



May 18, 2020


Arthur Schwarz
17 Glorieta East
Irvine, CA 92620

Re: Request for Management Contract and ADR

Dear Mr. Schwarz:

Regarding your request for Park Paseo's Management contract with Associa/PCM. It is included in this letter. Regarding your request for an Alternate Dispute Resolution, ADR, it has been denied by the Board of Directors.

On Behalf of the Board of Directors,


Lynn Wyatt CCAM®, CMCA®
General Manager
Park Paseo Homeowners Association

cc: Board of Directors
David E. Cane, Esq

ORIGINAL

Management Agreement

between

Park Paseo Homeowners Association

and

**Professional Community Management
of California, Inc.**

MANAGEMENT AGREEMENT

This Agreement is entered into by and between PARK PASEO HOMEOWNERS ASSOCIATION, a non-profit California Corporation, (hereinafter referred to as "Association") and PROFESSIONAL COMMUNITY MANAGEMENT OF CALIFORNIA, INC., a California Corporation (hereinafter referred to as "Agent").

IT IS MUTUALLY PROMISED AND AGREED AS FOLLOWS:

ARTICLE I GENERAL

- 1.1 Appointment. For valuable consideration and in consideration of the services to be performed by Agent, Association hereby appoints Agent and Agent hereby accepts appointment as directed by Association's governing body, to manage the property and activities of Association as they relate to the certain real property located in the city of Irvine, County of Orange, State of California and commonly known as Park Paseo Homeowners Association and agrees to pay Agent the compensation hereinafter provided. Association expressly warrants that it is duly authorized to execute this Agreement.
- 1.2 Agency Relationship Between Association and Agent. Everything done by Agent under the provisions of this Agreement shall be done as Agent of Association and all obligations or authorized expenses incurred thereunder shall be for the account, on behalf, and at the expense, of Association. Payments to be made by Agent hereunder shall be made from the account of Association or as may be provided by Association. Agent shall not be obliged to make any advance to or for the account of Association or to pay any sum, except out of funds held or provided as aforesaid nor shall Agent be obliged to incur any liability or obligation for the account of Association without assurance that the necessary funds for the discharge thereof will be provided.
- 1.3 Agent's Employees. With regard to Agent's employees, Agent shall exercise complete control of and supervision over Agent's employees and the procedures and methods employed in the performance of Agent's duties. The relationship between Association and Agent shall be that of owner and Agent and not employer and employee. Neither Association nor any of its members shall have the right to supervise the employees of Agent. Complaints or concerns regarding the activities or performance of Agent's employees should be directed to the appropriate representative of the Agent. It is understood that Agent's employees will observe Agent's holidays, be allowed vacation time and be eligible for sick leave in accordance with Agent's policies. Agent's assigned Association Manager will be available and onsite to organize and coordinate Association's 4th of July activities and other Association Holiday events as determined by Association.
- 1.4 Insurance. Agent shall, throughout the term of this Agreement and at Agent's expense, maintain the following insurance policies and coverage limits: General Liability \$1 Million, Umbrella \$5 Million, Crime/Fidelity \$6 Million, Errors & Omissions \$5 Million, Employment Practices Liability \$3 Million and Workers Compensation \$1 Million.

ARTICLE II COMMUNITY MANAGEMENT

2.1 Administrative Duties. Agent shall assist the Board of Directors of Association ("BOD") in the management and administration of the Association. Agent shall organize and maintain documents and files relating to Association in a business-like manner. Examples are, but are not limited to, written unit owner correspondence, contracts, filings with public agencies, insurance policies, owner's lists and individual unit files.

