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Wednesday, October 24, 2018

**Via Email & U.S. Mail:**

Poudre Overlook  
Homeowners Association  
P.O. Box 885  
Laporte, Colorado 80535

***Re: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521***

Dear Members of the Board:

Our firm has been retained by Linda and Kevin Brucker to address matters relating to their home within Poudre Overlook Homeowners Association (“Association”). It has come to our attention that the Architectural Control Committee (“ACC”) has taken some issue with the color or manufacturer or our clients’ shingles. As you are aware, their roof—along with numerous other roofs within the Association—was replaced following the hail event earlier this year.

Recent communications between our clients, the ACC, and members of the Board indicate that some review by the Board is currently underway. After a review of the Declaration of Covenants and applicable rules and guidelines from the ACC, it is not at all clear to our office what issues are properly before the Board or what action the Board may be contemplating. This is addressed further below.

Following the hail event, on June 30, 2018, Mr. Dennenberg, as ACC Chairman, issued a bulletin to all members of the Association. He stated that “this letter serves a written approval for roof replacements” if members follow the rules and regulations, specifically, the Architectural Control Guidelines effective February 1, 2006. As you are aware, under the guidelines, “[s]hingles are to be Tamko Weathered Wood or similar manufacturer and color.”

Most notably, neither the Declaration nor the guidelines provide any additional information regarding what constitutes a “similar manufacturer” or a “similar color.” In contract matters, where language of a document is reasonably susceptible to different meanings, that language

must be construed against the drafter. See for instance, *Swentkowski By & Through Reed v. Dawson*, 881 P.2d 437, 438 (Colo. App. 1994) (regarding the interpretation of contracts with well-settled principles of contractual interpretation). In short, our clients are not responsible for lack of clarity or failures in the language of the guidelines.

As the ACC is aware, our clients had Malarkey Roofing Products' Vista Shingle Line installed and the color is Storm Gray. This was previously provided to the ACC by our clients. Given the vague guidance regarding shingle manufacturers and colors, our clients reviewed and selected a color for their roof which they believed to be well within the parameters provided by the ACC. Their color decision was bolstered by the fact that roofs throughout the Association include various shades of brown and gray. A sampling of the variety of roof colors is included along with this letter. The members of the Board also have the ability to take visual notice of these variations by walking or driving through the community.

Given that the ACC offered a general written approval for roof replacements which are within the guidelines, it is our office's opinion that the ACC has waived its right of review regarding our clients' roof. Pursuant to Article XI, Section 1(c) of the Declaration, decisions of the ACC shall be by majority vote. Our client was not apprised of any such vote, nor is it apparent that any decision was made by the ACC. Our client has been given no notice of any hearing or meeting in which the issue of their roof is part of the agenda. As a result, our clients and this office are unsure what process, if any, the ACC and Board are following.

At the present time, it is apparent that the matter is before the Board; however, it is not clear how this matter is properly before the Board. Article IX, Section 7 of the Declaration addresses appeals of ACC decisions. In that process, dissatisfied owners may place matters before the Board, but that has not occurred in this instance.

On October 19, 2018, our client received a troubling email purportedly from the "HOA Board" indicating that a decision will be made by the end of the month. In that email, Mr. Denenberg states that Weatherwood or Drift Wood are "the only colors that have been approved by the Board." That is an incorrect statement. In fact, the Board approved the Architectural Guidelines, not particular colors for shingles. The guidelines approve "Tamko Weathered Wood or similar manufacturer and color." Let us not forget that the ACC already approved in writing our clients' roof along with a host of other roofs within the Association. The email of October 19 correctly acknowledges the color variation throughout the neighborhood. That acknowledgment is appropriate to highlight in the context of this discussion. A question will arise, if this matter proceeds, about whether the ACC is acting arbitrarily when approving or disapproving roof materials and colors.

If the Board is to issue a decision regarding our clients' roof, it is the expectation of this office that the decision will be a resounding approval and recognition that our client is well within the covenants and ACC guidelines. This matter has been delayed for no apparent reason. It has caused significant and undue stress for our clients. They have been waiting to have their solar panels reinstalled and have again delayed that reinstallation due to the ACC and Board action. This is a direct loss to our client and for no apparent or cognizable reason. As you are aware, our clients have respected and complied with rules and regulations historically and, most recently, with the approval of the repainting of their home.

Our clients look forward to the decision of the Board. They retain all rights available to them under the Declaration, rules and regulations, and all rights at law and in equity. Our office would be pleased to discuss this matter with the Board or its representative. Communications may be directed to my attention at the Fort Collins address above or via email at [kward@wicklaw.com](mailto:kward@wicklaw.com).

We look forward to your prompt attention to and resolution of this matter.

Sincerely,

WICK & TRAUTWEIN, LLC

A handwritten signature in black ink that reads "Kevin William Ward". The signature is written in a cursive style with a large initial 'K'.

Kevin William Ward, Esq.

