

1 **FREEMAN MATHIS & GARY, LLP**

2 Lisa M. Lampkin SBN 036944

3 Megan E. Ritenour SBN 034677

4 4343 N. Scottsdale Rd., Suite 150

5 Scottsdale, AZ 85251

6 T: 602.805.9878

7 Lisa.Lampkin@fmglaw.com

8 Megan.Ritenour@fmglaw.com

9 *Attorneys for Defendant*

10
11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 AZNH REVOCABLE TRUST, by and
14 through JOHN and SUSAN
15 SULLIVAN, TRUSTEES, REAL
16 PARTIES IN INTEREST,

17 Plaintiffs,

18 v.

19 SUNLAND SPRINGS VILLAGE
20 HOMEOWNERS ASSOCIATION,

21 Defendant.

Case No. CV2023-096192

**ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT**

22 Defendant Sunland Springs Village Homeowners Association ("Sunland Springs
23 Village HOA") hereby submits its Answer to Plaintiff AZNH Revocable Trust, by and
24 through John and Susan Sullivan, Trustees, Real Parties in Interest ("Plaintiffs")
25 Complaint for Declaratory Judgment ("Complaint") as follows:

26 **I. Parties**

27 1. Admitted.

28 2. Sunland Springs Village HOA is without sufficient information to admit or
deny the allegations of Paragraph 2, and therefore denies same and demands strict proof
thereof.

3. Sunland Springs Village HOA is without sufficient information to admit or

1 deny the allegations of Paragraph 3, and therefore denies same and demands strict proof
2 thereof.

3 **II. Venue & Jurisdiction**

4 4. Without admitting Plaintiffs' assertions regarding jurisdiction and venue,
5 Sunland Springs Village HOA consents to jurisdiction and venue for purposes of this
6 lawsuit only. To the extent that any of the allegations set forth in Paragraph 4 are
7 intended to allege any form of liability or wrongdoing on the part of Sunland Springs
8 Village HOA, the allegations are specifically denied.

9 5. Without admitting Plaintiffs' assertions regarding jurisdiction and venue,
10 Sunland Springs Village HOA consents to jurisdiction and venue for purposes of this
11 lawsuit only. To the extent that any of the allegations set forth in Paragraph 5 are
12 intended to allege any form of liability or wrongdoing on the part of Sunland Springs
13 Village HOA, the allegations are specifically denied.

14 6. Sunland Springs Village HOA admits that A.R.S. § 12-1832 reads: "Any
15 person interested under a deed, will, written contract or other writings constituting a
16 contract, or whose rights, status or other legal relations are affected by a statute,
17 municipal ordinance, contract or franchise, may have determined any question of
18 construction or validity arising under the instrument, statute, ordinance, contract, or
19 franchise and obtain a declaration of rights, status or other legal relations thereunder."
20 Sunland Springs Village HOA is without sufficient information to admit or deny the
21 remaining allegations of Paragraph 6, and therefore denies same and demands strict
22 proof thereof.

23 **III. Planned Community Open Meeting Requirements – Relevant Excerpts &**
24 **Homeowner Rights**

25 7. Sunland Springs Village HOA admits that A.R.S. § 33-1804 A. reads:

26
27 Notwithstanding any provision in the declaration, bylaws or other
28 documents to the contrary, all meetings of the members' association and the
board of directors, and any regularly scheduled committee meetings, are

1 open to all members of the association or any person designated by a
2 member in writing as the member's representative and all members or
3 designated representatives so desiring shall be permitted to attend and speak
4 at an appropriate time during the deliberations and proceedings. The board
5 may place reasonable time restrictions on those persons speaking during the
6 meeting but shall permit a member or member's designated representative to
7 speak once after the board has discussed a specific agenda item but before
8 the board takes formal action on that item in addition to any other
9 opportunities to speak. The board shall provide for a reasonable number of
10 persons to speak on each side of an issue. Persons attending may audiotape
11 or videotape those portions of the meetings of the board of directors and
12 meetings of the members that are open. The board of directors of the
13 association shall not require advance notice of the audiotaping or
14 videotaping and may adopt reasonable rules governing the audiotaping and
15 videotaping of open portions of the meetings of the board and the
16 membership, but such rules shall not preclude such audiotaping or
17 videotaping by those attending, unless the board audiotapes or videotapes
18 the meeting and makes the unedited audiotapes or videotapes available to
19 members on request without restrictions on its use as evidence in any
20 dispute resolution process. Any portion of a meeting may be closed only if
21 that closed portion of the meeting is limited to consideration of one or more
22 of the following:

