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9 *Attorneys for Plaintiffs*

10 IN THE SUPERIOR COURT OF ARIZONA

11 COUNTY OF MARICOPA

12 BOLTON and FLORENCE ANDERSON;  
13 SHARON ATWOOD; MICHAEL BAKER;  
14 DAVID and DAWNNA BARNES; JEAN  
15 BATTISTA; VIRGINIA BAUGHMAN;  
16 EDWARD BERGER; OLGA CARLSON;  
17 LAVINA DAWSON; CATHERINE FULLER;  
18 KENNETH GEGG; MARY GRANSDEN;  
19 JOANNE GREATHOUSE; REGINA HECK;  
20 RAY and LINDA HICKS; SHERRY  
21 JOHNSON-TRAVER, as Trustee of the Sherry  
Sue Johnson-Traver Trust; SHIRLEY KOERS;  
22 SUSAN MARSH; GEORGE and SHERYL  
23 MCCLAIN; ELIZABETH MERCER, as  
24 Trustee of the Elizabeth Scott Mercer Trust;  
25 ARLEF MOYER; JAMES NAPIER; ARTHUR  
26 NEAULT, as Trustee of the Arthur D. Neault  
Living Trust; DIANE PATRAKIS; PETUNIA  
LLC; CAROLE POPEROWITZ; PAUL and  
GLORIA RICHMAN; DONNA SIES; GAY  
SOUSEK; ANNE RANDALL STEWART, as  
Trustee of the Stewart Trust; THERESE  
TERRIS; WENDY and CHARLES WOOD;  
and ANGELO ZAPPELLA, individually and  
on behalf of the similarly situated,

Plaintiffs,

vs.

RECREATION CENTERS OF SUN CITY,  
INC., a nonprofit corporation,

Defendant.

No. CV2015-012458

**PLAINTIFFS’ MOTION FOR CLASS  
CERTIFICATION**

**(Complex Case)**

(Hon. Roger Brodman)

1 RECREATION CENTERS OF SUN CITY,  
INC., a nonprofit corporation,

2 Third-Party Plaintiff,

3 vs.

4 LINDA MOYER and RICHARD STEWART,

5 Third-Party Defendants.  
6

7 Pursuant to Arizona Rules of Civil Procedure, Rule 23(b), Plaintiffs request that this  
8 action be maintained as a class action. Plaintiffs seek to certify the following classes:

- 9 1. All current and former Sun City homeowners who have paid any Property  
10 Improvement Fee (“PIF”) or transfer fee to Defendant Recreation Centers  
of Sun City (“RCSC”) since October 29, 2009 (the “Transfer Fee Class”).
- 11 2. All current and former Sun City homeowners who have paid annual  
12 assessments to RCSC at a higher rate than any other Sun City homeowner  
since October 29, 2009 (the “Assessment Class”).

13 For the reasons that follow, Plaintiffs request an order certifying the claims of the two  
14 classes pursuant to Rules 23(b)(1) and (3). The Class Representatives of the Transfer Fee Class  
15 are Virginia Baughman, Edward Berger, Ray Hicks, Linda Hicks, Susan Marsh, Arthur Neault,  
16 Petunia, LLC, and Donna Sies. The Class Representatives of the Assessment Class are Jean  
17 Battista, Virginia Baughman, Edward Berger, Olga Carlson, Joanne Greathouse, Regina Heck,  
18 Sherry Johnson-Traver, Shirley Koers, Susan Marsh, Elizabeth Mercer, Arlef Moyer, Arthur  
19 Neault, Diane Patrakis, Carole Poperowitz, Donna Sies, Gay Sousek, and Wendy Wood.<sup>1</sup>

### 20 Introduction

21 Sun City is a master planned community located in an unincorporated area of Maricopa  
22 County that covers approximately 9,000 acres and over 40,000 single family and condominium  
23 units. RCSC is charged with “operating and maintaining... recreational facilities...for the  
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25 <sup>1</sup> Plaintiffs are not seeking class certification on the Ownership Class as pled in the  
26 Complaint because their motion for summary judgment regarding the Planned Communities Act  
will address those issues previously contemplated by the Class.

1 benefit of [all homeowners within Sun City]”<sup>2</sup> and collecting annual assessments from all  
2 owners whether or not they use the recreational facilities.<sup>3</sup> Plaintiffs allege that RCSC has  
3 violated Arizona law and its own governing documents by charging various unlawful fees to  
4 owners, all of whom are senior citizens and many of whom are on fixed incomes.

5 The Transfer Fee Class challenges RCSC’s imposition of PIF and other transfer fees  
6 within the last six years. Each of the Transfer Fee Class Representatives have paid PIF and  
7 transfer fees within the last six years. Plaintiffs allege that PIF and transfer fees violate A.R.S.  
8 §§ 33-442 and/or 33-1806. Plaintiffs further allege that the at least portions of the Facilities  
9 Agreements they were forced to sign are unconscionable.

10 The Assessment Class challenges RCSC’s imposition of assessments on certain owners  
11 at a rate that is twice the rate that RCSC charged to others that were similarly-situated. Each of  
12 the Assessment Class Representatives are charged assessments at a “per property” or “per lot”  
13 rate that is twice the “per person” rate charged to others. All owners in Sun City are expected to  
14 pay annual assessments to RCSC in amounts that RCSC unilaterally sets. As set forth in  
15 RCSC’s Articles of Incorporation, these charges are supposed to be equal.<sup>4</sup> Specifically,  
16 RCSC’s Articles of Incorporation provide as follows:

17 The Bylaws of the Corporation shall prescribe the qualifications of Members and  
18 the terms of admission to membership, provided that the voting rights of all  
19 Members shall be equal and all Members shall have equal rights and privileges  
and be subject to equal responsibilities. Such Bylaws shall also provide the  
method for determining assessments to be paid by the Members.

20 RCSC charges assessments at two rates. Before 2003, RCSC charged all properties at a  
21 “per person” rate, but after 2003 began assessing properties at a “per property” or “per lot” rate  
22 that is twice the “per person” rate. Owners in the Assessment Class are charged at the higher  
23 rate and, therefore, are not subject to equal responsibilities. For example, a widow who acquired

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24 <sup>2</sup> See Exhibit 1.

25 <sup>3</sup> See Exhibits 2 and 3.

26 <sup>4</sup> See Exhibit 4.



1 federal rule as authoritative.<sup>6</sup> Rule 23 is “intended to allow a class action when it would ‘achieve  
2 economies of time, effort, and expenses, and promote uniformity of decision as to persons  
3 similarly situated, without sacrificing procedural fairness or bringing about undesirable  
4 results.’”<sup>7</sup>

5 In order for a class to be certified, all four requirements of Ariz. R. Civ. P., Rule 23(a)  
6 must be satisfied along with one of the three requirements of Ariz. R. Civ. P., Rule 23(b).<sup>8</sup> The  
7 court generally accepts as true the substantive allegations in the complaint on a motion to  
8 certify.<sup>9</sup> Trial courts have discretion whether a class action should proceed or be denied.<sup>10</sup> Under  
9 Rule 23, a plaintiff’s burden “is not a heavy one” and the rule is “liberally construed” in favor of  
10 class certification.<sup>11</sup>

11 **I. PLAINTIFFS SATISFY THE REQUIREMENTS OF RULE 23(A).**

12 Ariz. R. Civ. P., Rule 23(a) provides:

13 One or more members of a class may sue or be sued as representative parties on  
14 behalf of all members only if: (1) the class is so numerous that joinder of all  
15 members is impracticable; (2) there are questions of law or fact common to the  
16 class; (3) the claims or defenses of the representative parties are typical of the  
17 claims or defenses of the class; and (4) the representative parties will fairly and  
18 adequately protect the interests of the class.

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17 <sup>6</sup> *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. 94, 50  
18 P.3d 844 (App. 2002).

18 <sup>7</sup> *Id.* at 98, 848.

19 <sup>8</sup> See *Amchen Prods. Inc. v. Windsor*, 521 U.S. 591, 592-93, 117 S. Ct. 2231, 2235, 138  
20 L. Ed. 2d 689 (1997); *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1339 (9th Cir.  
21 1976); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *Gonzalez v. Proctor &  
22 Gamble Co.*, 247 F.R.D. 616, 620 (S.D. Cal. 2007).

21 <sup>9</sup> *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975); *Eisen v. Carlisle & Jacquelin*,  
22 417 U.S. 156, 178 (1974) (“The question is not whether the plaintiff or plaintiffs have stated a  
23 cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are  
24 met.”).

24 <sup>10</sup> *Godbey v. Roosevelt School Dist. No. 66 of Maricopa County*, 131 Ariz. 13, 16, 638  
25 P.2d 235, 238 (1981).

25 <sup>11</sup> *Irwin v. Mascott*, 96 F. Supp. 2d 968, 971-972 (N.D. Cal 1999) (citing Newberg and  
26 Conte, *Newberg on Class Actions*, 3d Ed., § 7.20; citing *Eisen v. Carlisle & Jacquelin*, 391 F.2d  
555, 563 (2d Cir. 1968)).

1           **A. Plaintiffs Satisfy the Numerosity Requirement.**

2           Rule 23(a)(1)'s requirement that an attempt to join all parties be impracticable does not  
3 mean impossible.<sup>12</sup> Instead, an attempt to join all parties to an action must only be difficult or  
4 inconvenient to join all members of the class.<sup>13</sup> “Although impracticability does not hinge only  
5 on the number of members in the putative class, joinder is usually impracticable if a class is  
6 ‘large in numbers.’”<sup>14</sup> “While there is no precise threshold, courts have found that the  
7 numerosity requirement ‘has been satisfied when the class comprises 40 or more members and  
8 will find that it has not been satisfied when the class comprises 21 or fewer.’”<sup>15</sup> Each of the  
9 proposed classes are comprised of several thousand potential members and the Rule 23(a)(1)  
10 numerosity requirement is not in dispute.<sup>16</sup>

11           **B. There are Questions of Law and Fact Common to Each Class.**

12           The second prerequisite is commonly referred to as “commonality.” Commonality is  
13 established if there are questions of law or fact common to the class. This standard is satisfied if  
14 the moving party shows that there are “questions of law applicable in the same manner to each  
15 member of the class.”<sup>17</sup> The standard for commonality is minimal because “all that is required is  
16 a common issue of law.”<sup>18</sup>

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18  
19 <sup>12</sup> See Fed.R.Civ.P. 23(a)(1); *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909,  
913–14 (9th Cir. 1964).

20 <sup>13</sup> *Harris*, 329 F.2d at 913–14.

21 <sup>14</sup> *Campbell v. PricewaterhouseCoopers, LLP*, 253 F.R.D. 586, 594 (E.D. Cal. 2008)  
22 adhered to, 287 F.R.D. 615 (E.D. Cal. 2012) (citing *Jordan v. Los Angeles County*, 669 F.2d  
1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810, 103 S.Ct. 35, 74 L.Ed.2d  
48 (1982)).

23 <sup>15</sup> *Berry v. Baca*, 226 F.R.D. 398, 403 (C.D. Cal. 2005) (citing *Ansari v. New York Univ.*,  
179 F.R.D. 112, 114 (S.D.N.Y. 1998)).

24 <sup>16</sup> See Exhibit 5.

25 <sup>17</sup> See *Brink v. First Credit Resources*, 185 F.R.D. 567, 570 (D. Ariz. 1999).

26 <sup>18</sup> *Blackie v. Barrack*, 524 F.2d 891, 904 (9<sup>th</sup> Cir., 1975), as quoted in *Winkler v. DTE,*  
*Inc.*, 205 F.R.D. at 240.

1 The Ninth Circuit construes commonality liberally,<sup>19</sup> holding that slight differences  
2 among class members does not prevent certification.<sup>20</sup> To satisfy the commonality requirement  
3 “[t]he existence of shared legal issues with divergent factual predicates is sufficient,”<sup>21</sup> as well  
4 as “an alleged common course of conduct.”<sup>22</sup> Furthermore, “[t]he commonality test is qualitative  
5 rather than quantitative- one significant issue common to the class may be sufficient to warrant  
6 certification.”<sup>23</sup> As set forth above, there are shared legal issues and a common course of  
7 conduct experienced by each of the classes.

8 Common questions of law and fact exist for the Transfer Fee Class, comprised of those  
9 homeowners who have paid PIF or a transfer fee to RCSC since October 2009, in accordance  
10 with the Facilities Agreement RCSC has required them to sign. Each of the Class  
11 Representatives and putative class members of the Transfer Fee Class paid a \$300.00 transfer  
12 fee and PIF in an amount ranging from \$3,000.00 to \$3,500.00 for each property they  
13 purchased. The question of the validity of these fees is a common question among all current or  
14 past owners who have paid that fee, even though the amounts paid may have changed over time.

15 Common legal issues also exist with respect to the Assessment Class. Namely, whether  
16 RCSC is violating its Articles of Incorporation by imposing unequal responsibility among its  
17 members by assessing them at different rates. Each of the purported class members is a  
18 homeowner who pays assessments at a rate greater than other homeowners, by virtue of being  
19 the only deeded owner of their Sun City property, typically because they acquired it after 2003.

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22 <sup>19</sup> See *Hanlon*, 150 F.3d at 1019.

23 <sup>20</sup> See *Berry*, 226 F.R.D. at 404.

24 <sup>21</sup> *Id.*

25 <sup>22</sup> *Garfinkel v. Memory Metals, Inc.*, 695 F.Supp. 1397, 1402 (D.Conn. 1988).

26 <sup>23</sup> *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007) on reh’g en banc sub  
nom. *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010) rev’d, 131 S. Ct. 2541, 180  
L. Ed. 2d 374 (2011); see also *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000).

1           **C. Plaintiffs’ Claims are Typical of the Classes of They Seek to Represent.**

2           The Arizona appellate court has addressed and interpreted the need for meeting the  
3 “typicality” requirement in *Lennon v. First National Bank of Arizona*.<sup>24</sup> In *Lennon*, the Arizona  
4 Supreme Court examined three tests for determining typicality: (1) the typicality requirement is  
5 satisfied when common questions of law or fact exist; (2) a representative’s claim is typical of  
6 the interests of the representative are not antagonistic to those of absent class members; and (3)  
7 the representative must demonstrate that absent class members have suffered the same  
8 grievances of which he complains.<sup>25</sup> Each of Plaintiffs’ proposed classes satisfies all three tests,  
9 the first one, as established above.

10           Plaintiffs’ claims are not antagonistic to those of absent class members, all of whom have  
11 suffered the same grievances of which the proposed class representatives complain. The  
12 Transfer Fee Class claims simply seek a fair and legal means for RCSC to collect the money its  
13 members agree it is entitled to collect. The imposition of nondescript transfer for undisclosed  
14 amounts, presented at closing without the benefit of any prior disclosures is not fair and legal.  
15 Those who RCSC to be able to continue to collect transfer fees will not be prejudiced by the  
16 Transfer Fee Class action, as those members, should they have adequate support of their peers,  
17 would be able to cause RCSC’s governing documents to be amended in a way that cures the  
18 defects that currently make the transfer fees that RCSC collects unlawful.

19           As for the Assessment Class, each absent potential member of this class is paying  
20 assessments at a rate greater than other homeowners within Sun City. While they may not be  
21 aware that others are being charged a rate less than what they pay, they are being deprived of  
22 their rights to be subject to equal rights, privileges, and responsibilities of the other Sun City

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24           <sup>24</sup> 21 Ariz. App. 306, 518 P.2d 1230 (1974)

25           <sup>25</sup> See, *Lennon v. First National Bank of Arizona*, 21 Ariz.App. 306, 309, 518 P.2d 1230,  
26 1233 (1974) (quoting *Green v. Wolf Corp.*, 406 F.2d 291, 299 (2d Cir. 1968); *Thomas v. Clarke*,  
54 F.R.D. 245 (D.C.Minn. 1971); *Katz v. Carte Blanche Corp.*, 52 F.R.D. 510 (W.D.Pa 1971);  
*White v. Gates Rubber Company*, 53 F.R.D. 412, 415 (D.C.Colo. 1971)).

