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**VIA EMAIL**

April 15, 2008

Governors of Crystal Springs Condo. Association, Inc.  
c/o Robert Linney  
Advanced Condominium Management Corp.  
40 Mechanic Street, Suite 301  
Foxboro, MA 02035

**Re: Windows - Repair/Replacement Responsibility**

Dear Governors:

You have requested our opinion as to the maintenance, repair and replacement responsibility of the windows at the Crystal Springs' units. I have reviewed your constituent documents with this issue in mind. The following is my opinion regarding the above-referenced issue.

Section 7 of your master deed states, in relevant part that the boundary of the "unit" with respect to windows is to "the exterior surface of the glass and window frames." In turn, Article VIII, Section 7 of your By-Laws states, in relevant part, that:

**"All maintenance and replacement of and repairs to any Unit, whether structural or non-structural, ordinary or extraordinary, and to the...windows...belonging to a Unit Owner and not part of the common areas and facilities shall be done by the Unit Owner and at the Unit Owner's expense...."** [emphasis added].

Thus, the window assemblies (i.e., the glass, sash and frames) are defined as part of the applicable individual "units." As such, my opinion is that each unit owner is exclusively responsible to maintain, repair and replace both the windows and the window frames appurtenant to his or her unit under the By-Laws.

Finally, I understand that some of the unit windows may not have been flashed properly when installed by the original developer. Please note that condominium association boards do not succeed to the original builder/developer's obligations under settled Massachusetts law. As you know, a condominium association is merely the organization of the condominium's unit owners – and not an extension of the developer.

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Thus, if and to the extent that the unit windows installed by the original builder/developer were done improperly, then this would be an individual unit owner responsibility to correct the same under the maintenance, repair and replacement principles referenced above – subject, of course, to the Board’s architectural integrity controls re:same. However, the Board would be well within its authority to demand that a unit owner replace a window and/or its flashing at the unit owner’s expense if the Board believes that the building envelope/building structure may be damaged due to a window-related deficiency – and, if a unit owner fails to do so within a reasonable time, then the association could undertake the same and charge the costs thereof to the applicable unit owner. The preference clearly would be to cause the unit owner to arrange for the replacement of a defective window to prevent common area damage, as provided in the By-Laws.

In closing, I trust that the above responds adequately to your request. Please do not hesitate to contact me if you either have any questions or require further information.

Very truly yours,

MARCUS, ERRICO, EMMER &  
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