

without prejudice save as to costs and subject to contract

**• Water Feature Action Group • Columbus Point Residents Association
• Dominica Court Residents Association**

Mr Peter Taylor
Columbus Point (Management Company) Limited
Persimmon Homes South Coast
100 Wickham Road
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PO16 7HT (by email)

Our ref: W FAG/CPRA/DCRA/14.1000

28 February 2014

References:

- A. LT054/0575/0575/359006.84 dated 17 February 2014
- B. Water Feature, Columbus Point - Newer Proposal dated 13 February 2014
- C. Proposal for Owners at Columbus Point dated 10 February 2014

Dear Mr Taylor,

1. Thank you for your letter at reference A in which you clarified the points raised in our letter at reference B. This letter sets out our preliminary response to your proposal at reference C, taking account of your comments subsequently provided at reference A.

2. Before we address the core items of your proposal, we offer the following comments regarding some of the points that you raised in your letter of clarification at reference A:

2.1. We note that you act in your capacity as a director of Columbus Point (Management Company) Limited ("CPMCL") and that you are not a director of either Aria Homes Ltd ("Aria") or Persimmon Homes Ltd ("Persimmon"). However, we understand that you and Mr Matthew Paine are employees of at least one of these companies. If this is not the case, please advise us accordingly.

2.2. With reference to your comment on paragraph B and paragraph 4.2: we appreciate that it is difficult to define the dates for satisfaction at this time, as these milestones will be influenced by a number of factors that are outside the direct control of all parties. We share your intent to expedite the resolution of this issue; however, the setting of arbitrary, unrealistic timelines would not enhance the process and could have a negative impact if owners perceive any sense of artificial urgency. Therefore, we recommend that the reasons behind the selection of the milestones are clearly and fully explained, so that we can encourage owners to support a rapid process.

2.3. With reference to your comments on paragraph C: we understand the difficulty that you have in judging the level of involvement of owners in the negotiations. Over 50% of the members of CPMCL are members of our Associations and Action Group and this percentage continues to increase. We also communicate and liaise regularly with other CPMCL members, so that a very

large majority (if not 100%) of CPMCL members are aware of the negotiation process and of the intent of our committees. Therefore, many of them consider that they are engaged (albeit by informal proxy) in negotiations to resolve their disputes with CPMCL. Consequently, your initiation and continuation of legal action against members while negotiations are still ongoing has led to a significant hardening of attitudes that will undoubtedly make it more difficult for us to "sell" any proposal.

2.4. With reference to your comments on paragraph 2.3 (first part): we are content for the maintenance to be based on the 2013-2014 work package as set out by Fell Reynolds. We request that you instruct Fell Reynolds to liaise with us during all stages of the development of the 2014-2015 maintenance plan. This would then allow us to support the subsequent cost estimate for payment by members/owners.

2.5. With reference to your comments on paragraph 2.3 (second part): We agree that the term "handover" is confusing - indeed, we note that you also used it in your comment on paragraph 2.4. Therefore, we shall use the term "handover" as it applies to the transfer of the responsibility of the water feature from the developers to CPMCL. The term "handover" does not apply in relation to a change of the board of directors of CPMCL, or a change to the Articles of Association, as by definition the members of CPMCL constitute the company.

2.6. With reference to paragraph 2.4: we consider that your comments contained in the second bullet are too vague. We would be unable to conclude any agreement without an unequivocal commitment (included within the contract) that CPMCL would amend Article 3 to our satisfaction as a condition of the agreement. In addition, we would welcome your views on how you would establish that members of the company were in favour of an amendment to the Articles, when the members are barred currently from voting.

3. Moving on to the proposal at reference C, we confirm that the committees of our Associations and Action Group wish to proceed with the proposal in principle.

