

# **By-Laws of the Lincoln Park Crooked Ditch Company, Inc.**

## **ARTICLE 1. GENERAL**

The Board of Directors of the Lincoln Park Crooked Ditch Company shall consist of seven members. There shall be two directors from each of the three divisions and one director at large. The terms of office shall be two years; however, there are no term limits. The directors must own stock in the Company. The officers of the Company will be members of the board of directors and as a minimum shall consist of a President, Vice President, Secretary and Treasurer.

**Section 1.1 Annual Meeting.** The directors shall hold an annual meeting in January of each year.

**Section 1.2 Special Meetings.** Special meetings may be called at any time by the president or three of the directors. If for any reason a regular meeting of the stockholders or of the board of directors can not be held at the time specified, the president shall reschedule the meeting to transact any Company business.

**Section 1.3 Fiscal year.** The fiscal year of the Lincoln Park Crooked Ditch Company shall close on December 31.

**Section 1.4 Expenses.** The directors will periodically review all bills and expenses against the company. The treasurer's annual report shall reflect all year-end expenses.

## **ARTICLE 2. ELECTIONS**

**Section 2.1 Election Procedure.** The Board of Directors shall be elected by the stockholders of the company. Applications for a seat on the board must be received by the secretary of the Company by October 1, prior to the annual meeting. After review by the board of directors, names will be placed on the ballots and mailed to all shareholders. Ballots must be returned to the secretary by November 30 of the election year. Ballots and nominations will not be accepted from the floor at the annual meeting. Election results will be announced at the annual meeting. If there are insufficient candidates to fill any

vacant positions on the board that position shall remain vacant. The current board members shall remain seated and an election shall not be required. Any vacancy on the board of directors may be filled by the board at any meeting. Applications shall be maintained to create a potential selection list for board vacancies.

**Section 2.2 Quorum.** Each shareholder is entitled to one vote per share. For shareholders to act during a meeting, a quorum must be present. A majority of all the stock or shares owned by the shareholders shall be necessary to constitute a quorum. A quorum constitutes 51% of the stock of the Company and must be present in order for business to be validly conducted. A majority of all the directors shall constitute a quorum at a directors meeting.

**Section 2.3 Proxies.** In the event a stockholder cannot attend a shareholders meeting, a shareholder may submit a proxy giving a third party authorization to vote their shares. Significant proposals to be presented at shareholders meetings must be included on the proxy. Proxies will be mailed to the shareholders and must be returned to the secretary of the Company by November 30, prior to a shareholders meeting. Proxies will not be accepted at or during a stockholders meeting.

### **ARTICLE 3. ASSESSMENTS AND FORFEITURES**

The directors shall determine what repairs are necessary to be made on the ditch property of the Company and shall levy an assessment or assessments to the shareholders of the Company to defray the operating expenses and repairs in order to keep the ditch and property of the Company in repair for the ensuing year. Assessments will be made on a graduated scale which reflects the cost of bringing water to each shareholder.

**Section 3.1 Assessments.** Whenever an assessment shall be levied upon stockholders of the Company, as provided by law, the assessment shall be made due and payable in such manner and within in such period of time as the board of directors may determine.

**Section 3.2 Assessment Notice and Demand.** Within 15 days after the board of directors first determine the manner and the time within which such assessment shall be paid the treasurer of the company shall prepare written and/or printed notices and demands, in accordance with the terms fixed by the board of directors, and shall serve upon each stockholder such a notice and

demand specifying the sum which shall become due and payable at the date so fixed and shall state if said sum not be paid at the time specified the stock held by the shareholder will be forfeited and cancelled in accordance with Section 3.2 of the by-laws.

**Section 3.3 Mailing of Assessment Notices.** The assessment notices and demands to be served by the treasurer as provided in Section 3.2 hereof, shall be mailed to the stockholders at the address of such stockholder at last address known to the treasurer.

**Section 3.4 Unpaid Assessments.** If the share of stock on which such assessment or part of an assessment shall remain due and unpaid on the 30th day after the date specified in the notice, the stock shares shall be considered in default and shall then become forfeited for non-payment and shall be entered as cancelled on the books of the Company.

After such forfeiture and cancellation, the former holder of such shares shall have no further rights as stockholders in the Company, and shall not be entitled to receive water from this Company. It will be the duty of the superintendent of the Company to prevent former stockholders from obtaining water from any ditch of the Company. Time shall be an essential part of this by-law so that said forfeiture shall not be delayed.

**Section 3.5 Forfeiture.** Whenever any share of stock of the Company shall be forfeited and cancelled as provided in Section 3.4, and non-payment of any assessment or part of an assessment shall exist, the treasurer of the Company shall immediately prepare a list of all such forfeited shares going to the name of each delinquent stockholder, the number of each certificate forfeited, the number of shares, the amount per share of the assessment or part of the assessment in default, and, if applicable, the date when the unpaid balance shall began to bear interest. Each delinquent stockholder shall be sent by certified mail a written notice that said stock has been forfeited and cancelled in accordance with Company by-laws, and that such cancelled share of stock may be redeemed at any time within 30 days from the mailing of said notice upon payment of the amount due, including interest and costs of mailing said forfeiture notice. Stock of the Company that has been forfeited may be reinstated according to a determination made by the board of directors.

**Section 3.6 Interest for Non-Payment.** Any person or person failing to pay any assessment or assessments or any part thereof, shall be charged interest at the rate of one and one-half percent per month on the balance from the date of said assessment until paid, and the treasurer is hereby authorized to collect said interest the same as any other assessment.

## **ARTICLE 4. DITCH SUPERINTENDENT**

**Section 4.1 General.** The directors shall have the power to employ a suitable person or persons to superintend the operation and repairs on the ditch property, including the division of the water. The superintendent may be a member of the board of directors, but shall not be able to vote regarding matters of the superintendent's job, related duties, salary or reimbursement.

