

**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR LAKE POINTE**

This declaration of covenants, conditions, easements and restrictions for LAKE POINTE, a subdivision in Flathead County, Montana, is dated October 25, 2005. ~~It is made by ROCKY MOUNTAIN RECREATIONAL COMMUNITIES, LLC, a Montana limited liability corporation.~~

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. ~~Declarant is the owner of a certain tract of real property located in Flathead County, Montana, more particularly described in Article I hereof as "Lake Pointe."~~
- C. Lake Pointe possesses great natural beauty which ~~Declarant~~ **the Lake Pointe Homeowner Association** has preserved and intends to preserve through the use of a coordinated plan of development and the terms of this Declaration. It is anticipated that the plan will provide for comprehensive land planning, preservation of the natural, environment and sensitive riparian areas, harmonious and appealing landscaping, improvements, and the establishment of an Association to govern the Community Areas of Lake Pointe. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.
- D. Each Owner shall receive fee title to a Lot and a Membership in the Association appurtenant to the same Lot.
- E. ~~Declarant may but is not obligated to annex additional land into Lake Pointe, which land is not presently included in Lake Pointe.~~
- F. ~~By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of Lake Pointe and the interests therein conveyed and to establish thereon a planned unit development.~~

NOW, THEREFORE, it is hereby declared that Lake Pointe shall be subject to the following Declaration.

ARTICLE I
DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the following meanings:

1. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Owner pursuant to Article VII, Section 2, hereof.
2. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
3. "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Maintenance Charge.
4. "Assessment Lien" shall mean the lien created and imposed by Article VII.
5. "Assessment Period" shall mean the term set forth in Article VII, Section 7.
6. "Association" shall mean the Montana nonprofit corporation ~~to be organized by Declarant~~ to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. ~~Declarant hereby reserves the exclusive right to cause such~~ The Association ~~to be incorporated and intends to name~~ **is** the Association "LAKE POINTE HOMEOWNERS' ASSOCIATION, INC."
7. "Association Land" shall mean such part or parts of Lake Pointe, together with the buildings, structures and improvements thereon including any other real property which the Association now or hereafter owns in fee or in which the Association now or hereafter has a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.
8. "Board" shall mean the Board of Directors of the Association.

9. “Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
10. “Community Area,” “Community Areas” and “Common Areas” shall mean (a) all Association Land and (b) all land or right-of-way easements within Lake Pointe, including but not limited to the Roadway System, which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Association to maintain. The term “Community Area” does not include Water Resources (unless such Water Resources are located on Association Land).
11. “Community Expense Fund” shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained thereunder, one for operating expenses and one for capital expenses which together shall constitute the Community Expense Fund.
12. “Community Expenses” shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of Lake Pointe and the Association and the maintenance of Water Resources as described in Article VII hereof and which determine the Annual Assessments made to Owners.
13. “Community Facilities” shall mean all Improvements, if any, constructed or located on Community Areas.
14. “Covenants” shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements set forth herein and as later amended or supplemented.
- ~~15. “Declarant” shall mean Rocky Mountain Recreational Communities, LLC, a Montana corporation, and the successors and assigns of Declarant’s rights and powers hereunder.~~
16. “Declaration” shall mean this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR LAKE POINTE, as amended or supplemented from time to time.

17. “Deed” shall mean a deed or other instrument conveying the fee simple title in a Lot.

18. “Design Guidelines” means those design guidelines for development of all the real property subject to the Declaration as established by the Declarant and/or the Design Review Committee from time to time. ~~Declarant or~~ **The** Committee reserves the right to modify the Design Guidelines. There is no assurance that such guidelines will not change from time to time. ~~and they may change with respect to unsold Lots, subject to the terms of the Declaration, after one or more other such Lots have been sold by Declarant.~~

19. “Design Review Committee” or “Committee” shall mean the Committee created pursuant to Article XI below.

20. “Dwelling Unit” shall mean any building or portion of a building situated upon an Owner’s Lot and designed and intended for use and occupancy as a residence by a Single Family.

21. “Lake Pointe” shall mean, refer to, and consist of the following described real property situated in Flathead County, Montana, and the development to be completed thereon, together with any real property hereafter annexed pursuant to the provisions of this Declaration:

Lots one (1) through forty-four (44) of the plat of The Harbor Village at Eagle Bend-Phase 2B, a subdivision located in the SE 1/4, SW 1/4 of Section 26, T27N, R20W, PMM, Flathead County, Montana, according to the records on file in the office of the Clerk and Recorder of Flathead County, Montana.

The Declarant currently intends, but is not required, to annex additional land described as:

Lots forty-five (45) through forty-nine (49) of the plat of The Harbor Village at Eagle Bend-Phase 2BA, a subdivision located in the SE 1/4, SW 1/4 of Section 26, T27N, R20W, PMM, Flathead County, Montana, according to the records on file in the office of the Clerk and Recorder of Flathead County, Montana,

and

Lots B1 through B4 of the plat of The Harbor Village at Eagle Bend-Phase 2BB, a subdivision located in the SE 1/4, SW 1/4 of Section 26, T27N, R20W, PMM, Flathead County, Montana, according to the records on file in the office of the Clerk and Recorder of Flathead County, Montana, and

The remainder of Tract 4B located in the SE 1/4, SW 1/4 of Section 26, T27N, R20W, PMM, Flathead County, Montana, according to the records on file in the office of the Clerk and Recorder of Flathead County, Montana.

Association may in its sole discretion annex additional land to Lake Pointe at any time within twenty-five (25) years of the recordation of this Declaration.

Commented [CN1]: Need to make sure the definitions of the property are correct to what is filed with the Flathead County Plot Plans.

22. “Eligible Mortgagee” shall mean and refer to a Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XVII of this Declaration.

23. “Exempt Property” shall mean the following parts of Lake Pointe:

(a) All land and improvements (i.e., Roadway System), if any, owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective.

(b) All Association Land, for as long as the Association is the owner thereof.

Property described in Item (a) of this Paragraph ~~24~~ **23** shall be fully exempt from all of the terms and provisions of this Declaration; however, all other Exempt Property described herein shall be exempt from assessments and membership in the Association and its associated privileges and responsibilities but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls.

24. “First Mortgage” means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

25. “First Mortgagee” means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

26. “Footbridge” shall mean that certain bridge structure as shown on the Master Development Plan and/or the Plat. The “Footbridge” shall be considered part of the Community Area.

27. “Improvements” shall mean the Dwelling Units and all other buildings, outbuildings, walkways, bridges, roads, driveways, utilities, exterior lighting, fences, walls, landscaping, fire breaks, trees, signs, fixtures, equipment and other improvements or facilities whether constructed upon a Lot or upon Community Areas.

28. “Landscaping” shall mean that portion of the Lot which is improved with lawn, ground cover, shrubbery, trees and the like and which may be **complemented** with earth berms, masonry, or similar materials, all harmoniously combined with other Improvements.

29. “Lease” shall mean a lease or sublease for the leasing or rental of a Lot and/or Dwelling Unit.

30. “Lot” shall mean any area of real property within Lake Pointe designated as a Lot on any Plat recorded by Declarant, including any portion of additional land added to Lake Pointe which is designated as a Lot. The term “Lot” includes all Residence Lots. All Water Resources located on a Lot shall be subject to the exclusive control and regulation of the Association as provided for elsewhere herein.

31. “Maintenance Charges” shall mean any and all costs assessed pursuant to Article X, Sections 2, 5 and 6.

32. “Manager” shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

33. ~~“Master Development Plan” shall mean the Plat, one or more unrecorded site plans and other documents showing and/or identifying the various Lots and Community Areas of Lake Pointe as approved by the Declarant, as the same may from time to time be amended, copies of which shall be on file at all times in the office of the Association. Declarant reserves the right to modify the Master Development Plan from time to time in its sole and exclusive subjective discretion.~~

34. “Member” shall mean any person holding a Membership in the Association pursuant to this Declaration.

35. “Membership” shall mean membership in the Association and the rights granted to the Owners ~~and Declarant~~ pursuant to Article VI to participate in the Association.

36. “Mortgage” shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot or an interest therein as security for the payment of a debt or obligation.

37. “Mortgagee” shall mean a beneficiary of a Mortgage as well as a named Mortgagee.

38. “Municipal Authority” shall mean the applicable governmental entity or municipality which has jurisdiction over some part of Lake Pointe including but not limited to **the Army Corps of Engineers.**

39. “Municipal Authority Agreement(s)” shall mean any development agreement entered into between ~~Declarant~~ **the Association** and a Municipal Authority.

40. “Owner” shall mean (a) any person(s) or entity(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot including, without limitation, one who is buying a Lot under a recorded contract, but excluding others who hold an interest therein merely as security and (b) any person(s) or entity(s) entitled to occupy all of a Lot under a lease for an initial term of at least **ten (10) years in which**

Commented [CN2]: Owner regarding lease and the responsibilities of lessee

case the fee owner or lessor of the Lot shall not be deemed the Owner thereof for purposes of this Declaration during the term of said lease.

41. “Plat” shall mean any subdivision plat affecting Lake Pointe filed in the office of the Recorder for Flathead County, Montana, as such may be amended from time to time, including but not limited to any such recorded plats respecting all or any portion of additional land.

42. “Recording” shall mean placing an instrument of public record in the office of the County Recorder of Flathead County, Montana and “Recorded” shall mean having been so placed of public record.

43. “Residence Lot” shall mean each of the Lots shown on the Plat of Lake Pointe and any additional lots platted within Lake Pointe or additional land annexed to Lake Pointe and any shown on any amended Plat of Lake Pointe.

44. “Resident” shall mean:

- (a) Each Owner of, and each tenant or lessee actually residing on, a Lot; and
- (b) Members of the immediate family of each Owner, tenant or lessee referred to in subparagraph (a) actually living in the same household with such Owner, tenant or lessee.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for use of the Community Areas if the Association shall so direct), the term “Resident” also shall include the on-site employees, guests or invitees of any such Owner, tenant or lessee.

