

REPRESENTATION AGREEMENT

CASH FLOW ENHANCEMENT METHOD

This Cash-Flow Enhancement Agreement (“Agreement” or “CFE”) is entered into by Kimberly Woods Homowners Association, an Oregon nonprofit corporation (the “Association”) and Vial Fotheringham LLP (“VF”).

1. DEFINITIONS.

1.1 “Assessment Account” or “Assessment Collection Account” means a past-due assessment balance for a property within the Association.

1.2 “Association” means Kimberly Woods Homeowners Association.

1.3 “Collection Resolution” means the Collection Resolution adopted by the Board of Directors.

1.4 “VF” means Vial Fotheringham LLP, attorneys at law.

2. APPLICATION OF CFE METHOD.

2.1 General Application. The CFE Method applies to Assessment Accounts turned over to VF, except Assessment Accounts that VF denies under the CFE Method as provided under Section 5 below.

2.2 Independent Treatment of Assessment Accounts. Although this agreement governs all Assessment Accounts, each Assessment Account turned over to VF under this agreement is treated independently.

3. ASSESSMENT ACCOUNT TURNOVER AND DOCUMENTATION.

3.1 Turnover Forms and Documents. Association shall complete and submit any turnover forms VF requires, including the Fines Questionnaire, if there are fines on the account, along with the documents requested on the turnover forms.

3.2 Accuracy of Information; VF Reliance. Association represents the accuracy of all information provided under this section, including all accounting of assessments, fines, late fees and interest charges. The Association understands and acknowledges that VF may rely on this information when rendering legal services.

4. EVALUATION OF ASSESSMENT ACCOUNT UNDER CFE METHOD.

4.1 Evaluation of Assessment Account. Upon receipt of an Assessment Account, VF shall evaluate the Assessment Account and determine whether or not the Assessment Account will be accepted under the CFE method and this agreement. VF may decline to accept an Assessment Account under the CFE Method for any reason, and specifically may do so whenever:

- (a) The total amount owed to the Association is too small.
- (b) The owner may have a valid dispute regarding the amount owed to the Association.
- (c) The debt appears uncollectable.
- (d) The account includes questionable fines that may not have been levied in accordance with the governing documents.

4.2 Notification; Denial and Return of Documentation. Subject to Section 4.3 below, if VF denies the Assessment Account for collection under the CFE Method, VF shall notify the Association and shall return the Assessment Account to the Association.

4.3 Collection under General VF Agreement. If VF denies an Assessment Account under the CFE Method, VF may proceed with collection of the Assessment Account at the Association's request. If VF and the Association agree to proceed with collection of the Assessment Account outside of the CFE agreement, VF and Association shall enter into a separate representation agreement that provides for fees to be billed according to general billing rates of VF.

4.4 Conflicts of Interest. VF follows applicable rules and regulations pertaining to screening of new clients and Assessment Accounts to ensure no conflict of interest arises. Nevertheless, the Association shall promptly notify VF if it believes a conflict of interest exists between or among board members, homeowners with Assessment Accounts, VF, or other entities.

5. COMMUNICATION REGARDING ASSESSMENT ACCOUNTS. After an Assessment Account is turned over to VF, and as long as the Assessment Account is with VF for collection:

5.1 Communication with Owners Regarding Assessment Account. Except as otherwise provided in this section, unless VF gives written consent otherwise:

- (a) All contacts and communications with owners or individuals on behalf of owners regarding the Assessment Account must be with VF. This includes any offers for full or partial settlement.

- (b) Members of the Board of Directors, officers, employees, management company staff or any other individual associated with the Association may not discuss or otherwise communicate with an owner regarding an Assessment Account.

5.2 Violations of Section 6.1.

- (a) Settlement Agreement. If the Association enters into a settlement agreement with the owner in violation of Section 5.1 above and the settlement agreement does not provide for payment in full of attorney fees and costs specified in Section 11.1 below, the Association shall pay the attorney fees and costs.

