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VIA FACSIMILE: (602) 274-6708
(Original by U.S. Mail)

Stephanie Wilson, Esq.
STOOPS, DENIOUS, WILSON, AND MURRAY, PLC
350 East Virginia Avenue, Suite 100
Phoenix, Arizona 85004

Re: Todd/Halt v. Sunburst Farms East, Inc.

Dear Ms. Wilson:

Our firm represents Vicki and Patrick Todd, and Robert and Lynn Halt in the above-referenced matter. Specifically, we have been retained to address the Association's improper and unlawful attempt to create a mandatory homeowners association. We understand that the Association intends to hold a vote, by illegal proxy ballot, on November 3, 2007. As time is therefore of the essence, our review of the factual details of this matter is only preliminary at this time. However, what we have found so far strongly supports our clients' position that the Association cannot legally proceed with the proposed Amendments. Please be advised that for the reasons set forth below, any further action by the Association in this regard will be met with a significant lawsuit

The facts of this case are truly astounding. The Sunburst community began the rigors of litigation in the 1970s, ultimately resulting in the Arizona Supreme Court issuing an opinion whereby it expressly found membership in the Association is purely <u>optional</u>. <u>Duffy v. Sunburst Farms East Mutual Water & Agricultural Company, Inc.</u>, 124 Ariz. 413, 604, P.2d 1124 (1979). Notwithstanding this express finding, the Association apparently felt it could create mandatory membership through a Second Amendment to the Declaration, which it claimed to have obtained majority approval for. Again, litigation resulted. Again, the Association failed in its effort to create mandatory membership.

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In Mir v. Sunburst Farms East Mutual Water & Agricultural Company, Maricopa County Superior Court case number C-488397, the Court declared the Association's purported Second Amendment invalid as a matter of law. The Court also awarded $100,000 to the plaintiffs in that matter as monetary damages. The Association, as you must be aware, entered into a Settlement Agreement and Covenant Not to Execute on April 30, 1985. In the Settlement Agreement, the Association expressly agreed to:

> . . . . refrain from filing, or attempting to file with the Maricopa County Recorder's office ***any document regardless of what it may be called which requires any homeowner*** in Sunburst Farms East Three or Four or Seven to have ***any form of membership*** in Sunburst Farms East Mutual Water & Agricultural Company, Inc. ***or to pay any amounts of money*** to Sunburst Farms East Mutual Water & Agricultural Company, Inc., ***regardless of what such amounts of money might be called.*** (Emphasis added).

Further, the Settlement Agreement states that it is binding upon "any successor in interest to Sunburst Farms East Mutual Water & Agricultural Company, Inc." and that it is enforceable by either the plaintiffs or "any of their successors in title." As such, the Association's current attempt to create an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunburst Farms East Two, Three, Four and Seven is in direct violation of the Settlement Agreement.

The Association's attempted Amendment, while it purports to give owners a "choice" about becoming a member in the Association, requires mandatory payment of dues. The requirement set forth in Article 8, which clearly states all owners must pay dues, regardless of their membership status, is a clear violation of the Settlement Agreement. Our clients, as owners in Section Three of the Sunburst community and successors in title to the plaintiffs in the Mir litigation, have the right to enforce the terms of the Settlement Agreement against the Association. The Association has already breached the Settlement Agreement by attempting to obtain "approval" for its proposed Amendment.

There is no doubt that the Association recognizes the implications of prior litigation addressing these issues. The Association's attempt to "supersede" all prior lawsuits and judgments entered against it, as specified in the introduction of the proposed Amendments, is questionable at best. What right does the Association have to "supersede" the rights of the parties to those prior lawsuits? What right does the Association have to "supersede" the rulings of judges of various courts of the State of Arizona, including the Supreme Court? We maintain the Association has no such rights, and any effort to "supersede" prior rulings, agreements, and judgments is a clear violation of Arizona law.

