

DECLARATION OF COVENANTS

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KNOWN ALL MEN BY THESE PRESENT:

Clearwater Development Limited Partnership of Alpine, Utah, referred to herein as the Developers, hereby impose upon those tracts of land owned by them and more particularly described as Emerald Point on Ashley Lake Subdivision in Flathead County, Montana and any resubdivisions or amendments thereof, the following covenants, conditions and restrictions, which shall inure to the benefit of themselves and all future owners of the said tract or a portion thereof.

Therefore, Developers, do hereby place the following covenants upon that property:

I. USE OF PREMISES

The premises shall be used primarily for single-family residential purposes and the residences thereon shall be constructed on the property and may be factory built homes or the like on permanent foundations, provided every residence will have a minimum of 1,200 square feet on a single floor or 1,000 square feet on each floor of a multi-story residence. All structures shall maintain a 20 foot set back from average high water line of the lake, and a 10 foot set back from all property lines. No home shall exceed 30 feet in height.

Type and Style of Home:

- A. Stick built house must conform with the rules and regulations of the Uniform Building Code, State of Montana, Flathead County Lake & Lakeshore protection Regulations and any local entity that may be empowered to administer same.
- B. No modular structure of any kind and particularly those commonly known as "mobile home" "modular home" or "trailer" construction shall be built.
- C. Recreation vehicles and travel trailers must be used for recreational purposes only, and cannot be used as a permanent residence.
- D. Any dwelling or structure erected or placed on any lot shall be completed as to exterior appearance, including finished painting, within one (1) year from the date of commencement of construction.
- E. No structure on any lot shall have metal exterior siding. Class A and Class B fire rated roofing materials will be required. Metal roofs shall be permitted only if they shall have been painted during the course of their manufacture. Bare aluminum steel, galvanized surfaces or other metallic surfaces of roofing shall not be permitted. The roofs of all residential structures shall have eaves which shall have a roof with a pitch of not less than one (1) foot and all residential structures shall have a roof with a pitch of not less than three (3) feet vertical rise to twelve (12) feet of horizontal run.
- F. Natural exterior finishes on all structures are preferred. All exterior painted surfaces will have natural tones that are in harmony with the structure's setting.
- G. All homes, garages and guest houses will conform to Flathead County Restrictive Covenant Regulations.

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- H. All use by any lot owner will conform to the Ashley Lake Neighborhood Plan and Development Code and the Flathead Lake & Lakeshore Protection Regulations. Each lakeview lot and park will be allowed to access the lake. Stairways and path to the lake will be located to reduce disturbance of steep lakeshore area, will avoid removal of trees, and minimal disturbance of natural vegetation, will be uncovered, and will be no wider than six (6) feet in width.
- I. **APPROVAL OF PLANS AND SPECIFICATIONS:** No building or structure of any kind shall be erected or placed upon any lot until the plans and specifications for such construction, together with a plot plan showing the location of the structure has been approved by the Board as to the proposed workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to lot lines, finish grade elevations and other requirements which may be imposed by the Architectural Committee. The same approval shall apply prior to any removal of existing trees that exceed twelve (12) inches diameter.

The Association shall have fourteen (14) days in which to approve or reject plans. Failure to issue a written decision within that period shall constitute approval for the individual property owner to construct the proposed structure according to the plans, provided that construction must still comply with covenants and by-laws then in effect.

The Architectural Committee retains the authority to stop construction if construction is not in accordance with approved plans.

The Architectural Committee may, by appropriate injunction, obtain an order from the Flathead County District Court to stop and enjoin any construction when such construction is inconsistent with any provision of these covenants and such construction is under a plan or plans which have not been presented to the Architectural Committee.

If the Architectural Committee disapproves of submitted plans, it shall state its reason or reasons for doing so. Any lot owner may resubmit an application for approval of its plans upon modification or correction of deficiencies. Alternatively, a property owner whose plans have been disapproved may appeal.

