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PEBBLE BEACH
COMPANY

October 18, 2016

Monterey County Planning Commission
Attn: Joseph Sidor
168 W. Alisal Street
Salinas, CA 93901

Re: Short-Term Rentals in Del Monte Forest

Dear Mr. Sidor:

This letter responds to the Planning Commission's question regarding enforcement of the covenants, conditions, and restrictions ("CCRs") on residential lots in Del Monte Forest ("DMF").

1. Pebble Beach Company's Right to Enforce CCRs.

Initially, it is important to distinguish between zoning limitations on use, and private restrictions on use imposed by CCRs. While zoning is the government's way of regulating property use, the restrictions on use imposed by CCRs, including their enforcement, are a matter of real property law between private parties in which the County has no involvement. The two are independent; and one does not depend on the other unless the restrictions of the other are specifically adopted. Thus, in a typical situation involving residential use, the residential zoning for the property may permit certain uses which the CCRs prohibit, and vice versa.

Del Monte Properties Co. ("DMPCo") was the original owner that created most of the present residential lots in DMF, and in conveying (selling) those lots it established CCRs applicable to those lots for the benefit of its retained property. Subsequent owners of DMPCo did the same with respect to lots they sold. Pebble Beach Company ("PBC") is the successor-in-ownership to DMPCo and the subsequent owners of its property, and as such it occupies the position of the original "Grantor" of those lots, and possesses the rights of the Grantor to enforce the CCRs. This is an established principle of real estate law.

LEGAL AFFAIRS

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The Del Monte Forest Property Owners organization (“DMFPO”) does not have the power to enforce the CCRs. It is not an association of homeowners organized under the Davis-Stirling Act of California law, and it is not a beneficiary of the CCR restrictions. It is not typical of the homeowners associations (“HOAs”) that are ubiquitous today, which HOAs are organized in connection with specific subdivisions to take care of common areas, roads, and other matters with the power to charge dues, lien property, and enforce CCRs. Membership in such HOAs is mandatory. DMFPO, on the other hand, is an organization that represents the interests of DMF residents. Membership is voluntary, and the DMFPO has none of the typical powers of an HOA. The arrangement in Del Monte Forest is based on its historical development, where DMPCo sold lots and maintained the roads, but did not establish specific HOAs for its subdivisions. HOAs were not prevalent when DMPCo was first creating its lots. DMPCo imposed its CCRs as a means of maintaining continuity in the residential areas while protecting its own interest in its commercial properties.

Given that history, it is fair to say that PBC occupies the position of a typical HOA in relation to interpretation and enforcement of the CCRs on DMF residential lots.

The precise language of the CCRs in deeds has varied over the years, but the typical deed restriction for residential lots in DMF prohibits the conduct of a “trade, business or profession of any description,” and limits the use “solely and exclusively” to not more than “one private single family residence”, with or without appurtenant facilities. When issues of potential violations arise, the question for PBC is thus what kinds of rentals are consistent with use as a “single family residence,” and which do not constitute a “trade, business, or profession.”

We believe that it is important for the County to take into account the restrictions of CCRs in DMF when making decisions on permits for short-term rentals in DMF. The County’s Transient Rental Ordinance for the inland area (Monterey County Code Section 21.64.280.D.2.g) states that “use of a residential unit for a transient use [7-30 days] shall not violate any applicable conditions, covenants, or other restrictions on real property.” It further requires notice by the applicant to the “affected homeowner’s association” and provides that the permit shall not be approved unless or until objection of the homeowner’s association has been resolved. As noted

above, PBC is the equivalent of the “homeowner’s association” for DMF insofar as the enforcement of the CCRs is concerned. Thus, under the ordinance, it should be deemed the “affected homeowner’s association” for DMF and entitled to the same rights of notice and ability to object to a proposed STR permit. This interpretation implements the general proposition that approval from the entity with ability to enforce the deed restriction is a prerequisite for obtaining a permit for an STR.

2. PBC’s Position on Short-term Rentals.

PBC generally considers “short-term” rentals to be rentals of less than 30 days, and considers them to be a violation of the CCRs. There can be exceptions to these rules, but in general this is how PBC views these rentals. This rental limitation applies to the main residence and any accessory dwelling unit or guest house on the property. The rental of the main residence or an accessory dwelling unit for 30 days or more is generally considered a permissible single-family residential use.

PBC considers the use of a residence for an Airbnb, VRBO, or similar transient occupancy to be the conduct of a “trade or business” in violation of the restriction, as well as a violation of the single-family residence restriction. This use is rental of the residence (or a portion thereof) for a short-term and for remuneration. The County may consider this use to be a “Bed & Breakfast” for which a coastal or inland administrative permit may be issued, but the use would still be prohibited by the CCRs absent circumstances warranting an exception.

PBC has the power and authority to enforce the CCRs on STRs, but it is not obligated to do so. PBC has the discretion to determine, in its judgment, whether a violation of the CCRs is occurring, based on all of the circumstances surrounding the particular use. In the end, the purpose of the CCRs is to maintain the character and quietude of the residential neighborhood, and to ensure that the owners of residences are not competing with PBC in the transient rental business. There are certain times, locations, and events where these purposes of the CCRs are not well served; examples include residences located in the general area of The Lodge at Pebble Beach during special events such as the AT&T Pebble Beach Pro-Am golf tournament or the

Concours d'Elegance, when that area becomes a widespread hub of commercial activity. Other exceptions may be possible.

Historically, PBC has remained neutral regarding STRs. There were a small number of STR permits issued by the County; most of the rentals appeared to occur during special event weeks; and PBC received few complaints. However, the advent of Airbnb and other rental companies, the growth in permitted and unpermitted STRs, and the increase in neighborhood complaints have all caused PBC to reconsider its neutral position. During the Planning Commission hearing held on August 31, 2016, PBC objected to the issuance of additional permits for STRs in DMF until: (1) the County has decided on a policy direction and the adopted a new ordinance, and (2) the County has more thoroughly analyzed the unique situation in DMF where CCRs restrict such use. We renew that objection.

As noted above, we believe that PBC should be notified of STR permit applications in DMF, with the right to object as provided in the County's Transient Rental Ordinance.

Very truly yours,

PEBBLE BEACH COMPANY

A handwritten signature in black ink, appearing to read "D. Stivers", with a long horizontal flourish extending to the right.

David Stivers
Executive Vice President & CAO