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Admitted in Oregon

March 6, 2018

VIA EMAIL ONLY – [Homeowner email removed for privacy]

Board of Directors
The Capes Homeowners Association
c/o Tim Breaux

Re: HOA's Authority Regarding Trees and View Preservation

Dear Directors:

In connection with your correspondence and conversation with Capes owners [Homeowner names removed for privacy], you have asked for me to confirm in writing the Association's authority regarding tree pruning and/or removal and view preservation or restoration at The Capes.

Section 6.11 of the Amended and Restated Declaration of CC&Rs for The Capes provides in part:

“No landscaping shall be installed by a Lot Owner which materially interferes with another Lot Owner's ocean or bay view, and no landscaping shall be allowed that can grow so as to materially interfere with another Lot Owner's ocean or bay view. Disputes regarding whether landscaping violates this requirement shall be resolved by the Landscape Committee.”

This language makes clear that the Association, through its Landscape Committee, does have the authority to decide whether landscaping “materially interferes” with a Lot Owner's ocean or bay view. This is important, since reasonable people can disagree on matters that involve inherently subjective evaluations such as how much interference with a particular view is material.

Oregon case law also supports the Association's authority in this regard. Specifically, the Oregon case of *Valenti v. Hopkins*, 324 OR. 324 (1996) held that when restrictive covenants (such as The Capes' CC&Rs) clearly designate a particular body as the decision-maker regarding standards expressed in those covenants, the Court will defer to that decision-maker's judgment in the absence of fraud, bad faith or failure to exercise honest judgment. Accordingly, any reasonable, good-faith decision of the Landscape Committee on this issue should hold.

It is important, of course, that the Association follow the appropriate procedures, giving the owner notice and an opportunity to be heard, both of which I understand were done in this case. In addition, all HOA decisions are subject to scrutiny if it can be shown that the Association is making inconsistent decisions, such as granting permission for a particular improvement in one case while denying approval for the same improvement in a similar situation in another case. Again, I am not aware that this concern is present in this situation.

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Board of Directors
The Capes Homeowners Association
March 6, 2018
Page 2

I am happy to discuss this further if you wish.

Very truly yours,

P. Stephen Russell III, P.C.

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