FOSCA Board of Directors Motion Form

Meeting Date: 05.14.2018 **Motion #:** 1

Motion:

Approve merger Transition Team (with new Team Members) to coordinate the final steps of the merger outlined in the Plan of Merger.

FOSCA Board President – Jerry Favero
FOSCA Vice President – Larry Shima
FOSCA Manager – John Millar
FOSCA Director & Merger AD Hoc Chair – Keith Hilgendorf
FOSHA Board President – Keith Kellen
FOSHA Vice President – George Taylor
FOSHA Manager – Betty Johnson

Rationale:

- Both FOSHA and FOSCA Boards continue to serve in their existing capacity and according to the respective 2018 budgeted operations.
- The transition team continues to coordinate and direct the priorities of merger while keeping the respective boards informed of progress being made
- It is essential during this continued transition period that merger and working together toward that common goal will build the trust, confidence and synergy of responsible leadership that our residents are looking to us for.

Motion by Director: K. Hilgendorf **Second by Director:** M. Powell

Result of vote: Passed X **Failed** ____ **Tabled** ____

Vote 6 yes
1 no

Roll Call:	Yea	Nay
Jerry Favero	X	
Keith Hilgendorf	X	
Francine Miller		X
Dorothy O'Brien	X	
Mike Powell	X	
Larry Shima	X	
Calvin Stone	X	

Dorothy O'Brien

Dorothy O'Brien, Secretary FOSCA

FOSCA Board of Directors Motion Attachment #1

WORK PRIORITIES

1. FINANCIAL MANAGEMENT

- Both association treasurers in conjunction with the transition team to work with the outside accounting firm in the development of blended financial documents and reporting for the merged organization FOSA. The 2017 yearend financial data and the approved 2018 operating budgets are to be used.
- All current financial budgeting, funding formulas (assessment and reserves) policies/procedures and reserve study reports (attachment #2) are the baseline structural policies for the administration of Department #1 (1492 units) and Department #2 (2,357 units) with community operations.
- As required by the amended and restated FOSA bylaws, three (3) reserve funds (Restricted Replacement Reserve Fund, Restricted Capital Asset Fund and Community Improvement Fund) are to be ***established and maintained.*** These new reserve funds (attachment #3) are to be identified in the budgeting process and clearly stated in each cost center established within the financial document reporting.
- The priorities 1 financial management reports, including the formatted financial documents are due on or before the respective scheduled September Board meetings.

2. ORGANIZATION STAFFING

- Development of a full-time staffing model in conjunction with Board members Dorothy O'Brien and Ron Heldt with report due to the transition team on or before July 1, 2018.
- Review of the proposed FOSA function based organizational chart with recommendations.

3. LEGAL STATUS REVIEW

- Address the remaining legal parameters of an Arizona Corporation Commission merger document filing with respect to: effective and/or implementation dates, board function authority, continuance of 2018 organization operations, etc.
- Based upon legal response, the transition team will recommend a function specific timeline for completion of the merger process due on or before August 15, 2018.

FOSCA Board of Directors Motion Attachment #2

ARTICLE IX (FOSCA Bylaws)

Budget

SECTION 1. Annual Budget. The Board of Directors shall cause to be prepared an annual budget for each fiscal year of FOSCA. This budget should be prepared by the Finance Committee and presented to the FOSCA Board for review. This budget shall include all anticipated expenses and cash requirements for the year, including funds for capital improvements and reserves for contingencies for repairs or replacement of equipment or facilities. Income from operations and other sources shall be estimated, after which income from assessment of members required to provide a balanced budget shall be established. The annual per member assessment shall be determined by dividing the planned assessment income by the total number of units. The annual per member assessment shall in no case be increased by more than ten percent (10%) over the previous year without the prior approval of the members by a majority of the votes cast at a meeting having that as a matter of business. The budget shall be completed and approved by the Board no later than October 31 of each year.

SECTION 2. Supplemental Budget. In the event that, during the course of any year, it shall appear to the Board that the cash income is not adequate to cover the estimated expenses for the remainder of the year, the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of the year. Copies of this supplemental budget shall be furnished by the Board to each association of unit owners within Fountain of the Sun within ten days of its approval, together with a notice of any additional assessment to be levied. Any supplemental assessment shall be subject to limitation imposed under Section 1 above.

SECTION 3. Collection of Assessments. FOSCA shall bill each association of unit owners within Fountain of the Sun on the first day of each month, for one-twelfth of the annual association share of the assessments, as determined herein, times the number of units within each of the associations. Each billing so made by FOSCA shall be due and payable upon receipt. FOSCA shall have no responsibility for the collection of these amounts from the individual owners of units, and shall look only to the unit associations for payment of amounts assessed. It will be the responsibility of the unit associations to collect the FOSCA assessment from their members and to take such action as their Articles of Incorporation or Bylaws permit in case of nonpayment.

