed by said boundaries."

The First Amendment to the CC&Rs also added some clarification in Section 15.12 that "Each Unit contains private open space and private storage spaces as set forth in the Condominium Plan…which constitute an integral part of the Unit." This means the balcony or patio area is part of the Unit and is not exclusive use common area. It also shows the intent to make only the airspace within the balcony or patio area part of the Unit, since there is a clear distinction between the foregoing definition and the definition of the residential element, which states that it includes the respective portions of the building and the improvements lying within said boundaries. The First Amendment also creates a change concerning the designation of the private storage spaces into a portion of the Unit as discussed below. Finally, Note 3 of the Condominium Plan states the "following are not part of a unit: bearing walls, Columns, vertical supports, floors, roofs, foundations, beams, balcony railings, pipes, ducts, flues, chutes, conduits, wires, pumps, central services and other utility installations, wherever located except the outlets thereof when located within the unit" (all underlining herein is added for emphasis and does not appear in the original).

b. **Exclusive Use Areas**. The Condominium Plan states in Note 9 that "Each of those areas shown on this map bearing the letter designation "G" depict a parking and storage space and is part of the common area…Each such parking and storage space includes only the airspace encompassed by said boundaries (emphasis added)." The exclusive use easement for parking spaces is contained in Section 16 of the First Amendment. The First Amendment to the CC&Rs changed the designation of the storage space from an exclusive easement in the Common Area to part of the Unit.

The Davis-Stirling Act states in Section 1351(i)(1): "Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest but located outside the boundaries of the separate interest are exclusive use common area allocated exclusively to that separate interest." The CC&Rs and Condominium Plan have designated the balconies and patios as part of the Unit, so they are not exclusive use common area.

The CC&Rs and the Condominium Plan clearly define the residential portion of the Unit to include everything within the boundaries of the residential element, with the boundaries being the interior surfaces of the perimeter walls, windows, doors, floors and ceilings, and all improvements therein, except bearing walls, columns, vertical supports, floors, roofs, foundations, beams, balcony railings, pipes, ducts, flues, chutes, conduits, wires, pumps, central services and other utility installations, wherever located except the outlets thereof when located within the Unit.

The CC&Rs and the Condominium Plan also clearly define the balcony and patio areas as beginning at the exterior surfaces of the perimeter walls, windows and doors of the adjacent building structure, and the interior surfaces of the floors (and ceilings if any) of said balcony or patio, thus making the building improvements (walls, windows and doors) located in between these two elements into Common Area, except to the extent that the Davis-Stirling Act can be read to make the exterior doors, door frames, windows and screens into exclusive use common area. The Condominium Plan states clearly and unequivocally that the balcony and patio areas of the Unit consist of only the airspace therein commencing at the interior surface of the floor of the balcony or patio and the exterior surfaces of the adjacent walls, doors and windows, and therefore, do not include the structures underneath the balcony or patio or any improvements forming the boundaries of the balcony or patio. However, language in Section 15.7 of the CC&Rs (discussed in detail below) also places the expense of repair of any windows or doors that exclusively serve a single Unit as the responsibility of the Owner, which is consistent with the Davis-Stirling Act making windows and doors into exclusive use common area.

The definitions in the Condominium Plan that explain the different elements of the Unit are quite specific with respect to what is and is not part of the Unit; however, certain improvements are not mentioned at all. In that case, we need to refer to the Davis-Stirling Act. As mentioned above, Section 1351(i)(1) makes the following improvements into exclusive use common area because the CC&Rs or Condominium Plan do not declare otherwise: any shutters, awnings, window boxes, doorsteps, stoops, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest but located outside the boundaries of the separate interest are exclusive use common area allocated exclusively to that separate interest. Although the window and the screen are deemed to be exclusive use common area, the window frame is not included in the list of improvements deemed by operation of law to be exclusive use common area, and we must assume that the Legislature did not intend for the window frame to be included because they did specifically include the door frame. In addition, garage doors are not specifically mentioned in the Davis-Stirling Act or in the CC&Rs, but they are fixtures designed to serve a single separate interest but located outside the boundaries of the separate interest (if any garage serves more than one Unit, then the garage doors would the responsibility of the Association).

