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December 18th, 2018

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:

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.

This is to follow up my letter of October 16, 2018, seeking to engage the City of San Diego ("City") in discussions related to the usages of the Polo fields by the City's tenant, Surf Club, which have escalated to the point of becoming a nuisance to homeowners in the surrounding community. The City has been aware for several years that my client considers the Surf Club's increased and 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

It is FPCHA's position that the 2002 and 2014 approvals for expanded uses of the Polo fields are contrary to the terms of the grant deed and the expanded uses ignore the grant deed's requirements. By way of brief explanation, FPCHA's position is supported by the following historical and legal context:

- On September 19, 1983, Watt Industries (now Ocean) executed a grant deed for the City of San Diego that contained certain restrictions, set forth in Exhibit B to the deed. The Polo fields are identified in Exhibit B as the Affected Land and the surrounding community Watt developed is identified as the Benefited Land.
- Paragraph 4 if Exhibit B states that the land must be kept and preserved as Open Space and may be permitted to be used for certain, delineated purposes and no others, including: (iii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driving machines or vehicles (e.g. equestrian activities, jogging, frisbee, and similar activities).
- Paragraph 5 provides that the City shall permit no use of the Affected Land in violation of Exhibit B and if any use is contemplated that is not specifically permitted by the terms of this document, it shall not be allowed without the City first obtaining Watt's successors' written consent. Any submission for approval of a different use must be in writing and submitted to Watt Industries and the HOA of the Benefited Land and posted in at least 20 locations reasonably calculated to give adequate notice. Further, any disputes regarding withholding of approval must be submitted to binding arbitration.
- Paragraph 12 of Exhibit B expressly states that each successive owner of the land will be benefited by the covenants and it is intended that the burden and benefits run with the land. All violations are deemed continuing violations, so any delay in enforcing rights constitutes no waiver of the violation.
- On August 5, 2002, the City requested permission for additional uses on the Affected Land. Watt (then called "WISD, Inc.") gave consent without a formal submission and without requiring compliance with the notice provisions of the 1983 Grant Deed ("2002 Approval"). The expanded uses included dog show, soccer tournaments, lacrosse tournaments, Christmas

tree sales, golf equipment testing, youth soccer practices, provided there are only events on 25 days per year. The 2002 Approval was valid only for the

land leased by the Polo Club and only for events permitted by the Polo Club and was valid until expressly revoked by WISD by written notice delivered to the City.

- On October 28, 2014, the City requested the 2002 exceptions to use restrictions be restated and not tenant-specific. Ocean Industries (successor to WISD) consented without requiring a formal submission or compliance with the notice requirements of the 1983 Grant Deed ("2014 Approval").
- The 2014 Approval purported to allow exhibitions (e.g. horse shows, dog shows, sports equipment testing/exhibitions/shows) and consecutive-day sporting/athletic tournaments provided there are only 25 events per year. It also purported to allow soccer, polo, lacrosse, and other sports practice and play, youth sports practice and competitions and single-day sporting tournaments, as well as parking and restrooms for such uses. The 2014 Approval stated that it was valid until revoked by Ocean or its successor by written notice to the City.
- On February 8, 2016, Ocean wrote to the City, explaining that it had received notice from certain groups, including the FPCHA, contending that the 2002 Approval and the 2014 Approval of additional uses of the Affected Lands violate the 1983 deed restrictions. Ocean asked the City to defend and indemnify it and demanded written assurances within 10 days, or "the permission granted under the September 2014 letter for the use of the Open Space for up to twenty-five (25) events per year is revoked, and the prior limitation to twenty-five (25) days per calendar year will apply." Such assurances were not received within the 10-day deadline.
- The City waited until March 25, 2016 to respond, stating that it would not defend Ocean in any potential litigating regarding because it intended to use the Affected Land under the terms of the original Grant Deed.
- In a follow-up email dated March 28, 2018, the City confirmed that it intended to proceed with its use of the Affected Land "pursuant to the terms of the Grant Deed," and included a cut-and-paste of Exhibit B to the Grant Deed with certain uses circled, including those for agricultural uses and "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)."