1 homeowners.

2 **D. The Named Class Representatives Will Adequately Represent the Absent**  
3 **Members of Each Proposed Class Following Certification if the Court**  
4 **Certifies this Case as a Class Action.**

5 “Rule 23(a)(4) requires that ‘the representative parties will fairly and adequately protect  
6 the interests of the class.’”<sup>26</sup> Representation is adequate in an claim, for class certification  
7 purposes, if counsel for the proposed class is competent and qualified, and if the class  
8 representatives do not have interests antagonistic to or conflicting with those of the unnamed  
9 class members.<sup>27</sup> To protect the interests of those whom the named plaintiffs claim to represent,  
10 a court inquires not only in the character and quality of the named representatives but it also  
11 considers the quality and experience of the attorneys representing the class.<sup>28</sup> Parties will be  
12 considered adequate representatives of absent class members if there are no conflicts of interest  
13 between the representatives and class members and if the Court is persuaded that counsel for the  
14 representatives will vigorously pursue the claims.<sup>29</sup> The adequacy of representation is generally  
15 presumed and the burden is on the defendant to demonstrate that the representation will be  
16 inadequate.<sup>30</sup> Representation is adequate if counsel for the call is competent and qualified, and  
17 the class representatives do not have interests antagonistic to or conflicting with those of  
18 unnamed class members.<sup>31</sup>

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19 <sup>26</sup> *Palmer v. Stassinios*, 233 F.R.D. 546, 550 (N.D. Cal. 2006); *see also Bogner v. Masari*  
20 *Investments, LLC*, 257 F.R.D. 529, 532-33 (D. Ariz. 2009).

21 <sup>27</sup> *Brink v. First Credit Res.*, 185 F.R.D. 567, 571 (D. Ariz. 1999).

22 <sup>28</sup> *Berry*, 226 F.R.D. at 404.

23 <sup>29</sup> *See London v. Green Acres Trust*, 159 Ariz. 136, 141, 765 P.2d 538, 543 (1988); *Brink*,  
24 185 F.R.D. at 571.

25 <sup>30</sup> *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987) (It is presumed  
26 plaintiffs’ counsel is competent to litigate case and will fairly and adequately represent the  
interests of the class members.); *see also In re Madison Associates*, 183 B.R. 206, 217 (Bankr.  
C.D. Cal. 1995) (absent contrary evidence from the party opposing class certification, adequacy  
of representation is generally presumed).

<sup>31</sup> *Brink*, 185 F.R.D. at 571.

1                   **1. The Class Representatives are Adequate.**

2                   The named plaintiff in a class action is required to be able to allege and show a personal  
3 injury suffered and be able to bring an individual claim against defendant.<sup>32</sup> “A class  
4 representative must ‘fairly and adequately...protect the interests’ of all the class members.”<sup>33</sup>  
5 The state of Texas has reasoned a plaintiff that “actively participate[s] in discovery and who  
6 ha[s] a substantial financial stake in the litigation [is] an adequate class representative.”

7                   Plaintiffs understand their responsibility as Class Representatives. They have  
8 demonstrated an active interest in this litigation, reviewed and approved disclosure statements,  
9 and verified discovery responses.<sup>34</sup> Each of them also appeared for their depositions. Plaintiffs  
10 seek to represent the class to protect others who were subjected to the same wrongs that they  
11 endured. They are familiar with the nature of the class claims and seek to vigorously pursue the  
12 case on behalf of their respective classes. Plaintiffs’ claims coincide with the claims of the class  
13 members and they assert identical claims arising from the same core set of facts and there is  
14 nothing to suggest that any of them have any interest that is antagonistic to the vigorous pursuit  
15 of the class claims. There are no conflicts of interest between the Class Representatives and the  
16 absent class members they seek to represent.

17                   **2. Class Counsel is Adequate.**

18                   Plaintiffs need only establish to the Court’s satisfaction that their counsel is capable of  
19 adequately representing the interests of the proposed class.<sup>35</sup> Plaintiffs are represented by  
20 counsel who are experienced in civil litigation matters, homeowner association law generally,  
21 and class actions. Mr. Dessaulles, Mr. Kubert, and Ms. Hill have HOA and consumer-oriented

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22                   <sup>32</sup> *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 141, 108 P.3d 917, 920 (2005).

23                   <sup>33</sup> *Sandwich Chef of Texas v. Reliance National Indemnity Insurance Co.*, 202 F.R.D.  
24 484, 493–94 (S.D.Tex.2001).

24                   <sup>34</sup> *See* Exhibit 6.

25                   <sup>35</sup> *See Aho v. AmeriCredit Fin. Services, Inc.*, 277 F.R.D. 609, 617 (S.D. Cal. 2011) (class  
26 counsel is adequate where Plaintiff has demonstrated that he and his counsel will vigorously  
prosecute the case on behalf of the class).

1 litigation experience and have qualified, experienced, and able to conduct the proposed  
2 litigation.<sup>36</sup> Counsel are experienced in litigating issues involving planned communities such as  
3 those that exist in this case. Mr. Dessaulles was class counsel in *Ryan v. American Institute of*  
4 *Technology, Inc.*, Case No. 2:10-cv-00979-LOA. Mr. Dessaulles has also served as local counsel  
5 in several class and derivative actions, including *Schindler v. Cole Holdings Corp., et al.*, Case  
6 No. 2:13-cv-00712-ROS, *Smilovits v. First Solar, Inc.*, Case No. CV12-0555-PHX-DGC, and *In*  
7 *re Freeport-McMoran Derivative Litigation*, Case No. CV2012-018351. Mr. Dessaulles has also  
8 represented large groups of owners in disputes against associations. *See Milsap, et al. v. Ventana*  
9 *Lakes Property Owners Association*, Case No. CV2006-017259 (representing more than 80  
10 homeowners in dispute concerning association’s failure to perform obligations under  
11 declaration).

12 Class counsel satisfies the adequacy requirement.

13 **II. CLASS CERTIFICATION IS APPROPRIATE UNDER RULE 23(B).**

14 “In addition to demonstrating that the Rule 23(a) requirements are met, a plaintiff seeking  
15 to represent a class also must establish one or more of the grounds enumerated in Rule 23(b) to  
16 maintain a class action suit.”<sup>37</sup> Rule 23(b)(1) provides that class actions are to be maintained if  
17 separate actions by individual plaintiffs could lead to inconsistent or varying judgments. A class  
18 action is maintainable under Rule 23(b)(3) where common question of law or fact  
19 predominate.<sup>38</sup> Here, the Court should certify both the Transfer Fee Class and Assessment Class  
20 under both Rules 23(b)(1) and 23(b)(3).

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24 <sup>36</sup> See Exhibit 7 (Declaration of Jonathan A. Dessaulles in Support of Motion for Class  
25 Certification).

25 <sup>37</sup> *Gonzalez*, 247 F.R.D. at 622.

26 <sup>38</sup> *Godbey*, 131 Ariz. at 18, 638 P.2d at 240.

1           **A.     Certification is Appropriate Under Rule 23(b)(1).**

2           The Transfer Fee Class and the Assessment Class should be certified under Rule  
3 23(b)(1), which allows for class actions if “prosecuting separate actions by or against individual  
4 class members would create a risk of inconsistent or varying adjudications with respect to  
5 individual class members that would establish incompatible standards of conduct for the party  
6 opposing the class.”<sup>39</sup>

7           The Transfer Fee Class seeks to disgorge RCSC’s collection of thousands of dollars in  
8 transfer fees from individual Sun City homeowners:

9           [U]pon the purchase, acquisition, transfer, inheritance, gift or any change in  
10 ownership of legal or beneficial interest in the title to property located in Sun City,  
11 Arizona pursuant to any deed, contract for sale, will or other instrument or  
12 document transferring an interest in said Property, so long as the original payer of  
such [transfer fee] no longer retains a majority ownership interest in said  
Property.<sup>40</sup>

13           RCSC contends that homeowners consent to pay these fees through the execution of a  
14 Facilities Agreement that homeowners see for the first time at closing, despite being provided  
15 with no prior disclosure as to the amount of the fees. RCSC does not provide any explanation in  
16 its governing documents regarding how these fees are to be spent. Likewise, the Assessment  
17 Class involves RCSC’s wrongful collection of funds from Sun City homeowners. In the case of  
18 the Assessment Class, RCSC collects assessments at double the rate from some homeowners  
19 than it does from other homeowners, despite the provision in its Articles of Incorporation that  
20 mandates that “all Members shall have equal rights and privileges, and be subject to equal  
21 responsibilities.”<sup>41</sup>

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<sup>39</sup> Ariz. R. Civ. P. 23(b)(1).

25           <sup>40</sup> See Exhibit 3.

26           <sup>41</sup> See Exhibit 4.

1 Class action treatment is appropriate to avoid inconsistent outcomes of individual  
2 homeowners challenging the validity of the fees, and will direct RCSC on the proper way to  
3 collect transfer fees, if any, and to collect assessments on an equal rate going forward.

4 **B. Certification is Appropriate Under Rule 23(b)(3).**

5 Rule 23(b)(3) allows the Court to certify a class where it “finds that the questions of law  
6 or fact common to the members of the class predominate over any questions affecting only  
7 individual members, and that a class action is superior to other available methods for the fair  
8 and efficient adjudication of the controversy.”<sup>42</sup> “Rule 23(b)(3) focuses on the relationship  
9 between the common and individual issues, testing whether a proposed class is sufficiently  
10 cohesive to warrant adjudication by representation.”<sup>43</sup> “When common questions present a  
11 significant aspect of the case and they can be resolved for all members of the class in a single  
12 adjudication, there is justification for handling the dispute on a representative rather than on an  
13 individual basis.”<sup>44</sup> Furthermore, “[i]mplicit in the satisfaction of the predominance test is the  
14 notion that the adjudication of common issues will help achieve judicial economy.”<sup>45</sup>

15 The questions of individual members of prospective classes are inferior to those of the  
16 collective group of Sun City homeowners who have paid RCSC’s transfer fees and who have  
17 paid assessments at a rate greater than other Sun City homeowners. As discussed above, the  
18 common questions of law and fact predominate with respect to both the Transfer Fee and  
19 Assessment Classes. These common questions predominate over any issues that might affect an  
20 individual member of the class. Moreover, a class action is superior to other available methods  
21 because it avoids the possibility of inconsistent results, RCSC owes each of the class members

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22 <sup>42</sup> See *In re Phenylpropanolamine (PPA) Products Liab. Litig.*, 208 F.R.D. 625, 630  
23 (W.D. Wash. 2002).

24 <sup>43</sup> *Gonzalez*, 247 F.R.D. at 622-23 (citing *Local Joint Executive Bd. of*  
*Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)).

25 <sup>44</sup> See *id.*

26 <sup>45</sup> *In re Phenylpropanolamine*, 208 F.R.D. at 630 (citing *Valentino v. Carter-Wallace,*  
*Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)).

1 the same duties and responsibilities, and a class action would permit others to participate who  
2 otherwise might not want to pursue their claims due to the limited recovery or risk.

3 **III. CONCLUSION.**

4 Plaintiffs have met the four Rule 23(a) requirements and has shown that the Transfer Fee  
5 Class and Assessment Class should be certified under Rule 23(b)(1) and (3). This Court may  
6 exercise its broad discretion under Rule 23 and grant Plaintiffs' motion for class certification.

7 DATED this 30th day of March 2018.

8 DESSAULES LAW GROUP

9  
10 By: /s/ Jonathan A. Dessaules

11 Jonathan A. Dessaules  
12 Jacob A. Kubert  
13 Ashley C. Hill  
14 *Attorneys for Plaintiffs*

13 COPY of the foregoing electronically served  
14 through AZTurbo Court  
15 on this 30th day of March 2018 to:

15 Christopher A. LaVoy  
16 Nora L. Jones  
17 TIFFANY & BOSCO, PA  
18 Seventh Floor Camelback Esplanade II  
19 2525 E. Camelback Rd.  
20 Phoenix, AZ 85016

21 [cal@tblaw.com](mailto:cal@tblaw.com)

22 [nlj@tblaw.com](mailto:nlj@tblaw.com)

23 *Attorneys for Defendant/Third-Party Plaintiff*

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# **EXHIBIT 1**

A

WHEN RECORDED, RETURN TO:  
DEL. E. WEBB DEVELOPMENT CO.  
P. O. BOX 7588, PHOENIX  
ATTENTION: Mr. Don Middleton

DK: 8585 PAI

01-DEED

51907

WARRANTY DEED

51907

DEL. E. WEBB DEVELOPMENT CO., an Arizona corporation, Grantor,  
hereby conveys to SUN CITY COMMUNITY ASSOCIATION, a nonprofit Arizona  
corporation, Grantee, the following described parcels of real property situated  
in Maricopa County, Arizona:

25

Parcel 1:

All of Tract "B" Sun City Unit Sixteen as shown on the plat on file  
and of record in the Office of the County Recorder of Maricopa  
County, Arizona, in Book 122 of Maps at Page 3 thereof; Except  
that part described as follows:

Beginning at the most easterly corner of said Tract "B" being a  
point on the west line of Tract "C" of said Sun City Unit Sixteen  
and also being the northeast corner of Tract "I" of said Sun City  
Unit Sixteen; thence N 83° 09' 40" W along the tract line common  
to said Tracts "B" & "I" for a distance of 30.22 ft; thence N 00°  
04' 14" W parallel to the east line of said Tract "B" for a distance  
of 56.37 ft. to the point of tangency with a 50.00 ft. radius curve  
said curve being concave southwesterly; thence along said curve  
through a central angle of 36° 52' 12" for a distance of 32.18 ft.  
to a point of reverse curve with a 50.00 ft. radius curve that is  
concave easterly; thence along the last mentioned curve through  
a central angle of 126° 52' 12" for a distance of 110.71 ft. to a  
point from which the radius point thereof bears S 00° 04' 14" E;  
thence S 00° 04' 14" E along the tract line common to said Tracts  
"B" and "C" for a distance of 170.00 ft. to the Point of Beginning.

Parcel 2:

That part of Tract "I" Sun City Unit Sixteen, as shown on the plat  
on file and of record in the Office of the County Recorder of Maricopa  
County, Arizona, in Book 122 of Maps at Page 3 thereof, described  
as follows:

Commencing at the northeast corner of said Tract "I"; thence  
N 83° 09' 40" W along the north line of said Tract "I" for a distance  
of 343.97 ft. to the True Point of Beginning; thence S 06° 50' 20" W  
at right angles to the last mentioned course for a distance of 120.00 ft.;  
thence N 83° 09' 40" W for a distance of 3.00 ft.; thence N 06° 50' 20"  
E for a distance of 120.00 ft.; thence S 83° 09' 40" E for a distance  
of 3.00 ft. to the True Point of Beginning.

Parcel 3:

That part of Tract "I" Sun City Unit Sixteen as shown on the plat  
on file and of record in the Office of the County Recorder of Maricopa  
County, Arizona, in Book 122 of Maps at Page 3 thereof, described  
as follows:

Commencing at the northeast corner of said Tract "I"; thence N 83°  
09' 40" W along the north line of said Tract "I" for a distance of  
115.97 ft. to the True Point of Beginning; thence S 06° 50' 20" W

DKT 8585 PAGE 676

at right angles to the last mentioned course for a distance of 66.00 ft.; thence N 83° 09' 40" W for a distance of 62.00 ft.; thence N 06° 50' 20" E for a distance of 66.00 ft.; thence S 83° 09' 40" E for a distance of 62.00 ft. to the True Point of Beginning.