The plumbing improvements located both within and outside of the Unit (except for the outlets thereof located within the Units) are Common Area because Note 3 of the Condominium Plan states that pipes, pumps, central services and other utility installations located in the Project are not part of the Unit, except the outlets thereof located within the Unit. This specific language prevents the plumbing improvements from being deemed to be exclusive use common area under Section 1351(i)(1) of the Davis-Stirling Act to the extent the plumbing would qualify as a fixture designed to serve a single separate interest but located outside of the boundaries of the separate interest. Water and sewer are central services in the Community (paid by the Association through the collection of assessments and not separately metered to the Units), and the plumbing improvements for water and sewer include pipes and pumps. Thus, the Common Area includes the plumbing improvements inside of the walls within the Unit, those located

inside of the walls between the Units and those located outside of the Units to clean-outs, except the outlets of the plumbing improvements located within the Unit. We must conclude that the intent of the Declarant with respect to plumbing improvements was to make them the responsibility of the Association by excluding them from the definition of the Unit and thereby making them Common Area.

B. **Maintenance, Repair and Replacement Obligations**. The maintenance and repair obligations of the Association and the Owners are described to a certain extent in the CC&Rs. To the extent they are not described in the CC&Rs, the obligations of the Association and the Owners will depend on whether the particular improvements are included as part of the Unit, part of the Common Area, or exclusive use common areas.

1. **Maintenance and Repair**.

a. **Association**. The Association is responsible pursuant to Section 5.6 of the CC&Rs for painting, maintenance, repair and all landscaping of the Common Areas, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area (subject to Owner responsibilities described below). In addition, Section 15.6 contains typical prohibitions against Owners altering, adding to, improving or repairing the Common Areas or to any portion of the Unit if such actions will impair the structural integrity or function of any residence building or substantially affect the exterior appearance thereof without the express written consent of the Board and seventy-five percent (75%) of first mortgagees. In addition, Section 15.6 prohibits painting or staining any patio, balcony, fence or wall without the express written consent of the Board. The prohibitions in Section 15.6 reinforce the concept that the Common Area is to be maintained and repaired by the Association, unless special permission is obtained to allow an Owner to make alterations or improvements to the Common Area.

The foregoing would place the responsibility on the Association for maintenance and repair of the following improvements designated as Common Area by the definitions in the first paragraph of this letter, unless the Board granted an individual Owner the right to conduct such repairs: the structure, roof and foundation of the residence buildings, and all other portions of the residence buildings that are not specifically allocated to maintenance by an Owner, including, without limitation, balcony and patio area floors, foundations and assemblies from beneath uppermost surface material to concrete structure, including the fiberglass built-up deck (except the surface thereof), edge flashing at west edge balcony, edge metal, gutters and downspouts, stucco located on the exterior wall surfaces adjoining the balcony and patio areas, paint and stucco of all other exterior wall surfaces, balcony railings, the window frames and surrounding wall improvements that need to be removed to repair or replace windows, including flashing, the flashing surrounding each door and sliding glass door, wall assemblies wherever located, including wall assembly between balcony or patio area and interior of Unit (including without limitation, posts and insulation, window and door headers), and further including plumbing pipes wherever located (except the outlets of the plumbing pipes and the plumbing fixtures located entirely within the Unit) (please see attached Exhibit A for easy reference).

b. **Unit Owners**. Section 5.6 of the CC&Rs requires the Owners to paint, maintain and repair the interior surfaces of each Unit at the sole expense of each Owner. Because the term "surface" is not defined in the CC&Rs, we must give the term its ordinary meaning under contract interpretation principles. After consulting multiple dictionaries, the term "surface" is most often defined as the "outer or topmost boundary of an object." Thus, references in the CC&Rs to interior surfaces or exteriors surfaces of the Unit or certain improvements under its ordinary meaning is only intended to

extend to the paint layer of a wall, but not the stucco or drywall underneath, and similarly to whatever is the uppermost material, fabric or paint on the floor of the balcony or patio area, but not the membrane or assemblies beneath the balcony or patio.

