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October 12, 2021

Via U.S. Mail and Electronic Mail

Poudre Overlook Homeowners Association
Board of Directors
c/o Trademark Property Management Group
100 North Mason Street
Fort Collins, CO 80524

Re: Document Review and Analysis

Dear Members of the Board:

Thank you for engaging our firm to review the provided governing documents of Poudre Overlook Homeowners Association (“Association”). After a thorough review and analysis, we believe that the Association would benefit from the expert knowledge our office can provide in a document edit and/or re-write. The documents are mostly functional and provide the Association with most of the necessary authority to govern; however, the governing documents include superfluous and unnecessary language which may confuse future interpretation of the documents and they fall short of providing the necessary authority to enforce the more modern rules adopted by the community.

In preparation for our opinion, we have reviewed the following documents:

1. Articles of Incorporation (2003)
2. Declaration of Covenants, Conditions, and Restrictions (2003), Amendments (2005), Supplement (2007)
3. Bylaws of the Homeowners Association (2003)
4. Association Policies and Procedures

I. Declaration of Covenants, Conditions, and Restrictions

The Declaration of the Association filed October 23, 2003, is the governing document of the Association whereby all authority of the Board of Directors and responsibilities of the membership flow. This Association is subject to the Common Ownership Interest Act in its entirety and therefore must comply with those requirements. For an efficient and lawful Association to properly govern, this document should be free of interpretation and clear on its face.

The **Definitions** contained in the Declaration are detailed and voluminous. There is certainly room here to re-work some definitions and remove definitions which are provided by statute to make the document more user-friendly. This is also an opportunity to alter and add definitions which over time have provided more clarity when interpreting the language in the Declaration.

The Sections relating to Declarant rights should be removed as they are no longer applicable and unnecessarily clutter and confuse the Declaration. In addition, throughout the Declaration we recommend removing the references to the Declarant as those provisions are no longer relevant or applicable. This would certainly improve readability.

While there is a brief description of how votes are cast for multiple member Lots, this should be expanded to include several other forms of membership, including corporate membership, as well as what the Board may do if there is a dispute among members entitled to cast one vote. Further, it should be more well defined exactly how to calculate votes for percentage ownership. Currently it is a little vague.

The Association **Maintenance** obligations and those of owners should be more easily defined and explained so there is no question as to who is responsible for maintaining each portion of both the Lots and other areas. Additionally, it is recommended that all sections regarding maintenance, whether by the Association or owners, should be consolidated and clarified to enhance the usability and clarity of the documents.

Assessments are the life blood of every Association. The provisions found within the Declaration are largely sufficient regarding assessments. The assessment language currently includes provisions for (1) annual assessments and (2) special assessments. A provision on individual assessments should be included so that if a common expense is incurred by the Association is caused by or benefits fewer than all Lot Owners, such expense may be individually levied against the same Lots. Further, the assessment provisions should be consolidated and the "maximum assessment" language removed to allow more flexibility to meet the needs of the Association. Additionally, the language related to Declarant obligations should be removed as they are no longer applicable. Assessments increases would only be limited by the budget set forth by the Board and its ratification by the membership. We would recommend that the special assessment provision be changed to require a vote of the Board and then have the potential to be vetoed by the membership rather than require the affirmative vote of the membership. This method of Special Assessment, prevents denial of a Special Assessment through apathy of the Association membership. The Association would also benefit from including express language for assessments related to the payment of insurance deductibles by the membership.

The Association assessment and collection language fails to identify and prioritize lien status (association as superlien holder).

The current Declaration has zero provisions regarding **insurance** that the Association must maintain. This includes general liability, property and directors and officer errors and omission. We recommend that this language be added to the Declaration. Further, we would recommend

adding provisions relating to deductibles, ensuring that owners who cause a loss are responsible for any Association deductible.

The **Architectural** Control section provides the foundation for aesthetics, remodel, repair and guidelines for approval of homeowner alterations to their Lot. Certain sections of the use restrictions would benefit from being updated to comply with current statutory requirements (including the restrictions on signs, flags, artificial turf, solar panels, and antennas). Further, the landscaping requirements should likewise be updated to reflect the current obligations of the Owners given the maturity of the Association.

The remainder of the Declaration requires several alterations to bring it current and into compliance with current standards. This includes adding mandatory statutory provisions such as satellite dishes, signs and flags as well as rights of owners pursuant to mandatory statutory guidelines. Further, as stated above, we recommend removing irrelevant "Declarant" language throughout the document. Finally, the enforcement portions of the Declaration require clarification and an inclusion of recovery of attorneys' fees and costs for enforcement of the Declaration provisions.

II. Bylaws

The Bylaws of the Association are largely compliant with current statutory obligations. The Bylaws are voluminous and would benefit immensely from editing and clarification to remove unnecessary language covered elsewhere in the governing documents. Depending upon the current functionality, the Association may consider alterations to the delegate representation system and the related meetings and voting thereof. There are certainly areas where we believe additional language would benefit clarity; these include: definitions (to be more in line with the Declaration); quorum; proxies for voting; indemnification of officers; budget meetings and vetoes; Association authority, removal and appointment of directors; and several other minor areas which would clarify Association business operations. Further, the Association Records section should be updated to bring it current and into compliance with current standards.

III. Rules and Regulations

We have also reviewed the Rules and Regulations of the Association. The Rules and Regulations would benefit from further clarification. They should be consistent with the policies and the Declaration. The Rules and Regulations provide the foundation for aesthetics, remodel, repair and guidelines for approval of homeowner alterations to their Lot. Thus, this document should be free of interpretation and clear on its face. There is room here to make the document more user-friendly, more specific, and more concise. We suggest updating and clarifying the Rules and Regulations so that there is no question as to the requirements of an Owner. In addition, the Rules and Regulations would benefit from being updated to comply with current statutory requirements.

IV. Conclusion

In summary, the current documents of the Association are useable, but do not properly insulate the Association from liability, may cause confusion in interpretation and contain superfluous language. Additionally, the Bylaws are voluminous and would benefit immensely from editing and clarification to remove unnecessary language covered elsewhere in the governing documents, the Declaration is missing several key provisions and all references to the Declarant should be eliminated to avoid confusion.

We hope this opinion has provided insight into the health of your Association. If there are any additional questions or you require further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Cancanon', written in a cursive style.

Lisa Cancanon, Esq.

VIAL FOTHERINGHAM LLP

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