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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Lauren Ketchum, Deputy Clerk

Adam C. Simonds
[redacted]
Plaintiff pro se

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ADA

Adam Simonds, et al;

Plaintiff

v.

Bridgetower Owners Association LLC,
via Primeland Development Corporation LLP,
via Varriale Construction Incorporated,
and Belltower LLC,
and Bews-Floyd Incorporated; *and*

Association Management Incorporated,
via Keystone Idaho LLC; *and*

Bridgetower Homeowner's Association, Incorporated;

Defendants

Case No. CV01-23-05393

MEMORANDUM OPPOSING MOTION FOR A MORE DEFINITIVE STATEMENT

In response to Defendants' Motion for a More Definitive Statement and defense counsel's Memo In Support of same, Plaintiff Adam Simonds proceeds to rebut the claims of insufficient process and lack of cogency upon which said motion is based, and to rearticulate statutory mechanisms available to the Court for distilling the Bridgetower Homeowner Class's claims or issues into the more definitive statement for which Defendants plead.

1. **Distinction between Plaintiff and Class.** As a pro se litigant who is not licensed as an attorney, Plaintiff acknowledges his lack of statutory authority to represent other parties, and he does not purport to do so in the Complaint. Instead, he merely petitions the Court as the moving-party Plaintiff

who comprehends that every other member of the de facto Bridgetower Homeowner Class (the Class) is similarly situated with identical claims or issues. As such, Complaint Section 6.B explicitly requests that the Court names Plaintiff as the Class's representative party, identifies and certifies the Class at such early time as is practicable, and therewith appoints class counsel to represent the Class's interests.

Pursuant IRCP Rule 77 §(c)(2)(B), if the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, then the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort; Defendant AMI certainly possesses the identity of every lasting Bridgetower homeowner, if not former homeowners as well. Furthermore, such notice must clearly and concisely state the nature of the action, the definition of the class certified, and the class's claims or issues (inter alia) in plain, easily understood language. Therefore, upon class certification it is statutorily incumbent upon the Court to judicially declare which of the Class's claims or issues predominate, thereby satisfying defense counsel's plea for a more definitive statement.

Since the Complaint was filed, the Class itself is organically coalescing in defense of its own interests. A grassroots organization of dozens of Bridgetower homeowners calling itself Friends of Bridgetower (see BridgetowerHOA.com), with whom Plaintiff is not affiliated despite their closely-aligned interests, has proceeded to retain the services of Brindee Collins of Collins Law, who specializes in real estate law and has substantial experience representing homeowners. Ms. Collins has written an *Advisory Legal Opinion Letter* to summarize her findings regarding the legal status of Bridgetower homeowners, to articulate homeowners' rights and potential liabilities, and to propose options for resolving ongoing issues; said letter is attached herewith as **Exhibit A** for the Court's consideration. If the Court considers appointing Ms. Collins as class counsel, Plaintiff believes she would fairly and adequately represent the interests of the Bridgetower Homeowner Class, and if so

appointed, Ms. Collins would better amend the Complaint into the more-definitive statement for which Defendants plead than Plaintiff is able to do himself, thereby benefiting all concerned parties.

2. **Sufficiency of Service Upon Named Defendants.** As a pro se litigant who lacks legal training and expertise, pursuant IRCP Rule 4 §(d)(3), Plaintiff believes that service upon a corporation's officer or registered agent is sufficient notice of litigation commenced against its officers and its members.

   a. **Bridgetower Owners Association LLC, via Primeland Development Corporation LLP.** Per se, as the registered agent for Defendant Bridgetower Owners Association LLC (the Company), service of the Complaint and the Summons upon Nick Thompson of AMI/Keystone was sufficient to notify the Company's individual officers and members, namely Primeland Partners Frank Varriale and Shannan Buzzini, of the civil action being commenced against them for breach of contract when neglecting to convey a transferrable interest in the Company to Bridgetower homeowners, and when neglecting to transfer an ownership interest in Bridgetower's community property to said homeowners, and when neglecting to transfer a controlling interest over said community's contracted manager to same. As stated in the Complaint, Plaintiff alleges that defendants Varriale and Buzzini are personally liable for the economic damages which were sustained and propagated against every member of the Bridgetower Homeowner Class subsequent to acts of willful or reckless misconduct, which invalidate assessments levied against same.

