



# ZELMANSKI, DANNER & FIORITTO, PLLC

*Experienced Condominium & HOA Attorneys*

## **PHEASANT VIEW SUBDIVISION**

### **GUIDE TO THE AMENDMENT PROPOSALS**

#### **GENERAL REVISIONS**

The Board of Directors of Pheasant View Association, Inc. is proposing comprehensive amendments and updates to the Association's Governing Documents. These Documents include the Articles of Incorporation, Declaration of Covenants and Restrictions, and Bylaws of the Association. The purpose of this amendment project is to improve, customize, and update the Governing Documents.

The vast majority of these changes are being proposed because they constitute improvements from an "objective" perspective over the existing Governing Documents (i.e., changes that would be in the interest of a homeowners' association with existing documents similar to Pheasant View Subdivision). Because the majority of the proposed amendments to the Declaration of Covenants and Restrictions, and Bylaws of the Association are objectively preferable to the existing Documents, they will be submitted to the Owners for a vote as a single ballot item. The amendments to the Articles of Incorporation will be voted on as a separate ballot item, since that is a separate and distinct legal document.

The proposed "objective" amendments to the Association's Governing Documents are numerous. The new text has been updated in accordance with recent revisions to the Michigan Nonprofit Corporation Act and other Michigan statutes. Any previous text considered illegal or unenforceable has been deleted. The provisions of the Declaration of Covenants and Restrictions and Bylaws of the Association have been combined into one (1) document (Amended and Restated Declaration of Covenants and Restrictions) that will be recorded with the Wayne County Register of Deeds, once approved by the Owners. The Amended and Restated Declaration will include a detailed Table of Contents. We have revised some sections of text to comply with the various technical requirements of the U.S. Department of Housing/Fannie Mae/Freddie Mac applicable to homeowners. We have also added text covering a number of important topics that the existing Documents do not cover, and eliminated any references to the Developer. Many changes have been made to incorporate the Association's potential use of new communication technologies, as permitted by the 2015 revisions to the Nonprofit Corporation Act. All of these changes should benefit the Association as a whole.

A few of the changes are being proposed from a more "subjective" perspective (i.e., changes that are not technically "required" to be made in a legal sense, but which the Board of Directors nevertheless feels are in the

Association's best interests to adopt). Most of these changes will be found in the proposed amendments to Article XI of the Amended and Restated Declaration (the "Building and Use Restrictions" article).

Overall, we have attempted to modernize, improve, clarify, and customize the Association's Governing Documents to better suit the current needs and desires of the Owners. We suggest that you consult the new Table of Content and this Guide, as you study the proposed amendments to the Association's governing documents.

The following is an itemized summary of the material amendments being proposed to each document:

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| <b>ARTICLES OF INCORPORATION</b> |
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The Articles of Incorporation for Pheasant View Association, Inc. have been revised and restated to eliminate irrelevant provisions and to address changes in the 2015 revisions to the Michigan Nonprofit Corporation Act. The amendments will help ensure that the Association's Directors and Officers, members, and committee members are protected to the fullest extent permitted by law for actions that they take in good faith on behalf of the corporation (Association). Such protections are necessary to encourage qualified individuals to continue to serve on the Association's Board of Directors.

The new Article II combines the former Articles II and III. We expanded and updated the corporate purposes in Article. These additions include the ability to sue and be sued (in order to ensure the ability of the Association to protect itself in litigation, and to operate the Association in accord with all Fair Housing laws.

The former Articles IV and VII were eliminated, as the distinction between two (2) types of classes for membership is no longer relevant. The provisions of former Articles V and VI were combined and restated in the new Article III. The Resident Agent and its office address have been updated in the new Article IV (former Article VIII). The former Article IX was eliminated, as it is no longer relevant. The former Article X was eliminated, as Association assessments and expenditure are addressed in detail within the Amended and Restated Declaration. Membership is addressed in the new Article VI (former Article XI).

The new Article VII includes the provisions in the former Article XII, as well as additional key provisions regarding nonliability and the Association's assumption of liability for volunteer Directors and Officers. This new article will help ensure that the Association's Directors and Officers are protected to the fullest extent permitted by law for any and all actions that they take in good faith on behalf of the Association. Such protections are necessary to encourage qualified individuals to continue to serve on the Association's Board of Directors. The term "volunteer" is now expressly defined in Article VII, Section 5. The new Article VIII contains indemnification provisions authorized by the Nonprofit Corporation act. These provisions are also for the protection of the Association's volunteer Directors and Officers.

