Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

12 April 2011

SEC-OGC Opinion No. 11-22
Condominium corporation

MR. RECILDO ELUMBRA
Building Administrator
Gilmore Business Center
8 Gilmore Avenue corner 1st Street,
New Manila, Quezon City

Sir:

This refers to your letter dated 27 January 2011 requesting the Commission to render an opinion on the matter of the condominium corporation of Gilmore Business Center.

Your letter states that Gilmore Business Center is a 12-storey mixed use condominium with residential and commercial areas in one building. Your letter poses three queries:

First, is the developer holding interest to the commercial area obliged to join in the condominium association? We would like to point out that your letter quotes a statement made by an officer in the Housing and Land Use Regulatory Board *("HLURB")*. Due to this, we cannot give a definitive opinion on this question because as a matter of policy, the Commission refrains from rendering opinion on requests that would require an examination and review of the acts and rulings of another government agency.[1] We can only point to the applicable provision in the Condominium Act[2] which deals with the first question in your letter, thus:

> Sec. 2. A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the **"condominium corporation") in which the holders of separate interest shall automatically be members or shareholders**, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.
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> xxx **(Emphasis provided.)**

[1] SEC Memorandum Circular No. 15, Series of 2003.
[2] Republic Act No. 4726 (1966).

Your second question is whether a separation of identity with regard to the common areas is allowed. The common area in debate is a couple of elevators, with one elevator assigned to serve the commercial section, and the other, the residential section.

As to this issue, reference must be made to the master deed or enabling deed covering the property. The Condominium Act requires that the master deed or enabling deed contain a description of the common areas and facilities[3]. Also, the Condominium Act states that "the common areas shall remain undivided, and there shall be no judicial partition thereof."[4] The act of designating or assigning a specific use for each of the elevators in the common area falls within the jurisdiction of the condominium corporation constituting the management body of the project[5].

Your third question inquires into the application of Section 1 of Republic Act No. 7899[6], which amended Section 4 of RA 4726. You are seeking confirmation whether the provision in question applies to all issues in relation to the building as being a mixed-use condominium. In response, we refer you to Section 4 of RA 4726 as amended by Section 1 of RA 7899 that provides:

> "The enabling or master deed may be amended or revoked upon registration of an instrument executed by a simple majority of the registered owners of the property: Provided, That in a condominium project exclusively for either residential or commercial use, simple majority shall be on a per unit of ownership basis and that in the case of mixed use, simple majority shall be on a floor area of ownership basis: Provided, further, That prior notifications to all registered owners are done: and Provided, finally, That any amendment or revocation already decided by a simple majority of all registered owners shall be submitted to the Housing and Land Use Regulatory Board and the city/municipal engineer for approval before it can be registered. Until

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[3] Sec. 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:
xxx
(c) Description of the common areas and facilities;

[4] Section 7, RA 4726.

[5] Sec. 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

[6] An Act Amending Section Four and Section Sixteen of Republic Act Numbered Four Thousand Seven Hundred Twenty-Six, Otherwise Known as "The Condominium Act" (1995).

registration of a revocation, the provisions of this Act shall continue to apply to such property."

This Opinion is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel