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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FAIRBANKS POLO CLUB HOMEOWNER'S ASSOCIATION Plaintiff, v. CITY OF SAN DIEGO and DOES 1 through 25, inclusive, Defendants.	CASE NO: **COMPLAINT FOR DECLARATORY RELIEF; SPECIFIC PERFORMANCE; AND INJUNCTIVE RELIEF**

Plaintiff Fairbanks Polo Club Homeowner's Association pleads and alleges follows:

PRELIMINARY STATEMENT

In 1983, certain real property in the San Dieguito River Valley, commonly known as the Polo Fields, was granted to the City of San Diego (the "City") in exchange for the development of Fairbanks Ranch. The Grant Deed transferring the property included a covenant that the City would "keep and preserve the land as open space in its natural condition as near as possible to maintain it as rural, public open space," and imposed specific enumerated restrictions on the future use of the land. These restrictions included limiting the uses to passive "non-commercial recreational uses not involving large

assemblages of people or automobiles. . .” as well as reasonable support facilities for such uses. The Grant Deed expressly acknowledges that monetary damages are inadequate and an injunction is warranted for breach of the terms of the Grant Deed.

Thereafter, the San Diego Polo Club leased the property from the City for equestrian activities for over 26 years, without incident and in compliance with the Grant Deed restrictions. The Polo Club subleased the property to Surf Cup Sports LLC (“Surf Cup”) beginning in 1992 to hold soccer tournaments two weekends per year. In 2002, the City sought consent of the grantee to allow dog shows, soccer tournaments, lacrosse tournaments limited to 25 days (cumulative) per year.

In 2016, after the Polo Club’s lease expired the City entered into a 28-year lease with Surf Cup (“Ground Lease”). The Recitals in the Ground Lease expressly recognize the limitations in the Grant Deed and obligate Surf Club abide by the restrictions. Yet the City has allowed the frequency, size and nature of activities and events on the property to expand every year well beyond the 25-day limit and has permitted, if not encouraged, plainly commercial uses involving large assemblages of people or automobiles, with little regard for the Grand Deed restrictions to the contrary.

Since 2017, Plaintiff Fairbanks Polo Club Homeowner’s Association (“FPCHA”) has been the assignee of the original grantor’s rights under the Grant Deed and the restrictions therein. Despite the assignment of rights, the City has ignored all efforts by FPCHA to enforce the restrictions in the Grant Deed without resort to litigation. Instead, the City has abdicated its responsibilities to protect property rights secured under the Grant Deed. Despite the Surf Club’s egregious violations of the express limitations in the Grant Deed, the City has acted in contempt of its and its tenant’s legal obligations.

In February of 2022, the City allowed Surf Cup to compound its violations of the Grant Deed by entering into a License Agreement with the San Diego Wave’s women’s professional soccer team allowing part of the land to be fenced off, making it inaccessible to the public, and used on an ongoing basis for the professional team’s training fields, and other parts of the land to be used for buildings, In short, the City has allowed, if not

encouraged, land that was to be preserved as open space to the exclusion of commercial uses to be exploited for private gain and transformed into a massive commercial enterprise..

These acts in derogation of the express terms of the Grant Deed have compounded the harm to the surrounding neighborhoods, the environment, the traffic flow, as well as the local citizenry at large who have been denied the rural, public open space the City had promised to preserve.

PARTIES

1. Plaintiff Fairbanks Polo Club Homeowner's Association ("FPCHA") is a California non-profit mutual benefit corporation located in San Diego County, California.
2. Defendant City of San Diego (the "City") is a local government which is a subdivision of the State of California and a body corporate and politic exercising local government powers, as specified in the Constitution and laws of the State of California.
3. FPCHA is unaware of the true names and capacities of defendants Does 1 through 25, inclusive, and therefore sues these fictitious names. FPCHA is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is in some manner responsible for the damages that FPCHA has alleged in this Complaint. FPCHA will amend this Complaint to show the true names and capacities of these fictitiously named defendants after their true names and capacities have been ascertained.
4. FPCHA is informed and believes that, at all times herein mentioned, each of the defendants, including the fictitious Doe defendants, is the agent, successor, alter ego, wholly owned subsidiary, and/or employee of each of the remaining defendants and in doing the things mentioned herein was acting within the scope of such relationship.

