

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

SUN COMMUNITIES INC
Form 10-K/A
April 15, 2003

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
(Amendment No. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2002

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

Commission File No. 1-12616

SUN COMMUNITIES, INC.

(Exact name of registrant as specified in its charter)

STATE OF MARYLAND

State of Incorporation

38-2730780

I.R.S. Employer I.D. No.

31700 MIDDLEBELT ROAD
SUITE 145

FARMINGTON HILLS, MICHIGAN 48334

(248) 932-3100

(Address of principal executive offices and telephone number)

Securities Registered Pursuant to Section 12(b) of the Act:
COMMON STOCK, PAR VALUE \$.01 PER SHARE

Securities Registered Pursuant to Section 12(g) of the Act:
NONE

Indicate by check mark if disclosure of delinquent filers pursuant to
Item 405 of Regulation S-K is not contained herein, and will not be contained,
to the best of Registrant's knowledge, in definitive proxy or information
statements incorporated by reference in Part III of this Form 10-K or any
amendment to this Form 10-K.

Indicate by check mark whether the Registrant (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter period that the
Registrant was required to file such reports), and (2) has been subject to such
filing requirements for the past 90 days.

Yes X No
 --- ---

Indicate by check mark whether the Registrant is an accelerated filer
(as defined in Rule 12b-2 of the Act).

Yes X No
 --- ---

As of June 30, 2002, the aggregate market value of the Registrant's

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

stock held by non-affiliates was approximately \$696,000,000. As of March 3, 2003, the aggregate market value of the Registrant's voting stock held by non-affiliates of the Registrant was approximately \$581,000,000. As of March 3, 2003, there were 18,107,102 shares of the Registrant's common stock issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the Registrant's definitive Proxy Statement to be filed for its 2003 Annual Meeting of Shareholders are incorporated by reference into Part III of this Report.

EXPLANATORY NOTE

Sun Communities, Inc. (the "Company") amends its Annual Report on Form 10-K for the fiscal year ended December 31, 2002, which was originally filed with the Securities and Exchange Commission on March 31, 2003 (the "Annual Report"), to include, as Exhibit 99.4, the audited financial statements of its subsidiary, Sun Home Services, Inc.

The Company is also amending this Annual Report to update the Exhibit List of Item 15 to reflect the filing of Exhibit 99.4 with this amendment. Exhibit 23 has also been revised to include the consent of PricewaterhouseCoopers LLP as the independent auditor performing the audit on Sun Home Services, Inc.'s financial statements. Except as described above, no other changes have been made to the Annual Report. This amendment continues to speak as of the date of the original Annual Report without an update by the Company of any of the disclosures contained therein to reflect any events which occurred at a later date. In addition, as required by Rule 12b-15 of the Securities Exchange Act of 1934, the registrant's principal executive officer and principal financial officer are providing new certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 in connection with this amendment and are also furnishing, but not filing, written statements pursuant to Title 18 United States Code Section 1350, as added by Section 906 of the Sarbanes-Oxley Act of 2002. The filing of this amendment shall not be deemed an admission that the original filing, when made, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement not misleading.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: April 14, 2003

SUN COMMUNITIES, INC.

By: /s/ Gary A. Shiffman

Gary A. Shiffman, Chief Executive Officer

2

CERTIFICATIONS

(As Adopted Under Section 302 of the Sarbanes-Oxley Act of 2002)

I, Gary A. Shiffman, certify that:

1. I have reviewed this amendment to the annual report on Form 10-K/A of Sun

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

Communities, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: April 14, 2003

/s/ Gary A. Shiffman

Gary A. Shiffman, Chief Executive Officer

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

CERTIFICATIONS

(As Adopted Under Section 302 of the Sarbanes-Oxley Act of 2002)

I, Jeffrey P. Jorissen, certify that:

1. I have reviewed this amendment to the annual report on Form 10-K/A of Sun Communities, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: April 14, 2003

