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MEMORANDUM

TO: River Park in Aspen Condominium Association
Attn.: Chuck Frias

FROM: Paul J. Taddune, Esq.

DATE: September 20, 2012

RE: House Bill 12-1237 Concerning the Records Kept by a Unit Owners
Association of a Common Interest Community

This is to alert you of the enactment of House Bill 12-1237, which repeals and re-enacts with amendments, Section 38-33.3-317 of the Colorado Common Interest Ownership Act. The Governor signed the Bill on May 29, 2012. A copy is attached. It becomes effective January 1, 2013.

The new law addresses: (1) the records which HOAs will be required to maintain and produce to owners upon request; (2) records which may be withheld from production to owners; (3) records which must be withheld from production to owners; (4) procedures which HOAs will be permitted to utilize when handling records requests from owners; (5) what HOAs may charge for assembling, producing and copying records; and (6) restrictions which owners in HOAs must follow when utilizing membership lists.

There is no substitute for reading the Bill in its entirety with regard to its requirements. You will see that it provides for the following:

1. In addition to any records specifically defined in the Association's Declaration or Bylaws or expressly required by Section 38-33.3-209.4(2) (i.e. regarding maps that are part of the Declaration), the Association must maintain the following:

(a) Detailed records of receipts and expenditures affecting the operation and administration of the association;

(b) Records of claims for construction defects and amounts received pursuant to settlement of those claims;

(c) Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;

(d) Written communications among, and the votes cast by, executive board members that are:

- Directly related to an action taken by the board without a meeting pursuant to Section 7-128-202, C.R.S.; or
- Directly related to an action taken by the board without a meeting pursuant to the Association's bylaws;

(e) The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the Association communicates with them, showing the number of votes each unit owner is entitled to vote;

(f) Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, responsible governance policies adopted pursuant to Section 38-33.3-209.5, and other policies adopted by the executive board;

(g) Financial statements as described in Section 7-136-106, C.R.S., for the past three years and tax returns of the Association for the past seven years, to the extent available;

(h) A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;

(i) Most recent annual report delivered to the Secretary of State, if any;

(j) Financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) concerning statement of unpaid assessments;

(k) Association's most recent reserve study, if any;

(l) Current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two years;

(m) Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;

- (n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate;
- (o) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members; and
- (p) All written communications within the past three years to all unit owners generally as unit owners.

These records must be available for examination and copying by a unit owner or the owner's authorized representative. The Association may not condition the production of records upon the statement of a proper purpose.

2. Other sections of the law prohibit the use of the membership list for the reasons set forth therein, however, records may be withheld from inspection and copying to the extent that they are or concern:

- (a) Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans or designs;
- (b) Contracts, leases, bids or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;
- (c) Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
- (d) Disclosure of information in violation of law;
- (e) Records of an executive session of an executive board;
- (f) Individual units other than those of the requesting owner; or
- (g) The names and physical mailing addresses of unit owners if the unit is a time-share unit.

3. Further, records maintained by an association that are not subject to inspection and copying, and which must be withheld, to the extent that they are or concern:

- Personnel, salary or medical records relating to specific individuals;

- Personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.

4. The right to copy records includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner. An association is not obligated to compile or synthesize information.

5. The Association may impose a reasonable charge for copies of Association records, which may be collected in advance and may cover the costs of labor and materials.

6. Association records and the information contained within those records shall not be used for commercial purposes.

Please feel free to call if you have any questions.

NOTE: The governor signed this measure on 5/29/2012.

An Act

HOUSE BILL 12-1237

BY REPRESENTATIVE(S) Williams A., Bradford, Court, Duran, Fields, Holbert, Kerr A., Kerr J., Labuda, Ramirez, Schafer S., Todd, Tyler, Wilson, Casso, Coram, Massey, Ryden, Vigil;
also SENATOR(S) Harvey, Jahn, Newell, Steadman.

CONCERNING THE RECORDS KEPT BY THE UNIT OWNERS' ASSOCIATION OF A
COMMON INTEREST COMMUNITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 38-33.3-317 as follows:

38-33.3-317. Association records. (1) IN ADDITION TO ANY RECORDS SPECIFICALLY DEFINED IN THE ASSOCIATION'S DECLARATION OR BYLAWS OR EXPRESSLY REQUIRED BY SECTION 38-33.3-209.4 (2), THE ASSOCIATION MUST MAINTAIN THE FOLLOWING, ALL OF WHICH SHALL BE DEEMED TO BE THE SOLE RECORDS OF THE ASSOCIATION FOR PURPOSES OF DOCUMENT RETENTION AND PRODUCTION TO OWNERS:

(a) DETAILED RECORDS OF RECEIPTS AND EXPENDITURES AFFECTING THE OPERATION AND ADMINISTRATION OF THE ASSOCIATION;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) RECORDS OF CLAIMS FOR CONSTRUCTION DEFECTS AND AMOUNTS RECEIVED PURSUANT TO SETTLEMENT OF THOSE CLAIMS;

