



December 7, 2017

Board of Directors  
Clover Creek Owners Association  
c/o Foster Management  
P.O. Box 6125  
Longmont, CO 80501

*Denver Office*

**David A. Closson**  
Direct 303.991.2000  
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Re: *Clover Creek Owners Association/ Maximum Annual Assessment Formula  
Our File No. 6074.0001*

Dear Members of the Board:

Our firm represents the Clover Creek Owners Association ("Association"). The Association's Board of Directors has asked that we provide a letter explaining the application of the assessment cap set forth in Article 9, Section 9.3 of the Declaration of Covenants, Conditions and Restrictions for Clover Creek Subdivision ("Declaration"). This letter is provided in response to that request.

As a preliminary matter, pursuant to Article 9, Section 9.3(c) of the Declaration the Association's Board of Directors has the right to fix the annual assessment at an amount not to exceed the maximum annual assessment. Any annual assessment fixed at a level not exceeding the maximum annual assessment is subject to the budget ratification procedures set forth in Article 9, Section 9.5 of the Declaration. Any annual assessment fixed at a level exceeding the maximum annual assessment would not be subject to the budget ratification process but instead would require the affirmative approval of the Members as provided in Article 9, Section 9.3(b) of the Declaration. Therefore, the critical issue for determining the approval requirements for any proposed annual assessment is whether or not the proposed annual assessment exceeds the maximum annual assessment permitted by the Declaration.

The maximum annual assessment amount is established pursuant to Article 9, Section 9.3 of the Declaration. The relevant provision of Article 9, Section 9.3 reads as follows:

Until January 1 of the year immediately following the conveyance of the first Site to an Owner by Declarant, the maximum annual assessment shall be Five Hundred and No/100ths Dollars (\$500.00) per Site.

(a) Automatically, without a vote of the Membership, from and after January 1 of the year immediately following the conveyance of the first Site to an Owner by Declarant, the maximum annual assessment shall be increased effective on the first day of each year by an amount equal to the increase, if any, of the Consumer Price Index for the Denver-Boulder SMSA, published by the United States Department of Labor (or any successor index) for the twelve (12) months preceding July of the previous year, but in no event more than five percent (5%) of the maximum annual assessment for the previous year.

The meaning of this provision is that the maximum annual assessment that could be charged in 1996 (when the Declaration was first recorded) was \$500.00 per Site. The maximum annual assessment was to remain at \$500.00 per Site until January 1 of the year following the first sale of a Site by the developer to a homeowner. At that time, and each year thereafter, the maximum annual assessment automatically increased by the lesser of: (i) the increase in the Consumer Price Index; or (ii) 5%. We understand the

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Association's management company has prepared a spreadsheet showing the relevant historical calculations.

Keep in mind that the maximum annual assessment is nothing more than a theoretical and arbitrary cap. The actual amount of annual assessments charged by the Association in any given year has no effect on the cap which automatically increases each year by the lesser of: (i) the increase in the Consumer Price Index; or (ii) 5%. In other words, the increase in the maximum annual assessment is not an increase over what was actually previously charged by the Association, but instead an increase to the maximum amount that could have been charged by the Association if the annual assessments were increase each year to the maximum extent allowed by the formula.

What this means, for example, is that if the Association failed to raise the annual assessment for a period of 10 years, the maximum annual assessment (or cap) would nevertheless continue to rise. Therefore, in year 11 the Association may (depending upon the CPI for that time period) be able increase assessments by 20% or more over the amount actually charged in the previous year and still remain under the maximum annual assessment cap which continued to automatically increase each of the previous 10 years even though the Association's actual annual assessments remained unchanged.

To summarize, the Association will need to continue to calculate the maximum annual assessment for each year by increasing the maximum annual assessment for the prior year by the lesser of (i) the increase in the Consumer Price Index; or (ii) 5%. Irrespective of the annual assessment actually charged in any previous year, so long as the annual assessment is set at an amount less than the maximum annual assessment cap calculated pursuant to the formula set forth in Article 9, Section 9.3 of the Declaration, no affirmative homeowner vote is required to approve the budget and instead the budget ratification process in Article 9, Section 9.5 of the Declaration will apply.

I hope this letter addresses your request and do not hesitate to contact me with questions or concerns.

Sincerely,



David A. Closson  
HindmanSanchez P.C.

**Notice to Homeowners of the Clover Creek Association:**

During the Annual Homeowners Meeting which took place on November 16<sup>th</sup>, there were inquiries regarding the increase in the assessments for 2018.

Per the Clover Creek Homeowners Association Covenants –

**Section 9.3A – Common Assessments, Maximum Annual Assessment and Initial Assessment:**

*Automatically, without a vote of the Membership, from and after January 1 of the year immediately following the conveyance of the first site to an Owner by Declarant, the maximum annual assessment shall be increased effective on the first day of each year by an amount equal to the increase, if any, of the Consumer Price Index for the Denver-Boulder SMSA, published by the United States Department of Labor (or any successor index) for the twelve (12) months preceding July of the previous year, but in no event more than five percent (5) of the maximum annual assessment for the previous year.*

**Clover Creek HOA  
Increase of Assessments**

Year	Annual CPI	CPI Rate Increase (\$)	CPI Annual Allowable Increase (\$)	5% MAX Assessment of Prev YR	Actual Annual Assessment
<b>1st year - Section 9.3(a)</b>			<b>\$ 500.00</b>		
1997	3.30%	\$ -	\$ 500.00		
1998	2.40%	\$ -	\$ 500.00		
1999	2.90%	\$ -	\$ 500.00		
2000	4.00%	\$ -	\$ 500.00		
2001	4.70%	\$ 23.50	\$ 523.50	<b>07/2001 turnover date</b>	
2002	1.90%	\$ 9.95	\$ 533.45	\$ 549.68	\$ 498.00
2003	1.10%	\$ 5.87	\$ 539.31	\$ 560.12	\$ 498.00
2004	0.10%	\$ 0.54	\$ 539.85	\$ 566.28	\$ 498.00
2005	2.10%	\$ 11.34	\$ 551.19	\$ 566.85	\$ 498.00
2006	3.60%	\$ 19.84	\$ 571.03	\$ 578.75	\$ 500.00
2007	2.20%	\$ 12.56	\$ 583.60	\$ 599.59	\$ 508.00
2008	3.90%	\$ 22.76	\$ 606.36	\$ 612.78	\$ 544.00
2009	-0.60%	\$ (3.64)	\$ 602.72	\$ 636.67	\$ 544.00
2010	1.90%	\$ 11.45	\$ 614.17	\$ 632.85	\$ 560.00
2011	3.70%	\$ 22.72	\$ 636.89	\$ 644.88	\$ 560.00
2012	1.90%	\$ 12.10	\$ 649.00	\$ 668.74	\$ 560.00
2013	2.80%	\$ 18.17	\$ 667.17	\$ 681.45	\$ 560.00
2014	2.80%	\$ 18.68	\$ 685.85	\$ 700.53	\$ 560.00
2015	1.20%	\$ 8.23	\$ 694.08	\$ 720.14	\$ 600.00
2016	2.80%	\$ 19.43	\$ 713.51	\$ 728.78	\$ 600.00
2017		\$ -			\$ 600.00
2018		\$ -			\$ 660.00