

MERGER OF CONDOMINIUMS, AMENDED DECLARATION, AND STATEMENT  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
BAY POINT ESTATES

This is a merger of and amendment to the following:

1. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 1, recorded in Book 579, pages 4-49, official records of Flathead County, State of Montana, on January 15, 1975.
2. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 2, recorded in Book 562, pages 917-960, official records of Flathead County, State of Montana, on January 25, 1974.
3. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 3, recorded in Book 543, pages 62-111, official records of Flathead County, State of Montana, on September 20, 1972.
4. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 4, recorded in Book 546, pages 765-812, official records of Flathead County, State of Montana, on February 13, 1973.
5. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 5, recorded in Book 615, pages 778-827, official records of Flathead County, State of Montana, on June 18, 1977.
6. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 14, recorded in Book 562, pages 1-45, official records of Flathead County, State of Montana, on November 13, 1973.
7. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 15, recorded in Book 573, pages 666-709, official records of Flathead County, State of Montana, on October 15, 1974.
8. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 16, recorded in Book 605, pages 333-383, official records of Flathead County, State of Montana, on October 7, 1976.

9. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 17, recorded in Book 635, pages 4-55, official records of Flathead County, State of Montana, on January 6, 1978.
10. DECLARATION OF UNIT OWNERSHIP OF BAY POINT ESTATES NO. 18, recorded in Book 591, pages 809-858, official records of Flathead County, State of Montana, on February 4, 1976.

Each of the above Declarations contains an "Exhibit C" entitled "STATEMENT OF COVENANTS, CONDITIONS, RESTRICTIONS AND BYLAWS OF ASSOCIATION OF UNIT OWNERS OF BAY POINT ESTATES...". Each of the above Declarations, by this reference, is made a part hereof, and will hereinafter be collectively called "The Ten Declarations".

#### RECITALS

A. In The Ten Declarations, certain property was submitted to the Montana Unit Ownership Act pursuant to Chapter 23, Title 67, RCM, 1947 (now Chapter 23, Title 70, Montana Annotated Code, 1978, and hereinafter called "Act").

B. One building containing four (4) residential apartments (hereinafter called "Units") was situated on the property submitted to unit ownership in each of The Ten Declarations.

C. The owners of the forty (40) Units now desire to merge into one (1) unit ownership project (hereinafter called "Bay Point Estates") so that they may use and enjoy their property as a single integrated entity with one association of owners, one set of bylaws, and one set of covenants, conditions and restrictions.

D. The owners of the forty (40) Units, together with the Developer who submitted the property to unit ownership in each of The Ten Declarations, further desire to amend said Declarations such that this document (hereinafter called "this Amended Declaration" or "this Amendment"), together with the Bylaws of the Association and the Restated Articles of Incorporation filed simultaneously herewith, shall govern Bay Point Estates and The Ten Declarations, together with the Statements of Covenants, Conditions, Restrictions and Bylaws attached as exhibits thereto, shall have no independent significance. In the event of any discrepancy between this Amended Declaration and The Ten Declarations, this Amendment shall control.

NOW, THEREFORE, the undersigned owners hereby merge The Ten Declarations and amend them as follows:

1. Merger of Unit Ownership Property. The property submitted to the unit form of ownership and use under the Montana Unit Ownership Act and which shall constitute Bay Point Estates is redefined, delineated and otherwise described as set forth on Exhibit "A" attached hereto and by this reference made a part hereof. The building layouts and units are as depicted on the elevations, floor plans and survey maps filed with The Ten Declarations.

2. Name of Property. The name by which this property is identified is "Bay Point Estates". It is hereinafter called the "Project".

3. Definitions. The terms used herein shall have the meanings stated in the Act and as follows:

3.1 "Association" means the Bay Point Owners Association, Inc., a Montana nonprofit corporation composed of all Unit Owners acting in accordance with the Restated Articles of Incorporation of Bay Point Owners Association, Inc., and the Bylaws of the Association, or its successor corporation.

3.2 "Bylaws" means the Bylaws duly adopted by the Association.

3.3 "Common Elements"

3.3.1 Common Elements. Each Unit Owner shall own an undivided one-fortieth (1/40) interest in the Common Elements, subject to defeasance only as set forth in Paragraph 6 hereof. The Common Elements include all property described on Exhibit "A" attached hereto, together with all Common Elements as defined in the Act at Section 70-23-102(8), as it now exists or as hereafter amended and all common elements added by annexation pursuant to Paragraph 6 herein (excepting therefrom any portion designated as Limited Common Elements).

3.3.2 Limited Common Elements. The Limited Common Elements shall be those areas designated as limited common elements in The Ten Declarations (i.e., furnaces, hot water tanks, and sun decks), and all limited Common Elements added by annexation pursuant to Paragraph 6 herein. Each Unit Owner shall be entitled to a one hundred percent (100%) right to use the Limited Common Elements appertaining exclusively to his or her Unit. The costs of maintenance, repair and replacement of

the Limited Common Elements shall be borne by the Unit Owners to which they are appurtenant.

