

EXHIBIT A - COMPLAINT FOR DECLARATORY JUDGMENT

Atty. JOHN SULLIVAN
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(480) 818-5070
Bar No. 023018
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST

Plaintiff

v.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendant

No. CV2023-096192

COMPLAINT for
DECLARATORY JUDGMENT

NOW COMES THE PLAINTIFF, in the above-captioned matter, seeking declaratory judgment with respect to the Planned Communities open meeting statute and states as follows:

I. Parties

1. **Defendant (“the HOA”)**, Sunland Springs Village Homeowners Association, is a domestic non-profit corporation subject to the provisions of the Arizona Planned Communities Act, Title 33, Chapter 16 (A.R.S. §§ 33-1801 to 1819), and has a place of business at 11214 E. Laguna Azul Cir., Mesa, AZ 85209.
2. **Plaintiff (“the Homeowner”)**, AZNH Revocable Trust, holds title to real property within Sunland Springs Village, a Planned Community in Mesa, AZ, and is a statutorily mandated member of the HOA pursuant to A.R.S. § 33-1802, 4.

3. John & Susan Sullivan (*real parties in interest*) are the Trustees of AZNH Revocable Trust which has its principal place of administration at 336 Intervale Rd., Unit B1, Gilford, NH 03249.

II. Venue & Jurisdiction

4. Venue & personal jurisdiction are proper in the Superior Court for Maricopa County.
5. The Superior Court has subject matter jurisdiction pursuant to Ariz. Const. art. VI, § 14, A.R.S. §§ 12-122, 12-123, 12-1831 and 12-1832 (2023).
6. The Homeowner seeks declaratory judgment pursuant to Arizona's Uniform Declaratory Judgments Act, A.R.S. Title 12, Ch. 10, Art. 2. "Any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder. A.R.S. § 12-1832.

III. Planned Community Open Meeting Requirements –

Relevant Excerpts & Homeowner Rights

7. A.R.S. § 33-1804, A (underline and bold added):

Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the . . . board of directors . . . are open to all members of the association . . . and all members . . . so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board . . . shall permit a member . . . to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. . . . Any portion of a meeting may be closed only if that closed portion of the meeting is limited to **consideration** of one or more of the following:

1. Legal advice from an attorney;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual;

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of either the Association or a contractor; and,
5. Discussion of a homeowner's appeal of any violation cited or penalty imposed by the Association except on request of the affected homeowner that the meeting be held in an open session.

8. A.R.S. § 33-1804, D:

Notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting.

9. A.R.S. § 33-1804, E:

The agenda for Board meetings "shall be available to all members attending."

* * *

"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."

10. A.R.S. § 33-1804, F (bold added):

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.**

11. A.R.S. § 33-1804 provides the Homeowner with the right: (1) to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the Board of Directors; (2) to speak once after the board has discussed a

specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak; (3) to receive notice of all Board meetings; (4) to attend Board meetings; (5) to receive notices and agendas for Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and, (6) to speak at Board Meetings at an appropriate time during the deliberations and proceedings.

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

12. With respect to Board of Directors meetings, A.R.S. § 33-1804, A, states, in part, “Any portion of a meeting may be closed only if that closed portion of the meeting is limited to **consideration of**” one of the matters listed in A.R.S. § 33-1804, A, 1-5. A.R.S. § 33-1804, A (bold added). Thus, any closed portion of a Board meeting is strictly limited to “**consideration**” of a qualifying matter under A.R.S. § 33-1804, A, 1-5.
13. The words and phrases of a statute shall be construed according to the common and approved use of the language. A.R.S. § 1-213 (2023).
14. “**Consideration**” is defined as: continuous and careful thought; a matter weighed or taken into account when formulating an opinion or plan; or, an opinion obtained by reflection. Merriam-Webster’s Collegiate Dictionary, 11th Ed.
15. A.R.S. § 33-1804, F, specifically requires that Board meetings be conducted in a manner which ensures that homeowners have the ability to speak after discussion of agenda items, but before a vote of the Board of Directors is taken.
16. When the definition of “consideration” is combined with the requirement that meetings be conducted in a manner which ensures that homeowners have the ability to speak after discussion of agenda items, but before a vote of the Board of Directors is taken, and the

requirement that the statute (A.R.S. § 33-1804) be construed in favor of open meetings, the conclusion is inescapable that voting is not allowed in a closed Board meeting.

17. The HOA Board has been voting (or taking formal actions) in closed meetings and, after the open meeting requirements were brought to the attention of the HOA by email, the HOA attorney replied that the Board may vote in executive session and they intend to continue to do so.
18. When the Homeowner sent a follow-up email to the HOA attorney, the Board President stated that that HOA shall no longer discuss the matter with the Homeowner.

V. The Basis for Declaratory Judgment

19. The parties disagree on the construction of the statute (A.R.S. § 33-1804).
20. The HOA's construction and application of the statute adversely affects the Homeowner's rights granted by the statute.
21. The HOA's construction of the statute (to wit: the Board may vote in closed meetings) has the effect of depriving the Homeowner of the following statutory rights:
 - a. The right to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the Board of Directors;
 - b. The right to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak;
 - c. The right to attend Board meetings which are required to be open for the Homeowner's attendance;

- d. The right to receive notices and agendas for Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and,
- e. The right to speak at open Board Meetings at an appropriate time during proceedings.

