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May 6, 2010

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REAL ESTATE ASSETS DIVISION

James Barwick, Director
Real Estate Assets
1200 Third Avenue, Suite 1700
San Diego, CA 92101

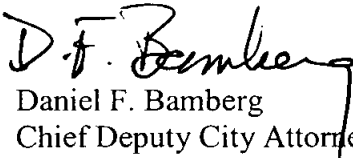
Re: Fairbanks Ranch Country Club, Inc., and The City of San Diego
Mutual Release and Settlement Agreement

Dear James:

Enclosed are two (2) fully signed originals of the above referenced agreement for your record.

Thank you for your courtesy.

JAN I. GOLDSMITH, City Attorney

By 
Daniel F. Bamberg
Chief Deputy City Attorney

DFB:nbm
(enclosures as indicated)

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT ("AGREEMENT") is made and entered into by and between **FAIRBANKS RANCH COUNTRY CLUB, INC.** a California nonprofit mutual benefit corporation ("FRCC") and **THE CITY OF SAN DIEGO**, a Chartered California municipal corporation ("CITY").

RECITALS

- A. On December 20, 1982 Watt Industries/San Diego, Inc. and CITY entered into a **PERCENTAGE LEASE** (the "LEASE") related to the real property identified in Exhibit B to that LEASE (i.e., the Golf Course).
- B. Effective January 31, 1986, FRCC was assigned the LEASE.
- C. Section III Paragraph B. (3) of the LEASE reads in pertinent part as follows:

"During the first twenty-five (25) years of the lease term ending December 31, 2009, pay to City three percent (3%) of all memberships sold in excess of Twenty-Five Million Dollars (\$25,000,000.00) by LESSEE in LESSEE or in the facilities operated by LESSEE on the leased premises."
- D. FRCC and CITY dispute whether the terms of Section III Paragraph B. (3) of the LEASE require FRCC to make payment to CITY for the lease term ending December 31, 2009 (the "DISPUTE").
- E. FRCC and CITY now wish to settle and resolve the DISPUTE, and otherwise release, discharge and terminate any and all claims, demands, controversies, causes of action, damages, rights, liabilities and obligations between them arising out of or in any way related to the DISPUTE.

- F. This AGREEMENT only concerns the DISPUTE regarding Section III Paragraph B. (3) of the LEASE and is not intended to release, discharge, terminate or settle any other disputes and/or claims arising out of the LEASE that the parties may now have or that they may have in the future regarding the rights and obligations of the parties to the LEASE.

NOW, THEREFORE, the parties hereto agree as follows:

1. **SETTLEMENT TERMS**

1.1 **Payment.** FRCC will pay to City a total sum of \$235,183.00. This sum shall be paid to the City in eight installments in the amounts listed below on the following dates:

- (a) \$29,397.91 – Within fifteen (15) days of both parties' execution on this AGREEMENT.
- (b) \$29,397.87 – July 1, 2010.
- (c) \$29,397. 87 – October 1, 2010.
- (d) \$29,397. 87 – January 3, 2011.
- (e) \$29,397. 87 – April 1, 2011.
- (f) \$29,397. 87 – July 1, 2011.
- (g) \$29,397. 87 – October 3, 2011.
- (h) \$29,397.87 – January 3, 2012.

1.2 **Attorneys' Fees and Costs.** Each party to this AGREEMENT shall bear all attorneys' fees and costs incurred by such party in connection with this matter (including, but not limited to, preparation for the negotiation and preparation of this AGREEMENT).

2. **MUTUAL RELEASES**

2.1 **Releases.** Each party, for itself its respective heirs, representatives, successors, assigns, agents, consultants, and attorneys, does hereby fully and forever RELEASE, ACQUIT and DISCHARGE each other party, together with all of the officers, members, trustees, directors, partners, employees, agents, consultants, councilmembers, attorneys,

heirs, successors, and assigns of each, from any and all claims, other than those created by this AGREEMENT, which they may have against each other arising out of or related in any way to Section III Paragraph B. (3) of the LEASE.

