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BUNN P.C.

## MEMORANDUM

**To: Reflection Homes Association**

**From: Bruce H. Easmunt & Daniel D. Blom**

**Re: Concerns with Splitting the Association into Two Associations**

**Date: May 25, 2021**

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We understand that there has been some interest among various owners within the Reflection Homes Association (“Association” or “RHA”) to explore the possibility of splitting the Association into two separate owners’ associations, one being comprised of the townhouse lots and the other being comprised of the detached, single-family lots. We write to express our concerns and potential impediments that the owners may encounter in pursuit of this bifurcation.

- **Declaration Amendment** – Pursuant to Article X, Section 3 of the Declaration of Covenants, Conditions and Restrictions of Reflection Homes Association (“Declaration”), the Declaration may only be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. In theory, the Declaration could be amended to remove the detached lots, thereby leaving only the existing common area and townhouse lots subject to the RHA.
- **Common Area** - If any common area exists within the detached lot neighborhood, that will need to be deeded separately to the new association by the RHA. Involvement from the County may be necessary to approve revised site plans or subdivide any common area for transfer.
- **Voluntarily Accept New Association** – While one set of owners would likely be able to remain intact as the RHA, the other set of owners would have to voluntarily accept membership into a new owners’ association. Anyone who does not voluntarily submit to the new covenants would not be subject to the new association.
- **Approval of Fairfax County & Proffered Conditions** – Fairfax County may need to approve any attempt carve out a new owners’ association from the existing RHA, based on the proffered conditions that were agreed to when Reflection Homes was originally

developed. These proffers may require that all lots within the Reflection Homes subdivision are required to be subject to a property owners association – which could be violated if one owner fails to voluntarily submit as noted above.

- **Increased Costs/Fees** – Time and money will need to be spent to seek County approval, engineering necessary plats/plans, draw up the amending documents, prepare the new association’s governing documents, etc. This is a time-consuming and costly endeavor and there is no guarantee that it will succeed (e.g., the County could disapprove or require unacceptable obligations of the owners/associations). Further, the owners would have fewer fellow members with whom to share costs. Each association would carry its own costs for management, legal fees, maintenance, etc. With fewer owners to share those costs, each individual owner will bear a higher price in terms of increased annual assessments.
- **Division of Reserves & Owner Equity in the Association** – The issue of how to divide the reserves and owners’ equity in the RHA will likely require the hiring of experts to perform analysis and make recommendations on how to fairly divide the Association’s assets and owners’ equity interest in the Association. Each entity will need to establish a separate reserve account for its common area capital components’ replacement.

#### Alternative Approach

Another option to address the different wants and needs of the townhouse lots versus the detached, single-family lots, would be to further separate the membership rights by class and create different voting rights. If there is political will for this type of arrangement, this may be the more straightforward approach. Under this approach, the owners of the townhomes and the owners of the detached homes would remain members of the Association, but the members would possess separate voting rights unique to the detached and townhouse lots, respectively (much like the separate classes of members are assessed separately, specifically related to costs that directly benefit their portion of the subdivision).

This arrangement could be achieved through amendments to the Articles of Incorporation, Declaration and the Bylaws.

We recommend the Association explore all possibilities to achieve the owners’ shared goals and carefully consider the costs (both in time and money) and potential pitfalls of attempting to split the Association into two separate owners’ associations.

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