3.4 "Common Expenses" means: (1) expenses of administration, maintenance, repair or replacement of the Common Elements, provided, however, that the costs of painting the exteriors of the buildings in which the Units are located shall be borne solely by the Owners of the Units contained in that building (i.e., each Unit within the building painted shall be assessed one-fourth (1/4) of painting costs); (2) expenses agreed upon as common by all the Unit Owners as provided by the terms of the Act; (3) expenses declared common by Section 70-23-610 and Section 70-23-612 of the Act, or by the Bylaws.

3.5 "Developer" shall refer to Russell Street and Mary Jane Street, husband and wife.

3.6 A "Unit" shall have the same meaning as in the Montana Unit Ownership Act.

3.7 "Unit Owner" means the person or persons owning a Unit in fee simple absolute, individually or as a co-owner in any real estate tenancy relationship recognized under the laws of the state of Montana, and as otherwise defined in the Act.

4. Units Subject to Declaration, Bylaws, Rules and Regulations, and Restrictive Covenants. All present and future owners of Units shall be subject to and shall comply with the provisions of this Amended Declaration, the Restated Articles of Incorporation of the Association, the Bylaws, and any Rules and Regulations which may be adopted by the Association, as these documents may be amended from time to time by the Association. Amendments to the Bylaws shall be filed of record with the Flathead County Clerk and Recorder.

5. Binding Effect. All provisions of this document shall be covenants running with the land and shall bind any person having any interest in a Unit as though the provisions were recited and fully stipulated in each deed or conveyance thereof.

6. Annexation of Additional Property.

6.1 Right Reserved. Developer is the owner of the property described on Exhibit "B" attached hereto and by this reference made a part hereof. Developer reserves the right to annex to Bay Point Estates the Exhibit "B" property under the terms and conditions set forth below.

6.2 Maximum Number of Units and Buildings. No more than two (2) buildings, each containing four (4) Units, shall be annexed to Bay Point Estates. Developer may, upon completion, annex one building only, so long as the land on which the building to be annexed is situated comprises at least one-half of the total land area of the Exhibit "B" property.

6.3 Comparability. The buildings, Units, roadways, landscaping, limited common elements, and other construction on the Exhibit "B" property which may be annexed shall be of comparable style, size, quality and value to those in Bay Point Estates, such that they will be aesthetically and economically harmonious and compatible therewith.

6.4 Cost of Annexation. Developer shall remit to the Association prior to filing an Amended Declaration a sum, in cash, equal to all capital assessments paid by Unit Owners and their predecessors, whether paid prior to or subsequent to the recordation of this Amended Declaration. All costs incurred in annexation, including, but not limited to, legal expenses, recording costs, governmental fees, and accounting expenses, shall be paid by Developer prior to annexation.

6.5 Completion Date. Developer shall complete annexation within five (5) years from the date of the recordation of this Amended Declaration. If annexation is not complete by said date, all rights of annexation granted hereunder shall expire.

6.6 Effect of Annexation. Should annexation occur, all of the common areas and facilities of Bay Point Estates will be for the use and enjoyment of all Unit Owners who shall share equally in the expenses of maintaining, repairing, and replacing them as necessary.

6.7 Easement Rights Reserved. Developer hereby reserves non-exclusive easements over, across, and through the common areas of Bay Point Estates for the benefit of the annexed property. These reserved easements are for ingress and egress over the roadways and pathways of Bay Point Estates and the right to have access to and over the common areas of the Bay Point Estates, and to connect to the water system and sewer system of Bay Point Estates if permitted by the State and County Health Departments, in accordance with the terms and conditions set forth in the document entitled "EASEMENTS", which shall be recorded simultaneously herewith, and a copy of which is attached hereto as Exhibit "C". The easements reserved hereby shall not benefit the Exhibit "B" property unless and until it is

annexed to Bay Point Estates under the terms and conditions set forth in this Amended Declaration.

6.8 Manner of Annexation. The manner of annexing the Exhibit "B" property to Bay Point Estates shall be accomplished by the filing of record in the office of the Clerk and Recorder of Flathead County, Montana, an Amended Declaration. Prior to annexation, Developer shall comply with all applicable zoning restrictions and density requirements, if any, and all other governmental and legal requirements applicable to the Exhibit "B" property.

The parties hereto, their heirs, successors and assigns, hereby grant to the Association their limited power of attorney coupled with an interest to shift the percentage of undivided ownership interest in the General Common Elements appurtenant to each Unit to the percentages set forth in each such Amended Declaration recorded pursuant to this Paragraph 6. Each deed, mortgage or other instrument with respect to a Unit and the acceptance thereof shall be a grant and acknowledgment of and consent to this power and shall be deemed to reserve to the Association the power to shift and reallocate from time to time the percentage of undivided ownership interest in the General Common Elements appurtenant to each Unit to the percentages set forth in each recorded Amended Declaration, provided that there shall be no division greater than an undivided one/forty-eighth (1/48) interest.

6.9 Binding Effect. Each Unit Owner, by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such Amended Declaration that is recorded, as follows:

6.9.1 The portion of the Exhibit "B" property described in any Amended Declaration shall be governed in all respects by the provisions of this Amended Declaration.

