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6570-001

**New Columbia Owners Association**

**Board of Directors**

c/o Darcy Vincent

Guardian Property Management

4605 N Trenton

Portland, OR 97203

Re: *Reserve Assessment Contribution Allocation*

Dear Board:

This letter is in response to a request for a legal opinion regarding the allocated responsibility of the various categories of owners for assessment contributions to the reserve fund. In preparing this letter, I have reviewed the following documents pertaining to New Columbia:

1. First Amended and Restated Declaration of Covenants, Conditions and Restrictions for New Columbia, New Columbia 2, New Columbia 3, New Columbia 4, New Columbia 5, and Partition Plat of New Columbia Lot 198, recorded July 28, 2005, as Document No. 2005-140563, in the records of Multnomah County, Oregon (“Declaration”);
2. Bylaws of New Columbia Owners Association (“Bylaws”);
3. Plat of New Columbia, recorded March 31, 2004, in Plat Book 1262, Pages 37-59 in the Plat Records of Multnomah County, Oregon;
4. Plat of New Columbia No. 2, recorded July 28, 2005, in Plat Book 1269, Pages 55-60, in the Plat Records of Multnomah County, Oregon;
5. Plat of New Columbia No. 3, recorded July 28, 2005, in Plat Book 1269, Pages 61-62, in the Plat Records of Multnomah County, Oregon;
6. Plat of New Columbia No. 4, recorded July 28, 2005, in Plat Book 1269, Pages 63-64, in the Plat Records of Multnomah County, Oregon; and

7. Plat of New Columbia No. 5, recorded July 28, 2005, in Plat Book 1269, Pages 65-66, in the Plat Records of Multnomah County, Oregon.

No other recorded or unrecorded documents, including rules, regulations, or resolutions of the Board, have been provided to me and were not included in my review. A separate review of those documents would need to be made to the extent that any documents not included in my review could affect or be affected by this opinion letter.

In order to fully understand how the reserve allocations are set up, it is important to first understand the terminology used in the Declaration dealing with them. First, the Declaration distinguishes between “Single-Family Lots” and “Multi-Family Lots.” Single-family Lots are defined as those lots designated for single-family residential use on them, regardless of the number of actual residences built on the lot. (Decl., Sect. 2.26). In contrast, Multi-Family Lots are those Lots designated for multi-family and mixed residential/commercial use. (Decl., Sect. 2.17).

The term “Unit” is defined by the Declaration based on the type of lot at issue. Thus, in the case of a Single-Family Lot, the Single-Family Lot, alone, is considered a unit. (Decl., Sect. 2.28). Conversely, in the case of a Multi-Family Lot, a Dwelling—itsself defined as a single household dwelling—is considered a unit. *Id.* As a result, every single-family lot and every residential apartment or dwelling on a multi-family lot qualify as an individual Unit.

This background is important because of the treatment of the different categories of assessments outlined in the Declaration. For example, as you are aware, Regular Assessments and Monthly Assessments are allocated differently for each Unit depending on whether the Unit attached to a Single-Family Lot or a Multi-Family Lot. (Decl., Sect. 5.3.2). In stark contrast, the reserve assessment allocation does not make such a distinction. (Decl., Sect. 5.7.2).

Section 5.7 of the Declaration governs the Association’s reserve account and reserve account funding. It requires that a “Common Property Reserve Account” be created to be used “exclusively for” replacement of items of common property that will normally require replacement in more than three (3) and less than thirty (30) years. (Decl., Sect. 5.7.1). “Common Property” includes all real property, interest in real property, or improvement on real property that is owned or leased by the Association, or designated as common property in the Plat of New Columbia. (Decl., Sect. 2.9).

At least annually, the Association is required to inventory all items of common property to estimate the remaining useful life of each component of common property. (Decl., Sect. 5.7.2). The Association is also required to estimate the current replacement cost of each component of common property at the time the inventory is made. *Id.* The Association then calculates the sum of the estimated replacement cost of all components of common property to determine the total amount of the “Common Property Reserve Assessment” for a particular year. *Id.*

Each Unit in the Association is assessed a share of the total amount of the Common Property Reserve Assessment for a particular year. *Id.* In addition, unlike with Regular and Special Assessments, each Unit has an equal share of the Common Property Reserve Assessment because the Association is required to “impose an assessment to be called the ‘Property Reserve Account Assessment’ against each Unit *on the basis of one (1) assessment unit per Unit.*” *Id.* (emphasis added).

In conclusion, every home, apartment, or other residential dwelling *pays an equal share* of the reserve fund assessment. There is no distinction based on type of lot (single-family versus multi-family). Likewise, there is also no distinction based on the number of apartments or dwellings on a single lot. The Board, therefore, must be vigilant in distinguishing between types of assessments that are levied to ensure that the proper allocation for each category of assessment.

If you have any questions or concerns regarding this letter or this issue, please call me.

Very truly yours,

VIAL FOTHERINGHAM LLP



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