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*Via E-mail*

Ridenour Home owners Association  
Sentinel West and Wyckford Subdivisions  
Marietta, GA 30064

**RE: Russell & Ellen McGonagil vs. Daniel F. Benner, Denise Benner, Ridenour Homeowners & Recreation Association.**

Dear Neighbors:

As you may be aware, we have brought a lawsuit against the Ridenour Homeowner's Association and Daniel & Denise Benner in Cobb County Superior Court. Although the HOA has made some public statements about the case, we have not yet had the opportunity to provide our own view of the issues involved in this case, and our motivation for bringing it. We hope this letter will address some of the questions our neighbors may have about our claims and clear up any lingering confusion about our objectives.

First, it's important to understand the basis of our claims and why those claims affect the neighborhood as a whole. As homeowners in the Sentinel West and Wyckford Subdivisions, all of our property is subject to the "Declaration of Covenants, Conditions and Restrictions," which is intended to enhance and protect the desirability and attractiveness of the property. As an enforceable contract, the Declaration is binding on every homeowner in the subdivision, and provides us certain duties, rights, and obligations that are meant to promote the common good and general welfare of the community. Pursuant to the Declaration, the HOA has "the power and **duty**" to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration" to the extent necessary to promote "the common good and general welfare of the people of the Development." Declaration, at §3.01.

Stated differently, the Declaration gives the HOA the power *and* the duty to take acts necessary to promote the common good and general welfare of the neighborhood. Further, the Declaration states that it benefits each homeowner in the neighborhood, and therefore that each homeowner may enforce it. Declaration, at § 8.01. Any beneficiary of the Declaration, therefore, is entitled to enforce its provisions by bringing a lawsuit to seek "relief by way of

injunction or specific performance as well as any other relief available at law or in equity.” Declaration, at § 8.03.

To reiterate, the Declaration is a valid, binding contract which (1) gives rights and obligations to each homeowner in the neighborhood; (2) is enforceable by each homeowner in the neighborhood; and (3) gives the HOA the power *and duty* to enforce its terms to the extent necessary to promote the common good of the community. One of the ways the Declaration requires the HOA to promote the common good of the community is by enforcing certain guidelines to assure “the conformity and harmony of external design and general quality of the Development.” Declaration, § 5.05. This is important to protect our financial investments in our homes, since property values decline quickly when neighboring properties fall into disrepair. It also ensures that we are able to continue enjoying life in an attractive, well-maintained community.

To that end, the Declaration requires that each homeowner “keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair,” and enumerates certain specific maintenance requirements. Declaration, at § 6.14. The Declaration also lists specific actions the HOA has the power and the duty to take in the event a homeowner does not comply with his duties. In particular, the HOA has the power and the duty to exercise the right of abatement, which is the right to enter any lot or structure in violation of the Declaration “and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation.” Declaration, at § 8.02(b).

Like most of you, we have taken our obligation to maintain our home seriously over the course of the 20 years we have lived in this community. We have invested significant time, effort, and money in the upkeep of our home during that time, and we take pride in being members of a community of other well-kept homes. However, our hard work and investment have been diminished as a result of the neighboring property’s deterioration over the course of the past 12 years. For example, but not limited to, the yard has become overgrown with weeds and tree stumps, the house has become covered with mold, there is debris on the roof, and the fence and retaining wall have become dilapidated. The HOA has notified the Benners of their violations of the Declaration’s maintenance requirements at least 8 times since February 2012. Each time the HOA has threatened to exercise the right of abatement if remedial action is not taken within 30 days, and each time, the HOA has failed to do so. Although the HOA has placed multiple liens on the home, they have refused to take any action to remediate the problems. Meanwhile, the continued deterioration of the Benners’ property has threatened to reduce our own property value, and diminished our ability to enjoy the use of our yard.

Over the past 6 years, we have repeatedly reached out to the Benners and the HOA, requesting that repairs be made, or that the Declaration be enforced. We have even obtained three quotes for the cost of repairing the retaining wall that straddles the property line between our homes, and have provided those quotes to the Benners along with an offer to split the cost of

that repair. Our requests have been consistently ignored, and so it is only out of a lack of other options that we have resorted to the courts to enforce the Declaration, as provided by § 8.03. Even after filing the lawsuit, we have tried diligently to serve the Benners with process over the course of nine months, to no avail. The Cobb County Sheriff's office made four unsuccessful attempts to serve the Benners at their home address. We then hired a private process server, who tried to serve the Benners three times, at three different times of day, and was unable to locate them. Our counsel sent a letter to their home via Federal Express, requesting that they acknowledge the lawsuit and waive service, but they did not respond. The Court has now granted our motion to serve the Benners by publishing notice of the lawsuit publicly in the Marietta Daily Journal. As you see, this process has been difficult, and if we knew of a more simple, straightforward way to solve the problem, we absolutely would have taken it.

Finally, the HOA has provided the community with the Complaint and the Board's answer to it. Subsequently the Board has sent us an unsolicited letter which we have responded to. Due to the lack of current website updates from the Board, we fear that the neighborhood has not received a complete picture of the dispute. Therefore, we enclose here for your review the HOA's letter to our attorney and our attorney's response. We believe these documents speak for themselves. As you see, we have invited counsel for the HOA to discuss potential resolutions to the issues we raise in the lawsuit. Although the June meeting minutes state that we are in "negotiations" with the HOA over this lawsuit, we are aware of no such negotiations to this date. We remain hopeful that the HOA and the Benners will work together to remedy the ongoing deterioration of their property. The Declaration exists to benefit the neighborhood as a whole, and we strongly believe it is not in the community's best interest to allow properties to become dilapidated when the HOA is contractually obligated to remediate them. We hope to find a mutually agreeable resolution to this matter soon, and that we may all continue to enjoy a safe, attractive, and well-maintained community.

Sincerely,

Russell & Ellen McGonagil