



# Updater

October 15, 2010

Dear Pinehurst Estates Resident:

The annual meeting of the membership of the Pinehurst Estates Homes Association will be held Wednesday, November 10, 2010 at 7:00PM. The meeting will be held at the Matt Ross Community Center, 8101 Marty, Overland Park, Kansas 66204.

The Board is not proposing any dues changes for 2011. However, in addition to the regular annual meeting agenda of adopting a budget for the upcoming year, hearing reports from officers and electing new officers, the Board is seeking input from the membership on the following items and questions:

- The Board has received a proposal to significantly amend the Association's By-Laws from a special committee. The Board is asking members for its feedback on the proposal. The By-Laws as they would read in full after amendment are included herein. A synopsis of the major amendments contained in the proposal is also included. After the annual meeting, the Board will take a final vote on the By-Laws at a Board meeting to be held on December 13th. Many of the amendments are required by the Kansas Legislature's passage of the "Uniform Common Interest Owners Bill of Rights Act", which will become effective January 1, 2011. The Association's current By-Laws are located on-line at <http://www.pinehurstestates.org/>.
- How should the Board approach the enforcement of the Association's deed restrictions, especially the restriction against sheds and other out-buildings?
- How should the Board approach the level of lake assessment dues over the intermediate future (after 2011 and beyond)?
- Johnson County government recently decided to require separate pick-up of regular trash and lawn waste and to require a "pay-as-you-throw" system for regular trash effective January 1, 2012. The Board is seeking direction from the membership on how the Board should approach the implementation of these rules during 2011.

The Board has permanently changed the timing for its annual membership meeting to November (the second Wednesday therein) from its usual time at the start of the year in order to better plan dues and budget. I hope that residents can attend this year's annual meeting at its new time of the year.

Sincerely,

Pinehurst Estates Board Members

## Synopsis of Proposed Amendments to the By-Laws of Pinehurst Estates Homes Association

The Kansas Legislature passed the "Uniform Common Interest Owners Bill of Rights Act" during its 2010 session. The Act becomes effective January 1, 2011. The Uniform Act is requiring the Association to make numerous amendments to its current By-Laws. Some of the amendments are required because the Association's current By-Laws conflict with the mandatory requirements the Uniform Act. Other amendments are included to set out in full the Act's default requirements or to activate certain of the Act's enabling provisions. Specifically, the significant By-Law amendments related to the Act are as follows:

- The Uniform Act's operative requirements regarding membership voting and meetings are included in the amended By-Laws.
- The Act's requirements regarding the removal of Directors, notice of Board meetings to the membership, the filling of Board vacancies and limitations on executive sessions are likewise incorporated.
- The title and description of all officer positions in the Association are added.
- The membership is to decide the level of the general assessment based upon a majority vote and not a two-thirds vote. The Board is allowed to make special and emergency assessments under certain circumstances.
- Any approval applications required by the Association's declarations (such as for roofing materials) are deemed approved if not acted upon within forty-five (45) days.
- The Uniform Act's granting of limited executive discretion to the Board in the enforcement of Association restrictions and the requirement that the Board not act arbitrarily in its enforcement is set out in full.
- The Act's detailed record retention and document availability to the membership requirements are set forth.
- After the Act takes effect, only the membership may amend the By-Laws. The amended By-Laws include a procedural process for membership approval of future By-Law changes.
- The amended By-Laws activate the Act's provision that Association disputes be submitted to mediation before litigation. Although not mention in the By-Laws, it should be noted that the Act provides that a court "may" award attorney's fees and costs in any Association related litigation.

Other proposed amendments are not required by or part of the Uniform Act:

- The date of the annual meeting of the membership is changed to the second Wednesday in November.
- Each Board member is required to assume an officer position.
- The fiscal year is explicitly stated to be January 1<sup>st</sup> to December 31<sup>st</sup>.
- Lake assessment levels after 2011 shall be set by the Board, but subject to an overall cap equal to the percentage change in the general assessment since 1992. Also, the Board is given discretion to spend general reserve monies for lake purposes. Moreover, mowing and tree trimming of the lake green space area is declared to be a general Association expense.
- A number of long standing Association practices are affirmed, including the buying of insurance, the appointment of committees and contracting for trash removal and recycling.