- 23 1. Legal advice from an attorney for the board or the association. On
24 final resolution of any matter for which the board received legal
25 advice or that concerned pending or contemplated litigation, the
26 board may disclose information about that matter in an open meeting
27 except for matters that are required to remain confidential by the
28 terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member
of the association, an individual employee of the association or an
individual employee of a contractor for the association, including
records of the association directly related to the personal, health or
financial information about an individual member of the association,
an individual employee of the association or an individual employee
of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health
records of or specific complaints against an individual employee of

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the association or an individual employee of a contractor of the association who works under the direction of the association.

5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

To the extent that any of the allegations set forth in Paragraph 7 are intended to allege any form of liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are specifically denied.

8. Sunland Springs Village HOA admits that A.R.S. § 33-1804 D. reads:

Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the date, time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

To the extent that any of the allegations set forth in Paragraph 8 are intended to allege any form of liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are specifically denied.

9. Sunland Springs Village HOA admits that A.R.S. § 33-1804 E. reads:

Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.

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- 2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed for the forty-eight hours required for notice. At any emergency meeting called by the board of directors, the board of directors may act only on emergency matters. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.
- 3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.
- 4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

To the extent that any of the allegations set forth in Paragraph 9 are intended to allege any form of liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are specifically denied.

10. Sunland Springs Village HOA admits that A.R.S. § 33-1804 F. reads:

It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, including members of the board of directors and any community manager, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

1 To the extent that any of the allegations set forth in Paragraph 10 are intended to allege
2 any form of liability or wrongdoing on the part of Sunland Springs Village HOA, the
3 allegations are specifically denied.

4 11. The allegations set forth in Paragraph 11 of Plaintiffs' Complaint
5 constitute legal conclusions rather than factual allegations to which no response is
6 required. To the extent there are factual allegations alleged therein and to the extent that
7 any of the allegations set forth in Paragraph 11 are intended to allege any form of
8 liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are
9 specifically denied.

10 **IV. Construing the Open Meeting Statute – No Voting in Closed Meetings**

11 12. Sunland Springs Village HOA reasserts its answer to Paragraph 7 as if
12 fully set forth in response to Paragraph 12. Sunland Springs Village HOA further
13 answers that the allegations set forth in Paragraph 12 of Plaintiffs' Complaint constitute
14 legal conclusions rather than factual allegations to which no response is required. To the
15 extent there are factual allegations alleged therein and to the extent that any of the
16 allegations set forth in Paragraph 12 are intended to allege any form of liability or
17 wrongdoing on the part of Sunland Springs Village HOA, the allegations are specifically
18 denied.

19 13. The allegations set forth in Paragraph 13 of Plaintiffs' Complaint
20 constitute legal conclusions rather than factual allegations to which no response is
21 required. To the extent there are factual allegations alleged therein and to the extent that
22 any of the allegations set forth in Paragraph 13 are intended to allege any form of
23 liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are
24 specifically denied.

25 14. Sunland Springs Village HOA is without sufficient information to admit or
26 deny the allegations of Paragraph 14, and therefore denies same and demands strict
27 proof thereof.

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1 15. The allegations set forth in Paragraph 15 of Plaintiffs' Complaint
2 constitute legal conclusions rather than factual allegations to which no response is
3 required. To the extent there are factual allegations alleged therein and to the extent that
4 any of the allegations set forth in Paragraph 15 are intended to allege any form of
5 liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are
6 specifically denied.

7 16. The allegations set forth in Paragraph 16 of Plaintiffs' Complaint
8 constitute legal conclusions rather than factual allegations to which no response is
9 required. To the extent there are factual allegations alleged therein and to the extent that
10 any of the allegations set forth in Paragraph 16 are intended to allege any form of
11 liability or wrongdoing on the part of Sunland Springs Village HOA, the allegations are
12 specifically denied.

