ISSUES RELATED TO STANTON CREEK HOA AND PROPOSED COVENANT REWRITE

1. **All meeting of the Board should be announced to the public through postal mail, email and text where applicable, as well as posted on the community board in the common area, per Colorado Revised Statute 38-33.3-308, at least 10 days prior to any meeting, to include the agenda of the meeting, and all meetings should be open to attendance by all members of the association. Attendance should be made accessible to all by providing a zoom link, although not required specifically under the statute, with technology easily available, this courtesy should be extended. All meetings and discussions of the board, should be open to attendance by members, with the exception of "Executive/closed door" meetings which per Section 2, citation 38-33.3-308 "MEETINGS. (4) Matters for discussion by an executive or closed session are limited to : (e) Any matter, the disclosure of which would constitute an unwarranted invasion of individual privacy, INCLUDING A DISCIPLINARY HEARING REGARDING A UNIT OWNER AND ANY REFERRAL OF DELINQUENCY; EXCEPT THAT A UNIT OWNER WHO IS THE SUBJECT OF A DISCIPLINARY HEARING OR REFERRAL OF DELINQUENCY MAY REQUEST AND RECEIVE THE RESULTS OF ANY VOTE TAKEN AT THE RELEVANT MEETING" All other meetings are to be open to all members.**

2. **The current Covenants, under section 5.04, state that "Unless contained within the annual budget or provide for by Reserve Funds as set forth in section 6.08 hereof, the Association must have the approval of a majority of the Lot owners for any single maintenance and repair expense of over $2,500" I don't see where this exists in the proposed rewrite, however, Article 4 in the proposed amendment, creates multiple potential creations of Liens and Assessments "imposed by the Association" including a very long list of potential fees, and also include "Special Assessments" in Section 4.4, and Supplemental Assessments in Section 4.5 "The Assessments, along with any and all additional charges, become a continuing lien upon the lot" Therefore it appears, that previously, homeowners needed to approve expenditures above $2,500 by a majority, and the proposal now, appears to be that assessments, fees, etc. may simply be charged to homeowners, as it states in several places, that the ByLaws may be changed from time to time, which could negate any opportunity for homeowner input at any time.**

3. **Architectural Control – In the current Covenants, Section 7.02, it states that plans and specifications for any proposed changes, must be submitted and approved. It goes on to state "In the event the Architectural Control Committee fails to approve or disapprove such design, location and color scheme within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with." It also goes on to say that the "Design Review Guidelines and Fence Design Guidelines may be amended from time to time by a 67% vote of the members of the Association" This seems very reasonable, and could potentially require proof of receipt of the submission, perhaps by certified mail or other electronic means, and also maintains control of the design and fence guidelines, appropriately with the majority of Homeowners, if they are**

to be amended. The proposed rewrite states in Section 6.3, first, that "the committee may require that the applicant reimburse the board for actual expense incurred by it in it's review and approval process" This seems burdensome and unreasonable to a homeowner, especially given that it goes on in Section 6.6 to state: "In the even the committee fails to take any action on submitted plans and specifications within 30 days after the committee has received the plans and specifications, approval shall be deemed to be denied. If a submittal is denied as a result of the committee's failure, the submitting owner may resubmit, indicating that the application is a resubmittal and in the event the committee fails to take any action on such resubmitted plans and specifications within 30 days approval shall again be deemed to be denied" This is completely unreasonable, and must be addressed. Our current Covenant, which all of us purchased our homes under, states, that if we don't get a response, we may proceed and I don't believe that many, if any, homeowners would find this proposal acceptable. Further, charging homeowners for the review process seems unreasonable in any case. Also in the existing Covenants, under 7.02, it states the 67% of the membership must vote for any changes to the Guidelines, but in the new proposal, section 6.5 takes that away from the membership stating "The committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association" These decisions should still be within the majority of the members of the Association.

4. **<u>House Bill 22-1137</u> was created to help prevent Homeowners from losing their homes to foreclosure over unpaid dues among other provisions in the law. It states that "The Association may refer a delinquent account to a collection agency or attorney only if a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to section 38-33.3-308(4)(e)" The necessity of this vote, does not appear in the rewrite proposal. Further, it states in Section 5 38-33.3-316.3(4) " If a unit owner who has both unpaid assessments and unpaid fines, fees or other charges, makes a payment to the Association, the Associate shall apply the payments first to the assessments owed and any remaining amount of the payment to fines, fees or other charges owed". This is extremely important because it also states "The Association shall not pursue Forclosure against the unit owner based on fines owed" I Further states in "Section (8) An Association Shall not (c) Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following: (I) Fines that the association has assessed against the unit owner; or (II) Collection costs or attorney fees that the association has incurred and that are only associated with the assessed fines. In the Collection Policy, dated 8/30/22, this is correctly stated, per the law, however in the proposed amendment, in section 4.7, it is contrary to the law, stating that all sums collected will be applied first to attorney fees, and all other fees, prior to application to the payment to special or regular assessments. This is contrary to the law at this date and needs to be in line with current law. Even though it would not be enforceable at this time, it would force someone already facing obvious financial hardship, to face a legal battle to show it unenforceable as it is contrary to the law. By applying the law correctly and following the collection policy currently in place, it allows a homeowner, who can bring any actual dues and assessments current, to avoid foreclosures, which is the purpose of that law.**

5. **<u>Section 4, of House Bill 22-1137</u> amends and adds to 38-33.3-316 (12) which states: "If a unit has been foreclosed, a member of the executive board, an employee of a community association management company representing the association, an employee of a law firm representing the association, or an immediate family member, as defined in section 2-4-401 (3.7), of any such executive board member, community association management company employee, or law firm employee, shall not purchase the foreclosed unit" This is in direct opposition to the proposed amendment, under 4.8 (d) which states: "The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage , convey or otherwise deal with the same" This appears in direct conflict of the law and incentivizes foreclosure action by the Association and as it is contrary to the law, should be eliminated from the proposed amendment.**

