

## AGREEMENT FOR USE OF ASSOCIATION PREMISES AND INSTRUCTOR INDEPENDENT CONTRACTOR AGREEMENT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between SUN CITY SHADOW HILLS COMMUNITY ASSOCIATION, a California non-profit mutual benefit corporation ("Association") and \_\_\_\_\_ ("Instructor").

The Instructor desires to perform services at the Association's clubhouse and/or other common area facilities for the benefit of the Instructor's clients and Association members, \_\_\_\_\_ residents \_\_\_\_\_ or \_\_\_\_\_ guests. Instructor is a \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Instructor desires to use the Association premises to provide similar services for the Association members, residents, and guests ("Students") and to be paid for these services. In return, the Association, in operating and managing the common areas of the Association, will permit the use of its facilities by the Instructor and will collect and transfer the fees from the Students to the Instructor for the convenience and enjoyment of the Association's members, residents, and guests.

The Association and Instructor agree that the relationship between them will be that of an "Independent Contractor" and not employer/employee. The Association has relied on the representation of Instructor as to whether he/she is qualified to provide the services described herein, and Instructor is solely responsible for determining the manner in which services are rendered pursuant to this Agreement. The purpose of this Agreement is also to set forth the parameters related to the Instructor's use of the Association premises and this Agreement is not meant to control or restrict the Instructor in terms of his/her manner of performance of services at the Association's premises.

The Association and Instructor hereby agree to the following:

1. **DESCRIPTION OF WORK:** The work to be performed by Instructor shall include the following services:

\_\_\_\_\_

\_\_\_\_\_

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Number of Classes: \_\_\_\_\_

Length of Individual Class: \_\_\_\_\_

2. **PREMISES:** The Instructor may use the Association's specific designated premises for services provided to his/her clients who are also members, residents or guests within the Association. Instructor has no authority to use, or to provide to others for their use, any portion of the Association's facilities other than as authorized by the Association.

3. **WORK SCHEDULE:** If Instructor must cancel a class, Instructor must immediately notify the Association's Lifestyle Director, providing a minimum of 24-hour advance notice when possible, so that the Association may notify the students.

Instructor's proposed schedule is the following:

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4. **CLASS SIZE:** The Association desires to have its premises used as intended or desired by its members. For continued use of the Association premises, it is agreed that for each session, the class size will have a maximum of \_\_\_\_\_ students per class and a minimum of \_\_\_\_\_ students per class. A list of students enrolled will be provided to Instructor on the day of the first class. If the minimum number has not been met, Instructor can decide if the class will be offered or cancelled.

5. **FEES AND PAYMENT:**

OPTION [1] The fee per class is a flat fee of \$\_\_\_\_\_.

OPTION [2] The class fee is \$\_\_\_\_\_ per student for \_\_\_\_\_ classes.

The Association/Club will remit payment to Instructor as follows:

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6. **TAXES AND BENEFITS:** Instructor assumes all obligations for reporting income and paying taxes on any income.
7. **DURATION OF AGREEMENT:** Either Instructor or Association may cancel this Agreement without cause on thirty (30) days' prior written notice, provided, however, the Association may cancel this Agreement for cause (e.g., unexcused failure to hold classes, \_\_\_\_\_) without prior notice.
8. **LICENSES:** Instructor shall maintain current all necessary and appropriate licenses for the provision of services described in this Agreement, and if such certification or licensure is required, Instructor shall provide proof of current

certification to Association prior to providing any services described in this Agreement.

9. **INSURANCE**: Instructor shall purchase from and maintain in full force and effect at all times during the term of this Agreement in a company or companies lawfully admitted in and authorized to do business in California with a published A.M. Best's rating of A or above, such insurance as in the reasonable opinion of Instructor will reasonably protect Instructor and the Association from claims which may arise out of or result from Instructor's services rendered pursuant to this Agreement and for which Instructor may be legally liable. Such insurance shall include, without limitation, (1) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) general aggregate, or current limit carried, whichever is greater; (2) automobile liability covering all owned, non-owned, and hired automobiles; and (3) worker's compensation disability insurance. **Sun City Shadow Hills Community Association and Associa Desert Resort Management** shall be named as additional insureds under all of the above-required policies, except Instructor's worker's compensation policy and auto insurance policy. Such insurance shall be primary and contain a waiver of subrogation on all coverage as a separate endorsement in favor of the Association. **Within two (2) days of execution of this Agreement, Instructor shall provide the Association Certificates of Insurance and renewals thereof as appropriate as well as a copy of such policies and any and all applicable endorsements and exclusions.** Instructor agrees to provide written notice to the Association at least thirty (30) days prior to any cancellation of coverage and/or change in carriers and/or coverage, and provide new certificates of insurance/endorsements to the Association, within five (5) business days of said change.
10. **INDEMNITY**: Instructor, his or her successors, assigns, heirs, administrators, executor and personal representatives hereby agree to indemnify, hold harmless and defend Association, its officers, directors, agents, successors, assigns, and legal representatives of and from any and all claims, damages, losses, expenses, judgments, and attorney's fees, arising out of, relating to, or resulting from the performance of Instructor's services that results in bodily injury, sickness, disease, death, or injury, damage or destruction of property, including loss of use thereof, to the extent the damage or injury is the result of Instructor's negligence or intentional acts or omissions. Instructor's duty to indemnify the Association shall apply regardless of whether the claim, damage, loss, expense, judgment, or attorney's fees are caused, in part, by the Association's negligence, in which case, Instructor's obligation to indemnify the Association shall be limited in proportion to the Association's percentage of comparative fault. This indemnification obligation shall not be construed as reducing or eliminating any other right or obligations of indemnity which would otherwise exist in favor of the Association. Instructor's indemnity obligation shall not apply to the extent any such claim, damage, loss, expense, judgment or attorneys' fees are caused by the Association's sole negligence or intentional misconduct. This section shall survive the expiration or termination of this Agreement.