VI. Prayer for Declaratory Judgment

- 22. The Homeowner incorporates by reference, all allegations and averments made in all preceding paragraphs.
- 23. The Homeowner respectfully requests a declaration from this Court that a closed meeting of the HOA Board is limited to consideration of the matters identified in A.R.S. § 33-1804, A, 1-5, and that there is nothing in the Planned Communities Act (Title 33, Chapter 16 [A.R.S. §§ 33-1801 to 1819]) which allows the HOA Board of Directors to take formal actions, to vote, to make collective decisions or to commit the HOA to any action or inaction in a closed meeting.
- 24. The Homeowner respectfully requests a declaration from this Court that the Homeowner has the following statutory rights pursuant to A.R.S. § 33-1804:
 - a. The right to have the provisions of A.R.S. § 33-1804 construed in favor of open meetings by any person or entity that is charged with the interpretation of its provisions, including, but not limited to, the members of the HOA Board of Directors;
 - b. The right to speak once after the HOA Board has discussed a specific agenda item but before the Board takes formal action on that item in addition to any other opportunities to speak;

- c. The right to attend HOA Board meetings which are required to be open for the Homeowner's attendance;
 - d. The right to receive notices and agendas for HOA Board meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided; and,
 - e. The right to speak at open HOA Board Meetings at an appropriate time during the deliberations and proceedings.
25. The Homeowner respectfully requests such other and further declarations or relief for the Homeowner as this Honorable Court deems appropriate and proper.
26. The Homeowner respectfully asks the Court to award costs pursuant to A.R.S. § 12-1840 ("In any proceeding under this article the court may make such award of costs as may seem equitable and just.").

Dated this 18th day of December, 2023.

/s/ John F. Sullivan

John F. Sullivan, Esq. (Bar # 023018)
Attorney for Plaintiff
1909 E. Ray Rd.
Suite 9198
Chandler, AZ. 85225
480-818-5070
email: Info@SullivanAppeals.com

EXHIBIT B - ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

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

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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.

2
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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EXHIBIT C - PLAINTIFF'S INITIAL DISCLOSURE STATEMENT

Atty. JOHN SULLIVAN
1909 E. Ray Rd., Suite 9198
Chandler, Arizona 85225
(480) 818-5070
Bar No. 023018
Attorney for Plaintiff

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

AZNH REVOCABLE TRUST,
by and through
JOHN and SUSAN SULLIVAN,
TRUSTEES, REAL PARTIES IN
INTEREST

Plaintiff

v.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendant

CV2023-096192

Rule 26.1(a) Verified Disclosure

NOW COME THE PLAINTIFFS, in the above-captioned matter, and make initial disclosure pursuant to Rule 26.1(a), Arizona Rules of Civil Procedure, as follows:

This Disclosure Statement and its contents represent the product of the investigation and research to date. This is the initial phase of discovery. Further investigation, research or discovery may reveal additional information, which may have a bearing on the Plaintiffs' theories and claims for recovery. Therefore, this Disclosure shall be considered as preliminary and, pursuant to the Rules, is subject to modification as new information becomes available. Therefore, if any part of this statement is ever read to a fact-finder, fairness would require that this preliminary statement also be read to indicate that, at the time it was prepared, there was limited access to information and this disclosure, at the time of the preparation, was potentially incomplete.

I. FACTUAL INFORMATION

Plaintiffs filed their Complaint on December 18, 2023, which Complaint is incorporated herein by reference. Plaintiff's exhibits or filings attached to, or accompanying, the Complaint are incorporated herein by reference.

The Plaintiffs' factual basis for the action is fully set-forth in the Complaint, and the Complaint is incorporated herein.

II. LEGAL BASIS OF CLAIMS AND DEFENSES

This is an action for declaratory judgment to determine questions of construction or validity arising under A.R.S. § 33-1804 and to obtain a declaration of rights, status or other legal relations thereunder. A.R.S. § 12-1832.

The parties disagree on the interpretation or construction of A.R.S. § 33-1804, and the Defendant's interpretation of the statute adversely affects the Plaintiff's rights granted by the statute.

Defendants are meeting regularly in closed session, and voting or taking formal action in closed session. Defendant asserts that the Planned Communities Act (Title 33, ch. 16) allows voting or formal actions in closed session. Plaintiff asserts that, pursuant to A.R.S. § 33-1804, formal actions or voting by the HOA Board is not allowed in closed meetings of the HOA Board.

III. WITNESSES/PERSONS BELIEVED TO POSSESS RELEVANT KNOWLEDGE

Any person with knowledge of the facts of this case may be called as a witness. The information that each person possesses, and if called to testify, their corresponding testimony, may be presumed to be similar.

1. Susan B. Sullivan, Trustee, Real Party in Interest
AZNH Revocable Trust
c/o Attorney John F. Sullivan
1909 E. Ray Rd., Suite 9198, Chandler, AZ. 85225
480-818-5070

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Ms. Sullivan may testify to the extent of her knowledge of such fact. When, and if, some fact comes into dispute and to which Ms. Sullivan may testify, this disclosure shall be updated.

2. Paul Marena, President/Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Mr. Marena may testify to the extent of his knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Mr. Marena may testify, this disclosure shall be updated.

3. Dale Miller, Vice President/Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Mr. Miller may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Mr. Miller may testify, this disclosure shall be updated.

4. Cathy Braun, Secretary/Treasurer/Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Ms. Braun may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Ms. Braun may testify, this disclosure shall be updated.

5. Eric Loeffler, Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Mr. Loeffler may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Mr. Loeffler may testify, this disclosure shall be updated.

6. Jerry L. Mason, Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Mr. Mason may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Mr. Mason may testify, this disclosure shall be updated.

7. Tom Knoll, Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Mr. Knoll may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Mr. Knoll may testify, this disclosure shall be updated.

