DC Ranch
Ranch Association

DC Ranch Association
Board Report 8-13-18 #10

Subject Matter: Working Capital Contribution

Background: The Board's 2017/2018 goals and objectives shows this item as a matter of importance. The specific objective is as follows: A legal opinion should be sought to determine if the Association should be collecting a "working capital" contribution in accordance with the foregoing provision.

The applicable provision in the CC&R's is as follows: 8.10. *Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount the Board determines periodically. This amount shall not exceed the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in any manner permitted by the Ranch Governing Documents, including, but not limited to, operating expenses, maintenance, costs of enforcement of the Ranch Governing Documents, and any other uses that are deemed necessary and appropriate in the Board's sole discretion.*

As we researched this matter and consulted with legal counsel (opinion herewith), we discovered that a working capital contribution fee has been collected through the years, but it has not been adjusted to align with the Ranch Association monthly assessment; it currently sits at $300. The fee can be adjusted to $866.40 based on the current monthly assessment of $72.20. This fee impacts roughly 100 future property transfers (including ICON).

The working capital fee can be adjusted again with the 2019 budget, if the assessment changes.

Recommendation: Set the working capital contribution fee at $866.40 for 2018 and adjust the fee annually based on the Ranch Association monthly assessment.

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SENT VIA EMAIL ONLY
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DC Ranch Association
Board of Directors
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Scottsdale, Arizona 85255

RE: Mandatory Working Capital Contribution

Dear Board of Directors:

We have been asked to provide guidance regarding collection of a working capital contribution from the first owners of property in the Association. In preparing this opinion, we reviewed the *Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Ranch*, recorded in the Official Records of the Maricopa County Recorder's Office at Instrument No. 99-0673267 (the "Ranch CC&Rs").

The relevant provision of the Ranch CC&Rs is as follows:

8.10 Capitalization of Association.

> **Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount the Board determines periodically.** This amount shall not exceed the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association ***for use in any manner permitted by the Ranch Governing Documents***, including, but not limited to, operating expenses, maintenance, costs of enforcement of the Ranch

Governing Documents, and any other uses that are deemed necessary and appropriate in the Board's sole discretion. [Emphasis added].

We are informed that the Association has never previously collected a "Working Capital Contribution" pursuant to Section 8.10 above, but the Board is interested in how it may implement a policy to do so in the future. First, it is important to understand who is responsible for paying the Working Capital Contribution. The Ranch CC&Rs require payment by the first Owner, but creates an exception for the Declarant or a Builder. "Builder" is defined at Section 2.5 as "Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Ranch for further subdivision, development, or resale in the ordinary course of such Person's business".

Based on the foregoing, DMB (and its affiliate Declarant companies) does not have to pay the Working Capital Contribution. Similarly, any Owner that acquires the property for purposes of developing and later selling to a consumer in their regular course of business does not have to pay the Working Capital Contribution. Here, while the various Builders who own hundreds of Lots/Units (including the 72 being developed in the ICON Project) are exempt, the first consumer who purchases these Lots/Units from the Builder (or DMB) must pay the Working Capital Contribution.

The provision above requiring payment of the Working Capital Contribution is not permissive. It states, "contribution shall be made" in an amount determined by the Board. As such, to date, the Working Capital Contribution has been zero. Going forward, the Board may set the Working Capital Contribution in any amount that does not exceed the annual Base Assessment. The annual Base Assessment is the annual Ranch Master assessment, independent of any Neighborhood Assessment relevant to the Lot/Unit. The Working Capital Contribution is required in addition to the Assessments and the Board has broad authority regarding how the funds may be used. The Board also has the authority to adjust the amount of the Working Capital Contribution "periodically".

If the Board decides to increase the Working Capital Contribution in an amount greater than zero, we recommend that it memorialize its decision in a formal, written resolution and publicly record a Notice of Mandatory Working Capital Contribution with the resolution as an exhibit. We also recommend that the Board allow for maximum flexibility for the use of the Working Capital Contribution funds; however, if the Board wishes to direct the funds for a specific use, that use should be specified in the resolution as well. This resolution should be disclosed, and the Working Capital Contribution collected, during the transfer/disclosure process.