SECTION 4. Suspensions. Any member of FOSCA who fails to follow the rules and regulations for the use of FOSCA facilities or services may have the right or privilege of such use suspended after written notice of the violation and failure to remedy the same. The suspension shall be by vote of the Board of Directors. A suspended member may be reinstated by the Board upon petition by the member.

If any association shall fail to pay assessments within thirty days after the assessment was due and payable on the first day of the month, the Board may, by majority vote of a quorum then present, suspend the rights and privileges of use of all of the members of the non-paying association until such time as the association pays the assessments in full. Upon payment in full of the association assessment the rights and privileges for the members of that association shall be reinstated.

SECTION 5. Reports. An annual report shall be prepared by the Board to include such information pertaining to the past year's operation as they may deem desirable. A financial report shall be prepared after the close of each fiscal year, showing the receipts, disbursement, cash position, and such other information pertaining to the corporation as the Board may deem desirable. Said financial report shall be published in a manner to be determined by the Board, together with the finalized budget prior to the annual meeting, and both shall be available for inspection at the meeting.

FOSCA's books and records shall be audited by a Certified Public Accountant following the close of each fiscal year or on request of the Board. The certified audit report is to be published and made a part of the Board Minutes of the Board Meeting following receipt of the audit report.

SECTION 6. **Partial Year or Month.** FOSCA billings for owners of Horizontal Property Regime (HPR) units shall be prorated from the date of occupancy by the purchaser, or the close of escrow pertaining to the unit, whichever is earlier. FOSCA shall bill the appropriate Horizontal Property Regime (HPR) Association and the Association shall pay FOSCA the applicable FOSCA assessment for the month, or part of a month, and for succeeding months, when a Unit(s) within that Association is complete and ready for sale. (A Unit is considered ready for sale when the landscaping is complete or the interior is ready for occupancy.)

SECTION 7. **Deposits.** All funds of FOSCA not otherwise employed shall be deposited from time to time to the credit of FOSCA in such federally insured banks, trust companies, or other depositories as the Board may select. For the purpose of such deposits, the President, Vice President, the Treasurer, the Secretary, or any other officer, agent, or employee of FOSCA to whom such power has been delegated by the Board, may endorse for deposit, and deliver checks, drafts and other orders for the payment of monies which are payable to the order of FOSCA.

SECTION 8. **Special Assessments.** Whenever capital improvements have been approved by the membership as stated in Article X, the Board of Directors may levy a special assessment upon each association according to its prorated share of the overall annual budget and require the special assessment to be collected by each association from its members and paid to FOSCA within sixty (60) days after the levy of the special assessment by the Board of Directors. The Special Assessment shall be due and payable as directed by the Board of Directors, but shall not be payable in monthly installments unless approved and authorized by the Board of Directors. The responsibility for collection of any special assessment from the members of FOSCA and the associations will be the responsibility of each individual association and not FOSCA. Each individual association will assess its members in accordance with its own Articles of Incorporation, Bylaws or Covenants, Conditions and Restrictions. Failure to pay an assessment within the time limit set forth by the Board will result in FOSCA suspending that Association and its members from all further use and participation in common area facilities, services, equipment and other privileges and rights as otherwise allowed by these Bylaws or any other agreement.

SECTION 9. **Impact Fee.** Notwithstanding any other provision of the 1983 Agreement, the Articles of Incorporation of FOSCA of the Bylaws of FOSCA, all Owners of Lots in any of the Associations shall pay an Impact Fee ("Impact Fee")at the time of voluntary conveyance of ownership rights in the Lot (including buyers under agreements for sale) directly to FOSCA. Unless otherwise directed by the conveyor [the seller] and conveyee [the buyer] of a Lot, FOSCA shall collect the Impact Fee owed by the conveyee through the close of escrow if FOSCA is notified of the conveyance and if a title company is used to facilitate a particular conveyance of a Lot. The conveyor and conveyee may allocate the payment of the Impact Fee through the escrow process between the conveyor and conveyee in any manner. The failure of the Association to be notified of a conveyance shall not affect the obligation of the new Owner to pay the entire Impact Fee.

No impact fee shall be payable with respect to: 1. the transfer or conveyance of a Lot by devise or intestate succession; 2. a transfer or conveyance of a Lot for estate planning purposes; or 3. a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the Impact Fee in which event an Impact Fee shall be payable with respect to such transfer of conveyance.

Any and all Impact Fees collected shall not be used to pay for operational expenditures. Rather, a budgeted percent of the Impact Fees shall be used for funding a reserve fund for repair and maintenance of facilities and/or applied towards capital improvements/capital expenditures.

