

REQUEST FOR ACTION

To	The Collection Board of Directors			
Subject	Development Controversies -- Investigate the Tower owners' concerns with the developer (A&B) for not providing the Tower amenities sold to us and provide written notice to A&B.			
Preparer	Debra Ishihara-Wong			
Date	Verbal request made on May 24, 208 BOD meeting. RFA submitted on July 30, 2018	For Board	x	Action
				Info

EXECUTIVE SUMMARY

See attached.

RECOMMENDATION

See attached.

RATIONALE

See attached.

Exhibits (If applicable)	Index	Title

FOR BOARD USE ONLY

CERTIFICATE OF BOARD ACTION

	Approved		Declined		Noted		Returned		Deferred		Withdrawn
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Stipulations

Coordinating Instructions

Distribution Instructions

Recording Secretary		Action Date		RFA No.	30-2018
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Request for Action

Development Controversies -- Investigate the Tower owners' concerns with the developer (A&B) for not providing the Tower amenities sold to us and provide written notice to A&B.

Executive Summary

The amenities sold to the owners at the time of their sales contract were changed by A&B without notification or consent by the purchasing owners, as required by law.

The existences of some of these amenities were established not only in verbal conversations with the realtor(s), but also in text format in the brochures provided to the owners at the time of their sale contract execution. As such, the existence of these amenities is not a "fabrication of an artist's rendering" but rather was verified and provided by A&B. Therefore, if these amenities were never planned to exist, it would amount to a fraudulent and immoral action, inconsistent with honest values, for A&B to convey their planned existence. In essence, if these amenities were actually planned and sold to the owners, their removal, as a material change, would require the owners to be notified. If A&B never planned for these amenities to exist, to use them as a selling point in their brochures and sales pitch would amount to nothing less than fraudulent false advertising claims.

For example, the following amenities were not provided:

- "Secured entry with controlled access to the garage and tower." The tower second-floor garage door was not locked and controlled by a FOB entry. In addition, the second-floor entry was, unlike the other parking entries, a manual door without handicap accessibility. In response to numerous owner complaints, it took nearly a year for this issue to be resolved by the association board.
- Outdoor theater. "Watch a movie -- outside".
- Dedicated kiddy pool.
- "Entertainment flex rooms where you can sing karaoke or work out with fitness on demand" (This is not in reference to the clubroom and/or the yoga room, since these line items are stated separately.)
- "... in one-of-a-kind community workshop." A blank canvas empty room was provided only.
- Dedicated children play area.
- Four cabanas. We were only provided three cabana.

A&B was required to notify the purchasers of "material changes." This allowed the purchaser the right to withdraw from the sale contract. This was not done.

Furthermore, it is obvious that the BOD has, through intentional action and inaction, intended to protect A&B from accepting responsibility for cheating the owners of their promised amenities. The BOD has, on numerous occasions, refused to take appropriate action in accordance with their fiduciary duty to the AOOU members. For example, at the July AOOU board meeting, one owner stated that A&B should pay the expense to properly equip the workshop, instead of the AOOU. However, his comment though heard by everyone in the room, was ignored by the association president, and not brought up for discussion among board members.

In addition, in voting to inappropriately pay A&B funds from the "Project Start Up Fee" outside of its stated purpose, the Directors at the time have shown, through their unilateral action, to have abandoned their duty to the owners in favor of acting on the interests of A&B.

Therefore, since the BOD at the times, neglected to act in the interests of the AOOU, it is impossible to assert that the BOD will be able to serve the AOOU's interest in this matter which also runs in opposition to the interests of A&B.

Recommendations

Recommend that the Board

- Create a Development Controversies Ad hoc Committee
 - The group shall be constituted of five members of whom there shall be seven owners and two Directors.
 - The Directors who have demonstrated their conflict of interest shall have no decision-making power in this matter.
 - In the interest of dispelling any possible contributing factors that may constitute a conflict of interest, the group shall not consist of any Directors who have a previous and/or existing relationship with A&B, A&B contractors, and/or other developers. As stated above, the directors who were involved with the misappropriation of funds to A&B also have conflicts of interest.
- Provide written notice to A&B of all claims against them.

Rationale

If a "material change" in a project occurs after a purchaser has signed a sales contract, the purchaser will have 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly", substantially and adversely effects the use or value of a purchaser's unit, or those amenities available for the purchaser's use.

We signed our sales contract on May 21, 2016, and A&B signed on June 2, 2016. A&B's contracted Collection Sales Team sale provided us The Collection

Brochure and listed to us all the amenities (as stated above) that we were purchasing (see attachment of amenities) at the time we signed our contract.