5.3 Association Invoices for Assessment Accounts. Association may continue to send the owner Association invoices for assessments indicating the amounts owed to the Association. However, the invoices must include a statement in substantially the following form in at least 10-point **boldface** type:

This account has been turned over to our attorney for collections. You must contact the law firm of Vial Fotheringham LLP at 503-684-4111 for a complete balance or to discuss settlement of this account. All payments must be made to Vial Fotheringham LLP. The balance does not include all collection fees associated with this account.

6. PAYMENTS AND DEPOSITS.

6.1 Payments. After an assessment file is turned over to VF, all payments from the owner must be paid to VF. The Association shall notify VF of any payment received and forward all payments to VF unless otherwise directed in writing by VF.

6.2 Limited Power of Attorney. The Association hereby grants VF a limited power of attorney to endorse and deposit checks made payable to the Association.

7. ALLOCATION, APPLICATION AND DISBURSAL OF FUNDS.

7.1 Allocation of Payments. Subject to Sections 7.2 and 7.3 below, payments received from owners shall be allocated equally (50/50) between the Association and VF as follows:

(a) Fifty percent (50%) to Association for outstanding balances owed to the Association; and

(b) Fifty percent (50%) to VF for accrued legal fees and costs as provided under Section 13 below.

(c) This process will continue until both assessments and attorney fees and costs are paid in full.

7.2 Application of Payments.

(a) Association Allocation. VF shall disburse the Association's allocation of the payments to Association.

(b) VF Allocation. VF's allocation of the payments shall first be applied to any *costs* incurred to date, and then to attorney fees to date.

7.3 Judgments.

(a) When the Association has filed a complaint for a personal judgment and a judgment has been entered and funds are received involuntarily, such as by a

wage garnishment or a bank garnishment, the 50/50 allocation of payments received prescribed under Section 7.1 above applies.

(b) Before initiating a lawsuit for past due assessments that accrued after a judgment was entered, VF shall file a supplemental judgment. Funds received from executing on the supplemental judgment must be applied to the supplemental judgment until it is satisfied.

8. PROCEDURE UNDER COLLECTION RESOLUTION.

8.1 Association. Association shall follow all procedures provided for in the Collection Resolution including, but not limited to, mailing a copy of the Collection Resolution to all owners at their last known address.

8.2 VF. VF shall follow all procedures provided for in the Collection Resolution.

9. CHANGES TO ASSESSMENT ACCOUNT.

9.1 Notice by Association. The Association shall notify VF in writing of any changes that affect the Assessment Account, including, without limitation:

- (a) Changes in the amount of the monthly or periodic assessment.
- (b) Special assessments or fines levied against the unit and owner.
- (c) Changes to the turnover information or documents provided to VF under Section 3 above.

9.2 Failure to Notify VF of Changes.

(a) Unless VF is notified of a change in accordance with Section 9.1, above, VF will collect on Assessment Accounts based upon the turnover information and documents provided under Section 4, above.

(b) If the Association fails to notify VF of a change to an Assessment Account in accordance with section 9.1 above and VF settles an Assessment Account, the Association is responsible for any unpaid attorney fees and costs and agrees to hold VF harmless with respect to any deficiency in the funds collected.

10. CIRCUMSTANCES AFFECTING CFE METHOD.

10.1 Bankruptcy. If the owner files for bankruptcy:

(a) At the time a bankruptcy is filed, VF shall review the Assessment Account to determine whether and how best to continue in the bankruptcy proceeding.

(b) If the Association is a claimant in the bankruptcy, the entire amount of attorney fees and costs to the date of filing of the bankruptcy will be added to the Association's claim.

(c) VF shall disburse any amounts paid after the date of filing of the bankruptcy in the manner described in Section 8 above, unless specified otherwise by the bankruptcy trustee.

10.2 Settlement of Assessment Account.

(a) VF shall communicate to Association any offer by the owner to settle the Assessment Account if the offered settlement provides for payment of less than the total amount owed to the Association. Any offered settlement that provides for payment of less than the total amount owed to the Association must be approved by the Association.

(b) Payment from a settlement will be applied as provided under Section 8 above, unless the Association and VF otherwise agree in writing.

10.3 Foreclosures By Third Parties. Foreclosure by another creditor or taxing authority may affect the application of the CFE Method.