8. Monica Stein, Director
Sunland Springs Village Homeowners Association
9000 E. Pima Center Pky., 300
Scottsdale, AZ 85258
Tel. # unknown

This is an action for Declaratory Judgment based upon a statute. The facts are derived from statutes and documents. Percipient witnesses are not anticipated but, to the extent any fact is placed at issue, Ms. Stein may testify to the extent of her knowledge of such fact. When, and if, some fact is known to be disputed and to which fact Ms. Stein may testify, this disclosure shall be updated.

9. Without waiving objection, any individual identified in any documents or records.

10. Without waiving objection, any individual identified by Defendant.

11. Without waiving objection, any and all witnesses identified between the date of this disclosure and the time of trial.

12. Custodians of any records or documents as necessary or pertinent to the action.

IV. OTHER PERSONS WHO MAY HAVE KNOWLEDGE

None known, other than those listed above. Shall supplement as necessary.

V. STATEMENTS MADE OR GIVEN

Plaintiffs are not currently aware of any recorded statements, but reserves the right to amend this disclosure statement. Plaintiffs assume that Defendant may have acquired written and/or recorded statements and that those statements will be disclosed in due course.

VI. EXPERT WITNESSES

Expert witnesses are undetermined at this time and none are expected to testify. Experts, if any, shall be disclosed consistent with the Court's scheduling order following a comprehensive pretrial conference.

Plaintiff shall supplement experts as expert witnesses are identified and retained, consistent with the court's scheduling order.

Without waiving objection, Plaintiff may call any individual identified by Defendant as an expert witness or potentially offering expert opinions for cross-examination. Any such cross-examination will be consistent with the Arizona Rules of Civil Procedure and the Rules of Evidence.

This matter is in the initial stages of discovery and, therefore, Plaintiff shall supplement this disclosure statement in a timely manner as additional information and/or documentation is received or discovered.

VII. COMPUTATION OF DAMAGES

This is an action for Declaratory Judgment based upon a statute. There is no claim for damages.

VIII. TANGIBLE EVIDENCE, EVIDENTIARY DOCUMENTS AND INSURANCE AGREEMENTS

1. All documents disclosed by Defendants to Plaintiff.
2. All documents disclosed by Plaintiffs to Defendants, including, but not limited to, attachments to the Complaint.
3. Any and all documents produced by any party in this action.
4. All further and future relevant documents as they are disclosed or become known.

Plaintiffs shall timely supplement this disclosure statement to include additional evidentiary information and documentation as the materials become known.

IX. OTHER DOCUMENTS OR THINGS WHICH MAY BE RELEVANT

None known at this time. Shall supplement as necessary.

As Plaintiff and counsel for Plaintiffs, I solemnly affirm that the above-disclosed information is true and accurate to the best of my knowledge and belief.

A copy hereof has been hand-delivered
on Dec. 29, 2023,
to Defendant's business office by placement in a document "dropbox" receptacle at:
11214 E. Laguna Azul Circle, Mesa, AZ 85209

A copy hereof has been mailed
on December 29, 2023,
to Paul Marena, President
Sunland Springs Village Homeowners Association
at the address on record with the Arizona Corp. Commission,
9000 E. Pima Center Parkway, 300
Scottsdale, AZ 85258

A courtesy copy hereof was also sent by email
on December 29, 2023,
to Paul Marena, President
Sunland Springs Village Homeowners Association
at the email address on record with the Arizona Corp. Commission,
julie.geist@fsresidential.com

/s/ John F. Sullivan

John F. Sullivan, Esq. (Bar # 023018)
Attorney for Plaintiffs
1909 E. Ray Rd., Suite 9198
Chandler, AZ. 85225
480-818-5070
Info@SullivanAppeals.com

**EXHIBIT D - SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S FIRST
AMENDED INITIAL DISCLOSURE STATEMENT**

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

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

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

16 Plaintiffs,

17 v.

18 SUNLAND SPRINGS VILLAGE
19 HOMEOWNERS ASSOCIATION,

20 Defendant.

Case No. CV2023-096192

**SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION'S
FIRST AMENDED RULE 26.1 INITIAL
DISCLOSURE STATEMENT**

21 Pursuant to Rule 26.1 of the Arizona Rules of Civil Procedure, Defendant
22 Sunland Springs Village Homeowners Association (“Sunland Springs Village HOA”),
23 by and through its undersigned counsel, hereby submits its First Amended Initial
24 Disclosure Statement. This supplemental disclosure is based upon information currently
25 available to Sunland Springs Village HOA and may be supplemented or amended as
26 discovery proceeds and as additional information becomes available. These disclosures
27 are made without waiver or prejudice to Sunland Springs Village HOA’s right to assert
28 any and all applicable objections, privileges or protections and all such rights are
expressly reserved. Disclosing party makes these disclosures following a good faith
review of the presently available information and reflect what is known as of this date,

1 prior to the completion of discovery and analysis of all pertinent facts. Sunland Springs
2 Village HOA reserves the right to amend, clarify or further supplement these
3 supplemental disclosures as discovery progresses. **Supplemental information is in**
4 **bold format.**

5 **I. FACTUAL BASIS OF DEFENSE**

6 Sunland Springs Village HOA is in compliance with A.R.S. § 33-1804.

7 **II. LEGAL THEORIES OF DEFENSE**

8 A.R.S. § 33-1804(C) expressly provides: “Before entering into any closed portion
9 of a meeting of the board of directors, or on notice of a meeting under subsection D of
10 this section that will be closed, the board shall identify the paragraph under subsection A
11 of this section that authorizes the board to close the meeting.” This language indicates
12 that not only can a portion of an open meeting be closed, but the Board can also provide
13 notice to the community that it will be holding a “meeting . . . that will be closed”
14 provided it identifies the subsection(s) under § 33-1804(A) that authorize the Board to
15 meet in closed session.