11. **NOTICE**: Any notice required or permitted to be delivered hereunder shall be deemed to be received, whether actually received or not, when deposited in the United States mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested.
12. **NO ASSIGNMENT**: This Agreement is not assignable by Instructor without the Association's prior written consent. The Association's consent may be withheld in the Association's sole and absolute discretion.
13. **GOVERNING LAW**: The term and conditions of this Agreement shall be construed pursuant to and in accordance with the laws of the State of California and all of the covenants and obligations hereunder are fully enforceable and performable under California law. If any legal action is commenced by any party to this Agreement against any other party to this Agreement, then all parties hereto expressly agree that jurisdiction and venue for such action shall be in the Superior courts or other appropriate court of Riverside County, California.
14. **BINDING EFFECT AND BENEFIT**: This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective successors and assigns in the event that said party is a corporation or said parties' respective heirs, executors, successors, assigns, and personal representatives in the event said party is an individual.
15. **AUTHORITY**: Each party hereto represents and warrants to the other that the individual signing this document below has the full authority to bind the entity for which said individual is signing to the terms and conditions hereof and that this Agreement and the performance of the terms, conditions, and covenants hereof is fully authorized by and binding upon said entity.
16. **INVALID PROVISIONS**: If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated. It is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portion which may, for any reason, be hereafter declared invalid.
17. **ENTIRE AGREEMENT AND AMENDMENTS**: This Agreement supersedes any and all other agreements, either oral or written with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matters. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. No change, modification, amendment, statement or promise not contained in this Agreement shall be valid unless in writing and signed by or on behalf of the parties hereto.

18. **WAIVER**: Any waiver or forbearance by the Association of any right or remedy under this Agreement shall not constitute a waiver or release by the Association exercising any right or remedy or any other right or remedy provided under this Agreement or under applicable law in the future.
19. **FORCE MAJEURE**: Neither party shall be liable for, and each party is excused from, any failure to perform or delay in the performance of its obligations under this Agreement due to causes beyond its control, including without limitation, interruptions of power or telecommunications services, acts of nature, governmental actions, fire, flood, or natural disaster. No failure of either party to pursue any remedy resulting from a breach of this Agreement by the other party shall be construed as a waiver of that breach, nor as a waiver of any subsequent or other breach unless such waiver is signed and in writing.
20. **MEDIATION**: In addition to and prior to filing litigation, the parties must first attempt to settle any dispute arising out of this Agreement by mediation unless the parties mutually agree to another approach to dispute resolution. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after a claim has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations. If any party files a lawsuit without complying with the foregoing requirement, that party shall waive its right to any attorneys' fees to which such party might otherwise be entitled in such lawsuit under this Agreement. Notwithstanding the foregoing, if a party submits a written request to mediate a dispute to the other party and the latter fails to respond in good faith and to take reasonable steps to initiate mediation within thirty (30) days of receipt of such notice, the party requesting the mediation shall then be free to file a lawsuit and there shall be no waiver of any entitlement to attorneys' fees under the preceding sentence. The parties agree that any applicable statute of limitations shall be tolled during the pendency of any mediation or arbitration proceedings
21. **ATTORNEY'S FEES**: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled in any court of competent jurisdiction.
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IN WITNESS WHEREOF, the Association and Instructor have executed this Agreement effective as of the last date upon which this Agreement is executed.

“ASSOCIATION”

“INSTRUCTOR”

SUN CITY SHADOW HILLS  
COMMUNITY ASSOCIATION

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Signature

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Signature

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Name

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Name

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Title

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Address

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Date

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City, State, Zip

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Signature

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Telephone:

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Name

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Title

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Date