**AMENDED BY-LAWS OF  
PINEHURST ESTATES HOMES ASSOCIATION**

**Article I. Definitions.**

1. “Common Areas” shall have the meaning set forth in the Declarations.
2. “Register’s Office” shall mean the Office of the Register of Deeds of Johnson County, Kansas.
3. “Declarations” shall mean, collectively, (i) *Declaration Creating Pinehurst Estates Homes Association* recorded as instrument number 987733 in Vol. 975, Page 925 in the Register’s Office, as such may be amended and supplemented from time to time, (ii) *Declaration of Restrictions* recorded as instrument number 987732 in Vol. 975, Page 921 in the Register’s Office, as such may be amended and supplemented from time to time, (iii) the *Deed Insertions on Lake Lot* made part of the original deeds of the Lake Lots as filed with the Register’s Office, and (iv) any additional declarations which relate to the Subdivision as may be recorded from time to time with the Register’s Office.
4. “Improved Lot” shall mean a lot which has a street adjacent thereto and a sewer line available to it.
5. “Lake Agreements” shall mean, collectively, (i) *Pinehurst Lake Agreement* dated July 8, 1991 and recorded as instrument number 2049331 in Vol. 3410, Page 248 in the Register’s Office, (ii) *Addendum to Pinehurst Lake Agreement* dated November 1, 1993 and recorded as instrument number 2324768 in Vol. 4149, Page 767 in the Register’s Office, and (iii) any additional agreements which relate to Lake Pinehurst as may be made from time to time.
6. “Subdivision” shall mean all of the property which is now or hereafter within the jurisdiction of the Association as provided in the Declarations. Specifically, the Subdivision includes the Commons Areas and the 323 Improved Lots included in the Plats of Pinehurst Estates – 2<sup>nd</sup> through 8<sup>th</sup> Plats, as filed with the Register’s Office.
7. “Lake Lots” shall mean those twenty (20) lots included in the Subdivision described as Lots 31 through 43 and 45 through 51, Block 7, Plat of Pinehurst Estates – 4<sup>th</sup> Plat, as filed with the Register’s Office.
8. “Uniform Act” shall mean the “Uniform Common Interest Owners Bill of Rights Act” as adopted by the Kansas Legislature with the passage of 2010 HB 2472 and effective January 1, 2011.

## **Article II. Name, Location and Purpose.**

1. The name of this corporation shall be Pinehurst Estates Homes Association (“Association”). The Association is incorporated under the laws of the State of Kansas as a not-for-profit, non-capital stock corporation. The corporation is the homes association referenced in the Declarations and Lake Agreements.
2. The principal office of the Association shall be located in Johnson County, Kansas.
3. The nature of the business to be conducted and purpose of the Association is to promote the general betterment of the Subdivision. In order to carry out its purpose, the Association shall have the following duties and powers as provided for in the Declarations: (i) the enforcement, in either its own name or the name of any owner, of any and all restrictions and agreements which are imposed or may hereafter be imposed on the Subdivision, (ii) the ownership and maintenance of the Common Areas of the Subdivision, (iii) if desired, providing for the removal of trash, rubbish or garbage to the extent that it is not a governmental function, (iv) the collection of assessments and the filing and enforcement of liens for nonpayment, and (v) to do or provide for such other matters as are proper and incidental to the purposes of the Association; provided, the Association shall not undertake any activities inconsistent with the Association being exempt from federal income taxation under the Internal Revenue Code of the United States.

## **Article III. Membership and Voting Rights.**

1. All owners of Improved Lots in the Subdivision are automatically members of the Association. At meetings of the Association’s membership, one owner of each Improved Lot in the Subdivision shall be entitled to cast one vote on each item upon which membership votes are to be cast. If only one of several owners is present, that owner is entitled to cast the vote for that Improved Lot. If more than one of the owners is present, the vote for that Improved Lot may be cast only in accordance with the agreement of owners holding a majority interest. There is majority agreement if any one of the owners casts the vote for that Improved Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Improved Lot.
2. Voting at membership meetings must be in person or by proxy. Voting may be by voice vote, show of hands, standing or secret ballot, as designated by the person presiding at the membership meeting. There shall be no absentee ballots or voting done without a meeting such as by mail-in or electronic ballot.
3. A directed or undirected proxy may be used by an owner of an Improved Lot in the Subdivision to vote or register protest to the casting of a vote by a co-owner(s) of the Improved Lot. A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting. A proxy is void if it is not in writing, executed and dated, or purports to be revocable without notice. A proxy may be revoked only by actual notice

of revocation to the person presiding at the membership meeting. Other than a member of the Board of Directors, a person may not cast undirected proxies representing more than 15% of the votes of the Association.