45. “Roadway System” shall mean the system of internal and neighboring roadways for Lake Pointe. The Roadway System is part of the Community Area.

46. “Rules” shall mean the rules for Lake Pointe adopted by the Board pursuant to Article V, Section 3 and which shall include, without limitation, rules and regulations pertaining to fire protection of Improvements at Lake Pointe.

Commented [CN3]: Rules ?
Commented [CN4R3]: Lake Pointe Rules do not exist.

47. “Single Family” shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.

48. “Special Assessment” shall mean any assessment levied and assessed pursuant to Article VII, Section 5.

49. “Visible From Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on Neighboring Property, on the level of the base of the object being viewed.

50. “Water Resources” shall mean all water features located within Lake Pointe, whether on Lots or Community Areas, including but not limited to all lakes, ponds, rivers and drainage areas, all springs, streams, and other water features. The water features constituting the Water Resources whether located within the boundaries of a Lot shall be governed and maintained by the Association but shall not constitute a portion of the Community Areas of Lake Pointe except to the extent such Water Resources are located on Association Land.

ARTICLE II
PROPERTY SUBJECT TO LAKE POINTE DECLARATION

Section 1. General Declaration Creating Lake Pointe. ~~Declarant hereby declares that~~ All of the real property within Lake Pointe, including the real property identified in Article I, Section 21 together with any additional land annexed pursuant to Article XVI of this Declaration, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the Covenants as amended or modified from time to time. ~~Declarant may, however, impose less than all of the covenants on annexed additional land pursuant to Article XVI (b). Declarant intends to develop Lake Pointe by subdivision into various Lots and to sell or lease such Lots.~~ This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of Lake Pointe and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Lake Pointe and every part thereof. All of this Declaration shall run with Lake Pointe (i.e., the land described in Article I, Section 21) for all purposes and shall be binding upon and inure to the benefit of ~~Declarant~~, the Association, all Owners and Residents and their successors in interest.

Section 2. Association Bound. This Declaration shall be binding upon and shall benefit the Association.

Section 3. Declarant's Reservation of Rights.

(a) In addition to all other rights reserved by ~~Declarant~~ Association in this Declaration, ~~Declarant~~ hereby reserves the following rights:

- (1) To construct, complete, modify and remove the Improvements ~~Declarant~~ Association deems to be appropriate and to do all things reasonably necessary to property in connection therewith.
- (2) To construct and complete on the additional land or any portion thereof such Improvements as ~~Declarant~~ Association or said assignee or successor shall determine to build in its sole discretion.
- (3) To improve portions of Lake Pointe with such other or additional Improvements, facilities, or Landscaping designed for the use and enjoyment of all the Owners ~~or Declarant~~ or as such assignee or successor may reasonably determine to be appropriate.
- (4) To improve the surface areas of ~~one or more Lots or~~ the Association Land by Landscaping, fencing and other Improvements to allow portions of said properties to be used as recreational common area.
- (5) ~~To maintain sales offices, management offices, and signs advertising Lake Pointe in any areas of Lake Pointe owned by the Declarant. Declarant may relocate sales offices, management offices and models to other locations within Lake Pointe at any time.~~
- (6) ~~To amend the plat or any amended plat of the properties known as Lake Pointe so long as such amendments do not change the boundary of a Lot no longer owned by the Declarant. If, however, the Owner of such Lot consents, then the Declarant or its assignees or successors may also amend the plat or any amended plat in a manner that does change the boundary of the consenting Owner's Lot. By way of example and not as an exclusive enumeration of powers, the Developer, its assignees or successors may relocate, decrease, increase, add or eliminate Common Areas, Improvements, parts of the Roadway System, and the Lots themselves, and may adjust and change the boundaries and size of Common~~

~~Areas, Improvements, the Roadway System and Lots. None of these examples or similar actions shall be deemed to be an amendment of this Declaration of Annexation, or to the covenants, conditions and restrictions set forth herein, or to the Restated Declaration.~~

(b) The Declarant, for itself and any of its assignees or successors, Association reserves such easements and rights of ingress and egress over, across, through, and under Lake Pointe and any Improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration) to do or implement any and all of the powers reserved in above Article II, Section 3(a).

(c) An amendment to the plat or to any amended plat of the properties known as Lake Pointe shall not be deemed to be an amendment of this Declaration of Covenants, Conditions, Easements and Restrictions of Lake Pointe or of any amendments hereto.

ARTICLE III
EASEMENTS AND RIGHTS OF ENJOYMENT IN
COMMUNITY AREAS AND ASSOCIATION SERVICES

Section 1. Easements of Enjoyment. Subject to the limitations contained in this Article III and elsewhere in this Declaration, every Owner shall have a right and easement of enjoyment in and to the Community Areas which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) Suspension of Rights. The right of the Association to suspend the voting rights and right to the use of the Community Areas by any Member (i) for any period during which any Assessment against its Lot remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration, the Lake Pointe Rules or the Design Guidelines, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(b) Guest Limitations. The right of the Association to impose reasonable limitations on the number of guests per Member, who at any given time are permitted to use the Community Areas.

(c) Transfer of Association Land. The right of the Association to dedicate or transfer all or any part of the Association Land to any public agency, Municipal Authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or any Municipal Authority Agreement with the applicable Municipal Authority effective prior to the date hereof or specified on a Plat, no such dedication or transfer shall be effective unless such action is approved by the Owners of sixty-seven percent (67%) of the Memberships agreeing to such dedication or transfer, except that the Board shall have authority to transfer to such public agencies, Municipal Authority or utilities, easements and rights-of-way which are intended to benefit Lake Pointe and which do not have any substantial adverse effect on the enjoyment of the Community Areas by the Members.

(d) Rules. The right of the Association to regulate the use of the Community Areas through the Lake Pointe Rules. The Lake Pointe Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Community Areas and the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents. The Lake Pointe Rules may limit or prohibit the use of certain Community Areas as described in this Article III.

(e) Limited Use Community Areas. The right of the Association to restrict the right of use of one or more portions of the Community Areas to a limited number of Owners and Residents or to prohibit the right to altogether use certain portions of the Community Areas. With respect to such restrictions, the Association shall have the right to enter into separate written license agreements with those Owners who agree to share the cost of such Community Areas including maintenance, replacement and repair, additions, insurance, property taxes and all other expenses. In the event the Association or a group of Owners desires to so restrict one or more portions of the Community Areas the right to be part of the group utilizing such Community Areas shall be offered to all Owners on a first-come first-serve basis. Owners who elect not to participate shall not have the right to use such Community Areas. The Association shall establish a committee of participating Owners who shall have the authority to establish specific rules and regulations for such limited use Community Areas. ~~Declarant~~ Association reserves the right, but not the obligation, to create limited use Community Areas from and out of portions of the additional land at such time as the same are added to Lake Pointe.

(f) Municipal Authority Uses. The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over Lake Pointe to access and rights of ingress and egress over and across the Roadway System, any parking area, walkway, or open area contained within Lake Pointe for purposes of providing police and fire protection and providing other governmental or municipal services shall be approved.

Section 2. Reservation of Rights Regarding Utilities. The Declarant and the Association reserve the right to grant non-exclusive and specific, as well as blanket easements, in, on, over, under and through Lake Pointe to private and public utility companies for all utility services and purposes. Each grantee of rights to use a utility easement shall be liable for damage to property or injury to persons arising from any use made by such grantee within the utility easement area to which the grantee has been granted rights. The Association reserves the right to abandon any easement or right of way which is no longer reasonably necessary for the proper functioning of Lake Pointe.

Section 3. Easements for Encroachments. If any part of the Community Areas encroaches or shall encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Provided, however, except as otherwise prohibited or limited in this Declaration each Owner shall have an unrestricted right of ingress or egress to and from its Lot.

Section 4. Declaration of Use. Each Member shall, in accordance with this Declaration and the Lake Pointe Rules and the limitations therein contained, be deemed to have extended its right of enjoyment in the Community Areas to the members of its family, its tenants or lessees, its guests or invitees or to its tenant's family, guests or invitees.

Section 5. Transfer of Title. Declarant agrees that it shall convey to the Association title to the Association Land free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

Commented [CN5]: Lake Pointe Rules not defined

Section 6. Errant Golf Ball Easement. Every Lot and the Community Area is burdened with an easement permitting golf balls unintentionally to come upon such Community Area, Lots and for golfers at reasonable times and in a reasonable manner to come upon the Community Area, or Lot to retrieve errant

golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be liable for any damage or injury resulting from errant golf balls or the exercise of this easement: ~~the Declarant~~, the Association or its Members (in their capacity as such); any successor ~~Declarant~~; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

ARTICLE IV
LOT AND COMMUNITY AREA LAND USE RESTRICTIONS

Section 1. Covenants, Conditions, Easements and Restrictions. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to Residence Lots and/or, the Owners and Residents, as applicable.

(a) Architectural Control. No Improvements (whether temporary or permanent), Landscaping, alterations, repairs, excavation, grading or other work which in any way alters the exterior appearance of any property within Lake Pointe from its natural state existing on the date this Declaration is recorded shall be made or done without the prior approval of the Design Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. In the event of a conflict between this Declaration and the Design Review Guidelines, the provisions of this Declaration shall control.

(b) Additional Requirements of Design Guidelines. Notwithstanding the specific enumeration in this Declaration of certain requirements with respect to

construction activities with respect to Lots, each Owner shall be subject to all of the provisions of the Design Guidelines and all requirements of the Design Review Committee.

(c) Use of Contractors and Architects. Owners shall be permitted to engage a reputable, licensed contractor of their choice to construct a Dwelling Unit on their Lot in accordance with plans prepared by a Montana licensed architect. The foregoing is subject to approval by the Design Review Committee and the final approval shall require submission of “as-built” plans certified by a Montana licensed architect.

(d) Set Backs. No Dwelling Unit or other structure shall be situated or constructed on any of the Lots except in conformity with the “Set Back” requirements as established by the Flathead County Zoning Regulations which shall be in conformity with any set back lines shown on the Plat.

