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March 15, 2018

Aaron Bishop
Sent via email: aaronb@womgroup.com

Re: Response to letter dated February 22, 2018
Our file number: 4652-00001

Dear Mr. Bishop:

As you may know, our firm represents the O.O. Community Association, Inc. (the "Association"). We are in receipt of the letter dated February 22, 2018 purportedly authored or at least supported by 376 homes in the community; this letter included a petition with the alleged signatures of the owners of the 376 homes (the letter and petition are collectively referred to as the "Correspondence"). We address this correspondence to you given that you signed in the presence of a notary the letter contained in the Correspondence. Additionally, you served as the author/sender of the email with a copy of the letter contained in the Correspondence attached and sent to our law firm, MASC Austin Properties, Inc., and the Board of Directors (the "Board").

It is of significant note that the Correspondence appears to stand for the notion that, when a Special Meeting of the Members is called to order, "the Board will be [] immediately discharged from office...." Article IV, Section 3 of the Bylaws of the Association provides the following:

The Members may remove any director with or without cause by a majority **vote** at a meeting called for such purpose.

While the Board will call a Special Meeting of the Members, understand that when that meeting is called to order, the Board will still be seated, and the members (assuming quorum is met) will then have to vote to remove the individual directors, one at a time. Thus, the idea that the calling of the Special Meeting will automatically remove the Board is inconsistent with Article IV, Section 3 of the Bylaws that requires the members to cast a vote to remove a single director. The signatures on the petition contained in the Correspondence are not the equivalent of a vote, and the vote must occur at a meeting.

Additionally, the Correspondence purports that the anticipated vacancies on the Board left by the improper "immediate discharge" of the Board will be filled by a special election. Citing Article IV, Section 3 of the Bylaws of the Association in relevant part:

In the event of the death, resignation **or removal of a director**, his successor **shall be** selected by the remaining members of the Board and shall serve the unexpired term of his predecessor.

While we do appreciate that there may be a Special Meeting of the Members and a vote on the removal of the individual directors, we must adhere to the terms of the Bylaws as it relates to removal. Article IV, Section 3 of the Bylaws mandates that the remaining members of the Board select the successor to serve in the removed director's vacancy.

A Special Meeting of the Members will be noticed by the Board in accordance with the terms of the Bylaws, but it will not necessarily be on the date or within the deadline presented by the Correspondence. We will adhere to the terms of the Bylaws as it relates to the owners right to request that the Board call a Special Meeting and identify the purpose(s) of the Special Meeting.

With the removal requirements in the Bylaws and the notion that the acts and affairs of the Association must be through the Board in mind, we must inform you that the Special Meeting will not be conducted in the manner anticipated or perceived in the Correspondence. The Board will call a Special Meeting of the Members and the purpose will involve the removal of directors. However, each individual director's removal will be voted on, and then assuming a majority vote of the members at the meeting in favor of removal occurs (at least 309 lots represented) the remaining directors will then appoint the replacement of the removed director. This process will repeat until a vote occurs as it relates to every director.

We bring this to your attention given that it is clear that the Correspondence intends that the Board be automatically removed once the Special Meeting is called to order based on the mistaken belief that the signing of a petition is somehow a vote. Additionally, the Correspondence ignores the Bylaws regarding the appointment of replacement directors if a director is voted to be removed. Lastly, the Correspondence ignores the Certificate of Formation and Bylaws which require the acts and affairs to be achieved through a board.

With the appropriate process of the removal presented, we hope that it is apparent that the campaigners behind the Correspondence to obtain signatures may have misunderstood how the removal process works and did not appreciate how the Bylaws and Certificate of Formation handle removal. The Special Meeting will still go forward, but we are obliged to notify you that it will be a large expenditure of Association resources, in the form of attorney fees and expenses, meeting notice mail outs, and the documentation and personnel that will be part of the Special Meeting.

In relation to the notion that the entire Board be removed at once, it is imperative that the Association not be left with a complete absence of directors to manage the Association. To do so would be a violation of Article IV, Section 1 of the Bylaws, which provides that the "affairs of this Association shall be managed by a board." Additionally, Article Eight of the Certificate of Formation of the Association provides that "[t]he Corporation shall act through a board of directors..., which shall manage the affairs of the Corporation as specified in the Bylaws." If the entire Board were to be removed, no individual would be in place to act on behalf of the Corporation and there would be no one in place to manage the affairs of the Association. The mandatory language of Article IV, Section 1 of the Bylaws and Article Eight of the Certificate of Formation requires management by a board and that the Corporation act through a board. While we certainly understand that the Bylaws provide for the removal of

Directors, removal of the entire Board leaving no one left to act on the Association's behalf or manage its affairs is inconsistent with the terms of the Bylaws and Certificate of Formation.

