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VIA EMAIL: jessica@jhmillerlaw.com AND US MAIL

May 4, 2021

Jessica H. Miller, Esq.
LAW FIRM OF JESSICA H. MILLER LLC
595 Canyon Blvd.
Suite 9
Boulder, CO 80302

Re: Roosevelt Ridge Homeowners Association, Inc.

Dear Ms. Miller:

As I advised you earlier, Pearson Wollenweber Freedman, LLC has been retained by Charles and Deborah Nolan as legal counsel in his disputes against your client, Roosevelt Ridge Homeowners Association, Inc. (Association).

We believe the Board was correct in cancelling the Board meeting scheduled for this past Wednesday for the reasons I provided in my previous emails to you. However, we do not believe the Board may proceed with any vote to approve the proposed Settlement Agreement with Lone Pine Real Estate, LLC, and Scott Schorer for the reasons set forth in this letter.

I. Demand for Your Recusal as Legal Counsel for the Association

As I stated earlier, we, on behalf of Mr. Nolan, respectfully demand that you recuse yourself as legal counsel for the Association on all matters involving Scott Schorer and the declarant, Lone Pine Real Estate, LLC, as required under the Colorado Rules of Professional Conduct based on an unwaivable conflict of interest. Since 2005, Mr. Schorer has been the sole member of Lone Pine. Mr. Schorer admittedly “controlled the Association by and through its Board of Directors from 2006 through 2018,” which included the hiring of your firm. These facts are set forth in the new proposed Settlement Agreement we believe you drafted or of which you participated in the drafting on behalf of the Association.

In your role as counsel for the Association, you took direction from the sole member of Lone Pine until, at least, 2018, if not later. During such time, Mr. Schorer also wrongfully attempted to exercise Declarant rights, even though those rights expired under CCIOA, which, we understand you, as counsel for the Association, failed to advise of the termination of such alleged declarant rights. Your fee agreement with the Association from 2017 states, “Unless otherwise indicated in writing, Scott Schorer will be authorized to direct all decisions made by the board regarding the scope of this firm’s work.” We are not aware of any other fee agreement or anything in writing

modifying this provision. Even so, you have continued to advise the Association on matters involving Lone Pine and Mr. Schorer, including, but not limited to, assessments owed by Lone Pine and/or Mr. Schorer on lots currently or previously held by them. In fact, we understand you drafted the supplemental declarations for the execution of Scott Schorer for Lone Pine when Mr. Nolan raised the issue that Lone Pine failed to annex the Phase 2 lots.

Also, since Mr. Schorer stepped down from the Board of Directors, his brother-in-law, Ted Bertele, has been on the Board of Directors, even though he has not remained current on assessments for lots he owns in the Community and, as we understand it, has been behind on the payment of assessments on lots he owns in the Community since he first obtained ownership.

As you know, RPC 1.7(a) states, "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: [Para.] (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." All of the requirements under subsection (b) cannot be satisfied here.

Specifically, your continued representation of the Association is seriously tainted by your prior legal representation of the Association when Mr. Schorer, acting on behalf of the declarant, "controlled the Association." Mr.[Schorer] readily admits in the proposed Settlement Agreement he controlled the Association while acting on behalf of Lone Pine, as further supported by the provision in your fee agreement quoted above. Your continued representation directly impacts all of the members of the Association, including Mr. Nolan. A settlement with Mr. Schorer and Lone Pine would have a drastic impact on the Association's and its members' rights and the funds available to the Association which deficit would directly come from Mr. Nolan and the other members.

The Settlement Agreement also only addresses certain outstanding assessments levied against lots owned by Mr. Bertele, a Board member and brother-in-law of Scott Schorer. It is not appropriate for you, as counsel for the Association, to participate in and provide legal advice concerning debt owed by a Board member of the Association, especially where that Board member was directly acting on behalf of the Association.

You have also apparently participated in the denigration of Mr. Nolan and the other members of the RRHOA Member Audit Committee by adding or including language in the Settlement Agreement regarding the Committee members. Such information, as discussed below, simply is false and not appropriately included in the Settlement Agreement.

As such, you should not have ever represented the Association with regard to any issues involving Mr. Schorer and Lone Pine. Your representation of the Association with regard to the proposed Settlement Agreement taints the Settlement Agreement and, even if it is executed, makes the Settlement Agreement void and unenforceable. Any continued legal representation of the Association in these or other matters involving Mr. Schorer and Lone Pine is inappropriate.

As such, please confirm your recusal as counsel of the Association on all matters involving Mr. Schorer and Lone Pine, including with regard to the proposed Settlement Agreement.

