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A PROFESSIONAL LIMITED LIABILITY COMPANY

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11/8/2017

Augusta Britt
4596 E. Camino de Cancun
Tucson, AZ 85718

Re: Viewpointe II Townhomes Association

Dear Ms. Britt:

At your request, I have performed a review of documents obtained from Associa regarding the management of the Viewpointe II Townhomes Association ("Association") where you live. I hope this letter helps explain why certain decisions by the Association's Board of Directors ("Board") are contrary to the Association's Bylaws and CC&Rs and/or Arizona law, and why other actions, while perhaps within the technical limits of the law, are not in the best interests of the Association and its members.

At the beginning of this process, I contacted Associa, the management company for the Association, to request documents related to the financial health of the Association and records related to Utility Submetering Services (USS). Despite the fact that the Association's Bylaws, Article IV, Section 4.13.A, and Arizona law, A.R.S. § 33-1805, clearly state that homeowners are entitled to Association records, you were not provided with any records until filing a lawsuit, the costs of which can be assessed against the Association. To date, you still have not received complete water bills from Tucson Water, nor have you received full records from USS despite a subpoena issued to them.*

This letter is a summary of the problems apparent after reviewing the documents we did finally receive. I have attached an appendix that goes into detail on the calculations our office made and provides citations to Arizona law and the Association's governing documents.

The Board made at least five decisions that are contrary to law or otherwise problematic. (1) The Board signed a problematic contract with Utility Submetering Services (USS) to meter individual water usage, which USS has performed in an at best careless manner. (2) A massive bank stabilization project

also was undertaken without properly submitting the decision to the homeowners, and the Board took out a large loan in the Association's name to pay for it, likewise without approval. (3) The Board has not been conducting a financial review as required by the Bylaws. (4) Significant increases in the cost of maintenance have been accompanied by a decline in the level of maintenance of the common areas. (5) The election of February 2017 was filled with irregularities. (6) Finally, the Board is currently attempting to change the Bylaws, CC&Rs, and Articles of Incorporation to reduce the quorum requirements and otherwise give the Board more control over Association business. The Board's performance thus far has not demonstrated that it can be trusted with increased authority.

Finance Committee

The Bylaws require the Board to appoint a finance committee consisting of at least two homeowners who are not Board members to review the Association's financial documents and report in writing to the Board as to their findings, including whether an audit is required. This has not taken place since at least 2015, possibly since 2013. Without such a review, there is no reason for homeowners to be confident in the financial health of the Association.

Arizona law no longer requires an annual audit, requiring only a "compilation." This change in law, however, does not remove the Bylaws' requirement for a financial review, as more fully discussed in the appendix. Despite our requests, the Board has not provided copies of any "compilations" performed, so it is not apparent that they are following even the minimum standard under Arizona law. Ignoring the Bylaws' provision for financial accountability shows the Board's lack of concern for the Association's finances.

Utility Submetering Services

Initially, the contract with USS was contrary to the Bylaws because it binds the Association to a contract longer than one year, without any reasonable cancellation provision. Additionally, the contract provides that USS will recover the meters if the contract is not renewed, but does not require USS to repair the water lines after removing the meters. This is a significant barrier to cancelling the USS contract.

When we initially requested information relating to billing by USS from the Association, both Associa's representative Gabino Trejo and the Association's attorney Michael Shupe told us that the Association had absolutely no documents in its possession related to billings from USS. We were forced to issue a subpoena and obtain these documents from USS directly. However, in sworn testimony before the Superior Court taken in *, Larry Bodine, at that time

the president of the Board, stated that a Board member was investigating* issues with USS. Either this investigation was conducted without any access to USS-related documents, or the Board's representatives were less than truthful in their response to your requests for records.

We have obtained voluminous documentation from USS regarding charges to the Association and to individual homeowners. Interestingly, while the figures for the usage of the Association as a whole are accurate, the records for individual homeowners provided by USS itself have simple arithmetic errors. Also interesting is that, since we requested USS records in August, the billings have been much more accurate than previously.

The contract between USS and the Association requires that USS charge no more for water and sewer than the rate charged by the public utility. A comparison of bills with Tucson Water rates indicates that, at least for three homeowners, USS has overcharged between \$8.00 and \$10.00 per month for water usage. Multiplying even the low rate by 136 homeowners yields a total potential overcharge of \$1,088 per month.

Comparing billed sewer rates with the rates charged by Pima County Wastewater between July 27, 2016 to September 14, 2017 shows individual homeowners charged between \$49.81 and \$86.04 for that period. Again multiplied over 136 homeowners, this yields charges from \$6,664 to \$11,696 for the period (slightly over one year).