(c) MINUTES OF ALL MEETINGS OF ITS UNIT OWNERS AND EXECUTIVE BOARD, A RECORD OF ALL ACTIONS TAKEN BY THE UNIT OWNERS OR EXECUTIVE BOARD WITHOUT A MEETING, AND A RECORD OF ALL ACTIONS TAKEN BY ANY COMMITTEE OF THE EXECUTIVE BOARD;

(d) WRITTEN COMMUNICATIONS AMONG, AND THE VOTES CAST BY, EXECUTIVE BOARD MEMBERS THAT ARE:

(I) DIRECTLY RELATED TO AN ACTION TAKEN BY THE BOARD WITHOUT A MEETING PURSUANT TO SECTION 7-128-202, C.R.S.; OR

(II) DIRECTLY RELATED TO AN ACTION TAKEN BY THE BOARD WITHOUT A MEETING PURSUANT TO THE ASSOCIATION'S BYLAWS;

(e) THE NAMES OF UNIT OWNERS IN A FORM THAT PERMITS PREPARATION OF A LIST OF THE NAMES OF ALL UNIT OWNERS AND THE PHYSICAL MAILING ADDRESSES AT WHICH THE ASSOCIATION COMMUNICATES WITH THEM, SHOWING THE NUMBER OF VOTES EACH UNIT OWNER IS ENTITLED TO VOTE; EXCEPT THAT THIS PARAGRAPH (e) DOES NOT APPLY TO A UNIT, OR THE OWNER THEREOF, IF THE UNIT IS A TIME-SHARE UNIT, AS DEFINED IN SECTION 38-33-110 (7);

(f) ITS CURRENT DECLARATION, COVENANTS, BYLAWS, ARTICLES OF INCORPORATION, IF IT IS A CORPORATION, OR THE CORRESPONDING ORGANIZATIONAL DOCUMENTS IF IT IS ANOTHER FORM OF ENTITY, RULES AND REGULATIONS, RESPONSIBLE GOVERNANCE POLICIES ADOPTED PURSUANT TO SECTION 38-33.3-209.5, AND OTHER POLICIES ADOPTED BY THE EXECUTIVE BOARD;

(g) FINANCIAL STATEMENTS AS DESCRIBED IN SECTION 7-136-106, C.R.S., FOR THE PAST THREE YEARS AND TAX RETURNS OF THE ASSOCIATION FOR THE PAST SEVEN YEARS, TO THE EXTENT AVAILABLE;

(h) A LIST OF THE NAMES, ELECTRONIC MAIL ADDRESSES, AND PHYSICAL MAILING ADDRESSES OF ITS CURRENT EXECUTIVE BOARD MEMBERS AND OFFICERS;

(i) ITS MOST RECENT ANNUAL REPORT DELIVERED TO THE SECRETARY OF STATE, IF ANY;

(j) FINANCIAL RECORDS SUFFICIENTLY DETAILED TO ENABLE THE ASSOCIATION TO COMPLY WITH SECTION 38-33.3-316 (8) CONCERNING STATEMENTS OF UNPAID ASSESSMENTS;

(k) THE ASSOCIATION'S MOST RECENT RESERVE STUDY, IF ANY;

(l) CURRENT WRITTEN CONTRACTS TO WHICH THE ASSOCIATION IS A PARTY AND CONTRACTS FOR WORK PERFORMED FOR THE ASSOCIATION WITHIN THE IMMEDIATELY PRECEDING TWO YEARS;

(m) RECORDS OF EXECUTIVE BOARD OR COMMITTEE ACTIONS TO APPROVE OR DENY ANY REQUESTS FOR DESIGN OR ARCHITECTURAL APPROVAL FROM UNIT OWNERS;

(n) BALLOTS, PROXIES, AND OTHER RECORDS RELATED TO VOTING BY UNIT OWNERS FOR ONE YEAR AFTER THE ELECTION, ACTION, OR VOTE TO WHICH THEY RELATE;

(o) RESOLUTIONS ADOPTED BY ITS BOARD OF DIRECTORS RELATING TO THE CHARACTERISTICS, QUALIFICATIONS, RIGHTS, LIMITATIONS, AND OBLIGATIONS OF MEMBERS OR ANY CLASS OR CATEGORY OF MEMBERS; AND

(p) ALL WRITTEN COMMUNICATIONS WITHIN THE PAST THREE YEARS TO ALL UNIT OWNERS GENERALLY AS UNIT OWNERS.

(2) (a) SUBJECT TO SUBSECTIONS (3), (3.5), AND (4) OF THIS SECTION, ALL RECORDS MAINTAINED BY THE ASSOCIATION MUST BE AVAILABLE FOR EXAMINATION AND COPYING BY A UNIT OWNER OR THE OWNER'S AUTHORIZED AGENT. THE ASSOCIATION MAY REQUIRE UNIT OWNERS TO SUBMIT A WRITTEN REQUEST, DESCRIBING WITH REASONABLE PARTICULARITY THE RECORDS SOUGHT, AT LEAST TEN DAYS PRIOR TO INSPECTION OR PRODUCTION OF THE DOCUMENTS, AND MAY LIMIT EXAMINATION AND COPYING TIMES TO NORMAL BUSINESS HOURS OR THE NEXT REGULARLY SCHEDULED EXECUTIVE BOARD MEETING IF THE MEETING OCCURS WITHIN THIRTY DAYS AFTER THE REQUEST. NOTWITHSTANDING ANY PROVISION OF THE DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, THE ASSOCIATION

MAY NOT CONDITION THE PRODUCTION OF RECORDS UPON THE STATEMENT OF A PROPER PURPOSE.