6.9.2 The percentage of undivided ownership interest in the general Common Elements shall automatically be reallocated to the extent set forth in each recorded Amended Declaration upon its recordation. The amount by which such percentage of undivided ownership interest in the general Common Elements is reduced shall thereby be deemed to be released and divested from such owner and reconveyed and reallocated among the other Unit Owners as set forth herein.

6.9.3 Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to

the conditional limitation that the percentage of undivided ownership interest in the general Common Elements shall, upon recording of each Amended Declaration, be divested pro tanto to the reduced percentage set forth in such Amended Declaration and vested among the other owners, mortgagees and others owning an interest in the other Units in accordance with the terms and percentage of each such recorded Amended Declaration.

6.9.4 The percentage of undivided ownership interest in the General Common Elements appurtenant to each Unit shall include and be deemed to include any additional General Common Elements annexed hereto by a recorded Amended Declaration and each deed, mortgage or other instrument affecting a Unit shall be deemed to include such additional General Common Elements. The ownership of any such Unit and lien of any such mortgage shall automatically include and attach to such additional General Common Elements as such Amended Declarations are recorded.

6.9.5 Each Unit Owner shall have a perpetual easement appurtenant to his Unit, or the use of any additional General Common Elements annexed thereto by and described in any recorded Amended Declaration for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the owners of specific Units as may be provided in any such Amended Declaration.

6.9.6 The recording of each such Amended Declaration shall not alter the amount that the lien for expenses assessed to a Unit prior to such recording.

6.9.7 Each Owner by acceptance of the deed conveying his or her Unit, agrees for himself or herself and all those who claim under them, including mortgagees, that this Amended Declaration and each subsequent Amended Declaration is and shall be deemed to be in accordance with the Montana Unit Ownership Act and for purposes of this Amended Declaration and the Montana Unit Ownership Act, any changes in the respective percentages of undivided ownership interest in the General Common Elements as set forth in each such Amended Declaration shall be deemed to be made by agreement of all Owners.

6.9.8 The provisions in this Amended Declaration and in all deeds and mortgages of the Units

and General Common Elements contain and will contain clauses designed to accomplish a shifting of the General Common Elements. None of the provisions shall invalidate the other, but each shall be supplementary to the other, toward the end that a valid shifting of the General Common Elements can be accomplished.

6.10 Agent for Service of Process. The registered agent shall be the resident manager, Greg Bryan, or other agent as shall be designated by resolution of the Board of Directors of the Association.

6.11 Non-Waiver. The parties expressly agree that by executing the within instrument they are in no way waiving any rights, interests, claims, demands and causes of action they have as to each other or third parties.

6.12 Use. No Unit may be sold, transferred or occupied without complying with the provisions contained in the Association Bylaws as they now exist or as they are hereafter amended.



EXHIBIT "A"

A tract of land situated, lying and being in Government Lot Three (3) of Section Twenty-five (25), Township Thirty-one (31) North, Range Twenty-two (22) West, P.M.M., Flathead County, Montana and more particularly described as follows to wit:

Commencing at the NE corner of Deed Exhibit No. 525/95, records of the Clerk and Recorder's Office of Flathead County, Montana; thence N 89° 58' 00" W along the North boundary of said Deed Exhibit, 353.73 feet to a set iron pin, which is the true point of beginning of the tract of land herein described; thence leaving said North boundary S 18° 11' 49" E, 159.27 feet to a set iron pin; thence S 46° 01' 36" W, 63.29 feet to a set iron pin; thence S 13° 23' 50" W, 98.93 feet to a set iron pin; thence S 13° 03' 56" E, 45.27 feet to a set iron pin, the P.C. of a 10.00 foot radius curve concave Northerly; thence Southeasterly and Northeasterly through a central angle of 147° 45' 28" an arc length of 25.79 feet to a set iron pin; the P.T. of said curve; thence N 19° 10' 36" E, 33.26 feet to a set iron pin; thence N 23° 34' 23" E, 39.19 feet to a set iron pin; thence N 40° 18' 23" E, 38.83 feet to a set iron pin; thence N 31° 18' 18" E, 44.26 feet to a set iron pin; thence N 43° 35' 49" E, 40.84 feet to a set iron pin; thence N 19° 25' 27" E, 70.32 feet to a set iron pin, the P.C. of a 150.00 foot radius curve concave Southeasterly; thence Northeasterly through a central angle of 38° 55' 29" an arc length of 101.90 feet to a set iron pin, the P.T. of said curve; thence N 58° 20' 56" E, 41.98 feet to a set iron pin, the P.C. of a 35.00 foot radius curve concave Southwesterly; thence Northeasterly and Southeasterly and Southwesterly through a central angle of 124° 54' 33" an arc length of 76.30 feet to a set iron pin, the P.T. of said curve; thence S 03° 15' 30" W, 22.46 feet to a set iron pin; thence S 14° 09' 24" W, 30.51 feet to a set iron pin; thence S 22° 28' 39" W, 108.80 feet to a set iron pin; thence N 81° 22' 59" W, 36.51 feet to a set iron pin; thence S 61° 46' 22" W, 75.84 feet to a set iron pin, which is a point on a 95.00 feet radius curve concave Southwesterly (having a radial bearing of S 52° 49' 32" W); thence Southeasterly and Southwesterly through a central angle of 49° 35' 13" an arc length of 82.22 feet to a set iron pin; thence S 01° 45' 33" W, 45.57 feet to a set iron pin which is a point on a 215.00 foot radius curve concave Northeasterly (having a radial bearing of N 59° 17' 18" E); thence Southeasterly through a central angle of 53° 33' 49" an arc length of 201.00 feet to a set iron pin; thence N 89° 50' 29" E, 92.19 feet to a set iron pin; thence S 07° 15' 34" W, 88.00 feet to a set iron pin, which is a point on a 390.00 foot radius curve concave Northeasterly; (having a radial bearing of N 04° 33' 09" W) thence Southwesterly and Northwesterly through a central angle of 48° 03' 30" an