In multiple instances, USS has also charged a notice fee, disconnect fee, and reconnect fee on the same day. It is literally impossible that all three fees could be incurred on the same day. Additionally, USS is not reading meters on a consistent read date as required by the contract. Read dates as shown on USS's own billing records vary from the 11th to the 23rd of the month. This of course makes it more difficult to compare billing across time periods and with the rates charged by Tucson Water.

In short, the USS contract was entered into in violation of the Bylaws, with no easy way to reverse the transaction, and USS appears to be overcharging the Association for water and sewer, as well as maximizing the other fees it is allowed to charge.

Bank Stabilization

In late 2013 or early 2014, the Board contracted to stabilize the bank of the wash that runs past the Association property. According to a letter sent in May 2013, this project cost approximately \$230,000.00. In order to pay the contractor doing the stabilization work, the Board took out a loan on behalf of the Association. Any work costing more than \$2500.00 requires approval of two

thirds of the homeowners voting in an annual or special meeting called for the purpose, but it is not clear that a meeting was ever called to approve the stabilization. Even worse, the stabilization might have been paid for by Pima County as part of the County's responsibility to maintain washes, if the Board had not approved the construction of a staircase into the wash.

February 2017 Election

The Board of Directors election held in February 2017 was full of irregularities. If a nominating committee was formed as required by the Bylaws, its membership was not made known to the homeowners. There was no opportunity for in-person voting at the annual meeting. Because the Bylaws and CC&Rs do not provide for secret ballots, it was required for all ballots to bear the name, address, and signature of the person voting. Homeowners who are not current on their payments to the Association are not eligible to vote, but no effort was made to verify whether voting homeowners were eligible. In fact, it may not have been possible to do so. Augusta Britt and others who attempted to stand for election at the meeting were not allowed to stand, despite clear language in the Bylaws stating that homeowners may be elected to the Board without being nominated by the nominating committee. Although the Bylaws allow for up to nine members on the Board, only five members were seated at the election, despite more than sufficient candidates to fill all nine seats. A sitting Board member criticized Dan Deppen, who was running for a seat on the Board, with a community-wide email shortly before the election. No other candidate was campaigned against in this manner.

Because of these multiple deficiencies in the election, actions taken by the Board after that election, including replacing Board members who stepped down, are likely void. Additionally, duly elected Board member Patrick Maher was excluded from discussion and voting regarding whether to file a lawsuit against Dan Deppen, and has been excluded from multiple other Board meetings.

The fact that the Board violated clear provisions of Arizona law and the Association's Bylaws and CC&Rs shows a lack of concern for the rights of homeowners and should be taken into account in considering who to elect at a new election using proper notice and voting procedures.

Amendment of Bylaws, CC&Rs, and Articles of Incorporation

The Board is currently attempting to amend the Association's governing documents. The proposed changes include reducing the necessary vote to amend the Articles of Incorporation, CC&Rs, and Bylaws to a simple majority vote, reducing the necessary vote to approve a special assessment, requiring internet cables to be run underground, and allowing the Board to retain one

Letter to Augusta Britt
Re: Viewpointe II Townhomes
16:14
Page 5

member without that member having to stand for election by the homeowners, removing restrictions on rooftop antennas, and removing so-called "obsolete" provisions of the Bylaws and CC&Rs.

Given the previous behavior of the Board, it would be unwise to make it easier to amend the Association's governing documents, and it is less than certain whether the Board's characterization of Bylaws provisions as "obsolete" should be trusted.

At a bare minimum, any actions toward amending the governing documents should be suspended until a properly elected Board can be seated.

Other Expenses

In January 2017, the Association paid \$10,760 in plumbing expenses. There is no record that a vote was held to approve this expense, as required by the Bylaws. A plumbing emergency could reasonably be dealt with without calling for a vote of all homeowners, but there is no record that homeowners were even notified of the issue.

The liability insurance premium for May 2017 was \$161.00; in June 2017 it rose to \$251.00, nearly \$100 more in a single month. There is no indication this increased expense was discussed or even disclosed to homeowners.

Reviewing monthly costs for pool maintenance show wide variability, from as low as \$240.00 in January 2016 to as high as \$1062.00 in July, while costs from August 2016 through April 2017 stayed constant at \$600.00 per month. Pool supplies and repairs, which could be expected to vary by season, are not included in this line item.

These maintenance costs are especially suspect because the condition of the common areas, far from improving, has significantly degraded in recent months/years. The Association is spending significantly more money for inferior service.

Finally, because of the Board's reluctance and foot-dragging in cooperating with your request for records, you had to take your case to court before records were provided. A follow-up request for additional records has been ignored and may require additional court action. The Association could be liable for the legal costs you have incurred to exercise your rights as a homeowner.

Thank you for the chance to assist you in this matter, and let me know if I can be of further service.

Letter to Augusta Britt
Re: Viewpointe II Townhomes
16:14
Page 6

Sincerely,

Daniel G. Barker
Attorney

*DGB/
Enclosures as stated
cc: client*