4. Any owner who is delinquent in any Association assessment, interest, or fee shall still be entitled to vote at membership meetings, but not on questions regarding Association assessments.
5. A majority of the votes cast determines the outcome of any vote at a membership meeting.

#### **Article IV. Membership Meetings.**

1. The annual membership meeting shall be held at 7:00 PM on the second Wednesday of each November at a place in Johnson County, Kansas selected by the Board of Directors; provided, that the Board of Directors may move the annual membership meeting to a more convenient time and/or date during the month of November or through the first fifteen (15) calendar days of December. At the annual membership meeting, the membership (i) shall elect Directors to serve until their successors shall be elected and qualified, (ii) shall adopt a budget for the upcoming fiscal year, (iii) may consider reports of the affairs of the Association, and (iv) may transact any business which is within the power of the membership.
2. The Secretary shall call a special membership meeting whenever a request is so received (i) from the President, or in his absence, from the Vice President, (ii) pursuant to a majority vote of the Board of Directors, or (iii) by members constituting majority ownership of at least 10% of the Improved Lots in the Subdivision.
3. The Secretary shall notify members in writing of the time, date and place of annual and special membership meetings not less than ten (10) days or more than sixty (60) days before the meeting date. A member may designate any mailing or electronic mail address for such notice. In the absence of such a designation, the Secretary shall deliver such notice to the mailing address of Improved Lots in the Subdivision by hand delivery or United States mail postage paid. The notice shall include items on the agenda, including any proposed assessment changes and any proposal to remove a Director. Only matters described in the notice may be considered at a special membership meeting. The minimum time to give notice of a special membership meeting may be reduced for a meeting called to deal with an emergency. The ineffectiveness of a good faith effort to send notice by an authorized means does not invalidate actions taken at a membership meeting.
4. The President, or in his absence, the Vice President, shall preside at annual and special membership meetings.

5. A quorum for the transaction of business at any annual or special membership meeting shall consist of the members present at such meeting.
6. Members must be given a reasonable opportunity at any membership meeting to comment regarding any matter affecting the Subdivision or the Association.

## **Article V. Board of Directors.**

1. The business of the Association shall be managed by a Board of Directors, which shall consist of nine (9) Directors. Each Director must be a member of the Association in good standing in order to be elected and remain a Director.
2. Members of the Board of Directors shall be elected by the membership at the annual membership meeting. Once elected, a Director shall hold office for three (3) years or until their successor is duly elected. The terms of one-third of the Board of Directors shall expire at each annual membership meeting. There shall be no cumulative voting for Directors.
3. Members may remove a Director, with or without cause, at any membership meeting if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal; provided, removal of the Director must be included in the notice of the meeting and the Director being considered for removal must have a reasonable opportunity to speak before the vote.
4. The annual meeting of the Board of Directors shall be held not more than sixty (60) days after the annual membership meeting. The annual meeting of the Board of Directors shall be at a time, date and place in Johnson County, Kansas selected by the President.
5. Other than the annual meeting of the Board of Directors, the Board of Directors shall meet at such time and date in Johnson County, Kansas as the President may designate.
6. Special meetings of the Board of Directors may be called by any Director.
7. Unless a meeting of the Board of Directors is included in a schedule given to members or the meeting is called to deal with an emergency, the Secretary shall give notice of each meeting of the Board of Directors at which Association business is conducted to each Director and to the members. The notice must state the time, date, place and agenda of the meeting and be given at least five (5) days prior to the meeting date. If any materials are distributed to the Board of Directors before any meeting, the Board at the same time shall make copies of those materials reasonably available to members, except that the Board need not make available copies of unapproved minutes or materials that are to be considered in executive session.
8. A quorum of the Board of Directors is present for purposes of determining the validity of any action taken at a meeting of the Board of Directors only if individuals entitled to cast

a majority of the votes are present at the time a vote regarding that action is taken, but a majority of those present at any meeting shall have the power to adjourn the meeting until a future date.

