

Exhibit A

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5 Attorneys for Plaintiff

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

9 COLETTE MCNALLY, an individual,

10 Plaintiff,

11 -vs-

12 SUN LAKES HOMEOWNERS
13 ASSOCIATION #1, INC., an Arizona non-
14 profit corporation,

15 Defendant.

No. CV2014-009496

**DECLARATION OF COLETTE
MCNALLY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT TO
RESTORE HER RIGHT TO
PARTICIPATE IN EXECUTIVE
SESSIONS**

(Assigned to The Hon. James T. Blomo)

ORAL ARGUMENT REQUESTED

16
17
18 I, Colette McNally, having been duly sworn upon my oath, hereby state as follows:

19 1. I am over the age of 18 years old and am competent to testify to the matters found
20 herein. I am the Plaintiff in the above captioned matter and I make this Declaration in Support
21 of my Motion for Summary Judgment to restore my right to participate in executive sessions. I
22 am aware of the facts and circumstances of this matter unless otherwise indicated and I hereby
23 affirm that all numbered exhibits attached hereto and to the Statement of Facts are true and
24 correct to the best of my knowledge.
25
26

1 2. I am a duly elected director on the Board of Directors for defendant Sun Lakes
2 Homeowners Association (the "Association").

3 3. In or about July 2013, I received a publicly circulated e-mail from a former
4 employee of the Association's property management team where this person confessed to
5 participating in a conspiracy with other members of the Association and the Association's
6 management team of stealing another Board Member's board notes, circulating those notes
7 throughout the community and lying to this Board Member that his computer was hacked
8 resulting in this mass public disclosure.

9 4. Upon receiving this confession, I gave it to the Association's president and
10 implored him to discuss the confession with the community at the next scheduled Board meeting
11 in August 2013.

12 5. After the Association failed to discuss the confession at the August 2013 Board
13 meeting, the Board met in an un-noticed executive session before the next September 2013
14 meeting and passed a resolution where they decided to take no action on the confession
15 (presumably because the confession implicated a majority of them).

16 6. When the Board president stopped public discussion of the confession during the
17 open portion of the meeting, I began reading the confession to those community members in
18 attendance and the Board president abruptly ended the meeting altogether.

19 7. Since that September 2013 meeting when I read the already publicized confession
20 to the community, the Association has prevented me from participating in executive sessions on
21 the grounds that I violated executive meeting privilege when I read the confession to the
22 community.

23 8. Even though I was re-elected to my directorship in March 2014 by the
24 community, the Association still precludes me from participating in executive sessions on the
25 grounds that I allegedly violated executive meeting privilege in September 2013.

26

1 9. The only way the Board will allow me to participate in executive sessions is if I
2 sign a false confession and admit that the prior confession by the former employee was false.

3 10. I read the confession to the community because I believed that I had an obligation
4 pursuant to Arizona's Open Meeting Law (i.e. A.R.S. § 33-1804) to inform the community of
5 what this former employee of the Association's management team confessed to.

6 11. I also believed that the Association was violating A.R.S. § 33-1804 by keeping the
7 confession secret because the confession did not fall within any of the exceptions of documents
8 that may be kept from disclosure pursuant to that statute.

9 12. On the other hand, the Association alleges that I breached executive session
10 privilege by reading the confession after it had already decided to take no action on it.

11 13. By precluding me from executive sessions, the Association has ostensibly
12 removed me as a Board Member because I can no longer adequately represent the interests of the
13 community, including those members that re-elected me to the Board in March 2014.

14 14. Section 6.15 of the CC&Rs titled "Boards Power to Adopt/Enforce Rules" does
15 not give the Board of Directors power to suspend my directorship privileges. Attached hereto as
16 Exhibit 1 is a true copy of Section 6.15 of the CC&Rs.

17 15. Section C of the Association's Policies and Rules Information Manual, which is
18 titled "Boards Authority" further does not give the Board of Directors the power to arbitrarily
19 suspend my directorship privileges for an indeterminate period of time. Attached hereto as
20 Exhibit 2 is a true copy of the relevant portions of the Association's Policies and Rules
21 Information Manual.

22 16. The only provision contained in any of the Association's governing documents
23 that gave the Association power to remove members of the Association's Board of Directors was
24 former Article III, Section 15 of the Bylaws. Attached hereto as Exhibit 3 is a true copy of
25
26

1 former Article III, Section 15 of the Bylaws that was in effect prior to February 21, 2011 along
2 with a statement from the community supporting deletion of same.

