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6 Attorneys for Recreation Centers of Sun City, Inc.

7 **SUPERIOR COURT OF ARIZONA**

8 **COUNTY OF MARICOPA**

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

26 Plaintiff,

vs.

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

Defendant.

Case No. CV2015-012458

**ANSWER**

(Hon. Lori Bustamante)

1 For its answer to plaintiffs' complaint, defendant Recreation Centers of Sun City,  
2 Inc. ("RCSC") admits, denies, and otherwise responds as follows:

3 **PARTIES AND JURISDICTION**

4 1. RCSC admits that some of the plaintiffs are owners of real property in Sun  
5 City, Maricopa County, Arizona who have signed one or more Facilities Agreements  
6 with RCSC and denies all remaining allegations. RCSC affirmatively alleges that some  
7 named plaintiffs are not owners of property in Sun City, Arizona.

8 2. RCSC admits the allegations of paragraph 2.

9 3. RCSC admits that it is located in Maricopa County, but denies all  
10 remaining allegations of paragraph 3.

11 4. RCSC admits the allegations of paragraph 4.

12 **GENERAL ALLEGATIONS**

13 5. RCSC denies the allegations of paragraph 5.

14 6. RCSC denies the allegations of paragraph 6.

15 7. RCSC admits the allegations of paragraph 7.

16 8. RCSC admits the allegations of paragraph 8.

17 9. RCSC states that the Articles of Incorporation of Sun City Community  
18 Association ("SCCA") speaks for itself. RCSC denies all remaining allegations of  
19 paragraph 9.

20 10. RCSC states that the 1968 Articles of Incorporation for SCCA speaks for  
21 itself. RCSC denies all remaining allegations of paragraph 10.

22 11. RCSC lacks sufficient information to admit or deny paragraph 11 and  
23 therefore denies same.

24 12. RCSC admits that SCCA was created and existed for the purpose of  
25 managing, maintaining or improving certain recreational property within Sun City, but  
26 denies the remaining allegations of paragraph 12.

1           13.    RCSC admits the allegations of paragraph 13.

2           14.    RCSC states that the 1972 Amendment to RCSC's Articles of Incorporation  
3 speaks for itself. RCSC denies all remaining allegations of paragraph 14.

4           15.    RCSC admits that Del E. Webb Development Company ("Webb"),  
5 included various recreational facilities as part of the Sun City development and conveyed  
6 certain recreation properties to SCCA, and later RCSC, as phases of development were  
7 completed. RCSC denies all remaining allegations of paragraph 15.

8           16.    RCSC states that any warranty deeds from Webb to SCCA and RCSC  
9 speak for themselves. RCSC denies all remaining allegations of paragraph 16.

10          17.    RCSC admits that it operates certain recreation center complexes, golf  
11 courses, and bowling alleys, but denies the remaining allegations of paragraph 17.

12          18.    RCSC states that the RCSC's Restated Articles of Incorporation, as  
13 amended November 20, 2003, speaks for itself. RCSC denies all remaining allegations of  
14 paragraph 18.

15          19.    RCSC states that Sun City's Declaration of Covenants, Condition and  
16 Restrictions, as Amended and Restated, speaks for itself. RCSC denies all remaining  
17 allegations of paragraph 19.

18          20.    RCSC denies the allegations of paragraph 20.

19          21.    RCSC denies the allegations of paragraph 21.

20          22.    RCSC denies the allegations of paragraph 22.

21          23.    RCSC admits the allegations of paragraph 23.

22          24.    RCSC states that the Amended Bylaws speaks for itself. RCSC denies all  
23 remaining allegations of paragraph 24.

24          25.    RCSC denies the allegations of paragraph 25.

25          26.    RCSC admits that assessments are used to cover the costs of maintaining,  
26 operating and developing certain recreational facilities in Sun City, but denies all

1 remaining allegations of paragraph 26.

2 27. RCSC admits that it sets the rate that each Owner, as that term is defined in  
3 RCSC's Amended Bylaws ("Owner"), must pay, but denies the remaining allegations of  
4 paragraph 27.

5 28. RCSC denies the allegations of paragraph 28.