/s/ Jeffrey P. Jorissen

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

Jeffrey P. Jorissen, Chief Financial Officer

4

EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
2.1	Form of Sun Communities, Inc.'s Common Stock Certificate
3.1	Amended and Restated Articles of Incorporation of Sun Communities, Inc
3.2	Bylaws of Sun Communities, Inc.
4.1	Indenture, dated as of April 24, 1996, among Sun Communities, Inc., Sun Communities Operating Limited Partnership (the "Operating Partnership") and Bankers Trust Company, as Trustee
4.2	Form of Note for the 2001 Notes
4.3	Form of Note for the 2003 Notes
4.4	First Supplemental Indenture, dated as of August 20, 1997, by and between the Operating Partnership and Bankers Trust Company, as Trustee
4.5	Form of Medium-Term Note (Floating Rate)
4.6	Form of Medium-Term Note (Fixed Rate)
4.7	Articles Supplementary of Board of Directors of Sun Communities, Inc. Designating a Series of Preferred Stock and Fixing Distribution and other Rights in such Series
4.8	Articles Supplementary of Board of Directors of Sun Communities, Inc. Designating a Series of Preferred Stock
10.1	Second Amended and Restated Agreement of Limited Partnership of Sun Communities Operating Limited Partnership
10.2	Second Amended and Restated 1993 Stock Option Plan
10.3	Amended and Restated 1993 Non-Employee Director Stock Option Plan
10.4	Form of Stock Option Agreement between Sun Communities, Inc. and certain directors, officers and other individuals#
10.5	Form of Non-Employee Director Stock Option Agreement between Sun Communities, Inc. and certain directors#
10.6	Employment Agreement between Sun Communities, Inc. and Gary A. Shiffman#
10.7	Amended and Restated Loan Agreement between Sun Communities Funding Limited Partnership and Lehman Brothers Holdings Inc.
10.8	Amended and Restated Loan Agreement among Miami Lakes Venture Associates, Sun Communities Funding Limited Partnership and Lehman Brothers Holdings Inc.
10.9	Form of Indemnification Agreement between each officer and director of Sun Communities, Inc. and Sun Communities, Inc.
10.10	Loan Agreement among the Operating Partnership, Sea Breeze Limited Partnership and High Point Associates, LP.
10.11	Option Agreement by and between the Operating Partnership and Sea Breeze Limited Partnership
10.12	Option Agreement by and between the Operating Partnership and High Point Associates, LP
10.13	Stock Pledge Agreement between Gary A. Shiffman and the Operating Partnership for 94,570 shares of Common Stock
10.14	Stock Pledge Agreement between Gary A. Shiffman and the Operating Partnership for 305,430 shares of Common Stock
10.15	Stock Pledge Agreement between Gary A. Shiffman and the Operating Partnership with respect to 80,000 shares of Common Stock

