

**PHEASANT CREEK HOMEOWNERS ASSOCIATION, INC. GOVERNANCE POLICIES**

Revised, JANUARY 30, 2014

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## PHEASANT CREEK HOMEOWNERS ASSOCIATION, INC. GOVERNANCE POLICIES

In compliance with the Colorado Common Interest Ownership Act, the Board of Directors hereby adopts the following policies and procedures.

### I. ADOPTION AND AMENDMENT PROCEDURE

#### A. Definitions:

1. A policy is a course or principle of action adopted to guide the Board of Directors.
2. A procedure is an established or official way of conducting a course of action.
3. A rule is defined as a regulation or requirement governing conduct or behavior.

B. Policies and procedures govern the activities of the Board of Directors in the operation of the Association.

C. Rules govern the use of property within the community and the behavior of residents and/or their guests while in the community.

D. The Board of Directors shall have the authority to adopt policies, procedures and rules to the extent they do not conflict with the Declaration, Articles of Incorporation, and Bylaws of the Association.

E. The Board shall have authority to adopt and amend those policies and procedures which govern Association operation. Such policies and procedures shall be adopted at an open Board meeting and documented in the minutes or in a formal resolution.

F. The Board may adopt rules and regulations. Such rules and regulations shall be adopted at an open Board meeting and documented in the minutes or in a formal resolution. Rules, once adopted, shall be sent to all Owners and shall be effective upon distribution.

### II. COLLECTION POLICY AND PROCEDURE

#### A. Due Dates, Late Charges, Interest, Suspension of Rights, and Acceleration of Assessments.

1. Due Date and Delinquency Date: Monthly installments of the annual assessment are due and payable on the 1<sup>st</sup> day of each month. Payments shall be deemed received and shall be posted on the date the payment is received in the Association's office or the Association's payment processor's office. Any installment not paid in full on the first of each month shall be considered past due and the Owner's account is delinquent.

2. Late Charge: Ten days after an Owner's account becomes delinquent, a late charge in the amount of \$25.00 shall be imposed each month that the account is delinquent without further notice to the Owner. Such late charge is a personal obligation of the Owner and a lien on the Lot.

3. Interest: Ten days after an Owner's account becomes delinquent, interest at the rate of 18% per annum shall accrue on the total amount that is delinquent without further notice to the Owner. Such interest is a personal obligation of the Owner and a lien on the Lot.

4. Suspension of Rights: Ten days after an Owner's account becomes delinquent, an Owner's voting rights shall be automatically suspended without notice. Ten days after an Owner's account becomes delinquent, an Owner's rights to use recreational facilities may also be suspended without notice.

5. Acceleration: If an assessment is more than 45 days delinquent, upon 30 days written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. Upon acceleration, that Owner loses the privilege of paying any and all assessments and charges in installments for the remainder of the fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

#### B. Return Check Charges.

1. If any check or other instrument payable to or for the benefit of the Association is not honored by the bank or is returned by the bank for any reason, including, but not limited to insufficient funds, the Owner is liable to the Association for one of the following amounts, at the option of the Association:

(a) An amount equal to the face amount of the check, draft, or money order and a return check charge of \$20.00 or an amount equal to the actual charges incurred by the Association levied by the party returning the check, whichever is greater; or

(b) If notice has been sent as provided in C.R.S. § 13-21-109 and the total amount due as set forth in the notice is not paid within 15 days after such notice is given, the person issuing the check, draft or money order shall be liable to the Association for collection for three times the face amount of the check, but not less than \$100.00.

2. Any returned check shall cause an account to be past due if full payment of the monthly installment of the annual assessment or of any other charge is delinquent.

3. If two or more of an Owner's checks are returned unpaid by the bank within any fiscal year, the Association may require that all of the Owner's future payments, for a period of one year, be made by certified check or money order.

C. Attorney Fees. The Association shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent Owner pursuant to the terms of the Declaration and Colorado law. Attorney fees incurred by the Association shall be considered part of the assessments and shall be due and payable immediately when incurred, upon demand.

D. Application of Payments. All payments received on account of any Owner or the Owner's property, will be applied first to post-judgment attorney's fees, costs and expense; then to costs and attorney's fees not reduced to a judgment; then to interest; then to late charges; then to return check charges; then to fines and other amounts levied pursuant to the Declaration; then to delinquent assessments; then to current assessments not reduced to judgment; and finally to amounts reduced to judgment.

