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February 12, 2019

## **Via Mail & Email**

Ms. Cybele Thompson  
Ms. Heidi Farst  
City of San Diego  
Real Estate Assets Department  
1200 Third Avenue, Suite 1700  
MS 51A  
San Diego, CA 92101-4199

Re: Fairbanks Polo Club Homeowner's Association

Dear Ms. Thompson:

As you know, our firm represents Fairbanks Polo Club Homeowner's Association ("FPCHA"), both as the beneficiary under the 1983 Grant Deed and as the Assignee of the rights of the Grantor under the 1983 Grant Deed<sup>1</sup>.

This letter follows our two previous letters, October 16, 2018 and December 18, 2018 wherein we informed you that the usages of the Polo fields by the City's tenant, Surf Club, have escalated to the point of becoming a nuisance and unbearable to the homeowners in the surrounding community. The City has been aware for several years that my client considers the Surf Club's increased and

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<sup>1</sup> On December 12, 2017, Ocean, as successor-in-interest to Watt Industries, assigned its rights and privileges as Grantor under the 1983 Grant Deed to FPCHA (the "Assignment"). The Assignment was recorded on January 24, 2018.

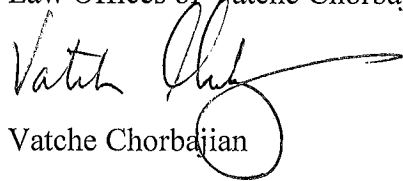
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expanded uses of the Polo fields to be unauthorized and independently subject to revocation. The expanded use is unauthorized because the City did not comply with the terms of the 1983 Grant Deed when seeking approval of uses that conflict with said Grant Deed. The expanded uses are independently revocable under the express terms of the approval for same given to the City in 2014.

Attached to this letter is FPCHA's notice of violation of the 1983 Grant Deed and to cease and desist.

Sincerely,

Law Offices of Vatche Chorbajian, APC

A handwritten signature in black ink, appearing to read "Vatche Chorbajian", with a large, sweeping flourish extending to the right. The signature is written over the printed name below it.

Vatche Chorbajian

VC/je  
Cc: clients

**NOTICE OF VIOLATION OF 1983 DEED RESTRICTIONS  
AND  
DEMAND TO CEASE AND DESIST**

You are hereby notified that you are in violation of the use restrictions contained in the Corporation Grant Deed dated September 19, 1983, between Watt Industries/San Diego, Inc. (Grantor) and the City of San Diego (Grantee).

Exhibit A to the Grant Deed describes the property granted to the City as Lots 1, 2, 4, 9 and 10 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County, on September 29, 1983. Exhibit B describes Lots 1, 4, 9 and 10 of Map No. 10730 as real property that is to be preserved and maintained as "Open Space" and is referred to as the "Affected Land." It identifies Lots 1 through 18 of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983 as the "Benefited Land."

Exhibit B provides that the City covenants and agrees that it shall keep and preserve the Affected Land as Open Space in a natural condition as near as possible or may permit it to be utilized for certain enumerated purposes and no others. Among the permitted purposes is: "Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driven machines or vehicles (e.g., equestrian activities, jogging, frisbee, and similar activities." (Section 4(a)(iii)) Exhibit B further provides that the City covenants and agrees that it shall prevent certain uses and activities from being conducted on the Affected Land. Among the prohibited purposes is: "Establishments or enterprises involving large assemblages of people or automobiles, including but not limited to, recreational facilities publicly or privately operated." (Section 4(b)(ix))

**The uses allowed by the lease between the City and Surf Cup Sports, in particular the single-day and consecutive-day sporting/athletic tournaments, violate Section 4(a)(iii) and 4(b)(ix) of Exhibit B to the 1983 Grant Deed.**

Although Section 5 of the Grant Deed allows otherwise prohibited uses to occur on the Affected Land if the Grantor gives its written consent, the City has failed to comply with the requirements of Section 5 in requesting and receiving consent for exceptions to the permitted uses and, in any event, consent has been duly revoked by Grantor's successors-in-interest. Despite the clear revocations of consent to any exceptions to the permitted uses, the City continues to allow uses which violate the 1983 Grant Deed restrictions. The most recent example of such violations is depicted in the photographs attached hereto, taken January 5, 2019. The Affected Land is clearly being used for large assemblages of people and automobiles. In addition to the sporting event itself, these tournaments also involve the sale of merchandise, a percentage of which is shared with the City per its lease with Surf Cup Sports. Moreover, these unauthorized large assemblages occur at unreasonable hours, involve unacceptable noise levels and produce excessive traffic congestion.

**Fairbanks Polo Club Homeowners' Association, as successor-in-interest to the Grantor and as representative of persons having an interest in the Benefited Land derived through the Grantor, hereby demands the City cease and desist any and all uses of the Affected Land which violate the covenants set forth in Exhibit B of the 1983 Grant Deed, particularly Section 4(a)(iii) and 4(b)(iv).**