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February 8, 2001

Lakeside Woods Association, Inc.
Attn: Edward Foley, President
1271 Lakeside Woods Drive
Venice, FL 34292

RE: **Association's Responsibility for Maintenance; Interpretation of Declaration**

Dear Mr. Foley:

The Board has asked for an opinion as to whether the Association is responsible for replacing trees damaged as a result of a casualty. A review of your documents, the statutes, and case law, as well as various arbitration decisions was performed in order to render an opinion with regard to this issue.

As you are aware, Article 3.10.02 and 5.10 of the Declaration of Covenants and Restrictions requires the Association to maintain the grass area of all lots and the existing landscaping on each lot. Article 5.10 further provides that all dead or diseased sod, plants, shrubs or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed. The Declaration was amended in 1997 to specifically reference foundation plants and trees as within the Association maintenance responsibility, but to exclude any responsibility for flower beds and fruit trees.

The documents require the Association to purchase casualty insurance for the common property and to restore the common property after casualty. There is no mention of any Association responsibility for restoration to the lots after a casualty and it is generally understood that each homeowner is responsible to insure his/her own property, including the improvements thereon. In fact, the documents do not authorize the Association to purchase insurance on the Lots as a common expense.

The Declaration of Covenants and Restrictions constitutes a contract between the owners themselves and the Association. The provisions thereof will be enforced based upon the clear, reasonable and ordinary meaning of the terms. The term

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"maintenance" as used in both Article 3.10.02 and Article 5.10 will generally include replacement of the landscaping when necessary in the ordinary course. It is understood that plants die, whether due to disease, lack of adequate maintenance, watering, environmental conditions, etc. and thus the Association will be required to replace portions of the landscaping when necessary to conform to the community's aesthetic standards.

Nonetheless, the responsibility for maintenance does not necessarily cause the Association to act as an insurer for improvements on an owner's property. Nowhere in the documents does it require the Association to restore improvements on individually owned lots after a casualty loss and requiring the Association to do so does not appear to be a reasonable interpretation of the documents, nor is it a logical conclusion to draw from the documents.

There are a number of "maxims" associated with the interpretation of ambiguous provisions in contracts. One of them is that a covenant that is substantially ambiguous is construed against the party claiming the right to enforce the restriction. Since the Owner challenging the Association is ostensibly seeking enforcement of the restriction, he will have the burden to prove to the Court that his interpretation is correct.

Another established maxim is that the mention of one thing implies the exclusion of the other. The original Declaration did not specifically refer to trees. In fact, trees are only mentioned by amendments made by the homeowners. While the homeowners included plants and trees within the ongoing maintenance provision in Article 3.10.02 by amendment, they did not include trees within the items to be replaced in the above quoted section of Article 5.10. Parol evidence is also considered in interpreting ambiguous contracts. Parol evidence consists of witness testimony and other factors external to the contract to determine the parties' intent in drafting and agreeing to the provisions therein. It is my understanding that the purpose of including foundation plants and trees in the maintenance section of Article 3.10.02 was to resolve an ambiguity as to whether the Association was even required to perform any work associated with trees on the individual lots. Additionally, I understand that testimony from the developer of the project will reveal that he intended for the Association to perform normal ongoing maintenance of the landscaping, but did not intend for the Association to replace the landscaping, especially after a casualty, as the Association is only responsible to insure the common property. This sentiment is confirmed in correspondence to the Association dated November 3, 2000. Again, these factors will only be considered if it is shown that the Declaration, as it presently exists, is ambiguous. However, these factors lead to the conclusion that the Association is not responsible for replacement and/or restoration of improvements on individual lots damaged as a result of a casualty.

It is therefore the opinion of this Firm that damages on account of a casualty on an individually owned lot should be reported to the lot owners' insurance carrier.

I recommend amending the Declaration again in order to avoid these problems in the future. The amendments should include an affirmative obligation on the part of the Homeowner to purchase and maintain insurance on the individually-owned Lots (and improvements), more clearly

delineate the responsibilities for maintenance, repair and replacement and otherwise modify any objectionable terms.

Thank you for allowing the undersigned to be of service. I look forward to working with the Association.

Very truly yours,

LISA A. WOLINER
For the Firm

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