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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

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

18 Plaintiffs,

19 v.

20 SUNLAND SPRINGS VILLAGE
21 HOMEOWNERS ASSOCIATION,

22 Defendant.

Case No. CV2023-096192

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S STATEMENT OF FACTS
SUPPORTING SUMMARY
JUDGMENT AND DEFENDANT'S
SEPARATE STATEMENT OF FACTS
IN OPPOSITION**

Assigned to the Hon. Rodrick Coffey

23 Pursuant to Arizona Rules of Civil Procedure 56(c), Defendant Sunland Springs
24 Village Homeowners Association ("SSV HOA") hereby submits its Response to
25 Plaintiff's Statement of Facts Supporting Summary Judgment and Defendant's Separate
26 Statement of Facts as follows:

27 **I. Defendant's Response to Plaintiff's Separate Statement of Facts**

28 1. For purposes of this motion, the following facts asserted by Plaintiff in
support of its motion are uncontroverted: 1 through 7, 9, and 12 through 17.

2. Defendant disputes Plaintiff's asserted facts Nos. 8, 10 and 11 as follows:

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<u>Plaintiff's Supporting Facts and Evidence</u>	<u>Defendant's Response and Supporting Evidence</u>
<p><u>Plaintiff's Fact No. 8:</u> Prior to all Board meetings, the HOA manager decides which matters appear on an open meeting or closed meeting agenda, and prepares proposed meeting agendas. Thereafter, the Board President meets with the HOA manager to review the proposed meeting agendas to confirm that each item has been placed on the correct agenda. At that time, the Board president approves the Board's open and closed meeting agendas.</p> <p><u>Evidence:</u> HOA Second Amended Answer to Interrogatory #4, p.3, lines 19-28, continued to p.4, lines 1-12 continued to "Amended Response" p.5-7.</p>	<p>Supporting evidence disputed. The proper citation in support of Plaintiff's summary of association procedure is HOA Second Amended Answer to Interrogatory #4, p.6, lines 4-16.</p> <p>Rather, Lines 4-16 read as follows:</p> <p>"Before each Board Meeting, and generally taking place on the preceding Monday, the elected Board President reviews the proposed meeting agendas to confirm that each item has been placed on the correct agenda. Gary Wagner served as the elected Board President until the end of February 2023, at which point Paul Marena was elected. During President Wagner's tenure, he met with Association Manager Kathy Fowers each week prior to the Friday executive meeting, including prior to the meetings that occurred on January 20, 2023 and February 21, 2023. During President Marena's tenure, he met with Ms. Fowers each week prior to the Friday executive meeting, including prior to the meetings that occurred on April 21, 2023, September 15, 2023, October 20, 2023 and November 17, 2023. During these meetings with Ms. Fowers, the elected President reviewed and approved of the agendas, at which point the open meeting agendas were published to the</p>

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	community.”
<p><u>Plaintiff’s Fact No. 10:</u> The notices of the above paragraph are identified by HOA Bates #'s:</p> <p>SSHOA 000002; SSHOA 000004; SSHOA 000009; SSHOA 000013; SSHOA 000014; SSHOA 000015; SSHOA 000017; SSHOA 000018; SSHOA 000020.</p> <p>All of the above notices announce “Board Executive Meeting” followed by the meeting date, and all notices contain the following statement identical to Bates # SSHOA 000002, but with differing statutory references:</p> <p>Closed to Owners in accordance with ARS § 33-1804 A.1, A.3, and A.5.</p> <p>Executive meetings are posted per law, and not open to Owners except by invitation.</p> <p><u>Evidence:</u> HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-24 & p.7, lines 6-9.</p>	<p>Undisputed that the Bates numbers set forth correspond to SSV HOA’s notices to members of closed session meetings. Disputed as to the following summary: “Executive meetings posted per law, and not open to Owners except by invitation” referenced as HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-24.</p> <p>Rather, Lines 21-24 read as follows:</p> <p>“Executive Session Board Meetings – Per Arizona state law, there are some topics of Association business that are considered confidential, and are not open to homeowners or residents unless specifically invited by the Board. If invited, the homeowner is only in attendance for the portion of the meeting they are directly involved with. Notice of executive session meetings will be posted on the bulletin board outside the office, and conform to state law.”</p>
<p><u>Plaintiff’s Fact No. 11:</u> The HOA has stated in meeting notices: “Per Arizona state law, there are some topics of Association business that are considered confidential, and are not open to homeowners or residents unless specifically invited by the Board.”</p> <p><u>Evidence:</u> HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-24.</p>	<p>The excerpt set forth in Plaintiff’s Fact #11 is found in HOA Second Amended Answer to Interrogatory #4, p.6, lines 21-22, but the full text comprising lines 23-24 is copied in full above in SSV HOA’s Response to Plaintiff’s Fact #10.</p>