      Likewise, service upon former Primeland partners Bews-Floyd is implicit to their status as jointly and severally liable defendants, even if the alleged acts of misconduct were exclusively committed by their Primeland partner during Bews-Floyd's tenure. However, because they lack de jure membership in the Company, the non-Primeland-partner homeowners who purported company membership after Association Management's (AMI's) illegal 2011 Company takeover are not currently considered by Plaintiff to be jointly and severally liable defendants, at least not prior to a judicial declaration identifying them as such; it is more likely that said homeowners were deceived by AMI into unwitting misconduct, for the purpose of purporting AMI's pretensive

operational legitimacy.

b. **Association Management Incorporated, via Keystone Idaho LLC.** Similarly, as an authorized officer for service of process for Defendant *AMI/Keystone* (the Contracted Manager), service of the Complaint and the Summons upon Keystone Vice President Nick Thompson was sufficient to notify said companies' officers and/or members of the civil action being commenced against same for operating in excess of their contractual and statutory authority, which willfully or recklessly propagated the economic damages which were sustained against Bridgetower homeowners by Primeland's partners' negligence, while concurrently enriching themselves at said homeowners' undue expense. Additionally, by wrongfully vesting management authority over the Company onto the person of herself in 2011, AMI's former president Alana Walker-Ashby pierced her own corporate veil by overtly exposing herself to personal liability for said damages. Regardless, service upon Walker-Ashby is implicit to the service of process upon her active company's registered agent.

Despite colluding with Walker-Ashby to act in excess of their authority, because she is not a corporate partner, Primeland Executive Assistant RoseMarie Frost is not currently considered by Plaintiff to be a jointly and severally liable defendant, at least not until such time as the Court judicially declares her as such. Having found no evidence of wrongdoing by former AMI president Dick Miller, and considering how AMI's misconduct occurred after his tenure, he is not considered as a defendant.

c. **Bridgetower Homeowner's Association, Incorporated.** In the same way, as the registered agent for Defendant *Bridgetower Homeowner's Association Inc.* (the Corporation), service of the Complaint and the Summons upon Nick Thompson of AMI/Keystone was sufficient to notify said corporation's individual directors and only members, namely Steve Strickland, Joe Gruber, and Jeff Wolfe, of the civil action being commenced against them for tortious interference against Bridgetower homeowners when colluding with AMI/Keystone and Varriale to cover up, defer,

and/or delay liability for economic damages sustained and propagated by same against said homeowners. Because it has not yet directly levied invalid assessments against Bridgetower Homeowners, among the three primary defendant entities the Corporation is the least liable for such economic damages. It is conceivable that the Corporation's directors may have been unwittingly deceived by AMI and its attorneys' improper plan for purportedly rectifying Company's and the Contracted Manager's operational untenability; however, considering defense counsels' public admission at a May 9, 2023 Bridgetower town hall meeting of the existence of signed conflict-of-interest waivers between Defendants AMI, Varriale, Strickland, Gruber, and Wolfe, the Corporation must be recognized as an adversarial party against the Bridgetower Homeowner Class and its legitimate interests.

Significantly, Plaintiff recently obtained additional evidence of Defendants' collusion, by way of the *Written Consent Resolution of Members of the Bridgetower Owners Association LLC In Lieu of a Board of Directors Meeting* which was drafted by defense counsel ELC in service of AMI/Keystone, and which was executed on February 20, 2023 by Primeland Partner Frank Varriale and all three aforementioned directors of the Corporation while improperly acting as "all the members of the Company having any claim or rights of membership"; said resolution is attached herewith as **Exhibit B** for the Court's consideration. Furthermore, a May 16 email from AMI/Keystone to Bridgetower homeowners admits that AMI operatives are in the process of transferring Bridgetower's common-area deeds from the Company to the Corporation as per Defendants' collusive agreement in said resolution, with completion of the transfer expected in mid-June. Therefore, Plaintiff hereby reiterates the Complaint's Section 6.C request for the court to enjoin Defendants from transferring ownership of Bridgetower Property to any entity until after this matter is adjudicated.

If the Court finds that service upon the above-named Defendants was somehow insufficient, and/or orders Plaintiff to submit a more definitive statement of the claims against them, then Plaintiff also reiterates his plea for the Court to concurrently order the Complaint's Section 6.D request for a

peremptory writ of mandate, so that Plaintiff may retain Givens Pursley Partner Tom Dvorak, if his participation in this case is unconflicted, to draft such amended complaint and serve Defendants in a manner that satisfies the court's potential order. Mr. Dvorak is a senior real estate litigator with substantial professional experience litigating cases involving homeowners' associations, and he also possesses significant personal experience serving in all positions on his own HOA board. Plaintiff believes that Mr. Dvorak would be an excellent choice to represent the Bridgetower Homeowner Class's interests, and, as an alternative to Ms. Collins for class representation, asks the court to consider appointing him as class counsel when the Court certifies the Class.

