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July 29, 2014

Sturgeon Point Condominium
c/o Al Schrader, President
3344 Brunk Drive
Akron, Ohio 44312

Re: Amendments

Dear Mr. Schrader:

On behalf of the Board of Directors for the Sturgeon Point Homeowners Association, you requested our opinion as to the validity of the 2008 leasing restriction amendment and the Association's amendment procedures. My response to this request is based on my review of the information we received, the Sturgeon Point Declaration and Bylaws, including the amendments to the Declaration previously provided to us, research and review of the Ohio Condominium Act, and on our experience representing condominium associations throughout Ohio.

In my opinion, the 2008 leasing restriction amendment conflicts with the Declaration and is invalid. The Association's Declaration provides that an amendment requires 75% approval of the total voting power of unit owners at a meeting. The Declaration also provides that unit owners can vote in person or by a limited proxy. Please allow me to elaborate.

Declaration Article 14, as amended in 1990 provides:

Rental of Units. Apartment units shall not be rented for transient or hotel purposes, which are defined as a rental for any period of less than three days. With the exception of rentals for transient or hotel purposes apartment unit owners shall have the absolute right to lease their units, provided such leases are made subject to the covenants and restrictions contained in this Amended Declaration, and in the original Declaration and Bylaws, as such documents may from time to time be amended.

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In 2008, the Association attempted to add a leasing restriction provision to the Bylaws, however, the amendment never deleted the above Declaration leasing provision. Even if one could argue that the 2008 amendment is valid there is now a conflict between the Declaration and the Bylaws. When there is a conflict between the two governing documents, the Declaration controls. Furthermore, based on the information our office received the 2007 meeting minutes reflects that the leasing restriction amendment failed. In my opinion, Bylaws Article SEVEN, Section Nine entitled "Leasing and Rentals" is invalid.

Declaration Article 23 provides:

This declaration may be amended by the affirmative vote of those unit owners entitled to exercise not less than 75% of the total voting power of the unit owners' association, cast in person or by proxy at a meeting duly called and held in accordance with the original Bylaws...

Based on this provision, 75% of the owners must approve an amendment for it to be valid. These owners must attend the meeting or send in their proxies (e.g. a limited proxy). The 75% is not based on quorum though quorum must be established to have a legal meeting.

The Board must also be aware that courts have held that restrictions on leasing must be reasonable. The amendment language must be drafted to address grandfathering units and hardship exemptions, therefore, any total ban on leasing would not be upheld in court.

In summary, the 2008 leasing restriction amendment did not delete the Declaration leasing provision and therefore is invalid. Seventy-five percent of the unit owners must approve an amendment in person or by proxy at a meeting for it to be valid.

I trust the above responds to the Board's request. Should you or any of the Board members have any questions or wish to further discuss this matter, please do not hesitate to telephone me.

Sincerely yours,



LYNDA L. KOVACH

LLK/lml

xc: All Board Members