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February 20, 2020

File 10835-001

Mr. Arthur Schwarz
17 Glorieta East
Irvine, CA 92620-1849

Re: *Park Paseo Homeowners Association*

Subject: **The Association's Invitation to Allow You to Inspect an Owner's Plans and Architectural Committee Meeting Minutes**

Dear Mr. Schawz:

As legal counsel to the Park Paseo Homeowners Association, I am responding to your February 14, 2020, letter directed to Ms. Lynn Wyatt.

Civil Code Section 5205(a) provides:

“(a) The association shall make available association records for the time periods and within the timeframes provided in Section 5210 for inspection and copying by a member of the association, or the member's designated representative.”

Civil Code Section 5200(a) defines the term “association records” that are subject to inspection and copying by a homeowner as follows

- (a) "Association records" means all of the following:
 - (1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.
 - (2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.
 - (3) Interim financial statements, periodic or as compiled, containing any of the following:

(A) Balance sheet.

(B) Income and expense statement.

(C) Budget comparison.

(D) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4) Executed contracts not otherwise privileged under law.

(5) Written board approval of vendor or contractor proposals or invoices.

(6) State and federal tax returns.

(7) Reserve account balances and records of payments made from reserve accounts.

(8) Agendas and minutes of meetings of the members, the board, and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, mailing address, and email address, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An "enhanced association record" as defined in subdivision (b).

(14) "Association election materials" as defined in subdivision (c).

The terms "enhanced association record" and "association election materials" are defined in subdivisions (b) and (c), respectively, of *Civil Code* 5205 as follows:

(b) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

(c) "Association election materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied.

The expression of some things in a statute necessarily means the exclusion of other things not expressed. *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852. Thus, the Association is statutorily obligated to make available for inspection and copying "association records," "enhanced association records," and "association election materials," as those terms are defined in *Civil Code* Section 5205, subject to an association's right to make permissible redactions in accordance with *Civil Code* Section 5215.

An architectural application submitted by an owner, and an architectural plan submitted by an owner are not included within the statutory definitions of "association records," "enhanced association records," or "association election materials." Therefore, there is no statutory obligation to make them available for inspection or copying.

Minutes of an Architectural Committee meeting are not included within the statutory definitions of "association records," "enhanced association records," or "association election materials". The Architectural Committee is not an executive committee appointed by the Board pursuant to Section 7212 of the *Corporations Code*. Therefore, there is no statutory obligation to make them available for inspection or copying.

Thus, the Association is not statutorily obligated to allow you to inspect or copy the architectural application, the plans, or the Architectural Committee meeting minutes subject of your correspondence.

Nevertheless, simply in an effort to bring an end to this discussion without spending more time and money on it, the Board of Directors resolved to allow you to review the documents at the Association's office. You may review the documents, but you may not copy nor take the documents with you. If you wish to review the documents as offered, please contact Ms. Wyatt directly as previously offered. Please

Mr. Arthur Schwarz
February 20, 2020
Page 4

be advised that this letter is not an invitation for further discussion or debate—the matter is closed and will not be discussed further.

Very truly yours,

CANE, WALKER & HARKINS LLP

David E. Cane

DEC:tg

cc: Board of Directors