In conclusion, Plaintiff asserts that the Complaint sufficiently specifies the capacity in which he brings the claims, sufficiently identifies the real parties in interest, provides sufficient notice of which claims are being brought against which defendants, and sufficiently simplifies the factual allegations founding such claims into reasonably short and plainly numbered paragraphs. The Court must not permit defense counsel to obfuscate from the fact that the complexity of this case is of their own clients' making, by multiple successive acts of willful or reckless misconduct. Because Defendants have no legitimate defense against the merits of the case, defense counsel's only hope is to defer or delay judicial accountability by attacking the Complaint itself, and by denigrating the pro se Plaintiff who authored it. In the interest of ending the disenfranchisement and economic damages which Defendants continue to perpetrate against Bridgetower homeowners, Plaintiff hereby pleads for the Court to act on the demands articulated in Section 6 of the Complaint pursuant to its statutory authority, or to otherwise act on its own motion to protect and advance the interests of the Bridgetower Homeowner Class.

DATED: May 23, 2023

Adam C. Simonds

CERTIFICATE OF SERVICE

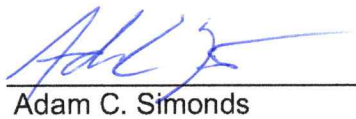
Plaintiff Adam Simonds hereby certifies that on the 23rd day of May 2023 he caused a true and correct copy of the foregoing Memorandum Opposing Motion for a More Definitive Statement to be served by the methods indicated below upon the following:

Nathan R. Starnes
c/o ELC Legal Services, LLC
3142 W. Belltower Dr.
Meridian, Idaho 83646
Nathan@ELCLegal.com
(208) 813-9220

_____ Hand Deliver

__X__ U.S. Mail

__X__ Email



Adam C. Simonds

Simonds et al v. Bridgetower LLC

CV-01-2023-05393

Memorandum Opposing Motion for a More Definitive Statement

EXHIBIT A

9 pages following:

Collins Law Advisory Legal Opinion Letter

Brindee L. Collins
Collins Law PLLC
6126 W. State Street
Boise, ID 83703
208-254-7699
Brindee@CollinsLawIdaho.com

April 21, 2023

Re: **Bridgetower Subdivision – Meridian, Idaho**
Advisory Legal Opinion Letter
Not intended to be an attorney-client privileged document

Thank you for retaining my services to assist your group in addressing your questions about ongoing issues and problems in the Bridgetower Subdivision, located in Meridian, Idaho, where each of you own residential property. At your request, I have reviewed all of the relevant plat maps and restrictive covenants for the various phases of the Subdivision, as well as the voluminous records that I have been provided. I have also reviewed and considered the corporate and business filings and records for the relevant entities that presently or previously purport to be the homeowners association for the Bridgetower Subdivision. I am providing this opinion letter at your request, to summarize my findings as to the present legal status of a homeowners association for the Bridgetower Subdivision, articulate the rights of the Lot Owners within the Subdivision and possible liabilities that may arise, and finally, to propose different options for moving forward and resolving these ongoing issues.

As we have discussed, it is my understanding that you plan to share this opinion letter with other Owners in the Subdivision who are not presently represented by my office. To that effect, none of the information or opinions contained herein are meant to be attorney-client privileged information and nothing contained, stated, or implied in this opinion letter is to be considered or treated as a waiver of the attorney-client-privilege. It has been purposely drafted so that it might be shared with other homeowners, as their involvement in resolving these matters is necessary and inevitable. All homeowners in the Bridgetower Subdivision should seek legal counsel in this matter. In the event that each of you would like to have a discussion about

strategies and the next steps forward, we can do so, but this letter is purely meant to summarize the history and background of the issues in Bridgetower, provide an advisory explanation of the possible liabilities and problems that can arise, and give a basic framework for the options that are available as remedies. In the event that other homeowners do retain their own counsel in this matter, please pass my contact information along to them and I will provide whatever assistance that I can. I am also happy to add new members to the group of homeowners that I presently represent, subject, of course, to your unanimous approval and execution of an updated representation agreement.

Background Concerns

The foundational documents of any residential subdivision and the homeowners association that is established to manage its affairs are the restrictive covenants (CC&Rs) and the plat map. Subdivisions are created when a developer records these two documents with the relevant county recorder's office, after following all required local planning and development processes. From that point forward, essentially everything that occurs within the subdivision or in relation to the subdivision must comply with the CC&Rs and the plat map (as well as any governing state or local law). Homeowners who purchase lots in the subdivision take title to their property subject to the terms of those documents, which are, essentially, the "Constitution" of the subdivision. The operation and existence of any homeowners association created to serve and benefit the subdivision must comply with the CC&Rs and plat map. Typically, the HOA is a non-profit corporation which is also governed by bylaws and articles of incorporation, which serve as the "user's manuals" of the HOA. The members of the HOA are the lot owners within the subdivision, and they meet (typically annually) to elect a board of directors to run the HOA. Often, that includes hiring a professional management company to act as the agent of the homeowners association and assist the board of directors in conducting its day-to-day business.