6 29. RCSC admits the allegations of paragraph 29, except for the  
7 characterization of assessments as "per lot." While RCSC previously referred to certain  
8 assessments as "per lot," RCSC now refers to assessments as either "per person" or "per  
9 property" to more accurately reflect the terms of the assessment. For purposes of this  
10 Answer, RCSC will refer to a "per property" basis where plaintiffs have designated  
11 certain assessments as "per lot."

12 30. RCSC admits that the "per person" assessment is one-half of the "per  
13 property" assessment, but denies all remaining allegations of paragraph 30. RCSC  
14 affirmatively alleges that assessments are not based on marital status or how many people  
15 reside in a property.

16 31. RCSC denies the allegations of paragraph 31. RCSC affirmatively alleges  
17 that the assessment basis of "per person" or "per property" is determined by the  
18 applicable assessment basis in place at the time that property was purchased and the  
19 continuing requirements as defined in Board Policy Resolution No. 28.

20 32. RCSC admits the allegations of paragraph 32, except for the allegation that  
21 an assessment is based on marital status or whether they reside alone, which RCSC  
22 denies. RCSC affirmatively alleges that the assessment basis of "per person" or "per  
23 property" is determined by the applicable assessment basis in place at the time that  
24 property was purchased and the continuing requirements as defined in Board Policy  
25 Resolution No. 28.

26 33. RCSC denies the allegations of paragraph 33. RCSC affirmatively alleges

1 that the assessment basis of “per person” or “per property” is determined by the  
2 applicable assessment basis in place at the time that property was purchased and the  
3 continuing requirements as defined in Board Policy Resolution No. 28.

4 34. RCSC admits that RCSC conducted a reconciliation process and denies the  
5 remaining allegations of paragraph 34. RCSC affirmatively alleges that this  
6 reconciliation process occurred in 2012, which led to some Owners seeing assessment  
7 changes in 2013 and 2014.

8 35. RCSC denies the allegations of paragraph 35. RCSC affirmatively alleges  
9 that annual property assessments are charged to all Owners.

10 36. RCSC admits that a Preservation and Improvement Fee (“PIF”) was an  
11 additional assessment adopted by the RCSC Board in 1999, but denies all remaining  
12 allegations of paragraph 36. RCSC affirmatively alleges that Owners are charged and/or  
13 refunded PIF as specified under the terms set forth in the Amended Bylaws, Article II,  
14 Section 4 and Board Policy Resolution No. 22.

15 37. RCSC denies the allegations of paragraph 37.

16 38. RCSC denies the allegations of paragraph 38.

17 39. RCSC admits the allegations of paragraph 39. RCSC affirmatively alleges  
18 that a \$300 transfer fee is charged per property transferred, as more specifically explained  
19 in the Amended Bylaws Article II, Section 4.F.

20 40. RCSC admits that PIF charges were initially \$700.00 and have increased  
21 over time. RCSC denies all remaining allegations of paragraph 40.

22 41. RCSC denies the allegations of paragraph 41. RCSC affirmatively alleges  
23 that PIF charges do not constitute a transfer fee as defined by A.R.S. § 33-1806(C).

24 42. RCSC denies the allegations of paragraph 42.

25 43. RCSC denies the allegations of paragraph 43.

26 44. RCSC denies the allegations of paragraph 44.

1           45.    RCSC states that RCSC's Restated Articles of Incorporation speaks for  
2 itself. RCSC denies all remaining allegations of paragraph 45.

3           46.    RCSC states that RCSC's Restated Articles of Incorporation speaks for  
4 itself. RCSC denies all remaining allegations of paragraph 46.

5           47.    RCSC states that RCSC's Restated Articles of Incorporation speaks for  
6 itself. RCSC denies all remaining allegations of paragraph 47.

7           48.    RCSC states that RCSC's Restated Articles of Incorporation speaks for  
8 itself. RCSC denies all remaining allegations of paragraph 48.

9           49.    RCSC states that RCSC's original bylaws speak for themselves. RCSC  
10 denies all remaining allegations of paragraph 49.

11          50.    RCSC denies the allegations of paragraph 50.

12          51.    RCSC states that RCSC's Amended Bylaws speaks for itself. RCSC denies  
13 the remaining allegations of paragraph 51.

14          52.    RCSC admits that all Owners may not necessarily qualify for membership  
15 and denies all remaining allegations of paragraph 52.

