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September 23, 2013

SENT VIA EMAIL: dhensing@mac.com
David Hensing, President
Villas at Cattail Creek Condominium, Inc.
15230 Callaway Court
Glenwood, Maryland 21738

RE: Villas at Cattail Creek Condominium, Inc.
Replacement of Trees Located in Front of Units

Dear Mr. Hensing:

This letter is to advise the Villas at Cattail Creek Condominium, Inc. (herein after the "Association") regarding the Association's obligation and responsibility for the replacement of trees within the front yard of several units within the Association. As discussed in more detail below, it is our opinion that the Association is not obligated to replace the trees within the yards which are Limited Common Elements appurtenant to individual units. In our opinion, the governing documents of the Association place this responsibility on the individual Unit Owners.

It is our understanding that four trees in question have been affected by a blight or a disease, and the issue of replacing these trees has been raised by the four Unit Owners affected by this situation. These four trees were installed by the Developer and not by the individual Unit Owners. It is also our understanding that the Association has contacted an arborist and the Association's landscaping company to examine the damage to the trees. They opined that this disease is common to this particular species of tree and that there is nothing the Association could have done to prevent the damage from occurring. They have also recommended that either the trees be significantly pruned or the trees be completely removed. However, the former is not an option because it would ruin the aesthetic value of the trees. The remaining issue is whether the Association or the Unit Owners are financially responsible for the replacement of the trees.

As you are aware, the Association is governed by the Declaration and Bylaws recorded in the Land Records of Howard County, Maryland. Article V(a)(i) of the Association's Declaration

defines a "Yard Limited Common Element" (hereinafter "YLCE") to include "each of those front, side or rear yard areas specifically designated by such name on the Condominium Plat." Article VII(d) of the Declaration states that the maintenance of the Limited Common Elements shall be performed by the Association in accordance with the provisions of the Declaration and Bylaws. Article XIII, Section 1, of the Association's Bylaws deals with the maintenance responsibilities of Unit Owners. It states:

[E]ach Unit Owner shall maintain, repair and replace all portions of his Unit and the Limited Common Elements appurtenant thereto, and each improvement thereon or therein, except those portions of or duties with respect to the Limited Common Elements or Units which are, under the provisions of the Declaration or these By-Laws, to be undertaken by the Council.

Article XIII, Section 2, of the Bylaws deals with the maintenance responsibilities of the Association, and it reads:

Except as provided elsewhere in the Declaration or these By-laws, the Council shall maintain, repair, and replace all Common Elements, the costs of which shall be a Common Expense; provided, however, the Council shall not be responsible for replacement of any Limited Common Element.

Even though Article XIII, Section 2, of the By-laws states that the Association is not responsible for the replacement of the YLCEs, it assigns YLCE maintenance and landscaping responsibilities to the Association. Another provision within the Association's Bylaws also deals with YLCEs. Article VIII, Section 1(e) of the By-laws, states that the Association may pay out of the Common Expenses the cost for "maintaining, replacing, repairing and landscaping the General and Limited Common Elements (including, without limitation, Yard Limited Common Elements...)".

There appears to be a conflict within the Bylaws as to the present issue of financing the replacement of the YLCEs. While Article XIII, Section 2, of the By-laws specifically states that the Association is not responsible for the replacement of the YLCE, Article VIII, Section 1(e) of the By-laws appears to state that it is the Association's responsibility. However, this apparent conflict is resolved by reading the introductory paragraph to Article VIII, Section 1, of the By-laws, which states that the Association "may" pay for the replacement of the YLCEs as a Common Expense. This provision should be interpreted as the Association has the option to pay for the replacement of the YLCEs, but is not required to do so. Such an interpretation is then supported by Article XIII, Section 2, of the By-laws, which specifically states that the Association is not responsible for the replacement of any Limited Common Element. This would include the YLCEs. In addition, the Board passed a resolution in September 2008,

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specifically stating that it would not pay for the replacement of the plantings in the builder installed areas.

It should be noted that the Association has a maintenance responsibility for the YLCEs under Article XIII, Section 2(d) of the Bylaws but not replacement responsibilities. It is our understanding that the Association's landscaping company regularly maintains these areas, and that in their opinion (and the opinion of an arborist) nothing could have been done to prevent the blight currently damaging the trees in question. Therefore, it does not appear that the Association failed in its maintenance responsibilities for the trees within the YLCEs.