1. Agent shall maintain a service desk to receive maintenance requests and forward requests to contractors.
2. Agent shall provide a 24 hour, seven (7) day per week answering service to receive emergency calls that pose a threat to life, health or property. However, such service shall not be construed by Association or its members as a substitute for notification of the proper civic authorities, law enforcement, fire and rescue, etc.
3. Agent shall be responsible for performing monthly community inspections in order to identify actual and/or potential violations of the CC&R's including Architectural Violations and/or Rules and Regulations. Additionally, Agent shall formally document and share the results of such inspections with the BOD and maintain all homeowner correspondence up to and including initiation of the Association's fine schedule. Agent shall take necessary action within Agent's scope of authority as set by Board resolution or procedure in accordance with Civil Code.
4. Agent shall research Association records, prepare answers, copy materials, give depositions, represent Association in court and otherwise provide assistance to requests from agencies such as insurance companies, legal counsel and tax auditors when and if directed by the Board of Directors and at reimbursable rates in accordance with the Schedule of Fees described in this Agreement.
5. Agent shall not approve architectural plans.
6. Agent shall not provide legal, audit/tax, reserve study, general contractor, or similar types of advice.
7. Unless otherwise authorized by Association BOD, Agent shall not initiate the towing of vehicles from Association common area.
8. Agent shall provide an onsite Associate Manager and Recreational Coordinator as needed, during Agent's normal business hours. The onsite Associate Manager's rate will be \$20 per hour and the Recreational Coordinator's rate will be \$ 16 per hour, as further specified in Article VI, section 6.1. Documented time logs will be kept.

2.2 Association Records. As of the Effective Date of this Agreement, all Association records provided to Agent shall be converted to and maintained in an electronic format at the Agent's office. Such records shall remain the sole property of Association. Physical files other than original signed minutes, original signed contracts and blueprints or large scale plans, which have been scanned and electronically stored will be retained for delivery to Association's document storage vendor. Upon termination of the Agreement, Agent agrees to return any and all such records and correspondence in any form to Association or to a person designated in writing by the Board of Directors. Electronic documents will be forwarded in a readable PC operating system format. Such records shall be picked up at Agent's offices during normal business hours with reasonable notice.

1. Records shall be available for inspection and/or copying based on guidelines established by the Board of Directors, however, only with 48 hour notice and only during Agent's normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. All copying and labor shall be charged at reimbursable rates in accordance with the Schedule of Fees described in this Agreement.
 2. Agent shall maintain a current unit owners list based upon voluntarily supplied data from owners or escrow companies and with supporting documentation. Agent has no responsibility to discover transfers of title or changes in ownership which are not so reported.
- 2.3 Association Meetings. Agent shall be available to attend (i) one (1) regularly scheduled Board or Membership Meeting per month and (ii) two (2) additional ad hoc meetings per year not to exceed two (2) hours per meeting as determined by BOD at no additional cost to Association.
1. Such meetings shall be scheduled for Agent's non-holiday weekdays.
 2. Attendance at regularly scheduled Board or Membership Meetings in excess of three (3) hours each or that extends past 9:00 p.m. will be billed at Association Manager reimbursable rates.
 3. Agent shall prepare the agenda, Board Packets and minutes of each such meeting.
 4. Agent shall arrange for the date, time, location and necessary notices for each such meeting. All related costs to be paid by Association.
 5. Agent shall organize and prepare for the Annual Membership Meeting in accordance with Association documents and California law.
 6. If mutually agreed upon, Agent shall attend other Board, committee or membership meetings and be compensated at reimbursable rates in accordance with the Schedule of Fees described in this Agreement.
 7. If Agent prepared for and was in attendance at a scheduled regular, special or annual meeting which was canceled, rescheduled or reconvened without prior notification to Agent, then Agent shall be reimbursed for the rescheduled or reconvened meeting.
 8. Agent shall be responsible for preparation and typing of BOD meeting minutes, and production of the monthly Association newsletter. Initial draft of BOD minutes shall be distributed to BOD members within ten (10) calendar days following the date of the BOD meeting.
- 2.4 Maintenance of Property. On behalf of Association, Agent shall contract for the normal maintenance of the buildings, appurtenances and grounds of the Association in accordance with standards specified by Association.
1. Agent shall obtain three (3) bids for each of the above mentioned services pursuant

to specifications approved by Association and provide Association with an analysis and evaluation of all bids. Upon review, the BOD shall determine which bid to select and communicate such bid acceptance to Agent.