Focusing on some of the comments and concerns in the letter contained in the Correspondence, we are unable to respond in several instances given the generality of the allegations. By way of example and not limitation, the allegation that the Board has not complied with Section 209.0051(h) of the Property Code is extremely general. We are aware of the practices of MASC Austin Properties, Inc. and the Board and have worked with them in regard to Chapter 209 of the Property Code and the practices and notice required by Section 209.0051(h) of the Property Code. While the Correspondence alleges "blatant and gross violation" of this section, it does little more than present an allegation without explanation. In addition, we understand that the hearing before the Board per Section 209.006 of the Property Code is offered and included in any notice preceding a fine to an owner.

As to the allegation that a fine was improperly levied given that a meeting was not held, a "Member" was not notified, and no agenda was posted, without knowing which Member, we cannot respond to this allegation. If we work under the notion that you, Aaron Bishop, are that owner, you have not been fined and thus, these allegations as it relates to you are unfounded.

The reference to "Texas HB 2869 Sec. 215.007 (d). BOARD MEETINGS" is assumed to be a reference to Section 215.007(d) of the Property Code. If so, please see Section 215.002(a) (1) (A) of the Property Code regarding applicability to Old Orchard. Your community does not contain commercial properties, including hotel and retail properties that constitute at least 35% of the total appraised property value of the mixed-use development governed by the association. There are other reasons why Old Orchard is not subject to this statute, but we need not go further given that it is specifically carved out on this notion from the onset.

The Board does acknowledge that it needs to improve the process of finalizing and posting board meeting minutes. The Board appreciates you bringing this to their attention and the Board looks forward to working with MASC Austin Properties, Inc. to continue to refine the process. We also understand that the Board is currently conducting hearings in accordance with Section 209.006 of the Property Code.

The reference to 209.014 of the Property Code is wholly without merit. It appears that the basis for the allegation that the 2017 Annual Meeting was not called is the lack of minutes, but this is still unclear in the Correspondence. We understand that the Annual Meeting was called. Annual Meeting minutes are not determinative of the calling or occurrence of an Annual Meeting.

We respectfully remind you and/or any other owners that you may represent of the three reasons why the proposed removal of the Board is not in the best interest of the community. First, in our experience, the legal fees associated with removals tend to be in the range of \$10,000 and \$30,000. Legal counsel is always a must to ensure that, if a removal is continued to be the desired route that it is done in accordance with the governing documents and the law. As we have pointed out in this correspondence, the assumptions made as to automatic removal of the Board, the special election, and removal of the entire Board at once are not consistent with the Association's governing documents. A removal under the purported approach would likely not withstand a challenge. You and the owners that you may represent have a choice to avoid these charges. Removal attempts like this one are rarely successful and always expensive. It should be considered that a more fiscally responsible and prudent approach to seating particular directors is through the annual members meeting held each year.

Second, the negative effect on community spirit is inevitable. While we understand that a large group of owners are concerned and have questions, the longer that this division exists and the more resources, funds, and time that everyone invests in it, the more likely the spirit of the community will be negatively affected.

Lastly, property values in the community will likely drop given that this is now a public discussion. Many have taken to social media forums to voice their opinion, at best, and in some cases (but perhaps not you, Mr. Bishop) personally attack the character of the individual directors. To the extent brokers, realtors, and buyers become aware of this dispute and the resources, funds, and time that everyone invests in it, they will likely look elsewhere to buy a home. This may reduce property values in your community given that the average buyer is not interested in buying into a dispute. Everyone is entitled to their opinion, but we understand that some may be using character assassinations in support of their opinion. This is reckless at best, malicious at worst and punishable by law in the case of a civil suit. This is another area where the concerned owners that we understand you may be representing have a choice to take a more cordial, productive path.

We also understand that the group of concerned owners may be receiving bad information on social media and/or other forums in relation to the governing documents of the Association, Property Code and the other laws that govern the operation of community associations like yours. We encourage you to be weary of information, representations and opinions pertaining to the governing documents and Texas law that originates from non-lawyers. Representation of community associations is a highly-specialized area of the law, and as we have pointed out in several ways in this correspondence, the understandings and citations to certain statutes are not accurate or consistent with the law. We impress upon you to utilize legal counsel prior to relying on information, representations and opinions that originate from non-lawyers.

While you and the owners that you may represent may have concerns and have questions, it is of note that the vast majority of the meetings of the Board in 2017 and prior years had little or no participation from the membership. It is also of note that 3 of the 5 directors were elected by the members; the last 2 seats only recently being filled by appointment of the remaining directors in accordance with the Bylaws and the Property Code. Many of the decisions that the Board made in 2017 are now being challenged and questioned when the appropriate time to ask these questions and voice these opinions has passed. We do acknowledge that there is always room for improvement and we are working with the Board and MASC Austin Properties, Inc. to that end. However, it is fair to acknowledge that there was little or no participation from the members at meetings of the Board for most of 2017. The Board is implementing steps to improve an already legitimate and legal foundation of transparency. The information that the owners claim that has been withheld has always been available and the law requires its production. The notion that no one asked for this information and/or it was not presented in the preferred format does not equate to a lack of transparency. Nonetheless, the Board is working toward addressing many of these concerns and hopes that the owners choose cordial and productive methods of communication.

Sincerely,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



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