

**Board Resolution Approving Settlement of  
Lot 201 Legal Matter**

WHEREAS, the Applewood Heights Homeowners Association ("Association") is governed by those certain Bylaws, dated January 27, 1982, which provide at Section 3, paragraph A, subparagraph 2 that "the affairs of the [Applewood Heights Homeowners Association] and its assets and other property shall be managed exclusively by a board of five directors . . ."; and

WHEREAS, the Bylaws further provide, at Section 2, paragraph G, subparagraph 2 that the Association is entitled to "institute any equitable or legal proceeding appropriate, convenient or necessary for . . . enforcement of any covenant . . ."; and

WHEREAS, the Bylaws further provide, at Section 3, paragraph C, subparagraph 5 that, "Each director shall be entitled to cast one vote in person on any matter or questions voted upon."; and

WHEREAS, the Bylaws further provide, at Section 3, paragraph C, subparagraph 6 that "the majority vote of the entire number of directors present at any meeting of the Board of Directors shall decide any matter or question voted upon by the directors."; and

WHEREAS, on August 3, 2015, the Association filed a Complaint against the owners of Lot 201 for installing non-conforming roofing material, without the prior approval from the Architectural Control Committee (collectively, the "Lot 201 Legal Matter"). A copy of the Complaint is attached hereto as Exhibit A;

WHEREAS, on October 27, 2016, the Association proposed a settlement of the Lot 201 Legal Matter by delivering a settlement proposal (the "Settlement Proposal") to the Lot 201 owners. A copy of the Settlement Proposal is attached hereto as Exhibit B;

WHEREAS, on January 3, 2018, the Lot 201 owners agreed to the terms of the Settlement Proposal;

WHEREAS, a majority vote of the Board of Directors has voted in favor of approving the settlement of the Lot 201 Legal Matter according to the terms and conditions of the Settlement Proposal; and

IT IS HEREBY RESOLVED that the Association's consent to the Settlement Proposal attached hereto as Exhibit B constitutes an official act of the Board.

VOTES IN FAVOR: 5 VOTES OPPOSED: 0 ABSENT:   

The requisite majority votes being in favor, this resolution and the aforementioned contract or expense item is hereby approved, effective this ~~3<sup>rd</sup>~~ 17<sup>th</sup> day of January, 2018.

**Applewood Heights Homeowners Association  
Board of Directors**

By: Aric Wenzl  
Aric Wenzl

By: Paul Schoomaker  
Paul Schoomaker

By: Mike Palmer  
Mike Palmer

By: Jeremy Maskel  
Jeremy Maskel

By: Joan Luebbert  
Joan Luebbert





IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APPLEWOOD HEIGHTS  
HOMEOWNERS ASSOCIATION, a  
Not For Profit Nebraska Corporation,

Plaintiff,

vs.

JASON R. SIMS and  
JENNIFER SIMS,

Defendants.

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COMPLAINT

COMES NOW, the Plaintiff and for its claim for relief against the Defendants, alleges and states as follows:

1. The Plaintiff is, and at all times mentioned in this Complaint was, a Not For Profit Corporation, organized and existing under the laws of the state of Nebraska, with its principal place of business located at P.O. Box 615, Boys Town, Nebraska 68010.
2. The Defendants, Jason R. Sims and Jennifer Sims, are, and at all times relevant to this action were, residents of Omaha, Douglas County, Nebraska, residing at 6223 S. 107<sup>th</sup> Street, Omaha, Nebraska 68127 ("Property"). The Defendants have, since January 22, 2009, been the fee owners of record of the Property by virtue of a Warranty Deed executed by Defendants and filed for record on February 3, 2009, in the Register of Deeds' Office at Deed Filing No. 2009009320. A true and correct copy of that Deed is attached hereto as Exhibit A, and by this reference made a part hereof.
3. This is an action for mandatory injunction to enforce certain covenants, conditions and restrictions of the following: (i) Declaration of Covenants, Conditions and Restrictions for Applewood Heights Lots 1 through 213, Inclusive, originally executed November 4, 1980 and recorded at Book 641, Page 604; (ii) Amendment to Declaration of Covenants, Conditions and Restrictions for Applewood Heights, executed November 4, 1981, and recorded at Book 662, Page 328; and (iii) Second Amendment to Declaration of Covenants, Conditions and Restrictions for Applewood Heights Lots 1 Through 213, Inclusive, executed January 17, 2012 and recorded January 30, 2012 at Filing No. 2012009013 (herein after referred to collectively as "Declarations"). The Declarations are attached hereto and marked as Exhibits B, C, and D, respectively.
4. As stated in Paragraph 2, Defendants are the fee owners of a Property legally described as: Lot 201, in Applewood Heights, an Addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska. Defendant's Property is located within the Applewood Heights subdivision and is subject to the Declarations as set forth above.