Parcel 4:

That part of Tract "C" Sun City Unit Sixteen as shown on the plat on file and of record in the Office of the County Recorder of Maricopa County, Arizona, in Book 122 of Maps at Page 3 thereof, described as follows:

Beginning at the northwest corner of said Tract "C" also being the northeast corner of Tract "B" of said Sun City Unit Sixteen; thence along a 73.00 ft. radius curve, the radius point of which bears N 09° 59' 39" E from the Point of Beginning, through a central angle of 15° 45' 31" for a distance of 20.08 ft.; thence S 00° 04' 14" E parallel with the west line of said Tract "C" for a distance of 72.90 ft. to a point on a 50.00 radius curve from which the radius point of said curve bears S 23° 30' 27" W; thence along said curve through a central angle of 23° 34' 41" for a distance of 20.58 ft. to a point on the west line of said Tract "C"; thence N 00° 04' 14" W along said west line for a distance of 69.49 ft. to the Point of Beginning.

Said parcels as described contain approximately 15.64 acres with improvements thereon consisting of a recreation center, pool, tennis courts, miniature golf area, lawn bowling area, and other improvements.

Unofficial Document

**SUBJECT TO:** existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights-of-way, easements, and other matters of record.

**FURTHER SUBJECT TO** the following restrictions:

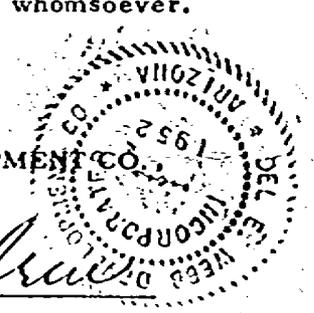
Said property shall be used only for the purposes presently set forth in the articles of incorporation of the Grantee herein, i. e., said property shall be used for the purpose of operating and maintaining a community center and recreational facilities, without pecuniary gain or profit, for the benefit of property owners in Sun City, Maricopa County, Arizona.

Grantor warrants title to said property against all persons whomsoever.

Dated this 3RD day of MARCH, 1971.

DEL. E. WEBB DEVELOPMENT CO.  
an Arizona corporation

By O. F. Childers  
Vice President



Attest:

[Signature]  
Secretary

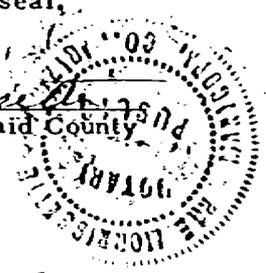
DKT 8585 PAGE 677

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF Maricopa )

On this, the 3rd day of March, 1971, before me, the undersigned Notary Public, personally appeared O. F. Childress and D. R. Middleton who acknowledged themselves to be the Executive Vice President and Secretary, respectively, of DEL E. WEBB DEVELOPMENT CO., an Arizona corporation, and that they as such officers being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal,

Rae Morrison  
Notary Public in and for said County  
and State



My commission expires:

Oct 31, 1971

Unofficial Document

STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

ARIZONA TITLE INSURANCE & TRUST

MAR 18 1971 - 8 00 AM  
in Docket 8585  
on page 675-677

Witness my hand and official seal the day and year aforesaid.

Paul N. Munton

County Recorder  
By Alyce Fisher  
Deputy Recorder

400

When Recorded Return To:  
Del E. Webb Development Co.  
3800 N. Central Avenue  
Phoenix, AZ 85012  
Attention: D. R. Middleton

991

WARRANTY DEED

DEL. E. WEBB DEVELOPMENT CO., an Arizona corporation, Grantor,  
hereby conveys to RECREATION CENTERS OF SUN CITY, INC., (formerly known  
as Sun City Community Association) a non-profit Arizona corporation, Grantee, the  
following described parcel of real property situated in Maricopa County, Arizona:

All of Tract "I", Sun City Unit Sixteen, as shown on the plat  
on file and of record in the Office of the County Recorder of  
Maricopa County, Arizona, in Book 122 of Maps at Page 3  
thereof, except therefrom those three portions of said Tract  
"I" described as follows:

Courtesy Recording  
ARIZONA TITLE  
NO TITLE LIABILITY

Exception 1:

Commencing at the northeast corner of said Tract "I"; thence  
N 83° 09' 40"W along the north line of said Tract "I" for a distance  
of 343.97 ft. to the True Point of Beginning; thence S 06° 50' 20"  
W at right angles to the last mentioned course for a distance of  
120.00 ft.; thence N 83° 09' 40"W for a distance of 3.00 ft.; thence  
N 06° 50' 20" E for a distance of 120.00 ft.; thence S 83° 09' 40" E  
for a distance of 3.00 ft. to the True Point of Beginning.

Exception 2:

Commencing at the northeast corner of said Tract "I"; thence  
N 83° 09' 40"W along the north line of said Tract "I" for a distance  
of 115.97 ft. to the True Point of Beginning; thence S 06° 50' 20"W  
at right angles to the last mentioned course for a distance of 66.00 ft.;  
thence N 83° 09' 40"W for a distance of 62.00 ft.; thence N 05° 50'  
20" E for a distance of 66.00 ft.; thence S 83° 09' 40"E for a distance  
of 62.00 ft. to the True Point of Beginning.

Exception 3:

All that certain portion of said Tract "I", Sun City Unit Sixteen,  
within the dedicated right-of-way of 105th Avenue described as  
beginning at the southeast corner of said Tract "I" run thence N  
00° 04' 14"W along the east line of Tract "I" a distance of 372.77 ft.;  
thence N 83° 09' 40"W a distance of 30.22 ft.; thence S 00° 04' 14"  
E along a line that is 30.00 ft. westerly of the east line of Tract "I"  
as measured at 90° 00' 00" to the east line of Tract "I" a distance  
of 358.17 ft. to a point of curvature; thence southerly and westerly  
along the arc of a 15.00 ft. radius curve that is concave northwesterly  
through a central angle of 94° 14' 55" a distance of 24.67 ft. to a  
point of compound curvature on the northerly line of Thunderbird Blvd.  
as shown on the plat of said Sun City Unit Sixteen; thence easterly  
along the arc of a 7445.00 ft. radius curve that is concave northerly  
through a central angle of 00° 21' 21" a distance of 46.23 ft. to the  
Point of Beginning.

TO HAVE AND TO HOLD the said above described property together with all  
tenements, hereditaments, appurtenances, easements thereunto belonging or in any  
wise or hereinafter appertaining thereto, reversions, remainders, rents, issues,

and profits thereof, and all of Grantor's right, title and interest in and to existing furnishings, equipment, fixtures, buildings, and other improvements located thereon. And said Grantor hereby binds itself, its successors and assigns, to warrant and forever defend all and singular the said property hereby conveyed unto said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, SUBJECT TO: existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights-of-way, easements, and other matters of record. FURTHER SUBJECT TO the following restrictions: said property shall be used only for the purposes presently set forth in the articles of incorporation of the Grantee herein, i. e., said property shall be used for the purpose of operating and maintaining a community center and recreational facilities without pecuniary gain or profit, for the benefit of property owners in Sun City, Maricopa County, Arizona.

Grantor warrants title to said property against all persons whomsoever.

Dated this 29 day of December, 1972.

Unofficial Document  
 DEL. E. WEBB DEVELOPMENT CO.,  
 an Arizona corporation

By O. F. Childress  
 Exec. Vice President

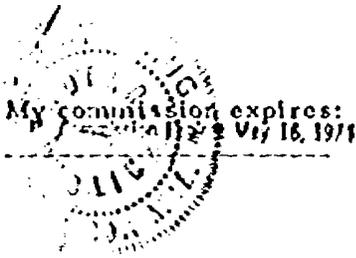
Attest:

[Signature]  
 Secretary

STATE OF ARIZONA )  
 ) ss.  
 COUNTY OF Maricopa )

On this, the 29 day of December, 1972, before me, the undersigned Notary Public, personally appeared O. F. Childress and \_\_\_\_\_ who acknowledged themselves to be the Exec. Vice President and Secretary, respectively, of DEL. E. WEBB DEVELOPMENT CO., an Arizona corporation, and that they as such officers being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



STATE OF ARIZONA )  
 County of Maricopa )  
 I hereby certify that this  
 within instrument was filed and  
 recorded at request of

ARIZONA TITLE

JAN 2 1973 8:00 AM  
 in  
 on page

Witness my hand and official  
 seal the day and year above stated.  
 PAUL A. MATHIAS

County Registrar  
 Deputy Recorder

Larry Krug  
 Notary Public

400

WARRANTY DEED

A

DEL. E. WEBB DEVELOPMENT CO., an Arizona  
hereby conveys to RECREATION CENTERS OF SUN CITY  
corporation, Grantee, the following described parcel of r  
Maricopa County, Arizona:

ALL OF TRACT "P" OF SUN CITY UNIT THIRTY SIX, A SUBDIVISION RECORDED IN  
BOOK 155 ON PAGE 41 OF M. C. R., EXCEPT THE FOLLOWING:

BEGINNING AT THE NORTHEAST CORNER OF TRACT "N" OF SAID SUN CITY UNIT  
THIRTY SIX; THENCE S89° - 45' - 16" E ALONG THE SOUTHERLY LINE OF BELL ROAD  
A DISTANCE OF 746.51 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY  
ALONG A CURVE CONCAVE SOUTHWESTERNLY WITH A RADIUS OF 65.00 FEET, A  
DISTANCE OF 84.67 FEET, THROUGH A CENTRAL ANGLE OF 74° - 37' - 55", TO A  
POINT OF TANGENCY; THENCE S 15° - 07' - 22"E ALONG THE WESTERLY LINE OF  
99TH AVENUE A DISTANCE OF 340.00 FEET TO A POINT; THENCE S74° - 52' - 38"W  
A DISTANCE OF 92.01 FEET TO A POINT; THENCE N89° - 45' - 16"W A DISTANCE OF  
986.39 FEET TO A POINT ON THE EASTERLY LINE OF BOSWELL BOULEVARD; THENCE  
NORTHERLY ALONG A CURVE CONCAVE EASTERLY WITH A RADIUS OF 4,002.62 FEET,  
A DISTANCE OF 200.94 FEET, THROUGH A CENTRAL ANGLE OF 2° - 52' - 35" TO  
THE SOUTHWEST CORNER OF SAID TRACT "N"; THENCE S89° - 45' - 16"E A DISTANCE  
OF 195.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT "N"; THENCE N00° -  
14' - 44"E A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

AND EXCEPT:

BEGINNING AT THE SOUTHWEST CORNER OF TRACT "N" OF SAID SUN CITY UNIT  
THIRTY SIX; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF BOSWELL BOULEV-  
ARD, ALONG A CURVE CONCAVE EASTERLY WITH A RADIUS OF 4,002.62 FEET, A  
DISTANCE OF 200.94 FEET, THROUGH A CENTRAL ANGLE OF 2° - 52' - 35" TO THE  
SOUTHWEST CORNER OF THE ABOVE DESCRIBED EXCEPTION, SAID POINT BEING THE  
TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTHERLY ALONG THE EASTERLY  
LINE OF BOSWELL BOULEVARD, ALONG A CURVE CONCAVE EASTERLY WITH A  
RADIUS OF 4,002.62 FEET, A DISTANCE OF 129.06 FEET, THROUGH A CENTRAL  
ANGLE OF 1° - 50' - 51" TO A POINT; THENCE N79° - 51' - 25" E a DISTANCE OF 709.01  
FEET TO A POINT ON THE SOUTHERLY LINE OF THE ABOVE DESCRIBED  
EXCEPTION; THENCE N89° - 45' - 16"W ALONG THE SOUTHERLY LINE OF THE  
ABOVE DESCRIBED EXCEPTION, A DISTANCE OF 715.00 FEET TO THE TRUE POINT  
OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 26.183 ACRES.

TO HAVE AND TO HOLD the said above described property together with  
all tenements, hereditaments, appurtenances, easements thereunto belonging or  
in any wise or hereinafter appertaining thereto, reversions, remainders, rents,  
issues, and profits thereof, and all of Grantor's right, title and interest in and to  
existing buildings and other improvements located thereon. And said Grantor hereby  
binds itself, its successors and assigns, to warrant and forever defend all and  
singular the said property hereby conveyed unto said Grantee, its successors and  
assigns, against every person whomsoever lawfully claiming or to claim the same  
or any part thereof, SUBJECT TO: existing taxes, assessments, liens, encumbrances,  
covenants, conditions, restrictions, rights-of-way, easements, and other matters  
of record. FURTHER SUBJECT TO the following restrictions: said property shall  
be used only for the purposes presently set forth in the articles of incorporation of  
the Grantee herein, i. e., said property shall be used for the purpose of operating  
and maintaining a community center and recreational facilities without pecuniary  
gain or profit, for the benefit of property owners in Sun City, Maricopa County,  
Arizona.

Dkt 11688pg 958

Grantor warrants title to said property against all persons whomsoever.

Dated this 14 day of April, 1976.

DEL E. WEBB DEVELOPMENT CO.,  
an Arizona corporation

By: [Signature]  
John W. Mecker, President

Attest: [Signature]  
G. E. Williams, Secretary

STATE OF ARIZONA )  
                          ) ss.  
COUNTY OF MARICOPA )

On this, the 14th day of April, 1976, before me, the undersigned Notary Public, personally appeared John W. Mecker and G. E. Williams, who acknowledged themselves to be the President and Secretary, respectively, of DEL E. WEBB DEVELOPMENT CO., an Arizona corporation, and that they as such officers being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
Notary Public in and for said County  
and State

My commission expires:  
Commission Expires May 16, 1978

STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of  
GUST, ROSENFELD & DIVELBESS

MAY 24 1976 - 4 30  
in Docket 11688  
on page 957-958

Witness my hand and official seal the day and year aforesaid.

[Signature]  
County Recorder  
Deputy Recorder

400

WHEN RECORDED RETURN TO:  
William G. Ridenour  
GUST, ROSENFELD, DIVELBESS & HENDERSON  
3300 Valley Bank Center  
201 North Central Avenue  
Phoenix, Arizona 85073

# **EXHIBIT 2**

# RECREATION CENTERS OF SUN CITY, INC.

## CORPORATE BYLAWS

Amended October 26, 2017

WHEREAS Article VIII, Section 3 of the Restated Articles of Incorporation (“Articles”) provides that the Board of Directors (“Board” or “Director(s)”) of the Recreation Centers of Sun City, Inc. (“RCSC” or “Corporation”) may adopt Corporate Bylaws (“Bylaws”) not in conflict with the Restated Articles of Incorporation.

NOW, THEREFORE, BE IT RESOLVED the Corporation shall adhere to the following Bylaws:

### **ARTICLE I – OFFICE AND RCSC FACILITIES**

The principal corporate office for the transaction of business of the Recreation Centers of Sun City, Inc. is located in Sun City, Maricopa County, Arizona.

Smoking shall be prohibited and banned inside all buildings of the Recreation Centers of Sun City, Inc. and also throughout and around RCSC facilities and per Federal and Arizona State law. Electronic cigarettes are not permitted within and on RCSC facilities except in designated smoking areas.

### **ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES**

For purposes of clarification, the following definition shall be used: (a) Property: Any land, building or structure or portion of any building or structure which is, has been or is intended to be, for use and occupancy as a dwelling unit, real property in Sun City, Arizona as defined by these Corporate Bylaws; and (b) Deeded Real Estate Owner(s): Any individual or entity holding or owning a current ownership interest in Property as defined in these Corporate Bylaws.

