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P0004-01

August 27, 2008

Painters Ridge Owners Association, Inc.
% Pristine Communities
P. O. Box 124
Castle Rock, CO 80104

Re: Funding Maintenance and Improvement for the Nine Cul-de-sacs
East of Lion's Paw Street (Tracts F, G, H, I, J, K, L, M, N)

Dear Members of the Board:

On behalf of the Board of Directors, John O'Connor requested me to address a question posed by a Member of Painters Ridge Owners Association, Inc.

Question:

Can the costs of maintenance and improvement of the cul-de-sacs within the Community be charged to the Owners of Lots served by those improvements pursuant to Article 4, Section 4.7 of the Declaration?

Rule:

In relevant part, Section 4.7 of the Supplemental Declaration of Covenants, Conditions, and Restrictions of Painters Ridge provides:

Painters Ridge may provide services to Crystal Valley Ranch or other areas in Painters Ridge. If such services are not funded by the Painters Ridge annual or special assessments then such services shall be provided pursuant to an agreement in writing between Painters Ridge and Crystal Valley Ranch or the Owners of the Lots for which such service is provided. The agreement shall include a statement and terms for payment of the costs that are to be paid by the owners for the services. (Emphasis added.)

Article 4, Section 4.7 of the Declaration establishes the purpose of the assessments:

Assessments levied by the Association shall be used for all of those purposes and activities which may be required of Painters Ridge pursuant to this Declaration. (Emphasis added.)

Article 8, Section 8.1.1 of the Declaration provides in relevant part:

Maintenance, repair, replacement, reconstruction of the Common Elements and all Improvements located thereon shall be the responsibility of Painters Ridge unless the Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement. (Emphasis added.)

Common Elements are defined in Article 1, Section 1.10 of the Declaration to include property owned by Painters Ridge which exists for the common use of more than one of the Owners. The Common Elements at the time of recordation of the Declaration are described on Exhibit B. Exhibit B specifically refers to Tracts F, G, H, I, J, K, L, M, N.

Application:

It is my understanding from a conversation with John O'Connor that the nine cul-de-sacs within the Painters Ridge Community are described as Tracts F through N on the Painters Ridge Plat Map. If that is in fact the case, the cul-de-sacs in question are Common Elements based on both definitions in Section 1.10 of the Declaration (they exist for the use of more than one of the Owners and are described on Exhibit B).

Answer:

Article 4, Section 4.7 of the Declaration is not pertinent to the nine cul-de-sacs as Section 8.1.1 of the Declaration requires Painters Ridge to maintain, repair, replace, and reconstruct the Common Elements. Article 4, Section 4.2 provides the cost of those services is a common expense of all Owners of Lots within the Community. Unless those Improvements are dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement.

If you have questions or desire a more detailed analysis of the issues presented above, please contact my office.

Sincerely,

Richard W. Johnston, P.C.

Richard W. Johnston

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