13 17. Sunland Springs Village HOA admits that it received a document titled
14 "Board of Directors Meetings Under ARS 33-1804" from Plaintiff John Sullivan.
15 Sunland Springs Village HOA admits that its attorney, Chad Gallacher of Maxwell &
16 Morgan, issued responsive correspondence dated December 7, 2023 to Mr. Sullivan.
17 Sunland Springs Village HOA denies the remaining allegations of Paragraph 17.

18 18. Sunland Springs Village HOA admits that during a December 15, 2023
19 Board Meeting, Mr. Paul Marena stated that the December 7, 2023 correspondence
20 from Mr. Gallacher to Mr. Sullivan constitute the Board's "final response." Sunland
21 Springs Village HOA denies the remaining allegations of Paragraph 18.

22 **V. The Basis for Declaratory Judgment**

23 19. Admitted.

24 20. Denied.

25 21. Denied.

26 a. Denied.

27 b. Denied.

28 c. Denied.

1 d. Denied.

2 e. Denied.

3 **VI. Prayer for Declaratory Judgment**

4 22. Sunland Springs Village HOA incorporates by reference its answers to
5 Paragraphs 1 through 21 as if fully set forth in this Paragraph 22.

6 23. Sunland Springs Village HOA denies that Plaintiffs are entitled to the
7 declarations they seek in Paragraph 23.

8 24. Sunland Springs Village HOA denies that Plaintiffs are entitled to the
9 declarations they seek in Paragraph 24, including subparagraphs a through e.

10 25. Sunland Springs Village HOA denies that Plaintiffs are entitled to the
11 declarations they seek in Paragraph 25.

12 26. Sunland Springs Village HOA denies that Plaintiffs are entitled to costs
13 pursuant to A.R.S. § 12-1840.

14 **AFFIRMATIVE DEFENSES**

15 In addition, without assuming the burden of proof on any matters that would
16 otherwise rest with Plaintiffs, and expressly denying any and all wrongdoing, Defendant
17 Sunland Springs Village HOA alleges the following affirmative defenses:

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs' Complaint and each cause of action set forth therein fails to allege facts
20 sufficient to state a claim against Sunland Springs Village HOA upon which relief can be
21 granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 The claims set forth against Sunland Springs Village HOA in Plaintiffs'
24 Complaint are barred, in whole or in part, by the doctrine of waiver.

25 **THIRD AFFIRMATIVE DEFENSE**

26 The claims set forth against Sunland Springs Village HOA in Plaintiffs'
27 Complaint are barred, in whole or in part, by the doctrine of estoppel.

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FOURTH AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint does not set forth sufficient facts to allow Sunland Springs Village HOA to determine all potential affirmative defenses. Accordingly, Sunland Springs Village HOA reserves its right to assert additional defenses when such information is ascertained through discovery and further investigation. So as to not waive any available affirmative defenses, Defendant alleges, as if fully set forth herein, all available affirmative defenses identified at Rule 8(c)(1) and 12(b) of the Arizona Rules of Civil Procedure.

GENERAL DENIAL

Defendant denies each and every allegation in Plaintiffs’ Complaint not specifically admitted herein.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment in its favor and against Plaintiffs, on all causes of action as follows:

1. That Plaintiffs’ Complaint be dismissed in its entirety, with Plaintiffs taking nothing hereby;
2. Awarding Defendant its reasonable costs and disbursements, including reasonable attorneys’ fees incurred herein; and
3. For such other and further relief as the Court deems proper.

Dated this 25th day of January, 2024.

FREEMAN MATHIS & GARY, LLP

By: /s/ Megan E. Ritenour
Lisa M. Lampkin
Megan E. Ritenour
*Attorneys for Defendant Sunland Springs
Village Homeowners Association*

1 ORIGINAL of the foregoing e-filed
This 25th day January, 2024.

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3 COPY of the foregoing e-mailed this
same date to:

4 John F. Sullivan, Esq.
1909 E. Ray Road
5 Suite 9198
Chandler, Arizona 85225
6 Info@sullivanappeals.com
Attorneys for Plaintiff
7

8 By: /s/ Deanne Gibeault

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