

November 10, 2016

**PRIVILEGED SETTLEMENT COMMUNICATION
CALIFORNIA EVIDENCE CODE §§ 1152 & 1154**

Gary Ameling
City of Santa Clara
Santa Clara City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Additional Parking Rights Agreement (Golf Course)

Dear Gary:

At your request, I write to summarize StadCo's view of the provisions of the Additional Parking Rights Agreement (Golf Course) dated January 14, 2014 (the "Golf Course Agreement") as regards the standard for adjustment of the Minimum Use Fee. The capitalized terms used in this letter have the meanings given to them in the Golf Course Agreement.

The term of the Golf Course Agreement commenced on January 14, 2014 and terminated effective July 20, 2016. To our knowledge, there is no disagreement with respect to the Golf Course Parking Fees under Section 4.1, the Ancillary Use Fee under Section 4.2, the Golf Course Expenses under Section 4.4 or the Golf Course-Specific Public Safety Costs under Section 4.5 of the Golf Course Agreement, all of which have been paid in full. Our disagreement relates to the provision for possible adjustment of the Minimum Use Fee pursuant to Section 4.3 of the Golf Course Agreement, which provides, in relevant part, as follows:

Therefore, if, following any License Year, City reasonably demonstrates to StadCo that, when compared to the City's net income from Golf Course operations for the 12-month period commencing July 1, 2012, and ending June 30, 2013, the City's net income from Golf Course operations for such License Year has been diminished by more than the applicable Minimum Use Fee as a result of StadCo's use of the Golf Course for Stadium Events, and the Minimum Use Fee for such License Year shall be increased to equal the amount of such diminution. (Emphasis added.)

Under Section 2.1.2(b) of the Golf Course Agreement, a similar adjustment of the Minimum Use Fee was required to be made on a monthly basis during the month-to-month extension of the term of the Agreement from March 1 to July 20, 2016.

Based on our conversations, we understand that the City reads these provisions to require that the Minimum Use Fee be adjusted such that the City's net income from Golf Course operations throughout the term would always at least equal its net income from Golf Course operations during the 2012-2013 Fiscal Year, regardless of whether or not StadCo's use of the

Golf Course was the reason for any diminution in net income. That is simply not what the Golf Course Agreement says. The Golf Course Agreement provides for adjustment of the Minimum Use Fee only where the City can demonstrate that any additional diminution occurred "as a result of StadCo's use of the Golf Course for Stadium Events."

In fact, it is clear that many factors contributed to the decline in net income from Golf Course operations since fiscal year 2012-2013. The City's own quarterly reports cite a number of such factors, including significantly increased rainfall, interruptions due to testing carried out for the City Place development, and increased repair and maintenance expenses, including landscaping, electrical work in the cart barn and tree pruning. Interest in golf and revenues at golf courses are down nationwide and at other municipal courses in the immediate area.¹ This trend is no doubt exacerbated in Santa Clara by the City's public announcement of its intention to close the Golf Course in the near future to make way for the City Place development.

In our conversations, you have also attributed some of the diminution in net income from Golf Course operations to the fact that fewer tournaments were booked. However, you have provided no support for any claim that the reduction in the number of tournaments booked is "a result of StadCo's use of the Golf Course for Stadium Events." Section 3.2 of the Golf Course Agreement lays out a detailed process for establishing an Annual Event Schedule for StadCo's exercise of its Parking Rights. Under Section 3.2.3 of the Golf Course Agreement, the City had the right to disapprove StadCo's exercise of Parking Rights for any Unscheduled Events. Never, during the term of the Golf Course Agreement, did the City advise StadCo of any tournament opportunities or request that any dates be reserved for tournament use. Perhaps the City made the judgment to book fewer tournaments in order to ensure that the Golf Course would be available for parking for Non-NFL events – which, as you know, accrue to the benefit of the City and the Stadium Authority, rather than StadCo, under the provisions of the Stadium Lease – but such a decision is not grounds for adjustment of the Minimum Use Fee.

The difficulty with the City's approach to adjustment of the Minimum Use Fee is most obvious as to the five month period from March to July 2016, when the Golf Course Agreement was in effect on a month-to-month basis. As no NFL Events took place in this time period, the only Stadium parking that occurred on the Golf Course during this period was for Non-NFL Events, and occurred on only seven days of the 142 days of the extended term. Despite this minimal parking use, under the City's view, the Minimum Use Fee would be increased from about \$20,000 per month to more than \$120,000 per month, for a total adjustment of more than \$500,000. Frankly, there is no plausible argument that these few days of parking for Non-NFL events had any material impact on Golf Course operations, let alone an impact of more than one-half million dollars.

At your request, and as a sign of our continuing good faith, StadCo has paid more than \$1 million based on your calculation of the adjustment to the Minimum Use Fee with respect to

¹ See, for example *The Death of Golf*, <http://www.mensjournal.com/magazine/the-death-of-golf-20150625> and *Golf course revenue swings low: San Mateo considers future of Poplar Creek 105-acre site*, <http://www.smdailyjournal.com/articles/news/2016-04-02/golf-course-revenue-swings-low-san-mateo-considers-future-of-poplar-creek-105-acre-site/1776425161117.html>

the initial term of the Golf Course Agreement.² However, the extraordinary amount the City has now claimed for the month-to-month period has led us to re-examine the Agreement and our position. We have undertaken a detailed analysis of Golf Course operations over the term of the Golf Course Agreement which indicates that no adjustment of the Minimum Use Fee is justified during any portion of the term. Our staff has analyzed actual lost golfing revenues as compared to the fees generated by StadCo's parking use for each event over the entire term of the Golf Course Agreement, and this analysis indicates that StadCo has already overpaid the City by more than \$1,000,000. By comparison, you have indicated that the City's simple comparison to the 2012-2013 Fiscal Year indicates that further adjustment of the Minimum Use Fee would require StadCo to pay more than \$700,000 in additional fees, the majority of which is attributable to the month-to-month portion of the term.

The Minimum Use Fee of \$250,000 per License Year set forth in the Golf Course Agreement represented the parties' joint estimate of the expected diminution in net income from Golf Course operations attributable to Stadium Events. The City bears the burden of demonstrating the need for any additional adjustment of the Minimum Use Fee, including that any additional diminution is attributable to use of the Golf Course for Stadium Events. In fact, however, the City has made no effort to distinguish between reductions in net income attributable to parking for Stadium Events and those that clearly resulted from other factors.

We would welcome the opportunity to discuss these issues with you in greater detail. As always, and despite the challenging political environment, StadCo values its relationship with the City and its staff and we remain hopeful that an amicable resolution of this issue can be reached. Please let me know if you have any comments or questions and when we can schedule a time to discuss these issues further.

Very truly yours,



Scott Sabatino

cc: Hannah Gordon

² Although StadCo has already paid over \$1 million on account of the Minimum Use Fee for the second year of the initial term, you advised us in our recent meeting that you calculate that an additional \$80,000 may be payable for that year. Because StadCo has already overpaid under the contract, we do not believe any further payments are required even if your calculation is correct, and we do not believe it is correct.