The Impact Fee provided for herein shall be One Thousand Dollars ($1,000.00) per conveyance of a Lot effective January 1, 2006. Thereafter, the Impact Fee may be increased by Twenty-five Dollars ($25.00) each calendar year at the discretion of the Board.

ARTICLE 4 ASSESSMENTS, FINES AND FEES

1 Assessments

4.1.2 Annual Assessments shall be based on the budget needs of FOS. Annual assessments may not be increased in excess of ten percent (10%) per year without prior approval of the Members by a majority of the votes cast at a meeting held for that purpose.

ARTICLE 5 MEETINGS OF THE MEMBERS

5.3 Annual Budget Meetings

5.3.1An Annual Budget Meeting shall be held between September 15 and October 31 for the purpose of reviewing and discussing with the Members the budget for the next calendar year. Written requests relating to amounts requested for inclusion in the budget on behalf of facilities, amenities, clubs and organizations shall be submitted to the Board by June 1.

FOSCA Board of Directors Motion Attachment #3

I'M STUCK ON THE MERGER'S INCREASED RISK MY CLIENT'S ASSESSMENTS MIGHT BE MISAPPPLIED.

That is totally understandable, all parties want assurances that their assessments, whether as one of the 1492 homeowner units, one of the 865 condo owner units or as one of the 2357 community unit owners, are assessed equally. Additionally, those assessments must be clearly set aside for their intended purpose. With that goal in mind, the ad hoc merger committee worked diligently to achieving that priority. The amended & restated bylaws specifically added new reserve fund accounts not previously existing.

RESERVE FUNDS:

RESTRICTED REPLACEMENT RESERVE FUND (RRRF)

To be used for restoration, major repair and replacement of existing or future capital improvements and equipment. The RRRF may be funded from allocations from regular assessments, as deemed appropriate by the Board, or other fees or charges imposed by the Board in accordance with the governing documents. Withdrawals from the RRRF shall only be by affirmative vote of a majority of the Board, and the minutes of the meeting where such vote is taken shall specify the amount to be withdrawn and the purpose of the withdrawal.

RESTRICTED CAPITAL ASSET FUND (RCAF)

To be used solely for the major modification of existing capital assets or acquisition of new capital assets. The RCAF shall be funded by allocations from any assessments or other sources as deemed appropriate by the Board. ALL withdrawals from the RCAF shall be made only after:

1. The development of a specific project and its estimated costs,
2. The affirmative vote of the Board (the minutes of the meetings where such vote was taken shall specify the amount and the project being funded),
3. And approval of the project and its estimated cost by members of the association.

Withdrawals for a specific project shall not exceed the project amount approved by members of the association. ALL three (3) of the above requirements must be met to expend funds.

Community Improvement Fund (CIF)

Monies designated for specific purposes and recorded separately as having been received from voluntary gifts, donations, memorials, bequests and fund raisers. Contributions may be designated for specific projects to be approved by the Board of Directors. All monies shall be used for community improvement as determined by the Board.

These reserve fund accounts are significant in both transparency of financial reporting and the improved financial management of assessment funds. This is important to all resident unit owners – 1492 homeowners, 865 condo owner and the combined 2357 community owners – from the budgeting process, the development of the assessment rates and all the way through the actual billing and payment of assessments. And that payment process had to be addressed. Our understanding is that the respective condo associations include 1/12th of the shared community annual assessment amount in their monthly condo association billing. Then in turn, remit that 1/12th amount times the number of units in their parcel and remit it to the community association. On the homeowner side, that same community annual assessment rate in their annual association billing and also remits 1/12th of the shared annual assessment amount times the number of units in the HOA and remits it to the community association. With nearly 40% of the 1492 homeowners paying their total HOA assessment at the beginning of the year (it requires the remaining 11/12th of the annual community assessment to be retained, in a decreasing reserve, for monthly transfers. They too must be assured that these assessments are correctly allocated and identified for their intended purposes. Projected fund accounts may follow along the lines of HOA #1 (for 1492 unit owners) and HOA#2 (for 2357 unit owners) – this approach is commonly in many of our neighboring communities such as the Sunland properties.

/ith these "new" reserve funds identified for transparency and fiscal management, the Board of Directors are required to take action. Under Article 8 Board of Directors Authority, 8.1.1.3 Establish and maintain a Restricted Replacement Reserve Fund in accordance with a current Capital Reserve Replacement Study... 8.1.1.1.4 Establish a Restricted Capital Asset Fund. This action will be a significant factor in the annual budgeting process.

Current discussions with our independent accounting firm (who specialize in association financial management services) have included a review of both Homeowners Association & Community Association financial and recordkeeping systems. They have assured us that the addition of the new restricted reserve funds (discussed above) will clearly address the ad hoc merger committee's priorities of transparency and accuracy.