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Randy Peterson
Harvey Michlitsch
Leesa Haugland

Delivered via email

Re: HOA and Covenants

Dear Randy, Harvey, and Leesa:

I'm attaching discussion drafts of the Articles of Incorporation and Bylaws for the HOA and the Covenant Restatement.

There are currently two different instruments recorded against the Pine-Oak subdivision – the Covenants and what are essentially the rules for the HOA. As we discussed, the HOA is a simply an unincorporated association, and I have advised you incorporate the HOA for liability protection. Meanwhile, you have decided to suggest that the Covenants be amended. My suggested approach is that the Covenants be restated, and that the restatement consolidate both documents of record. Meanwhile, the operative rules for the HOA will be relocated to unrecorded corporate Bylaws. To walk you through them:

Articles of Incorporation. These are filed online with the South Dakota Secretary of State, which incorporates the HOA as a nonprofit corporation. Statutes require that there be three Incorporators and we provide a mailing address the and name and street address of a Registered Agent. I have Harvey listed.

Bylaws. As noted, these are the HOA's new procedural rules. I have a few areas highlighted and need some guidance. Note also I suggest that we simplify the procedures from what is included in the recorded instrument – e.g., rather than having the complex process for approving assessment increases, I suggest that all member decisions occur at an annual or special meeting, and the decision be carried by a majority of a quorum. Practically, I find a proper quorum to be in the neighborhood of 25% of the lots.

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Covenant Restatement. This was the most complex task. I essentially rewrote your current Covenants to address the issues we discussed and to address the developments which have occurred over the last 40 years. To walk you through the new draft:

Recitals: these refer to the older instruments, update the legal description, and explain what is occurring.

Section 1 defines terms. Note that I refer to the HOA as incorporated. Note also I have redefined the Subject Property to not include the Truax Construction lot.

Section 2 introduces the HOA. It refers back to the Bylaws for procedural rules. As noted above, I generally do not record Bylaws because that makes them more difficult to amend.

Section 3 is new assessment language. It updates and expands the assessment process and procedures. As noted above, I would advise you use the standard provisions which allow the Board to increase the assessment by 10% a year; otherwise, it will require Membership approval. What is the 2025 assessment?

Section 4 are the actual use covenants. Generally, I took the provisions out of the original Covenants and tried to keep as much of the original language as possible. However, I revised most of the provisions. I also reorganized the provisions to be easier to follow and understand. I had to rewrite what is now Section 4.9 to address the road district. Section 4.11 is the new animal provision. Section 4.15 concerns rentals – please review it carefully. As written, it prohibits any rental under six months. I also retained in Section 4.3 the current ban on renting guest houses. Section 4.16 is new language addressing solar panels (I did drive past the ones we discussed and I can see the potential glare danger).

Section 5 updates the plan approval language. The current Covenants require plan approval, but are very light on process.

Section 6 is the new amendment language. It provides that to further amend the Covenants, the owners of a majority of the Lots (NOT a certain number of owners) needs to sign.

Section 9 is much more robust enforcement language. It specifically gives the HOA the right to fine, or to take an issue to Court.

Once we arrive at a final suggested draft of the Covenant Restatement, the next step is to circulate it and obtain the signatures. Just so we are all on the same page, remember that the Covenants and the HOA rules have different amendment procedures. The Covenants (Article XXII) requires “an instrument signed by a majority of the then owners of the lots within said subdivision...” That means that we

need to obtain and record the notarized signature of 50%+1 of the actual owners, meaning that it is not one vote per lot. The HOA rules (Article VII) provide that it “may be amended by a two-thirds vote of Class A members.” Article III defines a “member” as “every owner of a lot” so, again, the voting is by number of owners, not by Lot. Technically, we could have a separate vote to reach the two-thirds and just and a majority sign, but it is much better just to have two-thirds of the owners sign and that will cover both instruments.

Please take a look and let me know what questions you have.

Thank you.

Yours truly,

ERIC JOHN NIES