16 Furthermore, A.R.S. § 33-1805(B)(3), regarding records requests, expressly
17 provides that homeowner associations do not have to produce “meeting minutes . . . of a
18 session of a board meeting that is not required to be open to all members pursuant to
19 section 33-1804.” A.R.S. § 33-1805 allows the Association to keep confidential the
20 meeting minutes from executive sessions.

21 **III. WITNESSES EXPECTED TO TESTIFY**

22 This is an action for Declaratory Judgment based upon a statute – specifically,
23 AR.S. § 33-1084 – that raises questions of law and not questions of fact. At this time,
24 witnesses are not anticipated.

25 Notwithstanding and without waiving objections, Sunland Springs Village HOA
26 reserves the right to depose and/or call to testify any and all witnesses listed by Plaintiff
27 in their disclosure statements and supplements thereto.

28 Sunland Springs Village HOA reserves the right to supplement should any

1 witness of any party be revealed through the normal course and scope of discovery from
2 now until the disclosure deadline, including but not limited to the following: depositions,
3 medical records, discovery responses, etc.

4 **IV. ADDITIONAL PERSONS HAVING RELEVANT INFORMATION**

5 Sunland Springs Village HOA is not aware of any other persons with information
6 or knowledge regarding the subject accident at this time. Sunland Springs Village HOA
7 will supplement this disclosure as additional persons with information are discovered.
8 Sunland Springs Village HOA further designates (as additional persons having relevant
9 information) any and all persons identified in records disclosed and/or produced
10 throughout this case regardless of whether the person is specifically identified in a
11 written, formal disclosure statement.

12 **V. PERSONS WHO HAVE GIVEN STATEMENTS**

13 Sunland Springs Village HOA is unaware of any recorded or written statements.
14 Sunland Springs Village HOA will supplement its disclosure if and when any are
15 procured.

16 **VI. EXPERT WITNESSES EXPECTED TO TESTIFY**

17 Sunland Springs Village HOA has not currently retained any expert witnesses but
18 reserves the right to do so based on the facts and issues involved as discovery
19 progresses.

20 **VII. COMPUTATION AND MEASURE OF DAMAGES**

21 In this action for Declaratory Judgment, damages are not at issue.

22 **VIII. TANGIBLE EVIDENCE AND EVIDENTIARY DOCUMENTS**

23 Without waiving objections, Sunland Springs Village HOA identifies the
24 following exhibits:

- 25 1. Board of Directors Meeting Notices (SSHOA 000001-21)
- 26 2. Board Of Directors Meeting Agendas (SSHOA 000022-41)
- 27 3. Board of Directors Open Meeting Minutes (SSHOA 000042-000110)
- 28 4. Board of Directors Executive Meeting Minutes (SSHOA 000111-146)

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ORIGINAL of the foregoing e-filed
this 30th day of April, 2024.

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

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

By: /s/ Deanne Gibeault

**EXHIBIT E - SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S
AMENDED RESPONSE TO REQUEST FOR ADMISSIONS**

1 Megan E. Ritenour (SBN 034677)
2 Lisa M. Lampkin (SBN 036944)
3 **FREEMAN MATHIS & GARY, LLP**
4 4343 N. Scottsdale Road, Suite 150
5 Scottsdale, Arizona 85251
6 Telephone No. (602) 805-9564
7 Megan.ritenour@fmglaw.com

8 *Attorneys for Defendant*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

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

16 Plaintiffs,

17 v.

18 SUNLAND SPRINGS VILLAGE
19 HOMEOWNERS ASSOCIATION,

20 Defendant.

Case No. CV2023-096192

**DEFENDANT SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION'S AMENDED
RESPONSE TO PLAINTIFF'S FIRST
REQUESTS FOR ADMISSION**

21 Pursuant to ARIZ. R. CIV. P. 36, Defendant, Sunland Springs Village
22 Homeowners Association ("SSV HOA"), by and through undersigned counsel, hereby
23 submits its amended responses to Plaintiff AZNH Revocable Trust's First Requests for
24 Admission.

25 SSV HOA has not yet completed its investigation of the facts related to Plaintiff's
26 claims in this matter and has not yet completed discovery in this action or preparation
27 for trial. The responses provided herein are based on information and documents
28 currently in SSV HOA's possession and/or specifically known to it at this time. Further
discovery may result in supplemental responses as additional information becomes
available. These responses are provided in good faith and based solely on the
knowledge and information available at the present time, with full reservation of rights
to change or supplement, if needed.

1 **RESPONSES TO REQUESTS FOR ADMISSION**

2 **REQUEST FOR ADMISSION 1:**

3 Admit that the Board of Directors of Sunland Springs Village Homeowners
4 Association may take formal action on matters under their consideration in a closed
5 session of a Board of Directors meeting.

6 **RESPONSE TO REQUEST FOR ADMISSION 1: Admit.**

7
8 **REQUEST FOR ADMISSION 2:**

9 Admit that all documents or records produced in response to the Plaintiff’s “Rule
10 34 First Request for Production” are records of an act, event, condition, or opinion: (1)
11 which were made at or near the time of the event, condition, or opinion by (or from
12 information transmitted by) someone with knowledge of the act, event, condition, or
13 opinion; (2) the record was kept in the course of a regularly conducted activity; and (3)
14 making the record was a regular practice of that activity.