#### **SECTION 1: MEMBERS, MEMBERSHIP AND MEMBER CARDS**

Members shall be Deeded Real Estate Owners (“Owner(s)”) of property located in the area entitled "Sun City General Plan, Maricopa County, Arizona," as prepared by the Del E. Webb Development Company and dated July 1972, November 1974, August 1975, and September 1978 with subsequent amendments thereto. Owners who meet the following qualifications shall be entitled to a Member Card and therefore considered as the Membership of the Corporation, as long as they are Members in good standing:

- A. A Member must be an Owner 55 years of age or older and occupy the Sun City AZ property as his/her primary Arizona residence unless his/her other Arizona residence is farther than seventy-five (75) miles from Sun City AZ in which case the Owner(s) must provide proof that he/she occupies the Sun City AZ residence as well.
- B. If a spousal Owner is under 55 years of age, he/she may be a Member, provided:
  - (i) he/she is not under 19 years of age;
  - (ii) he/she occupies the Sun City AZ property as his/her primary Arizona residence unless his/her other Arizona residence is farther than seventy-five (75) miles from Sun City AZ in which case the Owner(s) must provide proof that he/she occupies the Sun City AZ residence as well; and

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 1: MEMBERS, MEMBERSHIP AND MEMBER CARDS (Cont.)**

- (iii) that one spousal Owner is 55 years of age or older and occupies the property at the same time.

Continued Membership by an underage spousal Owner, because of the death or long term medical relocation of the Owner meeting the age requirement, shall continue only as long as the spousal Owner does not change the ownership and his/her occupancy status of the property.

- C. If there are more than two Deeded Real Estate Owners per property who meet the above qualifications for Membership and a Member Card, such Owners must decide which two of the Deeded Real Estate Owners shall be classified as Members. Up to two Member Cards may be provided for each property, provided there are two persons who meet the qualifications of Article II, Sections 1.A and 1.B of these Corporate Bylaws. Additional Owners who meet the above qualifications must purchase a Privilege Card in order to use RCSC facilities. An Owner who does not occupy a Sun City AZ property may purchase a Host Punch Card. The Host Punch Card gives such Owner the privilege of using the RCSC facilities while temporarily (14 days or less) in Sun City AZ, subject to being signed in by a valid Member or Privilege Cardholder.
- D. If the Deeded Real Estate Owner is a Trust, no more than two of the Grantors / Trustors / Settlers, or if deceased, no more than two remainder beneficiaries of the Trust may be deemed to be Members, provided that they meet the individual Member qualifications of Article II, Sections 1.A and 1.B of these Corporate Bylaws. If none of the above meet said qualifications, no person(s) will be eligible for a Member Card. Remainder, contingent or non-vested beneficiaries of a trust will not be considered Owner(s) and are not eligible to be Members, unless the Grantors / Trustors / Settlers are deceased. Those granted lifetime use of a property are not eligible to be Members.
- E. If the Deeded Real Estate Owner is a Corporation, LLC, Partnership, LLP, or any other entity (“Company”) that may represent non-individual ownership other than Trusts, the Company may select two of its shareholders or partners to be Members, provided that they meet the individual Member qualifications of Article II, Sections 1.A and 1.B of these Corporate Bylaws; and further provided that said individuals have an ownership interest in said Company. If none of the individuals meet said qualifications, no person(s) will be eligible for a Member Card.
- F. Each individual qualified as a Member shall be issued no more than one Member Card, regardless of whether more than one Sun City AZ property is owned and assessments and fees are paid. A multiple property Owner is not considered to occupy more than one property at a time. Each individual qualified as a Member is entitled to only one vote on each matter voted on by the Members.
- G. Member Cardholders in good standing may vote, serve on the Board or Committees, and use all available RCSC facilities, subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs. A Member whose annual property assessments are not paid in full is not considered a Member in good standing.

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 1: MEMBERS, MEMBERSHIP AND MEMBER CARDS (Cont.)**

- H. Member Cardholders in good standing may become members of the Chartered Clubs and participate in the activities of said Clubs, subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs.
- I. Member Cardholders in good standing may participate in Board/Member exchanges and speak at Board meetings, subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs.
- J. Guests of Members in good standing may use RCSC facilities for a fee, as determined by the Board, and subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs and guests must be signed in by a valid Member or Privilege Cardholder.
- K. No Member may be denied the use of any RCSC facilities furnished by the Corporation as long as he/she is in compliance with the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders Guest Code of Conduct, any Rules and Regulations of the Corporation and Chartered Clubs and is a Member in good standing. A Member whose annual property assessments and/or other fees are not paid in full is not considered a Member in good standing.
- L. A Member or group of Members, whether or not sponsored by a Chartered Club, or any other person or persons, must not behave in a manner which jeopardizes the rights and privileges of other Cardholders, their guests or any other person or persons. A Cease and Desist Order may be issued by the Board or Management against said Member(s) for such behavior and, upon failure of said Member(s) to comply with said Order, denial of the future use of RCSC facilities by said Member(s) may be ordered by the Board, which may include denied attendance at any and all Corporate meetings.
- M. A Member may be suspended or expelled from RCSC facilities or property by the Board, after a hearing by the Board, for non-compliance by said Member within the provisions of the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs. Any Member who is suspended or expelled is not considered to be a Member in good standing.
- N. Written application for reinstatement may be filed with the Board after the suspension or expulsion has been in effect for a minimum of thirty (30) days. During the period of suspension or expulsion, said Member shall not be entitled to any privileges of Membership or use of RCSC facilities or property and shall remain obligated to pay assessments and fees.

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 2: UNDERAGE DEEDED REAL ESTATE OWNERS**

Underage Deeded Real Estate Owners (“Owner(s)”) of property located in the area entitled "Sun City General Plan, Maricopa County, Arizona," as prepared by the Del E. Webb Development Company and dated July 1972, November 1974, August 1975, and September 1978 with subsequent amendments thereto, are subject to the following:

- A. An Owner under 55 years of age, who is not eligible for the spousal Owner exemption as stated in Article II, Section 1.B of these Corporate Bylaws, may be issued an annual Privilege Card for a fee, as determined by the Board, provided the Owner, who is under 55 years of age:
  - (i) is not under 19 years of age, and;
  - (ii) occupies a Sun City AZ property as his/her primary Arizona residence unless his/her other Arizona residence is farther than seventy-five (75) miles from Sun City AZ in which case the Owner(s) must provide proof that he/she occupies the Sun City AZ residence as well; and
  - (iii) provided further that there is verifiable proof of at least one person 55 years of age or older occupying the property at the same time.
- B. An Owner, who is under the age of 55, but over the age of 19, and who does not occupy a Sun City AZ property as his/her primary Arizona residence, is entitled to purchase a Host Punch Card. The Host Punch Card gives such Owner the privilege of using the RCSC facilities while temporarily (14 days or less) in Sun City AZ, subject to being signed in by a valid Member or Privilege Cardholder.

**SECTION 3: NON-OWNERS AND PRIVILEGE CARDHOLDERS**

Non-Owners, renters, tenants, lessees, occupants, those granted lifetime use (“Non-Owner(s)”) of property located in the area entitled "Sun City General Plan, Maricopa County, Arizona," as prepared by the Del E. Webb Development Company and dated July 1972, November 1974, August 1975, and September 1978 with subsequent amendments thereto and who meet the following qualifications may be entitled to a Privilege Card:

- A. A Non-Owner may be issued an annual Privilege Card for a fee, as determined by the Board, provided:
  - (i) at least one Owner or Non-Owner who occupies the property is 55 years of age or older;
  - (ii) the Non-Owner occupies the Sun City AZ property as his/her primary Arizona residence unless his/her other Arizona residence is farther than seventy-five (75) miles from Sun City AZ in which case the Non-Owner(s) must provide proof that he/she occupies the Sun City AZ residence as well;
  - (iii) the Non-Owner is not under 19 years of age, and;
  - (iv) the property assessments and fees, where such Non-Owner resides, are current.

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 3: NON-OWNERS AND PRIVILEGE CARDHOLDERS (Cont.)**

- B. Annual Privilege Card fees are not refundable except:
- (i) in the event of death of the Privilege Cardholder, or;
  - (ii) upon the acquisition of a Sun City, Arizona property, by the Privilege Cardholder, provided the Privilege Cardholder has met the related Facilities Agreement obligations, or;
  - (iii) upon a Privilege Cardholder who is an underage Owner becoming eligible for RCSC Membership.
  - (iv) All refunds shall be on a pro-rata basis and may be subject to a service charge.
  - (v) Refunds shall not be issued if the property assessments and fees, where such Privilege Cardholders occupied, are not current.
  - (vi) Refunds shall not be issued on privilege cards that were issued for a term of less than one year.
- C. Privilege Cardholders in good standing may use all available RCSC facilities, subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs. If the annual property assessments are not current on the property the Privilege Cardholder occupies, they will be denied use of RCSC facilities. Privilege Cardholders cannot vote or hold Corporate office and may not be entitled to participate in corporate meetings.
- D. Privilege Cardholders in good standing may become members of the Chartered Clubs and participate in the activities of said Clubs, subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs.
- E. Guests of Privilege Cardholders in good standing may use RCSC facilities for a fee, as determined by the Board, and subject to the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs and guests must be signed in by a valid Member or Privilege Cardholder.
- F. No Privilege Cardholder may be denied the use of any RCSC facilities furnished by the Corporation as long as he/she is in compliance with the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs and is a Cardholder in good standing except if the annual property assessments are not current on the property the Privilege Cardholder occupies.
- G. A Privilege Cardholder or group of Privilege Cardholders, whether or not sponsored by a Chartered Club, or any other person or persons, must not behave in a manner which jeopardizes the rights and privileges of other Cardholders, their guests or any other person or persons. A Cease and Desist Order may be issued by the Board or Management against said Privilege Cardholder(s) for such behavior and, upon failure of said Privilege Cardholder(s) compliance with said Order, denial of the future use of RCSC facilities or property by said Privilege Cardholder(s) may be ordered by the Board.

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 3: NON-OWNERS AND PRIVILEGE CARDHOLDERS (Cont.)**

- H. A Privilege Cardholder may be suspended or expelled from RCSC facilities or property by the Board, after a hearing by the Board, for non-compliance by said Privilege Cardholder with the provisions of the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs. Any Cardholder who is suspended or expelled is not considered to be a Cardholder in good standing.
- I. Written application for reinstatement may be filed with the Board after the suspension or expulsion has been in effect for a minimum of thirty (30) days. During the period of suspension or expulsion, said Privilege Cardholder shall not be entitled to any privileges or use of RCSC facilities or property, nor receive any reimbursement of Privilege Card fees.

**SECTION 4: ASSESSMENTS AND FEES**

Each and every Deeded Real Estate Owner (“Owner(s)”) of property located in the area entitled "Sun City General Plan, Maricopa County, Arizona," as prepared by the Del E. Webb Development Company and dated July 1972, November 1974, August 1975, and September 1978 with subsequent amendments thereto shall join in a Facilities Agreement. Each Owner shall be responsible for the payment of assessments and fees.

- A. Owners must execute a Facilities Agreement in the form required by the Corporation, obligating property Owners to pay property assessments when due. The Facilities Agreement shall obligate Owners to pay assessments whether or not Owners occupy the property or use RCSC facilities.
- B. Assessments and fees shall be determined by the Board and shall be payable by property Owners pursuant to the Facilities Agreement.
- C. Late fees and penalties, as determined by the Board, shall be imposed on all property assessments and fees which are in arrears. Legal action to secure payment may be taken, as authorized by Arizona State Law, including but not limited to additional fees, liens and the enforcement of the same. Any Owner whose assessments and/or fees are in arrears is not considered a Member in good standing.
- D. Property assessments are not refundable except:
  - (i) in the event of death of an Owner, or;
  - (ii) upon the sale of the Owner’s Sun City, Arizona property, provided the Owner has met the obligations as described in the Facilities Agreement and said Facilities Agreement has been executed by the new Owners, or;
  - (iii) in the event of death of an Owner resulting in an estate property; however, no refund shall be issued until the sale of such Sun City, Arizona estate property, provided all annual assessments and fees are then current.
  - (iv) All refunds shall be on a pro-rata basis and may be subject to a service charge.

**ARTICLE II – MEMBERSHIP, CARDHOLDERS, ASSESSMENTS AND FEES (Cont.)**

**SECTION 4: ASSESSMENTS AND FEES (Cont.)**

- E. A Preservation and Improvement Fee, as determined by the Board, shall be imposed on the purchase, acquisition, transfer, inheritance, gift or any change in ownership of legal or beneficial interest in the title to Property located in Sun City, Arizona (a) pursuant to any deed, contract for sale, will or other instrument or document transferring an interest in such property, so long as the original payor of said Preservation and Improvement Fee no longer retains a majority ownership interest in the property; or (b) following the death of the last original Grantor / Trustor / Settlor under a Trust which holds title to the Property.
- F. A Transfer Fee, as determined by the Board, shall be imposed on the purchase, acquisition, transfer, inheritance, gift or any change in ownership of legal or beneficial interest in the title to Property located in Sun City, Arizona (a) pursuant to any deed, contract for sale, will or other instrument or document transferring an interest in such property, so long as the original payer of said Transfer Fee no longer retains a majority ownership interest in the property; or (b) following the death of the last original Grantor / Trustor / Settlor under a Trust which holds title to the Property.
- G. A onetime Access Fee per property, as determined by the Board, shall be paid by the builder, owner or developer desiring to have access to the RCSC facilities for future property owners. Said builder/owner/developer must execute a Facilities Agreement with the Corporation. Purchasers of individual properties are also required to execute a Facilities Agreement and pay a Preservation and Improvement Fee.

**ARTICLE III - MEETINGS**

**SECTION 1: ANNUAL MEMBERSHIP MEETING**

An annual meeting of the Members shall be held each year.

Written notice stating the place, day and hour of the annual meeting of the Members shall be posted in RCSC facilities and/or published in the RCSC newsletter (*SunViews*) and/or on the RCSC website ([www.suncityaz.org](http://www.suncityaz.org)), not less than ten (10) days, nor more than fifty (50) days before the date of the meeting.

With respect to amendments to the Corporate Bylaws, notice of any proposed amendment shall be posted in RCSC facilities and/or on the RCSC website ([www.suncityaz.org](http://www.suncityaz.org)) at least ten (10) days prior to a Board meeting at which these changes shall be considered.

With respect to amendments to the Restated Articles of Incorporation, notice of any proposed amendment shall be posted in RCSC facilities and published in the RCSC (*SunViews*) newsletter and/or on the RCSC website ([www.suncityaz.org](http://www.suncityaz.org)) at least thirty (30) days prior to a Membership meeting at which these changes shall be considered. Such notice shall include the proposed changes to the Restated Articles of Incorporation.

### ARTICLE III – MEETINGS (Cont.)

#### SECTION 2: SPECIAL MEMBERSHIP MEETINGS

Special meetings of the Members may be called by the Board of Directors, President of the Corporation or by petition of the Members having at least one-tenth (1/10) of the votes entitled to be cast according to the Corporation's records as of the preceding July 1. The reason for the meeting shall be stated in such call and petition. After receiving the petition and validating the signatures thereon, the President shall set a date for such meeting, which shall be held within sixty (60) days after validation of the signatures is completed.

With respect to a special meeting called by petition of the Members for the purpose of amending the Restated Articles of Incorporation or the Corporate Bylaws, the Board, after validation of the petition, shall set a special meeting. A written notice shall be posted in RCSC facilities and/or published in the RCSC newsletter (*SunViews*) and/or on the RCSC website (*www.suncityaz.org*) not less than ten (10) days, nor more than fifty (50) days before the date of the meeting.

With respect to a special meeting of the Members called by the Board of Directors or the President of the Corporation, a written notice shall be posted in RCSC facilities and/or published in the RCSC newsletter (*SunViews*) and/or on the RCSC website (*www.suncityaz.org*) not less than ten (10) days, nor more than fifty (50) days before the date of the meeting. Notice shall include information concerning the purpose for the special meeting.

#### SECTION 3: MEMBERSHIP QUORUM

A quorum for any Membership meeting shall consist of not less than one thousand two hundred fifty (1,250) Members in good standing. A quorum shall be presumed in the absence of a challenge. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote at such meeting shall have the power to adjourn the meeting without notice other than announcement at the meeting, until a quorum is present.