FACTUAL ALLEGATIONS

The City accepts a Grant Deed with specific restrictions on the deeded property.

5. In or about 1983, FPCHA's predecessor-in-interest, Watt Industries/San Diego, Inc. ("WISD"), owned certain real property located in the City of San Diego, more particularly described as, Lots 1 through 18, inclusive, of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983.
6. By a Corporation Grant Deed ("Grant Deed") dated September 19, 1983 and recorded October 24, 1983, WISD granted the City of San Diego ("City") certain real property described 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." A true and correct copy of the 1983 Grant Deed attached hereto at Exhibit A.
7. The Grant Deed is expressly subject to covenants, conditions and restrictions set forth in Exhibit B and made part of the Grant Deed. The City executed Exhibit B of the Grant Deed on September 27, 1983.
8. Exhibit B to the Grant Deed describes Lots 1 through 18 as the "Benefited Land."
9. Exhibit B to the Grant Deed further provides that Lot 2 was being leased by the City as a country club and golf course ("Country Club") and Lots 1, 4, 9 and 10, the real property contiguous to the Country Club, is designated as Open Space and is to be "preserved and maintained" as Open Space. The Open Space is described as the "Affected Land."
10. In accepting the covenants, conditions and restrictions to the Grant Deed, the City agreed as follows:

> Grantee for and on behalf of itself, and on behalf of each successive owner, during its, his, her or their ownership of any portion of the Affected Land herein granted by Grantor to Grantee, and each person having any interest in the Affected Land derived through any such owner, covenants, and agrees that it, he, she or they:
>
> (a) Shall keep and preserve the Affected Land as Open Space in its natural condition as near as possible, or may permit it to be utilized for any or all of the following purposes and no others:

(i) All agricultural uses relating to the growing harvesting, processing or selling of field grain crops, fruit and vegetables;

(ii) Passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar activities) and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses;

(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).

(b) Shall, notwithstanding any other provision hereof, prevent any of the following purposes, uses and activities from being conducted upon the Affected Land:

. . .

(ix) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated;

. . .

(xvi) Accessory buildings, other than as may be specifically allowed hereinabove, and uses customarily incidental to any of the above uses, including but not limited to:

. . .

(xvii) Any other use similar in character to the uses, including accessory uses, enumerated in this section and inconsistent with the purpose and intent of this deed restriction.

11. The City further agreed: "5. (a) Grantee or its successors shall permit no use of the Affected Land in violation of the provisions hereto. In the event any use is contemplated which is not specifically permitted by the terms of this document, such use shall not be allowed without Grantee having first obtained Grantor's (or Grantor's successors') written consent thereto."

12. Paragraph 11 of the Grant Deed provides: "Monetary damages for the breach of the covenants contained herein are declared to be inadequate and Grantee or its successors may be enjoined by any court of competent jurisdiction from commencing or proceeding with the construction of any improvements to, or permitting any use upon, the Affected Land which are in violation of the covenants set forth here, or if an

improvement is constructed, may be ordered by any court of competent jurisdiction to remove such improvements."

13. Paragraph 12 of Exhibit B to the Grant Deed 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.

14. Paragraph 13 of Exhibit B to the Grant Deed provides that all violations are deemed continuing violations, so any delay in enforcing rights constitutes no waiver of the violation.

15. The Grant Deed provides that each person having any interest in the Benefited Land derived through the Grantor (WISD) shall be benefited by the covenants and restrictions contained in the Grant Deed.

The City leases the Affected Land to the Rancho Santa Fe Polo Club.

16. In 1986, the City approved a 26-year lease with the Rancho Santa Fe Polo Club ("Polo Club") for the development of polo facilities. The lease provided that the Polo Club would not allow "large assemblages of people or automobiles."