E. Delegation of Authority to Sign Notice of Lien. The Board of Directors delegates authority to the Association's attorney to sign and acknowledge the Notice of Assessment Lien. This delegation may be withdrawn at any time. In the event the delegation is withdrawn, the Board will send written notice to the Association's attorney of the withdrawal.

F. Time Frames. The following time frames shall be followed in the collection of monthly installments of the annual assessment and for collection of other charges.

Due /Delinquency Date	Monthly installment of annual assessments: 1 <sup>st</sup> day each month
	All other fines and charges: 10 days after notice
Late Fee Imposed	10 days after Owner's account delinquent
Interest Accrues	10 days after Owner's account delinquent

Notices will be sent in accordance with the following schedule:

First Notice from Association or manager	15 days after due/delinquency date
Warning Notice	45 days after due/delinquency date
<b>NOTICE OF DELINQUENCY</b> from Association or manager "Notice of Delinquency" defined below	75 days after due/delinquency date
Delinquent account turned over to Association's attorney	105 days after due/delinquency date

**NOTICE OF DELINQUENCY** will specify:

1. The total amount due, with an accounting of how the total was determined.
2. Whether there is an opportunity to enter into a payment plan, and instructions how to do so if that option is available.
3. The name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt.
4. That the Owner must take action to cure the delinquency, and a failure to do so within 30 days may result in the Owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the Owner, the filing and foreclosure of a lien against the Owner's property, or any other remedies available under Colorado law.

Notwithstanding the time frames set forth above, if a lien holder with priority over the Association's lien (i.e., first mortgagee) takes title to a Lot through foreclosure or deed in lieu of foreclosure, the Association may file a lien on the Lot

for any delinquent payment.

Once accounts are turned over to the Association's attorney, Owners shall make payment to the Association at the address of the Association's attorney. The Association's attorney shall consult with the Association regarding collection procedures and payment arrangements.

G. Notices: Use of Certified Mail/Regular Mail. The Association shall use regular mail for the purpose of delivering letters or notices unless specifically required by Colorado law or by the Declaration to use certified mail. Actual notice by any means, including electronic such as facsimile or email is sufficient for the Association to comply with any notice requirement.

H. Referral of Delinquent Accounts to Attorneys. Upon referral of a delinquent account to the Association's attorneys, the attorneys shall take appropriate action to collect the accounts referred. After an account has been referred to the Association's attorney, the account shall remain with the attorney until the account is settled, has a zero balance or is written off. The Association's attorney is authorized to take whatever action is necessary, in consultation with the Board of Directors, believed to be in the best interest of the Association, including, but not limited to any or all of the following:

1. Filing a lien against the delinquent Owner's property to provide record notice of the Association's claim against the property, if not already filed;

2. Filing a lawsuit against the delinquent Owner for a money judgment. The purpose of obtaining a personal judgment against the Owner is to allow the Association to pursue remedies such as garnishment of the Owner's wages or bank account to collect judgment amounts;

3. Foreclosing upon the Association's lien against the Owner's property giving rise to a deficiency and seeking a deficiency judgment in that same action. The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or in other circumstances that may favor such action;

4. Filing necessary claims, documents, and motions in Bankruptcy Court to protect the Association's claim; and

5. Filing a court action seeking appointment of a receiver. A receiver is a disinterested person, appointed by the court, who manages rental of the Owner's property, and collects the rents according to the court's order. The purpose of a receivership for the Association is to obtain payment of current assessments, reduce past due assessments, and prevent waste and deterioration of the property.

6. Filing a quiet title action and/or pursue any other remedies available under Colorado law and the governing documents of the Association.

All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney.

Upon referral of any matter to the Association's attorney, the Association shall pay the Association's attorneys their usual and customary charges as well as any costs incurred by the attorney on the Association's behalf, promptly upon receipt of the monthly invoice from the attorney. Any fees and costs incurred will be charged to the delinquent Owner's account, including but not limited to attorneys' fees and related costs incurred prior to filing suit.

I. Notification to and Communication with Owners. This Collection Policy shall be made available to all Owners by the Association as required by Colorado law. After a delinquent account has been referred to the Association's attorney, all communication with the delinquent Owner shall be handled through the Association's attorney. Neither the manager, if any, nor any member of the Board of Directors shall discuss the collection of the account directly with an Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact. However, the Association has the option and right to continue to evaluate each delinquency on a case by case basis.

J. Certificate of Status of Assessment/Estoppel Letter. The Association shall furnish to an Owner or such Owner's designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against the Owner's Lot. The statement shall be delivered within 14 calendar days after receipt of the request personally or by certified mail, first-class postage prepaid, return receipt requested. The fee for the statement shall be assessed in accordance with the management company's fee schedule for such statements, which fee shall become an assessment. If the Owner's account has been turned over to the Association's attorney, such statement shall be handled through the Association's attorney and shall include any attorney fees incurred in providing the statement.