~~(e) Fencing. In connection with the construction of a Dwelling Unit, each Owner may, but is not required to, fence its Lot with fencing materials approved pursuant to the Design Guidelines. Such fencing normally approved by the Design Review Committee will not materially impede the view of other Owners. The Design Guidelines shall not permit the use of vinyl or chain link fencing. Fences higher than five (5) feet in height that run for more than ten (10) linear feet must be approved by the Design Review Committee.~~

1. Article IV, Section 1 (e): Fencing. Owners desiring to install a fence must submit diagrams including fence layout, height and materials to the Design Review Committee for approval. Such fencing normally approved by the Design Review Committee will not materially impede the view of other Owners. The Design Guidelines shall not permit the use of vinyl or chain link fencing. Fence type structures and or screens higher than five (5) feet in height that run for more than ten (10) linear feet must be approved by the Design Review Committee.

(f) Basements. Due to the elevation of the water table, basements shall not be permitted in any Dwelling Unit. Crawl spaces may be permitted at the discretion of the Design Review Committee.

(g) Structural Fill. In connection with review and approval of construction plans for a Dwelling Unit by the Design Review Committee, each proposed

Dwelling Unit must have an engineer's certificate which sets forth the plans for structural fill and addresses compaction issues of the Lot.

~~(h) — Construction Time Period. Following ground breaking with respect to any construction on an Lot, the Dwelling Unit shall be completed within eighteen (18) months.~~

Article IV, Section 1 (h): Construction Time Period. All construction (interior and exterior), and landscaping, must be completed within a period of twelve (12) months from the approval of the construction application.

(i) Animal Regulations.

(i) No animals, livestock, reptiles, insects, poultry or other animals of any kind, shall be kept on any Lot except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages, may be kept as household pets on any Lot provided that they are not kept, bred, or raised therein for commercial purposes or in unreasonable quantities or sizes.

(ii) As used in this Declaration, “unreasonable quantities” shall ordinarily mean more than two (2) pets per Lot. Provided, the Board may determine in its sole discretion that a reasonable number of pets in a given each situation may be more or less than two.

(iii) The Board shall have the right to prohibit the maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner.

(iv) Animals belonging to Owners, Residents, or their licensees, tenants or invitees, within Lake Pointe must be kept within an enclosed area, or on a leash held by a person capable of controlling the animal.

(v) Any Owner shall be liable to each and all remaining owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon a Lot by such Owner or by such Owner’s family, tenants, or guests. Each Owner shall be responsible to clean up after their animals who have soiled the Property or any public street abutting the Property.

(vi) Each owner shall immediately clean up his or her animals' waste from all Lots, both sold and unsold, and from all Common Areas in both Lake Pointe. Each owner shall clean up his or her animals' waste from his own Lot ~~at least daily~~. Each Owner shall comply with any rules promulgated by the Association with reference to the manner or place of disposal of animal waste.

(j) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of any structure on any property shall be removed immediately after the completion of construction.

(k) — Building Restrictions. Building heights shall not exceed a maximum of thirty-five (35) feet. Building height shall be measured from the highest ridge to the lowest (adjacent curb height) adjacent, pre-construction grade. Garage doors and garage openings shall not exceed nine (9) feet in height. No log home Dwelling Units shall be constructed or moved into Lake Pointe. No metal roofing or metal siding shall be used on or applied to any Dwelling Unit or other structure in Lake Pointe.

Article IV, Section 1 (k): Building Restrictions. Building heights shall not exceed a maximum of thirty-five (35) feet. Building height shall be measured from the highest ridge to the lowest adjacent, pre-construction grade. Garage doors and garage openings shall not exceed nine (9) feet in height. No log home Dwelling Units shall be constructed or moved in Lake Pointe. No metal siding shall be used on or applied to any Dwelling Unit or other structure in Lake Pointe. Decorative metal roofing may be allowed with Design Review Committee approval.

(l) — Landscaping of Residence Lot. Each Owner of a Residence Lot shall provide Landscaping in connection with construction of its Improvements and shall maintain the Landscaping of the Lot in accordance with the standards of the Design Review Committee. Prior to installing Landscaping, the Owner of a Residence Lot shall submit a written landscaping plan to the Design Review Committee and secure approval of the same. In accordance with the Design Guidelines, each Residence Lot must contain at least six (6) deciduous trees (which may include crab apple, ash, maple, birch, aspen, cherry or apple or any other deciduous tree approved by the Design Review Committee) and at least three

~~(3) evergreen trees (which may include fir, blue spruce, scotch pine, or Austrian pine or any other evergreen approved by the Design Review Committee). No cottonwood trees or poplar trees will be permitted in Lake Pointe under any circumstances. Thereafter, each Owner shall keep all Landscaping of every kind located on its Residence Lot neatly trimmed and shall keep all such area properly cultivated and free of trash, weeds and other unsightly material. While lawn seeding may be permitted by the Design Review Committee, sodding is recommended. All Landscaping on Residence Lots must be properly irrigated. Any Owner who fails to complete the initial Landscaping within six months of approval of the landscaping plan unless such time frame otherwise extended by the Design Review Committee to account for weather or seasonality or who fails to maintain its Landscaping shall be subject to a Maintenance Charge by the Association to cover the cost of bringing the Lot into compliance with the Landscaping standards. The Association is authorized to take reasonable action to cause the Landscaping to be installed and maintained in accordance with the terms of this Declaration.~~

Article IV, Section 1 (1): Landscaping of Residence Lot. Each Owner of a Residence Lot shall provide Landscaping in connection with construction of its Improvements and shall maintain the Landscaping of the Lot in accordance with the standards of the Design Review Committee. Prior to installing Landscaping, the Owner of a Residence Lot shall submit a written landscaping plan to the Design Review Committee and secure approval of the same. In accordance with the Design Guidelines, each Residence Lot must contain at least six (6) deciduous trees (which may include crab apple, ash, maple, birch, aspen, cherry or apple or any other deciduous tree approved by the Design Review committee) and at least three (3) evergreen trees (which may include fir, blue spruce, scotch pine, or Austrian pine or any other evergreen approved by the Design Review Committee). No cottonwood trees or poplar trees will be permitted in Lake Pointe under any circumstances. Thereafter, each Owner shall keep all Landscaping of every kind located on its Residence Lot neatly trimmed, and shall keep all such area properly cultivated and free of trash, weeds and other unsightly material. While lawn seeding may be permitted by the Design Review Committee, sodding is recommended. All Landscaping on Residence Lots must be properly irrigated. Any Owner who fails to complete the initial Landscaping within the twelve (12) month construction period, unless such time frame otherwise extended by the Design Review Committee to account for weather or seasonality or who fails to maintain its Landscaping shall be subject to a Maintenance Charge with the

Landscaping standards. The Association is authorized to take reasonable action to cause the Landscaping to be installed and maintained in accordance with the terms of this Declaration.

(m) The construction and maintenance of all driveways shall be the responsibility of the Owner. Driveways and parking areas shall be crowned and sloped for adequate drainage and safety. Driveway and parking surfaces shall be concrete. No asphalt or other material may be used to surface driveways or parking areas.

(n) Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Community Area, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Community Area **to be** offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or Community Area shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas. The Design Review Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

(o) Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant and animal diseases or noxious insects or weeds defined by the State of Montana as noxious.

(p) Maintenance and Repair of Improvements on Lots. No Improvements on any Lot shall be permitted to fall into disrepair and each such Improvement shall always be kept in good condition and repair and adequately painted or otherwise

finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Subsection 1(a) above, such Improvements shall be immediately repaired, rebuilt or demolished.

(q) Use of Water Resources. Water Resources are for visual enjoyment and drainage purposes only. No Owner, including the Owners of Lots on which Water Resources are located, shall be permitted to use the Water Resources for any purpose which would in any way disturb the Water Resources and/or plants and animals therein or thereon, except in case of emergency or in connection with maintenance responsibilities of the Association. Owners shall not be permitted to use the Water Resources.

~~®) — Antennas. Except as otherwise permitted by applicable law, no antenna, satellite receiving station or other device for the transmission or reception of television or radio signals (including what are known as “HAM radio” signals) or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee. No towers, exposed or outside radio, television or other electronic antennae, shall be allowed or permitted to remain on any Lot. It is recommended that lightning rods be installed on all Dwelling Units and related structures. Satellite receivers must have an enclosure to screen them from view so they are not visible From Neighboring Property. Satellite dishes 24 inches (+/-) diameter may be mounted as approved by the Design Review Committee.~~

Article IV, Section 1 (r): Antennas. Except as otherwise permitted by applicable law, no antenna, satellite receiving station or other device for the transmission or reception of television or radio signals (including what are known as “HAM radio” signals) or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Design Review Committee. No towers, exposed or outside radio, television or other electronic antennae, shall be allowed or permitted to remain on any Lot. It is recommended that lightning rods be installed on all Dwelling Units and related structures. Satellite receivers must have an enclosure to screen them from view so they are not visible From Neighboring Property. Per Federal Regulations satellite dishes not exceeding one meter in diameter are permitted in Lake Pointe. However, due to safety restrictions,

Committee approval is required for location and means of fastening the satellite dish.

(s) Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(t) Trash Collection and Removal. No garbage or trash shall be placed or kept on any Lot or Community Area, except in covered containers of a type which are approved by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property. All rubbish, trash and garbage shall be removed regularly from the Lots by Owners and shall not be allowed to accumulate thereon. Provided, however, the Association reserves the right to contract for garbage pickup either from Lots or from other pick-up locations for all of Lake Pointe and treat the cost thereof as a Community Expense.

(u) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot.

(v) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (ii) that which Declarant or the Association may require for the operation and maintenance of Lake Pointe.

(w) Signs. No signs whatsoever (including, but not limited to political and similar signs) which are visible From Neighboring Property shall be erected or maintained on any Lot except pursuant to the Design Guidelines and except:

(i) Signs required by legal proceedings.

