

# Equity Plan Update

# Equity Plan Update

- The POA has become aware of recent court rulings regarding POAs owning golf courses
- Therefore, LFPOA has consulted with its lawyers to determine the legal status of the proposed Equity Plan
- In effect, these court rulings say that ownership and/or operation of a golf course falls outside the accepted and reasonable functions of POAs and HOAs

# Specifically-----

- LFPOA governing documents and state statutes are North Carolina General Statutes (NCGS) and LFPOA Articles of Incorporation, By-Laws and Master Declaration of Covenants
- These documents authorize the LFPOA to:  
“acquire, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, and otherwise dispose of real and personal property in connection with the affairs of the Association”
- Although the governing documents clearly authorize LFPOA to acquire property, they do not authorize the Association to purchase, own or operate a golf course
- Owning/operating a golf course is determined to fall outside the normal affairs of the Association

# The Bottom Line---

- The LFPOA cannot purchase a golf course
  - The POA is specifically authorized to purchase property, however, it is not specifically authorized to purchase a golf course
- The LFPOA cannot participate in operating a golf course
  - Operation of a golf course is not specifically identified as a function of LFPOA in the Articles of Incorporation, By-Laws or Covenants
- The LFPOA cannot hold an equity position in a golf course
  - This requires a purchase, which is not authorized

# What Does This Mean?

- LFPOA is abandoning the plan to purchase/invest in the golf course
- This does not necessarily mean that the golf course will fall into foreclosure
- The LFCC is taking alternate steps to ensure the golf course stays viable and in LFCC member control
- These steps and the justification for them follow in the presentation

# Fallout of the Equity Plan Demise

- Now that LFPOA cannot purchase the golf course, revenues from the purchase are not available to pay off LFCC's debt
- Therefore, the prospect of an outside owner (BB&T) of the golf course increases substantially
- This presents a problem for the POA, since the owner of the golf course can exercise its 50 class B votes to block community projects, such as the community center (which any third party would likely do)
  - The community center would cost any third party owner of the property an additional \$105K in assessments (\$180K if BB&T)
  - Since the community center provides no benefit to the golf course, any third party owner of the property would almost surely block the project due to cost

# Fallout of the Equity Plan Demise

- The community center is critical for our residents and the POA board
  - The current clubhouse is too small to accommodate large meetings and social gatherings
  - Recreational space is limited, causing scheduling problems and conflicts among residents seeking to reserve space
  - The POA has no office space in the current clubhouse to conduct its business
- LFPOA has committed to you, the members, that a community center will be built
- Earlier this year we presented to you our plans for funding, for working on cost reductions and for collaborating on the floor plans in our existing building design proposal
- At that time sixty eight percent of the membership supported our plans
- As stated, the community center project is now at risk if a new owner, exercising its 50 class B votes, chooses not to approve the project

# Fallout of the Equity Plan Demise

Additionally----

- With the prospect of foreclosure facing it, LFCC may be forced to put the golf course up for sale before BB&T forecloses
- Since the pro shop & grill are essential to a sale, and since they are on the property designated for the new community center, LFCC has withdrawn its no cost grant of that property to LFPOA
  - This poses another threat to the community center project, as no suitable alternative property is available



# The POA Proposal

- With the prospect of LFCC or a new golf course owner wielding substantial power over major POA projects, the POA board has decided to revise language in the Articles of Incorporation and the Master Declaration of Covenants to eliminate the Class B Member's voting power and dues obligations so that the Class B Member will have no votes and pay dues equal to one Class A Member
- The appropriate legal language will be composed by POA lawyers
- LFCC agrees to endorse these changes
- This accomplishes 3 things:
  - Prevents a new owner of the golf course from blocking important community projects
  - Saves the golf course owner \$52K per year in assessments
  - These savings may make the golf course more attractive to a potential buyer who wants to continue to operate the golf course
- Coincidentally, the \$52K in savings can be used to help fund LFCC's debt service, but it does not make up the full revenue shortfall

# The POA Proposal

- Since LFCC's offer to grant the 2.4 acre tract to LFPOA at no charge is withdrawn, the POA has determined that it is in the best interest of the POA and its members to purchase the property before such property is sold or foreclosed upon by a third party
- LFCC is willing to sell the property, because making it available for sale to LFPOA provides revenues that can be used to fund LFCC's loan payments
  - Therefore, a land purchase agreement is in the best interests of both parties
- When the dues reduction from the class B vote conversion is added to revenues from the sale of the community center property, LFCC should have more than adequate supplemental income to cover its debt obligations

# What is the Value of the Land?

- Various appraisals have been conducted to value the CC property
  - Appraisals were done in 2009 and 2011
  - The appraisals provided separate values for the land and the pro shop / cafe
  - We have contacted the appraiser and received updated information on current real estate values
  - Based on that information LFCC and LFPOA have agreed on a purchase price for the land (not including the pro shop) of \$554K for the 2.4 acre waterfront property
  - The total payments for the land, including interest, over 15 years is \$770,000

# Additional Factors

- Since LFCC will no longer grant the community center site at no cost, it will be required to pay fair market value for renting the pro shop and restaurant
- But, since LFCC requires compensation for the existing pro shop / café, LFPOA grants LFCC a rent moratorium for ten years, starting in 2012 as payment for the building
- The suspension of rent payments continues for ten years regardless of whether LFCC operates out of the existing pro shop or new facilities in a future community center

