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June 19, 2023

VIA EMAIL (themeadowsofsevenpoints@gmail.com)

Judy Barwig
Board President
Meadows of Seven Points HOA

Re: Maintenance Opinion

Dear Ms. Barwig:

Please accept this Opinion in response to the Association’s request for an Opinion related to the Board’s control, concerning exterior maintenance. In preparation for this Opinion, I have reviewed the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Meadows of Seven Points (the “Declaration”), the Bylaws, the May 2023 Newsletter, the Rules and Regulations, correspondence from GAF Residential Services, and also the email from the resident.

The Newsletter states in part, “While it is the responsibility of each homeowner to pressure wash and seal their driveways and sidewalks routinely, if you have uneven slabs or developing holes in your sidewalks that would cause issues for wheelchairs, METRO is responsible for ADA Compliance.” It also states in part, “...residences with black stained algae roofs will be identified and provided with 30 days to bring their roofs back from the ‘black’ to the slate gray color. Inspection will occur in August allowing everyone at least three months to schedule beforehand.”

Per the email from a resident, some owners are disputing whether the Board can require them to pressure wash and seal their driveways and treat the roofs with algicide.

It is my opinion that the Board can require Owners to seal their driveways and to remove algae from their roofs. I do not see specific authority to require owners to pressure wash their driveways. However, I think the Board can act to require a driveway (if in an “unsightly condition”) to remediate that by a means the owner chooses. The Board’s authority comes from the Declaration, Bylaws, and Rules & Regs., which I will discuss below.

First, Article VII, Section 1 of the Bylaws gives the Board the power to (a) “Adopt and publish rules and regulations governing *the use of the Lots*, common area and facilities, and the personal conduct of the Members...” This particular language is very important. Most documents do not permit the Board to regulate the use of Lots, so this is crucial in the analysis. Additionally, Article VII, Section 4 of the Declaration gives the Board authority to make rules and regulations. It states, “The Association, acting through the Board of Directors, shall have authority to make and enforce reasonable rules and regulations and/or use restrictions, standards and restrictions governing the use of the property and Lots in addition to those contained here...Such rules and

regulations and/or use restrictions shall be binding upon all Owners, tenants, occupants and invitees until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of a Majority of the Members.”

The Board, in using the authority from the Declaration and Bylaws adopted the “ Meadows of Seven Points Rules & Regulations.” They provide in part, “Homeowner is responsible for maintenance of the home’s exterior and surrounding landscaping which includes, but is not limited to, the following: 1) **driveway, sidewalks cleaned and sealed as needed** and free of clutter; 2) **checking roofs for black algae growth and clean as needed...**” The Rules & Regs were approved on August 21, 2017, and Amended on December 12, 2022.

Not only are these maintenance requirements in the Rules, but they are also in the Declaration. Article VII, Section 2(b) provides, in part: “All driveways shall be sealed as needed with a sealer designed for the type of material currently in place. Sealers shall be high-gloss wet look clear or brown tinted product which is non-yellowing and UV resistant.” Additionally, Article VII, Section 9 states in part, “It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt conditions on his or her Lot...”

In sum, the Board is acting with proper authority to require Owners to seal their driveways, and clean algae from their roofs. They are also acting with proper authority when advising an Owner to clean their driveway, however, I do not think they can be forced to “pressure wash,” without a rule regarding the same.

I have additionally reviewed the letters from Heartland Roofing stating that if work is performed on the roofs, it will void the warranty. I also understand Heartland Roofing is claiming they cannot tell you what type of roofing was used (whether or not it is algae-resistant), and can only tell that to the homeowner. I would advise the respective owners that they have a duty to keep the algae off the roof. The “warranty” issue does not remove their duty to remove algae from their roofs. I would advise the Owners that they should contact Heartland to ask how they can clean the roof without voiding the warranty. The homeowner should get that information over to you, as allowing algae buildup is a violation of the governing and they can be subject to penalties/fines for failing to remediate.

Based on the “Facebook” correspondence provided, I would also make it clear to the Owners that you are not asking them to paint/re-do their roofs, yet merely to remove/clean the algae and/or black mold.

Please let me know if you have any questions.

Very truly yours,

ORTALE KELLEY LAW FIRM

Gerald C. Wigger

GCW/ef