(ii) Not more than two (2) identification signs for individual Dwelling Units, each conforming to the Design Guidelines.

(iii) Signs (including “for sale” and “for lease” signs) the nature, number and location of which have been approved in advance and in writing by the Design Review Committee.

(iv) Signs of builders on any Lot approved from time to time by Declarant as to number, size, colors, design, message content, location and type.

(v) Such other signs (including but not limited to construction job identification signs, builders signs, and identification signs) which are in conformance with the requirements of the applicable Municipal Authority and which have been approved in writing by the Design Review Committee as to size, colors, design, message content, and location.

(x) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner. ~~This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant and which has not previously been platted or subdivided into Lots.~~ No portion of a Lot (i.e., less than the entire Lot), may be rented or leased to a third party. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by ~~the Declarant~~ or the Design Review Committee and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with a Municipal Authority unless the proposed use of the Lot complies with this Declaration and the Owner obtains the prior written consent of the Design Review Committee.

(y) Combination of Residence Lots. Residence Lots within Lake Pointe may be combined and utilized for construction of a single Dwelling Unit at the discretion of the Design Review Committee. Provided a Residence Lot combination arrangement is approved by the Design Review Committee, the Owner thereof shall be considered to own a single Residence Lot for purposes of this Declaration. All permits required by the Municipal Authority shall be the responsibility of the Owner.

(aa) Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and the Community Area for ingress to, egress from, and the installation, replacing, repairing, and maintaining of, all utility and service lines and systems, including, but not limited to gas, telephone, electricity, television cable or communication lines and systems, etc., as such utilities may be installed. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits, and conduits on, in and under the roofs and exterior walls of Improvements on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no electrical lines or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by ~~the Declarant or the~~ Design Review Committee. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements or other structures as approved by ~~the Declarant or the~~ Design Review Committee, except for:

- (i) overhead power poles and lines along Holt Drive, and
- (ii) boxes on the ground for electrical or communication connections, junctions, transformers, and other apparatus customarily used in connection with such underground lines, wires, and other devices, and
- (iii) such above ground electrical apparatus as may be convenient or necessary reasonably on the well sites for the operation of any pumps and wells.

(ab) Utility Charges. Each Owner shall pay for all applicable hook-up fees, service charges and other charges on utility services which are separately billed or metered to a Dwelling Unit by the utility or other party furnishing such service. The Association is to pay for all electric, gas, telephone and other utility charges for the Community Areas and Community Area Improvements.

(ac) Partition. There shall be no judicial partition of any Lot, the Community Areas or any part thereof, and any person acquiring an interest in Lake Pointe waives the right to partition the Lot and Community Areas and waives the right to

seek partition for the purpose of a sale of the Lot and Community Areas or any portion thereof.

(ad) Notice of Intended Conveyances. It shall be the duty and responsibility of an Owner who has entered into an agreement to convey a Lot to notify the Association in writing prior to the conveyance being completed:

(i) To facilitate the collection by the Association of any Assessments, fees, or other amounts due under the provisions of this Declaration.

(ii) To permit the Association to review its files and to inspect the Lot to assure compliance with this Declaration, the Design Guidelines and the Lake Pointe Rules.

(iii) To review permits issued by the Association which must be corrected or updated prior to or in connection with the conveyance.

The notice shall state the name and address of the proposed transferee. If the notice required by this Section is not given, the title conveyed shall be subject to all claims and charges of the Association existing prior to the conveyance, whether or not the transferee had actual notice thereof, and the transferee shall be responsible to the Association for outstanding fees and other charges and for correcting any violations of this Declaration, the Design Guidelines, the Lake Pointe Rules or permits issued by the Association.

(ae) Additional Improvements. In the event the Association is required by a Municipal Authority to develop additional Improvements, all Owners shall proportionately share the development expenses, costs and charges. Said proportionate share shall be calculated on a per Lot basis and shall be due thirty (30) days prior to construction.

(af) Trucks, Trailers, Campers, Toter Homes and Boats. No motor vehicle classed by manufacturer rating as exceeding one (1) ton, and no motorcoach of any class, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, or repaired on any Lot in Lake Pointe so as to be visible from Neighboring Property or Common Areas of Lake Pointe. For

purposes of this Declaration, a “toter home” is a freight truck with a camper or other living accommodation on its back.

Commented [CN6]: Not to exceed three days

(ag) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be parked, stored, constructed, reconstructed, or repaired upon any Lot in Lake Pointe and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from Community Areas; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs; (ii) construction vehicles temporarily associated with any improvement project approved by the Design Review Committee; or (iii) vehicles parked in garages. All vehicles operated at Lake Pointe shall be properly licensed and maintained so as not to create a dangerous situation, become a nuisance, or emit unreasonable smoke, oil or noise. Motorized vehicles shall not be operated in any manner which would cause damage or harm to the natural environment or landscape of Lake Pointe property. Golf carts may be operated on the roadway system and may be parked on site and visible to neighboring Lots during hours of daylight only. Garage doors shall not be left open overnight. The Design Review Committee shall have the power to restrict the use of any vehicle which may create any nuisance. All drivers of vehicles must be legally licensed. All motorized vehicles shall be restricted to the Roadway System and designated pathways except where a motorized vehicle may be necessary for maintenance of Lake Pointe.

(ah) Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over its Lot from or to any other Lot as that pattern may exist as of the date of recording this Declaration or as may be established by Declarant.

(ai) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Commented [CN7]: Does not reflect the necessity to inspect the completion of the interior of the structure.

~~(aj) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly~~

~~authorized agents, of Improvements or signs necessary or convenient to the development or sale of property within Lake Pointe.~~

(ak) Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Committee to be a nuisance or to adversely affect the health, safety or welfare of owners and Residents, the Design Review Committee may make rules restricting or regulating their Presence on Lake Pointe as part of the architectural rules and guidelines.

(al) Leases. In order to prevent transient occupancy of Lots and/or Dwelling Units, no Dwelling Unit or Lot shall be leased for a period of less than six months. The lease shall be in writing and a copy shall be given to the Association prior to commencement of the Lease term. **Any attempt to rent/lease a Dwelling for less than six months shall be fined a minimum of \$500/day for any daily infraction.** Any lease agreement between an Owner and a lessee shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws. Any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Owners shall be responsible for their lessees' compliance with all the terms and provisions of this Declaration, and such Owners shall pay any expense incurred by the Association as a result of their lessees' failure to comply.

(am) Wildlife. Any harassing of wildlife which may be present on the lands or in the waters within or near Lake Pointe is prohibited. Owners and Residents shall be responsible for their pets, children and guests complying with this provision. No one shall place outdoors or allow to remain outdoors any animal or human food or garbage as an attractant or food for any mammals, wild or domestic. No bird feeders shall be placed between a Dwelling Unit and adjacent roadways or between two Dwelling Units. No bird feeders shall be permitted to remain outdoors from April 1 to October 31 of each year or at any other time when bears are present in or near the vicinity.

(an) No Interference of Streams, Rivers, Lakes or Drainage. The flow of any stream, creek, spring or other natural drainage may not be stopped, dammed or altered without the Design Review Committee and/or Municipal Authority approval, where applicable, nor may any Lot be increased in size by filling in the water that abuts said Lot. Because of the proximity of Lake Pointe to Flathead Lake, ponds and riparian areas, the Association and/or the Design Review

Committee may limit both the area of lawns and the amount and type of fertilizers and weed killers used and the timing and frequency of application thereof.

(ao) Pollution. In the interest of public health and sanitation, and so that Lake Pointe may be benefitted by a decrease in hazards of stream pollution and fire, and by the protection of water supplies and wildlife, no Owner shall use any Lot for any purpose that would result in the pollution of any waterway that flows through or adjacent to such Lot or Community Areas by refuse, sewage or other material that might tend to pollute the water of any such stream or streams or otherwise impair the ecological balance of the surrounding lands.

(ap) No Hazardous Activities. No hazardous activities shall be conducted on any Lot or the Community Areas. No open fires shall be lighted or permitted on a Lot or the Community Areas, but fires shall be permitted on a Lot only in a contained barbecue unit well attended and in use for cooking purposes or within a safe and well-designed fireplace or fire pit.

(aq) No Annoying Sounds, Odors or Lights. No sound shall be emitted from any Lot or Dwelling Unit which is unreasonably loud or annoying including but without limitation, speakers, horns, whistles, bells or other sound devices, with the exception of security devices and/or fire alarms used exclusively to protect any of the property or Dwelling Units. No odors shall be emitted from any Lot or Dwelling Unit which are noxious or offensive to others.

No light shall be emitted from any Lot or Dwelling Unit which light is not adequately shielded or which is unreasonably bright or causes unreasonable glare. In determining whether an exterior light is adequately shielded, these definitions and rules shall apply:

1. “Fixture” means the assembly that holds the lamp bulb or tube in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast housing, and the attachment parts.
2. “Horizontal Cut-Off” means a feature of a Fixture designed and functioning in such a manner that all light rays emitted by the fixture, either directly from the lamp, reflector, lens, or housing, are projected at least 25 degrees below a horizontal plane running through the lowest point on the fixture from which the light is emitted.

3. Every exterior light Fixture must have and use a functioning Horizontal Cut-off.

4. Exterior Fixtures shall not be placed higher than the ridge line of the structure on which they are located. The Lake Pointe Design Review Committee may require that exterior Fixtures be placed lower than the ridge line.

5. Exterior flood or security lights shall be controlled by a movement-detector device and shall not remain illuminated all night long.

(ar) Residential Use. Lake Pointe is exclusively restricted to residential uses and those related uses permitted under this Declaration. No business or industry shall be conducted on a Lot except as expressly permitted hereunder. Use of a portion of a Dwelling Unit as a business office or for other business purposes may be allowed only as such terms and conditions as the Board may determine.

(as) Illegal Activities. No Owner shall Permit any use of a Lot or Community Area in violation of any applicable Municipal Authority ordinance, or other law or regulation to which Lake Pointe is subject.