arc length of 327.12 feet to a set iron pin; thence S 47° 08' 43" W, 61.93 feet to a set iron pin ; thence S 68° 46' 29" W, 46.83 feet to a set iron pin; thence S 23° 00' 48" W, 15.49 feet to a set iron pin; thence S 73° 00' 58" W, 213.43 feet to a set iron pin; thence S 87° 38' 52" W, 23.31 feet to a FND iron pin on the high water mark of Whitefish Lake; thence N 16° 30' 00" W along said high water mark 90.00 feet to a FND iron pin; thence N 04° 13' 00" W, 187.40 feet to a FND iron; thence N 16° 01' 00" E, 179.75 feet to a FND iron pin; thence N 22° 30' 00" E, 125.10 feet to a FND iron pin on the North boundary of said Deed Exhibit 525/95; thence leaving said North boundary S 89° 58' 00" E, 165.72 feet to the place of beginning and containing 4.782 acres of land more or less. Subject to and together with all existing easements of record.

Beginning at the NE corner of Deed Exhibit 525/95, of record on file in the Clerk and Recorder's Office of Flathead County, Montana; thence South along the East boundary of said Deed Exhibit, 443.41 feet to a point; thence S 89° 50' 29" W, 37.23 feet to a found iron pin, which is the P.C. of a 215.00 foot radius curve concave Northeasterly (having a radial bearing of N 05° 43' 29" E); thence Northwesterly through a central angle of 53° 33' 49" an arc length of 201.00 feet to a found iron pin; thence N 01° 45' 33" E, 45.57 feet to a found iron pin, the P.C. of a 95.00 foot radius curve concave Westerly (having a radial bearing of N 77° 35' 15" W); thence Northwesterly through a central angle of 49° 35' 13" an arc length of 82.22 feet to a found iron pin; thence N 61° 46' 22" E, 75.84 feet to a found iron pin; thence N 81° 22' 59" W, 36.51 feet to a found iron pin; thence N 22° 28' 39" E, 103.80 feet to a found iron pin; thence N 14° 09' 24" E, 30.51 feet to a found iron pin; thence N 03° 15' 30" E, 22.46 feet to a found iron pin; the P.C. of a 35.00 foot radius curve concave Southwesterly; thence Northeasterly and Southwesterly through a central angle of 93° 15' 30" an arc length of 56.97 feet to a point; thence N 00° 00' 00" E, 0.75 feet to a point on the North boundary of said Deed Exhibit; thence S 89° 58' 00" E along said North boundary 99.92 feet to the place of beginning and containing 1.407 acres of land more or less. Subject to and together with all existing easements of record.

EXHIBIT "B"

EXHIBIT "C"

EASEMENTS

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 1981, by and among BAY POINT OWNERS ASSOCIATION, INC., a Montana nonprofit corporation (hereinafter referred to as "Association"), and RUSSELL STREET and MARY JANE STREET, husband and wife (hereinafter referred to as "Streets").

R E C I T A L S

A. Association is composed of owners of condominium units in a condominium project known as Bay Point Estates which is located in Flathead County, Montana (hereinafter referred to as "Bay Point Estates"). Bay Point Estates was created pursuant to certain Declarations of Condominium which were merged in a document entitled "Merger of Condominiums and Amended Declaration of Bay Point Estates", recorded on \_\_\_\_\_, 1981, in the official records of Flathead County, Montana, as File No. \_\_\_\_\_, and hereinafter collectively referred to as "Declaration".

B. Unless otherwise set forth herein, the terms contained in this Agreement shall have the same meanings and definitions as contained in the Declaration and in the Montana Unit Ownership Act.

C. Streets are the owners of certain parcels of land adjacent to Bay Point Estates, more particularly described on Exhibit "1" attached hereto.

D. Streets constructed certain improvements located within Bay Point Estates which have been used by and are now owned by Bay Point Estates Owners either as part of their units or as common property.

1. Included as part of said improvements which are common property is a sewerage system (hereinafter referred to as the "Bay Point Sewer System") located within Bay Point Estates, consisting of sewer mainlines and some truck lines serving Bay Point Estates. Said system discharges into a sewer trunk line (hereinafter referred to as the "Sewer Trunk Line") owned by Streets and located, for the most part, outside the boundaries of Bay Point Estates. Said trunk line ultimately discharges into the sewer system of the City of Whitefish, Montana, pursuant to permission granted by said City.

