

**Six Mile Corporate Park
12140 Carissa Commerce Court, Suite 200
Fort Myers, Florida 33966**

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Naples, Florida 34103**

April 8, 2015

**CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED**

VIA E-MAIL: RALPHDS@AOL.COM

Baycrest Homeowners Association, Inc.
Board of Directors
c/o Ralph Searce, President

Re: Roof Replacement Issues

Dear Members of the Board:

Please accept this letter in response to the Association's inquiry concerning a variety of issues related to roof replacement. Accordingly, I have attempted to address each of the Association's in question in turn below.

As an initial matter, there are a number of specific provisions of the Amended and Restated Declaration of Baycrest Homeowners Association, Inc. (the "Declaration"), which address these issues.

Article IV, Section 1 provides as follows:

The Association shall at all times maintain the Common Open Space and any grassed area, hedges, woody plants, shrubs, bushes or similar such plants on each Lot. The maintenance of the grassed area and each Lot includes mowing and edging the grass and trimming of hedges, irrigation, fertilization and pest control. To preserve the beauty, quality and value of the Project, the Association is also responsible for painting the exterior surfaces of the individual residences on each Lot and coordinating the periodic cleaning of the roofs. See Article V, Section 3. In addition, the Association shall be responsible for maintenance of the recreational facilities. (Emphasis added.)

Article IV, Section 2 of the Declaration provides as follows:

Access – For the purpose of performing the maintenance authorized by this Article and Article VIII hereof, the Association, through its duly authorized

agents or employees, shall have the right to enter upon any Lot(s) or the exterior of any improvements thereon, at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as, under the circumstances, is practically affordable. (Emphasis added.)

Article VI, Section 9 of the Declaration, concerning the Association's right to enforce the Documents in the event of an Owner default provides as follows:

Non-Monetary Defaults. In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations of the Association, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such a violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association, or if any similar violation is thereafter repeated, the Association may, at its option:

- A. Impose a fine against the Owner or tenant as provided in Section 10 hereof; and/or
- B. Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
- C. Commence an action to recover damages; and/or
- D. Take any and all actions reasonable necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten (10%) percent of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees, shall be assessed against the applicable Owner, and shall be due upon written demand by the

