

February 21, 2007

PERSONAL AND CONFIDENTIAL

Re: Treo @ Kettner Homeowners Association - Preliminary List of Defects

Dear Treo Owner:

The Association has filed a lawsuit in San Diego Superior Court, case number GIC 879718. The lawsuit was filed February 7, 2007, and is entitled *Treo @ Kettner Homeowners Association v. Sundt Construction, et al.* The lawsuit names the subcontractors and design professionals and manufacturers responsible for the defects at the project. The Association currently has an agreement not to sue the developer pending further settlement discussions.

Enclosed you will find a "Preliminary List of Defects" which is required by law to be provided to the Treo owners. The list may be amended from time to time. If you are selling or refinancing your condominium, you may be required to provide this document to escrow, a buyer or a lending institution.

Should you have any questions about this Preliminary List of Defects or questions about the ongoing litigation, please e-mail the Association's general manager at safkhami@meritpm.com.

Sincerely,

EPSTEN GRINNELL & HOWELL, APC

Jon H. Epsten

JHE/tmc
enclosure

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TREO @ KETTNER HOMEOWNER ASSOCIATION
PRELIMINARY LIST OF DEFECTS

This Preliminary List of Defects is provided pursuant to Civil Code section 1368. The items identified below are being addressed as part of on-going negotiations between the Association and the developer. The List of Defects was compiled, as required by law, for disclosure purposes to the Association's Owners because the Association had to file a lawsuit against the subcontractors and manufacturers to preserve its legal rights while negotiations are continuing. The Association has an agreement with the developer not to file suit against the developer, while at the same time preserving its legal rights.

- (a) Soil subsidence at east and west elevations near street sidewalk;
- (b) Defective counterflashings at planters;
- (c) Cracking, spalling, improperly placed structural reinforcing bar, and leaking concrete floors and shotcrete walls;
- (d) Misaligned and discontinuous expansion joints;
- (e) Inadequate waterproofing at planters;
- (f) Leaks and ponding at patios;
- (g) Cracks in concrete pool deck;
- (h) EIFS failure, including cracks, debonding, splits, open joints and internal water damage;
- (i) Rough and uneven surfaces, leaks and insufficient flashing and counterflashing along concrete fascias, planters and potshelves;
- (j) Lack of building paper behind stucco;
- (k) Stucco inadequately sealed;
- (l) No counterflashing at Davit Pedestals;
- (m) Cross-connected drains and overflows on roof;

- (n) Incomplete and loose flashing and counterflashing on roof;
- (o) Incomplete metal cap flashing on elevator trash chute;
- (p) Leaks, ponding, insufficient offset to interior;
- (q) Insufficient deck to wall flashing and waterproofing at balconies and decks;
- (r) Ponding, peeling membrane, insufficient offset to interior;
- (s) Insufficient deck to wall flashing at breezeways;
- (t) Incomplete firestops;
- (u) Leaks, gaps in flashing, incomplete sealant, tears, gaps in windows and doors;
- (v) Unfinished interior floors and walls;
- (w) Leaks in fire box;
- (x) Excessive gaps between railings;
- (y) No guard railings below stairs;
- (z) Inadequate dryer vents; and
- (aa) Inadequate domestic plumbing system

The following statement is required by law:

"A final determination as to whether the list of defects is accurate and complete has not been made."

Dated: February 13, 2007

EPSTEN GRINNELL & HOWELL, APC



Jon H. Epstein

2/2009

UPDATE ON THE CONSTRUCTION DEFECT

We are pleased to announce that following the Appellate Court's overturning of the trial court's decision to deny the Association the right to a jury trial, the Supreme Court of California has refused to review the matter further. So what does this mean? As you may recall, the trial court ruled that the Association's CC&Rs required that the construction dispute with the Builder Parties be heard by judicial reference (a process using a private retired judge or lawyer). The Board believed that requiring the use of judicial reference, as opposed to having the case heard by a jury, denied the Association its fundamental right to a jury. The Association challenged the trial court's ruling by filing a writ with the Appellate Court. The Appellate Court overturned the trial court's ruling against the Association. The developer petitioned the California Supreme Court asking it to review the Appellate Court's decision, but the Supreme Court refused to hear the matter further. The result is that the Association has the right to have its case heard before a jury.

Just before the holidays, the Association and many of the defendants met to discuss a way to organize the case for mediation prior to commencing costly depositions in furtherance of trial preparation.. As a result of that meeting, the Superior Court on December 24, 2008, ordered all the parties to mediation before mediator James Roberts. Following expert meetings in January and the exchange of documents, mediations will occur throughout March 2009. The Board is optimistic that most, if not all, the case can be resolved in mediation. The Superior Court has the option to order additional mediations if they are warranted. We will keep you posted at Board meetings as to the status of the mediations.

We would ask that owners who have not provided assignments of rights to the Association do so immediately. If you have questions about the assignment of rights forms or need an additional copy of the form, please e-mail manager Sabrina Afkhami (safkhami@meritpm.com.) with your questions or requests. Lastly, as has been previously stated numerous times, if you wish to pursue any independent claims you may have against the Builder Parties; we suggest that you contact independent legal counsel for advice. The Association is pursuing only common area defect claims, separate interest damage caused by common area defects and any defect claims assigned to the Association. If you do retain independent counsel, they may contact our counsel with any questions they may have about the Association's litigation (Jon Epsten at (858) 527-0111).

Kettner HOA website go to:

4TKETTNER.COM