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EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission AZ CORP COMMISSION
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3 WILLIAM A. MUNDELL
CHAIRMAN
4 JIM IRVIN
COMMISSIONER
5 MARK SPITZER
COMMISSIONER
6

7 IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-01656A-98-0577
8 SUN CITY WATER COMPANY AND SUN CITY) DOCKET NO. SW-02334A-98-0577
9 WEST UTILITIES COMPANY FOR APPROVAL)
10 OF CENTRAL ARIZONA PROJECT WATER)
UTILIZATION PLAN AND FOR AN) **SECOND SUPPLEMENT TO**
11 ACCOUNTING ORDER AUTHORIZING A) **EXCEPTIONS OF SUN CITY**
GROUNDWATER SAVINGS FEE AND) **TAXPAYERS ASSOCIATION, INC.**
12 RECOVERY OF DEFERRED CENTRAL)
ARIZONA PROJECT EXPENSES.)
13

14 On March 23, 2001, Sun City Taxpayers Association, Inc. ("SCTA") timely
15 filed exceptions to the Recommendation filed by Administrative Law Judge Rodda in the
16 above-entitled matter. On April 6, 2001, SCTA filed a Supplement to its Exceptions to
17 provide a copy of the letter sent to the Recreation Centers of Sun City, Inc. ("RCSC")
18 questioning the legality of the agreement between Sun City Water Company, Inc. ("SCWC")
19 and the RCSC permitting use of CAP water on the golf courses (the "Exchange Agreement")
20 was not properly approved by RCSC. (For the Commissioners' convenience another copy of
21 that letter is attached hereto as Exhibit A.) By letter dated April 5, 2001, the RCSC indicated
22 that no corrective action would be taken. A copy of the correspondence from RCSC's
23 attorney is attached hereto as Exhibit B.

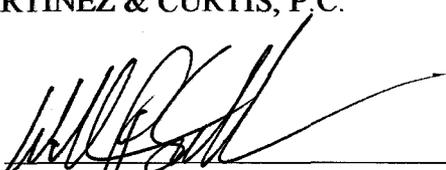
24 On April 16, 2001, a Complaint was filed in the Superior Court of the State of
25 Arizona in and for the County of Maricopa (Cause No. CV2001-006415) by SCTA and
26 various individual members of SCTA ("Plaintiffs") against RCSC and SCWC. The

1 Complaint requests the Court declare the Exchange Agreement null and void ab initio due to
2 Defendant RCSC's failure to first comply with the mandatory provisions of its Articles of
3 Incorporation and the Sun City Community Facilities Agreement. The Complaint also
4 alleges breach of contract and breach of fiduciary duty. A copy of the Complaint is attached
5 hereto as Exhibit C.

6 The legality of the Exchange Agreement is now pending before the Superior
7 Court. If the relief requested in the Complaint is granted: 1) the RCSC would be precluded
8 from proceeding with the Exchange Agreement; and 2) there is absolutely no need for the
9 system SCWC is proposing to construct to serve the RCSC golf courses unless and until
10 RCSC obtains the requisite approvals of the Exchange Agreement by RCSC's members.
11 Therefore, even if the Arizona Corporation Commission were otherwise inclined to approve
12 SCWC's CAP water utilization plan over SCTA's other Exceptions, it is respectfully
13 requested the Arizona Corporation Commission not approve the plan, as to SCWC, or
14 authorize SCWC to spend any further monies to implement the plan until a final decision is
15 rendered by the Arizona Courts on Plaintiffs' Complaint.

16 RESPECTFULLY submitted this 17th day of April, 2001.

17 MARTINEZ & CURTIS, P.C.

18
19 By: 

20 William P. Sullivan
21 Paul R. Michaud
22 2712 North Seventh Street
23 Phoenix, Arizona 85006-1090
24 Attorneys for Sun City Taxpayers
25 Association, Inc.
26

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An original and ten (10) copies of the foregoing are filed this 17th day of April, 2001 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

A copy of the foregoing mailed or hand-delivered this 17th day of April, 2001 to:

William A. Mundell, Chairman
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Jim Irvin, Commissioner
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Marc Spitzer, Commissioner
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Jane Rodda
Acting Chief Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, Arizona 85701-1347

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Legal Division
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2828 North Central Avenue
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Phoenix, Arizona 85004-4453

Mr. Walter W. Meek, President
Arizona Utility Investors Association
2100 North Central Avenue
Suite 210
Phoenix, Arizona 85004

William G. Beyer, Esq.
5632 W. Alameda Road
Glendale, Arizona 85310
Attorney for Recreation Centers of Sun City, Inc. and
Recreation Centers of Sun City West, Inc.