In the case of Bridgetower Subdivision, however, this general roadmap has not been followed. There are numerous phases of the Bridgetower Subdivision, with a Plat Map and supplemental CC&Rs for each, but each refers back to the original Declaration of Covenants, Condition, and Restrictions for Bridgetower Subdivision No. 1, which was recorded in the Ada County Recorder's Office as Instrument No. 102114488 on October 3, 2002, by the developer of the Subdivision, Primeland Development Company, LLP. I have reviewed the terms of those original CC&Rs, any amendments, and any supplements extensively, and I refer to them collectively as the "CC&Rs" or the "Original CC&Rs."

The Original CC&Rs for Bridgetower Subdivision appear, at first glance, to be fairly typical of a residential development of this type. However, rather than establishing a non-profit corporation entity as the homeowners association for the Subdivision, the developer created a limited liability company, called the Bridgetower Owners Association, LLC. The CC&Rs purport to require each Owner of a Lot to become a member of that LLC entity, and the LLC

entity is vested with ownership and control of the Subdivision's Common Areas. All of the powers and responsibilities of the homeowners association are dedicated to the LLC entity. That LLC entity has a separate Operating Agreement, as well as Articles of Organization. As mentioned, it is very non-typical for a homeowners association to be established as a limited liability company and there is a question as to whether such a business organization could even lawfully function in that role, as membership in an LLC typically cannot be imposed or transferred automatically and without the consent of the new Member and the existing Members. Additionally, LLCs are normally operated as for-profit business entities and the law surrounding LLCs largely relates to doing business for a profit, even if the organizational documents of the entity in question do not anticipate operating for a profit.

It appears from reviewing all of the documents, specifically Section 4.3 of the CC&Rs, that the intention behind organizing the homeowners association as an LLC was to allow for the entity to be established as a "manager-managed" company, thus vesting all of the day-to-day management and control of the entity and its affairs in the manager, rather than the homeowners. This is a novel concept, and one that I have never previously seen in ten years of practice in this field, nor one that I would recommend. Normally, as I mentioned, the members of a homeowners association elect a Board of Directors from their ranks, and that Board of Directors hires a management company, who serves under the terms of a contract, subject to the Board's guidance and direction.

This creation of an LLC entity to act as the homeowners association for the Subdivision is problematic in and of itself, but conceivably could have been workable. Yet, it is further complicated by the idea of the entity being manager-managed, and it is very concerning that the homeowners had (and apparently continue to have) so little input in choosing or removing the "Manager" that is vested with so much authority and responsibility. All of these concerns are valid and the execution of these ideas was not well-advised in the first instance. Any Owner who was concerned about this scheme and the operation of the LLC entity under the CC&Rs and its own Operating Agreement would have had legitimate apprehensions to voice.

However, the situation was made infinitely more complicated by the automatic termination and dissolution of that LLC entity, under the terms of its own Operating Agreement, which occurred, apparently, in December of 2020. According to Section 2.3 of the Operating Agreement, "the Association shall be dissolved, and its affairs wound up in accordance with the Act and this Operating Agreement, on December 31, 2020, unless the term shall be extended by a duly adopted amendment to this Operating Agreement, or unless the Association shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement." It is my understanding that no such Amendment to the Operating Agreement was executed and that all parties now agree that Bridgetower Owners Association, LLC has been dissolved. A formal Statement of Dissolution for the entity was filed with the Idaho Secretary of State on February 22, 2023, by ELC Legal Services, LLC.

So, as things presently stand, the business entity that was created to be the homeowners association for the Bridgetower Subdivision under the express terms of the CC&Rs no longer exists. Consequently, there is a question as to the ownership and control of all of the property and assets held by that entity for the benefit of the Lot Owners within the Subdivision, as well as the rights, duties, and obligations of that entity under the CC&Rs and Idaho law. The Common Areas of the Subdivision are currently titled in the name of an entity that does not exist, and all provisions of the CC&Rs that reference the "Association" now refer to an entity that has been terminated and was legally questionable to begin with.

In an attempt to remedy these concerns and issues, it appears that a new non-profit corporation was created in February of 2023, concurrently with the formal dissolution of the LLC entity. On February 22, 2023, the Articles of Incorporation of Bridgetower Homeowner's Association, Inc. were filed with the Idaho Secretary of State. The Articles of Incorporation were executed by individuals who appear to be homeowners in the Bridgetower Subdivision, who are listed therein as the "incorporators," "shareholders," and the initial Board of Directors (to serve for a three (3) year term). At the same time, a set of Bylaws were executed for the Bridgetower Homeowner's Association, Inc., and it appears that this new entity is now purporting to operate as the homeowners association for the Bridgetower Subdivision, under the authority of the CC&Rs and the Plat Maps for the various phases of the development. The new documents appear to be an amalgamation of the existing scheme of "manager-management" referenced in the CC&Rs, but have various provisions that purport to place additional responsibilities and powers upon the Board of Directors, often in a conflicting way.