(at) Disclaimer Regarding Fire and Police Protection. Each Owner who purchases a Lot acknowledges that Lake Pointe is in an area of Flathead County, Montana, where the level of police and fire protection, as well as other public services, is less than would be available in a more populated or more highly developed area. Each Owner assumes the risk of less responsive municipal services including police protection, fire protection and delivery of emergency medical services. ~~Neither the~~ The Association ~~nor the Declarant~~ shall ~~not~~ have any liability to the Owners and Residents as a result of any delay or failure of any person or entity to provide adequate or timely fire protection, police protection, emergency medical and other similar services to the Owners.

Section 2. Variances. Subject to the provisions of the Design Guidelines, the Design Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article or if the Design Review Committee determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or (ii) that a change of circumstances since the recordation of this Declaration has rendered such

restriction obsolete and (b) that the activity permitted under the variance will not have any material adverse effect upon the Owners and Residents of Lake Pointe and is consistent with the high quality of life intended for Owners and Residents of Lake Pointe.

ARTICLE V
ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Montana corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted to be inconsistent with this Declaration.

Section 2. Board of Directors and Office. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. ~~The initial Board shall be composed of as many as three (3) members. The Bylaws shall determine the number of directors. The Declarant shall determine the number of initial directors and shall appoint the initial Board members, who need not be Owners. The initial Board members and any successors appointed by the Declarant shall serve until the first election of Directors by Members. When the Declarant has closed the sale of half or more of the Lots in Lake Pointe, the Declarant shall arrange and conduct the first election of directors by the Owners. As long as the Declarant owns any Lot within Lake Pointe, the Declarant may appoint its representative to fill one of the authorized positions on the Board, in the event the Declarant's votes are insufficient to elect one of its candidates. Declarant's elected and appointed directors need not be Owners within Lake Pointe.~~

The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

- (a) administration, including administrative support as required for the Design Review Committee.
- (b) preparing and administering an operational budget.
- (c) establishing and administering an adequate reserve fund.
- (d) scheduling and conducting the annual meeting and other meetings of the Members.
- (e) establishing the amounts of and collecting assessments.
- (f) accounting functions and maintaining records.
- (g) promulgation and enforcement of the Lake Pointe Rules (but not the Design Guidelines);
- (h) maintenance of the Community Areas; and
- (i) all the other duties imposed upon the Board pursuant to this Declaration, the Bylaws, the Articles and the Lake Pointe Rules.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Declaration, the Articles, the Bylaws or the Lake Pointe Rules as the responsibility of the Design Review Committee.

Section 3. The Lake Pointe Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Lake Pointe Rules. The Lake Pointe Rules may restrict and govern the use of any area by any Owner or Resident; provided, however, that the Lake Pointe Rules shall not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws.

Commented [CN8]: Once again Lake Pointe Rules do not exist

Section 4. Personal Liability. No member of the Board or of any committee of the Association (including but not limited to the Design Review Committee), no officer of the Association and no Manager or other employee of the Association shall be personally liable to any Member or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager,

any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 of Article V shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5. Professional Management. The Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing Lake Pointe for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

ARTICLE VI MEMBERSHIPS AND VOTING

Section 1. Owners of Lots. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each such Owner shall have one Membership for each Lot owned by the Member.

Each such Membership shall be appurtenant to and may not be separated from Ownership of the Lot to which the Membership is attributable. There shall be only one Membership for each Lot which Memberships shall be shared by any joint owners of, or owners of undivided interests in a Lot.

Section 2. Declarant. ~~The Declarant shall be a Member of the Association for so long as the Declarant owns any Lot in Lake Pointe.~~

Section 3. Voting. Every Lot Owner ~~other than the Declarant~~ shall have one vote for each Lot owned, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof. ~~The Declarant shall be entitled to three (3) votes for each Lot it owns.~~

Section 4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such

Owners are unable to agree among themselves as to how their vote or votes shall be cast, their vote on the matter in question shall be determined by majority vote of such Owners. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast.

~~Section 5. — Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Declarant shall have the number of votes designated in Section 3 above times the number of directors to be elected. Each Member shall have the right to cumulate its votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.~~

Article VI, Section 5. Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Declarant shall have the number of votes designated in Section 3 above times the number of directors to be elected. Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 7. Transfer of Membership. The rights and obligations of an Owner (other than the Declarant) in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Montana. Any attempt to make a prohibited transfer shall

be void. Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

ARTICLE VII
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Each Owner by acceptance of a deed or other conveyance of a Lot (whether or not it shall be so expressed in such deed or conveyance) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, and (3) Maintenance Charges established by Article X, Sections 2, 5 and 6. All such Assessments shall be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, and Maintenance Charges together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. The Annual and Special Assessments against each Lot shall be based on a pro rata share per Lot as described in Section 4 hereof. Each such Annual and Special Assessment, and Maintenance Charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. ~~Declarant shall have no liability for assessments under this Article VII for unsold Lots, but shall pay any deficit in the Community Expenses (other than reserves amounts), after payment by Owners of their Annual Assessments until a majority of the Lots have been sold.~~

Section 2. Annual Assessments. Annual Assessments shall be computed and assessed against all Lots as follows:

(a) Community Expenses. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Community Areas and operating the Association and maintenance of Water Resources. Such estimated expenses may include, without limitation, the following: Expenses of management; real property taxes and special assessments (unless and until the Lots are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and

maintenance; wages of Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Community Areas, Offsite Water Features and Water Resources that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Members under or by reason of this Declaration. Such shall constitute the Community Expense, and all funds received from assessments under this Section 2(a) shall be part of the Community Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Community Expense Fund.

(b) Apportionment. Community Expenses shall be apportioned among and assessed to Owners of all Lots equally in accordance with Section 4 of this Article VII. Declarant shall not be liable for any assessments against Lots owned by it (other than as provided herein above as to deficits in the Community Expenses).

(c) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration, and, on or before November 1 of each year thereafter, the Board shall prepare and furnish to each Member, or cause to be prepared and furnished to each Member, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which Lake Pointe shall be operated during such annual period.

~~(d) — Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the Annual Assessment against his or her Lot on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year remaining from and after the date an Owner signs an agreement to~~

purchase a Lot. Members shall commence payment of the full monthly assessments against their respective Lots upon conveyance of the first Lot in Lake Pointe regardless of whether a Dwelling Unit has been constructed thereon on such Member's Lot. All unpaid installments of any Annual Assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18 %) per annum fifteen (15) days after the date each such installment became due until paid and the Member shall be liable for all costs, including attorneys' fees incurred by the Association in collecting the same. In addition, in the event that any installment of the Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Member, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18 %) per annum from such date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Member from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Member in the manner provided in this Declaration.

Article VII, Section 2 (d). Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the Annual Assessment against his or her Lot on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each Annual Assessment shall be payable in four equal quarterly installments, one such installment due on the first day of each calendar quarter during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year remaining from and after the date an Owner signs an agreement to purchase a Lot. Members shall commence payment of the full quarterly assessments against their respective Lots upon conveyance of the first Lot in Lake Pointe regardless of whether a Dwelling Unit has been constructed thereon on such Member's Lot.

(e) Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any

Member's assessment, the Board may, on behalf of the Association, levy special Assessments in accordance with the procedure set forth in Article VII, Section 5 below, except that the vote therein specified shall be unnecessary.

Section 4. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Lot. For purposes of Assessment, each Lot shall be assessed equally a pro rata portion of the Community Expenses.

~~Section 5. — Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, other Community Areas, or the , including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of sixty-seven percent (67 %) of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose or by written approval of sixty-seven percent (67%) of such Members. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.~~

Article VII, Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, other Community Areas, or for the fixtures and personal property related thereto or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of Members who are voting in person or written approval of sixty-seven percent (67%) of such Members. The provisions of the Section are not intended to preclude or limit the assessment, collection or use of Annual assessments for the aforesaid purposes.

Section 6. Notice and Quorum for Any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25 %) of all the votes (exclusive of suspended voting rights)

of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Establishment of Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by written notice to the Owners specifying the new Assessment Period.

Section 8. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual Assessments, Special Assessments, and the Maintenance charges imposed pursuant to Article X, Section 2, 5 and 6, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment Period, the Owner shall notify the Association but its failure to notify the Association shall not relieve such Owner of the liability for such amounts.

Section 9. Reserves and Working Capital. The Association shall establish the following funds:

(a) Community Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of

improvements to the Community Area the Association may be obligated to maintain, repair or replace. The reserve Fund shall be maintained out of Annual Assessments for Community Expenses.

(b) Working Capital Fund. There shall be established a working capital fund equal to at least two monthly installments of the Annual Assessment for each Lot. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Lot. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular Assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

Section 10. Evidence of Payment of Annual Assessments, Special Assessments, and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual Assessments, Special Assessments, and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Sections 2 and 3 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Annual Assessments, Special Assessments, and Maintenance Charges have not been paid, the amount of such Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot in question.

Section 11. Property Exempt from the Annual Assessments, Special Assessments, and Assessment Lien. Exempt Property shall be exempt from the assessment of the Annual Assessments, and Special Assessments, but such property shall not be exempt from the Maintenance Charges provided for in Article X, Sections 2, 5 and 6; from attorneys' fees, costs and expenses as

described in Article XII, Section 2; or from the Assessment Lien to secure said Maintenance Charges, attorneys' fees, costs and expenses; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming assessable property in any year, the same thereupon shall be subject to the assessment of the Annual Assessments and Special Assessments (prorated as of the date it became assessable property) and the Assessment Lien.

~~Section 12. Initial Assessment. The initial Annual Assessment shall be the sum of (a) \$1,176 per year (\$98 per month) for the Community Reserve Fund and (b) \$196, representing two months' assessments for the Working Capital Fund, for a total of \$1,372. At closing, every purchaser of a Lot shall pay \$196 for the Working Capital Fund component plus a pro-rated portion of the \$98 monthly component of the Annual Assessment for the Community Reserve Fund~~

Section 12. Initial Assessment. At closing, every purchaser of a Lot shall pay a transfer fee to the Association of \$500. This fee may be modified from time to time as the Board of Directors may approve.