Mr. Ray Jones
General Manager
Sun City Water Company, Inc.
Post Office Box 1687
Sun City, Arizona 85372

Michael M. Grant, Esq.
Todd C. Wiley, Esq.
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Citizens Communications Company


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EXHIBIT A

The Phoenix Corporate Center
3003 North Central Avenue
Suite 1250
Phoenix, Arizona 85012-2915
www.lawyers.com/lawms/

MOYES STOREY

LAW OFFICES

FILE COPY
Jeffrey C. Zimmerman

Telephone: 602-604-2111
Facsimile: 602-274-9135

March 26, 2001

VIA CERTIFIED MAIL

Jerry Swintek, President
Recreation Centers of Sun City, Inc.
10626 Thunderbird Boulevard
Sun City, Arizona 85351

Re: Demand for Vote of Members re Validity of Agreement for Exchange of CAP Water in Sun City dated October 30th, 2000, between the Recreation Centers of Sun City and Sun City Water Company (Exchange Agreement)

Dear Mr. Swintek:

This firm represents the Sun City Taxpayers Association, Inc. (SCTA). On behalf of SCTA, we demand that the Recreation Centers of Sun City, Inc. (RCSC) immediately call and notice a vote of its members to approve or reject the above Exchange Agreement. The Exchange Agreement is invalid and void because it was never authorized by RCSC's members, nor was it ever even properly authorized by the RCSC board.

As you know, Article VIII, Paragraph 7 of the articles of incorporation of RCSC expressly provides that "The Corporation shall not convey any substantial part of its assets, or any real property of assessed value for tax purposes exceeding \$50,000, without affirmative vote of a majority of its membership entitled to vote thereon." The groundwater rights which are the subject of the Exchange Agreement have a value in the millions of dollars and clearly constitute a "substantial part" of RCSC's assets. Exchanging those assets for 43 years or longer clearly constitutes a conveyance under Arizona law.

As you also know, Article X of the articles of incorporation of RCSC expressly provides that "The highest amount of indebtedness or liability, direct or contingent, to which the Corporation may at any time subject itself shall be limited to \$750,000 or any greater amount which may be authorized by three-fourths (3/4) of the Members present at a duly called and noticed meeting of the membership; or in such amounts as may be authorized by the Arizona Corporation Commission." By entering into the Exchange Agreement, RCSC has unilaterally subjected all of its members to bearing the substantial financial burden of a huge portion of the \$15 million debt that Citizens Utilities Company and its subsidiaries (Citizens) will incur to build the CAP water delivery facilities under the Exchange Agreement. This multi-million dollar debt never would have been incurred or imposed upon RCSC's members in the absence of the Exchange Agreement, which clearly violates this provision of RCSC's articles of incorporation in both spirit as well as substance.

As you also know, the Sun City Community Facilities Agreement that is recorded against every member's home imposes upon RCSC a strict fiduciary duty to promote and protect the interests of its members. This binding legal document recites that RCSC's properties were conveyed to RCSC solely "for the purpose of maintaining, operating and developing such facilities for the benefit of" the Sun City residents. It also expressly requires RCSC to "operate such recreational facilities for the benefit of" its members, the Sun City homeowners. By unilaterally entering into the Exchange Agreement with Citizens, RCSC has illegally imposed millions of dollars of debt upon its members in clear breach of its fiduciary duty to act exclusively for the benefit of its

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Jerry Swintek, President

March 26, 2001

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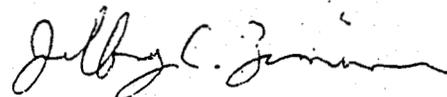
members. RCSC's breach of its fiduciary duty to its members also constitutes a breach of its contract with its members, thereby exposing RCSC to both tort and contractual consequential damages.