There is a glaring problem with this scheme, however, and it is completely ignored in the Articles of Incorporation and the Bylaws for this new entity. The CC&Rs for the Bridgetower Subdivision have not been amended to reflect this change and properly empower this new entity. The CC&Rs do not compel membership in this entity by virtue of ownership of a Lot within the Subdivision. It has not been created pursuant to any authority in the CC&Rs, and the terms of the CC&Rs, as they are presently written, directly conflict with its existence and operation. There is ample Idaho Supreme Court caselaw addressing this issue and it is very clear that compulsory membership in an entity such as this is inappropriate absent a proper amendment to the restrictive covenants of a subdivision.

Nowhere in any of the corporate documents for Bridgetower Homeowner's Association, Inc. is it properly described and explained who made the decision to establish this new entity, from where it draws its authority, or even that the documents themselves were voted on and approved by the homeowners as the "members" of the new entity. The CC&Rs are referenced, but it is never stated that the terms of the CC&Rs have been amended. To properly do so, at least seventy-percent (70%) of the owners of Lots within the Subdivision would have had to affirmatively approve the changes and the creation of the new entity. Amending the CC&Rs to establish a proper non-profit corporate entity as the homeowners association for the Bridgetower

Subdivision was a good idea and is the ultimate solution, but that effort was never undertaken. Absent that step, this new non-profit corporation appears to have no authority whatsoever to own, manage, or operate the Subdivision's Common Areas and improvements, nor to conduct the business of the homeowners association for the Bridgetower Subdivision, including enforcing the CC&Rs, imposing and collecting assessments, and managing the architectural control considerations of the Subdivision, among other things. I understand that the entity has been invoicing homeowners for assessments, which have been increased for 2023, but I see no authority in the law for its ability to do so, absent some possible argument for equitable contribution to the actual costs of operating the Common Areas, which is itself an incredibly complicated and fact-based calculation, which would invariably result in an amount lower than that being assessed.

Even if one operates under the premise that the original LLC entity was proper, Section 4.1 of the Operating Agreement for the LLC was also disregarded when this new non-profit corporation was created and began handling the Subdivision's affairs. That provision entitled the Members of the LLC, or the Lot Owners, to vote upon certain matters, regardless of the "manager-managed" style of operation of the entity. Those matters include the sale, exchange, or disposition of the Association's assets, the making of any capital expenditure of more than $10,000, the selection of a "replacement Manager," any amendment to the Operating Agreement, *and* the continuation of the Association after the date set for termination. Based upon the information that has been provided to me and the records I have reviewed, no such membership vote has ever occurred for any of these items, and none occurred for creation of the new homeowners association entity or the continued operation of the LLC entity past its stated dissolution date of December 31, 2020. Even the Operating Agreement of the now-defunct LLC entity, in Section 2.2, states that the Operating Agreement is to be "subject to the Declaration and to each Supplemental Declaration," and that if any conflict between the two arises, the Declaration shall control. The authority of the CC&Rs has been, in my view, entirely disregarded by the creation and operation of this new non-profit corporation, regardless of how good the intentions may have been in doing so.

The proper solution to this problem would have been to obtain the vote of the homeowners to amend the CC&Rs, to create and authorize the new non-profit entity, and grant it all the powers and duties of the homeowners association that should have been established in the first place. The CC&Rs have a clear mechanism for doing so, in Article X, Section 10.4, entitled "Amendment," which states that the terms of the CC&Rs may only be amended "by the approving vote of seventy percent (70%) of all Members…." The term "Members" is defined in Section 1.5 of the CC&Rs as "every person or entity who holds membership in the Association as a result of being a lot Owner in Bridgetower Subdivision No. 1, and will also include any other person or entity who later becomes a lot Owner in a future residential Bridgetower Crossing Subdivision who are included in a Supplement Declaration to that future Subdivision." Accordingly, to amend the CC&Rs, the affirmative vote of at least seventy percent (70%) of all

of the Lot Owners within the Bridgetower Subdivision must be gathered. I have found no records of that effort being undertaken and it is my understanding that the necessity to amend the CC&Rs was not considered in the process.

Concerns, Present Status, and Next Steps

As we have discussed, this leaves the homeowners in the Bridgetower Subdivision in a very unfortunate and complicated position. Without a properly-established and authorized homeowners association in place to serve the Subdivision, the two glaring questions facing all homeowners are 1) what are the potential consequences of this situation; and 2) what can be done to remedy it. I have considered both of these questions extensively, and it is my hope that this letter can be of assistance in addressing your concerns and providing a road-map for different paths forward.

I have reviewed the title records for the Common Area Lots within the Subdivision, and despite the Plat Maps' language that dedicated the Common Areas to "Bridgetower Homeowner's Association," the Common Area Lots have instead been deeded by Primeland Development to the Bridgetower Owners Association, LLC. As previously referenced, that entity no longer exists and has been formally and functionally dissolved. I have not found any record of the title to those Lots being transferred to a new entity. Accordingly, it is an open question as to who holds title to the properties, who bears responsibility and legal liability for them (as well as how that liability might be allocated), and whether or not they are properly insured by any policies that may have been purchased to cover the lots and improvements. I have not reviewed records related to insurance or other considerations for these properties, so I speak largely based upon conjecture, but it is not difficult to imagine an insurance company objecting to coverage for a loss arising from property that is not truly owned by the entity who purchased the relevant policy for that property.

