

EXHIBIT 4

March 8, 2013

VIA EMAIL AND FACSIMILIE

Nadia L. Costa, Esq.
Miller, Starr & Regalia
1331 N. California Blvd, Fifth Floor
Walnut Creek, California 94596

Re: 3236 Stone Valley Road West, Alamo, California

Dear Ms. Costa:

We have further reviewed April 17, 1979, Book 9312, Official Records, pages 440-459 (the "1979 Easement") and historical documents related thereto in order to investigate the assertions made in your February 12, 2013 letter on behalf of TRH Holdings LLC ("TRH"). TRH's assertions are without merit for each of the following separate reasons:

First, TRH's assertion that TRH "... is a successor-in-interest to the original grantee and as such is entitled to the full beneficial use of the entire easement as granted and described" is belied by:

- The map that is a part of the 1979 Easement (the Map") is incorporated into the recitals to that Easement and hence is binding on the parties. (Evid. Code § 622.) The Map includes both: (1) language that limits which "adjacent" parcel benefits from the 20 parking spaces adjoining Area A and which "adjacent" parcel benefits from the 30 parking spaces adjoining Area B; and (2) language that describes the Lunada Lane Easement (being the consideration for the granted easement rights) which separates Area A from Area B as well as Mr. Rubey's respective parcels on each side of Lunada Lane. TRH's assertion cannot be sustained because it is dependent on not only making the notations on the Map a nullity, but also nullifies the Lunada Lane Easement's separation of the two parcels;
- The Map is very clear in showing that a single parcel is adjacent to Area B and states: "(Includes 30 parking space use) granted to the *adjacent* parcel to the East..." TRH's Property is not adjacent to Area B;

- The Map is very clear in showing that a single parcel is adjacent to Area A and states: "(Includes 20 parking space use) to the *adjacent* parcel to the East...." (This single parcel as shown on the Map covers two parcels); and
- The fact that the two parcels shown on the Map as being owned by Mr. Rubey are designated as "Rubey's properties" in the Map's text is consistent with and does not change which of the two, shown parcels are respectively adjacent to Area A and Area B.

Second, to the degree TRH is asserting that the sales transaction made it the "sole" successor-in-interest to the original grantee in the 1979 Easement, such an assertion is belied by:

- The 2012 transaction documents themselves, including the 2012 Easement Agreement signed by the Hirts on behalf of TRH that explicitly states that post-closing Mr. Rubey's "Danville Property" retains its ownership interest in the 1979 Easement (denominated in the 2012 documents as "PARCEL TWO") and that the "Danville Property" (made up of the defined PARCEL ONE and PARCEL TWO) "is not part of the property being acquired by TRH;"
- TRH's purchase agreement states it is only purchasing 3236 Stone Valley Road, Alamo, California. Accordingly, only easements that ran with the land being sold were to be transferred to TRH. Hence, the Grant Deed only transferred the limited interest in Area A of the 1979 Easement that ran with 3236 Stone Valley Road, Alamo, California.
- Consistent with the 2012 Easement Agreement signed by the Hirts on behalf of TRH in which TRH acknowledged that the "Danville Property" retains its ownership interest in the 1979 Easement (denominated as "PARCEL TWO") and that the "Danville Property" (made up of the defined PARCEL ONE and PARCEL TWO) "is not part of the property being acquired by TRH," and consistent with the controlling law, the 2012 transaction documents did not transfer to TRH the appurtenant interests held by Mr. Rubey's other two parcels which were not sold to TRH. "An appurtenant easement is a part of, and cannot be transferred separate from, the dominant tenement." (See Miller & Starr, §15.6, citing, e.g., *Leggio v. Haggerty* (1965) 231 Cal.App.2d 873, 880);
- As an incidental fact, it should be noted that the broker for Mr. Rubey met with the broker for TRH prior to the close of TRH's purchase transaction.