2. All contracts and purchase orders shall be entered into in the name of Association and Association retains the primary responsibility for enforcing the provisions of the contracts.
3. Agent shall have authority to contract on behalf of Association without procuring bids and without specific Association authorization for any one item of repair or replacement not covered under any existing contract and costing no more than \$750; provided, however that emergency repairs involving manifest danger to life or property, or for the safety of the members of Association, or required to avoid suspension of any necessary service to the Association, may be made by Agent irrespective of the cost limitation imposed by this paragraph. In the event Agent authorizes any emergency repair in excess of \$750, Agent shall notify the Association President within twenty four hours of making such repair or no later than the close of the next business day if such repair is required to be made on a weekend or holiday.
4. Agent shall maintain contact with and monitor the performance of contractors. It is understood, however, that Agent shall not be responsible for any loss or injury arising out of the improper performance of any contractor. Agent's responsibility for monitoring the performance of contractors shall be limited to contractors involving routine maintenance and service of existing facilities.
5. Agent shall monitor the common area over the course of each month's management duties. If committee members or BOD members wish to accompany Agent on walk-throughs, it must be at a mutually agreed upon time.

ARTICLE III FINANCIAL MANAGEMENT

3.1 Accounts Receivable. Agent shall mail a statement of account to each owner. A return envelope will be included for mailing of assessment payment. Charges for supplies will be passed through to the Association. A charge to the homeowner will be made for processing each insufficient funds or closed account check in accordance with Association's fine schedule and attached Schedule of Fees.

1. Delinquency Processing

- a. Agent is authorized to take steps for collection of delinquent assessments in accordance with the Association's delinquency policy, including but not limited to the application of late charges, interest and collection costs to the delinquent homeowner's account, mailing out notice(s) of past due assessment, mailing of pre-lien letter, preparation and recordation of the lien, and forwarding of delinquent account to Association's attorney. Fees for these services will be charged to the Association and billed to the delinquent owner.

- b. In accordance with Civil Code Section 1367 (b), the Association designates Agent's corporate officers as authorized agents to execute liens on behalf of Association, notwithstanding any contrary provisions of the Association's governing documents.
 - c. Association shall be responsible for advancing any and all out-of-pocket costs in connection with attorney's collection proceedings including staff time spent assisting Association's attorney or giving depositions or preparation of records in contested collection matters. A fee for attorney's preparation and related administrative work will be charged to Association and billed to the delinquent owner in accordance with the Schedule of Fees described in this Agreement.
2. Agent shall coordinate with escrow companies upon notification of sale regarding property transfers, amounts owed to Association and changes in ownership. Changes of ownership will be processed and a fee charged through escrow in accordance with the Schedule of Fees described in this Agreement.
- 3.2 Disbursements. Agent shall receive and classify all invoices and shall prepare, sign and forward remittances to vendors on Agent's regularly scheduled pay dates.
- 1. Agent shall present to the Board of Directors monthly a listing of cash disbursements in the form of the check register.
 - 2. All disbursements from reserve accounts shall be signed pursuant to the requirements of California Civil Code.
- 3.3 General Accounting. Agent shall maintain on an accrual basis a set of double entry accounting records in accordance with generally accepted accounting principles and industry standards.
- 1. Agent shall prepare and distribute to the Board of Directors monthly, five (5) calendar days prior to the regularly scheduled Board meeting, a balance sheet, income statement and supporting schedules of cash, investments, year-to-date reserve allocations, year-to-date reserve expenses, check register, accounts payable and accounts receivable listing.
 - 2. Agent shall reconcile all bank statements and shall provide to the Board of Directors copies of bank statements and bank reconciliations at each monthly BOD meeting.
 - 3. Agent shall establish and maintain, in a bank of Agent's choice whose deposits are insured by the Federal Deposit Insurance Corporation and in a manner to indicate the custodial nature thereof, a separate bank account in the name of the Association for the deposit of the monies of Association, with authority to draw thereon for any payments to be made by the Agent to discharge any liabilities or obligations incurred pursuant to this Agreement and for the payment of the Agent's fee, all of which payments shall be subject to the limitations of this Agreement. From funds collected, Agent shall pay the expenses for the operation of Association in accordance with the approved budget or as authorized by Association's Board of

Directors. Notwithstanding any contrary provision of this Agreement, any payment generated by Agent for an authorized Association operating expense, other than payment of Agent's fee, that exceeds twenty five hundred dollars (\$2,500.00), shall require the signature of one (1) Association BOD member.

