

April 21, 2004

Jennifer S. Gold, Esq.
Biltmore Properties, Inc.
2025 W. Long Lake Road, Suite 104
Troy, MI 48098

Re: **BARCLAY PARK
SATELLITE DISH ANTENNA LOCATIONS**

Dear Jennifer:

At your request, in order to assess its conformance to the Condominium Documents, we have reviewed the presentation of permissible satellite dish antenna locations which, we understand, the Barclay Park Association has added to the Barclay Park web page, <http://barclaypark.org>. We have concluded that the Condominium Documents specifically prohibit the installation of a satellite dish antenna in those locations which the Association has identified as permissible which are defined by the Condominium Documents as a General Common Element, and that Regulations promulgated by the Federal Communications Commission ("FCC") under the Telecommunications Act of 1996 do not require that a co-owner be allowed to install a satellite dish antenna in such a General Common Element location, even assuming that in a particular case the reception of a quality satellite signal requires a General Common Element installation.

GENERAL PRINCIPLES:

Neither the Telecommunications Act of 1996 nor the FCC Regulations require that the Association permit satellite dish antenna installations upon the general common elements of a condominium. Indeed, by definition, a General Common Element is owned, and is subject to the use in common by, all Co-owners; consequently, an individual Co-owner may not expropriate any General Common Element to his exclusive use for any purpose.

INSTALLATIONS BY UNIT MODEL:

The Hartford:

Mounting Option 1 describes and depicts an installation on the walking surface of the Limited Common Element front deck; Mounting Options 2 and 3 on the walking surface of the Limited Common Element rear deck and patio. In all instances, the installation is forbidden to project into the adjacent General Common Element space. Mounting Options 1, 2 and 3 are

consistent with Article VI, Section 3 of the Bylaws and satisfy FCC satellite dish antenna accommodation requirements.

The Providence:

Mounting Option 1 describes and depicts an installation on the walking surface of the Limited Common Element front deck; Mounting Option 2 on the General Common Element brick stanchion which separates the adjacent garage entrances to the Providence and Concord units. An installation in accordance with Mounting Option 1 may not project into the adjacent General Common Element space. The Association appears to acknowledge that, but has sought to minimize the extent to which, an installation in conformance with Mounting Option 2 will protrude into the adjacent General Common Element air space.

Mounting Option 1 is permitted by Article VI, Section 3 of the Bylaws, but Mounting Option 2 is not, since both the brick stanchion and the adjacent air space are General Common Elements. The Board of Directors of the Association is not authorized by Article VI, Section 11 of the Bylaws to promulgate a rule or regulation which is in derogation of the absolute prohibition of General Common Element installations (Article VI, Section 3). Assuming, for the purpose of this opinion, that a rear General Common Element installation may be necessary to obtain a quality signal, we nevertheless conclude that the Article VI, Section 3 prohibition of a General Common Element installation complies with FCC satellite dish antenna accommodation requirements.

The Bridgeport:

Mounting Option 1 describes and depicts an installation within the recessed entrance to the unit's garage; Mounting Option 2 on the wood surface of the wall leading to the Limited Common Element rear patio. In both instances, the installation may not project into the adjacent General Common Element space.

Neither Mounting Option 1 nor Mounting Option 2 is permitted by Article VI, Section 3 of the Bylaws. Notwithstanding that both prohibit protrusion into the adjacent General Common Element space, Mounting Options 1 (brick wall or stanchion) and 2 (wood surface of wall) permit the satellite dish antenna to be attached to a General Common Element. The Board of Directors of the Association is not authorized by Article VI, Section 11 of the Bylaws to promulgate a rule or regulation which is in derogation of the absolute prohibition of General Common Element installations (Article VI, Section 3). Assuming, for the purpose of this opinion, that a General Common Element installation at these locations may be necessary to obtain a quality signal, we nevertheless conclude that the prohibition of General Common Element installations in Article VI, Section 3 complies with FCC satellite dish antenna accommodation requirements.

The Bridgeport unit rear corner patio is assigned as a Limited Common Element. We note that a satellite dish antenna may be installed within this area, but it must be attached to the walking surface.

The Greenwich:

Mounting Option 1 describes and depicts an installation on the walking surface of the Limited Common Element deck located above the unit garage. The installation may not project into the adjacent General Common Element air space. Mounting Option 1 is permitted by Article VI, Section 3 of the Bylaws and satisfies FCC satellite dish antenna accommodation requirements.

The Concord:

Mounting Option 1 describes and depicts an installation behind the Limited Common Element air conditioning unit (outside the terrace, attached to its front wall); Mounting Option 2 on the brick stanchion which separates the adjacent entrances to the garages serving the Concord and Providence units. An installation in accordance with Mounting Option 1 may not project into the adjacent General Common Element space. The Association appears to acknowledge, but has sought to minimize, the extent to which an installation in conformance with Mounting Option 2 will protrude into the adjacent General Common Element air space.

Neither Mounting Option 1 nor Mounting Option 2 is permitted by Article VI, Section 3 of the Bylaws. Mounting Option 1 provides that the satellite dish antenna will be attached to the front terrace wall, which the Condominium Subdivision Plan depicts as a General Common Element. As to Mounting Option 2, both the brick stanchion and adjacent air space are General Common Elements. The Board of Directors of the Association does not have the authority under Article VI, Section 11 of the Bylaws to promulgate a rule or regulation which is in derogation of the absolute prohibition of General Common Element installations (Article VI, Section 3). Even assuming that a General Common Element installation may be required for a quality signal, we nevertheless conclude that the Article VI, Section 3 prohibition of a General Common Element installation complies with FCC satellite dish antenna accommodation requirements.

The air conditioning compressors in Barclay Park are assigned as Limited Common Elements. The Condominium Documents are unclear as to whether the air conditioning compressor pad also is a Limited Common Element. Assuming that the air conditioning compressor pad is a Limited Common Element, and also assuming that an air conditioning pad installation can be made safely (i.e., without interference with the operation of the air conditioning compressor) and without protrusion of the satellite dish into the adjacent General Common Element air space, the Board could permit satellite dish antenna installations behind the air conditioning compressor, but only if attached to the air conditioning compressor pad.

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We hope that you have found the foregoing to be helpful and that it also will assist the Association in its effort to provide guidance to the Co-owners of Barclay Park. Please advise should you require additional information or analysis.

Very truly yours,

MEISNER & ASSOCIATES, P.C.

David S. Keast