2. A further part of said improvements owned as common property is a domestic water system (hereinafter

referred to as the "Bay Point Water System"), which is located within Bay Point Estates and which carries water purchased from the City of Whitefish, Montana, and carried through a trunk line located outside the boundaries of Bay Point Estates and owned by Streets (hereinafter referred to as the "Water Trunk Line") to Bay Point Estates.

3. Another relevant improvement owned as common property is a roadway system located within Bay Point Estates and described in the Declaration. This roadway system (hereinafter referred to as the "Bay Point Road System") is connected to a roadway over which the Association and its members and predecessors have had an implied easement for vehicular ingress and egress granted by Streets. Streets were granted a portion of this easement pursuant to a Grant of Easement recorded on February 11, 1972, in the Records of Flathead County, Montana, in Book 536, page 159.

E. The parties to this Agreement desire to define, delineate and confirm their respective rights and obligations relating to the use of the Bay Point Estates Water and Sewer Systems, the Road Systems and the Sewer and Water Trunk Lines.

F. The parties further desire to create herein certain covenants which shall run with the land owned by them and which shall benefit said land, the parties hereto and their respective heirs, successors and assigns;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows.

## I.

### Sewer Lines

1.1 Ownership of Sewer Trunk Lines. The parties agree that the Streets, their heirs, successors and assigns, own the Sewer Trunk Line which is located outside Bay Point Estates. Streets, their heirs, successors and assigns agree to maintain said Trunk Line in good condition and replace as necessary, until and unless dedicated to the City of Whitefish or to Flathead County and said governmental units or either of them assumes said obligations. One-half (1/2) of the costs of normal operating maintenance of said Trunk Line shall be contributed by Association until additional hookups to said Line are installed. At such time as new hookups are added, Association shall contribute to the maintenance costs for the Trunk Line based on sharing costs in proportion to the total number of hookups. Costs for replacement, in whole or in part, of said Trunk Line shall be the sole

obligation of the Streets, their heirs, successors and assigns. The Streets, their heirs, successors and assigns, agree to indemnify and hold the Association and its members harmless against any damage or liability resulting from the failure to maintain the Sewer Trunk Line in good condition and repair. In the event maintenance, repair, or replacement, in whole or in part, by the Streets, their heirs, successors and assigns, is inadequate to provide for the proper functioning of the Trunk Line, Association shall have the right to enter the property and maintain, replace or repair said Line and charge the Streets, their heirs, successors and assigns, their proportional share of the costs.

1.2 Ownership of Sewer System. In accordance with the provisions of the Declaration, the Bay Point Estates Sewer System is the common property of Bay Point Estates and will be maintained by the Association. The Association agrees to indemnify and hold the Streets harmless against any damage or liability resulting from any failure to maintain the Sewer System in good condition and repair.

1.3 Hookups to Sewer Systems.

a. Streets represent that there are presently ~~five~~ <sup>twelve</sup> ~~(12)~~ hookups to the Bay Point Estates Sewer System.

b. It is agreed that Streets, their heirs, successors and assigns, may, at their expense, add two (2) additional hookups to the Sewer System and ultimately to the Sewer Trunk Line adequate to serve the eight (8) units in the two (2) buildings which Streets, their heirs, successors and assigns may build on the land described in the Declaration and annexed under the terms and conditions set forth in Paragraph 6 therein.

1.4 Hookups to Sewer Trunk Lines.

a. The parties hereto agree that Streets, or their heirs, successors and assigns, shall have the right, at their own expense, to connect to the Sewer Trunk Line so long as such connection in no way interferes with the proper functioning of the system and its use by Bay Point Estates. Streets, their heirs, successors and assigns, shall, as a condition to the right to connect said hookups to the Sewer Trunk Line, assure that they, their successors and assigns, shall be responsible for any maintenance and repair costs on the lines, other than the Trunk Line, located on their respective lands. (Maintenance and repair of the Trunk Line shall be in accordance with Paragraph 1.1 herein.) Streets and their heirs, successors and assigns in ownership of the Exhibit "1" land shall be responsible

for providing separate metering for such connections, if appropriate.

b. Any hookups to the Bay Point Estates Sewer System and the Sewer Trunk Line shall be made in conformance with good engineering practice with respect to the number and method of hookups and Streets and their heirs, successors and assigns agree to indemnify and hold Association and its members harmless against any damage or liability incurred as a result of the failure of Streets or their heirs, successors and assigns to abide by such practice.

1.5 Permits. The foregoing rights to connect to the Bay Point Estates Sewer Systems and the Sewer Trunk Line (as opposed to use of such Systems once connected) are subject to any necessary permits, licenses, conditions, etc., imposed by the City of Whitefish or Flathead County. Streets, their heirs, successors and assigns shall undertake to secure any such permits, etc., as shall be necessary at its expense and not of the Association.

## II.

### Water Lines

2.1 Ownership of Water Trunk Lines. The parties agree that the Streets, their heirs, successors and assigns, own the Water Trunk Line which is located outside of Bay Point Estates. Streets, their heirs, successors and assigns, agree to maintain said Trunk Line in good condition and replace as necessary, until and unless dedicated to the City of Whitefish or to Flathead County and said governmental units or either of them assumes said obligations. One-half (1/2) of the costs of normal operating maintenance of said Trunk Line shall be contributed by Association until the Trunk Line is replaced and additional hookups to said Line are installed. At such time as new hookups are added, Association shall contribute to the normal operating maintenance costs for the Trunk Line, based on sharing costs in proportion to the total number of hookups.

