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Trevi Gardens Homeowners Association
P.O. Box 9238
Springfield, Illinois 62791

Re: Condominium Private Drive Maintenance, Repair and/or Replacement

The Trevi Gardens Homeowners Association ("HOA") has asked me for the HOA's obligations as to the private drives in the Trevi Gardens Fifth Addition P.U.D. Condominium (Collectively, the "Condominium Development").

The HOA has no obligation for the private drives at all. Instead, the responsibility for all maintenance, repair and /or replacement rests with the condominium board for the Condominium Development, as is described in detail below.

1. *The Condominium Declaration and Condominium Board*

The Condominium Development is governed by the "Declaration of Condominium Ownership Lots 20 & 21, Trevi Gardens Fifth Addition P.U.D. Condominium" ("Condominium Declaration"). The Condominium Declaration was recorded with the Sangamon County Recorder's Office on November 15, 1993 as Document No. 93-50928 and it provides that a unit owner ("Unit Owner") is someone with "Unit Ownership" as defined under Section 1(k).

Section 5 of the Condominium Declaration provides for the establishment of a board of directors ("Condominium Board") as the governing body for the administration and operation of the Condominium Development. Section 5 further provides that the Condominium Board is to cause the formation of a not-for-profit condominium association corporation, upon receiving authorization to do so from a majority of the Unit Owners.

The Condominium Board (and any resulting condominium association corporation) are separate and distinct from the HOA, and nothing obligates the HOA to act as Condominium Board for the Condominium Development. Notwithstanding the foregoing, however, Section 20-A of the Condominium Declaration provides that each Unit Owner is also a member of the HOA and is subject to HOA assessment fees that are over and above any condominium fees as may be made by the Condominium Board for the Condominium Development. The Condominium Development also provides that the Condominium Board (and any resulting condominium association corporation) and the Unit Owners must comply with the provisions in the covenants for the HOA but "[i]f there is a conflict between the terms and conditions of this Declaration and the Declarations of Easements, Covenants and Restrictions for Trevi Gardens, this [Condominium] Declaration and any required provisions supplied by the Condominium Property Act shall be controlling."

2. *Common Elements of the Condominium Development*

Section 1(f) of the Condominium Declaration further defines the Condominium Development's common elements ("Common Elements"). Common Elements include "all access roads and streets... Common elements shall specifically include those parts of Argenta Drive, Messina Drive and Racina Drive" (the "Condominium Roads"). The Condominium Declaration provides "[t]he Common elements shall not be subject to any assessment or levy for fees by the [HOA]."

Under the Condominium Declaration, each Unit Owner owns a percentage of the Common Elements in accordance with each Unit Owner's percentage of ownership as a tenant in common and further provides that the Condominium Board has the exclusive authority to adopt rules regarding these Common Elements. Consistent with that, the bylaws of the Condominium Development ("By-Laws") provide that the operation, maintenance, replacement and improvement of the common elements are the duties of the Condominium Board. Section 15 of the Condominium Declaration also states that, "No alterations of any Common Elements, or any additions or improvements thereof, shall be made by any Unit Owner without the prior written approval of the [Condominium] Board."


3. *Analysis*

The HOA is not obligated for any maintenance, repair and/or replacement of the Condominium Roads. Under the clear terms of the Condominium Declaration, the Condominium Roads are considered as Common Elements of the Condominium Development. Under both the Condominium Declaration and the Bylaws, repair of all Common Elements is the responsibility of the Condominium Board. Therefore, the HOA is under no obligation (financial or otherwise) to maintain, repair and/or replace the Condominium Roads.

Section 20-A of the Condominium Declaration makes it controlling over any contrary provisions in the HOA covenants. As such, any provision adopted by the HOA for the maintenance, repair and/or replacement of the Condominium Roads would be voided by Section 20-A, because the Condominium Board is vested with the sole obligation (financial or otherwise) for maintaining, repairing and/or replacing them. Accordingly, the Condominium Board (and not the HOA board) is solely responsible for same.

Thank you for allowing us to help you with this issue. Should the HOA Board have any questions regarding this issue, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael M. Durr", is written over the typed name.

Michael M. Durr

MMD:mw