Minimum Wildfire Prevention Measures:

1. Roofs of structures will be constructed of, or made to be, fire resistant material and kept free of debris such as pine needles, leaves, moss, etc.
2. A 30 foot perimeter will be kept around structures in which weed, brush, and other debris capable of rapidly transmitting fire are removed.
3. No portion of a tree or any other vegetation will extend to within 20 - 25 feet of the outlet of a stovepipe or chimney.
4. A minimum setback distance for any development be maintained to a distance of at least 10 feet from any property line.

Minimum Noxious Weed Control Measures:

1. Existing topsoil will be stripped and stockpiled wherever soil is to be disturbed for roads, excavation, grading, etc.

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2. Topsoil will be replaced on all disturbed areas. Upon completion of the grading, it will be fertilized and seeded with native or commercial grass
3. Any offsite topsoil or gravel will be inspected for noxious weeds prior to delivery to the site.

Expansion: Further these declarations may be applied to that land adjacent to or contiguous with the property herein described in the Developers discretion or if the same is determined to be necessary by the Flathead County Board of County Commissioners.

II. RESTRICTION ON USE

- A. Use - The premises shall be used for single family residences, limited business and recreational purposes. Businesses such as architects, engineer, artists and other professions which do not require extensive public visitorship, and as allowed by The Ashley Lake Neighborhood Plan, shall be allowed. Guest homes shall not be used as a permanent residence. Garages shall not be used for any type of residency. Rental of homes, guest houses and garages in not permitted.
- B. Fences: No fences or walls shall be erected, placed or altered on any lot until construction plans and specifications and a plot plan showing the locations of the structure or structures have been approved by the Board of Directors of the Homeowners Association. In no event shall fences exceed five (5) feet in height.
- C. Garbage, Refuse and Sewage Disposal: No building site shall be used for or maintained as a dumping ground of rubbish, trash, garbage or waste and the aforementioned shall not be kept except in sanitary animal proof containers. All incinerators or other such equipment for storage or disposal for such material shall be kept in clean and sanitary condition. Garbage receptacles and clothes lines shall not be visible from any roads.

No individual sewage disposal system shall be permitted unless such system is designed, located and constructed in accordance with the applicable rules of the Flathead City County Health Department and the Montana State Department and Environmental Quality.
- D. Yard Lights and Fuel Tanks: Outside yard lights are not permitted upon any of the properties until the type and location thereof has first been approved by the Board of Directors of the Homeowners Association, and the owner has received written permission approving same. Fuel tanks are prohibited. Containers of flammable material shall not be kept on the premises unless the same complies with the ordinances, rules and regulations of Flathead County, and the State of Montana. Even if so complying, no container of flammable material shall be allowed to remain open other than for its immediate use.
- E. Signs: No signs of any kind shall be displayed to the public view on any lot except one sign of not more than four square feet advertising the property for sale or rent. A sign not to exceed four square feet may be used by a builder to advertise the property during construction or sale. This provision does not apply to street signs erected by the Developer or a government agency.

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- F. Nuisance: No noxious or offensive activity shall be carried out or permitted upon any of the lots, nor shall anything be done thereon which may be or may become any annoyance to the neighborhood. Nor shall the premises be used in annoyance to the neighborhood. Nor shall the premises be used in any way or for any purpose which may endanger the health or safety of, or unreasonably disturb the residents of any lots. Outdoor barbecues are not considered nuisances under this section.
- G. Livestock, Poultry and Pets: No animals, livestock or poultry of any kind shall be raised, bred or kept on any building site except dogs, cats or other animals herein mentioned provided that they are not kept, bred and maintained for any commercial purpose, and provided that such pets are not a nuisance to the neighbors or neighborhood. All dogs and cats shall be fed indoors. All pet food shall also be stored indoors.
1. One horse per 2.5 acres of owned land will be permitted providing that:
 - a. The containment area is adequately fenced.
 - b. The animals are not permitted to graze within 30 feet of any residences on the Emerald Point.
 - c. Horses are not permitted to be grazed or housed on the common area.
- H. Maintenance and Upkeep: All parcels and structures shall be maintained and kept in any esthetically pleasing manner and good repair. All exterior finishes on structures shall be maintained, stained or painted. All land shall be maintained in a slightly and clean manner free from debris and noxious weeds. All owners will implement a Wildfire Protection Plan for their parcel.
- I. Utility Lines: All utilities shall be underground.
- J. No business will be conducted in the subdivision that would necessitate the storage or resale of materials, heavy equipment or multi-axle vehicles. No business will be conducted that would cause excessive traffic in the subdivision.
- K. Miscellaneous: There shall be no washing or repairing or overnight parking of vehicles in the cul-de-sac or streets at any time, nor shall there be burning of leaves or trash on any street or cul-de-sacs. Boat trailers, utility trailers and all other trailers shall be parked so as not to impede the view, access or safety of the adjacent residents.
- L. Use Easements and Cross Easements: The parties recognize that the roads built within this subdivision are for the benefit of all lots herein and each lot is deemed to have cross easements appurtenant to each said lot and over the other lots for the use thereof.
- M. No temporary building, basement, shack, garage, barn, or any other type of temporary or partly finished building or structure shall be erected or placed on this property. Tents may be allowed providing the use is strictly recreational and seasonal.

- N. All lot owners are encouraged to maintain the natural forest setting of the Subdivision. Tree removal beyond that which is necessary for residential construction shall not be allowed. Tree removal within 20 feet of any property boundary is not allowed without prior written consent of the adjoining owner.

III. PROPERTY RIGHTS

- A. Owners Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot or Living Unit, subject to the following provisions:
1. The right of the Association to charge reasonable admission and other fees to the use, care, maintenance and improvements of the Common Area and the furnishings or providing of services and facilities to the property and owners thereof.
 2. The rights of the Association to place liens on Lots or Living Units whose owners fail to pay any fee, as limited by Article V hereof.
- B. Dedication of Common Areas: Declarant, in the plat of Emerald Point as recorded with the Clerk and recorder of Flathead County, Montana, has designated certain area of land as roadways and as Homeowner's purposes and recreation purposes respectfully. Dedicated areas are not dedicated for use by the general public. Ownership access and use of said areas is controlled and limited by Clearwater Developments.
- C. Homeowners Park. The homeowners park is designated to serve the owners of view lot properties in the Emerald Point Subdivision. Activities shall be limited to day-use only in nature and be single-family residential in scale and intensity. Commercial use and use by clubs or other private or semi-private organizations other than the specific residential homeowners association is prohibited.

Maintenance and development of the Park remains the responsibility of and shall be administered by the view lot owners. The view lot owners will place on site a portable toilet and enter into a maintenance agreement for the service of the same. Each view lot owner has equal rights in the Park's use. All development in the Lake, on the lakeshore or 20 feet landward of the average high water line of Ashley Lake shall comply with the Flathead County Lake and Lakeshore Protection Regulations and Ashley Lake Neighborhood plan.

IV. VARIANCES

The Association Board may grant variances, upon application, to any covenants, with written approval of adjoining neighbors, if applicable.

V. ASSOCIATION: ESTABLISHMENT, POWERS AND DUTIES

- A. For the purposes of maintaining the community roads and common area which is under the control of the Association, and shared by the owners and for the purpose of providing for the collection of any payment of necessary common expenses, and Association is hereby formed under the name of Emerald Point HOMEOWNERS ASSOCIATION. (Association)
- B. **Membership:** An owner of a lot in said subdivisions shall automatically upon becoming the owner of such lot be a member of the Association, and shall remain a member of such association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. The membership shall be limited to owners as defined in this declaration.
- C. **Voting:** On all matters to be decided by the Association, unless excluded by this declaration, each owner shall have one vote. A majority of the owners or a majority of votes represented by the owner of the votes present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum, as defined in the by-laws, is present.

Each lot in the described property shall have one (1) vote, but that vote shall be proportionally distributed between all owners. As used herein, the owners of the property shall be the person holding possession and title (including herein a purchaser under direct contract for deed), but shall not include a mortgage or a contract seller. Until 90% of the presently proposed lots are built and sold, developer shall have two votes for each lot retained. The presently proposed lots number 55.