3 17. Former Article III, Section 15, which the Association has relied on to remove me
4 from the Board, was deleted by a community vote in February 2011 - - over two years before the
5 Association removed me. Attached hereto as Exhibit 4 is a true copy of Article III, Section 15 of
6 the Bylaws that was in effect at the time the Association removed me from the Board showing
7 that this section was deleted back in February 2011.

8 18. The Association did not call a special meeting and did not allow the members who
9 voted me into office in the first place an opportunity to vote me off the Board of Directors.

10 19. Instead, the Association held an un-noticed meeting and determined for itself to
11 preclude me from participating in executive sessions, which is tantamount to removing me as a
12 director.

13 20. Since September 2013, the Association has portrayed me as an untrustworthy
14 Board Member and has essentially removed me as a Director by forcing me to miss important
15 issues discussed during executive sessions.

16 21. The Association's removal of me as a member of the Board of Directors for an
17 arbitrary length of time has severely compromised my ability to adequately represent the
18 interests of those members who voted me onto the Board.

19 Pursuant to Rule 80(i) of the Arizona Rules of Civil Procedure, I declare under penalty of
20 perjury that the foregoing is true and correct.

21 Executed on December 11th, 2014

22 

23
24 _____
25 COLETTE MCNALLY
26

Exhibit 1

WHEN RECORDED, RETURN TO:

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC
1400 EAST SOUTHERN AVENUE, SUITE 400
TEMPE, ARIZONA 85257

SUNLAKESNO10001CCR-46-1-1--
ramirezp

CONSOLIDATED

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

**FOR SUN LAKES UNITS 1, 2, 3, 3A, 4, 5, 6, 7, 8, 9, 9A, AND 41
(INCLUDING GOLF COURSE AND COMMON AREAS)**

shall have the right to enter upon such property and to restore the premises and the exterior of any improvements situated thereon, and the cost thereof shall be charged against the owner of said property.

(b) Any such charge or assessment shall become a lien upon said property and may be foreclosed as provided in the Declaration of Restrictions affecting said property. The Board of Directors, however, shall first give written notice to the member of its intention to perform such maintenance or rehabilitation work and afford the member thirty (30) days time within which to make such necessary repairs or maintenance work. If, at the end of said thirty (30) day period, the work to be performed has not been performed by the owner to the Board's satisfaction, then the Board of Directors shall have the right as set forth herein, to perform such maintenance, repairs, or rehabilitation work.

6.15 Board's Power to Adopt/Enforce Rules.

(a) The Board of Directors shall have the power to adopt and publish rules and regulations governing the use of all existing properties and tracts and any additional properties and tracts conveyed to the Association, and such rules and regulations shall be binding upon the members of this Association. The Board of Directors may, from time to time, adopt rules and regulations in furtherance of the aims of these Declaration of Restrictions (CC&R's).

(b) Failure or refusal to abide by Association Rules and Regulations or Deed Restrictions shall result in a written notification from the Board or the Board's designated representative, to the offending member, identifying the specific Rule and Regulation, or Deed of Restriction, which is being violated, and give the member a suitable period of time, not to exceed 30 days, in which to correct the violation or come into compliance with the Rules, Regulations and Deed Restrictions. If the member does not take appropriate steps to remedy the violation within the time period expressed, the Board of Directors may levy a fine or penalty upon the member, which fine, if not paid, shall be added by the Board to the member's annual dues, and may be made into a lien on the property in the same manner as the lien assessment may be exercised as provided for in the Bylaws and the Deed Restrictions.

6.16 Indemnity. This Association shall have the power to indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending, or contemplated action, suit, or proceeding whether civil, criminal, administrative, or investigative or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a member, Director, officer, employee, or agent of [**for Unit 4 Manufactured Homes Area, Unit 4 Tract B, and Unit 5 only, include:** "the Association or is or was serving at the request of the Association as a member, director, officer, employee, or agent of"] another corporation, partnership, joint venture, trust or other enterprise in accordance with the laws of the State of Arizona, and specifically A.R.S. 10-1005 as it now exists or may hereafter be amended.

6.17 Interest. Any costs or expenses incurred by the Association pursuant to enforcement of these CC&R's shall bear interest at the rate of twelve percent (12%) per annum from the date incurred, until paid.

12.4 This Declaration of Restrictions for Common Area Use was duly adopted by the Board of Directors of Sun Lakes Homeowners Association No. 1, Inc., at a meeting held September 7, 1999.

CERTIFICATION

The undersigned Secretary of the Association certifies that the following is a true and correct consolidation of the Declaration, as reflected in the previous recordings, and attest that the foregoing was assented to at a meeting of the Board of Directors, held on February 6, 2013, by majority vote of the Members of the Board.

Executed this 5th day of FEBRUARY, 2013.