17. In 1992, the City allowed the Polo Club to sublease the Property to Surf Cup for a youth soccer tournament spanning two weekends in the summer for a total of six days.

18. In later years, additional tournaments and other events were added, for generally fewer than 25 days per year in total, while the Polo Club continued to present polo matches and other events.

19. By 2001, Surf Cup had expanded to three weekends for a total of 9 days.

WISD consents to limited additional uses.

20. On August 5, 2002, the City requested permission for additional uses on the Affected Land, expressly admitting that several provisions of the Grant Deed "arguably prohibit some of these events." The City specifically acknowledged that the Grant

Deed allows only "non-commercial recreational uses" on the Affected Land and prohibits "large assemblages of people."

21. WISD ultimately consented to the following uses: dog show, soccer tournaments, lacrosse tournaments, Christmas tree sales, golf equipment testing, youth soccer practices, livestock superintendents living on site. The consent was expressly subject to revocation by WISD by written notice and also subject to the first three uses occurring "no more than 25 days per calendar year cumulatively (not each)."

22. In 2009, the use of the Polo Fields expanded to include a one more soccer tournament for two days, a lacrosse tournament for three days and Ultimate Frisbee for three days.

WISD's successor, Ocean Industries, temporarily consents to limited additional uses.

23. By 2012, the use of the fields had been expanded to include 14 days of soccer tournaments and five days of lacrosse tournaments.

24. The Polo Club's lease term expired in March 2012. The Polo Club continued to possess the land due to holdover provisions in its lease.

25. In 2014, the City asked the successor grantor of the deed, Ocean Industries ("Ocean"), the successor by merger to WISD, to expand the permissible use of the property. The City requested cooperation from Ocean to make a restatement of its 2002 approved exceptions to the property-use restrictions contained Grant Deed.

26. The City indicated that it was negotiating a long-term lease of the Affected Land and wanted "to establish certain Ocean-approved exceptions to the Deed's use restrictions without being tenant-specific."

27. The City then proposed a list of allowed uses, including: (1) Exhibitions (e.g. horse shows, dog shows, sports equipment testing/exhibitions/shows), provided that there shall be no more than 25 such events per year; (2) soccer, polo, lacrosse, and other sports practice and play, youth sports practice and competitions and single-day sporting tournaments; (3) seasonal holiday sales (e.g. Christmas tree and pumpkin sales); parking and restroom for uses such as those stated above and other incidental

support facilities reasonably required; and (5) up to 6 livestock superintendents living on site.

28. The City also asked Ocean to permit up to 25 *events* per year, with events being defined as consecutive-day sporting/athletic tournaments, in lieu of the previous consent for up to 25 *days* of events.

29. The 2014 Approval provided that the consent was valid until revoked by Ocean or its successor by written notice to the City.

The City accepts Surf Cup's Lease proposal and determines that a Negative Declaration or an Environmental Impact Report were not required under CEQA.

30. In 2015 the City issued a Request for Proposals for qualified firms or individuals to lease the property.

31. The City received three responses, reviewed the three proposals and recommended approval of a long-term lease with Surf Cup.

32. The Surf Cup proposal also included partnering with other sports organizations for sports-related special events and other ancillary uses including corporate events *and other uses allowable under the deed . . ..*" (emphasis added)

33. The City issued an environmental review under the California Environmental Quality Act ("CEQA") regarding approval of the 2016 Lease with Surf Cup ("CEQA Memorandum").

34. The CEQA Memorandum describes the existing condition of the property as: "open grassy fields used for recreational activities, existing dirt trails, roads, and parking areas, and dilapidated or aged accessory or appurtenant facilities."

35. The CEQA Memorandum further states that the property "has been used for polo, soccer, lacrosse, rugby, and other recreational and special uses" since 1986 by the Polo Club and, since 1992, the Surf Cup Sports has contracted with the Polo Club for ongoing use of the property. In addition to the continued use for daily youth sports, youth polo instruction and occasional polo matches, the horse drop-off facilities for equestrian users of the Coast to Crest Trail will also be maintained."

