

August 17, 2015

**CONFIDENTIAL COMMON INTEREST COMMUNICATION**

**Re: Southpark Homeowners Association Number 2 (“Association”)**

Dear Homeowner:

We are writing to update you on the progress of the Association’s claims against the City of Englewood and Englewood/McLellan Reservoir Foundation (“Defendants”) relating to water seepage from the McLellan Reservoir. The Board attempted to resolve these claims through the Notice of Claim process required by Colorado law. A copy of the Notice of Claim is attached. The Defendants did not respond to the Notice of Claim. As a result, the Association board elected to pursue a claim against the Defendants in Court. A lawsuit was filed against Defendants on July 14, 2015 in Arapahoe County District Court, Case number 2015CV031748. A copy of the *Complaint and Jury Demand* is enclosed for review.

The Southpark Homeowners Association Number 2 is seeking to recover monetary damages from Defendants as well as an order from the Court requiring Defendants to make the necessary repairs to the Reservoir to prevent water from leaking onto the Association’s property. Our Firm is taking this case on a contingency basis. This means that the Association will not be responsible for attorney fees or costs so long as the lawsuit is not voluntarily dismissed by the Association Board other than upon the Firm’s recommendation to do so. Fees and costs, which will be advanced by the Firm on the Association’s behalf, shall be repaid by the Association only from the proceeds, if any, obtained in the lawsuit.

Now that the lawsuit has been filed, the next step will be to serve the defendants the *Complaint and Jury Demand*. Each defendant will then have 21 days to file with the Court a response to the *Complaint*. Once all of the parties have filed responses, the disclosure and discovery process in this case will begin. In preparation, we need to obtain certain documentation from the Association and potentially the homeowners. The Association is required to provide the Defendants all non-privileged documents – this means documents other than communications between a law firm and its client, or between persons who share a common interest in the lawsuit’s outcome, such as the Association and its unit owners. The non-privileged documents that need to be produced must be relevant to the claims or defenses alleged

in this lawsuit. Our office will coordinate with Centennial Management Group to obtain the necessary documents.

During the course of this lawsuit some of you may decide to sell your units for a variety of reasons. Please remember that a seller of a home has certain disclosure obligations that may be triggered by the type of claims the Association is making in this lawsuit. Each of you who choose to list your unit for sale needs to familiarize yourself with these disclosure requirements. They are typically listed on a property disclosure form that your agent will ask you to read, fill out, and sign. In our experience, homeowners in this situation typically reference the lawsuit on the disclosure form and make available to prospective purchasers copies of the *Notice of Claim*, the *Complaint* and the engineers' reports and contractor's repair estimate for the project, if available. At this point we do not have final expert or cost of repair reports. Those will be prepared as the case progresses. Documents that can be disclosed to the homeowners as the case progresses will be made available through your property manager Kevin Lavene. We are not advising you that this procedure will satisfy all disclosure requirements relative to your particular unit; however, it appears that, at a minimum, this sort of information should be disclosed. Finally, because our views on the lawsuit are confidential, to be shared only with the Board, we are unable to answer questions from potential buyers or their agents and lenders regarding the nature of the lawsuit, its likelihood of success, or its affect on the sale of a particular unit.

Please remember that the lawsuit only involves claims relating to damage to the Association's common elements that affect the buildings and community as a whole. We have not been retained to represent the individual homeowners on any individual claims they may have against the Defendants. If you wish to pursue claims against the Defendants for individually owned property, you should retain your own legal counsel. Individual homeowner claims are subject to various time limitations in which these claims must be filed in court or else be forever barred and we urge you to contact an attorney promptly should you elect to pursue any individual claims.

Last, this letter is confidential and you need not, and the Board asks that you do not, discuss or share its contents with anyone but your co-owners or family, or your lawyer or other professional. If the lawsuit Defendants or their lawyers try to contact you, please feel free to contact our office to discuss the situation at no charge.

Very truly yours,

**BURG SIMPSON**  
**ELDREDGE HERSH & JARDINE PC**

Craig Nuss