February 13, 2015

Eva G. Segerblom, Esq.
Maddox, Segerblom, and Canepa, LLP
10587 Double R. Blvd., Suite, 100
Reno, Nevada 89521

Re: Violation of Governing Documents

Dear Ms. Segerblom:

Thank you for your letter of February 11, 2015 responding to the three issues raised in our letter of January 13, 2015. As legal counsel to the ACHOA Board, your job is to protect the Board and the corporation, of which the undersigned are members in good standing, from unnecessary risk instead of exposing them to it. Instead of advising the Board to proceed with caution, you summarily dismiss our legitimate concerns with superficial legal arguments.

I. Amending the Articles to Engage in Business For Profit.

You "wholeheartedly disagree" with our belief that the Articles of Incorporation cannot be amended to allow the corporation to engage in a for profit business. The plain language of Article IX of the Articles of Incorporation state, "*no such amendment shall permit the corporation to engage in business for profit."* The reason we raised this issue is because the ACHOA Board stated in response to FAQ No. 18 (enclosed), "*The Articles of Incorporation* and Bylaws *will need to be changed* to reflect *a 'For Profit' HOA*."

Because we have notified the Board that Article IX will not even allow an amendment to engage in for-profit business, you have conveniently changed the Board's position by claiming it is "not clear" whether an amendment is necessary. However, it is clear that approval of the golf course acquisition will require the ACHOA corporation to engage in a for-profit joint venture with Arnold Palmer Golf Management. The Board recently acknowledged this fact in its response to a homeowner's question (enclosed):

> Unfortunately, if the ACHOA members vote for the acquisition and operation of "the Club at ArrowCreek", ***the Board of Directors and ACCC have been told by tax experts and legal counsel that the ACHOA will need to become a "For-Profit" entity*** as allowed under the NRS.

We are mindful that the ACHOA Board just revised its responses to these questions in response to our legitimate concerns. Those responses ignore the most fundamental question. *If the Articles cannot be amended to allow for-profit business but the corporation will be a 50% owner of a for-profit joint venture, then how can such a transaction be legal?* You suggest that NRS Chapter 82 will trump Article IX. However, the plain language dictates the *exact opposite.* In particular, NRS 82.131 states:

> ***Subject to such limitations, if any, as may be contained in its articles*** *(emphasis added)*, and except as otherwise provided in NRS 82.392, every corporation may:
> …
> 7. Carry on a business for profit and apply any profit that results from the business to any activity in which it may lawfully engage.

Thus, NRS 82.131 generally allows a non-profit corporation formed under Chapter 82 to engage in business for profit, but only "*subject to such limitations ... as may be contained in its articles.*" Since Article IX is an express limitation and prohibition against for-profit business activity, the Article trumps NRS 82.131, not vice versa.

Likewise, NRS 116.11085 and 116.3101 do not trump the for-profit prohibition in Article IX. NRS 116.11085 merely states that "when there is a conflict" between Chapter 116 and Chapter 82, then Chapter 116 governs. NRS 116.3101 requires a homeowners association to be organized "as a profit or nonprofit corporation, association, limited-liability company, trust, partnership or any other form of organization authorized by the law of this State." Our homeowners association chose to be formed as a *non-profit* corporation under Chapter 82. There is no conflict between Chapters 116 and 82. More importantly, there is no conflict between Article IX and any Nevada statute. Therefore, the ACHOA Board cannot ignore the express prohibition of for-profit business in Article IX. To advise the ACHOA Board otherwise subjects the Board and corporation to unnecessary risk and liability, which we as members have a right to be concerned about.

II. Amending the Articles to Permit Net Earnings to Inure to the Direct Financial Benefit of Members of the Corporation.

In response to this issue, you proclaim that "this is mere speculation." If so, then it is your duty to advise the ACHOA Board to research this issue further to ensure that there will be no direct financial benefit to corporate members. The five persons identified as managers of the FOA (Tom Gurnee, Alan Humphrey, Gary Pestello, Joseph Petite, and Mark Wimbush) are record owners of lots in ArrowCreek, and therefore corporate members who stand to earn a 12% return on their investment. You suggest that it is unclear the 12% profit to the FOA will actually result in a financial benefit to its members. This suggestion ignores the primary tax advantage for limited liability companies, such as the FOA, that profits or losses flow directly to its members. It is common sense to assume under the tax laws that the 12% profit to the FOA will flow directly to its members, who are also members of the corporation. If you truly believe this is speculation, then the ACHOA Board should ascertain the identity of all the members of the FOA, investigate whether they are members of the corporation, and inquire whether the FOA intends to pass through the 12% profit to its members. By dismissing this issue as mere speculation, you are placing unnecessary risk on the ACHOA Board and the corporation.

III. Holding a Vote To Amend the Articles Requiring Approval By Vote of Less Than Two Thirds of the Members of the Corporation.

You state that this issue is "pure conjecture" because "ACHOA has not suggested that the Articles of Incorporation may be amended with less than two-thirds of voting members." You state it is "unclear" whether the Articles of Incorporation will need to be amended at all. It is readily apparent from the recent revisions to the ACHOA Board's answers to homeowner questions quoted above that the Board now intends to work backwards by claiming that only a simple majority is needed to change the CC&Rs to purchase the golf courses, and then use this simple majority vote to proclaim that the corporation has no choice but to engage in a for-profit business. It is troubling why the ACHOA Board continues to spend so much of our corporation's money on attorneys and accountants to skirt around the plain requirements of Article IX. Since Article IX completely prohibits the corporation from engaging in business for profit and requires a two thirds vote to amend, such requirements must be complied with instead of avoided through legal loopholes which frankly do not exist.

We are mindful that ACHOA Board members sincerely believe the acquisition of the golf courses will be beneficial to the ArrowCreek community, yet to be proven. But since the proposal requires the corporation to engage in business for profit in direct violation of Article IX, then it is imperative for you to advise the Board of the substantial risks associated with violating this provision. The time is ripe for the ACHOA to require the FOA to make a different proposal that does not involve violation of the Articles of Incorporation.

Sincerely,

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Enclosures
cc: Jeanne Tarantino (via email); Samuel Fox (via email)