9. If a quorum is present at any meeting of the Board of Directors when a vote is taken, the affirmative vote of a majority of the Board of Directors present is the act of the Board unless a greater vote is required by these By-Laws; provided, the Board may act without a meeting by unanimous consent to undertake ministerial actions or to implement action previously taken at a meeting of the Board.
10. A vacancy in the Board of Directors may be filled for the unexpired term -- or if earlier, until the next annual membership meeting -- by the remaining Directors at a regular or special meeting of the Board of Directors.
11. The Board of Directors and Officers shall exercise the degree of care and loyalty to the Association required of a Director or Officer of a corporation organized, and are subject to the conflict of interest rules governing Directors and Officers, under existing law. The Board of Directors may by resolution further enact reasonable conflict of interest rules concerning Directors and Officers.
12. The Directors and Officers of the Association shall be indemnified to the maximum extent permitted by law, including but not limited to K.S.A 60-3611 and the federal Volunteer Protection Act of 1997, Public Law 105-19.
13. Except during executive sessions, meetings of the Board of Directors and committees of the Association must be open to members. The Board of Directors and committees may hold an executive session only during a regular or special meeting of the Board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:
  - (a) consult with the Association's attorney concerning legal matters;
  - (b) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;
  - (c) discuss labor or personnel matters;
  - (d) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage; or
  - (e) prevent public knowledge of the matter to be discussed if the Board of Directors or committee determines that public knowledge would violate the privacy of any person.

14. Members must be given a reasonable opportunity at any meeting of the Board of Directors to comment regarding any matter affecting the Subdivision or the Association.

## **Article VI. Officers.**

1. The Officers of the Association, as created by these By-Laws, shall be (i) a President, (ii) a Vice President, (iii) a Treasurer, (iv) a Secretary, (v) a Restrictions Officer, (vi) a Grounds Officer – General, (vii) a Lake Officer, (viii) a Grounds Officer – Islands, (ix) a Grounds Officer – Perimeter, (x) a Hospitality Officer, and (xi) a Newsletter Officer.
2. The President, Vice President, Treasurer, Secretary, Restrictions Officer, Grounds Officer – General and Lake Officer shall all be chosen from the members of the Board of Directors. Those members of the Board of Directors that do not hold at least one of the foregoing Offices shall hold at least one of the remaining Offices created by these By-Laws. The Board of Directors, by resolution, may create additional Offices, including one or more Assistant Treasurers and Assistant Secretaries, which need not be chosen from the members of the Board but they may be so chosen. Any two or more Offices may be held by the same person, except the Offices of President and Vice President.
3. Officers shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. New offices may be created and vacancies filled at any meeting of the Board of Directors. Each Officer shall hold office until their successor shall have been duly elected or until their death or until they shall resign or shall have been removed in the manner hereinafter provided.
4. All Officers and agents of the Association, as between themselves and the Association, shall have such authority and perform such duties in the management of the property and affairs of the Association as may be provided in these By-Laws, or, in the absence of such provision, as may be determined by resolution of the Board of Directors.
5. Any Officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in the Board's judgment the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, or membership on the Board of Directors of the person so removed.
6. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall:
  - (a) preside at all membership meetings and meetings of the Board of Directors;
  - (b) sign, with the Secretary or Treasurer or any other proper Officer thereunto authorized by the Board of Directors, any instruments which the Board of Directors have authorized to be executed except in cases where the signatures and

execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other Officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and,

- (c) in general, perform all duties incident to the Office of President and such other duties as may be prescribed by the Board of Directors from time to time.
7. In the absence of the President or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President; and, shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors.
8. The Board of Directors may require the Treasurer to give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine. The Treasurer shall:
- (a) have charge and custody of and be responsible for all funds and securities of the Association;
  - (b) receive and give receipts for moneys due and payable to the Association from any source whatsoever;
  - (c) deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these By-Laws; and,
  - (d) in general, perform all duties incident to the Office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board of Directors.
9. The Secretary shall:
- (a) keep the minutes of the membership and the Board of Directors meetings in one or more books provided for the purpose;
  - (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law;
  - (c) be custodian of the records of the Association;
  - (d) keep a register of the post office address of each member, which shall be furnished to the Secretary by all such members; and,