1 **II. Defendant’s Separate Statement of Facts in Opposition**

2 1. The parties disagree on the construction and application of A.R.S. § 33-
3 1804. **(Complaint & Answer ¶¶ 19 and 20 – Exhibits A & B).**

4 2. SSV HOA is a domestic, non-profit corporation subject to the provisions
5 of the Arizona Planned Communities Act, Title 33, Chapter 16 (A.R.S. §§ 33-1801 to
6 1819). **(Complaint & Answer ¶ 1 – Exhibits A & B).**

7 3. Plaintiff seeks a declaratory judgment. **(Complaint & Answer ¶ 6 –
8 Exhibits A & B).**

9 4. The parties agree that this action raises questions of law not fact.
10 **(Plaintiff’s Initial Disclosure, Sec. III; SSV HOA’s Amended Initial Disclosure,
11 Sec. III, lines 21-23 – Exhibits C & D).**

12 5. SSV HOA’s policies and procedures comply with A.R.S. § 33-1804.
13 **(SSV HOA’s Amended Initial Disclosure, Sec. I – Exhibit D).**

14 6. SSV HOA’s Board may take formal action in a closed session. **(SSV
15 HOA Amended Response to Request for Admission #1 – Exhibit E).**

16 7. Plaintiff alleges that SSV HOA’s construction and application of A.R.S. §
17 33-1804 deprives him of five statutory rights. **(Complaint & Answer ¶¶ 11, 20, 21 –
18 Exhibits A & B).**

19 8. The legislative intent of A.R.S. § 33-1804 (A) and (F) promote and
20 encourage open session meetings. **(Complaint & Answer ¶¶ 10 and 11 – Exhibits A
21 & B).**

22 9. The plain language of A.R.S. § 33-1804 does not provide any member of
23 SSV HOA the absolute right to attend every Board meeting, or to speak on every single
24 agenda item prior to the Board taking formal action. **(SSV HOA Amended Response
25 to Interrogatory #3, p.4, lines 14-16 and 26-28, continuing to p.5, lines 1-4 –
26 Exhibit F).**

27 10. A.R.S. § 33-1804 permits closed executive meetings by the SSV HOA
28 Board. **(SSV HOA Amended Response to Interrogatory #3, p.4, lines 14-16 and 26-**

1 **28, continuing to p.5, lines 1-4 – Exhibit F.**

2 11. A.R.S. § 33-1804 does not require the SSV HOA Board to meet in open
3 session to identify the exception under (A) (1-5) permitting a closed session. (**SSV**
4 **HOA’s Amended Response to Plaintiff’s Request for Admission #3 – Exhibit E**).

5 12. A.R.S. § 33-1804(A)(1-5) authorizes SSV HOA to hold closed meetings
6 on the five enumerated subjects. (**SSV HOA’s Amended Response to Plaintiff’s**
7 **Interrogatory #3; SSV HOA’s Amended Initial Disclosure, Sec. II – Exhibits F &**
8 **D**).

9 13. SSV HOA’s policies and procedures comply with A.R.S. § 33-1804(C).
10 (**SSV HOA’s Amended Initial Disclosure, Sec. II – Exhibit D**).

11 14. SSV HOA’s notices of Board meetings to association members comply
12 with A.R.S. § 33-1804(D). (**SSV HOA’s Amended Initial Disclosure, Sec. II; SSV**
13 **HOA’s Second Amended Response to Plaintiff’s Interrogatory #4, p.6, lines 16-20**
14 **and 25-27 – Exhibits D & G**).

15 15. SSV HOA includes the following statement in its electronic notices to
16 members about closed sessions: “**Executive Session Board Meetings** – Per Arizona
17 state law, there are some topics of Association business that are considered confidential,
18 and are not open to homeowners or residents unless specifically invited by the Board.
19 If invited, the homeowner is only in attendance for the portion of the meeting they are
20 directly involved with. Notice of executive session meetings will be posted on the
21 bulletin board outside the office, and conform to state law.” (**SSV HOA’s Second**
22 **Amended Response to Plaintiff’s Interrogatory #4, p.6, lines 21-24 – Exhibit G**).

23 Dated this 24th day of October, 2024.

24 **FREEMAN MATHIS & GARY, LLP**

25 By: /s/ Megan E. Ritenour

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1 ORIGINAL of the foregoing e-filed
this 24th day October, 2024.

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

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