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VIA ELECTRONIC MAIL ONLY: bzetlaw@gmail.com

Mariners Point Condominium
c/o Bill Zetlaw, President
6035 Lake Road West
Ashtabula, Ohio 44004

Re: Balcony Deck Repairs

Dear Mr. Zetlaw:

On behalf of the Board of Directors for Mariners Point Condominium Association, you provided our office a copy of a deck inspection report from Globex Corporation along with a list of questions related to communicating with owners and ensuring the needed balcony deck repairs are made by owners in a timely manner. In conjunction with this information, you requested our written response to the questions and a letter from the Board to owners about getting balcony deck repairs made. My response to the Board's request is based on my review of the information received, review of the Mariners Point Declaration and Bylaws, research and review of the Ohio Condominium Act and pertinent case law, and on our experience representing condominium associations throughout Ohio.

As stated in an opinion letter dated August 2, 2022, the owners are responsible to maintain, repair, and replace their limited common element decks. Repairing the structural beams that support both the second and third-floor unit decks is the shared responsibility of the second and third-floor unit owners. The structural beams that only support the third-floor patio are the third-floor unit owner's responsibility. For example, the vertical beams that surround the first-floor patio support the second and third-floor balconies. Therefore, the cost of repairing or replacing those beams is shared equally by the second and third-floor unit owners. The beams that surround the second-floor patio only support the third-floor balcony. Accordingly, the third-floor unit owner is solely responsible for the costs of repairing and replacing those beams.

The Globex Inspection Report identified several decks with high priority deficiencies that need immediate attention. I will address the Board's questions related to communicating with

owners about their responsibility for deck repairs and replacements and ensuring that owners make the necessary repairs to their decks below.

1. What form of communication should the Board use to notify unit owners deemed as “High Priority” under the Globex inspection report?

The first step is sending a Notice to Cure Letter to the owner who needs to make deck repairs. I have prepared a draft letter that can be used and modified to fit each situation. I recommend adding language describing the needed repairs. If this letter is emailed to the owner, I recommend also sending the letter through the US Postal Service. As drafted, the letter is from John Phillips, but if desired, the Board can revise the letter and make it from the Board.

2. If a unit owner does not secure a written contract for their deck repairs with the given timeframe that’s been documented in the letter they receive, does the Board have the right to have all work completed and then assess the individual unit owner(s) involved?

Yes, provided the proper steps are taken. If an owner ignores the Notice to Cure Letter and does not hire someone to make the needed deck repairs and does not give written proof to the Board of entering into a contract for the repairs before the specified date, the Board can send a Notice of Intent to Impose Enforcement Assessment Letter. Under Ohio Revised Code Section 5311.081(C)(1), this letter must include a description of the needed repairs, the amount of any proposed enforcement assessment and deck repair costs, a statement that the owner has the right to a hearing before the Board, and a reasonable date by which the owner must have the repairs completed. If an owner does not have the repairs completed by the date specified in the second letter, the Board can have the repairs made and assess the owner the costs stated in the letter. I have included a sample of this letter as well that the Board can use. This letter is also in Word format so the Board can modify it to fit each situation.

3. Does the Board have the right to restrict access to high priority decks until repairs are completed?

Yes. If the Board becomes aware of a potentially dangerous condition on the condominium property, the Board should take appropriate action to protect the condominium property, residents, and guests. The use of a second or third floor deck in disrepair poses danger to persons and property below. If appropriate, the Board can notify the owner in writing that no one can use the deck until the repairs are completed.

4. Once notified about the risk, if a unit owner fails to comply and continues to use their deck before repairs are made, what recourse can the Board take, if any?

The Board can follow the procedure set forth above by sending a Notice of Intent to Impose Enforcement Assessment Letter that states the conduct violation of using the deck on a specified day and time. The letter must include the proposed penalty, which is most often an enforcement assessment of a specified amount, and state that the owner has a right to request a hearing before the Board. If the owner does not request a hearing or if deemed appropriate after a hearing, the Board can impose the enforcement assessment.

5. In the past, the Board has not required unit owners to supply proof of insurance for personal property, liability, or casualty, but should we start?

This is a Board decision. The Board can adopt a rule requiring owners to provide proof of insurance to the Association annually. Once such a rule is distributed to all owners, the Board can enforce the rule. This type of rule can provide helpful information to the Board but can also be time consuming to follow up on with owners who do not provide the proof of insurance.

In summary, owners who need to make deck repairs should be informed using the Notice to Cure Letter. If owners do not make the needed repairs, the Board should follow up using the Notice of Intent to Impose Enforcement Assessment Letter that states both the enforcement assessment amount and the cost of repairs that will be assessed if the Association makes the repairs. The Board can prohibit use of decks that are in disrepair and can levy enforcement assessments on owners who still use their decks as long as the proper procedure is used.

I trust that the above responds to the Board's request. Should you or any of the other Board members have any questions, please do not hesitate to telephone me.

Sincerely yours,



JENNIFER B. CUSIMANO

JBC:mtr