

April 9, 2021

Homeowners
Beaver Run Homeowners Association

Dear Homeowners:

Orten Cavanagh & Holmes, LLC is general counsel to the Beaver Run Homeowners Association (“Association”). The Association, acting through its Board of Directors and with the assistance of a committee of the Board, is proposing amendments to the governing documents of the Beaver Run community. The existing Declaration, Articles of Incorporation and Bylaws, as amended, are collectively referred and known as the “governing documents” for the community and those are the documents proposed to be amended and updated.

The Association’s governing documents were initially drafted by the developer of Beaver Run in the late 1970s through the 1980s, and much has changed both in the community and in Colorado law since that time. For example, the Colorado legislature enacted the Colorado Common Interest Ownership Act (“CCIOA”) that significantly impacts the manner in which associations operate and affords numerous rights, obligations, and protections to homeowners. The purposes of the CCIOA include: (a) establishing a comprehensive framework for the operation of common interest communities; (b) enhancing the financial stability of associations, and (c) promoting effective and efficient management. Owner associations for common interest communities are also governed by the Colorado Revised Nonprofit Corporations Act. This Act was completely amended and restated in 1998 and has been amended several times since then. Additionally, there has been a substantial amount of case law regarding community associations since Beaver Run’s governing documents were adopted.

The Board believes that having outdated documents hampers both the Association and its members in knowing the rights and obligations that apply. In addition, the way in which residents use their properties has changed over time, and the Board wants to include use restrictions that are better suited to the community than those imposed by the developer. As a result, the Board feels that it is time to bring the three primary governing documents up-to-date to allow the community to operate more efficiently.

Therefore, we have been working with the Board and committee to draft updated governing documents. Enclosed you will find proposed drafts of the following:

- Amended and Restated Condominium Declaration for Beaver Run (“Declaration”)
- Amended and Restated Articles of Incorporation for Beaver Run Homeowners Association (“Articles”)
- Amended and Restated Bylaws of Beaver Run Homeowners Association (“Bylaws”)

These documents have been drafted to come into compliance with changes in the law since the existing Beaver Run documents were drafted and to reflect the Association's needs today rather than the developer's needs. The general purposes of the proposed documents are:

1. To delete the Developer's rights and responsibilities that are no longer applicable.
2. To meet the legal requirements imposed by various state laws.
3. To include powers, duties, and obligations imposed by law on the Association and the Owners, of which they may not otherwise be aware.
4. To give the Association more flexibility in its day-to-day operations in order to improve efficiency in operations.
5. To update and modernize use restrictions to reflect the character of the community as it is now.
6. To eliminate outdated language and provisions that are no longer applicable or enforceable.

The purpose of this letter is to outline the key aspects of the proposed Amended and Restated Declaration, Articles of Incorporation, and Bylaws for Beaver Run.

Summary of Proposed Amended and Restated Declaration

Article 2

- Article 2 carries forward many of the terms that were defined in the original declaration.
- In addition, Article 2 has been updated to include definitions of common terms used and/or defined in CCIOA, as applicable to the Beaver Run community.
- This Article is also intended to clarify definitions of certain terms that were not clearly defined in the original declaration.
- Clarifying ambiguities in the existing/original declaration helps to avoid confusion and lowers costs to the Association for attorney fees, etc. to assist in interpreting documents, etc.

Article 4

- Article 4 describes the allocated interests of owners for purposes of ownership, voting, and assessments.
- This Article also establishes that Owners cannot separate ownership and membership in the Association (e.g., owners are automatically members of the Association).
- The formula for calculating allocated interests is NOT proposed to be changed; however, Exhibit B includes a comprehensive list of the existing units, shows the unit's ownership percentage of the common elements relative to the Building/Condominium map as initially assigned, specifies the common expense allocation for unit relative to the entire community, and notes any units that have been combined.

Article 5

- Article 5 describes the purposes of assessments, the duty to pay assessments, and the duty/obligation of the Association to collect assessments, in accordance with the purposes for which the Association was originally established.
- Section 5.5 allows the Association to assess certain costs to fewer than all of the owners. This authority is carried forward from the current Declaration. For example, damage caused by another owner's negligence or intentional misconduct can be assessed to the owner who caused the damage. This protects the Association and owners from having to pay for damages caused by another person's misconduct.
- Section 5.7 describes the potential consequences associated with failure to pay assessments, which provides important protections to the Association and other owners to help ensure the financial stability of the Association.
- Section 5.8 provides owners the right to participate in the Association's budget process. Specifically, Section 5.8 provides owners the right to "veto" the Association's budget. This section was added to comply with CCIOA.
- Section 5.9 requires approval from owner's holding 2/3rds of the votes cast at a meeting where a quorum is present to approve any proposed special assessment over \$50,000. The dollar amount for owner approval was increased from \$10,000.

Article 6

- Article 6 is intended to clarify the allocation of maintenance responsibility between the Association and owners.
- Sections 6.1 through 6.3 are intended to clarify who is responsible for maintenance of the units, common elements, and limited common elements, and to avoid confusion with respect to maintenance responsibilities.

