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PARTNER
ADMITTED IN CA, MI, TX, NY
AND THE U.S. SUPREME COURT

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October 25, 2022

VIA ELECTRONIC DELIVERY (JENSENF1@CO.MONTEREY.CA.US)

Fionna Jensen
Associate Planner
Monterey County Housing and Community Development
1441 Schilling Place, 2nd Floor
Salinas, California 93901

RE: PLN220137 (Shaughnessy Property: APN 007-201-018)

Dear Ms. Jensen:

This firm represents Thomas Shaughnessy related to his application for a short-term rental certificate. This addresses the comments made in your email communication dated August 15, 2022, to Mr. Shaughnessy's consultant Daniel Saphorghnan regarding Mr. Shaughnessy's application. In your email you state, "The County recognizes that the Pebble Beach Company (PBC) is the de facto and/or the functional equivalent of a homeowners' association for the Pebble Beach/Del Monte Forest area, and recognizes PBC as the affected homeowners' association for the purposes of implementation of MCC Section 21.64.280.D.2.g."

The comment in your email is problematic for several reasons. There is no such thing in law as a "de facto" or "functional equivalent" of a homeowner's association. The Pebble Beach Company either is a legally formed and authorized homeowner's association, or it is not. There are specific requirements applicable to the formation of a homeowner's association; typically, they are non-profit mutual benefit corporations formed in compliance with the Davis-Sterling Act (See, e.g., Civil Code § 4000-6150.) One of the key features of a homeowners' association is the levy and collection of assessments. Alternatively, a private entity such as The Pebble Beach Company may obtain the right to regulate or limit the use of others' private property through properly recorded liens, covenants, conditions & restrictions, or similar servitudes.

I am not aware of any evidence to support the conclusion that The Pebble Beach Company is a legally formed and authorized homeowners' association. The Pebble Beach Company's website expressly contradicts the idea that it is a homeowners' association: "In the summer of 1999, Arnold Palmer, Richard Ferris, Peter Ueberroth and Clint Eastwood—along with William Perocchi and GE Pension—offered limited

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partnership interests with the understanding that the plan was to never again sell Pebble Beach Company to another ownership group.” (<https://www.pebblebeach.com/about-us/company-history>). The Pebble Beach Company operates public hotels, resort properties and amenities, including golf courses, and tennis clubs, and retails sports equipment, travel and spa services, among other related services and products. None of those goods and services are consistent with the management and operation of an association of homeowners in a common interest development. The Pebble Beach Company also does not levy and collect assessments from its “members.” This is not how a homeowners’ association operates and functions.

The Pebble Beach Company also does not have any enforceable rights against Mr. Shaughnessy’s property arising from equitable servitudes or covenants, conditions & restrictions. Some properties in the Del Monte Forest are subject to covenants, conditions & restrictions, some of which were recorded as long ago as 1928. However, Assessor’s Parcel Number 007-201-018 (Mr. Shaughnessy’s property) is not one of the properties subject to the deed restrictions. Mr. Shaughnessy’s title report, which he obtained when he purchased the property in 2013, does not identify any covenants, conditions & restrictions or deed restrictions encumbering his property.

As a result, The Pebble Beach Company has no legal authority to interfere with Mr. Shaughnessy’s right to obtain a permit and the County has no legal justification to require that Mr. Shaughnessy obtain consent from The Pebble Beach Company to obtain a short-term rental certificate. We therefore request that you withdraw the requirement that Mr. Shaughnessy obtain consent from The Pebble Beach Company and promptly process and issue his short-term rental certificate.

Sincerely,

SBEMP LLP



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