

PLAN OF MERGER

FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION AND FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION

This Plan of Merger (this “Agreement”) is entered into and made effective as of this _____ day of _____, 20__ by and between the FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION, INC., an Arizona nonprofit corporation, (“FOSCA”) and FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation (“FOSHA”), acting pursuant to A.R.S. § 10-11101 et seq. of the Arizona Revised Statutes and with respect to the proposed merger of FOSCA into FOSHA.

RECITALS:

WHEREAS, FOSCA and FOSHA presently exist as separate and distinct corporations, requiring duplication of management duties and costs thereof;

WHEREAS, 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, FOSHA was created in 1972 as the Arizona nonprofit 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 the CC&Rs recorded at Instrument Number 1971-0201, as well as maintain and administer its common areas and facilities;

WHEREAS, on December 31, 1983 an Agreement was made between FOSCA and FOSHA (collectively, the “Associations”) and the other councils of 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”) as executed by the Fountain of the Sun Association, Fountain of the Sun Community Association, Fountain of the Sun Condominiums Association, First Phase Parcel 9 Condominiums Association, Second Phase Parcel 9 Condominiums Association, Third Phase Parcel 9 Condominiums Association, Fourth Phase Parcel 9 Condominiums Association, First Phase Parcel 10 Condominiums Association, Second Phase Parcel 10 Condominiums Association, Third Phase Parcel 10 Condominiums Association, Parcel 11 Condominiums Association, Universal Development Corporation, and Realty Dealers, LTP;

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”) as executed by the Fountain of the Sun Homeowners Association, Parcel 8-1 and 8-2, Parcel 8-3, Parcel 9-1, Parcel 9-2, Parcel 9-3, Parcel 9-4, Parcel 10-1, Parcel 10-2, Parcel 10-3, Parcel 11, Parcel 15 aka Fairway Vistas, Parcel 12, Parcel 14, and Sun Villa Apartments;

WHEREAS, after careful consideration, the Boards of Directors of the Associations have concluded it would be in the best interests of the parties to consolidate into a single nonprofit corporation; and

WHEREAS, it has been preliminarily determined and approved by the Boards of Directors for FOSCA and FOSHA that the members of FOSCA be asked to approve the merger of the corporations into one corporation;

AGREEMENT:

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FOSCA and FOSHA hereby enter into the following Agreement to merge FOSCA into FOSHA:

I. PLAN OF THE MERGER

FOSCA is proposed to be merged into FOSHA if such merger is approved by the members of FOSCA (a majority of those voting if quorum is present). FOSHA shall be the surviving corporation, which shall not be a new corporation, and which shall continue its corporate existence as a corporation to be governed by the laws of the State of Arizona. If the Merger is successful, FOSHA will change its name to "Fountain of the Sun Association."

II. OBJECTIVES OF THE MERGED ASSOCIATION

(a) To operate and manage the common area property included within Fountain of the Sun and governed by its community documents;

(b) To enhance and preserve the value of the properties of owners subject to the applicable protective covenants;

(c) To maintain Fountain of the Sun as a community of the highest quality and value, and to enhance and protect its value, desirability and attractiveness;

(d) To perform all acts and services and exercise all powers and duties in accordance with the requirements for a planned community and as set forth in the Associations' governing documents.

(e) To collect dues and/or assessments as authorized in the community documents;

(f) To act for and on behalf of the members of the Association in all matters deemed necessary and proper for the protection, maintenance, and improvement of the lands and improvements owned by the members and the Association;

(g) To provide for administration, preservation, improvement, and architectural review as contained in the applicable community documents;

(h) To promote, foster and advance the health, safety, and welfare of the residents;

(i) To eliminate or limit the personal liability of Directors to the Association for monetary damages for breach of fiduciary duty, as allowed by law;

(j) To do any and all permitted acts suitable or incidental to any of the foregoing purposes and objects to the fullest extent permitted by law, and do any and all acts that, in the opinion of the Board, will promote the common benefit and enjoyment of the members within the Association, and to have and to exercise any and all powers, rights, and privileges which are granted under Arizona law, the applicable community documents, and the laws applicable to a nonprofit corporation in the State of Arizona.