In addition to the need for an immediate membership vote, your board apparently never even properly authorized the Exchange Agreement. As you know, by resolution passed February 25, 1999, the board merely approved the exchange concept in principle and authorized the president only to "enter into the requisite contract with Citizens," but this authorization was expressly made "subject to final review by this Board." The resolution expressly stated that it was "non-binding." At its meeting on October 26, 2000, the Exchange Agreement was discussed, but there was never any board vote approving it, thereby rendering the subsequent execution of the Exchange Agreement void and in violation of RCSC's own procedural requirements.

The issue of the Exchange Agreement must be subjected to an immediate vote of RCSC's members that satisfies both Articles VIII and X of RCSC's articles of incorporation because Citizens already has a pending application for approval of its CAP water delivery facilities before the Arizona Corporation Commission. For the Exchange Agreement to be valid, the vote under Article VIII must be approved by a majority of RCSC's full membership, and the vote under Article X must be approved by at least 3/4 of RCSC's full membership. If the RCSC board refuses to immediately notice the appropriate vote of its members to consider the Exchange Agreement as soon as its articles and bylaws allow, then SCTA will have no recourse but to commence legal proceedings against RCSC to compel RCSC to comply with Arizona law and its own recorded documents. Any such litigation will, of course, expose RCSC to actual monetary damages for its flagrant breaches of its fiduciary and contractual duties to its members, along with further liability for all of SCTA's costs and attorneys' fees. SCTA also requires that RCSC give it a fair opportunity to approve the wording of the ballot in advance to satisfy itself that the wording is clear and understandable for all the members.

While SCTA sincerely hopes that legal proceedings will not become necessary, that is a decision that lies solely in your hands. We can do this the easy way or the hard way. The choice is up to you. If we do not receive written confirmation from you within fifteen days from the date of this letter that the RCSC board will notice a vote of its membership for the purpose of approving or rejecting the Exchange Agreement, then we will conclude that RCSC would rather litigate against its own members than work to resolve this matter outside of a courtroom. Representatives of SCTA would be pleased to meet with the RCSC board to discuss these important issues in the hope of resolving this matter quickly and inexpensively for everyone. Please take advantage of this unique, and final, opportunity to avoid the expense and embarrassment of a lawsuit, and work with us and our clients toward the resolution of this matter.

Very truly yours,



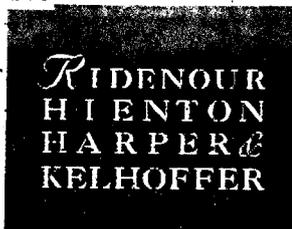
Jeffrey C. Zimmerman

JCZ/lkk

cc: Ray E. Dare, President, Sun City Taxpayers Association, Inc.

EXHIBIT B

ROBERT R. BELTZ
JEFFREY A. BERNICK
ALAN R. COSTELLO
NATALIE P. GARTH
GREGORY P. GILLIS
THOMAS F. HARPER
JAMES R. HENTON



A PROFESSIONAL LIMITED LIABILITY COMPANY

CHARLES I. KELHOFFER
TAMALYN E. LEWIS
BRIAN D. MYERS
KURT A. PETERSON
WILLIAM G. RIDENOUR
ROBERT P. RUTHLA
ELIZABETH J. ZANON

File No. 43755.4

Direct Line: (602) 254-3668

April 5, 2001

Jeffrey C. Zimmerman, Esq.
Moyes Storey
3003 North Central Avenue, Suite 1250
Phoenix, Arizona 85012-2902

RE: Sun City Taxpayers Association, Inc. Demand for Vote

Dear Mr. Zimmerman:

This firm represents the Recreation Centers of Sun City, Inc. ("RCSC"). Your letter of March 26, 2001, regarding a demand for vote by the Sun City Taxpayers Association, Inc. ("SCTA") has been forwarded to us by our client.