4. Agent shall establish Association's reserve accounts in federally insured institutions or Treasury T-bills or Treasury bonds at Association's direction. If Association instructs Agent to place funds in any other type of investment vehicle other than in federally insured institutions or Treasury Bills or Treasury Bonds, then Association shall hold Agent harmless from any and all losses of those funds or earnings. Agent shall not be held liable in the event of bankruptcy or failure of a depository.
5. Agent shall, when authorized by the Board of Directors, allow independent auditors, Association members, government representatives and any other parties so authorized, access to all financial records and working space to review those records in accordance with the Schedule of Fees described in this Agreement.
6. Agent shall assist the Board of Directors or its designee in preparation and submission of a recommended pro forma budget to the Board of Directors for their approval at least sixty (60) days prior to the end of Association's fiscal year.

ARTICLE IV ASSOCIATION RESPONSIBILITIES

- 4.1 Documents Furnished to Agent. Upon full execution of this Agreement, Association shall furnish to Agent copies of the Covenants, Conditions and Restrictions, By-Laws, Rules and Regulations, Budget, owner listing, financial information and any other documentation deemed necessary by Agent for the purpose of carrying out its obligations under this Agreement.

Association shall reimburse Agent for any costs associated with researching and obtaining current copies to meet statutory distribution requirements.

- 4.2 Agent as Additional Insured. Association shall name Agent as an additional insured on all association insurance policies, including but not limited to Property, Liability, Directors and Officers and Umbrella immediately after commencement of Agreement. Association shall have insurer forward a Certificate of Insurance and additional insured endorsement evidencing such coverage with the stipulated requirement that Agent (additional insured) be given 30 day notice of cancellation or non renewal.
- 4.3 Association Insurance Coverage. Association shall be solely responsible for all decisions regarding the type and amount of insurance but at the request of Association, Agent shall review insurance coverage of Association and assist in obtaining advice from insurance brokers regarding the type and amount of coverage to maintain.
- 4.4 Indemnification. The Association hereby agrees to defend and indemnify Agent and its employees, agents, officers and directors ("Agent Indemnified Parties") against, and to hold the Agent Indemnified Parties harmless from, all claims, losses, liabilities and

expenses asserted against or incurred by the Agent Indemnified Parties arising out of Agent's association and relationship with the Association, except to the extent of claims, losses, liabilities and expenses (i) arising out of acts or omissions of Agent which are outside the course and scope of its agency relationship with the Association (unless performed by Agent pursuant to the instruction of the Association) or (ii) arising out of actions or omissions that occur as a result of the sole negligence or willful misconduct of Agent.

4.4.1 Indemnification. Agent hereby agrees to defend and indemnify Association and its employees, agents, officers and directors ("Association Indemnified Parties") against, and to hold the Association Indemnified Parties harmless from, all claims, losses, liabilities and expenses asserted against or incurred by the Association Indemnified Parties arising out of Agent's sole negligence or willful misconduct Associations relationship with Agent, except to the extent of claims, losses, liabilities and expenses (i) arising out of acts or omissions of Association which are outside the course and scope of its agency relationship with Agent or (ii) arising out of actions or omissions that occur as a result of the sole negligence or willful misconduct of the Association or (iii) arising out of actions performed by Agent pursuant to the instruction of the Association.

4.5 Audit Review and Tax Fees. All Audit Review, Tax and Legal Fees authorized by the Board of Directors, incurred for the benefit of Association, shall be paid for by Association.