III. ARTICLES OF INCORPORATION

If this Agreement is approved by the members of FOSCA, the respective Articles of Incorporation of FOSCA and FOSHA are to be replaced and superseded by the amended Articles of Incorporation for FOSHA (if approved) and Articles of Merger of FOSCA and FOSHA to be filed with the Arizona Corporation Commission.

IV. BYLAWS

If this Agreement is approved by the members of FOSCA, the respective Bylaws of FOSCA and FOSHA are to be replaced and superseded by the Amended and Restated Bylaws of FOSHA (if approved), as amended from time to time.

V. OFFICERS AND DIRECTORS

The officers and directors of FOSHA on the Effective Date (as defined in Article VIII, Section (a) below) of the merger shall be the officers and directors of FOSHA currently serving at that time, unless provided otherwise by the amended Bylaws of FOSHA. They shall continue to constitute the officers and directors of FOSHA for the terms elected and until their respective successors shall be elected and qualified.

VI. RESOLUTION BY DIRECTORS APPROVING AND RECOMMENDING THE MERGER PLAN AND AGREEMENT

The Board of Directors for FOSHA and FOSCA has adopted the Joint Board Resolution Regarding Intent to Pursue Merger resolving to pursue the following actions:

- (1) Both Boards will review and adopt this Agreement pursuant to the Arizona Nonprofit Corporation Act;
- (2) FOSCA shall seek its membership approval (a majority of those voting if quorum is present) of the proposed merger by submitting a ballot to its members, where the members may vote for or against the proposed merger of the Associations;
- (3) FOSCA will seek to amend its Bylaws and Articles of Incorporation (through a membership vote and by the percentages required in the governing documents) 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 (through a membership vote and by the percentages required in the governing documents) to address Board transition, expansion issues, and potentially adopt a new corporate name;
- (5) The Associations will amend the 1983 Agreement (with the consent of all now-existing parties thereto) to reflect the merged entity's obligations and duties;

The intended Merger of FOSCA and FOSHA is contingent upon an affirmative membership vote and/or consent of relevant parties as described above, upon which the following additional actions shall be taken:

- (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.

VII. RECOMMENDATION OF ADOPTION OF THIS MERGER PLAN AND AGREEMENT BY MEMBERS

The members of FOSCA will be asked to vote for and approve the merger of the Associations. If the plan of merger is approved, the members of FOSCA will be asked to vote for and approve the amended Articles of Incorporation and Bylaws for FOSCA. The members of FOSHA will be asked to vote for and approve the Amended Articles of Incorporation and amended Bylaws for FOSHA and the Articles of Merger.

VIII. EFFECT OF MERGER

(a) If the merger becomes effective, the Articles of Merger are to be filed with the Arizona Corporation Commission and the Certificate of Merger will then be issued. The Amended and Restated Bylaws for FOSHA will be executed and approved only upon issuance of a Certificate of Merger. Upon issuance of a Certificate of Merger by the Arizona Corporation Commission (the "Effective Date"), FOSCA shall be merged into FOSHA and the separate existence of FOSCA will have ceased and the existence of FOSHA shall continue. FOSHA will then be subject to all of the duties and liabilities of FOSCA as well as the Arizona Nonprofit Act and all applicable provisions of Arizona law. FOSHA shall also possess all of the rights, privileges, immunities, and franchises of a public as well as a private nature of FOSCA; and all property, real, personal, and mixed, all debts due on whatever account, and all other causes in action shall be deemed transferred to and vested in FOSHA without further act or deed, and the title to any real estate or any interest therein vested in FOSCA shall not revert or be in any way impaired by reason of this merger.

- (b) FOSHA will assume the contracts, liabilities, and obligations of FOSCA.
- (c) FOSHA will agree to accept all banking and other accounts of or from FOSCA.

