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August 22, 2012

Mr. James R. Hinton
Ridenour, Hinton & Lewis
Statutory Agent
Recreation Centers of Sun City, Inc.
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004

Certified Mail- Return Receipt Requested

RE: RCSC's non-compliance with state statutes and community documents

Dear Jim:

The Mangone Law Firm, P.C., has been retained by a group of Sun City, Arizona, homeowners who formed the Sun City Formula Registry ("SCFR") in 2000 for the purpose of monitoring the Recreation Centers of Sun City, Inc. ("RCSC") so as to protect the interests of all Sun City homeowners. Anne Randall Stewart is the group's spokesperson.

These homeowners have asked me to bring a number of issues to your attention and to the attention of your client, RCSC. Being mandatory members of RCSC, they are alarmed at the many unilateral actions taken by the board that are contrary to both Arizona law and RCSC's own corporate documents. I am writing in the hope that RCSC will choose to correct these actions on its own without our having to resort to legal action. Specifically, the following actions need to be addressed and corrective action taken:

1. Reinstate the "100" member quorum

The board voted to increase the quorum for membership meetings from 100 to 1250 by unilaterally rewriting the bylaw that had set the quorum amount. However, this unilateral action is contrary to the Arizona law that requires a membership vote to increase the quorum for a membership vote. [See, ARS Section 10-11023]. Section 10-11023 of the Arizona Revised Statutes provides:

- A. If authorized by the articles of incorporation, members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for its members, or for classes of members, than is required by chapters 24 through 40 of this title. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for members shall meet the same quorum requirement and shall be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, **whichever is greater.**
- B. A bylaw that **fixes a greater quorum or voting requirement for members** under subsection A **shall not be adopted, amended or repealed by the board of directors.**

A review of both the historic and current RCSC Restated Articles of Incorporation reveals that the Articles themselves are silent on the number of Members that constitutes a quorum. Article VIII, Paragraph 4, merely states that the voting rights and obligations of all Members shall be equal, while Article XIII states the types of matters upon which Members may vote.

The original quorum was established in RCSC's Corporate Bylaws at one-hundred (100) Members. Because the amount of Members constituting a quorum can be found only in RCSC's Corporate Bylaws, a provision in those Bylaws that adds a greater quorum must be adopted by the same vote and classes of members required to take action under the new quorum proposal. In other words, 1,250 Members should have had to vote to approve the change to the Bylaws. There is no evidence that such a "super" quorum was present at the December 2009 Board meeting either in person or by proxy. Further, it appears the Board alone approved this change to the Bylaws at its December 17, 2009, meeting, as there was no indication in the minutes that a vote of the membership was called. The Board's unilateral action was thus impermissible under Arizona law. We, therefore, ask for the reinstatement of the original 100-Member quorum requirement.

2. Comply with Title 33, Chapter 16, the Arizona Planned Communities Act

Title 10 requires non-profit corporations that are homeowners associations to follow the provisions of the Planned Communities Act. As we have previously discussed in the context of the Viewpoint Lake Homeowners' litigation, RCSC does not believe it has to comply with the Planned Communities Act because it claims to be a not-for-profit corporation rather than a "homeowners association". As you know, I have previously argued that Sun City is a "planned community" as defined in A.R.S. § 33-1802(4). I have also argued that, even though RCSC is a not-for-profit corporation, it owns properties and requires through facilities agreements (with threat of foreclosure for non-compliance) that homeowners pay mandatory assessments to maintain "common areas" within Sun City for the homeowners' beneficial use. The Planned Communities Act identifies the types of homeowners' associations that are subject to its provisions, which include those with mandatory membership and those which require payment of assessments.¹ Because execution of a Recreation Facilities Agreement is "mandatory," and because RCSC makes homeowners pay the costs and expenses incurred in the performance of its obligations, RCSC is an "association" as defined by A.R.S. § 33-1802(1). RCSC is therefore required to comply with the Arizona Planned Communities Act.