Once a quorum has been established for any meeting, appropriate business may be conducted and decided by a majority vote of Members present unless otherwise required by the Restated Articles of Incorporation or the Arizona Revised Statutes.

#### SECTION 4: MEMBERSHIP MEETING RULES AND REGULATIONS

The laws of the State of Arizona, the Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation and Chartered Clubs shall govern procedure at all meetings of the Corporation, and Robert's Rules of Order, when applicable, shall apply, provided they are not inconsistent with the aforementioned. The President may appoint a parliamentarian to serve during his/her term of office.

Proposals or matters relating to the conduct of the business affairs of the Corporation, if brought before a Membership meeting shall be referred to the Board for study. Such matters, being solely within the powers delegated to the Board in accordance with the laws of the State of Arizona, the Restated Articles of Incorporation, and these Corporate Bylaws will be considered only as a recommendation to the Board.

**ARTICLE III – MEETINGS (Cont.)**

**SECTION 4: MEMBERSHIP MEETING RULES AND REGULATIONS (Cont.)**

If the disposition of these proposals or matters is determined by the Board not to be in the best interest of the Corporation, the Board shall announce its decision and such proposal or matter shall not be considered further. The Members may, by petition signed by at least ten percent (10%) of the total membership of the Corporation as of the first day of the preceding July, bring the proposal or matter before the Membership for a majority vote of the Members present at a duly called and noticed Annual or Special Membership meeting.

**ARTICLE IV - BOARD OF DIRECTORS**

**SECTION 1: FISCAL YEAR**

For all purposes, financial and otherwise, the calendar year January 1 - December 31, shall be synonymous with the term “fiscal year” of the Recreation Centers of Sun City, Inc. (RCSC).

**SECTION 2: COMPENSATION OF DIRECTORS**

The Board of Directors (“Board”) shall receive no compensation of any kind for his/her service as a Board of Director (“Director”) or Officer or from any group using RCSC facilities. Furthermore, a Director cannot serve on any Chartered Club Boards during their term in office.

**SECTION 3: INSTALLATION OF DIRECTORS**

At the first regular Board meeting after a Director has been newly-elected or newly-appointed, the President of the Corporation shall formally install the new Director(s) specifying when their term of office commences.

**SECTION 4: ELECTION OF OFFICERS**

The Board shall meet on the first business day after January 1 for election of Officers. At this organizational meeting, the Board shall select from their own number, by ballot, the Officers listed in Article V of these Corporate Bylaws who shall serve for the term of one year, to end at the election of Officers in the following year.

A Director may be re-elected to consecutive terms as an Officer if he/she receives the majority vote of the Board of Directors.

**ARTICLE IV - BOARD OF DIRECTORS (Cont.)**

**SECTION 5: LENGTH OF TERMS AND VACANCIES**

The term of office for an elected Director shall be three (3) years. At the annual election, three (3) Directors shall be elected. One, two or three-year elected terms enter into the six (6) year limit set forth in the Restated Articles of Incorporation. In the event more than three (3) vacancies exist as of the deadline for turning in the petitions, those vacancies shall also be filled at the annual election as follows:

- (i) The candidate receiving the highest number of votes, after the three (3) three-year terms are filled, shall fill the next longest vacant term.
- (ii) If a candidate is elected to a Board position and, prior to the beginning date of the term for which he/she has been elected, declines or is unable to assume the office (“declining candidate”), then the term of the declining candidate(s) shall be filled with the unsuccessful candidate(s) receiving the next highest number of votes, based on the vote totals of the candidates in the last annual Directors’ election. A candidate receiving less than one hundred (100) votes shall not be eligible to fill any vacancies.
- (iii) The Balloting Committee (hereinafter referred to as the “Election Committee”) will determine the order of placement in the event of a tie vote. The method shall be a simple drawing of the names of the candidates involved in the tie vote.
- (iv) Vacancies occurring on the Board during the year (January 1 through December 31) may be filled by appointment of the Board. A majority vote of the Board is required for said appointment. An appointment ends on December 31 of the year appointed. An appointed term does not enter in the six-year limit set forth in the Restated Articles of Incorporation.

**SECTION 6: MEETINGS OF THE BOARD**

Regular monthly meetings of the Board of Directors shall be held on the day or days as designated by the Board. The Board may elect to delete summer meetings. The President or his/her appointee shall preside at all meetings. Six (6) Board of Directors shall constitute a quorum.

The regular meetings of the Board of Directors, with a prepared agenda, shall be open to the Members and the press. At each of these meetings, a specified time may be allotted for the Members to make comments in regards to corporate matters.

Special meetings of the Board of Directors may be called by the President or upon the written request of three (3) or more of the Board of Directors. The purpose of the meeting shall be stated in the call. Except in cases of emergency, at least seventy-two (72) hours notice shall be given.

The Board may meet in an Executive Session (closed meeting) to discuss confidential matters such as; litigation; matters relating to formation of contracts with third parties; Member or Privilege Cardholder discipline and personnel matters. Before going into Executive Session, the Chair must state such and all matters discussed thereafter shall remain confidential. Executive Sessions may be called during any work session or regular, special or emergency meeting of the Board and/or the Membership. The Board has the authority to take final action in Executive Session and is not required to make public those decisions that are of a confidential nature. Minutes may or may not be taken of Executive Sessions. If they are recorded, they are retained as a part of the confidential records of the Corporation.

## **ARTICLE IV - BOARD OF DIRECTORS (Cont.)**

### **SECTION 7: BOARD AUTHORITY**

The Board of Directors shall have the authority to employ the General Manager; to hold and administer corporate assets, and direct, control, manage, and supervise the business and financial affairs of the Corporation without limitation, except as set forth in the Restated Articles of Incorporation.

The Board of Directors shall have authority to establish, change, and/or delete Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation as deemed necessary and within the authority as outlined in the Restated Articles of Incorporation and these Corporate Bylaws.

## **ARTICLE V – OFFICERS**

### **SECTION 1: OFFICERS OF THE CORPORATION**

The Officers of the Corporation shall be President, Vice-President, Secretary, and Treasurer and shall be elected pursuant to Article IV, Section 4 of these Corporate Bylaws.

### **SECTION 2: PRESIDENT**

The President shall be Chair and shall preside at and conduct all meetings by a formal order of business. The President shall have general supervision and direction of the affairs of the Corporation in accordance with the Restated Articles of Incorporation, these Corporate Bylaws, Board Policies, and any Rules and Regulations of the Corporation. The President shall have authority to administer all matters not otherwise expressly delegated, and shall call special meetings of the Membership and/or Board.

After approval by the Board, he/she may execute bonds, investments, debts, and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof may be expressly delegated by the Board to some other Officer or Agent of the Corporation.

### **SECTION 3: VICE-PRESIDENT**

The Vice-President shall perform such duties as assigned by the President and in the absence or incapacity of the President; shall perform the duties of the President.

### **SECTION 4: SECRETARY**

The Secretary shall adhere to the duties of the Secretary as outlined in Robert's Rules of Order and shall assure that the Corporate Board of Directors records of the Corporation are maintained and in order.

**ARTICLE V – OFFICERS (Cont.)**

**SECTION 5: TREASURER**

The Treasurer shall ensure that financial records and cash/investment handling procedures are audited after the close of each fiscal year by a Certified Public Accountant, as selected by the Board. The Treasurer shall make certain that annual income tax returns and other required corporate filings have been filed as required. The Treasurer shall require safeguards to protect corporate assets. Any indebtedness issued in the name of the Corporation shall be signed by the Treasurer or other Board Officer after such indebtedness is approved by a majority of the Board of Directors.

**SECTION 6: THEFT, DISHONESTY AND LIABILITY INSURANCE**

The Officers of the Corporation shall ensure that an Employee Dishonesty Insurance Policy, as determined by the Board, is in place to insure the Corporation against losses relating to theft or mishandling of assets by Employees, Directors or Corporate Agents. The Corporation shall provide Directors and Officers liability insurance for all Directors and Officers and their spouses.

**SECTION 7: REMOVAL OF BOARD OFFICERS**

A Board Officer who is unwilling or incapable of satisfactorily performing the responsibilities of his/her office, may be removed from his/her office by a ballot vote of a majority of the Board of Directors. An Officer so removed shall be eligible to continue as a Director. The Restated Articles of Incorporation addresses removal of any elected or appointed Director from the Board.

A new election of the Officer by the Board of Directors for the vacated position(s) shall be held within fifteen (15) days after removal. In the case of a vacancy in the President's office, the Vice President will perform the duties of the President until a new President is elected.

**SECTION 8: INDEMNIFICATION**

Recreation Centers of Sun City, Inc., its successors and assigns, hereby agree to protect, defend, indemnify and hold harmless its Directors and their spouses, Officers, Management and Employees ("Agents") from and against any and all claims, demands, actions, damages, loss, and judgments arising out of or occurring in connection with any act or omission of such, including reasonable attorney fees and court costs. Such indemnification of said Agents of the Recreation Centers of Sun City, Inc. shall exclude any such liability caused by gross negligence or willful misconduct.

### **ARTICLE VI – COMMITTEES**

The Board shall be empowered to create or eliminate committees as they may deem necessary to properly and effectively carry on the affairs of the Corporation. A standing committee is a small group of Members, subordinate to the Board of Directors, which is organized to assist the Board in specific areas as assigned. Ad hoc committees are formed for a specific task or objective and dissolved after the completion of the task or achievement of the objective. RCSC Cardholders may present specific concerns and issues to the appropriate committee for review and recommendation to the Board. Committees have no decision making authority. Committees are limited to presenting ideas and recommendations to the Board of Directors and Management. All committees shall have a Board of Director as Chair and Co-Chair who shall be approved by the Board of Directors in January each year. A Board Chair or Co-Chair who is unwilling or incapable of satisfactorily performing the responsibilities may be removed from his/her position as Chair or Co-Chair by a ballot vote of a majority of the Board of Directors. All committees shall attempt to have no less than five (5) members. Members of committees shall be selected from the Membership at large who must meet the following requirements: (a) Must be an RCSC Member Cardholder in good standing; (b) Must not be related to any other member of the committee by marriage or birth unless committee members are selected by election or appointment to another position; i.e., green committee members, association officers, and/or Club Presidents; and (c) Must agree to adhere to RCSC's Articles, Bylaws, Board Policies, and any and all rules and regulations of the Corporation.

Committee members are expected to attend all committee meetings, review materials in advance of the meetings, participate in meetings, and meet as frequently as necessary to discharge properly the committee's responsibilities. Committee members may be suspended or expelled by a majority vote of the Board of Directors for the following reasons: (a) Failure to adhere to RCSC's Articles, Bylaws, Board Policies, or any rules and regulations of the Corporation; (b) For any good and sufficient cause which is contrary to the highest moral or sportsman like principles; (c) For being unwilling or incapable of satisfactorily performing the responsibilities of a committee member; or (d) Failure to attend three (3) committee meetings in a row.

### **ARTICLE VII - CHARTERED CLUBS**

A group of Cardholders interested in a particular hobby, avocation or field of interest may join together for the purpose of pursuing said interest and may request the Board to certify them as a Chartered Club. Duties, responsibilities and requirements of such Clubs are outlined in the Board Policies. The Restated Articles of Incorporation, Corporate Bylaws, Board Policies, Cardholders and Guest Code of Conduct, and any Rules and Regulations of the Corporation shall take precedence over any and all Chartered Club or individual club rules and regulations. The Chartered Club facilities are to be used solely for the purpose of leisure recreational hobbies and not as a profit making endeavor.

**ARTICLE VIII - NOMINATION AND APPOINTMENT PROCEDURES**

**SECTION 1: PRESENTATION OF CANDIDATES**

The Chair of the Elections Committee shall present to the Board, at a Board meeting no later than October 31 of each year, a list of candidates for Director position(s) to be filled at the coming annual election. The election shall be held in accordance with Article IX of these Corporate Bylaws.

**SECTION 2: RECRUITMENT OF CANDIDATES**

On or before July 1 each year, by appropriate notice to the Membership at large, Members shall be invited to become candidates. In the event additional candidates are needed, the Elections Committee shall begin recruiting to provide the required number.

If a member of the Election Committee desires to become a Board of Director candidate, he/she must resign from the Committee prior to becoming a candidate.

**SECTION 3: PETITION AND APPLICATION OF CANDIDATES**

A Member who is eligible, as per Article VIII, Section 4 of these Corporate Bylaws, to become a candidate for election to the Board of Directors shall provide to the Chairperson of the Election Committee on any date specified or no later than October 15 the following:

- (i) A written petition on the official form required with valid signatures from at least one-hundred (100) Member Cardholders in good standing;
- (ii) An application on the official form required, to include a resume and list of goals; and,
- (iii) Nominee shall make himself/herself available to RCSC for a photograph.

**SECTION 4: CANDIDATE REQUIREMENTS**

An eligible candidate for election to the Board of Directors shall satisfy all the following requirements and a candidate for appointment to the Board shall satisfy all except number seven (vii) below:

- (i) Must be at least fifty-five (55) years of age;
- (ii) Must not be related by marriage or birth to any other member of the Board, Sr. Management Staff, or Board Candidate;
- (iii) Must be a Deeded Real Estate Owner of property in Sun City, Maricopa County, Arizona as well as a resident of Sun City AZ;
- (iv) Must be a Member in good standing;
- (v) Must reside in Sun City, Arizona and be available at least ten (10) months of the year;
- (vi) Must meet the requirement to hold an Arizona liquor license;
- (vii) Must be eligible and available to serve a three (3) year term; and
- (viii) Must attend Board Candidate Orientation(s).

A Board Candidate that withdraws from his/her candidacy for any or no reason may not elect to reestablish candidacy in the same election year.

**ARTICLE IX - ELECTION OF DIRECTORS**

**SECTION 1: POLLING PLACES, TIMES AND DATES**

- (i) Election of Directors shall be held on the second Tuesday in December each year.
- (ii) The Board may schedule earlier voting dates.
- (iii) The Board shall select the number of polling places, their locations and times of operation for voting within Sun City, Maricopa County, Arizona.

**SECTION 2: VOTES**

The person or persons receiving the highest number of votes shall be elected to the vacancy or vacancies for which the election is held.

**SECTION 3: RECALL ELECTION**

- (i) In a recall election, a Director shall be deemed recalled if a majority of the votes cast by Membership ballots are for his/her removal, provided further that the total number of votes received for the recall is not less than one hundred (100).
- (ii) The person receiving the highest number of votes cast by Membership ballots to replace the recalled Director shall be deemed elected to fill the unexpired term of said Director.
- (iii) The Board, or its designated representative, may use the services of a neutral entity such as the Maricopa County Election staff and adopt their procedures, as desired, to ensure a fair election process.
- (iv) The Board, or its designated representative, may exercise the flexibility to negotiate technical and routine matters with the neutral entity conducting the election at the Board's request and to make any necessary arrangements or revisions, as the need arises.

**ARTICLE X –VOTING PROCEDURES AT MEMBERSHIP MEETINGS**

**SECTION 1: NON-BALLOT VOTING**

Voting shall be by ballot of the eligible Members present at any meeting of the Members.

**SECTION 2: BALLOT VOTING**

The following procedures shall apply for ballot voting:

- (i) Voting shall proceed under supervision of the Election Committee.
- (ii) At least two (2) members of the Election Committee shall be in attendance at all times during voting and they, along with their assigns, shall determine eligibility of all voters, issue all official ballots, and witness the casting of the ballots.
- (iii) Ballot boxes shall remain sealed until all votes are cast. Votes shall be tabulated in the presence of at least three (3) members of the Election Committee. Any Member may be present as an observer at the tabulation of the votes. Upon completion of the tabulation of ballots, the results shall be certified by the Election Committee Chairperson to the Board and posted on the corporate website ([www.suncityaz.org](http://www.suncityaz.org)) and/or in RCSC facilities.