- Nonetheless the City has ignored the revocation and its own promises to adhere to the original 1983 Grant Deed allowable uses, and continues to permit its tenant, the Surf Club, to engage in expanded and increased uses

of the Affected Land that involve large assemblages of people and automobiles.

- 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.

My client understands that the City has gotten itself into a bit of a bind with its current tenant, Surf Cup, and that its contractual obligations may be challenging to unwind. But the City is responsible for creating its own predicament by failing to comply with the requirements of the 1983 Grant Deed when it sought to increase the uses of the Affected Land to benefit its tenants.

Moreover, the City willingly entered into the lease with Surf Cup, knowing that there was an unqualified right of revocation of the expanded uses Surf Cup desired. The 1983 Grant Deed and the Approvals do not condition revocation on the non-existence of side-agreements with third parties. And, they expressly provide that Watt or its successor-in-interest can revoke the approval of expanded uses at any time. There is no provision limiting the right to revoke based on the amount of time that has past or the amount of money that has been invested in, or could be generated by, the expanded uses.

Trying to be mindful of the complexities involved, my client generously afforded the City 30 days to respond the request for a meeting to pursue a mutually satisfying solution. Yet the City has chosen to completely ignore the letter and my client's reasonable request for 60 days. The City cannot simply ignore the realities and pretend the problem either does not exist or is somehow going to go away on its own. FPCHA can only surmise from the City's silence that it has no interest in cooperating to find a mutually acceptable solution.

The City has left FPCHA no option but to exercise its legal rights under the 1983 Grant Deed and the Assignment. Although FPCHA has authority and power to revoke all unauthorized expanded uses resulting from the improper 2002 and

The increased number of events, including national and international soccer tournaments that draw hundreds of thousands of attendees and thousands of players, by definition, involve large assemblages of people and automobiles. The signage and commercial use of the property during tournaments violates the 1983 Grant Deed and local ordinances. It is unlikely a court will find the City complied with the requirements of the 1983 Grant Deed in seeking and receiving the 2002 Approval and the 2014 Approval for additional uses and it is equally unlikely that a court will re-write the parties' contracts to benefit and accommodate third parties.

It seems Surf Cup may be trying to rally support around its continued use of the Affected Land based on the focus of the homepage on its website. But Surf Cup's temporary possessory interest cannot trump the plain language of the agreements between the parties or the law applicable to those agreements. Moreover, while the showboating on the Surf Cup's website is perhaps the best proof that the City has allowed expanded uses of the Affected Land that go far beyond what was ever contemplated by the parties to the 1983 Grant Deed or even the 2002 and 2014 Approvals. It would not be a challenge for a court to look at the numbers and photos on Surf Club's website and instantly appreciate the plight of the residents trying to live their lives near that venue. Residents who did not choose to be neighbors with a behemoth international sports complex whose goal seems to be to attract more people than any other sport destination anywhere in the world. And, residents whose rights were specifically contemplated and protected by the terms of Exhibit B to the 1983 Grant Deed.

In the meantime, if the City in unwilling to find a middle ground and stipulate to certain expanded uses with reasonable limitations, FPCHA must unilaterally roll back the unauthorized uses. Although FPCHA would be well within its rights under the Assignment to revoke both the 2002 Approval and the 2014 Approval, FPCHA is willing to offer a compromised position up front to as a showing of good faith and to accommodate the City.

Accordingly, FPCHA provides the following written notice to the City under

the terms of the 1983 Grant DEED and the 2014 Approval as follows:

EFFECTIVE IMMIATELY, FPCHA, AS SUCCESSOR-IN-INTEREST TO OCEAN INDUSTRIES AND ITS PREDECESSORS-IN-INTEREST HEREBY REVOKES THE UNAUTHORIZED 2014 APPROVAL OF ADDITIONAL USES OF THE AFFECTED LAND THAT EXCEED THE USES ALLOWED BY THE 1983 GRANT DEED. FPCHA REVOKES THE USES GRANTED IN THE 2002 CONSENT AND THE 2014 CONSENT.

Please advise the Surf Club immediately of my client's position and cease any and all activities that do not comply with the limitations of the 1983 Grant Deed, as expanded by the 2014 Approval.

Sincerely,

Law Offices of Vatche Chorbajian, APC

Vatche Chorbajian

VC/je
Cc: clients