2.2 Hookups to Water Trunk Line. There shall be no hookups to said Trunk Line in addition to the presently operating twelve ~~operating/fifteen (15)~~ hookups unless and until the Trunk Line is replaced with a line: (a) sufficient to insure the proper functioning of the Water System; (b) sufficient to meet any and all standards imposed by any governmental unit, including, but not limited to, fire standards; and (c) sufficient to meet any and all requirements imposed as a condition of insurance coverage for Bay Point Estates. The Association shall replace any operating hookups and connections within Bay Point Estates which become defective or

deficient so long as the defect or deficiency was not caused by Streets or their agents.

The Streets, their heirs, successors and assigns, agree to indemnify and hold the Association and its members harmless against any damage or liability resulting from the failure to maintain the Water Trunk Line in good condition and repair. In the event maintenance or replacement, in whole or in part, by the Streets, their heirs, successors and assigns, is inadequate to provide for the proper functioning of the Trunk Line, Association shall have the right to enter the property and maintain, replace or repair said Line and charge the Streets, their heirs, successors and assigns, their proportional share of the costs.

The Association, its successors and assigns, agrees to indemnify and hold the Streets, their heirs, successors and assigns, harmless against any damage or liability resulting from the failure of the Association to maintain the Bay Point Estates' water system in good condition and repair, provided such failure was not caused by the negligent design or installation of the water system by the Streets or their agents.

2.3 Ownership of Water System. In accordance with the provisions of the Declaration, the Bay Point Estates Water System is the common property of Bay Point Estates and will be maintained by the Association.

2.4 Hookups to Water System.

a. There are presently ten (10) hookups to the Bay Point Estates Water System. Two hookups, one serving Building 16 and one serving Building 17, are located on property presently outside of Bay Point Estates.

b. It is agreed that Streets, their heirs, successors and assigns, may, at their expense, add two (2) additional hookups adequate to serve up to eight (8) units in two (2) buildings which Streets, their heirs, successors and assigns, may build on the land described in the Declaration and annexed under the terms and conditions set forth in Paragraph 6 therein, and that such hookups will become part of the Bay Point Estates Water System so long as a larger trunk line(s) is/are installed and connected to the city or county water system at the expense of the Streets, their heirs, successors and assigns. Such connection(s) must not in any way interfere with the proper functioning of the System or the Water Trunk Line.



## 2.5 Hookups to Water Trunk Lines.

a. The parties hereto agree that Streets, their heirs, successors and assigns, shall have no right to increase the existing usage of the Water Trunk Line if such increased usage would interfere with the proper functioning of the System. The parties hereto agree, however, that Streets, their heirs, successors and assigns, shall have the right, at their own expense, to extend and increase the size of the present Water Trunk Line, to reverse the water flow through the Water System, and to connect to the Water Line so long as separate metering for such connections are provided for and the proper functioning of the System is not interfered with. Streets, their heirs, successors and assigns, shall, as a condition to the right to connect said hookups to the Water Trunk Line, assure that they, their heirs, successors and assigns, shall be responsible for any maintenance and repair costs on the lines located on their respective lands. Streets and their successors in ownership of the Exhibit "1" land shall be responsible for providing separate metering for such connections.

b. Any hookups to the Bay Point Estates Water System and the Water Trunk Line shall be made in conformance with good engineering practice with respect to the number and method of hookups and Streets and their successors agree to indemnify and hold Association and its members harmless against any damage or liability incurred as a result of the failure of Streets or their heirs, successors and assigns to abide by such practice.

2.6 Permits. The foregoing rights to connect to the Bay Point Estates Water Systems and the Water Trunk Line (as opposed to use of such Systems once connected) are subject to any necessary permits, licenses, conditions, etc., imposed by the City of Whitefish, Flathead County, and the Montana Department of Health & Environmental Sciences. Streets, their heirs, successors and assigns, shall undertake to secure any such permits, etc., as shall be necessary at its expense and not at the expense of the Association.

### III.

#### Easements to Use Roadway; Maintenance and Repair

3.1 Existing Roadway Outside of Bay Point Estates. The parties acknowledge the existence of a sixteen (16) foot wide crown paved roadway which presently serves as an access road for Bay Point Estates and the Streets. Said roadway has been continuously improved at the expense of both the Association and the Streets. The approximate location of

said roadway is as illustrated on Exhibit "2", attached hereto and incorporated herein by this reference.

3.2 Existing Roadway Within Bay Point Estates. The parties acknowledge the existence of a roadway system within Bay Point Estates which presently serves the Association and its members.

3.3 Easements. Streets, their heirs, successors and assigns, hereby grant to the Association and its successors and assigns a perpetual non-exclusive easement to use the roadway described on Exhibit "2" for vehicular ingress and egress. The roadway which is the subject of the non-exclusive easement is more particularly set forth and described on Exhibit "2", attached. Association hereby grants to owners of units which may be constructed on the property described on Exhibit "3" of the Declaration a perpetual non-exclusive easement over the roadway system within Bay Point Estates.