36. The CEQA Memorandum opines that multiple categorical exemptions apply to the Surf Cup Lease and that none of the exceptions to the exemptions apply. The CEQA Memorandum concludes that neither a Negative Declaration nor an Environmental Impact Report were required by the CEQA Guidelines.

37. Specifically, the City determined that the Project was exempt pursuant to CEQA Guidelines 15323 (normal operations), 15301 (existing facilities), 15304 (minor alterations), and 15311 (accessory structures).

Ocean revokes its prior consent to additional uses and the City nonetheless approves the Ground Lease with Surf Cup.

38. On February 8, 2016, Ocean revoked its 2014 consent expanded uses, when it became clear that the long-term lease with Surf Cup and the future uses planned for the Affected Land violated the Grant Deed.

39. The City responded that it would "proceed with its use of the Affected Land pursuant to the terms of the Grant Deed."

40. The Smart Growth and Land Use Subcommittee of the City Council reviewed the Surf Cup proposal on June 29, 2016, with a lengthy public discussion of the issue. The committee members forwarded to City Council a recommendation to approve the Surf Cup Lease. City Council members considered the Lease in an open, public meeting on July 25, 2016.

41. The City Council voted eight to one to adopt a resolution authorizing the mayor to execute the Lease between the City and Surf Cup. The mayor approved the resolution, and approved an amended resolution on August 3, 2016, after the required statement of market value was added.

42. Also, on July 25, 2016, the City Council adopted a resolution determining that the approval of the Lease was categorically exempt from CEQA and that no exceptions to the exemptions applied. An amended resolution was approved by the Council and the mayor on August 3, 2016.

43. The City prepared and recorded a Notice of Exemption (NOE) and signed the Lease on July 25, 2016.

44. The Recitals in the Lease expressly recognized the limitations in the Grant Deed, stating that the Ground Lease is "subject and subordinate to the conditions and restrictions on the Premises and its allowed uses contained in that certain Corporation Grant Deed. . ."

45. The Lease expressly provided that "Lessee shall use the Premises for programs, activities, and operations as set forth in the Deed and any subsequent amendments to the Deed (the "Allowed Uses")." The Lease states that "Lessee will not use the Premises for any purpose other than the Allowed Uses."

46. The Grant Deed, along with the limited 2002 Consent for Additional uses, which are incorporated into the Lease, permit only the enumerated uses on the property and do not permit any multi-day events beyond 25 days per year.

CEQA writ petition is filed against the City and Surf Cup.

47. On August 29, 2016, Friends of the San Dieguito River Valley ("Friends") filed a petition for writ of mandate alleging various violations of CEQA arising out the City's decision to exempt the Surf Cup Lease from further CEQA analysis.

48. The petition challenged the City's decision to grant a percentage ground lease to Surf Cup because the City should not have relied on exemptions from CEQA because there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

49. The City defended the petition, arguing that the Project would continue previous uses at historical levels. The City took the position that any expanded use of the property was retracted and the City agreed to limit use of the property under the Lease to its historical uses. It argued that the staff report for the project, and the staff description of the Lease to the City Council stated that the Lease was limited to historical purposes.

50. The City claimed that the Lease was categorically exempt because it permitted the continued normal operations of the property, which was designed for sports play, practice and competitions, with a history of having been used for the same or similar activities and there was a reasonable expectation that increase in intensity of use was not permitted under the Lease.

51. The City further contended that the intensity of use will not be increased under the Lease and that expanded tournaments are not permitted under the Lease, which continues the existing use of 25 days of events only.

52. The City claimed that the requirements of CEQA Guidelines section 15301 were met ("operation, repair, maintenance...or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use....") and that the Project did not contemplate an expansion of uses at the site.

53. The City also claimed that the Lease permits only incidental support facilities for the soccer, polo, lacrosse, and other sports practice, play, competition and tournaments that were historically permitted for the property and that construction, improvement and placement of these structures accessory to the existing facilities are minor, and exempt under this category.

