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March 8, 2013

SENT VIA EMAIL

City of Homer
Attn: Walt Wrede, City Manager
wwrede@ci.homer.ak.us

Re: Tax Assessment Opinion.
Our File No.: C-4571-01

Dear Walt:

You have asked my opinion with respect to levying a special assessment against individual condominium units as opposed to levying one (1) assessment on the parcel on which the condominium project is located. The assessment district in question is for a gas distribution system and was authorized by Ordinance 13-02 and initiated by Resolution 12-069. I have reviewed the opinion of Thomas F. Klinkner dated January 28, 2013 and agree fully with the conclusions Mr. Klinkner stated in his letter.

Condominium projects are often created on a single parcel of land. Each unit owner in a condominium project owns an undivided percentage interest in the common elements of the condominium project. Common elements are, by definition, *all portions of the property outside the unit boundaries*. Therefore, each unit owner owns the space within their unit boundaries, together with, their undivided interest in the common elements. The drafters of the 1982 Uniform Common Interest Ownership Act, which serves as the basis for the Alaska Uniform Common Interest Ownership Act, specifically address the issue of taxation of condominiums. AS 34.08.720 (b)(2) was adopted verbatim from Section 1-105 of the 1982 version of the Uniform Common Interest Ownership Act (the "Act"). The pertinent provisions thereof are set forth below.

AS 34.08.720(b)(2): In a condominium or planned community, if there is a unit owner other than a declarant, each unit shall be separately taxed and assessed, and a separate tax or assessment may not be rendered against any common elements for which a declarant has reserved no development rights.

Further, the comments to Section 1-105 of the Act state as follows:

"When separate tax assessments become mandatory under this Section, the assessment for each unit must be based on the value of that individual unit, under

whatever uniform assessment mechanism prevails in the State or locality. Importantly, no separate tax bill on the common elements should be rendered to the association or unit owners collectively even though in the context of planned communities, the common elements owned by the association might be subject to taxation as a separately owned parcel of real estate in absence of this provision."

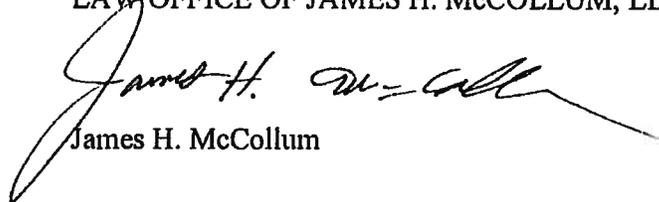
These comments make it absolutely clear that under Alaska law there can be no assessment of the parcel upon which a condominium project is located. Any assessment must be levied on the individual condominium units.

There is another practical problem with assessing an entire condominium parcel. The assessment would, of necessity, have to be billed to the condominium association of owners. Depending on the status of the collection of assessments this could result in the entire condominium project being foreclosed on as opposed to those individual units that have not been paying their share of assessments to the condominium association. This would not be an equitable result. Theoretically, it would result in the termination of the condominium project.

In summary Alaska law does not permit the City of Homer to assess the lot or tract on which a condominium project is located.

Very truly yours,

LAW OFFICE OF JAMES H. McCOLLUM, LLC



James H. McCollum

JHM/sr