K. Bankruptcies and Public Trustee Foreclosures. Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any Lot within the Association, the Association shall advise the Association's attorney of the same and turn the account over to the Association's attorney.

L. Waivers. The Association may alter the time for the filing of lawsuits and liens, or otherwise modify the procedures contained herein, as the Association shall determine appropriate under the particular circumstances and in accordance with Colorado law. Any such accommodation shall be documented in the Association's files with the conditions of relief. Failure of the Association to require strict compliance with this Collection Policy shall not be deemed a waiver of the Association's right to require strict compliance and shall not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Collection Policy.

M. Payment Plan. A payment plan is available to an Owner if the Owner has not entered into a payment plan, previously. The payment plan shall allow the Owner to pay any deficiency in equal installments over a period of 6 months. Nothing in this policy prohibits the Association or a holder or assignee of the Association's debt from pursuing legal action against an Owner or any other responsible person if the Owner fails to comply with the terms of his or her payment plan. An Owner's failure to remit payment of an agreed upon installment, or to remain current with regular assessments as they come due during the 6 month period constitutes a failure to comply with the terms of his or her payment plan. Upon failure to comply with a payment plan no additional notice of default or delinquency is required prior to the Association pursuing its remedies against the Owner or other responsible person.

### III. CONDUCT OF MEETINGS POLICY AND PROCEDURE

#### A. Annual Meetings/Special Member Meetings

1. Notice of a Membership meeting shall be sent to each Member not less than 15 or more than 60 days prior to the meeting. Notice shall also be posted at the mail kiosk. If a Member requests notice by e-mail only and provides an e-mail address, notice will be provided by e-mail.

2. Each Member will sign in prior to the meeting for himself/herself and for any proxies he/she holds. Voting rights of delinquent Members are suspended and such Members shall not be given ballot. If an election or vote is to be held, the Member will be given the appropriate number of ballots.

(a) Secret ballots are required for the following: any ballot for election of a contested position on the Board of Directors; and any ballot for other matters if so requested by at least 20% of the Members present in person or by proxy at the meeting.

(b) If secret balloting is not required, the Association may indicate the number of proxies held on the ballot itself.

3. The President of the Board of Directors, or other person directed by the Board, will call the meeting to order and conduct the meeting. The meeting shall proceed in the order set forth in the agenda.

4. To facilitate Member participation, each Member who wishes to speak will be given three minutes to speak, provided the chair may extend such time at its discretion. Members may not speak a second time until everyone who wishes to speak has been given an opportunity to speak once. Members may not speak more than twice on any one topic, subject to the chair's discretion.

5. Members must maintain decorum and refrain from addressing the Membership or Board until recognized by the chair. Upon being recognized, the Member must state his/her name and address.

6. Members may not interrupt anyone who validly has the floor, or otherwise disrupt the meeting. Members may not engage in personal attacks on either Board Members or other Association Members. All comments and questions are to be delivered in a businesslike manner and comments shall be confined to matters germane to the agenda item being discussed. No Member may use abusive, rude, threatening, vulgar or crude language. To facilitate free and open discussion Members shall not audio or video record meetings.

7. Members must obey all orders made by the meeting chair, including an order to step down. Any Member who refuses to follow the above rules will be asked to leave the meeting.

8. Any motions must be seconded prior to discussion and voting. Because the nature of a motion and vote may be outside the Members' authority, the Board reserves the right to determine whether a motion will be considered binding on the Association or a recommendation for proceeding. Such determination may be made following consultation with legal counsel.

9. Ballots shall be counted by a neutral third party or by a committee of volunteers who shall be Members selected or appointed at an open meeting by the President of the Board or other person presiding during that portion of the meeting. The committee of volunteers shall not be board members and, in case of a contested election for a Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without identifying information of Members participating in such vote.

10. Meetings are not required to be held in accordance with Robert's Rules of Order.

#### B. Board Meetings

1. Notice of Board meetings shall be given to directors at least three days prior to the meeting. Notice shall be in writing, hand delivered, by telephone, or e-mail. If a schedule is set for regular Board meetings, no notice beyond the schedule need be given.

2. All Board meetings shall be open to attendance by Members of the Association, or their representatives, provided that the Board may go into executive session for any purpose allowed by law. Members may be excluded from executive session. Prior to going into executive session, the chair of the meeting shall announce the purpose for the executive session.

3. The meeting agenda shall be made reasonably available for examination by Members of the Association or



their designated representatives.

4. There shall be a Members' forum at the beginning of each regular Board meeting. The Members' forum shall be for up to 30 minutes, although the Board may extend this time in its discretion. The rules for Member participation during the meetings are as follows:

(a) To facilitate member participation each Member who wishes to address the Board on an agenda item or on any other matter will be given three minutes to speak, provided the chair may extend the time in his/her sole discretion. If more than one person desires to address an issue on which the Board is to vote and there are opposing views, the Board shall provide for a reasonable number of Members to speak on each side of the issue. After other Members have had an opportunity to speak, then a Member who has already spoken will be given another opportunity, time permitting.

(b) Each Member who wishes to speak must be recognized by the chair. Once recognized, the Member shall state his/her name and address.

(c) All comments must be delivered in a businesslike and professional manner. Personal attacks or inflammatory comments will not be permitted.

(d) A Member who wishes to speak about any matter on the agenda of the Board meeting shall do so only during the Members' forum.

(e) To facilitate free and open discussion Members shall not audio or video record meetings.

(f) The Board is not obligated to take immediate action on any item presented by a Member.

5. Following the conclusion of the Members' forum, the Board will proceed with the business portion of the meeting. Except as provided in Paragraph 6 below, Members who attend or remain may not participate in deliberation or discussion during this portion of the Board meeting unless expressly authorized by a vote of the majority of a quorum of the Board.

6. Items shall be discussed pursuant to the meeting agenda, provided that items may be taken out of order if deemed advisable by the chair of the meeting. Items not on the agenda may be discussed once all other items have been concluded, time permitting. If items that are not on the agenda are to be voted upon by the Board, Members shall be given a reasonable opportunity to comment prior to the vote in accordance with the terms of Section B(4)(a) above.

7. Any director may make a motion. All motions shall be recorded in the minutes. If any director requests his/her vote in favor or against or his/her abstention be recorded in the minutes, the minutes shall so reflect.

8. Board meetings are not required to be held in accordance with Robert's Rules of Order.

#### IV. CONFLICT OF INTEREST POLICY

##### A. Definitions:

1. "Conflicting interest transaction" means a contract, transaction or other financial relationship between: (a) the Association and a director, or (b) between the Association and a party related to a director, or (c) between the Association and an entity in which a director of the Association is a director or officer.
2. "Party related to a director" means a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.
3. "Officer," for purposes of this policy only, means any person designated as an officer of the Association and any person to whom the Board delegates responsibilities, including, without limitation, a managing agent, attorney, or accountant employed by the Board.

B. Disclosure. The director shall disclose the conflicting interest in the proposed transaction in an open meeting prior to the discussion and vote. Such disclosure shall be reflected in the minutes of the meeting or other written form.

C. Participation and Voting. The director shall not take part in the discussion and shall leave the room during the discussion and the vote on the matter. Notwithstanding the foregoing, a majority of the disinterested Board members may ask the interested Board member to remain during any portion of the discussion and/or vote, provided that the director does not vote.

D. Quorum. The interested director shall count for the purpose of establishing a quorum of the Board for the matter in which there is a conflict.

E. Approval of Transaction. The contract, Board decision or other Board action must be approved by a majority of the disinterested Board members who are voting. No contract, Board decision or other Board action in which a Board member has a conflict of interest shall be approved unless it is commercially reasonable to and/or in the best interests of the Association.

F. Standard of Review. Notwithstanding anything to the contrary herein or in the Association's conflict of interest policy and in accordance with the Colorado Revised Nonprofit Corporations Act, no conflicting interest transaction shall be set aside solely because an interested director is present at, participates in or votes at a Board or committee meeting that authorizes, approves or ratifies the conflicting interest transaction if:

1. the material facts as to the director's relationship or interest as to the conflicting interest transaction are disclosed or known to the Board of Directors or the committee, and the Board or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors may be less than a quorum; or
2. the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or known to the Members entitled to vote on the transaction, if any, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the Members entitled to vote; or
3. the conflicting interest transaction is fair to the Association.

G. Loans. No loans shall be made by the Association to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment of the loan.

## **V. COVENANT AND RULE ENFORCEMENT POLICIES AND PROCEDURES**

A. Enforcement Procedure. The Board shall not impose fines unless and until the Association has sent or delivered written notice to the Owner as provided below. However, compliance with the notice and hearing procedure set forth below is not required for the late charges on delinquent assessments.

