



November 12, 2025

Via Email

Board of Directors
Breakaway West Association
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CONFIDENTIAL

COMMUNICATION

ATTORNEY CLIENT PRIVILEGED

Re: *Breakaway West Association/Garage Roof and Pool Area*
Our File No. 8139.0065

Dear Members of the Board:

Altitude Community Law P.C. has been retained to provide an opinion regarding whose responsibility it is to pay for the maintenance, repair, and replacement of the: (1) garage roof under the pool/deck area; (2) the sodded garage roof adjacent the pool deck area (containing grass, picnic area, and stairwell for a unit in the 400 building); (3) garage doors; (4) garage floor; (5) parking garage striping and wall paint, utilities (ducts, water supply lines, and other utilities that service any of the individual buildings or multiple buildings); and (6) the fire suppression system equipment located in the garage that services the garage and the 300 & 400 buildings. This letter is in response to that inquiry.

QUESTIONS and RESPONSES

1. *Is the garage roof under the pool/deck area a Project Common Element?*

While the answer to this question is not entirely clear from the Declaration and plat maps, it is our opinion the garage roof under the pool deck area, and the components supporting the garage roof (columns, walls, and foundations), are Project Common Elements with expenses allocated to all Owners in the community.

2. *Is the sodded garage roof adjacent the pool/deck area (containing grass, picnic area, and stairwell for a unit in the 400 building) a Project Common Element?*

While the answer to this question is also not entirely clear from the Declaration and plat maps, it is our opinion the sodded garage roof adjacent the pool deck area and the components supporting the garage roof (columns, walls, and foundations) are Project Common Elements with expenses allocated to all Owners in the community.

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3. *Are the garage doors a Project Common Element?*

No. The garage doors to Parking Units 4 - 29 are Limited Common Elements and Units 4 - 29 are obligated to reimburse the Association for the garage doors to those parking spaces, and Parking Units 1 - 3 are each obligated to reimburse the Association for the individual garage doors leading to their individual garage spaces as Limited Common Elements.

4. *Who is obligated to repair the garage floor from cuts into it required for structural support of the garage roof?*

The Association, as a Project Common Expense. All damage caused by the Association in utilizing its easement rights to repair Project Common Elements must be repaired by the Association.

5. *Is the parking garage striping and wall paint a Project Common Element?*

No. Non-structural components like striking and wall paint are the obligation of the Parking Unit Owners.

6. *Are the utilities (ducts, water supply lines, and other utilities that service any of the individual buildings or multiple buildings) a Project Common Element?*

The utilities are either Project Common Elements (to the extent the utilities serve the entire project), or General Common Elements to the extent they serve less than all of the buildings. The analysis depends on several factors including what the utilities are servicing. Each utility would need to be looked at on a case by case basis.

7. *Is the fire suppression system equipment located in the garage that services the garage and the 300 & 400 buildings a Project Common Element?*

Either Project Common Elements (if serving entire project) or General Common Elements (if serving less than all buildings). If the fire suppression system is only serving those two buildings, it is a limited General Common Element that should be allocated to those two buildings.

FACTS/DISCUSSION

The Association is comprised of five different buildings containing condominium units, a pool, and a parking garage that contains a number of different Parking Units. The Parking Units are identified as separate taxing parcels, are individually deeded, and are not Common Elements. The Declaration requires, to the extent possible, that any cost or expense allocated to the building be paid for exclusively from a budget charged to, and collected from, the Owners of

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Units within the building. The pool sits on top of the parking garage, acting as a part of the parking garage's roof.

The pool and pool deck have fallen into disrepair and require extensive maintenance, including repair of post-tension slab cables supporting the pool; replacement of waterproofing membranes constructed between the pool and parking garage; sealing of cracks appearing in both the roof and sidewall areas; and finally, replacement of the pool itself. Allocating these costs is what has led to questions about whether or not the costs should be allocated to all Owners or limited to Owners of Parking Units.

The Declaration provides three separate categories of elements within the Association: Project Common Elements, General Common Elements, and Limited Common Elements. General Common Elements and Project Common Elements are maintained by the Association, not individual Owners. The cost allocation scheme for maintenance and repair expenses in the community are designed such that expenses associated with the maintenance and repairs of Project Common Elements are born by all of the Units in the community, and expenses associated with General Common Elements are born by each individual building's Unit Owners. Additionally, Project Common Elements, which includes recreational facilities, are owned by the Association, while General Common Elements, are owned by the Unit Owners within an individual building. The swimming pool and its decking are located on the roofs above the garage units (the garage units themselves are not considered any of the three elements). The swimming pool, its decking, and the grassy area on the roof adjacent to the pool are all Project Common Elements, as that term is defined in the Declaration.

The pool decking is an integral and necessary part of the pool; the swimming pool cannot exist without its decking. The pool, the decking, and the grassy area adjacent to the pool are all being supported by the garage. The garage roof, columns, walls, and foundations all provide necessary support for the items resting on top. The garage roof, columns, walls, and foundation are all built in such a way to support the additional weight of the pool, decking, and sod above. The garages are individual units and while they have roofs, the dimensions and characteristics of the garage were purpose built and likely overbuilt to provide benefit to the entire community by creating additional Project Common Elements above. The construction specifications of the foundations, walls, columns, and roof is not integral to the garage itself; the garage can exist without those high-end specifications. The pool and its deck however, are not functional as separate items apart from the garage structure beneath, as they rely on the structural integrity of the garage for support. The pool deck leaks must be repaired to ensure the swimming pool remains functional and that the garage will be structurally sound. Failure to maintain and repair them results in the closure of the pool, and the physical deterioration of the garage, making the pool area unavailable to all Owners, and the Parking Units unavailable to its Owners.

