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March 26, 2025

Via Email

Spring Forest Condominium Homeowners' Association, Inc.
Attn: Board of Directors
112 Williamsburg Drive
Greenville, NC 27858

Re: **Memorandum re Association Leak Policy**

Dear Directors:

This memorandum is submitted in order to provide you with a review and analysis of the Spring Forest Condominium Homeowners' Association, Inc. ("Association")'s governing documents, together with the requirements of Chapter 47C of the North Carolina General Statutes (the "Condominium Act"), as the same apply to various, previously submitted examples of leak-related issues between unit owners and the Association. This memorandum is intended to provide guidance with respect to frequently encountered leak issues, outlining the rights and obligations of the Association and its members with respect to leaks affecting the common elements, limited common elements, and individual units. However, this memorandum should only be used as a guide, and is not a substitute for the Board's thorough review of the facts in each situation, with counsel and its insurer, as may be presented in the future.

Review of Applicable Authority

The provisions for governance of any condominium association formed in North Carolina *on or after* October 2, 1986, shall be found within the provisions of Condominium Act, together with the association's own governing documents (namely the bylaws, declarations, and any amendments thereto).¹ Therefore, the discussions and counsel given in this memorandum will be based upon the provisions of the Condominium Act and the provisions of the Association's Bylaws² (the "Bylaws") and Declaration of Condominium³ (the "Declarations"), as amended.

¹ N.C. Gen. Stat. § 47C-1-102

² Recorded March 22, 1995, Book 567, Page 733, Pitt County Registry

³ Recorded March 31, 1995, Book 570, Page 87, Pitt County Registry



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The Condominium Act requires that the Association maintain, repair and replace the common elements.⁴ This may include limited common elements, as will be seen later. Unlike North Carolina's Planned Community Act, which governs single-family and other planned communities and certain townhomes, the Condominium Act does not allow an association's declarations or other governing documents to alter the association's obligations for maintenance, repair and replacement of common elements. With respect to this duty of maintenance, repair and replacement of the common elements, the material portions of the Condominium Act state as follows:

§ 47C-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

...(4) "Common elements" means all portions of a condominium other than the units...

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

...(16) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of G.S. 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

...(25) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to G.S. 47C-2-105(a)(5)....

§ 47C-2-102. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the

⁴ N.C. Gen. Stat. § 47C-3-107(a)



unit; and all other portions of such walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit but located outside the unit's boundaries are limited common elements allocated exclusively to that unit.

§ 47C-3-107. Upkeep; damages; assessments for damages, fines.

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit or the limited common element assigned to his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common element or limited common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

(c) If damage is inflicted on any unit by an agent of the association in the scope of his activities as such agent, the association is liable to repair such damage or to reimburse the unit owner for the cost of



repairing such damages. The association shall also be liable for any losses to the unit owner...

§ 47C-3-113. Insurance.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1), to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsection (a) or (b) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or members of his household;



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(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

Supplemental to the provisions of N.C. Gen. Stat. § 47C-3-107, the Association's Declarations provide in pertinent part as follows:

ARTICLE I Definitions

Definitions. As used herein, the following words and terms shall have the following meanings:...

1.6. Common Element. All portions of the condominium except the units. Limited common elements are common elements...

1.13. Limited Common Elements. Those portions of the common elements allocated by operation of Section 2-102(2) or (4) of the [Condominium] Act for the exclusive use of one or more, but fewer than all, of the units and also any limited common elements specifically allocated to units on Exhibit "B"...



1.20. Unit. Any portion of the condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the common elements as set forth on Exhibit "C". Each unit is designated and delineated on the floor plan...

1.21. Unit Boundaries. The boundaries of each unit, both as to vertical and horizontal planes, as shown on the floor plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all panelling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries...

5.11. Use of Limited Common Elements. Limited common elements assigned to the exclusive use of one or more units shall be kept in a clean and orderly manner. The Board may act as it deems necessary as to the limited common elements in the same manner as it would protect the common elements...

Exhibit B
Limited Common Elements

1. Balconies and patios. The balconies attached to the second floor units and the patios attached to the first floor units shall be limited common elements for the exclusive use of the unit to which they are attached.
2. Entrance walks and stairs. The entrance walks and stairs attached to each building shall be limited common elements, for the joint use of all of the units located in the building.
3. Entrance doors and outside windows (glass). The entrance doors and windows, including glass facing the exterior of the units, are limited common elements for the exclusive use of the unit in which they are attached.