We do not agree with your interpretation of the various provisions of the RCSC Articles of Incorporation set forth in your letter. We also strongly disagree with your allegations that there have been any breaches of fiduciary duty by RCSC. To the contrary, the members that volunteer to be directors and officers of RCSC work extremely hard and spend many hours diligently investigating and reviewing information concerning matters such as the RCSC water issues. RCSC has also been professionally advised in connection with the Agreement for Exchange of CAP Water in Sun City dated October 30, 2000 (the "CAP Water Agreement"). Since the RCSC directors and officers are also members of RCSC and live in Sun City, they are clearly motivated to use their best business judgment and make the best decisions regarding water issues as they can for the benefit of RCSC and its members. RCSC, its directors and its officers take their fiduciary duties quite seriously and they have always acted in a manner to carry out and comply with those fiduciary duties.

Two Renaissance Square • 40 North Central Avenue, Suite 1400 • Phoenix, Arizona 85004-4457

166301;JRH;43755-0004

ph. 602.254.9900 • fax 602.254.8670

Jeffrey C. Zimmerman, Esq.

April 5, 2001

Page 2

In addition, as I'm sure you know, SCTA is not a member of RCSC and has no legal standing to demand a membership vote by RCSC. In fact, SCTA has no legal standing to demand anything of RCSC. Thus, RCSC has no intention of complying with any of the demands of SCTA.

Finally, we understand that the entire groundwater/CAP water issue was the subject of an intensive study by the CAP Task Force during the past few years. The members of the CAP Task Force included persons who were affiliated with SCTA and RCSC. Apparently, the position of SCTA on the groundwater/CAP water issue did not prevail in the Task Force. Based upon the conclusions of the Task Force, RCSC's own investigation and review of its water issues and the professional advice given to it, RCSC proceeded with the CAP Water Agreement. It appears now that SCTA is making a last ditch effort to delay or block the CAP Water Agreement because it is opposed in principle to the agreement. SCTA's objections to bringing CAP Water to Sun City were, however, not accepted during the extensive debate, investigation and review of the water issues. SCTA should respect that fact and the diligent work and investigation of the CAP Task Force and RCSC.

In conclusion, RCSC hopes that SCTA does not regrettably file a baseless lawsuit against RCSC. Since SCTA has no legal standing to make any demands upon RCSC, we believe such a suit would be quickly dismissed. To the extent that SCTA disagrees with the decision by RCSC to enter into the CAP Water Agreement, SCTA should recognize that the merits of its position and arguments on this matter did not prevail in the CAP Task Force or RCSC debates and investigations. SCTA is free to continue advocating its opposition to the CAP Water Agreement, but it should refrain from filing a lawsuit against RCSC when it has no standing to do so.

Very truly yours,

RIDENOUR, HIENTON, HARPER
& KELHOFFER

By:

James R. Hienton
James R. Hienton
For the Firm

JRH:ymb

cc: Mr. Jerry Swintek, President of Recreation Centers of Sun City, Inc.

EXHIBIT C

COPY

APR 16 2001



MICHAEL K. JEANES, CLERK
T. ANZALDUA
DEPUTY CLERK

1 Jeffrey C. Zimmerman (I.D. No. 009900)
2 Brad K. Keogh (I.D. No. 010321)
3 **MOYES STOREY, LTD.**
4 3003 North Central Avenue
5 Suite 1250
6 Phoenix, Arizona 85012
7 (602) 604-2141

8 Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

9 SUN CITY TAXPAYERS ASSOCIATION, INC.,)
10 an Arizona corporation; BERNARD BERARDINI;)
11 JUNE BERARDINI; CHARLES SEDGWICK;)
12 JOAN SEDGWICK; ROLAND FRANQUEMONT;)
13 JUNE MACDONALD; BRUCE MACDONALD;)
14 ELMER BECSI; RAYMOND DARE;)
15 WARREN MILLER; OREN LANE;)
16 GERALD DOLEZAL; RUTH DOLEZAL;)
17 LARRY SPITZ, in their individual capacities)
18 and as representatives of all other present and)
19 future members of Sun City Taxpayers Association,)
20 Inc.; JOHN and JANE DOES 1-20,000,)

Plaintiffs,

21 vs.

