History and Formation of SCCCA

Sun City Center Community Association ("SCCCA") is a successor by consolidation of the Sun City Center Home Owners Association, Inc. (formerly exempt under Section 501(c)(4) of the Internal Revenue Code of 1954 (later 1986), as amended (the "Code")) (the "Home Owners Association") and the Sun City Center Civic Association, Inc. (formerly exempt under Code Section 501(c)(7)) (the "Civic Association"). The consolidation took place as a result of the Civic Association's settlement of litigation with the then developer, W-G Development Corporation (the "Developer"). The initial agreement, dated January 26, 1984, was amended four times, ratified by a vote of the Civic Association membership and finally agreed to and signed by both parties on December 11, 1987 as the Clarification Agreement. Collectively, these documents are now called the 1984 Agreement. The litigation resulted in the "1984 Agreement" which was essentially a contract between the Developer and the Civic Association as to the future development of Sun City Center.

The 1984 Agreement contained several references to a "Master Declaration" and a "Master Community Association." The Developer prepared a plan to form the master community association, but the plan was rejected by the residents of Sun City Center ("SCC") and thereafter withdrawn by the Developer. There were no further efforts to create a Master Community Association. Thereafter, in order to most efficiently effectuate the 1984 Agreement, the Home Owners Association and the Civic Association jointly appointed a committee, known as the Community Development Committee (the "CDC") to study and recommend a form of government for the entire community. The CDC spent over a year conducting its study, after which it submitted a formal report dated February 24, 1986 to the boards of both the Home Owners Association and the Civic Association. In essence, the CDC report recommended a consolidation of the two associations and further recommended that the consolidated entity should apply for Code Section 501(c)(3) status.

On May 15, 1986, the boards of both the Civic Association and the Home Owners Association voted on a plan of consolidation. This plan was filed in the Florida Secretary of State's Office as exhibits to each respective entity's Articles of Consolidation. Both entities scheduled votes by their respective members, and the vote by both associations did, in fact, take place. On October 28, 1986, the SCCCA was formed. The legal effect of the consolidation caused SCCCA to be subject to all obligations of the Civic Association as of the date of the consolidation. Therefore, SCCCA is subject to the 1984 Agreement and its amendments. SCCCA's Articles of Incorporation were filed with the Florida Secretary of State's Office, together with the Articles of Consolidation for both the Home Owners Association and the Civic Association, with both thereupon terminating their existence.

The SCCCA's Original Articles contained the following provisions regarding amendment to the Articles:

- These Articles may be amended by the board of directors if needed to meet the requirement of the U.S. Internal Revenue Service's response to the corporation's request for an advance determination letter concerning the corporation's exempt status.

- All other amendments of these Articles shall require approval of more than 50% of all members.

SCCCA is a Code Section 501(c)(3) Organization

At the time the plan of consolidation was approved by the membership of the Home Owners Association and the Civic Association, the draft Articles of Incorporation of SCCCA contemplated seeking tax-exempt status from the IRS, under section 501(c)(3), which includes charitable organizations. Once SCCCA was formed, the law firm of Fowler White Boggs ("Fowler White") was engaged to assist SCCCA in the tax-exempt application process with the IRS.

On August 19, 1987, SCCCA filed its Form 1023, Application for Recognition of Tax-Exempt Status Under Section 501(c)(3) of the Internal Revenue Code, to the IRS EP/EO Office in Atlanta, Georgia.

At the end of 1987, Fowler White wrote to the EP/EO Group in Atlanta, from which it had not heard since the filing of the application. Shortly thereafter, Fowler White was advised that the application had been sent to the IRS National Office in Washington, D.C. for further review. It was not learned until much later that the National Office review is mandatory for any application seeking exempt status on the basis of lessening the burdens of government.

By letter dated August 2, 1988, the IRS National Office, under the signature of Jeanne S. Gessay, Chief, Exempt Organizations Rulings Branch 2, requested additional information concerning the activities and other issues of SCCCA. By letter dated August 23, 1988, SCCCA responded to the IRS request for additional information with a multi-page letter, followed by numerous supporting exhibits.

Sometime in late December, 1988, or early January, 1989, the IRS requested that SCCCA prepare substantial amendments to its Articles of Incorporation in order to more clearly qualify for exempt status. Fowler White prepared these amendments and forwarded them to the board for action. As provided in the Articles, since these amendments were required by the IRS in its response to SCCCA's request for an advance determination letter, the board approved the recommended amendments without a vote of the membership.

On January 31, 1989, the IRS issued its advance determination letter of exempt status. The advance determination letter stated that the advanced ruling period would end on September 30, 1991, and SCCCA would be considered a non-private foundation under Code Section 509(a)(2) until the end of the advance ruling period.

By letter dated September 11, 1991 the IRS noted that the advanced ruling period had expired and that SCCCA "would have to establish that you were in fact an organization described in one of the above sections." SCCCA submitted information to the IRS in response to this letter. A determination letter dated February 25, 1992 was issued by the IRS's District Director's Office in Atlanta which states: "Your exempt status under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) is still in effect."

In late 1996, a new board of directors (the "1997 board") was elected to run SCCCA. The 1997 board had a fundamental misunderstanding as to the basis and the purpose by which SCCCA was granted exempt status under Code Section 501(c)(3). Based on this misunderstanding, the 1997 board undertook several actions which were contrary to both the organizational and operational requirements for maintaining 501(c)(3) status. Among these actions was voting to amend the Articles of Incorporation, which were filed on or about April 12, 1997, eliminating all of the amendments required by IRS in January, 1989, to finalize the exempt status. However, no membership vote occurred with respect to this amendment. This was contrary to the requirements of the Articles, which mandate a membership vote for all amendments except those required by the IRS in response to SCCCA's request for an advance determination letter. Since that advance determination letter was issued January 31, 1989, with the final determination letter issued February 25, 1992, any subsequent amendment to the Articles could not be effective without a majority vote of all members. This did not occur with respect to the amendments filed in April, 1997.

