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Members of Ravines Community Association, Inc.

Re.: Preliminary Changes to Use of Golf Course

Dear Members of Ravines Community Associate:

Earlier in the month, I met with the Board of Directors of the Ravines Community Association, Inc. (Association) to discuss the preliminary proposed build out of the area referred to as the front nine of the golf course.

As I am sure you know, the Board of Directors consists of elected members of your community who are charged with the operation of the Association. The Association must be operated in accordance with the governing documents and Florida law, including the applicable statutes. The Board of Directors requested guidance regarding their obligations to the community and how the preliminary plans for development of the front nine of the golf course interact with the governing documents and the applicable law. Further, it was stated that there was a threat that if the owners did not cooperate with approval of the build out, the golf course owner would install a fence around the golf course.

First, a fence may not be put in place around the golf course, for whatever reason. The Association is permitted to put a fence around the perimeter or elsewhere. While others may put in fences, it requires approval of the Architecture Review Board (ARB).

Second, the Fourth Amendment to the Declarations does not reference the Developer. It provides regulations and rules for construction, including Builders. All construction is subject to ARC approval. The statement that upon replatting, the owner of the golf course would become the Developer and control the Association is baseless.

Third, the Board should not vote, and probably has no authority to vote, to allow the replat, resubdivision or subdivision of the golf course. The Declarations contain specific restrictions and prohibition on the subdivision of the golf course. It would be up to the members to amend the Declarations to allow the subdivision and replat and the construction of homes and other buildings on the golf course. The Declarations may be amended by two-thirds of the votes cast at a duly called meeting.

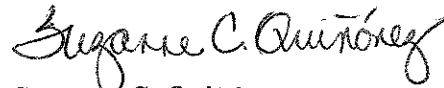
Fourth, Declarations (covenants and restrictions) will be upheld and are enforceable unless someone alleges and proves that conditions and circumstances existing at the time the restrictions were placed on the land have changed so as to make the original intent or purpose of the restriction meaningless. Wahrendorff v. Moore, 93 So.2d 720 (Fla. 1957). The Court went on to find that while rezoning of the property was admissible evidence of change, it was not conclusive. Further, the Court held that when there is a conflict between zoning and a restrictive covenant, the one providing the "more restrictive requirements shall prevail." Id. at 722.

Rezoning will not affect covenants and restrictions which run with and were already attached to the land. Essenson v. Polo Club Associates, 688 So.2d 981, 983 (2d DCA Fla. 1997). Although restrictive covenants may be cancelled or modified, the law does not permit cancellation of restrictions for the purpose of accommodating the best or most profitable use of the property. Id. at 983. In order for covenants to be cancelled or modified, there must be material change, but also the material change must be proven to have occurred after: 1) the restrictions were put in place; 2) without any fault on the part of the party asking for the cancellation or modification, and, 3) that the change destroyed the value of the covenants. Id. at 983, 984. When a party purchases property with existing covenants and restrictions, it will not be easy for a party to have them cancelled or modified. Restrictive covenants are favored in public policy, and the fact that the best use of the property may be a use not permitted by the covenants, is of little consequence. Marco Island Civic Association v. Mazzini, 881 So.2d 99 (2d DCA Fla. 2004).

If you have any further questions, please let me know.

Sincerely,

LAW OFFICE OF
SUZANNE C. QUIÑÓNEZ, P.A.



Suzanne C. Quiñónez
For the Firm

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