From the perspective of Idaho law and the Idaho Homeowner's Association Act, there are two types of homeowners associations – incorporated and unincorporated association. A "homeowner's association" is defined in the Act as "any incorporated or unincorporated association: (a) in which membership is based upon owning or possessing an interest in real property; and (b) that has the authority, pursuant to recorded covenants, bylaws, or other governing documents, to assess and record liens against the real property of its members." Whether incorporated or unincorporated, homeowners associations are required, by Section 55-3204 of Idaho Code, to hold a meeting of the membership each calendar year, to provide certain notice of meetings to the members of the homeowners association, to take minutes from all meetings of the homeowners association, including member meetings and board meetings, and to "determine and establish the amount of assessments in accordance with the governing documents" or to obtain the approval of a majority of the lot owners within the subdivision, in the event the governing documents are silent in that regard Similarly, whether a homeowners

association is incorporated or unincorporated, the Non-Profit Act's provisions related to removal of member(s) of the board of directors apply. Separate requirements related to the operation of unincorporated homeowners associations are also articulated in that same statutory provision.

Without a properly established and authorized entity to fill the role of the "Association" under the terms of the CC&Rs, it is possible that the conduct of the relevant parties has created a functional unincorporated non-profit association, under Idaho Code Section 30-27-102. That entity would still not be able to avail itself of all of the provisions of the CC&Rs, as there are serious factual questions as to the limits of its authority in matters of assessment, collections, and enforcement of the CC&Rs. The subject of unincorporated affiliation is not one that has been well-explored in Idaho, aside from a basic statutory scheme, and there is little guidance from the Courts. The law essentially treats these situations like large partnerships, which not only creates a great likelihood of conflict and dispute, but a very real possibility of joint and several liability for homeowners, should any liability arise upon or in relation to the Subdivision's Common Areas or other matters. That means that if, for example, a death or injury were to occur in one of the Subdivision's facilities, each and every homeowner in the Bridgetower Subdivision could, conceivably, be liable for a portion or the entire amount of any award. This is one of the main reasons why a non-profit corporation is typically created in subdivisions of this type – the homeowners, as members of the corporation, are shielded from personal liability for any portion, let alone the entirety, of the corporation's obligations, aside from the pro-rata amount that the owner might be properly assessed in accordance with the governing documents. As things stand, homeowners in the Bridgetower Subdivision do not enjoy the benefit of that corporate shield. Any liability for the "group" can conceivably be attributed to the owners jointly and severally and the likelihood of a liability arising by virtue of the improper operation of the Subdivision's affairs is high, especially when questions of insurability are considered, as I mentioned.

Obviously, this is a major concern and one that needs to be remedied in a lawful and effective manner. The recent creation of the non-profit corporate entity appears to have been undertaken with this goal in mind, but the execution of that plan was fatally flawed. Absent an amendment to the CC&Rs, the new entity likely has even less authority and legitimacy to handle the Subdivision's affairs than the original poorly-conceived LLC entity. Good intentions and a plan to simply "do what we can" does not remedy all of these outstanding issues and liabilities. Even if that entity is disregarded, there remains an ongoing question as to who actually owns the Common Areas and how, exactly, over 900 homeowners are supposed to commonly conduct the Subdivision's business. The Idaho Unincorporated Nonprofit Associations Act provides some guidance, as does the Idaho Homeowners Association Act, as previously stated. These statutory provisions provide a very basic framework for how the lot owners in the Bridgetower Subdivision can vote to handle business and elect a group to manage the association. However, serious questions and disputes will inevitably arise, which only further increase the likelihood of some kind of liability.

At this juncture, there are only three legitimate options that I can see as viable options for moving forward. First, would be to properly amend the CC&Rs to reflect the creation of the new non-profit corporation (Bridgetower Homeowner's Association, Inc.) and retroactively legitimize it. That will require the drafting of an amendment to the existing language, which must be circulated, along with a ballot, to all of the homeowners within the Subdivision. At least seventy percent (70%) of the Lot Owners will have to approve the changes and execute those signed ballots before the changes can be effective. There will be, I am sure, political difficulties associated with that pursuit even if it is successful, when it comes to gaining control of the funds of the "association," any historical records, and control of its affairs. I would also strongly recommend that the Articles of Incorporation and Bylaws be updated to reflect a much more typical and homeowner-centered style of management. For the purposes of this opinion letter, however, the main objective in that pursuit would be to properly authorize and legitimize the entity, so that some formal entity at least properly exists to allow business-as-usual to be conducted. I have no illusions as to the difficulty of obtaining the affirmative vote of seventy-percent of the homeowners in a subdivision as large as Bridgetower. It is easy to imagine that the daunting nature of such a task was one of the reasons why this step was skipped in creation of the new entity in the first place. However, if there is sufficient interest in amending the CC&Rs and a group of homeowners willing to do the work and bear the costs of doing so, it is the most direct solution and something that will ultimately have to be done in the long run either way.

