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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of)
PALM BEACH PARK ASSOCIATION,)
Respondent.) CONSENT ORDER

Respondent Palm Beach Park Association and Complainant the Commissioner of Business Oversight (“Commissioner”) enter into this Consent Order (“Order”) based on the following facts:

I. JURISDICTION AND VENUE

1. The Commissioner of the Department of Business Oversight (“DBO”) is authorized to administer and enforce the provisions of the Corporate Securities Law of 1968, Corporations Code section 25000 et seq. (“CSL”) and the regulations found at Title 10 of California Code of Regulations.

2. The Commissioner brings this action pursuant to the provisions of CSL sections 25110 and 25532, and the rules and regulations promulgated thereunder.

3. The Palm Beach Park Association admits to the jurisdiction of the Department of Business Oversight in this matter solely for the purpose of this order and for the purpose of resolving the Commissioner’s investigation of Palm Beach Park Association and its re-issuance of membership certificates.

II. STATEMENT OF FACTS

4. Respondent Palm Beach Park Association (“Association”) is a non-profit mutual benefit California Corporation which was formed on December 17, 1997, as a successor in interest to an unincorporated association of the same name, for the purpose of owning and operating a mobile home park located at 101 Palm Drive in the city of San Clemente, California. Under its Articles of Incorporation, the Association was entitled to facilitate the purchase and operation of a mobilehome

1 park commonly known as Palm Beach Park (“Park”) by its residents and manage a common interest
2 development under the Davis-Stirling Common Interest Development Act. In 1979, the Association
3 was able to obtain an assignment of the Original Ground Lease and assume the obligations of a
4 Sublease that expired in April 2018, and also acquired a Right of First Refusal to purchase the Park
5 property from the Forster Family Trust, which owned the Park property.

6 5. At the time of formation in 1997, the Association issued approximately 126
7 memberships to the then residents of the Park for \$15,000.00 each. At the time of the original
8 issuance of memberships, the Association had no ownership interest in the real property on which the
9 Park was located. It had only a leasehold interest in the property which expired in 2018. As a
10 condition of being allowed to obtain a membership in the Association, members were required to
11 own a mobile home at the Park and be over 55 years of age. The memberships entitled the members
12 to lease from the Association the space at the Park on which their mobile home was located. The
13 Association facilitated management of the Park and common areas, the costs of which were paid by
14 members through monthly rent and/or special assessments voted on by the members pursuant to the
15 Association’s bylaws.

16 6. At the time of the formation of the Association and the issuance of the original
17 memberships in or about 1997, the Association applied for and received a permit from the then
18 California Department of Corporations, now the Department of Business Oversight, to issue 126
19 memberships in the Association for \$15,000.00 each. As a condition of the permit, the DBO required
20 that members apply for a transfer permit from the DBO whenever they sold their membership to a
21 new member. The transfer of the membership was generally accompanied by the sale of the mobile
22 home of the selling member to the new member.

23 7. The Association continued to lease the property from the Forster Family Trust until
24 2007. At that time, the Forster Family Trust notified the Association that it received a bona fide offer
25 by a third party to purchase the Park property and the Association had 30 days to exercise its right of
26 First Refusal to purchase the Park property for \$24,750,000.00. If the Association did not exercise
27 the Right of First Refusal, the Park property would have been sold to the bona fide purchaser and
28 eventually cause the members to be evicted from the Park when the Original Ground Lease expired in

1 2018.

2 8. The Association's members voted to authorize the Board of Directors to exercise the
3 Right of First Refusal to purchase the Park Property for \$24,750,000.00. To facilitate the purchase,
4 an assessment ("Assessment") in the amount of \$200,000.00 was levied on each member of the
5 Association. The \$200,000.00 assessment approximated the purchase price and costs associated with
6 the Association's purchase of the Park property (126 members multiplied by \$200,000.00).

7 9. When the Assessment was levied on the Association's members, some members were
8 able to pay the Assessment in full and other members agreed to make monthly payments for the
9 Assessment. The Association required as a condition of membership that if any member had not paid
10 the Assessment in full, the remaining balance would be paid by a purchaser of the member's
11 mobilehome at the time of sale either by paying the remaining balance in full or assuming the
12 obligation of the monthly payments.

13 10. In or about 2014, the Commissioner received complaints from persons involved in
14 litigation against the Association about issues pertaining to membership certificates in the
15 Association. As a result of those complaints, the DBO began an investigation to determine if the
16 transaction surrounding the Association's purchase of the Park property, levy of the \$200,000.00
17 Assessment, and the reissuance of membership certificates was done in compliance with the CSL,
18 Business and Professions Code, California Finance Lenders Law and other laws within the DBO's
19 jurisdiction.

20 11. In or about the end of 2015, the Association sold the land on which the Park is located
21 to a third party. The Association also represented it plans to dissolve the Association and distribute its
22 remaining assets, including the proceeds from the sale of the land, to members in good standing. The
23 Association represented it does not intend to issue, exchange, or sell memberships in the Association
24 in the future under the planned dissolution.

25 **III. THE DBO'S FINDINGS**

26 12. Based on its investigation, the DBO makes the following findings of law and fact.
27 The Association disputes the DBO's findings, and denies it has violated any securities laws which are
28 the subject of the DBO's findings, but agrees to comply with the other terms of this Order to resolve

1 the DBO’s investigation without the need for an administrative hearing or other litigation:

2 13. The memberships in the Association were securities subject to the CSL pursuant to
3 Corporations Code section 25110.