At this meeting, it was explained to TRH's broker that TRH was not acquiring any interest in the 30 parking spaces in Area B;

- Further, prior to the close of the 2012 purchase transaction, the broker for TRH met with Mr. Rubey, who in front of multiple witnesses, again explained that TRH was not acquiring any interest in the 30 parking spaces in Area B; and
- Following the close of the purchase transaction, Mr. Hirt asked Mr. Rubey to bring a copy of the 1979 Easement to a meeting and to explain the 1979 Easement. Mr. Rubey explained to Mr. Hirt that the property purchased by TRH has the benefit of the parking spaces in Area A and did not have the benefit of the parking spaces in Area B. Mr. Hirt indicated he understood. Subsequently, Mr. Hirt via TRH Properties made a purchase offer for Mr. Rubey's parcel that is adjacent to Area B in order to, in part, gain the benefit of the 30 parking spaces in Area B. It was only when this purchase offer was rejected that, for the first time, TRH claimed to have the right to parking in Area B.

Third, to the degree TRH argues that the 1979 Easement is ambiguous as to whether the Map – which is part of the recorded document and incorporated into the recitals – gives rise to the allocation shown on the Map such that the 30 parking spaces in Area B only benefit the adjacent parcel on the same side of the Lunada Lane easement that Area B is on, all admissible testimony on this issue confirms Mr. Rubey's position:

- Mr. Rubey is prepared to testify to the drafters' intent that, consistent with the Map, Area B's 30 parking spaces only benefit the adjacent parcel that is on the same side of the Lunada Lane Easement as Area B; and
- Consistent with the intent of the drafters' of the 1979 Easement and the Map, the building plans and permits for the buildings on the respective parcels reveal that:
 - (i) the building on TRH's purchased parcel was permitted and built based on it having the right to use the parking spaces on the west and south sides of the building on the TRH parcel, plus the 20 parking spaces in Area A;
 - (ii) the building on the parcel to the west of TRH's purchased parcel (the Dominant Tenement in the 2012 Easement Agreement) was permitted and built based on it having the parking on its parcel and the parking on the east side of the TRH's parcel (that is now covered by TRH's 2012 Easement Agreement); and

- (iii) the building on Mr. Rubey's parcel that is adjacent to Area B and is on the same side of the Lunada Lane Easement as Area B was permitted and built based on it having the right to the 30 parking spaces in Area B.

Fourth, the building purchased by TRH does not need the 30 parking spaces in Area B to be compliant with applicable laws. The building permit was properly obtained based on the parking spaces on the west and south sides of the building plus the 20 parking spaces in Area A. It is fully vested and, therefore, compliant.

Fifth, even assuming *arguendo* that Mr. Rubey's parcels listed in the 1979 Easement did not have the allocation set forth on the Map (which can only be done by improperly ignoring the Map) and that a legal proceeding is needed to quiet title or allocate the parking spaces, the result of any such proceeding would at best allocate to TRH the 20 parking spaces in Area A and nothing more. Factors considered in apportioning the benefits of an easement include: *inter alia* the configuration and location of the parcels." (Restatement (Third) Property (Servitudes), §5.7, Comment c.) Here, based on the configuration and location of the three respective parcels as currently configured, including the County's reliance on the 20 parking spaces in Area A supporting the permit for the building TRH purchased and the 30 parking spaces in Area B supporting the permit for the building on Mr. Rubey's parcel adjacent to Area B on the north side of the Lunada Lane easement, it is clear that TRH would not be allocated any of the 30 parking spaces in Area B. Rather, any such allocation to TRH would be limited, at best, to the 20 spaces in Area A.

Having had the foregoing explained, unless TRH serves a lawsuit alleging a different position, Mr. Rubey will understand that TRH is making no claim of right or interest in the 30 parking spaces in Area B under the 1979 Easement or otherwise.

Very truly yours,

Bartko-Zankel-Tarrant-Miller
A Professional Corporation



Michael D. Abraham

MDA/ma

cc: Albert R. Rubey ✓