



ArrowCreek Community Club Committee

# **Recommendations for HOA Board Action**



## Recap of Prior Recommendations

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- ACCC believes that there are sufficient potential benefits for homeowners to bring the following to a homeowner vote:
  - HOA to acquire the current Club in order to control its use in perpetuity
  - HOA to form a joint venture with Arnold Palmer Golf for purposes of operating a Community Club
  - HOA to lease the Club property and the Residents Center to the joint venture
- Tonight's recommendations are for the purpose of being able to clearly detail financial impact and legal issues in order to fully inform homeowners prior to a vote.

## Approval of Joint Venture Terms

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- Rough term sheet has been negotiated with Arnold Palmer Golf. Recommend signing a non-binding Letter of Intent.
- If approved by the Board the Committee can then proceed with:
  - Refining the financial projections for the joint venture and the resulting financial impact on homeowners. We cannot effectively communicate with homeowners until these numbers are reasonably accurate.
  - Fully defining the obligations, limitations and implications of the joint venture – also essential to begin homeowner communication.
  - Drawing up contracts. Homeowners will want to review and understand proposed contracts prior to a vote. New legal issues could be identified.
  - Performing other due diligence as required.

## Summary of JV Terms

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- JV owned 50/50 by HOA and APG, control is 50/50 with any deadlock issues going to binding arbitration.
- Net cash flow will be distributed 50/50, annually.
- APG manages operations and receives a fee of \$12,500 per month, waived for the first 2 years and then deferred until profits can cover fees.
- HOA will lease the residents center and the club to the JV for 99 years. Under the lease the JV will cover the cost of property taxes, water Special Assessment District charges, required Reserves and maintenance of Fire Fuels following HOA initial mitigation.

## Summary of JV Terms

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- JV will cover all operating costs including those related to the Residents Center (HOA budget will decrease by this amount).
- JV partners (HOA and APG) will be subject to capital calls as determined by the JV's Major Decisions Committee on a 50/50 basis. Capital calls could be generated by sustained operating losses or by decisions to make capital improvements.
- JV partners may be required to make an equal initial capital contribution for deferred maintenance items not addressed by the previous management (parking lot, irrigation system).
- Either partner may be dismissed for sustained and uncorrected fraud, malfeasance, etc.
- Further detail in the attached materials for the Board.

## Approval of Option to Purchase the Club

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- A key assumption of the proposal is the purchase of the Club from the Friends of ArrowCreek. It is critical to ensure that this option is available if approved by homeowners. Agreement on general terms also enables the ACCC to make accurate financial projections.
- Requesting Board approval of Purchase Option agreement with the FOA.
  - Deadline of May 31, 2015, with extensions if mutually agreed and HOA vote is already underway by that date.
  - Purchase price to include FOA's initial purchase price, accumulated losses through the date of purchase by the HOA (including capital asset repairs) and 12% interest on their capital as invested over time.
  - HOA will assume the remaining obligation to Washoe County for past due water bills and penalties which were incurred by Aspen Sierra. FOA will have already paid 40% of the total \$1.4 million.



## Approval of Communication Committee Members

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- As communicated at the last Board meeting, we have formed a communications team to focus on the Community Club issue.
- It is recommended that we add the communications team to the HOA's Communications Committee.
- The team has the following members:
  - Norm Reeder and Paul Burkett, co-chairs and current members of the ACCC
  - J.R. Rodine, new member
  - Hal Albright, new member
  - Klark Staffan, new member
  - Joe Uhlan, new member

## Upcoming Activities

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- Meeting with a group of realtors on Nov. 19<sup>th</sup> to brief them on current status, answer questions.
- Finalize financial projections with Arnold Palmer Golf.
- Develop necessary contract documents.
- Finalize proposed changes to the CC&R's required to implement the proposal, if approved.
- Refine communications plan; identify and interview professional communications firms as needed.