(b) (I) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2), A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE OBTAINED OR USED BY ANY PERSON FOR ANY PURPOSE UNRELATED TO A UNIT OWNER'S INTEREST AS A UNIT OWNER WITHOUT CONSENT OF THE EXECUTIVE BOARD.

(II) WITHOUT LIMITING THE GENERALITY OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), WITHOUT THE CONSENT OF THE EXECUTIVE BOARD, A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE:

(A) USED TO SOLICIT MONEY OR PROPERTY UNLESS SUCH MONEY OR PROPERTY WILL BE USED SOLELY TO SOLICIT THE VOTES OF THE UNIT OWNERS IN AN ELECTION TO BE HELD BY THE ASSOCIATION;

(B) USED FOR ANY COMMERCIAL PURPOSE; OR

(C) SOLD TO OR PURCHASED BY ANY PERSON.

(3) RECORDS MAINTAINED BY AN ASSOCIATION MAY BE WITHHELD FROM INSPECTION AND COPYING TO THE EXTENT THAT THEY ARE OR CONCERN:

(a) ARCHITECTURAL DRAWINGS, PLANS, AND DESIGNS, UNLESS RELEASED UPON THE WRITTEN CONSENT OF THE LEGAL OWNER OF THE DRAWINGS, PLANS, OR DESIGNS;

(b) CONTRACTS, LEASES, BIDS, OR RECORDS RELATED TO TRANSACTIONS TO PURCHASE OR PROVIDE GOODS OR SERVICES THAT ARE CURRENTLY IN OR UNDER NEGOTIATION;

(c) COMMUNICATIONS WITH LEGAL COUNSEL THAT ARE OTHERWISE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE;

(d) DISCLOSURE OF INFORMATION IN VIOLATION OF LAW;

(e) RECORDS OF AN EXECUTIVE SESSION OF AN EXECUTIVE BOARD;

(f) INDIVIDUAL UNITS OTHER THAN THOSE OF THE REQUESTING OWNER; OR

(g) THE NAMES AND PHYSICAL MAILING ADDRESSES OF UNIT OWNERS IF THE UNIT IS A TIME-SHARE UNIT, AS DEFINED IN SECTION 38-33-110 (7), C.R.S.

(3.5) RECORDS MAINTAINED BY AN ASSOCIATION ARE NOT SUBJECT TO INSPECTION AND COPYING, AND MUST BE WITHHELD, TO THE EXTENT THAT THEY ARE OF CONCERN:

(a) PERSONNEL, SALARY, OR MEDICAL RECORDS RELATING TO SPECIFIC INDIVIDUALS; OR

(b) PERSONAL IDENTIFICATION AND ACCOUNT INFORMATION OF MEMBERS, INCLUDING BANK ACCOUNT INFORMATION, TELEPHONE NUMBERS, ELECTRONIC MAIL ADDRESSES, DRIVER'S LICENSE NUMBERS, AND SOCIAL SECURITY NUMBERS.

(4) THE ASSOCIATION MAY IMPOSE A REASONABLE CHARGE, WHICH MAY BE COLLECTED IN ADVANCE AND MAY COVER THE COSTS OF LABOR AND MATERIAL, FOR COPIES OF ASSOCIATION RECORDS. THE CHARGE MAY NOT EXCEED THE ESTIMATED COST OF PRODUCTION AND REPRODUCTION OF THE RECORDS.

(5) A RIGHT TO COPY RECORDS UNDER THIS SECTION INCLUDES THE RIGHT TO RECEIVE COPIES BY PHOTOCOPYING OR OTHER MEANS, INCLUDING THE RECEIPT OF COPIES THROUGH AN ELECTRONIC TRANSMISSION IF AVAILABLE, UPON REQUEST BY THE UNIT OWNER.

(6) AN ASSOCIATION IS NOT OBLIGATED TO COMPILE OR SYNTHESIZE INFORMATION.

(7) ASSOCIATION RECORDS AND THE INFORMATION CONTAINED WITHIN THOSE RECORDS SHALL NOT BE USED FOR COMMERCIAL PURPOSES.

SECTION 2. In Colorado Revised Statutes, 38-35.7-102, **amend** (2) (b) as follows:

38-35.7-102. Disclosure - common interest community -

obligation to pay assessments - requirement for architectural approval.

(2) (b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 ~~(3)~~ (4), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.

SECTION 3. Act subject to petition - effective date. This act takes effect January 1, 2013; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on January 1,

2013, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO