

## Concept

4 residents who have the fence on their property would prefer to maintain the fence themselves as opposed to having the HOA remove it. With the fence also being within the Landscape Easement Area, the HOA would like to enter into a Fence Service Contract with each resident; same contract for every resident.

## Article XII of HOA Bylaws

***“The Board of Directors, on behalf of the Association, may obtain and pay for the service of any person or entities, to manage corporate affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as Board of Directors shall determine to be necessary or desirable for the proper operation of the Landscape Easement Area...”***

“Any agreement for professional management of the Property...must provide for the termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice, and shall have a maximum contract term of three years, but may be renewable by agreement of the parties for successive terms.”

Note - in the above summary of Article XII, I did not include reference to “Declarant” since “Declarant” is defined to be “Hans Hagen Homes, Inc ...” and we have no intent to enter into any contracts with them.

## Article VI of HOA Declaration of Covenants

***“The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property...”***

“Any agreement for professional management of the Property...must provide for the termination by either party without payment of a termination fee on ninety (90) days or less written notice **without cause (sic)** and by either party upon thirty (30) days or less written notice **for cause (sic)**, and shall have a maximum contract term of three years, but may be renewable by agreement of the parties for successive terms.”

Note - in the above summary of Article VI, I did not include reference to “Declarant” since “Declarant” is defined to be “Hans Hagen Homes, Inc ...” and we have no intent to enter into any contracts with them.

## Seven Ponds HOA Board of Directors interpretation of Bylaws Article XII and Covenants Article VI

- 1) Just as the HOA is allowed to enter into a service contract for lawn mowing/weed control w/in the LEA, the HOA would also appear to be allowed to enter into a service contract with another party for them to provide maintenance and repairs to the fence w/in the LEA.
- 2) There is nothing in the Bylaws or Covenants which precludes a homeowner/resident from being a service provider to the HOA.
- 3) There is nothing in the Bylaws or Covenants which precludes the HOA from contracting with a homeowner/resident for them to provide certain services to the HOA.
- 4) There is nothing in the Bylaws or Covenants which precludes the HOA from providing non-cash consideration in exchange for the services to be provided as part of the service contract.

## **Basics of Agreement**

The Seven Ponds HOA and Homeowner are in mutual agreement as to the following:

- 1) The wooden fence that is located on the Homeowner Property (to be a defined term in the contract) is mostly, if not entirely, within the Seven Ponds HOA Landscape Easement Area (defined by reference to the Declaration of Covenants).
- 2) While the Seven Ponds HOA is responsible for maintaining the Landscape Easement Area, the HOA Board of Directors and Officers has expressed a concern about the long term viability of the fence and has determined that the only additional funds the HOA is obligated and willing to spend on the fence will be for the removal of said fence. The HOA will not allocate any additional funds to pay for any additional maintenance and/or repairs to the fence.
- 3) Homeowner would prefer that the HOA not remove the fence until it is absolutely necessary to do so and is willing to enter into a Service Contract with the HOA to help facilitate this.
- 4) During the term of the contract, Homeowner agrees that they will provide all necessary maintenance and complete all necessary repairs to the fence to keep it structurally sound and in an acceptable state of repair. All costs associated with providing said maintenance and completing said repairs will be the responsibility of the Homeowner. In return, and as consideration for the Homeowner agreeing to provide all necessary maintenance and complete all necessary repairs, the Seven Ponds HOA agrees to delay and/or defer the removal of said fence during the term of this contract as long as said fence remains structurally sound and in an acceptable state of repair.
- 5) Homeowner must be the first to sign the contract. The contract becomes effective on the date that the contract is signed on behalf of the HOA. Once signed, the HOA will send a copy of the signed contract to Homeowner in electronic file format.
- 6) Upon the contract becoming effective, Homeowner agrees to assume all HOA liabilities that may arise from and that are related to and associated with said fence, but only those HOA liabilities relating to incidents, events or occurrences that are related to said fence and that first occur while this contract is in force.
- 7) If the HOA, in its sole discretion, makes a determination that the Homeowner is not providing all necessary maintenance and completing all necessary repairs to the fence to keep it structurally sound and in an acceptable state of repair, the HOA will provide a “non-performance” notice in writing to the Homeowner. If the Homeowner does not remedy the issue of “non-performance” w/in 14 days, the HOA may terminate this agreement for cause without any further notice and take whatever actions relative to the fence it deems necessary.
- 8) Either party may terminate this contract without cause by providing the other party with 30 days advance written notice.
- 9) Term of Contract – initial term of 3 yrs but may be renewed by agreement of both parties for successive terms.

## **Questions:**

Status of Homeowner as service provider – in providing the maintenance and repair services, do we need to make it clear that the Homeowner will be acting in an independent contractor capacity and is in no way acting in an “HOA employee” capacity?

Does the liability assumption provision as outlined earlier in this document protect the HOA in the event the Homeowner claims to have injured themselves while performing the necessary maintenance and/or repairs?

Do we need to say anything about whether the HOA will allow the Homeowner to use a sub-contractor to perform the maintenance and/or repairs?

Remedy for non-performance – is the HOA termination provision acceptable?

Termination without cause – can a minimum 30 day notice provision be used or would a Service Contract as outlined above be deemed to be an “...agreement for professional management of the Property...” which would mean that the contract would have to allow for ## “...days or less...” notice? If so, what value do the Bylaws/Covenants termination provisions provide when they require ## “...days or less...” notice? Doesn’t this effectively mean that you are limited as to how far in advance you can provide notice of your intent to terminate but you are not actually required to provide any advance notice of your intent to terminate?

What happens in the event the Homeowner sells their home?