Section 15.7 of the CC&Rs further states: "Each Owner shall at his sole cost and expense maintain and keep his own Condominium in good, orderly and sanitary condition and in a good state of repair and shall perform promptly all maintenance and repair work within his Unit which, if omitted, would adversely affect the Project in its entirety or any portion thereof and each Owner shall be expressly responsible for the damages and liabilities that his failure to do so may engender." The key to the above language with respect to the issues currently before the Association are "within his Unit." The language that follows in Section 15.7 appears to create uncertainty concerning the improvements to be maintained by an Owner, but when read in its entirety is actually a list of improvements that the Owner is obligated to pay for whether he performs the maintenance himself or not. Thus, to the extent that the following items are maintained by the Association but benefit exclusively a single Owner, the repairs shall be at that benefited Owner's expense: "all repairs of internal and interior installations of the Units, such as water, lights, gas, power, sewage, telephone, sanitary installations, doors, windows, lamps and all other accessories or parts thereof…" The words "such as" in the foregoing sentence can reasonably be interpreted to mean "for example" or "including, without limitation" such that the Association's repair of the listed improvements or similar improvements that serve exclusively one Unit can be charged back to that Owner. However, if the Association performs a repair to any improvement that serves more than one Unit, the cost is included in the normal maintenance budget of the Association. Also, the language following Section 5.9 of the CC&Rs permits the Association to specially assess any Owner for the costs or expenses incurred by the Association in contracting for the obligations described in Section 5 if any of such costs or expenses are incurred for the benefit of a particular Unit or Units. This would appear to allow the Association to specially assess Owners of Units for maintenance of improvements that benefit one or several Units.

Section 15.7A of the Second Amendment adds language concerning the obligation to maintain and repair all alterations, additions, improvements, or repairs made by the Owner to his Condominium, including his Unit, Common Area and Private Open Space (balcony or patio): "Each Owner and his successor-in-interest shall have the responsibility to keep any and all alterations, additions, improvements, or repairs made by him to his Condominium (including his Unit, Common Area and Private Open Space) in good, orderly and sanitary condition and in a good state of repair and shall perform promptly all maintenance and repair work, which if omitted, would adversely affect the Project in its entirety or any portion thereof." Thus, to the extent that any Owner made alterations, additions, improvements or repairs to their Unit, the Common Area or their Private Open Space (balcony or patio), such Owner will be solely responsible for maintaining and repairing those improvements, or to the extent the Association may perform the maintenance or repair, the cost thereof shall be charged as a special assessment back to the Owner as a compliance assessment.

Finally, while Section 15.10 of the First Amendment (where we encounter the term "deck" for the first time instead of balcony or patio) provides language requiring an Owner to take all reasonable steps necessary to insure that contractors are responsible to avoid damage to, or leaks in waterproof deck or roof membranes. This appears to create confusion over whether the Owner or the Association is responsible for maintaining and replacing impact insulation. However, when read in its entirety, this portion of Section 15.10 can and should be read to state that any contractor hired by an Owner to perform maintenance of the surface of the floor of the balcony or patio (or deck) used by such Owner should take

care to avoid causing any damage to or leaks in the waterproofing materials for the balcony, patio or deck during such maintenance.

Therefore, using the list of improvements in the first paragraph of this letter that were called out by the Association as important, the Owner is responsible for maintaining and repairing the following improvements: paint on walls and ceilings inside the residential element of the Unit, paint on the walls that border the balcony or patio area, maintain uppermost surface of balcony or patio floor, paint on the walls and ceiling that encompass the private storage space, clean floor surface of private storage space, sunshades that overhang the balcony or patio area (deemed exclusive use common area similar to awnings by the Davis-Stirling Act), interior drywall of west wall if damaged by Owner or by Owner's failure to properly maintain exterior surface (otherwise it is the Association's responsibility), interior doors within Unit, exterior doors, door frames, hardware incident to the doors and door frames, windows and screens that exclusively serve the Unit (but not the window frames, or the flashing, drywall, stucco or other portions of the wall surrounding such windows, window frames, or door frames), garage doors that serve the exclusive use area parking garage if serving only one Unit, shutters, window boxes, planter boxes, doorsteps, and stoops (please see attached Exhibit B for easy reference).

2. **Replacement**. The term "replacement" is rarely used in the CC&Rs, thus, we have to rely on the statements concerning maintenance and repair to determine the responsibility for replacement of improvements. If an improvement is designated as Common Area, it should be replaced at the cost of the Association as a whole unless the rule in Section 15.7 concerning certain installations that serve exclusively one Unit will allow the Association to charge an Owner for the cost of replacement. If an improvement is designated as part of the Unit or an exclusive use common area, the replacement cost thereof is the responsibility of the Unit Owner.

The second paragraph of Section 15.7 requires an Owner to reimburse all other Owners for any expenditure incurred in repairing or replacing any and all Common Area facilities and utilities damaged through his fault, whether caused by his action or inaction, by making payment to the Board to be deposited in the maintenance fund.