54. After extensive litigation including multiple motions and petitions the Court denied Friends Petition for Writ of Mandate on January 30, 2019, and entered judgment on February 20, 2019.

55. Friends appealed and on January 29, 2021, the Fourth Appellate District affirmed the judgment. *Friends of the San Dieguio River Valley v. City of San Die*go, 2021 Cal.App.Unpub. LEXIS 583 (4th DCA, Jan. 29, 2021).

56. In its unpublished opinion, the Court of Appeal explained the key issue: "At the center of this appeal is the claim of Friends that Surf Cup will significantly expand its use of property, specifically by expanding 25 days of events to 25 events per year, of five days each, for up to 125 days of events. Surf Cup sent to the City a letter of intent

on February 4, 2016, that anticipated up to 25 events of five days each, which would certainly be a significant expansion of use. Twenty-five events in total would have been allowed under the amendment to the grant deed that was in effect at the time of the letter of intent, but permission for that greater use was rescinded by the grantor and the City agreed to this limitation." *Id*. at p. 15-16.

57. On appeal, the City proffered the same arguments set forth above.

58. Specifically, the City argued, and the Court of Appeal affirmed, that CEQA was not violated because the Ground Lease "did not significantly expand the intensity of use of the property because it only allowed the uses that had been ongoing, including up to 25 days of events throughout the year." *Id*. at p. 22.

59. The City also argued, and the Court of Appeal affirmed, that the "grant deed and its amendments, which were incorporated into the Ground Lease, permitted the same uses on the property and do not permit the multi-day events to increase beyond 25 days per year. Future operations would not represent a change in the operation of the facility." *Id.*

60. The Court of Appeals expressly relied upon and adopted the City's confirmation that it would only permit Surf Cup's to conduct events 25 days per year.

61. Since the City was successful in defending the writ petition based on its position that event would be limited to 25 days per year pursuant to the Grant Deed, it is bound to that affirmation as a judicial admission.

62. Further, by subsequently refusing to enforce the limitation the City once embraced, the City is flouting the Court of Appeals decision and simply makes arguments to suit its convenience of the moment, rather than acting responsibly in relation to the terms of the Grant Deed.

Ocean assigns its rights to FPCHA and FPCHA issues the City a Notice of Violation of the Grant Deed use restrictions.

63. On December 12, 2017, Ocean, as successor by merger to WISD, assigned its rights and privileges as Grantor under the 1983 Grant Deed to FPCHA (the "Assignment"), which was recorded on January 24, 2018.

64. The Assignment allows the FPCHA to bring any claims under the Grant Deed that WISD/Ocean could have brought.

65. On December 18, 2018, FPCHA provided written notice to the City, as successor-in-interest to Ocean Industries, revoking the unauthorized 2014 approval of additional uses of the Affected Land that exceed the uses allowed by the 1983 Grant Deed. FPCHA also revoked the uses granted in the 2002 Consent and the 2014 Consent.

66. On February 12, 2019, FPCHA issued a Notice of Violation of 1983 Deed Restrictions and Demand to Cease and Desist.

67. The Notice states that the City is in violation of Sections 4(a)(iii) and 4(b)(ix) of the Grant Deed.

68. The Notice demands that 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).

69. On February 14, 2019, the City responded to the Notice insisting that it is in compliance with the Grant Deed.

70. Despite the Notice, the City continued to allow activities on the Affected Land that violate the Grant Deed, including but not limited to allowing events on 200 days per year, far exceeding even the 2002 Consent to Additional Uses. These events bring over 400,000 visitors and at least 10,000 cars, which constitute "large assemblages of people" in violation of the Grant Deed.

The City continues to allow increasing violations of the Grant Deed use restrictions.

71. In February of 2022, the City allowed Surf Cup to vastly increase the activities on the Affected Land by entering into a License Agreement with the San Diego Wave's women's soccer team ("License Agreement).