II. Objections to Board Meeting

As previously stated, not only should this past Wednesday's Board meeting have been cancelled for lack of timely notice, but any Board meeting may not be held only through a virtual means. Neither the Bylaws for the Association nor CCIOA allow for a Board meeting to be held virtually. Section 6.1 of the Bylaws requires all Board meetings to be held either at the principal office of the Association "or at such other place, within or convenient to the Project." This requires a Board meeting to be held at a specific location. Nothing in the Bylaws allows for a Board meeting to be held by some technological means. Zoom does not provide a "place, within or convenient to the Project" where the meeting is to be held, but rather a method for the holding of the meeting. As such, an actual location where owners can attend in person is required. Further, Section 6.9 of the Bylaws requires the Board members to be present "in person," not by some technological means. This also means that a Board member cannot participate solely by telephone, email, etc.

In its communication from yesterday, the Board argues that it should have the right to conduct its business via teleconference during a pandemic. Unfortunately, neither CCIOA nor the Declaration permits teleconference meetings to occur. Similarly, neither CCIOA nor the Declaration permits a Board member to vote at a teleconference Board meeting or through other electronic means. The Board does not have the right to violate the covenants or Colorado law. Any acts taken by the Board at such an electronic Board meeting would constitute an ultra vires act.

Further, Mr. Bertele is precluded from voting for approval or disapproval of the proposed Settlement Agreement. The Association, through the proposed Settlement Agreement, seeks to release and waive claims related to real property owned by Mr. Bertele, in turn, releasing and waiving claims that could be asserted against Mr. Bertele. Specifically, the release provision provides that all claims, causes of action, etc. related to any lot or parcel ever owned by Mr. Schorer or Lone Pine is released by the Association and its members, etc. Further, the two specific lots for which outstanding assessments have been identified in the proposed Settlement Agreement are owned by Mr. Bertele. As you know, those lots are currently encumbered by statutory assessment liens. Also, the fact that the Association now recognizes that Mr. Schorer and Lone Pine owe money to the Association raises serious questions as to the conduct of Mr. Bertele through the Association's lack of collection of these and other amounts owed by his brother-in-law and his brother-in-law's company and Mr. Bertele's compliance with his fiduciary obligations owed to the Association.

These issues and the fact that this transaction involves Mr. Bertele's relative and a company in which his relative has an ownership interest create a serious conflict of interest for Mr. Bertele. It would be inappropriate and against Mr. Bertele's fiduciary duties under the Colorado Revised Nonprofit Corporations Act, CCIOA and the Governing Documents to participate in a vote to approve or disapprove the proposed Settlement Agreement on behalf of the Association. The Conflict of Interest Policy also does not provide any language, as required by Section 209.5 of CCIOA, permitting a conflicted Board member to vote on a conflicting interest transaction.

Insofar as the Board argues in its communication from yesterday that Mr. Bertele may vote if permitted by the Colorado Revised Nonprofit Corporations Act, Section C.R.S. 7-128-501 provides that any Board member voting on a conflicting interest transaction must act in good faith and the conflicting interest transaction must be fair to the Association. However, under C.R.S. 38-33.3-209.5, which controls the issue as to the Association, specifically requires that the Conflict

of Interest Policy must “[s]et forth procedures to follow when a conflict of interest exists, including . . . whether a [conflicted] board member must recuse himself or herself from discussing or voting on the issue.” Here, the Conflict of Interest Policy fails to provide any information as to whether or not a conflicted board member must recuse himself or herself. As it fails to comply with Section 209.5 of CCIOA and is absent of any information as to when a board member must or does not need to recuse himself or herself, a conflicted Board member simply cannot vote on a conflicting interest transaction. Further, the proposed Settlement Agreement purports to waive and release substantial amounts Mr. Bertele and his brother-in-law, Mr. Schorer and Lone Pine owe to the Association and other claims that could be raised by the Association and its members against these same individuals and entity. It simply is not fair to the Association and its members. Mr. Bertele cannot vote on this proposed Settlement Agreement in good faith, in the manner a reasonable board member in the same position would vote, and in the best interests of the Association. Mr. Mayberry’s fiduciary duties, including his good faith, is also tainted by his continued involvement in these matters, including, but not limited to, the participation in any negotiations, the preparation of the Settlement Agreement, and his continued agreement to obtain legal advice from you on these matters.

As Mr. Bertele is precluded from voting on the proposed Settlement Agreement, the Association has only one Board member who could possibly vote, although his own fiduciary obligations may preclude him from voting on the proposed Settlement Agreement. Even if this sole remaining Board member could vote, any vote requires the affirmative vote of a majority of the Board for the Board to act. This requires the affirmative vote of at least two Board members.