22 RECREATION CENTERS OF SUN CITY, INC.,)
23 an Arizona corporation; SUN CITY WATER)
24 COMPANY, INC., an Arizona corporation,)

Defendants.

Cause No. CV2001-006415

COMPLAINT
(Rule 23 Class Action for Declaratory
Judgment and Injunctive Relief; Breach
of Contract; Breach of Fiduciary Duty)

21 For their Complaint against defendants, plaintiffs Sun City Taxpayers Association, Inc., and Bernard
22 Berardini, June Berardini, Charles Sedgwick, Joan Sedgwick, Roland Franquemont, June MacDonald, Bruce
23 MacDonald, Elmer Becsi, Raymond Dare, Warren Miller, Oren Lane, Gerald Dolezal, Ruth Dolezal, Larry
24 Spitz, in their individual capacities and as representatives of all other present and future members of Sun City
25 Taxpayers Association, Inc., and the fictitiously denominated plaintiffs (hereafter collectively designated
26 "Plaintiffs"), hereby allege as follows:

27 1. The individual named Plaintiffs are residents of Maricopa County, Arizona, and are members
28 of the Plaintiff entity, Sun City Taxpayers Association, Inc., which presently has over 15,000 members, on

1 whose behalf said Plaintiffs also bring this action. The individual named Plaintiffs also are members of
2 defendant Recreation Centers of Sun City, Inc. Plaintiffs have suffered damages inflicted upon them by
3 defendants in Maricopa County, Arizona.

4 2. Defendant Recreation Centers of Sun City, Inc. (hereafter designated "RCSC") is an Arizona
5 corporation which has inflicted damages upon Plaintiffs in Maricopa County, Arizona. Defendant Sun City
6 Water Company (hereafter designated "SCWC") is an Arizona corporation which has inflicted damages upon
7 Plaintiffs in Maricopa County, Arizona.

8 3. This Court has jurisdiction over this action pursuant to A.R.S. § 12-1831 et seq. and Rule 23,
9 Arizona Rules of Civil Procedure.

10 4. This action is a proper action for class action certification pursuant to Rule 23(a) because (1)
11 the class of plaintiffs is so numerous that joinder of all members is impracticable, (2) there are questions of
12 law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the
13 claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests
14 of the class. This action also is a proper action for class action certification because all the prerequisites of
15 Rule 23(b) are satisfied here.

16 5. In addition, or in the alternative, Plaintiffs have designated fictitious plaintiffs 1-20,000, who
17 are present and future members of the Plaintiff entity Sun City Taxpayers Association, Inc. and of defendant
18 Recreation Centers of Sun City, Inc., and who are similarly situated as the named Plaintiffs for said reasons.

19 GENERAL ALLEGATIONS

20 6. Plaintiffs incorporate by this reference their allegations in paragraphs 1-5 above, inclusive.

21 7. On or about October 30, 2000, defendants RCSC and SCWC entered into a written contract
22 entitled "AGREEMENT FOR EXCHANGE OF CAP WATER IN SUN CITY" (hereafter designated
23 "Agreement"), a true and accurate copy thereof is attached as Exhibit A to this Complaint.

24 8. The Agreement provides in relevant part that defendant RCSC will exchange its grandfathered
25 groundwater rights for defendant SCWC's CAP water for a period of at least 43 years, and that defendant
26 SCWC will construct a pipeline and all other necessary distribution facilities (hereafter designated the
27 "System") required to deliver said CAP water to defendant RCSC's golf courses.

28

1 9. The Agreement further requires defendant RCSC—and therefore its present and future members,
2 Plaintiffs in this action—to pay for said CAP water at the rate of 80% of what would have been paid for
3 pumping said groundwater.

4 10. Defendant SCWC estimates that the System will cost at least \$15,000,000.

5 11. Defendants SCWC and RCSC understand and agree that the payments for said CAP water are
6 woefully insufficient to pay for the System.

7 12. Defendants SCWC and RCSC understand and agree that defendant SCWC will include the
8 capital cost of the System in its rate base, and therefore will pass said cost on to, among others, the members
9 of defendant RCSC, which includes Plaintiffs..