C. **Special Assessments for Repair and/or Replacement of Common Areas**. Under Section 7.2 of the CC&Rs, regular assessments are charged in equal, monthly installments to all Owners based on the number of Units owned by an Owner in relation to the total number of Units subject to assessment in the Project (i.e., 1/33rd of the annual budget, then divided into 12 equal monthly payments). Under Section 7.3 of the CC&Rs, special assessments are levied in the same manner as regular assessments, except as described in Section 7.3(d)(1) in the case of a "special assessment to raise funds for the rebuilding or major repair of the structural Common Area housing Units of the Project shall be levied upon the basis of the ratio of the square footage of floor area of all Units to be assessed."

The phrase "all Units to be assessed" is ambiguous, because it can be read to mean either all Units requiring or benefiting from the rebuilding or major repair, or it could mean all Units in the Project (i.e., 33). I found no guidance in case law to allow the Association to make a decision as to the meaning of this phrase, other than contract interpretation principles referring to ordinary meaning of the terms and the context in which they appear. If we look elsewhere in the CC&Rs, the last sentence of Section 5 (following after 5.9) of the CC&Rs states the Association has the right to specially assess the Owners of the Units to the extent that any of the costs or expenses described in Section 5 are incurred for the benefit of a particular Unit or Units. There is certainly a good argument that Owners who have already paid directly for repairs to the portions of Common Area that directly benefit their Units under previous

interpretations of the CC&Rs should not have to pay for repairs to the Common Area that directly benefit other Units and other Owners. In such a case, interpreting the phrase "all Units to be assessed" would be based on which Units would benefit from the rebuilding or major repair of the Common Areas.

When calculating the square footage of the floor area of all Units in the Project, care should be taken to include the floor area of all elements of the Units designated in the Condominium Plan, which includes the residential elements, balcony or patio elements, and the storage space, which was made part of the Unit by the First Amendment. The parking areas are shown on the Condominium Plan as part of the Common Area, including the garages for Units 1 to 8, inclusive, and therefore, are not to be included in the calculation of the floor area of the Unit. The Association will need to decide on whether to use the floor area of each of the elements of the Units as shown on the detail sheets in the Condominium Plan, or to hire someone to go out and physically measure each of these elements if there is a belief that the Condominium Plan is not accurate for some reason.

D. **Additional Areas of CC&Rs that are Ambiguous, Unclear, or Uncertain**. To the extent that we found areas of the CC&Rs that are ambiguous, unclear or uncertain, we addressed them within the body of this letter.

E. **Can Association Amend the CC&Rs to Change the Maintenance, Repair and Replacement Responsibilities of the Owners and the Association and Apply Those Changes Retroactively Under California law**?

We did not locate any case law or treatises that dealt specifically with retroactive application of amendments to CC&Rs that would change the responsibility for maintenance, repair and replacement of improvements, thereby transferring the cost of said maintenance, repair or replacement from one party to another. However, we did find support generally for the concept that an Association has the right to impose new use restrictions by way of an amendment to CC&Rs that was passed by the requisite number of owners against other owners of units in a project who did not vote to approve the amendment.

The California Supreme Court in Villa De Las Palmas Homeowners Ass'n v. Terifaj, 33 Cal.4th 73 (2004), stated that the plain language of Section 1355(b) of the Davis-Stirling Act "provides that an amendment is effective after notice of the proposed amendment is given to the homeowners, a majority of the homeowners approve the amendment, and the amendment is recorded (citations omitted). Plainly read, any amendment duly adopted under this subdivision is effective against all homeowners, irrespective of when the owner acquired title to the separate interest or whether the homeowner voted for the amendment (citations omitted)." see Villa De Las Palmas at page 83. The Court cited extensively from its prior decision in Nahrstedt v. Lakeside Village Condominium Association, 8 Cal.4th 361 (1994), including "[w]e further observed that 'anyone who buys a unit in a common interest development with knowledge of its owners association's discretionary power accepts 'the risk that the power may be used in a way that benefits the commonality but harms the individual.'" see Nahrstedt at page 374.