1. Complaint. Any Owner within the community may send the Association a formal, written complaint via either electronic mail or regular mail of a covenant or rule violation, with as much information as is known. Complaints may also be initiated by the Manager, any member of the Board of Directors. Complaints that cannot be independently verified by a Board member or the Association's management agent must be in writing. The Board shall have no obligation to consider oral complaints or anonymous complaints. The Board shall have the authority to determine whether a written complaint is justified before continuing with the Notice and Hearing Procedure.

2. Notice of Alleged Violation. A Notice of Alleged Violation of any provisions of the Declaration, Bylaws, Rules and Regulations, or Resolutions shall be provided in writing to the applicable Owner as soon as reasonably practicable following the receipt of a complaint or discovery by the Board of such violation. The Board may also, at its option, provide a copy of such notice to any non-Owner violator. The notice shall describe the nature of the violation and the possible fine that may be imposed, the right to request a hearing before the Board to contest the violation or possible fine, and may further state that the Board may seek to protect its rights as they are specified in the governing legal documents. Warning letters shall be deemed to be routine notices and may be sent by regular first class mail. All other notices shall be sent by certified mail.

3. Request for Hearing. If an Owner desires a hearing to challenge or contest any alleged violation and possible fine, or to discuss any mitigating circumstances, the Owner must request such hearing, in writing, within 10 days of the date of the Notice of Alleged Violation. The request for hearing shall describe the grounds and basis for challenging the alleged violation or the mitigating circumstances. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing shall be deemed forever waived. If a hearing is not requested within the 10 day period, the Board shall determine if there was a violation based upon the information available to it, and if so, assess a reasonable fine as set forth in the fine schedule, within 10 days of the expiration of the 10 day period. The Board of Directors shall give written notice of said fine to the applicable Owner.

4. Board of Directors to Conduct Hearing. The Board shall hear and decide cases set for hearing pursuant to the procedures set forth herein. The Board may appoint an officer or other Owner to act as the Presiding Officer at any of the hearings. The Board shall determine whether a violation exists and impose fines.

5. Conflicts. Any Board member who is incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Association prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure shall be made at the hearing, and the Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear a case, the Presiding Officer may appoint an Association member, in good standing, to serve as a voting member of the hearing board.

6. Hearing. The Board shall inform the Owner of the scheduled time, place and date of the requested hearing by certified mail. The Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall establish a quorum, explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board. The complaining parties and the Owner shall have the right, but not the obligation to be in attendance at the hearing. Each party may present evidence, testimony, and witnesses. The decision of the Board at each hearing shall be based on the matters set forth in the Notice of Alleged Violation and Hearing, Request for Hearing, and such evidence as may be presented at the hearing. Unless otherwise determined by the Board of Directors in accordance with the terms of the Colorado Common Interest Ownership Act, all hearings shall be open to attendance by all members of the Association. If a complaining party is unable to attend the Hearing, he or she may instead submit a letter to the Board explaining the basis of the complaint.

7. Decision. After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its written findings and decision, and impose a reasonable fine, if applicable, within 30 days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority vote of the Board of Directors or hearing body. The Board may also issue and record with the Clerk and Recorder, a Notice of Violation. Upon notice of satisfactory compliance with the Association's governing documents, the Notice of Violation may be released by the Association issuing and recording a Release of Notice of Violation.

### **B. Fine Schedule.**

1. The following fines are guidelines for violation of the provisions of the Declaration, Bylaws, Rules and Regulations and Resolutions of the Association:

First violation:	Warning letter
Second violation:	\$ 25.00 + certified mail cost
Third violation:	\$ 50.00 + certified mail cost
Fourth violation:	\$100.00 + certified mail cost
Subsequent violations:	\$100.00 + certified mail cost

The Board reserves the right to fine for first violations of rules that involve health and safety issues and other violations where a warning may not be deemed necessary by the Board in its reasonable discretion. Additionally, upon prior written notice, the Board reserves the right to levy fines in excess of the above referenced schedule, if the fines set forth in this schedule are not likely to provide effective incentives to induce compliance.

The Board may waive all, or any portion, of the fines if, in its reasonable discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the violator coming into compliance with the Declaration, Bylaws or rules.

2. All fines shall be due and payable upon notice of the fine. A fine will be late and considered delinquent if not paid within 10 days of the date that the Owner is notified of the imposition of the fine. Interest and late charges may be imposed on fines not paid when due in accordance with the terms of the Collection Policy. All fines and late charges shall be considered an assessment and may be collected as set forth in the Declaration. Fines shall be in addition to all other remedies available to the Association pursuant to the terms of the Declaration and Colorado law, including the Association's right to collect attorney fees as authorized by Colorado law.

#### C. Additional Enforcement Rights

1. Legal Action. The Association, at any time, may pursue legal action against an Owner to enforce the provisions of the Declaration, Bylaws, rules or resolutions without first following the preceding notice and hearing procedures, if the Board determines that such action is in the Association's best interests.

2. Towing of Vehicles. The Association may tow vehicles parked in violation of the Declaration or the rules and regulations.

3. Suspension of Rights to Use the Common Areas. The rights of an Owner to use the Common Areas shall be automatically suspended if the Owner is more than 10 days delinquent in payment of assessments.

4. Suspension of Right to Vote. The right of an Owner to vote shall be automatically suspended if the Owner is more than 10 days delinquent in payment of any assessment, fee, or other charge.

D. Failure to Enforce. Failure of the Association to enforce the Declaration, Bylaws, rules and resolutions will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any of the above referenced governing documents for the Association.

## VI. DISPUTE RESOLUTION POLICIES AND PROCEDURES

A. Disputes between Association and Owners Regarding Collection and Covenant and Rule Enforcement Matters. Disputes between the Association and Unit Owners regarding assessment collection matters and covenant and rule enforcement matters are addressed in the Collection Policy and the Covenant and Rule Enforcement Policy.

B. Disputes Between Residents. The Association encourages Owners or residents with disputes among themselves to resolve such disputes without court proceedings. The Association may take reasonable steps to facilitate negotiation or mediation between Owners and/or residents, but will have no responsibility for any costs incurred by the parties to the dispute resolution process. For any step in the dispute resolution process, the parties are not waiving their right to employ legal counsel at their own expense to assist them.

### C. Required Dispute Resolution Procedure

1. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the Association's property manager.

2. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than 10 or more than 30 days from the date of receipt of the request.

3. The Owner, in such request and at the hearing, shall make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's grievance.

4. If the dispute cannot be resolved, the parties may utilize the discretionary mediation procedure set forth below, but shall not be required to do so.

D. Discretionary Dispute Resolution Procedures. The procedures set forth below may be used in disputes between Owners and residents. At its discretion, the Board of Directors may utilize the procedures set forth below to resolve disputes with Owners prior to filing litigation.

1. Negotiation. A request for dispute resolution by negotiation may be initiated by an Owner or the Association. Any such request shall be in writing stating the nature and details of the dispute and shall be personally delivered to the other party. So long as the other party agrees to negotiate, a meeting shall be held between the parties to begin a good faith attempt to negotiate a resolution not less than 10 or more than 30 days of receipt of such request, unless otherwise extended by written agreement. Through negotiation, the parties will communicate directly with each other in an effort to reach an agreement that serves the interests of both parties. Should the dispute pertain to property issues, each party will be granted the right to inspect the alleged defects or problems at a time convenient to everyone involved.

2. Mediation. If the dispute is not resolved by negotiation, any party may request in writing that the issue be submitted to mediation. If the parties agree to mediate the dispute prior to seeking other remedies, they shall participate in good faith in the mediation. The role of the mediator is to facilitate further negotiation between the parties. The mediator will not have power to decide how to resolve the dispute but will use recognized, accepted mediation techniques to assist the parties in making that decision. The mediator shall be selected by a consensus of the parties involved within 15 days of the receipt of the request. Any cost of mediation will be shared equally among the parties unless they and the mediator agree otherwise.

## **VII. RESERVE STUDY POLICY**

A. The Association will update or prepare internally or externally a reserve study for the portions of the community maintained, repaired, replaced, and improved by the Association when in the Board's discretion a reserve study or update is necessary, but not less than every 5 years. Factors the Board may consider in ordering a reserve study include but are not limited to the following: substantial changes directly affecting the cost of replacements and/or repairs, insurance settlements, natural disasters, substantial changes in the economic climate, and substantial changes in the financial condition of the Association.

B. A reserve study will be based on a physical and financial analysis of the Common Interest Community. The individual or individuals preparing the reserve study may or may not have professional experience in conducting a reserve study.

C. A reserve study is not required to provide a funding plan for recommended work. If a funding plan is requested or prepared by the Board, it will identify projected sources of funding for the work intended to be completed. The Board may use any and all sources of funding allowed by the Association's governing documents.

## **VIII. INVESTMENT OF RESERVES POLICY**

A. Standard of Care. With regard to investment of reserve funds, directors and officers shall be subject to the standard of care outlined below. Officers, for purposes of this policy only, means any person designated as an officer of the Association and any person to whom the Board delegates responsibilities, including, without limitation, a managing agent, attorney, or accountant employed by the Board.

1. Each director and officer shall perform their duties regarding investment of reserves in good faith, in a manner the director or officer reasonably believes to be in the best interests of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In the performance of their duties, a director or officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (a) one or more officers or employees of the Association whom the director or officer reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, professional property manager, public accountant, or other persons as to matters which the director or officer reasonably believes to be within such person's professional or expert competence; or (c) a committee of the Association on which the director or officer does not serve if the director reasonably believes the committee merits confidence.

2. A director or officer shall not be considered to be acting in good faith if the director or officer has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director or officer shall not be liable to the Association or its Members for any action the director or officer takes or omits to take as a director or officer if, in connection with such action or omission, the director or officer performs his duties in compliance with this policy. A director or officer, regardless of title, shall not be deemed to be a trustee with respect to the Association or with respect to any property held or administered by the Association.

B. Investment Vehicles. Reserves may be invested in certificates of deposit, money market deposit accounts, money market funds, U.S. treasury and government obligations, municipal bonds and other state obligations, and other investments pursuant to the Association's investment goals. No funds shall be deposited or invested except in authorized investment funds. The Board of Directors may, but shall not be obligated to, require that investments must be insured by FDIC, SIPC or comparable insurance.

C. Investment Goals. The reserve funds shall be invested to achieve the following goals, in descending order of importance:

1. Promote and ensure the preservation of principal;
2. Structure maturities to ensure liquidity and accessibility of funds for projected or unexpected expenditures;
3. Mitigate the effects of interest rate volatility upon reserve assets;
4. Seek the highest level of return that is consistent with preserving the principal and accumulated interest;
5. Minimize investment costs.

D. Criteria. The Board may consider the following circumstances in investing reserve funds:

1. General economic conditions;
2. Possible effect of inflation or deflation;
3. Expected tax consequences;
4. Role that each investment plays in the overall investment portfolio;

5. Other resources of the Association.

E. Review, Authorization and Records.

1. The Board of Directors shall establish the amount, if any, to be transferred to reserve funds on an annual basis.
2. All accounts, instruments and other documentation of such investments shall be subject to the approval of, and may from time to time be amended by, the Board of Directors as appropriate, and shall be reviewed at least once per year.
3. The President, Treasurer or Manager, if authorized by the Board, shall be authorized and empowered to purchase, invest in, acquire, sell or assign any and all types and kinds of investments meeting the goals in paragraph VII(C) above; and to enter into agreements, contracts and arrangements with respect to such security transactions and to execute, sign or endorse agreements on behalf of the Association. To withdraw or transfer funds, the signature of two of the aforementioned persons shall be required.
4. The Association's manager or other person designated by the Board shall maintain monthly statements, including detailed accounting of current values, income and all transactions.

F. Insurance. The Association shall carry fidelity insurance to protect against theft or dishonesty from anyone with access to the reserve funds to the extent such insurance is reasonably available.

## IX. RECORDS INSPECTION POLICY AND PROCEDURE

A. Association Records. The Association shall maintain, at a minimum, the following records:

1. financial records sufficiently detailed to enable the Association to provide statements of unpaid assessments in accordance with the Colorado Common Interest Ownership Act;
2. minutes of Membership meetings, minutes of Board meetings, a record of all actions taken by the Members or Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association, and a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board;
3. a record of Members in a form that permits preparation of a list of names and addresses of all Members, showing the number of votes each Member is entitled to vote ("Membership list");
4. the Articles of Incorporation, Declaration, Covenants, Bylaws, rules and regulations, and resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations, and obligations of Members;
5. written communications within the past three years to Members generally as Members;
6. a list of the names and business or home addresses of its current directors and officers;
7. its most recent annual report, if any; and
8. all financial audits or reviews conducted pursuant to the Colorado Common Interest Ownership Act during the immediate preceding three years.

B. Criteria for Inspection. Records shall be made reasonably available for inspection and copying by a Member or the Member's authorized agent. "Reasonably available" means available during normal business hours upon notice of 5 business days or at the next regularly scheduled meeting, if such meeting occurs within 30 days after the request, to the extent that:

1. the request is made in good faith and for a proper purpose;
2. the request describes with reasonable particularity the records sought and the purpose of the request; and
3. the records are relevant to the purpose of the request.

All requests shall be submitted on the form attached to this policy.

C. Restrictions on Use of Membership List. A Membership list may not be:

1. used to solicit money or property unless such money or property will be used solely to solicit votes of the Members in an election held by the Association;
2. used for any commercial purpose;
3. sold to or purchased by any person; or
4. used for any other purpose prohibited by law.

