

ATTACHMENT 2

DISCUSSION ON THE GENERAL NATURE OF THE TERMS OF THE PROPOSED BYLAWS AND IMPORTANT DIFFERENCES BETWEEN THE BYLAWS AND THE BYLAWS OF LINCOLN COMMONS TOWNHOMES OWNERS ASSOCIATION, INC.

This document sets forth a discussion of the proposed Bylaws (“**Bylaws**”) for Lincoln Commons Homeowners Association, a Colorado nonprofit corporation (the “**Association**”), a copy of which is enclosed as Attachment 1 to the Notice of Special Meeting of the Members; this discussion is Attachment 2 to the Notice of Special Meeting of the Members. Capitalized terms that are not defined in this discussion shall have the definition set forth in the Bylaws. This document also discusses some of the important differences between the Bylaws and the bylaws of Lincoln Commons Townhomes Owners Association, Inc., which were prepared for the previous declarant’s intended owners association (the “**LCTOA Bylaws**”).

While this provides a general discussion of the Bylaws, you are strongly encouraged to read and understand the Bylaws prior to the Special Meeting of the Members.

DISCUSSION

1. General

1.1. The Bylaws generally follow the default provisions of the Colorado Revised Nonprofit Corporation Act, Colo. Rev. Stat. §7-121-101 *et al.* (the “**Nonprofit Act**”), and the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §38-33.3-101 *et al.*, (“**CCIOA**”).

NOTE: The same is true of the LCTOA Bylaws. Accordingly, many of the provisions of the Bylaws and the LCTOA Bylaws are substantially similar. Certain important differences will be noted herein.

2. Members, Meetings, and Voting.

2.1. The Association’s Articles of Incorporation provide that the Association will have voting Members. Articles of Incorporation, ¶ 5. Membership in the Association is tied to ownership of a Lot or Unit (i.e. a townhome) within the Lincoln Commons development. The Bylaws provide that there is only one class of Members, with all Members being treated alike. Bylaws, ¶¶ 4.5 and 4.6. Each Lot is given one vote, and the Owners or Co-Owners of that Lot may decide how to cast that one vote. Bylaws, ¶4.6.

2.2. The Association shall hold an annual meeting of the Members for the election of the members of the Board of Directors. Bylaws, ¶ 5.1. The Members may also call a Special Meeting of the Members if Members representing at least 25% of the total votes in the Association agree to do so. Bylaws, ¶ 5.2.

2.3. The Association must give the Members notice of any Annual Meeting or Special Meeting of the Members. Bylaws, ¶ 5.4. The Nonprofit Act states that any notice must be “fair and reasonable” and provides an example. C.R.S. §7-127-104(2). The CCIOA statute provides more guidance for homeowners associations and states that notice of any meeting must be given not less than 10 days, but no more than 50 days, in advance of the meeting. C.R.S. § 38-33.3-308(1). The Bylaws follow the provisions of CCIOA and state that notice of any meeting of the Members must be given no less than 10 days, but no more than 50 days, in advance of the meeting.

NOTE: The LCTOA Bylaws set the number of Directors at three, and all Directors are elected to serve a term of one year.

2.4. To satisfy the quorum requirements for a meeting of the Members, enough Members must be present to represent 20% of all of the votes within the Association. Bylaws, ¶ 5.5.

NOTE: The LCTOA Bylaws set the quorum requirement as 30% of the votes within the Association. The Bylaws follow the standard set forth in CCIOA.

2.5. Members will vote to elect the members of the Board of Directors by written ballot, which shall be a secret ballot if the election is contested. Bylaws, ¶¶ 5.10 and 5.11.

3. Board of Directors

3.1. The Association is governed by a Board of Directors. Bylaws, ¶ 6.1. The Board of Directors must have at least three members, but not more than nine members, and shall attempt to maintain an odd number of directors at all times. Bylaws, ¶ 6.2. The Directors are elected by the Members to serve a term of three years, with staggered terms so that approximately one-third of the Directors are elected on an annual basis. Bylaws, ¶¶ 6.3 and 6.4.

NOTE: The LCTOA Bylaws set the number of Directors at three, and all Directors are elected to serve a term of one year.

3.2. The Board of Directors will designate one Director to serve as the Chairperson of the Board. Bylaws, ¶ 6.5.

NOTE: The LCTOA Bylaws do not provide for a Chairperson of the Board.

3.3. The Board of Directors has significant authority with respect to the Association, including, without limitation, the authority to enforce the covenants, conditions, restrictions, and obligations of the Declarations, to set and enforce the rules and regulations, to maintain the Common Areas, to collect annual assessments and assess fines or levies for unpaid annual assessments, and to manage and oversee the Association’s budget and funds. Bylaws, ¶ 6.11.