Barring an amendment to the CC&Rs, the second option for a lawful and legitimate resolution to these issues is litigation. There are various mechanisms to petition the Court for assistance in overseeing the management and control of the Subdivision's affairs, quieting title to the Common Areas, establishing an injunction against any entity or group that is seeking to exercise invalid authority in the Subdivision, and generally attempting to the "right the ship," as the saying goes. This will also not be an easy undertaking, but the Court will have the authority to force participation by all of the relevant and necessary parties, whereas amendment of the CC&Rs is based completely upon the willing participation of the homeowners. A well-drafted complaint for relief in the Court can operate to clarify the answers to all of these outstanding questions, place the Court in the position to act as a kind of "guardian" for the Subdivision and its affairs, provide some surety for owners, mortgagees, vendors, and insurers, and allocate responsibility and liability for these problems to those who might bear such responsibility, among other benefits. Such litigation will be very time-consuming and incredibly expensive, but it may be the only option that the homeowners have to properly resolve the situation that they now find themselves in. Unfortunately, I expect that litigation in some form or another is almost inevitable for the Bridgetower Subdivision. I would expect any such litigation to cost upwards of $25,000, with that number varying dramatically based upon the conduct of the parties involved and the Court itself.

The third and final option for the Lot Owners is to just commit to the idea of unincorporated affiliation and begin holding votes and making decisions in accordance with the Idaho Unincorporated Nonprofit Associations Act and the Idaho Homeowners Association Act. The homeowners do not have the obligation to consent to the demands and actions of the Bridgetower Homeowner's Association, Inc., as that entity presently has no legitimate authority or standing, either to force membership, assess and collect dues, or enforce the language of the CC&Rs. I have represented a handful of subdivisions with unincorporated HOAs, and the scheme is workable, even if it is not ideal. This option would at least allow the homeowners to vote immediately on the Subdivision's affairs, including electing a group of managers, establishing assessments, and the like. A number of questions will remain outstanding, such as the issue of quieting title to the Common Areas and getting control of the funds that have already been paid to the "HOA," but it is at least a step in the right direction, with control exercised by the homeowners who are so deeply invested in the Subdivision.

There is no simple fix to this problem, but it can be solved and it needs to be solved properly. For most people, their home is the single most valuable asset that they have and their personal worth is innately tied to the value of that home. It is incredibly important that this value be protected by the homeowners association for the Subdivision and that unexpected liabilities not be incurred by virtue of the actions of the homeowners association and those controlling it. Each of the homeowners in the Bridgetower Subdivision is seriously at risk, and I would advise all of you to encourage all of the homeowners that you speak with to obtain counsel to protect their rights in this manner. I am happy to answer any questions that may arise and to aid the group in moving forward in any of the ways I have described or that may otherwise be conceived of by the group. There might not be a perfect solution for this problem, due to its complexity and the number of parties involved, among other things, but we can certainly work towards a better solution than the one that has foisted upon the homeowners, which will inevitably engender more dispute and liabilities. Something needs to be done in the Subdivision and it needs to be done properly in order to protect all of the homeowners, as they are the ones who truly have the most to lose in this situation. Please do not hesitate to ask any follow-up questions and if anything contained in this letter is unclear, please reach out immediately for clarification.

Sincerely,

Collins Law PLLC

Brindee L. Collins

Simonds et al v. Bridgetower LLC

CV-01-2023-05393

Memorandum Opposing Motion for a More Definitive Statement

EXHIBIT B

3 pages following:

Written Consent Resolution
of Members of Bridgetower Owners Association LLC
In Lieu of a Board of Directors Meeting

WRITTEN CONSENT RESOLUTION OF
MEMBERS OF THE BRIDGETOWER OWNERS ASSOCIATION, LLC
IN LEU OF A BOARD OF DIRECTORS MEETING

Pursuant to the Idaho Uniform Limited Liability Company Act and the constituent documents of Bridgetower Owners Association, LLC, an Idaho limited liability company (the **"Company"**), the undersigned, being all the members of the Company or having any claim or rights of membership (the **"Member" or "Members"** as the case may be), hereby consent to the adoption of the following resolutions and the actions to be taken thereunder:

WHEREAS, the Company has been operated as a limited liability company under the Idaho Limited Liability Company Act.

WHEREAS, the original sole member of the Company is Primeland Development Company, L.L.P. (the "**LLP**").