3.4 Maintenance. Expenses for normal maintenance and snow removal service for the roadway described on Exhibit "2" property shall be shared as follows: Association 75%; Streets 25%; so long as there is no additional usage by others not currently using said roadway. At such time as there is an increased usage, expenses shall be shared by the Association, the Streets, and others based on sharing costs in proportion to the total number of living units utilizing said roadway. Damages caused to the roadway by any party shall be repaired by the party causing such damage.

#### IV.

##### Easements for Utilities

4.1 Existing Utilities. The parties acknowledge the existence of certain gas and electric lines running from the Exhibit "1" property to and through property owned by the Association and its members.

4.2 Easements. Streets, their heirs, successors and assigns, hereby grant to the Association and its agents the right at all times to enter the Exhibit "1" property for the purpose of inspecting, maintaining, improving, repairing, constructing, reconstructing, locating and relocating the utility lines.

4.3 Costs. The costs of any inspection, maintenance, improvement, repair, construction, reconstruction, location or relocation of the utility lines, improvements thereto or relocation thereof shall be borne by the Association so long as such costs were incurred for the Association's benefit.

V.

Miscellaneous

5.1 Agreement in Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

5.2 Successors and Assigns. The rights and obligations of the parties hereto shall inure to the benefit of and be binding upon their respective heirs, successors and assigns.

VI.

Conditions of Grant

6.1 Condition. The grant of the easements by the parties hereto, each to the other, is subject to the conditions precedent to the execution by the Association as Purchaser of a Contract for Deed dated August 1, 1981, under the terms of which the Streets are the Sellers and the Association is the Purchaser, and which Contract for Deed describes the property more particularly described in Exhibit 4 attached hereto and by this reference made a part hereof.

IN WITNESS WHEREOF, the undersigned have set their hands.

BAY POINT OWNERS ASSOCIATION  
INC., a Montana Non-Profit  
Corporation

RUSSELL C. STREET and  
MARY JANE STREET, Husband and  
Wife

By C. Oddie  
President

Russell C. Street  
Russell C. Street

By K. Williams  
Secretary

Mary Jane Street  
Mary Jane Street


"Association"

"Streets"

STATE OF MT )  
County of FLATHOOD:ss

On this 24<sup>th</sup> day of OCTOBER, 1981, before me personally appeared C. OPDIE, to me known to be the President of BAY POINT OWNERS ASSOCIATION, INC., the association that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said association, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of the corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

  
Notary Public in and for the State  
of MT, residing at WHITEFISH

STATE OF MT )  
County of FLATHOOD:ss

On this 24<sup>th</sup> day of OCTOBER, 1981, before me personally appeared LEE MILLS, to me known to be the Secretary of BAY POINT OWNERS ASSOCIATION, INC., the association that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said association, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of the corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

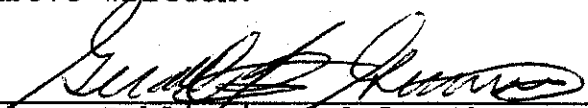
  
Notary Public in and for the State  
of MT, residing at WHITEFISH



EXHIBIT "1"

[to be added]

EXHIBIT "1"

EXHIBIT "2"

A tract of land situated, lying and being in Gov't Lot Three (3) of Section Twenty-five (25), Township Thirty-one (31) North, Range Twenty-two (22) West., P.M.M, Flathead County, Montana, and more particularly described as follows to wit:

Beginning at the N.E. corner of Deed Exhibit No. 525/95, records of the clerk and recorders office of Flathead Co. Montana; thence "SOUTH" along the west boundary of said Deed Exhibit no. 525/95; thence S89° 58' 00" E., along said south boundary 60.00 feet to a set iron pin; thence S 89° 59' 42" E., continuing along said South boundary, 443.99 feet to a found iron pin; thence S 00° 01' 50" E., 329.35 feet to a found iron pin; thence N 89° 44' 53" W., 398.00 feet to a found iron pin; thence S 00° 07' 41" E., 88.81 feet to a found iron pin; on the approximate high water mark of Whitefish Lake; thence along a meander line which represents the high water mark of Whitefish Lake the following courses and distances; N 81° 06' 05" W., 131.76 feet; then N 64° 12' 16" W., 131.28 feet; then N 80° 32' 16" W., 79.08 feet; then S 35° 44' 33" W., 162.63 feet; then N 75° 57' 50" W., 52.72 feet; then N 50° 42' 38" W., 85.28 feet; then N 41° 59' 14" W., 40.36 feet; then N 28° 57' 04" W., 53.71 feet; then N 22° 37' 12" W., 52.00 feet; then N 36° 00' 38" W., 115.87 feet to a found iron pin; thence N 87° 38' 52" E., and leaving said low water line, 23.31 feet to a found iron pin; thence N 72° 02' 08" E., 213.66 feet to a found iron pin; thence N 32° 57' 15" E., 12.76 feet to a found iron pin; thence N 68° 46' 29" E., 46.83 feet to a found iron pin; thence N 47° 08' 43" E., 61.93 feet to a found iron pin; which is the P.C. of a 390.00 foot radius curve concave Northeasterly (having a radial bearing of N 43° 30' 20" E.); thence southeasterly and Northeasterly through a central angle of 48° 03' 30" an arc length of 327.12 feet to a found iron pin; thence N 07° 15' 34" E., 87.67 feet to a found iron pin; thence N 86° 54' 55" W 104.92 feet to a found iron pin; thence N 69° 44' 57" W., 104.11 feet to a found iron pin; thence N 49° 12' 05" E., 70.90 feet to a found iron pin; thence N 12° 34' 28" E., 86.92 feet to a found iron pin; thence N 31° 53' 06" W., 64.46 feet to a found iron pin; thence N 61° 46' 22" E., 74.84 feet to a found iron pin; thence N 81° 22' 59" W., 39.71 feet to a found iron pin; thence N 20° 55' 25" E., 101.53 feet to a found iron pin; thence N 13° 55' 48" E., 32.08 feet to a found iron pin; thence N 03° 15' 30" E., 60.24 feet to a found iron pin on the North boundary of said Deed Exhibit No. 525/95; thence S 89° 58' 00" E., and along said North Boundary, 65.83 feet to the place of beginning and containing 9.548 acres of land more or less. Subject to and together with all Existing easements of Records.