Beyond the undeniable breach of the Settlement Agreement and disregard of prior rulings, the Association cannot create mandatory payment obligations in a community where membership is only voluntary and no notice of payment obligations is provided to homeowners. Courts addressing this issue across the Country have held that homeowners are not required to pay assessments based upon a change of covenants by a majority vote of the homeowners when there were no provisions in the original covenants that would have alerted the homeowner to the possibility that they would be subjected to pay assessments to an association. See Armstrong v. Ledges Homeowners Ass'n. Inc., Supra; Lakeland Properties Owners Association v. Larsen, 121 Ill. App.3d 805, 459 N.E.2d 1164 (1984); Webb v. Mullikin, 142 S.W.3d 822 (2004); Caughlin Ranch Homeowners Association v. Caughlin Club, 109 Nev. 264, 849 P.2d 310 (1993); Boyles v. Hausmann, 246 Neb. 181, 517 N.W.2d 610 (1994). Because the Declaration for the Sunburst Community (as it stands now and as interpreted by the Duffy Court) does not contain any provisions putting homeowners on notice of mandatory payment obligations, the Association cannot create mandatory payment obligations by a simple majority vote. In other words, the Association's purported Amendment requires unanimous consent of all homeowners, which the Association knows it cannot obtain (our clients, for instance, will not consent).

We are not only troubled by the Association's repeated refusal to honor rulings of several Arizona courts, we are deeply disturbed by the manner in which the Association has intimidated homeowners in an effort to cause them to consent to the proposed Amendments. We understand that the Association's Board is communicating with homeowners regarding the proposed Amendments claiming that without the Amendments, homeowners will be unable to receive water and the Association will collapse. Obviously, such statements are patently false, as the Association has been operating well with voluntary membership for the past several years. Moreover, we understand the Board has claimed the Association will remain truly "voluntary" with the proposed Amendment and that the proposed Amendment is not an attempt to create a community association or planned community. A simple reading of the proposed Amendment, however, demonstrates that the proposed Amendment could not possibly be anything other than an attempt to create a community association and/or planned community.

First and most obviously, the proposed Amendments require mandatory dues payments of all homeowners. This payment obligation is secured by a "Dues Lien," which is automatic and carries with it payment of interest, fines, and attorneys' fees. The Association, in an effort to make the "Dues Lien" seem benign, relinquishes the typical right to foreclose for assessment dues. However, the lien created will hinder any owner's ability to sell his or her property, refinance his or her mortgage, and will severely impact his or her credit ratings.

What is most disturbing about this payment obligation is the fact that the Association proclaims voluntary membership, yet those members that do not "choose" to join are nevertheless required to pay assessments. Why should paying homeowners not receive the benefits of membership? What do these non-member paying homeowners receive as a benefit for their payment? To put this simply, how can the Association possibly ***call*** membership "voluntary" when it is requiring ***mandatory*** payment?

Further, there are seemingly endless possibilities for mandatory payment beyond the regular dues. The Association's proposed Amendments allow for special assessments, common expenses, "unanticipated expenses," transfer fees, and capital reserve fees. In reality, there is apparently no limit to what the Association can charge its "voluntary" members through mandatory payment obligations, all of which are secured by a lien.

Along with the mandatory payment, the Association's proposed Amendments require that all homeowners are subject to the "Sunburst Farm Rules" that are left to the sole discretion of the Board. Again, there seems to be no end to the Association's power. We suspect the Rules will be like those in any other homeowners association, in that they will require Association approval prior to any improvement made on an owner's individual property, and in the same respect will grant the Association the power to prevent owners from making improvements on their own property.

The proposed Amendments are also troubling with respect to the bridle path easements. The bridle path easements are currently owned by the homeowners, yet the proposed Amendments purport to establish that these easements are common areas. In addition, the Association's proposed Amendments seek to impose a far greater burden on the owners of the easements than originally contemplated.

There is no question that the Association's proposed Amendments are an attempt to create a mandatory homeowners association. Why the Association continues in its efforts to create a homeowners association in spite of numerous rulings prohibiting it from doing so is disturbing, at best. While the Association apparently has no regard for the agreements it is bound by, prior rulings, and prior judgments, our clients intend to seek all remedies available in the event the Association proceeds with the proposed Amendments. Please understand that in the event it becomes necessary to litigate this matter, we intend to assert claims against not

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only the Association, but the individual Board members in their personal capacity for what can only be described as a breach of their fiduciary duties.

Kindly contact me at your earliest convenience to advise of the Association's intentions with respect to the proposed Amendments. As the Board is currently planning on holding its vote on November 3, 2007, we would appreciate a response on or before October 19, 2007. Thank you for your cooperation in this regard.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: Melanie McKeddie
Melanie C. McKeddie
For the Firm

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