2.2 **Waiver of Civil Code Section 1542.** As to the matter encompassed by this AGREEMENT (i.e., the DISPUTE arising out of Section III Paragraph B. (3) of the LEASE) and as to the releases set forth herein, each Party hereby waives all rights under California Civil Code § 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have material affected his settlement with the debtor.”

Each party acknowledges that it has discussed with their respective legal counsel the significance and effect of waiving California Civil Code § 1542, and warrant that this waiver is informed, knowing, and voluntary.

3. **MISCELLANEOUS**

3.1 **Disputed Claims.** This AGREEMENT represents the settlement of disputed claims and does not constitute any admission of liability by either party to the other party; each party to this AGREEMENT hereby expressly denies any liability to the other party.

3.2 **Counterparts.** This AGREEMENT may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

3.3 **Attorneys' Fees.** Should any party hereto retain counsel for the purpose of enforcing or preventing the breach of any provision hereof including, but not limited to, instituting any action or proceeding to enforce any provision hereof, for damages by reason of any alleged breach of any provision hereof, for a declaration of such party's rights or obligations hereunder or for any other judicial remedy, then, if said matter is settled by judicial determination (which term includes arbitration judicially affirmed), the prevailing party (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs for the services rendered to such prevailing party.

3.4 **Further Assurances.** The parties hereto hereby agree to execute such other documents and to take such other action as may reasonably be necessary to further the purposes of this AGREEMENT.

3.5 **Time of Essence.** Time is expressly declared to be of the essence of this AGREEMENT and of every provision hereof in which time is an element.

3.6 **Governing Law.** This AGREEMENT has been negotiated and entered into in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

3.7 **Benefit and Burden.** This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

3.8 **Severability.** In the event that any condition or covenant contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, such condition or covenant shall be deemed severable from the remainder of this AGREEMENT and shall not affect any other condition or covenant contained herein. If such condition or covenant is deemed to be invalid due to the scope or breadth, the remaining portions of such provision shall remain valid to the extent and scope permitted by law.

3.9 **Waiver and Amendment.** No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This AGREEMENT may be amended only by a written agreement executed by the parties in interest at the time of the modification.

3.10 **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this AGREEMENT or any provision hereof. No provision in this AGREEMENT is to be interpreted for or against either party because that party or his legal representative drafted such provision.

3.11 **Negotiated Agreement.** The parties to this AGREEMENT acknowledge that such AGREEMENT is the result of good faith negotiations between the parties through their respective counsel. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation or enforcement of this AGREEMENT.

3.12 **Entire Agreement.** This AGREEMENT constitutes the entire AGREEMENT between the parties hereto pertaining to the subject matter hereof, fully supersedes any and all prior understandings, representations, warranties and agreements between the parties hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written AGREEMENT signed by all of the parties hereto.

3.13 **Independent Advice of Counsel.** The parties hereto, and each of them, represent and declare that in executing this AGREEMENT they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

3.14 **Warranties of Authority.** Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this AGREEMENT on behalf of the party for whom he or she purports to sign. Each party hereto agrees to defend, indemnify, and hold harmless the other parties hereto against all claims, suits, actions and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this AGREEMENT.

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3.15 **Voluntary Agreement.** The parties hereto, and each of them, further represent and declare that they have carefully read this AGREEMENT and know the contents thereof, and that they sign the same freely and voluntarily.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date and year first above written.

THE FAIRBANKS RANCH COUNTRY CLUB,
INC.
Dated: 4-27-10 By: Robert F. McNeil
Its: President

THE CITY OF SAN DIEGO
Dated: 5-6-10 By: [Signature]
Its: Chief Operating Officer

APPROVED AS TO FORM:

HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

By Paul E. Robinson 5/3/10
Paul E. Robinson Dated
Attorneys for the Fairbanks Ranch
Country Club, Inc.

OFFICE OF THE CITY ATTORNEY, CITY OF SAN DIEGO

By D.F. Bamberg 5-6-10
Daniel F. Bamberg Dated
Attorneys for The City of San Diego