ARTICLE VIII
ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS,
SPECIAL ASSESSMENTS, MAINTENANCE CHARGES OF ASSESSMENT
LIEN AND OTHER COVENANTS AND RULES

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them at its own expense by any appropriate action, whether in law or in equity.

Section 2. Association's Remedies to Enforce Payment of Annual Assessments, Special Assessments, and Maintenance Charges. If any Member fails to pay the Annual Assessment, Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article X, Sections 2, 5 and 6, the Association may enforce the payment of the Annual Assessments, Special Assessments, Maintenance Charges and/or Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual Assessments, Special Assessments or the Maintenance Charges.

(b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Montana law relating to the foreclosure of trust indentures (including the right to recover any deficiency) including by judicial action or by advertisement or any other means permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law.

Notwithstanding subordination of an Assessment Lien as described in Section 3 of this Article VIII, the delinquent Member shall remain personally liable for the Assessments and related costs after its membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

Section 3. Subordination of Assessment Lien to First Mortgage, Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the Mortgage foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual Assessments, Special Assessments, and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all applicable Annual Assessments, Special Assessments, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 4. Costs to be Born by Member in Connection with Enforcement of Payment of Annual Assessments, Special Assessments, and Maintenance Charges. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Special Assessments, and Maintenance Charges together with interest and the Association's collection costs and

attorneys' fees, including those costs and fees specified in Article VII, Sections 2 and 3.

~~Section 5. In addition to the means of enforcement of covenants, conditions and restrictions provided in this Declaration, all covenants, conditions and restrictions applicable to Lake Pointe may be enforced as follows:~~

~~The Board of Directors of the Association and its successors in interest may impose fines upon Owners for violations.~~

~~Prior to the imposition of a fine, the Board or its agent shall give the Owner in question written notice of the violation and intended amount of the fine, and the notice shall provide fifteen (15) days' opportunity, after receipt of the notice, to correct the violation so as to avoid the fine.~~

~~If the violation is remedied within the fifteen (15) day period, no fine shall be imposed. If the violation is not corrected within the fifteen (15) day period, the Board may, but is not required to, impose a fine, using the procedures set forth below.~~

~~The Board may impose fines ranging from ten dollars (\$10) to one hundred dollars (\$100) for violations continuing after the Owner's receipt of the written notice. Each separate day of a continuing violation may be considered a separate violation. Imposition of a fine shall be by mailing a notice, certified mail, return receipt requested, to all Owners of the Lot in question. In determining the appropriate amount of a fine, the Board shall consider, among other factors:~~

~~Whether the violation threatened the health or safety of anyone,
Whether the violation involved physical damage to property of another, to Common Areas, or to the environment,
The cost of remedying the violation, and
Whether the Owner has been previously warned in writing or fined for the same or substantially similar violations.~~

~~The notice of imposition of fine shall also give the Owner in question at least seven (7) days notice of the next meeting of the Board at which the Owner may appear to appeal the determination of violation and the fine or amount of the fine. The Owner may appear in person, by agent or by written communication.~~

If a fine is neither paid nor appealed within seven days of the receipt of notice by the Owner, then the Board may cause a lien to be filed against the Owner's Lot for the amount of the fine, plus the cost of filing the lien. If the Owner appeals from the Board's notice, no lien shall be filed until the Board hears the appeal.

The Board shall keep a written record of all notices sent and the disposition of each.

The Owner and the Board may each be represented by an attorney at all hearings on the violation.

If the Owner wishes to appeal the Board's decision after the Board's hearing of the Owner's appeal, the Owner shall, in writing, request binding arbitration by a single arbitrator to be agreed upon by the parties. The parties shall equally share the fees, if any, of the arbitrator.

Article VIII, Section 5. In addition to the means of enforcement of covenants, conditions and restrictions provided in this Declaration, all covenants, conditions and restrictions applicable to Lake Pointe may be enforced as follows:

a. The Board of Directors of the Association and its successors in interest may impose fines upon Owners for violations.

b. Prior to the imposition of a fine, the Board or its agent shall give the Owner in question written notice of the violation and intended amount of the fine, and the notice shall provide fifteen (15) days' opportunity, after receipt of the notice, to correct the violation so as to avoid the fine.

c. If the violation is remedied within the fifteen (15) day period, no fine shall be imposed. If the violation is not corrected within the fifteen (15) day period, the Board may, but is not required to, impose a fine, using the procedures set forth below.

The Board may impose fines ranging from ten dollars (\$10) to one hundred dollars (\$100) for violations continuing after the Owner's receipt of the written notice. Each separate day of a continuing violation may be considered a separate violation. Imposition of a fine shall be by mailing a notice, certified mail, return receipt requested, to all Owners of the Lot in question. In determining the appropriate amount of a fine, the Board shall consider, among other factors:

Whether the violation threatened the health or safety of anyone,
Whether the violation involved physical damage to property of another, to
Common Areas, or to the environment,
The cost of remedying the violation, and
Whether the Owner has been previously warned in writing or fined for the same or
substantially similar violations.

The notice of imposition of fine shall also give the Owner in question at least
seven (7) days notice of the next meeting of the Board at which the Owner may
appear to appeal the determination of violation and the fine or amount of the fine.
The Owner may appear in person, by agent or by written communication.

If a fine is neither paid nor appealed within seven days of the receipt of notice by
the Owner, then the Board may cause a lien to be filed against the Owner's Lot for
the amount of the fine, plus the cost of filing the lien. If the Owner appeals from
the Board's notice, no lien shall be filed until the Board hears the appeal.

The Board shall keep a written record of all notices sent and the disposition of
each.

The Owner and the Board may each be represented by an attorney at all hearings
on the violation.

If the Owner wishes to appeal the Board's decision after the Board's hearing of the
Owner's appeal, the Owner shall, in writing, request binding arbitration by a
single arbitrator to be agreed upon by the parties. The parties shall equally share
the fees, if any, of the arbitrator.

ARTICLE IX
USE OF FUNDS; BORROWING POWER;
OTHER ASSOCIATION DUTIES

~~Section 1. — Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Lake Pointe and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by manner or method whatsoever of any kind, all land, properties, improvements, facilities, services, projects, programs, studies and systems, within Lake Pointe, which may~~

be necessary, desirable or beneficial to the general common interests of Lake Pointe, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of the Community Areas and public rights of way and drainage areas within Lake Pointe, recreation, liability insurance, communications, ownership and operation of storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association and payment of sums due, if any, under Municipal Authority Agreements. The Association also may expend its funds as permitted under the laws of the State of Montana.

Article IX, Section 1. Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Lake Pointe or the Association, as applicable, and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by manner or method whatsoever of any kind, all land, properties, improvements, facilities, services, projects, programs, studies and systems, within Lake Pointe, which may be necessary, desirable or beneficial to the general common interests of Lake Pointe, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance of the Community Areas and public rights –of-way and drainage areas within Lake Pointe, recreation, liability insurance, communication, ownership and operation of storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association and payment of sums due, if any, under Municipal Authority Agreements. The Association also may expend its funds as permitted under the laws of the State of Montana.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, for such periods of time as is necessary or appropriate.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of Annual Assessment, as

applicable, in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Maintenance Charges. The Association is authorized to bill for, sue for, collect, administer and disburse all Maintenance Charges and the payment thereof shall be secured by the Assessment Lien.

Section 5. Reserve Funds. From the Annual Assessments received by the Association, the Board shall establish an adequate reserve fund for the maintenance, repair and replacement of the Community Areas.

ARTICLE X MAINTENANCE

Section 1. Community Areas. The Association, or its duly delegated representative, shall maintain and otherwise manage all Community Areas, including, but not limited to, the Roadway System, the Water Resources, the Open Space Preserve, Landscaping, walkways, recreational facilities and the buildings and structures, if any, located upon said properties. Specific areas to be maintained by the Association may be identified on the Master Development Plan or Plats recorded with Flathead County or approved by the Declarant, and in deeds from the Declarant to a transferee of a Lot, but the failure to so identify such area shall not affect the Association's rights or responsibilities with respect to such Community Areas and other areas intended for the general benefit of Lake Pointe.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Lake Pointe will reflect a high grade of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, and so long as maintenance of the Open Space Preserve is consistent with any applicable requirements set out by the Army Corps of Engineers, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land;
- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Community Areas used as a road, trail, walk,

driveway or parking area, except that no permanent Improvements shall be made by the Association on any Community Area that is not Association Land and the Association shall provide only maintenance on any Community Areas which are not Association Land;

(c) Replace injured and diseased trees and other vegetation in any Community Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

(d) Place and maintain upon any Community Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

(e) Provide services and maintenance including snow plowing, repair work, road, tree and vegetation maintenance, maintenance of riparian areas and water features, maintenance of any entrance monuments, maintenance and repair of all common amenities and any related required maintenance; and

(f) Do all such other and further acts which the Board deems necessary to preserve and protect the Community Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Community Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any Plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Community Areas, Water Resources or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Lake Pointe for the Association or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

The Association may enter into a cost sharing agreement with owners of other real estate utilizing the Roadway System for access to and from such real estate.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Community Areas. In the event that the need for maintenance or repair of Community Areas, structures and other property maintained by the Association is caused through the willful or negligent act of any Owner, Resident, or any family, guests, invitees or tenants of such persons, the cost of such maintenance or repairs is a Maintenance Charge and shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities is a Maintenance Charge and shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Maintenance of Water Resources. In order to comply with requirements set forth by Municipal Authorities in connection with the approval of aspects of the Lake Pointe, the Association or its duly delegated representative shall maintain the Water Resources and the cost thereof shall be a Community Expense. Each Owner of a Lot on which a Water Resource is located hereby grants the Association a reasonable easement over and across their Lot to permit the Association to carry out this maintenance obligation. Owners shall have no right hereby to access or utilize the Water Resources.