72. The License Agreement provides that Surf Cup occupies the land pursuant to the 2016 Ground Lease with the City and provides that the "Ground Landlord" (aka, the City) must approve the License Agreement.

73. Under the License Agreement, Surf Cup has dedicated part of the Affected Land to the Wave for exclusive use of training fields and locker rooms, etc. twenty-four hours a day, seven days a week.

74. The permitted uses under the License Agreement include but are not limited to: a soccer training facility, office and storage uses, locker rooms, showers, changing rooms and restrooms, and any other uses consistent generally with the foregoing. Further, with the consent of Surf Club, the Wave can engage in the following additional uses: camps, personal training, or any other activity that can reasonably viewed as competitive to Surf's business activities.

75. Under the License Agreement, Surf Cup will receive annual revenue in the amount of $625,000. The License Agreement also references the construction of a stadium on the adjacent property.

76. In accordance with the License Agreement, Surf Cup has engaged in additional grading, as well as construction of concrete pads, fences, walkways, ramps, stairs and retaining walls. Surf Cup also widened entrances and roads, brought in fill material and relocated soil. Surf Cup has expanded electrical and water services.

77. The Affected Land has accumulated portable buildings, multiple training-type storage structures, sports equipment, temporary gravel pavement for staff parking, with soccer goals and structures stored along the once green area. It is no longer a park setting but has become a stadium complex. The entire property is fenced off, disrupting the natural wildlife migration patterns. The noise and bright lights at night have scared off wildlife.

78. The City contends that the additional construction is governed only by its zoning laws, and has suggested that the zoning laws override the Grant Deed.

79. The City blithely dismisses its obligation to enforce the Grant Deed by characterizing it as "weak" and "outdated" and asserting that "things change with time."
80. The City has clearly abdicated control of the Affected Land to Surf Cup, which continues to engage in unfettered use of the Affected Land, without regard to the Grant Deed or even the City's own Municipal Code.
81. On October 6, 2022, the City issued a Civil Penalty Notice and Order, citing six violations of thirteen different Municipal Code sections.
82. For years, the City and Surf Cup have ignored concerns regarding traffic, air quality and environmental impacts expressed by the San Dieguito Planning Group, the Carmel Valley Planning Board, and the 22nd District Agricultural Association, among others.

FIRST CAUSE OF ACTION
(Declaratory Relief)

83. FPCHA re-alleges and incorporates by reference Paragraphs 1 through 82 above, inclusive as though fully set forth herein.
84. FPCHA is the assignee of Ocean, the successor by merger to WISD, which is the Grantor under the Grant Deed at issue. FPCHA has an interest both as assignee and as the HOA representing the homeowners who purchased parcels located on the Benefited Land.
85. An actual controversy exists between FPCHA and the City as to whether the actions of the City alleged in this Complaint violate the restrictions, covenants, and conditions expressly enumerated in the 1983 Grant Deed.
86. FPCHA contends that Surf Cup's use of the Affected Land violates the Grant Deed, while the City maintains that it and Surf Cup are in full compliance with the Gran Deed.
87. A judicial resolution of this controversy is now required.
88. FPCHA requests a declaration from this Court that the actions alleged in this Complaint violate the Grant Deed.

SECOND CAUSE OF ACTION
(Specific Performance of Grant Deed Restrictions)

89. FPCHA re-alleges and incorporates by reference Paragraphs 1 through 88 above, inclusive as though fully set forth herein.

90. As hereinabove alleged, FPCHA is a nonprofit public benefit corporation representing the homeowners residing on the Benefitted Land, that are the intended beneficiaries of the Deed restrictions. As such, FPCHA has a cognizable equitable interest in enforcing the Grant Deed restrictions against the City.

91. FPCHA is also the assignee of the original grantor's rights under the Grant Deed and thus has a cognizable legal interest in enforcing the Grant Deed restrictions against the City.

92. As hereinabove alleged, the City operated in accordance with the Grant Deed restrictions for 26 years before entering in the Lease with Surf Cup in 2016. There can be no question that the Grant Deed is clear, just, reasonable and specifically enforceable.