5

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

EXHIBIT NUMBER -----	DESCRIPTION -----
10.16	Employment Agreement between Sun Communities, Inc. and Jeffrey P. Jorissen#
10.17	Long Term Incentive Plan
10.18	Restricted Stock Award Agreement between Sun Communities, Inc. and Gary A. Shiffman, dated June 5, 1998#
10.19	Restricted Stock Award Agreement between Sun Communities, Inc. and Jeffrey P. Jorissen, dated June 5, 1998#
10.20	Restricted Stock Award Agreement between Sun. Communities, Inc. and Jonathan M. Colman, dated June 5, 1998#
10.21	Restricted Stock Award Agreement between Sun Communities, Inc. and Brian W. Fannon, dated June 5, 1998#
10.22	Sun Communities, Inc. 1998 Stock Purchase Plan#
10.23	Facility and Guaranty Agreement among Sun Communities, Inc., the Operating Partnership, Certain Subsidiary Guarantors and First National Bank of Chicago, dated December 10, 1998
10.24	Rights Agreement between Sun Communities, Inc. and State Street Bank and Trust Company, dated April 24, 1998
10.25	Contribution Agreement, dated as of September 29, 1999, by and among the Sun Communities, Inc., the Operating Partnership, Belcrest Realty Corporation and Belair Real Estate Corporation
10.26	One Hundred Third Amendment to Second Amended and Restated Limited Partnership Agreement of the Operating Partnership
10.27	One Hundred Eleventh Amendment to Second Amended and Restated Limited Partnership Agreement of the Operating Partnership
10.28	One Hundred Thirty-Sixth Amendment to Second Amended and Restated Limited Partnership Agreement of the Operating Partnership
10.29	One Hundred Forty-Fifth Amendment to Second Amended and Restated Limited Partnership Agreement of the Operating Partnership
10.30	Restricted Stock Award Agreement between Sun Communities, Inc. and Gary A. Shiffman, dated March 30, 2001#
10.31	Restricted Stock Award Agreement between Sun Communities, Inc. and Jeffrey P. Jorissen, dated March 30, 2001#
10.32	Restricted Stock Award Agreement between Sun Communities, Inc. and Jonathan M. Colman, dated March 30, 2001#
10.33	Restricted Stock Award Agreement between Sun Communities, Inc. and Brian W. Fannon, dated March 30, 2001#
10.34	Investment Agreement dated July 20, 2001 between SUI TRS, Inc., Shiffman Family LLC, Bingham and Woodward Holdings, LLC, amended by Amendment to Investment Agreement dated August 13, 2001
10.35	Limited Liability Company Agreement of Origen Financial, L.L.C. dated December 18, 2001 by and among SUI TRS, Inc., Shiffman Family LLC, Bingham and Woodward Holdings LLC
10.36	Second Amended and Restated Subordinated Loan Agreement, dated December 4, 2002, by and between Origen Financial L.L.C. and the Operating Partnership
10.37	Subordinated Term Loan Agreement, dated December 4, 2002, by and between Origen Financial L.L.C. and the Operating Partnership

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

EXHIBIT NUMBER -----	DESCRIPTION -----
10.38	First Amendment to Second Amended and Restated Subordinated Loan Agreement, dated December 30, 2002, by and between Origen Financial L.L.C. and Sun Home Services
10.39	First Amendment to Subordinated Term Loan Agreement, dated December 30, 2002, by and between Origen Financial L.L.C. and Sun Home Services
10.40	Seventh Amended and Restated Promissory Note, dated December 30, 2002, made by Origen Financial L.L.C. in favor of Sun Home Services
10.41	First Amended and Restated Subordinated Term Promissory Note, dated December 30, 2002, made by Origen Financial L.L.C. in favor of Sun Home Services
10.42	First Amended and Restated Security Agreement, dated December 30, 2002, by and between Origen Financial L.L.C. and Sun Home Services
10.43	Second Amended and Restated Stock Pledge Agreement, dated December 30, 2002, by and between Origen Financial L.L.C. and Sun Home Services
10.44	First Amended and Restated Limited Liability Company Interest Security and Pledge Agreement, dated December 30, 2002, by and between Origen Financial L.L.C. and Sun Home Services
10.45	Second Amended and Restated Guaranty, dated December 30, 2002, by Bingham in favor of the Operating Partnership
10.46	Second Amended and Restated Security Agreement, dated December 30, 2002, by and between Bingham and Sun Home Services.
10.47	Amended and Restated Stock Pledge Agreement, dated December 30, 2002, by and between Bingham and Sun Home Services
10.48	Amended and Restated Membership Pledge Agreement, dated December 30, 2002, by and between Bingham and Sun Home Services.
10.49	Second Amended and Restated Participation Agreement, dated December 30, 2002, by and among Sun Home Services, the Milton M. Shiffman Spouse's Marital Trust and Woodward Holding LLC
10.50	Master Credit Facility Agreement, dated as of May 29, 2002, by and between Sun Secured Financing LLC, Aspen-Ft. Collins Limited Partnership, Sun Secured Financing Houston Limited Partnership and ARCS Commercial Mortgage Co., L.P.
10.51	Credit Agreement, dated as of July 3, 2002, by and between the Operating Partnership, Sun Communities, Inc., Banc One Capital Markets, Inc., Bank One, N.A. and other lenders which are signatories thereto
10.52	First Amendment to Master Credit Facility Agreement, dated as of August 29, 2002, by and between Sun Secured Financing LLC, Aspen-Ft. Collins Limited Partnership, Sun Secured Financing Houston Limited Partnership and ARCS Commercial Mortgage Co., L.P.
10.53	First Amendment to Employment Agreement, dated as of July 15, 2002, by and between Sun Communities, Inc. and Gary A. Shiffman#
10.54	Second Amended and Restated Promissory Note (Secured), dated as of July 15, 2002, made by Gary A. Shiffman in favor of the Operating Partnership
10.55	First Amended and Restated Promissory Note (Unsecured), dated as of July 15, 2002, made by Gary A. Shiffman in favor of the Operating Partnership