III. Proposed Settlement Agreement Contains False and Inaccurate Information

Finally, approval of a proposed Settlement Agreement which contains false and inaccurate information would constitute a wrongful act and a violation of the individual Board member’s fiduciary duties, not to mention the possibility of such an act constituting an intentional and willful wrongful act.

First, the Association, through the Board, has included language in the proposed Settlement Agreement falsely accusing the Member Audit Committee, appointed by the Board at the Board meeting held in June 2020, of violating their duties under the Governing Documents and CCIOA. As you know, a committee has only those duties provided to them by the Board and is to report directly to the Board, unless otherwise directed by the Board. The Board remains ultimately responsible for the duties appointed to the committee. Here, the Board has wrongfully accused the individual members of the Member Audit Committee of failing to hold open committee meetings. The Board clearly is using that false argument to excuse its own consideration of the findings by the Member Audit Committee and allow the Board members to vote to approve a settlement agreement that releases a substantial amount of assessments owed by Mr. Bertele, Mr. Schorer, and Lone Pine. As you well know, the Member Audit Committee was to first provide its preliminary report to the Board before it released the final audit to the members.

We are curious as to how the Board came up with this incorrect information to include in the proposed Settlement Agreement. We believe, by including this information in the proposed Settlement Agreement and distributing it to the entire membership, the Association has waived any privilege it may have under the attorney-client communication privilege concerning such information.

As you should know, although CCIOA provides that meetings of a committee appointed by the Board must be open, CCIOA does not require that the committee provide notice of any such meetings to the membership nor require that any such meetings discussing legal matters or matters private to any owners or other persons be open. As to the latter, the Member Audit Committee may hold closed executive committee meetings to discuss such legal or private matters. The Member Audit Committee's entire appointment was to review legal and private collection matters. It would not have been appropriate for the Member Audit Committee to allow anybody else to attend their meetings. However, at no point has any member requested notice for any such meetings of the Member Audit Committee or been refused notice of or access to any of their meetings.

The Board, in yesterday's communication, cites to your legal opinion of August 24, 2020, as some evidence that the Member Audit Committee had knowledge of all of its legal duties from you, even though the Member Audit Committee was approved by the Board prior to your letter, your letter does not mention the Member Audit Committee, and your letter was provided directly to the Board itself. Even so, it is good to see that you agree that a committee may hold executive committee meetings and maintain legal confidences. What is curious is your apparent opinion that the Board somehow has the right to just disregard any findings by any appointed committee because a committee somehow did not hold open meetings or failed somehow to comply with its procedural requirements.

A committee generally is appointed by a board of directors for the purpose of information gathering, independent decision-making, or performing an important community function. However, this Board appears to utilize them just to appease the masses without any intention of considering a committee's findings or following its recommendations. Instead, this Board, as evidenced by your August 24, 2020 letter, appears to try to find a way to disregard the validity of a committee and its findings and recommendations. This again raises serious questions as to the application of each Board member's fiduciary duties and whether the decisions by this Board are made in good faith or are arbitrary and capricious. Neither CCIOA, the Declaration nor the Bylaws provide that the procedural rules applicable to a committee are for the benefit of the Board. In fact, they refer to benefitting the Association members (for example, the notice requirement of Section 5.11 of the Bylaws to which you cite in your letter provides notice for open meetings of committees to be provided to the Association members, not the Board. Further, CCIOA, the Declaration, and the Bylaws do not provide that the Board may deem a committee's conduct to be invalid. Here, as stated above, the Member Audit Committee did not take any act on behalf of the Association. Instead, it merely prepared a report for consideration by the Board for the Board to consider appropriate action. However, the Board simply found a way to disregard the Member Audit Committee's report for the benefit of a Board member and his brother-in-law.

Further, as the matters included potential legal claims by the Association against Mr. Bertele, Mr. Bertele should have recused himself from access to any discussion or findings by the Member Audit Committee and any determination by the Association, through the Board, as to whether or not to pursue legal action against Mr. Bertele.