10 13. Defendant SCWC has estimated that water bills for Plaintiffs will increase by at least 36%.

11 14. Defendants SCWC and RCSC understand and agree that there are less expensive alternatives
12 to the System that are less profitable for SCWC.

13 15. Article VIII, Section 7 of defendant RCSC’s Articles of Incorporation prohibits defendant
14 RCSC from conveying “any substantial part of its assets, or any real property of assessed value for tax
15 purposes exceeding \$50,000, without [the] affirmative vote of a majority of its membership entitled to vote
16 thereon.”

17 16. Defendant RCSC’s grandfathered groundwater rights are a substantial part of its assets.

18 17. Defendant RCSC’s grandfathered groundwater rights exceed \$50,000 in value.

19 18. Defendant RCSC executed the Agreement with defendant SCWC without first obtaining the
20 affirmative vote of a majority of its membership entitled to vote thereon.

21 19. Article X of defendant RCSC’s Articles of Incorporation prohibits defendant RCSC from
22 subjecting itself to any indebtedness or liability, direct or contingent, equal to or greater than \$750,000 without
23 first obtaining authorization from “three-fourths of its members present at a duly called and noticed meeting
24 of the membership, or in such amounts as may be authorized by the Arizona Corporation Commission.”

25 20. Defendant RCSC’s financial obligations to defendant SCWC under the Agreement subject
26 defendant RCSC—and therefore its members, Plaintiffs in this action—to an indebtedness or liability, direct or
27 contingent, equal to or greater than \$750,000.

28

1 21. Defendant RSCS incurred an indebtedness or liability, direct or contingent, equal to or greater
2 than \$750,000 without first obtaining authorization from three-fourths of its members present at a duly called
3 and noticed meeting of the membership.

4 22. Paragraph 1 of the Sun City Community Facilities Agreement that defendant RCSC has entered
5 into with every homeowner in Sun City—and therefore with every Plaintiff—includes defendant RCSC's
6 promise to operate all recreational facilities "for the benefit of homeowners and residents of Sun City who
7 qualify under its Bylaws."

8 23. By entering into the Agreement with defendant SCWC and unilaterally making the promises
9 and unilaterally incurring the contractual obligations set forth above and therein, all without the requisite prior
10 approval of its members, defendant RCSC has not acted for the benefit of the homeowners and residents of
11 Sun City who qualify under its Bylaws.

12 24. On February 25, 1999, the Board of Directors of defendant RCSC met and resolved to adopt
13 the non-binding resolution authorizing their President to enter into the requisite contract for the delivery of
14 said CAP water, subject to final review by the Board.

15 25. The Board of Directors of defendant RCSC has never met and adopted a binding resolution
16 approving of the final Agreement as executed on or about October 30, 2000.

17 **COUNT ONE**
18 (Declaratory Judgment Against Defendants RCSC and SCWC)

19 26. Plaintiffs incorporate by this reference their allegations in paragraphs 1-25 above, inclusive.

20 27. Pursuant to A.R.S. § 12-1832, Plaintiffs are persons interested under the Agreement, and their
21 rights, status, or other legal relations are affected by the Agreement, and Plaintiffs therefore are entitled to
22 seek judicial determination of any question of construction or validity arising under the Agreement and to
23 obtain a judicial declaration of their rights, status, or other legal relations thereunder.

24 28. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Plaintiffs are entitled to recover their costs and
25 attorney's fees incurred in prosecuting this action.

26 29. Pursuant to A.R.S. §§ 12-1832 and 12-1838, Plaintiffs are entitled to a judicial declaration by
27 the Court's Order that the Agreement between defendants RCSC and SCWC is null and void ab initio due to
28 defendant RCSC's failure to first comply with the mandatory provisions of its Articles of Incorporation and

1 the Sun City Community Facilities Agreement as set forth above; that the Agreement shall remain null and
 2 void ab initio unless and until defendant RCSC complies with the mandatory provisions of its Articles of
 3 Incorporation and the Sun City Facilities Agreement and obtains the requisite approval of its members; that
 4 defendants RCSC and SCWC are prohibited from attempting in any way to proceed with the Agreement
 5 unless and until defendant RCSC complies with the mandatory provisions of its Articles of Incorporation and
 6 the Sun City Facilities Agreement and obtains the requisite approval of its members; that defendants RCSC
 7 and SCWC shall show cause why Plaintiff's requested relief should not be granted forthwith; and that
 8 defendants RCSC and SCWC pay Plaintiffs their costs and attorney's fees incurred in prosecuting this action,
 9 pursuant to A.R.S. §§ 12-341 and 12-341.01, respectively.

