



July 24, 2018

To: Columbia Association Board of Directors
Milton W. Matthews, President/CEO

From: Susan Krabbe, Vice President and CFO

Cc: Sheri Fanaroff, General Counsel

Re: Indemnify CA Team Members on the 401(k) Plan Investment Committee

This memo follows up on your second discussion of the proposed Columbia Association (CA) Board resolution to hold the 401(k) plan Administrative Committee members harmless from the acts and decisions they make as a committee member on behalf of the Plan. The 401(k) plan serves eligible employees of CA and nine of the ten village community associations.

It is my understanding that your discussion during the second reading on July 12, 2018 centered on replacing the term "gross negligence" with "recklessness." At your direction, we submitted the proposed amendments (in red on the attached document) to the outside benefits attorney who drafted the original proposed resolution, for his evaluation.

In order to assess the difference in impact between "gross negligence" and "recklessness", the difference in meaning between those two terms must be noted. Gross negligence means serious carelessness. Recklessness means that a person is aware of the possible harmful consequences of his/her actions but decides to take that risk anyway. Some conduct could be grossly negligent but not reckless, which means that replacement of the term "gross negligence" with the word "recklessness" broadens the indemnity initially proposed. In addition, the term "gross negligence" is well understood by the courts and has been used for many years to limit the indemnification of fiduciaries.

Consequently, it is recommended that CA include in the resolution the phrase "willful misconduct or gross negligence," rather than revising it to read "willful misconduct or recklessness."

Thank you for your consideration of this matter at your July 26, 2018 meeting.

Attachment

**BOARD RESOLUTION INDEMNIFYING FIDUCIARIES OF
THE COLUMBIA ASSOCIATION, INC.
INCENTIVE SAVINGS PLAN AND TRUST**

WHEREAS, Columbia Association, Inc. (the "Association") sponsors and maintains The Columbia Association, Inc. Incentive Savings Plan and Trust (the "Plan"); and

WHEREAS, fiduciaries of the Plan are also Association employees ("Plan Fiduciaries"); and

WHEREAS, current Plan Fiduciaries are Lynn Schwartz, Director of Finance/Treasurer, Paul Papagjika, Controller, Ron Meliker, Director of Human Resources, John Clark, Payroll Manager and Susan Krabbe, Vice President and CFO; and

WHEREAS, the Plan's financial advisers have recommended that the Association indemnify the Plan Fiduciaries in connection with their roles as Plan Fiduciaries through a specific resolution of the Association's Board of Directors; and

WHEREAS, the Employee Retirement Income Security Act of 1974, as amended, permits an employer to indemnify plan fiduciaries from the effects and consequences of their acts, omissions and conduct as Plan Fiduciaries, except to the extent that the effects and consequences result from the Plan Fiduciaries' own willful misconduct or recklessness.

NOW, THEREFORE, it is

RESOLVED that the Association shall indemnify and hold harmless each current and future Plan Fiduciary, acting in good faith, from the effects and consequences of his or her acts, omissions and conduct in his or her official capacity as a Plan Fiduciary, except to the extent that such effects and consequences result from his or her own willful misconduct or recklessness.

FURTHER RESOLVED, that if any matter arises as to which a Plan Fiduciary is entitled to indemnity pursuant to this resolution, the Association, at its own expense, shall take charge of the disposition of the asserted liability, including the compromise or conduct of litigation.

Approved by Columbia Association Board of Directors _____, 2018