

Kenneth J. Price
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MEMORANDUM

TO: Donald Kendig
Retirement Administrator
Fresno County Employees' Retirement Association

Steven Jolly
Chair of the Board of Retirement
Fresno County Employees' Retirement Association

FROM: Kenneth J. Price
Craig W. Armstrong
BAKER MANOCK & JENSEN, PC

DATE: February 11, 2016

RE: Consent to Representation - Boardwalk at Palm Bluffs, LP

As you know, the Fresno County Employees' Retirement Administration ("FCERA") is considering relocating its operations to a new office. As part of this process, FCERA has, with the assistance of a real estate broker, identified and considered several potential properties within Fresno to either purchase or lease. It has come to our attention that one of those properties is owned by an entity named Boardwalk at Palm Bluffs, LP ("Boardwalk").

When we learned that Boardwalk owned the property, we diligently performed a conflict of interest check within our firm to determine whether or not a conflict of interest exists that would affect our ability to provide legal counsel to FCERA in an independent, unbiased manner. While our check revealed that our firm assisted in Boardwalk's formation and has

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provided legal counsel to its principals on unrelated legal matters, because our firm has not and does not represent Boardwalk in the sale of the property in question, we have concluded that we are not conflicted from continuing to represent FCERA in this matter. Even so, in situations like this, the Rules of Professional Conduct applicable to attorneys in California requires that we obtain written consent from both FCERA and Boardwalk to our representation of the other.

Attached to this memorandum are the following documents: (1) a letter from our law office explaining the nature of our representation of both FCERA and Boardwalk; and (2) a Consent to such representation. Also attached is a Consent that Boardwalk's general partner, Larry Fortune, has already agreed to execute.

We are grateful and honored to have the opportunity to provide legal counsel to the FCERA Board and staff, and we would be happy answer any questions you might have regarding this matter.

KJP:CWA
Enclosures

Kenneth J. Price
Attorney at Law
kprice@bakermanock.com

February 11, 2016

Donald Kendig
Retirement Administrator
Fresno County Employees' Retirement Association
1111 H Street
Fresno, California 93721

Larry Fortune
General Partner
Boardwalk at Palm Bluffs, LP
680 W. Shaw Avenue, Suite 200
Fresno, California 93704

Re: Consent to Representation

Dear Mr. Kendig and Mr. Fortune:

Baker, Manock & Jensen, PC ("BMJ") represents the Fresno County Employees' Employee Retirement Association ("FCERA"). Additionally, BMJ represented Mr. Fortune, and his wife, Jane Fortune with respect to the formation of Boardwalk at Palm Bluffs, LP ("Boardwalk").

FCERA is considering purchasing certain real property from Boardwalk, and the FCERA Board has given FCERA staff approval to begin negotiations with Boardwalk regarding the potential purchase. The FCERA Board will have to approve any real property purchase before the purchase can be finalized.

FCERA, as an independent agency, must consider all information it deems pertinent before deciding whether or not to make a real property purchase. FCERA has asked BMJ to advise it as it considers making a real property purchase. At the outset, it is unlikely there would be an actual conflict between FCERA and Boardwalk. BMJ is not representing Boardwalk with regard to the sale of the real property in question. However, because BMJ has represented Boardwalk, there is the possibility that the interests of both FCERA and Boardwalk could potentially conflict as it relates to FCERA's consideration of purchasing real property from Boardwalk. The purpose of this letter is to obtain the written consent from both Boardwalk and FCERA to our representation of FCERA in connection with the potential purchase of real property from Boardwalk.

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As part of our professional responsibilities and duty of loyalty to our clients, we strive to act in the best interests of each client and to avoid any conflicts of interest, whether potential or actual. It is also part of our professional responsibilities and our duty of loyalty as legal counsel to advise you when potential or actual conflicts of interest may arise, so that legal representation proceeds on an informed basis and with your written consent to any such conflict.

Under the circumstances involved, our representation of FCERA with respect to the matters discussed above could result in a potential conflict of interest as this term is defined under the Rules of Professional Conduct of the State Bar of California. Because we represent FCERA and Boardwalk, and because we owe a duty of loyalty and fidelity to both clients, we request the informed written consent of both parties. Specifically, Rule 3-310(C)(1) of the Rules of Professional Conduct of the State Bar of California provides as follows:

“(C) A member shall not, without the informed written consent of each client: ...

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict;”

Rule 3-310(E) of the Rules of Professional Conduct of the State Bar of California provides as follows:

“(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.”

Rule 3-310(A) defines “informed written consent” to mean written agreement to the representation following written disclosure of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences.

Confidential information provided to us by either party will not be made available to the other.

All parties understand and agree that any current waiver of a conflict of interest described herein is based upon current facts and circumstances as they are known to us.

This letter confirms that BMJ will not represent either FCERA or Boardwalk in the unlikely event of any subsequent litigation, mediation or arbitration between them. This

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letter itself and its contents are provided for the information of the parties and with the understanding that all privileges and confidentiality are fully reserved.

Both FCERA and Boardwalk may engage separate and independent counsel to advise you with respect to the potential transactions that are the subject of this letter, and to advise you concerning the content and consequences of this letter. We emphasize that you remain completely free to seek independent counsel of your choice at any time even if you decide to sign the consent set forth below.

If we can provide any further information, or there is anything about this waiver that you would like to discuss, please let me know at any time. If you are aware, or become aware, of any additional conflict of interest that may or have arisen, please let us know as soon as possible so that we may discuss them and consider the appropriate course of action under the circumstances.

If you agree to our representation as set forth above in this matter under the conditions and limitations described in this letter, please signify your informed written consent to such representation by signing the enclosed Consent to our representation in this matter. Thank you.

Very truly yours,

Kenneth J. Price
BAKER MANOCK & JENSEN, PC

KJP:CWA

Enclosure

**CONSENT OF FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
TO REPRESENTATION OF BOARDWALK AT PALM BLUFFS, LP**

Reference is made to the attached letter dated February 11, 2016, from Kenneth J. Price of Baker, Manock & Jensen, PC, with respect to certain potential conflicts of interest relating to Baker, Manock & Jensen PC's representation of Fresno County Employees' Retirement Association ("FCERA") with respect to its potential real property purchase from Boardwalk at Palm Bluffs, LP.

The undersigned hereby consents and agrees to Baker, Manock & Jensen, PC's continued representation of Boardwalk at Palm Bluffs, LP, on unrelated matters and consents and agrees to the representation of FCERA by Baker, Manock & Jensen, PC, in connection with all matters described in the attached letter.

The undersigned has the power and authority to execute this Consent.

Dated: February ___, 2016.

By: _____
Donald Kendig, Retirement
Administrator

**CONSENT OF BOARDWALK AT PALM BLUFFS, LP
TO REPRESENTATION OF FRESNO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION**

Reference is made to the attached letter dated February 11, 2016, from Kenneth J. Price of Baker, Manock & Jensen, PC, with respect to certain potential conflicts of interest relating to Baker, Manock & Jensen PC's representation of Fresno County Employees' Retirement Association ("FCERA") with respect to its potential real property purchase from Boardwalk at Palm Bluffs, LP.

The undersigned hereby consents and agrees to the representation of FCERA by Baker, Manock & Jensen, PC, in connection with all matters described in the attached letter.

The undersigned has the power and authority to execute this Consent.

Dated: February ___, 2016.

By: _____
Larry Fortune, General Partner