- (e) in general, perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned by the President or by the Board of Directors.
- 10. Any Assistant Treasurers shall, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. Any Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned by the Treasurer or the Secretary, respectively, or by the President or the Board of Directors.
- 11. The Restrictions Officer shall, among other duties incident to the Office and as maybe assigned from time to time by the President or by the Board of Directors, field requests from members for any approvals required by the Declarations and see to it that the Declarations are adhered to by the membership, all in consultation with and exercising the discretion generally afforded to the Board of Directors in such matters.
- 12. The Grounds and Lake Officers shall, among other duties incident to the Offices and as maybe assigned from time to time by the President or by the Board of Directors, generally ensure that the Common Areas and Lake Pinehurst are maintained. The Grounds Officer – General and the Lake Officer shall each have the authority to bind the Association to contracts for goods and services in amounts not greater than \$2,000 (as adjusted for inflation) to so accomplish. The Grounds and Lake Officers shall consult with the Board of Directors on specific contracts as appropriate and shall apprise the Board of all contracts they have entered into on behalf of the Association. A copy of all such contracts shall be given to the Secretary.
- 13. The Hospitality and Newsletter Officers shall, among other duties incident to the Offices and as maybe assigned from time to time by the President or by the Board of Directors, establish reasonable methods of communication among members themselves and between members and the Board of Directors concerning the Association.

**Article VII. General, Late & Special Assessments; Finance.**

- 1. In order to carry out the purposes of the Association, each Improved Lot shall be subject to an annual assessment due and payable on January 1<sup>st</sup> (“General Assessment”). The General Assessment for the Association’s upcoming fiscal year shall be determined by the membership at the annual membership meeting. General Assessment statements should be deposited in United States mail postage paid to owners’ last address listed with the Association not later than two weeks prior to January 1st.
- 2. General Assessments will be delinquent if unpaid by March 1<sup>st</sup> and shall bear interest at the rate of eight (8%) percent per annum from the date of delinquency.

- (a) If not paid before becoming delinquent, a Late Assessment equal to twenty-five (25%) percent of the General Assessment shall be assessed to defray the Association's administrative handling costs.
  - (b) If not paid before becoming delinquent, the amount of the General Assessment plus interest and the Late Assessment shall become a lien on the Improved Lot against which the assessment has been made. The Association shall file a certificate of non-payment of assessment in the Register's Office whenever an assessment becomes delinquent. Such liens shall be enforceable as liens on the real estate in any court of competent jurisdiction. Such liens shall continue for a period of five (5) years from the date of delinquency, unless within such time suit shall have been filed for the collection of the assessment or foreclosure of the lien, in which case the lien shall continue until the termination of the suit and until the sale of the property under the execution of the judgment establishing same or until the judgment is otherwise satisfied. It shall be the duty of the Association to enforce such liens before the expiration thereof.
  - (c) For each certificate of nonpayment filed, the Association shall be entitled to reimbursement of the Register's Office filing fee, if any, which shall become a part of the lien upon the real estate described in the certificate.
  - (d) The Association shall suspend any trash, recycling or lawn waste removal services the Association provides to an Improved Lot for so long as any Association assessment against the Improved Lot remains delinquent or any accumulated interest or filing fee remains unpaid.
3. The Board of Directors, at any time, may propose a Special Assessment on each Improved Lot in the Subdivision. Any proposed Special Assessment must be considered and approved by the membership at a special membership meeting; provided, any Special Assessment needed to respond to a deficiency in the Lake Escrow Fund need only receive the approval of the Board of Directors following a special membership meeting.
  4. Notwithstanding the provisions of Section 3 of this Article, if the Board of Directors determines by a two-thirds (2/3) vote of the membership of the Board that a Special Assessment on each Improved Lot in the Subdivision is necessary to respond to an emergency, then the Special Assessment shall become effective immediately in accordance with the terms of the vote; provided, the Board of Directors may spend the funds paid on account of the emergency only for the purposes described in the vote.
  5. Notice of any Special Assessment must be provided promptly to all members. Special Assessments shall be due and payable thirty (30) days after Special Assessment statements are mailed United States mail postage paid to members and shall bear interest at the rate of eight (8%) percent per annum from the date of any delinquency. Delinquent Special Assessments shall be collectable in the same manner as delinquent General Assessments under Section 2 of this Article.

6. The funds of the Association shall be deposited in such bank or trust company as the Board of Directors shall designate and shall be withdrawn only upon checks signed by such persons authorized by the Board of Directors.
7. The Association's fiscal year shall begin January 1<sup>st</sup> and end December 31<sup>st</sup>; provided, the Board of Directors shall have the power by resolution to fix and from time to time change the fiscal year.