5. Pursuant to Article VI of the Declarations, Applewood Heights Homeowners Association, a corporation formed and existing under Nebraska law, is entitled, from time to time, to institute any equitable and legal proceeding appropriate, convenient or necessary for the enforcement as to any lot of any covenant or easement granted to it, and allows a reasonable charge for such action as a lien upon and charge against the lot in favor of the Applewood Heights Homeowners Association. This power includes the power to enforce covenants, conditions and restrictions contained in the Declarations so as to enjoy any violations of those covenants.

6. Additionally, Section 2G of the Applewood Heights Homeowners Association, Inc. By-Laws, as amended on November 3, 1982, states as follows:

"The corporation shall be entitled at any time or from time to time to institute any equitable or legal proceeding appropriate, convenient or necessary for collection of any dues or charges or enforcement of any covenant or easement of concern to it or to take any appropriate, convenient or necessary remedial or other action against any resident member or any resident member's residential lot within the limits of the real property included in membership, or against the holder of any option from the Declarant..."

A copy of the Applewood Heights Homeowners Association, Inc. By-Laws and Amendment are attached hereto as Exhibit E, and by this reference made a part hereof.

7. Article II(A) of the Declaration of Covenants, Conditions and Restrictions for Applewood Heights Lots 1 through 213, Inclusive (Exhibit B) states as follows:

"No dwelling, fence, other than fences constructed by Declarant, wall, driveway, patio, patio enclosure, deck, rock garden, swimming pool, television or radio antenna, solar collecting panels or equipment, air conditioning equipment, wind-generated power equipment or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without the express written approval of the Association through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below."

8. Section 1 of the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Applewood Heights Lots 1 Through 213, Inclusive (Exhibit D) states as follows:

"All dwellings shall be roofed with (i) wood shakes or wood shingles; (ii) synthetic shake shingles with the appearance, color, texture, and thickness of natural wood shakes; (iii) minimum two-piece laminated fiberglass shingles including the Heritage® Series Laminated Asphalt Shingles manufactured by TAMKO®, the Landmark™ Series Shingles



manufactured by CertainTeed, or the Presidential Shake™ manufactured by CertainTeed; provided, however, that the exclusive color of all such shingles shall be 'Weathered Wood' and shall weigh no less than 235 pounds per 100 square feet; or (iv) any material preapproved by the Architectural Control Committee; provided however that the Architectural Control Committee shall only approve of materials similar in appearances, texture and quality as those materials enumerated in items (i), (ii) and (iii) above. The Architectural Control Committee shall at all times maintain and publish a list of preapproved roofing materials."