4. Officers

4.1. The Board of Directors elects or appoints the Officers of the Association, including, without limitation, its President, Vice President (if any), Secretary, and Treasurer. Bylaws, ¶ 7.1.

4.2. The President is the principal Officer of the Association with responsibility for supervising and controlling all of the business and affairs of the Association, and ensuring that the resolutions and decisions of the Board of Directors are carried out. Bylaws, ¶ 7.5.

4.3. The Treasurer is responsible for the Association's funds, is authorized to sign checks, and is directed to keep the Association's books and records. Bylaws, ¶ 7.7.

4.4. The Secretary keeps the Associations' minutes and records, and keeps minutes of the meetings of the Members and of the Board of Directors. Bylaws, ¶ 7.8.

5. Standards of Conduct; Conflicts of Interest; and Indemnification

5.1. The Directors and Officers must act and exercise their power in good faith, with the care that an ordinarily prudent person would exercise in a similar situation, and in a way they believe to be in the best interests of the Association. Bylaws, ¶ 9.1.

NOTE: The LCTOA Bylaws require the Directors to exercise reasonable business judgment in the performance of their duties.

5.2. Directors and Officers may rely on outside professionals in making decisions, and are not liable to the Association or other Members for actions taken in performance of their duties if such actions were done in compliance with the Bylaws. Bylaws, ¶¶ 9.2 and 9.3.

5.3. The bylaws define a "conflicting interest transaction" and provide a mechanism for dealing with conflicting interest transactions. Bylaws, Article 10.

NOTE: The LCTOA Bylaws do not directly address conflicting interest transactions.

5.4. The Association is obligated to indemnify any Director or Officer for liabilities arising as a result of such person's service as a Director or Officer to the extent permitted or required by law. Bylaws, ¶ 11.1

6. Amendments and Compliance With the Law

6.1. The Bylaws can be amended by the Board by a majority vote, with certain limitations. Bylaws, ¶ 12.1.

NOTE: The LCTOA Bylaws state that the Bylaws can be amended by a majority vote of the Members. While the Bylaws do not specifically mention this right, the

Nonprofit Act specifically gives Members the power to amend the Bylaws as well, if done in accordance with the Nonprofit Act.

6.2. If there is a conflict between the Bylaws and the CCIOA, then the provisions of the CCIOA prevail and will govern the Association. Bylaws, ¶ 12.2. Also, if there is a conflict between the provisions of the Bylaws and the Association's Articles of Incorporation or Declaration, the Declaration will control. Bylaws, ¶ 12.3.

7. Services

7.1. The Bylaws identify the services the Association will provide, which include, without limitation, administrative services, payroll, accounting, office supplies, maintenance of the Common Areas and Lots as specified in the Declaration, legal services, electricity and utilities for the Common Areas, and the maintenance of insurance. Bylaws, Article 13.

NOTE: The LCTOA Bylaws do not enumerate the services to be provided by the Association.

8. Nonprofit Status

8.1. The Association is organized as a Colorado nonprofit corporation. However, it may pay reasonable compensation to any Member or Director acting as an agent or employee for the Association for services provided. The Association may also reimburse any Member or Director for actual and reasonable expenses incurred in connection with the administration of the Association. Bylaws, Article 14.

9. Obligations of the Owners

9.1. The Owners are obligated to pay the Assessments imposed by the Association. Bylaws, ¶¶ 15.1 and 15.4.

9.2. Owners are responsible for maintaining a good mailing address with the Association so that they can receive notices and other information. Bylaws, ¶ 15.2.

10. Budgets and Financial Records

10.1. Within 90 days after adopting a proposed budget, the Board of Directors shall mail a summary of the Association's budget to the Owners and shall set a meeting for the Owners to consider and discuss the budget. The budget does not have to be approved by the Owners, and will be deemed approved unless 67% of the Owners veto the proposed budget at the meeting. Bylaws, ¶ 16.1(a).

NOTE: The LCTOA Bylaws do not impose similar obligations with respect to the Association's budget.

10.2. The Association's books and records shall be audited if required by law or at the discretion of the Board of Directors. Bylaws, ¶ 16.1(b).

10.3. The Association's governing documents, financial documents, and other documents required by CCIOA will be made available for inspection and copying by Owners and certain other third-parties; however, the list of the Owners cannot be used for any purpose unrelated to an Owner's interest as an Owner without the Board's consent. Bylaws, ¶ 16.2.