### **Article VIII. Lake Pinehurst Policy, Lake Lot Assessment and Lake Escrow Fund.**

1. History and Statement of Board Policy. The Subdivision has within its confines a lake. The lake and greenbelt area surrounding the lake enclosed by the wrought iron fence ("Lake Pinehurst") has never been generally open to members of the Association. Instead, Lake Pinehurst has been used exclusively by the Lake Lot owners. For many years, the Lake Lot owners paid an assessment in addition to the General Assessment. The Lake Lot owners paid the additional assessment pursuant to notice imparted to them in several ways, including by way of language in the Lake Lot owners' original deeds in the form of a *Deed Insertions on Lake Lot*, which provide that each Lake Lot is "subject to an assessment by the Pinehurst Estates Homes Association, for the purpose of maintaining the lake and greenbelt area adjoining the property conveyed herein, in addition to the regular Homes Association assessment" and pursuant to the following provisions then contained in the By-Laws, which have since been repealed:

*Certain lots in the subdivision will be adjoining a lake within the area. These lots are Lots 31 through 43 and 45 through 51, Block 7. Access to and use of the Lake and its adjacent surrounding area within the confines of the wrought iron fence shall be restricted to the owners of these twenty (20) said lots. Members representing three of said lots, chosen by the owners of said lots, shall comprise a committee to the Board of Directors. Said committee shall be responsible for determining the maintenance need for the lake area, having such maintenance done and obtaining the funds from the board to pay for such work. The lots above-described shall share equally in the costs of such maintenance and no other lots in the subdivision shall bear any of the burden of the lake maintenance. The amount expended shall be certified by the committee to the board and when making the assessment against all lots in the subdivision the board shall increase the assessment of the above-described lots by their proportionate share or the cost of the lake maintenance, which shall become apart of their assessment enforceable as any other assessment.*

After the passage of some ten years, many of the Lake Lot owners refused to comply with these By-Law terms. They did so, in part, because of the need for substantial dredging, repairs, and capital improvements to Lake Pinehurst, which had a potentially very high cost.

The Lake Lot owners expressed a willingness to pay an additional assessment for the maintenance of Lake Pinehurst, but only if their exposure was capped. Because the City of Overland Park was concerned about the maintenance of Lake Pinehurst and its impact on storm drainage in the area, the City agreed to fund substantial repairs and maintenance to Lake Pinehurst on the terms set forth in the Lake Agreements. The Board of Directors was concerned about the possible impact of Lake Pinehurst in depressing property values and unfavorably impacting storm drainage in the area. The Board of Directors was concerned that if the City of Overland Park chose to affect repairs by constructing a concrete culvert and by creating a benefit district, the costs to all members of Association would be substantially greater. For all these reasons, the Board of Directors determined to establish the following policies:

- (a) The Association will be ultimately responsible for maintenance of Lake Pinehurst by way of making a lake lot assessment against the Lake Lot owners and by utilizing Association funds and making Special Assessments against all members of the Association to cover any shortfall in funds for maintenance or repair of Lake Pinehurst;
- (b) The lake lot assessment will be no more than \$300.00 annually and may be increased only for years beginning with 1995 and only by the same percentage increase in the amount of the General Assessments;
- (c) A permanent escrow fund for Lake Pinehurst maintenance and repair will be established into which annual distributions will be made; and
- (d) Lake Pinehurst will not be utilized as Common Areas.

These policies on Lake Pinehurst and a lake lot assessment were approved by more than two-thirds of the general membership at a special meeting and two-thirds of the Lake Lot owners.

## 2. Lake Lot Assessment.

- (a) Each Lake Lot shall be subject to an additional annual assessment due and payable on January 1<sup>st</sup> ("Lake Lot Assessment"). Lake Lot Assessment statements should be deposited in United States mail postage paid to Lake Lot owners' last address listed with the Association not later than two weeks prior to January 1<sup>st</sup>.
- (b) Lake Lot Assessments will be delinquent if unpaid by March 1<sup>st</sup> and shall bear interest at the rate of eight (8%) percent per annum from the date of delinquency. Delinquent Lake Lot Assessments shall be collectable in the same manner as delinquent General Assessments under Section 2 of Article VII.
- (c) Lake Lot owners shall pay the Lake Lot Assessment in addition to the General Assessment and any Special Assessment(s). The overall liability of the Lake Lot

owners for Lake Pinehurst, including its maintenance and repair, shall be limited to the Lake Lot Assessment and any Special Assessment(s) equally payable by all members of the Association.