4. Within the very limited time that has been available to us, we have conducted a "straw poll" to test the views of our members. As expected, the responses reflect the broad range of opinions, ranging from small minorities at each end of the spectrum who would either be prepared to accept the extant proposal, or be unlikely to agree to sign a new covenant. The large majority of responses indicate that although owners agree in principle to the proposal, it is unlikely to secure the required number of new covenants in its current form. Our aim is to obtain a positive vote from a large majority of our members, so given the prevalent opinion, we have not proceeded to a full vote on the proposal as it stands.

5. At our initial meeting last Autumn, you stated that your key objectives were to transfer control of CPMCL to the owners and to implement the new covenant across all properties that have current responsibilities for the water feature. For our part, we wish to achieve an aesthetically pleasing amenity that is sustainable, affordable and controlled by CPMCL members. Therefore, it is in the interests of all parties that any joint action to implement an agreement with owners should have the highest possible probability of success. We recognise that it is for Aria/Persimmon to weigh the acceptable probability of success against cost; however, we believe that there could be significant benefits from fine-tuning the proposal and offer the following comments for your consideration.

5.1. Although the current legal action by CPMCL may resolve the issues surrounding service charges, it most certainly will not bring about Aria's key objective of delivering a large majority of signed new covenants. Indeed as mentioned earlier, the current threat of legal action is creating an entrenchment of attitudes. As a result, there is now an increased likelihood of expensive litigation that might extend beyond the narrow confines of service charges to issues covering all aspects of the water feature and CPMCL itself. Accordingly, we recommend that you examine options to postpone any commencement of court action until after the end of April 2014 and that you include a statement to this effect in your proposal. This will assuage feelings and give all of us time to move forward with the agreement in a more benign environment.

5.2. The Condition requires 80% of 369 owners to have signed the new covenant. This gives a calculated total of 295; however, your clarification of this point in reference A states that the previously signed new deeds should not count towards this total. We assume that your current offer to forgo the presented service charges will continue to persuade some owners to sign the new covenant. Therefore, the logical result of "the maths" is that if you achieve a total of 75 signed covenants as a result of the offer, we could never meet the Condition - in short this is a moving and unhittable target. Thus we request that you advise us of the total minimum fixed number of signed covenants that would be acceptable under the Condition.

5.3. The second consequence of the Condition is that the higher the required number of covenants, the lower the probability of a successful conclusion of the agreement. As we mentioned earlier we cannot judge the relative importance of your objectives, but it is clear that you would increase the chances of achieving your goals by increasing the financial package within the proposal. Our straw poll has shown that the majority of respondents consider that a significant increase of the financial package would be required to provide sufficient financial security for CPMCL to implement options for the long-term viability of the feature. This indicates that the funds currently on offer do not provide sufficient inducement for owners to sign the new covenant. Thus we strongly recommend that you seek to improve the probability of successfully meeting the Condition, through either a significant lowering of the required number of covenants or a substantial increase in funding.

5.4. An additional point of concern to owners is the potential difficulties and costs of recovering service charges from households who decline to (or cannot) pay. We note that under clause 9.3 of the 16 Aug 2012 lease for the water feature, Aria covenants with CPMCL that at the request of CPMCL, it will take any steps and actions necessary to enforce obligations to pay service charges (paraphrased from lease deed). We request that a clear commitment to this effect (including clarification of costs) is included in the proposal and contract.

6. As you are aware, the majority of owners, acting on Clarke Willmott's advice, have obtained legal advice that considers the new covenant to be onerous. Therefore, the Associations' and Action Group's committee members will be unable to recommend formally the signing of the new covenants against this legal advice. However, we can and will work with you, Eastbourne Borough Council and Mr Stephen Lloyd MP to present positively the finalised proposal to all owners and to encourage their agreement.

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7. In closing, we believe that your proposal for the empowerment of CPMCL members to direct and manage CPMCL, coupled with sufficient funding to secure the long-term viability of the feature, and the widespread implementation of the new covenant is a sound basis for a successful agreement. We look forward to working closely with you and Mr Matthew Paine over the coming weeks to deliver a resolution that is satisfactory to all parties.

Yours sincerely,

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