ARTICLE VII

Management, Maintenance, Repairs, Replacements, Alterations, and Improvements

7.1 Common Elements.

(a). By the Association. The management, replacement, maintenance, repair, alteration and improvement of the common elements shall be the responsibility of the association, and, subject to the provisions of section 7.2 hereof, the cost thereof shall be a common expense to the extent not paid by unit owners pursuant to Section 7.1(b) hereof. All damage caused to a unit by any work on or to the common elements done by or for the association shall be repaired by the association, and the cost thereof shall be a common expense.

(b). By Unit Owner. Each unit owner shall pay all costs to repair and replace all portions of the common elements that may become damaged or destroyed by reason of his intentional acts or failure to act, or the intentional acts or failure to act of any occupant or visatee of his unit. Such payment shall be made upon demand made by the association.

7.2 Common Expenses Associated with Limited Common Elements or Benefitting Less than all Units.

(a). Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the unit, or in equal shares to the units, to which such limited common element was allocated at the time the expense was incurred, provided, however, that routine maintenance and repair to external surfaces located within limited common areas done in conjunction with routine maintenance and repair to the building as a whole, such as painting of the entire structure, may be born as a common expense without such allocation, at the discretion of the Board.

(b). In addition, the association may assess any common expense benefitting less than all of the units against the units benefitted in proportion to their common expense liability.

7.3. Units. Each unit owner shall maintain his unit at all times in a good and clean condition, and repair and replace, at his expense,



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all portions of his unit; shall perform his responsibilities in such manner as not to unreasonably disturb other occupants; shall promptly report to the Board, or its agent, any defect or need for repairs the responsibility for which is that of the association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the association, shall pay all costs to repair and replace any portion of another unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any occupant of his unit. Such payment shall be made upon demand by the unit owners of such other unit. Nothing herein contained shall modify any wavier by insurance companies or rights of subrogation.

7.4. Wavier of Claims. Except only as provided in Section 7.5(a) and (b), the association agrees that it shall make no claim against a unit owner or occupant, each unit owner and occupant agrees that he shall make no claim against the association, the members of the Board, officers of the association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other unit owners or occupants, for any loss or damage to any of the property, or to a unit or personal property therein, even if abused by the omission or neglect of any one or more of such persons; and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

With the foregoing in mind, the Board has requested that this memorandum discuss the rights and responsibilities of the Association and the unit owners, under the following scenarios:

1. A leak comes in the windows/doors/skylight of a unit and causes damage. Who is responsible for payment of the damages arising therefrom?

For purposes of this inquiry, it is presumed that the leak at issue originates from a single source (i.e., a window, door skylight or other feature) which is attributed to a single unit. Under N.C. Gen. Stat. § 47C-2-102(4) and Exhibit B to the Declarations, windows, doors, and similar features should be considered limited common elements, for the exclusive use of the unit to which they are attached. Under Section



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5.11 of the Declarations, such limited common elements are to be kept in "a clean and orderly manner" by the owner of the unit which is benefitted by the same.

To the extent that the damages are contained to the unit benefitted by the subject limited common element, that owner is responsible for the costs to correct the damage to their unit. To the extent that the damage is caused to the common elements (including other limited common elements) and the costs do not exceed the deductible of any applicable insurance coverage, the unit owner may be directed by the Association to repair the damage or the Association may undertake the repairs and invoice the owner for the costs.⁵

2. Leaks occurring between or affecting more than one unit:

- (a). Leak caused by a water heater, overflowing sinks or tubs, overflowing toilets or something else that is clearly inside a unit boundary.**

Unit boundary definitions between the Declarations and the Condominium Act are generally the same. Losses resulting from leak condition within the unit (as defined in N.C. Gen. Stat. 47C-1-103(25) and Sections 1.20 and 1.21 of the Declarations) are attributable to the unit from which the leak originated. Damage resulting from a limited common element and the damages to the common elements therefrom, are assessable against the owner of the unit to which the limited common element (water pipe) is dedicated.