Article 7

- This Article describes the primary use restrictions in the community, which are intended for the benefit and protection of the community.
- Examples of use restrictions includes restrictions on commercial use, vehicles/parking in the community, pets, marijuana, and nuisance activities.
- Sections 7.4 and 7.5 describe the rental program to highlight that owners may voluntarily participate in the program or elect to rent their unit themselves. The on-site services are also described in greater detail to specify that these expenses will be allocated to owners who elect to rent their units either through the rental program contract or through payment of the daily occupancy fee.
- Section 7.24 also addresses the rights of the Association to adopt rules and regulations governing conduct in the community (as provided in CCIOA Section 302).

Article 8

- Article 8 describes the standards and criteria for architectural review.
- This Article sets forth the procedures for owners to submit architectural requests, and the obligations of the Association to consider and respond to owner requests.

Article 11

- Article 11 carries over the time-share provisions set forth in the current Declaration, but includes updates to comply with current law.

Article 12

- Article 12 addresses the Association's authority and enforcement remedies available under Colorado law. The purpose of this section is to help ensure compliance with the governing documents.

Article 13

- Article 13 describes the procedures for amending the Declaration in the future, consistent with the requirements of CCIOA.

Article 14

- Article 14 includes several general provisions related to interpretation of the Declaration and other governing documents, as well as the rights of both the Association and owners to enforce the terms of the Declaration.

Summary of Proposed Amended and Restated Articles of Incorporation

Article 6

- This Article broadens the purposes of the Association.

Article 10

- This Article was added to specify what happens to Association assets upon dissolution of the Association as a nonprofit corporation. In that rare event, the assets of the Association will be deemed to be owned by the Association members at the date of dissolution, as part of their Units, as provided by the Declaration.

Article 11

- This Article was added to address conflicts between documents and to specify which governing document controls in case of conflicts.

Summary of Proposed Amended and Restated Bylaws

The primary purpose of the Association's Bylaws is to establish the framework for the Association to function, and to describe the roles of the Association's Board of Directors and members. The Bylaws describe owners' voting rights, owners' rights to participate in Association meetings, and procedures for conducting board and member meetings. The Bylaws also define the rights and obligations of the Board of Directors within the parameters of the Declaration and Colorado law.

In large part, the Association's Bylaws reflect the requirements of CCIOA and the Colorado Nonprofit Corporation Act that homeowners associations are required to follow in order to operate effectively and efficiently. The following is a brief outline of the proposed Amended and Restated Bylaws:

Article 1

- Describes the general purposes of the Association, consistent with the Declaration and Colorado law.

Article 2

- Includes definitions consistent with the proposed Amended and Restated Declaration.

Article 3

- This Article clarifies the voting rights of owners/members, and methods for voting (e.g., by mail, proxy, or electronic means).
- Section 3.5 describes methods for counting votes to help ensure that elections are conducted fairly and to promote and preserve the integrity of the voting process.
- Section 3.6 permits the Association to conduct votes by mail or electronic means to encourage greater owner participation.

Article 4

- Describes the methods and procedures for conducting owner meetings in accordance with CCIOA and the Nonprofit Act; this includes the notice that the Association is required to provide to owners and quorum requirements to conduct business.

Article 5

- Article 5 establishes the number of Board members, the structure of the Board, and the qualifications to serve as a Board member.

Article 6

- Addresses procedures and requirements for conducting Board meetings, including notice of Board meetings and voting.

Article 7

- The powers and duties of the Board of Directors are described in Section 7.1, consistent with the powers set forth in CCIOA and the Colorado Nonprofit Act.
- The purpose of describing the Board's duties is so that Board members and owners understand the obligations of the Association and the Board of Directors to act in the best interests of the owners and to protect and enhance the value of property in the community.
- Section 7.2 requires the Association to adopt and maintain responsible governance policies in accordance with CCIOA Section 209.5.

Article 8

- Defines the duties, rights, and responsibilities of Board officers.

Article 9

- Outlines the standards of conduct that Board members and officers are to follow. This is the standard of care specified under the Colorado Nonprofit Act.

Article 10

- Colorado law requires homeowners associations to maintain records related association governance, and to make these records available for inspection by owners.
- This Article describes the records required to be maintained and the owners' rights to access the Association's records.

This outline represents a summary of the key provisions of the proposed Amended and Restated Declaration, Articles and Bylaws. These drafts are provided for discussion purposes only at this time. To facilitate your review, we have included notes after most sections of the proposed Declaration, Articles, and Bylaws that identify changes, and where appropriate, reference analogous provisions of the current governing documents.

Each of the documents have approval requirements. The Declaration requires approval from Owners representing at least 67% of the total votes in the Association. The Articles require the approval of at

least 2/3 of the votes of the members present, in person or by proxy, at a meeting called for such purpose at which a quorum is present. The Bylaws require the approval from a majority of Owners present in person or by proxy, a meeting where a quorum is present. As stated above, these documents are being distributed now for discussion and informational purposes, but your participation will be critical when final drafts are presented for voting.

Owners are encouraged to carefully read and review the proposed Declaration, Articles, and Bylaws and submit any questions or comments to the Association's Board of Directors or the Association's manager.

Pursuant to Colorado law, any vote which may be taken at a physical meeting may be taken by a mail-in ballot in lieu of a physical meeting. The ballot is enclosed with this letter. Your vote is important. Please complete and return the ballot at your earliest opportunity. The ballot includes instructions for returning to the Association. Ballots must be received by the Association by 5:00 p.m. Mountain Time on May 11, 2021, in order to be counted.

Sincerely,



Kelly G. Morrow

ORTEN CAVANAGH & HOLMES, LLC