Sun Lakes Home Owners Association, #1, Inc.

Michael Hern

By: Michael Hern
Its: Secretary

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 8th day of February, 2013, by Michael Hern, the Secretary of Sun Lakes Home Owners Association, #1, Inc., an Arizona nonprofit corporation, for an on behalf of the corporation.

Carol G. Ulmer
Notary Public

My Commission Expires: 5-10-2014

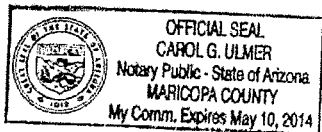


Exhibit 2

SUN LAKES HOMEOWNERS ASSOCIATION #1, INC.

POLICIES AND RULES INFORMATION MANUAL

RESTATED JULY 28, 1998

REVISED MAY 1, 2013

SECTION C

BOARD OF DIRECTORS

1. Board's Authority

The Articles of Incorporation and the Bylaws of SLHOA #1 provide that:

- a) The business and affairs of the Association shall be managed and controlled by a Board of Directors.
- b) The Board of Directors is composed of seven (7) qualified members of the Association elected by the majority of members voting at the annual election. Any vacancies are filled by appointment by the Board of Directors.
- c) Directors shall be elected and serve in accordance with the Bylaws. They shall serve terms of three (3) years each, for not more than two (2) full consecutive terms.
- d) The Board of Directors shall have full power to make proper rules and regulations for the transaction of the affairs of the Association and to establish, execute and enforce the policies of the Association.

2. Meetings

a. Meetings Of Members

The annual meeting of the Homeowners Association is held on the first Tuesday of March. Special meetings of members may be called as provided in the Bylaws.

b. Community Forum

Community Forums are normally held on the third Tuesday of each month. There shall be a minimum of nine (9) Community Forums (including the annual meeting) a year.

The main purpose of the Community Forum held the second Tuesday in January is to meet and nominate candidates who are running for a position on the Board of Directors (Meet Your Candidates Night). Ballots are then mailed to each property owner. Election day is the third Monday in February. The annual meeting in March is the start of the term of the newly elected Board members. (No cumulative voting.)

c. Board Meetings

The Board normally meets on a monthly or as needed basis for Board Meetings in the Friendship Room. The date, time, and agenda are posted on the Clubhouse bulletin board. Resident members are welcome to attend. Residents will be given time at the start of the meeting to discuss a topic. The Board reconfirms its position over the past years not to allow anyone to tape record Board Meetings with the exception of the Secretary to the Board of Directors. The Board feels that there is no need to tape record Board Meetings since minutes will be taken by a recording secretary and approved by the Board at a subsequent meeting.

Exhibit 3

HOMEOWNER PETITIONED PROPOSED BYLAW AMENDMENT

Current Bylaw: Article III, Section 15. Removal

Any Director may be removed on a resolution for cause by an affirmative vote of two thirds (2/3) of all the members of the Board of Directors. Not less than ten (10) days before any such vote is taken, the Director or Directors whose removal is contemplated shall receive, in writing, a bill of particulars setting forth the basis for the resolution and shall have the right to answer the bill of particulars in writing or in person before any vote is taken.

Proposed Bylaw: Article III, Section 15. Removal

Deleted. (Amended 2/21/2011)

SUPPORTING THE PROPOSED AMENDMENT TO DELETE ARTICLE III, SECTION 15 OF THE BYLAWS:

Most HOAs don't allow one group of board members to remove other board members. It violates democratic process, leaves many homeowners unrepresented, becomes dictatorial, encourages arrogance, generates conflict and angry feelings in the community and it can't be done fairly. One group of board members make themselves into judge, jury, and prosecutor and they make up the rules. It is expensive and there is no appeal. Board members who are a problem can always be ignored, or removed by the homeowners using Recall or the elections. We don't need this bad process which causes more problems than it ever solves.

THE PETITIONERS RECOMMEND THAT YOU VOTE "YES" ON THIS AMENDMENT.

THE BOARD OPPOSES THE PROPOSED AMENDMENT TO DELETE ARTICLE III, SECTION 15 OF THE BYLAWS:

1. Article III, Section 15 should remain in the Bylaws in case it is needed in the future.
2. It challenges each board member to avoid being so far out of line as to lose trust with the rest of the board members, especially in cases of seriously violating confidentiality, financial responsibilities, legal obligations and similar duties.
3. If a board member violates his/her fiduciary duty in such a serious way, the homeowners deserve the option of prompt action by the board.
4. If the board fails to act, the Bylaws give homeowners the right to recall the offending board member.

