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Sun City Taxpayers Association,



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Arizona Corporation Commission  
W-01656A-98-0577 and SW-02334A-98-0577 DOCKETED

MAR 28 2001

DOCKETED BY [ ]

TO: ACC - COMMISSIONER, JIM IRVIN,

FAX #: 602.542.0765

DATE TRANSMITTED: 3/28/01

PAGES (INCLUDING COVER SHEET): 3

MESSAGE: SEE BELOW

FOR YOUR INFORMATION SCTA HAS ISSUED A DEMAND LETTER TO THE RECREATIONAL CENTERS OF SUN CITY ON THE BINDING AGREEMENTS ON RATE CASE #62293. THIS IS NOW PUBLIC KNOWLEDGE COPY OF DEMAND LETTER IS ATTACHED

AZ CORP COMMISSION DOCUMENT CONTROL

2001 MAR 28 P 1:18

RECEIVED

SIGNED:

Raymond E. Dare  
RAYMOND DARE, PRESIDENT

Mar 26 2001 1:45PM

MOYES&amp;STOREY LTD

No. 8232 P. 2/3

The Phoenix Corporate Center  
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**MOYES STOREY****LAW OFFICES****Jeffrey C. Zimmerman**Telephone: 602-604-2111  
Facsimile: 602-274-9135

March 26, 2001

**VIA CERTIFIED MAIL**

Jerry Swintek, President  
Recreation Centers of Sun City, Inc.  
10626 Thunderbird Boulevard  
Sun City, Arizona 85351

Re: Demand for Vote of Members re Validity of Agreement for Exchange of CAP Water in Sun City dated October 30<sup>th</sup>, 2000, between the Recreation Centers of Sun City and Sun City Water Company (Exchange Agreement)

Dear Mr. Swintek:

This firm represents the Sun City Taxpayers Association, Inc. (SCTA). On behalf of SCTA, we demand that the Recreation Centers of Sun City, Inc. (RCSC) immediately call and notice a vote of its members to approve or reject the above Exchange Agreement. The Exchange Agreement is invalid and void because it was never authorized by RCSC's members, nor was it ever even properly authorized by the RCSC board.

As you know, Article VIII, Paragraph 7 of the articles of incorporation of RCSC expressly provides that "The Corporation shall not convey any substantial part of its assets, or any real property of assessed value for tax purposes exceeding \$50,000, without affirmative vote of a majority of its membership entitled to vote thereon." The groundwater rights which are the subject of the Exchange Agreement have a value in the millions of dollars and clearly constitute a "substantial part" of RCSC's assets. Exchanging those assets for 43 years or longer clearly constitutes a conveyance under Arizona law.

As you also know, Article X of the articles of incorporation of RCSC expressly 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." By entering into the Exchange Agreement, RCSC has unilaterally subjected all of its members to bearing the substantial financial burden of a huge portion of the \$15 million debt that Citizens Utilities Company and its subsidiaries (Citizens) will incur to build the CAP water delivery facilities under the Exchange Agreement. This multi-million dollar debt never would have been incurred or imposed upon RCSC's members in the absence of the Exchange Agreement, which clearly violates this provision of RCSC's articles of incorporation in both spirit as well as substance.

As you also know, the Sun City Community Facilities Agreement that is recorded against every member's home imposes upon RCSC a strict fiduciary duty to promote and protect the interests of its members. This binding legal document recites that RCSC's properties were conveyed to RCSC solely "for the purpose of maintaining, operating and developing such facilities for the benefit of" the Sun City residents. It also expressly requires RCSC to "operate such recreational facilities for the benefit of" its members, the Sun City homeowners. By unilaterally entering into the Exchange Agreement with Citizens, RCSC has illegally imposed millions of dollars of debt upon its members in clear breach of its fiduciary duty to act exclusively for the benefit of its

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Jerry Swintek, President  
March 26, 2001  
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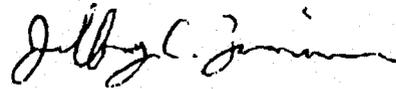
members. RCSC's breach of its fiduciary duty to its members also constitutes a breach of its contract with its members, thereby exposing RCSC to both tort and contractual consequential damages.

In addition to the need for an immediate membership vote, your board apparently never even properly authorized the Exchange Agreement. As you know, by resolution passed February 25, 1999, the board merely approved the exchange concept in principle and authorized the president only to "enter into the requisite contract with Citizens," but this authorization was expressly made "subject to final review by this Board." The resolution expressly stated that it was "non-binding." At its meeting on October 26, 2000, the Exchange Agreement was discussed, but there was never any board vote approving it, thereby rendering the subsequent execution of the Exchange Agreement void and in violation of RCSC's own procedural requirements.

The issue of the Exchange Agreement must be subjected to an immediate vote of RCSC's members that satisfies both Articles VIII and X of RCSC's articles of incorporation because Citizens already has a pending application for approval of its CAP water delivery facilities before the Arizona Corporation Commission. For the Exchange Agreement to be valid, the vote under Article VIII must be approved by a majority of RCSC's full membership, and the vote under Article X must be approved by at least 3/4 of RCSC's full membership. If the RCSC board refuses to immediately notice the appropriate vote of its members to consider the Exchange Agreement as soon as its articles and bylaws allow, then SCTA will have no recourse but to commence legal proceedings against RCSC to compel RCSC to comply with Arizona law and its own recorded documents. Any such litigation will, of course, expose RCSC to actual monetary damages for its flagrant breaches of its fiduciary and contractual duties to its members, along with further liability for all of SCTA's costs and attorneys' fees. SCTA also requires that RCSC give it a fair opportunity to approve the wording of the ballot in advance to satisfy itself that the wording is clear and understandable for all the members.

While SCTA sincerely hopes that legal proceedings will not become necessary, that is a decision that lies solely in your hands. We can do this the easy way or the hard way. The choice is up to you. If we do not receive written confirmation from you within fifteen days from the date of this letter that the RCSC board will notice a vote of its membership for the purpose of approving or rejecting the Exchange Agreement, then we will conclude that RCSC would rather litigate against its own members than work to resolve this matter outside of a courtroom. Representatives of SCTA would be pleased to meet with the RCSC board to discuss these important issues in the hope of resolving this matter quickly and inexpensively for everyone. Please take advantage of this unique, and final, opportunity to avoid the expense and embarrassment of a lawsuit, and work with us and our clients toward the resolution of this matter.

Very truly yours,



Jeffrey C. Zimmerman

JCZ/lkk

cc: Ray E. Dare, President, Sun City Taxpayers Association, Inc.