In addition, the 1997 board also engaged a new accounting firm, which concurred that SCCCA did not qualify for exemption under Code Section 501(c)(3). As a result, the accounting firm filed a Form 1120, U.S. Corporation Return of Income for 1996, rather than the required Form 990, and filed amended Forms 1120 for years 1993, 1994 and 1995. The accounting firm also filed a Form F1120 with the State of Florida. Finally, on the advice of the then attorneys for SCCCA, the 1997 board requested the IRS to re-examine SCCCA's exempt status for re-determination. The examination resulted in the issuance of a draft IRS Notice of Proposed Adverse Action (the "Notice") by the IRS on January 21, 1999 and final Notice on January 19, 2000, revoking SCCCA's 501(c)(3) exempt status retroactively effective as of its formation on October 28, 1986.

In mid-1998, SCCCA engaged Fowler White (specifically, attorney Mitchell Horowitz) to pursue any and all efforts necessary to retain the 501(c)(3) status for SCCCA. Mr. Horowitz submitted a protest letter to the IRS on March 26, 1999, protesting that SCCCA was organized for, and had been continuously operated exclusively to accomplish, the dual exempt purposes of the relief of the elderly and lessening the burdens of the government. Subsequently, pursuant to authorization by SCCCA, Mr. Horowitz sent a letter to the IRS on March 24, 2000, requesting the matter be referred to the IRS National Office in Washington, D.C. for technical advice regarding whether SCCCA qualified as a 501(c)(3) organization. Thereafter, there had been several communications concerning SCCCA's 501(c)(3) status among the IRS, SCCCA and its attorney. Finally, during a meeting on December 15, 2000, among the IRS and the officers of SCCCA, the IRS advised that SCCCA retained its status as a 501(c)(3) tax exempt status. As a result, SCCCA continues to file annual Forms 990 with IRS, and there have been no further inquiries from IRS on the tax exempt issue since the end of year 2000.

SCCCA is Not a Homeowners' Association

SCCCA is not a "homeowners' association" within the meaning of Chapter 720 of the Florida Homeowners' Association Act (the "HOA Act"). Florida Statute Section 720.301(9) defines a "homeowners' association" as a corporation responsible for the operation of a community, and

membership is a mandatory condition of parcel ownership. A "community" is defined by Florida Statute Section 720.301(3) as "the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term 'community' includes all real property, including undeveloped phases, that is or was the subject of a development of regional impact order, together with any approved modifications thereof."

SCCCA does not fall within the definition of an HOA for the following reasons:

- SCCCA manages the recreational facilities, but is not responsible for the operation of a community. SCCCA's primary purposes are to serve the elderly residents of SCC, to operate in lieu of a municipal government for the benefit of those residents, to lessen the burdens of the Hillsborough County government, to enforce age restrictions on behalf of those residents, and to enforce the 1984 Agreement that it inherited as the successor of the Civic Association.
- As stated above, SCCCA's activities are affected by the 1984 Agreement, which SCCCA inherited from its predecessor, the Civic Association. The 1984 Agreement does not establish any homeowners' association.
- An association is not required to be a homeowners association within the meaning of the HOA Act in order to impose charges or assessments. The 1984 Agreement refers to imposed assessments and secured liens for unpaid assessments. It also refers to age-restrictions and imposed charges for recreational improvements. A non-homeowners association document, such as the 1984 Agreement, can impose charges or assessments on real property that is not owned by SCCCA.
- It is the IRS's position that a homeowners' association does not meet the requirements to be classified as a 501(c)(3) organization. The IRS approved SCCCA's 501(c)(3) tax exempt status. The IRS would have not granted SCCCA with the 501(c)(3) tax exempt status if SCCCA was a homeowners' association.
- SCCCA has limited its activities to those activities that facilitate its approval as a 501(c)(3) organization. SCCCA has avoided engaging in any activities that are customarily performed by a homeowners' association pursuant to the HOA Act.

SCCCA is not a Master Association

Master Associations generally are "umbrella" organizations existing over other associations. They typically exist in planned communities consisting of a variety of neighborhoods. They can also be found in areas with ecological features such as streamlines or lakes that need to be conserved. A Master Association typically has different levels of authority. A Master Association is typically paid by the associations under the Master Association, not directly by the individual owners of the property. The dues are typically used for maintenance of grounds. The Master Association may have responsibility for property within the grounds, but typically not within individual associations. The Master Association often has substantial control over aesthetics and rules within the community.

Here, the initial 1984 Agreement contained provisions regarding a Declaration of Covenants (aka Master Declaration) creating a Master Community Association. The Master Declaration set up the mechanism for a limited form of a self-sufficient community relying on its own resources and

representative government. Its foreseen role included the responsibilities of both the Sun City Center Civic and the Sun City Center Homeowners Association. However, the Master Declaration was never approved. It was rejected by the residents of SCC. As a result, reference to and the requirements for the Master Association were removed from the 1984 Agreement via its Fourth Amendment, dated June 6, 1985. No further efforts were made to create a Master Community Association. Therefore, SCCCA never was and is not a Master Association.

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