Section 4. Maintenance and Use of Residence Lots. Each Dwelling Unit, Improvement and the grounds on a Residence Lot shall be properly maintained by the Owner thereof so as not to detract from the appearance of Lake Pointe and so as not to affect adversely the value or use of any other Dwelling Unit, Improvement or Lot. In the event any portion of any Residence Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Lake Pointe which are substantially affected thereby or related thereto, or in the event any portion of a Residence Lot is being used in a manner which violates this Declaration or in the event the Owner of any Residence Lot is failing to perform any of its obligations under this Declaration, the Lake Pointe Rules or the Design Guidelines, the Board may by Resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within

fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof is a Maintenance Charge and shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Residence Lot is subject and shall be secured by the Assessment Lien.

ARTICLE XI
DESIGN REVIEW COMMITTEE

Section 1. Membership. There is hereby established a Design Review Committee which shall be responsible for the establishment and administration of the Design Guidelines and to carry out all other responsibilities assigned to the Committee in order to carry out the purposes and intent of this Declaration. The Committee shall be composed of three (3) or five (5) persons (as determined by Board, the Declarant until Declarant has closed the sale of 75% of the Lots in Lake Pointe, and thereafter by the Board), who need not be Members of the Association. At least one of the members of the Committee must be a Montana licensed architect. ~~All of the members of the Committee shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as the Declarant has closed the sale of 75% of the Lots in Lake Pointe, and at that time~~ The Board shall exclusively ~~succeed to Declarant's~~ possess the right to appoint, remove, or replace the members of the Committee.

Section 2. Purpose. The Committee shall review, study and either approve, reject or request resubmittal of proposed developments and Improvements to a Lot, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

(a) The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

(b) Consistent with Article IV, Section 1, no Improvement on a Lot shall be erected, placed or altered on any Lot nor shall any construction be commenced

until plans for such improvement shall have been approved by the Committee; provided, however, that improvements and alterations which are completely within a Dwelling Unit may be undertaken without such approval.

(c) The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties subject to appeal as provided in the Bylaws.

Section 3. Organization and Operation of Committee.

(a) Term. The term of office of each member of the Committee, subject to Section 1 hereof, shall be three (3) years, commencing January 1 of each year, and continuing until its successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 1 hereof.

(b) Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman shall, be elected annually from among the members of the Committee by majority vote of said members.

(c) Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

(d) Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

(e) Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 4. Expenses. Except as provided below, all expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected

by the Committee and remitted to the Association to help defray the expenses of the Committee's operation. ~~Until December 31, 2008, the filing fee shall not exceed \$550 per Dwelling Unit, but may be subject to reasonable increase after the date as determined by the Board on recommendation from the Committee. Provided, no application fee shall be required on the Declarant or of its related entities.~~

Section 5. Design Guidelines and Rules. The Committee shall promulgate and maintain Design Guidelines. The Design Guidelines shall define and describe the design standards for Lake Pointe and the various uses within Lake Pointe. The Design Guidelines may be modified or amended from time to time by the Committee. To the extent permitted by the Design Guidelines, the Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Lake Pointe design review process is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to obtaining final approval of any improvements from the Committee and prior to commencing construction. To the extent that any Design Guideline contradicts a provision of this Declaration, the terms of this Declaration shall control.

Section 6. Procedures. As part of the Design Guidelines, the Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings **and the consequences for non-compliance.** Appeals shall be conducted as provided in the Bylaws.

Section 7. Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual Committee member, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate Governmental Authority. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any improvements. Neither the Board, the Design Review Committee, or any

agent thereof, nor Declarant or any of its owners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of its duty as a member of the Committee, unless and then only to the extent that the Court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 8. Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Board, and upon written request of any Owner or its agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is in violation of any of the terms and conditions of the Declaration or other documents of Lake Pointe. Unless such request shall be complied with within 30 days after receipt of the request, it shall be conclusively presumed that the Owner and the Owner's improvements are in conformance with all the terms and conditions subject to the control of the Committee.

ARTICLE XII RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws or permitted under applicable state law. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and

Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners and Members shall have the right to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, fines, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association ~~or by Declarant~~. In the event suit is brought or arbitration is instituted or an attorney is retained by the Association to enforce the terms of this Declaration or other document as described in this Section 2 and the Association prevails, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. If the Association should fail to act within a reasonable time, any Owner shall have the right to enforce the Covenants set forth in this Declaration.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, ~~including the Declarant and its affiliated companies~~, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee ~~are employed by or otherwise connected with Declarant or its affiliates~~, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which such Member is a member which shall authorize any contract or transaction described above ~~or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof~~ and may vote there **upon** to authorize any such contract, transaction or approval with like force and effect as if such Member were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Community Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land. Any construction, reconstruction, alteration or change of the buildings, structures and improvements on Association Land shall require the approval of the Design Review Committee.

ARTICLE XIII
INSURANCE AND FIDELITY BONDS

Section 1. Hazard Insurance. The Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained covering all insurable improvements, if any, on the Association Land and where appropriate on the Community Areas, Water Resources, Offsite Water Features, fixtures, building service equipment, personal property and supplies comprising a part of the Community Areas or owned by the Association and which are of a class typically encumbered by Mortgages held by institutional Mortgage investors, but excluding land, foundations, excavations, and other items normally not covered by such policies. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to Lake Pointe in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Community Areas covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage.

Section 2. Flood Insurance. If any part of the Community Areas comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy of flood insurance shall be maintained covering the improvements located on the Community Areas, and if available on the Water Resources, and Offsite Water Features and any machinery and equipment related thereto (hereinafter “Insurable Property”) in an amount deemed appropriate.

Section 3. Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for “blanket” fidelity bonds for all officers, Members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide “blanket” fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager’s officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond.

Section 4. Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Community Areas, public ways in Lake Pointe, if any, Water Resources, Offsite Water Features and all other areas of Lake Pointe that are under the Association's supervision. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Community Areas, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days’ prior written notice to the Association.

Section 5. Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association’s authorized representative, including

any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance Policy maintained, pursuant to the foregoing Sections 1, 2, 3 and 4, shall be written by an insurance carrier which is licensed to transact business in the State of Montana.

Section 6. Lots and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Dwelling Unit or any other Improvements located on either a Residence Lot or with respect to any acts and events occurring thereon. Accordingly, each Owner shall secure and keep in force at all times fire, extended coverage and other insurance which shall be of a type and in an amount commonly required by private institutional mortgage investors in the area in which the Lot is located.

Section 7. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Community Areas and improvements thereon which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

ARTICLE XIV DAMAGE OR DESTRUCTION

Section 1. Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and

lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements on the Community Areas upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XV below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

Section 2. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the improvements on the Community Areas in Lake Pointe, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Community Areas so damaged or destroyed. "Repair and reconstruction" as used in this Article XIV shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction.

Section 3. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Article VII, Section 5 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

Section 5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Article VII, Section 5 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 4 above, or, if no Special Assessments were made, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

Section 6. Decision Not to Rebuild. If Owners representing at least sixty-seven percent (67%) of the votes of each class of Members in the Association agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Community Areas shall be restored to their natural state and maintained as an undeveloped portion of the Community Areas by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Lot first to the Mortgagees, and then to the Owners, as their interests appear.

Section 7. Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Lot who requests such notice in writing in the event of substantial damage to or destruction of any part of the Community Areas.

ARTICLE XV
CONDEMNATION

Section 1. Rights of Owners. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 2. Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Community Areas on which improvements have been constructed, then, unless within sixty days after such taking Declarant and Owners representing at least sixty-seven percent (67%) of the votes in the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors and the Design Review Committee. If such improvements are to be repaired or restored, the provisions in Article XIV above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

Section 3. Complete Condemnation. If all of Lake Pointe is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Community Areas shall be distributed to Owners on an equal basis.

ARTICLE XVI ADDITIONAL LAND

~~Section 1. Right to Expand and State of Title to New Lots.~~

~~(a) There is hereby granted unto Declarant, and Declarant the Association and hereby reserves, the absolute right and option to expand Lake Pointe at any time and from time to time by adding to Lake Pointe additional land.~~

Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including the Association, any Owner or Mortgagee) and shall be limited only as specifically provided in this Declaration. Any given portion of the additional land shall be deemed added to Lake Pointe at such time as a duly approved Plat and a Declaration of Annexation containing the information required by Section 3 below have been recorded with respect to the portion of the additional land concerned. After the recordation of such Declaration of Annexation, title to each Lot thereby created within the portion of the additional land concerned and its appurtenant right and easement of use and enjoyment in and to the Community Areas shall be vested in and held by the Association-Declarant, and none of the other Owners or the Association shall have any claim or title to or interest in such Lot or its appurtenant right and easement of use and enjoyment to the Community Areas. Within twenty-five years of recordation of this Declaration, Declarant may add additional land to Lake Pointe whether or not Declarant owns any then existing Lots in Lake Pointe.

(b) Any portions of annexed additional land may be subject to less than all of the Covenants, in Declarant's sole discretion. For example and not as an exclusive listing of such partial application of Covenants, some, but not necessarily all, of the additional land may be subject to all or parts of Article IV (Lot and Community Area Land Use Restrictions) or Article XI (Design Review Committee) and to Design Guidelines but not Article VII (Covenant for Assessments and Creation of Lien).