(d) No contracts, agreements, easements, licenses, and other obligations of FOSCA will be terminated, vacated, or otherwise eliminated.

(e) Each member of the Associations shall continue to be subject to the restrictions, architectural requirements, and enforcement provisions of their applicable protective covenants, as amended or may be amended.

(f) The Board of Directors of FOSCA will assign its rights, powers, and duties conveyed pursuant to its governing documents to the Board of Directors of FOSHA, including authority under any existing protective covenants.

(g) FOSHA will be responsible and liable for all of the liabilities and obligations of the corporations merged; and any and all claim existing or action or proceeding pending by or against FOSCA, any of which may be prosecuted as if the merger had not taken place or FOSHA may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by this merger.

(h) The percentage of common expense liabilities shall be provided for in the applicable existing protective covenants, as amended, of record.

(i) The proposed merger may be abandoned at any time prior to the effective date of merger (1) by either FOSCA or FOSHA, by resolution of either Board of Directors, for any reason whatsoever, or (2) by FOSCA and FOSHA, each acting by and through its Board of Directors, by mutual consent, for any reason. Further, the proposed merger shall be deemed abandoned if the Articles of Merger are not filed by January 1, 2018.

IX. REPRESENTATIONS OF THE PARTIES

Both Associations represent to each other that no statement, document, financial statement, schedule, exhibit or certificate furnished in connection with the Agreement or in connection with due diligence with respect hereto contains any untrue statement of a material fact, or omits to state a material fact required to make the statements therein contained not misleading. Both Associations have disclosed to each other all information concerning its operations, financial condition, funding sources, and contractual commitments that is necessary for the board of directors of each Association to make an informed decision concerning the feasibility and desirability of the Merger.

X. PROVISIONS OF GENERAL APPLICATION

(a) For the convenience of the Associations and to facilitate the completion of this Agreement, any number of counterparts hereof may be executed; each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one agreement.

(b) This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Arizona.

(c) This Agreement cannot be altered or amended except pursuant to an instrument in writing signed on behalf of the parties hereto.

(d) At any time, or from time to time, simultaneously with or after the Effective Date of the merger, the last acting officers and directors of FOSCA shall, if and when requested by

FOSHA or its successors or assigns, execute and deliver all such deeds, assignments and other instruments and take or cause to be taken all such further action as FOSHA or its successors and assigns may deem necessary or desirable in order to vest, perfect or confirm in FOSHA title to and possession of all properties, rights, privileges, powers, franchises, immunities and interests of FOSCA and otherwise to carry out the purpose of this Agreement.

IN WITNESS WHEREOF, the Fountain of the Sun Community Association and the Fountain of the Sun Homeowners Association, Inc. have caused this Agreement to be signed in their respective corporate names and on their behalf by their respective Presidents and attested by their respective Secretaries.

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

By: _____
Name: _____
Its: _____

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

By: _____
Name: _____
Its: _____

**FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION
SECRETARY'S ATTESTATION**

I, _____, being the duly elected Secretary of Fountain of the Sun Community Association, hereby attest that the foregoing Amendment was approved by a majority of its members.

By: _____
Name: _____
Secretary, Fountain of the Sun Community Association

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____day of _____, 20__, by _____, the Secretary of Fountain of the Sun Community Association, an Arizona nonprofit corporation, for and on behalf of the corporation.

Notary Public
My Commission Expires:

**FOUNTAIN OF THE SUN HOMEOWNERS ASSOCIATION
SECRETARY'S ATTESTATION**

I, _____, being the duly elected Secretary of Fountain of the Sun Homeowners Association, hereby attest that the foregoing Amendment was approved by a majority of its members.

By: _____
Name: _____
Secretary, Fountain of the Sun Homeowners Association

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____day of _____, 20__, by _____, the Secretary of Fountain of the Sun Homeowners Association, an Arizona nonprofit corporation, for and on behalf of the corporation.

Notary Public
My Commission Expires: