

Tarryall Fishing Club, Inc.
Attorney: Tracie Hulbert

Stagestop Home Owners Association, Inc.
Attorney: Richard Toussaint

Lost Park Home Owners Association, Inc.
Attorney: Mark Payne

Date: Monday, April 12, 2010 Version 3. Amended on May 14, 2010

MEMORANDUM OF UNDERSTANDING

This *Memorandum of Understanding (MOU)* documents the agreements made by the Board members of the Tarryall Fishing Club (TFC), Stagestop Owners Association (SOA), and Lost Park Ranch Owners Association (LPROA) who attended the mediation conducted at the Riverside Inn in Fairplay, Colorado on Monday, April 12, 2010. Also present at the mediation were attorneys Tracie Hulbert, Richard Toussaint, and Mark Payne. The mediation was conducted by Hugh Young (a member of *The Mediation Practice of Hugh Young, LLC*).

- 1. Purpose and Intent:** Each party has agreed that the purpose of the agreements documented in this MOU is to resolve the disagreements that have arisen between the TFC, SOA and LPROA regarding the method in which the TFC can raise its assessments. It is each party's intention that the agreements documented in this MOU shall provide the TFC with a perspicuous procedure for raising the amount of its assessments without conflicting with the covenants, bylaws and operating procedures of the SOA and LPROA. The duties and obligations imposed by the agreements documented in this MOU shall be limited to those necessary to implement the procedures for the TFC to raise its assessments and shall not otherwise impose duties and obligations on each organization in relation to other matters.
 - 2. Voluntary Agreement to Be Bound:** Each party has voluntarily agreed to be bound by the agreements documented in this MOU, has entered into these agreements without coercion, duress, or undue influence, and has represented that he or she has the authority and is competent to execute these agreements.
 - 3. Requirement for Approval.** Each party understands that implementation of the agreements documented in this MOU will require the approval of the general membership of each organization at its annual meeting pursuant to each organization's bylaws. Each party shall place approval of the agreements documented in this MOU, including all necessary amendments to each organization's bylaws, on the agenda of its 2010 annual meeting. Failure to receive approval by any one of the organizations shall result in the voiding of this MOU.
 - 4. Definition of Assessment.** Each party has agreed that the term *assessment* shall be used in this MOU to refer to any obligatory payment, annual or special, made by a member to the TFC, and shall include all TFC revenue sources referred to within the bylaws and
- Memorandum of Understanding: TFC, SOA & LPROA

covenants as dues, fees, assessments or special assessments. A *special assessment* is a one-time assessment levied for a specific purpose.

5. **Clarification of What is Meant by a “Free” Membership in the TFC.** Each party has agreed that the language “free membership in the Tarryall Fishing Club” contained in section 15 of the SOA and LPROA covenants means that there is no *initial* cost for the obligatory membership in the TFC above the cost of purchasing a lot. Purchasing one or more lots provides the purchaser with all of the rights, benefits and obligations that are concomitant with being a member of the TFC, including the obligation to pay assessments at the rate established under the TFC bylaws.
6. **Procedure for the TFC to Raise Assessments.** Each party has agreed that the TFC shall amend its bylaws and operating procedures to utilize the following procedures for raising assessments:
 - 6.1. To raise the TFC assessments over the amount levied in the previous fiscal year shall require an affirmative majority vote of all ballots received by 5:00 PM on the specified due date in a mail-in election called by the Board of Directors of the TFC.
 - 6.2. The cost of conducting a mail-in election to raise the TFC assessment shall be paid solely by the TFC, with the exception of a possible election in 2010 (see section 8).
 - 6.3. Any proposal by TFC to increase its annual assessment or to levy a special assessment shall be presented to the SOA and LPROA at least 15 days before their respective annual meetings of members. TFC shall be entitled to attend the SOA and LPROA annual meetings to present to their respective memberships the TFC budget and the rationale for a proposed increase in the annual assessment or need for a special assessment.
 - 6.4. Following a formal decision by the TFC board to hold an election to increase the assessment, the TFC board shall notify the SOA and LPROA Boards of TFC’s intent to call an election and the Board of Directors from each entity shall each appoint two members to an Election Committee (total of six members) within thirty days. The Election Committee shall be responsible for facilitating the mail-in election, including, preparing and mailing the ballots, receiving and counting the mail-in ballots and preparing a statement of the election results. The Election Committee shall hold the authority to conduct the election in a manner which conforms to the TFC bylaws and assures fairness, openness and transparency.
 - 6.5. TFC assessments shall be increased if the majority of ballots received by 5:00 PM on the specified closing date approve of the increase. If equal numbers of ballots vote for and against the proposed increase (tie vote), then the increase shall not be approved. The results of an election to increase the TFC assessments shall be made available to the TFC membership and the boards of the SOA and LPROA on the date following the counting of the ballots by posting on the TFC web site. The statement of election results prepared by the Election Committee shall be included in the SOA and LPROA’s annual assessment notice.

