Plantation Golf and Country Club
Minutes Legal Committee Meeting

Date: June 4, 2013
Time: 2:30 p.m.
Location: Board Conference Room

Attendees: Legal Committee Members - [redacted]
Board Members – [redacted]
Staff - [redacted]

Subject: REFUNDING RESIGNED EQUITY

The Legal Committee met on June 4, 2013 to discuss the title subject. As an overview the attorneys, [redacted] and [redacted] agreed that we are governed by our Bylaws and the laws of the state of Florida.

[redacted] inquired as to how the club has reflected the purchase obligation to resigned members in the club's books for accounting purposes. [redacted] explained that nothing is recorded in the financial statements of the club with regard to a resigned member until such time as an actual redemption occurs. Equity capital contributions collected from new membership sales are deposited into a separate cash account, the Member Reserve Cash account on the balance sheet. Funds deposited into this account are used solely to accomplish redemption of membership certificates and making the payment of the retention fee to the club at the time a membership redemption occurs. Subsidiary records related to the Member Reserve Cash account are maintained to segregate and track equity contributions received and redemption payments made by each class of membership, i.e. Golf, Tennis & Social. Whenever sufficient cash has been received to accomplish a redemption of a resigned member (i.e. $30,000 in the case of a Class I golf membership redemption), a payment is made to the first person on the resigned member list out of the Member Reserve Cash account for the amount of the redemption payment (again, in the case of a Class I golf membership redemption that would be $24,000). At the same time a transfer is made from the Member Reserve Cash account to the Operating Cash account for the 20% "retention" earned by the club in connection with the redemption transaction. As the redemption obligation relates to the rights of an equity holder only, there is no liability recorded in the club's financial statements for the amount of outstanding resigned memberships.

The club keeps a detailed list of resigned members by membership class and the date of resignation in order to track the priority sequence of redemption payments to be made.

[redacted] reported as of mid-May the resigned member list had the following number of pending resigned membership redemptions:

Golf	255
Tennis	18
Social	263

PGCC-BW000318

The following Membership Equity Questions had been submitted by [redacted] to the committee in advance of this meeting with responses provided by [redacted] The Q&A was discussed and [redacted] offered his concurrence with responses noted below.

1. **Question:** Clarify what rights exist for "resigned" members? Are we obligated to refund some portion of their equity contribution? 80%? Of what? From what source(s)? At what rate?
   Answer: Club is required to fund $24,000 per member (in the case of a Class I Golf Membership redemption) from one source: paid-in equity of new members without interest.

2. **Question:** Confirm or correct understanding that membership represents an equity investment for which the club has no legal obligation <u>to use general club funds</u> to redeem certificates. Are equity contributions separate from operating dues and revenue or are they interchangeable? May we and/or must we or must we not use operating revenue to pay resigned equity accounts?
   Answer: The Club is properly booking the obligation to purchase memberships as outlined above. It has no legal obligation to use general club funds; in fact, it must not use these funds to pay resigned members equity at the risk of exposure to general creditors of the Club.

3. **Question:** If an obligation does exist to resigned members, can existing members change the bylaws to eliminate the obligation that exists to resigned members? Or declare bankruptcy or recapitalize? Or renegotiate?
   Answer: A change in By-Laws would only affect holders of equity memberships today. Consent from resigned holders would be required to affect them--100% consent! It's possible that a recapitalization could be effective for current members. Renegotiating, of course, is possible with 100% consent for resigned members.

4. **Question:** Assess the risk of club being sued by resigned members and what strategies/defenses might minimize that risk, i.e. include resigned members in vote to change anything.
   Answer: The best chance of not being sued by resigned members is to not touch the arrangement currently on the books. As noted above resigned members would have to consent to change the arrangement.

5. **Question:** Income tax implications:
   a. Does the investment in club equity represent an investment that could be deducted on a federal tax return?
      i. Think the answer is "NO", but
      ii. If yes, and if a Bylaw change eliminated or significantly reduced existing redemption rights, a member would be able to recognize a capital loss.
   b. If redemption values are not changed or eliminated, we need to address the topic of "gifting" the redemption value of the membership to clarify for members what the "issues" are and advise the member to seek counsel from their tax advisor.

   Answer: Reserved for tax lawyer. Concern may be that Club has income from cancellation of debt if restructured (See 6 below)

6. **Question:** Under what conditions could the Club offer a discounted buy-out of member equity? Offer to anyone in any order? Top of list first? If refused, may we go to the next person on the list and so on? Using what source of funds?
   Answer: Once you begin using other resources you may turn the obligation into an indebtedness of the Club with consequences for current borrowings and Club income (see 5 above)

7. **Question:** The bottom line question is how should we deal with the backlog of unfunded equity repayment?
   Answer: That's the question.

8. **Question:** A related issue is voting rights. Currently we offer multiple classes of memberships which provide for differing voting rights. For golf, class 1 members get 6 votes while class 6 members get one vote. In reality we only sell class 6, so new members pay less and get less votes. Eventually a minority of older members will dominate any member referendum since 100 class 1 members will equal 600 class 6 members. It would be wonderful to deal with this problem while dealing with equity repayment. Ideas?
   Answer: Probably should have thought about this in 2010, for instance, made two classes of stock with current shares having a liquidation preference of $24,000 and nothing else, but that bridge was crossed in 2010; and it may have resulted in winning the vote in 2010!

The Equity Memberships Levels I -VI voting structure was discussed.

According to the attorneys, the Bylaws require that we return 80% of new equity contributions to resigned equity members, and that we may not use other sources of funds to pay resigned equity accounts.

The attorneys went on to describe an equity contribution as being similar to buying a stock. Once one owns the stock, its value is subject to daily fluctuation with the market. Similarly, the value of an equity golf share is driven by market factors. At PGCC it is $5000 at this time. Therein is the problem. At this time it takes six $5000 equity sales to raise enough dollars to pay one resigned equity golf member the $24000 defined in the Bylaws. Of course the analysis is the same for Social and Tennis Members, only the dollar amounts are different. The result is that the list of resigned members is growing much faster than we are able to pay.

In conclusion, as much as we may wish to benefit resigned members, we are limited in finding a solution to this problem by the fact that the buy-back is of an equity interest. Even if it were possible to amend the Bylaws by a majority vote of the members, we would still need the permission of our creditors to place the debt of resigned members before them in payment rights.

The Meeting adjourned at 3:50 p.m.

Respectfully submitted,
[redacted]