16          53.    RCSC states that RCSC's Amended Bylaws speaks for itself. RCSC denies  
17 all remaining allegations of paragraph 53.

18          54.    RCSC denies the allegations of paragraph 54. RCSC affirmatively alleges  
19 that no Owners ceased to be Members, as that term is defined in RCSC's Amended  
20 Bylaws ("Member"), when RCSC adopted the "75-mile rule."

21          55.    RCSC states that RCSC's Amended Bylaws speaks for itself. RCSC denies  
22 all remaining allegations of paragraph 55.

23          56.    RCSC states that RCSC's Amended Bylaws speaks for itself. RCSC denies  
24 all remaining allegations of paragraph 56.

25          57.    RCSC admits the allegations of paragraph 57.

26          58.    RCSC admits that certain Owners do not qualify for membership as

1 specified in the Amended Bylaws and denies all remaining allegations of paragraph 58.  
2 RCSC affirmatively alleges that Owners are entitled to membership if they meet the  
3 qualifications set forth in the Amended Bylaws.

4 59. RCSC denies the allegations of paragraph 59.

5 60. RCSC denies the allegations of paragraph 60.

6 61. RCSC admits that all Owners are obligated to pay assessments and denies  
7 all remaining allegations of paragraph 61. RCSC affirmatively alleges that Member  
8 voting rights are set forth in RCSC's Amended Bylaws and Articles of Incorporation.

9 62. RCSC denies the allegations of paragraph 62.

10 63. RCSC denies the allegations of paragraph 63.

11 **ALLEGATIONS COMMON TO ALL CLASS MEMBERS**

12 64. RCSC denies the allegations of paragraph 64.

13 65. RCSC denies the allegations of paragraph 65.

14 66. RCSC denies the allegations of paragraph 66.

15 67. RCSC denies the allegations of paragraph 67.

16 68. RCSC denies the allegations of paragraph 68.

17 69. RCSC lacks sufficient information to either admit or deny the allegations of  
18 paragraph 69 and therefore denies same.

19 70. RCSC denies the allegations of paragraph 70.

20 71. RCSC denies the allegations of paragraph 71.

21 **ALLEGATIONS SPECIFIC TO THE NAMED PLAINTIFFS**

22 72. RCSC admits the allegations of paragraph 72.

23 73. RCSC admits the allegations of paragraph 73.

24 74. RCSC admits the allegations of paragraph 74, except for the allegation that  
25 a Facilities Agreement "imposes" assessments and PIF, which RCSC denies. RCSC  
26 affirmatively alleges that an Owner is obligated to pay annual assessments and PIF as

1 specified by the Amended Bylaws, Article II, Section 4.

2 75. RCSC denies that any individual is forced to pay an extra fee for a privilege  
3 card and admits the remaining allegations of paragraph 75.

4 76. RCSC admits that Jean Battista purchased a Sun City property in 2004 and  
5 was assessed on a “per property” basis and responsible for a PIF fee in an amount  
6 unidentified in the Facilities Agreement. RCSC further admits that Jean Battista bought a  
7 second Sun City property in 2007 and was assessed on a “per property” basis and was  
8 responsible for a PIF charge and that she paid PIF charges on both properties. RCSC  
9 lacks sufficient information to admit or deny all remaining allegations of paragraph 76  
10 and therefore denies same. RCSC affirmatively alleges that assessments are not based on  
11 marital status or how many people reside in a property.

12 77. RCSC admits the allegations of paragraph 77, except for the allegations that  
13 RCSC “unilaterally changed” the rate for a property owned by Virginia Baughman in  
14 2012 and that renters are “forced” to pay for privilege cards, which RCSC denies.

15 78. RCSC admits the allegations of paragraph 78, except for the allegation that  
16 Edward Berger lives alone. RCSC lacks sufficient information to admit or deny the  
17 allegation that Mr. Berger lives alone and therefore denies same. RCSC affirmatively  
18 alleges that assessments are not based on marital status or how many people reside in a  
19 property.

20 79. RCSC admits the allegations of paragraph 79. RCSC affirmatively alleges  
21 that Olga Carlson, as trustee of Carlson Family Trust Agreement dated June 8, 2004,  
22 executed a new Facilities Agreement in 2004, when the property was transferred into the  
23 name of the trust.