- (d) The Lake Lot Assessment of \$300 shall not be increased by the Board of Directors for the years 1992, 1993, and 1994. Beginning with the year 2007, the Lake Lot Assessment shall not be increased by the Board to more than \$320. Beginning with the year 2012, the Board of Directors may in its discretion increase the Lake Lot Assessment; provided, the Lake Lot Assessment shall not be increased to an amount greater than the sum of the original Lake Lot Assessment in 1995 of \$300 and an amount equal to \$300.00 times the percentage change in the General Assessment since 1995<sup>1</sup>; provided further, the amount allocable to any trash, recycling or lawn waste removal services provided by the Association to all members shall not be included when calculating the percentage increase in the General Assessment.<sup>2</sup>
- (e) The Board of Directors shall establish a Lake Escrow Fund into which the Lake Lot Assessments shall be deposited. The Board of Directors may then utilize such funds for Lake Pinehurst purposes, but only Lake Pinehurst purposes, in any manner the Board deems appropriate. Maintenance expenses associated with the regular mowing of grass and trimming of trees in the Lake Pinehurst greenbelt area shall be considered a general Association expense and not a Lake Pinehurst expense.
- (f) The Board of Directors may, in its discretion, utilize funds on hand that are not part of the Lake Escrow Funds for Lake Pinehurst purposes.

## **Article IX. Approvals and Enforcement of Declarations.**

1. The Declarations require members to obtain certain approvals from the Association. Members should direct applications for approval to the Association's Restrictions Officer. The Restrictions Officer shall either approve or deny applications for approval within forty-five (45) days. If neither the Restriction Officer or the Board of Directors approves or denies an application for approval within this period, then the application shall be deemed approved.
2. The Declarations provide that the materials used in replacement roofs of residential structures in the Subdivision must be approved in writing by the Association. The State

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<sup>1</sup> The General Assessment for 1995 was \$210.00. The Association did not provide members with any trash, recycling or lawn waste removal services in 1995.

<sup>2</sup> By way of illustration, the calculation for the maximum Lake Lot Assessment beginning in 2012 would be as follows:  $\$300 + (\$300 * ((\$460 - \$160) - \$210) / \$210)$ , where the General Assessment is assumed to be \$460 and the amount allocable to trash, recycling and lawn waste removal services provided to all members is assumed to be \$160.

of Kansas by statute<sup>3</sup> and the City of Overland Park by ordinance<sup>4</sup> have provided that the Association may not require the use of wood shingles or wood shakes for roofing materials; nevertheless, the Association shall require its members to submit an application and obtain Association approval for Subdivision replacement roofs so that it may regulate their color, style, dimensions of materials and other aesthetic characteristics.

3. The Board of Directors may determine whether to take enforcement action by exercising the Association's power to commence an action for a violation of the Declarations, By-Laws, or any rule, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The Board of Directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
  - (a) the Association's legal position does not justify taking any or further enforcement action;
  - (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
  - (c) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or
  - (d) it is not in the Association's best interests to pursue an enforcement action.

The Board of Directors' decision not to pursue enforcement under one set of circumstances does not prevent the Board of Directors from taking enforcement action under another set of circumstances, but the Board of Directors may not be arbitrary or capricious in taking enforcement action.

4. Before adopting, amending, or repealing any rule, the Board of Directors shall: (i) give all members notice of its intention to adopt, amend, or repeal a rule, (ii) provide the text of the rule or the proposed change and (iii) state a date on which the Board of Directors will act on the proposed rule or amendment after considering comments from members. Following adoption, amendment, or repeal of a rule, the Association shall notify members of its action and provide a copy of any new or revised rule.

## **Article X. Common Grounds.**

1. All owners of Improved Lots within the Subdivision shall have the non-exclusive right to the use of the all Common Areas; provided, the use of Lake Pinehurst shall be limited to the owners of the Lake Lots.

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<sup>3</sup> K.S.A. §31-171.

<sup>4</sup> O.P.M.C §16.110.901.2 & .3.