93. The benefits of the Grant Deed were accepted by the City and the Affected Land has continued to benefit the City for forty years.

94. FPCHA is informed and believes and on that basis alleges that the homeowners it represents were intended beneficiaries of the Grant Deed restrictions, covenants and conditions.

95. FPCHA further alleges that the City holds the Affected Land in trust for the benefit of the homeowners residing on the Benefitted Land, including those who are represented by the FPCHA.

96. While the Grant Deed was made to the City, the restrictions expressly enumerated therein were designed to prevent the very actions the City is attempting to carry out through Surf Cup – allowing the Affected Land to be used for commercial uses involving large assemblages of people and cars for far more than 25 days per year and

the conversion of the Affected Land from open space to a massive commercial enterprise.

97. The beneficiary of the Grant Deed restrictions is thus obviously not the City, which would prefer it not be enforced, but FPCHA and the homeowners on the Benefitted Land who are directly benefitted by the enforcement of the Grant Deed restrictions.

98. Given the totality of the circumstances as hereinabove alleged, the current and future-planned uses of the Affected Land by the City and Surf Cup are a clear breach of the Deed Restriction and of the trust in which the City holds the Affected Land.

99. Because the Grant Deed restrictions are an interest in real property, FPCHA has no adequate remedy at law. In addition, the Grant Deed specifically provides that any breach of the agreement cannot adequately be remedied with damages and that enjoining the breaching party's conduct is warranted and authorized by the Grant Deed.

THIRD CAUSE OF ACTION
(Injunctive Relief)

100. FPCHA re-alleges and incorporates by reference Paragraphs 1 through 99 above, inclusive as though fully set forth herein.

101. FPCHA is entitled to a preliminary and permanent injunction against the City to prevent continued violations of the terms of the Grant Deed.

102. The City has allowed increasing uses on the Affected Property, as well as additional structures and other construction, all in violation of the restrictions set forth in the Grant Deed's restrictions, conditions, and covenants.

103. The City's violation of the restrictions, unless and until enjoined and restrained by order of this Court, will cause grave and irreparable injury to FPCHA and there is no adequate remedy at law for the City's ongoing and increasing violations of the restrictions described above.

PRAYER FOR RELIEF

WHEREFORE, FPCHA prays for judgment against the Defendant City of San

Diego and DOES 1 -25, as follows:

1. For a declaration under Code of Civil Procedure § 1060 that the current uses by the City and/or Surf Club on the Affected Land violate the terms of the Grant Deed;
2. For specific performance of the Grant Deed restrictions, covenants and conditions;
3. For preliminary and permanent injunctions restraining the City, its agents, servants, employees, officers, and representatives, and others acting in concert with them or on their behalf, from engaging in or allowing any uses on the Affected Land that violate the terms of the Grant Deed, including:
4. For a permanent mandatory injunction compelling the City to:

a. keep and preserve the Affected Land as Open Space in a natural condition as near as possible;

b. allow the Affected Land to be utilized only for the purposes identified in the Grant Deed and no others, and only for 25 days per year and only for:

(i) Passive non-commercial recreational uses and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses; and

(ii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driving machines or vehicles.

c. ensure that uses and activities prohibited by the Grant Deed are not conducted on the Affected Land, including, but not limited to:

(i) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated; and

(ii) Accessory buildings, other than as may be specifically allowed in the Grant Deed, and uses customarily incidental to any of the uses identified in the Grant Deed; (iii) Events exceeding 25 days per year.

d. Replant and restore any vegetation and trees removed from the Affected Land in connection with the violation of the Grant Deed described herein; and

e. Undertake any additional work necessary to ensure the Affected Land is fully restored to the condition that existed prior to the violations.

5. Costs and reasonable attorney fees under the terms of the Grant Deed;

6. For further relief as the Court deems just and proper.

DATED: 4/13/2023

LAW OFFICES OF VATCHÉ CHORBAJIAN, APC

By:/s/ *Vatche Chorbajian*
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