EXHIBIT NUMBER -----	DESCRIPTION -----
10.56	First Amended and Restated Promissory Note (Secured), dated as of July 15,

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

10.57	2002, made by Gary A. Shiffman in favor of the Operating Partnership Second Amended and Restated Promissory Note (Unsecured), dated as of July 15, 2002, made by Gary A. Shiffman in favor of the Operating Partnership
10.58	2002, made by Gary A. Shiffman in favor of the Operating Partnership Second Amended and Restated Promissory Note (Secured), dated as of July 15, 2002, made by Gary A. Shiffman in favor of the Operating Partnership
10.59	Employment Agreement, dated as of January 1, 2003, by and between Brian W. Fannon and Sun Home Services, Inc.#
10.60	Employment Agreement, dated as of January 1, 2003, by and between Brian W. Fannon and Sun Communities, Inc.#
10.61	Lease, dated November 1, 2002, by and between the Operating Partnership as Tenant and American Center LLC as Landlord
10.62	Term Loan Agreement, dated as of October 10, 2002, among Sun Financial, LLC, Sun Financial Texas Limited Partnership, the Operating Partnership, Sun Communities, Inc. and Lehman Commercial Paper, Inc.
12.1	Computation of Ratio of Earnings to Fixed Charges and Ratio Earnings to Combined Fixed Charges and Preferred Dividends
21.1	List of Subsidiaries of Sun Communities, Inc.
23.1	Independent Auditors' Consent
23.2	Consent of PricewaterhouseCoopers LLP
99.1	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.2	Opinion of Jaffe, Raitt, Heuer & Weiss, P.C. with respect to REIT qualification
99.3	Audited financial statements of Origen Financial L.L.C.
99.4	Audited financial statements of Sun Home Services, Inc.

- (1) Incorporated by reference to Sun Communities, Inc.'s Registration Statement No. 33-69340.
- (2) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 1995.
- (3) Incorporated by reference to Sun Communities, Inc.'s Current Report on Form 8-K dated April 24, 1996.
- (4) Incorporated by reference to Sun Communities, Inc.'s Registration Statement No. 33-80972.
- (5) Incorporated by reference to Sun Communities, Inc.'s Quarterly Report on Form 10-K for the quarter ended September 30, 1995.
- (6) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 1996.
- (7) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 1997.
- (8) Incorporated by reference to Sun Communities, Inc.'s Current Report on Form 8-A dated May 27, 1998.

- (9) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 1998.
- (10) Incorporated by reference to Sun Communities, Inc.'s Proxy Statement, dated April 20, 1999

Edgar Filing: SUN COMMUNITIES INC - Form 10-K/A

- (11) Incorporated by reference to Sun Communities, Inc.'s Current Report on Form 8-K dated October 14, 1999.
 - (12) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2001.
 - (13) Incorporated by reference to Sun Communities, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.
 - (14) Incorporated by reference to Sun Communities, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.
 - (15) Incorporated by reference to Sun Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2002.
 - (16) Filed herewith.
- # Management contract or compensatory plan or arrangement required to be identified by Form 10-K Item 14.