Based upon these provisions of the Association's governing documents, it is our opinion that the Association is not required to pay for the replacement of the trees on the four YLCEs in question. The individual Unit Owners are financially responsible for the replacement of the trees in the YLCEs appurtenant to their Units.

In addition, the Unit Owners have an obligation under Article XIII, Section 1, to maintain the YLCEs appurtenant to their Units, and the failure to do so is a violation of the Bylaws. Article XIII, Section 1, provides the Association with a right of entry to remedy a violation of the maintenance obligations, and the expense of correcting the violation can be levied against the Unit Owners.

Our opinion in this matter is based on the facts as presented to our office. Please let our office know if any of the facts as discussed above have changed. I hope that this letter addresses any questions that the Association has regarding this matter. Should you or the Board of Directors have any additional questions or wish to discuss this matter further, please do not hesitate to contact our office.

Sincerely,



Steven M. Gassert

cc: Liz Hagerty, Community Manager

At the August 20th Board Meeting the Secretary was ask to send the following notice of the Board Action:

Unit owners are responsible for replacing dead trees, shrubs and other plants located in front, side and rear yards.

At the August 20, 2013 Board Meeting the Board reaffirmed the 2008 Board Decision on unit owner responsibility for replacing unit plantings:

Motion made and approved to continue the policy established by 2008 Board requiring unit owners to pay for replacement of trees, shrubbery and other plants located in front, side and rear yards.

At the September 8, 2008 Board Meeting the following Policy Guidance on maintenance of added planting beds and on future replacement plantings was approved:.

It was moved, seconded and passed that the rule as expressed in the by-laws be followed, i.e. Article XIII, section 2, paragraph C. "...a unit owner shall be solely responsible for any landscaping, flower beds and the like installed by such Unit Owner on the Yard Limited Common Element appurtenant to his Unit...";

It was also moved, seconded and passed that the Association will not replace or pay for replacement of plantings in the original (builder installed) areas.



Ideas that work.

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March 25, 2014

Via E-mail Transmission

Board of Directors
Villas at Cattail Creek Condominium, Inc.
c/o Renee Parcover, President

Re: Replacement of Existing Trees on the Yard Limited Common Elements

Dear Members of the Board of Directors:

We are writing to assess whether the Villas at Cattail Creek Condominium, Inc. ("Association") is responsible for the replacement of existing bushes and trees located in the Yard Limited Common Elements ("Yard LCEs"). As set forth in greater detail below, based on our review of the Maryland Condominium Act ("Act") and the Association's By-Laws, the Association is responsible for replacing existing trees and bushes in the Yard LCEs, if the bush or tree is dead or dying, or if the Board otherwise chooses to do so. However, the owners of the units to which the Yard LCEs are appurtenant may plant new trees or bushes in their Yard LCEs, but they will then be responsible for the replacement of those bushes or trees they plant.

Section § 11-108.1 of the Act establishes the default maintenance, repair and replacement obligations for condominiums and provides:

Except to the extent otherwise provided by the declaration or bylaws, and subject to §11-114 of this title, the council of unit owners is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit.

Therefore, unless the Association's Declaration and By-Laws provide otherwise, the Association is responsible for the maintenance, repair and replacement of the Yard LCEs, which are part of the common elements of the Association.

Article XIII of the By-Laws specifically addresses the unit owners' and the Association's maintenance, repair and replacement obligations. With respect to the unit owners' obligation, Article VIII, Section 1 provides in relevant part:

Section 1. Maintenance by Owners. Except as otherwise provided in Section 2 of this Article XIII, each Unit Owner shall maintain, repair and replace all portions of his Unit and the Limited Common Elements appurtenant thereto, and each improvement thereon, except those portions of or duties of with respect to the Limited Common Elements or Unit which are, under the provisions of the Declaration or these By-Laws, to be undertaken by the Council.

Based on the above, a Unit Owner is responsible for the maintenance, repair and replacement of all of his Limited Common Elements, except as provided in Section 2.¹ We thus must turn to Article XIII, Section 2 of the By-Laws.

Article XIII, Section 2 of the By-Laws provides in relevant part:

Section 2. Maintenance by the Council. Except as provided elsewhere in the Declaration or these By-Laws, the Council shall maintain, repair, and replace all Common Elements, the costs of which shall be a Common Expense; provided, however, the Council shall not be responsible for replacement of any Limited Common Elements.