At no point since the appointment of the Member Audit Committee did the Board advise the Member Audit Committee of any executive board meeting, or any other board meeting for that matter, to review and discuss the findings of the Member Audit Committee nor did the Board ask for the findings before preparing the proposed Settlement Agreement

Even so, the Member Audit Committee provided the Board a preliminary report in December and an unpaid dues report in January. It also asked the Board for an update on March 30, but never received a response from the Board until the Board recently shared the proposed Settlement Agreement with the Association's members. Clearly, based on the creation of the proposed Settlement Agreement, the Board held executive board meetings to discuss the assessment issues involving Mr. Schorer and Lone Pine without notice of such meetings with the membership or the right of the membership to attend such meetings. The Board cannot hold the Member Audit Committee to a different standard concerning the same or similar legal matters. Under the Board's analysis of your advice as referenced in the proposed Settlement Agreement and in yesterday's communication, any decisions made by the Board in executive session or any Board meeting outside of an open meeting would be invalid. Your opinion is that, under Section 5.11 of the Bylaws, any procedural provision governing the Board is applicable to a committee (and vice versa). This would include the entire negotiations and preparation of the proposed Settlement Agreement. As the Board is rejecting the findings of the Member Audit Committee completely and not proceeding on any information contained in the Member Audit Committee's report, the Board would have to reject its own proposed Settlement Agreement and not even proceed with any type of settlement. You can see how ridiculous the Board's position is as to the viability of the Member Audit Committee's findings and the Board's right (and duty) to consider such findings before acting.

Further, as the committee is part of the Association, the Association's legal counsel has a duty to properly advise the Member Audit Committee of its legal obligations. It was the fiduciary duty of the Board to retain legal counsel, without a conflict of interest as to the issues for which the committee was formed to analyze, to properly advise the Member Audit Committee. The Board failed to do so. In fact, it kept you as legal counsel, and you did not provide any such legal advice to the members of the Member Audit Committee. In correspondence from the Board sent this week, the Board mentions a legal opinion you prepared which the Board contends was provided to the Member Audit Committee concerning its duties. Please immediately provide to us a copy of that legal opinion. Otherwise, if you refuse to provide this opinion immediately, please consider this a request for the turnover of such opinion pursuant to C.R.S. 38-33.3-317 by no later than 10 days after the date of this letter.

To then use this false information as an excuse for the Board's consideration and preparation of the proposed Settlement Agreement is seriously inappropriate.

The proposed Settlement Agreement also inaccurately states that Lone Pine and Mr. Schorer have not paid requisite assessments on only two lots/parcels in the Community. The proposed Settlement Agreement does not mention the assessments Lone Pine / Mr. Schorer failed to pay on all other lots / parcels they owned in the Community. However, the Association is releasing all claims related to all such other lots / parcels, not just to assessments owed to the two lots / parcels specifically mentioned in the proposed Settlement Agreement which are now owned by Mr. Bertele. As such, the Association, through the Board, is misrepresenting material facts to the membership through the proposed Settlement Agreement. Please also produce, pursuant to C.R.S. 38-33.3-317, within 10 days of the date of this letter, all invoices sent by the Association to Scott Schorer, Lone Pine, and Ted Bertele for assessments levied against any lots or parcels ever owned by either Scott Schorer, Lone Pine, or Ted Bertele. Based on the proposed Settlement Agreement, all such invoices clearly relate to, and have a substantial impact upon, our client and our client's lot, including, but not limited to, the impact on claims the Association or the members have, the additional amounts members may owe to cover assessments the Association intends to release, the

viability of the Association (as, in such recent Board communication mentioned above, the Board explained the financial constraints with which the Association is dealing), the good standing of a member of the Board, and any conflicts of Board members and the Association's counsel.

The members of the Board state, in yesterday's communication, that compliance is important to them. However, they continue to fail to comply with Colorado law. They continue to denigrate and defame the members of the Member Audit Committee and of the Association. In addition to this and the other compliance issues raised above, in yesterday's communication, they reiterated their requirement that Association members' utilize a "member contact form when requesting documents or reporting issues." It is our understanding that the Board requires this document to be used for questions an Association member may have for a Board meeting even though Section 308(2.5)(b) of CCIOA provides Association members the right to "speak regarding that issue" before an issue is voted on by the Board. Board member emails are also required to be disclosed to Association members for contact by such members directly. CCIOA does not permit the Board to ignore concerns or requests raised by members of the Association by means other than such a "member contact form."

The Board also is providing inaccurate legal advice to its members as to the duties and obligations of committees in the Association. For example, they state, "[n]of committee member may negotiate terms and conditions nor enter into a contract on behalf of the HOA." If the Board provide a committee such authorization, a committee could have that power (although, as stated above, the Board remains liable for such an act). They also cite to a letter you drafted

Based on the above, we believe you must recuse yourself as counsel for the Association and Mr. Bertele must resign from the Board immediately. The Association then should schedule the annual meeting for the purpose of electing new members to the Board of Directors who can hire new counsel for the Association and consider the findings of the Member Audit Committee before determining any action to take with regard to any amounts owed by Mr. Schorer, Lone Pine, Mr. Bertele, and any others.

Please let me know how you and the Board intend to proceed.

Very truly yours,



LEE H. FREEDMAN
FOR THE FIRM

cc: Charles and Deborah Nolan