

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE VAUX CONDOMINIUMS OWNERS' ASSOCIATION TO RETAIN LEGAL
COUNSEL TO PURSUE COMMON ELEMENT DEFECT CLAIMS**

WHEREAS, "Declaration" is the Declaration of Condominium Ownership for The Vaux Condominiums, as recorded in the Multnomah County, Oregon, deed records on September 20, 2006, as Document No. 2006-174967; "Bylaws" refers to the The Vaux Condominiums Owners' Association, recorded as Exhibit D to the Declaration; "OCA" is the Oregon Condominium Act, Oregon Revised Statutes, Chapter 100; "Association" is The Vaux Condominiums Owners' Association; and "Board" is the Board of Directors of the Association.

ASSOCIATION DUTIES

WHEREAS, ORS 100.405(1)(a) of the OCA requires an association of unit owners to be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominiums;

WHEREAS, ORS 100.417(1) of the OCA requires Condominium Boards of Directors to act in good faith, and in the best interests of the Association pursuant to ORS 65.377;

WHEREAS, ORS 100.540(2) of the OCA and Article 8.1.2 of the Bylaws provides that the Association is responsible for maintenance, repair, and replacement of common elements;

WHEREAS, Section 3.2 of the Bylaws grants the power to the Board to make decisions on behalf of the Association, such as maintenance, repair, and replacement of common elements, determination of amounts required for operation, maintenance, and other affairs of the Association, preparation and adoption of budgets, reserve studies, and to levy and collect assessments of the common expenses;

WHEREAS, these decisions are made by a vote of a majority of the Board members present at a meeting at which a quorum is present, in accordance with Sections 3.7 of the Bylaws;

WHEREAS, Section 3.2.21 of the Bylaws grants the power to the Board to enforce the provisions of the OCA, the Declaration, and the Bylaws;

WHEREAS, ORS 100.185(1)(f) of the OCA and the Unit Sale Agreement provides the Association is a beneficiary of the warranty with respect to the general common elements;

WHEREAS, ORS 100.405(4)(e)(D) of the OCA allows the Association to initiate litigation in its own name, and without joining the individual unit owners in matters relating to or affecting common elements, including but not limited to actions for damage, destruction, impairment or loss of use of any common element;

WHEREAS, ORS 100.405(4)(e)(E) of the OCA allows the Association to initiate litigation in its own name, and without joining the individual unit owners in matters relating to or

affecting the units or interests of unit owners, including but not limited to damage, destruction, impairment or loss of use of a unit or portion thereof if resulting from a defect in or damage to a common element; or required to facilitate repair to any common element;

PRODUCT DEFECT CLAIMS

WHEREAS, significant defects have been found in portions of the domestic water supply plumbing system at the Vaux Condominiums in products manufactured by Victaulic Company, which constitute a portion of the common elements of the Condominium;

WHEREAS, the cost to repair these defects will exceed \$100,000;

WHEREAS, Victaulic has thus far failed to repair or resolve the defective products;

WHEREAS, to preserve claims, the Association sent a Notice of Defect letter to Victaulic and others regarding the problems to the common elements pursuant to ORS 701.565;

WHEREAS, experienced product defect litigation counsel is necessary to advise the Association in its resolution of its claims, including legal services in excess of \$2,500, because: (1) time is of the essence, (2) the issues presented in the warranty claims are complex, (3) the development of an appropriate repair scope is integral to the resolution of the warranty claims, (4) the Association and Victaulic will need to engage in extensive settlement negotiations; and (5) litigation may be necessary to resolve the Association's claims and effectuate or fund repair;

ATTEMPTED LIMITATION OF ASSOCIATION'S RIGHTS AND OBLIGATIONS TO PURSUE DEFECT CLAIMS

WHEREAS, Section 11.4 of the Bylaws, written before turnover of the Association, provides that "the Board may not incur or commit the Association to incur legal fees in excess of \$2,500 to bring any specific litigation or claim matter or enter into any contingent fee agreement to bring any claim in excess of \$100,000 unless the unit owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association;"

WHEREAS, Section 11.4 of the Bylaws, further provides, "[t]he foregoing limitation shall not apply to actions . . . initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association . . .".

RESOLUTION

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that this Board interprets Section 11.4 of the Bylaws not to apply to the Association's claims against Victaulic, as that section is in direct conflict with the OCA and in direct conflict with the Board's fiduciary duties and decision making authority in representing the best interests of the Association and