24 80. RCSC admits the allegations of paragraph 80, except for the allegation that  
25 Lavina Dawson lives alone. RCSC lacks sufficient information to either admit or deny  
26 the allegation that Ms. Dawson lives alone and therefore denies same. RCSC



1 affirmatively alleges that assessments are not based on marital status or how many people  
2 reside in a property.

3 81. RCSC admits the allegations of paragraph 81, except for the allegation that  
4 Catherine Fuller lives alone. RCSC lacks sufficient information to either admit or deny  
5 the allegation that Ms. Fuller lives alone and therefore denies same. RCSC affirmatively  
6 alleges that assessments are not based on marital status or how many people reside in a  
7 property.

8 82. RCSC admits the allegations of paragraph 82. RCSC affirmatively alleges  
9 that, in 1993, Kenneth Gegg sold the property he had purchased a year earlier and  
10 therefore currently only owns one Sun City property.

11 83. RCSC admits the allegations of paragraph 83, except for the allegation that  
12 Mary Gransden lives alone. RCSC lacks sufficient information to either admit or deny  
13 the allegation that Ms. Gransden lives alone and therefore denies same. RCSC  
14 affirmatively alleges that assessments are not based on marital status or how many people  
15 reside in a property.

16 84. RCSC admits the allegations of paragraph 84.

17 85. RCSC admits the allegations of paragraph 85.

18 86. RCSC admits that Kenneth Raymond Hicks and Linda Hicks purchased  
19 property in Sun City and lacks sufficient information about Mr. and Mrs. Hicks' primary  
20 residence or whether the property is a condominium and therefore denies same. RCSC  
21 denies the remaining allegations of paragraph 86. RCSC affirmatively alleges that Mr.  
22 and Mrs. Hicks purchased a property in Sun City in 2013.

23 87. RCSC denies the allegations of paragraph 87. RCSC affirmatively alleges  
24 that Sherry Johnson-Traver is trustee of the Sherry Sue Johnson-Traver Trust, which  
25 owns property in Sun City.

26 88. RCSC admits the allegations of paragraph 88, except the allegations that

1 Shirley Koers paid PIF in the amount of \$3,000 and that Ms. Koers' mother named her in  
2 a beneficiary deed. RCSC denies that Ms. Koers paid PIF in the amount of \$3,000 and  
3 affirmatively alleges that Ms. Koers paid PIF in the amount of \$2,500. RCSC lacks  
4 sufficient information to admit or deny the allegation that Anne K. Schmidt is Ms. Koers'  
5 mother and therefore denies same.

6 89. RCSC admits the allegations of paragraph 89, except for the allegation that  
7 Shirley Koers lives alone. RCSC lacks sufficient information to admit or deny the  
8 allegation that Ms. Koers lives alone and therefore denies same. RCSC affirmatively  
9 alleges that assessments are not based on marital status or how many people reside in a  
10 property.

11 90. RCSC admits the allegations of paragraph 90.

12 91. RCSC denies the allegations of paragraph 91. RCSC affirmatively alleges  
13 that Elizabeth Mercer is trustee of the Elizabeth Scott Mercer Trust dated April 14, 1982,  
14 which owns property in Sun City.

15 92. RCSC denies the allegations of paragraph 92, except for the allegations that  
16 Arlef Moyer purchased property via a family trust in 2003 and is subject to a "per  
17 property" assessment, which RCSC admits. RCSC affirmatively alleges that assessments  
18 are not based on marital status or how many people reside in a property.

19 93. RCSC admits that James Napier owns property in Sun City and has  
20 executed a "per person" Facilities Agreement with no PIF specified in the Facilities  
21 Agreement. RCSC lacks sufficient information about Mr. Napier's concerns or whether  
22 the property was inherited and therefore denies same. RCSC denies all remaining  
23 allegations of paragraph 93. RCSC further affirmatively alleges that RCSC does not  
24 refuse to honor Facilities Agreement and does not unilaterally alter agreements.

