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LEGAL MEMORANDUM

TO: President Sherri Brown
Board of Directors
Sahhali Shores at Neskowin Consolidated Owner's Association

FROM: Heather Reynolds, Attorney at Law

RE: Members of Association

DATE: September 29, 2015

Question: The Sahhali Shores at Neskowin Consolidated Owner's Association (Owner's Association) Board of Directors has asked what properties are included in the membership of the Owner's Association.

Answer: The properties included within the Owner's Association are Lots 1-28, Sahhali Shores at Neskowin; Lots 29-48, and Tract A, Sahhali Shores at Neskowin Unit One; Lots 49-60 Sahhali Shores at Neskowin Unit Two; Lots 61-86 of Sahhali Shores at Neskowin Unit Three; Parcels 1 and 2 of Partition Plat 2003-27; Parcels 1-3 of Partition Plat 2001-08: and the open space adjoining lot 49.

Discussion: The land that is in a homeowner's association is determined by what is described in Declaration of Covenants, Conditions and Restrictions (CCRs) that are recorded with the county clerk. The CCRs that control the Sahhali Shores at Neskowin Consolidated Owner's Association have been amended numerous times. The original CCR's were (shown by recording dates) recorded August March 6, 1979 and last amended January 8, 1993. Then, an Amended Declaration of Covenants, Conditions and Restrictions of Sahhali Shores at Neskowin was executed January 21, 1999, and recorded May 26, 1999 in Book 407, Page 762 Tillamook County Deed Records. This document was intended to restate the CCRs and entirely replace all prior documents. The land included under this document was Lots 1-28 of Sahhali Shores at Neskowin, and Lots 29-48 and Tract A of Sahhali Shores at Neskowin Unit One.

The 1999 CCRs were amended by an amendment recorded November 18, 2002 in Book 441, Page 428 to add the land described as Sahhali Shores at Neskowin Unit Two, Lots 49-60, together with the open space adjacent to Lot 49.

Additional property was added by a CCR amendment recorded July 16, 1999, and the property was subsequently partitioned into parcels 1-3 of Partition Plat 2001-08.

By amendment recorded May 7, 2003 as Instrument ("Instrument" replaced "Book" as the place for recording) 2003-420203, property consisting of lots 61-86 Sahhali Shores at Neskowin Unit Three was added.

On August 21, 2003, an amendment to the CCRs was recorded to add the property that became partitioned as parcels 1 and 2 of Partition Plat 2003-27.

The CCRs were subsequently amended by recording July 14, 2006 as Instrument 2006-006116 to address timeshares, and on May 2, 2011 by Instrument 2011-002402 to address garages and parking. (No additional land was added).

There has apparently been some concern as to whether the parcels in the partition plats, added to the CCRs in 1999 and 2003, were, and remain, subject to the CCRs. While there may have been some irregularities with the forms of the CCR amendments, ORS 94.590(4) provides that an amendment to a CCR is conclusively presumed to have been regularly adopted unless challenged within one year of recording. Further, a covenant is a servitude against property that "runs with the land" and is binding on heirs, successors and assigns. CCRs cannot be removed by foreclosure or any action other than amendment pursuant to ORS 94.590 and a deed or release from the homeowners association. See, *Westwood Homeowner's Association v. Lane County*, 318 OR 146, 864 P2d 350 (1993).

It may be that part of the confusion in this matter arose because more property is in the CCRs of the Owners Association than are platted lots in a Sahhali Subdivision. Thus, when you request a print-out from the assessor of everything with Sahhali in it, a "word search" of their system does not show the parcels in the two partition plats. The name on a plat does not affect the validity of any CCRs that may benefit and burden the property in the plat.

There has been some question regarding the language of Partition Plats 2001-08 and 2003-27, and whether it included all encumbrances or was limited to wildlife protection. The CCRs, referenced as Book 407, Page 762, show on the face of both plats. When a plat is submitted to the County, a surveyor must certify over his stamp, and a developer declare under oath on the face of the plat, that a plat shows all easements existing or created or any other restriction (See, ORS 92.050(6), 92.070 and 92.075), and the County Surveyor is only statutorily permitted to accept the plat if it shows all easements and encumbrances of record (ORS 92.090). If language on the face of a plat is considered ambiguous, the intent of the surveyor is strong evidence for resolving the ambiguity. *Bloomfield v. Weakland*, 199 P3d 318, 224 Or App 433 (2008).

I contacted Dale Barrett, the HLB partner who oversaw the survey of Sahhali Shores, and he stated (specifically addressing survey plat 2003-27):

"I did two things to try to confirm the intent of the Conditions and Restrictions that apply to the Sahhali Shores Unit 1 and the Partition Plat 2003-27. First I reviewed our files when the plats were created. Second I contacted the Surveyor, Mark

Tellhed, PLS that prepared and stamped both the Sahhali Shores Unit 1 and the 2003 Partition Plat.

I did not find anything in our files that indicated the Sahhali Shores CC&R's intent was to exclude the owners of the 2003 Partition from the ownership or restrictions. The CC&R was specifically amended and recorded as Inst #2003-424451 to include the area in Partition Plat 2003-27. My opinion of how the Partition Plat 2003-27 Conditions & Restrictions statement reads is the previous recorded CC&Rs are a part of the conditions. Note both the Conditions & Restrictions shown on Sahhali Shores at Neskowin Unit one (dated Aug 1998) and the 2013-27 Partition plat read the same except the amended CC&R document was listed as Instrument 2003-424451 was added to the statement."

The surveyor who prepared the plats stated as follows:

"I reviewed the partition plat and the previous and subsequent plats in T5S,11W, Sec13, and as I remember all property was owned by Sycan B Corp. It was the intent of the partition and all subdivision plats to bind property owners to the original covenants and restrictions as well as any amendments thereof. The conditions of Fish and Wildlife as shown on the plat were a requirement of that agency to absolve themselves of any wildlife damage and was separate from the original covenants. It was the intent for all restrictions and conditions to be applied to property owners equally."

There is no doubt the property on these partition plats was written and recorded as subject to the CCRs.

I have provided your Board with Lot Book Reports from First American Title on a sample parcel from both partition plat 2001-08 and 2003-27. The title company was paid for these reports, and required to show every encumbrance in its Tract Indices (although it is not guarantying title as it would be when insurance is issued). The title company finds that the parcels in each partition plat (2001-08 and 2003-27) are subject to the CCRs of the Sahhali Shores at Neskowin Consolidated Owner's Association.

Summary: In summary, lots 1-28 on the original Sahhali Shores at Neskowin plat, the lots (29-86) on the plats of Sahhali Shores at Neskowin Units One, Two and Three, the parcels in partition plats 2001-08 and 2003-27, Tract A and open space adjacent to lot 49, are all part of the Sahhali Shores at Neskowin Consolidated Owner's Association.

Please advise if the Board has additional questions or concerns.