August 31, 2018

BIR RULING NO. 1155-18

RMC No. 9-2013; R.A. No. 9904; R.A. No. 8424; BIR Ruling No. 103-14; BIR Ruling No. 105-14

Severina Diamond Homeowners Association, Inc.
Severina Diamond Subdivision, Km. 18, West Service Road,
Barangay Marcelo Green, Parañaque City 1700

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 21, 2014, requesting on behalf of SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. for a Certificate of Tax Exemption enjoyed by Homeowners' Associations under Republic Act No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," as enunciated in Revenue Memorandum Circular No. 9-2013 which clarifies the taxability of association dues, membership fees, and other assessments/charges collected by Homeowners' Associations.

Documents submitted disclosed that SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. is a residential homeowners' association with Taxpayer's Identification Number (TIN) 000-000-000-000 and duly registered with the Securities and Exchange Commission (SEC) with Registration No. 45121 dated August 24, 1971; that it was registered with the Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. 20790 dated June 16, 2014; that Severina Diamond Subdivision is situated and within the jurisdiction of Parañaque City; and that among the purposes for which the Association was incorporated are the following:

1. *To promote, improve and advance the best interest, general welfare, prosperity and safeguard the well-being of the owners, lessees, and occupants of the property of Severina Diamond Subdivision more particularly described and bounded in the following area:*

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A tract of land located in the Barrio of San Dionisio, Parañaque, Rizal, bounded in the North by the properties of , BBB, CCC, DDD, EEE and FFF; in the South by the properties of the Heirs of GGG, HHH, III; in the East by the South Super Highway and the property of JJJ; and in the West by the properties of FFF, KKK and LLL, more particularly described in (LRC) Pcs-11431 approved March 31, 1971,

and such additional or contiguous areas which in the future may apply for and the accepted by the governing or ruling body of this Association as members thereof or as included in its jurisdiction;

2. *To adopt such measures as may be necessary for the protection, security and safeguard of the members of the Association and their property;*

3. *To make, adopt and promulgate such rules and regulations as may be necessary concerning the proper use, enjoyment and occupancy of all the property within the area over which the Association has jurisdiction;*

4. *To impose or levy fees and charges that may be required or necessary for the maintenance of the Association and its activities; and to collect such fees and charges to pay all the expenses or organization and maintenance of office and all expenses incident to which the Association if formed;*

5. *To supervise and provide for all the necessary rules and regulations concerning the construction of buildings and improvements within the area;*

6. *To erect, construct, improve, equip, operate, supervise and maintain ornamental and functional structures in said area;*

7. *To improve, light, provide for, beautify, equip, operate, supervise and maintain streets, pavements, pedestrians' malls, gardens, play-grounds and recreational areas for public use or for general use for the owners, residents and lessees of the area;*

8. *To sweep, clean and maintain the streets, collect and dispose of street sweepings, garbage, rubbish and the like, and to construct and maintain such public utilities or services as may be necessary in the premises of the area;*

9. *To enforce the covenant, restrictions, reservation, servitudes, easements, liens and charges which exist or may hereafter be imposed for the benefit of the property within the area over which the Associations has jurisdiction, to pay all the expenses in connection therewith or incidental thereto; to enforce the decisions and rulings promulgated by the Association over any of said property; and to pay all the expenses in connection therewith;*

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10. *To acquire, purchase, or otherwise to own, hold, enjoy, lease, operate, maintain and to convey, sell, lease, transfer, mortgage or otherwise encumber, dedicate for public use or otherwise dispose of real or personal property in connection with the operation, business and activities of the Association;*

11. *To enjoy such other powers as are requisite and necessary or incidental to those hereinbefore mentioned and those provided for in Republic Act No. 9904 (Magna Carta for Homeowners and Homeowner Associations) and its implementing rules and regulations.*

that the Office of the City Mayor of Parañaque City certified that SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC.:

> *"defrays the cost of delivering basic services such as but not limited to security, streetlights, solid waste management and disposal, emergency and disaster response and water supply, as well as the repairs and maintenance of its roads and other facilities as the local government of Parañaque City lacks resources to provide basic services, constraining the city to tap the funds of said association for the delivery of said services."*

SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. bases its exemption on Section 18 of R.A. No. 9904, which provides:

> "**SECTION 18.** ***Relationship with LGUs.*** — Homeowners' associations shall complement, support and strengthen LGUs in providing vital services to their members and help implement local government policies, programs, ordinances, and rules.
>
> Associations are encouraged to actively cooperate with LGUs in furtherance of their common goals and activities for the benefit of the residents of the subdivisions/villages and their environs.
>
> Where the LGUs lack resources to provide for basic services, the associations shall endeavor to tap the means to provide for the same. In recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt: *Provided*, That such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages. x x x"

In reply thereto, considering the fact that SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. is a duly registered Homeowners Association with the HLURB; that its financial statements show the delivery of basic community services defined under Sec. 3 (d) of R.A. 9904; and that the Local Government unit covering the jurisdiction of the

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Homeowners Association have issued Certificate that it lack the resources to provide these services to the Association, hence, this Office hereby holds that the income derived from association dues and rentals of facilities of SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. is exempt from income tax, value-added tax or percentage tax, whichever is applicable. Provided, that such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages. *(BIR Ruling No. 103-14 dated March 26, 2014)*

However, SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. shall be subject to the applicable internal revenue taxes on its other income from trade, business or other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on its income not derived from association dues nor rentals of its facilities, which income should be returned for taxation. Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax; provided, however, that interest income derived from it from a depository bank under the expanded foreign currency deposit system shall be subject to 7 1/2% final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997. Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as resources and disposition of income. *(BIR Ruling No. 103-14 dated March 26, 2014)*

Value-Added Tax or Percentage Tax

Likewise, SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC.'s gross receipts from operations not derived from association dues nor rentals of its facilities shall be subject to the 12% VAT as imposed under Section 108 of the Tax Code of 1997, as amended, which tax payment may legitimately be passed on to buyers of such goods and services; or 3% percentage tax imposed under Section 116 in relation to Section 109 (W) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00). *(BIR Ruling No. 105-14 dated March 26, 2014)*

It is requested that a copy of this letter of exemption be attached to the annual

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information return which SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. will file on or before the 15th day of the fourth month of each year.

Under Section 235 of the Tax Code of 1997, as amended, any provision of existing conduct an audit of annual information return filed, the books of accounts and other pertinent records of SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. to determine compliance with the conditions set forth in this letter of tax exemption and tax liabilities, if any.

It should be understood that SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 57 of the Tax Code of 1997, as amended.

Finally, SEVERINA DIAMOND HOMEOWNERS ASSOCIATION, INC. is also subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts for services rendered which do not comprise income from association dues and rentals of their facilities.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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