15 **RESPONSE TO REQUEST FOR ADMISSION 2: SSV HOA admits that the**
16 **documents it has produced in this action – bates-labeled SSHOA 000001-000146**
17 **and including the amended replacement documents produced to opposing counsel**
18 **via email on May 20, 2024 – are records of a regularly conducted activity within the**
19 **meaning of Ariz. R. Evid. 803.**

20
21 **REQUEST FOR ADMISSION 3:**

22 Admit that, for each closed session meeting held on Jan. 20, 2023, Feb. 21, 2023,
23 April 21, 2023, July 21, 2023, Sept. 15, 2023, Oct. 20, 2023, and Nov. 17, 2023, the
24 Board met in open session to identify the paragraph under A.R.S. § 33-1804, A, that
25 authorizes the board to close the meeting.

26 **RESPONSE TO REQUEST FOR ADMISSION 3: Deny.**

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Dated this 20th day of June, 2024.

FREEMAN MATHIS & GARY, LLP

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

On June 20, 2024, the foregoing responses to Plaintiff's First Set of Requests for Admission was e-mailed to:

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

By: /s/ Deanne Gibeault

**EXHIBIT F - SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S
AMENDED RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR
INTERROGATORIES**

1 Megan E. Ritenour (SBN 034677)
2 Lisa M. Lampkin (SBN 036944)
3 **FREEMAN MATHIS & GARY, LLP**
4 4343 N. Scottsdale Road, Suite 150
5 Scottsdale, Arizona 85251
6 Telephone No. (602) 805-9564
7 Megan.ritenour@fmglaw.com

8 *Attorneys for Defendant*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

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

16 Plaintiffs,

v.

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendant.

Case No. CV2023-096192

**DEFENDANT SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION'S AMENDED
RESPONSE TO PLAINTIFF'S FIRST
REQUEST FOR INTERROGATORIES**

17 Defendant Sunland Springs Village Homeowners Association ("SSV HOA"), by
18 and through undersigned counsel, hereby responds and objects pursuant to ARIZ. R.
19 CIV. P. 26 and 33 to Plaintiff AZNH Revocable Trust's First Request for Interrogatories
20 as follows:

21 **PRELIMINARY STATEMENT**

22 SSV HOA's investigation and development of all facts and circumstances relating
23 to this action is ongoing.

24 SSV HOA makes these responses and objections based on information presently
25 known to it without prejudice to and without waiving its rights to rely on other facts,
26 witnesses, or documents at trial.

27 By making the accompanying responses and objections to Plaintiff's
28 Interrogatories, SSV HOA does not waive, and hereby expressly reserves, its rights to

1 assert any and all objections as to the admissibility of such responses into evidence in
2 this action, or in any other proceedings, on any and all grounds including, but not limited
3 to, competency, relevancy, materiality, and privilege. Further, SSV HOA makes the
4 responses and objections herein without, in any way, implying that it considers the
5 Interrogatories, and responses to the same, to be relevant or material to the subject
6 matter of the action.

7 SSV HOA submits these responses and objections without prejudice to its right to
8 further object to further discovery.

9 SSV HOA expressly reserves the right to supplement, clarify, revise, or correct
10 any or all of the responses and objections herein, and to assert additional objections or
11 privileges, in one or more subsequent supplemental response(s).

12 The following responses are made subject to this preliminary statement and the
13 following general objections, which are hereby incorporated into each and every
14 response hereinafter stated, as if set forth in full therein.

15 Subject to the following conditions, SSV HOA continues to respond and object to
16 the Interrogatories as set forth below.

17 **GENERAL OBJECTIONS**

18 1. SSV HOA objects to the extent that the instructions and definitions seek to
19 impose any obligation beyond that required by the Arizona Rules of Civil Procedure and
20 the applicable Rules and Orders of the Court.

21 2. SSV HOA objects to each Interrogatory to the extent that it seeks
22 information protected from disclosure by any applicable privilege including, but not
23 limited to, the attorney-client privilege.

24 3. SSV HOA objects to each Interrogatory to the extent that it seeks
25 information prepared in anticipation of litigation or for a hearing.

26 4. SSV HOA objects to each Interrogatory to the extent that it seeks
27 information that is not within its possession, custody, or control.
28

1 as the accompanying document production [SSHOA000001 through
2 SSHOA000178] and all amended/supplemental documents produced.

3 **INTERROGATORY 3:**

4 If you contend that your interpretation, construction or application of A.R.S. § 33-
5 1804 (to wit: the Board may vote or take formal action in closed session meetings) does
6 not deprive the Plaintiff of the right to speak once after the SSV HOA Board has
7 discussed a specific agenda item but before the board takes formal action on that item,
8 describe in detail the factual basis and legal theory upon which your contention is based,
9 and include any authorities supporting your contention or theories. (See your
10 contentions in paragraph #21 of your Answer).

11 **RESPONSE:** This information is set forth in SSV HOA’s Rule 26.1 Initial
12 Disclosure Statement. Please see Section I – **FACTUAL BASIS OF DEFENSE** and
13 Section II – **LEGAL THEORIES OF DEFENSE**.

14 By way of further response, A.R.S. § 33-1804 does not provide any member
15 of SSV HOA the absolute right to attend every Board meeting, or to speak on every
16 single agenda item prior to the Board taking formal action. A.R.S. § 33-1804(A)
17 begins by stating that association members “shall be permitted to attend and speak
18 ... during the deliberations and proceedings” at “all meetings of the members’
19 association and board of directors.” However, that language cannot be interpreted
20 in a vacuum. Subsection A concludes by qualifying the above-referenced language
21 when it specifies that “[a]ny portion of a meeting may be closed ... if that closed
22 portion of the meeting is limited to consideration of” five subsequently enumerated
23 exceptions. A.R.S. § 33-1804 does not contain any further language qualifying the
24 closed meeting exception, nor does it permit any association member to be present
25 and speak at closed meetings.