9. On August 20, 2014, Aric Wenzl, President of Applewood Heights Homeowners Association, addressed a letter to Defendant Jason Sims stating that it has been brought to the attention of the Architectural Control Committee (herein "ACC") that "you have recently completed an external improvement to your property without obtaining the approval of the ACC, namely the installation of a new roof." Additionally, Wenzl states to Jason Sims that "While the named external improvement has already been completed, the ACC can still approve of the improvement." Wenzl requests that Jason Sims submits an ACC approval form. A copy of this letter is attached hereto as Exhibit F.
10. Defendants submitted an Approval Request Form for their roof, signed by Jennifer Sims on August 25, 2014. The form requested a start date of August 12, 2014 and a completion date of August 16, 2014. The form listed "Heritage-Tamko" as the shingle manufacturer and described the property as "new roof due to hail damage." A copy of this request form is attached hereto as Exhibit G.
11. Defendants, by and through their attorney, stated to Plaintiff's counsel via letter dated May 26, 2015 that the manufacturer of the roof was TAMKO Building Products, Inc.; the name of the color of the roof is Rustic Black; the material used is Wood Shingles – impact resistant – Class 4; and the name of the roofing company that installed the roof is Alexander Construction. A copy of this letter is attached hereto as Exhibit H.
12. Plaintiff, by and through its attorney, stated to Defendants in a letter dated June 26, 2015 that they had failed to date to secure the approval of the ACC regarding their new roof. Defendants were allotted fourteen (14) days to apply for approval from the ACC. Defendants have failed to seek such approval. A copy of this letter is attached hereto as Exhibit I.
13. Defendants' roof is of a different color and texture than the colors and textures pre-approved by the ACC.
14. Defendants have refused, neglected and continue to refuse to install a conforming roof on their home.
15. Plaintiff is without legal remedy to correct the wrong described in this Complaint and will be irreparably harmed if Defendant is allowed to continue to maintain the roof on the Property, in its now current condition, being replaced with non-conforming roofing products.

**WHEREFORE**, Plaintiff respectively prays this Court for a Order granting a temporary and permanent injunction restraining the Defendant from maintaining their current roof, having roofing materials as set forth and described in this Complaint and requiring the Defendants to remove such non-conforming roofing materials immediately. Plaintiff further requests costs of this action and such other and further relief as the Court deems just and equitable in the circumstances.

**DATED** this 3<sup>rd</sup> day of August, 2015.

APPLEWOOD HEIGHTS  
HOMEOWNERS ASSOCIATION, Plaintiff,

BY: 

Bruce H. Brodkey, #10435

Wm. Oliver Jenkins, #24683

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October 27, 2016

*Via Electronic Mail Only*  
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**Re: Applewood Heights HOA v. Sims v. Wenzl et al.**  
**District Court of Douglas County, Nebraska**  
**Case No.: CI 15 – 6847**

**FOR SETTLEMENT PURPOSES ONLY (Neb. Rev. Stat. § 27-408)**

Dear Mr. Jabenis:

Our firm recently had the opportunity to meet with our client, Applewood Heights Homeowners Association (“Applewood Heights HOA”), regarding the above referenced litigation. After reviewing the facts and status of the litigation, our client feels confident in the strength of its position. However, in the interest of avoiding the cost of further litigation of the matter for all sides, and moving forward, Applewood Heights HOA has authorized us to set forth a settlement proposal.

Applewood Heights HOA will release all claims arising from or related to the replacement of shingles on the roof of the Sims residence in Applewood Heights, occurring on or about August 12, 2014, and dismiss the action with prejudice, if the Sims agree to the following:

- a) Replace the shingles on their roof with materials that are in compliance with Applewood Heights HOA roofing covenants within two years of the date of the settlement agreement;
- b) If the Sims sell their residence during the two year term of the settlement agreement, the Sims must replace the shingles with materials that are in compliance of Applewood Heights HOA roofing covenants prior to closing of the sale of the home;
- c) Submit all roofing materials to be used in replacing the shingles to the Applewood Heights Homeowners Association Architectural Control Committee for approval; and

- d) Agree to releasing Applewood Heights HOA and all Third-Party Defendants from all claims arising from or related to the replacement of shingles and all other materials, occurring on or about August 12, 2014, and dismiss all counterclaims with prejudice.

Due to the nature of the Applewood Heights HOA, any settlement agreement will require final approval of the Board of Directors.

Please advise of your clients' approval or rejection within ten (10) days of the date of this letter. If we do not receive any communication regarding our client's settlement proposal within ten (10) days from the date of this letter, we will assume the settlement proposal has been rejected. If you have any questions regarding the matter, please contact me.

Best regards,  
**BRODKEY, PEEBLES, BELMONT & LINE, LLP**

*s/ Wm. Oliver Jenkins*

Wm. Oliver Jenkins

Cc: Aric Wenzl, President Applewood Heights HOA  
Joel D. Nelson, Esq., Keating O'Gara  
Bruce H. Brodkey, Esq.  
Tosha Rae D. Heavican, Esq.