25 94. RCSC denies the allegations of paragraph 94. RCSC affirmatively alleges  
26 that Arthur Neault, as trustee of the Arthur D. Neault Living Trust dated April 23, 2004,

1 purchased property in Sun City in 2012 and executed a “per property” Facilities  
2 Agreement and is obligated to pay PIF.

3 95. RCSC admits the allegations of paragraph 95, except for the allegations that  
4 Diane Patrakis lives alone. RCSC lacks sufficient information to admit or deny the  
5 allegation that Ms. Patrakis lives alone and therefore denies same. RCSC affirmatively  
6 alleges that assessments are not based on marital status or how many people reside in a  
7 property.

8 96. RCSC denies the allegations of paragraph 96. RCSC affirmatively alleges  
9 that Payton Petunia, LLC, and not Jefferson Payton, purchased two properties in Sun City  
10 in 2013 and paid \$3,000 in PIF for each property with assessments on a “per property”  
11 basis. RCSC further affirmatively alleges that Payton Petunia, LLC sold both properties  
12 in 2015.

13 97. RCSC admits the allegations of paragraph 97. RCSC affirmatively alleges  
14 that Carole Poperowitz’s Facilities Agreement mistakenly stated a “per person” rate and  
15 that the Amended Bylaws and Board Policy Resolution No. 28 specified that her property  
16 was subject to a “per property” rate.

17 98. RCSC admits the allegations of paragraph 98, except for the allegation that  
18 in the event Paul or Gloria Richman dies, “the surviving spouse would pay twice the  
19 amount paid by other members,” which RCSC denies. RCSC affirmatively alleges that,  
20 in the event of one of the Deeded Owner’s death, Mr. or Mrs. Richman may pay twice the  
21 amount paid by other Owners who bought their Sun City properties prior to February 1,  
22 2003.

23 99. RCSC admits that Donna Sies purchased a Sun City property in 2009 and  
24 paid \$3,000 in PIF and denies the remaining allegations of paragraph 99. RCSC  
25 affirmatively alleges that Ms. Sies sold her Sun City property in 2014 and therefore does  
26 not pay an annual assessment at any rate. RCSC affirmatively alleges that assessments

1 are not based on marital status or how many people reside in a property.

2 100. RCSC admits the allegations of paragraph 100, except for the allegation  
3 that Gay Sousek was improperly not refunded PIF and that she is single. RCSC denies  
4 that Ms. Sousek was improperly not refunded PIF. RCSC lacks sufficient information as  
5 to whether or not Ms. Sousek is single and therefore denies same. RCSC affirmatively  
6 alleges that assessments are not based on marital status or how many people reside in a  
7 property.

8 101. RCSC denies the allegations of paragraph 101. RCSC affirmatively alleges  
9 that Anne Randall Stewart is co-trustee of the Stewart Trust dated October 24, 2000,  
10 which owns property in Sun City. RCSC further affirmatively alleges that RCSC does  
11 not refuse to honor Facilities Agreement and does not unilaterally alter agreements to suit  
12 it owns whims. RCSC further affirmatively alleges that voting rights are based on  
13 membership and not assessments. RCSC affirmatively alleges that assessments are not  
14 based on marital status or how many people reside in a property.

15 102. RCSC admits the allegations of paragraph 102, except the allegation that  
16 Therese Terris received title to certain property from her brother. RCSC lacks sufficient  
17 information to admit or deny the allegation that Ms. Terris received title to certain  
18 property from her brother and therefore denies same.

19 103. RCSC admits the allegations of paragraph 103, except the allegation that  
20 Wendy and Charles Wood had their membership cards rescinded after the adoption of the  
21 75-mile rule, which RCSC denies.

22 104. RCSC admits the allegations of paragraph 104, except for the allegation  
23 about Angelo Zappella's concerns. RCSC lacks sufficient information about Mr.  
24 Zappella's concerns and therefore denies same. RCSC affirmatively alleges that it does  
25 not and never has refused to honor Facilities Agreements and has not unilaterally altered  
26 agreements to suit its own whims.

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**COUNT ONE**  
**(Declaratory Judgment re Application of Planned Community Act)**

105. In answering paragraph 105, RCSC reiterates all of the above admissions, denials, and allegations as if set forth in full.