As between unit owners, the owners should notify the Association of the loss and the Association should direct notice of the matter to its insurance carrier (see N.C. Gen. Stat. § 47C-3-113(b)). Furthermore, and based upon the likelihood that the Association's unit-required coverage excludes such a loss from coverage, each owner should be directed to submit a claim to their respective insurer for resolution.⁶ Section 7.3 of the Declarations appears to place an obligation for payment (in the absence of Association insurance coverage) upon the owner of the unit from which the leak or overflow originated, but note should be made with respect to Section 7.4

⁵ N.C. Gen. Stat. § 47C-3-107(b); Declarations Section 7.3.

⁶ See also Hyatt, Wayne, *Condominium and Homeowner Practice: Community Association Law* (2d ed. 1983) (noting it is important for the association's role to be understood, and that role does not include liability without fault and that as long as the officers and directors have performed reasonably and with diligence, and in the absence of negligence, the board will not be liable simply because an individual unit owner has suffered harm).



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of the Declarations, which constitutes a waiver of claims as between unit owners and the Association and unit owners as to property damage. Such waivers may be further binding upon the insurers of those parties, limiting recovery against unit owners for damages resulting from leaks in their units or attributable to limited common elements allocated to their unit(s), unless intentional, or possibly due to gross negligence (i.e., allowing toilets, sinks or other vessels to overflow).

(b). Leak caused by the water pipe in the wall, said water pipe not being a main servicing multiple units but only serving a particular unit.

Damage resulting from a leak in a water pipe which services only one unit of a building of the condominium is, under Section 1.13 of the Declarations as well as N.C. Gen. Stat. § 47C-2-102(2) (“any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit”), damage resulting from a limited common element and the damages to the common elements therefrom are assessable against the owner of the unit to which the limited common element (water pipe) is dedicated.

As between unit owners, the owners should notify the Association of the loss and the Association should direct the matter to its insurance carrier (see N.C. Gen. Stat. § 47C-3-113(b)). Furthermore, and based upon the possibility that the Association's unit-required coverage excludes such a loss, each owner should be directed to submit a claim to their respective insurer for resolution. Section 7.3 of the Declarations appears to place an obligation for payment (in the absence of Association insurance coverage) upon the owner of the unit the leak or overflow originated, but note should be made with respect to Section 7.4 of the Declarations, which constitutes a waiver of claims as between unit owners and the Association and unit owners as to property damage. Such waivers may be further binding upon the insurers of those parties, limiting recovery against unit owners for damages resulting from leaks in their units or attributable to limited common elements allocated to their unit(s), unless intentional or due to gross negligence (i.e., allowing toilets or other vessels to overflow).⁷

⁷ Note that such waivers were historically designed to promote harmony and good will between owners and the Association/board. In practice, these are not commonly of issue in the context of property loss absent intentional conduct resulting in the loss.



(c). Leak caused by a water pipe in the wall that services the whole building.

Damage resulting from a leak in a water pipe which services an entire building of the condominium is, under Section 1.13 of the Declarations as well as N.C. Gen. Stat. § 47C-2-102(2) ("any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements"), designated as a common element of the Association and therefore the responsibility of the Association to pay for repairs to all common elements and all matters and materials existing as of the original construction.⁸ Other damages (i.e., unit interiors) would fall to the unit owners and their insurers.

- 3. Units that are on top of each other share a common chase line. A chase line is the pipe that the A/C condensation lines as well as the drain lines run in. In most chase lien designs, the drain line for the upstairs unit and for the downstairs unit remain separate within the chase line. However, Spring Forest features a design wherein both drain lines openly drain or drop into one common drain line within the chase line. The drain line(s) build up sludge if not properly maintained by the owners and when this happens, the sludge can create an overflow from the chase/drain/condensation line onto the floor damaging the bottom unit. It is nearly impossible to prove if overflow results from a particular unit's drain line, but it is always the downstairs that pays for cleaning and damage.**

Analysis of this issue follows that of 2(b) and (c), above. Damage resulting from a leak in a drain pipe which services only one unit of a building of the condominium is, under Section 1.13 of the Declarations as well as N.C. Gen. Stat. § 47C-2-102(2) ("any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated exclusively to that unit"), damage resulting from a limited common element and the damages to the common elements therefrom, up to the deductible limit a provided in N.C. Gen. Stat. § 47C-3-107(b), are assessable against the owner of the unit to which the limited common element (water pipe) is dedicated

⁸ N.C. Gen. Stat. § 47C-3-113(b).