- D. **Function:** The Association shall have the following functions:
 - 1. To adopt by-laws for the governance of the Association.
 - 2. To make provisions for the general management of the development.
 - 3. To make specific provisions for.
 - a. Road maintenance and control.
 - b. Applying dust retardant twice per year to the county road through the subdivision.
 - c. Maintenance of the drainage improvements.
 - d. Maintenance of the open space and parks under its control.
 - e. The Fire Service District.
 - 4. To levy assessments as provided for in the declaration and by-laws. The Association shall have the power to collect assessments and cause to be filed a notice of assessment at the office of the Clerk and Recorder all as provided in the by-laws. Such notice of assessment shall constitute a lien on the property.

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5. To adopt and implement a policy for the affairs of the subdivision.
 6. To enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repair of the properties under its control.
 7. To appoint an Architectural Committee to review lot building plans for compliance to guidelines established herein.
- E. Failure to Comply: Each owner shall strictly comply with the provisions of this declaration, the by-laws of the Association and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorney's fees incurred in connection therewith, which action shall be maintained by the Association owner where there has been a failure of Association to bring such action within a reasonable time.
- F. Payment of Assessments when Due: All assessments shall be due 30 days from the date of mailing of such assessment following the meeting at which time assessments are levied by the Association and may be payable in installments monthly or quarterly, at the option of the Association, which may charge interest on deferred payments. No owner may exempt himself from liability for this contribution toward the common expenses by waiver of the use or enjoyment of the property or by abandonment of his unit. All assessments which are not paid within thirty days from the date they are due and payable become delinquent and are subject to interest and penalty charges. The Association or manager shall have the responsibility of taking prompt action to collect any unpaid assessment which becomes delinquent. In the event of delinquency of the payment of the assessment, the unit owner shall be obligated to pay interest at a rate to be determined by the Association on the amount of the assessment from the due date thereof, together with such late charges as are provided in the by-laws of the Association. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintained without foreclosing or waiving the lien securing the same. The Board of Directors after an assessment is unpaid for 30 days may cause to be filed a lien in the amount then due plus accruing interest. A copy of the lien shall be sent to the owner at his last known address and to any mortgage holder who within the six months before requested notice of lien.
- G. Levying Assessments: The Association shall levy assessments upon the unit owners in the following reasons.
1. Assessment shall be made as a part of the regular, annual business meeting of the Association as provided in the by-laws of the Association, or assessments may be made for special purposes at any other regular or special meeting thereof. All assessments shall be fixed by resolution of the Association. Notice of an intended assessment, whether regular or special, the amount thereof, and the purpose for which it is to be made, including an annual budget for expenditures and operation for regular annual assessments, shall be served on each owner affected, by delivering a copy to the owner personally or by mailing a copy to the owner at his address of any special meeting to levelly the same.

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2. Assessments shall be made for the repair, replacement, insurance, general maintenance, management and administration of the properties, fees, costs and expenses of the manager, maintenance, insurance, repair of roads and taxes for common areas.
 3. Assessments may also be made for any purpose contemplated by this declaration.
 4. Common expenses and profits, if any, of the Association shall be distributed among and charged to the owners according to the percentage of lots owned by them as contrasted with the percentage built upon and occupied.
 5. In a voluntary conveyance of a lot, the grantee of the unit shall be jointly and severely liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice of the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the manager or Association, as the case be, setting forth the amount of such unpaid assessments against the grantor due the Association, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien or any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.
 6. At the time the Association holds its first meeting, a reserve account shall be set up to which initial assessments shall then be deposited and which assessments shall be a sum that is equal to two times the monthly assessment fee for that year multiplied by the number of lots. Such amount shall be divided equally among all lot owners, and if the Declarant still holds title to one or more lots, he shall pay the amount assessed against each lot so owned.
- H. Insurance Public Liability: Public liability coverage shall be maintained in such amounts and with such coverage as shall be required by the Association, with a cross-liability endorsement to cover liabilities of the lot owners as a group to a lot owner. Public liability shall also be maintained to cover liabilities related to common and open space areas.
1. Other Insurance: Such other insurance shall be obtained as the Association shall determine from time to time to be desirable and as may be required by federal and state laws.
 2. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except for the amount of increase in the premium occasioned by use for other than residential purposes, or misuse, negligence or the wrongful occupancy or abandonment of a lot or its appurtenances or of the common elements by a unit owner, which shall be assessed against that owner.