106. RCSC denies the allegations of paragraph 106.

107. RCSC denies the allegations of paragraph 107.

108. RCSC admits that its longstanding position is that it is not an association subject to Arizona's Planned Communities Act (the "Act") and therefore not obligated to conform its actions to the requirements of the Act. RCSC lacks sufficient information as to admit or deny the remaining allegations of paragraph 108 and therefore denies same.

109. RCSC denies the allegations of paragraph 109.

110. RCSC denies the allegations of paragraph 110.

111. RCSC denies the allegations of paragraph 111.

**COUNT TWO**  
**(Declaratory Judgment re Unlawful Corporate Acts)**

112. In answering paragraph 112, RCSC reiterates all of the above admissions, denials, and allegations as if set forth in full.

113. RCSC denies the allegations of paragraph 113.

114. RCSC denies the allegations of paragraph 114.

115. RCSC denies the allegations of paragraph 115.

116. RCSC denies the allegations of paragraph 116.

117. RCSC denies the allegations of paragraph 117.

118. RCSC denies the allegations of paragraph 118.

**COUNT THREE**  
**(Declaratory Judgment re Amended Bylaws)**

119. In answering paragraph 119, RCSC reiterates all of the above admissions, denials, and allegations as if set forth in full.

120. RCSC denies the allegations of paragraph 120.

1 121. RCSC denies the allegations of paragraph 121.

2 122. RCSC denies the allegations of paragraph 122.

3 123. RCSC denies the allegations of paragraph 123.

4 124. RCSC denies the allegations of paragraph 124.

5 125. RCSC denies the allegations of paragraph 125.

6 126. RCSC denies the allegations of paragraph 126.

7 **COUNT FOUR**

8 **(Declaratory Judgment re RCSC Membership)**

9 127. In answering paragraph 127, RCSC reiterates all of the above admissions,  
10 denials, and allegations as if set forth in full.

11 128. RCSC denies the allegations of paragraph 128.

12 129. RCSC denies the allegations of paragraph 129.

13 130. RCSC denies the allegations of paragraph 130.

14 131. RCSC denies the allegations of paragraph 131.

15 132. RCSC denies the allegations of paragraph 132.

16 133. RCSC admits the allegations of paragraph 133.

17 134. RCSC denies the allegations of paragraph 134.

18 **COUNT FIVE**

19 **(Breach of Contract – Annual Assessment)**

20 135. In answering paragraph 135, RCSC reiterates all of the above admissions,  
21 denials, and allegations as if set forth in full.

22 136. RCSC admits that its Bylaws and Articles of Incorporation constitute a  
23 contract between RCSC and Members and that Facilities Agreements constitute a  
24 contract between RCSC and Owners and denies all remaining allegations of paragraph  
25 136.

26 137. RCSC denies the allegations of paragraph 137.

138. RCSC denies the allegations of paragraph 138.

1 139. RCSC denies the allegations of paragraph 139.

2 140. RCSC denies the allegations of paragraph 140.

3 141. RCSC denies the allegations of paragraph 141.

4 142. RCSC denies the allegations of paragraph 142.

5 143. RCSC denies the allegations of paragraph 143.

6 144. RCSC denies the allegations of paragraph 144.

7 145. RCSC denies the allegations of paragraph 145.

8 146. RCSC denies the allegations of paragraph 146.

9 **COUNT SIX**

10 **(Breach of Covenant of Good Faith and Fair Dealing – Annual Assessment)**

11 147. In answering paragraph 147, RCSC reiterates all of the above admissions,  
12 denials, and allegations as if set forth in full.

13 148. RCSC admits the allegations of paragraph 148.

14 149. RCSC denies the allegations of paragraph 149.

15 150. RCSC denies the allegations of paragraph 150.

16 **COUNT SEVEN**

17 **(Breach of Contract – PIF)**

18 151. In answering paragraph 151, RCSC reiterates all of the above admissions,  
19 denials, and allegations as if set forth in full.

20 152. RCSC admits that its Bylaws and Articles of Incorporation constitute a  
21 contract between RCSC and Members and that Facilities Agreements constitute a  
22 contract between RCSC and Owners and denies all remaining allegations of paragraph  
23 136.

24 153. RCSC denies the allegations of paragraph 153.

25 154. RCSC denies the allegations of paragraph 154.

26 155. RCSC denies the allegations of paragraph 155.