4.6 Reserve Funds. Association will provide two (2) Board signatures authorizing the withdrawal of any and all reserve funds.

ARTICLE V TERM

5.1 Term. The term of this Agreement shall commence on the first day of September 2011 and shall continue for a period of one (1) year (the "Initial Term"). At the expiration of the Initial Term, this Agreement, if not renewed in writing for an additional fixed period shall automatically renew for successive one (1) year periods thereafter (a "Renewal Term"). This Agreement may be terminated by either party at anytime effective the last day of the month following thirty (30) days written notice delivered by hand or by first class mail, postage prepaid, at the following addresses.

ASSOCIATION: Park Paseo Homeowners Association
25 Christamon West
Irvine, CA 92620
Attention: President, PPHOA Board of Directors

AGENT: Professional Community Management of California, Inc.
23726 Birtcher Drive
Lake Forest, Ca 92630
Attention: President and Chief Executive Officer

ARTICLE VI COMPENSATION

- 6.1 Contract Services. Agent accepts as its fee for the performance of its contract services hereunder for the first year of this agreement, payment at the rate of \$5000 per month (\$8 per home per month). Plus \$20 per hour for onsite Associate Manager and \$16 per hour for onsite Recreation Coordinator when needed (documented time logs will be kept), payable no later than the tenth of each month for the contract services performed during the preceding month.
1. After the Initial Term or any Renewal Term of this Agreement, Agent may provide Association with written notice of a proposed annual rate increase. Any proposed rate increase shall be provided to Association at least ninety (90) days in advance of the proposed effective date and shall be limited to the lesser of four percent (4%) or the change in the Consumer Price Index for the Los Angeles, Riverside, Orange County region for the twelve (12) months preceding the proposed increase. Changes to specified fees and payment rates shall only be made effective by Amendment to this Agreement.
- 6.2 Set Up Fees. Agent agrees to waive its initial set up fee. Such fee and waiver is exclusive of banking charges and account reconciliation fees which may also be incurred.
- 6.3 Reimbursable Costs. Agent shall be reimbursed, in accordance with the Fee Schedule described in this Agreement, for labor, materials and incurred expenses which result from activities and services which cannot be accurately forecast or are controlled by, and at the discretion of, the Board, its designee or its membership.

ARTICLE VII MISCELLANEOUS

- 7.1 Amendment of Agreement. This Agreement shall not be modified or amended except by a writing signed by both parties.
- 7.2 State Law. This Agreement shall be subject to and shall be construed under the laws of the State of California.
- 7.3 Entire Agreement. This Agreement contains the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein.
- 7.4 Number and Gender. As used herein, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so indicates.
- 7.5 Arbitration. Any controversy or claim arising out of, or related to, this Agreement shall be settled by binding arbitration in the County of Orange, State of California, in accordance with the then existing rules of the Judicial Arbitration & Mediation Service ("JAMS") and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter in the controversy. The Arbitrator shall have authority to award reasonable attorney fees to the prevailing party in the arbitration.
- 7.6 Indemnification and Reimbursement Survives Termination. All representations and

attorney fees to the prevailing party in the arbitration.

- 7.6 Indemnification and Reimbursement Survives Termination. All representations and warranties of the parties contained herein shall survive the termination of this Agreement. All provisions of this Agreement that require a party to have insurance or to defend, reimburse, or indemnify the other party shall survive any termination; and if Agent is or becomes involved in any proceeding or litigation by reason of having been Association's agent, such provision shall apply as if this Agreement were still in effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the 9th day of August, 2011.

ASSOCIATION: PARK PASEO HOMEOWNERS ASSOCIATION

By: [Signature] President
Signature Title

By: _____
Signature Title

AGENT: PROFESSIONAL COMMUNITY MANAGEMENT OF CALIFORNIA, INC.