**ARTICLE X – VOTING PROCEDURES AT MEMBERSHIP MEETINGS (Cont.)**

**SECTION 3: LIMITATION PERIOD**

No Membership election or vote, initiated by petition of the members, shall be held on an issue which is the same as, or substantially similar to, any issue which has been voted upon by the Membership within the current calendar year or any of the past three (3) calendar years (hereinafter referred to as the "Limitation Period"). The Board of Directors shall determine, in its sole discretion, whether the issue proposed to be voted upon by the Membership is the same as, or substantially similar to, an issue previously voted upon by the Membership during the Limitation Period. In the event a Membership election or vote is not required to be held due to the provisions of this section, then the Board of Directors shall not set, call, notice or post the proposed Membership election or vote or any Membership meeting in connection therewith, or take any other action normally associated with a Membership election or vote or a Membership meeting. This section shall not apply to the election or removal of Directors.

BE IT FURTHER RESOLVED that a copy of these Corporate Bylaws shall be posted on the RCSC website for members and shall be made available to members upon request at no cost.

Adopted and signed this 26<sup>th</sup> day of October, 2017 at a duly called Board meeting by a majority (5) of the Recreation Centers of Sun City, Inc. Board of Directors.

ATTEST:

\_\_\_\_\_  
Rich Hoffer, President

\_\_\_\_\_  
Stella Van Ness, Secretary

# **EXHIBIT 3**

WHEN RECORDED MAIL TO:  
Recreation Centers of Sun City, Inc.  
10626 W Thunderbird Blvd  
Sun City AZ 85351

**RECREATION CENTERS OF SUN CITY, INC.**  
**FACILITIES AGREEMENT**

**I. AGREEMENT between Recreation Centers of Sun City, Inc. (“RCSC” or “Corporation”), a nonprofit, Arizona corporation and the undersigned Owner(s).**

**AGREED FACTS:**

This Agreement relates to Lot \_\_\_\_\_, Tract \_\_\_\_\_, Sun City Unit \_\_\_\_\_, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, Book \_\_\_\_\_, Page \_\_\_\_\_, also known as \_\_\_\_\_, Sun City, Arizona \_\_\_\_\_, Assessor’s Parcel ID \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ (“Property”).

The Amended and Restated Declaration of Covenants, Conditions and Restrictions (“CC&Rs” or “Declarations”) run with the land and are binding on all persons owning said Property and require each Owner to execute a Facilities Agreement in favor of RCSC, including an obligation to pay assessments and fees imposed. Each Owner and all persons residing on said Property, shall abide by the RCSC Articles of Incorporation, Corporate Bylaws, Board Policies and any and all other rules and regulations of the corporation.

Pursuant to RCSC’s Restated Articles of Incorporation, Corporate Bylaws, and Board Policies, each and every Owner is obligated to pay assessments and fees imposed when due, whether or not Owners occupy the Property or use RCSC facilities. The RCSC Board of Directors has the authority to determine the amount of any assessments and fees, to include but not limited to: annual property assessments, special assessments, preservation and improvement fees, transfer fees, late and lien fees and interest on past due accounts.

Residential property located in the area entitled “Sun City General Plan, Maricopa County, Arizona” is subject to Maricopa County Senior Citizen Overlay Zoning Ordinance §1501A, et seq., as amended. As of October 1, 1993, at least one occupant of said Property must be fifty-five (55) years of age or older, and no one under the age of nineteen (19) years may be a resident for more than ninety (90) days.

**II. RCSC AGREES:**

- A. To operate the recreational facilities for the benefit of homeowners and residents of Sun City, Arizona, who qualify to use them under its Restated Articles of Incorporation, Corporate Bylaws, and Board Policies.
- B. To impose an annual property assessment upon said Property and its Owner(s) as established in the RCSC Restated Articles of Incorporation, Corporate Bylaws, and Board Policies to cover the costs of maintaining, operating and developing the common community recreational facilities in Sun City, Arizona.
- C. To impose a Transfer Fee and Preservation and Improvement Fee upon said Property and its Owner(s) on the purchase, acquisition, transfer, inheritance, gift or any change in ownership of legal or beneficial interest in the title to property located in Sun City, Arizona pursuant to any deed, contract for sale, will or other instrument or document transferring an interest in such property, so long as the original payer of such Transfer Fee or Preservation and Improvement Fee no longer retains a majority ownership interest in said Property.

**III. OWNER(S) AGREE(S):**

- A. To pay in advance and when due to RCSC: (a) The annual property assessment for said Property regardless of the use or non-use of any recreational facilities, and regardless of whether such Owner or any occupants are qualified under the RCSC Restated Articles of Incorporation, Corporate Bylaws, or Board Policies to use any such facilities; and (b) A Transfer Fee and Preservation and Improvement Fee upon the purchase, acquisition, transfer, inheritance, gift or any change in ownership of legal or beneficial interest in the title to property located in Sun City, Arizona pursuant to any deed, contract for sale, will or other instrument or document transferring an interest in said Property, so long as the original payer of such Transfer Fee or Preservation and Improvement Fee no longer retains a majority ownership interest in said Property.
- B. The agreements set forth above shall be to the benefit of each and all Owners of said Property, whether they shall have become such before or after the date hereof, and their respective successors. The obligations, agreements, assessment and fees herein are subject to the provisions of the RCSC Articles of Incorporation, Corporate Bylaws, Board Policies and any and all other rules and regulations of the corporation, as amended from time to time. The annual property assessments, special assessments, preservation and improvement fees, transfer fees and any and all other assessments or fees charged by the RCSC may be amended by the Board of Directors of RCSC, at any time, pursuant to the Articles of Incorporation, Corporate Bylaws, and Board Policies of the RCSC and the laws of the State of Arizona.

Owner(s) Initials \_\_\_\_\_/ \_\_\_\_\_/ \_\_\_\_\_/ \_\_\_\_\_/

- C. To waive any statute of limitations defense in connection with the collection of the RCSC assessments and fees.
- D. In addition to other remedies, RCSC shall have a valid lien upon the Property, whether or not exempt by law, as security for the payment of RCSC annual property assessments, special assessments, preservation and improvement fees, transfer fees, late and lien fees, interest and any and all other assessments or fees assessed against the Property and its Owner(s) and shall be subordinate only to the first mortgage or first deed on said Property. If any assessment or fee is not paid within ninety (90) days after it becomes due, said lien may be foreclosed in the same manner as a mortgage.
- E. To require, as a condition of any future transfer of the Property, that the buyer/transferee execute, and deliver to RCSC at the closing, a RCSC Facilities Agreement signed by all the deeded Owners.
- F. The agreements set forth shall bind all persons or entities in whom/which title or ownership of the Property shall be vested, legally or beneficially. This Facilities Agreement shall terminate (a) after Owner(s) has/have terminated title or beneficial ownership interest in the Property; and (b) upon the signing and execution of a new Facilities Agreement provided that the selling/transferring owner(s) has/have no unsatisfied liability or obligation hereunder at the time of termination of this Agreement. Owner(s) expressly declare(s) that the covenants set forth herein are to run with the Property.

**IV. IT IS MUTUALLY AGREED THAT:**

- A. This agreement is binding upon the parties, their heir(s), executor(s), personal representative(s), successor(s), assign(s), guardian(s), conservator(s), trustees and beneficial owner(s).
- B. This agreement, or notice thereof, shall be recorded in the office of Recorder of Deeds, Maricopa County, Arizona.
- C. This agreement cannot be changed, altered or amended in anyway except by the Recreation Centers of Sun City, Inc.
- D. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court, the validity and enforcement of the remaining provisions shall not be affected thereby and shall continue to be enforceable and valid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
OWNER

STATE OF \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Owner(s)

**In witness whereof**, I have hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**FOR USE BY RECREATION CENTERS OF SUN CITY, INC. ONLY**

By \_\_\_\_\_ its Authorized Agent

STATE OF ARIZONA  
County of Maricopa

The foregoing agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_ the authorized agent of Recreation Centers of Sun City, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

**In witness whereof**, I have hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

# **EXHIBIT 4**

# RECREATION CENTERS OF SUN CITY, INC.

## RESTATED ARTICLES OF INCORPORATION

REVISED DECEMBER, 1990

AMENDED NOVEMBER 20, 2003

### ARTICLE I

The name of this Corporation shall be Recreation Centers of Sun City, Inc., hereinafter referred to as "Corporation", and its principal place of business is located in Sun City, Maricopa County, Arizona.

Members of the Corporation shall be limited to homeowners or residents of Sun City, Arizona.

Sun City is all of the area shown on the plan titled "Sun City General Plan, Maricopa County, Arizona" as prepared by the Del E. Webb Development Company and dated July 1972, with subsequent amendments thereto.

### ARTICLE II

The names, residences and post office addresses of the incorporators are as follows:

<u>Name</u>	<u>Residence &amp; Post Office Addresses</u>
Lin Price	10716 Abbott Avenue, Sun City, AZ
George C. Wilson	10201 105 <sup>th</sup> Drive, Sun City, AZ
James M. Cullum	11001 Sun City Blvd., Sun City, AZ
Esther R. Morris	10315 Corte Del Sol Este, Sun City, AZ
Bertha M. Cox	10720 Crosby Drive, Sun City, AZ
Alfred R. Voelker	10824 Crosby Drive, Sun City, AZ
John W. Prather	10144 Pinehurst Drive, Sun City, AZ
Gerald W. McCarty	11609 Balboa Drive, Sun City, AZ
John R. Mead	10413 Clair Drive, Sun City, AZ
Leo J. Wilson	11807 Hacienda Drive, Sun City, AZ
Walter F. Schott	12045 Cherry Hills Drive, Sun City, AZ
Phil T. Ewan	12451 Augusta Drive, Sun City, AZ

RCSC010483

**ARTICLE III**

The general nature of the business in which the Corporation is engaged is as follows:

To do anything and everything lawfully necessary in the interest of the Members of the Corporation, including, without limitation, the following:

1. To establish and conduct a general social, cultural, recreational and amusement enterprise for the benefit of its Members and do anything lawfully necessary or convenient to accomplish such purpose, including, but not by way of limitation, to purchase, acquire, develop, sell, lease, own, operate, and manage theaters, playhouses, agricultural projects, riding stables and corrals, libraries, opera houses, golf courses, baseball and football games, tennis courts, dancing facilities, lawn bowling rinks, horseshoe pits, croquet courts, travel clubs, card games, shuffleboard, swimming pools, skating rinks, lecture and conference rooms, and facilities and equipment for such arts and crafts as ceramic work, sewing, woodworking, leathercraft, lapidary, photography, fine arts, jewelry, shellcraft, mosaics, etc., and any and all facilities necessary or incidental to accomplish the general purposes of the Corporation.
2. To coordinate, implement, and aid the various recreational and social clubs which are now or which may become duly recognized as such by this Corporation.
3. To promote cooperation in all matters of interest and benefit to the residents and/or homeowners of the area within the bounds set out in Article I, who become and remain Members of this Corporation.
4. To contract, coordinate or operate, with other organizations, associations, corporations, or individuals in carrying out and conducting the activities and endeavors for which this Corporation is formed and in effecting the benefits and results sought to be gained.
5. To purchase, lease, option, contract for or otherwise acquire, take, own, hold, exchange, sell, or otherwise dispose of, pledge, mortgage, hypothecate, encumber any and all classes of property necessary to the fulfillment and furtherance of the objects and purposes of the Corporation within the limits prescribed by law.
6. To issue such notes, bonds, debentures, contracts, or other security or evidence of indebtedness upon such terms and conditions and in such manner and form as may be prescribed or determined by the Board of Directors, within the limitations prescribed by Article X hereof.
7. To purchase, acquire, own, hold, sell, assign, transfer, mortgage, pledge or otherwise acquire, dispose of, hold or deal in the shares of stocks, bonds, debentures, notes or other security or evidence of indebtedness of this or any other corporation, association or individual, and to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

8. To lend or invest its funds, with or without security, upon such terms and conditions as shall be prescribed or determined by the Board of Directors in accordance with Article VIII, Section 7, of these Articles of Incorporation.
9. To borrow money and to issue bonds, debentures, notes, contracts, and other evidences of indebtedness or obligation, and from time to time for any lawful purpose to mortgage, pledge, and otherwise charge any or all of its properties, property rights and assets to secure the payment thereof.
10. To act as surety or guarantor, agent, trustee, broker, or in any other fiduciary capacity.
11. To make and to perform contracts of every kind and description, and in carrying on its business, or for the purpose of attaining and furthering any of its objects, to do any and all things which a natural person might or could do, and which now or hereafter may be authorized by law, and in general, to do and perform such acts and things, and to have and exercise all the powers and to transact such business in connection with the foregoing objects as may be necessary and required.
12. To do all and everything necessary, suitable, or proper for the accomplishment of any of the purposes or attainment of any of the objects hereinabove enumerated, either alone or in association or partnership with other corporations, firms, and individuals, as principals, agents, brokers, contractors, trustees, or otherwise, and, in general, to engage in any and all lawful business that may be necessary or convenient in carrying on the business of said Corporation and for the purposes pertaining thereto, and to do any and every other act or acts, thing or things, incidental to, growing out of, or connected with said business, or any part or parts thereof; the designation of any object or purpose therein shall not be construed to be a limitation for qualifications or in any manner to limit or restrict the purpose and objects of the Corporation.
13. To transact any or all lawful business for which non-profit corporations may be incorporated under the laws of the State of Arizona and in pursuance thereof to exercise any or all powers granted to corporations in general under the laws of the State of Arizona.

The foregoing purposes shall be construed as both objects and powers and the foregoing enumeration of specific purposes shall not be held to limit or restrict in any manner the powers of the Corporation.

#### **ARTICLE IV**

This Corporation shall have no power to issue capital stock, and no dividends or pecuniary profits shall be declared or inure to any Member, Director, Officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no Member, Director, Officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

#### ARTICLE V

This Corporation shall have perpetual succession by its corporate name.

#### ARTICLE VI

Indemnification of present and former Members, Directors, Officers and employees, and agents of this Corporation shall be governed in accordance with Title 10, Chapter 5, Section 10-1005, Sub-Section B of the Revised Arizona Statutes. The provisions therein set forth are incorporated herein by reference and made a part hereof with the same force and effect as though set forth herein in full.

#### ARTICLE VII

No membership or certificate of membership shall be transferable and no assignee or transferee thereof, whether by operation of law or otherwise, shall be entitled to membership in this Corporation or to any property rights or interest therein, except as shall be provided in the Bylaws of this Corporation. Any person ceasing to be a Member shall forfeit all rights and privileges of membership and all rights or interest in the Corporation absolutely, except as shall be provided in the Bylaws of the Corporation.

#### ARTICLE VIII

1. The affairs of the Corporation shall be conducted by a Board of Directors and such Officers as the Board may elect or appoint. The Board shall select from its own members a president, one or more vice-presidents, a secretary, and a treasurer. It may select an assistant treasurer who is not required to be a member of the Board. All Officers shall be elected at the first meeting of the Board of Directors in January of each year and shall hold office for a period of one (1) year and until their successors are elected and installed. The number of Directors shall be nine (9). Directors shall be elected by the Members at an annual election in the manner prescribed in the Bylaws.
2. Three (3) Directors in a manner set forth in the Corporate Bylaws, shall be elected each year to serve for a term of three (3) years and shall serve until their successors are installed. A Member/Director may be elected to a maximum of two (2) three-year terms, six (6) years total, on the Board of Directors. **(Approved by the membership on Nov. 20, 2003)**
3. The Directors shall have the power to adopt Bylaws not in conflict with the Articles of Incorporation.