(a) As a lienholder with a secured interest in the unit, the Association has certain rights in a foreclosure proceeding. VF shall confer with the Association to determine the priority of the Associations lien compared to other liens and the best course of action in dealing with the foreclosure.

(b) VF shall disburse any payments received as a result of the foreclosure in the manner provided under Section 8 above.

(c) If the Association declines to exercise their redemption rights:

(1) Association shall notify VF in writing.

(2) If VF determines that the rights of redemption would be beneficial to the collection process, the Association shall assign its right to redemption to VF to enable VF to continue collection of the Assessment Account.

(3) If Association fails to notify VF in writing of their decision to decline exercising their right of redemption, the Association's right to redeem shall automatically be assigned to VF.

(d) If VF redeems the property, at the request of the Association, all expenses incurred related to the redemption shall be added to the attorney fee portion of the assessment, subject to Section 12 below.

(e) If VF exercises the right to redeem under Subsection (c)(2) or (c)(3) of this section, all expenses incurred for the redemption of the property shall be the responsibility of VF and shall not be billed to the Association.

10.4 Association Foreclosure. If the Association opts to foreclose its lien against a lot or unit, VF will review the Assessment Account to determine whether it will proceed with the foreclosure under the CFE method or if VF will require a separate hourly representation agreement for that individual Assessment Account.

(a) If the Association purchases the property at the foreclosure sale, the total amount of attorney fees and costs incurred in connection with the foreclosed Assessment Account shall be due and payable by the Association on the date of the sale. The Assessment Account will then be converted to an hourly billable account, if not already an hourly account, and all future work on the Assessment Account will be billed and payable each month by the Association.

(b) If a third party purchases the property at the foreclosure sale, VF will collect the total of the attorney fees and costs due at the date of the sale from the proceeds of the sale and all remaining proceeds will be paid to the Association to satisfy the lien. The Assessment Account will then be converted to an hourly billable account, if not already an hourly account, and all future work on the Assessment Account will be billed and payable each month by the Association.

11. ATTORNEY FEES AND COSTS.

11.1 Attorney Fees and Costs.

(a) Attorney Fees. “Attorney Fees” includes all work performed with respect to the Assessment Account, including but not limited to file intake; calculations; consultations and telephone calls with the Association, owners, Court, witnesses and other individuals involved in the collection process; legal research; drafting and preparing legal documents; drafting and preparing letters; depositions; trial preparation; travel time; investigations; court appearances; analyzing the account to determine the appropriate action; and preparing and attending post judgment proceedings.

(b) Other Costs. “Costs” includes all expenses associated with the Assessment Account, including but not limited to recording fees, postage, copy costs, service costs, court costs, filing fees, private investigator fees, garnishment fees and other similar expenses.

11.2 Responsibility for Payment of Attorney Fees. For Assessment Accounts under the CFE program and governed by this agreement, the Association is not required to pay any attorney fees associated with the collection of the Assessment Account unless the Association terminates the Assessment Account before the account is fully collected under 15.3, below, or VF determines the Assessment Account is uncollectible under Section 13, below.

11.3 Fee Awards.

(a) In a legal action where the Association is the prevailing party, VF bears the risk when the Court reduces the amount of or otherwise denies requested attorney fees. Association is not required to pay any fees the Court refuses to award.

(b) In a legal action where the Association is the prevailing party, VF is entitled to any prevailing party or other similar fee awarded by the Court.

11.4 Payment of Costs.

(a) Subject to Subsection (b) of this section, VF shall advance payment of costs including, without limitation, costs for copies, postage, recording fees, filing fees and other related items and services.

(b) Association shall not be required to pay costs as they accrue. However, Association shall be responsible for payment of costs upon termination of collection of an Assessment Account if the costs are not recovered from the owner or settled through a written agreement.

12. UNCOLLECTABLE ASSESSMENT ACCOUNTS.

12.1 Determination of Assessment Account as Uncollectable. VF, in its sole discretion, may determine that an Assessment Account is uncollectible. The reason for the determination may include, without limitation:

- (a) A bankruptcy of the debtor or a co-debtor.
- (b) Foreclosure by a senior mortgagee or lien holder that extinguishes the Association's lien.
- (c) Situations in which the adverse party is out-of-state.
- (d) The adverse party appears to lack assets or employment sufficient to pay the amounts owed.
- (e) The likelihood of recovery is low.
- (f) The debtor is a defunct company.
- (g) The cost to collect will be excessive.