2. The Association may make reasonable rules which shall govern the use of the Common Areas, including Lake Pinehurst.

## **Article XI. Records & Record Keeping.**

1. Subject to Section 3 of this Article, the records retained by the Association must be available for examination and copying by members: (i) during reasonable business hours, or at a mutually convenient time and location, and (ii) upon 10 days' written notice, reasonably identifying the specific records of the Association requested.
2. The Association must retain the following for at least five (5) years unless otherwise provided:
  - (a) detailed records of receipts and expenditures affecting the operation and administration of the Association and other appropriate accounting records;
  - (b) minutes of all meetings of its membership and Board of Directors other than executive sessions, a record of all actions taken by the members or Board of Directors without a meeting, and a record of all actions taken by a committee in place of the Board of Directors on behalf of the Association;
  - (c) the names of members in a form that permits preparation of a list of the names of all members and the addresses at which the Association communicates with them, in alphabetical order;
  - (d) its original or restated organizational documents, By-Laws and all amendments to them, and all rules currently in effect;
  - (e) all financial statements and tax returns of the Association for the past three years;
  - (f) a list of the names and addresses of its current Board of Directors and Officers;
  - (g) its most recent annual report delivered to the secretary of state;
  - (h) financial and other records sufficiently detailed to enable the Association to comply with other requirements of law;
  - (i) copies of current contracts to which it is a party;
  - (j) records of Board of Directors or committee actions to approve or deny any requests for design or architectural approval from members; and

- (k) ballots, proxies, and other records related to voting by members for one year after the election, action, or vote to which they relate.
3. Records retained by the Association may be withheld from inspection and copying to the extent that they concern:
    - (a) personnel, salary, and medical records relating to specific individuals;
    - (b) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;
    - (c) existing or potential litigation or mediation, arbitration, or administrative proceedings;
    - (d) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws, or any rule;
    - (e) communications with the Association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
    - (f) information the disclosure of which would violate law;
    - (g) records of an executive session of the Board of Directors or a committee; or
    - (h) individual member files other than those of the requesting owner.
  4. The Association may charge a reasonable fee for providing copies of any records under this Article and for supervising the member's inspection.
  5. A right to copy records under this Article includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by a member. Copied records may be used for any reasonable purposes other than for commercial purposes.
  6. The Association is not obligated to compile or synthesize information.

## **Article XII. General Provisions.**

1. As provided by the Uniform Act, the Association declares that disputes between the Association and a member(s) or between two or more members regarding the Association shall be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.

2. The Association shall promptly provide notice to the members of any legal proceedings in which the Association is a party, other than proceedings involving enforcement of the Declarations or the recovery of unpaid assessments or other sums due the Association.
3. No Director or Officer shall receive compensation for the service he or she may render to the Association as a Director or Officer. However, any Director or Officer may be reimbursed for his or her reasonable out-of-pocket expenses incurred in the performance of his or her duties.
4. The Board of Directors may procure and maintain public liability insurance, fire and extended coverage hazard insurance and other insurance on property owned or controlled by the Association and maintain Officer's and Director's liability insurance, all with such coverages and in such sums as may be deemed appropriate by the Board of Directors.
5. The Board of Director's may appoint one or more committees. Any such committee shall be composed of at least one Director and any other individuals the Board of Directors shall designate. A quorum of any committee shall consist of not less than one-half (1/2) of the total number of members appointed to such committee. The President shall be an ex-officio member of all committees.
6. The Association may enter into contracts for the regular removal of trash, recyclables and lawn waste from Improved Lots in the Subdivision. The Board of Directors should obtain the approval of the membership at an annual or special meeting of the membership whenever initially entering into or making a major renewal of such contracts. If the Association does enter into such contracts, the hauling fees associated with such contracts will become an undivided portion of each member's General Assessment.

### **Article XIII. Amendments.**

1. Any amendment to these By-Laws must be made at an appropriately called annual or special meeting of the membership. The notice for the meeting of the membership shall include a statement of the general nature of the proposed By-Laws amendment. Such notice shall also provide that a full copy of the proposed By-Laws amendment is available on the Association's website ([www.pinehurstestates.org/](http://www.pinehurstestates.org/)) or upon request made to the Secretary. To be effective, any proposed By-Laws amendment must be approved by a majority vote of the membership. Only those By-Laws subjects/provisions included in the notice of the special meeting of the membership may be amended at the special meeting; provided, the By-Laws amendment as ultimately approved may differ from the amendment as originally proposed.
2. No amendment to these By-Laws shall in any way impair the promises made by the Association in the Lake Agreements or impinge on matters controlled by the Declarations.

3. Prior to December 31, 2010, the Board of Directors may amend these By-Laws at any Director's meeting when the proposed amendment has been set out in the notice of such meeting. After December 31, 2010, the Board of Directors may amend these By-Laws only as allowed by the Uniform Act and other Kansas laws.

#### **Article XIV. Rules of Order.**

Meetings of the Association shall be conducted in accordance with the most recent edition of *Roberts' Rules of Order Newly Revised*.