VI. ENFORCEMENT

- A. **General Statement:** These covenants may be enforced by an action to enjoin, abate or to collect in any Court of Law. It is understood that any violation of the covenants is to be deemed a nuisance and subject to abatement subject to equitable arguments. Any person taking subject to these covenants hereby recognizes the same and by accepting and recording a deed hereof accepts to be governed by the same.
- B. **Liens and Foreclosure:** All sums assessed but unpaid for the share expenses chargeable to any unit shall constitute a lien on such unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the lot in favor of any assessing authority, and all sums unpaid on a first mortgage or a first trust indenture of record, including all unpaid sums as may be provided by such encumbrance. To evidence such lien, the Association shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the owner of the lot and a description of the lot. Such notice shall be signed and verified by one of the officers of the Association or by the manager, if any, or their authorized agent, and shall be recorded in the office of the Clerk and Recorder of Flathead County, Montana. Such lien shall attach on the date of recording of such notice. Such lien may be enforced by the foreclosure of the defaulting owner's lot by the Association as provided for by the foreclosure proceedings on real property upon the recording of a notice of claim thereof. In any such foreclosure the owner shall be required to pay a reasonable rental for the lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the owner may be required to pay the costs, expenses, and attorney's fees incurred in filing the lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.
- C. **Bidding at Foreclosure:** The Association on behalf of the other owners shall have the power, but need not, to bid on the lot at a foreclosure or other legal sale and to acquire and hold, lease, mortgage and vote the votes appurtenant thereto, convey or otherwise deal with the same. Any lien holder holding a lien on a lot may pay, but shall not be required to pay, any unpaid general common expenses payable with respect to such unit and upon such payment such lien holder shall have a lien on said unit for the amounts paid of the same rank as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.
- D. **Unpaid Assessments, Mortgages:** When a lien holder or other purchasers of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessment by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expense collectible from all of the unit owners including such acquirer, his successors and assigns.

VII. BENEFITS

These Covenants inure to benefit all owners of units which are on tracts described above, either in existence now or as later decided and may be enforced by any one of them or by the Association as above created. The Association so acting may act in its own name but in doing so is acting for the owners of all the property except for the owner which is seeking relief.

In any action maintained under these covenants, the Court shall have authority and shall award reasonable attorneys fees to the availing party.

VIII. AMENDMENTS

At any regular or special meeting of the Association an amendment of this declaration may be proposed by a resolution by any unit owner. Upon adoption of the resolution by a majority vote of those present the amendment shall be made a subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the amendment to be furnished to each owner no later than thirty days in advance of such meeting. At such meeting, the amendment shall be approved upon receiving the favorable votes of 75% of the unit owners. If so approved, it shall be the responsibility of the Association to file the amendment with the Clerk and Recorder's Office in Flathead County, Montana. To record such amendment, the President and Secretary of the Association shall certify on the face of the amendment the vote. The Association will maintain for four years records of the unit owners votes. The signature of no other party is necessary on the amendment.

DATE this 1st day of June, 2001.

Clearwater Development Limited Partnership

By: Mike Russon Director

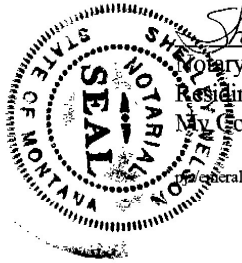
STATE OF MONTANA)

ss.

County of Flathead

On this 1st day of June, 2001, before me the undersigned, Notary Public for the State of Montana, personally appeared Mike Russon, known to me to be the person (s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.



Shelley Russon
Notary Public for the State of Montana
Residing at Kalispell
My Commission Expires: 4-9-2003
Emerald/covenants

STATE OF MONTANA, }
County of Flathead } ss.

Recorded at the request of Brien Surveijng
this 13 day of Aug., 2001 at 8:40 o'clock AM and recorded in
the records of Flathead County, State of Montana.

Fee \$ 66.00 Pd. Susan St. Havenfield
(Flathead County Clerk and Recorder)

RECEPTION NO. 200122508410

RETURN TO Clearwater Devel. Ltd. Part. Mara Grigostri
517 Grove Drive Alpine UT 84004 (Deputy)