Any Member requesting a Membership list shall be required to sign the agreement attached to this policy indicating that he/she will not use the list for the purposes stated above.

D. Review of Records.

1. Upon receipt of a request, the Association shall make an appointment with the Owner, at a time convenient to both parties (subject to the requirements of Paragraph 2 above), to conduct the inspection. Unless otherwise agreed, all records shall be inspected at the office of the Association's managing agent. All appointments for inspection will be limited to two hours. If additional time is needed, another appointment will be made within two weeks, at a time convenient to both parties.



2. At the discretion of the Board of Directors or Manager, records will be inspected only in the presence of a Board member, management company employee or other person designated by the Board.

3. During inspection, an Owner may designate pages to be copied with a paperclip, post-it note, or other means provided by the Association. Copies will be made at a cost based on the standard schedule of fees charged by the Association's management agent, which charges shall include retrieval costs for off-site files. The Owner shall be responsible for paying the total copying cost prior to receiving the copies.

4. Records may not be removed from the office in which they are inspected without the express written consent of the Board.

5. The following records will not be available for inspection without the express written consent of the Board:

- a. documents which are privileged or confidential between attorney and client or which concern pending or imminent court proceedings;
- b. documents related to investigative proceedings concerning possible or actual criminal misconduct;
- c. documents which, if disclosed, would constitute an unwarranted invasion of individual privacy;
- d. documents which the Association is prohibited from disclosing to a third party as a matter of law; and
- e. inter-office memoranda, preliminary data, working papers and drafts, and general information or investigations which have not been formally approved by the Board.

E. Remedies. The Association may pursue any Owner for damages or injunctive relief or both, including reasonable attorney fees, for abuse of inspection and copying rights, including use of any records for a purpose other than that stated in the Owner's request.

IN WITNESS WHEREOF, the undersigned certify these Governance Policies were adopted by resolution of the Board of Directors of the Association on this 30th day of January, 2014.

PHEASANT CREEK HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation,

By: Mark Taylor

Its: President

ATTEST:

By: Monis Kemper

**PHEASANT CREEK HOMEOWNERS ASSOCIATION, INC.**  
**REQUEST FOR ACCESS TO ASSOCIATION RECORDS**

Member Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Pursuant to state law and the Association's Records Inspection Policy, I hereby request that Pheasant Creek Homeowners Association, Inc. provide access to the records of the Association. I understand that upon receipt of this request, the Association will set an appointment with me during regular business hours.

1. The records that I wish to review are (attach a separate piece of paper if necessary):

A . \_\_\_\_\_  
B . \_\_\_\_\_  
C . \_\_\_\_\_

2. I certify that my request to review the records of the Association is for a proper purpose related to my Membership in the Association, and that this request is not for commercial purposes or my personal financial gain. Specifically, my purpose for wanting to review the records of the Association is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I acknowledge and accept the Association's records inspection policy. I acknowledge and accept that the records of the Association will be made available to me only at such time and place as the Association's policy provides, and that there may be a cost associated with providing copies of these documents for me. I agree to pay any costs associated with copying these documents. In the event the records provided to me by the Association are used for any improper purpose, I will be responsible for any and all damages, penalties and costs incurred by the Association, including attorney fees, and I shall be subject to all enforcement procedures available to the Association through its governing documents and/or Colorado law.

Member Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**AGREEMENT REGARDING USE OF THE MEMBERSHIP LIST FOR  
PHEASANT CREEK HOMEOWNERS ASSOCIATION, INC.**

Member Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

I have requested a copy of the Membership list for Pheasant Creek Homeowners Association, Inc.

The list shall be used only for the following purpose(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that under the terms of Colorado law, the Membership or voting list, or any portion thereof, may not be obtained or used for any purpose unrelated to my interests as a Member of the Association. I further understand and agree that without limiting the generality of the foregoing, the Membership list, or any portion thereof, may not be:

- A. Used to solicit money or property unless such money or property will be used solely to solicit votes of the Members in an election held by the Association;
- B. Used for any commercial purpose;
- C. Sold to or purchased by any person; or
- D. Used for any other purpose prohibited by law.

In the event the list is used for any improper purpose, I will be responsible for any and all damages, penalties and costs incurred by the Association, including attorney fees, and I shall be subject to all enforcement procedures available to the Association through its governing documents and/or Colorado law.

Understood and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by:

Member Signature: \_\_\_\_\_ Date: \_\_\_\_\_