EXHIBIT "3"

Beginning at the NE corner of Deed Exhibit 525/95, of record on file in the Clerk and Recorder's Office of Flathead County, Montana; thence South along the East boundary of said Deed Exhibit, 443.41 feet to a point; thence S 89° 50' 29" W, 37.23 feet to a found iron pin, which is the P.C. of a 215.00 foot radius curve concave Northeasterly (having a radial bearing of N 05° 43' 29" E); thence Northwesterly through a central angle of 53° 33' 49" an arc length of 201.00 feet to a found iron pin; thence N 01° 45' 33" E, 45.57 feet to a found iron pin, the P.C. of a 95.00 foot radius curve concave Westerly (having a radial bearing of N 77° 35' 15" W); thence Northwesterly through a central angle of 49° 35' 13" an arc length of 82.22 feet to a found iron pin; thence N 61° 46' 22" E, 75.84 feet to a found iron pin; thence N 81° 22' 59" W, 36.51 feet to a found iron pin; thence N 22° 28' 39" E, 103.80 feet to a found iron pin; thence N 14° 09' 24" E, 30.51 feet to a found iron pin; thence N 03° 15' 30" E, 22.46 feet to a found iron pin; the P.C. of a 35.00 foot radius curve concave Southwesterly; thence Northeasterly and Southwesterly through a central angle of 93° 15' 30" an arc length of 56.97 feet to a point; thence N 00° 00' 00" E, 0.75 feet to a point on the North boundary of said Deed Exhibit; thence S 89° 58' 00" E along said North boundary 99.92 feet to the place of beginning and containing 1.407 acres of land more or less. Subject to and together with all existing easements of record.



EXHIBIT "4"

A tract of land situated, lying and being in Government Lot Three (3), Section Twenty-five (25), Township Thirty-one (31) North, Range Twenty-two (22) West, P.M.N., Flathead County, Montana and more particularly described as follows to wit:

Commencing at the NE corner of Deed Exhibit No. 525/95, records of Flathead County, Montana; thence N 89° 58' 00" W along the North boundary of said Deed Exhibit, 353.73 feet to a found iron pin, which is the true point of beginning of the tract of land herein described; thence leaving said North boundary S 18° 11' 49" E, 159.27 feet to a found iron pin; thence S 46° 01' 36" W, 63.29 feet to a found iron pin; thence S 13° 23' 50" W, 98.93 feet to a found iron pin; thence S 13° 03' 56" E, 45.27 feet to a found iron pin, which is the P.C. of a 10.00 foot radius curve concave Northeasterly; thence Southeasterly and Northeasterly through a central angle of 147° 45' 28" an arc length of 25.79 feet to a found iron pin, the P.T. of said curve; thence N 19° 10' 36" E, 33.26 feet to a found iron pin; thence N 23° 34' 23" E, 39.19 feet to a found iron pin; thence N 40° 18' 23" E, 38.83 feet to a found iron pin; thence N 31° 18' 18" E, 44.26 feet to a found iron pin; thence N 43° 35' 49" E, 40.84 feet to a found iron pin; thence N 19° 25' 27" E, 70.32 feet to a found iron pin, the P.C. of a 150.00 foot radius curve concave Southeasterly; thence Northeasterly through a central angle of 38° 55' 29" an arc length of 101.90 feet to a set iron pin, the P.T. of said curve; thence N 58° 20' 56" E, 41.98 feet to a found iron pin, the P.C. of a 35.00 foot radius curve concave Southwesterly; thence Northeasterly through a central angle of 31° 39' 04" an arc length of 19.33 feet to a point; thence N 00° 00' 00" E, 0.75 feet to a point on the North boundary of said Deed Exhibit; thence N 89° 58' 00" W along said North boundary 253.81 feet to the place of beginning and containing 0.742 acres of land more or less. Subject to and together with all existing easements of record.