156. RCSC denies the allegations of paragraph 156.

1 157. RCSC denies the allegations of paragraph 157.

2 158. RCSC denies the allegations of paragraph 158.

3 159. RCSC denies the allegations of paragraph 159.

4 **COUNT EIGHT**  
5 **(Breach of Covenant of Good Faith and Fair Dealing – PIF)**

6 160. In answering paragraph 160, RCSC reiterates all of the above admissions,  
7 denials, and allegations as if set forth in full.

8 161. RCSC admits the allegations of paragraph 161.

9 162. RCSC denies the allegations of paragraph 162.

10 163. RCSC denies the allegations of paragraph 163.

11 **COUNT NINE**  
12 **(Violation of Statute – PIF)**

13 164. In answering paragraph 164, RCSC reiterates all of the above admissions,  
14 denials, and allegations as if set forth in full.

15 165. RCSC denies the allegations of paragraph 165.

16 166. RCSC denies the allegations of paragraph 166.

17 167. RCSC denies the allegations of paragraph 167.

18 **AFFIRMATIVE DEFENSES**

19 168. RCSC denies all allegations not expressly admitted herein.

20 169. Without waiving any other rights or defenses, RCSC asserts that it acted in  
21 accordance with its rights and duties as set forth in its governing documents and  
22 applicable law.

23 170. Without waiving any other rights or defenses, RCSC asserts that this action  
24 is prohibited by A.R.S. § 10-3304 because plaintiffs do not have at least 50 members or  
25 10% of the voting power. RCSC further asserts that the exception in subsection (B) of  
26 A.R.S. §10-3304 is not applicable because RCSC is not a “planned community.”

171. Without waiving any other rights or defenses, RCSC asserts that it is not a



1 “planned community” and therefore is not subject to the obligations that Title 33 of the  
2 Arizona Revised Statutes requires of planned communities.

3 172. Without waiving any other rights or defenses, RCSC asserts that this action  
4 is barred because plaintiffs have waived certain claims.

5 173. Without waiving any other rights or defenses, RCSC asserts that this action  
6 is barred by the affirmative defense of laches, due to significant delay in plaintiffs  
7 asserting any alleged claims.

8 174. Without waiving any other rights or defenses, RCSC asserts that this action  
9 is barred by the affirmative defense of estoppel.

10 175. Without waiving any other rights or defenses, RCSC affirmatively alleges  
11 that this action is barred by the affirmative defense of unclean hands.

12 176. Without waiving any other rights or defenses, RCSC affirmatively alleges  
13 that this action is barred by the applicable statute of limitations.

14 177. Discovery may reveal the existence and applicability of additional  
15 affirmative defenses. For the specific purpose of not waiving any defenses which are  
16 revealed or clarified through further discovery, RCSC preserves those affirmative  
17 defenses as contained within Arizona Rules of Civil Procedure 4, 8, 12 and 19, as well as  
18 any applicable case law.

19 178. Because this is a contested action arising out of the Facilities Agreements  
20 and other operative agreements between the parties, RCSC is entitled to its costs and  
21 attorneys’ fees pursuant to A.R.S. §§ 12-341, 12-341.01.

22 179. RCSC is entitled to recover its costs pursuant to A.R.S. § 12-1840.

23 WHEREFORE, defendant RCSC respectfully requests that the Court dismiss the  
24 Complaint with prejudice; award RCSC costs and attorneys’ fees pursuant to A.R.S. §§  
25 12-341, 12-341.01, and 12-1840, and terms of any other operative agreements between  
26 the parties; and grant such other relief as the Court deems just and equitable.

1 RESPECTFULLY SUBMITTED this 4th day of December, 2015.

2 TIFFANY & BOSCO, P.A.

3 By: /s/Christopher A. LaVoy

4 Christopher A. LaVoy

5 Nora Jones

6 Seventh Floor Camelback Esplanade II

7 2525 East Camelback Road

8 Phoenix, Arizona 85016-4237

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

10 ORIGINAL of the foregoing  
11 **electronically filed** and a **COPY mailed**  
12 this 11<sup>th</sup> day of December, 2015 to:

13 Jonathan A. Dessales

14 F. Robert Connelly

15 Douglas C. Wigley

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