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June 3, 2004

Board of Directors  
AUO of North Shore Terrace Condominium  
96 N.W. 33<sup>rd</sup> Place, Unit A  
Newport, OR 97365

**AUO = Association of Unit Owners**

Dear Directors:

Chairman Johnsen requested a letter explaining in non-technical language:

1. The dividing lines between an individual unit, which is the financial responsibility of the individual owner, and the common elements, which are the financial responsibility of the unit owners association; and
2. The feasibility and requirements to change the obligation for dues from equal payment for each unit to a structure in which the amount of dues charged to each unit varies with the size of the unit or other factors.

The information in this letter is based on the recorded declarations creating the various stages or buildings as condominiums, and the Oregon Condominium Act found in Oregon Revised Statutes (ORS) Chapter 100.

1. Dividing Lines Between Units and Common Elements.

Units include the drywall, carpet and pad, tile, any hardwood flooring, and other finish materials attached to the walls, ceilings or floors of the units.<sup>1</sup> Units include all parts of non-bearing interior walls.<sup>2</sup> Also, windows, window frames, exterior doors, and door frames are parts of each unit.<sup>3</sup> Finally, units include the outlets of all utility lines within the unit, including water, gas, electricity, waste disposal, and ventilation, but do not

<sup>1</sup> Declaration recorded 4/1/92, Section 7; ORS 100.510(1).

<sup>2</sup> ORS 100.510(2)(a).

<sup>3</sup> ORS 100.510(2)(a). Section 7 of the Declaration recorded 4/1/92 states that “each unit is bounded by the interior surfaces of its perimeter, including . . . window and window frames, doors and door frames . . .” Section 8(a) fails to list windows or doors as general common elements. ORS 100.510(2)(a) clearly states that windows, window frames, exterior doors, and door frames are part of the unit, unless provided otherwise in the declaration. I conclude that all parts of windows, etc., are part of the units, not just their interior surfaces.



include any parts of such pipes, lines, wires or ducts.<sup>4</sup> Therefore, things like electric outlets, light switches and vent covers are included. Of course, lights, plumbing and other kinds of fixtures within the unit's boundaries are parts of the unit.

Basically, everything else are common elements, meaning they are owned in common by all owners, and are the responsibility of the association. Thus, the ground, foundations, beams, rafters, joists, subflooring, roofs and roofing materials, exterior walls, siding, and all parts of the walls, floors, or ceilings that materially contribute to the structural or shear capacity of the buildings constitute general common elements.<sup>5</sup> In multi-story units, the floor structure between the levels are common elements because they contribute to structural or shear capacity. The utility lines, pipes, wires and ventilation ducts are also parts of the general common elements.<sup>6</sup>

Limited common elements are a kind of common element that, according to the declaration, are reserved for the exclusive use of one or a limited number of units. These are specifically described in the declaration for each building, and include things like particular small yard areas, entry ways, decks, patios, garbage receptacles and storage areas, and the supplemental sewage pumping system shared by two of the buildings.

This explanation should cover most of the issues in this area that you have encountered or are likely to encounter. If other questions arise, I would be happy to attempt to answer them for you.

## 2. Allocation of Dues (Assessments).

The Declarations generally provide that all common expenses of the association, including repair and maintenance of general and limited common elements, are allocated on the same basis as ownership of the general common elements.<sup>7</sup> Thus, the owners of each unit must pay 1/32<sup>nd</sup> of the common expenses. An exception relates to the supplemental sewage pump system which serves eight units. The entire expense of maintaining and repairing this system is divided equally among only the eight units that use the system.<sup>8</sup> However, the cost of electrical service to operate the pump is expressly declared to be a common expense of all owners.

Changing this allocation is extremely difficult. Any amendment of the declaration requires the affirmative vote of at least 75% of the owners of all units, as well as the approval of the Oregon Real Estate Commissioner and the Lincoln County Assessor.

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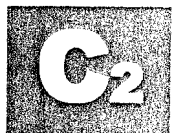
<sup>4</sup> Declaration, Section 7; ORS 100.510(2)(b).

<sup>5</sup> Declaration, Section 8(a); ORS 100.005(16) and 100.510(1).

<sup>6</sup> Declaration, Section 7; ORS 100.005(16).

<sup>7</sup> See Declaration recorded 4/1/92, Section 9.

<sup>8</sup> Supplemental Declaration for Stage IV, Section 7; Supplemental Declaration for Stage V, Section 7.

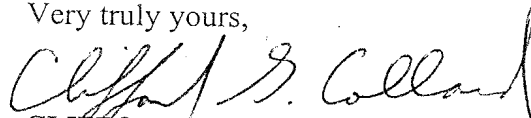


Board of Directors  
North Shore Terrace Condominium  
June 3, 2004  
Page - 3

However, any change to the allocation of liability for common expenses must also be approved by the owners of the "affected units." ORS 100.135(6). Clearly, all owners whose percentage would be increased would have to vote in favor of the proposal for it to pass.

I appreciate the offer to be of service to you. Feel free to let me know if you have any questions or there is anything further that I can do.

Very truly yours,

  
CLIFFORD G. COLLARD

CGC/kfj