The new Article IX states the Association's legal duty to comply with all applicable Fair Housing laws. This emphasizes the need and importance of the Association's duty to comply with such laws. Article X was added to address amendments to the Articles of Incorporation and Article XI addresses enforceability of the Articles. Article XII was added to allow action to be taken without a membership by a written vote, ballot, or consent of the Owners. Finally, Article XIII was added to address the removal of a Director.

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| <b>AMENDED AND RESTATED</b> |
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| <b>DECLARATION OF COVENANTS AND RESTRICTIONS</b> |
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The Pheasant View Subdivision Declaration of Covenants and Restrictions was prepared and recorded by the Developer, Sunflower Seven Associates. It is dated October 12, 1995, and was recorded on October 27, 1995, with the Wayne County Register of Deeds. It has not been previously amended.

The Declaration established the Association and defined the property that is subject to its terms. The Declaration defines the various terms that apply throughout your Governing Documents. It also identifies the Common Areas of the Subdivision, as well as the Association duty to maintain such areas. More importantly, the Declaration defines the powers of the Association to assess the Owners for the purpose of funding the Association's operation and management of the Subdivision and Common Areas. It also sets forth a detailed set of covenants, conditions, and restrictions that govern the Owners' use of their Lots, as well as the Common Areas.

The Association is also part of the Pheasant Run Road Maintenance Association (PRRMA), which maintains, repairs, and replaces the roadways within the Subdivision. A portion of the assessments collected by the Association goes to PRRMA for such maintenance, repair, and replacement.

The Bylaws of Pheasant View Association, Inc. were prepared by the incorporator of the Association, Richard M. Lewiston. They were dated June 2, 1995, but not recorded. The Association or Corporate Bylaws govern the various procedures and rules that are necessary for the administration and management of the Association as a non-profit corporation under the Michigan Nonprofit Corporation Act.

The proposed Amended and Restated Declaration of Covenants and Restrictions combines the current Declaration of Covenants and Restrictions with the Association Bylaws into one (1) document. The Amended and Restated Declaration includes numerous changes, the vast majority of which are intended to update, clarify, modernize, and improve the document in an objective sense.

In general, references to the Developer within the original Declaration of Covenants and Restrictions have been eliminated from Article II, Section 2; Article V, Section 1; Article V, Section 7; Article VI, Section 1; Article VII, Section 21; and Article VIII, Section 6. The following Articles/Sections have been eliminated due to Developer references or subsequent irrelevance: Article V, Section 3(a); Article VII, Section 20; and Article VIII, Section 4. References to the Developer within the original Association Bylaws have been eliminated from Article IV, Section 3 and Article XVI, Section 1.

The proposed amendments in the Amended and Restated Declaration of Covenants and Restrictions include the following key changes to your existing Declaration and Association Bylaws:

**Article I – Definitions**

- New Article I contains definitions Old Article I of the Declaration and Old Article II of the Association Bylaws.
- Definitions for the following terms used throughout the Governing Documents were added: Act; Ballot; Board of Directors or Board; Bylaws; Declaration; Default or Owner Fault; Dwelling; Electronic Transmission or Electronically Transmitted; Entrance Way, Landscaping, and Perimeter Improvements;

Good Standing; Governing Documents; Irrigation Improvements; Mortgage; Pheasant Run Road Maintenance Association or PRRMA; Proper Purpose; Property; Reciprocal Easement; Right to Inspect; Subdivision; Tenant; and Volunteer.

**Article II – Property Subject to this Declaration**

- New Article II contains provisions from Old Article IV of the Declaration.

**Article III – Property Rights in the Common Areas and Roadways**

- New Article III contains provisions from Old Article IV of the Declaration.

**Article IV – Homeowners Association**

- New Article IV contains provisions from Old Articles II and V of the Declaration, as well as provisions from Articles I and IV of the Association Bylaws.
- *Section 3 – Functions:* New Subsection C identifies that the Association shall be responsible for the maintenance, repair, and replacement of the mailboxes and newspaper boxes, including posts, within the Subdivision, with the exception of those boxes and posts for Lots 34, 87, and 122.

**Article V – Voting**

- New Article V contains provisions from Old Article II of the Declaration, as well as provisions from Articles IV and XII of the Association Bylaws.
- Voting distinctions between Class A and Class B Members were eliminated due to irrelevancy.
- *Section 1 – Voting Rights:* There is only 1 class of voting and each Lot is entitled to 1 vote. An Owner of a Lot must be in Good Standing in order to vote and sign petitions.
- *Section 3 – Designation of Voting Representative:* Owners must file a Designated Voting Representative form with the Association to identify the person casting a vote for that Lot.
- *Section 4 – Voting:* Votes may be cast in person, by proxy, or by written absentee ballot (including ballots cast by email).
- *Section 6 – Approval of Actions by Written Ballot without a Meeting:* Any action, other than the election of the Board of Directors, can be done without a meeting, by written ballot.