## Term Sheet - Arnold Palmer Golf and ArrowCreek Homeowners Association

Item	Agreement
Joint Venture ownership	50/50
Joint Venture control	Major decisions committee - 50/50 Binding arbitration in Reno, Nevada for deadlock
Joint Venture managing partner	APG
Initial capital contribution	<p>Unfunded capital improvements (those which cannot be funded through the JV's capital expense account) will be funded through capital calls.</p> <p>Roof repairs/replacement, pump station repairs, parking lot repairs, etc. are in need of immediate attention in Year 1. They will not yet have been funded in the HOA's Reserves. Partners agree that if these items have not already been addressed by the FOA, then the partners will fund these kinds of items in years 1-3 of the JV.</p> <p>Need schedule of anticipated expenses and estimates before agreement is final.</p>
Capital calls	<p>Initiated by managing partner in event of shortfall.</p> <p>Initiated by Major Decisions committee for other reasons.</p> <p>50/50 according to ownership percentage.</p> <p>If one party refuses, other party can make up difference - this party then receives preferential distribution of cash flows and 10% interest until that capital has been repaid.</p>
Capital Improvements	<p>The partners may agree through the Major Decisions committee, to make certain capital improvements in the future. Unless the JV has sufficient funds on hand in the capital expense account, these improvements will be funded through capital calls.</p> <p>The JV will treat these improvements as leasehold improvements and intends to take depreciation for tax purposes.</p> <p>Special treatment will be given to the capital calls associated with these improvements upon dissolution of the JV (see below).</p>
Distribution of profits	<p>Net cash flow distributed 50/50, except as noted above under "Capital calls".</p> <p>Assumed to mean Revenues less operating expenses, less loan repayments, less capital expense account, less property and sales taxes, less mgmt fees, less audit fees (does not include income taxes, if any, to be paid by each party).</p>
APG management fee	\$12.5K per month, waived for two years and deferred thereafter until the JV shows positive cash flow. Term for the life of the JV.
JV to absorb specific expenses	<p>All operating expenses for the club and residents center</p> <p>Excludes items which are covered by the HOA Reserve Fund since funds will have been paid over by the JV to the HOA to fund the Reserve Requirement.</p> <p>The following items will be spelled out in the lease as the JV's responsibility - paid by the HOA and billed to the JV.</p> <p>Property taxes applicable to the Club property</p>

**Term Sheet - Arnold Palmer Golf and ArrowCreek Homeowners Association**

Item	Agreement
	Special assessment district charges applicable to the Club property
	Fire fuels maintenance expense following HOA initial mitigation. Approximately 44 acres will be added each year over 10 years to total 440 acres. Current maintenance cost is \$100/acre.
	Capital expense account @ 3% of revenue - portion to be paid over to HOA Reserve Fund

## Term Sheet - Arnold Palmer Golf and ArrowCreek Homeowners Association

Item	Agreement
HOA Reserve Requirements	<p>General agreement: JV will cover the Reserve Fund requirements related to the newly acquired Club property. HOA must reserve for fixed assets (buildings, pavement, irrigation system, etc. HOA will authorize dispersal of funds from Reserves to cover repair or replacement of these fixed assets.</p> <p>The following process will be utilized: HOA will perform reserve studies as required by law HOA will bill JV for the Reserve requirement, to be paid from the JV capital exp. account. JV major decisions committee will recommend expenditures for Reserve assets HOA will authorize expenditures from the Reserve account as needed</p> <p>Agreement pending results of Reserve estimate (underway).</p>
Property ownership and lease	<p>HOA will own the club and the residents center HOA will give a 99 year lease to the JV</p>
Partner performance	<p>Suggest that 3 occurrences of Bad Conduct within a 5 year period, even if remedied, will give the other partner the option to terminate. Bad Conduct must be valid act of Bad Conduct and supported by evidence, not alleged acts of fraud or criminal misconduct.</p>
Dissolution	<p>Under all circumstances, APG as managing partner will sell the assets of the JV to satisfy creditors (including outstanding management fees) - any remainder is distributed to partners according to their percentage of paid-in capital, except as noted below under "improvements".</p> <p>Capital Improvements (i.e. - clubhouse expansion, new pickle ball courts, etc.) which have been jointly funded through capital contributions from the partners. Since the property reverts to ACHOA following dissolution, improvements of this kind will be "purchased" from AP for the amount of their original capital contribution less any depreciation taken up to the date of dissolution.</p> <p>Personal and proprietary property of either partner will be returned to that partner.</p> <p>APG as managing partner will assist in transition, make available all client and accounting data, assist in converting to new systems as needed, and other reasonable and customary requests. APG will be entitled to reimbursement for reasonable expenses.</p>
Special buyout provision	<p>Either partner can make an offer to the other to buy them out.</p> <p>If the offered partner refuses to sell then they are required to buy out the offering partner for the original offer amount.</p> <p>If APG is the offered partner then they must respond in 30 days.</p> <p>If the HOA is the offered partner, then the partners will agree upon a reasonable deadline for response based on the then-current legal requirements, HOA by-laws and HOA CC&amp;R's. If agreement cannot be reached, the item will be submitted for binding arbitration in Reno, NV.</p>

**Term Sheet - Arnold Palmer Golf and ArrowCreek Homeowners Association**

Item	Agreement
Independent Auditor	<p>Independent Auditor selection is the responsibility of the Major Decisions Committee.</p> <p>Books to audited annually.</p> <p>Each partner is entitled to call for an outside audit. The partner conducting the audit will be responsible for the costs involved.</p>