THE BOARD OF DIRECTORS RECOMMEND THAT YOU VOTE "NO" ON

Exhibit 4

When recorded return to:
Attn: Clint J. Warrell
Sun Lakes Homeowners Assn. #1, Inc.
25601 N. Sun Lakes Blvd.
Sun Lakes, AZ 85248
(480-895-9270)



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2011-0847753 10/13/11 09:40 AM
1 OF 1

HUSBEJ

**RESTATED BYLAWS OF
SUN LAKES HOMEOWNERS ASSOCIATION #1, INC.
(A Non-Profit Corporation)
(Includes Amendments Through 02/21/2011)**

**ARTICLE I
NAMES, OFFICES, MEMBERSHIP AND VOTING**

Section 1. Name

The name of this corporation is SUN LAKES HOMEOWNERS ASSOCIATION #1, INC., with principal offices at 25601 North Sun Lakes Boulevard, Sun Lakes, Arizona, 85248. Notwithstanding the location of the principal office for the affairs of the corporation, the Arizona Corporation Commission shall be given the name and address of the current Statutory Agent as the principal office for purposes of receiving all legal notices and mail from the Corporation Commission.

Section 2. Hereafter Association

This corporation, hereafter referred to as "the Association" is a corporation which does not contemplate pecuniary gain or profit to its members, and shall at all times comply with whatever laws or requirements set forth by the United States Treasury Department or the Internal Revenue Service to maintain its tax exempt status under the laws as they now exist or as they may hereafter be amended.

Section 3. Membership and Members (Amended 2/21/89)

Membership in this Association shall be limited solely to those individuals owning one or more residential lots in Section 31, and that part of Section 30 whose North border is Riggs Road and whose West border is Price Road, all of which are located in Township 2 South Range 5 East, Maricopa County, Arizona, (hereinafter referred to as "said property") and have paid all dues and assessments. Those persons shall be hereinafter referred to as "qualified members."

Section 4. Voting (Amended 2/21/89, 7/15/91)

The recorded deed shall be evidence of ownership to the owners of record. In the event any lot is owned or is being purchased by two or more persons, other than husband and wife, said owners shall designate to the Association, in writing, the one of their number who shall have the power to vote at any and all meetings of the members, or in any vote conducted by mail or hand delivered ballot. Any member owning more than one lot shall be entitled to one vote for each lot at any meeting or in any vote conducted by mail or hand delivered ballot.

Section 14. Vacancy (Amended 7/15/91, 2/21/94, 2/21/2011)

In the event of a vacancy on the Board of Directors through death, resignation, or other cause, the remaining Directors shall appoint a successor within six (6) weeks of any vacancy who shall hold office only until the next annual election of Directors. If there exists an unexpired term at the time of the annual election of Directors.

(a) **Notification** As long as a vacancy exists, it shall be published as follows: it will be announced at all open board meetings and member meetings. It shall be posted on the bulletin board, on the web site, and on the front page of the Association's publication. These notifications shall begin no more than ten days following the vacancy and shall continue until all such vacancies are filled.

(b) **Eligibility** The board shall select the successor from eligible applicants. Those homeowners who were candidates in the previous Board of Directors' election, received the next highest votes and received over seventy-five (75) votes shall be selected over other eligible candidates. Previously recalled directors shall not be eligible for appointment. Anyone appointed to fill a vacancy must have all the qualifications provided by the Bylaws in Article III, Section 5.

(c) **Unexpired Terms** If there exists unexpired terms at the time of the annual election of Directors, the candidates polling the 4th, 5th, etc., highest number of votes shall be designated to complete the unexpired terms. The length of the unexpired term served by a member filling a vacancy (either by appointment or election) shall not be considered as part of the term limitations set forth in Section 2 of this Article.

Section 15. Removal – (Deleted by 2/21/11 Amendment)

Section 15 (a). Recall of Director(s) (Amended 7/15/91)

A Director may be subject to recall for cause. "Cause" must relate to, and affect the administration of the office of Director and must be restricted to something of a substantial nature directly affecting the rights and interests of the members of the Association.

1. After charges are filed against a Director with the Board of Directors, a petition containing the valid signatures of 10% of qualified voting members must be filed with the Secretary.

ARTICLE VIII

Adoption

These Restated Bylaws were prepared to include the amendments that were adopted February 21, 2011 by a majority vote of the members of the Association voting on these Bylaws.

Jean K Talar
PRESIDENT

ATTEST:

~~_____
SECRETARY~~

STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me, a Notary Public, this 22 day of Sept 2011, by JEAN K TALAR, the President and by _____, Secretary, of SUN LAKES HOMEOWNERS ASSOCIATION #1, INC., an Arizona corporation, for and on behalf of the corporation.