26 The language in A.R.S. § 33-1805 further supports SSV HOA’s
27 interpretation of § 33-1804. A.R.S. § 33-1805 (B)(3) specifies that homeowner
28 associations do not have to produce “meeting minutes ... of a session of a board

1 meeting that is not required to be open to all members pursuant to section 33-
2 1804.” When read together, the two statutes authorize the SSV HOA Executive
3 Board to meet in closed sessions and permit SSV HOA to keep confidential certain
4 information in the meeting minutes from such sessions.

5 **INTERROGATORY 4:**

6 Your Rule 26.1, Initial Disclosure Statement, sec. II (Legal Theories of Defense)
7 dated March 15, 2024, states:

8 “A.R.S. § 33-1804(C) expressly provides” ‘Before entering into any
9 closed portion of a meeting of the board of directors, or on notice of
10 a meeting under subsection D of this section that will be closed, the
11 board shall identify the paragraph under subsection A of this section
12 that authorizes the board to close the meeting’.”

13 Records produced by SSV HOA to Plaintiff (AZNH Revocable Trust) show that
14 the Board of Directors for SSV HOA met in a closed session on the following dates: Jan.
15 20, 2023; Feb. 21, 2023; April 21, 2023; Sept. 15, 2023; Oct. 20, 2023; and Nov. 17,
16 2023. The records showing the above-referenced meeting dates are marked by SSV
17 HOA as: SSHOA000123 through SSHOA000146.

18 **For each matter or issue receiving consideration on the above closed meeting**
19 **dates** by the SSV HOA Board of Directors, and with respect to your Rule 26.1
20 Disclosure of Legal Theories of Defense, **describe in detail** where, when and how the
21 Board complied with the requirement of A.R.S. § 33-1804(C) to “identify the paragraph
22 under subsection A of this section that authorizes the board to close the meeting” and
23 **include in your response the identity of the document or documents (or meeting**
24 **minutes)** which describe, discuss, demonstrate, memorialize or record any or all of the
25 actions by the SSV HOA Board of Directors to identify the paragraph under subsection
26 A of A.R.S. § 33-1804 which authorized the board to meet in closed session.

27 **RESPONSE:** This information is set forth in the document production that
28 accompanied SSV HOA’s Rule 26.1 Initial Disclosure Statement. Please see the

1 **Board of Directors Meeting Notices produced as SSHOA000001 through**
2 **SSHOA000021. Each of the referenced documents identifies the statutory**
3 **subsection that allowed the Association to go into executive session. Answering**
4 **further, SSV HOA complied with the requirement of A.R.S. § 33-1804(C) – which**
5 **provides full: “Before entering into any closed portion of a meeting of the board**
6 **of directors, or on notice of a meeting under subsection D of this section that will**
7 **be closed, the board shall identify the paragraph under subsection A of this**
8 **section that authorizes the board to close the meeting” – by providing notice to**
9 **the community of an upcoming closed executive meeting.**

10 **In advance of each Board of Directors Meeting (open session), the SSV**
11 **HOA members receive an electronic notification of the meeting. While**
12 **unrequired, such electronic notification contains the following statement as a**
13 **voluntary and transparent communication to homeowners about the nature and**
14 **notice of closed session meetings:**

15 **Executive Session Board Meetings** - Per Arizona state law, there are some topics of
16 Association business that are considered confidential and are not open to
17 homeowners or residents unless specifically invited by the Board. If invited, the
18 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.

19 Dated this 27th day of June, 2024.

20 **FREEMAN MATHIS & GARY, LLP**

21
22 By: /s/ Megan E. Ritenour
Megan E. Ritenour
23 *Attorneys for Defendant Sunland Springs*
24 *Village Homeowners Association*
25
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VERIFICATION

Sunland Springs Village Homeowners Association (“SSV HOA”) certifies that the foregoing **Amended Response to Plaintiff’s First Request for Interrogatories** complete and correct based on SSV HOA’s knowledge, information, and belief. SSV HOA declares under penalty of perjury under the laws of the State of Arizona that the information set forth therein is true and correct.

EXECUTED on this 27 day of June 2024.

Sunland Springs Village Homeowners Association

By:  _____
DocuSigned by:
[Signature]
2024.06.27 10:00:00 AM

Its: President _____

1 COPY of the foregoing e-mailed
2 this 27th day of June, 2024, to:

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

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By: /s/ Julie Rial

**EXHIBIT G - SUNLAND SPRINGS VILLAGE HOMEOWNERS ASSOCIATION'S
SECOND AMENDED RESPONSE TO PLAINTIFF'S INTERROGATORY #4**

1 Lisa M. Lampkin (SBN 036944)
2 Megan E. Ritenour (SBN 034677)
3 Téhaura R. Henning (SBN 039321)
4 **FREEMAN MATHIS & GARY, LLP**
5 6720 N. Scottsdale Road, Suite 310
6 Scottsdale, Arizona 85253
7 Telephone No. (602) 805-9564
8 Lisa.lampkin@fmglaw.com
9 Megan.ritenour@fmglaw.com
10 Teh.henning@fmglaw.com

11 *Attorneys for Defendant*

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 SUNLAND SPRINGS
VILLAGE HOMEOWNERS
ASSOCIATION'S SECOND AMENDED
RESPONSE TO PLAINTIFF'S
INTERROGATORY #4**

23 Defendant, Sunland Springs Village Homeowners Association (“SSV HOA”), by
24 and through undersigned counsel, hereby responds and objects pursuant to ARIZ. R.
25 CIV. P. 26 and 33 to Plaintiff AZNH Revocable Trust’s request for an amended
26 response to Interrogatory #4 as follows:

27 **PRELIMINARY STATEMENT**

28 SSV HOA’s investigation and development of all facts and circumstances relating
to this action is ongoing.

SSV HOA makes these responses and objections based on information presently
known to it without prejudice to and without waiving its rights to rely on other facts,
witnesses, or documents at trial.