Section 2. Rights and Statements Respecting Additional Land. Association Declarant hereby furnishes the following information and statement respecting the additional land and Declarant's Association's right and option concerning expansion of Lake Pointe by the addition thereto of additional land:

There are no limitations or requirements relative to the size, location, or configuration of any given portion of the additional land which can be added to Lake Pointe or relative to the order in which particular portions of the additional land can be added to the Lake Pointe. Declarant may add additional land to Lake Pointe for twenty-five years (25) from the recordation of this Declaration even though Declarant may not own any Lots within the then existing Lake Pointe at the time of such annexation of additional land. All or portions of annexed additional land may be subject

~~to less than all the Covenants of Lake Pointe, in the sole discretion of Declarant.~~

Section 3. Procedure for Expansion. Each Declaration of Annexation by which addition to Lake Pointe of any portion of the additional land is accomplished shall be executed by ~~Declarant~~ **Association**, shall be in recordable form, must be filed for record together with the approved Plat reflecting the addition, in the office of the County Recorder of Flathead County, Montana, on or before twenty-five (25) years from the date that this Declaration is recorded, and shall contain the following information for that portion of the additional land which is being added:

- (a) Data sufficient to identify this Declaration and the Plat respecting that portion of the additional land being added.
- (b) The legal description of the portion of the additional land being added.
- (c) A statement that such portion of the additional land shall thereafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.
- (d) A conveyance to the Association of good and marketable title, free and clear of all liens and encumbrances to all Association Land situated in that portion of the additional land being added.
- (e) Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the recordation of any supplement contemplated above, it shall automatically supplement this Declaration and any supplements previously recorded. At any point in time, the Declaration for Lake Pointe shall consist of this Declaration, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

Section 4. Allocation of Assessments and Voting Rights Following Expansion. Each Lot created shall be apportioned a share of the Community Expenses attributable to Lake Pointe as provided in Article VII. Each Lot and Owner shall be entitled to votes in the Association as provided for in Article VI, Section 4. Assessments and voting rights shall commence as of the date the **Association** executes a Declaration of Annexation-

Section 5. No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon the Association-Declarant any obligation respecting, or to restrict Association-Declarant in any way with regard to: (i) The addition to Lake Pointe of any or all of the additional land; (ii) The creation or construction of any Lot or other improvement; (iii) The carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) The taking of any particular action with respect to any portion of the additional land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the additional land or any portion thereof shall be binding as to such of the additional land as is never added to Lake Pointe.

ARTICLE XVII
MORTGAGEE REQUIREMENTS

Section 1. Notice of Action. Upon written request made to the Association by a Mortgagee which written request shall identify the name and address of such Mortgagee, and Lot number or address of the Dwelling Unit, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of Lake Pointe or any Lot on which there is a Mortgage held by such Mortgagee;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot is subject to a Mortgage held by such Mortgagee, which default remains uncured for a period of sixty (60) days; and
- (c) Any lapse or cancellation of any insurance policy or fidelity bond maintained by the Association.

Section 2. Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of each class of Members in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the

~~votes in the Association is required, in which case such specific provisions shall control~~), and Eligible Mortgagees holding Mortgages on Lots having at least fifty-one percent (51 %) of the votes of the Lots subject to Mortgages held by Eligible Mortgagees shall be required to:

(a) Abandon or terminate the legal status of Lake Pointe after substantial destruction or condemnation occurs. Termination of the legal status of Lake Pointe for any other reason shall be agreed to by Eligible Mortgagees holding at least sixty-seven percent (67%) of the Mortgages on Lots.

(b) Amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

(i) voting rights;

(ii) increases in Assessments that raise the amount assessed above the prior year by more than 25 %, Assessment Liens, or the priority of Assessment Liens;

(iii) reductions in reserves for maintenance, repairs and replacement of Community Areas;

(iv) responsibility for maintenance and repairs;

(v) hazard or fidelity insurance requirements;

(vi) imposition of any restrictions on Owner's right to sell or transfer his or her Lot; and

(vii) restoration or repair of Lake Pointe (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

(viii) any provisions that expressly benefit Mortgagees.

Any Mortgagee, who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days

shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a “return receipt” requested.

Section 3. Availability of Property Documents and Financial Statements.

The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning Lake Pointe as well as its own books, records, and financial statements available for inspection by Owners or by holders of Mortgages that are secured by Lots. Generally, these documents shall be available during normal business hours.

Section 4. Subordination of Lien. The lien or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned.

Section 5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Areas are not timely paid, or in the event the required hazard insurance described in Section 1 of Article XIII lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

Section 6. Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Parcels or the Community Areas.

ARTICLE XVIII
TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if eighty percent (80%) of the votes cast shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate (or amend as provided in Section 2 below) this Declaration shall be effective unless and until written consent to such termination or amendment has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from First Mortgagees on fifty-one percent (51%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Flathead County, Montana, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. This Declaration may be amended by recording with the County Recorder of Flathead County, Montana, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in this Section 2 of this Article, shall certify that an election duly held pursuant to the provisions of the Articles and Bylaws the Members casting sixty-seven percent (67%) of the votes at the election voted affirmatively for the adoption of the amendment. ~~Within twenty five (25) years from the date of recording this Declaration and so long as the Declarant is the owner of any Lot in Lake Pointe, this Declaration may be amended or terminated only with the written~~

~~approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lake Pointe Parcel.~~

ARTICLE XIX
MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

~~Section 4. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other instrument recorded in the office of the County Recorder of Flathead County, Montana, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Lake Pointe can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend the Master Development Plan.~~

Section 5. References to the Covenants in Deeds. Deeds or any instruments affecting any Lot or any part of Lake Pointe may contain the Covenants herein

set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and its heirs, executors, administrators, successors and assigns.

Section 6. List of Owners and Eligible Members. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Lot which is encumbered by the Mortgage held by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Flathead County, Montana. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Flathead County, Montana. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Board is otherwise advised. The list of Owners shall be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges.

Section 7. General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. ~~With respect to unsold Lots, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Lot.~~

Section 8. Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

~~Section 9. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors to or assigns of Declarant's rights and powers hereunder as well as any successors or assigns of Declarant itself.~~

Section 10. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 11. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 12. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice or to the address of the lot of such person if no address has been given. Such address may be changed from time to time by notice in writing received by the Association. Notice to the Board or to the Design Review Committee shall also be delivered or mailed to the Declarant.

Section 13. Consent of Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all Membership votes outstanding in connection with the class of membership concerned. The following provisions shall govern any application of this Section 13:

- (a) all necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member;
- (b) the total number of votes required for authorization or approval under this Section 13 shall be determined as of the date on which the last consent is signed;

(c) except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose;

(d) unless the consent of all Members whose Memberships are appurtenant to the same Lot are secured the consent of none of such Members shall be effective.

Section 14. Tax Collection From Lot Owners by Flathead County Authorized. It is recognized that, under the Declaration, the Association will own the Association Land and that it will be obligated to pay property taxes to Flathead County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of its monthly assessment will be required to pay to the Association its pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration or otherwise, Flathead County shall be and is authorized to collect such pro rata share (an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Flathead County is hereby directed so to do. In the event that an assessor shall separately assess Association Land to the Association, the Board of Directors may require in its discretion, a Special Assessment to pay such taxes, or they may be included in the regular Assessment budget.

Section 15. Liability for Willful or Negligent Damage. Maintenance, repair or replacement of all or any part of the Community Facilities arising out of or caused by the willful or negligent act of an Owner or Resident shall be done at said Owner's expense or a Maintenance Charge therefor shall be made against its Lot.

Section 16. Enforcement. ~~The Declarant,~~ the Design Review Committee, the Association, or the applicable Municipal Authority shall have the right to enforce, by any proceeding in law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Design Review Committee, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

Section 17. Enforcement of Covenants. In the event of any act or condition of non-compliance of the covenants contained in this Declaration by an Owner, the Design Review Committee or the Association shall provide to the Owner a notice on non-compliance and demand that said Owner take any and all steps necessary to correct said act or condition of non-compliance within fifteen (15) days. If the Owner fails to terminate or correct the non-complying act or condition within fifteen (15) days, then the Association, the Design Review Committee or their duly authorized agents, in furtherance of the general health, welfare and safety of the Owners, shall have the right to undertake any and all action that they in their sole discretion deem necessary and reasonable under the circumstances in order to terminate or correct the act or condition of noncompliance including without limitation, imposing fines, obtaining legal or equitable relief including injunctions or orders of specific performance, foreclosing liens, and entering upon the premises for the purpose of removing any non-complying Improvement, nuisance or garbage, Landscaping, restoring the Lot and Improvements thereon to a clean, attractive and well maintained state, and terminating any unsafe or hazardous activity. In the event of an emergency arising from any act or condition of non-compliance which the Association or the Design Review Committee determines to constitute or pose a health hazard or dangerous condition threatening the life or safety of any persons, the Association or the Design Review .Committee or their duly authorized agent shall be entitled to immediately undertake any and all action that it determines in its sole discretion to be reasonable and necessary, without notice to the Owner, in order to terminate, eliminate, remove or correct the dangerous or hazardous non-complying act or condition including, without limitation, obtaining legal or equitable relief including injunctions or orders of specific performance and/or entering upon the premises in order to undertake corrective action. The Owner of the Lot on which any such non-complying act or condition exists shall solely be responsible for repaying to the Association or the Design Review Committee any and all costs incurred by the Association or the Design Review Committee, including attorney's fees and costs of court, in terminating or correcting the non-complying act or condition on the Lot. The Association shall further be entitled to a lien upon said Owner's Lot in the amount of such costs, including attorney's fees and costs of court, the creation, maintenance and foreclosure of which lien is to be governed by the same terms and conditions as those governing the creation, maintenance and foreclosure of liens for unpaid Assessments to the Association as set forth in this Declaration.

Section 18. No Public Right or Dedication. Nothing contained in the Declaration shall be deemed to be a gift or dedication of all or any part of Lake Pointe to the public, or for any public use. This will include, but not be limited to, non-owner use of the Open Space Preserve and the Water Resources, access through the locked gates and/or usage of the Roadway System for non-owner use and any other use of the amenities without Association approval.

~~IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day first above written.~~

~~ROCKY MOUNTAIN RECREATIONAL COMMUNITIES, LLC~~

~~_____
By: Daniel Manning Title: General Manager~~

~~STATE OF MONTANA)~~

~~ss:~~

~~COUNTY OF FLATHEAD) _____~~

~~Signed and acknowledged before me on October 25, 2005, by Daniel Manning, who swore that he was authorized by ROCKY MOUNTAIN RECREATIONAL COMMUNITIES, LLC, to execute this document on its behalf.~~

~~_____
Notary Public for Montana
Edward P. Nolde
Residing in: Bigfork~~