4. The Bylaws may be amended, modified, revised, or revoked by the Directors or by the Members. In the event of conflict concerning the Bylaws as amended, modified, revised, or revoked by the Directors, the action of the Members shall prevail.
5. The Bylaws of the Corporation shall prescribe the qualifications of Members and the terms of admission to membership, provided that the voting rights of all Members shall be equal and all Members shall have equal rights and privileges, and be subject to equal responsibilities. Such Bylaws shall also provide the method for determining assessments to be paid by the Members.
6. The Board of Directors shall have power to fill vacancies occurring on the Board or in any Office. Any Director or Officer so chosen shall hold such position until the next election when a successor is elected, qualified, and assumes such position.
7. The Corporation shall not convey any substantial part of its assets, or any real property of assessed value for tax purposes exceeding \$50,000, without affirmative vote of a majority of its membership entitled to vote thereon.

#### ARTICLE IX

Removal of any elected or appointed Director may be done in either of the following ways:

- A. By a vote of two-thirds (2/3) of the members of the Board of Directors after a member of the Board is absent from three (3) or more consecutive regular meetings of the Board or who, in the opinion of such two-thirds (2/3) of the Board members, is unwilling or incapable of performing his or her share of the duties and responsibilities of a Director.
- B. The Members may remove any elected or appointed Director in the following manner, and any vacancy so created may be filled in the following manner:
  1. A petition for a removal election of one or more Directors, specifying by name or names the occupants of the seats whose removal is desired, signed by not less than ten percent (10%) of the voting Members of the Corporation as of the preceding July 1<sup>st</sup>, may be filed with the Secretary of the Corporation not less than ten (10) days preceding a regularly scheduled meeting of the Board of Directors. At such meeting, the Board shall then schedule an election for the purpose of voting on the removal and replacement of any Directors whose removal is sought, said election to be held not later than forty-five (45) days and not less than thirty-five (35) days after such aforesaid meeting, and said election shall be conducted in accordance with the Bylaws of the Corporation regarding election of Directors. Appropriate announcement thereof shall be made by the Board of Directors on the bulletin boards of the Corporation.

2. Balloting at such removal elections shall proceed in the same manner as specified in Article X of the Bylaws, except that at least fifty percent (50%) of the members of the Balloting Committee shall be selected from those signing the removal petition.
3. Any member of the Corporation in good standing and who is qualified under Article IV, Section 2, of the Bylaws may become a candidate for election to the Board to fill the position of a specified Director whose removal is being sought, by filing a petition signed by not less than one hundred (100) of the voting Members in good standing, and such petition and other material, as required by Article IX of the Corporate Bylaws, shall be filed with the Chairman of the Elections Committee not later than fifteen (15) days preceding the date set for the election.

### **ARTICLE X**

The highest amount of indebtedness or liability, direct or contingent, to which the Corporation may at any time subject itself shall be limited to \$750,000 or any greater amount which may be authorized by three-fourths (3/4) of the Members present at a duly called and noticed meeting of the membership, or in such amounts as may be authorized by the Arizona Corporation Commission.

### **ARTICLE XI**

The private property of the Members, Directors, and Officers of this Corporation shall be forever exempt from the debts and obligations of the Corporation.

### **ARTICLE XII**

In the event of the dissolution or winding up of the Corporation, all assets not otherwise disposed of and not subject to any trust, shall be transferred as the Board of Directors may then decide for carrying out the purposes or similar purposes of this Corporation.

### **ARTICLE XIII**

The Members of the Corporation shall be provided with the opportunity to vote by proxy in:

- a. Amending the Articles of Incorporation
- b. Members amending the Bylaws of the Corporation
- c. The election of Directors\*
- d. Any other matter requiring an act of the members

\*If the Bylaws provide for voting by mail in the election of Directors, the above-stated

Proxy vote will not apply to the election of Directors.

#### **ARTICLE XIV**

An amendment to the Restated Articles of Incorporation may be proposed by resolution of the Board of Directors or by petition signed by at least ten percent (10%) of the total membership of the Corporation as of the first day of the preceding July. The proposed amendment shall be submitted to a vote of the Members at a regular or special meeting called pursuant to the provisions of the Bylaws.

The proposed amendment shall be adopted or rejected by a majority vote of the Members, present or represented by proxy at such meeting or adjourned meeting.

Written notice setting forth the proposed amendments or a summary thereof shall be given to each Member entitled to vote at the meeting within the time and in the manner provided in the Bylaws for the giving of notice of meeting to Members.

#### **ARTICLE XV**

These Restated Articles of Incorporation set forth the provisions of the Articles of Incorporation as amended and the Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto.

#### **ARTICLE XVI**

Richard H. Whitney, of the law firm of Gust, Rosenfeld, Divelbess & Henderson, whose business address is in Phoenix, Arizona, and who has been a bona fide resident of the State of Arizona for more than three (3) years last past, is hereby appointed and designated Statutory Agent of the Corporation for the State of Arizona, upon whom service of process may be had. This appointment may be revoked at any time by filing the appointment of another agent.

Rev. 7/81; 6/84; 12/88; 12/90, 11/03

# **EXHIBIT 5**

1 Christopher A. LaVoy (016609)  
2 Nora L. Jones (028872)



3 SEVENTH FLOOR CAMELBACK ESPLANADE II  
4 2525 EAST CAMELBACK ROAD  
5 PHOENIX, ARIZONA 85016-4237  
6 TELEPHONE: (602) 255-6000  
7 FACSIMILE: (602) 255-0103  
8 E-Mail: cal@tblaw.com / nlj@tblaw.com

9 Attorneys for Recreation Centers of Sun City, Inc.

10 **SUPERIOR COURT OF ARIZONA**  
11 **COUNTY OF MARICOPA**

12 Bolton and Florence Anderson; Sharon  
13 Atwood; Michael Baker; David and Dawnna  
14 Barnes; Jean Battista; Virginia Baughman;  
15 Edward Berger; Olga Carlson; Lavina  
16 Dawson; Catherine Fuller; Kenneth Gegg;  
17 Mary Gransden; Joanne Greathouse; Regina  
18 Heck; Ray and Linda Hicks; Sherry  
19 Johnson-Traver, as Trustee of the Sherry Sue  
20 Johnson-Traver Trust; Shirley Koers; Susan  
21 Marsh; George and Sheryl McClain;  
22 Elizabeth Mercer, as Trustee of the Elizabeth  
23 Scott Mercer Trust; Arlef Moyer; James  
24 Napier; Arthur Nealt, as Trustee of the  
25 Arthur D. Neault Living Trust; Diane  
26 Patrakis; Petunia, LLC; Carole Poperowitz;  
Paul and Gloria Richman; Donna Sies; Gay  
Sousek; Anne Randall Stewart, as Trustee of  
the Stewart Trust; Therese Terris; Wendy  
and Charles Wood; and Angelo Zappella,  
individually and on behalf of the similarly  
situated,

Plaintiffs,

vs.

Recreation Centers of Sun City, Inc., a  
nonprofit corporation,

Defendant.

Case No. CV2015-012458

**DEFENDANT'S FIRST  
SUPPLEMENTAL RESPONSE TO  
PLAINTIFFS' FIRST SET OF  
NON-UNIFORM  
INTERROGATORIES**

(Hon. Roger Brodman)

1 Defendant Recreation Centers of Sun City, Inc. (“RCSC”) supplements its  
2 responses to Plaintiffs’ First Set of Non-Uniform Interrogatories. RCSC’s supplemental  
3 response to an interrogatory is in **bold** type.

#### 4 INTERROGATORIES

##### 5 **Interrogatory No. 1:**

6 Identify all Owners of residential property within Sun City who have not signed a  
7 Facilities Agreement.

8 RESPONSE:

9 RCSC objects to this interrogatory because the names of the individual putative  
10 class members are irrelevant at the class certification stage. The names of the individual  
11 putative class members, as distinguished from the characteristics of the proposed class,  
12 do not factor into the class certification analysis. In other words, their names do not tend  
13 to prove or disprove any Rule 23 element. Names are only needed down the road *if* the  
14 proposed class is certified for the purpose of sending the required opt-out notice. Rule 23  
15 only requires identification of the proposed class, not individual putative class members.  
16 A proposed class is identified by stating the standards for inclusion in objective terms,  
17 which Plaintiffs purport to do in paragraph 64 of their Amended Complaint.

18 RCSC further objects because assembling a comprehensive roster of everyone  
19 who owns residential property in Sun City, but did not sign a Facilities Agreement, would  
20 impose an unreasonable burden and expense on RCSC. RCSC cannot just press a button  
21 to generate such a list. Creating such a list would require a lengthy and detailed review of  
22 real property records at the county recorder to identify all residential property owners in  
23 Sun City (as defined in the interrogatory), which would then need to be cross-referenced  
24 against a list of Facilities Agreements. If Plaintiffs desire such a list, they are equally able  
25 to create it by purchasing a title report that identifies all residential property owners in the  
26 defined geographic area with an accompanying report of all recorded Facilities

1 Agreements for the owners. Plaintiffs cannot push this substantial burden and expense on  
2 to RCSC by requesting the information in an interrogatory.

3 **FIRST SUPPLEMENTAL RESPONSE:**

4 **To the extent plaintiffs contend they require the requested information to**  
5 **determine if the numerosity requirement for class certification is satisfied,**  
6 **defendant does not dispute the numerosity requirement is satisfied.**

7  
8 **Interrogatory No. 2:**

9 Identify all individuals or entities who have acquired residential property within  
10 Sun City on or after October 29, 2009 who have not paid a transfer fee since October 29,  
11 2009.

12 **RESPONSE:**

13 RCSC objects to this interrogatory because, again, it is directed at identifying the  
14 names of putative class members, which is not needed to decide class certification. It is  
15 sufficient to define a class as “all individuals or entities who have acquired residential  
16 property within Sun City on or after October 29, 2009 who have not paid a transfer fee  
17 since October 29, 2009” without listing their names. The names of individual putative  
18 class members, as distinguished from the characteristics of the proposed class, are  
19 irrelevant. Rule 23 only requires identification of the proposed class, not individual  
20 putative class members.

21 RCSC further objects to this interrogatory as unreasonably burdensome. RCSC  
22 has no ready list of “all individuals or entities who have acquired residential property  
23 within Sun City” in this time frame. Even if it had such a list, RCSC has no efficient  
24 means of determining which owners on the list paid a transfer fee other than running each  
25 name through its computer system, which would be a substantial and expensive

26

1 undertaking. Plaintiffs cannot push this burden and expense on to RCSC by requesting  
2 the information in an interrogatory.

3  
4 **Interrogatory No. 3:**

5 Identify any individuals or entities who have purchased residential property within  
6 Sun City on or after October 29, 2009 whose Facilities Agreements do not require the  
7 payment of PIF.

8 RESPONSE:

9 The same irrelevancy objection as above applies here because the identity of  
10 individual putative class members does not bear on class certification stage. It only  
11 becomes potentially relevant *after* certification.

12 Without waiving the foregoing objection, RCSC has only used one version of the  
13 Facilities Agreement since October, 29 2009 (*see* Bates Nos. RCSC004453 – 004454).  
14 That version specifically authorizes the charging of a PIF, stating that “[t]he RCSC Board  
15 of Directors has the authority to determine the amount of any assessments and fees, to  
16 include but not limited to . . . preservation and improvement fees.” Therefore, the  
17 Facilities Agreement of every residential property owner who acquired title on or after  
18 October 29, 2009 does authorize the imposition of a PIF.

19  
20 **Interrogatory No. 4:**

21 For each exemplar produced in response to Request for Production No. 1, identify  
22 the date(s) each Facilities Agreement was in use.

23 RESPONSE:

24 Upon information and belief, since 1990, each version of the Facilities Agreement  
25 includes a revision or amendment date at the bottom of the first or second page. In  
26 general, from 1990 forward, each version was in use from its revision or amendment date

1 until the revision or amendment date of the next version. With respect to the pre-1990  
2 versions, RCSC is attempting to determine how long each was in use and will supplement  
3 this response if and when it obtains more information. The only document that RCSC has  
4 found in its records addressing this issue is Bates Nos. RCSC004389 – 004390, which  
5 provides an incomplete summary of when prior versions of the Facilities Agreement were  
6 in use.

7  
8 **Interrogatory No. 5:**

9 Describe how annual assessments are determined for each Sun City residential  
10 property, where homeowners can find how much they are expected to pay, and how  
11 RCSC maintains its records that indicate the rate at which a homeowner must pay  
12 property.

13 RESPONSE:

14 RCSC determines annual assessments according to RCSC Board Policy No. 28  
15 (“Policy 28,” *see* Bates Nos. RCSC004385 – 004388). Owners may consult Policy 28 to  
16 determine their annual assessment amount. They may also contact RCSC if they have any  
17 questions. The annual assessment currently charged an owner is reflected in RCSC’s  
18 records for the owner.

19  
20 **Interrogatory No. 6:**

21 Identify the legal basis that you contend authorizes you to foreclose an Owner’s  
22 property for unpaid annual assessments and fees.

23 RESPONSE:

24 The current version of the Facilities Agreement, in use since October 15, 2009,  
25 specifically authorizes foreclosure for the non-payment of assessments and fees. In  
26 addition, the declaration of covenants, conditions and restrictions for a subdivision may

1 authorize it. For example, paragraph 16 of the Amended and Restated Declaration of  
2 Covenants, Conditions and Restrictions for Sun City Unit One (Maricopa County  
3 Recorder, No. 1991-1062779), which Plaintiffs allege governs the entirety of Sun City,  
4 specifically authorizes foreclosure for the non-payment of assessments and fees.

5  
6 **Interrogatory No. 7:**

7 Identify the legal basis that you contend creates a lien that overrides or supersedes  
8 an Owner's homestead exemption.

9 RESPONSE:

10 RCSC objects to this interrogatory because the applicability and scope of  
11 Arizona's homestead exemption is not at issue in this lawsuit. Neither the word  
12 "homestead" nor phrase "homestead exemption" appear anywhere in Plaintiffs' Amended  
13 Complaint.

14 To the extent the applicability and scope of Arizona's homestead exemption is at  
15 issue, RCSC objects to this interrogatory on the ground it seeks merits-related discovery.  
16 The scope of discovery is currently limited to class certification issues.

17 Without waiving the foregoing objection, RCSC has only used one version of the  
18 Facilities Agreement since October 15, 2009 (*see* Bates Nos. RCSC004453 – 004454).  
19 Paragraph III(D) thereof provides that "RCSC shall have a valid lien upon the Property,  
20 whether or not exempt by law, as security for the payment of RCSC annual property  
21 assessments, special assessments, preservation and improvement fees, transfer fees, late  
22 and lien fees, interest and any and all other assessments or fees assessed against the  
23 Property and its Owner(s) and shall be subordinate only to the first mortgage or first deed  
24 on said Property." In addition, the declaration of covenants, conditions and restrictions  
25 for a subdivision may grant a lien. For example, the Amended and Restated Declaration  
26 of Covenants, Conditions and Restrictions for Sun City Unit One (Maricopa County

1 Recorder, No. 1991-1062779), which Plaintiffs allege governs the entirety of Sun City,  
2 provides in paragraph 16 that “[e]ach Owner of a lot shall execute a Recreation Facilities  
3 Agreement . . . [that] shall be a lien on such lot subordinate only to a first mortgage or  
4 first deed of trust on such lot, and may be foreclosed in the same manner as a mortgage  
5 under Arizona law.” A.R.S. § 33-1103(A) provides that a “consensual lien” is not subject  
6 to the homestead exemption granted in A.R.S. § 33-1101(A).

7  
8 **Interrogatory No. 8:**

9 Identify all Facilities Agreements executed on or after October 29, 2009 that do  
10 not require the Owner to pay PIF.

11 RESPONSE:

12 There are none. RCSC has only used one version of the Facilities Agreement since  
13 October 29, 2009 (*see* Bates Nos. RCSC004453 – 004454). As discussed above,  
14 paragraph III(D) of this version specifically authorizes the charging of a PIF.

15  
16 **Interrogatory No. 9:**

17 Identify all Facilities Agreements executed on or after October 29, 2009 that do  
18 not require the Owner to pay a Transfer fee.