WHEREAS, over the years various secretary of state filing have altered the members of the Company without corresponding Company documents and formalities being completed and included in the Company records.

WHEREAS, the original sole member of the Company, the LLP, was previously dissolved.

WHEREAS, the original sole member and those individuals currently identified on the Idaho Secretary of State filing for the Company wish to update information related to the membership of the Company and thereafter reconstitute the operative documents related to Bridgetower Homeowner's Association, Inc., a non-profit organization under Idaho law (the "**HOA**").

WHEREAS, the Operating Agreement of the Company and affiliated documents related to the Bridgetower subdivision (the "**Subdivision**") provides for the transfer and conveyance of all assets of the Company should the Company be dissolved and reconstituted as another non-profit organization with similar purposes.

WHEREAS, Bridgetower Homeowner's Association, Inc. (the "**HOA**") will execute Articles of Incorporation and Bylaws in accordance with Idaho law.

NOW, THEREFORE, BE IT RESOLVED that it is the best interest of the Company and the HOA that the undersigned, to the extent they may have a membership interest, if any, in the Company, take the following actions and adopt the following resolutions by unanimous written consent without a meeting, with the intention that such actions will have the same force and effect as if a meeting was duly called and held.

BE IT RESOLVED that it is in the best interest of the Company to direct and authorize the Members to enter into the necessary HOA documents, and to execute and deliver any other documents required in connection with the formation of the HOA contemplated herein, including; (i) Articles of Incorporation, (ii) Bylaws, (iii) Statement of dissolution of the Company, (iv) transfer

documents, (v) and any other documents related to the formation, operation, and management of the HOA (collectively the "**HOA Documents**").

BE IT RESOLVED that the undersigned are hereby authorized, empowered and directed to take any actions, and to execute, deliver, and cause the Company to perform its obligations under any and all documents related thereto, which may be executed by the undersigned, or its agent, with such changes as the undersigned deems appropriate.

BE IT RESOLVED that it is in the best interests of the Company and the HOA that the Members approve the formation of Bridgetower Homeowner's Association, Inc., an Idaho non-profit organization, and the undersigned do hereby authorize and ratify the execution of the HOA Documents and direct that all documents be filed and recorded as part of the HOA.

BE IT RESOLVED that it is in the best interests of the Company and the HOA that the undersigned authorize and ratify the execution of all assignment and transfer documents necessary to consummate the creation and re-formation of the operative documents of the HOA, including Article of Incorporation and Bylaws for Bridgetower Homeowner's Association, Inc., an Idaho non-profit corporation.

BE IT RESOLVED that it is in the best interests of the Company and the HOA that once the HOA has been established and all agreements and ancillary documents have been assigned and/or transferred that the Company be dissolved and wound up. The undersign authorize and empower the Company's agent AMI to execute and take such action as necessary to complete the transfer of the Company's Assets, including, but not limited to the transfer of real property.

BE IT RESOLVED that it is in the best interests of the Company and the HOA that once the HOA has been established that all assets of the Company be transferred to the HOA. The undersign authorize and empower the Company's agent AMI to execute and take such action as necessary to complete the dissolution and winding up of the Company.

BE IT RESOLVED that it is in the best interests of the Company and the HOA that the HOA recognize the need to take the foregoing actions for the benefit of the Bridgetower subdivision and that the HOA fully and completely indemnify the undersigned from any claims, known or unknown, related to the Company or the management of the Subdivision.

In furtherance of this resolution, the undersigned certifies that he/she/it duly authorizes AMI to enter into and execute said contracts on behalf of the Company. The undersigned further authorizes AMI to provide such additional information and execute such other documents as may be required by state or federal government in connection with said contracts and to execute any amendments, recessions, and revisions thereto, and further certifies:

1. The Company is organized and operating under the laws of Idaho and is qualified to do business in Idaho and is in good standing.

2. No proceeding for forfeiture of the certificate of incorporation of the Company or for voluntary or involuntary dissolution of the Company is pending.

3. The Company, an Idaho limited liability company, is a manager managed limited liability company organized and existing under the laws of the State of Idaho and neither the articles of organization nor any other agreement limits the power of the members to pass the resolutions contained in this Resolution by Written Consent.

4. The undersigned is authorized to make and sign this certificate.

5. The undersigned does hereby certify this to be a true copy of the resolution duly adopted by written consent of all members of the Company to the extent they are members and that it has not been rescinded, amended or altered in any way, **and that it remains in full force and in effect.**

The undersigned hereby certifies that he/she/they are authorized to execute this resolution.

This Consent shall be effective for all purposes on the 20 day of FEB 2023.

MEMBER(S):

By: _____
Name: Steve Strickland
Title: Member

By: _____
Name: Joe Gruber
Title: Member

By: _____
Name: JEFFREY T. WOLFF
Title: Member

Primeland Development Company, L.L.P.

By: _____
Name: Frank Varriale
Title: Member