Carol N. Kellaney
NOTARY PUBLIC

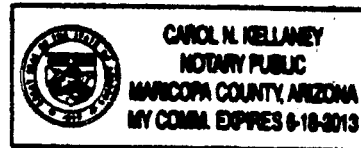


Exhibit B

RECEIVED

DEC 03 2014

**CHEIFETZ IANNITELLI
MARCOLINI, P.C.**

1 Robert Grasso, Jr. – Bar No. 015087
2 Jenny J. Winkler – Bar No. 019032
3 **GRASSO LAW FIRM, P.C.**
4 2121 West Chandler Boulevard, Suite 100
5 Chandler, Arizona 85224
6 Telephone (480) 730-5553
7 *rgrasso@grassolawfirm.com*
8 *jwinkler@grassolawfirm.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 COLETTE McNALLY, an individual,)
14)
15) Plaintiff,)
16)
17) vs.)
18)
19) SUN LAKES HOMEOWNERS ASSOCIATION #1,)
20) INC, an Arizona non-profit corporation,)
21)
22) Defendant.)

Case No. CV2014-009496
**DEFENDANT’S RESPONSE TO
PLAINTIFF’S FIRST SET OF NON-
UNIFORM INTERROGATORIES TO
DEFENDANT**
(Assigned to the Honorable
James Blomo)

23 Defendant Sun Lakes Homeowners Association #1, Inc. responds to Plaintiff’s First
24 Set of Non-Uniform Interrogatories to Defendant as follows.

25 **RESPONSES TO NON-UNIFORM INTERROGATORIES**

26 1. Explain in detail all legal authority that supports the Association’s position that
27 it had/has the legal right to preclude Ms. McNally from participating in executive sessions
28 of the Association’s Board of Directors.

RESPONSE: The Association’s Directors have an obligation to discharge their duties: 1) in good faith, 2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and 3) in a manner the director reasonably believes to be in the best interest of the corporation. See A.R.S. § 10-3830(A). This includes an obligation not to willfully expose the Association to liability for defamation or other torts, and to preserve as confidential the matters discussed at executive session under A.R.S. § 33-1805(B). The Association’s Board of Directors has the right and obligation to protect the Association against the consequences of such conduct and may take reasonable measures to protect the Association in such circumstances. Screening of Plaintiff from executive sessions while allowing her to continue to serve her elected term as a voting member of the Association’s Board of Directors is a reasonable measure and complies with the standard of care applicable to the

1 Association and its Board of Directors in these circumstances. The
2 Association will support its position with expert testimony concerning
3 industry standard of care for managing homeowners associations. The
4 conduct of the Board of Directors was undertaken in good faith and with
5 the advice of counsel and is presumptively reasonable under A.R.S. § 10-
6 3830(B)(2).

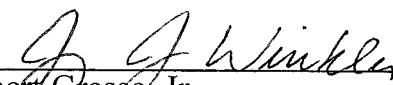
7 2. Explain in detail all authority contained in the Association's governing
8 documents that supports the Association's position that it had/has the legal right to preclude
9 Ms. McNally from participating in executive sessions of the Association's Board of
10 Directors.

11 **RESPONSE:** Article III, Section 15 of the Restated Bylaws of Sun Lakes
12 Homeowners Association #1, Inc. ("Bylaws") authorizes removal of a
13 Director for cause by an affirmative vote of two-thirds (2/3) of all
14 members of the Board of Directors. Article III, Section 16 of the Bylaws
15 authorizes the Board of Directors to manage the affairs of the Association
16 and to exercise all "legal, and other powers of the Board" in accordance
17 with the Bylaws and "any other powers granted under the laws of the
18 State of Arizona." Article IV, Section 5(a) authorizes the President of the
19 Board of Directors to act as the Chief Executive Officer of the Association
20 and to direct it in accordance with the law, and to exercise any and all
21 other powers necessary or incidental to the office.

22 DATED this 1st day of December, 2014.

23 GRASSO LAW FIRM, P.C.

24 By

25 
26 Robert Grasso, Jr.
27 Jenny J. Winkler
28 2121 West Chandler Boulevard, Suite 100
Chandler, Arizona 85224
Attorneys for Defendant

29 ORIGINAL mailed this 1st day
30 of December, 2014 to:

31 Steven W. Cheifetz, Esq.
32 Jacob A. Kubert, Esq.
33 CHEIFETZ IANNITELLI MARCOLINI, P.C.
34 111 West Monroe Street, 17th Floor
35 Phoenix, Arizona 85003
36 Attorneys for Plaintiff

37 By

38 