# Proposal Summary

- LFPOA changes the language in the governing POA documents to reduce class B votes and dues obligations of the golf course owner
- LFCC agrees to the changes, and LFPOA revises Master Declaration to reflect a dues reduction for the recreational amenity to one class A property
- LFPOA purchases the community center property from LFCC for \$554K
- When the community center is built, LFCC will manage the pro shop & restaurant
  - In 2022 LFCC & LFPOA will negotiate a lease agreement and LFCC will begin paying rent to LFPOA
  - The rent abatement agreement will not apply to a new owner in case the golf course changes ownership
- LFCC's agreement to sell the land is contingent on LFPOA's successfully revising their Articles/Covenants to eliminate class B votes and the associated dues reduction
- Adding LFCC's dues reductions plus LFPOA's payments for the land purchase, and abating LFCC's pro shop/restaurant lease payments for 10 years, the net cash revenues to LFCC should be enough to cover its loan payments
- Therefore, the steps that LFPOA and LFCC must take to prepare for a possible change in golf course ownership should actually make the golf course financially viable, achieves the goals of the equity plan and guarantees the POA use of the waterfront property regardless of whether the golf course remains viable

# What are the Differences Between this Plan and the Equity Plan?

- For LFCC:
  - Members retain all their equity in the golf course
  - The LFCC board retains exclusive golf course management rights, no POA involvement
  - POA dues for the Class B Member are reduced to that of one Class A Member and their votes are eliminated
  - LFCC is now selling the community center site to LFPOA instead of gifting it
  - After 10 years, LFCC will pay rent to LFPOA for using the new community center facilities

# What are the Differences Between this Plan and the Equity Plan?

- For LFPOA:
  - Will not own an interest in the golf course or participate in LFCC management
  - Will not be required by virtue of ownership to fund any LFCC debts, operations, capital requirements or financial losses
    - The POA is not at risk for the financial performance of LFCC
    - The only POA financial commitment is the land purchase agreement
- Since LFPOA is not purchasing the golf course, its cash investment is limited to the land purchase, therefore the amount paid to LFCC is lower than proposed in the equity plan
- After the 10 years rent abatement expires, LFPOA will receive rental income from LFCC (or a subsequent owner) as long as the golf course is in operation, further reducing POA cost

# How is this Plan Similar to the Equity Plan?

- It helps the golf course avoid bankruptcy and foreclosure
- It does not affect your POA dues or assessments; like the equity plan there are no incremental out of pocket costs
- LFCC plans to honor the main provisions of the Equity Plan because it believes they are in the best interests of both LFCC and the community
  - Limited golf memberships for POA members with economical play rates, 5 free rounds of golf, free range access, full member upgrades at no initiation fee and pro shop discounts
  - New equity memberships no longer offered
  - Managing Director added as ad hoc board member
  - Adoption of the net \$0 (or better) budget amendment
  - Implementation of a long range strategic financial plan



# How is this Plan Similar to the Equity Plan?

- Although this plan is not an equity plan or a merger of the POA and LFCC, it accomplishes a similar goal as the equity plan and is better for the POA because it guarantees member use of the 2.4 acre waterfront property regardless of who owns the golf course
- The cooperative achievements by LFPOA and LFCC exemplified in the equity plan will continue as the two organizations seek to bring the community closer together

# What are the Advantages of this Plan vs. the Equity Plan?

- LFCC members maintain their equity
- The POA is not required to be involved in golf course management
- The POA is not encumbered with any legal obligation to subsidize golf course operation due to ownership
- All POA financial risks associated with golf course ownership are eliminated
- By eliminating the golf course Class B Member votes, the golf course owner cannot override POA member votes and block the community center project
- By purchasing the 2.4 acre LFCC tract, LFPOA is guaranteed having the desired building site for the community center, regardless of the status of LFCC

# What are the Next Steps?

- Our lawyers will complete the land purchase agreement and both boards will formally approve it
- Since amendments to the Articles of Incorporation require POA membership approval, we will vote on the revisions to them
- The dates for ballot mailing and the return due date will be announced ASAP
- Ballots must be signed, dated and contain the property owner's address (this is a change from previous balloting) to be counted
- Ballot counting will be conducted same as for the equity plan
- Amendments to the Articles of Incorporation requires 2/3 of votes cast or a simple majority of all property owners (NCGS 55A-10-40)
- Amendment of the Master Declaration requires a majority vote of the Board of Directors
- The provisions will be executed immediately upon approval

# Summary

- This new proposal provides LFCC the additional revenues needed to pay off its debt, same as the equity plan
- Therefore, the golf course should continue to operate, and our property values will be preserved
- LFPOA locks in the community center building site
- There are no out of pocket costs for POA members
- LFCC equity members retain their equity in the golf course
- LFPOA will not own a share of the golf course or participate in its operation
- LFPOA will have **NO** liability for the financial performance of LFCC
- LFCC will voluntarily honor all the provisions in the equity plan other than those associated with POA management involvement
- The POA membership overwhelmingly approved the equity plan, and this proposal eliminates all the equity plan's financial risk and reduces the cost to the POA
- This plan has been reviewed and approved by the POA law firm Ward & Smith, specializing in POA/HOA law
- Both the LFCC board and the LFPOA board agree that this proposal is in the best interests of the POA and its members and recommend approval

# Questions

Gordon,

As we discussed earlier today, we will prepare a written ballot for the Association to send to the members regarding the Class B Member's voting power and assessment obligations. The written ballot will propose an amendment to the Articles of Incorporation and the Master Declaration, but both amendments will be voted on together. The written ballot must include the lot number or property address, the member's name, and must be signed by the member. The written ballot also must be returned by the date indicated on the ballot. We will prepare this ballot for you by tomorrow and will include the date you provide us.

Thanks,

-Justin

**Justin M. Lewis**  
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