**Article VI – Membership Meetings**

- New Article VI contains provisions from Article V of the Association Bylaws.
- *Section 2 – Virtual Meetings:* Association meetings may be held virtually or via remote communication.
- *Section 4 – Annual Meetings; Agenda:* An order of business for the Annual Meeting is included.
- *Section 6 – Notice of Meetings:* Owners shall be deemed to have consented to receiving meeting notices via electronic transmission if they provide the Association with their email address or text number.
- *Section 8 – Quorum:* Association meetings require a quorum of 20% of the Lots in the Subdivision entitled to vote.
- *Section 9 – Adjournment for Want of Quorum:* If an Association meeting is adjourned because quorum is not met, the adjourned meeting requires a quorum of 10% of the Lots in the Subdivision entitled to vote.
- *Section 12 – Electronic Transmission of Meeting Documents and Communications:* Owners shall be deemed to have consented to receiving Association meeting documents and communications via electronic transmission if they provide the Association with their email address or text number.

**Article VII – Board of Directors**

- New Article VII contains provisions from Articles VI, VII, VIII, and IX of the Association Bylaws.
- *Section 2 – Eligibility:* An Owner must be in Good Standing to serve on the Board of Directors. Only one Owner/Member of a Lot may serve on the Board.
- *Section 3 – Voting for Directors:* Votes for the election of Directors at the Annual Meeting may be cast in person, by proxy, or by written absentee ballot.
- *Section 5 – Powers and Duties – Generally and Section 6 – Specific Power and Duties:* Subsections F, I, J, K, N, O, P, and Q are new to Section 6 of the Amended and Restated Declaration.
- *Section 7 – Management Agent:* If the Board of Directors hires a property manager, the management contract must be no longer than 1 year, must be terminable upon 30 days' written notice with or without cause, and must not contain a termination fee or penalty.
- *Section 9 – Removal or Recall of Directors:* A Director may be removed or recalled with or without cause by the affirmative vote of more than 50% of the Owners in Good Standing at any Annual Meeting or Special Meeting called for that purpose. A quorum of 20% is required for any such meeting of the Owners.
- *Section 10 – Meetings of the Board of Directors:* After any election of new Directors or the resignation of any Director, the Director(s) no longer serving on the Board must turn over all Association records, documents, property, etc. to the current Board no later than the date of the first meeting of the new Board. The Board must meet at least 4 times per fiscal year. Meeting notices may be given personally or by mail, fax, telephone, email, or text. The Board may hold meetings virtually or via remote communication. Directors may vote via email without a meeting for unanimous decisions. Quorum for Board meetings is a majority of the Directors. The Board may close a portion or all of any meeting to the Owners. The Board may use electronic transmission to share documents and communications.
- *Section 11 – Fidelity Bonds; Employee Dishonesty Insurance:* All Directors, officers, agents, volunteers, and employees of the Association shall be covered by adequate fidelity bonds and/or employee dishonesty insurance purchased by the Association.
- *Section 12 – Conflicts of Interest:* If a Director has a relationship with or transacts with or has an interest in any person or entity with whom or which the Association may have any contractual dealings, such Director must disclose that information at a Board meeting.

**Article VIII – Officers**

- New Article VIII contains provisions from Article X of the Association Bylaws.
- *Section 1 – Designation:* The office of Roadway Manager has been added.
- *Section 3 – Term of Office:* Officers shall hold office for 1-year terms.
- *Section 4 – Removal or Resignation of Officers:* An affirmative vote of a majority of Directors may remove an Officer from their office, but may not remove them from the Board of Directors. Only the Owners may vote to remove a Director from the Board.

**Article IX – Covenant for Maintenance Assessments**

- New Article IX contains provisions from Old Article V of the Declaration.
- *Section 3 – Annual Assessments:* The Annual Assessment may not be increased more than 10% above the Annual Assessment for the prior year without the approval of at least 66.67% of the Lots in the Subdivision with Owners in Good Standing.
- *Section 4 – Special Assessments:* Special Assessments may not be assessed without the approval of at least

66.67% of the Lots in the Subdivision with Owners in Good Standing.