The California Supreme Court opinions cited above were limited to a discussion of amendments to the CC&Rs to change use restrictions, as was all of the case law we found in our research. Therefore, it appears that the issue of whether an amendment to change the person or entity responsible for maintenance, repair and replacement of improvements located on the Common Area or the Unit in a retroactive manner and in a way that would have significant financial consequences is unsettled, and the issue leaves the Association open to potential lawsuits from Owners who vote against the amendment. In addition, to the extent that an amendment changing maintenance, repair or replacement responsibilities is

attempting to change Common Area into exclusive use common area, the procedures set forth in Section 1363.07 of the Davis-Stirling Act must be followed unless an exception applies (as it did for the balcony railings).

We have researched all of the issues above as much as possible given the time and cost constraints, however, we cannot guarantee that we found all potentially relevant case law applicable to the issues discussed in this letter since such an undertaking would have at least doubled or tripled the cost of the preparation of this letter and there is no guarantee that any different information would have been found. Most of our research indicated that the Courts rely on general contract interpretation rules and the provisions of the Davis-Stirling Act to make decisions on issues of ownership and maintenance with respect to units, exclusive use common areas and common areas.

We recommend the Association consider amending and restating the CC&Rs to offer clear direction to the Owners and the Association concerning their relative maintenance, repair and replacement obligations to avoid further confusion in the future concerning these matters. If the Owners want to change the current obligations of the Owners and the Association, the CC&Rs could address those obligations both as they exist when the CC&Rs are adopted and prospectively once the necessary repairs are made to the Units and the Common Area.

If you have any questions or wish to discuss this letter, do not hesitate to call me. I am currently scheduled to attend your annual meeting on August 19th at 7 pm to answer questions from your members about the matters discussed in this letter. Please let me know if your annual meeting date or time is changed at least 24 hours in advance of this date.

Sincerely,

Sheri L. Marvin

SLM/plw

EXHIBIT A

ASSOCIATION MAINTENANCE RESPONSIBILITIES

- painting, maintenance, repair and all landscaping of the Common Areas, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper (this would include the pool, pool furnishings and other typical common areas)

- the structure, roof and foundation of the residence buildings

- all other portions of the residence buildings that are not specifically allocated to maintenance by an Owner, including, without limitation:

    - balcony and patio area floors (except the uppermost surface to be maintained by Owner)

    - foundations and assemblies of balcony and patio floors from beneath uppermost surface material to concrete structure, including, without limitation:

        - the fiberglass built-up deck (except the surface thereof)

        - edge flashing at west edge balcony

        - edge metal

        - gutters and downspouts

        - stucco located on the exterior wall surfaces adjoining the balcony and patio areas

        - paint and stucco of all other exterior wall surfaces

    - balcony railings

    - the window frames and surrounding wall improvements that need to be removed to repair or replace windows, including flashing

    - the flashing surrounding each door and sliding glass door

    - wall assemblies wherever located, including wall assembly between balcony or patio area and interior of Unit (including without limitation, posts and insulation, window and door headers)

- plumbing pipes wherever located (except the outlets of the plumbing pipes and the plumbing fixtures located entirely within the Unit) {however, Association has ability to charge Owner for maintenance of plumbing improvements under the language following Section 5.9 of the CC&Rs that provides "In the event that any of the foregoing costs of (sic) expense are incurred for the benefit of a particular Unit or Units, then the cost thereof shall be specially assessed to the Owners of such Unit or Units} {If plumbing was replaced by current or former Owner of Unit pursuant to Owner's request and approved by Board that falls within Section 15.7A of Second Amendment, Owner may be responsible for maintaining and repairing the new plumbing}.

EXHIBIT B

UNIT OWNER MAINTENANCE RESPONSIBILITIES

- paint, maintain and repair the interior surfaces of each Unit
    - paint on walls and ceilings inside the residential element of the Unit
    - paint on the walls that border the balcony or patio area
    - maintain uppermost surface of balcony or patio floor
    - paint on the walls and ceiling that encompass the private storage space
    - clean floor surface of private storage space
- sunshades that overhang the balcony or patio area (deemed exclusive use common area similar to awnings by the Davis-Stirling Act)
- interior drywall of west wall if damaged by Owner or by Owner's failure to properly maintain exterior surface (otherwise it is the Association's responsibility)
- interior doors within Unit
- exterior doors
- door frames
- hardware incident to the doors and door frames
- windows and screens that exclusively serve the Unit (but not the window frames, or the flashing, drywall, stucco or other portions of the wall surrounding such windows, window frames, or door frames)
- garage doors that serve the exclusive use area parking garage if serving only one Unit
- shutters (if applicable)
- window boxes and planter boxes
- doorsteps (if applicable)
- stoops (if applicable)