12.2 Attorney Fees and Costs. Subject to Section 12.3 below, if VF determines that an Assessment Account accepted under the CFE Method is uncollectible under Subsection Section 12.1 above:

- (a) VF shall notify the Association of the determination and close the Assessment Account.
- (b) The Association shall pay attorney fees incurred up to, but not exceeding, \$400.00, plus costs specified under Section 11.1(b) above.

13. ASSOCIATION ERROR IN ASSESSMENT ACCOUNT.

If an Assessment Account is turned over to VF due to Association error:

13.1 Turnover Error. If an Assessment Account is turned over to VF due to Association error:

(a) If the Association notifies VF that an Assessment Account was turned over in error within thirty (30) days of the date the Assessment Account is turned over to VF, VF shall bill the Association a flat fee of \$150 plus costs specified under Section 11.1(b) above, close the Assessment Account, and return the account to the Association.

(b) If the turnover error is discovered by the owner or VF, or the Association notifies VF of the error more than thirty (30) days after the Assessment Account is turned over to VF, VF shall bill the Association for all attorney fees and costs incurred, close the Assessment Account, and return the account to the Association.

13.2 Error in Account of Failure to Notify. If an error is discovered in an Assessment Account that affects the collectability of the Account, or if the Association fails to forward bankruptcy or foreclosure notices to VF, VF shall bill the Association for all attorney fees and costs incurred, close the Assessment Account, and return the account to the Association.

14. TERMINATION.

14.1 Right to Termination of Representation. Subject to Section 14.4 below, the Association or VF may terminate this Agreement at any time by written notice given in accordance with Section 16.1 below.

14.2 Right to Termination of Individual Assessment Accounts. Subject to Sections 15.3 and 15.4 below, the Association or VF may terminate one or more individual Assessment Accounts at any time by written notice given in accordance with Section 15.1 below.

14.3 Continuation of Collection. If VF notifies the Association of its intent to terminate an individual Assessment Account, Association may request VF to review the Assessment Account to determine if VF would accept the Assessment Account outside of the CFE agreement. If VF and the Association agree to proceed with collection of the Assessment Account outside of the CFE agreement, VF and Association shall enter into a separate representation agreement that provides for fees to be billed according to general billing rates of VF.

14.4 Payment of Fees and Costs. If Association terminates this Agreement while any CFE Method Assessment Account remains outstanding, Association agrees to pay all attorney fees and costs incurred to the date of termination. As used in this section, "outstanding" includes before the owner is totally absolved of the unpaid portions through bankruptcy or before the owner is absolved of the unpaid portions through court judgment. Attorney fees and costs paid by the Association for a collection on an Assessment Account are an assessment against the individual property and owner. These attorney fees and costs can be added to the assessment ledger.

14.5 Copies of Files. If this Agreement is terminated, Association may obtain a copy of any portion of the Assessment Account files created and maintained in connection with VF representation (except VF internal work papers) upon payment of all accrued fees and costs, and the costs of reproducing the files requested.

15. GENERAL PROVISIONS.

15.1 Association Communication. Association shall be responsible for notifying VF of communication from Owners of third-parties that affect, or may affect, the rights of the Association to collect assessments, including, but not limited to: bankruptcy notices, foreclosure notices, etc.

15.2 Association Contact Information. Association shall be responsible for ensuring that VF has valid contact information for at least one (1) Board member at all times.

15.3 Status Reports. Association has a right to a monthly status report for all Assessment Accounts. Reports shall be provided by VF upon receipt of request and a valid e-mail address.

15.4 Number and Construction. As used in this Agreement, the singular includes the plural and the plural the singular and “may not” and “shall not” are equivalent expressions of an absolute prohibition. The masculine and neuter each include the masculine, feminine, and neuter, as the context requires.

15.5 Captions. All captions used in this Agreement are intended solely for convenience of reference and in no way limit any of the provisions of this Agreement.