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(i.e., the upstairs unit owner). However, this requires that the cause of the damage be readily ascribable to that portion of the drain serving only that single.

In the event that the cause of the clog resulting in the overflow is shown to originate from or is likely to have originated from the portion of the common drain line serving both the upstairs and downstairs units, Section 1.13 of the Declarations as well as N.C. Gen. Stat. § 47C-2-102(2) ("any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements") indicate that the drain constitutes a common element and would thus fit within the class of damages to be covered by the Association. Put another way, because the line serves more than one unit, it is by definition a common element to be covered by insurance of the Association. Argument may be made that the bottom unit owner is in a particular position to maintain the chase/drain lines and that the bottom unit has a duty to maintain this portion, but the clogs may also stem from portions of the common line outside of both units.

As between unit owners, the owners should notify the Association of the loss and the Association should direct the matter to its insurance carrier (see N.C. Gen. Stat. § 47C-3-113(b)). Furthermore, and based upon the possibility that the Association's unit-required coverage excluded such a loss (or may have done so in the past), each owner should be directed to submit a claim to their respective insurer for resolution. Section 7.3 of the Declarations appears to place an obligation for payment (in the absence of Association insurance coverage) upon the owner of the unit the leak or overflow originated, but note should be made with respect to Section 7.4 of the Declarations, which constitutes a waiver of claims as between unit owners and the Association and unit owners as to property damage. Such waivers may be further binding upon the insurers of those parties, limiting recovery against unit owners for damages resulting from leaks in their units or attributable to limited common elements allocated to their unit(s), unless intentional or due to gross negligence (i.e., allowing toilets or other vessels to overflow).

4. Water intrusion from outside, but not thru a means described in example 1, above. For example, the water intrusion takes place through an exterior wall, the roof, or perhaps via the slab.

Each source of the leak described in this example is via a common element (see Section 1.6 of the Declarations). Under Section 7.1(a) of the Declarations, the Association would be responsible for repair of the malfunctioning portion of the common element involved, and any common element affected thereby. To the extent



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that the leak from a common element causes damage to a unit or units, the claim(s) should be submitted to the Associations insurance carrier under the horizontal boundaries provisions of N.C. Gen. Stat. 47C-3-113(b), as well the unit owner's policy, which may afford a secondary source of coverage.

- 5. In the event that one unit has smoke from a kitchen fire or other source, and the sprinkler system (in the sole building which possess the same) activates, causing water damage to multiple units, who is responsible for the damage caused by the system water?**

Because the loss described is occasioned by some accident or negligence activating the sprinkler system (a common element under Section 1.13 of the Declarations as well as N.C. Gen. Stat. § 47C-2-102(2) ("any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements")), rather than a defect with the sprinkler system occasioned by disrepair or a lack of maintenance, the unit owners should be instructed to make a claim against their respective unit insurance policies for repair of the damage to their units resulting from activation of the sprinkler system. Likewise, the Association would need to make a claim to its carrier with respect to repair of the common elements.

Regarding insurance, a condominium association must insure the common elements. Casualty insurance covers any structures on the common elements that may be damaged because of natural disasters, flooding, fire and the like. If there are structures being insured on common elements, the association needs to determine the value of the structures being insured. This can be done by having a professional appraisal done to determine the value of the property. Once the value of the structure is determined, the association should make sure it has replacement cost plus coverage, which assures full value replacement, without regard to a coverage dollar limit.

N.C. Gen. Stat. § 47C-3-113 only requires that the total amount of insurance, after tender of any deductibles (which is payable by the association for common element losses), shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. However, replacement cost plus is advisable. An open perils policy is preferable to a named perils policy because the coverage provided under the open perils policy is much broader. Open perils cover all the causes of loss not specifically excluded in the policy. Common exclusions on open peril policies include damage



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resulting from earthquakes, floods, nuclear incidents, acts of terrorism and war. However, a named perils policy requires the actual cause of loss to be listed in the policy for insurance to be provided.

Please review the foregoing, and feel free to submit any additional questions or reach out for comment. As always, we appreciate the opportunity to be of assistance.

Sincerely,

WHITE & ALLEN, P.A.

By: /s/ W. Lee Percise III
W. Lee Percise III, Attorney

WLP/wlp #23; 138040-00001

cc: File