- 6.6. Ballots for a mail-in election to raise the TFC assessment shall be prepared and mailed by the election committee to the last known address of all TFC members on record as of June 1 in the year of the election. The envelope containing the ballot, and any return envelope, shall list the Election Committee as the return addressee and may also be printed with additional information to increase election participation.
- 6.7. Ballots for a mail-in election to raise the assessment for the following year shall not be mailed prior to September 1 and the due date for return of the ballots shall not be less than 30 days following the date of mailing.
- 6.8. The Board of Directors of the TFC, SOA and LPROA shall each be able to include within the ballot envelope a statement of up to 500 words regarding its position on the requested increase in the TFC assessment.
- 6.9. The language contained in the ballot for an increase in an assessment shall be made available to the Boards of the SOA and LPROA by the election committee prior to their annual meetings.
- 6.10. The mail-in ballots for an increase in the annual assessment shall contain the following language: "Shall the annual assessment of the Tarryall Fishing Club be raised by \$ (requested annual increase) to a total annual assessment of \$ (requested total amount of the annual assessment) per paying lot per year, beginning on January 1, (year) and continuing until modified pursuant to the Tarryall Fishing Club bylaws? If approved, the proposed increase would result in a (percent increase)% increase over the previous year's assessment."
- 6.11. The mail-in ballots for a special assessment shall contain the following language: "Shall the the Tarryall Fishing Club collect a one-time special assessment of \$ (requested amount of special assessment) per paying lot for the purpose of (neutral description of the purpose of the special assessment)?"
- 6.12. Each member shall receive one vote for each lot for which a member pays an assessment.
- 6.13. If the increase is approved, the SOA and LPROA shall collect and remit to the TFC the total amount of the assessment, including the increase, without further need for the approval of the members of the SOA or LPROA. If the proposal to increase the assessment is not approved, the annual assessment shall not change and the SOA and LPROA shall collect and remit to the TFC the same annual assessment amount as that set for the previous year.
7. **Amendment of the TFC, SOA and LPROA Bylaws.** Each party has agreed that the TFC, SOA and LPROA shall amend their bylaws to allow the seamless implementation of the agreements documented in this MOU, and will include language that allows the SOA and LPROA to raise their assessments to collect an approved TFC assessment increase without requiring any additional approval of the members of the SOA or LPROA. The SOA and LPROA further agree that their respective Protective Covenants shall not be amended in any manner that would effectively circumvent this MOU.

8. **Allocation of Costs for a Possible 2010 Election.** Each party has agreed that should the TFC Board call an election to increase assessments for the 2010-2011 fiscal year, the costs of the election shall be shared by the SOA and LPROA, with the SOA paying up to \$1,000 of the actual costs and the LPROA paying up to \$500 of the actual costs. Any additional costs shall be paid by the TFC.
9. **The Amount of the TFC Assessment for the 2009-2010 Fiscal Year.** Each party has agreed that the assessment payable to the TFC for the 2009-2010 fiscal year shall remain at \$21.00 per paying lot per year. All assessments that have been collected and retained to date by the SOA or LPROA shall be paid to the TFC within ten days of the signing of this MOU. All payments of the TFC assessment collected by the LPROA above \$21.00 per paying lot shall either be refunded by the TFC or credited toward the 2011 assessments of LPROA members, at the sole discretion of the LPROA Board.
10. **Annual Report of Current Lot Owners.** Each party has agreed that no later than 45 days before the date of the TFC annual meeting each year, the Board of Directors of the SOA and LPROA shall each provide the TFC with a current list of all lot owners of record as of March 1, including name, contact information and current status with regards to the payment of TFC assessments.
11. **Annual Financial Reporting by the TFC.** Each party has agreed that the TFC shall provide the SOA and LPROA Boards with an annual financial report, including a balance sheet listing the TFC's assets and liabilities, an income statement listing revenue and expenditures, and a budget for the upcoming year. For the 2010 annual TFC meeting, the annual financial report shall be provided on or before the date of the annual meeting. Beginning with the 2011 annual TFC meeting, the annual financial report shall be emailed to the SOA and LPROA Boards no later than fifteen days prior to the date of the TFC annual meeting each year.
12. **General Understanding:** Each party has agreed that this MOU provides an accurate expression of the agreements made through the process of mediation. Each party understands that the mediator is not an attorney and has written this MOU for the purpose of documenting the agreements made through the process of mediation.

Agreed: _____ Title: _____
Representing the Tarryall Fishing Club

Date

Approved: _____
Attorney: Tracie Hulbert

Date

Agreed: _____ Title: _____
Representing the Stagesop Owners Association

Date

Approved: _____
Attorney: Richard Toussaint

Date

Agreed: _____ Title: _____
Representing the Lost Park Ranch Owners Association

Date

Approved: _____
Attorney: Mark Payne

Date