By: [Signature] CEO
Signature Title

**PROFESSIONAL COMMUNITY MANAGEMENT
SCHEDULE OF FEES
(Subject to change)**

1. **Supplies.** Agent shall be reimbursed at the following rates for materials and supplies:
 - a. Postage Current United States Postal Service rates and costs
 - b. Office Supplies Actual cost
 - c. Certified Letters \$2.50 handling charge per letter
 - d. Mailings \$0.08 for first page and \$0.05 for each additional page which includes printing, labeling & stuffing.
 - e. Incidental Copying \$ 0.08 per copy /\$0.25 for color copies (color copies only as authorized by BOD)

2. **Labor.** Agent shall be reimbursed at the following labor rates for services performed on behalf of Association that are not specifically described in the Management Agreement. Such items would include, but not be limited to, special projects, meeting as described in this Agreement, court appearances, depositions, record research, clerical support, midyear budget and assessment revisions.
 - a. Executive \$100 per hour
 - b. Association Manager \$60.00 per hour
 - c. Associate Manager \$20.00 per hour
 - d. Recreational Coordinator \$16.00 per hour
 - e. Other Administrative and Clerical \$18.00 per hour
 - f. Construction Repair/ Contract Administration As negotiated
 - g. Trip charge - IRS mileage reimbursement rate plus hourly rate. Visits to the property in excess of those outlined in the contract with a one hour minimum.

3. **Delinquency Processing.** Agent shall be paid by Association and Association agrees to charge Owner according to fees shown:
 - a. Returned Check \$ 10.00
 - b. Late Reminder & Support \$ 15.00
 - c. Pre-lien Letter \$ 75.00
 - d. Additional Pre-lien letters \$ 35.00 each
 - e. Title Check Fee \$ 35.00
 - f. Resolution to Record Lien \$ 35.00
 - f. Lien Filing Fee \$150.00
 - g. Additional Lien Mailings \$ 50.00 each
 - g. Attorney Package Preparation \$200.00 including Monthly Monitoring
 - h. Payment Plan Administration \$ 15.00 per month
 - i. Lien Release \$ 75.00

4. **Transfer of Ownership.** Agent shall be compensated through escrow for changes in ownership as follows:
 - a. First Time Transfer \$125.00
 - b. Resale Transfer (\$200.00 requested at opening of escrow and is non-refundable) \$275.00
 - c. Resale Transfer with Disclosures \$365.00 (Documents and financial package)
 - d. Resale Transfer with Disclosures \$430.00 (Documents, financial package and minutes)
 - e. Financial Package \$ 45.00 per set
 - f. Documents Package \$ 73.00 per set
 - g. Meeting Minutes \$ 70.00
 - h. Certification Letter (PCM form) \$ 80.00
 - i. Certification Letter (Lender form) \$175.00
 - j. Appraisal Report \$ 50.00
 - k. Refinance Demand \$115.00
 - l. Updated Escrow Demand \$ 55.00
 - m. Expedite Fees \$ 50.00 - \$200.00

**PROFESSIONAL COMMUNITY MANAGEMENT
SCHEDULE OF FEES
(Subject to change)**

5. **Miscellaneous.** Agent shall be reimbursed at the following rates:
- | | | |
|----|----------------------------------|------------------------------|
| a. | Rush Check Charge | \$ 25.00 per check |
| b. | Investments: | |
| | (1) Rollovers | No charge |
| | (2) New Accounts | \$ 35.00 each |
| c. | Mailing Labels, if requested | \$.10 each, \$20.00 minimum |
| d. | Year-end preparation for CPA | \$ 250.00 per year |
| e. | Web Site Standard Design | as negotiated |
| f. | Web Site Hosting & Maintenance | as negotiated |
| g. | Web Site Custom Edits | as negotiated |
| h. | IT Tech Support | as negotiated |
| i. | 1099's | \$ 25.00 each |
| j. | Employment Development Reporting | \$100 1x Set |
| | Monthly reporting | \$ 50.00 per vendor |
| | Garnishment | \$ 50.00 each |
| k. | Architectural Processing Fee | \$ 50.00 per annexed unit |
| l. | Newsletter Preparation | \$ 35.00 per page |
6. **Payroll Costs** (if applicable) N/A