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ADMITTED IN CA

REPLY TO:
Palm Springs, California

April 19, 2018

VIA EMAIL AND MAIL

Robert W. Hargreaves, City Attorney
City of Palm Desert
c/o Best Best & Krieger
74760 Highway 111, Suite 200
Indian Wells, CA 92210

Re: Palm Desert Country Club

Dear Mr. Hargreaves:

This letter is provided to the City of Palm Desert on behalf of our client PD Holdings, LP which owns a nine-hole golf course and an eighteen-hole golf course commonly known as the Palm Desert Country Club. PD Holdings, LP has applied for certain entitlements including Tract Maps 37240, 37241 and 37242 (“Entitlements”) allowing a portion of the nine hole executive golf course to be developed as single family residential housing. You have asked for our opinion about whether there are any covenants or restrictions that would prohibit the construction of the single-family residential housing project (“Project”) contemplated by the Entitlements.

It is our unequivocal opinion that there are no covenants or restrictions that restrict or prohibit the entitlement and construction of the Project. Therefore, the City Council must consider the recommendation of the Planning Commission to approve the Entitlements without any reference to this potential issue. In fact the issue has been raised by members of the public who are opposed to the development strictly for political reasons. In short, the covenants are a red herring that must be disregarded.

PRIVATE CC&Rs

There are two sets of CC&Rs that potentially could affect the Project. However, neither one of these CC&Rs contains a restriction applicable to the area of the Project. The overall project known as Palm Desert Country Club is covered by Tract Map 33195. Tract 33195 is a remapping of two previous smaller tracts, Tract 2137 and Tract 2283. The Project is located on Lots 12, 26 and 29 of Tract 33195 (APNs 637-19-27, 637-19-

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21 and 637-19-24).

On April 12, 1961, a Declaration of Restrictions containing a golf course requirement was recorded as Instrument Number 31032, affecting certain Lots within Tract 2137, as amended on November 19, 2004 by Instrument Number 2004-0929679 (collectively the "2137 Declaration"). Paragraph 1 of Declaration 2137 states that it covers only lots within Tract 2137. Section 1 says that a golf course must be maintained on the property. Attached to this letter is a diagram showing the coverage of the 2137 Declaration. The 2137 Declaration covers the area commonly known as the front 9 holes of the Championship Golf Course. ("Front 9 Holes"). However, more notably, the 2137 Declaration does not cover any part of the Project.

On March 12, 1963, a Declaration of Restrictions was recorded as Instrument Number 24645 affecting certain lots within Tract 2283 as amended on November 19, 2004 as Instrument Number 2004-0929681 (the "2283 Declaration"). The 2283 Declaration covers the area commonly known as the "Back 9 Holes" and requires that a golf course be maintained on the subject property. While the 2283 Declaration requires maintenance of golf course it has expired and is no longer of any force or effect.(See Section 2) In any event the 2283 Declaration covers only a small part of the Project as shown on the attached diagram. The 2137 Declaration does not cover the Project and the 2283 Declaration has expired. No private covenants affect, restrict or prohibit the Project.

CITY OPERATION AND MAINTENANCE AGREEMENT

The only other covenant that could affect the Project is the Operation and Maintenance Agreement between the City and Dahoon Investment Company, Inc. dated August 31, 2005 and recorded as Document Number 2005-0780948. This document states that so long as a golf course is maintained it will be maintained according to the standards set forth in the agreement. However, the City Covenant is clear that the owner is not mandated to operate a golf course. The standards provide that so long as a golf course is operated on the property it must be maintained in a manner consistent with the operations of an average golf course facility allowing members of the public and private members to play. As mentioned above, there were initially two golf courses on the overall project known as Palm Desert Country Club—the Executive Course and the Championship Course. PD Holdings, however, shut down the Executive Course—the area at issue—several years ago. The Championship Course remains in operation and PD Holdings intends to continue to operate and maintain that course. The development project applies only to the former Executive Course. Therefore, PD Holdings will continue to maintain the eighteen-hole course in full compliance with the City Covenant.

The language in the City Covenant states that "for so long as Owner operates a golf course on the Property, Owner agrees to operate and maintain the Property according to the standards set forth in this Agreement, as required under the Development Agreement". Nowhere does the City Covenant state that the owner must operate a golf course or golf courses on the entirety of the project. The City Covenant does not state that the owner cannot take one of the golf courses out of play because that

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was never the intention of the agreement. The City Covenant was entered into at a time when a concern existed because the turf and landscaping was dying and unsightly. The purpose of the City Covenant was to assure that the grass did not dry up and create an eyesore. The purpose of the City Covenant was definitely not to mandate that the property not be developed for another use such as single family residential. Had that been the intent, the City could have stated that as its intent. Our client strongly opposes any interpretation of the City Covenant as prohibiting development of single family residential housing as this is not supported in any way by the City Covenant.

In conclusion, the covenants affecting the property do not in any way restrict or prohibit our client's development. In fact the Palm Desert Country Club Association has provided its prior written support to the project as it is not inconsistent with the CC&Rs. We request that you present this letter to the City Council members so that they can make an adequately informed decision. In making their decision, the issue of the City Covenant or a private covenant prohibiting or restricting the Entitlements would not be within the reasonable discretion of the City Council.

We thank you for giving us the opportunity to present this opinion and information for your review. Please feel free to contact me with any questions or if you need any further information or documents referred to in this letter.

Sincerely,

SBEMP LLP



Robert L. Patterson

enclosure

