

Plaza at Wood Creek Condominium Association
Responses to Questions and Comments Pertaining to the Proposed Declaration
January 27, 2016

Overview: The Board of Directors (the “Board”) of the Plaza at Wood Creek Condominium Association (the “Association”) delivered a proposed declaration (the “Proposed Declaration”) to the owners (the “Owners”) on or about December 4, 2015, for review and comment until January 15, 2016. The Board has received a handful of questions and comments from the Owners as well as a number of comments from the attorney representing the Owner in the lawsuit against the Association related to the responsibility for maintenance, repair and replacement of the windows and doors. The Board appreciates the feedback provided and will endeavor to make the suggested revisions to the Proposed Declaration in an effort to both prevent any future litigation related to the Proposed Declaration and to clarify any unintended drafting problems. Below please find a summary of the questions and comments received by the Board as well as responses prepared by the Board’s attorney. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

Question/Comment 1: Wording choice in some provisions can be revised to provide further clarity.

Response 1: The Board and its attorney are working through these comments to provide increased clarity throughout the Proposed Declaration.

Question/Comment 2: The provisions regarding unit boundaries, common elements, windows and doors and penetrations can be clarified further. Examples include the following:

- Clarify the definition of Common Elements in Section 1.2 to include windows and doors in the perimeter boundary of a Unit, but to exclude doors located on the interior of a unit (i.e., a door into a bedroom).
- Provide further clarity around utility lines, and when they are part of the Common Elements and when they are part of a Unit.

Response 2: The Board and its attorney are working through these comments to provide increased clarity throughout the Proposed Declaration.

Question/Comment 3: Why is the term “limited common element” not included in the Proposed Declaration? Why are the balconies, doors and windows of each Unit not defined as a limited common element in the Proposed Declaration?

Response 3: Section 103 of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended from time to time (“CCIOA”), defines “limited common element” as “a portion of the Common Elements allocated by the declaration ... for the exclusive use of one or more units but fewer than all of the Units.” All Common Elements (whether general use or limited use) are owned by all Owners as tenants in common. Balconies can be designated as limited common elements to indicate two things: first, that only certain Owner(s) can use that particular Common Element, and second, that only certain Owner(s) pay for (certain) expenses related to that particular Common Element.

- **Balconies:** In the existing declaration, all balconies were designated as limited common elements allocated to the Units to which they are attached and required that each Owner pay for maintenance expenses incurred by the Association in connection with that Owner’s balcony. The Board thought the division of Common Elements into general versus limited to achieve this was confusing. So, at the suggestion and request of the Board, the Proposed Declaration was revised to indicate that balconies are regular Common Elements, but gave each Owner an exclusive use rights over the balcony attached to its Unit. The result is that all balcony expenses go into a single bucket and all Owners pay for all expenses related to balconies. While Section 202 of CCIOA contemplates that items (such as balconies) that are outside a Unit but only serve a single Unit are limited common

elements, CCIOA also provides that a declaration may provide otherwise, which is what the Board decided to do in this case.

- **Windows and Doors:** The same holds true for windows and doors as they involve “penetrations” into the Unit boundaries. The word “penetration” is used because it is descriptive. It designates a break in the normal construction type at the Unit boundary, which is the interior unfinished surface of drywall. Exterior doors and windows create a circumstance where the Common Elements penetrate what would otherwise be a Unit boundary. The Proposed Declaration does not define these as limited common elements because there is no need to break them out for expense purposes on a Unit by Unit basis as discussed above. Expenses for the maintenance to windows and doors also go into a common bucket paid for out of Assessments.

Question/Comment 4: Why are short-term rentals (under 90 days) required to be managed by a single rental company in Section 4.7(c)?

Response 4: The restriction on short-term rentals has been in the Bylaws of the Association since the Association’s inception in 1982. The Management Agent of the Association (CBMR) staffs the front desk. It is in all Owners’ best interest to have a single company manage rentals for purposes of consistency and safety. If Owners were to use a number of different rental companies and guests had a negative experience with a specific rental company, guests would associate that negative experience with the Plaza rather than the rental company. Keeping all rental units managed by a single company eliminates such potential problems and helps provide a positive, safe experience for all guests. In exchange for the opportunity to handle rental management for the Owners, CMBR provides its management services to the Association at a very low rate. But for this arrangement, the management fee charged to the Association would be much higher. In the event that CBMR fails to handle the rental program successfully, the Board and Owners can always choose a different Management Agent, thus incentivizing CBMR to manage the rental program effectively.

Question/Comment 5: Why is alternate dispute resolution mandatory in Article 7 of the Proposed Declaration? The Board should consider revisions to these provisions related to mandatory timelines and the types of actions to which these provisions apply.

Response 5: Alternate dispute resolution is recommended to encourage amicable resolution of disputes without the emotional and financial costs of litigation in accordance and furtherance of Section 124 of CCIOA. The Board will reexamine the types of actions for which arbitration should be required and will also re-evaluate the proposed timelines in Article 7.

Question/Comment 6: Throughout the Proposed Declaration, there are different time periods required for notice under various circumstances, ranging from a vague reference to “reasonable” notice or some specified period of days, which also varies depending upon the circumstances. It was suggested that the declaration articulate a specific, uniform definition of the notice required, such as a minimum of 45 days and a maximum of 90 days.

Response 6: The Board will review notice requirements throughout the proposed declaration with this in mind. In some instances, “reasonable” may be shorter or longer than in other circumstances.