1 By making the accompanying responses and objections to Plaintiff's
2 Interrogatories, SSV HOA does not waive, and hereby expressly reserves, its rights to
3 assert any and all objections as to the admissibility of such responses into evidence in
4 this action, or in any other proceedings, on any and all grounds including, but not limited
5 to, competency, relevancy, materiality, and privilege. Further, SSV HOA makes the
6 responses and objections herein without, in any way, implying that it considers the
7 Interrogatories, and responses to the same, to be relevant or material to the subject
8 matter of the action.

9 SSV HOA submits these responses and objections without prejudice to its right to
10 further object to further discovery.

11 SSV HOA expressly reserves the right to supplement, clarify, revise, or correct
12 any or all of the responses and objections herein, and to assert additional objections or
13 privileges, in one or more subsequent supplemental response(s).

14 The following responses are made subject to this preliminary statement and the
15 following general objections, which are hereby incorporated into each and every
16 response hereinafter stated, as if set forth in full therein.

17 Subject to the following conditions, SSV HOA continues to respond and object to
18 the Interrogatories as set forth below.

19 **GENERAL OBJECTIONS**

20 1. SSV HOA objects to the extent that the instructions and definitions seek to
21 impose any obligation beyond that required by the Arizona Rules of Civil Procedure and
22 the applicable Rules and Orders of the Court.

23 2. SSV HOA objects to each Interrogatory to the extent that it seeks
24 information protected from disclosure by any applicable privilege including, but not
25 limited to, the attorney-client privilege.

26 3. SSV HOA objects to each Interrogatory to the extent that it seeks
27 information prepared in anticipation of litigation or for a hearing.

28 4. SSV HOA objects to each Interrogatory to the extent that it seeks

1 information that is not within its possession, custody, or control.

2
3 5. SSV HOA objects to each Interrogatory to the extent that it seeks
4 information that Plaintiff already has (e.g. materials that Plaintiff previously received),
5 that is available to SSV HOA members, that could more easily be obtained through other
6 sources, or that is already within Plaintiff's own possession, custody, or control.

7 6. SSV HOA objects to each Interrogatory to the extent that it seeks
8 information that is proprietary or confidential.

9 7. SSV HOA expressly reserves all objections regarding the relevancy,
10 admissibility at trial, or other use of any information, document, or other tangible item
11 provided or identified in response to these Interrogatories.

12 8. Discovery in ongoing in this matter. SSV HOA's responses are based on
13 the information obtained thus far. Further investigation and discovery may reveal
14 information causing SSV HOA to supplement, modify, or otherwise modify these
15 responses.

16 Subject to the foregoing general objections, which are incorporated by reference
17 into each of the following responses, SSV HOA further responds as set forth below.

18 **AMENDED RESPONSE TO INTERROGATORY #4**

19 **INTERROGATORY 4:**

20 Your Rule 26.1, Initial Disclosure Statement, sec. II (Legal Theories of Defense)
21 dated March 15, 2024, states:

22 "A.R.S. § 33-1804(C) expressly provides" 'Before entering into any
23 closed portion of a meeting of the board of directors, or on notice of
24 a meeting under subsection D of this section that will be closed, the
25 board shall identify the paragraph under subsection A of this section
26 that authorizes the board to close the meeting'."

27 Records produced by SSV HOA to Plaintiff (AZNH Revocable Trust) show that
28 the Board of Directors for SSV HOA met in a closed session on the following dates: Jan.

1 20, 2023; Feb. 21, 2023; April 21, 2023; Sept. 15, 2023; Oct. 20, 2023; and Nov. 17,
2 2023. The records showing the above-referenced meeting dates are marked by SSV
3 HOA as: SSHOA000123 through SSHOA000146.

4 **For each matter or issue receiving consideration on the above closed meeting**
5 **dates** by the SSV HOA Board of Directors, and with respect to your Rule 26.1
6 Disclosure of Legal Theories of Defense, **describe in detail** where, when and how the
7 Board complied with the requirement of A.R.S. § 33-1804(C) to “identify the paragraph
8 under subsection A of this section that authorizes the board to close the meeting” and
9 **include in your response the identity of the document or documents (or meeting**
10 **minutes)** which describe, discuss, demonstrate, memorialize or record any or all of the
11 actions by the SSV HOA Board of Directors to identify the paragraph under subsection
12 A of A.R.S. § 33-1804 which authorized the board to meet in closed session.

13 **INITIAL RESPONSE:** **This information is set forth in the document production**
14 **that accompanied SSV HOA’s Rule 26.1 Initial Disclosure Statement. Please see**
15 **the Board of Directors Meeting Notices produced as SSHOA000001 through**
16 **SSHOA000021. Each of the referenced documents identifies the statutory**
17 **subsection that allowed the Association to go into executive session. Answering**
18 **further, SSV HOA complied with the requirement of A.R.S. § 33-1804(C) – which**
19 **provides full: “Before entering into any closed portion of a meeting of the board**
20 **of directors, or on notice of a meeting under subsection D of this section that will**
21 **be closed, the board shall identify the paragraph under subsection A of this**
22 **section that authorizes the board to close the meeting” – by providing notice to**
23 **the community of an upcoming closed executive meeting.**

24 **In advance of each Board of Directors Meeting (open session), the SSV**
25 **HOA members receive an electronic notification of the meeting. While**
26 **unrequired, such electronic notification contains the following statement as a**
27 **voluntary and transparent communication to homeowners about the nature and**
28 **notice of closed session meetings:**

1 **Executive Session Board Meetings** - Per Arizona state law, there are some topics of
2 Association business that are considered confidential, and are not open to
3 homeowners or residents unless specifically invited by the Board. If invited, the
4 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.