10 **COUNT TWO**
 11 (Breach of Contract Against Defendant RCSC)

12 30. Plaintiffs incorporate by this reference their allegations in paragraphs 1-29 above, inclusive.

13 31. Defendant RCSC breached its contract with Plaintiffs by acting and/or failing to act as set forth
 14 above, in violation of the express provisions of the Sun City Community Facilities Agreement, thereby
 15 proximately causing Plaintiffs to suffer damages, in an amount to be determined at trial, but in no amount less
 16 than the capital cost of the System that defendant SCWC passes on to Plaintiffs.

17 32. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Plaintiffs are entitled to recover their costs and
 18 attorney's fees incurred in prosecuting this action.

19 **COUNT THREE**
 20 (Breach of Fiduciary Duty Against Defendant RCSC)

21 33. Plaintiffs incorporate by this reference their allegations in paragraphs 1-32 above, inclusive.

22 34. Pursuant to the Sun City Community Facilities Agreement, defendant RCSC had and has a
 23 fiduciary duty to Plaintiffs to operate the recreational facilities, and to otherwise act in general, for the benefit
 24 of the homeowners and residents of Sun City who qualify under its Bylaws.

25 35. Defendant RCSC has breached its fiduciary duty to Plaintiffs by acting and/or failing to act as
 26 set forth above, thereby proximately causing Plaintiffs to suffer damages, in an amount to be determined at
 27 trial, but in no amount less than the capital cost of the System that defendant SCWC passes on to Plaintiffs.

1 36. Pursuant to A.R.S. §§ 12-341 and 12-341.01, Plaintiffs are entitled to recover their costs and
2 attorney's fees incurred in prosecuting this action.

3 WHEREFORE Plaintiffs respectfully request the Court to issue its Order declaring, and thereafter
4 enter Judgment decreeing:

5 (1) that this action shall proceed as a class action pursuant to Rule 23, Arizona Rules of Civil
6 Procedure;

7 (2) that the Agreement between defendants RCSC and SCWC is null and void ab initio due
8 to defendant RCSC's failure to first comply with the mandatory provisions of its Articles of
9 Incorporation and the Sun City Community Facilities Agreement;

10 (3) that the Agreement shall remain null and void ab initio unless and until defendant RCSC
11 complies with the mandatory provisions of its Articles of Incorporation and the Sun City
12 Facilities Agreement and obtains the requisite approval of its members;

13 (4) that defendants RCSC and SCWC are prohibited from attempting in any way to proceed
14 with the Agreement unless and until defendant RCSC complies with the mandatory provisions
15 of its Articles of Incorporation and the Sun City Facilities Agreement and obtains the requisite
16 approval of its members;

17 (5) that defendants RCSC and SCWC shall show cause why Plaintiff's requested relief should
18 not be granted forthwith;

19 (6) that Plaintiffs are entitled to an award of their consequential and other damages
20 proximately caused by defendant RCSC's breach of contract;

21 (7) that Plaintiffs are entitled to an award of their consequential and other damages
22 proximately caused by defendant RCSC's breach of fiduciary duty;

23 (8) that Plaintiffs are entitled to an award of their costs and attorney's fees incurred in
24 prosecuting this action, pursuant to A.R.S. §§ 12-341 and 12-341.01; and

25 (9) that Plaintiffs are entitled to all such further relief the Court deems just and proper under
26 the circumstances.

27 DATED this 16th day of April, 2001.

28 MOYES STOREY, LTD.

By Brad K. Keogh
Jeffrey C. Zimmermen
Brad K. Keogh
3003 North Central Avenue
Suite 1250
Phoenix, Arizona 85012
Attorneys for Plaintiffs