Because it is governed by the Arizona Planned Communities Act, RCSC is required to conduct open meetings and allow for inspection of its community-related records. The board must comply with the statute, including, but not limited to, banning proxies, opening its "work session" and "commission" meetings, allowing taping of *all* meetings, and allowing those with opposing viewpoints to speak before the board votes on each issue being considered. We do not understand why RCSC's president has recently precluded the recording of these meetings since creating a complete and accurate record of the content of meetings is in everyone's best interests, including those of the homeowners and RCSC.

¹ See, *Shamrock v. Wagon Wheel Park Homeowners Association*, 206 Ariz. 42, 75 P.2d 132, 408 Ariz. Adv. Rep 16 (2003).

3. Comply with RCSC's own corporate documents

RCSC's Restated Articles of Incorporation mandate that the board cannot write by-laws or board policies that conflict with those Articles. The Articles mandate ALL members must pay the same amount and have the same voting rights and privileges. In the current board-created Bylaws and Board Policies, some members are designated as "Member Cardholders" while others are "Privilege Cardholders," thereby creating differing classes of members. These designations must be eliminated because "Member Cardholders" enjoy greater rights and privileges than "Privilege Cardholders". If homeowners or residents pay assessments to RCSC to maintain its properties, those homeowners or residents must be equal members according to the Articles. It is my understanding that the annual assessments being paid by various classes of members differ. Further, I understand that members paying the \$3,000 Preservation and Improvement Fee ("PIF") do not necessarily have the right to vote or to use RCSC's facilities.

Lastly, and perhaps most troubling, is the fact that RCSC has not conducted a membership vote to approve projects with contingent liability of over \$750,000 or to obtain members' approval to convey RCSC property worth over \$50,000. Membership approval was not obtained before undertaking the \$18-million Fairway Project, the \$3.5 million Bell Project, or the \$8 million Sundial Project. We note that the Restated Articles of Incorporation, in Article X, provides that "the highest amount of indebtedness or liability, direct or contingent, to which the Corporation may at any time subject itself shall be limited to \$750,000 or any greater amount which may be authorized by three-fourths (3/4) of the Members present at a duly called and noticed meeting of the membership, or in such amounts as may be authorized by the Arizona Corporation Commission." As with the quorum issue, we believe the Board has exceeded its authority by allowing RCSC to become indebted or liable on contracts and for expenditures that, in the aggregate, are greater than \$750,000 without Membership or ACC approval.

The foregoing summarizes the most glaring instances of unilateral actions taken by the RCSC board, but I understand there are a variety of other examples of RCSC not complying with its own Articles, Bylaws or Board Policies. My clients are extremely alarmed because of the recent board decisions to close committee meetings to the press and to potentially undertake multi-million-dollar construction projects, again, without a membership vote. The lack of transparency suggests to us that an injunction might be necessary to intervene and prevent further violations of RCSC'S Articles, Bylaws and Board Policies.

I would appreciate the opportunity to discuss the details of these concerns with you so that we can reach an appropriate resolution. To date, the RCSC Board has been unwilling to compromise with the homeowners themselves and has represented that their unilateral actions were recommended and approved by counsel. I do not see the benefit to RCSC in litigating these matters, especially since my clients and I believe our likelihood of success on the merits of these claims is quite high and it comes at a cost to all parties concerned in terms of time, financial resources and good will.

We hope that RCSC will work with us in a cooperative fashion to address the issues we have raised in this letter. We also hope RCSC will reinstate the original quorum of 100 Members immediately, as it has no legal basis to impose the greater quorum amount. Please be advised, however, that if RCSC is unwilling to restore the original quorum amount, as well as address the other issues mentioned herein, my clients are sufficiently impassioned and motivated to press their position in court.

The Mangone Law Firm, P.C.
August 22, 2012

Please feel free to contact me at the electronic or regular mailing address or by telephone to discuss this matter further.

Sincerely yours,



Nancy A. Mangone

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cc: Anne Randall Stewart, SCFR homeowners via <http://www.annereport.com>