**Section 4.2 Duties.** The superintendent shall have the power and it shall be his duty to adjust and regulate ditch water. No person or persons shall be allowed to take water from the ditch except through an approved and properly constructed head gate to be prescribed by the superintendent; and such head gate shall be sized and placed in a prescribed manner by the superintendent. No person at any time shall be allowed to store water or to place in said ditches any pump or obstruction nor be allowed to dam the ditch for any purpose. The superintendent shall also have power to measure or regulate the water and to lock any or all head gates if necessary.

## **ARTICLE 5. COMPANY STOCK AND TRANSFER**

**Section 5.1 General.** A shareholder is the owner of shares in the capital stock of the Company. Shareholders do not have an equitable interest or legal title to company property, such as buildings, equipment and water rights. A shareholder must own land which is located within the area serviced by the existing ditches of the Company.

**Section 5.2 Number of Shares Required.** The number of shares that is required for one acre of land shall be seven and one-half.

**Section 5.3 Transfer of Shares.** Any person or persons desiring to transfer his or her stock shall notify the treasurer of the Company of the amount of shares to be transferred and the name of the person to whom it will be transferred. The treasurer shall make the transfer on the books of the Company and issue a new stock certificate to the new owner. No transfer of

shares shall be valid unless the transfer is processed and reissued by the ditch company and shown on the company books. All shares of stock must remain in their entirety with the property to which they were issued.

**Addendum to Section 5.3 dated 5/29/12:** No transfer of shares shall be valid unless the transfer is processed and reissued by the Ditch Company and shown on the Company books. All shares of stock must remain in their entirety with the property to which they were issued. The treasurer shall make the transfer on the books of the Company and issue a new stock certificate to the new owner.

**Section 5.3.1 Sale of Property.** When a property with ditch shares is sold, a title company will contact the Ditch Company treasurer to verify the number of shares attached to the property. Any assessments, fees, or charges due will be collected by the title company during the closing of the sale.

**Section 5.3.2. Transfer of Shares Other Than Sales.** In the case of death, divorce, or name change the treasurer of the Company must be contacted in order that a transfer of stock can be made.

**Section 5.4 Subdivisions.** Whenever real property appurtenant to the shares of stock of the Company is subdivided the board of directors shall be notified. The owner or owners of such real property shall provide the necessary rights-of-way, divider boxes, and easements for all ditches for irrigation purposes of said subdivision together with reasonable access thereto. Said easements and access shall be a part of each deed conveying ownership. Any transfer of stock of the Company shall be made in accordance with Section 5.3 of these Articles.

Delivery of water by the Company shall be restricted to the points of delivery in existence at the time these Articles were executed or as the board of directors hereafter authorize.

## **ARTICLE 6. CORPORATE SEAL**

The common seal or corporate seal of this Company shall be as near as may be one inch and seven -eighths of an inch (1 7/8") in diameter and shall be circular with the name of the Company in a circle within the outer rim of the seal and with word "seal" in the center inside of an ornamental circle upon its

face, and shall be constructed in the style usual to seals which are worked by a handle or lever.

## **ARTICLE 7. BANKING, FINANCING AND INSURANCE**

**Section 7.1 Banking.** The directors may open and maintain safety deposit boxes and savings, checking, and depository or other bank accounts.

**Section 7.2 Financing.** The directors may with a majority vote of the board obtain one or more loans or other forms of financing for unexpected or large repairs and maintenance on the ditch. Two or more of the directors must sign for any loan or other financing.

**Section 7.3 Liability Insurance.** The Company must purchase and maintain liability insurance against liability imposed on the insured resulting from injuries to the person or property of another.

**Section 7.4 Organization Insurance.** The Company must purchase and maintain liability insurance against liability on behalf of any person who is or was a director, officer, employee, or agent of the Company in the course arising from the performance of their duties, whether or not the Company would have the power to indemnify them against such liability under the provisions of Article 8 of the by-laws.

## **ARTICLE 8. LEGAL ACTION**

**Section 8.1 General.** The Company shall indemnify any person or persons who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company), by reason of the fact that he is or was a director, officer, employee, or agent of the Company against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he reasonably believed to be in the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person or persons

did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**Section 8.2 Indemnification.** The Company shall indemnify any person or persons who was or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the Company against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Company. No indemnification shall be made in respect of any claim, issue, or matter as to which such person or persons has been adjudged to be liable for negligence or misconduct in the performance of his duty to the Company unless and only to the extent that the court in which action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person or persons is fairly and reasonably entitled to indemnification for such expenses which such court deems proper.

**Section 8.3 Expenses.** To the extent that a director, officer, employee, or agent of the Company has been successful on the merits in defense of any action, suit, or proceeding referred to in Section 8.1 or 8.2 of this by-law or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

**Section 8.3.1 Expenses in Advance.** Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Company in advance of the final disposition of such action, suit, or proceeding as authorized in Section 8.3 of this by-law upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the Company as authorized by this by-law.

**Section 8.4 Standards of Conduct.** Any indemnification under Section 8.1 or 8.2 of this by-law (unless ordered by a Court) shall be made by the Company only as authorized in the specific case upon a determination that

indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Section 8.1 or 8.2. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or, if such a quorum is not obtainable or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in written opinion, or by the shareholders.

**Section 8.5 Exclusion of Other Rights.** The indemnification provided by this by-law shall not be deemed exclusive of any other rights to which those indemnified may be entitled under the articles of incorporation, any by-law, agreement, vote of shareholders or disinterested directors, or otherwise, and any procedure provided for by any of the foregoing, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of heirs, executors, and administrators of such a person.