- *Section 5 – Meeting for Increases in Annual Assessment Amount and Special Assessments:* Quorum for a meeting regarding an increase in an Annual Assessment amount or Special Assessment is 30% (higher than the 20% quorum for all other Association meetings). If the meeting is adjourned for lack of quorum, the adjourned meeting shall have a 15% quorum. Voting on an increase in an Annual Assessment amount or Special Assessment may take place at the meeting and may be cast in person, by proxy, or by written ballot.
- *Section 6 – Payment of Assessments:* The Annual Assessment is due and payable on March 1 of each year. It is delinquent if not paid within 30 days after March 1. Delinquent accounts are subject to interest of 7% per annum from the due date of an assessment until paid in full. **An annual late fee of \$30 will be assessed, as well as an administrative fee equal to 20% of the amount of the unpaid assessments until paid in full. ???? The Association may file a lawsuit against an Owner to foreclose an Association lien recorded for delinquent assessments.**
- *Section 10 – Other Affiliations:* The Association is a member of Pheasant Run Road Maintenance Association (PRRMA) and must pay a portion of the costs to operate, maintain, improve, repair, and replace the Roadways within the Subdivision and other subdivisions that are members of PRRMA.

#### **Article X – Architectural Review**

- New Article X contains provisions from Old Article VI of the Declaration.

#### **Article XI – Building and Use Restrictions**

- New Article XI contains provisions from Old Article VII of the Declaration.
- *Section 1 – Permitted Use of Property:* Maximum occupancy limitations were added, pursuant to the International Property Maintenance Code. Home offices are allowed, subject to certain requirements. A list of prohibited uses, taken from the Canton Township Zoning Ordinance, was added. Airbnb use of homes is strictly prohibited.
- *Section 3 – Exterior Materials:* Vinyl siding is now acceptable as an exterior material, within the stated limitations.
- *Section 4 – Air Conditioners:* Air conditioning units and compressors must be appropriately screened from view with trees, bushes, and other landscaping as approved by the Architectural Control Committee.
- *Section 12 – Mailboxes and Newspaper Boxes:* The Association shall be responsible for the maintenance, repair, and replacement of the mailboxes and newspaper boxes, including posts, within the Subdivision, with the exception of those boxes and posts for Lots 34, 87, and 122.
- *Section 15 – Play Structures:* New section regarding play structures within a Lot.
- *Section 16 – Swimming Pools:* The Board of Directors may issue Rules and Regulations regarding the temporary placement of small, inflatable wading pools.
- *Section 18 – Landscaping:* Expanded section regarding landscaping and maintenance of Lots.
- *Section 20 – Street Parking:* New section regarding street parking.
- *Section 21 – Vehicles:* Expanded section regarding vehicles. New subsection regarding recreational vehicles parked within the Subdivision, based on Canton Township Code of Ordinances.
- *Section 22 – Storage Containers:* New section regarding temporary placement of a PODS container, dumpster, bagster, or similar storage container in the Subdivision.
- *Section 23 – Antennas:* Amended section to allow satellite/television/radio dishes and antennas to the extent that the FCC’s “OTARD” rules apply.

- *Section 24 – Trash, Waste, and Recycling:* New section regarding trash and recycling.
- *Section 25 – Unsightly Conditions:* Amended section to include examples of unsightly conditions.
- *Section 26 – Signs and Flags:* Expanded section regarding signs and flags. Certain requirements have been included regarding types of allowable signs and flags.
- *Section 30 – Animals:* Additional rules regarding pet ownership have been added. Service animals and emotional support animals are addressed.
- *Section 31 – Leasing and Non-Owner Occupancy of Dwellings:* The leasing section has been enhanced significantly. All leases must have an initial 1-year term. Dwellings may not be leased for short-term rental purposes, including Airbnb, VRBO, etc. An Owner may not lease less than an entire Dwelling (no room rentals). Leasing procedures have been included. Tenants or Non-Owner Occupants may be evicted if they do not comply with the Governing Documents.
- *Section 34 – Easements and Other Conditions:* This long section has been broken down into easier-to-read paragraphs.
- *Section 35 – Destruction of Building by Fire; Duty to Repair Timely:* New section regarding rebuilding a damaged or destroyed dwelling.
- *Section 36 – Drones:* New section regarding use of drones in the Subdivision.
- *Section 37 – Solar Provision:* New section regarding the use of solar energy systems.
- *Section 38 – Wind Energy Turbines:* New section restricting wind energy turbines.

#### **Article XII – Finances and Records**

- New Article XII contains provisions from Articles XI and XV of the Association Bylaws.
- *Section 4 – Financial Statements:* The Association must make financial statements available to the Owners each year.
- *Section 5 – Association Records:* The Association is required to keep detailed books and records.
- *Section 6 – Right to Inspect Association Records; Section 7 – Limits on Right to Inspect Association Records:* Owners have certain rights to inspect the Association’s books, records, financial statements, and contracts during reasonable working hours under the Nonprofit Corporation Act. Under the Act, the Board of Directors may protect certain types of records from disclosure to Owners.