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The pool, deck, and grassy area on top of the garage roof are all common areas, and, pursuant to the Declaration, any recreational facility and common areas reserved for common use of all the members are categorized as Project Common Elements; therefore, the maintenance responsibility is the Association's. The obligation of support for the pool and common areas around the pool should thus be borne by the entire Association, not the garage owners.

The first question posed to us is whether or not the garage roof (and supporting structure) is a Project Common Element (expenses to be paid by entire community) or a General Common Element (expenses paid for by the Owners of the particular building containing the General Common Elements).

The Declaration for Breakaway West Association, recorded in the Eagle County Clerk and Recorder's Office on November 28, 1972 at Reception No. 122245, at Section 1(g), defines Project Common Elements as "...**property of any kind owned by the Association** of Unit Owners...and used or **reserved for the common use of the members** of such Association and their guests; such **property may include...parking areas, recreational facilities, yards, gardens, sidewalks or paths, driveways, barbecue and picnic areas**, equipment, materials, or other property and easements and rights necessary or convenient thereto." [Emphasis added]. The Declaration states recreation facilities, yards, barbecue and picnic areas are Project Common Elements. All of these are located on the top of the garage and are being supported by the roof. The roof of the garage, including and extending beyond the pool and deck area, have been used from time to time by members of the community, indicating that the entire rooftop is a Project Common Element.

That being said, the recorded plat maps for the community showing the Parking Unit garage and deck area unfortunately do not show a cross section/elevation expressly showing which parts of the parking garage are General Common Elements (if any), and which are Project Common Elements. The only indications we have from the plat maps imply the garage structure is a Project Common Element as a result of the following:

(1) The First Supplement to the Condominium Map for Breakaway West, sheet 1 of 10, outlines an area on an overhead view graphic showing an outline of an area titled "Swimming Pool (Location Approx.) P.C.E." This graphic only shows the pool itself, excluding the deck. We know from other images depicted in the plat map that areas beyond the swimming pool, specifically the pool deck areas, were intended to be Project Common Elements, but are not marked as such. Therefore, the garage roof, walls, columns, and foundations may be Project Common Elements as well, though not marked as such.

(2) The First Supplement to the Condominium Map for Breakaway West, sheet 2 of 10 titled "First Floor Plan," denotes an area to the south of the 400 building that states the area is "P.C.E. Pool and Garage Area." This seems to again indicated the "pool and garage" area, less all individual Parking Units, is a Project Common Element.

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(3) The First Supplement to the Condominium Map for Breakaway West, sheet 10 of 10 titled "Parking Unit Garage & Deck Area," shows where the individual Parking Units are located from an overhead view and a cross section, but again does not indicate which areas are General Common Elements and which areas are Project Common Elements. We typically see that drive lanes between parking spaces are either marked as General Common Elements or Project Common Elements, but here we have neither.

Furthermore, the First Supplement to the Condominium Declaration for Breakaway West recorded in the Eagle County Clerk and Recorder's Office on August 23, 1973 at Reception No. 126607 ("First Supplement") provides, "A certain number of additional fee simple estates, each such estate **consisting of one parking unit together with an appurtenant undivided interest in and to the General Common Elements associated with the building in which such unit is located**, such interest being shown on Exhibit A." [Emphasis added] The First Supplement also provides "The General Common Elements shall be held in common by the owners of the undivided condominium Units associated with the building in which such units are located." While again, the text here in the First Supplement is not entirely clear, these two clauses in the Second Supplement could be interpreted to mean the garage is its own building and all unmarked structures within the building are General Common Elements. As the garage may be its own building, the pool, deck and sodded areas are Project Common Elements rendering any supports or structural elements for the Project Common Elements as Project Common Elements as well.

Section 1(k)(1) and (2) provide "Common Expenses" means "all sums lawfully assessed against the General Common Elements or the Project Common Elements" and "expenses of...maintenance, repair or replacement...of the General Common Elements and Project Common Elements."

Any repair, or rebuild of the structural elements of the garage, regardless of whether those structural elements are classified as Project Common Elements or General Common Elements, which are occasioned by the Association exercising its easement to fully support and repair the pool, deck and sodded area, are common expenses borne by all of the Unit Owners.

RECOMMENDATION

It is our opinion that the garage roof, columns, walls, and foundation are all Project Common Elements supporting the pool, pool deck, and the sodded picnic area above the garage units. The Declaration, supplements, and plat maps are not entirely clear, although it is our opinion that when the governing documents of the Association are viewed as a whole, in conjunction with the plat maps, building drawings, and historical uses of the areas, the garage structure (less the individual deeded Parking Units) is a Project Common Element. As such, we believe

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the maintenance and repair costs to the garage structure are a common expense to all Owners in the community, not the individual garage Owners.

The classification of different structural elements of the garage may become a contentious issue with Owners who do not own Parking Units, but are being asked to shoulder the cost of the garage rebuild. We recommend the Board adopt a clarifying resolution to the Declaration, and/or an amendment to the plat maps, to clearly identify which parts of the garage are Project Common Elements, General Common Elements, and Limited Common Elements.

Non-structural repairs to the garage such as the garage doors, striping, and wall paint are all obligations required to be paid by the Owners of the Parking Units.

Lastly, utilities are the obligation of the buildings being served by those utilities.

Our recommendations and opinions are based on the facts stated or assumed and known to us as of the date of this letter, but are not a guarantee of results or a specific outcome. The documents relied upon in preparing this letter are set forth on Schedule A.

We hope this letter satisfactorily addresses the question presented to us. Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,



David A. Firmin
Altitude Community Law P.C.

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SCHEDULE A

Documents Reviewed:

1. Declaration.
2. The First and Second Supplements to the Declaration.
3. Condominium Maps.
4. Google Earth Images.
5. Deeds for Parking Units.