19 RESPONSE:

20 There are none. RCSC has only used one version of the Facilities Agreement since  
21 October 29, 2009 (*see* Bates Nos. RCSC004453 – 004454). Paragraph III(D) of this  
22 version specifically authorizes the charging of a transfer fee.

23  
24 **Interrogatory No. 10:**

25 Identify the per-person and per-lot annual assessments for 2014, 2015, and 2016.  
26

1 RESPONSE:

2 As of February 1, 2014 - \$456.00 per property per year or \$228.00 per person per  
3 year;

4 As of February 1, 2015 - \$462.00 per property per year or \$231.00 per person per  
5 year; and

6 As of February 1, 2016 - \$474.00 per property per year or \$237.00 per person per  
7 year.

8

9 **Interrogatory No. 11:**

10 Identify all real estate or facilities in Sun City that RCSC owns.

11 RESPONSE:

12 RCSC objects to this interrogatory on the ground it seeks merits-related discovery.

13 The scope of discovery is currently limited to class certification issues. RCSC's real  
14 property holdings do not bear on class certification. Moreover, it is unclear how such  
15 discovery would be relevant at the merits stage; the nature and extent of RCSC's real  
16 property holdings are not at issue in this lawsuit.

17

18 **Interrogatory No. 12:**

19 Identify all real estate or facilities in Sun City that you manage or operate.

20 RESPONSE:

21 RCSC objects to this interrogatory on the ground it seeks merits-related discovery.

22 The scope of discovery is currently limited to class certification issues. What properties  
23 RCSC manages does not bear on class certification in any way. Moreover, it is unclear  
24 how such discovery would be relevant at the merits stage; the nature and extent of  
25 RCSC's management responsibilities are not at issue in this lawsuit.

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**Interrogatory No. 13:**

Identify when you generally inform prospective Owners of the amount of PIF.

RESPONSE:

RCSC provides information regarding assessments and fees, including the PIF, on its web site, which is available for review at any time. In the context of a sale, RCSC normally provides the amount of the PIF when the information is requested by the title/escrow company at closing; the information is normally provided to the title/escrow company, not the prospective buyer whose identity is typically unknown to RCSC. Where there is a non-sale change in ownership, RCSC normally communicates the amount of the PIF directly to the new record owner.

**Interrogatory No. 14:**

Identify when you provide a copy of the Facilities Agreement to prospective Owners.

RESPONSE:

RCSC provides an exemplar of the Facilities Agreement on its web site, which is available for review at any time. In the context of a sale, RCSC normally provides the Facilities Agreement to the title/escrow company for execution at closing. Where there is a non-sale change in ownership, RCSC normally provides the Facilities Agreement directly to the new record owner for execution.

**Interrogatory No. 15:**

Identify any policies or practices relating to the timing of providing prospective Owners with the amount of assessments, transfer fees, and PIF.

1 RESPONSE:

2 RCSC has no other policy or practice beyond that described in its responses to  
3 interrogatory numbers 14 and 15 above.

4

5 **Interrogatory No. 16:**

6 Identify any recreational facilities in Sun City that are operated or maintained by  
7 SCHOA.

8 RESPONSE:

9 None to RCSC's knowledge.

10

11 **Interrogatory No. 17:**

12 Identify all properties where PIF has been reimbursed or waived since October 29,  
13 2009.

14 RESPONSE:

15 The circumstances under which a PIF refund is available are set forth in RCSC  
16 Board Policy No. 22 ("Policy 22," *see* Bates Nos. RCSC004380 – 004382). PIF refunds  
17 have been provided pursuant to Policy 22 in the past. The identity of the property owners  
18 who have received PIF refunds since October 29, 2009 is irrelevant to class certification  
19 and RCSC therefore objects to the interrogatory on this basis.

20

21 **Interrogatory No. 18:**

22 Identify the person most knowledgeable with respect to Facilities Agreements  
23 from January 1, 2000 to Present.

24 RESPONSE:

25 RCSC's legal counsel, James R. Hinton.

26

1 **FIRST SUPPLEMENTAL RESPONSE:**

2 **RCSC's Assistant General Manager, Christopher Herring.**

3  
4 **Interrogatory No. 19:**

5 Identify all individuals who participated in preparing answers to Plaintiff's [sic]  
6 First Set of Non-Uniform Interrogatories or responses to Plaintiff's [sic] First Request for  
7 Admissions or First Request for Production of Documents.

8 RESPONSE:

9 Christopher Herring, Janet M. Ek, and RCSC's counsel.

10  
11 **Interrogatory No. 19 [sic]:**

12 To the extent that your answer to any Request for Admission is anything other  
13 than an unqualified admission, state all facts that prevent you from admitting the Request.

14 RESPONSE:

15 See qualifications and explanations included in RCSC's responses to Plaintiffs'  
16 requests for admission.

17  
18 DATED this 17<sup>th</sup> day of May, 2017.

19 TIFFANY & BOSCO, P.A.

20  
21 By: /s/Christopher A. LaVoy

22 Christopher A. LaVoy

23 Nora L. Jones

24 Seventh Floor Camelback Esplanade II

25 2525 East Camelback Road

26 Phoenix, Arizona 85016-4237

*Attorneys for Recreation Centers of Sun City, Inc.*

1 ORIGINAL of the foregoing mailed  
2 and emailed this 17<sup>th</sup> day of May, 2017  
3 to:

4 Jonathan A. Dessaulles, Esq.  
5 Jacob A. Kubert, Esq.  
6 Ashley C. Hill, Esq.  
7 Dessaulles Law Group  
8 5353 North 16<sup>th</sup> Street, Suite 110  
9 Phoenix, Arizona 85016  
10 [jdessaulles@dessaulleslaw.com](mailto:jdessaulles@dessaulleslaw.com)  
11 [jkubert@dessaulleslaw.com](mailto:jkubert@dessaulleslaw.com)  
12 [ahill@dessaulleslaw.com](mailto:ahill@dessaulleslaw.com)  
13 *Attorneys for Plaintiffs*

14 By: /s/Emily Kingston

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# **EXHIBIT 6**

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.

4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and

5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 16 day of May, 2017.

  
\_\_\_\_\_  
(Signature)

By: Gay Sousek  
(Print Name)

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**VERIFICATION**

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  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.
4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 18 day of May, 2017.

Wendy S Wood  
(Signature)

By: WENDY S WOOD  
(Print Name)

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.
4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 12 day of May, 2017.

Ray Hicks

(Signature)

By: Ray Hicks

(Print Name)

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.
4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 13 day of May, 2017.

Linda Hicks  
(Signature)

By: Linda Hicks  
(Print Name)

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.
4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 22 day of May, 2017.

  
\_\_\_\_\_  
(Signature)

By: Jeff Payton  
(Print Name)  
Managing Partner Petunio LLC

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.

4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and

5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 14 day of May, 2017.

  
\_\_\_\_\_  
(Signature)

By: JEAN A. BATTISTA  
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(Print Name)

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**VERIFICATION**

1. I am one of the Plaintiffs in this matter;
2. I am authorized to make this verification on my behalf;
3. I have read the documents listed below and know the contents thereof:
  - a. *Supplemental* Response to Defendant's Uniform Interrogatories;
  - b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and
  - c. *Third* Supplemental Rule 26.1 Disclosure Statement.
4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 9<sup>th</sup> day of May, 2017.

Elizabeth Mercer  
(Signature)

By: Elizabeth Mercer  
(Print Name)

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4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 9<sup>th</sup> day of May, 2017.

  
(Signature)

By: Diane Patrakis  
(Print Name)

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4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 4th day of May, 2017.



(Signature)

By: Sherry Johnson-Traver  
(Print Name)

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5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 4<sup>th</sup> day of May, 2017.

  
(Signature)

By: Olga L. Carlson  
(Print Name)

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**VERIFICATION**

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3. I have read the documents listed below and know the contents thereof:

a. *Supplemental* Response to Defendant's Uniform Interrogatories;

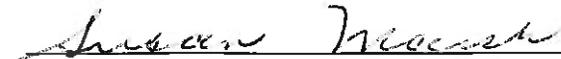
b. *Supplemental* Response to Defendant's Non-Uniform Interrogatories; and

c. *Third* Supplemental Rule 26.1 Disclosure Statement.

4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and

5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 2 day of May, 2017.

  
(Signature)

By: Susan Marsh  
(Print Name)

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**VERIFICATION**

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5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this \_\_\_\_ day of May, 2017.

Joanne S. Greathouse  
(Signature)

By: Joanne S. Greathouse  
(Print Name)

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EXECUTED on this 1<sup>st</sup> day of May, 2017.

*Arleif J. Moyer*  
(Signature)

By: ARLEIF J MOYER  
(Print Name)



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5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 1<sup>st</sup> day of May, 2017.

  
(Signature)

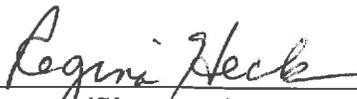
By: Arthur D. Neault  
(Print Name)

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5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 1<sup>st</sup> day of May, 2017.

  
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(Signature)

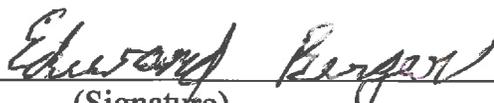
By: REGINA HECK  
(Print Name)

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EXECUTED on this 1 day of May, 2017.

  
(Signature)

By: EDWARD BERGER  
(Print Name)

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EXECUTED on this  1  day of May, 2017.

  
(Signature)

By: Carole Popperowitz  
(Print Name)

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5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 1<sup>st</sup> day of May, 2017.

Virginia Baughman  
(Signature)

By: VIRGINIA BAUGHMAN  
(Print Name)

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4. The contents of these documents are true and correct as to my own personal knowledge, except as to those statements made upon information and belief, and as to those, I believe them to be true and correct; and
5. I declare under penalty of perjury that the responses to interrogatories is true and correct.

EXECUTED on this 1 day of May, 2017.

Shirley A. Koers  
(Signature)

By: Shirley A. Koers  
(Print Name)



# **EXHIBIT 7**

1 Jonathan A. Dessaulles (019439) – [jdessaulles@dessauleslaw.com](mailto:jdessaulles@dessauleslaw.com)  
2 Jacob A. Kubert (027445) – [jkubert@dessauleslaw.com](mailto:jkubert@dessauleslaw.com)  
3 Ashley C. Hill (032483) – [ahill@dessauleslaw.com](mailto:ahill@dessauleslaw.com)

3 **DESSAULES LAW GROUP**  
4 5353 North 16<sup>th</sup> Street, Suite 110  
4 Phoenix, Arizona 85016  
5 Tel. 602.274.5400  
5 Fax 602.274.5401

6 *Attorneys for Plaintiffs*

7  
8 IN THE SUPERIOR COURT OF ARIZONA  
9 COUNTY OF MARICOPA

9 BOLTON and FLORENCE ANDERSON;  
10 SHARON ATWOOD; MICHAEL BAKER;  
10 DAVID and DAWNNA BARNES; JEAN  
11 BATTISTA; VIRGINIA BAUGHMAN;  
11 EDWARD BERGER; OLGA CARLSON;  
12 LAVINA DAWSON; CATHERINE FULLER;  
12 KENNETH GEGG; MARY GRANSDEN;  
13 JOANNE GREATHOUSE; REGINA HECK;  
13 RAY and LINDA HICKS; SHERRY  
14 JOHNSON-TRAVER, as Trustee of the Sherry  
14 Sue Johnson-Traver Trust; SHIRLEY KOERS;  
15 SUSAN MARSH; GEORGE and SHERYL  
15 MCCLAIN; ELIZABETH MERCER, as  
16 Trustee of the Elizabeth Scott Mercer Trust;  
16 ARLEF MOYER; JAMES NAPIER; ARTHUR  
17 NEAULT, as Trustee of the Arthur D. Neault  
17 Living Trust; DIANE PATRAKIS; PETUNIA  
18 LLC; CAROLE POPEROWITZ; PAUL and  
18 GLORIA RICHMAN; DONNA SIES; GAY  
19 SOUSEK; ANNE RANDALL STEWART, as  
19 Trustee of the Stewart Trust; THERESE  
20 TERRIS; WENDY and CHARLES WOOD;  
20 and ANGELO ZAPPELLA, individually and  
21 on behalf of the similarly situated,

22 Plaintiffs,

23 vs.

24 RECREATION CENTERS OF SUN CITY,  
24 INC., a nonprofit corporation,

25 Defendant.  
26 -----

No. CV2015-012458

**DECLARATION OF JONATHAN A.  
DESSAULES IN SUPPORT OF MOTION  
FOR CLASS CERTIFICATION**

1 RECREATION CENTERS OF SUN CITY,  
INC., a nonprofit corporation,

2 Third-Party Plaintiff,

3 vs.

4 LINDA MOYER and RICHARD STEWART,

5 Third-Party Defendants.  
6

7 I, Jonathan A. Dessales, declare under penalty of perjury that the foregoing is true and  
8 correct:

9 1. I am an attorney with the Dessales Law Group. I am one of the attorneys for  
10 Plaintiffs and the putative class in this matter. I make the statements in this Declaration on my  
11 personal knowledge.

12 2. My principal area of practice is civil and commercial litigation. I graduated law  
13 school in 1997 from the Dickinson School of Law of Pennsylvania State University and was  
14 licensed to practice in Pennsylvania and New Jersey in 1997. I have been licensed to practice  
15 law in the state of Arizona since 1999 and was subsequently licensed to practice in the state of  
16 California in 2001.

17 3. Jacob Kubert is an attorney who has been licensed to practice law in the State of  
18 New York since 2001 and the State of Arizona since 2009. He graduated from New York Law  
19 School.

20 4. Ashley Hill is an attorney who has been licensed to practice law in the State of  
21 Arizona since 2015. She graduated from Sandra Day O'Connor School of Law at Arizona State  
22 University.

23 5. I, Mr. Kubert, and Ms. Hill have not been disbarred, suspended, or the subject of  
24 any disciplinary proceedings in any jurisdiction where they have been admitted generally or *pro*  
25 *hac vice*.

1           6.     I have substantial experience representing homeowners and consumers in various  
2 matters, including, but not limited to, disputes with their homeowners or condominium  
3 associations and individual and consumer-based litigation.

4           7.     Prior to forming Dessauls Harper PLC in 2004, I worked as an associate in the  
5 Class Action Litigation section at the law firm of Bryan Cave for approximately two years.

6           8.     I have represented and counseled numerous individuals in actions involving  
7 planned communities and homeowner associations, including planned communities in which the  
8 association denied it was subject to the Planned Communities Act. *See Rodgers v. Anthem*  
9 *Community Council, Inc.*, 2011 WL 2586374 (Ariz. Ct. App. June 30, 2011). I have also  
10 represented large groups of owners who lived in planned communities in disputes against  
11 associations. *See Milsap, et al. v. Ventana Lakes Property Owners Association*, Case No.  
12 CV2006-017259 (representing more than 80 homeowners in dispute concerning association's  
13 failure to perform obligations under declaration).

14          9.     I was class counsel in *Ryan v. American Institute of Technology, Inc.*, Case No.  
15 2:10-cv-00979-LOA, which was a collective action on behalf of then current and former  
16 employees for unpaid overtime wages pursuant to the Fair Labor Standards Act, 29 U.S.C. §  
17 201 *et seq.*

18          10.    In *Ryan*, we successfully certified the case as a collective action under 29 U.S.C.  
19 § 216(b) and successfully negotiated a settlement on behalf of the opt-in plaintiffs that was  
20 approved by this Court.

21          11.    I have also served as local counsel in several class and derivative actions,  
22 including *Schindler v. Cole Holdings Corp., et al.*, Case No. 2:13-cv-00712-ROS, *Smilovits v.*  
23 *First Solar, Inc.*, Case No. CV12-0555-PHX-DGC, and *In re Freeport-McMoran Derivative*  
24 *Litigation*, Case No. CV2012-018351.

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