



## FOSCA FOSHA Board of Directors Motion Form

Meeting Date:

9.21.2016

Motion #:

1

Motion:

Approve the Joint Board Resolution Regarding Intent To Pursue the Merger of Fountain of the Sun Community Association (FOSCA) and Fountain of the Sun Homeowners Association (FOSHA).

Rationale:

See attached resolution.

Motion by Director:

*Sheila Buchan*  
FOSCA  
FOSHA Tom Parker

Second by Director:

*Larry Gibbens*  
*Rob Heldt*

Result of vote: Passed  Failed  Tabled

Roll Call:

	Yea	Nay	Abstain		Yea	Nay
Sheila Buchan	<input checked="" type="checkbox"/>	<input type="checkbox"/>		George Taylor	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jerry Favero	<input type="checkbox"/>	<input type="checkbox"/>		Marilyn Block	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Harry Gibbens	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Tom Parker	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Francine Miller	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Richard Bistodeau	<input type="checkbox"/>	<input type="checkbox"/>
Mike Powell	<input type="checkbox"/>	<input type="checkbox"/>		Sue McMahon	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael Royse	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Keith Kellen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larry Shima	<input checked="" type="checkbox"/>	<input type="checkbox"/>		Ron Heldt	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Sheila Buchan*

Shelia Buchan  
Secretary FOSCA

*Sue McMahon*

Sue McMahon  
Secretary FOSHA



**FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION  
FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION  
JOINT BOARD RESOLUTION REGARDING INTENT TO PURSUE MERGER**

**WHEREAS**, the Fountain of the Sun Homeowners Association ("FOSHA") was created in 1972 as the nonprofit Arizona corporation Fountain of the Sun Association (later renamed as "Fountain of the Sun Homeowners Association" in 1994) for the benefit of the Fountain of the Sun community at large and in order to enforce its covenants, conditions and restrictions as well as maintain and administer its common areas and facilities;

**WHEREAS**, the Fountain of the Sun Community Association ("FOSCA") was created in 1983 for the transfer of and continued maintenance and operation of Fountain of the Sun development common facilities in accordance with the reasonable expectations of the residents and property owners of the community;

**WHEREAS**, on December 31, 1983 an Agreement was made between FOSCA and FOSHA (collectively, the "Associations") and the other councils and co-owners of the Fountain of the Sun development with respect to the transfer and continued maintenance and operation of its common facilities (the "1983 Agreement");

**WHEREAS**, the Associations recorded an Amendment to the 1983 Agreement on March 2, 2005 adopting a provision with respect to the payment of an "Impact Fee by its homeowners pursuant to the Agreement (the "1983 Amendment");

**WHEREAS**, the Associations formed a joint Ad Hoc Committee for the purposes of exploring and performing its due diligence regarding a potential merger of both Associations;

**WHEREAS**, having performed their due diligence through the Ad Hoc Committee, the Associations now desire to pursue merger of FOSCA into FOSHA and to that end, further amend their governing documents and the 1983 Agreement to accomplish such merger;

**BE IT THEREFORE RESOLVED:**

The Associations intend to move forward with the merger of FOSCA into FOSHA. In order to facilitate the intended merger, the Associations will pursue the following actions as the Boards deem necessary (along with additional actions if deemed necessary by the Boards):

- (1) Both Boards will review and adopt a Plan of Merger pursuant to the Arizona Nonprofit Corporation Act;
- (2) The Associations shall submit the Plan of Merger to its members for approval;
- (3) FOSCA will seek to amend its Bylaws and Articles of Incorporation to address the distribution of property to FOSHA and the dissolution of FOSCA;

**FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION  
FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION  
JOINT BOARD RESOLUTION REGARDING INTENT TO PURSUE MERGER**

**WHEREAS**, the Fountain of the Sun Homeowners Association (“FOSHA”) was created in 1972 as the nonprofit Arizona corporation Fountain of the Sun Association (later renamed as “Fountain of the Sun Homeowners Association” in 1994) for the benefit of the Fountain of the Sun community at large and in order to enforce its covenants, conditions and restrictions as well as maintain and administer its common areas and facilities;

**WHEREAS**, the Fountain of the Sun Community Association (“FOSCA”) was created in 1983 for the transfer of and continued maintenance and operation of Fountain of the Sun development common facilities in accordance with the reasonable expectations of the residents and property owners of the community;

**WHEREAS**, on December 31, 1983 an Agreement was made between FOSCA and FOSHA (collectively, the “Associations”) and the other councils and co-owners of the Fountain of the Sun development with respect to the transfer and continued maintenance and operation of its common facilities (the “1983 Agreement”);

**WHEREAS**, the Associations recorded an Amendment to the 1983 Agreement on March 2, 2005 adopting a provision with respect to the payment of an “Impact Fee by its homeowners pursuant to the Agreement (the “1983 Amendment”);

**WHEREAS**, the Associations formed a joint Ad Hoc Committee for the purposes of exploring and performing its due diligence regarding a potential merger of both Associations;

**WHEREAS**, having performed their due diligence through the Ad Hoc Committee, the Associations now desire to pursue merger of FOSCA into FOSHA and to that end, further amend their governing documents and the 1983 Agreement to accomplish such merger;

**BE IT THEREFORE RESOLVED:**

The Associations intend to move forward with the merger of FOSCA into FOSHA. In order to facilitate the intended merger, the Associations will pursue the following actions as the Boards deem necessary (along with additional actions if deemed necessary by the Boards):

- (1) Both Boards will review and adopt a Plan of Merger pursuant to the Arizona Nonprofit Corporation Act;
- (2) The Associations shall submit the Plan of Merger to its members for approval;
- (3) FOSCA will seek to amend its Bylaws and Articles of Incorporation to address the distribution of property to FOSHA and the dissolution of FOSCA;
- (4) FOSHA will seek to amend its Bylaws and Articles of Incorporation to address Board transition, expansion issues, and potentially adopt a new corporate name, etc.;

- (5) The Associations will amend the 1983 Agreement to reflect the merged entities' obligations and duties;
- (6) FOSCA will convey its property to FOSHA—both real and personal property; and
- (7) After the merger is completed and the above work is accomplished, FOSCA will be dissolved and FOSHA will assume its responsibilities under the 1983 Agreement regarding the maintenance of common facilities.

The Associations further acknowledge that the above such actions will need to be taken, in addition to potential other actions, and that several such actions will be contingent on the successful undertaking of other preceding actions in order to facilitate the successful merger of the two Associations.

**IN WITNESS WHEREOF**, the undersigned parties have adopted this Joint Resolution at an open meeting held on Sept 21, \_\_\_\_\_, 2016.

**FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION,**  
an Arizona nonprofit corporation

Board of Directors

By: Larry V. Shims

Name: Larry V. Shims

Its: President

**FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION,**  
an Arizona nonprofit corporation

Board of Directors

By: Thomas Parker

Name: Thomas Parker

Its: Vice President FOSHA