5 **AMENDED RESPONSE:** Since SSV HOA's Declaration of Covenants, Conditions
6 and Restrictions ("CC&Rs") was first recorded in 1997, the Association has
7 developed informal processes to triage homeowner-related issues and topics that
8 routinely arise. These issues and topics form the basis of each open and closed
9 executive session agenda. For example, the Association routinely receives
10 violations appeals from homeowners. These appeals are not submitted all at once,
11 rather they trickle in when homeowners receive violation letters and initiate a
12 dispute with management concerning same.

13 Having processed similar homeowner appeals for over twenty years, the
14 Association is well versed in A.R.S. § 33-1804, the statute governing Association
15 meetings. The Association understands without having to formulaically review the
16 statute that unless the homeowner expressly requests otherwise, all appeals are to
17 be addressed in a closed executive session, pursuant to A.R.S. § 33-1804(A)(3) and
18 (A)(5). Another example would be when Association management receives action
19 items from the Board of Directors requiring input and direction from legal counsel.
20 Association management understands without needing to review statutory
21 language that interactive legal advice occurs during a closed executive session,
22 pursuant to A.R.S. § 33-1804(A)(1).

23 Executive session agendas gradually take shape as issues arise from
24 homeowners and other matters are brought to management's attention requiring
25 Board input. Per Board determination, homeowners file all appeal forms directly
26 with management, and management in turn interfaces with appropriate vendors if
27 needed. Association management then begins to draft each meeting agenda to
28 reflect the matters that arose following the last Board Meeting. There is no specific

1 date or time for management to determine which items are placed onto which
2 agenda. The items are preliminarily assigned to a tentative agenda once brought to
3 management's attention, pending further review.

4 Before each Board Meeting, and generally taking place on the preceding
5 Monday, the elected Board President reviews the proposed meeting agendas to
6 confirm that each item has been placed on the correct agenda. Gary Wagner
7 served as the elected Board President until the end of February 2023, at which
8 point Paul Marendia was elected. During President Wagner's tenure, he met with
9 Association Manager Kathy Fowers each week prior to the Friday executive
10 meeting, including prior to the meetings that occurred on January 20, 2023 and
11 February 21, 2023. During President Marendia's tenure, he met with Ms. Fowers
12 each week prior to the Friday executive meeting, including prior to the meetings
13 that occurred on April 21, 2023, September 15, 2023, October 20, 2023, and
14 November 17, 2023. During these meetings with Ms. Fowers, the elected President
15 reviewed and approved of the agendas, at which point the open meeting agendas
16 were published to the community. In advance of each open session Board Meeting,
17 Association members receive an electronic notification of the meeting. While
18 unrequired, such electronic notification contains the following statement as a
19 voluntary and transparent communication to homeowners about the nature and
20 notice of closed session meetings:

21 **Executive Session Board Meetings** - Per Arizona state law, there are some topics of
22 Association business that are considered confidential, and are not open to
23 homeowners or residents unless specifically invited by the Board. If invited, the
24 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.

25 Before each closed executive session, the Association posts notice identifying
26 the applicable subsection(s) of A.R.S. § 33-1804 that permit the Board to conduct a
27 closed meeting. Therefore, it is the Association's contention that it fully complies
28 with the requirements set forth in A.R.S. § 33-1804(C) by identifying on the

1 executive meeting notice the applicable statutory subsections authorizing the Board
2 to conduct a closed meeting. Subsection (C) provides in full, “[b]efore entering into
3 any closed portion of a meeting of the board of directors, or on notice of a
4 meeting under subsection D of this section that will be closed, the board shall
5 identify the paragraph under subsection A of this section that authorizes the
6 board to close the meeting.” By way of further response, please see the Board of
7 Directors Meeting Notices produced as SSHOA000001 through SSHOA000021.
8 Each of the referenced documents identifies the statutory subsection that allowed
9 the Association to go into executive session.

10 Dated this 30th day of August, 2024.

11 **FREEMAN MATHIS & GARY, LLP**

12
13 By: /s/ Tehaura R. Henning

14 Lisa M. Lampkin

15 Megan E. Ritenour

16 Tehaura R. Henning

17 *Attorneys for Defendant Sunland Springs
18 Village Homeowners Association*

19 COPY of the foregoing e-mailed
20 this 30th day of August, 2024, to:

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23 Suite 9198

24 Chandler, Arizona 85225

25 Info@sullivanappeals.com

26 *Attorneys for Plaintiff*

27 By: /s/ Julie Rial

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VERIFICATION

Sunland Springs Village Homeowners Association (“SSV HOA”) certifies that the foregoing **Amended Response to Plaintiff’s First Request for Interrogatories** is complete and correct based on SSV HOA’s knowledge, information, and belief. SSV HOA declares under penalty of perjury under the laws of the State of Arizona that the information set forth therein is true and correct.

EXECUTED on this 30 day of August 2024.

Sunland Springs Village Homeowners Association

By: Paul Marcenda

Its: SSV HOA President