4 14. In or about 1997 the DBO issued a permit to the Association to sell memberships for a
5 price of \$15,000.00 each. At that time the permit was issued, the Association only had a leasehold
6 interest in the land on which the Park was located.

7 15. In 2007, the Association materially changed the rights, preferences and privileges of
8 the memberships from those that had previously been permitted by the DBO. These changes required
9 the Association to obtain a new permit from the DBO pursuant to Corporations Code sections
10 25120(a)(1) and 25121, unless an exemption applied.

11 16. The Association was required to obtain a permit from the DBO pursuant to Business
12 Professions Code section 11010.8 to convert the Park to a resident owned mobile home park unless it
13 filed a Notice of Intent to Offer Subdivided Lands with the California Bureau of Real Estate, pursuant
14 to the procedure contained in Business and Professions Code section 11010.

15 **IV. CONSENT ORDER TO DESIST AND REFRAIN FROM VIOLATIONS OF**
16 **CORPORATE SECURITIES LAW AND BUSINESS AND PROFESSIONS CODE**

17 Based upon the foregoing findings, the Commissioner of Business Oversight hereby orders
18 the Association to desist and refrain from offering, selling, reissuing or exchanging memberships in
19 the Association and/or materially changing the rights preferences and privileges of existing
20 memberships, including but not limited to converting the Association into to a resident owned mobile
21 home park under Business and Professions Code section 11010.8, without first applying for and
22 obtaining a permit from the DBO pursuant to Business and Professions Code section 11010.8 and in
23 compliance with Corporations Code sections 25110, 25113, 25120(a) (1) and 25121. The
24 Association hereby consents to comply with this Order and to desist and refrain from issuing, re-
25 issuing, selling or exchanging any memberships in the Association. Notwithstanding the foregoing,
26 this Order shall not affect, prevent, or otherwise apply to the Association dissolving as a Corporation
27 in accordance with any applicable law of the State of California.
28

1 **V. ADDITIONAL CONSIDERATIONS**

2 A. In consideration of the Association's agreement to this Order and the Association's planned
3 dissolution and distribution of assets, the DBO will refrain from taking any further legal action
4 against the Association or its members with respect to any past issuance, offer, sale, exchange or
5 change in the rights preferences and privileges of memberships in the Association. The DBO
6 specifically reserves the right to take legal action against the Association to enforce the terms of this
7 Order and agreement. In consideration of the DBO's agreement, the Association agrees to waive any
8 claim against the DBO related to or arising out of the DBO's investigation, any application for permit
9 or requests to transfer memberships.

10 B. This Order does not limit or create any private rights or remedies against the Association, or
11 limit or create liability of the Association, or limit or create defenses of Association to any claims that
12 may be brought by any person or entity not a party to this agreement. This Order is not intended to be
13 an admission of wrongdoing, liability, or to any of the Findings made by the Commissioner and the
14 DBO as set forth herein. The Association agrees to this Consent Order to resolve and compromise a
15 disputed claim about whether the laws and regulations set forth herein were violated. The violations
16 of law alleged herein are expressly denied by the Association. The Association enters into this
17 Consent Order as a settlement of the issues raised by the DBO's investigation to avoid any further
18 enforcement action or litigation by the DBO. This Order and the findings of fact and law by the
19 DBO contained herein may not be used in any other action or proceeding by any person or entity not
20 a party to this order and is not admissible in any subsequent legal proceeding against the Association
21 for any purpose, except by the DBO in any subsequent action to enforce the terms of this Order.

22 C. Nothing herein shall preclude the State of California, its departments, agencies, boards,
23 commissions, authorities, political subdivisions and corporations, other than the California
24 Department of Business Oversight from asserting any claims, causes of action, or applications for
25 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
26 against the Association.

27 D. This Order and any dispute related thereto shall be construed and enforced in accordance
28 with, and governed by, the laws of the State of California without regard to any choice of law

1 principles.

2 E. The Association through its execution of this Order acknowledges that it has been served with
3 a copy of the Order, admits the jurisdiction of the DBO solely for the purpose of resolving the
4 Commissioner’s investigation of Palm Beach Park Association and its re-issuance of membership
5 certificates and to enforce the terms of this order and is aware of its right to a hearing and appeal in
6 this matter and voluntarily waives its right to a hearing on this matter and to judicial review of this
7 Order under California Corporations Code sections 25532(d) and 25609.

8 F. The Association enters into this Order voluntarily and represents that no threats, offers,
9 promises, or inducements of any kind have been made by the California Department of Business
10 Oversight or any member, officer, employee, agent, or representative of the California Department of
11 Business Oversight to induce the Association to enter into this Order.

12 This Order shall be binding upon the Association and its successors and assigns. This Order is
13 necessary in the public interest, for the protection of investors, and consistent with the purposes,
14 policies, and provisions of the Corporate Securities Law of 1968.

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16 Dated: July 19, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

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By _____
MARY ANN SMITH
Deputy Commissioner

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22 Dated: July 12, 2016

Palm Beach Park Association

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By _____
DIANA MANTELLI
President

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