#### **Article XIII – Indemnification of Directors, Officers, and Volunteers; Directors’ and Officers’ Insurance**

- New Article XIII contains provisions from Article XIII of the Association Bylaws.
- Language has been added to grant important indemnification protections to the Association’s Directors, Officers, and volunteers. These provisions coordinate with similar provisions contained in the Restated Articles of Incorporation.
- *Section 1 – Indemnification of Directors, Officers, and Non-Director Volunteers by the Association – Generally; Section 2 – Indemnification of Directors, Officers, and Non-Director Volunteers by the Association – Derivative Actions in the Right of the Association:* These sections are almost word-for-word from the Nonprofit Corporation Act.
- *Section 3 – Directors’ and Officers’ Liability Insurance:* The Association must carry liability insurance for Directors and Officers. The Association may indemnify Directors and Officers if the insurance coverage turns out to be inadequate.

**Article XIV – Compliance - NEW**

**Article XV – Enforcement and Remedies**

- New Article XV contains a provision from Old Article VIII of the Declaration.
- *Section 1 – Remedies – Generally:* Restrictions on an Owner’s rights if they are not in Good Standing.
- *Section 2 – Nonpayment of Assessments – Foreclosure of Liens:* The Association’s remedies for nonpayment of assessment are described in detail. The lien process is set forth in several steps. The Association may recover legal fees and costs incurred in collection efforts.
- *Section 3 – Default of an Owner:* Other remedies for an Owner’s noncompliance with the Governing Documents are specified. Procedures the Association must take before assessing fines for noncompliance are outlined. A fine schedule is included. Repeat violations and continuing violations are defined; different fine amounts may apply to each.
- *Section 6 – Owner’s Right to Enforce the Governing Documents:* An Owner’s right to enforce the Governing Documents and recover attorney fees and costs are addressed.

**Article XVI – Duration and Amendments**

- New Article XVI contains a provision from Old Article VIII of the Declaration and a provision from Article XVI of the Association Bylaws.
- *Section 1 – Duration:* If the proposed Amended and Restated Declaration is approved by the Owners with the requisite 80% of all Lots in the Subdivision with Owners in Good Standing, the Primary Term of 30 years from the date the Declaration was recorded will be eliminated. The covenants, conditions, restrictions and agreements of the Amended and Restated Declaration will continue in full force and effect until or unless the Amended and Restated Declaration is terminated.
- *Section 3 – Membership Meetings Regarding Amendments:* The Board of Directors may call a meeting of the Owners to discuss and review any proposed amendments with the Owners that would require a vote of the Owners.
- *Section 4 – Voting by Written Ballot:* The Amended and Restated Declaration may be amended with the approval of at least 66.67% of all Lots in the Subdivision with Owners in Good Standing. Approval may be by written consent or vote taken by written ballot, either at or outside a meeting of the Owners regarding the proposed amendments.
- *Section 5 – Effective Date:* The Amended and Restated Declaration, if approved by the Owners, shall be effective 3 years from the date of its recording with the Wayne County Register of Deeds, pursuant to Article VIII, Section 6 of the Original Declaration. All future amendments to the Amended and Restated Declaration shall be effective upon their recording with the Wayne County Register of Deeds.
- *Section 6 – Termination:* The Amended and Restated Declaration may be terminated upon the written approval of at least 75% of all Lots in the Subdivision with Owners in Good Standing.

**Article XVII – Other General Provisions**

- New Article XVII contains provisions from Old Article VIII of the Declaration and a provision from Article XVI of the Association Bylaws.
- The following new Sections were added to the Other General Provisions:
  - *Section 1 – Applicability of Township Ordinances*
  - *Section 2 – Insurance Proceeds*

- *Section 5 – Captions*
- *Section 6 – Number and Gender*
- *Section 9 – Nondiscrimination Policy and Fair Housing Compliance*

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| <b>CONCLUSION</b> |
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The proposed amendments to the Declaration and Association Bylaws require the approval of at least 80% of all Lots in the Subdivision eligible to vote (i.e. not delinquent). The proposed amendments to the Articles of Incorporation require the approval of a majority of all Lots in the Subdivision eligible to vote.

The Pheasant View Subdivision Declaration of Covenants and Restrictions, Association Bylaws, and Articles of Incorporation are binding contracts between all of the Owners in the Subdivision and the Association. The proposed amendments are intended to improve, modernize, and customize the Governing Documents to better suit the needs and wants of the entire community. As circumstances change over time, future amendments may become appropriate to best serve the evolving needs and interests of the community.