6. **<u>Recital F of the amendment</u> states that one of the purposes of the amendment is to remove provisions that do not comply with current state law however all cited above, do in fact, not comply with current state law and therefore must be stricken or modified to comply with current state law. It also states that it seeks to provide the association with sufficient power to create rules and regulations, however rules and regulations should be created by the majority of the members, through process. Section 2.3 (a) speaks to the right of the Association to promulgate and publish Rules and Regulations, not to create them .**

7. **<u>Section 2.6 Easements for the association</u>, refers to easement granted to the Association, but needs to specify that it would be for emergencies only. If not for emergency, permission must be obtained from the owner, and may be denied if not emergency or other true necessity. In non-emergency situation, 10 days should be allowed for owner to approve or deny the request.**

8. **<u>Section 3.2 – General purposes and powers of the association.</u> The last sentence of the first paragraph reads :"The Association shall have all power necessary or desirable to effectuate such purposes" This is much to broad in scope, and should instead read: "The Association shall have only power necessary or desirable to effectuate such purposes specifically authorized by this document.**

9. **<u>3.</u>5 – Right to Notice. Per the By-laws, homeowners are to be notified at least 10 days prior to all meetings. These meeting should be held in a space large enough to accommodate a reasonable amount of homeowners, should they choose to attend, and/or zoom link provided.**

10. **<u>5.</u>2 – Authority – This states:" (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents" – This is deeply concerning as nothing in these documents should limit the owners use of their lot unless the home was actually sold in a foreclosure sale so this should be restated or eliminated. "(b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and**

other Governing Documents" – which seems to suggest that the Board can basically rewrite anything they wish at any time. A Declaration, by definition, is a statement of terms and should not be able to altered without the approval of the majority of homeowners. "(c) The Board may establish penalties for the infraction of all regulations and owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions" – These proposed penalties must be defined and disclosed, with appropriate notice and full disclosure, which is not provided here. "(d) All fines imposed are collectable as assessments" – Again, per (b) and (c), it appears the Board can create rules and regulation and impose fines, without notification, or other disclosure. This should be amended to limit any changes to those approved by the majority of homeowners, and to define any proposed penalties.

11. **5.4 (h) "The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction and for the implementation of other restrictions in the Declaration and as allowed by law" – This appears also to allow for creating new rules and regulations without the consent or even disclosure to, the majority of homeowners. This should be amended to allow for homeowner approval by a majority or it should be removed.**

12. **Section 5112 – Nuisances – This makes reference to "embarrassment, improper and offensive" but no definitions of these terms are given. These should be defined as it is too broad and unclear.**

13. **Section 5.13 – Vehicular Parking, Storage and Repairs – this refers to no overnight parking of boats, RV's and other kinds of vehicles, however many of our neighbors own these kinds of vehicles and should have the ability to have them at their homes for a reasonable period of time. There is no actual RV parking on any of our lots so permanent storage is not an option, but people do have guests that visit in RV's and should be allowed to park for a period of time, and certainly our neighbors should be able to park their own vehicles for a period of time. Not allowing overnight parking is unreasonable.**

14. **Section 5.19 – Insect, Bedbug and Vermin – We live adjacent to a natural area which is full of all kinds of wildlife and mice, voles, etc. are going to be an ongoing issue as well as mosquitos, spiders, etc. Nothing that one homeowner does will eliminate these issues from the neighborhood and we all do as we choose to deal with these issues in and around our homes. This section seems inappropriate and unenforceable given where our neighborhood is located and it is impossible to prove that all mice are gone for example. This should be modified to be less onerous and under no circumstances should the Association have any authority to have toxins or poisons applied to anyone's property, as so many people are chemically sensitive.**

15. **Section 5.26 – Rules and Regulations states: "In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the**

Community or any portion thereof may be adopted, amended or replaced from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof" – This needs to be amended significantly or stricken as it essentially gives the Board authority to basically rewrite this declaration or any portion thereof, at any time without input or consent of the homeowners, and to establish penalties for that which homeowners have not consented to nor been given notice of. Nothing in the declaration should be modified in any way without the majority of homeowner's consent and certainly no penalties without full disclosure and notice. This section should really be eliminated as it goes against the spirit of having a declaration, and removing homeowner notification, involvement and consent is not consistent with the best interests of the community.

16. **<u>Section 6.</u>1 – Architectural Review – Required Approval – Certainly large scale items such as painting or major structural changes or large landscape projects make sense to undergo the review and approval process, but putting up a string of exterior lights or small plantings should not be subject to that process especially given the potential 60 day wait, with potentially no reply and assumed denial as such. If people decide they want to string up lights in their back yard, or plant a garden or such thing or some other small project that doesn't interfere with anyone else, they should be able to enjoy their home and do that. This section should be modified and limited to large, projects, whole house painting, etc.**

17. **<u>6.</u>8 – Commencement and Completion of Construction – Construction often takes longer than anticipated, and contractors are often unreliable, and supply chains are limited, so projects can easily take longer than anticipated, so these timelines should be increased or eliminated as sometimes owners don't know how long construction may actually take.**

18. **<u>Article 8 –</u> General Provisions –" (b) The Association may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, WITHOUT LIMITATION" - It seems that most of the real estate laws limit the amount of penalties, etc. so this seems concerning to be without limitation. It also states in " (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violators lot" - It does not define what a "reasonable monetary fine" is, nor the hearing process.**