By way of example and not as a limitation, the following items of maintenance, repair and replacement shall be performed by the Council and such maintenance, repair and replacement shall be an item of Common Expense:

...

C. All landscaping and maintenance of lawns in the General Common Elements and the Yard Limited Common Elements, provided, that a Unit Owner shall be solely responsible for any landscaping, flower beds and the like installed by such Unit Owner on the Yard Limited Common Element appurtenant to his Unit; and

In the first paragraph of the above Section 2, the By-Laws indicate that the Association shall not be responsible for the replacement of any Limited Common Element, but the next paragraph, which includes subsection C, provides that the Association shall be responsible for the maintenance, repair and replacement of all landscaping in the Yard Limited Common Elements, except those items installed by the unit owner. While these two paragraphs appear inconsistent, when interpreting contracts, one seeks to reconcile inconsistencies. In particular, when a general requirement is inconsistent with a specific requirement, the specific requirement will be found to

¹ Article XIII, Section 1 of the By-Laws contains what appears to be two exceptions to the Unit Owner's obligation for the maintenance, repair and replacement of the Limited Common Elements (one at the beginning of the sentence, and one at the end of the sentence), however, the two exceptions are effectively the same, as the Association's maintenance, repair and replacement obligations are contained in Article XIII, Section 2 of the By-Laws.

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be an exception to the general requirement. Here, we interpret the first paragraph as the general requirement addressing Limited Common Elements generally, and the second paragraph contains the specific requirement for the Yard Limited Common Elements. Therefore, we believe that the Association is obligated to maintain, repair and replace the landscaping in the Yard Limited Common Elements, except those items planted by a unit owner.

Practically, based on the above interpretation, the Association is responsible for all landscaping that was originally installed by the Declarant within the Yard Limited Common Elements and any landscaping the Association has planted or plants in the future. However, the owners of the units to which the Yard LCEs are appurtenant may undertake the landscaping of the Yard LCEs, including the removal of existing plantings. The unit owner assumes the responsibility for any plantings planted by the Unit Owner. For the existing landscaping, the Board can choose when such maintenance, repairs and replacement is necessary. For example, if a tree or bush is dead or dying, replacement would be appropriate. The Board can choose what to replace the tree or bush with.

Since this issue has been a point of confusion due to poorly drafted By-Laws, we recommend that the Board adopt rules clarifying the obligations for the Yard LCEs.² These rules should also clarify whether a unit owner is permitted to remove an existing tree or bush within his/her Yard LCE, and if so, what is required to be planted as a replacement, if anything. We are happy to assist in preparing these rules.

Please do not hesitate to contact me if you have any questions or if we can be of assistance in this or any other matter.

Respectfully,

Jeremy M. Tucker

Jeremy M. Tucker

² We understand that previous counsel arrived at a different conclusion based on the language of Article VIII, Section 1 of the By-Laws. For the reasons stated in this letter and several other reasons, we respectfully disagree with that opinion. If the Board would like us to address the specific arguments raised by prior counsel, please let us know and we would be happy to do so.

To: Villas at Cattail Creek Residents

From: The Board of Directors Villas at Cattail Creek

The Board has recently received requests from individuals who want to plant trees in the common area. These requests and any new ones in the foreseeable future will be denied for the following reasons.

We have 615 trees in the community, the majority of which were planted by the builder. We have other trees that were planted as part of our legal settlement, original yard plantings, and some trees planted by individuals. The majority of the trees are the financial responsibility of the community. The only ones that are not the community's responsibility are those trees planted by individuals on their limited common property.

There is a lot of expense involved with maintaining this large number of trees. There is mulching, fertilizing, pest control and pruning which gets more difficult and more costly as the trees grow larger. Late this past winter we had to have a "cherry picker" cut back trees that had become overgrown in a grove on our property. As areas become overgrown we may have to remove trees so those around them can thrive. If a tree dies the association is responsible for removal. Original plantings on limited common elements must be maintained, removed if dead, and replaced in some way. Trees that die on common property can be replaced at the discretion of the Board with input from the Landscape Committee.

We are fortunate that we have a lovely community. We want to maintain the balance of trees and open space and most of all be able to pay to maintain this without undue increases in our dues.

The Board feels that this decision is both aesthetically and fiscally responsible.